MEDICAL ALARM CONCEPTS HOLDINGS INC
Form 8-K
October 26, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF
THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): October 25, 2010

MEDICAL ALARM CONCEPTS HOLDING, INC.
(Exact name of registrant as specified in its charter)

Nevada	333-153290	26-3534190
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

5215-C Militia Hill Road, Plymouth Meeting, PA	19462
(Address of principal executive offices)	(Zip Code)

(877) 639-2929
(Registrant’s telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.

On October 25, 2010, Medical Alarm Concepts Holding, Inc. (the "Company") received notice from its independent registered public accounting firm, Li & Company, PC, that an error had been made in the Company's historical financial statements. The Company's independent registered public accounting firm advised the Company of this error during the course of the audit of the Company's 2010 consolidated financial statements. The error affects primarily the Company's equity section and operating expenses.

As a result of the error, the Board of Directors determined that the Company should restate its financial statements for the periods ending December 31, 2009 and March 31, 2010 to reflect that the Company did not issue a warrant to purchase two million (2,000,000) shares of restricted common stock as payment for investor relations services. Such restatements impact the financial statements and other financial information included in Item 1. Financial Statements and Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations for each of the Quarterly Reports on Form 10-Q that were previously filed with the Securities and Exchange Commission (the "SEC"). The Company's Board of Directors and its management have discussed each of these matters with the Company's independent registered public accounting firm. As a result of the restatements, the Company's previously issued financial statements in its Quarterly Reports on Form 10-Q for the periods ended December 31, 2009 and March 31, 2010 should no longer be relied upon.

The Company plans to file with the SEC amended Quarterly Reports on Form 10-Q for the periods ended December 31, 2009 and March 31, 2010 following the filing of this Current Report on Form 8-K.

Correspondence from the Company's independent registered accounting firm with regard to whether it agrees with the statements made by the Company in response to this Item 4.02 is attached hereto as Exhibit 7.1.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
7.1	Letter from Li & Company, PC.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: October 26, 2010	MEDICAL ALARM CONCEPTS HOLDING, INC.
	By: /s/ Howard Teicher
	Howard Teicher
	Chief Executive Officer and Chairman of the Board

EXHIBIT INDEX

Exhibit No.	Description
7.1	Letter from Li & Company, PC.

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ttom"> (1,307.6)

Other, net

(142.0) 17.0 4.0 (121.0)

Total other income and (expenses)

(451.5) (606.0) 15.0 (69.4) (1,111.9)

Income (loss) from continuing operations before income taxes	617.6	109.0	(417.5)	(37.9)		271.2
Income tax expense (benefit)	250.2	(73.0)	(190.6)	(18.4)	(r)	(31.8)

Income (loss) from continuing operations

367.4 182.0 (226.9) (19.5) 303.0

Income (loss) from discontinued operations, net of tax

(0.5) 226.9 (149.3) (s) 77.1

Net income (loss)

366.9 182.0 (168.8) 380.1

Net loss (income) attributable to noncontrolling interests

71.7 (226.0) (12.6) (t) (166.9)

Net income (loss) attributable to Kinder Morgan

$438.6 $(44.0) $ $(181.4) $213.2

Basic Earnings Per Common Share from Continuing Operations

Class P shares

$0.52 $ 0.13 (w)

Class A shares

$0.48 $ 0.09 (w)

Basic Weighted Average Number of Shares Outstanding

Class P shares

110.8 329.1 (u) 440.0 0.1 (v)

Class A shares

596.2 (0.1) (v) 596.1

Diluted Earnings Per Common Share from Continuing Operations

Class P shares

$0.52 $ 0.13 (w)

Class A shares

$0.48 $ 0.09 (w)

Diluted Weighted Average Number of Shares Outstanding

Class P shares	707.4	329.1	(u)	1,036.5
Class A shares	596.2	(0.1)	(v)	596.1

The accompanying notes are an integral part of these

unaudited pro forma condensed combined financial statements.

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KINDER MORGAN, INC.

UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF INCOME

FOR THE YEAR ENDED DECEMBER 31, 2010

(In millions, except per share amounts)

	Historical		Pro Forma Adjustments				
	Kinder Morgan	El Paso	EP Energy Sale(a)	El Paso Acquisition(b)		Pro Forma Combined	
Operating revenues	$ 8,190.6	$ 4,616.0	$ (1,789.0)	$ (54.6)	(o)	$ 10,963.0	
Operating costs and expenses							
Gas purchases and other costs of sales	3,612.9	218.0	(88.0)	(54.6)	(o)	3,688.3	
Other operating expenses	3,297.0	2,355.0	(946.8)	(42.0)	(p)	4,663.2	
Total operating costs and expenses	6,909.9	2,573.0	(1,034.8)	(96.6)		8,351.5	
Operating income	1,280.7	2,043.0	(754.2)	42.0		2,611.5	
Other income and (expenses)							
Equity in earnings of other equity investments	(186.2)	188.0	7.0			8.8	
Interest expense, net	(668.3)	(1,031.0)	16.0	(116.8)	(q)	(1,800.1)	
Other, net	41.7	110.0	(3.0)			148.7	
Total other income and (expenses)	(812.8)	(733.0)	20.0	(116.8)		(1,642.6)	
Income(loss) from continuing operations before income taxes	467.9	1,310.0	(734.2)	(74.8)		968.9	
Income tax expense (benefit)	167.6	386.0	(273.5)	(33.3)	(r)	246.8	
Income (loss) from continuing operations	300.3	924.0	(460.7)	(41.5)		722.1	
Income (loss) from discontinued operations, net of tax	(0.7)		460.7	(229.8)	(s)	230.2	
Net income (loss)	299.6	924.0		(271.3)		952.3	
Net income attributable to noncontrolling interests	(340.9)	(166.0)		(16.8)	(t)	(523.7)	
Net (loss) income attributable to Kinder Morgan	$ (41.3)	$ 758.0	$	$ (288.1)		$ 428.6	
Basic Earnings Per Common Share from Continuing Operations							
Class P shares						$ 0.19	(x)
Class A shares						$ 0.19	(x)
Basic Weighted Average Number of Shares Outstanding							
Class P shares				110.9	(v)	440.0	
				329.1	(u)		
Class A shares				596.1	(v)	596.1	
Diluted Earnings Per Common Share from Continuing Operations							
Class P shares						$ 0.19	(x)
Class A shares						$ 0.19	(x)
Diluted Weighted Average Number of Shares Outstanding							

Class P shares	707.0	(v)	1,036.1
	329.1	(u)	
Class A shares	596.1	(v)	596.1

The accompanying notes are an integral part of these

unaudited pro forma condensed combined financial statements.

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NOTES TO UNAUDITED PRO FORMA CONDENSED

COMBINED FINANCIAL STATEMENTS

Note 1 Basis of Pro Forma Presentation

The unaudited pro forma condensed combined financial statements (the Unaudited Pro Forma Statements) give effect to the proposed transactions under the purchase method of accounting. The unaudited pro forma condensed combined balance sheet gives effect to the transactions as if the second merger had occurred on September 30, 2011. The unaudited pro forma condensed combined statements of income for the nine months ended September 30, 2011 and for the year ended December 31, 2010 give effect to the transactions as if the second merger had occurred on January 1, 2010. The Unaudited Pro Forma Statements present EP Energy as current assets and liabilities held for sale as of September 30, 2011 and discontinued operations beginning January 1, 2010, as Kinder Morgan intends to sell the assets of EP Energy.

These Unaudited Pro Forma Statements are presented for illustrative purposes only. The pro forma adjustments are based upon available information and assumptions described below. The Unaudited Pro Forma Statements are not necessarily indicative of what the actual results of operations or financial position of Kinder Morgan would have been if the transactions had in fact occurred on the dates or for the periods indicated, nor do they purport to project the results of operations or financial position of Kinder Morgan for any future periods or as of any date. The Unaudited Pro Forma Statements do not give effect to any cost savings, operating synergies, and revenue enhancements expected to result from the transactions or the costs to achieve these cost savings, operating synergies, and revenue enhancements.

The Unaudited Pro Forma Statements should be read in conjunction with (i) the historical consolidated financial statements and related notes of Kinder Morgan included elsewhere in this information statement/proxy statement/prospectus, (ii) Additional Information About Kinder Morgan Kinder Morgan Management s Discussion and Analysis of Financial Condition and Results of Operations, (iii) El Paso s Annual Report on Form 10-K for the year ended December 31, 2010, incorporated by reference and (iv) El Paso s quarterly report on Form 10-Q for the nine months ended September 30, 2011, incorporated by reference.

Note 2 Pro Forma Adjustments and Assumptions

(a) Sale of EP Energy

Kinder Morgan intends to sell the assets of El Paso s subsidiary, EP Energy. Kinder Morgan has committed to a plan and is actively pursuing buyers with the intent to sell all or substantially all of those assets either in conjunction with the closing of the transactions or shortly thereafter. Accordingly, the assets and liabilities of EP Energy have been reclassified as current assets and liabilities held for sale on the accompanying unaudited pro forma condensed combined balance sheet. In addition, the results of operations (excluding indirect corporate overhead allocations) for EP Energy have been reclassified to discontinued operations on the accompanying unaudited pro forma condensed combined statement of income beginning January 1, 2010. El Paso s net operating loss carryforwards are expected to significantly offset the cash taxes associated with this sale and the resulting cash raised will significantly reduce the debt borrowed to fund the cash portion of this transaction. The assets and liabilities held for sale have been shown in the Pro Forma Combined column of the Unaudited Pro Forma Statements based on their estimated fair value based on management s best estimate on the date of this information statement/proxy statement/prospectus. An increase of $100 million in the fair value for these assets would have the following impacts to the accompanying Unaudited Pro Forma Statements:

Unaudited pro forma condensed combined balance sheet:

Increasing the fair value of assets held for sale by $100 million and decreasing goodwill by $100 million. The tax effect of this adjustment would increase deferred income tax liabilities by $36.3 million and increase goodwill by $36.3 million, for a net reduction to goodwill of $63.7 million. As noted above, we anticipate that El Paso s net operating loss carryforwards will significantly offset the cash taxes associated with this sale.

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Unaudited pro forma condensed combined income statements:

Interest expense will shift from continuing operations to discontinued operations in the amount of $3.1 million and $4.8 million for the nine months ended September 30, 2011 and year ended December 31, 2010, respectively. Net of income taxes of 36.3% the impact is $2.0 million and $3.1 million for the nine months ended September 30, 2011 and year ended December 31, 2010, respectively.

A decrease of $100 million in the sales price would have the opposite impact to the accompanying Unaudited Pro Forma Statements.

Unaudited Pro Forma Condensed Combined Balance Sheet Adjustments

(b) Represents pro forma adjustments to reflect the proposed transactions under the purchase method of accounting. Under the purchase method of accounting, tangible and identifiable intangible assets acquired and liabilities assumed are recorded at their estimated fair values. The excess of the purchase price over the preliminary estimated fair value of net assets acquired is classified as goodwill on the accompanying unaudited pro forma condensed combined balance sheet. Such goodwill is not amortized but will be evaluated for impairment on, at least, an annual basis. The estimated fair values and useful lives of assets acquired and liabilities assumed are based on preliminary management estimates and are subject to final valuation adjustments which may cause some of the amounts ultimately recorded as goodwill to be materially different from those shown on the unaudited pro forma condensed combined balance sheet. The preliminary estimates used to prepare the pro forma information presented will be updated after the closing of the transactions based upon management s final analysis prepared with the assistance of third party valuation advisors. The price at which the warrants will trade, as well as the ultimate value to be realized with respect to the warrants, is uncertain. Recognizing that it is not possible to determine a precise fair market value of the warrants at this time, Kinder Morgan and El Paso have had Morgan Stanley, Evercore and Barclays each independently value the warrants using Black-Scholes and other valuation methods. Based on the valuation ranges calculated by the financial advisors, Kinder Morgan estimates the fair value, in accordance with ASC 820, *Fair Value Measurements and Disclosures,* to be approximately $1.50 per warrant.

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The following is a preliminary estimate of the purchase price for El Paso (in millions, except per share and per warrant amounts):

Purchase Price:	
El Paso shares outstanding	765.3
Dilutive effect of El Paso outstanding restricted stock and stock options	20.8
Total El Paso shares assumed to be subject to conversion	786.1
Cash conversion amount per El Paso share	$ 14.65
Cash portion of purchase price (assumed to be funded through borrowings)	$ 11,516.6
Total El Paso shares assumed to be subject to conversion	786.1
El Paso share conversion rate	0.4187
Total Kinder Morgan Class P common shares assumed to be issued	329.1
Kinder Morgan Class P common share closing price as of January 27, 2012 (1)	$ 32.38
Assumed fair value of equity portion of purchase price	$ 10,657.8
Total El Paso shares assumed to be subject to conversion	786.1
Exchange rate for Kinder Morgan warrants	0.64
Total Kinder Morgan warrants assumed to be issued	503.1
Kinder Morgan warrant estimated fair value per warrant	$ 1.50
Assumed fair value of Kinder Morgan warrants portion of purchase price	$ 754.7
Total consideration assumed to be paid (excluding debt assumed)	$ 22,929.1
Less: El Paso share based awards to be expensed (2)	(209.7)
Purchase price before noncontrolling interest	22,719.4
Fair value of noncontrolling interests in EPB (3)	4,144.0
Total purchase price and fair value of noncontrolling interests	$ 26,863.4

(1) The final purchase price will be based on the fair value of Kinder Morgan s Class P common stock and Kinder Morgan warrants as of the closing date. Because the El Paso share conversion rate and the exchange rate for the warrants are fixed, the market value of the shares of Kinder Morgan Class P common stock and/or Kinder Morgan warrants that El Paso stockholders receive as part of the merger consideration may vary significantly from the purchase price calculated above. A 5% change in the market value of Kinder Morgan stock would result in an increase or decrease to the total purchase price of approximately $533 million (assuming no change in the value of the Kinder Morgan warrants). A 20% change in the fair value of Kinder Morgan warrants would result in an increase or decrease to the total purchase price of approximately $150 million. The impact of this change on the purchase price allocation would be to increase or decrease the amount of goodwill recognized in this transaction.

(2) Represents an estimate of the portion of the fair value of El Paso s share based awards pertaining to post-combination service, as of September 30, 2011, which will be excluded from the merger consideration and will be immediately expensed in Kinder Morgan s post-combination financial statements as no post-combination service is required of the recipients. The final fair value of El Paso s share based awards will be determined as of the closing date and will be impacted by the market value of Kinder Morgan Class P common stock and/or Kinder Morgan warrants exchanged for settlement of these awards. In addition, the allocation of fair value to post-combination service will decrease as more time passes between the grant dates of El Paso s share based awards and the closing date of this transaction. For example, if this calculation were updated as of December 31, 2011 with no changes to valuation other than the passage of time, the estimated portion of the fair value allocated to post-combination service would decrease from $209.7 million to $167.4 million.

(3) The fair value of noncontrolling interests associated with El Paso s investment in EPB is based on the 117.3 million EPB common units outstanding to the public as of January 27, 2012, which has not materially changed since September 30, 2011, and valued at EPB s January 27, 2012 closing price of $35.33 per common unit. The final fair value of noncontrolling interest will be based on the number of EPB common units outstanding and the price of EPB s common units as of the closing date.

The preliminary allocation of the purchase price is as follows (in millions):

Purchase Price Allocation:	
Current assets	$ 1,066.5
Current assets held for sale	9,076.0
Goodwill	18,238.5
Investments	2,902.0
Property, plant and equipment, net	13,019.8
Deferred charges and other assets	1,614.8
Current liabilities	(2,335.5)
Current liabilities held for sale	(1,627.0)
Deferred income taxes	(1,069.5)
Other deferred credits	(1,442.0)
Long-term debt	(12,580.2)
Total purchase price and fair value of noncontrolling interests	$ 26,863.4

(c) To eliminate balances between Kinder Morgan and El Paso.

(d) Represents amounts expected to be borrowed in excess of the purchase price net of financing fees. Kinder Morgan expects to borrow approximately $283.4 million in excess of the cash purchase price. Of this amount, approximately $145.3 million will be used to pay financing fees and the balance will be used to pay transaction expenses, such as financial advisory, legal, accounting, printing and filing fees and severance costs. Severance costs included herein will be expensed in Kinder Morgan s post-combination financial statements. When the allocation of other costs between expense and capital can be reasonably determined, El Paso and Kinder Morgan will either (i) expense their respective financial advisory, legal, accounting, printing and filing fees incurred in connection with the transactions in their respective financial statements for the periods prior to the closing of the transactions or (ii) capitalize any of these fees incurred to issue debt or equity securities in accordance with other applicable U.S. GAAP.

(e) Represents a pro forma adjustment to property, plant and equipment for historical excess purchase costs associated with El Paso s acquisitions of regulated assets. This adjustment is necessary to reflect El Paso s property, plant and equipment balances at their estimated regulatory fair value in conformity with Kinder Morgan s accounting policy.

(f) To adjust the carrying value of El Paso s equity investments to estimated fair value.

(g) To reflect the establishment of goodwill, estimated as the excess of merger consideration (including cash, Class P common shares, warrants and the fair value of noncontrolling interests) over the estimated fair value of the assets acquired and liabilities assumed.

(h) Represents the net adjustment to deferred charges and other assets to reflect (i) an $827.8 million regulatory offset to the fair value of debt adjustment recorded on debt in regulated companies, (ii) $145.3 million in new debt issuance costs associated with the incremental debt

issued in the transactions and (iii) a $112.0 million adjustment of El Paso s historical debt issuance costs to its estimated fair value of zero.

(i) Represents the net adjustment to short term and long term debt to (i) reflect the issuance of $6.8 billion in short term debt to fund a portion of the cash purchase price, (ii) reflect the issuance of $4.7 billion long term debt to fund a portion of the cash purchase price, (iii) reflect the $700.0 million repayment of El Paso s September 30, 2011 outstanding balance on its revolving credit facility which is classified as long term debt and a $700.0 million borrowing on Kinder Morgan s upsized credit facility which is classified as short term debt, (iv) reflect the issuance of $283.4 million of long-term debt borrowed in excess of cash purchase price, and (v) adjust the carrying value of El Paso s long term debt to its estimated fair value as of September 30, 2011 ($1.3 billion).

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(j) To reflect approximately $25 million ($15.9 million after-tax) for known contractual severance costs for certain identified employees that will be involuntarily terminated. These severance costs will be expensed in Kinder Morgan s post-combination financial statements. A plan to identify additional employees will be completed shortly before the consummation date of transactions. Additional severance costs are likely, however, the amount of these costs is not known at this time.

(k) To reflect the impact on deferred taxes resulting from the tax effects of other pro forma balance sheet adjustments described herein using Kinder Morgan s statutory federal and state tax rate of 36.3%.

(l) To reflect the elimination of the historical stockholders equity balances of El Paso.

(m) Represents the fair value of Kinder Morgan Class P common stock and warrants issued as part of the purchase price ($3.3 million to Class P shares par value and $11.2 billion to additional paid-in-capital).

(n) To adjust the carrying value of noncontrolling interests associated with EPB to fair value based on the 117.3 million EPB common units outstanding to the public as of January 27, 2012 and valued at EPB s January 27, 2012 closing price of $35.33 per common unit. The final fair value of noncontrolling interest will be based on the number of EPB common units outstanding and the price of EPB s common units as of the closing date.

Unaudited Pro Forma Condensed Combined Statements of Income Adjustments

(o) To eliminate activity between Kinder Morgan and El Paso.

(p) Represents a pro forma adjustment to depreciation expense related to the adjustment of property, plant and equipment for the historical excess purchase costs associated with El Paso s acquisitions of regulated assets, as discussed in footnote (e) above. These historical excess purchase costs on regulated assets were previously being depreciated over approximately 60 years.

(q)

	Nine Months Ended September 30, 2011	Year Ended December 31, 2010
	(in millions)	
Interest expense on debt issued in these transactions (1)	$ (130.6)	$ (174.1)
Amortization of debt issuance costs (2)	(6.4)	(36.6)
Debt refinanced in conjunction with these transactions (3)	(8.0)	(6.2)
Amortization of fair value adjustment to El Paso s debt (4)	105.5	140.6
Amortization of regulatory offset to fair value adjustment to El Paso s debt (5)	(52.9)	(70.5)
Reversal of El Paso s amortization of capitalized debt issuance costs (6)	23.0	30.0
Pro forma adjustments to interest expense	$ (69.4)	$ (116.8)

(1) Represents incremental interest expense associated with continuing operations on the debt issued in these transactions. Kinder Morgan has obtained an $11.8 billion financing commitment from a syndicate of banks. The incremental debt issued will have two components (i) a $6.8 billion 364-day senior secured term loan credit facility which will bear interest at LIBOR plus 300 basis points (based on Kinder Morgan s current credit rating) (referred to as the 364-Day Facility) and (ii) a $5.0 billion three year senior secured

term loan credit facility which will bear interest at LIBOR plus 350 basis points (based on Kinder Morgan s current credit rating) (referred to as the Term Facility). The spread over LIBOR on the 364-Day Facility and the Term Facility may increase or decrease based on Kinder Morgan s credit ratings. The 364-Day Facility provides for additional fees as well as an increase in LIBOR margin during the 364-day term. See Description of the Debt Financing.

For purposes of these Unaudited Pro Forma Statements, it was assumed that the incremental $11.8 billion of debt would have an average annual interest cost of 4.0%. A change of 0.125% in the effective interest rate on the incremental debt would cause a change in annual interest expense of $9.4 million, net of income tax.

(2) Represents amortization of debt issuance costs associated with continuing operations on the debt issued in these transactions over the lives of the two debt facilities.

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(3) Represents increased interest expense associated with the debt refinanced in conjunction with the transactions. In conjunction with the transactions, Kinder Morgan will upsize its existing senior secured revolving credit facility from $1.0 billion to $1.5 billion, repay the $700 million outstanding as of September 30, 2011 on El Paso s revolving credit facility using the upsized Kinder Morgan credit facility, and retire the El Paso credit facility. The rate difference between (i) Kinder Morgan s upsized credit facility and its existing credit facility (approximately 187.5 basis points) and (ii) Kinder Morgan s upsized credit facility and El Paso s credit facility (approximately 75 basis points) is reflected herein. See Description of the Debt Financing.

(4) Represents the reduction of interest expense for the amortization of the fair value of El Paso s debt purchase price adjustment using the effective interest rate method. The estimated future reduction of interest expense for the amortization of the fair value of debt purchase price adjustment for each of the next five fiscal years (2012 2016) would be approximately $140 million, $137 million, $128 million, $126 million and $103 million.

(5) Represents the increase of interest expense for the amortization of the regulatory offset to the fair value adjustment to El Paso s debt in regulated subsidiaries. The estimated future amortization expense related to this regulatory offset for each of the next five fiscal years (2012 2016) would be approximately $70 million, $73 million, $76 million, $77 million and $57 million, respectively.

(6) Represents the reversal of El Paso s historical amortization expense associated with its capitalized debt issuance costs, which is included in El Paso s historical interest expense for the nine months ended September 30, 2011 and the year ended December 31, 2010.

(r) Pro forma adjustment to income tax expense, calculated using Kinder Morgan s statutory federal and state income tax rate of 36.3%.

(s) Represents the incremental interest expense, net of income taxes, on the portion of the $11.8 billion of debt issued in the transactions that is allocated to discontinued operations. The amount of debt allocated to discontinued operations is equal to EP Energy s estimated fair value. Net proceeds received from the sale of EP Energy will be required by the terms of the 364-Day Facility and the Term Facility to be used to pay down debt.

(t) To allocate net income to noncontrolling interests for pro forma adjustments related to the portion of EPB that El Paso does not own. El Paso owns a 2% general partner and a 41.8% limited partner interest in EPB with 56.2% of EPB being owned by noncontrolling interests. Pro forma adjustments related to EPB include a portion of the adjustments described in footnote (q) above to reflect (i) a reduction in interest expense related to the amortization of El Paso s fair value of debt purchase price adjustment and (ii) the reversal of El Paso s historical amortization expense associated with its capitalized debt issuance costs. The pro forma adjustments to noncontrolling interests were calculated by multiplying these two pro forma adjustments by 56.2%.

(u) Assumes the 329.1 million Class P shares issued in conjunction with the second merger were outstanding as of January 1, 2010.

(v) Assumes the shares issued in Kinder Morgan s February 2011 Initial Public Offering and the related conversion of 1,110,672 Class P shares were outstanding as of January 1, 2010.

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(w) The following table sets forth the computation of basic and diluted earnings per share from continuing operations for the nine months ended September 30, 2011 (in millions, except per share amounts):

	Nine Months Ended September 30, 2011 Net Income Available to Shareholders			
	Class P	Class A	Participating Securities(1)	Total
Net income from continuing operations				$ 303.0
Less: noncontrolling interests				(166.9)
Net income attributable to shareholders from continuing operations				136.1
Kinder Morgan dividends declared during period	$ 236.4	$ 295.4	$ 25.4	(557.2)
Excess distributions over earnings	(178.8)	(242.2)	(0.1)	$ (421.1)
Total net income attributable to shareholders from continuing operations	$ 57.6	$ 53.2	$ 25.3	$ 136.1
Basic Earnings Per Share from Continuing Operations				
Basic Weighted Average Number of Shares Outstanding	440.0	596.1	N/A	
Basic Earnings per Common Share from Continuing Operations(2)	$ 0.13	$ 0.09	N/A	
Diluted Earnings per Share from Continuing Operations				
Total net income attributable to shareholders from continuing operations (assuming conversions)(2)(3)	$ 136.1	$ 53.2	N/A	
Diluted Weighted Average Number of Shares	1,036.5	596.1	N/A	
Diluted Earnings per Common Share from Continuing Operations(2)	$ 0.13	$ 0.09	N/A	

(1) Participating securities include Class B shares, Class C shares and unvested restricted stock awards issued to non-senior management employees that contain rights to dividends.

(2) The Class A shares earnings per share as compared to the Class P shares earnings per share is different due to the sharing of economic benefits (including dividends) amongst the Class A, B, and C shares. For the nine months ended September 30, 2011, this difference is created by the priority dividend paid to the Class B shareholders that reduces the dividends paid to the Class A shareholders. Class A, B and C shares owned by Richard Kinder, the Sponsor Investors, the Original Shareholders, and Other Management are referred to as investor retained stock, and are convertible into a fixed number of Class P shares. In the aggregate, the investor retained stock is entitled to receive a dividend per share on a fully converted basis equal to the dividend per share on the Class P common stock. The conversion of shares of investor retained stock into Class P shares will not increase Kinder Morgan s total fully-converted shares outstanding, nor impact the aggregate dividends Kinder Morgan pays or the dividends Kinder Morgan pays per share on Class P common stock.

(3) For the diluted earnings per share calculation, total net income attributable to shareholders from continuing operations is divided by the adjusted weighted average shares outstanding during the period, including all dilutive potential shares.

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(x) The following table sets forth the computation of basic and diluted earnings per share from continuing operations for the year ended December 31, 2010 (in millions, except per share amounts):

	Year Ended December 31, 2010 Net Income Available to Shareholders		
	Class P	Class A	Total
Net income from continuing operations			$ 722.1
Less: noncontrolling interests			(523.7)
Net income attributable to shareholders from continuing operations			198.4
Kinder Morgan dividends declared during period	$ 297.3	$ 402.7	(700.0)
Excess distributions over earnings	(213.0)	(288.6)	$ (501.6)
Total net income attributable to shareholders from continuing operations	$ 84.3	$ 114.1	$ 198.4
Basic Earnings Per Share from Continuing Operations			
Basic Weighted Average Number of Shares Outstanding	440.0	596.1	
Basic Earnings per Common Share from Continuing Operations(2)	$ 0.19	$ 0.19	
Diluted Earnings per Share from Continuing Operations			
Total net income attributable to shareholders from continuing operations (assuming conversions)(1)	$ 198.4	$ 114.1	
Diluted Weighted Average Number of Shares	1,036.1	596.1	
Diluted Earnings per Common Share from Continuing Operations(2)	$ 0.19	$ 0.19	

(1) For the diluted earnings per share calculation, total net income attributable to shareholders from continuing operations is divided by the adjusted weighted average shares outstanding during the period, including all dilutive potential shares.

(2) There were no priority dividends paid to the Class B shareholders in the year ended December 31, 2010; therefore, the Class P and Class A basic and diluted earnings per share amounts are identical.

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Report of Independent Registered Public Accounting Firm

To the Board of Directors

and Shareholders of Kinder Morgan, Inc. (formerly known as Kinder Morgan Holdco LLC):

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of income, of cash flows, of members equity and of comprehensive income present fairly, in all material respects, the financial position of Kinder Morgan, Inc. (formerly known as Kinder Morgan Holdco LLC) and its subsidiaries (the Company) at December 31, 2010 and 2009, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2010 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company s management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

Houston, Texas

March 1, 2011

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KINDER MORGAN, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF INCOME

	Year Ended December 31,		
	2010	2009	2008
		(In millions)	
Revenues			
Natural gas sales	$ 3,614.4	$ 3,137.2	$ 7,705.8
Services	3,024.7	2,739.1	2,904.0
Product sales and other	1,551.5	1,308.9	1,485.0
Total Revenues	8,190.6	7,185.2	12,094.8
Operating Costs, Expenses and Other			
Gas purchases and other costs of sales	3,612.9	3,068.5	7,744.0
Operations and maintenance	1,422.3	1,159.9	1,318.0
Depreciation, depletion and amortization	1,078.8	1,070.2	918.4
General and administrative	631.1	373.0	352.5
Taxes, other than income taxes	171.4	137.0	191.4
Goodwill impairment expense			4,033.3
Other expense (income)	(6.6)	(30.6)	9.3
Total Operating Costs, Expenses and Other	6,909.9	5,778.0	14,566.9
Operating Income (loss)	1,280.7	1,407.2	(2,472.1)
Other Income (Expense)			
Earnings (loss) from equity investments	(186.2)	221.9	201.1
Amortization of excess cost of equity investments	(5.8)	(5.8)	(5.7)
Interest expense	(668.3)	(599.1)	(675.8)
Interest income	23.4	25.7	47.5
Other, net	24.1	49.5	7.0
Total Other Income (Expense)	(812.8)	(307.8)	(425.9)
Income (Loss) from Continuing Operations Before Income Taxes	467.9	1,099.4	(2,898.0)
Income Taxes	(167.6)	(326.6)	(304.3)
Income (Loss) from Continuing Operations	300.3	772.8	(3,202.3)
Income (Loss) from Discontinued Operations, net of tax	(0.7)	0.3	(0.9)
Net Income (Loss)	299.6	773.1	(3,203.2)
Net Income Attributable to Noncontrolling Interests	(340.9)	(278.1)	(396.1)
Net Income (Loss) Attributable to Kinder Morgan, Inc.	$ (41.3)	495.0	$ (3,599.3)

The accompanying notes are an integral part of these consolidated financial statements.

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KINDER MORGAN, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME

	Year Ended December 31,		
	2010	**2009**	**2008**
		(In millions)	
Kinder Morgan, Inc.			
Net income (loss)	$ (41.3)	$ 495.0	$ (3,599.3)
Other comprehensive income (loss), net of tax (see Note 10)			
Change in fair value of derivatives utilized for hedging purposes	(18.8)	(138.7)	212.0
Reclassification of change in fair value of derivatives to net income	21.2	(39.4)	117.1
Foreign currency translation adjustments	38.7	53.9	(68.7)
Benefit plan adjustments	(16.3)	2.8	(66.5)
Benefit plan amortization	6.6	6.9	0.4
Total other comprehensive income (loss)	31.4	(114.5)	194.3
Total comprehensive income (loss)	(9.9)	380.5	(3,405.0)
Noncontrolling Interests			
Net income	340.9	278.1	396.1
Other comprehensive income (loss), net of tax (see Note 10)			
Change in fair value of derivatives utilized for hedging purposes	(34.6)	(208.8)	295.4
Reclassification of change in fair value of derivatives to net income	85.7	45.7	301.1
Foreign currency translation adjustments	45.7	114.9	(149.6)
Benefit plan adjustments	(1.3)	(1.2)	1.9
Benefit plan amortization	0.2	0.1	(0.3)
Total other comprehensive income (loss)	95.7	(49.3)	448.5
Total comprehensive income	436.6	228.8	844.6
Total			
Net income (loss)	299.6	773.1	(3,203.2)
Other comprehensive income (loss), net of tax (see Note 10)			
Change in fair value of derivatives utilized for hedging purposes	(53.4)	(347.5)	507.4
Reclassification of change in fair value of derivatives to net income	106.9	6.3	418.2
Foreign currency translation adjustments	84.4	168.8	(218.3)
Benefit plan adjustments	(17.6)	1.6	(64.6)
Benefit plan amortization	6.8	7.0	0.1
Total other comprehensive income (loss)	127.1	(163.8)	642.8
Total comprehensive income (loss)	$ 426.7	$ 609.3	$ (2,560.4)

The accompanying notes are an integral part of these consolidated financial statements.

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KINDER MORGAN, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

	December 31, 2010	December 31, 2009
	(In millions)	
ASSETS		
Current assets		
Cash and cash equivalents	$ 502.4	$ 165.6
Restricted deposits	90.5	52.5
Accounts, notes and interest receivable, net	971.4	916.3
Inventories	92.0	71.9
Gas in underground storage	2.2	43.5
Fair value of derivative contracts	24.0	20.8
Other current assets	104.4	109.7
Total current assets	1,786.9	1,380.3
Property, plant and equipment, net	17,070.7	16,803.5
Investments	4,291.1	3,695.6
Notes receivable	115.0	190.6
Goodwill	4,830.9	4,744.3
Other intangibles, net	339.2	259.8
Fair value of derivative contracts	301.7	293.3
Deferred charges and other assets	172.6	213.6
Total Assets	$ 28,908.1	$ 27,581.0
LIABILITIES AND MEMBERS EQUITY		
Current liabilities		
Current portion of debt Kinder Morgan Kansas, Inc.	$ 750.0	$ 172.1
Current portion of debt KMP	1,263.3	596.6
Cash book overdrafts	34.3	36.6
Accounts payable	647.5	620.8
Accrued interest	310.4	292.1
Accrued taxes	44.7	58.3
Deferred revenues	96.7	76.1
Fair value of derivative contracts	281.5	272.0
Accrued other current liabilities	215.7	194.6
Total current liabilities	3,644.1	2,319.2
Long-term liabilities and deferred credits		
Long-term debt		
Outstanding Kinder Morgan Kansas, Inc.	2,773.8	2,772.2
Outstanding KMP	10,282.8	10,007.5
Preferred interest in general partner of KMP	100.0	100.0
Value of interest rate swaps	656.3	361.0
Total long-term debt	13,812.9	13,240.7

Deferred income taxes	2,092.7	2,035.9
Fair value of derivative contracts	172.2	469.6
Other long-term liabilities and deferred credits	647.2	670.5
Total long-term liabilities and deferred credits	16,725.0	16,416.7
Total Liabilities	20,369.1	18,735.9
Commitments and contingencies (Notes 8, 12 and 16)		
Members Equity		
Members capital	3,575.6	4,338.4
Accumulated other comprehensive loss	(136.5)	(167.9)
Total Kinder Morgan, Inc. s members equity	3,439.1	4,170.5
Noncontrolling interests	5,099.9	4,674.6
Total Members Equity	8,539.0	8,845.1
Total Liabilities and Members Equity	$ 28,908.1	$ 27,581.0

The accompanying notes are an integral part of these consolidated financial statements.

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KINDER MORGAN, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

	Year Ended December 31,		
	2010	2009 (In millions)	2008
Cash Flows From Operating Activities			
Net income (loss)	$ 299.6	$ 773.1	$ (3,203.2)
Adjustments to reconcile net income to net cash provided by operating activities			
Loss (income) from discontinued operations, net of tax	0.7	(0.3)	0.9
Loss on early extinguishment of debt			23.6
Depreciation, depletion and amortization	1,078.8	1,070.2	918.4
Impairment of goodwill			4,033.3
Deferred income taxes	1.9	60.6	(496.4)
Amortization of excess cost of equity investments	5.8	5.8	5.7
Income from the allowance for equity funds used during construction	(0.7)	(22.7)	(10.9)
(Income) loss from the sale or casualty of property, plant and equipment and other net assets	(15.4)	(30.4)	9.2
Loss (earnings) from equity investments	186.2	(221.9)	(201.1)
Mark-to-market interest rate swap gain			(19.8)
Distributions from equity investments	219.8	277.0	241.6
Proceeds from termination of interest rate swap agreements	157.6	146.0	192.0
Pension contributions in excess of expense	(14.6)	(7.7)	
Changes in components of working capital			
Accounts receivable	18.2	47.6	60.6
Inventories	(20.8)	(20.0)	(7.9)
Other current assets	40.3	(93.6)	(16.9)
Accounts payable	(4.2)	(180.5)	(99.3)
Accrued interest	18.4	50.2	0.7
Accrued taxes	(4.8)	(131.6)	109.0
Accrued liabilities	(45.3)	(125.0)	(119.1)
Rate reparations, refunds and other litigation reserve adjustments	(34.3)	2.5	(13.7)
Other, net	24.8	(11.3)	(9.1)
Cash Flows Provided by Continuing Operations	1,912.0	1,588.0	1,397.6
Net Cash Flows Used in Discontinued Operations	(1.0)	(0.5)	(0.8)
Net Cash Provided by Operating Activities	1,911.0	1,587.5	1,396.8
Cash Flows From Investing Activities			
Proceeds from sale of 80% interest in NGPL PipeCo LLC net of $1.1 cash sold			2,899.3
Proceeds from NGPL PipeCo LLC restricted cash			3,106.4
Acquisitions of equity investments	(925.7)	(36.0)	
Acquisitions of assets	(287.5)	(292.9)	(47.6)
Repayments (loans) from customers		109.6	(109.6)
Capital expenditures	(1,002.5)	(1,324.3)	(2,545.3)
Deconsolidation of variable interest entity due to the implementation of ASU 2009-17 (Note 18)	(17.5)		
Sale or casualty of property, plant and equipment, investments and other net assets, net of removal costs	49.3	47.9	111.1
(Investments in) net proceeds from margin and restricted deposits	(35.4)	(55.7)	71.0
Contributions to investments	(299.3)	(2,051.8)	(366.2)
Distributions from equity investments in excess of cumulative earnings	224.5	125.7	98.1
Other, net	7.0		(7.2)

Net Cash (Used in) Provided by Investing Activities	$ (2,287.1)	$ (3,477.5)	$ 3,210.0

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KINDER MORGAN, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS (continued)

	Year Ended December 31,		
	2010	**2009**	**2008**
		(In millions)	
Cash Flows From Financing Activities			
Issuance of debt Kinder Morgan Kansas, Inc.	$ 2,233.1	$ 1,028.9	$ 1,467.2
Payment of debt Kinder Morgan Kansas, Inc.	(1,655.3)	(871.7)	(7,611.5)
Issuance of debt KMP.	7,140.1	6,891.9	9,028.6
Payment of debt KMP.	(6,186.4)	(4,857.1)	(7,525.0)
Repayments from related party	2.7	3.7	2.7
Discount on early extinguishment of debt			69.2
Debt issue costs	(31.0)	(16.9)	(15.9)
(Decrease) increase in cash book overdrafts	(2.2)	(8.5)	14.5
Cash dividends	(700.0)	(650.0)	
Contributions from noncontrolling interests	758.7	1,155.6	561.5
Distributions to noncontrolling interests	(848.7)	(744.0)	(630.3)
Other, net	(0.4)	(0.9)	10.9
Net Cash Provided by (Used in) Financing Activities	710.6	1,931.0	(4,628.1)
Effect of Exchange Rate Changes on Cash and Cash Equivalents	2.3	6.0	(8.7)
Net Increase (Decrease) in Cash and Cash Equivalents	336.8	47.0	(30.0)
Cash and Cash Equivalents, beginning of period	165.6	118.6	148.6
Cash and Cash Equivalents, end of period	$ 502.4	$ 165.6	$ 118.6
Noncash Investing and Financing Activities			
Assets acquired by the assumption or incurrence of liabilities	$ 13.8	$ 7.7	$ 4.8
Assets acquired by contributions from noncontrolling interests	$ 81.7	$ 5.0	$
Interest expense recognized from early extinguishment of debt	$	$	$ 87.5
Subordinated notes acquired by exchange of preferred equity interest	$	$	$ 111.4
Contribution of net assets to investments	$ 20.0	$	$
Supplemental Disclosures of Cash Flow Information			
Cash paid during the period for interest (net of capitalized interest)	$ 627.9	$ 572.8	$ 649.9
Cash paid during the period for income taxes (net of refunds)	$ 146.9	$ 401.1	$ 657.3

The accompanying notes are an integral part of these consolidated financial statements.

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KINDER MORGAN, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF MEMBERS EQUITY

	Year Ended December 31,					
	2010		2009		2008	
	Units	Amount	Units	Amount	Units	Amount
			(In millions)			
Members Capital						
Beginning balance	7,914.4	$ 4,338.4	7,914.4	$ 4,457.7	7,914.4	$ 8,069.2
Impact of KMP s equity transactions (Note 10)		(27.5)		28.1		(19.8)
A-1 and B unit amortization		6.1		7.6		7.6
Net income (loss)		(41.3)		495.0		(3,599.3)
Cash dividends		(700.0)		(650.0)		
Other		(0.1)				
Ending balance	7,914.4	3,575.6	7,914.4	4,338.4	7,914.4	4,457.7
Accumulated Other Comprehensive Income (Loss)						
Beginning balance		(167.9)		(53.4)		(247.7)
Change in fair value of derivatives utilized for hedging purposes		(18.8)		(138.7)		212.0
Reclassification of change in fair value of derivatives to net income		21.2		(39.4)		117.1
Foreign currency translation adjustments		38.7		53.9		(68.7)
Benefit plan adjustments		(16.3)		2.8		(66.5)
Benefit plan amortization		6.6		6.9		0.4
Ending balance		(136.5)		(167.9)		(53.4)
Total Kinder Morgan, Inc. s Members Equity	7,914.4	3,439.1	7,914.4	4,170.5	7,914.4	4,404.3
Noncontrolling interests						
Beginning balance		4,674.6		4,072.6		3,314.0
Impact from equity transactions of KMP		43.0		(43.8)		(21.4)
Distributions to noncontrolling interests		(848.7)		(745.5)		(630.7)
Contributions from noncontrolling interests		840.1		1,160.6		561.5
Implementation of ASU 2009-17 (Notes 10 and 18)		(45.9)				
Other		0.2		1.9		4.6
Comprehensive income						
Net income		340.9		278.1		396.1
Change in fair value of derivatives used for hedging purposes		(34.6)		(208.8)		295.4
Reclassification of change in fair value of derivatives to net income		85.7		45.7		301.1
Foreign currency translation adjustments		45.7		114.9		(149.6)
Benefit plan adjustments		(1.3)		(1.2)		1.9
Benefit plan amortization		0.2		0.1		(0.3)
Total comprehensive income		436.6		228.8		844.6
Ending balance		5,099.9		4,674.6		4,072.6
Total Members Equity	7,914.4	$ 8,539.0	7,914.4	$ 8,845.1	7,914.4	$ 8,476.9

The accompanying notes are an integral part of these consolidated financial statements.

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KINDER MORGAN, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. General

On February 10, 2011, we converted from a Delaware limited liability company to a Delaware corporation and we changed our name from Kinder Morgan Holdco LLC to Kinder Morgan, Inc. Our subsidiary formerly known as Kinder Morgan, Inc. was renamed Kinder Morgan Kansas, Inc., and is referred to in these financial statements as Kinder Morgan, Kansas, Inc. On February 16, 2011, we completed the initial public offering of our common stock (the offering). All of the common stock that was sold in the offering was sold by our existing investors consisting of funds advised by or affiliated with Goldman Sachs & Co., Highstar Capital LP, The Carlyle Group and Riverstone Holdings LLC. No members of management sold shares in the offering and we did not receive any proceeds from the offering. Other than the company name changes, these conversion transactions have not been reflected in our consolidated financial statements and the notes thereto. For additional information on the offering, see Note 10 Members Equity Subsequent Events Initial Public Offering.

Kinder Morgan, Inc. was formed August 23, 2006 principally for the purpose of acquiring (through a wholly owned subsidiary) all of the common stock of Kinder Morgan Kansas, Inc. The merger closed on May 30, 2007 with Kinder Morgan Kansas, Inc. continuing as a surviving legal entity. This transaction is referred to herein as the Going Private Transaction. Unless the context requires otherwise, references to we, us, our, or the Company are intended to mean Kinder Morgan, Inc. and its consolidated subsidiaries including Kinder Morgan Kansas, Inc.

We own the general partner and approximately 11% of the limited partner interests of Kinder Morgan Energy Partners, L.P., referred to in this report as KMP. KMP is a publicly traded pipeline limited partnership whose limited partner units are traded on the New York Stock Exchange under the ticker symbol KMP. Primarily through KMP, we operate or own an interest in approximately 37,000 miles of pipelines and approximately 180 terminals. These pipelines transport natural gas, gasoline, crude oil, carbon dioxide and other products, and these terminals store petroleum products, chemicals and handle bulk materials like coal and petroleum coke.

Kinder Morgan Management, LLC, referred to in this report as KMR, is a publicly traded Delaware limited liability company. Kinder Morgan G.P., Inc., the general partner of KMP and a wholly owned subsidiary of ours, owns all of Kinder Morgan Management s voting shares. KMR, pursuant to a delegation of control agreement, has been delegated, to the fullest extent permitted under Delaware law, all of Kinder Morgan G.P., Inc. s power and authority to manage and control the business and affairs of KMP, subject to Kinder Morgan G.P., Inc. s right to approve certain transactions.

2. Summary of Significant Accounting Policies

Basis of Presentation

Our accounting records are maintained in United States dollars, and all references to dollars are United States dollars, except where stated otherwise. Canadian dollars are designated as C$.

Our accompanying consolidated financial statements were prepared in accordance with accounting principles generally accepted in the United States, and certain amounts from prior years have been reclassified to conform to the current presentation. Effective September 30, 2009, the Financial Accounting Standards Boards Accounting Standards Codification became the single source of generally accepted accounting principles, and in this report, we refer to the Financial Accounting Standards Board as the FASB and the FASB Accounting Standards Codification as the Codification.

Our consolidated financial statements include the accounts of Kinder Morgan, Inc. and our majority-owned subsidiaries, as well as those of (i) KMP; (ii) KMR and (iii) and prior to January 1, 2010, Triton Power Company

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KINDER MORGAN, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

LLC, in which Kinder Morgan Kansas, Inc. had a preferred investment. Except for KMP, KMR and Triton Power Company LLC, investments in 50% or less owned operations are accounted for under the equity method. All material intercompany transactions and balances have been eliminated.

Notwithstanding the consolidation of KMP and its subsidiaries into our financial statements and into Kinder Morgan Kansas, Inc. s financial statements, we and Kinder Morgan Kansas, Inc. are not liable for, and our assets are not available to satisfy, the obligations of KMP and/or its subsidiaries and vice versa, except as discussed in the following paragraph. Responsibility for payments of obligations reflected in our, Kinder Morgan Kansas, Inc. s or KMP s financial statements is a legal determination based on the entity that incurs the liability.

In conjunction with KMP s acquisition of certain natural gas pipelines from Kinder Morgan Kansas, Inc., Kinder Morgan Kansas, Inc. agreed to indemnify KMP with respect to approximately $733.5 million of its debt. Kinder Morgan Kansas, Inc. would be obligated to perform under this indemnity only if KMP s assets were unable to satisfy its obligations.

Going Private Transaction

The Going Private Transaction was accounted for under the purchase method of accounting with the assets acquired and liabilities assumed recorded at their fair market values as of the acquisition date based on an allocation of the aggregate purchase price paid in the Going Private Transaction, resulting in a new basis of accounting effective with the closing of the Going Private Transaction. To the extent that we consolidated less than wholly owned subsidiaries (such as KMP and KMR), the reported assets and liabilities for these entities were given a new accounting basis only to the extent of our economic ownership interest in those entities. Therefore, the assets and liabilities of these entities are included in our financial statements, in part, at a new accounting basis reflecting our purchase of our economic interest in these entities (approximately 50% in the case of KMP and 14% in the case of KMR). The remaining percentage of these assets and liabilities, reflecting the continuing noncontrolling ownership interest, is included at its historical accounting basis.

Use of Estimates

Certain amounts included in or affecting our financial statements and related disclosures must be estimated, requiring us to make certain assumptions with respect to values or conditions which cannot be known with certainty at the time our financial statements are prepared. These estimates and assumptions affect the amounts we report for assets and liabilities, our revenues and expenses during the reporting period, and our disclosure of contingent assets and liabilities at the date of our financial statements. We evaluate these estimates on an ongoing basis, utilizing historical experience, consultation with experts and other methods we consider reasonable in the particular circumstances. Nevertheless, actual results may differ significantly from our estimates. Any effects on our business, financial position or results of operations resulting from revisions to these estimates are recorded in the period in which the facts that give rise to the revision become known.

In addition, we believe that certain accounting policies are of more significance in our financial statement preparation process than others, and set out below are the principal accounting policies we apply in the preparation of our consolidated financial statements.

Cash Equivalents

We define cash equivalents as all highly liquid short-term investments with original maturities of three months or less.

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KINDER MORGAN, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Restricted Deposits

As of December 31, 2010, our restricted deposits totaled $90.5 million and consisted of restricted deposits associated with KM Insurance, Ltd., a Bermuda insurance company and wholly-owned subsidiary of KMI, and $50.0 million in a third-party escrow account at KMP to comply with contractual stipulations related to its equity investment in Watco Companies, LLC. In January 2011, the funds were released from escrow and KMP used the cash for its investment. For additional information on this investment, see Note 3 Acquisitions and Divestitures Acquisitions Subsequent to December 31, 2010. As of December 31, 2009, our restricted deposits totaled $52.5 million and consisted of restricted deposits associated with KM Insurance, Ltd. and cash margin deposits associated with KMP s energy commodity contract positions and over-the-counter swap partners.

Accounts Receivable

The amounts reported as Accounts, notes and interest receivable, net on our accompanying consolidated balance sheets as of December 31, 2010 and 2009 primarily consist of amounts due from third party payors (unrelated entities). For information on receivables due to us from related parties, see Note 11.

Our policy for determining an appropriate allowance for doubtful accounts varies according to the type of business being conducted and the customers being served. Generally, we make periodic reviews and evaluations of the appropriateness of the allowance for doubtful accounts based on a historical analysis of uncollected amounts, and we record adjustments as necessary for changed circumstances and customer-specific information. When specific receivables are determined to be uncollectible, the reserve and receivable are relieved. The following table shows our balance of the allowance for doubtful accounts and activity for the years ended December 31, 2010, 2009 and 2008 (in millions):

Valuation and Qualifying Accounts

Allowance for doubtful accounts	**Balance at beginning of period**	**Additions charged to costs and expenses**	**Additions charged to other accounts**	**Deductions(a)**	**Balance at end of period**
Year ended December 31, 2010	$ 5.4	$ 2.3	$	$ (0.9)	$ 6.8
Year ended December 31, 2009	$ 6.2	$ 0.5	$	$ (1.3)	$ 5.4
Year ended December 31, 2008	$ 7.0	$ 0.7	$	$ (1.5)	$ 6.2

(a) Deductions represent the write-off of receivables and currency translation adjustments.

In addition, the balances of Accrued other current liabilities in our accompanying consolidated balance sheets include amounts related to customer prepayments of approximately $7.1 million and $10.9 million as of December 31, 2010 and 2009, respectively.

Inventories

Our inventories of products consist of natural gas liquids, refined petroleum products, natural gas, carbon dioxide and coal. We report these assets at the lower of weighted-average cost or market, and in December 2008, we recognized a lower of cost or market adjustment of $12.9 million in the CO_2 KMP business segment. We report materials and supplies inventories at cost, and periodically review for physical deterioration and obsolescence.

As of December 31, 2010 and 2009, the value of natural gas in our underground storage facilities under the weighted-average cost method was $2.2 million and $43.5 million, respectively, and we reported these amounts separately as Gas in underground storage in our accompanying consolidated balance sheets.

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Gas Imbalances

We value gas imbalances due to or due from interconnecting pipelines at the lower of cost or market, per our quarterly imbalance valuation procedures. Gas imbalances represent the difference between customer nominations and actual gas receipts from, and gas deliveries to, our interconnecting pipelines and shippers under various operational balancing and shipper imbalance agreements. Natural gas imbalances are either settled in cash or made up in-kind subject to the pipelines various tariff provisions. As of December 31, 2010 and 2009, our gas imbalance receivables including both trade and related party receivables totaled $18.8 million and $14.0 million, respectively, and we included these amounts within Other current assets on our accompanying consolidated balance sheets. As of December 31, 2010 and 2009, our gas imbalance payables including both trade and related party payables totaled $7.7 million and $7.4 million, respectively, and we included these amounts within Accrued other current liabilities on our accompanying consolidated balance sheets.

Property, Plant and Equipment

Capitalization, Depreciation and Depletion and Disposals

We report property, plant and equipment at its acquisition cost. We expense costs for maintenance and repairs in the period incurred. As discussed below, for assets used in our oil and gas producing activities or in our unregulated bulk and liquids terminal activities, the cost of property, plant and equipment sold or retired and the related depreciation are removed from our balance sheet in the period of sale or disposition, and we record any related gains and losses from sales or retirements to income or expense accounts. For our pipeline system assets, we generally charge the original cost of property sold or retired to accumulated depreciation and amortization, net of salvage and cost of removal. We do not include retirement gain or loss in income except in the case of significant retirements or sales. Gains and losses on minor system sales, excluding land, are recorded to the appropriate accumulated depreciation reserve. Gains and losses for operating systems sales and land sales are booked to income or expense accounts in accordance with regulatory accounting guidelines.

We generally compute depreciation using the straight-line method based on estimated economic lives, however, for certain depreciable assets, we employ the composite depreciation method, applying a single depreciation rate for a group of assets. Generally, we apply composite depreciation rates to functional groups of property having similar economic characteristics. The rates range from 1.6% to 12.5%, excluding certain short-lived assets such as vehicles. Depreciation estimates are based on various factors, including age (in the case of acquired assets), manufacturing specifications, technological advances and historical data concerning useful lives of similar assets. Uncertainties that impact these estimates included changes in laws and regulations relating to restoration and abandonment requirements, economic conditions, and supply and demand in the area. When assets are put into service, we make estimates with respect to useful lives (and salvage values where appropriate) that we believe are reasonable. However, subsequent events could cause us to change our estimates, thus impacting the future calculation of depreciation and amortization expense. Historically, adjustments to useful lives have not had a material impact on our aggregate depreciation levels from year to year.

Our oil and gas producing activities are accounted for under the successful efforts method of accounting. Under this method costs that are incurred to acquire leasehold and subsequent development costs are capitalized. Costs that are associated with the drilling of successful exploration wells are capitalized if proved reserves are found. Costs associated with the drilling of exploratory wells that do not find proved reserves, geological and geophysical costs, and costs of certain non-producing leasehold costs are expensed as incurred. The capitalized costs of our producing oil and gas properties are depreciated and depleted by the units-of-production method. Other miscellaneous property, plant and equipment are depreciated over the estimated useful lives of the asset.

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A gain on the sale of property, plant and equipment used in our oil and gas producing activities or in our bulk and liquids terminal activities is calculated as the difference between the cost of the asset disposed of, net of depreciation, and the sales proceeds received. A gain on an asset disposal is recognized in income in the period that the sale is closed. A loss on the sale of property, plant and equipment is calculated as the difference between the cost of the asset disposed of, net of depreciation, and the sales proceeds received or the market value if the asset is being held for sale. A loss is recognized when the asset is sold or when the net cost of an asset held for sale is greater than the market value of the asset.

In addition, we engage in enhanced recovery techniques in which carbon dioxide is injected into certain producing oil reservoirs. In some cases, the acquisition cost of the carbon dioxide associated with enhanced recovery is capitalized as part of our development costs when it is injected. The acquisition cost associated with pressure maintenance operations for reservoir management is expensed when it is injected. When carbon dioxide is recovered in conjunction with oil production, it is extracted and re-injected, and all of the associated costs are expensed as incurred. Proved developed reserves are used in computing units of production rates for drilling and development costs, and total proved reserves are used for depletion of leasehold costs. The units-of-production rate is determined by field.

As discussed in Inventories above, we own and maintain natural gas in underground storage as part of our inventory. This component of our inventory represents the portion of gas stored in an underground storage facility generally known as working gas, and represents an estimate of the portion of gas in these facilities available for routine injection and withdrawal. In addition to this working gas, underground gas storage reservoirs contain injected gas which is not routinely cycled but, instead, serves the function of maintaining the necessary pressure to allow efficient operation of the facility. This gas, generally known as cushion gas, is divided into the categories of recoverable cushion gas and unrecoverable cushion gas, based on an engineering analysis of whether the gas can be economically removed from the storage facility at any point during its life. The portion of the cushion gas that is determined to be unrecoverable is considered to be a permanent part of the facility itself (thus, part of our Property, plant and equipment, net balance in our accompanying consolidated balance sheets), and this unrecoverable portion is depreciated over the facility s estimated useful life. The portion of the cushion gas that is determined to be recoverable is also considered a component of the facility but is not depreciated because it is expected to ultimately be recovered and sold.

Impairments

We measure long-lived assets that are to be disposed of by sale at the lower of book value or fair value less the cost to sell, and we review for the impairment of long-lived assets whenever events or changes in circumstances indicate that our carrying amount of an asset may not be recoverable. We would recognize an impairment loss when estimated future cash flows expected to result from our use of the asset and its eventual disposition is less than its carrying amount.

We evaluate our oil and gas producing properties for impairment of value on a field-by-field basis or, in certain instances, by logical grouping of assets if there is significant shared infrastructure, using undiscounted future cash flows based on total proved and risk-adjusted probable and possible reserves. For the purpose of impairment testing, we use the forward curve prices as observed at the test date; however, due to differences between the forward curve and spot prices, the forward curve cash flows may differ from the amounts presented in our supplemental information on oil and gas producing activities disclosed in Note 20.

Oil and gas producing properties deemed to be impaired are written down to their fair value, as determined by discounted future cash flows based on total proved and risk-adjusted probable and possible reserves or, if

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available, comparable market values. Unproved oil and gas properties that are individually significant are periodically assessed for impairment of value, and a loss is recognized at the time of impairment. Due to the decline in crude oil and natural gas prices during 2008, on December 31, 2008, we conducted an impairment test on our oil and gas producing properties in the CO_2 KMP business segment and determined that no impairment was necessary.

Allowance for Funds Used During Construction/Capitalized Interest

Included in the cost of our qualifying property, plant and equipment is (i) an allowance for funds used during construction (AFUDC) or upgrade for assets regulated by the Federal Energy Regulatory Commission or (ii) capitalized interest. The primary difference between AFUDC and capitalized interest is that AFUDC may include a component for equity funds, while capitalized interest does not. AFUDC on debt, as well as capitalized interest, represents the estimated cost of capital, from borrowed funds, during the construction period that is not immediately expensed, but instead is treated as an asset (capitalized) and amortized to expense over time in our income statements.

Total AFUDC on debt and capitalized interest in 2010, 2009 and 2008 was $12.5 million, $32.9 million and $49.5 million, respectively. Similarly, AFUDC on equity represents an estimate of the cost of capital funded by equity contributions, and in the years ended December 31, 2010, 2009 and 2008, we also capitalized approximately $0.7 million, $22.7 million and $10.8 million, respectively, of equity AFUDC.

Asset Retirement Obligations

We record liabilities for obligations related to the retirement and removal of long-lived assets used in our businesses. We record, as liabilities, the fair value of asset retirement obligations on a discounted basis when they are incurred, which is typically at the time the assets are installed or acquired. Amounts recorded for the related assets are increased by the amount of these obligations. Over time, the liabilities increase due to the change in their present value, and the initial capitalized costs are depreciated over the useful lives of the related assets. The liabilities are eventually extinguished when the asset is taken out of service. For more information on our asset retirement obligations, see Note 5 Property, Plant and Equipment Asset Retirement Obligations.

Equity Method of Accounting

We account for investments greater than 20% in affiliates which we do not control, but do have the ability to exercise significant influence by the equity method of accounting. Under this method, our equity investments are carried originally at our acquisition cost, increased by our proportionate share of the investee s net income and by contributions made, and decreased by our proportionate share of the investee s net losses and by distributions received.

Goodwill

Goodwill represents the excess of the cost of an acquisition price over the fair value of the acquired net assets, and such amounts are reported separately as Goodwill on our accompanying consolidated balance sheets. Our total goodwill was $4,830.9 million and $4,744.3 million as of December 31, 2010 and 2009, respectively. Goodwill cannot be amortized, but instead must be tested for impairment annually or on an interim basis if events or circumstances indicate that the fair value of the asset has decreased below its carrying value. We perform our goodwill impairment test on May 31 of each year. See Note 7 for more information about goodwill and our annual impairment test.

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Revenue Recognition Policies

We recognize revenues as services are rendered or goods are delivered and, if applicable, title has passed. We generally sell natural gas under long-term agreements, generally based on Houston Ship Channel index posted prices. In some cases, we sell natural gas under short-term agreements at prevailing market prices. In all cases, we recognize natural gas sales revenues when the natural gas is sold to a purchaser at a fixed or determinable price, delivery has occurred and title has transferred, and collectability of the revenue is reasonably assured. The natural gas we market is primarily purchased gas produced by third parties, and we market this gas to power generators, local distribution companies, industrial end-users and national marketing companies. We recognize gas gathering and marketing revenues in the month of delivery based on customer nominations and generally, our natural gas marketing revenues are recorded gross, not net of cost of gas sold.

In addition to storing and transporting a significant portion of the natural gas volumes we purchase and resell, we provide various types of natural gas storage and transportation services for third-party customers. The natural gas remains the property of these customers at all times. In many cases, generally described as firm service, the customer pays a two-part rate that includes (i) a fixed fee reserving the right to transport or store natural gas in our facilities and (ii) a per-unit rate for volumes actually transported or injected into/withdrawn from storage. The fixed-fee component of the overall rate is recognized as revenue in the period the service is provided. The per-unit charge is recognized as revenue when the volumes are delivered to the customers agreed upon delivery point, or when the volumes are injected into/withdrawn from our storage facilities. In other cases, generally described as interruptible service, there is no fixed fee associated with the services because the customer accepts the possibility that service may be interrupted at our discretion in order to serve customers who have purchased firm service. In the case of interruptible service, revenue is recognized in the same manner utilized for the per-unit rate for volumes actually transported under firm service agreements. In addition to our firm and interruptible transportation services, we also provide natural gas balancing services to assist customers in managing short-term gas surpluses or deficits. Revenues are recognized based on the terms negotiated under these contracts.

We provide crude oil transportation services and refined petroleum products transportation and storage services to customers. Revenues are recorded when products are delivered and services have been provided, and adjusted according to terms prescribed by the toll settlements with shippers and approved by regulatory authorities.

We recognize bulk terminal transfer service revenues based on volumes loaded and unloaded. We recognize liquids terminal tank rental revenue ratably over the contract period. We recognize liquids terminal throughput revenue based on volumes received and volumes delivered. Liquids terminal minimum take-or-pay revenue is recognized at the end of the contract year or contract term depending on the terms of the contract. We recognize transmix processing revenues based on volumes processed or sold, and if applicable, when title has passed. We recognize energy-related product sales revenues based on delivered quantities of product.

Revenues from the sale of crude oil, natural gas liquids and natural gas production are recorded using the entitlement method. Under the entitlement method, revenue is recorded when title passes based on our net interest. We record our entitled share of revenues based on entitled volumes and contracted sales prices. Since there is a ready market for oil and gas production, we sell the majority of our products soon after production at various locations, at which time title and risk of loss pass to the buyer. As a result, we maintain a minimum amount of product inventory in storage.

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Environmental Matters

We expense or capitalize, as appropriate, environmental expenditures that relate to current operations. We expense expenditures that relate to an existing condition caused by past operations, which do not contribute to current or future revenue generation. We do not discount environmental liabilities to a net present value, and we record environmental liabilities when environmental assessments and/or remedial efforts are probable and we can reasonably estimate the costs. Generally, our recording of these accruals coincides with our completion of a feasibility study or our commitment to a formal plan of action. We recognize receivables for anticipated associated insurance recoveries when such recoveries are deemed to be probable.

We routinely conduct reviews of potential environmental issues and claims that could impact our assets or operations. These reviews assist us in identifying environmental issues and estimating the costs and timing of remediation efforts. We also routinely adjust our environmental liabilities to reflect changes in previous estimates. In making environmental liability estimations, we consider the material effect of environmental compliance, pending legal actions against us, and potential third-party liability claims. Often, as the remediation evaluation and effort progresses, additional information is obtained, requiring revisions to estimated costs. These revisions are reflected in our income in the period in which they are reasonably determinable. For more information on our environmental disclosures, see Note 16.

Legal

We are subject to litigation and regulatory proceedings as the result of our business operations and transactions. We utilize both internal and external counsel in evaluating our potential exposure to adverse outcomes from orders, judgments or settlements. When we identify specific litigation that is expected to continue for a significant period of time and require substantial expenditures, we accrue an amount that appears to be better than any other estimate within the range. To the extent that actual outcomes differ from our estimates, or additional facts and circumstances cause us to revise our estimates, our earnings will be affected. In general, we expense legal costs as incurred and all recorded legal liabilities are revised as better information becomes available. For more information on our legal disclosures, see Note 16.

Pensions and Other Postretirement Benefits

We fully recognize the overfunded or underfunded status of our consolidating subsidiaries pension and postretirement benefit plans as either assets or liabilities on our balance sheet. A plan s funded status is the difference between the fair value of plan assets and the plan s benefit obligation. We record deferred plan costs and income unrecognized losses and gains, unrecognized prior service costs and credits, and any remaining unamortized transition obligations in accumulated other comprehensive income, until they are amortized to expense. For more information on our pension and postretirement benefit disclosures; see Note 9.

Noncontrolling Interests

Noncontrolling interests represents the outstanding ownership interests in our consolidated subsidiaries that are not owned by us. On January 1, 2009, we adopted certain provisions concerning the accounting and reporting for noncontrolling interests included within the Consolidation Topic of the Codification. Specifically, these provisions establish accounting and reporting standards that require (i) the ownership interests in subsidiaries held by parties other than the parent to be clearly identified, labeled, and presented in the consolidated balance sheet within equity, but separate from the parent s equity and (ii) the equity amount of consolidated net income attributable to the parent and to the noncontrolling interests to be clearly identified and presented on the face of the consolidated statement of income.

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The adopted provisions apply prospectively, with the exception of the presentation and disclosure requirements, which must be applied retrospectively for all periods presented. Accordingly, our consolidated net income and comprehensive income are now determined without deducting amounts attributable to our noncontrolling interests. In our accompanying consolidated statements of income, the noncontrolling interests in the net income (or loss) of our consolidated subsidiaries is shown as an allocation of our consolidated net income and is presented separately as Net income attributable to noncontrolling interests. In our accompanying consolidated balance sheets, noncontrolling interests represents the ownership interests in our consolidated subsidiaries net assets held by parties other than us. It is presented separately as Noncontrolling interests within Members Equity.

Income Taxes

Income tax expense is recorded based on an estimate of the effective tax rate in effect or to be in effect during the relevant periods. Deferred income tax assets and liabilities are recognized for temporary differences between the basis of assets and liabilities for financial reporting and tax purposes. Changes in tax legislation are included in the relevant computations in the period in which such changes are effective. Deferred tax assets are reduced by a valuation allowance for the amount of any tax benefit we do not expect to be realized. Note 4 contains information about our income taxes, including the components of our income tax provision and the composition of our deferred income tax assets and liabilities.

In determining the deferred income tax asset and liability balances attributable to us, we have applied an accounting policy that looks through its investments including its investment in KMP. The application of this policy resulted in no deferred income taxes being provided on the difference between the book and tax basis on the non-tax-deductible goodwill portion of our investment in KMP.

Foreign Currency Transactions and Translation

Foreign currency transactions are those transactions whose terms are denominated in a currency other than the currency of the primary economic environment in which our reporting subsidiary operates, also referred to as its functional currency. Transaction gains or losses result from a change in exchange rates between (i) the functional currency, for example the Canadian dollar for a Canadian subsidiary and (ii) the currency in which a foreign currency transaction is denominated, for example the U.S. dollar for a Canadian subsidiary. Foreign currency transaction gains and losses are included within Other Income (Expense) Other, net in our accompanying consolidated statements of income.

We translate the assets and liabilities of each of our consolidating foreign subsidiaries to U.S. dollars at year-end exchange rates. Income and expense items are translated at weighted-average rates of exchange prevailing during the year and members equity accounts are translated by using historical exchange rates. Translation adjustments result from translating all assets and liabilities at current year-end rates, while members equity is translated by using historical and weighted-average rates. The cumulative translation adjustments balance is reported as a component of the Accumulated other comprehensive loss caption in our accompanying consolidated balance sheets.

Risk Management Activities

We utilize energy commodity derivative contracts for the purpose of mitigating our risk resulting from fluctuations in the market price of natural gas, natural gas liquids and crude oil. In addition, we enter into interest rate swap agreements for the purpose of hedging the interest rate risk associated with our debt obligations and cross-currency interest rate swap agreements to mitigate foreign currency risk from our investments in businesses

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owned and operated outside the United States. We measure our derivative contracts at fair value and we report them on our balance sheet as either an asset or liability. If the derivative transaction qualifies for and is designated as a normal purchase and sale, it is exempted from fair value accounting and is accounted for using traditional accrual accounting.

Furthermore, changes in our derivative contracts   fair values are recognized currently in earnings unless specific hedge accounting criteria are met. If a derivative contract meets those criteria, the contract s gains and losses are allowed to offset related results on the hedged item in our income statement, and we are required to both formally designate the derivative contract as a hedge and document and assess the effectiveness of the contract associated with the transaction that receives hedge accounting. Only designated qualifying items that are effectively offset by changes in fair value or cash flows during the term of the hedge are eligible to use the special accounting for hedging.

Our derivative contracts that hedge our energy commodity price risks involve our normal business activities, which include the sale of natural gas, natural gas liquids and crude oil, and we have designated these derivative contracts as cash flow hedges derivative contracts that hedge exposure to variable cash flows of forecasted transactions and the effective portion of these derivative contracts   gain or loss is initially reported as a component of other comprehensive income (outside earnings) and subsequently reclassified into earnings when the forecasted transaction affects earnings. The ineffective portion of the gain or loss is reported in earnings immediately. See Note 13 for more information on our risk management activities and disclosures.

Accounting for Regulatory Activities

Regulatory assets and liabilities represent probable future revenues or expenses associated with certain charges and credits that will be recovered from or refunded to customers through the ratemaking process. The amount of regulatory assets and liabilities reflected within   Deferred charges and other assets   and   Other long-term liabilities and deferred credits,   respectively, in our accompanying consolidated balance sheets as of December 31, 2010 and 2009 are not material to our consolidated balance sheets.

Transfer of Net Assets Between Entities Under Common Control

We account for the transfer of net assets between entities under common control by carrying forward the net assets recognized in the balance sheets of each combining entity to the balance sheet of the combined entity, and no other assets or liabilities are recognized as a result of the combination. Transfers of net assets between entities under common control do not affect the income statement of the combined entity.

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3. Acquisitions and Divestitures

Acquisitions from Unrelated Entities

During 2010, 2009 and 2008, KMP completed the following acquisitions from unrelated entities. For each of these acquisitions, KMP recorded all the acquired assets and assumed liabilities at their estimated fair market values (not the acquired entity s book values) as of the acquisition date. The results of operations from these acquisitions accounted for as business combinations are included in our consolidated financial statements from the acquisition date.

				Assignment of Purchase Price (in millions)			
Ref.	**Date**	**Acquisition**	**Purchase Price**	**Current Assets**	**Property Plant & Equipment**	**Deferred Charges & Other**	**Goodwill**
(1)	8/08	Wilmington, North Carolina Liquids Terminal	$ 12.7	$	$ 5.9	$	$ 6.8
(2)	12/08	Phoenix, Arizona Products Terminal	27.5		27.5		
(3)	4/09	Megafleet Towing Co., Inc. Assets	21.7		7.1	4.0	10.6
(4)	7/09	Portland Airport Pipeline	9.0		9.0		
(5)	10/09	Crosstex Energy, L.P. Natural Gas Treating Business	270.7	15.0	181.7	25.4	48.6
(6)	11/09	Endeavor Gathering LLC	36.0			36.0	
(7)	1/10	USD Terminal Acquisition	201.1		43.1	100.0	58.0
(8)	3/10	Mission Valley, California Products Terminal	13.5		13.5		
(9)	3/10	Slay Industries Terminal Acquisition	101.6		67.9	32.8	0.9
(10)	5/10	KinderHawk Field Services LLC	917.4			917.4	
(11)	7/10	Direct Fuels Terminal Acquisition	16.0		5.3		10.7
(12)	9/10	Gas-Chill, Inc. Natural Gas Treating Assets	13.1		8.0	5.1	
(13)	10/10	Allied Concrete Terminal Acquisition	8.6		3.9	4.7	
(14)	10/10	Chevron Refined Products Terminals	32.3		32.1	0.2	

(1) Wilmington, North Carolina Liquids Terminal

On August 15, 2008, KMP purchased certain terminal assets from Chemserve, Inc. for an aggregate consideration of $12.7 million, consisting of $11.8 million in cash and $0.9 million in assumed liabilities. The liquids terminal facility is located in Wilmington, North Carolina and stores petroleum products and chemicals. The acquisition both expanded and complemented KMP s existing Southeast region terminal operations, and all of the acquired assets are included in the Terminals KMP business segment. KMP assigned $6.8 million of its purchase price to Goodwill, and the entire amount is expected to be deductible for tax purposes. KMP believes this acquisition resulted in the recognition of goodwill primarily because of certain advantageous factors (including the synergies provided by increasing its liquids storage capacity in the Southeast region of the U.S.) that contributed to its acquisition price exceeding the fair value of acquired identifiable net assets and liabilities in the aggregate, these factors represented goodwill.

(2) Phoenix, Arizona Products Terminal

Effective December 10, 2008, KMP s West Coast Products Pipelines operations acquired a refined petroleum products terminal located in Phoenix, Arizona from ConocoPhillips for approximately $27.5 million in cash. The terminal has storage capacity of approximately 200,000 barrels for gasoline, diesel fuel and ethanol. The acquisition complemented KMP s existing Phoenix liquids assets, and the acquired incremental storage increased KMP s combined storage capacity in the Phoenix market by approximately 13%. The acquired terminal is included as part the Products Pipelines KMP business segment.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(3) Megafleet Towing Co., Inc. Assets

Effective April 23, 2009, KMP acquired certain terminals assets from Megafleet Towing Co., Inc. for an aggregate consideration of approximately $21.7 million. KMP s consideration included $18.0 million in cash and an obligation to pay additional cash consideration on April 23, 2014 (five years from the acquisition date) contingent upon the purchased assets providing KMP an agreed-upon amount of earnings, as defined by the purchase and sale agreement, during the five year period. The contingent consideration had a fair value of $3.7 million as of the acquisition date.

The acquired assets primarily consisted of nine marine vessels that provide towing and harbor boat services along the Gulf coast, the intracoastal waterway, and the Houston Ship Channel, and the acquisition complemented and expanded KMP s existing Gulf Coast and Texas petroleum coke terminal operations. KMP assigned $10.6 million of the purchase price to Goodwill, and we expect that approximately $5.0 million of goodwill will be deductible for tax purposes. KMP believes the primary item that generated the goodwill is the value of the synergies created between the acquired assets and its pre-existing terminal assets (resulting from the increase in services now offered by its Texas petroleum coke operations). In February 2010, the *JR Nicholls*, one of the acquired vessels, overturned and sank in the Houston Ship Channel. For further information about the *JR Nicholls* incident, see Note 16. For information about events occurring subsequent to December 31, 2010, see Divestiture Subsequent to December 31, 2010 below.

(4) Portland Airport Pipeline

On July 31, 2009, KMP acquired a refined products pipeline, as well as associated valves, equipment and other fixtures, from Chevron Pipe Line Company for $9.0 million in cash. The approximate 8.5 mile, 8-inch diameter pipeline is located in Multnomah County, Oregon. The line transports commercial jet fuel from KMP s Willbridge liquids terminal facility to the Portland International Airport, both located in Portland, Oregon. It has an estimated system capacity of approximately 26,000 barrels per day. The acquisition enhanced KMP s West Coast terminal operations, and the acquired assets are included in the Products Pipelines KMP business segment.

(5) Crosstex Energy, L.P. Natural Gas Treating Business

On October 1, 2009, KMP acquired the natural gas treating business from Crosstex Energy, L.P. and Crosstex Energy, Inc. for an aggregate consideration of $270.7 million, consisting of $265.3 million in cash and assumed liabilities of $5.4 million. The acquired assets primarily consisted of approximately 290 natural gas amine-treating and hydrocarbon dew-point control plants and related equipment, and are used to remove impurities and liquids from natural gas in order to meet pipeline quality specifications. The assets are predominantly located in Texas and Louisiana, with additional facilities located in Mississippi, Oklahoma, Arkansas and Kansas. The acquisition complemented and expanded the existing natural gas treating operations offered by the Texas intrastate natural gas pipeline group and all of the acquired assets are included in the Natural Gas Pipelines KMP business segment.

KMP measured the identifiable intangible assets acquired at fair value on the acquisition date and accordingly, recognized $25.4 million in Deferred charges and other assets, representing the purchased fair value of separate and identifiable relationships with existing natural gas producing customers. KMP estimates the remaining useful life of these existing customer relationships to be between approximately eight and nine years. After measuring all of the identifiable tangible and intangible assets acquired and liabilities assumed at fair value on the acquisition date, KMP recognized $48.6 million of Goodwill, an intangible asset representing the future economic benefits expected to be derived from this acquisition that are not assigned to other identifiable, separately recognizable assets acquired. KMP believes the primary item that generated the goodwill is its ability

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to grow the business by leveraging its pre-existing natural gas operations (resulting from the increase in services now offered by its natural gas processing and treating operations in the state of Texas), and KMP believes that this value contributed to its acquisition price exceeding the fair value of acquired identifiable net assets and liabilities in the aggregate, these factors represented goodwill. Furthermore, this entire amount of goodwill is expected to be deductible for tax purposes.

(6) Endeavor Gathering LLC

On November 1, 2009, KMP acquired a 40% membership interest in Endeavor Gathering LLC for $36.0 million in cash. Endeavor Gathering LLC owns the natural gas gathering and compression business previously owned by GMX Resources Inc. and its wholly-owned subsidiary, Endeavor Pipeline, Inc. Endeavor Gathering LLC provides natural gas gathering service to GMX Resources exploration and production activities in its Cotton Valley Sands and Haynesville/Bossier Shale horizontal well developments located in East Texas. The remaining 60% interest in Endeavor Gathering LLC is owned by GMX Resources, Inc. and Endeavor Pipeline Inc. remained operator of the business. The acquired investment complemented KMP s existing natural gas gathering and transportation business located in the state of Texas. KMP accounts for this investment under the equity method of accounting, and the investment is included in the Natural Gas Pipelines KMP business segment. For more information on KMP s investments, see Note 6.

(7) USD Terminal Acquisition

On January 15, 2010, KMP acquired three ethanol handling train terminals from US Development Group LLC for an aggregate consideration of $201.1 million, consisting of $114.3 million in cash, $81.7 million in common units, and $5.1 million in assumed liabilities. The three train terminals are located in Linden, New Jersey; Baltimore, Maryland and Euless, Texas. As part of the transaction, KMP announced the formation of a joint venture with US Development Group LLC to optimize and coordinate customer access to the three acquired terminals, other ethanol terminal assets it already owns and operates, and other terminal projects currently under development by both parties. The acquisition complemented and expanded the ethanol and rail terminal operations KMP previously owned, and all of the acquired assets are included in the Terminals KMP business segment.

Based on the measurement of fair values for all of the identifiable tangible and intangible assets acquired and liabilities assumed on the acquisition date, KMP assigned $94.6 million of the combined purchase price to Other intangibles, net, and a combined $5.4 million to Other current assets and Deferred charges and other assets. The acquired intangible amount represented the fair value of customer relationships, and KMP estimated the remaining useful life of these customer relationships to be 10 years. After measuring all of the identifiable tangible and intangible assets acquired and liabilities assumed at fair value on the acquisition date, KMP recognized $58.0 million of Goodwill, an intangible asset representing the future economic benefits expected to be derived from this acquisition that are not assigned to other identifiable, separately recognizable assets. KMP believes the primary items that generated the goodwill are the value of the synergies created between the acquired assets and its pre-existing ethanol handling assets, and its expected ability to grow the business by leveraging its pre-existing experience in ethanol handling operations. KMP expects that the entire amount of goodwill will be deductible for tax purposes.

(8) Mission Valley Terminal Acquisition

On March 1, 2010, KMP acquired the refined products terminal assets at Mission Valley, California from Equilon Enterprises LLC (d/b/a Shell Oil Products US) for $13.5 million in cash. The acquired assets included

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buildings, equipment, delivery facilities (including two truck loading racks), and storage tanks with a total capacity of approximately 170,000 barrels for gasoline, diesel fuel and jet fuel. The terminal operates under a long-term terminaling agreement with Tesoro Refining and Marketing Company. The acquisition enhanced KMP s Pacific operations and complemented its existing West Coast terminal operations, and the acquired assets are included in the Products Pipelines KMP business segment.

(9) Slay Industries Terminal Acquisition

On March 5, 2010, KMP acquired certain bulk and liquids terminal assets from Slay Industries for an aggregate consideration of $101.6 million, consisting of $97.0 million in cash, assumed liabilities of $1.6 million, and an obligation to pay additional cash consideration of $3.0 million in years 2013 through 2019, contingent upon the purchased assets providing KMP an agreed-upon amount of earnings during the three years following the acquisition. Including accrued interest, KMP expects to pay approximately $2.0 million of this contingent consideration in the first half of 2013.

The acquired assets included (i) a marine terminal located in Sauget, Illinois; (ii) a transload liquid operation located in Muscatine, Iowa; (iii) a liquid bulk terminal located in St. Louis, Missouri and (iv) a warehousing distribution center located in St. Louis. All of the acquired terminals have long-term contracts with large creditworthy shippers. As part of the transaction, KMP and Slay Industries entered into joint venture agreements at both the Kellogg Dock coal bulk terminal, located in Modoc, Illinois, and at the newly created North Cahokia terminal, located in Sauget and which has approximately 175 acres of land ready for development. All of the assets located in Sauget have access to the Mississippi River and are served by five rail carriers. The acquisition complemented and expanded KMP s pre-existing Midwest terminal operations by adding a diverse mix of liquid and bulk capabilities, and all of the acquired assets are included in the Terminals KMP business segment.

Based on the measurement of fair values for all of the identifiable tangible and intangible assets acquired and liabilities assumed, KMP assigned $24.6 million of the combined purchase price to Other intangibles, net (representing customer contracts with an estimated remaining useful life of 20 years) and $8.2 million to Investments. KMP also recorded $0.9 million of the combined purchase price as Goodwill, representing certain advantageous factors that contributed to the acquisition price exceeding the fair value of acquired identifiable net assets in the aggregate, these factors represented goodwill, and KMP expects that the entire amount of goodwill will be deductible for tax purposes.

(10) KinderHawk Field Services LLC

On May 21, 2010, KMP purchased a 50% ownership interest in Petrohawk Energy Corporation s natural gas gathering and treating business in the Haynesville shale gas formation located in northwest Louisiana. KMP paid an aggregate consideration of $917.4 million in cash for its 50% equity ownership interest, consisting of $921.4 million KMP paid on closing, and $4.0 million received in the fourth quarter of 2010 for the final settlement of estimated capital expenditures and estimated net cash outflows from operating activities for the period January 1, 2010 through May 21, 2010.

During a short transition period, Petrohawk continued to operate the business, and effective October 1, 2010, a newly formed company named KinderHawk Field Services LLC, owned 50% by KMP and 50% by Petrohawk, assumed the joint venture operations. The acquisition complemented and expanded KMP s existing natural gas gathering and treating businesses, and KMP assigned the entire purchase price to Investments (including $144.8 million of equity method goodwill, representing the excess of KMP s investment cost over its proportionate share of the fair value of the joint venture s identifiable net assets). KMP s investment and pro rata share of the joint venture s operating results are included as part of the Natural Gas Pipelines KMP business segment.

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(11) Direct Fuels Terminal Acquisition

On July 22, 2010, KMP acquired a terminal with ethanol tanks, a truck rack and additional acreage in Dallas, Texas, from Direct Fuels Partners, L.P. for an aggregate consideration of $16 million, consisting of $15.9 million in cash and an assumed property tax liability of $0.1 million. The acquired terminal facility is connected to and complements the Dallas, Texas unit train terminal KMP acquired from USD Development Group LLC in January 2010 (described above in (7) USD Terminal Acquisition). All of the acquired assets are included in the Terminals KMP business segment. After measuring all of the identifiable tangible and intangible assets acquired and liabilities assumed at fair value on the acquisition date, KMP recognized $10.7 million of Goodwill, an intangible asset representing the future economic benefits expected to be derived from the acquisition that was not assigned to other identifiable, separately recognizable assets acquired. KMP believes the primary items that generated the goodwill are the value of the synergies created between the acquired assets and its pre-existing ethanol handling assets, and its expected ability to grow the business by leveraging its pre-existing experience in ethanol handling operations. KMP expects that the entire amount of goodwill will be deductible for tax purposes.

(12) Gas-Chill, Inc. Asset Acquisition

On September 1, 2010, KMP acquired the natural gas treating assets of Gas-Chill, Inc. for an aggregate consideration of $13.1 million in cash, consisting of $10.5 million in cash paid on closing, and an obligation to pay a holdback amount of $2.6 million within eighteen months from closing. The acquired assets primarily consist of more than 100 mechanical refrigeration natural gas hydrocarbon dew point control units that are used to remove hydrocarbon liquids from natural gas streams prior to entering transmission pipelines. The acquisition complemented and expanded the existing natural gas treating operations offered by KMP s Texas intrastate natural gas pipeline group, and all of the acquired assets are included in the Natural Gas Pipelines KMP business segment. KMP assigned $8.0 million of its purchase price to Property, Plant and Equipment, net and the remaining $5.1 million to Other intangibles, net (representing both a technology-based asset and customer-related contract values).

(13) Allied Concrete Bulk Terminal Assets

On October 1, 2010, KMP acquired certain bulk terminal assets and real property located in Chesapeake, Virginia, from Allied Concrete Products, LLC and Southern Concrete Products, LLC for an aggregate consideration of $8.6 million, consisting of $8.1 million in cash and an assumed environmental liability of $0.5 million. The acquired terminal facility is situated on 42 acres of land and can handle approximately 250,000 tons of material annually, including pumice, aggregates and sand. The acquisition complemented the bulk commodity handling operations at KMP s nearby Elizabeth River terminal, also located in Chesapeake, and all of the acquired assets will be included in the Terminals KMP business segment. KMP assigned $3.9 million of its purchase price to Property, Plant and Equipment, net and the remaining $4.7 million to Other intangibles, net (representing customer-related contract values).

(14) Chevron Refined Products Terminal Assets

On October 8, 2010, KMP acquired four separate refined petroleum products terminals from Chevron U.S.A. Inc. for an aggregate consideration of $32.3 million, consisting of $31.5 million in cash and assumed environmental liability of $0.8 million. Combined, the terminals have storage capacity of approximately 650,000 barrels for gasoline, diesel fuel and jet fuel. Chevron has entered into long-term contracts with KMP to terminal product at the terminals. The acquisition complemented and expanded KMP s existing refined petroleum products assets, and all of the acquired assets are included in the Products Pipelines KMP business segment.

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KMP assigned $32.1 million of its purchase price to Property, Plant and Equipment, net and the remaining $0.2 million to Deferred charges and other assets (representing the fair value of petroleum pipeline product additives).

Pro Forma Information

Pro forma consolidated statement of income information that gives effect to all of the acquisitions we have made and all of the joint ventures we have entered into since January 1, 2009 as if they had occurred as of January 1, 2009 is not presented because it would not be materially different from the information presented in our accompanying consolidated statements of income.

Divestitures

North System Natural Gas Liquids Pipeline System Discontinued Operations

On July 2, 2007, KMP announced that it entered into an agreement to sell the North System natural gas liquids pipeline and its 50% ownership interest in the Heartland Pipeline Company (collectively referred to in this report as the North System) to ONEOK Partners, L.P. for approximately $298.6 million in cash. KMP s investment in net assets, including all transaction related accruals, was approximately $145.8 million, most of which represented property, plant and equipment, and KMP recognized approximately $152.8 million of gain in the fourth quarter of 2007 from the sale of these net assets.

In the first half of 2008, following final account and inventory reconciliations, KMP paid a net amount of $2.4 million to ONEOK to fully settle amounts related to (i) working capital items; (ii) total physical product liquids inventory and inventory obligations for certain liquids products and (iii) the allocation of pre-acquisition investee distributions. Prior to the sale, KMP included the financial results of the North System within the Products Pipelines KMP business segment and, because the sale of the North System did not change the structure of KMP s internal organization in a manner that caused a change to its reportable business segments, KMP included the incremental gain within the Products Pipelines KMP business segment disclosures for 2008.

Thunder Creek Gas Services, LLC

Effective April 1, 2008, KMP sold its 25% ownership interest in Thunder Creek Gas Services, LLC, referred to in this report as Thunder Creek, to PVR Midstream LLC, a subsidiary of Penn Virginia Corporation. Prior to the sale, KMP accounted for its investment in Thunder Creek under the equity method of accounting and included its financial results within the Natural Gas Pipelines KMP business segment. In the second quarter of 2008, KMP received cash proceeds, net of closing costs and settlements, of approximately $50.7 million for its investment.

Cypress Interstate Pipeline LLC

Effective October 1, 2010, Westlake Petrochemicals LLC, a wholly-owned subsidiary of Westlake Chemical Corporation, exercised an option it held to purchase a 50% ownership interest in KMP s Cypress Pipeline. Accordingly, KMP sold a 50% interest in its subsidiary, Cypress Interstate Pipeline LLC, to Westlake and KMP received proceeds of $10.2 million. At the time of the sale, the carrying value of the net assets of Cypress Interstate Pipeline LLC totaled $20.0 million and consisted mostly of property, plant and equipment. In the fourth quarter of 2010, KMP recognized an $8.8 million gain from this sale, including an $8.6 million gain amount related to the remeasurement of KMP s retained investment in its fair value. Due to the loss of control of Cypress Interstate Pipeline LLC, KMP recognized the retained investment at its fair value, and the gain amount

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related to remeasurement represents the excess of the fair value of KMP s retained investment ($18.6 million as of October 1, 2010) over its carrying value ($10.0 million). This fair value of KMP s retained investment was determined by applying a multiple to the future annual cash flows expected from its retained 50% interest. The $10.2 million value of the transaction with Westlake Chemical Corporation was based on a contract price and does not represent the fair value of a 50% interest in the Cypress Pipeline in an orderly transaction between market participants. KMP now accounts for its retained investment under the equity method of accounting. KMP included the entire gain within the caption Other, net in our accompanying consolidated statement of income.

NGPL PipeCo LLC

On February 15, 2008, we sold an 80% ownership interest in NGPL PipeCo LLC (formerly MidCon Corp.), which owns Natural Gas Pipeline Company of America LLC and certain affiliates, collectively referred to as NGPL, to Myria Acquisition Inc. (Myria) for approximately $2.9 billion. We also received approximately $3.0 billion of cash previously held in escrow related to a notes offering by NGPL PipeCo LLC in December 2007, the net proceeds of which were distributed to us principally as repayment of intercompany indebtedness and partially as a dividend, immediately prior to the closing of the sale to Myria. Pursuant to the purchase agreement, Myria acquired all 800 Class B shares and we retained all 200 Class A shares of NGPL PipeCo LLC. We continue to operate NGPL PipeCo LLC s assets pursuant to a 15-year operating agreement. The total proceeds from this sale of $5.9 billion were used to pay off the entire outstanding balances of Kinder Morgan Kansas, Inc. s senior secured credit facility s Tranche A and Tranche B term loans, to repurchase $1.67 billion of its outstanding debt securities and to reduce balances outstanding under its $1.0 billion revolving credit facility.

Triton Power

Effective October 22, 2010, we sold our ownership interest in Triton Power, a 550-megawatt natural gas-fired electricity generation facility in Michigan, for approximately $15.0 million in cash and recorded a gain on the sale for approximately $16.1 million, which is included in the caption Other expense (income) in our accompanying consolidated statement of income.

Other Divestitures

In January 2008, we completed the sale of our interests in three natural gas-fired power plants in Colorado to Bear Stearns received proceeds of $63.1 million.

Earnings of Discontinued Operations

The financial results of discontinued operations have been reclassified for all periods presented and reported in the caption, Income (loss) from Discontinued Operations, net of tax in our accompanying consolidated statements of income. Summarized financial results of these operations are as follows (in millions):

	Year Ended December 31,		
	2010	2009	2008
Revenues	$	$	$
Income (loss) from discontinued operations before income taxes	$ (1.1)	$ 0.5	$ (0.9)
Income taxes	0.4	(0.2)	
Income (loss) from discontinued operations	$ (0.7)	$ 0.3	$ (0.9)

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The cash flows attributable to discontinued operations are included in our accompanying consolidated statements of cash flows for the years ended December 31, 2010, 2009 and 2008 in the caption Net Cash Flows Used in Discontinued Operations.

Acquisition Subsequent to December 31, 2010

On January 3, 2011, KMP purchased 50,000 Class A preferred shares of Watco Companies, LLC for $50.0 million in cash in a private transaction. In connection with its purchase of these preferred shares, the most senior equity security of Watco, KMP entered into a limited liability company agreement with Watco that provides KMP certain priority and participating cash distribution and liquidation rights. KMP will receive priority, cumulative cash distributions from the preferred shares at a rate of 3.25% per quarter, and will participate partially in additional profit distributions at a rate equal to 0.5%. The preferred shares have no conversion features and hold no voting powers, but do provide KMP certain approval rights, including the right to appoint one of the members to Watco s Board of Managers. As of December 31, 2010, KMP placed its $50.0 million investment in a cash escrow account and included this amount within Restricted Deposits on our accompanying consolidated balance sheet. The acquired investment complements KMP s existing rail transload operations and KMP will account for its investment under the equity method of accounting and include it in the Terminals KMP business segment.

Watco Companies, LLC is a privately owned, Pittsburg, Kansas based transportation company that was formed in 1983. It is the largest privately held short line railroad company in the United States, operating 22 short line railroads on approximately 3,500 miles of leased and owned track. Its services include (i) rail freight transportation; (ii) industrial switching services; (iii) railcar and locomotive repair; (iv) track construction, maintenance and repair; (v) freight railroad specific transloading and intermodal services; (vi) freight railroad specific warehouse logistics activities and (vii) port terminal freight railroads and associated operations.

Divestiture Subsequent to December 31, 2010

On February 9, 2011, KMP sold a marine vessel to Kirby Inland Marine, L.P., and additionally, KMP and Kirby formed a joint venture named Greens Bayou Fleeting, LLC. Pursuant to the joint venture agreement, KMP both sold a 51% ownership interest in the boat fleeting business acquired from Megafleet Towing Co., Inc. in April 2009 (discussed above in Acquisitions from Unrelated Entities (3) Megafleet Towing Co., Inc. Assets) to the joint venture for $4.1 million in cash, and KMP contributed the remaining business to the joint venture for a 49% ownership interest. Kirby then made cash contributions to the joint venture in exchange for the remaining 51% ownership interest. Related to the above transactions, in the fourth quarter of 2010, KMP recorded a combined loss amount of $5.5 million to write down the carrying value of the net assets to be sold to their estimated fair values as of December 31, 2010. We included this loss within the caption Other expense (income) in our accompanying consolidated statement of income for the year ended December 31, 2010.

4. Income Taxes

The components of income (loss) before income taxes from continuing operations are as follows (in millions):

	Year Ended December 31,		
	2010	**2009**	**2008**
United States	$ 394.9	$ 1,023.3	$ (2,978.7)
Foreign	73.0	76.1	80.7
Total	$ 467.9	$ 1,099.4	$ (2,898.0)

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Components of the income tax provision applicable to continuing operations for federal and state income taxes are as follows (in millions):

	Year Ended December 31,		
	2010	**2009**	**2008**
Current tax provision			
Federal	$ 152.5	$ 248.9	$ 786.6
State	9.7	17.0	18.6
Foreign	3.5	0.1	(4.5)
	165.7	266.0	800.7
Deferred tax provision			
Federal	(38.0)	29.9	(439.5)
State	29.2	0.2	11.5
Foreign	10.7	30.5	(68.4)
	1.9	60.6	(496.4)
Total tax provision	$ 167.6	$ 326.6	$ 304.3

The difference between the statutory federal income tax expense (and rate) and our actual income tax expense (and effective income tax rate) is summarized as follows (in millions, except percentages):

	Year Ended December 31,					
	2010		**2009**		**2008**	
Federal income tax	$ 163.8	35.0%	$ 384.8	35.0%	$ (1,014.3)	(35.0)%
Increase (decrease) as a result of:						
Nondeductible goodwill impairment					1,411.7	48.7%
Deferred tax liability on KMI Investment in KMR	79.5	17.0%				
State deferred tax rate change	17.4	3.7%	(10.4)	(0.9)%	17.8	0.6%
Taxes on foreign earnings	14.1	3.0%	30.2	2.7%	(68.2)	(2.4)%
Net effects of consolidating KMP s U.S. income tax provision	(105.7)	(22.6)%	(93.5)	(8.5)%	(77.4)	(2.7)%
State income tax, net of federal benefit	16.2	3.5%	24.6	2.2%	17.1	0.6%
Adjustment to KMI s investment in NGPL	(8.1)	(1.7)%				
Adjustment to employee benefit plan	(4.9)	(1.0)%				
Dividend received deduction	(10.9)	(2.3)%	(16.9)	(1.5)%	(15.6)	(0.5)%
Other	6.2	1.2%	7.8	0.7%	33.2	1.2%
Total	$ 167.6	35.8%	$ 326.6	29.7%	$ 304.3	10.5%

As part of our dividend policy, after our initial public offering (See Note 10 Subsequent Events Initial Public Offering) we intend periodically to sell the KMR shares we receive as distributions from KMR. Since we no longer expect to recover our investment in KMR in a tax-free manner, a deferred tax liability was recorded resulting in a $79.5 million increase to income tax expense in 2010.

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Deferred tax assets and liabilities result from the following (in millions):

	December 31,	
	2010	2009
Deferred tax assets		
Employee benefits	$ 66.3	$ 57.6
Book accruals	11.1	25.3
Net operating and capital loss carryforwards	58.4	11.4
Interest rate and currency swaps	19.8	24.3
Other	13.3	25.9
Total deferred tax assets	168.9	144.5
Deferred tax liabilities		
Property, plant and equipment	265.3	239.9
Investments	1,904.8	1,880.2
Book accruals	15.8	4.7
Derivative instruments	12.0	12.5
Debt adjustment	19.6	19.4
Other	8.0	9.5
Total deferred tax liabilities	2,225.5	2,166.2
Net deferred tax liabilities	$ 2,056.6	$ 2,021.7
Current deferred tax asset	$ 36.1	$ 14.2
Non-current deferred tax liability	2,092.7	2,035.9
Net deferred tax liabilities	$ 2,056.6	$ 2,021.7

KMP, through its corporate subsidiaries, has federal, state and foreign net operating loss carryforwards for which deferred tax assets of approximately $17.8 million have been recorded. These net operating loss carryforwards will expire between 2014 and 2030. We believe that KMP s subsidiaries will be able to generate sufficient taxable income in the future to utilize all of its net operating loss carryforwards. Therefore, no valuation allowance has been recorded for the deferred tax assets associated with these net operating loss carryforwards as of December 31, 2010.

In 2010, we sold certain assets that generated a capital loss of approximately $116.0 million. The capital loss will be carried back and a current deferred tax asset of approximately $40.6 million will be realized as a result of the carryback. As we have sufficient capital gains from prior years to offset this capital loss, no valuation allowance for the deferred tax asset has been recorded.

We recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based not only on the technical merits of the tax position based on tax law, but also the past administrative practices and precedents of the taxing authority. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution.

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A reconciliation of our gross unrecognized tax benefit excluding interest and penalties for the years ended December 31, 2010, 2009 and 2008 is as follows (in millions):

	2010	2009	2008
Balance at beginning of period	$ 52.0	$ 26.2	$ 41.5
Additions based on current year tax positions		1.4	2.1
Additions based on prior year tax positions	12.0	19.3	15.9
Settlements with taxing authority	(2.2)	14.0	(10.2)
Changes due to lapse in statue of limitations	0.6	(8.9)	(3.7)
Reductions for tax positions related to prior year	(9.5)		(19.4)
Balance at end of period	$ 52.9	$ 52.0	$ 26.2

Our continuing practice is to recognize interest and/or penalties related to income tax matters in income tax expense, and as of December 31, 2010, we had $4.1 million of accrued interest and $0.6 million in accrued penalties. As of December 31, 2009, we had $6.5 million of accrued interest and $0.8 million in accrued penalties. As of December 31, 2008, we had $2.9 million of accrued interest and $0.8 million of accrued penalties. In addition, we believe it is reasonably possible that our liability for unrecognized tax benefits will increase by $0.3 million during the next year, and that approximately $53.3 million included in the total $52.9 million of unrecognized tax benefits, if recognized, would affect our effective tax rate in future periods. Such amounts exclude interest, while the latter amount of $52.9 million includes both temporary and permanent differences.

We are subject to taxation, and have tax years open to examination for the periods 2007-2010 in the United States, 2005-2010 in Mexico, 2006-2010 in Canada, and 2005-2010 in various states.

5. Property, Plant and Equipment

Classes and Depreciation

As of December 31, 2010 and 2009, our property, plant and equipment consisted of the following (in millions):

	December 31,	
	2010	2009
Kinder Morgan, Inc.		
General and other	$ 46.5	$ 45.7
KMP(a)		
Natural gas, liquids, crude oil and carbon dioxide pipelines	6,684.4	6,503.6
Natural gas, liquids, carbon dioxide, and terminals station equipment	10,112.0	9,271.8
Natural gas, liquids (including linefill), and transmix processing	233.7	220.3
Other	1,874.8	1,671.3
Accumulated depreciation, depletion and amortization	(2,953.9)	(2,002.8)
	15,997.5	15,709.9
Land and land right-of-way	560.5	519.5

Construction work in process	512.7	574.1
Property, plant and equipment, net	$ 17,070.7	$ 16,803.5

(a) Includes the allocation of purchase accounting adjustments associated with the Going Private Transaction (see Note 2).

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Depreciation, depletion and amortization expense charged against property, plant and equipment was $1,025.5 million in 2010, $1,047.5 million in 2009 and $897.2 million in 2008.

Asset Retirement Obligations

As of December 31, 2010 and 2009, we have recognized asset retirement obligations in the aggregate amount of $122.0 million and $100.9 million, respectively. The majority of our asset retirement obligations are associated with the CO_2 KMP business segment, where KMP is required to plug and abandon oil and gas wells that have been removed from service and to remove its surface wellhead equipment and compressors. We have included $2.5 million of asset retirement obligations as of both December 31, 2010 and 2009 within Accrued other current liabilities in our accompanying consolidated balance sheets. The remaining amounts are included within Other long-term liabilities and deferred credits at each reporting date.

A reconciliation of the beginning and ending aggregate carrying amount of asset retirement obligations for each of the years ended December 31, 2010 and 2009 is as follows (in millions):

	Year Ended December 31,	
	2010	2009
Balance at beginning of period	$ 100.9	$ 76.5
Liabilities incurred/revised	23.7	26.0
Liabilities settled	(9.1)	(6.2)
Accretion expense	6.5	4.6
Balance at end of period	$ 122.0	$ 100.9

KMP has various other obligations throughout its businesses to remove facilities and equipment on rights-of- way and other leased facilities. We currently cannot reasonably estimate the fair value of these obligations because the associated assets have indeterminate lives. These assets include pipelines, certain processing plants and distribution facilities, and certain bulk and liquids terminal facilities. An asset retirement obligation, if any, will be recognized once sufficient information is available to reasonably estimate the fair value of the obligation.

6. Investments

We reported a combined $4,291.1 million and $3,695.6 million as Investments in our accompanying consolidated balance sheets as of December 31, 2010 and 2009, respectively. Our investments primarily consist of equity investments where we hold significant influence over investee actions and which we account for under the equity method of accounting.

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As of December 31, 2010 and 2009, our investments consisted of the following (in millions):

	December 31,	
	2010	2009
Rockies Express Pipeline LLC	$ 1,703.0	$ 1,693.4
KinderHawk Field Services LLC	924.6	
Midcontinent Express Pipeline LLC	706.4	662.3
Plantation Pipe Line Company	329.6	340.4
NGPL PipeCo LLC	265.6	698.5
Red Cedar Gathering Company	163.2	145.8
Express pipeline system	68.5	68.0
Endeavor Gathering LLC	36.1	36.2
Eagle Ford Gathering LLC	29.9	
Cortez Pipeline Company	9.9	11.2
Subsidiary trusts holding solely debentures of Kinder Morgan Kansas, Inc.(a)		8.6
All others	46.1	18.0
Total equity investments	4,282.9	3,682.4
Bond investments	8.2	13.2
Total investments	$ 4,291.1	$ 3,695.6

(a) Upon the adoption of Accounting Standards Update No. 2009-17, which amended the codification s Consolidation topic, on January 1, 2010 (ASU 2009-17), our subsidiary trusts holding solely debentures of Kinder Morgan Kansas, Inc. are consolidated into our financial statements. For more information on recent accounting pronouncements, see Note 18.

The increase in the carrying amount of our equity investments, including those of KMP, since December 31, 2009, was primarily due to KMP s acquisition of a 50% ownership interest in KinderHawk Field Services LLC in May 2010. For further information pertaining to the KinderHawk acquisition, see Note 3 Acquisitions and Divestitures Acquisitions from Unrelated Entities (10) KinderHawk Field Services LLC.

As shown in the table above, in addition to the investment in KinderHawk Field Services LLC, our significant equity investments, including those of KMP, as of December 31, 2010 consisted of the following:

Rockies Express Pipeline LLC KMP operates and owns a 50% ownership interest in Rockies Express Pipeline LLC, the sole owner of the Rockies Express natural gas pipeline system. The Rockies Express pipeline system began full operations on November 12, 2009 following the completion of its final pipeline segment, Rockies Express-East. The remaining ownership interests in Rockies Express Pipeline LLC are owned by subsidiaries of Sempra Energy and ConocoPhillips.

Effective December 1, 2009, KMP s ownership interest in Rockies Express Pipeline LLC was reduced to 50% (from 51%), ConocoPhillips interest was increased to 25% (from 24%), and minimum voting requirements for most matters was increased to 75% (from 51%) of the member interests. KMP received $31.9 million for the 1% reduction in ownership interest and we included this amount within Sale or casualty of property, plant and equipment, investments and other net assets, net of removal costs on our accompanying consolidated statement of cash flows

for the year ended December 31, 2009. Sempra Energy continues to own the remaining 25% ownership interest in Rockies Express Pipeline LLC.

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Additionally, in 2010 and 2009, KMP made capital contributions of $130.5 million and $1,273.1 million, respectively, to Rockies Express Pipeline LLC and KMP received cash distributions of $208.6 million and $148.8 million, respectively. KMP s 2009 contributions were primarily made to partially fund both the construction costs for the Rockies Express pipeline system and the repayment of senior notes (which matured in August 2009);

NGPL PipeCo LLC On February 15, 2008, we sold an 80% ownership interest in NGPL PipeCo LLC (formerly MidCon Corp.), which owns Natural Gas Pipeline of America and certain affiliates to Myria Acquisition Inc. (Myria). Pursuant to the purchase agreement, Myria acquired all 800 Class B shares and we retained all 200 Class A shares of NGPL PipeCo LLC. We continue to operate NGPL PipeCo LLC s assets pursuant to a 15-year operating agreement.

On November 19, 2009, the FERC initiated an investigation, pursuant to Section 5 of the Natural Gas Act, into the justness and reasonableness of the transportation and storage rates as well as the fuel and natural gas lost percentages of NGPL PipeCo LLC s subsidiary, Natural Gas Pipeline Company of America LLC, referred to as NGPL. NGPL reached a settlement in principal with the FERC on April 22, 2010. On June 11, 2010, NGPL filed an offer of settlement, which was approved without modification by the FERC on July 29, 2010. The order approving the settlement has become final and nonappealable. The settlement resolved all issues in the proceeding. The settlement provides that NGPL will reduce its fuel and gas lost and unaccounted for, or GL&U, retention factors as of July 1, 2010. The settlement further provides a timeline for additional prospective fuel and GL&U reductions and prospective reductions in the maximum recourse reservation rates that it bills firm transportation and storage shippers.

The events discussed above caused us to reconsider the carrying value of our investment in NGPL PipeCo LLC as of March 31, 2010. A current fair value of an investment that is less than its carrying amount may indicate a loss in value of the investment. The fair value represents the price that would be received to sell the investment in an orderly transaction between market participants. We determined the fair value of the investment in NGPL PipeCo LLC by taking the total fair value of NGPL PipeCo LLC (calculated as discussed below) deducting the fair value of the joint venture debt and multiplying by our 20% ownership interest. We calculated the total fair value of NGPL PipeCo LLC from the present value of the expected future after-tax cash flows of the reporting unit, inclusive of a terminal value, which implies a market multiple of approximately 9.5 times EBITDA (earnings before interest, income taxes, depreciation and amortization) discounted at a rate of 7.4%. The result of our analysis showed that the fair value of our investment in NGPL PipeCo LLC was less than its carrying value. In 2010, we recognized a $430.0 million, pre-tax, non-cash impairment charge included in the caption Earnings (loss) from equity investments in our accompanying consolidated statement of income;

Midcontinent Express Pipeline LLC KMP operates and owns a 50% ownership interest in Midcontinent Express Pipeline LLC. It is the sole owner of the Midcontinent Express natural gas pipeline system. The remaining ownership interests in Midcontinent Express Pipeline LLC are owned by Regency Energy Partners LP and Energy Transfer Partners, L.P. Effective May 26, 2010, Energy Transfer Partners, L.P. transferred to Regency Energy Partners LP (i) a 49.9% ownership interest in Midcontinent Express Pipeline LLC and (ii) a one-time right to purchase its remaining 0.1% ownership interest in Midcontinent Express Pipeline LLC on May 26, 2011. As a result of this transfer, Energy Transfer Partners, L.P. now owns a 0.1% ownership interest in Midcontinent Express Pipeline LLC. KMP continues to own the remaining 50% ownership interest in Midcontinent Express Pipeline LLC, and since there was no change in its ownership interest, KMP did not record any equity method adjustments as a result of the ownership change between Regency Energy Partners LP and Energy Transfer Partners, L.P.

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Additionally, in 2010 and 2009, KMP made capital contributions of $86.0 million and $664.5 million, respectively, to Midcontinent Express Pipeline LLC to partially fund its pipeline construction and expansion costs. In 2010 and 2009, KMP also received, from Midcontinent Express Pipeline LLC, cash distributions of $72.0 million and $16.2 million, respectively;

Plantation Pipe Line Company KMP operates and owns a 51.17% ownership interest in Plantation Pipe Line Company, the sole owner of the Plantation refined petroleum products pipeline system. An affiliate of ExxonMobil owns the remaining interest. Each investor has an equal number of directors on Plantation s board of directors, and board approval is required for certain corporate actions that are considered participating rights; therefore, KMP does not control Plantation Pipe Line Company, and it accounts for its investment under the equity method;

Red Cedar Gathering Company KMP owns a 49% ownership interest in the Red Cedar Gathering Company. The remaining 51% interest in Red Cedar is owned by the Southern Ute Indian Tribe. Red Cedar is the sole owner of the Red Cedar natural gas gathering, compression and treating system;

Express pipeline system KMP acquired a 33 1/3% ownership interest in the Express pipeline system from us effective August 28, 2008;

Endeavor Gathering LLC KMP acquired a 40% ownership interest in Endeavor Gathering LLC from GMX Resources Inc. effective November 1, 2009 (discussed in Note 3 Acquisitions and Divestitures Acquisitions from Unrelated Entities (6) Endeavor Gathering LLC);

Eagle Ford Gathering LLC on May 14, 2010, KMP and Copano Energy, L.L.C. entered into formal agreements for a joint venture to provide natural gas gathering, transportation and processing services to natural gas producers in the Eagle Ford Shale formation in south Texas. KMP named the joint venture Eagle Ford Gathering LLC, and KMP owns a 50% member interest in Eagle Ford Gathering LLC. Copano owns the remaining 50% interest and serves as operator and managing member of Eagle Ford Gathering LLC. For more information on the investment in Eagle Ford, see Items 1 and 2 Business and Properties (a) General Development of Business Recent Developments Natural Gas Pipelines KMP included in our Annual Report on Form 10-K for the year ended December 31, 2010, incorporated by reference; and

Cortez Pipeline Company KMP operates and owns a 50% ownership interest in the Cortez Pipeline Company, the sole owner of the Cortez carbon dioxide pipeline system. A subsidiary of Exxon Mobil Corporation owns a 37% ownership interest and Cortez Vickers Pipeline Company owns the remaining 13% ownership interest.

KMP also owns a 50% ownership interest in Fayetteville Express Pipeline LLC, which was formed in August 2008. Fayetteville Express Pipeline LLC is the sole owner of the Fayetteville Express natural gas pipeline system. Energy Transfer Partners, L.P. operates the Fayetteville Express pipeline system and owns the remaining 50% ownership interest in Fayetteville Express Pipeline LLC. The Fayetteville Express system began interim transportation service on October 12, 2010, and began full operations on January 1, 2011. In 2009, KMP made capital contributions of $103.2 million to Fayetteville Express Pipeline LLC to partially fund its pipeline construction costs. As of December 31, 2010 and 2009, however, KMP had no material net investment in Fayetteville Express Pipeline LLC because in November 2009, Fayetteville Express Pipeline LLC established and made borrowings under its own revolving bank credit facility in order to fund its pipeline development and construction costs and to make distributions to its member owners to reimburse them for prior contributions (including contributions made in

2008). Accordingly, KMP received cash distributions of $115.6 million from Fayetteville Express Pipeline LLC in 2009.

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In addition to the investments listed above, KMP s significant equity investments included a 25% ownership interest in Thunder Creek Gas Services, LLC until it sold its ownership interest to PVR Midstream LLC on April 1, 2008. The divestiture of the investment in Thunder Creek is discussed in Note 3 Acquisitions and Divestitures Divestitures Thunder Creek Gas Services, LLC.

Our earnings (losses) from equity investments were as follows (in millions):

	Year Ended December 31,		
	2010	2009	2008
Rockies Express Pipeline LLC	$ 87.6	$ 98.5	$ 84.9
Midcontinent Express Pipeline LLC	30.1	14.7	0.5
Red Cedar Gathering Company	28.7	24.9	26.7
Cortez Pipeline Company	22.5	22.3	20.8
Plantation Pipe Line Company	20.0	16.5	13.6
KinderHawk Field Services LLC	19.5		
Endeavor Gathering LLC	3.2	0.1	
Express pipeline system	(3.3)	(4.1)	8.2
NGPL PipeCo LLC(a)	(399.0)	42.5	40.1
Eagle Ford Gathering LLC			
Thunder Creek Gas Services, LLC			1.3
Horizon Pipeline Company			0.2
All others	4.5	6.5	4.8
Total	$ (186.2)	$ 221.9	$ 201.1
Amortization of excess costs	$ (5.8)	$ (5.8)	$ (5.7)

(a) 2010 amount includes a non-cash investment impairment charge, which we recorded in the amount of $430.0 million (pre-tax) discussed preceding.

Summarized combined unaudited financial information for our significant equity investments (listed or described above) is reported below (in millions; amounts represent 100% of investee financial information):

	Year Ended December 31,		
Income Statement(a)	**2010**	**2009**	**2008**
Revenues	$ 2,649.3	$ 2,351.9	$ 2,170.4
Costs and expenses	2,870.9	1,754.8	1,649.6
Earnings before extraordinary items and cumulative effect of a change in accounting principle	(221.6)	597.1	520.8
Net income	$ (221.6)	$ 597.1	$ 520.8

Balance Sheet	**December 31,** **2010**	**2009**
Current assets	$ 701.0	$ 501.8
Non-current assets	17,759.1	16,687.5
Current liabilities	711.8	2,299.7
Non-current liabilities	7,905.4	6,275.6
Partner /owners equity	$ 9,842.9	$ 8,614.0

(a) Amounts exclude NGPL PipeCo LLC earnings prior to the sale of our 80% interest on February 15, 2008.

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For information on regulatory matters affecting certain of our equity investments, see Note 17.

As of December 31, 2010 and 2009, our investment amounts also included bond investments totaling $8.2 million and $13.2 million, respectively. These bond investments consisted of certain tax exempt, fixed-income development revenue bonds KMP acquired in the fourth quarter of 2008. Because KMP has both the ability and the intent to hold these debt securities to maturity, we account for these investments at historical cost. KMP acquired its bond investments by issuing notes under the Gulf Opportunity Zone Act of 2005, which are further discussed in Note 8 Debt Long-Term Debt KMP s Subsidiary Debt Gulf Opportunity Zone Bonds.

7. Goodwill and Other Intangibles

Goodwill and Excess Investment Cost

Changes in the gross amounts of our goodwill and accumulated impairment losses for each of the two years ended December 31, 2010 and 2009 are summarized as follows (in millions):

	Products Pipelines KMP	Natural Gas Pipelines KMP	CO_2 KMP	Terminals KMP	Kinder Morgan Canada KMP	Total
Historical Goodwill	$ 2,116.5	$ 3,439.4	$ 1,521.7	$ 1,450.8	$ 580.7	$ 9,109.1
Accumulated impairment losses.	(1,266.5)	(2,090.2)		(676.6)	(377.1)	(4,410.4)
Balance as of December 31, 2008	850.0	1,349.2	1,521.7	774.2	203.6	4,698.7
Acquisitions and purchase price adjustment		48.6		(35.4)		13.2
Currency translation adjustments					32.4	32.4
Balance as of December 31, 2009	850.0	1,397.8	1,521.7	738.8	236.0	4,744.3
Acquisitions				73.2		73.2
Currency translation adjustments					13.4	13.4
Balance as of December 31, 2010	$ 850.0	$ 1,397.8	$ 1,521.7	$ 812.0	$ 249.4	$ 4,830.9

For more information on our accounting policies for goodwill, see Note 2 Summary of Significant Accounting Policies Goodwill.

We record the excess of the cost of an acquisition price over the fair value of acquired net assets as an asset on our balance sheet. This amount is referred to and reported separately as Goodwill in our accompanying consolidated balance sheets. Goodwill is not subject to amortization but must be tested for impairment at least annually. This test requires us to assign goodwill to an appropriate reporting unit and to determine if the implied fair value of the reporting unit s goodwill is less than its carrying amount.

We evaluate goodwill for impairment on May 31 of each year. For this purpose, we have six reporting units as follows: (i) Products Pipelines KMP (excluding associated terminals); (ii) Products Pipelines Terminals KMP (evaluated separately from Products Pipelines KMP for goodwill purposes); (iii) Natural Gas Pipelines KMP; (iv) CO_2 KMP; (v) Terminals KMP and (vi) Kinder Morgan Canada KMP. There were no impairment charges resulting from our May 31, 2010 impairment testing, and no event indicating an impairment has occurred subsequent to that date.

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In the second quarter of 2008, we finalized the purchase price allocation associated with our May 2007 Going Private Transaction, establishing the fair values of our individual assets and liabilities including assigning the associated goodwill to our six reporting units, in each case as of the May 31, 2007 acquisition date. A significant portion of the goodwill that arose in conjunction with this acquisition was determined to be associated with the general partner and significant limited partner interests in KMP (a publicly traded master limited partnership, or MLP), attributable, in part, to the difference between the market multiples that might be paid to acquire the general partner and limited interests in an MLP and the market multiples that might be paid to acquire the individual assets that comprise that MLP. This market premium is partially attributable to the incentive distribution right that is embedded in the KMP general partner interest for which a separate intangible asset was not recognized in purchase accounting because this right cannot be detached or transferred apart from the entire general partner interest.

In conjunction with our first annual impairment test of the carrying value of this goodwill, performed as of May 31, 2008, we determined that the fair value of certain reporting units that are part of our investment in KMP were less than the carrying values. The fair value of each reporting unit was determined from the present value of the expected future cash flows from the applicable reporting unit (inclusive of a terminal value calculated using market multiples between six and ten times cash flows) discounted at a rate of 9.0%. The value of each reporting unit was determined on a stand-alone basis from the perspective of a market participant and represented the price that would be received to sell the unit as a whole in an orderly transaction between market participants at the measurement date. Thus, any value generated from the inclusion of these assets in an MLP structure was not captured in the valuation of these reporting units. This resulted in several of the reporting units having fair values less than their carrying values as the incremental value created by the inclusion of these assets in an MLP structure was taken into account in the Going Private Transaction and thus was used in allocating the purchase price. To capture this value at the reporting unit level, we believe it would be necessary to recreate the MLP structure at the reporting unit level. We believe this is not feasible for Kinder Morgan, Inc. or for any market participant, as further discussed below.

Recreating such structure would involve separating each of our reporting units into separate entities so that each reporting unit could be valued on a stand alone basis assuming each such unit was sold as an MLP. Creating separate MLPs would involve significant structural difficulties including potentially numerous adverse state and federal tax consequences to KMP and its unitholders. In addition, it would involve a significant amount of tax, legal and commercial analysis, and based on that analysis may also require customer and/or joint venture consents, lender consents, and regulatory approvals and/or unitholder approval. As a result of these factors, we believe that it is not feasible to apply the MLP structure related value to the individual reporting unit level.

For the reporting units where the fair value was determined to be less than the carrying value, we determined the implied fair value of goodwill. The implied fair value of goodwill within each reporting unit was then compared to the carrying value of goodwill of each such unit, resulting in the following goodwill impairment charges by reporting units: Products Pipelines KMP (excluding associated terminals) $1.20 billion, Products Pipelines Terminals KMP (separate from Products Pipelines KMP for goodwill impairment purposes) $70 million, Natural Gas Pipelines KMP $2.09 billion, and Terminals KMP $677 million, for a total impairment of $4.03 billion. The goodwill impairment charges were non-cash charges and did not have any impact on our cash flows.

With regard to our equity investments in unconsolidated affiliates, in almost all cases, either (i) the price we paid to acquire our share of the net assets of such equity investees or (ii) the revaluation of our share of the net assets of any retained noncontrolling equity investment (from the sale of a portion of our ownership interest in a consolidating subsidiary, thereby losing our controlling financial interest in the subsidiary) differed from the underlying carrying value of such net assets. This differential consists of two pieces. First, an amount related to

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the difference between the investee s recognized net assets at book value and at current fair values (representing the appreciated value in plant and other net assets), and secondly, to any premium in excess of fair value (referred to as equity method goodwill) we paid to acquire the investment. We include both amounts within Investments on our accompanying consolidated balance sheets.

The first differential, representing the excess of the fair market value of our investees plant and other net assets over its underlying book value at either the date of acquisition or the date of the loss of control totaled $166.0 million and $163.2 million as of December 31, 2010 and 2009, respectively. In almost all instances, this differential, relating to the discrepancy between our share of the investee s recognized net assets at book values and at current fair values, represents our share of undervalued depreciable assets, and since those assets (other than land) are subject to depreciation, we amortize this portion of our investment cost against our share of investee earnings. As of December 31, 2010 this excess investment cost is being amortized over a weighted average life of approximately 27.6 years.

The second differential, representing total unamortized excess cost over underlying fair value of net assets acquired (equity method goodwill) was $283.0 million and $138.2 million as of December 31, 2010 and 2009, respectively. This differential is not subject to amortization but rather to impairment testing. Accordingly, in addition to our annual impairment test of goodwill, we periodically reevaluate the amount at which we carry the excess of cost over fair value of net assets accounted for under the equity method, as well as the amortization period for such assets, to determine whether current events or circumstances warrant adjustments to our carrying value and/or revised estimates of useful lives. Our impairment test considers whether the fair value of the equity investment as a whole, not the underlying net assets, has declined and whether that decline is other than temporary. As of December 31, 2010, we believed no such impairment had occurred and no reduction in estimated useful lives was warranted.

Other Intangibles

Excluding goodwill, our other intangible assets include customer relationships, contracts and agreements, technology-based assets, and lease value. These intangible assets have definite lives and are reported separately as Other intangibles, net in our accompanying consolidated balance sheets. Following is information, as of December 31, 2010 and 2009, related to our intangible assets subject to amortization (in millions):

	December 31,	
	2010	**2009**
Customer relationships, contracts and agreements		
Gross carrying amount	$ 424.7	$ 297.9
Accumulated amortization	(99.9)	(50.9)
Net carrying amount	324.8	247.0
Technology-based assets, lease value and other		
Gross carrying amount	16.3	14.1
Accumulated amortization	(1.9)	(1.3)
Net carrying amount	14.4	12.8
Total other intangibles, net	$ 339.2	$ 259.8

Our customer relationships, contracts and agreements relate primarily to the Terminals KMP business segment, and include relationships and contracts for handling and storage of petroleum, chemical, and dry-bulk materials, including oil, gasoline and other refined petroleum products, coal, petroleum coke, fertilizer, steel and

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ores. The values of these intangible assets were determined by us (often in conjunction with third party valuation specialists) by first, estimating the revenues derived from a customer relationship or contract (offset by the cost and expenses of supporting assets to fulfill the contract), and second, discounting the revenues at a risk adjusted discount rate. The increase in the carrying amount of our customer relationships, contracts and agreements since December 31, 2009 was mainly due to the acquisition of intangibles included in our purchase of terminal assets from US Development Group LLC and Slay Industries, discussed in Note 3.

We amortize the costs of our intangible assets to expense in a systematic and rational manner over their estimated useful lives. Among the factors we weigh, depending on the nature of the asset, are the effect of obsolescence, new technology, and competition. For each of the years ended December 31, 2010, 2009 and 2008, the amortization expense on our intangibles totaled $49.6 million, $21.1 million and $19.2 million, respectively. These expense amounts primarily consisted of amortization of our customer relationships, contracts and agreements. Our estimated amortization expense for our intangible assets for each of the next five fiscal years (2011 2015) is approximately $43.6 million, $38.2 million, $34.3 million, $30.9 million and $28.0 million, respectively.

The life of each intangible asset is based either on the life of the corresponding customer contract or agreement or, in the case of a customer relationship intangible (the life of which was determined by an analysis of all available data on that business relationship), the length of time used in the discounted cash flow analysis to determine the value of the customer relationship. As of December 31, 2010, the weighted average amortization period for our intangible assets was approximately 11.6 years.

8. Debt

Our balances of debt are classified based on the contractual maturity dates of the underlying debt instruments. We defer costs associated with debt issuance over the applicable term. These costs are then amortized as interest expense in our accompanying consolidated statements of income. The net carrying amount of Kinder Morgan Kansas, Inc. s debt (including both short-term and long-term amounts and excluding the value of interest rate swap agreements) as of December 31, 2010 and 2009 was $3,623.8 million (including the $750.0 million of 5.35% Kinder Morgan Finance Company, LLC s senior notes paid on January 5, 2011) and $3,044.3 million, respectively. The weighted average interest rate on all of Kinder Morgan Kansas, Inc. and its subsidiaries (excluding KMP and its subsidiaries) borrowings was approximately 5.01% during 2010 and 5.45% during 2009. Our net carrying amount of KMP s debt (including both short-term and long-term amounts and excluding the value of interest rate swap agreements) as of December 31, 2010 and 2009 was $11,546.1 million and $10,604.1 million, respectively. The weighted average interest rate on all of KMP s borrowings was approximately 4.35% during 2010 and 4.57% during 2009.

Short-Term Debt

Kinder Morgan Kansas, Inc. s outstanding short-term debt as of December 31, 2010 was $750.0 million, which consisted of its 5.35% series senior notes that matured on January 5, 2011. KMP s outstanding short-term debt as of December 31, 2010 was $1,263.3 million. The balance consisted of (i) $700.0 million in principal amount of KMP s 6.75% senior notes due March 15, 2011 (including purchase accounting adjustments, the notes had a carrying amount of $700.9 million); (ii) $522.1 million of KMP s commercial paper borrowings; (iii) $23.7 million in principal amount of tax-exempt bonds that mature on April 1, 2024, but are due on demand pursuant to certain standby purchase agreement provisions contained in the bond indenture (KMP s subsidiary Kinder Morgan Operating L.P. B is the obligor on the bonds); (iv) a $9.4 million portion of a 5.40% long-term note payable (KMP s subsidiaries Kinder Morgan Operating L.P. A and Kinder Morgan Canada Company are the obligors on the note) and (v) a $7.2 million portion of 5.23% long-term senior notes (KMP s subsidiary Kinder Morgan Texas Pipeline, L.P. is the obligor on the notes).

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Kinder Morgan Kansas, Inc. s outstanding short-term debt as of December 31, 2009 was $172.1 million. The balance consisted of (i) $171.0 million in outstanding borrowings under Kinder Morgan Kansas, Inc. s senior secured credit facility and (ii) $1.1 million remaining portion of Kinder Morgan Kansas, Inc. s 6.50% series debentures, due September 1, 2013. KMP s outstanding short-term debt as of December 31, 2010 was $596.6 million. The balance consisted of (i) $300.0 million in outstanding borrowings under KMP s bank credit facility discussed following; (ii) $250.0 million in principal amount of KMP s 7.50% senior notes that matured on November 1, 2010 (including unamortized discounts and purchase accounting adjustments, the notes had a carrying amount of $251.9 million); (iii) $23.7 million in principal amount of tax-exempt bonds due from KMP s subsidiary Kinder Morgan Operating L.P. B; (iv) an $8.9 million portion of the 5.40% long-term note payable due from KMP s subsidiaries Kinder Morgan Operating L.P. A and Kinder Morgan Canada Company; (v) a $6.8 million portion of the 5.23% senior notes due from KMP s subsidiary Kinder Morgan Texas Pipeline, L.P. and (vi) $5.3 million in principal amount of adjustable rate industrial development revenue bonds that matured on January 1, 2010 (the bonds were issued by the Illinois Development Finance Authority and KMP s subsidiary Arrow Terminals L.P. was the obligor on the bonds).

Credit Facilities

	As of December 31, 2010	
	Short-term Notes Payable	Weighted-Average Interest Rate
	(In millions)	
Kinder Morgan Kansas, Inc. Secured debt(a)	$	%
KMP Unsecured debt(b)	$ 522.1	0.67%

(a) The average short-term debt outstanding (and related weighted-average interest rate) was $203.0 million (1.74%) during the year ended December 31, 2010.

(b) The average short-term debt outstanding (and related weighted-average interest rate) was $542.1 million (0.77%) during the year ended December 31, 2010.

Kinder Morgan Kansas, Inc. s $1.0 billion six-year senior secured revolving credit facility matures on May 30, 2013 and includes a sublimit of $300 million for the issuance of letters of credit and a sublimit of $50 million for swingline loans. Kinder Morgan Kansas, Inc. does not have a commercial paper program. As of December 31, 2009, there were $171.0 million in borrowings outstanding under Kinder Morgan Kansas, Inc. s credit facility and the weighted average interest on these borrowings was 1.61%.

As of December 31, 2010, the amount available for borrowing under Kinder Morgan Kansas, Inc. s credit facility was reduced by $40.6 million consisting of four letters of credit required under provisions of Kinder Morgan Kansas, Inc. s property and casualty, workers compensation and general liability insurance policies.

The applicable margin for the revolving credit facility is subject to change pursuant to a leverage-based pricing grid. In addition, the credit agreement provides for customary commitment fees and letter of credit fees under the revolving credit facility. The credit agreement contains customary terms and conditions and is unconditionally guaranteed by each of Kinder Morgan Kansas, Inc. s wholly owned material domestic restricted subsidiaries, to the extent permitted by applicable law and contract. Voluntary prepayments can be made at any time on revolving credit loans and swingline loans, in each case without premium or penalty, and on LIBOR Loans (as defined in the credit agreement) on the interest payment date without premium or penalty.

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Kinder Morgan Kansas, Inc. s credit facility included the following restrictive covenants as of December 31, 2010:

- total debt divided by earnings before interest, income taxes, depreciation and amortization may not exceed 6.00: 1.00;
- certain limitations on indebtedness, including payments and amendments;
- certain limitations on entering into mergers, consolidations, sales of assets and investments;
- limitations on granting liens; and
- prohibitions on making any dividend to shareholders if an event of default exists or would exist upon making such dividend.

On June 23, 2010, KMP successfully renegotiated its previous $1.79 billion five-year unsecured revolving bank credit facility that was due August 18, 2010, replacing it with a new $2.0 billion three-year, senior unsecured revolving credit facility that expires June 23, 2013. Similar to its previous facility, KMP s $2.0 billion credit facility is with a syndicate of financial institutions, and the facility permits KMP to obtain bids for fixed rate loans from members of the lending syndicate. Wells Fargo Bank, National Association is the administrative agent, and borrowings under the credit facility can be used for general partnership purposes and as a backup for KMP s commercial paper program. KMP had no borrowings under the credit facility as of December 31, 2010. As of December 31, 2009, the outstanding balance under its previous $1.79 billion credit facility was $300.0 million, and the weighted average interest rate on these borrowings was 0.59%.

The covenants of this senior unsecured revolving credit facility are substantially similar to the covenants of KMP s previous facility; however, the interest rates for borrowing under this facility have increased from its previous facility. Interest on KMP s credit facility accrues at its option at a floating rate equal to either (i) the administrative agent s base rate (but not less than the Federal Funds Rate, plus 0.5%) or (ii) LIBOR, plus a margin, which varies depending upon the credit rating of its long-term senior unsecured debt. The credit facility can be amended to allow for borrowings of up to $2.3 billion.

As of December 31, 2010, the amount available for borrowing under KMP s credit facility was reduced by a combined amount of $758.9 million, consisting of $522.1 million of commercial paper borrowings and $236.8 million of letters of credit, consisting of: (i) a $100.0 million letter of credit that supports certain proceedings with the California Public Utilities Commission involving refined products tariff charges on the intrastate common carrier operations of KMP s Pacific operations pipelines in the state of California; (ii) a combined $87.9 million in three letters of credit that support tax-exempt bonds; (iii) a $16.2 million letter of credit that supports debt securities issued by the Express pipeline system; (iv) a $16.1 million letter of credit that supports KMP s indemnification obligations on the Series D note borrowings of Cortez Capital Corporation and (v) a combined $16.6 million in other letters of credit supporting other obligations of KMP and its subsidiaries.

Additionally, KMP s $2.0 billion credit facility included the following restrictive covenants as of December 31, 2010:

- total debt divided by earnings before interest, income taxes, depreciation and amortization for the preceding four quarters may not exceed:

5.5, in the case of any such period ended on the last day of (i) a fiscal quarter in which KMP makes any Specified Acquisition (as defined in the credit facility) or (ii) the first or second fiscal quarter next succeeding such a fiscal quarter; or

5.0, in the case of any such period ended on the last day of any other fiscal quarter;

KINDER MORGAN, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

- certain limitations on entering into mergers, consolidations and sales of assets;

- limitations on granting liens; and

- prohibitions on making any distribution to holders of units if an event of default exists or would exist upon making such distribution.

In addition to normal repayment covenants, under the terms of KMP s credit facility, the occurrence at any time of any of the following would constitute an event of default: (i) KMP s failure to make required payments of any item of indebtedness or any payment in respect of any hedging agreement, provided that the aggregate outstanding principal amount for all such indebtedness or payment obligations in respect of all hedging agreements is equal to or exceeds $75 million; (ii) KMP s general partner s failure to make required payments of any item of indebtedness, provided that the aggregate outstanding principal amount for all such indebtedness is equal to or exceeds $75 million; (iii) adverse judgments rendered against KMP for the payment of money in an aggregate amount in excess of $75 million, if this same amount remains undischarged for a period of thirty consecutive days during which execution shall not be effectively stayed and (iv) voluntary or involuntary commencements of any proceedings or petitions seeking KMP s liquidation, reorganization or any other similar relief under any federal, state or foreign bankruptcy, insolvency, receivership or similar law.

Other than the relatively non-restrictive negative covenants and events of default in KMP s credit facility, there are no provisions protecting against a situation where KMP is unable to terminate an agreement with a counterparty who is facing an impending financial collapse, and such collapse may be hastened due to cross-defaults. Also, KMP s credit facility does not contain a material adverse change clause coupled with a lockbox provision; however, the facility does provide that the margin KMP will pay with respect to borrowings, and the facility fee that it will pay on the total commitment, will vary based on its senior debt credit rating. None of KMP s debt is subject to payment acceleration as a result of any change to its credit ratings.

Commercial Paper Program

KMP s commercial paper program provides for the issuance of $2 billion of commercial paper. On October 13, 2008, Standard & Poor s Ratings Services lowered KMP s short-term credit rating to A-3 from A-2, and on May 6, 2009, Moody s Investors Service, Inc. downgraded KMP s commercial paper rating to Prime-3 from Prime-2 and assigned a negative outlook to KMP s long-term credit rating. As a result of these revisions and the commercial paper market conditions, KMP was unable to access commercial paper borrowings throughout 2009.

However, on February 25, 2010, Standard & Poor s revised its outlook on KMP s long-term credit rating to stable from negative, affirmed KMP s long-term credit rating at BBB, and raised KMP s short-term credit rating to A-2 from A-3. The rating agency s revisions reflected its expectations that KMP s financial profile will improve due to lower guaranteed debt obligations and higher expected cash flows associated with the completion and start-up of KMP s 50%-owned Rockies Express and Midcontinent Express natural gas pipeline systems and its fully-owned Kinder Morgan Louisiana natural gas pipeline system. Due to this favorable change in KMP s short-term credit rating it resumed issuing commercial paper in March 2010. In the near term, KMP expects that its short-term liquidity and financing needs will be met through a combination of borrowings made under its bank credit facility and commercial paper program.

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Long-Term Debt

Kinder Morgan Kansas, Inc. s long-term debt balance, excluding the value of interest rate swaps, at December 31, 2010 and 2009 was $2,873.8 million and $2,872.2 million, respectively. KMP s long-term debt balance, excluding the value of interest rate swaps, at December 31, 2010 and 2009 was $10,282.8 million and $10,007.5 million, respectively. The balances consisted of the following (in millions).

	December 31,	
	2010	2009
Kinder Morgan Kansas, Inc.		
Debentures		
6.50% series, due September 1, 2013	$	$ 1.1
6.67% series, due November 1, 2027	7.0	7.0
7.25% series, due March 1, 2028	32.0	32.0
7.45% series, due March 1, 2098	25.9	25.9
Senior Notes		
6.50% series, due September 1, 2012	841.8	844.1
5.15% series, due March 1, 2015	238.0	235.6
Deferrable Interest Debentures Issued to Subsidiary Trusts		
8.56% junior subordinated deferrable interest debentures due April 15, 2027(a)		15.8
7.63% junior subordinated deferrable interest debentures due April 15, 2028(a)		19.9
Bank credit facility borrowings		171.0
Kinder Morgan Finance Company, LLC		
5.35% series, due January 5, 2011	750.0	745.9
5.70% series, due January 5, 2016	817.0	811.6
6.00% series, due January 15, 2018	750.0	
6.40% series, due January 5, 2036	35.1	34.4
Subsidiary Trusts		
Preferred Capital Trust Securities		
8.56% K N Capital Trust I due April 15, 2027(a)	12.7	
7.63% K N Capital Trust III due April 15, 2028(a)	14.4	
Kinder Morgan G.P., Inc.		
$1,000 Liquidation Value Series A Fixed-to-Floating Rate Term Cumulative Preferred Stock	100.0	100.0
Unamortized Debt Discount on Long-term Debt	(0.1)	
Current Maturities of Long-term Debt	(750.0)	(172.1)
Total Long-term Debt Kinder Morgan Kansas, Inc.	$ 2,873.8	$ 2,872.2
Kinder Morgan Energy Partners, L.P. borrowings		
7.50% senior notes due November 1, 2010	$	$ 251.8
6.75% senior notes due March 15, 2011	700.9	704.3
7.125% senior notes due March 15, 2012	453.6	456.2
5.85% senior notes due September 15, 2012	500.0	500.0
5.00% senior notes due December 15, 2013	494.5	492.8
5.125% senior notes due November 15, 2014	493.1	491.7
5.625% senior notes due February 15, 2015	300.0	300.0
6.00% senior notes due February 1, 2017	598.2	598.0

5.95% senior notes due February 15, 2018	975.0	975.0
9.00% senior notes due February 1, 2019(b)	500.0	500.0
6.85% senior notes due February 15, 2020	700.0	700.0
5.30% senior notes due September 15, 2020	600.0	
5.80% senior notes due March 1, 2021	400.0	400.0

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	December 31,	
	2010	2009
7.40% senior notes due March 15, 2031	309.9	310.1
7.75% senior notes due March 15, 2032	315.8	316.1
7.30% senior notes due August 15, 2033	513.4	513.7
5.80% senior notes due March 15, 2035	478.0	477.7
6.50% senior notes due February 1, 2037	395.9	395.8
6.95% senior notes due January 15, 2038	1,175.0	1,175.0
6.50% senior notes due September 1, 2039	600.0	600.0
6.55% senior notes due September 15, 2040	400.0	
Bank credit facility borrowings	522.1	300.0
Subsidiary borrowings:		
Arrow Terminals L.P.-IL Development Revenue Bonds due January 1, 2010		5.3
Kinder Morgan Louisiana Pipeline LLC-6.0% LA Development Revenue note due January 1, 2011		5.0
Kinder Morgan Operating L.P. A -5.40% BP note, due March 31, 2012	10.2	14.9
Kinder Morgan Canada Company-5.40% BP note, due March 31, 2012	9.0	13.2
Kinder Morgan Texas Pipeline, L.P.-5.23% Senior Notes, due January 2, 2014	23.6	30.5
Kinder Morgan Liquids Terminals LLC-N.J. Development Revenue Bonds due January 15, 2018	25.0	25.0
Kinder Morgan Columbus LLC-5.50% MS Development Revenue note due September 1, 2022	8.2	8.2
Kinder Morgan Operating L.P. B -Jackson-Union Cos. IL Revenue Bonds due April 1, 2024	23.7	23.7
International Marine Terminals-Plaquemines, LA Revenue Bonds due March 15, 2025	40.0	40.0
Other miscellaneous subsidiary debt	1.3	1.3
Unamortized Debt Discount on Long-term Debt	(20.3)	(21.2)
Current Maturities of Long-term Debt	(1,263.3)	(596.6)
Total Long-term Debt KMP	$ 10,282.8	$ 10,007.5

(a) As a result of the implementation of ASU 2009-17, effective January 1, 2010, we (i) include the transactions and balances of our business trust, K N Capital Trust I and K N Capital Trust III, in our consolidated financial statements and (ii) no longer include our Junior Subordinated Deferrable Interest Debentures issued to the Capital Trusts (see Note 18 Recent Accounting Pronouncements).

(b) KMP issued its $500 million in principal amount of 9.00% senior notes due February 1, 2019 in December 2008. Each holder of the notes has the right to require KMP to repurchase all or a portion of the notes owned by such holder on February 1, 2012 at a purchase price equal to 100% of the principal amount of the notes tendered by the holder plus accrued and unpaid interest to, but excluding, the repurchase date. On and after February 1, 2012, interest will cease to accrue on the notes tendered for repayment. A holder s exercise of the repurchase option is irrevocable.

Kinder Morgan Kansas, Inc.

The 2028 and 2098 debentures and the 2012 and 2015 senior notes are redeemable in whole or in part, at Kinder Morgan Kansas, Inc. s option at any time, at redemption prices defined in the associated prospectus supplements. The 2027 debentures are redeemable in whole or in part, at Kinder Morgan Kansas, Inc. s option after November 1, 2004 at redemption prices defined in the associated prospectus supplements.

On September 2, 2010, Kinder Morgan Kansas, Inc. paid the remaining $1.1 million principal balance outstanding on Kinder Morgan Kansas, Inc. s 6.50% series debentures, due 2013.

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Kinder Morgan Finance Company, LLC

On December 20, 2010, Kinder Morgan Finance Company, LLC, a wholly owned subsidiary of Kinder Morgan Kansas, Inc., completed a public offering of senior notes. It issued a total of $750 million in principal amount of 6.00% senior notes due January 15, 2018. Net proceeds received from the issuance of the notes, after underwriting discounts and commissions, were $744.2 million, which were used to retire the principal amount of the 5.35% senior notes that matured on January 5, 2011.

The 2011, 2016, 2018 and 2036 senior notes issued by Kinder Morgan Finance Company, LLC are redeemable in whole or in part, at Kinder Morgan Kansas, Inc. s option at any time, at redemption prices defined in the associated prospectus supplements. Each series of these notes is fully and unconditionally guaranteed by Kinder Morgan Kansas, Inc. on a senior unsecured basis as to principal, interest and any additional amounts required to be paid as a result of any withholding or deduction for Canadian taxes.

Capital Trust Securities

Kinder Morgan Kansas, Inc. s business trusts, K N Capital Trust I and K N Capital Trust III, are obligated for $12.7 million of 8.56% Capital Trust Securities maturing on April 15, 2027 and $14.4 million of 7.63% Capital Trust Securities maturing on April 15, 2028, respectively, which it guarantees. The 2028 Securities are redeemable in whole or in part, at Kinder Morgan Kansas, Inc. s option at any time, at redemption prices as defined in the associated prospectus. The 2027 Securities are redeemable in whole or in part at Kinder Morgan Kansas, Inc. s option and at any time in certain limited circumstances upon the occurrence of certain events and at prices, all defined in the associated prospectus supplements. Upon redemption by Kinder Morgan Kansas, Inc. or at maturity of the Junior Subordinated Deferrable Interest Debentures, it must use the proceeds to make redemptions of the Capital Trust Securities on a pro rata basis.

KMP

All of KMP s fixed rate senior notes provide that it may redeem the notes at any time at a price equal to 100% of the principal amount of the notes plus accrued interest to the redemption date plus a make-whole premium.

On May 19, 2010, KMP completed a public offering of senior notes. KMP issued a total of $1 billion in principal amount of senior notes in two separate series, consisting of $600 million of 5.30% notes due September 15, 2020, and $400 million of 6.55% notes due September 15, 2040. KMP received proceeds from the issuance of the notes, after underwriting discounts and commissions, of $993.1 million and KMP used the proceeds to reduce the borrowings under its commercial paper program and its bank credit facility.

In addition, on November 1, 2010, KMP paid $250 million to retire the principal amount of its 7.50% senior notes that matured on that date. KMP borrowed the necessary funds under its commercial paper program.

During 2009, KMP completed two separate public offerings of senior notes. With regard to these offerings, KMP received proceeds, net of underwriting discounts and commissions, as follows: (i) $993.3 million from a May 14, 2009 public offering of a total of $1 billion in principal amount of senior notes, consisting of $300 million of 5.625% notes due February 15, 2015, and $700 million of 6.85% notes due February 15, 2020 and (ii) $987.4 million from a September 16, 2009 public offering of a total of $1 billion in principal amount of senior notes, consisting of $400 million of 5.80% notes due March 1, 2021 and $600 million of 6.50% notes due September 1, 2039. KMP used the proceeds from all of its 2009 debt offerings to reduce borrowings under its bank credit facility.

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In addition, on February 1, 2009, KMP paid $250 million to retire the principal amount of its 6.30% senior notes that matured on that date. KMP borrowed the necessary funds under its bank credit facility.

Interest Rate Swaps

Information on our interest rate swaps is contained in Note 13 Risk Management Interest Rate Risk Management.

KMP s Subsidiary Debt

KMP s subsidiaries are obligors on the following debt. The agreements governing these obligations contain various affirmative and negative covenants and events of default. KMP does not believe that these provisions will materially affect distributions to its partners.

Arrow Terminals L.P. Debt

On January 1, 2010, KMP s subsidiary Arrow Terminals L.P. paid the $5.3 million outstanding principal amount of its Adjustable Rate Industrial Development Revenue Bonds issued by the Illinois Development Finance Authority that matured on that date, and following its repayment, Arrow Terminals L.P. had no outstanding debt.

Kinder Morgan Operating L.P. A Debt

Effective January 1, 2007, KMP acquired the remaining approximately 50.2% interest in the Cochin pipeline system that it did not already own. As part of the purchase price consideration, two of KMP s subsidiaries issued a long-term note payable to the seller having a fair value of $42.3 million. KMP valued the debt equal to the present value of amounts to be paid, determined using an annual interest rate of 5.40%. KMP s subsidiaries Kinder Morgan Operating L.P. A and Kinder Morgan Canada Company are the obligors on the note, and the principal amount of the note, along with interest, is due in five annual installments of $10.0 million beginning March 31, 2008. The third installment was paid on March 31, 2010, and as of December 31, 2010, the net present value of the note (representing the outstanding balance included as debt on our accompanying consolidated balance sheet) was $19.2 million. As of December 31, 2009, the net present value of the note was $28.1 million.

Kinder Morgan Texas Pipeline, L.P. Debt

KMP s subsidiary, Kinder Morgan Texas Pipeline, L.P. is the obligor on a series of unsecured senior notes, which were assumed on August 1, 2005 when it acquired a natural gas storage facility located in Liberty County, Texas from a third party. The notes have a fixed annual stated interest rate of 8.85%; however, it valued the debt equal to the present value of amounts to be paid determined using an approximate interest rate of 5.23%. The assumed principal amount, along with interest, is due in monthly installments of approximately $0.7 million, and the final payment is due January 2, 2014. During 2010, KMP paid a combined principal amount of $6.9 million, and as of December 31, 2010 and 2009 Kinder Morgan Texas Pipeline L.P. s outstanding balance under the senior notes was $23.6 million and $30.5 million, respectively. Additionally, the unsecured senior notes may be prepaid at any time in amounts of at least $1.0 million and at a price equal to the higher of par value or the present value of the remaining scheduled payments of principal and interest on the portion being prepaid.

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Kinder Morgan Liquids Terminals LLC Debt

KMP s subsidiary, Kinder Morgan Liquids Terminals LLC is the obligor on $25.0 million of Economic Development Revenue Refunding Bonds issued by the New Jersey Economic Development Authority. These bonds have a maturity date of January 15, 2018. Interest on these bonds is computed on the basis of a year of 365 or 366 days, as applicable, for the actual number of days elapsed during Commercial Paper, Daily or Weekly Rate Periods and on the basis of a 360-day year consisting of twelve 30-day months during a Term Rate Period. As of December 31, 2010, the interest rate was 0.29%. KMP has an outstanding letter of credit issued by Citibank in the amount of $25.4 million that backs-up the $25.0 million principal amount of the bonds and $0.4 million of interest on the bonds for up to 46 days computed at 12% on a per annum basis on the principal thereof.

Kinder Morgan Operating L.P. B Debt

KMP s subsidiary Kinder Morgan Operating L.P. B is the obligor of a principal amount of $23.7 million of tax-exempt bonds due April 1, 2024. The bonds were issued by the Jackson-Union Counties Regional Port District, a political subdivision embracing the territories of Jackson County and Union County in the state of Illinois. These variable rate demand bonds bear interest at a weekly floating market rate and are backed-up by a letter of credit issued by Wells Fargo.

The bond indenture also contains certain standby purchase agreement provisions which allow investors to put (sell) back their bonds at par plus accrued interest. As of December 31, 2010, the interest rate on these bonds was 0.38%. KMP s outstanding letter of credit issued by Wells Fargo totaled $24.1 million, which backs-up a principal amount of $23.7 million and $0.4 million of interest on the bonds for up to 55 days computed at 12% per annum on the principal amount thereof.

International Marine Terminals Debt

KMP owns a 66 2/3% interest in the International Marine Terminals (IMT) partnership. The principal assets owned by IMT are dock and wharf facilities financed by the Plaquemines Port, Harbor and Terminal District (Louisiana) $40.0 million Adjustable Rate Annual Tender Port Facilities Revenue Refunding Bonds (International Marine Terminals Project) Series 1984A and 1984B. As of December 31, 2010, the interest rate on these bonds was 1.20%.

On March 15, 2005, these bonds were refunded and the maturity date was extended from March 15, 2006 to March 15, 2025. No other changes were made under the bond provisions. The bonds are backed by two letters of credit issued by Wells Fargo. On March 19, 2002, an Amended and Restated Letter of Credit Reimbursement Agreement relating to the letters of credit in the amount of $45.5 million was entered into by IMT and KBC Bank. In connection with that agreement, KMP agreed to guarantee the obligations of IMT in proportion to its ownership interest. KMP s obligation is approximately $30.3 million for principal, plus interest and other fees.

Gulf Opportunity Zone Bonds

To help fund its business growth in the states of Mississippi and Louisiana, KMP completed the purchase of a combined $13.2 million in principal amount of tax exempt revenue bonds in two separate transactions in December 2008. To acquire its investment, two of KMP s subsidiaries issued notes with identical terms under the Gulf Opportunity Zone Act of 2005. The notes consisted of the following: (i) $8.2 million in principal amount of 5.5% Development Revenue Bonds issued by the Mississippi Business Finance Corporation (MBFC), a public, non-profit corporation that coordinates a variety of resources used to assist business and industry in the state of Mississippi and (ii) $5.0 million in principal amount of 6.0% Development Revenue Bonds issued by the Louisiana Community Development Authority (LCDA), a political subdivision of the state of Louisiana.

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The Mississippi revenue bonds mature on September 1, 2022, and both principal and interest is due in full at maturity. KMP holds an option to redeem in full (and settle the note payable to MBFC) the principal amount of bonds it holds without penalty after one year. KMP redeemed the Louisiana revenue bonds in December 2010 (by settling its $5.0 million note payable to LCDA), and it replaced this investment with a new investment of $100.0 million in principal amount of Development Revenue Bonds that mature on December 1, 2040 and pay interest at a rate equal to one-month LIBOR plus 1.75%. KMP paid for this investment by issuing a $100.0 million note payable to LCDA with identical terms, and for this bond issuance, KMP elected to offset its borrowing against the investment it acquired.

Kinder Morgan G.P., Inc. Preferred Shares

As of December 31, 2010, Kinder Morgan G.P., Inc. had outstanding 100,000 shares of its $1,000 Liquidation Value Series A Fixed-to-Floating Rate Term Cumulative Preferred Stock due 2057. Until August 18, 2012, dividends will accumulate, commencing on the issue date, at a fixed rate of 8.33% per annum and will be payable quarterly in arrears, when and if declared by Kinder Morgan G.P., Inc. s Board of Directors, on February 18, May 18, August 18 and November 18 of each year, beginning November 18, 2007. After August 18, 2012, dividends on the preferred stock will accumulate at a floating rate of the 3-month LIBOR plus 3.8975% and will be payable quarterly in arrears, when and if declared by Kinder Morgan G.P., Inc. s Board of Directors, on February 18, May 18, August 18 and November 18 of each year, beginning November 18, 2012. The preferred stock has approval rights over a commencement of or filing of voluntary bankruptcy by KMP or its SFPP, L.P. or Calnev Pipe Line LLC subsidiaries.

During 2010, $8.3 million in cash dividends, or $83.30 per share, was paid on Kinder Morgan G.P. Inc. s Series A Fixed-to-Floating Rate Term Cumulative Preferred Stock. On January 19, 2011, Kinder Morgan G.P., Inc. s Board of Directors declared a quarterly cash dividend on its Series A Fixed-to-Floating Rate Term Cumulative Preferred Stock of $20.825 per share that was paid on February 18, 2011 to shareholders of record as of January 31, 2011.

Maturities of Debt

The scheduled maturities of our outstanding debt balances, including purchase accounting adjustments and excluding the value of interest rate swaps, as of December 31, 2010, are summarized as follows (in millions):

Year	Kinder Morgan Kansas, Inc.	KMP
2011	$ 750.0	$ 1,263.3
2012	841.8	1,470.7
2013		502.1
2014		493.7
2015	238.0	299.9
Thereafter	1,794.0	7,516.4
Total	$ 3,623.8	$ 11,546.1

Subsequent Events

On January 5, 2011, Kinder Morgan Finance Company, LLC, a wholly owned subsidiary of Kinder Morgan Kansas, Inc., paid $750.0 million to retire the principal amount of its 5.35% senior notes that matured on that date using proceeds from the December 2010 issuance of $750.0 million of its 6.00% senior notes due January 15, 2018.

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In January 2011, KMP terminated a previously issued $55.0 million letter of credit issued by Deutsche Bank to support its pipeline and terminal operations in Canada. Specifically, this letter of credit supported the operations of the Kinder Morgan Canada KMP business segment owned by its subsidiary KMEP Canada ULC. To replace this letter of credit, on January 6, 2011, KMP entered into a credit agreement with The Toronto-Dominion Bank that allows it to obtain the issuance of letters of credit up to a limit of C$70.0 million to support the Canadian operations. Each letter of credit issued pursuant to this credit agreement will expire one year after issuance or, in the case of any renewal or extension, one year after such renewal or extension. As of February 14, 2011, letters of credit having a combined face amount of C$50.7 million have been issued pursuant to this credit agreement.

9. Share-based Compensation and Employee Benefits

Share-based Compensation

Kinder Morgan, Inc. (Formerly Kinder Morgan Holdco LLC)

We completed an initial public offering in February 2011 as discussed further in Note 10 Members Equity Subsequent Events Initial Public Offering. The following discussion of our equity interests is based on the classes of ownership interests outstanding as of December 31, 2010 and 2009.

Our limited liability company agreement created three classes of ownership interests or units: Class A units, Class A-1 Units and Class B Units. For further information, see Note 10 Members Equity. The Class A-1 Units were granted to certain members of management. The Class B units were granted to certain members of management as a replacement to previous incentive compensation programs. The granting of both the Class A-1 Units and the Class B Units are being accounted for as equity awards.

Class A-1 Units

Class A-1 Units entitled the holder to receive a distribution once certain other distribution criteria had been met. A total of 27,570,736 Class A-1 Units (including phantom Class A-1 Units) were authorized and outstanding as of December 31, 2010 and 2009, all of which were granted as of the close of the Going Private Transaction. Class A-1 Units may be purchased, under certain circumstances including a service condition, by KMI for no consideration for a period of four years from the date of issuance. As the A-1 units were equity interests in KMI, a private limited liability company at that time, a discounted cash flow analysis was prepared to determine a grant date fair value of these awards of $6.2 million. This grant date fair value is being amortized over the 4 year requisite service period. During each of the years ended December 31, 2010, 2009 and 2008, we recognized compensation expense with respect to such units, however, we have no obligation, nor do we expect to pay any amounts in respect of such units.

Class B Units

Class B Units entitled the holder to receive a distribution once certain other distribution criteria had been met. A total of 1,978,513,629 Class B Units (including phantom Class B Units) were granted as of the close of the Going Private Transaction or shortly thereafter. Class B Units were subject to time vesting where one third of each grant time vested or was to time vest, as applicable, on the third, fourth, and fifth anniversary of the date of issuance. As the Class B units were equity interests in KMI, a private limited liability company at that time, a discounted cash flow analysis was prepared to determine a grant date fair value of these awards of $23.0 million. This grant date fair value is being amortized over the 5 year requisite service period with one third of the total fair value being amortized over 3, 4 and 5 years, respectively. During the years ended December 31, 2010, 2009

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and 2008, we amortized $4.5 million, $6.0 million and $6.0 million with respect to such units, however, we have no obligation, nor do we expect to pay any amounts in respect to such units. As of January 1, 2009, there were 1,977,524,373 Class B units outstanding. During 2009 there were 8,903,310 Class B units granted and 7,914,054 Class B units forfeited and as of December 31, 2009, 1,978,513,629 Class B units were outstanding. During 2010 there were no Class B units granted or forfeited and 1,978,513,629 were outstanding as of December 31, 2010.

Kinder Morgan Energy Partners, L.P.

KMP has two common unit-based compensation plans: The Directors Unit Appreciation Rights Plan and the Kinder Morgan Energy Partners, L.P. Common Unit Compensation Plan for Non-Employee Directors.

The Directors Unit Appreciation Rights Plan was established on April 1, 2003. Pursuant to this plan, and on this date of adoption, each of KMR s then three non-employee directors was granted 7,500 common unit appreciation rights. In addition, 10,000 common unit appreciation rights were granted to each of KMR s then three non-employee directors on January 21, 2004, at the first meeting of the board in 2004. During the first board meeting of 2005, the plan was terminated and replaced by the Kinder Morgan Energy Partners, L.P. Common Unit Compensation Plan for Non-Employee Directors (discussed following); however, all unexercised awards made under the plan remain outstanding.

Upon the exercise of unit appreciation rights, KMP will pay, within thirty days of the exercise date, the participant an amount of cash equal to the excess, if any, of the aggregate fair market value of the unit appreciation rights exercised as of the exercise date over the aggregate award price of the rights exercised. The fair market value of one unit appreciation right as of the exercise date will be equal to the closing price of one common unit on the New York Stock Exchange on that date. The award price of one unit appreciation right will be equal to the closing price of one common unit on the New York Stock Exchange on the date of grant. Proceeds, if any, from the exercise of a unit appreciation right granted under the plan will be payable only in cash (that is, no exercise will result in the issuance of additional common units) and will be evidenced by a unit appreciation rights agreement. All unit appreciation rights granted vest on the six-month anniversary of the date of grant. If a unit appreciation right is not exercised in the ten year period following the date of grant, the unit appreciation right will expire and not be exercisable after the end of such period. In addition, if a participant ceases to serve on the board for any reason prior to the vesting date of a unit appreciation right, such unit appreciation right will immediately expire on the date of cessation of service and may not be exercised.

During 2008, 10,000 unit appreciation rights were exercised at an aggregate fair value of $60.32 per unit. During 2009, 17,500 unit appreciation rights were exercised at an aggregate fair value of $53.75 per unit. As of December 31, 2010, 17,500 unit appreciation rights had been granted, vested and remained outstanding.

The Kinder Morgan Energy Partners, L.P. Common Unit Compensation Plan for Non-Employee Directors recognizes that the compensation to be paid to each non-employee director is fixed by the KMR board, generally annually, and that the compensation is payable in cash. Pursuant to the plan, in lieu of receiving cash compensation, each non-employee director may elect to receive common units. A non-employee director may make a new election each calendar year. The total number of common units authorized under this compensation plan is 100,000. All common units issued under this plan are subject to forfeiture restrictions that expire six months from the date of issuance. A total of 2,450, 2,450, 3,200 and 4,338 common units were issued to non-employee directors in 2011, 2010, 2009 and 2008, respectively, as a result of their elections to receive common units in lieu of cash compensation.

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KINDER MORGAN, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Pension and Postretirement Benefit Plans

Kinder Morgan, Inc.

Retirement Plans

We have defined benefit pension plans covering eligible full-time employees. These plans provide pension benefits that are based on the employees compensation during the period of employment, age and years of service. These plans are tax-qualified subject to the minimum funding requirements of the *Employee Retirement Income Security Act of 1974,* as amended. Our funding policy is to contribute annually the recommended contribution using the actuarial cost method and assumptions used for determining annual funding requirements. Plan assets consist primarily of pooled fixed income, equity, bond and money market funds. The Plan did not have any material investments in our company or affiliates as of December 31, 2010 and 2009.

Total amounts recognized in net periodic pension cost include the following components (in millions):

	Year Ended December 31,		
	2010	2009	2008
Net periodic pension benefit cost			
Service cost	$ 12.0	$ 4.8	$ 10.8
Interest cost	16.3	15.8	14.5
Expected return on assets	(19.5)	(16.2)	(23.2)
Amortization of prior service cost	0.1	0.1	0.1
Amortization of loss	6.5	7.9	0.3
Net periodic pension benefit cost	$ 15.4	$ 12.4	$ 2.5

The following table sets forth the reconciliation of the beginning and ending balances of the pension benefit obligation (in millions):

	Year Ended December 31,	
	2010	2009
Benefit obligation at beginning of period	$ 274.4	$ 255.0
Service cost	12.0	4.8
Interest cost	16.3	15.8
Actuarial loss (gain)	19.7	12.4
Benefits paid	(14.1)	(13.6)
Benefit obligation at end of period	$ 308.3	$ 274.4

The accumulated benefit obligation at December 31, 2010 and 2009 was $298.0 million and $265.2 million, respectively.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following table sets forth the reconciliation of the beginning and ending balances of the fair value of the plans assets and the plans funded status (in millions):

	Year Ended December 31, 2010	2009
Fair value of plan assets at beginning of period	$ 220.1	$ 179.7
Actual return on plan assets during the period	24.2	34.0
Contributions by employer	20.0	20.0
Benefits paid during the period	(14.1)	(13.6)
Fair value of plan assets at end of period	250.2	220.1
Benefit obligation at end of period	(308.3)	(274.4)
Funded status at end of period	$ (58.1)	$ (54.3)

Our accompanying consolidated balance sheets at December 31, 2010 and 2009 include a balance of $58.1 million and $54.3 million, respectively, under the caption Other Long-term Liabilities and Deferred Credits related to our pension plans.

The following table sets forth by level, within the fair value hierarchy, the Plan s assets at fair value (in millions):

	Assets at fair value at December 31, 2010			
	Level 1	Level 2	Level 3	Total
Money market funds	$	$ 14.1	$	$ 14.1
Insurance contracts		12.0		12.0
Mutual funds	11.8	67.6		79.4
Common and preferred stocks	88.6	0.1	0.1	88.8
Corporate bonds		29.0		29.0
U.S. government securities		12.2		12.2
Asset backed securities		2.9		2.9
Limited partnerships			6.9	6.9
Private equity			4.4	4.4
Total asset fair value	$ 100.4	$ 137.9	$ 11.4	$ 249.7(a)

(a) Excludes $0.5 million in interest, dividend, tax claim and investment receivables.

	Assets at fair value at December 31, 2009			
	Level 1	Level 2	Level 3	Total
Money market funds	$	$ 20.1	$	$ 20.1
Insurance contracts		12.2		12.2

Mutual funds		61.1		61.1
Common and preferred stocks	75.6			75.6
Corporate bonds		23.8		23.8
U.S. government securities		15.2		15.2
Asset backed securities		3.2		3.2
Limited partnerships			5.2	5.2
Private equity			3.2	3.2
Total asset fair value	$ 75.6	$ 135.6	$ 8.4	$ 219.6(a)

(a) Excludes $0.5 million in interest, dividend and security receivables.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

An asset s fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.

Following is a description of the valuation methodologies used for assets measured at fair value:

Common stocks and fixed income: Valued at the closing price reported on the active market on which the individual securities are traded.

Money market funds: Valued at amortized cost, which approximates fair value.

Mutual funds: Valued at the net asset value (NAV) of shares held by the plan at year-end.

Limited partnership and private equity investments: Valued at net fair value utilizing discounted present value.

Insurance contracts: Valued at contract value, which approximates fair value.

The table below sets forth a summary of changes in the fair value of the Plan s level 3 assets (in millions):

	Level 3 assets at fair value at December 31, 2010			
	Limited Partnerships	Private Equity	Common Stock	Total
Balance, beginning of year	$ 5.2	$ 3.2	$	$ 8.4
Transfers to level 3			0.1	0.1
Realized and unrealized gains/(losses)	0.6	0.4		1.0
Purchases and sales	1.1	0.8		1.9
Level 3 end of year balance	$ 6.9	$ 4.4	$ 0.1	$ 11.4
Changes in unrealized net gains (losses) relating to contracts still held at end of period	$ 0.7	$ 0.3	$	$ 1.0

	Level 3 assets at fair value at December 31, 2009		
	Limited Partnerships	Private Equity	Total
Balance, beginning of year	$ 4.6	$ 2.6	$ 7.2
Realized and unrealized gains/(losses)	0.4	(0.5)	(0.1)
Purchases and sales	0.2	1.1	1.3
Level 3 end of year balance	$ 5.2	$ 3.2	$ 8.4
	$ (0.6)	$ (0.6)	$ (1.2)

Changes in unrealized net gains (losses) relating to contracts still held at end of period

Changes in the underlying value of level 3 assets due to the effect of measurement were immaterial for the years ended December 31, 2010 and 2009.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Other changes in plan assets and benefit obligations recognized in other comprehensive income consist of (in millions):

	Year Ended December 31,	
	2010	2009
Beginning balance	$ 96.6	$ 109.9
Net (gain)/loss arising during period	15.1	(5.3)
Prior service cost arising during period		
Amortization of (gain)/loss	(6.5)	(7.9)
Amortization of prior service cost	(0.1)	(0.1)
Ending balance	$ 105.1	$ 96.6

Accumulated Other comprehensive loss balances for retirement plans at December 31, 2010 and 2009 consist of the following (in millions):

	December 31,	
	2010	2009
Unrecognized net (gain) or loss	$ 104.5	$ 96.0
Unrecognized prior service cost	0.6	0.6
Total	$ 105.1	$ 96.6

Our actuarial estimates allocate costs based on projected employee costs. As experience develops under our plan, actuarial gains (losses) result from experience more favorable (unfavorable) than assumed.

The estimated net loss for the defined benefit pension plans that will be amortized from accumulated other comprehensive income into net periodic pension benefit cost over the next fiscal year is $6.7 million.

We expect to contribute approximately $20 million to the Plan during 2011.

The following net benefit payments, which reflect expected future service, as appropriate, are expected to be paid (in millions):

Fiscal year	Expected net benefit payments
2011	$ 16.1
2012	$ 17.0
2013	$ 17.7
2014	$ 18.6
2015	$ 20.3
2016-2020	$ 126.2

Certain collectively bargained employees and grandfathered employees continue to accrue benefits through the defined pension benefit plan described above. The remainder of the employees accrue benefits through a Personal Retirement Account (PRA) in the Kinder Morgan, Inc. Cash Balance Retirement Plan, a cash balance plan. We allocate contribution credits equivalent to 3% of eligible compensation every pay period to participants PRA. For plan years prior to 2011, interest was credited to the PRA at the 30-year U.S. Treasury

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KINDER MORGAN, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

bond rate published in the Internal Revenue Bulletin for the November of the prior year. Beginning January 1, 2011, interest is credited to the PRA at the 5-year U.S. Treasury bond rate published in the Internal Revenue Bulletin for the November of the prior year, plus 0.25%. Employees become 100% vested in the plan after three years and may take a lump sum distribution upon termination of employment or retirement. As a result of a cost savings effort in 2009, all company contributions to the plan were suspended from April 12, 2009 through December 31, 2009. Company contributions were reinstated effective January 1, 2010.

In addition to the Retirement Plan described above, we have the Kinder Morgan, Inc. Savings Plan (the Plan), a defined contribution 401(k) plan. The Plan permits all eligible Plan participants to contribute between 1% and 50% of eligible compensation, on a pre-tax or after-tax (Roth 401k) basis, into their accounts. In addition to a Company contribution equal to 4% of eligible compensation per year for most of the Plan participants, we may make discretionary contributions. Certain Plan participant s contributions and Company contributions are based on collective bargaining agreements. The contributions are made each pay period on behalf of each eligible participant. Participants may direct the investment of their contributions and all Company contributions, including discretionary contributions, into a variety of investments. Plan assets are held and distributed pursuant to a trust agreement. The total amount contributed for the years ended December 31, 2010, 2009 and 2008 was $21.0 million, $19.8 million and $20.8 million, respectively.

Company contributions for participants vest on the second anniversary of the date of hire. Vesting on Company contributions for bargaining employees will follow the collective bargaining agreements.

At its July 2008 meeting, the Compensation Committee of our Board of Directors approved a special contribution of an additional 1% of base pay into the Plan for each eligible participant. Each eligible participant received an additional 1% Company contribution based on eligible base pay each pay period beginning with the first pay period of August 2008 and continuing through the last pay period of July 2009. The additional 1% contribution did not change or otherwise impact the annual 4% contribution that most of the eligible participants received and the vesting schedule mirrored the Company s 4% contribution.

Commencing February 1, 2009 through February 1, 2010, the Company suspended both the annual 4% contribution as well as the discretionary 1% contribution for participants with a title of Vice President or greater.

The Office of the Chair announced an amendment to the Plan to be effective in August of 2011. For most of the Plan s eligible participants, the amendment increases the 4% contribution to 5% and will eliminate the Company s discretionary 1% contribution.

Additionally, participants have an option to make after-tax Roth contributions (Roth 401(k) option) to a separate participant account. Unlike traditional 401(k) plans, where participant contributions are made with pre-tax dollars, earnings grow tax-deferred, and the withdrawals are treated as taxable income, Roth 401(k) contributions are made with after-tax dollars, earnings are tax-free, and the withdrawals are tax-free if they occur after both (i) the fifth year of participation in the Roth 401(k) option and (ii) attainment of age 59 $^{1}/_{2}$, death or disability. The Company contribution will still be considered taxable income at the time of withdrawal.

Beginning in 2006, we elected not to make any restricted stock awards as a result of the Going Private Transaction. To ensure that certain key employees who had previously received restricted stock and restricted stock unit awards continued under a long-term retention and incentive program, the Company implemented the Long-term Incentive Retention Award plan. The plan provides cash awards approved by the compensation committees of the Company which are granted in July of each year to recommended key employees. Senior management is not eligible for these awards. These grants require the employee to sign a grant agreement. The

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

grants vest 100% after the third year anniversary of the grant provided the employee remains with the Company. Grants were made in July of 2010, 2009 and 2008. During the years ended December 31, 2010, December 31, 2009 and December 31, 2008, we amortized $3.3 million, $2.3 million and $6.9 million, respectively, related to these grants.

Other Postretirement Employee Benefits

We have a postretirement plan providing medical and life insurance benefits upon retirement. For certain eligible employees and their eligible dependents that are grandfathered, we also provide a subsidized premium. All others who are eligible pay the full cost. NGPL funds a portion of the future expected postretirement benefit cost under the plan by making payments to Voluntary Employee Benefit Association trusts. Plan assets are invested in a mix of equity funds and fixed income instruments similar to the investments in our pension plans.

Total amounts recognized in net periodic postretirement benefit cost include the following components (in millions):

	Year Ended December 31,		
	2010	2009	2008
Net periodic postretirement benefit cost			
Service cost	$ 0.2	$ 0.3	$ 0.3
Interest cost	4.5	4.5	4.6
Expected return on assets	(5.1)	(4.6)	(6.5)
Amortization of loss	3.4	2.5	0.5
Net periodic postretirement benefit cost	$ 3.0	$ 2.7	$ (1.1)

The following table sets forth the reconciliation of the beginning and ending balances of the accumulated postretirement benefit obligation (in millions):

	Year Ended December 31,	
	2010	2009
Benefit obligation at beginning of period	$ 75.6	$ 78.0
Service cost	0.2	0.3
Interest cost	4.5	4.5
Actuarial loss (gain)	11.9	1.1
Benefits paid	(11.5)	(11.7)
Retiree contributions	3.4	3.4
Benefit obligation at end of period	$ 84.1	$ 75.6

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The following table sets forth the reconciliation of the beginning and ending balances of the fair value of plan assets and the plan s funded status (in millions):

	Year Ended December 31,	
	2010	2009
Fair value of plan assets at beginning of period	$ 54.1	$ 49.1
Actual return on plan assets	8.1	6.8
Contributions	6.7	7.0
Retiree contributions	3.4	3.4
Benefits paid	(11.7)	(12.2)
Fair value of plan assets at end of period	60.6	54.1
Benefit obligation at end of period	(84.1)	(75.6)
Funded status at end of period	$ (23.5)	$ (21.5)

Our accompanying consolidated balance sheets at December 31, 2010 and 2009 include balances of $23.5 million and $21.5 million, respectively, under the caption Other Long-term Liabilities and Deferred Credits, related to our other postretirement benefit plans.

The following table sets forth by level, within the fair value hierarchy, the fair value of postretirement benefit assets (in millions):

	Assets at fair value at December 31, 2010			
	Level 1	Level 2	Level 3	Total
Money market funds	$	$ 5.5	$	$ 5.5
Insurance contracts		44.8		44.8
Mutual funds	10.3			10.3
Total asset fair value	$ 10.3	$ 50.3	$	$ 60.6

	Assets at fair value at December 31, 2009			
	Level 1	Level 2	Level 3	Total
Money market funds	$	$ 5.5	$	$ 5.5
Insurance contracts		41.6		41.6
Mutual funds	7.0			7.0
Total asset fair value	$ 7.0	$ 47.1	$	$ 54.1

Other changes in plan assets and benefit obligations recognized in other comprehensive income consist of (in millions):

	Year Ended December 31, 2010	2009
Beginning balance	$ 34.9	$ 37.9
Net (gain)/loss arising during period	8.9	(0.5)
Amortization of (gain)/loss	(3.4)	(2.5)
Ending balance	$ 40.4	$ 34.9

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Accumulated other comprehensive loss balances for other postretirement employee benefits at December 31, 2010 and 2009 consist of the following (in millions):

	December 31,	
	2010	2009
Unrecognized net (gain) or loss	$ 40.4	$ 34.9

The estimated net loss for the postretirement benefit plans that will be amortized from accumulated other comprehensive income into net periodic postretirement benefit cost over the next fiscal year is $3.5 million. NGPL contributed approximately $1.3 million to the plan in February 2011.

A one-percentage-point increase (decrease) in the assumed health care cost trend rate for each future year would have increased (decreased) the aggregate of the service and interest cost components of the 2011 net periodic postretirement benefit cost by approximately $5,000 $(4,000) and would have increased (decreased) the accumulated postretirement benefit obligation as of December 31, 2010 by approximately $75,000 $(71,000).

The following net benefit payments, which reflect expected future service, as appropriate, are expected to be paid (in millions):

Fiscal year	Expected net benefit payments
2011	$ 7.4
2012	$ 7.1
2013	$ 6.8
2014	$ 6.6
2015	$ 6.5
2016-2019	$ 30.0

Actuarial Assumptions

The assumptions used to determine benefit obligations for the pension and postretirement benefit plans were:

	Year Ended December 31,		
	2010	2009	2008
Discount rate	(b)	(a)	6.25%
Expected long-term return on assets	8.90%	8.90%	8.75%
Rate of compensation increase (pension plan only)	3.50%	3.50%	3.50%

(a) Discount rates of 5.75% and 6.00% were used to determine obligations for 2009 other postretirement benefits and pension benefits, respectively.

(b) Discount rates of 5.00% and 5.50% are used to determine obligations for 2010 other postretirement benefits and pension benefits, respectively.

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The assumptions used to determine net periodic benefit cost for the pension and postretirement benefits were:

	Year Ended December 31,		
	2010	2009	2008
Discount rate	(a)	6.25%	5.75%
Expected long-term return on assets	8.90%	8.75%	9.00%
Rate of compensation increase (pension plan only)	3.50%	3.50%	3.50%

(a) Discount rates of 5.75% and 6.00% are used to determine net periodic benefit cost for other postretirement benefits and pension benefits, respectively.

The assumed healthcare cost trend rates for the postretirement plan were:

	Year Ended December 31,		
	2010	2009	2008
Healthcare cost trend rate assumed for next year	3.00%	3.00%	3.00%
Rate to which the cost trend rate is assumed to decline (ultimate trend rate)	3.00%	3.00%	3.00%
Year the rate reaches the ultimate trend rate	2010	2009	2008

Plan Investment Policies

The investment policies and strategies for the assets of our pension and retiree medical and retiree life insurance plans are established by the Fiduciary Committee (the Committee), which is responsible for investment decisions and management oversight of each plan. The stated philosophy of the Committee is to manage these assets in a manner consistent with the purpose for which the plans were established and the time frame over which the plans obligations need to be met. The objectives of the investment management program are to (1) meet or exceed plan actuarial earnings assumptions over the long term and (2) provide a reasonable return on assets within established risk tolerance guidelines and liquidity needs of the plans with the goal of paying benefit and expense obligations when due. In seeking to meet these objectives, the Committee recognizes that prudent investing requires taking reasonable risks in order to raise the likelihood of achieving the targeted investment returns. In order to reduce portfolio risk and volatility, the Committee has adopted a strategy of using multiple asset classes.

As of December 31, 2010, the following target asset allocation ranges were in effect for the pension plans (Minimum/Target/Maximum): Cash 0%/0%/5%; Fixed Income 20%/30%/40%; Equity 47%/65%/85% and Alternative Investments 0%/5%/10%. As of December 31, 2010, the following target asset allocation ranges were in effect for the retiree medical and retiree life insurance plans (Minimum/Target/Maximum): Cash 0%/5%/15%; Fixed Income 25%/35%/45% and Equity 40%/60%/80%. In order to achieve enhanced diversification, the equity category is further subdivided into sub-categories with respect to small cap vs. large cap, value vs. growth and international vs. domestic, each with its own target asset allocation.

In implementing its investment policies and strategies, the Committee has engaged a professional investment advisor to assist with its decision making process and has engaged professional money managers to manage plan assets. The Committee believes that such active investment management will achieve superior returns with comparable risk in comparison to passive management. Consistent with its goal of reasonable diversification, no manager of an equity portfolio for the plan is allowed to have more than 10% of the market value of the portfolio in a single security or weight a single economic sector more than twice the weighting of that sector in the appropriate market index. Finally, investment managers are not permitted to invest or engage in

KINDER MORGAN, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

the following equity transactions unless specific permission is given in writing (which permission has not been requested or granted by the Committee to-date): derivative instruments, except for the purpose of asset value protection (such as the purchase of protective puts), direct ownership of letter stock, restricted stock, limited partnership units (unless the security is registered and listed on a domestic exchange), venture capital, short sales, margin purchases or borrowing money, stock loans and commodities. In addition, fixed income holdings in the following investments are prohibited without written permission: private placements, except medium-term notes and securities issued under SEC Rule 144a; foreign bonds (non-dollar denominated); municipal or other tax exempt securities, except taxable municipals; margin purchases or borrowing money to effect leverage in the portfolio; inverse floaters, interest only and principle only mortgage structures; and derivative investments (futures or option contracts) used for speculative purposes. Certain other types of investments such as hedge funds and land purchases are not prohibited as a matter of policy but have not, as yet, been adopted as an asset class or received any allocation of fund assets.

Return on Plan Assets

For the year ending December 31, 2010, our defined benefit pension plan yielded a weighted-average rate of return of 10.64%, above the expected rate of return on assets of 8.9%. Investment performance for a balanced fund comprised of a similar mix of assets yielded a weighted-average return of 11.34%, so the plans underperformed the benchmark balanced fund index. For the year ending December 31, 2010, our retiree medical and retiree life insurance plans yielded a weighted-average rate of return of 11.46%, above the expected rate of return on assets of 8.9%. Investment performance for a balanced fund comprised of a similar mix of assets yielded a weighted-average return of 11.67%, so the plans underperformed the benchmark balanced fund index.

At December 31, 2010, our pension plan assets consisted of 64.3% equity, 28.4% fixed income, 4.4% alternative investments and 2.9% cash and cash equivalents, and the retiree medical and retiree life insurance plan assets consisted of 52.6% equity, 32.9% fixed income and 14.5% cash and cash equivalents. Historically over long periods of time, widely traded large cap equity securities have provided a return of 10%, while fixed income securities have provided a return of 6%, indicating that a long term expected return predicated on the asset allocation as of December 31, 2010 would be approximately 8.74% to 9.30% if investments were made in the broad indexes for the defined benefit pension plan, and 7.96% to 8.47% for the retiree medical and retiree life insurance plan. We arrived at an overall expected return of 8.9% for the periodic benefit cost calculations and an overall expected return of 8.9% for the benefit obligation calculations as of December 31, 2010.

Kinder Morgan Energy Partners, L.P.

Pension and Postretirement Benefit Plans

Two of KMP s subsidiaries, Kinder Morgan Canada Inc. and Trans Mountain Pipeline Inc. (as general partner of Trans Mountain Pipeline L.P.) are sponsors of pension plans for eligible Trans Mountain employees. The plans include registered defined benefit pension plans, supplemental unfunded arrangements, which provide pension benefits in excess of statutory limits, and defined contributory plans. KMP also provides postretirement benefits other than pensions for retired employees.

KMP s combined net periodic benefit costs for these Trans Mountain pension and postretirement benefit plans for 2010, 2009 and 2008 were approximately $3.9 million, $2.9 million, and $3.5 million, respectively, recognized ratably over each year. As of December 31, 2010, KMP estimates its overall net periodic pension and postretirement benefit costs for these plans for the year 2011 will be approximately $6.6 million, although this estimate could change if there is a significant event, such as a plan amendment or a plan curtailment, which would require a remeasurement of liabilities. KMP expects to contribute approximately $7.1 million to these benefit plans in 2011.

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Additionally, in connection with its acquisition of SFPP, L.P. in 1998, KMP acquired certain liabilities for pension and postretirement benefits. KMP provides medical and life insurance benefits to current employees, their covered dependents and beneficiaries of SFPP. KMP also provides the same benefits to former salaried employees of SFPP and KMP will continue to fund these costs for those employees currently in the plan during their retirement years.

SFPP s postretirement benefit plan is frozen and no additional participants may join the plan. Benefits under the SFPP postretirement benefit plan are provided by the Burlington Northern Santa Fe railroad and KMP reimburses BNSF for the costs of the plan. As of the date of this report, KMP has not received its 2010 actuarial valuation report for the SFPP postretirement benefit plan; however, in 2010, KMP recorded a credit of less than $0.1 million for net periodic benefit costs related to this plan, and for each of the years ended December 31, 2009 and 2008, KMP s net periodic benefit cost for the SFPP postretirement benefit plan was a credit of less than $0.1 million. The credits in all three years resulted in increases to income, largely due to amortizations of an actuarial gain and a negative prior service cost. As of December 31, 2010, KMP estimates its overall net periodic postretirement benefit cost for the SFPP postretirement benefit plan for the year 2011 will again be a credit of less than $0.1 million; however, this estimate could change if a future significant event would require a remeasurement of liabilities. In addition, KMP expects to contribute approximately $0.3 million to this postretirement benefit plan in 2011.

As of December 31, 2010 and 2009, the recorded value of KMP s pension and postretirement benefit obligations for these plans was a combined $44.8 million and $37.4 million, respectively. KMP considers its pension and postretirement benefit liability exposure and the fair value of its pension and postretirement plan assets to be minimal in relation to the value of its total consolidated assets and net income.

Multiemployer Plans

As a result of acquiring several terminal operations, primarily KMP s acquisition of Kinder Morgan Bulk Terminals, Inc. effective July 1, 1998, KMP participates in several multi-employer pension plans for the benefit of employees who are union members. KMP does not administer these plans and contributes to them in accordance with the provisions of negotiated labor contracts. Other benefits include a self-insured health and welfare insurance plan and an employee health plan where employees may contribute for their dependents health care costs. Amounts charged to expense for these plans were approximately $10.3 million, $8.4 million and $7.8 million for the years ended December 31, 2010, 2009 and 2008, respectively.

10. Members Equity

During the years ended December 31, 2010, 2009 and 2008, there were no material changes in our ownership interests in subsidiaries, in which we retained a controlling financial interest.

Kinder Morgan, Inc. Equity Interests

During 2010, and prior to the initial public offering in February 2011 discussed following in Subsequent Events Initial Public Offering, our equity consisted of the following outstanding (or potentially outstanding) equity interests:

Class A Units Those individuals and entities that invested directly in the Going Private Transaction, either through (i) cash; (ii) contribution of common shares of Kinder Morgan Kansas, Inc.; (iii) surrender of restricted common shares of Kinder Morgan Kansas, Inc. (restricted stock) or (iv) surrender of options to acquire Kinder Morgan Kansas, Inc. common stock (Kinder Morgan options), received one Class A Unit per dollar contributed,

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with share and share-related contributions valued at $107.50/share, the publicly offered Kinder Morgan Kansas, Inc. common share repurchase price (with the exception of shares contributed by certain Kinder Morgan Kansas, Inc. officers that were valued at a slightly lesser amount per share).

Class A-1 Units As of the date of the Going Private Transaction, tax was accelerated for those individuals who held either unvested restricted stock or Kinder Morgan Kansas, Inc. options. For those individuals, in general, a tax liability was triggered as a result of this acceleration. In order to allow those individuals to effectively participate in the Going Private Transaction at an amount approximating the pre-tax value of their contributed equity, the Class A-1 Units were granted in an amount computed by multiplying an effective tax rate (reflecting both the expected federal and state tax obligation) by the taxable amount triggered by the acceleration.

Class B Units As a part of the basic Going Private Transaction structure, certain members of management of Kinder Morgan Kansas, Inc. (who were already Class A Unit and/or Class A-1 Unit holders) were granted incremental interests in Kinder Morgan Holdco LLC without any requirement on their part to contribute cash or existing equity interests for those incremental interests. In addition, Class B Units were issued to certain others who were neither Class A Unit nor Class A-1 Unit holders. These incremental equity interests were granted in the form of Class B Units. Class B Units were only entitled to receive distributions after Class A Units received a multiple of initial capital contributions, as discussed below.

Class B Series Units Under certain circumstances, Class B Units forfeited would have been made available for reissuance in the form of one or more new series of Class B Units, collectively referred to as the Class B Series Units .

Class B-1 Units If individuals who held Class B Units terminated their employment other than for cause (as defined), death or disability, and certain milestones had not been met with respect to cumulative distributions made, Class B Units would have been forfeited and would have been (i) transferred to an incentive pool (as defined) or (ii) made available for reissuance in the form of one or more new series of Class B Units, collectively referred to as the Class B-1 Units .

Our limited liability company agreement prescribed that our distributions were to have been made to these individual classes of equity interests as follows:

First: 100% to the holders of the Class A Units (other than Class A-1 Units) until the cumulative amount distributed is equal to 100% of the sum of the Initial Capital Contributions (as defined, but generally represents the initial contributions made in exchange for the Class A Units). Then,

100% to the holders of the Class A Units (other than Class A-1 Units) until the cumulative amount distributed pursuant to this distribution waterfall is equal to 2% of the sum of the Initial Capital Contributions. Then,

100% to the holders of the Class A-1 Units until the cumulative amount distributed pursuant to this distribution waterfall equals 2% of the sum of the Notional Capital Contributions (as defined, but generally represents the calculated tax liability resulting from acceleration of certain equity compensation awards). Then,

100% to the holders of the Class A Units (including the Class A-1 Units) until the cumulative amount distributed to the holders of Class A and A-1 Units pursuant to this distribution waterfall equals 150% of Total Capital Contributions (as defined, but generally represents the sum of amounts contributed or deemed to be contributed in exchange for equity interests). Then,

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to the Class B Units until the cumulative amount distributed to Class B Units equals the product of 5% and the cumulative amount distributed pursuant to this distribution waterfall in excess of Total Capital Contributions. Then,

95% to the holders of the Class A Units (including the Class A-1 Units) and 5% to the holders of the Class B Units until the cumulative amount distributed pursuant to this distribution waterfall equals 200% of Total Capital Contributions. Then,

to the holders of the Class B Units until the cumulative amount distributed pursuant to this and the previous provisions of this distribution waterfall to holders of Class B Units equals the product of 10% and the cumulative amount distributed pursuant to this distribution waterfall in excess of Total Contributions. Then,

between 10-20% Class B Distribution to the holders of the Class B Units and 100% of the remainder to the holders of the Class A Units (including the Class A-1 Units) until the cumulative amount distributed pursuant to this distribution waterfall equals 400% of Total Capital Contributions. Then,

80% to the holders of the Class A Units (including the Class A-1 Units) and 20% to the holders of the Class B Units.

During the years ended December 31, 2010 and 2009, we paid distributions on our Class A units totaling $700.0 million and $650.0 million, respectively.

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Comprehensive Income Income Tax Expense

The following table sets forth the tax amounts included in the respective components of other comprehensive income (loss) (in millions):

Tax Benefit (Expense) Included in Other Comprehensive Income (Loss)

	Year Ended December 31,		
	2010	2009	2008
Kinder Morgan, Inc.			
Change in fair value of derivatives utilized for hedging purposes	$ 8.9	$ 85.5	$ (121.3)
Reclassification of change in fair value of derivatives to net income	(10.4)	24.5	(69.4)
Foreign currency translation adjustments	(20.6)	(34.7)	31.0
Benefit plan adjustments	9.2	(1.6)	37.7
Benefit plan amortization	(3.7)	(3.7)	(0.2)
Tax benefit (expense) included in total other comprehensive income (loss) attributable to Kinder Morgan, Inc.	(16.6)	70.0	(122.2)
Noncontrolling interests			
Change in fair value of derivatives utilized for hedging purposes	3.8	20.7	(34.1)
Reclassification of change in fair value of derivatives to net income	(9.4)	(4.5)	(34.6)
Foreign currency translation adjustments	(5.0)	(11.4)	17.2
Benefit plan adjustments	0.1	0.1	(0.2)
Benefit plan amortization			
Tax benefit (expense) included in total other comprehensive income (loss) attributable to noncontrolling interests	(10.5)	4.9	(51.7)
Total			
Change in fair value of derivatives utilized for hedging purposes	12.7	106.2	(155.4)
Reclassification of change in fair value of derivatives to net income	(19.8)	20.0	(104.0)
Foreign currency translation adjustments	(25.6)	(46.1)	48.2
Benefit plan adjustments	9.3	(1.5)	37.5
Benefit plan amortization	(3.7)	(3.7)	(0.2)
Tax benefit (expense) included in total other comprehensive income (loss)	$ (27.1)	$ 74.9	$ (173.9)

Noncontrolling Interests

The caption Noncontrolling interests in our accompanying consolidated balance sheets consists of interests in the following subsidiaries (in millions):

	December 31,	
	2010	2009
KMP	$ 3,135.4	$ 2,746.4
KMR	1,956.2	1,870.7
Triton Power Company LLC(a)		45.9
Other	8.3	11.6
	$ 5,099.9	$ 4,674.6

(a) Upon the adoption of Accounting Standards Update No. 2009-17, which amended the codification s Consolidation topic, on January 1, 2010, Triton Power Company LLC is no longer consolidated into our financial statements, but is treated as an equity investment. On October 22, 2010, we sold Triton Power (see Notes 3 and 18).

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KMP

Noncontrolling interests in KMP represent the economic interests in this subsidiary that we do not own. At December 31, 2010, we owned, directly, and indirectly in the form of i-units corresponding to the number of shares of KMR we owned, approximately 34.8 million limited partner units of KMP. These units, which consist of 16.4 million common units, 5.3 million Class B units and 13.1 million i-units, represent approximately 11.0% of the total limited partner interests of KMP. In addition, we are the sole common stockholder of the general partner of KMP, which holds an effective 2% interest in KMP and its operating partnerships. Together, at December 31, 2010, our limited partner and general partner interests represented approximately 12.8% of KMP s total equity interests and represented an approximate 50% economic interest in KMP. This difference results from the existence of incentive distribution rights held by the general partner shareholder.

Contributions

Contributions from our noncontrolling interests consist primarily of KMP s issuance of its common units that we did not purchase or obtain. On January 16, 2009, KMP entered into an equity distribution agreement with UBS Securities LLC (UBS). According to the provisions of this agreement, which was amended and restated on October 1, 2009, KMP may offer and sell from time to time common units having an aggregate offering value of up to $600 million through UBS, as sales agent. Sales of the units will be made by means of ordinary brokers transactions on the New York Stock Exchange at market prices, in block transactions or as otherwise agreed between KMP and UBS. Under the terms of this agreement, KMP also may sell common units to UBS as principal for its own account at a price agreed upon at the time of the sale. Any sale of common units to UBS as principal would be pursuant to the terms of a separate agreement between KMP and UBS.

This equity distribution agreement provides KMP the right, but not the obligation, to sell common units in the future, at prices it deems appropriate. KMP retains at all times complete control over the amount and the timing of each sale, and it will designate the maximum number of common units to be sold through UBS, on a daily basis or otherwise as it and UBS agree. UBS will then use its reasonable efforts to sell, as KMP s sales agent and on its behalf, all of the designated common units. KMP may instruct UBS not to sell common units if the sales cannot be effected at or above the price designated by KMP in any such instruction. Either KMP or UBS may suspend the offering of common units pursuant to the agreement by notifying the other party.

In 2010, KMP issued 3,902,225 of its common units pursuant to its equity distribution agreement. After commissions of $2.0 million, KMP received net proceeds from the issuance of these common units of $266.3 million. KMP used the proceeds to reduce the borrowings under its commercial paper program and its bank credit facility.

KMP also completed the following equity issuances in 2010:

- On January 15, 2010, KMP issued 1,287,287 common units valued at $81.7 million as a portion of its purchase price for additional ethanol handling terminal assets it acquired from US Development Group LLC (for more information on this acquisition, see Note 3 Acquisitions and Divestitures Acquisitions from Unrelated Entities (7) USD Terminal Acquisition;

- On May 7, 2010, KMP issued, in a public offering, 6,500,000 of its common units at a price of $66.25 per unit, less commissions and underwriting expenses. After commissions and underwriting expenses, KMP received net proceeds of $417.4 million for the issuance of these common units, and used the proceeds to reduce the borrowings under its commercial paper program and its bank credit facility; and

On July 2, 2010, KMP completed an offering of 1,167,315 of its common units at a price of $64.25 per unit in a privately negotiated transaction. KMP received net proceeds of $75.0 million for the issuance

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of these common units, and used the proceeds to reduce the borrowings under its commercial paper program and its bank credit facility.

The above equity issuances during the year ended December 31, 2010 had the associated effects of increasing our (i) noncontrolling interests associated with KMP by $804.5 million; (ii) accumulated deferred income taxes by $13.0 million and (iii) additional paid-in capital by $22.9 million.

2009 Issuances

In 2009, KMP issued 5,488,947 of its common units pursuant to its equity distribution agreement with UBS. After commissions of $4.0 million, KMP received net proceeds from the issuance of these common units of $281.2 million. KMP used the proceeds to reduce the borrowings under its bank credit facility.

KMP also completed three separate underwritten public offerings of its common units in 2009 receiving net proceeds of $874.4 million as discussed following and in April 2009, it issued 105,752 common units valued at $5.0 million as the purchase price for additional ownership interests in certain oil and gas properties.

In its first 2009 underwritten public offering, completed in March, KMP issued 5,666,000 of its common units at a price of $46.95 per unit, less underwriting commissions and expenses. KMP received net proceeds of $258.0 million for the issuance of these common units. In its second offering, completed in July, KMP issued 6,612,500 common units at a price of $51.50 per unit, less underwriting commissions and expenses, and received net proceeds of $329.9 million. In its final 2009 public offering, completed in December, KMP issued 5,175,000 common units at a price of $57.15 per unit, less underwriting commissions and expenses, and received net proceeds of $286.5 million for the issuance of these common units. KMP used the proceeds from each of these three public offerings to reduce the borrowings under its bank credit facility.

These KMP s issuances of common units during the year ended December 31, 2009, collectively, had the associated effects of increasing our (i) noncontrolling interests associated with KMP by $1,116.9 million; (ii) accumulated deferred income taxes by $15.6 million and (iii) additional paid-in capital by $28.1 million.

Distributions

Distributions to our noncontrolling interests consist primarily of distributions by KMP to its common unit holders. KMP s partnership agreement requires that it distribute 100% of Available Cash, as defined in its partnership agreement, to its partners within 45 days following the end of each calendar quarter. Available Cash consists generally of all of KMP s cash receipts, including cash received by its operating partnerships and net reductions in reserves, less cash disbursements and net additions to reserves and amounts payable to the former general partner of SFPP, L.P. in respect of its remaining 0.5% interest in SFPP.

KMR, as the delegate of Kinder Morgan G.P., Inc., of which we indirectly own all of the outstanding common equity, and the general partner of KMP, is granted discretion, subject to the approval of Kinder Morgan G.P., Inc. in certain cases, to establish, maintain and adjust reserves for the proper conduct of KMP s business, which might include reserves for matters such as future operating expenses, debt service, sustaining capital expenditures and rate refunds, and for distributions for the next four quarters. These reserves are not restricted by magnitude, but only by type of future cash requirements with which they can be associated. When KMR determines KMP s quarterly distributions, it considers current and expected reserve needs along with current and expected cash flows to identify the appropriate sustainable distribution level.

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Pursuant to KMP s partnership agreement, distributions to its unitholders are characterized either as distributions of cash from operations or as distributions of cash from interim capital transactions. This distinction affects the distributions to owners of common units, Class B units and i-units relative to the distributions retained by Kinder Morgan G.P., Inc. as KMP s general partner.

Cash from Operations. Cash from operations generally refers to KMP s cash balance on the date it commenced operations, plus all cash generated by the operation of its business, after deducting related cash expenditures, net additions to or reductions in reserves, debt service and various other items.

Cash from Interim Capital Transactions. Interim capital transactions generally include borrowings, sales of debt and equity securities and sales or other dispositions of assets for cash, other than inventory, accounts receivable and other current assets and assets disposed of in the ordinary course of business.

Rule for Characterizing Distributions. All available cash distributed by KMP from any source will be treated as distributions of cash from operations unless the sum of all available cash distributed exceeds the cumulative amount of cash from operations actually generated from the date KMP commenced operations through the end of the calendar quarter prior to any applicable distribution. Any portion of a distribution of available cash for that quarter which, when added to the sum of all prior distributions, is in excess of the cumulative amount of cash from operations, will be considered a distribution of cash from interim capital transactions and treated as described under Allocation of Distributions from Interim Capital Transactions. For purposes of calculating the sum of all distributions of available cash, the total equivalent cash amount of all distributions of i-units to KMR, as the holder of all i-units, will be treated as distributions of available cash, even though the distributions to KMR are made in additional i-units rather than in cash. KMP retains this cash and uses it in its business. To date, all of KMP s cash distributions, other than a $177.1 million distribution of cash from interim capital transactions for the second quarter of 2010 (paid in August 2010), have qualified under the rule stated above as distributions of cash from operations.

Allocation of Distributions from Operations. Cash from operations for each quarter will be distributed effectively as follows:

first, 98% to the owners of all classes of units pro rata and 2% to Kinder Morgan G.P., Inc. as KMP s general partner until the owners of all classes of units have received a total of $0.15125 per unit in cash or equivalent i-units for such quarter;

second, 85% of any available cash then remaining to the owners of all classes of units pro rata and 15% to Kinder Morgan G.P., Inc. as KMP s general partner until the owners of all classes of units have received a total of $0.17875 per unit in cash or equivalent i-units for such quarter;

third, 75% of any available cash then remaining to the owners of all classes of units pro rata and 25% to Kinder Morgan G.P., Inc. as KMP s general partner until the owners of all classes of units have received a total of $0.23375 per unit in cash or equivalent i-units for such quarter; and

fourth, 50% of any available cash then remaining to the owners of all classes of units pro rata, to owners of common units and Class B units in cash and to the owner of i-units in the equivalent number of i-units, and 50% to Kinder Morgan G.P., Inc. as KMP s general partner.

Allocation of Distributions from Interim Capital Transactions. Any distribution by KMP of available cash that would constitute cash from interim capital transactions would be distributed effectively as follows:

98% to all owners of common units and Class B units pro rata in cash and to the holder of i-units in equivalent i-units; and

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2% to Kinder Morgan G.P., Inc. as KMP s general partner, until KMP has distributed cash from this source in respect of a common unit outstanding since KMP s original public offering in an aggregate amount per unit equal to the initial common unit price of $5.75, as adjusted for splits.

As cash from interim capital transactions is distributed, it would be treated as if it were a repayment of the initial public offering price of the common units. To reflect that repayment, the first three distribution target levels of cash from operations would be adjusted downward proportionately by multiplying each distribution target level amount by a fraction, the numerator of which is the unrecovered initial common unit price immediately after giving effect to that distribution and the denominator of which is the unrecovered initial common unit price immediately prior to giving effect to that distribution. When the initial common unit price is fully recovered, then each of the first three distribution target levels will have been reduced to zero. Thereafter, all distributions of available cash from all sources will be treated as if they were cash from operations and distributed 50% to all classes of units pro rata, with the distribution to i-units being made instead in the form of i-units, and 50% to Kinder Morgan G.P., Inc. as KMP s general partner. In connection with the distribution of cash from interim capital transactions for the second quarter 2010, mentioned following, we waived any adjustment in the target distribution levels and any reduction in the unrecovered initial common unit price that otherwise would have been made because of that distribution of cash from interim capital transactions.

KMP s distribution of cash for the year ended December 31, 2010 from interim capital transactions totaled $177.1 million (approximately $0.56 per limited partner unit) which resulted in Kinder Morgan G.P., Inc., as KMP s general partner receiving a reduced incentive amount of $168.3 million (including our 2% general partner interest, total cash distributions to us were reduced by $170.0 million). We, as KMP s general partner, also waived an incentive amount equal to $11.1 million related to common units issued to finance a portion of KMP s acquisition of a 50% interest in KinderHawk Field Services LLC joint venture and have agreed not to take incentive distributions related to this acquisition through year-end 2011.

During the year ended December 31, 2010, KMP paid distributions of $4.32 per common unit, of which $847.6 million was paid to the public holders (represented in noncontrolling interests) of KMP s common units. On January 19, 2010, KMP declared a quarterly distribution of $1.13 per common unit for the quarterly period ended December 31, 2010. The distribution was paid on February 14, 2010 to unitholders of record as of January 31, 2010.

Kinder Morgan Management, LLC

KMR s distributions are paid in the form of additional shares or fractions thereof calculated by dividing the KMP cash distribution per common unit by the average of the market closing prices of a KMR share determined for a ten-trading day period ending on the trading day immediately prior to the ex-dividend date for the shares. KMR has paid share distributions totaling 6,369,724, 7,540,357 and 5,565,424 shares in the years ended December 31, 2010, 2009 and 2008, respectively. On February 14, 2011, KMR made a share distribution of 0.017393 shares per outstanding share (1,598,556 total shares) to shareholders of record as of January 31, 2011, based on the $1.13 per common unit distribution declared by KMP.

At December 31, 2010, our subsidiary, Kinder Morgan Kansas, Inc., owned approximately 13.1 million KMR shares representing approximately 14.3% of KMR s outstanding shares.

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Subsequent Events

Noncontrolling Interest Contributions

In early-January 2011, KMP issued 110,902 of its common units for the settlement of sales made on or before December 31, 2010 pursuant to its equity distribution agreement with UBS. After commissions of $0.1 million, KMP received net proceeds of $7.7 million for the issuance of these common units, and used the proceeds to reduce the borrowings under its commercial paper program and its bank credit facility.

Initial Public Offering

In the following discussion, the Investors refer to: (i) Richard D. Kinder, our Chairman and Chief Executive Officer; (ii) investment funds advised by, or affiliated with, Goldman, Sachs & Co., Highstar Capital LP, The Carlyle Group and Riverstone Holdings LLC, which we refer to collectively as the Sponsor Investors; (iii) Fayez Sarofim, one of our directors, and investment entities affiliated with him, and an investment entity affiliated with Michael C. Morgan, another of our directors, and William V. Morgan, one of our founders, and (iv) a number of other members of our management.

On February 16, 2011, we completed an initial public offering of our common stock (the offering). In connection with the offering, we converted from a Delaware limited liability company to a Delaware corporation. Our outstanding Class A units, Class B units and Class A-1 units were converted to Class A shares, Class B shares and Class C shares, respectively. Upon this conversion, the Sponsor Investors then converted some of their Class A shares on a one-for-one basis into our common stock sold in the initial public offering. No shares were sold by members of Kinder Morgan management in the offering. All of the common stock that was sold in the offering was sold by existing investors, consisting of investment funds advised by, or affiliated with, Goldman, Sachs & Co., Highstar Capital LP, The Carlyle Group and Riverstone Holdings LLC, and we did not receive any proceeds from the offering.

We have 707,000,000 shares outstanding on a fully converted basis. In the offering, we sold 109,786,590 shares, or approximately 15.5% of our outstanding shares. Upon the closing of the offering, our Class A shares, Class B shares and Class C shares were convertible into a fixed aggregate of 597,213,410 shares of common stock (investor retained stock), which represents 84.5% of our outstanding shares of common stock on a fully-converted basis. The number of shares of common stock into which Class A shares, Class B shares and Class C shares will convert will be determined in accordance with our certificate of incorporation. The conversion of our shares of investor retained stock into shares of our common stock will not increase our total fully converted shares outstanding. Initially, our Class A shares will be convertible into shares of common stock on a one-for-one basis and our Class B shares and Class C shares will not be convertible into any shares of our common stock. Any conversion of Class B shares and Class C shares will decrease on a share for share basis the number of shares of our common stock into which our Class A shares would be able to convert. The terms of the Class A shares, Class B shares and Class C shares are intended to preserve substantially the same relative rights to share in the value of Kinder Morgan, Inc. s equity that the Class A units, Class B units and Class A-1 units, respectively, had with respect to Kinder Morgan Holdco LLC s equity.

Kinder Morgan, Inc. Dividends Paid

On February 11, 2011, Kinder Morgan, Inc. s Board of Directors declared and paid a dividend to our existing investors of $245.8 million with respect to the period for which we were not public. This consisted of $205.0 million for the fourth quarter of 2010 and $104.8 million for the first 46 days of 2011, representing the portion of the first quarter of 2011 that we were not public, less a one time adjustment of $64.0 million in available earnings and profits reserved for the after tax cost of one-time cash bonuses (and premium pay) in an

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aggregate amount of approximately $100 million to certain of our non-executive management employees. We expect to pay such bonuses pursuant to the shareholders agreement in the second quarter of 2011. The payment of any bonuses to holders of our Class B shares or Class C shares is subject to supermajority approval of our board of directors in accordance with our bylaws.

11. Related Party Transactions

Significant Investors

One of our investors, Goldman Sachs Capital Partners and certain of its affiliates (Goldman Sachs), is considered related parties to us as that term is defined in the authoritative accounting literature. Goldman Sachs has acted in the past, and may act in the future, as an underwriter for equity and/or debt issuances for us, Kinder Morgan Kansas, Inc., KMP and KMR. Also, on January 15, 2010, KMP acquired three ethanol handling train terminals from U.S. Development Group, of which Goldman Sachs effectively owned 49%, for an aggregate consideration of $197.4 million, consisting of $115.7 million in cash and $81.7 million in its common units. The three train terminals are located in Linden, New Jersey, Baltimore, Maryland, and Dallas, Texas. As part of the transaction, KMP announced the formation of a venture with U.S. Development Group to optimize and coordinate customer access to the three acquired terminals, other ethanol terminal assets KMP already owns and operates, and other terminal projects currently under development by both parties. We also conduct commodity risk management activities in the ordinary course of implementing our risk management strategies in which the counterparty to certain of our derivative transactions is an affiliate of Goldman Sachs. In conjunction with these activities, we are a party (through one of KMP s subsidiaries engaged in the production of crude oil) to a hedging facility with J. Aron & Company/Goldman Sachs, which requires us to provide certain periodic information but does not require the posting of margin. As a result of changes in the market value of our derivative positions, we have recorded both amounts receivable from and payable to Goldman Sachs affiliates. The following table summarizes the fair values of our energy commodity derivative contracts that are (i) associated with commodity price risk management activities with J. Aron & Company/Goldman Sachs and (ii) included within Fair value of derivative contracts in our accompanying consolidated balance sheets (in millions):

	December 31,	
	2010	2009
Derivative Assets (Liabilities)		
Current Assets: Fair value of derivative contracts	$	$ 4.3
Assets: Fair value of derivative contracts	$ 12.7	$ 18.4
Current Liabilities: Fair value of derivative contracts	$ (221.4)	$ (96.8)
Long-term Liabilities and Deferred Credits: Fair value of derivative contracts	$ (57.5)	$ (190.8)

Cortez Pipeline Company

In March 2008, KMP s subsidiary Kinder Morgan CO_2 Company, L.P. sold certain pipeline meter equipment to Cortez Pipeline Company, its 50% equity investee, for its current fair value of $5.7 million. The meter equipment is still being employed in conjunction with our CO_2 business segment.

Kinder Morgan NatGas Operator LLC

KMP s subsidiary Kinder Morgan NatGas Operator LLC operates the Rockies Express and the Midcontinent Express natural gas pipeline systems pursuant to two separate operating agreements. It entered into the Rockies Express agreement in April 2008, and according to the provisions of the agreement, it is reimbursed for its costs and it receives a management fee of 1%, based on Rockies Express operating income, less all

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depreciation, depletion and amortization expenses. In 2010 and 2009, it received management fees of $5.4 million and $4.0 million, respectively. Kinder Morgan NatGas Operator LLC operates the Midcontinent Express pipeline system according to the provisions of an operating agreement entered into in March 2007. It is reimbursed for its operating costs; however, it receives no special management fees according to this agreement.

Terminals KMP Business Segment

Mr. C. Berdon Lawrence, a non-management director on the boards of Kinder Morgan G.P., Inc. and KMR, is also Chairman of the Board of Kirby Corporation. For services in the ordinary course of Kirby Corporation s and the Terminals KMP segment s businesses, Kirby Corporation received payments from KMP s subsidiaries totaling $39,828, $18,878 and $430,835 in 2010, 2009 and 2008, respectively, and Kirby made payments, in 2008, to KMP s subsidiaries totaling $144,300.

Notes Receivable

Plantation Pipe Line Company

KMP has a long-term note receivable bearing interest at the rate of 4.72% per annum from Plantation Pipe Line Company, its 51.17%-owned equity investee. The note provides for semiannual payments of principal and interest on June 20 and December 31 each year, with a final principal payment due July 20, 2011. KMP received principal repayment amounts of $2.7 million in 2010. As of December 31, 2010, the outstanding note receivable balance was $82.1 million, and we included this amount within Accounts, notes and interest receivable, net, on our accompanying consolidated balance sheet. As of December 31, 2009, the note receivable balance was $84.8 million, and we included $2.6 million within Accounts, notes and interest receivable, net on our accompanying consolidated balance sheet, and the remaining outstanding balance within Notes receivable.

Express US Holdings LP

On June 30, 2008, we exchanged our C$113.6 million preferred equity interest in Express US Holdings LP for two subordinated notes from Express US Holdings LP (the obligor) with a combined face value of $111.4 million (C$113.6 million). The debentures, denominated in Canadian dollars, are due in full on January 9, 2023, each bearing an interest rate of 12.0% per annum and providing for quarterly payments of interest in Canadian dollars on March 31, June 30, September 30 and December 31 each year.

On August 28, 2008, we sold our one-third interest in the net assets of the Express pipeline system (Express), as well as our full ownership of the net assets of the Jet Fuel pipeline system (Jet Fuel), to KMP. This transaction included the sale of the subordinated notes described above. We accounted for this transaction as a transfer of net assets between entities under common control. Therefore, following the sale of Express and Jet Fuel to KMP, KMP recognized the assets and liabilities acquired at our carrying amounts (historical cost) at the date of transfer.

As of December 31, 2010 and 2009, the outstanding note receivable balance, representing the translated amount included in our accompanying consolidated financial statements in U.S. dollars, was $114.2 million and $108.1 million, respectively, and we included these amounts within Notes receivable in our accompanying consolidated balance sheets.

NGPL PipeCo LLC

On February 15, 2008, we entered into an Operations and Reimbursement Agreement (Agreement) with NGPL PipeCo LLC. The Agreement provides for us to be reimbursed, at cost, for pre-approved operations and maintenance costs, plus a $43.2 million annual general and administration fixed fee charge (Fixed Fee), for

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services provided under the Agreement. This Fixed Fee escalates at 3% each year until 2011 and is billed monthly. For the years ended December 31, 2010 and 2009 and 2008, these Fixed Fees totaled $47.2 million, $45.8 million and $39.0 million, respectively. In addition, KMP purchases natural gas transportation and storage services from NGPL. For each of the years ended December 31, 2010, 2009 and 2008, these expenses totaled $7.8 million, $8.8 million and $7.2 million, respectively, and we include these amounts within Gas purchases and other costs of sales in our accompanying consolidated statements of income.

Other Receivables and Payables

As of December 31, 2010 and 2009, our related party receivables (other than notes receivable discussed above in Notes Receivable) totaled $23.3 million and $14.6 million, respectively. The December 31, 2010 receivables amount consisted of (i) $16.1 million included within Accounts, notes and interest receivable, net on our accompanying consolidated balance sheet and (ii) $7.2 million of natural gas imbalance receivables included within Other current assets. The $16.1 million amount primarily related to accounts and interest receivables due from the Express pipeline system, the Rockies Express pipeline system and NGPL. The related party natural gas imbalance receivables consisted of amounts due from NGPL. The December 31, 2009 amount consisted of (i) $11.5 million included within Accounts, notes and interest receivable, net and primarily related to receivables due from the Express pipeline system, the Rockies Express pipeline system and NGPL and (ii) $3.1 million of natural gas imbalance receivables due from NGPL included within Other current assets and consisting primarily of amounts due from NGPL.

As of December 31, 2010 and 2009, our related party payables totaled $4.6 million and $1.2 million, respectively. The December 31, 2010 amount consisted of (i) $0.9 million included within Accounts payable and primarily related to amounts due to RGZ, Inc. and (ii) $3.7 million of natural gas imbalance payables included within Accrued other current liabilities and consisting of amounts due to the Rockies Express pipeline system. The December 31, 2009 related party payable amounts are included within Accounts payable on our accompanying balance sheet, and primarily consisted of amounts we owed to RGZ, Inc.

Interest

Our accompanying consolidated statements of income includes related-party net interest income totaling $17.3 million, $16.1 million and $5.5 million for the years ended December 31, 2010, 2009 and 2008, respectively. Related party interest income is primarily related to interest income from Plantation Pipe Line Company and Express US Holdings LP.

12. Commitments and Contingent Liabilities

Leases

The table below depicts future gross minimum rental commitments under our operating leases as of December 31, 2010 (in millions):

Year	Commitment
2011	$ 49.6
2012	38.2
2013	29.9
2014	24.5
2015	20.4
Thereafter	63.0
Total minimum payments	$ 225.6

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The remaining terms on our operating leases, including probable elections to exercise renewal options, range from one to 38 years. We have not reduced our total minimum payments for future minimum sublease rentals aggregating approximately $1.7 million. Total lease and rental expenses were $69.0 million, $73.1 million and $84.2 million for the years ended December 31, 2010, 2009 and 2008, respectively. The amount of capital leases included within Property, Plant and Equipment, net in our accompanying consolidated balance sheets as of December 31, 2010 and 2009 are not material to our consolidated balance sheets.

Contingent Debt

KMP s contingent debt disclosures pertain to certain types of guarantees or indemnifications KMP has made and cover certain types of guarantees included within debt agreements, even if the likelihood of requiring KMP s performance under such guarantee is remote. Most of these agreements are with entities that are not consolidated in our financial statements; however, KMP has invested in and holds equity ownership interests in these entities.

As of December 31, 2010, KMP s contingent debt obligations with respect to these investments, as well as KMP s obligations with respect to related letters of credit, are summarized below (dollars in millions):

Entity	KMP s Ownership Interest	Investment Type	Total Entity Debt	KMP s Contingent Share of Entity Debt(a)
Fayetteville Express Pipeline LLC(b)	50%	Limited Liability	$ 940.0(c)	$ 470.0
Cortez Pipeline Company(d)	50%	General Partner	$ 142.4(e)	$ 87.3(f)
Midcontinent Express Pipeline LLC(g)	50%	Limited Liability	$ 799.0(h)	$ 16.7(i)
Nassau County, Florida Ocean Highway and Port Authority(j)	N/A	N/A	N/A	$ 18.3(k)

(a) Represents the portion of the entity s debt that KMP may be responsible for if the entity cannot satisfy its obligations.

(b) Fayetteville Express Pipeline LLC is a limited liability company and the owner of the Fayetteville Express natural gas pipeline system. The remaining limited liability company member interest in Fayetteville Express Pipeline LLC is owned by Energy Transfer Partners, L.P.

(c) Amount represents borrowings under a $1.1 billion, unsecured revolving bank credit facility that is due May 11, 2012.

(d) Cortez Pipeline Company is a Texas general partnership that owns and operates a common carrier carbon dioxide pipeline system. The remaining general partner interests are owned by ExxonMobil Cortez Pipeline, Inc., an indirect wholly-owned subsidiary of Exxon Mobil Corporation, and Cortez Vickers Pipeline Company, an indirect subsidiary of M.E. Zuckerman Energy Investors Incorporated.

(e) Amount consists of (i) $32.1 million of fixed rate Series D notes due May 15, 2013 (interest on the Series D notes is paid annually and based on an average interest rate of 7.14% per annum); (ii) $100.0 million of variable rate Series E notes due December 11, 2012 (interest on the Series E notes is paid quarterly and based on an interest rate of three-month LIBOR plus a spread) and (iii) $10.3 million of outstanding borrowings under a $40.0 million committed revolving bank credit facility that is also due December 11, 2012.

(f) KMP is severally liable for its percentage ownership share (50%) of the Cortez Pipeline Company debt ($71.2 million). In addition, as of December 31, 2010, Shell Oil Company shares KMP s several guaranty obligations jointly and severally for $32.1 million of Cortez s debt balance related to the Series D notes; however, KMP is obligated to indemnify Shell for the liabilities it incurs in connection with such guaranty. Accordingly, as of December 31, 2010, KMP has a letter of credit in the amount of $16.1 million issued by JP Morgan Chase, in order to secure its indemnification obligations to Shell for 50% of the Cortez debt balance of $32.1 million related to the Series D notes.

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Further, pursuant to a Throughput and Deficiency Agreement, the partners of Cortez Pipeline Company are required to contribute capital to Cortez in the event of a cash deficiency. The agreement contractually supports the financings of Cortez Capital Corporation, a wholly-owned subsidiary of Cortez Pipeline Company, by obligating the partners of Cortez Pipeline to fund cash deficiencies at Cortez Pipeline, including anticipated deficiencies and cash deficiencies relating to the repayment of principal and interest on the debt of Cortez Capital Corporation. The partners respective parent or other companies further severally guarantee the obligations of the Cortez Pipeline owners under this agreement.

(g) Midcontinent Express Pipeline LLC is a limited liability company and the owner of the Midcontinent Express natural gas pipeline system. The remaining limited liability company member interests in Midcontinent Express Pipeline LLC are owned by Regency Energy Partners, L.P. and Energy Transfer Partners, L.P.

(h) Amount consists of an aggregate carrying value of $799.0 million in fixed rate senior notes issued by Midcontinent Express Pipeline LLC in a private offering in September 2009. All payments of principal and interest in respect of these senior notes are the sole obligation of Midcontinent Express. Noteholders have no recourse against KMP or the other member owners of Midcontinent Express Pipeline LLC for any failure by Midcontinent Express to perform or comply with its obligations pursuant to the notes or the indenture.

(i) As of December 31, 2010, Midcontinent Express had no outstanding borrowings under its $175.4 million, unsecured revolving bank credit facility that is due February 28, 2011. However, its credit facility can be used for the issuance of letters of credit to support the operation of its pipeline system, and as of December 31, 2010, a letter of credit having a face amount of $33.3 million was issued under the credit facility by the Bank of Tokyo-Mitsubishi UFJ, Ltd. KMP s contingent responsibility with regard to this outstanding letter of credit was $16.7 million (50% of total face amount).

(j) Arose from KMP s Vopak terminal acquisition in July 2001. Nassau County, Florida Ocean Highway and Port Authority is a political subdivision of the state of Florida.

(k) KMP has posted a letter of credit as security for borrowings under Adjustable Demand Revenue Bonds issued by the Nassau County, Florida Ocean Highway and Port Authority. The bonds were issued for the purpose of constructing certain port improvements located in Fernandino Beach, Nassau County, Florida. KMP s subsidiary, Nassau Terminals LLC, is the operator of the marine port facilities. The bond indenture is for 30 years and allows the bonds to remain outstanding until December 1, 2020.

Principal payments on the bonds are made on the first of December each year, and corresponding reductions are made to the letter of credit. As of December 31, 2010, this letter of credit had a face amount of $18.3 million.

KMP also holds a 50% equity ownership interest in Rockies Express Pipeline LLC, a limited liability company and the owner of the Rockies Express natural gas pipeline system. Subsidiaries of Sempra Energy and ConocoPhillips own the remaining member interests, and pursuant to certain guaranty agreements remaining in effect on December 31, 2009, all three member owners of Rockies Express Pipeline LLC had agreed to guarantee, severally in the same proportion as their percentage ownership of the member interests in Rockies Express Pipeline LLC, borrowings under its $2.0 billion five-year, unsecured revolving bank credit facility that is due April 28, 2011. On April 8, 2010, Rockies Express Pipeline LLC amended its bank credit facility to allow for borrowings up to $200 million (a reduction from $2.0 billion), and on this same date, each of its three member owners were released from their respective debt obligations under the previous guaranty agreements. Accordingly, KMP no longer has a contingent debt obligation with respect to Rockies Express Pipeline LLC.

KMP accounts for its investments in Fayetteville Express Pipeline LLC, Cortez Pipeline Company, and Midcontinent Express Pipeline LLC under the equity method of accounting. For the year ended December 31, 2010, KMP s share of earnings, based on its ownership percentage and before amortization of excess investment cost, if any, was $22.5 million from Cortez Pipeline Company and $30.1 million from Midcontinent Express Pipeline LLC. KMP had no equity earnings from its investment in Fayetteville Express Pipeline LLC during 2010.

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Subsequent Event

On February 25, 2011, Midcontinent Express Pipeline amended its bank credit facility to allow for borrowings up to $75.0 million and on this same date each of its member owners, including KMP, were released from their respective debt obligations under the previous guaranty agreements.

13. Risk Management

Certain of our business activities expose us to risks associated with unfavorable changes in the market price of natural gas, natural gas liquids and crude oil. We also have exposure to interest rate risk as a result of the issuance of debt obligations by our subsidiaries. Pursuant to our management s approved risk management policy, we use derivative contracts to hedge or reduce our exposure to certain of these risks.

Energy Commodity Price Risk Management

Primarily through our subsidiary, KMP, we are exposed to risks associated with changes in the market price of natural gas, natural gas liquids and crude oil as a result of the forecasted purchase or sale of these products. Specifically, these risks are primarily associated with price volatility related to (i) pre-existing or anticipated physical natural gas, natural gas liquids and crude oil sales; (ii) natural gas purchases and (iii) natural gas system use and storage. Price changes are often caused by shifts in the supply and demand for these commodities, as well as their locations.

The principal use of energy commodity derivative contracts is to mitigate the risk associated with unfavorable market movements in the price of energy commodities. The energy commodity derivative contracts act as a hedging (offset) mechanism against the volatility of energy commodity prices by allowing this price risk to be transferred to counterparties who are able and willing to bear it.

For derivative contracts that are designated and qualify as cash flow hedges pursuant to generally accepted accounting principles, the portion of the gain or loss on the derivative contract that is effective in offsetting the variable cash flows associated with the hedged forecasted transaction is reported as a component of other comprehensive income and reclassified into earnings in the same line item associated with the forecasted transaction and in the same period or periods during which the hedged transaction affects earnings (e.g., in revenues when the hedged transactions are commodity sales). The remaining gain or loss on the derivative contract in excess of the cumulative change in the present value of future cash flows of the hedged item, if any (i.e., the ineffective portion), is recognized in earnings during the current period. The effectiveness of hedges using an option contract may be assessed based on changes in the option s intrinsic value with the change in the time value of the contract being excluded from the assessment of hedge effectiveness. Changes in the excluded component of the change in an option s time value are included currently in earnings. During 2010, we recognized a net gain of $5.3 million related to crude oil and natural gas hedges, and resulting from both hedge ineffectiveness and amounts excluded from effectiveness testing. During 2009, we recognized a net loss of $13.5 million from crude oil hedges that resulted from hedge ineffectiveness and amounts excluded from effectiveness testing.

Additionally, during each of the two years ended December 31, 2010 and 2009, we reclassified losses of $21.2 million and gains of $39.4 million, respectively, from Accumulated other comprehensive loss balance into earnings. No material amounts were reclassified into earnings as a result of the discontinuance of cash flow hedges because it was probable that the original forecasted transactions would no longer occur by the end of the originally specified time period or within an additional two-month period of time thereafter, but rather were reclassified as a result of the hedged forecasted transactions actually affecting earnings (i.e. when the forecasted

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sales and purchase actually occurred). The proceeds or payments resulting from the settlement of cash flow hedges are reflected in the operating section of our statement of cash flows as changes to net income and working capital.

The Accumulated other comprehensive loss balance included in our Members Equity was $136.5 million as of December 31, 2010, and $167.9 million as of December 31, 2009. These totals included Accumulated other comprehensive loss amounts associated with energy commodity price risk management activities of $93.3 million of losses as of December 31, 2010 and $95.7 million of losses as of December 31, 2009. Approximately $67.3 million of the total loss amount associated with energy commodity price risk management activities and included in our Members Equity as of December 31, 2010 is expected to be reclassified into earnings during the next year (when the associated forecasted sales and purchases are also expected to occur). As of December 31, 2010, the maximum length of time over which we have hedged our exposure to the variability in future cash flows associated with energy commodity price risk is through December 2015.

As of December 31, 2010, KMP had entered into the following outstanding commodity forward contracts to hedge its forecasted energy commodity purchases and sales:

	Net open position long/(short)	
Derivatives designated as hedging contracts		
Crude oil	(23.2)	million barrels
Natural gas fixed price	(19.0)	billion cubic feet
Natural gas basis	(13.9)	billion cubic feet
Derivatives not designated as hedging contracts		
Natural gas basis	0.5	billion cubic feet

For derivative contracts that are not designated as a hedge for accounting purposes, all realized and unrealized gains and losses are recognized in the statement of income during the current period. These types of transactions include basis spreads, basis-only positions and gas daily swap positions. KMP primarily enters into these positions to economically hedge an exposure through a relationship that does not qualify for hedge accounting. Until settlement occurs, this will result in non-cash gains or losses being reported in our operating results associated with KMP.

Interest Rate Risk Management

In order to maintain a cost effective capital structure, it is our policy to borrow funds using a mix of fixed rate debt and variable rate debt. Interest rate swap agreements are used to manage the interest rate risk associated with the fair value of fixed rate borrowings and to effectively convert a portion of the underlying cash flows related to the long-term fixed rate debt securities into variable rate cash flows in order to achieve our desired mix of fixed and variable rate debt.

Since the fair value of fixed rate debt varies inversely with changes in the market rate of interest, swap agreements are entered into to receive a fixed and pay a variable rate of interest in order to convert the interest expense associated with certain of our subsidiaries senior notes from fixed rates to variable rates, resulting in future cash flows that vary with the market rate of interest. These swaps, therefore, hedge against changes in the fair value of the fixed rate debt included in our accompanying balance sheets that result from market interest rate changes. For derivative contracts that are designated and qualify as a fair value hedge, the gain or loss on the derivative as well as the offsetting loss or gain on the hedged item attributable to the hedged risk are recognized in current earnings.

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As of December 31, 2010, Kinder Morgan Kansas, Inc. and its subsidiary, KMP, had a notional principal amount of $725 million and $4,775 million, respectively, and as of December 31, 2009, $725 million and $5,200 million, respectively, of fixed-to-variable interest rate swap agreements, effectively converting the interest expense associated with certain senior notes from fixed rates to variable rates based on an interest rate of LIBOR plus a spread. All of Kinder Morgan Kansas, Inc. s and KMP s swap agreements have termination dates that correspond to the maturity dates of the related series of senior notes and, as of December 31, 2010, the maximum length of time over which we have hedged a portion of our exposure to the variability in the value of this debt due to interest rate risk is through January 15, 2038.

In May 2010, KMP entered into three separate fixed-to-variable interest rate swap agreements having a combined notional principal amount of $400 million. Each agreement effectively converts a portion of the interest expense associated with its 5.30% senior notes due September 15, 2020 from a fixed rate to a variable rate based on an interest rate of LIBOR plus a spread. In November 2010, KMP terminated five of its existing fixed-to-variable swap agreements in separate transactions. These swap agreements had a combined notional principal amount of $825 million, and KMP received combined proceeds of $157.6 million from the early termination of these swap agreements.

Fair Value of Derivative Contracts

The fair values of current and non-current asset and liability derivative contracts are each reported separately as Fair value of derivative contracts on our accompanying consolidated balance sheets. The following table summarizes the fair values of derivative contracts included in our accompanying consolidated balance sheets as of December 31, 2010 and 2009 (in millions):

Fair Value of Derivative Contracts

	Balance sheet location	Asset derivatives December 31, 2010	2009	Liability derivatives December 31, 2010	2009
		Fair value		Fair value	
Derivatives designated as hedging contracts					
Energy commodity derivative contracts	Current	$ 20.1	$ 19.1	$ (275.9)	$ (270.8)
	Non-current	43.1	57.3	(103.0)	(241.5)
Subtotal		63.2	76.4	(378.9)	(512.3)
Interest rate swap agreements	Non-current	258.6	236.0	(69.2)	(218.5)
Cross currency swap agreements	Non-current				(9.6)
Total		321.8	312.4	(448.1)	(740.4)
Derivatives not designated as hedging contracts					
Energy commodity derivative contracts	Current	3.9	1.7	(5.6)	(1.2)
Total derivatives		$ 325.7	$ 314.1	$ (453.7)	$ (741.6)

The offsetting entry to adjust the carrying value of the debt securities whose fair value was being hedged is included within Value of interest rate swaps on our accompanying consolidated balance sheets, which also includes any unamortized portion of proceeds received from the early termination of interest rate swap agreements. As of December 31, 2010 and 2009, this unamortized premium totaled $461.9 million and $337.5

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million, respectively, and as of December 31, 2010, the weighted average amortization period for this premium was approximately 17.1 years.

Effect of Derivative Contracts on the Income Statement

The following four tables summarize the impact of our derivative contracts on our accompanying consolidated statements of income for each of the years ended December 31, 2010 and 2009 (in millions):

Derivatives in fair value hedging relationships	Location of gain/(loss) recognized in income on derivative	Amount of gain/(loss) recognized in income on derivative(a) Year Ended December 31,		Hedged items in fair value hedging relationships	Location of gain/(loss) recognized in income on related hedged item	Amount of gain/(loss) recognized in income on related hedged items(a) Year Ended December 31,	
		2010	2009			2010	2009
Interest rate swap agreements	Interest, net income/(expense)	$ 329.5	$ (585.1)	Fixed rate debt	Interest, net income/(expense)	$ (329.5)	$ 585.1
Total		$ 329.5	$ (585.1)	Total		$ (329.5)	$ 585.1

(a) Amounts reflect the change in the fair value of interest rate swap agreements and the change in the fair value of the associated fixed rate debt which exactly offset each other as a result of no hedge ineffectiveness. Amounts do not reflect the impact on interest expense from the interest rate swap agreements under which we pay variable rate interest and receive fixed rate interest.

Derivatives in cash flow hedging relationships	Amount of gain/(loss) recognized in OCI on derivative (effective portion) Year Ended December 31,		Location of gain/(loss) reclassified from Accumulated OCI into income (effective portion)	Amount of gain/(loss) reclassified from Accumulated OCI into income (effective portion) Year Ended December 31,		Location of gain/(loss) recognized in income on derivative (ineffective portion and amount excluded from effectiveness testing)	Amount of gain/(loss) recognized in income on derivative (ineffective portion and amount excluded from effectiveness testing) Year Ended December 31,	
	2010	2009		2010	2009		2010	2009
	$ (18.8)	$ (138.7)	Revenues-natural gas sales	$ 1.0	$ 13.1	Revenues	$ 5.3	$ (13.5)

Energy commodity derivative contracts								
			Revenues-product sales and other	(23.4)	25.7			
			Gas purchases and other costs of sales	1.2	0.6	Gas purchases and other costs of sales		
Total	$ (18.8)	$ (138.7)	Total	$ (21.2)	$ 39.4	Total	$ 5.3	$ (13.5)

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Derivatives in cash flow hedging relationships	Amount of gain/(loss) recognized in OCI on derivative (effective portion) Year Ended December 31, 2010	2009	Location of gain/(loss) reclassified from Accumulated OCI into income (effective portion)	Amount of gain/(loss) reclassified from Accumulated OCI into income (effective portion) Year Ended December 31, 2010	2009	Location of gain/(loss) recognized in income on derivative (ineffective portion and amount excluded from effectiveness testing)	Amount of gain/(loss) recognized in income on derivative (ineffective portion and amount excluded from effectiveness testing) Year Ended December 31, 2010	2009
Cross currency swap agreements	$ 9.6	$ (41.6)	Other, net	$	$	Revenues	$	$
Total	$ 9.6	$ (41.6)	Total	$	$	Total	$	$

Derivatives not designated as hedging contracts	Location of gain/(loss) recognized in income on derivative	Amount of gain/(loss) recognized in income on derivative Year Ended December 31, 2010	2009
Energy commodity derivative contracts	Gas purchases and other costs of sales	$ 2.3	$ (4.2)
Total		$ 2.3	$ (4.2)

Net Investment Hedges

We are exposed to foreign currency risk from our investments in businesses owned and operated outside the United States. In 2005 and 2006, Kinder Morgan Kansas, Inc. entered into various cross-currency interest rate swap transactions, which were designated as net investment hedges, in order to hedge the value of the investment in Canadian operations. Over time, as the exposure to foreign currency risk through our Canadian operations was reduced through dispositions, Kinder Morgan Kansas, Inc. began to terminate cross-currency swap agreements. The final cross-currency swap agreements were terminated during the third quarter of 2010 and there were no outstanding cross currency interest rate swaps at December 31, 2010. In the periods with outstanding cross-currency swap agreements, the effective portion of the changes in fair value of these swap transactions was reported as a cumulative translation adjustment included in the balance sheet caption Accumulated other comprehensive loss.

Credit Risks

Our subsidiaries, Kinder Morgan Kansas, Inc. and KMP, have counterparty credit risk as a result of the use of financial derivative contracts. These counterparties consist primarily of financial institutions, major energy companies and local distribution companies. This concentration of counterparties may impact our overall exposure to credit risk, either positively or negatively, in that the counterparties may be similarly affected by changes in economic, regulatory or other conditions.

We maintain credit policies with regard to counterparties that we believe minimize our overall credit risk. These policies include (i) an evaluation of potential counterparties financial condition (including credit ratings); (ii) collateral requirements under certain circumstances and (iii) the use of standardized agreements which allow for netting of positive and negative exposure associated with a single counterparty. Based on our policies, exposure, credit and other reserves, our management does not anticipate a material adverse effect on our financial position, results of operations, or cash flows as a result of counterparty performance.

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Over-the-counter swaps and options are entered into with counterparties outside central trading organizations such as futures, options or stock exchanges. These contracts are with a number of parties, all of which have investment grade credit ratings. While derivative transactions are entered into principally with investment grade counterparties and actively monitor their ratings, it is nevertheless possible that from time to time losses will result from counterparty credit risk in the future.

Our maximum potential exposure to credit losses on derivative contracts as of December 31, 2010 was (in millions):

	Asset position
Interest rate swap agreements	$ 258.6
Energy commodity derivative contracts	67.1
Gross exposure	325.7
Netting agreement impact	(58.8)
Net exposure	$ 266.9

In conjunction with the purchase of exchange-traded derivative contracts or when the market value of our derivative contracts with specific counterparties exceeds established limits, we are required to provide collateral to our counterparties, which may include posting letters of credit or placing cash in margin accounts. As of December 31, 2010, KMP had no outstanding letters of credit supporting its hedging activities; however, as of December 31, 2009, KMP had outstanding letters of credit totaling $55.0 million in support of its hedging of energy commodity price risks associated with the sale of natural gas, natural gas liquids and crude oil.

Additionally, as of December 31, 2010, KMP s counterparties associated with its energy commodity contract positions and over-the-counter swap agreements had margin deposits with KMP totaling $2.4 million, and we reported this amount within Accrued other current liabilities in our accompanying consolidated balance sheet. As of December 31, 2009, KMP had cash margin deposits associated with its energy commodity contract positions and over-the-counter swap partners totaling $15.2 million, and we reported this amount as Restricted deposits in our accompanying consolidated balance sheet.

KMP also has agreements with certain counterparties to its derivative contracts that contain provisions requiring it to post additional collateral upon a decrease in its credit rating. Based on contractual provisions as of December 31, 2010, KMP estimates that if its credit rating was downgraded, it would have the following additional collateral obligations (in millions):

Credit Ratings Downgraded(a)	Incremental obligations	Cumulative Obligations(b)
One notch to BBB-/Baa3	$	$
Two notches to below BBB-/Baa3 (below investment grade)	$ 65.2	$ 65.2

(a) If there are split ratings among the independent credit rating agencies, most counterparties use the higher credit rating to determine our incremental collateral obligations, while the remaining use the lower credit rating. Therefore, a two notch downgrade to below BBB-/Baa3 by one agency would not trigger the entire $65.2 million incremental obligation.

(b) Includes current posting at current rating.

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14. Fair Value

The Codification emphasizes that fair value is a market-based measurement that should be determined based on assumptions (inputs) that market participants would use in pricing an asset or liability. Inputs may be observable or unobservable, and valuation techniques used to measure fair value should maximize the use of relevant observable inputs and minimize the use of unobservable inputs. Accordingly, the Codification establishes a hierarchal disclosure framework that ranks the quality and reliability of information used to determine fair values. The hierarchy is associated with the level of pricing observability utilized in measuring fair value and defines three levels of inputs to the fair value measurement process quoted prices are the most reliable valuation inputs, whereas model values that include inputs based on unobservable data are the least reliable. Each fair value measurement must be assigned to a level corresponding to the lowest level input that is significant to the fair value measurement in its entirety.

The three broad levels of inputs defined by the fair value hierarchy are as follows:

Level 1 Inputs quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date;

Level 2 Inputs inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly. If the asset or liability has a specified (contractual) term, a Level 2 input must be observable for substantially the full term of the asset or liability; and

Level 3 Inputs unobservable inputs for the asset or liability. These unobservable inputs reflect the entity s own assumptions about the assumptions that market participants would use in pricing the asset or liability, and are developed based on the best information available in the circumstances (which might include the reporting entity s own data).

Fair Value of Derivative Contracts

The following two tables summarize the fair value measurements of our (i) energy commodity derivative contracts; (ii) interest rate swap agreements and (iii) cross currency interest rate swap agreements as of December 31, 2010 and 2009, based on the three levels established by the Codification (in millions). The fair value measurements as of December 31, 2009 in the two tables below do not include cash margin deposits of $15.2 million, which are reported separately as Restricted deposits in our accompanying consolidated balance sheet (in millions):

		Asset fair value measurements using		
	Total	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
As of December 31, 2010				
Energy commodity derivative contracts(a)	$ 67.1	$	$ 23.5	$ 43.6
Interest rate swap agreements	$ 258.6	$	$ 258.6	$

As of December 31, 2009				
Energy commodity derivative contracts(a)	$ 78.1	$	$ 14.4	$ 63.7
Interest rate swap agreements	$ 236.0	$	$ 236.0	$

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		Liability fair value measurements using		
	Total	Quoted prices in active markets for identical liabilities (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
As of December 31, 2010				
Energy commodity derivative contracts(b)	$ (384.5)	$	$ (359.7)	$ (24.8)
Interest rate swap agreements	$ (69.2)	$	$ (69.2)	$
As of December 31, 2009				
Energy commodity derivative contracts(b)	$ (513.5)	$	$ (462.8)	$ (50.7)
Interest rate swap agreements	$ (218.5)	$	$ (218.5)	$
Cross currency interest rate swap agreements	$ (9.6)	$	$ (9.6)	$

(a) Level 2 consists primarily of OTC natural gas hedges that are settled on NYMEX. Level 3 consists primarily of natural gas options and West Texas Intermediate options.

(b) Level 2 consists primarily of OTC West Texas Intermediate hedges and OTC natural gas hedges that are settled on NYMEX. Level 3 consists primarily of natural gas basis swaps and West Texas Intermediate options.

The table below provides a summary of changes in the fair value of our Level 3 energy commodity derivative contracts for each of the years ended December 31, 2010 and 2009 (in millions):

Significant unobservable inputs (Level 3)

	Year Ended December 31,	
	2010	2009
Derivatives-net asset (liability)		
Beginning of period	$ 13.0	$ 44.1
Realized and unrealized net gains (losses)	1.7	(48.4)
Purchases and settlements	4.1	17.3
Transfers in (out) of Level 3		
End of period	$ 18.8	$ 13.0
Change in unrealized net losses relating to contracts still held at end of period	$ (10.7)	$ (42.1)

Fair Value of Financial Instruments

Fair value as used in the disclosure of financial instruments represents the amount at which an instrument could be exchanged in a current transaction between willing parties. As of each reporting date, the estimated fair value of our outstanding publicly-traded debt is based upon quoted market prices, if available, and for all other debt, fair value is based upon prevailing interest rates currently available to us. In addition, we adjust (discount) the fair value measurement of our long-term debt for the effect of credit risk.

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The estimated fair value of our outstanding debt balance as of December 31, 2010 and 2009 (both short-term and long-term, but excluding the value of interest rate swaps), is disclosed below (in millions):

	December 31, 2010		December 31, 2009	
	Carrying Value	Estimated fair value	Carrying Value	Estimated fair value
Total Debt(a)	$ 15,169.9	$ 16,129.1	$ 13,648.4	$ 14,158.2

(a) The 2010 amounts include the $750.0 million of 5.35% senior notes paid on January 5, 2011 (see note 8 Debt Subsequent Events).

15. Reportable Segments

We divide our operations into the following reportable business segments. These segments and their principal source of revenues are as follows:

Products Pipelines KMP the transportation and terminaling of refined petroleum products, including gasoline, diesel fuel, jet fuel and natural gas liquids;

Natural Gas Pipelines KMP the sale, transport, processing, treating, storage and gathering of natural gas;

CO_2 KMP the production and sale of crude oil from fields in the Permian Basin of West Texas and the transportation and marketing of carbon dioxide used as a flooding medium for recovering crude oil from mature oil fields;

Terminals KMP the transloading and storing of refined petroleum products and dry and liquid bulk products, including coal, petroleum coke, cement, alumina, salt and other bulk chemicals;

Kinder Morgan Canada KMP the transportation of crude oil and refined products from Alberta, Canada to marketing terminals and refineries in British Columbia, the state of Washington and the Rocky Mountains and Central regions of the United States;

NGPL PipeCo LLC consists of our 20% interest in NGPL PipeCo LLC, the owner of Natural Gas Pipeline Company of America and certain affiliates, collectively referred to as Natural Gas Pipeline Company of America or NGPL, a major interstate natural gas pipeline and storage system, which we operate; and

Power during the historical periods presented in this report, we had a business segment referred to as Power, which consisted of our ownership of a natural gas-fired electric generation facilities. On October 22, 2010, we sold our facility located in Michigan, referred to as Triton Power, for approximately $15.0 million in cash (see Note 3).

On August 28, 2008, we sold our one-third interest in the net assets of the Express pipeline system (Express), as well as our full ownership of the net assets of the Jet Fuel pipeline system (Jet Fuel), to KMP. We accounted for this transaction as a transfer of net assets between entities under common control. Therefore, following the sale of Express and Jet Fuel to KMP, KMP recognized the assets and liabilities acquired at our carrying amounts (historical cost) at the date of transfer. The results of Express and Jet Fuel are reported in the Kinder Morgan Canada KMP segment for all periods presented.

On February 15, 2008, we sold an 80% ownership interest in NGPL PipeCo LLC business segment to Myria (see Note 3). Effective February 15, 2008, we began to account for the results of operations of the NGPL PipeCo LLC segment as an equity investment.

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We evaluate performance principally based on each segments earnings before depreciation, depletion and amortization expenses (including amortization of excess cost of equity investments), which excludes general and administrative expenses, third-party debt costs and interest expense, unallocable interest income, and unallocable income tax expense. Our reportable segments are strategic business units that offer different products and services, and they are based on the way our chief operating decision maker organizes the operations within our enterprise for assessing performance and allocating resources. Each segment is managed separately because each segment involves different products and marketing strategies.

Because KMP s partnership agreement requires it to distribute 100% of its available cash to its partners on a quarterly basis (KMP s available cash consists primarily of all of its cash receipts, less cash disbursements and changes in reserves), we consider each period s earnings before all non-cash depreciation, depletion and amortization expenses to be an important measure of business segment performance for our segments that are also segments of KMP. We account for intersegment sales at market prices, while we account for asset transfers at either market value or, in some instances, book value.

During 2010, 2009 and 2008, we did not have revenues from any single customer that exceeded 10% of our consolidated revenues.

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Financial information by segment follows (in millions):

	Year Ended December 31,		
	2010	2009	2008
Revenues			
Products Pipelines KMP			
Revenues from external customers	$ 883.0	$ 826.6	$ 815.9
Natural Gas Pipelines KMP			
Revenues from external customers	4,416.5	3,806.9	8,422.0
CO_2 KMP			
Revenues from external customers	1,298.4	1,131.3	1,269.2
Terminals KMP			
Revenues from external customers	1,264.0	1,108.1	1,172.7
Intersegment revenues	1.1	0.9	0.9
Kinder Morgan Canada KMP			
Revenues from external customers	268.5	226.1	198.9
NGPL PipeCo LLC(a)			
Revenues from external customers			132.1
Intersegment revenues			0.9
Power(b)			
Revenues from external customers	9.4	40.4	44.0
Other			
NGPL PipeCo LLC fixed fee revenue	47.2	45.8	39.0
Other revenues	3.6		1.0
Intersegment revenues			(0.9)
Total segment revenues	8,191.7	7,186.1	12,095.7
Less: Total intersegment revenues	(1.1)	(0.9)	(0.9)
Total consolidated revenues	$ 8,190.6	$ 7,185.2	$ 12,094.8

	Year Ended December 31,		
	2010	2009	2008
Operating expenses(c)			
Products Pipelines KMP(d)	$ 414.6	$ 269.5	$ 291.0
Natural Gas Pipelines KMP	3,756.8	3,192.7	7,803.3
CO_2 KMP	308.1	271.1	391.8
Terminals KMP	629.2	536.8	631.8
Kinder Morgan Canada KMP	91.6	72.5	68.0
NGPL PipeCo LLC(a)			43.5
Power(b)	5.3	23.6	24.8
Other	2.1	0.1	0.1
Total segment operating expenses	5,207.7	4,366.3	9,254.3
Less: Total intersegment operating expenses	(1.1)	(0.9)	(0.9)

Total consolidated operating expenses	$ 5,206.6	$ 4,365.4	$ 9,253.4

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	Year Ended December 31,		
	2010	**2009**	**2008**
Other expense (income)			
Products Pipelines KMP(e)	$ 11.8	$ 1.1	$ 1,269.5
Natural Gas Pipelines KMP(e)	0.9	(6.6)	2,090.0
CO_2 KMP			
Terminals KMP(e)	(3.3)	(25.0)	683.0
Kinder Morgan Canada KMP			
Other	(16.0)	(0.1)	0.1
Total consolidated other expense (income)	$ (6.6)	$ (30.6)	$ 4,042.6

	Year Ended December 31,		
	2010	**2009**	**2008**
Depreciation, depletion and amortization			
Products Pipelines KMP	$ 127.0	$ 121.3	$ 116.9
Natural Gas Pipelines KMP	150.3	120.5	99.9
CO_2 KMP	542.9	620.6	498.1
Terminals KMP	215.5	169.1	157.4
Kinder Morgan Canada KMP	42.9	38.5	36.7
NGPL PipeCo LLC(a)			9.3
Other	0.2	0.2	0.1
Total consolidated depreciation, depletion and amortization	$ 1,078.8	$ 1,070.2	$ 918.4

	Year Ended December 31,		
	2010	**2009**	**2008**
Earnings (loss) from equity investments			
Products Pipelines KMP	$ 22.8	$ 18.7	$ 15.7
Natural Gas Pipelines KMP	169.1	141.8	113.4
CO_2 KMP	22.5	22.3	20.7
Terminals KMP	1.7	0.7	2.7
Kinder Morgan Canada KMP	(3.3)	(4.1)	8.3
NGPL PipeCo LLC(a)(f)	(399.0)	42.5	40.3
Power			
Other			
Total consolidated equity earnings (loss)	$ (186.2)	$ 221.9	$ 201.1

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	Year Ended December 31,		
	2010	2009	2008
Amortization of excess cost of equity investments			
Products Pipelines KMP	$ 3.4	$ 3.4	$ 3.3
Natural Gas Pipelines KMP	0.4	0.4	0.4
CO_2 KMP	2.0	2.0	2.0
Terminals KMP			
Kinder Morgan Canada KMP			
Total consolidated amortization of excess cost of equity investments	$ 5.8	$ 5.8	$ 5.7

	Year Ended December 31,		
	2010	2009	2008
Interest income			
Products Pipelines KMP	$ 4.0	$ 4.1	$ 4.3
Natural Gas Pipelines KMP	2.3	6.2	1.2
CO_2 KMP	2.0		
Terminals KMP			
Kinder Morgan Canada KMP	13.2	12.0	3.9
Total segment interest income	21.5	22.3	9.4
Unallocated interest income	1.9	3.4	38.1
Total consolidated interest income	$ 23.4	$ 25.7	$ 47.5

	Year Ended December 31,		
	2010	2009	2008
Other, net-income (expense)			
Products Pipelines KMP	$ 12.4	$ 8.3	$ (2.3)
Natural Gas Pipelines KMP	2.0	25.6	15.1
CO_2 KMP	2.5		1.9
Terminals KMP	4.7	3.7	1.7
Kinder Morgan Canada KMP	2.6	11.9	(10.1)
Other	(0.1)		0.7
Total consolidated other, net-income (expense)	$ 24.1	$ 49.5	$ 7.0

	Year Ended December 31,		
	2010	2009	2008
Income tax benefit (expense)			
Products Pipelines KMP	$ 1.1	$ (3.1)	$ 4.9
Natural Gas Pipelines KMP	(3.3)	(5.7)	(2.7)
CO_2 KMP	0.9	(4.0)	(3.9)
Terminals KMP	(5.3)	(5.2)	(19.7)
Kinder Morgan Canada KMP	(7.8)	(18.9)	19.0

Total segment income tax expense	(14.4)	(36.9)	(2.4)
Unallocated income tax expense	(153.2)	(289.7)	(301.9)
Total consolidated income tax expense	$ (167.6)	$ (326.6)	$ (304.3)

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	Year Ended December 31,		
	2010	**2009**	**2008**
Segment earnings (loss) before depreciation, depletion, amortization and amortization of excess cost of equity investments(g)			
Products Pipelines KMP	$ 496.9	$ 584.0	$ (722.0)
Natural Gas Pipelines KMP	828.9	788.7	(1,344.3)
CO_2 KMP	1,018.2	878.5	896.1
Terminals KMP	640.3	596.4	(156.5)
Kinder Morgan Canada KMP	181.6	154.5	152.0
NGPL PipeCo LLC(a)(f)	(399.0)	42.5	129.8
Power	4.1	4.8	5.7
Segment earnings (loss) before depreciation, depletion, amortization and amortization of excess cost of equity investments	2,771.0	3,049.4	(1,039.2)
Total segment depreciation, depletion and amortization	(1,078.8)	(1,070.2)	(918.4)
Total segment amortization of excess cost of equity investments	(5.8)	(5.8)	(5.7)
NGPL PipeCo LLC fixed fee revenue	47.2	45.8	39.0
Other revenues	3.6		
General and administrative expenses	(631.1)	(373.0)	(352.5)
Unallocable interest and other, net(h)	(652.6)	(583.7)	(623.6)
Unallocable income tax expense	(153.2)	(289.7)	(301.9)
Income (loss) from continuing operations	$ 300.3	$ 772.8	$ (3,202.3)

	Year Ended December 31,		
	2010	**2009**	**2008**
Capital expenditures(i)			
Products Pipelines KMP	$ 144.2	$ 199.8	$ 221.7
Natural Gas Pipelines KMP	135.4	372.0	946.5
CO_2 KMP	372.8	341.8	542.6
Terminals KMP	326.3	378.2	454.1
Kinder Morgan Canada KMP	22.2	32.0	368.1
NGPL PipeCo LLC(a)			10.3
Other	1.6	0.5	2.0
Total consolidated capital expenditures	$ 1,002.5	$ 1,324.3	$ 2,545.3

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	2010	2009
Investments at December 31		
Products Pipelines KMP	$ 354.9	$ 346.9
Natural Gas Pipelines KMP	3,563.3	2,542.8
CO_2 KMP	9.9	11.2
Terminals KMP	27.4	18.7
Kinder Morgan Canada KMP	69.8	68.7
NGPL PipeCo LLC(a)	265.6	698.5
Total segment investments	4,290.9	3,686.8
Other	0.2	8.8
Total consolidated investments	$ 4,291.1	$ 3,695.6

	2010	2009
Assets at December 31		
Products Pipelines KMP	$ 5,650.9	$ 5,614.7
Natural Gas Pipelines KMP	10,960.0	9,956.7
CO_2 KMP	4,057.2	4,230.5
Terminals KMP	5,009.3	4,537.3
Kinder Morgan Canada KMP	1,870.0	1,797.7
NGPL PipeCo LLC(a)	265.6	698.5
Power(b)		67.6
Total segment assets	27,813.0	26,903.0
Other(j)	1,095.1	678.0
Total consolidated assets	$ 28,908.1	$ 27,581.0

(a) Effective February 15, 2008, we sold an 80% ownership interest in NGPL PipeCo LLC to Myria. As a result of the sale, beginning February 15, 2008, we account for our 20% ownership interest in NGPL PipeCo LLC as an equity method investment and 100% of NGPL PipeCo LLC revenues, earnings and assets prior to the sale, are included in the above tables.

(b) Upon the adoption of Accounting Standards Update No. 2009-17, which amended the codification s Consolidation topic, on January 1, 2010, Triton Power operations are no longer be consolidated into our financial statements, but are treated as an equity investment, resulting in decreases to revenues, operating expenses and noncontrolling interests with no impact to segment earnings before DD&A (see Note 18). As noted preceding, Triton Power was sold for approximately $15.0 million on October 22, 2010.

(c) Includes natural gas purchases and other costs of sales, operations and maintenance expenses, fuel and power expenses and taxes, other than income taxes.

(d) 2010 amount includes a $172.0 million litigation reserve related to KMP s West Coast pipeline rate case (see Note 16).

(e) 2008 includes non-cash goodwill impairment charges (see Note 7).

(f) 2010 amount includes an impairment charge of $430.0 million to reduce the carrying value of our investment in NGPL PipeCo LLC (see Note 6).

(g) Includes revenues, earnings from equity investments, allocable interest income, and other, net, less operating expenses, allocable income taxes, and other expense (income).

(h) Includes (i) interest expense and (ii) miscellaneous other income and expenses not allocated to business segments.

KINDER MORGAN, INC.

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(i) Sustaining capital expenditures, including KMP s share of Rockies Express sustaining capital expenditures, for each of the years ended December 31, 2010, 2009 and 2008, were $180.8 million, $172.7 million and $183.9 million, respectively.

(j) Includes cash and cash equivalents, margin and restricted deposits, unallocable interest receivable, prepaid assets and deferred charges, and risk management assets related to the fair value of interest rate swaps.

We do not attribute interest and debt expense to any of our reportable business segments. For each of the years ended December 31, 2010, 2009 and 2008, we reported total consolidated interest expense of $668.3 million, $599.1 million and $675.8 million, respectively.

Following is geographic information regarding the revenues and long-lived assets of our business segments (in millions):

	Year Ended December 31,		
	2010	**2009**	**2008**
Revenues from external customers			
United States	$ 7,814.6	$ 6,862.3	$ 11,804.2
Canada	356.5	301.9	269.3
Mexico and other(a)	19.5	21.0	21.3
Total consolidated revenues from external customers	$ 8,190.6	$ 7,185.2	$ 12,094.8

	2010	**2009**	**2008**
Long-lived assets at December 31(b)			
United States	$ 19,926.5	$ 19,263.5	$ 17,511.1
Canada	1,928.7	1,834.3	1,568.7
Mexico and other(a)	95.9	98.8	97.7
Total consolidated long-lived assets	$ 21,951.1	$ 21,196.6	$ 19,177.5

(a) Includes operations in Mexico and the Netherlands.

(b) Long-lived assets exclude (i) goodwill and (ii) other intangibles, net.

16. Litigation, Environmental and Other Contingencies

Below is a brief description of our ongoing material legal proceedings, including any material developments that occurred in such proceedings during 2010. This note also contains a description of any material legal proceedings that were initiated against us during 2010, and a description of any material events occurring subsequent to December 31, 2010 but before the filing of this report.

In this note, we refer to KMP s subsidiary SFPP, L.P. as SFPP; KMP s subsidiary Calnev Pipe Line LLC as Calnev; Chevron Products Company as Chevron; Navajo Refining Company, L.P. as Navajo; BP West Coast Products, LLC as BP; ConocoPhillips Company as ConocoPhillips; Tesoro Refining and Marketing Company as Tesoro; Texaco Refining and Marketing Inc. as Texaco; Western Refining Company, L.P. as Western Refining; ExxonMobil Oil Corporation as ExxonMobil; Valero Energy Corporation as Valero; Valero Marketing and Supply Company as Valero Marketing; Continental Airlines, Inc., Northwest Airlines, Inc., Southwest Airlines Co. and US Airways, Inc., collectively, as the Airlines; KMP s subsidiary Kinder Morgan CO_2 Company, L.P. (the successor to Shell CO_2 Company, Ltd.) as Kinder Morgan CO_2; the United States Court of Appeals for the

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District of Columbia Circuit as the D.C. Circuit; the Federal Energy Regulatory Commission as the FERC; the California Public Utilities Commission as the CPUC; the United States Department of the Interior, Minerals Management Service as the MMS; the Union Pacific Railroad Company (the successor to Southern Pacific Transportation Company) as UPRR; the Texas Commission of Environmental Quality as the TCEQ; The Premcor Refining Group, Inc. as Premcor; Port Arthur Coker Company as PACC; KMP s subsidiary Kinder Morgan Bulk Terminals, Inc. as KMBT; KMP s subsidiary Kinder Morgan Liquids Terminals LLC as KM LT; Rockies Express Pipeline LLC as Rockies Express; and Plantation Pipe Line Company as Plantation. OR dockets designate complaint proceedings, and IS dockets designate protest proceedings.

Federal Energy Regulatory Commission Proceedings

The tariffs and rates charged by SFPP and Calnev are subject to numerous ongoing proceedings at the FERC, including the shippers complaints and protests regarding interstate rates on the pipeline systems listed below. These complaints and protests have been filed over numerous years beginning in 1992 through and including 2009. In general, these complaints and protests allege the rates and tariffs charged by SFPP are not just and reasonable. If the shippers are successful in proving their claims, they are entitled to seek reparations (which may reach up to two years prior to the filing of their complaints) or refunds of any excess rates paid, and SFPP may be required to reduce its rates going forward. These proceedings tend to be protracted, with decisions of the FERC often appealed to the federal courts.

As to SFPP, the issues involved in these proceedings include, among others: (i) whether certain of KMP s Pacific operations rates are grandfathered under the Energy Policy Act of 1992, and therefore deemed to be just and reasonable; (ii) whether substantially changed circumstances have occurred with respect to any grandfathered rates such that those rates could be challenged; (iii) whether indexed rate increases are justified and (iv) the appropriate level of return and income tax allowance KMP may include in its rates. The issues involving Calnev are similar.

SFPP

As a result of FERC s approval in May 2010 of a settlement agreement with eleven of twelve shipper litigants, a wide range of rate challenges dating back to 1992 were resolved (Historical Cases Settlement). The Historical Cases Settlement resolved all but two of the cases outstanding between SFPP and the eleven shippers, and SFPP does not expect any material adverse impacts from the remaining two unsettled cases with the eleven shippers.

The Historical Cases Settlement and other legal reserves related to SFPP rate litigation resulted in a $158.0 million charge to earnings in the first quarter of 2010, and in June 2010, KMP made settlement payments of $206.3 million to the eleven shippers. However, because a portion of KMP s partnership distributions for the second quarter of 2010 (which KMP paid in August 2010) was a distribution of cash from interim capital transactions (rather than a distribution of cash from operations) our second quarter 2010 distribution from KMP was reduced by $170.0 million and our second quarter pre-tax earnings were reduced by $168.3 million. As provided in KMP s partnership agreement, we receive no incentive distribution on ICT Distributions; therefore, there was no practical impact to KMP s limited partners from this ICT Distribution because (i) the expected cash distribution to the limited partners did not change; (ii) fewer dollars in the aggregate were distributed, because there was no incentive distribution paid to us related to the portion of the quarterly distribution that was an ICT Distribution and (iii) we, in this instance, have agreed to waive any resetting of the incentive distribution target levels, as would otherwise occur according to KMP s partnership agreement.

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KMP s second quarter 2010 ICT Distribution is expected to allow it to resolve the remaining FERC rate cases (discussed above) and CPUC rate cases (discussed below) without impacting future distributions. Due to our support, KMP was able to make $4.40 in distributions per unit to its limited partners for 2010.

Furthermore, (i) KMP s declared cash distributions for both the third and fourth quarters of 2010 contain no distributions of cash from interim capital transactions, but instead consist entirely of distributions of cash from operations and (ii) KMP recognized a $14.0 million increase in expense in December 2010 associated with overall adjustments to its rate case liabilities. For more information on KMP s partnership distributions, see Note 10 *Members Equity KMP Distributions*.

Chevron is the only shipper who was not a party to the Historical Cases Settlement. In December 2010, an agreement in principle was reached with Chevron, and in February 2011, an uncontested settlement was filed at the FERC which the chief judge certified to the FERC. The FERC has not yet acted on the certified settlement. Upon approval by the FERC, the settlement will resolve the following dockets now pending only as to Chevron:

FERC Docket Nos. OR92-8, et al. (West and East Line Rates) Chevron protests of compliance filings pending with FERC and appeals pending at the D.C. Circuit;

FERC Docket Nos. OR96-2, et al. (All SFPP Rates) Chevron (as a successor-in-interest to Texaco) protests of compliance filings pending with FERC;

FERC Docket No. OR02-4 (All SFPP Rates) Chevron appeal of complaint dismissal pending at the D.C. Circuit;

FERC Docket No. OR03-5 (West, East, North, and Oregon Line Rates) Chevron exceptions to initial decision pending at FERC;

FERC Docket No. OR07-4 (All SFPP Rates) Chevron complaint held in abeyance;

FERC Docket No. OR09-8 (consolidated) (2008 Index Increases) Hearing regarding Chevron complaint held in abeyance pending settlement discussions;

FERC Docket No. IS98-1 (Sepulveda Line Rates) Chevron protests to compliance filing pending at FERC;

FERC Docket No. IS05-230 (North Line Rates) Chevron exceptions to initial decision pending at FERC;

FERC Docket No. IS07-116 (Sepulveda Line Rates) Chevron protest subject to resolution of IS98-1 proceeding;

FERC Docket No. IS08-137 (West and East Line Rates) Chevron protest subject to resolution of the OR92-8/OR96-2 proceeding;

FERC Docket No. IS08-302 (2008 Index Rate Increases) Chevron protest subject to the resolution of proceedings regarding the West, North and Sepulveda Lines; and

FERC Docket No. IS09-375 (2009 Index Rate Increases) Chevron protest subject to resolution of proceedings regarding the North, West and Sepulveda Lines.

The following dockets, which pertain to all protesting shippers, are either pending or recently resolved, as noted below:

FERC Docket No. IS08-390 (West Line Rates) Protestants: BP, ExxonMobil, ConocoPhillips, Valero Marketing, Chevron, the Airlines Status: FERC order issued on February 17, 2011. While the order

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made certain findings that were adverse to SFPP, it ruled in favor of SFPP on many significant issues. SFPP will file a rehearing request on certain adverse findings. It is not possible to predict the outcome of FERC review of the rehearing request or appellate review of this order; and

FERC Docket No. IS09-437 (East Line Rates) Protestants: BP, ExxonMobil, ConocoPhillips, Valero, Chevron, Western Refining, and Southwest Airlines Status: Initial decision issued on February 10, 2011. A FERC administrative law judge generally made findings adverse to SFPP, found that East Line rates should have been lower, and recommended that SFPP pay refunds for alleged over-collections. SFPP will file a brief with the FERC taking exception to these and other portions of the initial decision. The FERC will review the initial decision and while the initial decision is inconsistent with a number of the issues ruled on in FERC s February 17, 2011 Order IS08-390, it is not possible to predict the outcome of FERC or appellate review.

Calnev

FERC Docket Nos. OR07-7, OR07-18, OR07-19 & OR07-22 (not consolidated) (Calnev Rates) Complainants: Tesoro, Airlines, BP, Chevron, ConocoPhillips and Valero Marketing Status: Complaint amendments pending before FERC;

FERC Docket No. IS09-377 (2009 Index Rate Increases) Protestants: BP, Chevron, and Tesoro Status: Requests for rehearing of FERC dismissal pending before FERC;

FERC Docket Nos. OR09-11/OR09-14 (not consolidated) (2007 and 2008 Page 700 Audit Request) Complainants: BP/Tesoro Status: BP petition for review at D.C. Circuit dismissed, mandate issued in June 2010;

FERC Docket Nos. OR09-15/OR09-20 (not consolidated) (Calnev Rates) Complainants: Tesoro/BP Status: Complaints pending at FERC; and

FERC Docket Nos. OR09-18/OR09-22 (not consolidated) (2009 Index Increases) Complainants: Tesoro/BP Status: BP petition for review at D.C. Circuit dismissed, mandate issued in June 2010.

Natural Gas Pipeline Company of America LLC Section 5 Proceeding

On November 19, 2009, the FERC initiated an investigation, pursuant to Section 5 of the Natural Gas Act, into the justness and reasonableness of the transportation and storage rates as well as the fuel and natural gas lost percentages of NGPL PipeCo LLC s subsidiary, Natural Gas Pipeline Company of America LLC (NGPL). NGPL reached a settlement in principal with the FERC on April 22, 2010. On June 11, 2010, NGPL filed an offer of settlement, which was approved without modification by the FERC on July 29, 2010. The order approving the settlement has become final and nonappealable. The settlement resolved all issues in the proceeding. The settlement provides that NGPL will reduce its fuel costs and gas lost and unaccounted for, or GL&U, retention factors as of July 1, 2010. The settlement further provides a timeline for additional prospective fuel and GL&U reductions and prospective reductions in the maximum recourse reservation rates that it bills firm transportation and storage shippers. Also, see Note 6 Investments.

Trailblazer Pipeline Company LLC

On July 7, 2010, KMP s subsidiary Trailblazer Pipeline Company LLC (Trailblazer) refunded a total of approximately $0.7 million to natural gas shippers covering the period January 1, 2010 through May 31, 2010 as part of a settlement reached with shippers to eliminate the December 1, 2009 rate filing obligation contained in its Docket No. RP03-162 rate case settlement. As part of the agreement with shippers, Trailblazer commenced billing reduced tariff rates as of June 1, 2010 with an additional reduction in tariff rates to take effect January 1, 2011.

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Kinder Morgan Interstate Gas Transmission LLC Section 5 Proceeding

On November 18, 2010, KMP s subsidiary Kinder Morgan Interstate Gas Transmission LLC (KMIGT) was notified by the FERC of a proceeding against it pursuant to Section 5 of the Natural Gas Act. The proceeding will set the matter for hearing and determine whether KMIGT s current rates, which were approved by the FERC in KMIGT s last transportation rate case settlement, remain just and reasonable. The FERC made no findings in its order as to what would constitute just and reasonable rates or a reasonable return for KMIGT. A proceeding under Section 5 of the Natural Gas Act is prospective in nature and any potential change in rates charged customers by KMIGT can only occur after the FERC has issued a final order. Prior to that, an Administrative Law Judge will preside over an evidentiary hearing and make an initial decision (which the FERC has directed to be issued within 47 weeks). The final FERC decision will be based on the record developed before the Administrative Law Judge. We do not believe that this investigation will have a material adverse impact on us.

California Public Utilities Commission Proceedings

SFPP has previously reported ratemaking and complaint proceedings pending with the CPUC. The ratemaking and complaint cases generally involve challenges to rates charged by SFPP for intrastate transportation of refined petroleum products through its pipeline system in the state of California and request prospective rate adjustments and refunds with respect to tariffed and previously untariffed charges for certain pipeline transportation and related services. These matters have been consolidated and assigned to two administrative law judges.

On April 6, 2010, a CPUC administrative law judge issued a proposed decision in several intrastate rate cases involving SFPP and a number of its shippers. The proposed decision includes determinations on issues, such as SFPP s entitlement to an income tax allowance and allocation of environmental expenses that KMP s believes are contrary both to CPUC policy and precedent and to established federal regulatory policies for pipelines. Moreover, the proposed decision orders refunds relating to these issues where the underlying rates were previously deemed reasonable by the CPUC, which KMP believes to be contrary to California law. Based on KMP s review of these CPUC proceedings, KMP estimates that its maximum exposure is approximately $220 million in reparation and refund payments and if the determinations made in the proposed decision were applied prospectively in two pending cases this could result in approximately $30 million in annual rate reductions.

The proposed decision is advisory in nature and can be rejected, accepted or modified by the CPUC. SFPP filed comments on May 3, 2010 outlining what it believes to be the errors in law and fact within the proposed decision and on May 5, 2010, SFPP made oral arguments before the full CPUC. The matter remains pending before the CPUC, which may act at any time at its scheduled bimonthly meetings. Further procedural steps, including motions for rehearing and writ of review to California s Court of Appeals, will be taken if warranted. KMP does not expect the final resolution of this matter to have an impact on its expected distributions to its limited partners for 2011.

Carbon Dioxide Litigation

Gerald O. Bailey et al. v. Shell Oil Co. et al, Southern District of Texas Lawsuit

Kinder Morgan CO_2, KMP and Cortez Pipeline Company are among the defendants in a proceeding in the federal courts for the Southern District of Texas, *Gerald O. Bailey et al. v. Shell Oil Company et al.* (Civil Action Nos. 05-1029 and 05-1829 in the U.S. District Court for the Southern District of Texas consolidated by Order dated July 18, 2005). The plaintiffs assert claims for the underpayment of royalties on carbon dioxide produced from the McElmo Dome unit, located in southwestern Colorado. The plaintiffs assert claims for fraud/fraudulent

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inducement, real estate fraud, negligent misrepresentation, breach of fiduciary and agency duties, breach of contract and covenants, violation of the Colorado Unfair Practices Act, civil theft under Colorado law, conspiracy, unjust enrichment, and open account. Plaintiffs Gerald O. Bailey, Harry Ptasynski, and W.L. Gray & Co. also assert claims as private relators under the False Claims Act, claims on behalf of the State of Colorado and Montezuma County, Colorado, and claims for violation of federal and Colorado antitrust laws. The plaintiffs seek actual damages, treble damages, punitive damages, a constructive trust and accounting, and declaratory relief. The defendants filed motions for summary judgment on all claims.

On April 22, 2008, the federal district court granted defendants motions for summary judgment and ruled that plaintiffs Bailey and Ptasynski take nothing on their claims, and that the claims of Gray be dismissed with prejudice. The court entered final judgment in favor of the defendants on April 30, 2008. The plaintiffs appealed to the United States Fifth Circuit Court of Appeals. On June 16, 2010, the Fifth Circuit Court of Appeals affirmed the trial court s summary judgment decision. On October 18, 2010, the U.S. Supreme Court denied Gerald Bailey s petition for writ of certiorari to the U.S. Supreme Court seeking further appellate review of the Fifth Circuit Court of Appeals decision.

CO_2 Claims Arbitration

Kinder Morgan CO_2 and Cortez Pipeline Company were among the named defendants in CO_2 Committee, Inc. v. Shell Oil Co., et al., an arbitration initiated on November 28, 2005. The arbitration arose from a dispute over a class action settlement agreement which became final on July 7, 2003 and disposed of five lawsuits formerly pending in the U.S. District Court, District of Colorado. The plaintiffs in such lawsuits primarily included overriding royalty interest owners, royalty interest owners, and small share working interest owners who alleged underpayment of royalties and other payments on carbon dioxide produced from the McElmo Dome unit.

The settlement imposed certain future obligations on the defendants in the underlying litigation. The plaintiffs in the arbitration alleged that, in calculating royalty and other payments, defendants used a transportation expense in excess of what is allowed by the settlement agreement, thereby causing alleged underpayments of approximately $12 million. The plaintiffs also alleged that Cortez Pipeline Company should have used certain funds to further reduce its debt, which, in turn, would have allegedly increased the value of royalty and other payments by approximately $0.5 million. On August 7, 2006, the arbitration panel issued its opinion finding that defendants did not breach the settlement agreement. On June 21, 2007, the New Mexico federal district court entered final judgment confirming the August 7, 2006 arbitration decision.

On October 2, 2007, the plaintiffs initiated a second arbitration (CO_2 Committee, Inc. v. Shell CO_2 Company, Ltd., aka Kinder Morgan CO_2 Company, L.P., et al.) against Cortez Pipeline Company, Kinder Morgan CO_2 and an ExxonMobil entity. The second arbitration asserts claims similar to those asserted in the first arbitration. A second arbitration panel has convened and a final hearing on the parties claims and defenses is expected to occur in 2011.

MMS Notice of Noncompliance and Civil Penalty

On December 20, 2006, Kinder Morgan CO_2 received from the MMS a Notice of Noncompliance and Civil Penalty: Knowing or Willful Submission of False, Inaccurate, or Misleading Information Kinder Morgan CO_2 Company, L.P., case no. CP07-001. This Notice, and the MMS s position that Kinder Morgan CO_2 has violated certain reporting obligations, relates to a disagreement between the MMS and Kinder Morgan CO_2 concerning the approved transportation allowance to be used in valuing McElmo Dome carbon dioxide for purposes of calculating federal royalties.

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The Notice of Noncompliance and Civil Penalty assessed a civil penalty of approximately $2.2 million as of December 15, 2006 (based on a penalty of $500.00 per day for each of 17 alleged violations) for Kinder Morgan CO_2 s alleged submission of false, inaccurate, or misleading information relating to the transportation allowance, and federal royalties for CO_2 produced at McElmo Dome, during the period from June 2005 through October 2006. The MMS stated that civil penalties would continue to accrue at the same rate until the alleged violations are corrected.

On January 3, 2007, Kinder Morgan CO_2 appealed the Notice of Noncompliance and Civil Penalty to the Office of Hearings and Appeals of the Department of the Interior. In July 2008, the parties reached a settlement in principle of the Notice of Noncompliance and Civil Penalty, subject to final approval by the MMS and the Department of the Interior. On September 8, 2010, the United States Department of the Interior, Bureau of Ocean Energy Management, Regulation, and Enforcement (formerly known as the MMS) approved the settlement, which is now final.

MMS Orders to Report and Pay

On March 20, 2007, Kinder Morgan CO_2 received an Order to Report and Pay from the MMS. The MMS contends that Kinder Morgan CO_2 over-reported transportation allowances and underpaid royalties in the amount of approximately $4.6 million for the period from January 1, 2005 through December 31, 2006 as a result of its use of the Cortez Pipeline tariff as the transportation allowance in calculating federal royalties. The MMS claims that the Cortez Pipeline tariff is not the proper transportation allowance and that Kinder Morgan CO_2 must use its reasonable actual costs calculated in accordance with certain federal product valuation regulations.

Kinder Morgan CO_2 submitted a notice of appeal in response to the Order to Report and Pay, challenging the Order and appealing it to the Director of the MMS in accordance with 30 C.F.R. sec. 290.100, et seq.

In addition to the March 2007 Order to Report and Pay, the MMS issued a second Order to Report and Pay in August 2007, in which the MMS claims that Kinder Morgan CO_2 over-reported transportation allowances and underpaid royalties (due to the use of the Cortez Pipeline tariff as the transportation allowance for purposes of federal royalties) in the amount of approximately $8.5 million for the period from April 2000 through December 2004. Kinder Morgan CO_2 filed its notice of appeal and statement of reasons in response to the second Order in September 2007, challenging the Order and appealing it to the Director of the MMS.

In July 2008, the parties reached a settlement in principle of the March 2007 and August 2007 Orders to Report and Pay, subject to final approval by the MMS and the Department of the Interior. On September 8, 2010, the United States Department of the Interior, Bureau of Ocean Energy Management, Regulation, and Enforcement (formerly known as the MMS) approved the settlement, which is now final.

Colorado Severance Tax Assessment

On September 16, 2009, the Colorado Department of Revenue issued three Notices of Deficiency to Kinder Morgan CO_2. The Notices of Deficiency assessed additional state severance tax against Kinder Morgan CO_2 with respect to carbon dioxide produced from the McElmo Dome unit for tax years 2005, 2006, and 2007. The total amount of tax assessed was $5.7 million, plus interest of $1.0 million, plus penalties of $1.7 million. Kinder Morgan CO_2 protested the Notices of Deficiency and paid the tax and interest under protest. Kinder Morgan CO_2 is now awaiting the Colorado Department of Revenue s response to the protest.

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Montezuma County, Colorado Property Tax Assessment

In November of 2009, the County Treasurer of Montezuma County, Colorado, issued to Kinder Morgan CO_2, as operator of the McElmo Dome unit, retroactive tax bills for tax year 2008, in the amount of $2 million. Of this amount, 37.2% is attributable to Kinder Morgan CO_2 s interest. The retroactive tax bills were based on the assertion that a portion of the actual value of the carbon dioxide produced from the McElmo Dome unit was omitted from the 2008 tax roll due to an alleged over statement of transportation and other expenses used to calculate the net taxable value. Kinder Morgan CO_2 paid the retroactive tax bills under protest and will file petitions for refunds of the taxes paid under protest and will vigorously contest Montezuma County s position.

Other

In addition to the matters listed above, audits and administrative inquiries concerning Kinder Morgan CO_2 s payments on carbon dioxide produced from the McElmo Dome and Bravo Dome units are currently ongoing. These audits and inquiries involve federal agencies, the states of Colorado and New Mexico, and county taxing authorities in the state of Colorado.

Commercial Litigation Matters

Union Pacific Railroad Company Easements

SFPP and UPRR are engaged in a proceeding to determine the extent, if any, to which the rent payable by SFPP for the use of pipeline easements on rights-of-way held by UPRR should be adjusted pursuant to existing contractual arrangements for the ten year period beginning January 1, 2004 (*Union Pacific Railroad Company vs. Santa Fe Pacific Pipelines, Inc., SFPP, L.P., Kinder Morgan Operating L.P. D , Kinder Morgan G.P., Inc., et al.,* Superior Court of the State of California for the County of Los Angeles, filed July 28, 2004). In February 2007, a trial began to determine the amount payable for easements on UPRR rights-of-way. The trial is ongoing and is expected to conclude by the end of the first quarter of 2011.

SFPP and UPRR are also engaged in multiple disputes over the circumstances under which SFPP must pay for a relocation of its pipeline within the UPRR right-of-way and the safety standards that govern relocations. In July 2006, a trial before a judge regarding the circumstances under which SFPP must pay for relocations concluded, and the judge determined that SFPP must pay for any relocations resulting from any legitimate business purpose of the UPRR. SFPP appealed this decision, and in December 2008, the appellate court affirmed the decision. In addition, UPRR contends that SFPP must comply with the more expensive American Railway Engineering and Maintenance-of-Way standards in determining when relocations are necessary and in completing relocations. Each party is seeking declaratory relief with respect to its positions regarding the application of these standards with respect to relocations.

Since SFPP does not know UPRR s plans for projects or other activities that would cause pipeline relocations, it is difficult to quantify the effects of the outcome of these cases on SFPP. Even if SFPP is successful in advancing its positions, significant relocations for which SFPP must nonetheless bear the expense (i.e., for railroad purposes, with the standards in the federal Pipeline Safety Act applying) would have an adverse effect on our financial position and results of operations. These effects would be even greater in the event SFPP is unsuccessful in one or more of these litigations.

Severstal Sparrows Point Crane Collapse

On June 4, 2008, a bridge crane owned by Severstal Sparrows Point, LLC and located in Sparrows Point, Maryland collapsed while being operated by KMBT. According to KMP s investigation, the collapse was caused

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by unexpected, sudden and extreme winds. On June 24, 2009, Severstal filed suit against KMBT in the United States District Court for the District of Maryland, cause no. WMN 09CV1668. Severstal alleges that KMBT was contractually obligated to replace the collapsed crane and that its employees were negligent in failing to properly secure the crane prior to the collapse. Severstal seeks unspecified damages for value of the crane and lost profits. KMBT denies each of Severstal s allegations.

JR Nicholls Tug Incident

On February 10, 2010, the *JR Nicholls*, a tugboat operated by one of KMP s subsidiaries overturned and sank in the Houston Ship Channel. Five employees were on board and four were rescued, treated and released from a local hospital. The fifth employee died in the incident. The U.S. Coast Guard shut down a section of the ship channel for approximately 60 hours. Approximately 2,200 gallons of diesel fuel was released from the tugboat. Emergency response crews deployed booms and contained the product, which is substantially cleaned up. Salvage operations were commenced and the tugboat has been recovered. A full investigation of the incident is underway. Our subsidiary, J.R. Nicholls LLC filed a limitations action entitled *In the Matter of the Complaint of J.R. Nicholls LLC as Owner of the M/V J.R. NICHOLLS For Exoneration From or Limitation of Liability,* CA No. 4:10-CV-00449, U.S. District Court, S.D. Tex. To date, three surviving crew members have filed claims in that action for personal injuries and emotional distress. On September 15, 2010, KMP s subsidiary KM Ship Channel Services LLC, agreed to pay a civil penalty of $7,500 to the U.S. Coast Guard for the unintentional discharge of diesel fuel which occurred when the vessel sank.

The Premcor Refining Group, Inc. v. Kinder Morgan Energy Partners, L.P. and Kinder Morgan Petcoke, L.P.; Arbitration in Houston, Texas

On August 12, 2010, Premcor filed a demand for arbitration against KMP and its subsidiary Kinder Morgan Petcoke, L.P., collectively referred to as Kinder Morgan, asserting claims for breach of contract. Kinder Morgan performs certain petroleum coke handling operations at the Port Arthur, Texas refinery that is the subject of the claim. The arbitration is being administered by the American Arbitration Association in Dallas, Texas. Premcor alleges that Kinder Morgan breached its contract with Premcor by failing to name Premcor as an additional insured, and failing to indemnify Premcor for claims brought against Premcor by PACC. PACC and Premcor are affiliated companies. PACC brought its claims against Premcor in a previous separate arbitration seeking to recover damages allegedly suffered by PACC when a pit wall of a coker unit collapsed at a refinery owned by Premcor. PACC obtained an arbitration award against Premcor in the amount of $50.3 million, plus post-judgment interest. Premcor is seeking to hold Kinder Morgan liable for the award. Premcor s claim against Kinder Morgan is based in part upon Premcor s allegation that Kinder Morgan is responsible to the extent of Kinder Morgan s alleged proportionate fault in causing the pit wall collapse. Kinder Morgan denies and is vigorously defending against all claims asserted by Premcor. The final arbitration hearing is scheduled to begin on August 29, 2011.

Employee Matters

James Lugliani vs. Kinder Morgan G.P., Inc. et al. in the Superior Court of California, Orange County

James Lugliani, a former Kinder Morgan employee, filed suit in January 2010 against various Kinder Morgan affiliates. On behalf of himself and other similarly situated current and former employees, Mr. Lugliani claims that the Kinder Morgan defendants have violated the wage and hour provisions of the California Labor Code and Business & Professions Code by failing to provide meal and rest periods; failing to pay meal and rest period premiums; failing to pay all overtime wages due; failing to timely pay wages; failing to pay wages for vacation, holidays and other paid time off; and failing to keep proper payroll records. KMP intends to vigorously defend the case.

KINDER MORGAN, INC.

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Pipeline Integrity and Releases

From time to time, despite our best efforts, our pipelines experience leaks and ruptures. These leaks and ruptures may cause explosions, fire and damage to the environment, damage to property and/or personal injury or death. In connection with these incidents, we may be sued for damages caused by an alleged failure to properly mark the locations of our pipelines and/or to properly maintain our pipelines. Depending upon the facts and circumstances of a particular incident, state and federal regulatory authorities may seek civil and/or criminal fines and penalties.

Pasadena Terminal Fire

On September 23, 2008, a fire occurred in the pit 3 manifold area of our Pasadena, Texas liquids terminal facility. On January 8, 2010, a civil lawsuit was filed on behalf of the People of Texas and the TCEQ for alleged violations of the Texas Clean Air Act. The lawsuit was filed in the 53rd Judicial District Court, Travis County, Texas and is entitled *State of Texas v. Kinder Morgan Liquids Terminals,* case no. D1GV10000017. Specifically, the TCEQ alleges that KMLT had an unauthorized emission event relating to the pit 3 fire at the Pasadena terminal in September 2008. KMP reached an agreement with the TCEQ to settle this matter for $40,000 plus $4,000 in attorneys fees to be paid to the State of Texas. The settlement was finalized and entered in court on December 20, 2010.

Charlotte, North Carolina

On January 17, 2010, KMP s subsidiary Kinder Morgan Southeast Terminal LLC s Charlotte #2 Terminal experienced an issue with a pollution control device known as the Vapor Recovery Unit, which led to a fire and release of gasoline from the facility to adjacent property and a small creek. There were no injuries. KMP is cooperating fully with state and federal agencies on the response and remediation.

Barstow, California

The United States Department of the Navy has alleged that historic releases of methyl tertiary-butyl ether, or MTBE from Calnev s Barstow terminal (i) have migrated underneath the Navy s Marine Corps Logistics Base in Barstow; (ii) have impacted the Navy s existing groundwater treatment system for unrelated groundwater contamination not alleged to have been caused by Calnev and (iii) could affect the Barstow, California Marine Corps Logistic Base s water supply system. Although Calnev believes that it has meritorious defenses to the Navy s claims, it is working with the Navy to agree upon an Administrative Settlement Agreement and Order on Consent for federal Comprehensive Environmental Response, Compensation and Liability Act (referred to as CERCLA) Removal Action to reimburse the Navy for $0.5 million in past response actions.

Westridge Release, Burnaby, British Columbia

On July 24, 2007, a third-party contractor installing a sewer line for the City of Burnaby struck a crude oil pipeline segment included within KMP s Trans Mountain pipeline system near its Westridge terminal in Burnaby, British Columbia, resulting in a release of approximately 1,400 barrels of crude oil. The release impacted the surrounding neighborhood, several homes and nearby Burrard Inlet. No injuries were reported. To address the release, KMP initiated a comprehensive emergency response in collaboration with, among others, the City of Burnaby, the British Columbia Ministry of Environment, the National Energy Board (Canada), and the National Transportation Safety Board (Canada). Cleanup and environmental remediation is complete and KMP has received a British Columbia Ministry of Environment Certificate of Compliance confirming complete remediation.

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The National Transportation Safety Board released its investigation report on the incident on March 18, 2009. The report confirmed that an absence of pipeline location marking in advance of excavation and inadequate communication between the contractor and KMP s subsidiary Kinder Morgan Canada Inc., the operator of the line, were the primary causes of the accident. No directives, penalties or actions of Kinder Morgan Canada Inc. were required as a result of the report.

Kinder Morgan Canada, Inc. commenced a lawsuit against the parties it believes were responsible for the third party strike, and a number of other parties have commenced related actions. The parties are currently involved in structured mediation.

On July, 22, 2009, the British Columbia Ministry of Environment issued regulatory charges against the third-party contractor, the engineering consultant to the sewer line project, Kinder Morgan Canada Inc., and KMP subsidiary Trans Mountain L.P. The British Columbia Ministry of Environment claims that the parties charged caused the release of crude oil, and in doing so were in violation of various sections of the Environmental, Fisheries and Migratory Bird Act. A trial has been scheduled to commence in October of 2011. KMP is of the view that the charges have been improperly laid against it, and it intends to vigorously defend against them.

Rockies Express Pipeline LLC Indiana Construction Incident

In April 2009, Randy Gardner, an employee of Sheehan Pipeline Construction Company (a third-party contractor to Rockies Express and referred to in this note as Sheehan Construction) was fatally injured during construction activities being conducted under the supervision and control of Sheehan Construction. The cause of the incident was investigated by Indiana OSHA, which issued a citation to Sheehan Construction. Rockies Express was not cited in connection with the incident.

In August 2010, the estate of Mr. Gardner filed a wrongful death action against Rockies Express and several other parties in the Superior Court of Marion County, Indiana, at case number 49D111008CT036870. The plaintiff alleges that the defendants were negligent in allegedly failing to provide a safe worksite, and seeks unspecified compensatory damages. Rockies Express denies that it was in any way negligent or otherwise responsible for this incident, and intends to assert contractual claims for complete indemnification for any and all costs arising from this incident, including any costs related to this lawsuit, against third parties and their insurers.

Litigation Relating to the Going Private Transaction

Beginning on May 29, 2006, the day after the proposal for the Going Private Transaction was announced, and in the days following, eight putative Class Action lawsuits were filed in Harris County (Houston), Texas and seven putative Class Action lawsuits were filed in Shawnee County (Topeka), Kansas against, among others, Kinder Morgan, Inc., its Board of Directors, the Special Committee of the Board of Directors, and several corporate officers.

The eight Harris County cases were consolidated into the *Crescente v. Kinder Morgan, Inc. et al* case, Cause No. 2006-33011, in the 164th Judicial District Court, Harris County, Texas. The seven Kansas cases were consolidated into the Consol. Case No. 06 C 801; *In Re Kinder Morgan, Inc. Shareholder Litigation*; in the District Court of Shawnee County, Kansas, Division 12. The Consolidated Petitions filed by the plaintiffs challenged the proposed transaction as inadequate and unfair to Kinder Morgan, Inc. s public stockholders. They alleged that Kinder Morgan, Inc. s Board of Directors and certain members of senior management breached their fiduciary duties and the Sponsor Investors aided and abetted the alleged breaches of fiduciary duty in entering

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into the merger agreement. They sought, among other things, to enjoin the merger, rescission of the merger agreement, disgorgement of any improper profits received by the defendants, and attorneys fees. Defendants answered the Consolidated Petitions, denying the plaintiffs substantive allegations and denying that the plaintiffs are entitled to relief.

In August, September and October 2008, the Plaintiffs in both consolidated cases voluntarily dismissed without prejudice the claims against those Kinder Morgan, Inc. directors who did not participate in the buyout (including the dismissal of the members of the special committee of the board of directors), Kinder Morgan, Inc. and Knight Acquisition, Inc. In addition, on November 19, 2008, by agreement of the parties, the Texas trial court issued an order staying all proceedings in the Texas actions until such time as a final judgment shall be issued in the Kansas actions. The effect of this stay is that the consolidated matters will proceed only in the Kansas trial court.

On September 8, 2010, the parties entered into a $200 million settlement agreement to resolve the consolidated class action cases that were pending before the Kansas trial court. On November 19, 2010, the settlement was approved by the Kansas trial court and in December 2010 the $200 million settlement amount was paid into an escrow account that is subject to the jurisdiction of the court. For the year ended December 31, 2010, we recognized a $200 million, pre-tax charge in the caption General and administrative expense in our accompanying consolidated statement of income.

On December 2, 2010 a Notice of Appeal of the Kansas trial court s approval of the settlement was filed by Ernest Browne, Jr., a former owner of 185 shares of Kinder Morgan Kansas, Inc., in the Court of Appeals for the State of Kansas at Case No. 11-105562-A. Browne filed an amended Notice of Appeal on January 7, 2011. Browne had previously filed an objection in the Kansas trial court to the amount of attorneys fees sought by the plaintiffs class counsel in the underlying settlement, which objection was stricken as late-filed. It appears that Browne s appeal is related to the issues of whether his late-filed objection regarding attorneys fees was properly stricken, and whether the Kansas trial court s award of attorneys fees to plaintiffs class counsel was reasonable and proper. We do not expect the appeal to impact the effectiveness of the underlying settlement.

General

Although no assurance can be given, we believe that we have meritorious defenses to the actions set forth in this note and, to the extent an assessment of the matter is possible, if it is probable that a liability has been incurred and the amount of loss can be reasonably estimated, we believe that we have established an adequate reserve to cover potential liability.

Additionally, although it is not possible to predict the ultimate outcomes, we also believe, based on our experiences to date and the reserves we have established, that the ultimate resolution of these matters will not have a material adverse impact on our business, financial position, results of operations or dividends to shareholders. As of December 31, 2010 and 2009, we have recorded a total reserve for legal fees, transportation rate cases and other litigation liabilities in the amount of $169.8 million and $220.9 million, respectively. The reserve is primarily related to various claims from regulatory proceedings arising from KMP s West Coast products pipeline transportation rates, and the contingent amount is based on both the circumstances of probability and reasonability of dollar estimates. The reserve included increases in 2010 for a $172.0 million increase in expense associated with various rate case liability adjustments that increased KMP s overall rate case liability and a $200.0 million increase in expense associated with the Going Private Transaction litigation that increased our legal reserve. The reserve included decreases for 2010 payments of $206.3 million associated with the various rate cases discussed preceding and the $200.0 million Going Private Transaction litigation settlement payment in December 2010. We regularly assess the likelihood of adverse outcomes resulting from these claims in order to determine the adequacy of our liability provision.

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Environmental Matters

The City of Los Angeles v. Kinder Morgan Liquids Terminals, LLC, Shell Oil Company, Equilon Enterprises LLC; California Superior Court, County of Los Angeles, Case No. NC041463.

KMLT is a defendant in a lawsuit filed in 2005 alleging claims for environmental cleanup costs at the former Los Angeles Marine Terminal in the Port of Los Angeles. The lawsuit was stayed beginning in 2009 and remained stayed through the end of 2010. A hearing was held on December 13, 2010 to hear the City s motion to remove the litigation stay. At the hearing, the judge denied the motion to lift the stay without prejudice. A full litigation stay is in effect until the next case management conference set for June 13, 2011. During the stay, the parties deemed responsible by the local regulatory agency have worked with that agency concerning the scope of the required cleanup and are now starting a sampling and testing program at the site. The local regulatory agency issued specific cleanup goals in early 2010, and two of those parties, including KMLT, have appealed those cleanup goals to the state agency.

Plaintiff s Third Amended Complaint alleges that future environmental cleanup costs at the former terminal will exceed $10 million, and that the plaintiff s past damages exceed $2 million. No trial date has yet been set.

Exxon Mobil Corporation v. GATX Corporation, Kinder Morgan Liquids Terminals, LLC and ST Services, Inc.

On April 23, 2003, Exxon Mobil Corporation filed a complaint in the Superior Court of New Jersey, Gloucester County. The lawsuit relates to environmental remediation obligations at a Paulsboro, New Jersey liquids terminal owned by ExxonMobil from the mid-1950s through November 1989, by GATX Terminals Corp. from 1989 through September 2000, and later owned by Support Terminals and Pacific Atlantic Terminals, LLC. The terminal is now owned by Plains Products, and it too is a party to the lawsuit.

The complaint seeks any and all damages related to remediating all environmental contamination at the terminal, and, according to the New Jersey Spill Compensation and Control Act, treble damages may be available for actual dollars incorrectly spent by the successful party in the lawsuit. The parties engaged in court ordered mediation in 2008 through 2009, which did not result in settlement. The trial judge has issued a Case Management Order and the parties are actively engaged in discovery.

On June 25, 2007, the New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund, referred to collectively as the plaintiffs, filed a complaint against ExxonMobil Corporation and KMLT, formerly known as GATX Terminals Corporation, alleging natural resource damages related to historic contamination at the Paulsboro terminal. The complaint was filed in Gloucester County, New Jersey. Both ExxonMobil and KMLT filed third party complaints against Support Terminals/Plains seeking to bring Support Terminals/Plains into the case. Support Terminals/Plains filed motions to dismiss the third party complaints, which were denied. Support Terminals/Plains is now joined in the case, and it filed an Answer denying all claims. The court has consolidated the two cases. All private parties and the state participated in two mediation conferences in 2010.

In December, 2010, KMLT and Plains Products entered into an agreement in principle with the New Jersey Department of Environmental Protection for settlement of the state s alleged natural resource damages claim. Currently, a Consent Judgment is being finalized subject to public notice and comment and court approval. The tentative natural resource damage settlement includes a monetary award of $1.1 million and a series of remediation and restoration activities at the terminal site. KMLT and Plains Products have joint responsibility for

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this settlement. We anticipate a final Consent Judgment during second quarter 2011. The settlement with the state does not resolve the original complaint brought by Exxon Mobil. There is no trial date set.

Mission Valley Terminal Lawsuit

In August 2007, the City of San Diego, on its own behalf and purporting to act on behalf of the People of the State of California, filed a lawsuit against KMP and several affiliates seeking injunctive relief and unspecified damages allegedly resulting from hydrocarbon and MTBE impacted soils and groundwater beneath the City s stadium property in San Diego arising from historic operations at the Mission Valley terminal facility. The case was filed in the Superior Court of California, San Diego County, case number 37-2007-00073033-CU-OR-CTL. On September 26, 2007, KMP removed the case to the United States District Court, Southern District of California, case number 07CV1883WCAB. The City disclosed in discovery that it is seeking approximately $170 million in damages for alleged lost value/lost profit from the redevelopment of the City s property and alleged lost use of the water resources underlying the property. Later, in 2010, the City amended its initial disclosures to add claims for restoration of the site as well as a number of other claims that increased their claim for damages to approximately $365 million.

According to the Court s most recent Case Management Order of January 6, 2011, the parties must complete all fact discovery by June 24, 2011 and all expert witness discovery by August 29, 2011. A mandatory settlement conference is set for July 6, 2011 and the trial is now set for March 13, 2012. KMP has been and will continue to aggressively defend this action. This site has been, and currently is, under the regulatory oversight and order of the California Regional Water Quality Control Board. KMP continues to be in compliance with this agency order as it conducts an extensive remediation effort at the City s stadium property site.

Kinder Morgan, EPA Section 114 Information Request

On January 8, 2010, Kinder Morgan, Inc., on behalf of Natural Gas Pipeline Company of America LLC, Horizon Pipeline Company and Rockies Express Pipeline LLC, received a Clean Air Act Section 114 information request from the U.S. Environmental Protection Agency, Region V. This information request requires that the three affiliated companies provide the EPA with air permit and various other information related to their natural gas pipeline compressor station operations in Illinois, Indiana, and Ohio. The affiliated companies have responded to the request and believe the relevant natural gas compressor station operations are in substantial compliance with applicable air quality laws and regulations.

Other Environmental

We are subject to environmental cleanup and enforcement actions from time to time. In particular, the CERCLA generally imposes joint and several liability for cleanup and enforcement costs on current and predecessor owners and operators of a site, among others, without regard to fault or the legality of the original conduct, subject to the right of a liable party to establish a reasonable basis for apportionment of costs. Our operations are also subject to federal, state and local laws and regulations relating to protection of the environment. Although we believe our operations are in substantial compliance with applicable environmental law and regulations, risks of additional costs and liabilities are inherent in pipeline, terminal and carbon dioxide field and oil field operations, and there can be no assurance that we will not incur significant costs and liabilities. Moreover, it is possible that other developments, such as increasingly stringent environmental laws, regulations and enforcement policies under the terms of authority of those laws, and claims for damages to property or persons resulting from our operations, could result in substantial costs and liabilities to us.

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We are currently involved in several governmental proceedings involving alleged violations of environmental and safety regulations. As we receive notices of non-compliance, we negotiate and settle these matters. We do not believe that these alleged violations will have a material adverse effect on our business.

We are also currently involved in several governmental proceedings involving groundwater and soil remediation efforts under administrative orders or related state remediation programs. We have established a reserve to address the costs associated with the cleanup.

In addition, we are involved with and have been identified as a potentially responsible party in several federal and state superfund sites. Environmental reserves have been established for those sites where our contribution is probable and reasonably estimable. In addition, we are from time to time involved in civil proceedings relating to damages alleged to have occurred as a result of accidental leaks or spills of refined petroleum products, natural gas liquids, natural gas and carbon dioxide. See Pipeline Integrity and Releases above for additional information with respect to ruptures and leaks from our pipelines.

General

Although it is not possible to predict the ultimate outcomes, we believe that the resolution of the environmental matters set forth in this note will not have a material adverse effect on our business, financial position, results of operations or cash flows. However, we are not able to reasonably estimate when the eventual settlements of these claims will occur and changing circumstances could cause these matters to have a material adverse impact. As of December 31, 2010, we have accrued an environmental reserve of $79.8 million, and we believe the establishment of this environmental reserve is adequate such that the resolution of pending environmental matters will not have a material adverse impact on our business, cash flows, financial position or results of operations. In addition, as of December 31, 2010, we have recorded a receivable of $8.6 million for expected cost recoveries that have been deemed probable. As of December 31, 2009, our environmental reserve totaled $86.3 million and our estimated receivable for environmental cost recoveries totaled $4.3 million. Additionally, many factors may change in the future affecting our reserve estimates, such as (i) regulatory changes; (ii) groundwater and land use near our sites and (iii) changes in cleanup technology.

Other

We are a defendant in various lawsuits arising from the day-to-day operations of our businesses. Although no assurance can be given, we believe, based on our experiences to date and taking into account established reserves, that the ultimate resolution of such items will not have a material adverse impact on our business, financial position, results of operations or cash flows.

17. Regulatory Matters

The tariffs we charge for transportation on our interstate common carrier pipelines are subject to rate regulation by the FERC, under the Interstate Commerce Act. The Interstate Commerce Act requires, among other things, that interstate petroleum products pipeline rates be just and reasonable and nondiscriminatory. Pursuant to FERC Order No. 561, effective January 1, 1995, interstate petroleum products pipelines are able to change their rates within prescribed ceiling levels that are tied to an inflation index. FERC Order No. 561-A, affirming and clarifying Order No. 561, expanded the circumstances under which interstate petroleum products pipelines may employ cost-of-service ratemaking in lieu of the indexing methodology, effective January 1, 1995. For each of the years ended December 31, 2010, 2009 and 2008, the application of the indexing methodology did not significantly affect tariff rates on our interstate petroleum products pipelines.

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Below is a brief description of our ongoing regulatory matters, including any material developments that occurred during 2010.

Natural Gas Pipeline Expansion Filings

Rockies Express Pipeline LLC Meeker to Cheyenne Expansion Project

Pursuant to certain rights exercised by EnCana Gas Marketing USA as a result of its foundation shipper status on the former Entrega Gas Pipeline LLC facilities (now part of the Rockies Express Pipeline), Rockies Express Pipeline LLC requested authorization to construct and operate certain facilities that will comprise its Meeker, Colorado to Cheyenne Hub expansion project. The proposed expansion would add natural gas compression at its Big Hole compressor station located in Moffat County, Colorado, and its Arlington compressor station located in Carbon County, Wyoming. Furthermore, the additional compression would permit the transportation of an additional 200 million cubic feet per day of natural gas from (i) the Meeker Hub located in Rio Blanco County, Colorado northward to the Wamsutter Hub located in Sweetwater County, Wyoming and (ii) the Wamsutter Hub eastward to the Cheyenne Hub located in Weld County, Colorado.

By FERC order issued July 16, 2009, Rockies Express Pipeline LLC was granted authorization to construct and operate this project, and it commenced construction on August 4, 2009. The additional compression at the Big Hole compressor station was made available as of December 9, 2009, and the additional compression at the Arlington compressor station was made available as of October 5, 2010. The expansion is fully contracted. The total FERC authorized cost for the proposed project was approximately $78 million; however, total costs for the project were approximately $50.5 million.

Kinder Morgan Interstate Gas Transmission Pipeline Huntsman 2009 Expansion Project

KMIGT filed an application with the FERC for authorization to construct and operate certain storage facilities necessary to increase the storage capability of the existing Huntsman Storage Facility, located near Sidney, Nebraska. KMIGT also requested approval of new incremental rates for the project facilities under its currently effective Cheyenne Market Center Service Rate Schedule CMC-2. By FERC order issued September 30, 2009, KMIGT was granted authorization to construct and operate the project, and construction of the project commenced on October 12, 2009. KMIGT received FERC approval to commence service on the expanded storage project effective February 1, 2010, and KMIGT placed all remaining facilities into service on August 13, 2010. Total costs for the project were approximately $10.1 million, significantly under the original budget.

Kinder Morgan Interstate Gas Transmission Pipeline Franklin to Hastings Expansion Project

KMIGT has filed a prior notice request to expand and replace certain mainline pipeline facilities to create up to 10,000 dekatherms per day of firm transportation capacity to serve an ethanol plant located near Aurora, Nebraska. The estimated cost of the proposed facilities is $18.6 million. On September 24, 2010 Seminole Energy Services, LLC filed a protest to the construction of this project, and the protest was subsequently denied by the FERC in an order issued October 15, 2010. KMIGT is proceeding with the construction of this project which is expected to be completed in early spring 2011.

Fayetteville Express Pipeline LLC Docket No.CP09-433-000

In January 2011, construction was fully completed on the previously announced Fayetteville Express Pipeline project. The Fayetteville Express Pipeline is owned by Fayetteville Express Pipeline LLC, a 50/50 joint

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venture between KMP and Energy Transfer Partners, L.P. The Fayetteville Express Pipeline is a 187-mile, 42-inch diameter natural gas pipeline that begins in Conway County, Arkansas, continues eastward through White County, Arkansas, and terminates at an interconnection with Trunkline Gas Company s pipeline in Panola County, Mississippi. The pipeline will have an initial capacity of two billion cubic feet per day, and has currently secured binding commitments for approximately ten years totaling 1.85 billion cubic feet per day of capacity.

On December 17, 2009, the FERC approved the pipeline s certificate application authorizing pipeline construction, and initial construction on the project began in January 2010. The pipeline began interim transportation service on October 12, 2010, and began firm contract transportation for all shippers on January 1, 2011. KMP s current estimate of total construction costs on the project is slightly less than $1.0 billion (versus the original budget of $1.3 billion).

Products Pipelines and Natural Gas Pipelines Regulatory Proceedings

For information on our pipeline regulatory proceedings, see Note 16 Litigation, Environmental and Other Contingencies Federal Energy Regulatory Commission Proceedings and California Public Utilities Commission Proceedings.

18. Recent Accounting Pronouncements

Accounting Standards Updates

In December 2009, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2009-16, Accounting for Transfers of Financial Assets and ASU No. 2009-17, Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities. ASU No. 2009-16 amended the Codification s Transfers and Servicing Topic to include the provisions included within the FASB s previous Statement of Financial Accounting Standards (SFAS) No. 166, Accounting for Transfers of Financial Assets an amendment of FASB Statement No. 140, issued June 12, 2009. ASU No. 2009-17 amended the Codification s Consolidations Topic to include the provisions included within the FASB s previous SFAS No. 167, Amendments to FASB Interpretation No. 46(R), also issued June 12, 2009. These two Updates changed the way entities must account for securitizations and special-purpose entities. ASU No. 2009-16 requires more information about transfers of financial assets, including securitization transactions, and where companies have continuing exposure to the risks related to transferred financial assets. ASU No. 2009-17 changes how a company determines whether an entity that is insufficiently capitalized or is not controlled through voting (or similar rights) should be consolidated.

For us, both ASUs were effective January 1, 2010; however, the adoption of these ASUs did not have a material impact on our consolidated financial statements. The principal impact of ASU No. 2009-17 is that, effective January 1, 2010 we no longer consolidate Triton Power Company LLC in our consolidated financial statements. There is no impact to Net Income Attributable to Kinder Morgan, Inc. relating to the exclusion of Triton Power Company LLC, however, we have shown the excluded Triton Power Company LLC s (i) $17.5 million cash and cash equivalent balance at December 31, 2009 as a Deconsolidation of variable interest entity due to the implementation of ASU 2009-17 in our accompanying consolidated statement of cash flows for the year ended December 31, 2010 and (ii) $45.9 million noncontrolling interest balance at December 31, 2009 as a reduction to our noncontrolling interests in our accompanying consolidated statements of members equity for the year ended December 31, 2010. In addition, as a result of the implementation of ASU 2009-17, effective January 1, 2010, we (i) include the transactions and balances of our business trusts, K N Capital Trust I and K N Capital Trust III, in our consolidated financial statements and (ii) no longer include our Junior Subordinated Deferrable Interest Debentures issued to the Capital Trusts.

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In January 2010, the FASB issued Accounting Standards Update No. 2010-06, Improving Disclosures about Fair Value Measurements. This ASU requires both the gross presentation of activity within the Level 3 fair value measurement roll forward and the details of transfers in and out of Levels 1 and 2 fair value measurements. It also clarifies certain disclosure requirements on the level of disaggregation of fair value measurements and disclosures on inputs and valuation techniques. For us, this ASU was effective January 1, 2010 (except for the Level 3 roll forward which was effective for us January 1, 2011); however, because this ASU pertains to disclosure requirements only, the adoption of this ASU did not have a material impact on our consolidated financial statements. Furthermore, during each of the years ended December 31, 2010 and 2009, we made no transfers in and out of Level 1, Level 2 or Level 3 of the fair value hierarchy.

In July 2010, the FASB issued Accounting Standards Update No. 2010-20, Disclosures about the Credit Quality of Financing Receivables and the Allowance for Credit Losses. ASU No. 2010-20 requires companies that hold financing receivables, which include loans, lease receivables, and the other long-term receivables to provide more information in their disclosures about the credit quality of their financing receivables and the credit reserves held against them. On December 31, 2010, we adopted all amendments that require disclosures as of the end of a reporting period, and on January 1, 2011, we adopted all amendments that require disclosures about activity that occurs during a reporting period (the remainder of this ASU). The adoption of this ASU did not have a material impact on our consolidated financial statements.

19. Quarterly Financial Data (Unaudited)

	Operating Revenues	Operating Income (In millions)	Net Income (Loss)
2010			
First Quarter(a)	$ 2,157.6	$ 244.4	$ (179.9)
Second Quarter	1,990.9	405.4	260.3
Third Quarter(b)	2,088.2	181.1	52.6
Fourth Quarter	1,953.9	449.8	166.6
2009			
First Quarter	$ 1,828.9	$ 309.9	$ 144.9
Second Quarter	1,693.3	346.7	209.1
Third Quarter	1,712.3	391.2	229.4
Fourth Quarter	1,950.7	359.4	189.7

(a) First quarter 2010 includes a $158.0 million increase in expense associated with rate case liability adjustments and a $430.0 million impairment on our investment in NGPL.

(b) Third quarter 2010 includes $200.0 million in expense associated with the Going Private Transaction litigation settlement.

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20. Supplemental Information on Oil and Gas Producing Activities (Unaudited)

Operating Statistics

Operating statistics from KMP s oil and gas producing activities for each of the years 2010, 2009 and 2008 are shown in the following table:

Results of Operations for Oil and Gas Producing Activities Unit Prices and Costs

	Year Ended December 31,		
	2010	**2009**	**2008**
Consolidated Companies(a)			
Production costs per barrel of oil equivalent(b)(c)(d)	$ 12.58	$ 11.44	$ 15.70
Crude oil production (MBbl/d)	35.5	37.4	36.2
SACROC crude oil production (MBbl/d)	24.3	25.1	23.3
Yates crude oil production (MBbl/d)	10.7	11.8	12.3
Natural gas liquids production (MBbl/d)(d)	5.8	5.4	4.8
Natural gas liquids production from gas plants(MBbl/d)(e)	4.2	4.0	3.5
Total natural gas liquids production(MBbl/d)	10.0	9.4	8.3
SACROC natural gas liquids production (MBbl/d)(d)	5.5	5.3	4.6
Yates natural gas liquids production (MBbl/d)(d)	0.2	0.1	0.2
Natural gas production (MMcf/d)(d)(f)	1.4	0.9	1.4
Natural gas production from gas plants(MMcf/d)(e)(f)	1.9	0.7	0.2
Total natural gas production(MMcf/d)(f)	3.3	1.6	1.6
Yates natural gas production (MMcf/d)(d)(f)	1.3	0.8	1.3
Average sales prices including hedge gains/losses:			
Crude oil price per Bbl(g)	$ 59.96	$ 49.55	$ 49.42
Natural gas liquids price per Bbl(g)	$ 50.34	$ 37.70	$ 63.48
Natural gas price per Mcf(h)	$ 4.08	$ 3.45	$ 7.73

Total natural gas liquids price per Bbl(e)	$ 51.03	$ 37.96	$ 63.00
Total natural gas price per Mcf(e)	$ 4.10	$ 3.53	$ 7.63
Average sales prices excluding hedge gains/losses:			
Crude oil price per Bbl(g)	$ 76.93	$ 59.03	$ 97.70
Natural gas liquids price per Bbl(g)	$ 50.34	$ 37.70	$ 63.48
Natural gas price per Mcf(h)	$ 4.08	$ 3.45	$ 7.73

(a) Amounts relate to Kinder Morgan CO2 Company, L.P. and its consolidated subsidiaries.

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(b) Computed using production costs, excluding transportation costs, as defined by the SEC. Natural gas volumes were converted to barrels of oil equivalent using a conversion factor of six mcf of natural gas to one barrel of oil.
(c) Production costs include labor, repairs and maintenance, materials, supplies, fuel and power, and general and administrative expenses directly related to oil and gas producing activities.
(d) Includes only production attributable to leasehold ownership.
(e) Includes production attributable to KMP s ownership in processing plants and third party processing agreements.
(f) Excludes natural gas production used as fuel.
(g) Hedge gains/losses for crude oil and natural gas liquids are included with crude oil.
(h) Natural gas sales were not hedged.

The following three tables provide supplemental information on oil and gas producing activities, including (i) capitalized costs related to oil and gas producing activities; (ii) costs incurred for the acquisition of oil and gas producing properties and for exploration and development activities and (iii) the results of operations from oil and gas producing activities.

Capitalized costs consisted of the following (in millions):

Capitalized Costs Related to Oil and Gas Producing Activities

	As of December 31,		
	2010	2009	2008
Consolidated Companies(a)			
Wells and equipment, facilities and other	$ 3,158.8	$ 2,920.7	$ 2,595.4
Leasehold	433.1	433.5	429.8
Total proved oil and gas properties	3,591.9	3,354.2	3,025.2
Unproved property(b)	88.3	10.2	
Accumulated depreciation and depletion	(2,235.4)	(1,764.0)	(1,155.6)
Net capitalized costs	$ 1,444.8	$ 1,600.4	$ 1,869.6

(a) Amounts relate to Kinder Morgan CO_2 Company, L.P. and its consolidated subsidiaries. Includes capitalized asset retirement costs and associated accumulated depreciation.
(b) The unproved amounts consist of capitalized costs related to the Katz Strawn Unit, which is in the initial stages of the carbon dioxide flooding operation.

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For each of the years 2010, 2009 and 2008, KMP s costs incurred for property acquisition, exploration and development were as follows (in millions):

Costs Incurred in Exploration, Property Acquisitions and Development

	Year Ended December 31,		
	2010	2009	2008
Consolidated Companies(a)			
Property acquisition proved oil and gas properties	$	$ 5.3	$
Development	326.0	330.3	495.2

(a) Amounts relate to Kinder Morgan CO_2 Company, L.P. and its consolidated subsidiaries. During 2010, KMP spent $78.2 million on unproved properties development costs related to the Katz Strawn Unit, which is in the initial stages of the carbon dioxide flooding operation. No exploration costs were incurred for the periods reported.

KMP s results of operations from oil and gas producing activities for each of the years 2010, 2009 and 2008 are shown in the following table (in millions):

Results of Operations for Oil and Gas Producing Activities

	Year Ended December 31,		
	2010	2009	2008
Consolidated Companies(a)			
Revenues(b)	$ 903.2	$ 767.0	$ 785.5
Expenses:			
Production costs(c)	229.5	188.8	308.4
Other operating expenses(d)	62.7	53.3	99.0
Depreciation, depletion and amortization expenses	406.3	441.4	342.2
Total expenses	698.5	683.5	749.6
Results of operations for oil and gas producing activities	$ 204.7	$ 83.5	$ 35.9

(a) Amounts relate to Kinder Morgan CO_2 Company, L.P. and its consolidated subsidiaries.

(b) Revenues include losses attributable to KMP s hedging contracts of $219.9 million, $129.5 million and $693.3 million for the years ended December 31, 2010, 2009 and 2008, respectively.

(c) The decrease in operating expenses in 2009 compared to 2008 was primarily due to (i) lower prices charged by the industry s material and service providers (for items such as outside services, maintenance, and well workover services), which impacted rig costs, other materials and services, and capital and exploratory costs; (ii) lower fuel and utility rates and (iii) the successful renewal of lower priced service and supply contracts negotiated since the end of 2008.

(d) Consists primarily of carbon dioxide expense.

Supplemental information is also provided for the following three items (i) estimated quantities of proved oil and gas reserves; (ii) the standardized measure of discounted future net cash flows associated with proved oil and gas reserves; and (iii) a summary of the changes in the standardized measure of discounted future net cash flows associated with proved oil and gas reserves.

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The technical persons responsible for preparing the reserves estimates presented in this Note meet the requirements regarding qualifications, independence, objectivity, and confidentiality set forth in the standards pertaining to the Estimating and Auditing of Oil and Gas Reserves Information promulgated by the Society of Petroleum Engineers. They are independent petroleum engineers, geologists, geophysicists, and petrophysicists; they do not own an interest in KMP s oil and gas properties; and we do not employ them on a contingent basis. Our employee who is primarily responsible for overseeing Netherland, Sewell and Associate, Inc. s preparation of the reserves estimates is a registered Professional Engineer in the states of Texas and Kansas with a Doctorate of Engineering from the University of Kansas. He is a member of the Society of Petroleum Engineers and has over 25 years of professional engineering experience.

We believe the geologic and engineering data examined provides reasonable assurance that the proved reserves are recoverable in future years from known reservoirs under existing economic and operating conditions. Estimates of proved reserves are subject to change, either positively or negatively, as additional information becomes available and contractual and economic conditions change.

Furthermore, our management is responsible for establishing and maintaining adequate internal control over financial reporting, which includes the estimation of our oil and gas reserves. We maintain internal controls and guidance to ensure the reliability of our crude oil, natural gas liquids and natural gas reserves estimations, as follows:

- no employee s compensation is tied to the amount of recorded reserves;

- we follow comprehensive SEC compliant internal policies to determine and report proved reserves, and its reserve estimates are made by experienced oil and gas reservoir engineers or under their direct supervision;

- we review our reported proved reserves at each year-end, and at each year-end, the CO_2 KMP business segment managers and the Vice President (President, CO_2 KMP) reviews all significant reserves changes and all new proved developed and undeveloped reserves additions; and

- the CO_2 KMP business segment reports independently of our other six remaining reportable business segments.

For more information on our controls and procedures, see Item 9A Controls and Procedures Management s Report on Internal Control Over Financial Reporting included in our Annual Report on Form 10-K for the year ended December 31, 2010, incorporated by reference.

Proved oil and gas reserves are the estimated quantities of crude oil, natural gas and natural gas liquids which geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs under existing economic and operating conditions, that is, current prices and costs calculated as of the date the estimate is made. Beginning in 2009, pricing is applied based upon the twelve month unweighted arithmetic average of the first day of the month price for the year. For prior years, pricing was based on the price as of year end. Future development and production costs are determined based upon actual cost at year-end. Proved developed reserves are the quantities of crude oil, natural gas liquids and natural gas expected to be recovered through existing investments in wells and field infrastructure under current operating conditions. Proved undeveloped reserves require additional investments in wells and related infrastructure in order to recover the production.

As of December 31, 2008, KMP had 53.4 million barrels of crude oil and 4.3 million barrels of natural gas liquids classified as proved developed reserves. Also as of year-end 2008, KMP had 25.2 million barrels of crude oil and 2.6 million barrels of natural gas liquids classified as proved undeveloped reserves.

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During 2009 production from the fields totaled 13.7 million barrels of oil and 2.0 million barrels of natural gas liquids. In addition, KMP incurred $330.3 million in capital costs which resulted in the development of 7.4 million barrels of oil and 0.4 million barrels of natural gas liquids and their transfer from the proved undeveloped category. These reclassifications reflect the transfer of 29.2% of crude oil and 13.7% of natural gas liquids from the proved undeveloped reserves reported as of December 31, 2008 to the proved developed classification of reserves reported as of December 31, 2009.

Also during 2009, previous estimates of proved undeveloped reserves were revised upwards by 15.9 million barrels of crude oil and 1.1 million barrels of natural gas liquids. These revisions were due primarily to utilizing a higher prescribed oil price basis for year-end 2009 ($57.65 per barrel) than year-end 2008 ($41.00 per barrel). The higher oil price basis resulted in 75 patterns being added to KMP s SACROC carbon dioxide flood project; also, the SACROC carbon dioxide flood project life was extended from 2014 to 2018. These revisions to our previous estimates, as well as the transfer of proved undeveloped reserves to the proved developed category, as discussed above, resulted in the percentage of proved undeveloped reserves increasing from 32.4% at year-end 2008 to 42.6% at year-end 2009.

After giving effect to production, revisions to previous estimates and minor purchases of reserves in place, during 2009 total proved reserves of crude oil increased by 2.2 million barrels and total proved reserves of natural gas liquids decreased by 0.9 million barrels. As of December 31, 2009, KMP had 47.0 million barrels of crude oil and 2.7 million barrels of natural gas liquids classified as proved developed reserves. Also as of year-end 2009, KMP had 33.8 million barrels of crude oil and 3.2 million barrels of natural gas liquids classified as proved undeveloped reserves. Total proved reserves as of December 31, 2009 were 80.8 million barrels of oil and 5.9 million barrels of natural gas liquids.

During 2010, production from the fields totaled 13.0 million barrels of crude oil and 2.1 million barrels of natural gas liquids. In addition, KMP incurred $248.0 million in capital costs which resulted in the development of 10.0 million barrels of crude oil and 1.3 million barrels of natural gas liquids and their transfer from the proved undeveloped category to the proved developed category. These reclassifications reflect the transfer of 29.6% of crude oil and 39.9% of natural gas liquids from the proved undeveloped reserves reported as of December 31, 2009 to the proved developed classification of reserves reported as of December 31, 2010.

Also during 2010, previous estimates of proved developed reserves were revised upwards by 12.3 million barrels of crude oil and 0.4 million barrels of natural gas liquids and proved undeveloped reserves were revised upward by 4.0 million barrels of crude oil and 0.7 million barrels of natural gas liquids. Almost 90 percent of the revisions were associated with our third party oil and gas consultants revising the methodology used to estimate reserves for KMP s Yates Field Unit in order to take greater account of the reservoir mechanisms associated with carbon dioxide injection, for which there are now seven years of history. The revised methodology used to forecast the Yates Field Unit future performance utilizes a volume balance based on a correlation of historical production to observed oil saturations and reservoir volume factors during the life of the Yates Field with emphasis on the period from 1996 through 2010. A portion of these revisions is attributed to utilizing a higher prescribed oil price basis to calculate reserves ($75.96 per barrel for year-end 2010 versus $57.65 per barrel for year-end 2009).

These revisions to the previous estimates, as well as the transfer of proved undeveloped reserves to the proved developed category as discussed above, resulted in the percentage of proved undeveloped reserves decreasing from 42.6% at year-end 2009 to 33.9% at year-end 2010. After giving effect to production and revisions to previous estimates during 2010, total proved reserves of crude oil increased by 3.3 million barrels and total proved reserves of natural gas liquids decreased by 1.1 million barrels.

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As of December 31, 2010 we had 56.4 million barrels of crude oil and 2.2 million barrels of natural gas liquids classified as proved developed reserves. Also, as of year-end 2010, we had 27.8 million barrels of crude oil and 2.6 million barrels of natural gas liquids classified as proved undeveloped reserves. Total proved reserves as of December 31, 2010 were 84.2 million barrels of crude oil and 4.9 million barrels of natural gas liquids. We currently expect that the proved undeveloped reserves reported as of December 31, 2010 will be developed within the next five years.

During 2010, we filed estimates of KMP s oil and gas reserves for the year 2009 with the Energy Information Administration of the U. S. Department of Energy on Form EIA-23. The data on Form EIA-23 was presented on a different basis, and included 100% of the oil and gas volumes from KMP s operated properties only, regardless of its net interest. The difference between the oil and gas reserves reported on Form EIA-23 and those reported in this Note exceeds 5%.

The following Reserve Quantity Information table discloses estimates, as of December 31, 2010, of proved crude oil, natural gas liquids and natural gas reserves, prepared by Netherland, Sewell and Associates, Inc. (independent oil and gas consultants), of Kinder Morgan CO_2 Company, L.P. and its consolidated subsidiaries interests in oil and gas properties, all of which are located in the state of Texas. This data has been prepared using current prices and costs, as discussed above, and the estimates of reserves and future revenues in this Note conform to the guidelines of the U.S. Securities and Exchange Commission (SEC).

Reserve Quantity Information

	Consolidated Companies(a)		
	Crude Oil (MBbls)	NGLs (MBbls)	Natural Gas (MMcf)(b)
Proved developed and undeveloped reserves:			
As of December 31, 2007	121,355	11,112	1,078
Revisions of previous estimates(c)	(29,536)	(2,490)	695
Production	(13,240)	(1,762)	(499)
As of December 31, 2008	78,579	6,860	1,274
Revisions of previous estimates(d)	15,900	1,018	(293)
Production	(13,688)	(1,995)	(298)
Purchases of reserves in place	53	37	15
As of December 31, 2009	80,844	5,920	698
Revisions of previous estimates(e)	16,294	1,059	2,923
Production	(12,962)	(2,116)	(523)
As of December 31, 2010	84,176	4,863	3,098
Proved developed reserves:			
As of December 31, 2008	53,346	4,308	1,274
As of December 31, 2009	47,058	2,665	698
As of December 31, 2010	56,423	2,221	3,098
Proved undeveloped reserves:			

As of December 31, 2008	25,233	2,552
As of December 31, 2009	33,786	3,255
As of December 31, 2010	27,753	2,642

(a) Amounts relate to Kinder Morgan CO_2 Company, L.P. and its consolidated subsidiaries.

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KINDER MORGAN, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(b) Natural gas reserves are computed at 14.65 pounds per square inch absolute and 60 degrees fahrenheit.
(c) Predominantly due to lower product prices used to determine reserve volumes.
(d) Predominantly due to higher product prices resulting in an expanded economic carbon dioxide project area.
(e) Predominantly due to higher product prices used to determine reserve volumes and the change in methodology discussed above.

The standardized measure of discounted cash flows and summary of the changes in the standardized measure computation from year-to-year are prepared in accordance with the Extractive Activities Oil and Gas Topic of the Codification. The assumptions that underlie the computation of the standardized measure of discounted cash flows, presented in the table below, may be summarized as follows:

- the standardized measure includes our estimate of proved crude oil, natural gas liquids and natural gas reserves and projected future production volumes based upon year-end economic conditions;

- for 2010 and 2009, pricing is applied based upon the 12 month unweighted arithmetic average of the first day of the month price for the year, and for 2008, was based upon the price as of the end of the year;

- future development and production costs are determined based upon actual cost at year-end;

- the standardized measure includes projections of future abandonment costs based upon actual costs at year-end; and

- a discount factor of 10% per year is applied annually to the future net cash flows.

The standardized measure of discounted future net cash flows from proved reserves were as follows (in millions):

Standardized Measure of Discounted Future Net Cash Flows From

Proved Oil and Gas Reserves

	As of December 31,		
	2010	**2009**	**2008**
Consolidated Companies(a)			
Future cash inflows from production	$ 6,665.8	$ 4,898.0	$ 3,498.0
Future production costs	(2,387.9)	(1,951.5)	(1,671.6)
Future development costs(b)	(1,433.7)	(1,179.7)	(910.3)
Undiscounted future net cash flows	2,844.2	1,766.8	916.1
10% annual discount	(946.6)	(503.5)	(257.7)
Standardized measure of discounted future net cash flows	$ 1,897.6	$ 1,263.3	$ 658.4

(a) Amounts relate to Kinder Morgan CO_2 Company, L.P. and its consolidated subsidiaries.
(b) Includes abandonment costs.

KINDER MORGAN, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following table represents our estimate of changes in the standardized measure of discounted future net cash flows from proved reserves (in millions):

Changes in the Standardized Measure of Discounted Future Net Cash Flows From

Proved Oil and Gas Reserves

	As of December 31,		
	2010	**2009**	**2008**
Consolidated Companies(a)			
Present value as of January 1	$ 1,263.3	$ 658.4	$ 4,078.4
Changes during the year:			
Revenues less production and other costs(b)	(828.2)	(652.7)	(1,012.4)
Net changes in prices, production and other costs(b)	890.0	915.7	(3,076.9)
Development costs incurred	248.0	330.3	495.2
Net changes in future development costs	(296.6)	(445.4)	231.1
Purchases of reserves in place			
Revisions of previous quantity estimates(c)	494.2	391.1	(417.1)
Accretion of discount	126.9	65.9	392.9
Timing differences and other			(32.8)
Net change for the year	634.3	604.9	(3,420.0)
Present value as of December 31	$ 1,897.6	$ 1,263.3	$ 658.4

(a) Amounts relate to Kinder Morgan CO_2 Company, L.P. and its consolidated subsidiaries.

(b) Excludes the effect of losses attributable to KMP s hedging contracts of $219.9 million, $129.5 million and $639.3 million for the years ended December 31, 2010, 2009 and 2008, respectively.

(c) 2010 revisions were primarily due to higher product prices used to determine reserve volumes and the change in methodology discussed above. 2009 revisions were primarily due to higher product prices resulting in an expanded economic carbon dioxide project area. 2008 revisions were predominately due to lower product prices used to determine reserve volumes.

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KINDER MORGAN, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF INCOME

(In Millions Except Per Share Amounts)

(Unaudited)

	Nine Months Ended September 30,	
	2011	2010
Revenues		
Natural gas sales	$ 2,594.9	$ 2,831.3
Services	2,317.6	2,248.9
Product sales and other	1,335.1	1,156.5
Total Revenues	6,247.6	6,236.7
Operating Costs, Expenses and Other		
Gas purchases and other costs of sales	2,641.5	2,829.2
Operations and maintenance	1,201.1	1,103.9
Depreciation, depletion and amortization	807.6	813.7
General and administrative	399.2	528.7
Taxes, other than income taxes	141.4	128.1
Other expense (income)	(12.3)	2.2
Total Operating Costs, Expenses and Other	5,178.5	5,405.8
Operating Income	1,069.1	830.9
Other Income (Expense)		
Earnings (loss) from equity investments	214.7	(256.1)
Amortization of excess cost of equity investments	(4.9)	(4.3)
Interest expense	(524.2)	(493.8)
Interest income	19.1	17.9
Loss on remeasurement of previously held equity interest in KinderHawk (Note 2)	(167.2)	
Other, net	11.0	9.7
Total Other Income (Expense)	(451.5)	(726.6)
Income from Continuing Operations Before Income Taxes	617.6	104.3
Income Tax (Expense) Benefit	(250.2)	29.1
Income from Continuing Operations	367.4	133.4
Loss from Discontinued Operations, Net of Tax	(0.5)	(0.4)
Net Income	366.9	133.0
Net Loss (Income) Attributable to Noncontrolling Interests	71.7	(237.3)
Net Income (Loss) Attributable to Kinder Morgan, Inc.	$ 438.6	$ (104.3)

Basic Earnings Per Common Share	
Class P Shares	$ 0.52
Class A Shares	$ 0.48
Basic Weighted Average Number of Shares Outstanding	
Class P Shares	110.8
Class A Shares	596.2
Diluted Earnings Per Common Share	
Class P Shares	$ 0.52
Class A Shares	$ 0.48
Diluted Weighted Average Number of Shares	
Class P Shares	707.4
Class A Shares	596.2
Dividends Per Common Share Declared	$ 0.74

The accompanying notes are an integral part of these consolidated financial statements.

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KINDER MORGAN, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

(Dollars in Millions, Except Share and Per Share Amounts)

	September 30, 2011 (Unaudited)	December 31, 2010
ASSETS		
Current assets		
Cash and cash equivalents KMI	$ 2.9	$ 373.3
Cash and cash equivalents KMP	271.0	129.1
Restricted deposits	41.8	90.5
Accounts, notes and interest receivable, net	830.2	971.4
Inventories	101.3	92.0
Gas in underground storage	27.2	2.2
Fair value of derivative contracts	135.2	24.0
Other current assets	68.6	104.4
Total current assets	1,478.2	1,786.9
Property, plant and equipment, net	17,715.9	17,070.7
Investments	3,668.7	4,291.1
Notes receivable	164.0	115.0
Goodwill	4,940.6	4,830.9
Other intangibles, net	1,201.3	339.2
Fair value of derivative contracts	771.5	301.7
Deferred charges and other assets	217.2	172.6
Total Assets	$ 30,157.4	$ 28,908.1
LIABILITIES AND STOCKHOLDERS EQUITY		
Current liabilities		
Current portion of debt KMI	$ 1,216.6	$ 750.9
Current portion of debt KMP	1,844.4	1,262.4
Cash book overdrafts	41.9	34.3
Accounts payable	640.4	647.5
Accrued interest	126.8	310.4
Accrued taxes	102.0	44.7
Deferred revenues	92.1	96.7
Fair value of derivative contracts	71.9	281.5
Accrued other current liabilities	258.9	215.7
Total current liabilities	4,395.0	3,644.1
Long-term liabilities and deferred credits		
Long-term debt		
Outstanding KMI	1,942.5	2,779.2
Outstanding KMP	10,662.2	10,277.4
Preferred interest in general partner of KMP	100.0	100.0
Value of interest rate swaps	1,146.8	656.3
Total long-term debt	13,851.5	13,812.9
Deferred income taxes	2,226.3	2,092.7

Fair value of derivative contracts	21.4	172.2
Other long-term liabilities and deferred credits	915.7	647.2
Total long-term liabilities and deferred credits	17,014.9	16,725.0
Total Liabilities	21,409.9	20,369.1
Commitments and contingencies (Notes 4 and 11)		
Stockholders Equity		
Class P shares, $0.01 par value, 2,000,000,000 shares authorized, 110,898,898 shares issued and outstanding	1.1	
Class A shares, $0.01 par value, 707,000,000 shares authorized, 596,102,672 shares issued and outstanding	6.0	
Class B shares, $0.01 par value, 100,000,000 shares authorized, 100,000,000 shares issued and outstanding	1.0	
Class C shares, $0.01 par value, 2,462,927 shares authorized, 2,462,927 shares issued and outstanding		
Preferred stock, $0.01 par value, 10,000,000 shares authorized, none outstanding		
Additional paid-in capital	3,423.3	
Retained earnings	56.5	
Members capital (Note 5)		3,575.6
Accumulated other comprehensive loss	(32.4)	(136.5)
Total Kinder Morgan, Inc. s stockholders equity	3,455.5	3,439.1
Noncontrolling interests	5,292.0	5,099.9
Total Stockholders Equity	8,747.5	8,539.0
Total Liabilities and Stockholders Equity	$ 30,157.4	$ 28,908.1

The accompanying notes are an integral part of these consolidated financial statements.

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KINDER MORGAN, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

(In Millions)

(Unaudited)

	Nine Months Ended September 30, 2011	Nine Months Ended September 30, 2010
Cash Flows From Operating Activities		
Net Income	$ 366.9	$ 133.0
Adjustments to reconcile net income to net cash provided by operating activities		
Loss from discontinued operations, net of tax	0.5	0.4
Depreciation, depletion and amortization	807.6	813.7
Deferred income taxes	77.6	(204.7)
Amortization of excess cost of equity investments	4.9	4.3
Loss on remeasurement of previously held equity interest in KinderHawk (Note 2)	167.2	
(Earnings) loss from equity investments	(214.7)	256.1
Distributions from equity investments	200.9	154.9
Proceeds from termination of interest rate swap agreements	73.0	
Pension contributions in excess of expense	(9.7)	(8.5)
Changes in components of working capital		
Accounts receivable	34.9	105.1
Inventories	9.3	(12.8)
Other current assets	(1.8)	23.1
Accounts payable	(7.3)	(20.5)
Accrued interest	(183.7)	(165.6)
Accrued taxes	36.4	57.7
Accrued liabilities	(1.5)	(44.8)
Going Private transaction litigation reserve adjustment		200.0
Rate reparations, refunds and other litigation reserve adjustments	160.4	(48.3)
Other, net	67.6	(24.0)
Cash Flows Provided By Continuing Operations	1,588.5	1,219.1
Net Cash Flows Used in Discontinued Operations	(0.8)	(0.6)
Net Cash Provided by Operating Activities	1,587.7	1,218.5
Cash Flows From Investing Activities		
Acquisitions of investments	(901.0)	(929.7)
Acquisitions of assets	(44.0)	(243.1)
Capital expenditures	(845.0)	(726.8)
Deconsolidation of variable interest entity		(17.5)
Sale or casualty of property, plant and equipment, and other net assets net of removal costs	29.0	21.5
Net proceeds from margin and restricted deposits	55.1	19.2
Contributions to investments	(297.0)	(210.3)
Distributions from equity investments in excess of cumulative earnings	185.0	187.9
Other, net	3.0	
Net Cash Used in Investing Activities	(1,814.9)	(1,898.8)
Cash Flows From Financing Activities		
Issuance of debt KMI	1,749.6	994.2
Payment of debt KMI	(2,124.6)	(873.0)

Issuance of debt KMP	6,356.4	5,704.2
Payment of debt KMP	(5,538.1)	(4,601.0)
Repayments from related party	29.3	1.3
Debt issue costs	(19.4)	(24.4)
Increase (decrease) in cash book overdrafts	7.6	(5.2)
Cash dividends	(557.3)	(500.0)
Contributions from noncontrolling interests	816.9	636.6
Distributions to noncontrolling interests	(706.6)	(622.4)
Other, net	(0.3)	
Net Cash Provided by Financing Activities	13.5	710.3
Effect of Exchange Rate Changes on Cash and Cash Equivalents	(14.8)	1.0
Net (decrease) increase in Cash and Cash Equivalents	(228.5)	31.0
Cash and Cash Equivalents, beginning of period	502.4	165.6
Cash and Cash Equivalents, end of period	$ 273.9	$ 196.6
Noncash Investing and Financing Activities		
Assets acquired by the assumption or incurrence of liabilities	$ 179.5	$ 12.5
Assets acquired by contributions from noncontrolling interests	$ 23.7	$ 81.7
Contribution of net assets to investments	$ 7.9	$
Sale of investment ownership interest in exchange for note	$ 4.1	$
Supplemental Disclosures of Cash Flow Information		
Cash paid during the period for interest (net of capitalized interest)	$ 668.6	$ 607.1
Net cash paid during the period for income taxes	$ 177.3	$ 143.2

The accompanying notes are an integral part of these consolidated financial statements.

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KINDER MORGAN, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

1. General

Organization

On February 10, 2011, we converted from a Delaware limited liability company to a Delaware corporation and we changed our name from Kinder Morgan Holdco LLC to Kinder Morgan, Inc. Our subsidiary formerly known as Kinder Morgan, Inc. was renamed Kinder Morgan Kansas, Inc., and is referred to in these financial statements for all periods as Kinder Morgan Kansas, Inc. On February 16, 2011, we completed the initial public offering of our common stock (the offering). All of the common stock that was sold in the offering was sold by our existing investors consisting of funds advised by or affiliated with Goldman Sachs & Co., Highstar Capital LP, The Carlyle Group and Riverstone Holdings LLC. No members of management sold shares in the offering and we did not receive any proceeds from the offering. Our common stock trades on the New York Stock Exchange under the symbol KMI. For additional information on the offering, see Note 5 Stockholders Equity Initial Public Offering.

On October 16, 2011, KMI and El Paso Corporation announced a definitive agreement whereby KMI will acquire all of the outstanding shares of El Paso in a transaction that will create an enterprise valued at approximately $94 billion (sum of market equity value and debt outstanding) which owns and/or operates 80,000 miles of pipelines. The total purchase price, including the assumption of debt outstanding at both El Paso Corporation and El Paso Pipeline Partners, L.P., is approximately $38 billion. See Note 2 Investments, Acquisitions and Divestitures Subsequent Events.

We own the general partner and approximately 11% of the limited partner interests of Kinder Morgan Energy Partners, L.P., referred to in this report as KMP . KMP is a publicly traded pipeline limited partnership whose limited partner units are traded on the New York Stock Exchange under the ticker symbol KMP. Primarily through KMP, we operate or own an interest in approximately 37,000 miles of pipelines and approximately 180 terminals. These pipelines transport natural gas, refined petroleum products, crude oil, carbon dioxide and other products, and these terminals store petroleum products and chemicals, and handle such products as ethanol, coal, petroleum coke and steel. Unless the context requires otherwise, references to we, us, our, KMI, or the Company are intended to mean Kinder Morgan, Inc. and our consolidated subsidiaries including Kinder Morgan Kansas, Inc. and KMP.

Kinder Morgan Management, LLC, referred to in this report as KMR, is a publicly traded Delaware limited liability company. Kinder Morgan G.P., Inc., the general partner of KMP and a wholly owned subsidiary of ours, owns all of KMR s voting shares. KMR, pursuant to a delegation of control agreement, has been delegated, to the fullest extent permitted under Delaware law and KMP s partnership agreement, all of Kinder Morgan G.P., Inc. s power and authority to manage and control the business and affairs of KMP, subject to Kinder Morgan G.P., Inc. s right to approve certain transactions.

On May 30, 2007, we acquired Kinder Morgan Kansas, Inc. through a wholly owned subsidiary. See Note 2 of our consolidated financial statements in our audited December 31, 2010 consolidated financial statements and related notes. This transaction is referred to in this report as the Going Private transaction. Effective with the closing of the Going Private transaction, all of our assets and liabilities were recorded at their estimated fair market values based on an allocation of the aggregate purchase price paid in the Going Private transaction.

Basis of Presentation

We have prepared our accompanying unaudited consolidated financial statements under the rules and regulations of the United States Securities and Exchange Commission. These rules and regulations conform to

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KINDER MORGAN, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

the accounting principles contained in the Financial Accounting Standards Board s Accounting Standards Codification, the single source of generally accepted accounting principles in the United States of America and referred to in this report as the Codification. Under such rules and regulations, we have condensed or omitted certain information and notes normally included in financial statements prepared in conformity with the Codification. We believe, however, that our disclosures are adequate to make the information presented not misleading.

In addition, our consolidated financial statements reflect normal adjustments, and also recurring adjustments that are, in the opinion of our management, necessary for a fair statement of our financial results for the interim periods, and certain amounts from prior periods have been reclassified to conform to the current presentation. Interim results are not necessarily indicative of results for a full year; accordingly, you should read these consolidated financial statements in conjunction with our audited December 31, 2010 consolidated financial statements and related notes.

Our accounting records are maintained in United States dollars, and all references to dollars are United States dollars, except where stated otherwise. Canadian dollars are designated as C$. Our consolidated financial statements include our accounts and those of our majority-owned subsidiaries as well as the accounts of KMP and KMR. Investments in jointly owned operations in which we hold a 50% or less interest (other than KMP and KMR, because we have the ability to exercise significant control over their operating and financial policies) are accounted for under the equity method. All significant intercompany transactions and balances have been eliminated.

Notwithstanding the consolidation of KMP and its subsidiaries into our financial statements, we are not liable for, and our assets are not available to satisfy, the obligations of KMP and/or its subsidiaries and vice versa, except as discussed in the following paragraph. Responsibility for payments of obligations reflected in our or KMP s financial statements is a legal determination based on the entity that incurs the liability.

In conjunction with KMP s acquisition of certain natural gas pipelines from us, we agreed to indemnify KMP with respect to approximately $733.5 million of its debt. We would be obligated to perform under this indemnity only if KMP s assets were unable to satisfy its obligations.

Earnings per Share

Earnings per share is calculated using the two-class method. Earnings are allocated to each class of common stock based on the amount of dividends declared in the current period for each class of stock plus an allocation of the undistributed earnings or excess distributions over earnings to the extent that each security shares in earnings or excess distributions over earnings. For the investor retained stock the allocation of undistributed earnings or excess distributions over earnings is in direct proportion to the maximum number of Class P shares into which it can convert.

For the Class P diluted per share computations, total net income attributable to Kinder Morgan, Inc. is divided by the adjusted weighted average shares outstanding during the period, including all dilutive potential shares. This includes the Class P shares into which the investor retained stock is convertible. Investor retained stock is convertible into 596,102,672 Class P shares. Thus, the number of Class P shares on a fully-converted basis is the same before and after any conversion of our investor retained stock. Each time one Class P share is issued upon conversion of investor retained stock, the number of Class P shares goes up by one, and the number of Class P shares into which the investor retained stock is convertible goes down by one. Accordingly, there is no

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KINDER MORGAN, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

difference between Class P basic and diluted earnings per share because the conversion of Class A, Class B, and Class C shares into Class P shares does not impact the number of Class P shares on a fully-converted basis. As no securities are convertible into Class A shares, the basic and diluted earnings per share computations for Class A shares are the same.

The following tables set forth the computation of basic and diluted earnings per share for the period February 11, 2011 (the date of our initial public offering) through September 30, 2011 (in millions, except per share amounts):

	February 11, 2011 through September 30, 2011 Net Income Available to Shareholders			
	Class P	Class A	Participating Securities(a)	Total
Net income attributable to KMI for the nine months ended September 30, 2011				$ 438.6
Less: net income attributable to KMI members prior to incorporation				(70.6)
Net income attributable to shareholders				368.0
Dividends declared during period	$ 48.8	$ 237.3	$ 25.4	(311.5)
Remaining undistributed earnings	8.9	47.6		$ 56.5
Total net income attributable to shareholders	$ 57.7	$ 284.9	$ 25.4	$ 368.0
Basic Earnings Per Share				
Basic Weighted Average Number of Shares Outstanding(d)	110.8	596.2	N/A	
Basic Earnings per Common Share(b)	$ 0.52	$ 0.48	N/A	
Diluted Earnings per Share				
Total net Income attributable to shareholders and assumed conversions(c)	$ 368.0	$ 284.9	N/A	
Diluted Weighted Average Number of Shares(d)	707.4	596.2	N/A	
Diluted Earnings per Common Share(b)	$ 0.52	$ 0.48	N/A	

(a) Participating securities include Class B shares, Class C shares, and 1,193,891 unvested restricted stock awards issued to non-senior management employees that contain rights to dividends.

(b) The Class A shares earnings per share as compared to the Class P shares earnings per share has been reduced due to the sharing of economic benefits (including dividends) amongst the Class A, B, and C shares. Class A, B and C shares owned by Richard Kinder, the

Sponsor Investors, the Original Shareholders, and Other Management are referred to as investor retained stock, and are convertible into a fixed number of Class P shares. In the aggregate, our investor retained stock is entitled to receive a dividend per share on a fully converted basis equal to the dividend per share on our common stock. The conversion of shares of investor retained stock into Class P shares will not increase our total fully-converted shares outstanding, impact the aggregate dividends we pay or the dividends we pay per share on our Class P common stock.

(c) For the diluted earnings per share calculation, total net income attributable to each class of common stock is divided by the adjusted weighted average shares outstanding during the period, including all dilutive potential shares.

KINDER MORGAN, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

(d) The weighted average shares outstanding calculation is based on the actual days in which the shares were outstanding for the period from February 11, 2011 to September 30, 2011.

2. Investments, Acquisitions and Divestitures

Investments

NGPL PipeCo LLC Investment Impairment Charge

On November 19, 2009, the Federal Energy Regulatory Commission (FERC) initiated an investigation, pursuant to Section 5 of the Natural Gas Act, into the justness and reasonableness of the transportation and storage rates as well as the fuel and natural gas lost percentages of NGPL PipeCo LLC s subsidiary, Natural Gas Pipeline Company of America LLC, referred to as NGPL. NGPL reached a settlement in principal with the FERC on April 22, 2010. On June 11, 2010, NGPL filed an offer of settlement, which was approved without modification by the FERC on July 29, 2010. The order approving the settlement has become final and nonappealable. The settlement resolved all issues in the proceeding. The settlement provided that NGPL reduce its fuel and gas lost and unaccounted for, (GL&U), retention factors as of July 1, 2010. The settlement further provided a timeline for additional prospective fuel and GL&U reductions and prospective reductions in the maximum recourse reservation rates that it bills firm transportation and storage shippers.

The events discussed above caused us to reconsider the carrying value of our investment in NGPL PipeCo LLC as of March 31, 2010. A current fair value of an investment that is less than its carrying amount may indicate a loss in value of the investment. The fair value represents the price that would be received to sell the investment in an orderly transaction between market participants. We determined the fair value of our investment in NGPL PipeCo LLC by taking the total fair value of NGPL PipeCo LLC (calculated as discussed below) deducting the fair value of the joint venture debt and multiplying by our 20% ownership interest. We calculated the total fair value of NGPL PipeCo LLC from the present value of the expected future after-tax cash flows of the reporting unit, inclusive of a terminal value, which implies a market multiple of approximately 9.5 times EBITDA (earnings before interest, income taxes, depreciation and amortization) discounted at a rate of 7.4%. The result of our analysis showed that the fair value of our investment in NGPL PipeCo LLC was less than our carrying value. For the nine months ended September 30, 2010, we recognized a $430.0 million, pre-tax, non-cash impairment charge included in the caption Earnings (loss) from equity investments in our accompanying consolidated statement of income.

Acquisitions

Watco Companies, LLC

On January 3, 2011, KMP purchased 50,000 Class A preferred shares of Watco Companies, LLC for $50.0 million in cash in a private transaction. In connection with its purchase of these preferred shares, the most senior equity security of Watco, KMP entered into a limited liability company agreement with Watco that provides KMP certain priority and participating cash distribution and liquidation rights. Pursuant to the agreement, KMP receives priority, cumulative cash distributions from the preferred shares at a rate of 3.25% per quarter, and it participates partially in additional profit distributions at a rate equal to 0.5%. The preferred shares have no conversion features and hold no voting powers, but do provide KMP certain approval rights, including the right to appoint one of the members to Watco s Board of Managers. As of December 31, 2010, KMP placed its $50.0 million investment in a cash escrow account and this amount was included within Restricted deposits on our accompanying consolidated balance sheet. As of September 30, 2011, KMP s net equity investment in Watco totaled $51.6 million and is included within Investments on our accompanying consolidated balance sheet. We

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KINDER MORGAN, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

account for this investment under the equity method of accounting, and we include it in the Terminals KMP business segment.

Watco Companies, LLC is a privately owned, Pittsburg, Kansas based transportation company that was formed in 1983. It is the largest privately held short line railroad company in the United States, operating 22 short line railroads on approximately 3,500 miles of leased and owned track. It also operates transload/intermodal and mechanical services divisions. KMP s investment provides capital to Watco for further expansion of specific projects, complements KMP s existing terminal network, provides its customers more transportation services for many of the commodities that it currently handles, and offers it the opportunity to share in additional growth opportunities through new projects.

Deeprock North, LLC

On February 17, 2011, Deeprock Energy Resources, LLC, Mecuria Energy Trading, Inc., and KMP s subsidiary Kinder Morgan Cushing LLC entered into formal agreements for a crude oil storage joint venture located in Cushing, Oklahoma. On this date, KMP contributed $15.9 million for a 50% ownership interest in an existing crude oil tank farm that has storage capacity of one million barrels, and it expects to invest an additional $8.8 million for the construction of three new storage tanks that will provide incremental storage capacity of 750,000 barrels. The new tanks are expected to be placed in service during the fourth quarter of 2011. The joint venture is named Deeprock North, LLC. Deeprock Energy owns a 12.02% member interest in Deeprock North, LLC and will remain construction manager and operator of the joint venture. Mecuria owns the remaining 37.98% member interest and will remain the anchor tenant for the joint venture s crude oil capacity for the next five years with an option to extend. In addition, KMP entered into a development agreement with Deeprock Energy that gives it an option to participate in future expansions on Deeprock s remaining 254 acres of undeveloped land.

We account for this investment under the equity method of accounting, and this investment and KMP s pro rata share of Deeprock North LLC s operating results are included as part of the Terminals KMP business segment. As of September 30, 2011, KMP s net equity investment in Deeprock North, LLC totaled $22.3 million and is included within Investments on our accompanying consolidated balance sheet.

TGS Development, L.P. Terminal Acquisition

On June 10, 2011, KMP acquired a newly constructed petroleum coke terminal located in Port Arthur, Texas from TGS Development, L.P. (TGSD) for an aggregate consideration of $74.1 million, consisting of $42.9 million in cash, $23.7 million in common units, and an obligation to pay additional consideration of $7.5 million. KMP estimates the remaining $7.5 million obligation will be paid to TGSD approximately one year from the closing (in May or June 2012), and will be settled in a combination of cash and common units, depending on TGSD s election.

All of the acquired assets are located in Port Arthur, Texas, and include long-term contracts to provide petroleum coke handling and cutting services to improve the refining of heavy crude oil at Total Petrochemicals USA Inc. s recently expanded Port Arthur refinery. The refinery is expected to produce more than one million tons of petroleum coke annually. Based on the measurement of fair values for all of the identifiable tangible and intangible assets acquired, we assigned $42.6 million of the combined purchase price to Property, plant and equipment, net, and the remaining $31.5 million to Other intangibles, net, representing the combined fair values of two separate intangible customer contracts with Total. The acquisition complements KMP s existing

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Gulf Coast bulk terminal facilities and expands its pre-existing petroleum coke handling operations. All of the acquired assets are included as part of the Terminals-KMP business segment.

KinderHawk Field Services LLC and EagleHawk Field Services LLC

Effective July 1, 2011, KMP acquired from Petrohawk Energy Corporation both the remaining 50% equity ownership interest in KinderHawk Field Services LLC that it did not already own and a 25% equity ownership interest in Petrohawk s natural gas gathering and treating business located in the Eagle Ford shale formation in South Texas for an aggregate consideration of $912.1 million, consisting of $835.1 million in cash and assumed debt of $77.0 million (representing 50% of KinderHawk s borrowings under its bank credit facility as of July 1, 2011). KMP then repaid the outstanding $154.0 million of borrowings and following this repayment, KinderHawk had no outstanding debt.

Following KMP s acquisition of the remaining ownership interest on July 1, 2011, KMP changed its method of accounting from the equity method to full consolidation, and due to the fact that KMP acquired a controlling financial interest in KinderHawk, KMP remeasured its previous 50% equity investment in KinderHawk to its fair value. KMP recognized a $167.2 million non-cash loss as a result of this remeasurement. The loss amount represents the excess of the carrying value of the investment ($910.2 million as of July 1, 2011) over its fair value ($743.0 million), and we reported this loss separately within the Other Income (Expense) section in our accompanying consolidated statement of income for the nine months ended September 30, 2011.

KMP then measured the fair values of the acquired identifiable tangible and intangible assets and the assumed liabilities on the acquisition date, and assigned the following amounts:

- $35.5 million to current assets, primarily consisting of trade receivables and materials and supplies inventory;

- $641.6 million to property, plant and equipment;

- $93.4 million to KMP s 25% investment in EagleHawk;

- $883.2 million to a long-term intangible customer contract, representing the contract value of natural gas gathering services to be performed for Petrohawk over an approximate 20-year period; less

- $92.8 million assigned to assumed liabilities, not including $77.0 million for the 50% of KinderHawk s borrowings under its bank credit facility that KMP was previously responsible for.

Based on the excess of (i) the consideration we transferred ($912.1 million) and the fair value of our previously held interest ($743.0 million); over (ii) the combined fair value of net assets acquired ($1,560.9 million), we recognized $94.2 million of Goodwill. This goodwill intangible asset represents the future economic benefits expected to be derived from this strategic acquisition that are not assignable to other individually identifiable, separately recognizable assets acquired. KMP believes the primary items that generated the goodwill are the value of the synergies created by expanding its natural gas gathering operations, and furthermore, we expect this entire amount of goodwill to be deductible for tax purposes.

KinderHawk Field Services LLC owns and operates the largest natural gas gathering and midstream business in the Haynesville shale formation located in northwest Louisiana, consisting of more than 400 miles of pipeline with over 2.0 billion cubic feet per day of pipeline capacity. Currently, it gathers approximately 1.0 billion cubic feet of natural gas per day. KMP operates KinderHawk Field Services LLC, and acquired its original 50% ownership interest in KinderHawk Field Services LLC from Petrohawk on May 21, 2010.

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The Eagle Ford natural gas gathering joint venture is named EagleHawk Field Services LLC, and we account for the 25% investment under the equity method of accounting. Petrohawk operates EagleHawk Field Services LLC and owns the remaining 75% ownership interest. The joint venture owns two midstream gathering systems in and around Petrohawk s Hawkville and Black Hawk areas of Eagle Ford and combined, the joint venture s assets will consist of more than 280 miles of gas gathering pipelines and approximately 140 miles of condensate lines to be in service by the end of 2011. It also has a life of lease dedication of Petrohawk s Eagle Ford reserves that provides Petrohawk and other Eagle Ford producers with gas and condensate gathering, treating and condensate stabilization services.

The acquisition of the remaining ownership interest in KinderHawk and the equity ownership interest in EagleHawk complemented and expanded KMP s existing natural gas gathering operations, and all of the acquired assets are included in the Natural Gas Pipelines-KMP business segment. Additionally, on August 25, 2011, mining and oil company BHP Billiton completed its previously announced acquisition of Petrohawk Energy Corporation through a short-form merger under Delaware law. The merger was closed with Petrohawk being the surviving corporation as a wholly owned subsidiary of BHP Billiton. The acquisition will not affect the terms of KMP s contracts with Petrohawk.

Pro Forma Information

Pro forma consolidated income statement information that gives effect to all of the acquisitions we have made and all of the joint ventures we have entered into since January 1, 2010 as if they had occurred as of January 1, 2010 is not presented because it would not be materially different from the information presented in our accompanying consolidated statements of income.

Divestitures

Megafleet Towing Co., Inc. Assets

On February 9, 2011, KMP sold a marine vessel to Kirby Inland Marine, L.P., and additionally, KMP and Kirby formed a joint venture named Greens Bayou Fleeting, LLC. Pursuant to the joint venture agreement, KMP sold its ownership interest in the boat fleeting business it acquired from Megafleet Towing Co., Inc. in April 2009 to the joint venture for $4.1 million in cash and a 49% ownership interest in the joint venture. Kirby then made cash contributions to the joint venture in exchange for the remaining 51% ownership interest. Related to the above transactions, we recorded a loss of $5.5 million ($4.1 million after tax) in the fourth quarter of 2010 to write down the carrying value of the net assets to be sold to their estimated fair values as of December 31, 2010.

In the first quarter of 2011, after final reconciliation and measurement of all of the net assets sold, we recognized a combined $2.2 million increase in income from the sale of these net assets, primarily consisting of a $1.9 million reduction in income tax expense, which is included within the caption Income Tax (Expense) Benefit in the accompanying consolidated statement of income for the nine months ended September 30, 2011. Additionally, the sale of KMP s ownership interest resulted in a $10.6 million non-cash reduction in goodwill (see Note 3), and was a transaction with a related party (see Note 9). Information about KMP s acquisition of assets from Megafleet Towing Co., Inc. is described more fully in Note 3 to our audited December 31, 2010 consolidated financial statements and related notes.

River Consulting, LLC and Devco USA L.L.C.

Effective April 1, 2011, KMP sold 51% ownership interests in two separate wholly-owned subsidiaries to two separate buyers, for an aggregate consideration of $8.1 million, consisting of a $4.1 million note receivable,

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$1.0 million in cash and a $3.0 million receivable for the settlement of working capital items. Following the sale, KMP continues to own 49% membership interests in both River Consulting LLC, a company engaged in the business of providing engineering, consulting and management services, and Devco USA, L.L.C., a company engaged in the business of processing, handling and marketing sulfur, and selling related pouring equipment. At the time of the sale, the combined carrying value of the net assets (and members capital on a 100% basis) of both entities totaled approximately $8.8 million and consisted mostly of technology-based assets and trade receivables. We now account for these retained investments under the equity method of accounting.

In the second quarter of 2011, we recognized a $3.6 million pre-tax gain from the sale of these ownership interests (including a $2.1 million gain related to the remeasurement of the retained investment to fair value) and included this gain within the caption Other, net in our accompanying consolidated statement of income for the nine months ended September 30, 2011. We also recognized a $1.4 million increase in income tax expense related to this gain, which is included within the caption Income Tax (Expense) Benefit in our accompanying consolidated statement of income for the nine months ended September 30, 2011.

Arrow Terminals B.V.

Effective August 31, 2011, KMP sold the outstanding share capital of its wholly-owned subsidiary Arrow Terminals B.V. to Pacorini Metals Europe B.V. for an aggregate consideration of $13.3 million in cash. Arrow Terminals B.V. owns and operates a bulk terminal facility located in the seaport area of Vlissingen, Netherlands. The terminal is primarily engaged in the business of storing, handling and distributing bulk ferro alloys and general commodities. Including the removal of the cumulative translation adjustments balance and the estimated costs to sell, we recognized a $1.3 million pre-tax gain from the sale of Arrow Terminals B.V. and included this gain within the caption Other expense (income) in our accompanying consolidated statement of income for the nine months ended September 30, 2011.

Subsequent Events

KMI s Acquisition of El Paso Corporation

On October 16, 2011, we and El Paso Corporation (NYSE: EP) announced a definitive agreement whereby we will acquire all of the outstanding shares of El Paso Corporation. EP owns North America s largest interstate natural gas pipeline system, one of North America s largest independent exploration and production companies and an emerging midstream business. EP also owns a 42 percent limited partner interest and the 2 percent general partner interest in El Paso Pipeline Partners, L.P.(NYSE:EPB). The combined enterprise, including the associated master limited partnerships, KMP and EPB, will represent the largest natural gas pipeline network in the United States, the largest independent transporter of petroleum products in the United States, the largest transporter of CO_2 in the United States, the second largest oil producer in Texas and the largest independent terminal owner/operator in the United States.

The total purchase price, including the assumption of debt outstanding at EP and the debt outstanding at El Paso Partners, L.P., is expected to be approximately $38 billion. Under the terms of the transaction, the consideration to be received by the EP shareholders is valued at $26.87 per EP share based on KMI s closing price as of October 14, 2011, representing a 47 percent premium to the 20-day average closing price of EP common shares and a 37 percent premium over the closing price of EP common shares on October 14, 2011. The offer is comprised of $14.65 in cash, 0.4187 KMI Class P shares (valued at $11.26 per EP share) and 0.640 KMI warrants (valued at $0.96 per EP share) based on KMI s closing price on October 14, 2011. The warrants will have an exercise price of $40 and a five-year term. EP shareholders will be able to elect, for each EP share held,

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either (i) $25.91 in cash, (ii) 0.9635 KMI Class P shares, or (iii) $14.65 in cash plus 0.4187 KMI Class P shares. All elections will be subject to proration and in all cases EP shareholders will receive 0.640 KMI warrants per share of EP common stock.

The transaction has been approved by each company s board of directors. We have firm commitments for the full amount of cash required for the transaction from a syndicate of banks. Prior to closing, the transaction will require approval of both KMI and EP shareholders. The transaction is expected to close in the second quarter of 2012 and is subject to customary regulatory approvals.

KMP Acquisition of SouthTex Treaters

On October 24, 2011, KMP announced that it had signed a definitive purchase and sale agreement to acquire the natural gas treating assets of SouthTex Treaters for approximately $155.0 million in cash. SouthTex Treaters is a leading manufacturer, designer and fabricator of natural gas treating plants that are used to remove impurities (carbon dioxide and hydrogen sulfide) from natural gas before it is delivered into gathering systems and transmission pipelines to ensure that it meets pipeline quality specifications. The acquisition complements and expands KMP s existing natural gas treating business, and all of the acquired operations will be included in the Natural Gas Pipelines KMP business segment. The transaction is expected to close in the fourth quarter of 2011, and KMP will then also assign the total purchase price to assets acquired and liabilities assumed.

3. Intangibles

Goodwill

We evaluate goodwill for impairment on May 31 of each year. For this purpose, we have six reporting units as follows: (i) Products Pipelines KMP (excluding associated terminals); (ii) Products Pipelines Terminals KMP (evaluated separately from Products Pipelines KMP for goodwill purposes, but combined with Products Pipelines KMP for presentation in the table below); (iii) Natural Gas Pipelines KMP; (iv) CO_2 KMP; (v) Terminals KMP; and (vi) Kinder Morgan Canada KMP. There were no impairment charges resulting from our May 31, 2011 impairment testing, and no event indicating an impairment has occurred subsequent to that date.

The fair value of each reporting unit was determined from the present value of the expected future cash flows from the applicable reporting unit (inclusive of a terminal value calculated using market multiples between six and ten times cash flows) discounted at a rate of 8.0%. The value of each reporting unit was determined on a stand-alone basis from the perspective of a market participant and represented the price that would be received to sell the unit as a whole in an orderly transaction between market participants at the measurement date.

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Changes in the gross amounts of our goodwill and accumulated impairment losses for the nine months ended September 30, 2011 are summarized as follows (in millions):

	Products Pipelines KMP	Natural Gas Pipelines KMP	CO_2 KMP	Terminals KMP	Kinder Morgan Canada KMP	Total
Historical Goodwill	$ 2,116.5	$ 3,488.0	$ 1,521.7	$ 1,488.6	$ 626.5	$ 9,241.3
Accumulated impairment losses.	(1,266.5)	(2,090.2)		(676.6)	(377.1)	(4,410.4)
Balance as of December 31, 2010	850.0	1,397.8	1,521.7	812.0	249.4	4,830.9
Other adjustments(a)	11.4	15.3	6.2	7.1		40.0
Acquisitions(b)		94.2				94.2
Disposals(c)				(11.8)		(11.8)
Currency translation adjustments					(12.7)	(12.7)
Balance as of September 30, 2011	$ 861.4	$ 1,507.3	$ 1,527.9	$ 807.3	$ 236.7	$ 4,940.6

(a) Tax adjustments related to our investment in KMP.

(b) 2011 acquisition amount relates to KMP s July 2011 purchase of the remaining 50% ownership interest in KinderHawk Field Services LLC that it did not already own (discussed further in Note 2).

(c) 2011 disposal amount consists of (i) $10.6 million related to the sale of KMP s ownership interest in the boat fleeting business it acquired from Megafleet Towing Co., Inc. in April 2009; and (ii) $1.2 million related to the sale of KMP s subsidiary Arrow Terminals B.V. (both discussed further in Note 2).

In addition, we identify any premium or excess cost we pay over our proportionate share of the underlying fair value of net assets acquired and accounted for as investments under the equity method of accounting. This premium or excess cost is referred to as equity method goodwill and is also not subject to amortization but rather to impairment testing. For all investments we own containing equity method goodwill, no event or change in circumstances that may have a significant adverse effect on the fair value of our equity investments has occurred during the first nine months of 2011.

As of September 30, 2011 and December 31, 2010, we reported $138.2 million and $283.0 million, respectively, in equity method goodwill within the caption Investments in our accompanying consolidated balance sheets. The decrease in our equity method goodwill since December 31, 2010 was due to KMP s July 2011 purchase of the remaining 50% ownership interest in KinderHawk Field Services LLC that it did not already own (discussed further in Note 2). Effective July 1, 2011, KMP exchanged its status as an owner of an equity investment in KinderHawk for a full controlling financial interest, and we began accounting for the investment under the full consolidation method.

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Other Intangibles

Excluding goodwill, our other intangible assets include customer relationships, contracts and agreements, lease value, and technology-based assets. These intangible assets have definite lives and are reported separately as Other intangibles, net in our accompanying consolidated balance sheets. Following is information related to our intangible assets subject to amortization (in millions):

	September 30, 2011	December 31, 2010
Customer relationships, contracts and agreements		
Gross carrying amount	$ 1,337.6	$ 424.7
Accumulated amortization	(143.1)	(99.9)
Net carrying amount	1,194.5	324.8
Technology-based assets, lease value and other		
Gross carrying amount	9.0	16.3
Accumulated amortization	(2.2)	(1.9)
Net carrying amount	6.8	14.4
Total other intangibles, net	$ 1,201.3	$ 339.2

The increase in the carrying amount of the customer relationships, contacts and agreements since December 31, 2010 was mainly due to the acquisition of (i) a natural gas gathering customer contract in July 2011, associated with KMP s purchase of the remaining 50% ownership interest in KinderHawk Field Services LLC that it did not already own; and (ii) two separate petroleum coke handling customer contracts in June 2011, associated with KMP s purchase of terminal assets from TGS Development, L.P. Both acquisitions are described further in Note 2.

We amortize the costs of our intangible assets to expense in a systematic and rational manner over their estimated useful lives. Among the factors we weigh, depending on the nature of the asset, are the effects of obsolescence, new technology, and competition. For the nine months ended September 30, 2011 and 2010, the amortization expense on our intangibles totaled $43.5 million and $37.0 million, respectively. As of September 30, 2011, the weighted average amortization period for our intangible assets was approximately 17.9 years, and our estimated amortization expense for these assets for each of the next five fiscal years (2012 2016) is approximately $81.4 million, $77.5 million, $74.4 million, $71.6 million and $68.9 million, respectively.

4. Debt

We classify our debt based on the contractual maturity dates of the underlying debt instruments. We defer costs associated with debt issuance over the applicable term. These costs are then amortized as interest expense in our consolidated statements of income.

KMI s debt balances included in our accompanying consolidated balance sheets (including both short-term and long-term amounts, the preferred interest in the general partner of KMP and purchase accounting adjustments on the carrying value of KMI s debt and KMP s debt, but excluding the value of interest rate swap agreements) as of September 30, 2011 and December 31, 2010 was $3,259.1 million and $3,630.1 million

(including the $750.0 million of 5.35% Kinder Morgan Finance Company LLC s senior notes paid on January 5, 2011), respectively. These balances included net unamortized purchase accounting adjustments, decreasing the

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debt balances by $34.2 million and $37.5 million at September 30, 2011 and December 31, 2010, respectively. For the first nine months of 2011 and 2010, the weighted average rate on all of KMI s borrowings was approximately 4.86% and 4.89%, respectively. KMP s debt balances included in our accompanying consolidated balance sheets (including both short-term and long-term amounts and excluding the value of interest rate swap agreements) as of September 30, 2011 and December 31, 2010 was $12,506.6 million and $11,539.8 million, respectively. For the first nine months of 2011 and 2010, the weighted average interest rate on all of KMP s borrowings was approximately 4.28% and 4.34%, respectively.

As of September 30, 2011, KMI s short-term debt was $1,216.6 million, which consisted of (i) $375.0 million of borrowings under KMI s credit facility; (ii) $839.3 million remaining principal amount of KMI s 6.50% senior notes due September 1, 2012 (including purchase accounting adjustments, KMI s carrying amount of the notes was $840.0 million as of September 30, 2011); and (iii) a $1.6 million current portion of purchase accounting adjustments on our carrying value of KMP s debt. As of September 30, 2011, KMP s short-term debt balance included in our accompanying consolidated balance sheet was $1,844.4 million, which consisted of (i) $500.0 million in principal amount of KMP s 9.00% senior notes due February 1, 2019, that may be repurchased by KMP at the option of the holder on February 1, 2012 pursuant to certain repurchase provisions contained in the bond indenture; (ii) $450.0 million in principal amount of KMP s 7.125% senior notes due March 15, 2012 (including discount, KMP s notes had a carrying amount of $449.9 million as of September 30, 2011); (iii) $500.0 million in principal amount of KMP s 5.850% senior notes due September 15, 2012 (including discount, KMP s notes had a carrying amount of $499.9 million as of September 30, 2011); (iv) $353.0 million of KMP s commercial paper borrowings; (v) $23.7 million in principal amount of tax-exempt bonds that mature on April 1, 2024, that are due on demand pursuant to certain standby purchase agreement provisions contained in the bond indenture (KMP s subsidiary Kinder Morgan Operating L.P. B is the obligor on the bonds); (vi) a $9.7 million portion of a 5.40% long-term note payable (KMP s subsidiaries Kinder Morgan Operating L.P. A and Kinder Morgan Canada Company are the obligors on the note); (vii) a $7.5 million portion of 5.23% long-term senior notes (KMP s subsidiary Kinder Morgan Texas Pipeline, L.P. is the obligor on the notes); and (viii) a $0.7 million portion of 6.00% long-term note payable (KMP s subsidiary Kinder Morgan Arrow Terminals, L.P. is the obligor on the note).

Credit Facilities

	September 30, 2011		**December 31, 2010**	
	Short-term notes payable	**Weighted average interest rate**	**Short-term notes payable**	**Weighted average interest rate**
	(Dollars in millions)			
KMI Secured debt(a)	$ 375.0	1.36%	$	
KMP Commercial paper(b)	$ 353.0	0.35%	$ 522.1	0.67%

(a) The average short-term debt outstanding (and related weighted average interest rate) was $386.3 million (1.55%) during the nine months ended September 30, 2011.

(b) The average short-term debt outstanding (and related weighted average interest rate) was $499.3 million (0.42%) during the nine months ended September 30, 2011.

As of September 30, 2011, the amount available for borrowing under the KMI $1.0 billion six-year senior secured credit facility was reduced by a combined amount of $423.7 million consisting of $375.0 million in borrowings under the credit facility and $48.7 million in four letters of credit required under provisions of our property and casualty, workers compensation and general liability insurance policies.

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On July 1, 2011, KMP amended its $2.0 billion three-year, senior unsecured revolving credit facility to, among other things, (i) allow for borrowings of up to $2.2 billion; (ii) extend the maturity of the credit facility from June 23, 2013 to July 1, 2016; (iii) permit an amendment to allow for borrowings of up to $2.5 billion; and (iv) decrease the interest rates and commitment fees for borrowings under this facility. The credit facility is with a syndicate of financial institutions, and the facility permits KMP to obtain bids for fixed rate loans from members of the lending syndicate. Wells Fargo Bank, National Association is the administrative agent, and borrowings under the credit facility can be used for KMP s general partnership purposes and as a backup for its commercial paper program. There were no borrowings under the credit facility as of September 30, 2011 or as of December 31, 2010.

Additionally, as of September 30, 2011, the amount available for borrowing under KMP s credit facility was reduced by a combined amount of $584.8 million, consisting of $353.0 million of commercial paper borrowings and $231.8 million of letters of credit, consisting of: (i) a $100.0 million letter of credit that supports certain proceedings with the California Public Utilities Commission involving refined products tariff charges on the intrastate common carrier operations of KMP s Pacific operations pipelines in the state of California; (ii) a combined $87.9 million in three letters of credit that support tax-exempt bonds; (iii) a $16.2 million letter of credit that supports debt securities issued by the Express pipeline system; (iv) a $10.7 million letter of credit that supports KMP s indemnification obligations on the Series D note borrowings of Cortez Capital Corporation; and (v) a combined $17.0 million in other letters of credit supporting other obligations of KMP and its subsidiaries.

KMP s Commercial Paper Program

In July 2011, in conjunction with the amendment to its revolving credit facility, KMP increased its commercial paper program to provide for the issuance of up to $2.2 billion of commercial paper (up from $2.0 billion). KMP s unsecured revolving credit facility supports its commercial paper program, and borrowings under KMP s commercial paper program reduce the borrowings allowed under its credit facility. The borrowings under KMP s commercial paper program were used principally to finance the acquisitions and capital expansions it made during 2011 and 2010. In the near term, KMP expects that its short-term liquidity and financing needs will be met primarily through borrowings made under its commercial paper program.

Long-term Debt

Kinder Morgan Finance Company LLC

In January 2011, Kinder Morgan Finance Company LLC, a wholly owned subsidiary of KMI, retired the principal amount of its 5.35% senior notes that matured on January 5, 2011 using proceeds from the December 2010 issuance of $750 million in principal amount of 6.00% senior notes due January 15, 2018.

KMP Senior Notes

On March 4, 2011, KMP completed a public offering of $1.1 billion in principal amount of senior notes in two separate series, consisting of $500 million of 3.500% notes due March 1, 2016, and $600 million of 6.375% notes due March 1, 2041. KMP received proceeds from the issuance of the notes, after deducting the underwriting discount, of $1,092.7 million, and it used the proceeds to reduce the borrowings under its commercial paper program.

On March 15, 2011, KMP paid $700 million to retire the principal amount of its 6.75% senior notes that matured on that date. KMP used both cash on hand and borrowings under its commercial paper program to repay the maturing senior notes.

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In addition, on August 17, 2011, KMP completed a public offering of $750 million in principal amount of senior notes in two separate series, consisting of $375 million of 4.150% notes due March 1, 2022, and $375 million of 5.625% notes due September 1, 2041. KMP received proceeds from the issuance of the notes, after deducting the underwriting discount, of $743.3 million, and it used the proceeds to reduce the borrowings under its commercial paper program.

KMP s Subsidiary Debt

Kinder Morgan Operating L.P. A Debt

Effective January 1, 2007, KMP acquired the remaining approximately 50.2% interest in the Cochin pipeline system that it did not already own. As part of the purchase price consideration, two of KMP s subsidiaries issued a long-term note payable to the seller having a fair value of $42.3 million. KMP valued the debt equal to the present value of amounts to be paid, determined using an annual interest rate of 5.40%. KMP s subsidiaries Kinder Morgan Operating L.P. A and Kinder Morgan Canada Company are the obligors on the note, and the principal amount of the note, along with interest, is due in five annual installments of $10.0 million beginning March 31, 2008. KMP paid the fourth installment on March 31, 2011, and as of September 30, 2011, the net present value of the note (representing the outstanding balance included as debt on our accompanying consolidated balance sheet) was $9.7 million. As of December 31, 2010, the net present value of the note was $19.2 million.

Kinder Morgan Texas Pipeline, L.P. Debt

KMP s subsidiary, Kinder Morgan Texas Pipeline, L.P. is the obligor on a series of unsecured senior notes, which were assumed on August 1, 2005 when it acquired a natural gas storage facility located in Liberty County, Texas from a third party. The notes have a fixed annual stated interest rate of 8.85%; however, KMP valued the debt equal to the present value of amounts to be paid determined using an approximate interest rate of 5.23%. The assumed principal amount, along with interest, is due in monthly installments of approximately $0.7 million, and the final payment is due January 2, 2014. During the first nine months of 2011, KMP paid a combined principal amount of $5.4 million, and as of September 30, 2011, Kinder Morgan Texas Pipeline L.P. s outstanding balance under the senior notes was $18.2 million. Additionally, the unsecured senior notes may be prepaid at any time in amounts of at least $1.0 million and at a price equal to the higher of par value or the present value of the remaining scheduled payments of principal and interest on the portion being prepaid. As of December 31, 2010, the outstanding balance under the notes was $23.6 million.

Kinder Morgan Arrow Terminals, L.P. Debt

On April 4, 2011, KMP s subsidiary Kinder Morgan Arrow Terminals, L.P. acquired a parcel of land and a terminal warehouse located in Industry, Pennsylvania from a third party for an aggregate consideration of $3.3 million, consisting of $1.2 million in cash and a $2.1 million promissory note payable. The note principal is payable in three annual payments beginning in March 2012. The note bears interest at 6% per annum, and accrued interest on the unpaid principal amount is due and payable on the due date of each principal installment.

KinderHawk Field Services LLC Credit Facility

On July 1, 2011, immediately following its acquisition of KinderHawk Field Services LLC (discussed in Note 2), KMP repaid the outstanding $154.0 million of borrowings under KinderHawk s revolving bank credit facility and following this repayment, KinderHawk had no outstanding debt. The revolving bank credit facility was terminated at the time of such repayment.

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Interest Rate Swaps

Information on interest rate swaps is contained in Note 6 Risk Management Interest Rate Risk Management.

Contingent Debt

The following contingent debt disclosures pertain to certain types of guarantees or indemnifications KMP has made and cover certain types of guarantees included within debt agreements, even if the likelihood of requiring its performance under such guarantee is remote. As of September 30, 2011, KMP s contingent debt obligations, as well as its obligations with respect to related letters of credit, consisted of the following two items:

an aggregate $80.7 million for KMP s contingent share (50%) of Cortez Pipeline Company s debt obligations, consisting of (i) $70.0 million for its contingent share of outstanding borrowings under Cortez s debt facilities (described below); and (ii) $10.7 million for a letter of credit issued on its behalf to secure its indemnification obligations to Shell for 50% of the $21.4 million in principal amount of Cortez s Series D notes outstanding as of that date. Cortez Pipeline Company is a Texas general partnership that owns and operates a common carrier carbon dioxide pipeline system.

KMP is severally liable for its percentage ownership share (50%) of Cortez s debt, and as of September 30, 2011, Cortez s debt facilities consisted of (i) $21.4 million aggregate principal amount of Series D notes due May 15, 2013 (interest on the Series D notes is paid annually and based on a fixed interest rate of 7.14% per annum); (ii) $100.0 million of variable rate Series E notes due December 11, 2012 (interest on the Series E notes is paid quarterly and based on an interest rate of three-month LIBOR plus a spread); and (iii) $18.5 million of outstanding borrowings under a $40.0 million committed revolving bank credit facility that is also due December 11, 2012. Accordingly, as of September 30, 2011, KMP s contingent share of Cortez s debt was $70.0 million (50% of total borrowings).

With respect to the Series D notes, Shell Oil Company shares KMP s several guaranty obligations jointly and severally; however, KMP is obligated to indemnify Shell for the liabilities it incurs in connection with such guaranty. Accordingly, as of September 30, 2011, KMP has a letter of credit in the amount of $10.7 million issued by JP Morgan Chase Bank, in order to secure its indemnification obligations to Shell for 50% of the $21.4 million in principal amount of Series D notes outstanding as of that date.

Further, pursuant to a Throughput and Deficiency Agreement, the partners of Cortez Pipeline Company are required to contribute capital to Cortez in the event of a cash deficiency. The agreement contractually supports the financings of Cortez Capital Corporation, a wholly-owned subsidiary of Cortez Pipeline Company, by obligating the partners of Cortez Pipeline to fund cash deficiencies at Cortez Pipeline, including anticipated deficiencies and cash deficiencies relating to the repayment of principal and interest on the debt of Cortez Capital Corporation. The partners respective parent or other companies further severally guarantee the obligations of the Cortez Pipeline owners under this agreement; and

an $18.3 million letter of credit posted as security for borrowings under Adjustable Demand Revenue Bonds issued by the Nassau County, Florida Ocean Highway and Port Authority. The bonds were issued for the purpose of constructing certain port improvements located in Fernandino Beach, Nassau County, Florida. KMP s subsidiary, Nassau Terminals LLC is the operator of the marine port facilities. The bond indenture is for 30 years and allows the bonds to remain outstanding until December 1, 2020.

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Principal payments on the bonds are made on the first of December each year, and corresponding reductions are made to the letter of credit. As of September 30, 2011, this letter of credit had a face amount of $18.3 million.

On February 25, 2011, Midcontinent Express Pipeline LLC entered into a three-year $75.0 million unsecured revolving bank credit facility that is due February 25, 2014. This credit facility replaced Midcontinent Express previous $175.4 million credit facility that was terminated on February 28, 2011, and on this same date, each of its two member owners, including KMP, were released from their respective debt obligations under the previous guaranty agreements. Accordingly, KMP no longer has a contingent debt obligation with respect to Midcontinent Express Pipeline LLC.

On July 28, 2011, Fayetteville Express Pipeline LLC entered into (i) a new unsecured $600.0 million term loan that is due on July 28, 2012, with the ability to extend one additional year and (ii) a $50.0 million unsecured revolving bank credit facility that is due on July 28, 2015. These debt instruments replaced Fayetteville Express $1.1 billion credit facility that was terminated on July 28, 2011, and on this same date, each of its two member owners, including KMP, were released from their respective debt obligations under the previous guaranty agreements. Accordingly, KMP no longer has a contingent debt obligation with respect to Fayetteville Express Pipeline LLC.

For additional information regarding KMI s and KMP s debt facilities and contingent debt agreements, see Note 8 Debt and Note 12 Commitments and Contingent Liabilities to our audited December 31, 2010 consolidated financial statements and related notes.

Kinder Morgan G.P., Inc. Preferred Shares

On October 16, 2011, Kinder Morgan G.P., Inc. s board of directors declared a quarterly cash distribution on its Series A Fixed-to-Floating Rate Term Cumulative Preferred Stock of $20.825 per share payable on November, 18, 2011 to shareholders of record as of October 31, 2011. On August 18, 2011, Kinder Morgan G.P., Inc. s board of directors paid a quarterly cash distribution on its Series A Fixed-to-Floating Rate Term Cumulative Preferred Stock of $20.825 per share to shareholders of record as of August 1, 2011. On May 18, 2011, Kinder Morgan G.P., Inc. paid a quarterly cash distribution on its Series A Fixed-to-Floating Rate Term Cumulative Preferred Stock of $20.825 per share to shareholders of record as of April 29, 2011. On February 18, 2011, Kinder Morgan G.P., Inc. paid a quarterly cash dividend on its Series A Fixed-to-Floating Rate Term Cumulative Preferred Stock of $20.825 per share to shareholders of record as of January 31, 2011.

5. Stockholders Equity

Common Equity

As of September 30, 2011, our stockholders equity included the following outstanding shares:

	September 30, 2011
Class P shares(a)	110,898,898
Class A shares	596,102,672
Class B shares	100,000,000
Class C shares	2,462,927

(a) Includes 1,570 common shares resulting from restricted common shares issued to an independent director that vested in the third quarter of 2011.

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For accounting purposes, both our Class P and our Class A shares are considered common stock, and our Class B and Class C shares are considered participating securities.

Initial Public Offering

In the following discussion, the Investors refer to: (i) Richard D. Kinder, our Chairman and Chief Executive Officer; (ii) investment funds advised by, or affiliated with, Goldman, Sachs & Co., Highstar Capital LP, The Carlyle Group and Riverstone Holdings LLC, which we refer to collectively as the Sponsor Investors; (iii) Fayez Sarofim, one of our directors, and investment entities affiliated with him, and an investment entity affiliated with Michael C. Morgan, another of our directors, and William V. Morgan, one of our founders; and (iv) a number of other members of our management.

On February 16, 2011, we completed an initial public offering of our common stock (the offering). In connection with the offering, we converted from a Delaware limited liability company to a Delaware corporation. Our outstanding Class A units, Class B units and Class A-1 units were converted to Class A shares, Class B shares and Class C shares, respectively. Upon this conversion, the Sponsor Investors then converted some of their Class A shares on a one-for-one basis into our common stock sold in the offering. No shares were sold by members of Kinder Morgan management in the offering. All of the common stock that was sold in the offering was sold by existing investors, consisting of investment funds advised by, or affiliated with, Goldman, Sachs & Co., Highstar Capital LP, The Carlyle Group and Riverstone Holdings LLC, and we did not receive any proceeds from the offering. The class of common stock sold in the offering was our Class P common stock, which is sometimes referred to herein as our common stock. Our then existing investors prior to the initial public offering hold our Class A, Class B and Class C common stock, which is sometimes collectively referred to herein as our investor retained stock.

In the offering, the selling stockholders sold 109,786,590 shares, or approximately 15.5% of our outstanding shares. Upon the closing of the offering, our investor retained stock was convertible into a fixed aggregate of 597,213,410 shares of common stock, which represented 84.5% of our outstanding shares of common stock on a fully-converted basis. The number of shares of common stock into which Class A shares, Class B shares and Class C shares will convert will be determined in accordance with our certificate of incorporation. The conversion of investor retained stock into shares of our common stock will not increase our total fully converted shares outstanding. Initially, our Class A shares will be convertible into shares of common stock on a one-for-one basis and our Class B shares and Class C shares will not be convertible into any shares of our common stock. Any conversion of Class B shares and Class C shares will decrease on a share for share basis the number of shares of our common stock into which our Class A shares would be able to convert. The terms of the Class A shares, Class B shares and Class C shares are intended to preserve substantially the same relative rights to share in the value of Kinder Morgan, Inc. s equity that the Class A units, Class B units and Class A-1 units, respectively, had with respect to Kinder Morgan Holdco LLC s equity. Subsequent to the offering and through September 30, 2011, 1,110,738 Class A shares have converted to the same number of Class P shares.

Kinder Morgan, Inc. Dividends

On February 11, 2011, our Board of Directors declared and paid a dividend to our then existing investors of $245.8 million with respect to the period for which we were not public. This consisted of $205.0 million for the fourth quarter of 2010 and $104.8 million for the first 46 days of 2011, representing the portion of the first quarter of 2011 that we were not public, less a one time adjustment of $64.0 million in available earnings and profits reserved for the after tax cost of special cash bonuses (and premium pay) in an aggregate amount of approximately $100 million that was paid in May of 2011 to certain of our non-senior employees. No holders of our Class B shares or Class C shares received such bonuses.

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(Unaudited)

On May 16, 2011, we paid a prorated dividend of $0.14 per share for the first quarter of 2011, to shareholders of record as of May 2, 2011. The initial dividend was prorated from February 16, 2011, the day that we closed the offering, to March 31, 2011. Based on a full quarter, the dividend amounts to $0.29 per share ($1.16 annualized).

On August 15, 2011, we paid a dividend of $0.30 per share for the second quarter of 2011, to shareholders of record as of August 1, 2011.

On October 16, 2011, our Board of Directors declared a dividend of $0.30 per share for the third quarter of 2011, payable on November 15, 2011, to shareholders of record as of October 31, 2011.

Changes in Equity

The following tables set forth for the respective periods (i) changes in the carrying amounts of our Stockholders Equity attributable to both us and our noncontrolling interests, including our comprehensive income (loss) and (ii) associated tax amounts included in the respective components of other comprehensive income (loss) (in millions):

	Nine Months Ended September 30, 2011							
	KMI Members	Common Shares(a)	Additional paid-in capital	Retained earnings	Accumulated other comprehensive loss	Stockholders equity attributable to KMI	Noncontrolling interests	Total
Beginning Balance	$ 3,575.6	$	$	$	$ (136.5)	$ 3,439.1	$ 5,099.9	$ 8,539.0
Reclassification of Equity upon the offering	(3,404.0)	8.1	3,395.9					
Amortization of restricted shares			4.5			4.5		4.5
Impact from equity transactions of KMP			23.7			23.7	(37.2)	(13.5)
A-1 and B unit amortization	3.6					3.6		3.6
Distributions							(706.6)	(706.6)
Contributions							840.6	840.6
Cash dividends	(245.8)			(311.5)		(557.3)		(557.3)
Other			(0.8)			(0.8)	0.6	(0.2)
Comprehensive income								
Net Income (loss)	70.6			368.0		438.6	(71.7)	366.9
Other comprehensive income, net of tax								
Change in fair value of derivatives utilized for hedging purposes					89.8	89.8	132.5	222.3
Reclassification of change in fair value of derivatives to net income					49.5	49.5	86.6	136.1
Foreign currency translation adjustments					(31.2)	(31.2)	(46.7)	(77.9)
Adjustments to pension and other postretirement benefit plan liabilities					(4.0)	(4.0)	(6.0)	(10.0)
Total other comprehensive income					104.1	104.1	166.4	270.5
Total comprehensive income						542.7	94.7	637.4

Ending Balance	**$**	**$ 8.1**	**$ 3,423.3**	**$ 56.5**	**$ (32.4)**	**$ 3,455.5**	**$ 5,292.0**	**$ 8,747.5**

(a) Common shares include $1.1 million, $6.0 million and $1.0 million of Class P, Class A and Class B shares, respectively.

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(Unaudited)

	Nine Months Ended September 30, 2011		
	Kinder Morgan, Inc.	Noncontrolling interests	Total
(Tax Expense) Tax Benefit Included in Other Comprehensive Income			
Change in fair value of derivatives utilized for hedging purposes	$ (55.0)	$ (14.6)	$ (69.6)
Reclassification of change in fair value of derivatives to net income	(29.8)	(9.5)	(39.3)
Foreign currency translation adjustments	18.8	5.1	23.9
Adjustments to pension and other postretirement benefit plan liabilities	2.4	0.7	3.1
Tax included in total other comprehensive income	$ (63.6)	$ (18.3)	$ (81.9)

	Nine Months Ended September 30, 2010		
	Kinder Morgan	Noncontrolling interests	Total
Beginning Balance	$ 4,171.5	$ 4,674.6	$ 8,846.1
Impact from equity transactions of KMP	(31.2)	48.7	17.5
A-1 and B unit amortization	4.8		4.8
Distributions to noncontrolling interests		(622.4)	(622.4)
Contributions from noncontrolling interests		718.3	718.3
Deconsolidation of variable interest entity(a)		(45.9)	(45.9)
Cash dividends	(500.0)		(500.0)
Other		0.2	0.2
Comprehensive income			
Net income (loss)	(104.3)	237.3	133.0
Other comprehensive income, net of tax			
Change in fair value of derivatives utilized for hedging purpose	33.5	38.4	71.9
Reclassification of change in fair value of derivatives to net income	13.0	61.4	74.4
Foreign currency translation adjustments	17.6	16.5	34.1
Adjustments to pension and other postretirement benefit plan liabilities	(0.7)	(1.0)	(1.7)
Total other comprehensive income	63.4	115.3	178.7
Total comprehensive income	(40.9)	352.6	311.7
Ending Balance	$ 3,604.2	$ 5,126.1	$ 8,730.3
(Tax Expense) Tax Benefit Included in Other Comprehensive Income			
Change in fair value of derivatives utilized for hedging purposes	$ (25.4)	$ (4.2)	$ (29.6)
Reclassification of change in fair value of derivatives to net income	(10.9)	(6.7)	(17.6)
Foreign currency translation adjustments	(12.2)	(1.8)	(14.0)
Adjustments to pension and other postretirement benefit plan liabilities	0.5	0.1	0.6

Tax included in total other comprehensive income	$ (48.0)	$ (12.6)	$ (60.6)

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Noncontrolling Interests

The caption Noncontrolling interests in our accompanying consolidated balance sheets consists of interests in the following subsidiaries (in millions):

	September 30, 2011	December 31, 2010
KMP	$ 3,306.9	$ 3,135.4
KMR	1,975.2	1,956.2
Other	9.9	8.3
	$ 5,292.0	$ 5,099.9

KMP

Noncontrolling interests in KMP represent the economic interests in this subsidiary that we do not own. At September 30, 2011, we owned, directly, and indirectly in the form of i-units corresponding to the number of shares of KMR we owned, approximately 35.5 million limited partner units of KMP. These units, which consist of 16.4 million common units, 5.3 million Class B units and 13.8 million i-units, represent approximately 10.7% of the total outstanding limited partner interests of KMP. In addition, we indirectly own all the common equity of the general partner of KMP, which holds an effective 2% combined interest in KMP and its operating partnerships. Together, at September 30, 2011, our limited partner and general partner interests represented approximately 12.4% of KMP s total equity interests and represented an approximate 50% economic interest in KMP. This difference results from the existence of incentive distribution rights held by Kinder Morgan G.P., Inc., the general partner of KMP.

Contributions

On February 25, 2011, KMP entered into a second amended and restated equity distribution agreement with UBS Securities LLC to provide for the offer and sale of common units having an aggregate offering price of up to $1.2 billion (up from an aggregate offering price of up to $600 million under KMP s first amended and restated agreement) from time to time through UBS, as KMP s sales agent. During the nine months ended September 30, 2011, KMP issued 3,930,581 of its common units pursuant to this equity distribution agreement. After commissions of $2.2 million, KMP received net proceeds of $279.4 million from the issuance of these common units. KMP used the proceeds to reduce the borrowings under its commercial paper program. For additional information regarding KMP s equity distribution agreement, see Note 10 to our consolidated financial statements included in our audited December 31, 2010 consolidated financial statements and related notes.

On June 10, 2011, KMP issued 324,961 of its common units as part of its purchase price for the petroleum coke terminal assets it acquired from TGS Development, L.P. KMP valued the common units at $23.7 million, determining the units value based on the $73.01 closing market price of KMP s common units on the New York Stock Exchange on the June 10, 2011 acquisition date. For more information on this acquisition, see Note 2.

On June 17, 2011, KMP issued, in a public offering, 6,700,000 of its common units at a price of $71.44 per unit, less commissions and underwriting expenses. At the time of the offering, KMP granted the underwriters a 30-day option to purchase up to an additional 1,005,000 common units from KMP on the same terms and conditions, and upon the underwriters exercise of this option in full, KMP issued the additional 1,005,000 common units on June 27, 2011. KMP received net proceeds, after deducting the underwriter discount, of $533.9 million from the

issuance of these 7,705,000 common units, and used the proceeds to reduce the borrowings under its commercial paper program.

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The above equity issuances during the nine months ended September 30, 2011 had the associated effects of increasing our (i) noncontrolling interests associated with KMP by $799.8 million; (ii) accumulated deferred income taxes by $13.5 million; and (iii) additional paid-in capital by $23.7 million.

Distributions

Distributions to our noncontrolling interests consist primarily of distributions by KMP to its common unit holders. On February 14, 2011, KMP paid a quarterly distribution of $1.13 per common unit for the fourth quarter of 2010, of which $229.0 million was paid to the public holders of KMP s common units. On May 13, 2011, KMP paid a quarterly distribution of $1.14 per common unit for the quarterly period ended March 31, 2011, of which $232.3 million was paid to the public holders of KMP s common units. On August 12, 2011, KMP paid a quarterly distribution of $1.15 per common unit for the quarterly period ended June 30, 2011, of which $244.9 million was paid to the public holders of KMP s common units.

On October 16, 2011, KMP declared a cash distribution of $1.16 per unit for the quarterly period ended September 30, 2011. The distribution will be paid on November 14, 2011, to KMP s unitholders of record as of October 31, 2011.

KMR

KMR s distributions are included in noncontrolling interests and are paid in the form of additional shares or fractions thereof calculated by dividing the KMP cash distribution per common unit by the average of the market closing prices of a KMR share determined for a ten-trading day period ending on the trading day immediately prior to the ex-dividend date for the shares. KMR has made share distributions totaling 4,899,621 shares in the nine months ended September 30, 2011.

On October 16, 2011, KMR declared a share distribution of 0.017579 shares per outstanding share (1,701,781 total shares) payable on November 14, 2011 to shareholders of record as of October 31, 2011, based on the $1.16 per common unit distribution declared by KMP.

6. Risk Management

Certain of our business activities expose us to risks associated with unfavorable changes in the market price of natural gas, natural gas liquids and crude oil. We also have exposure to interest rate risk as a result of the issuance of our debt obligations. Pursuant to our management s approved risk management policy, we use derivative contracts to hedge or reduce our exposure to certain of these risks.

Energy Commodity Price Risk Management

We are exposed to risks associated with changes in the market price of natural gas, natural gas liquids and crude oil as a result of the forecasted purchase or sale of these products. Specifically, these risks are primarily associated with price volatility related to (i) pre-existing or anticipated physical natural gas, natural gas liquids and crude oil sales; (ii) natural gas purchases; and (iii) natural gas system use and storage. Price changes are often caused by shifts in the supply and demand for these commodities, as well as their locations.

Our principal use of energy commodity derivative contracts is to mitigate the risk associated with unfavorable market movements in the price of energy commodities. Our energy commodity derivative contracts act as a hedging (offset) mechanism against the volatility of energy commodity prices by allowing us to transfer this price risk to counterparties who are able and willing to bear it.

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For derivative contracts that are designated and qualify as cash flow hedges pursuant to U.S. generally accepted accounting principles, the portion of the gain or loss on the derivative contract that is effective (as defined by U.S. generally accepted accounting principles) in offsetting the variable cash flows associated with the hedged forecasted transaction is reported as a component of other comprehensive income and reclassified into earnings in the same line item associated with the forecasted transaction and in the same period or periods during which the hedged transaction affects earnings (e.g., in revenues when the hedged transactions are commodity sales). The remaining gain or loss on the derivative contract in excess of the cumulative change in the present value of future cash flows of the hedged item, if any (i.e., the ineffective portion as defined by U.S. generally accepted accounting principles), is recognized in earnings during the current period.

The effectiveness of hedges using an option contract may be assessed based on changes in the option s intrinsic value with the change in the time value of the contract being excluded from the assessment of hedge effectiveness. Changes in the excluded component of the change in an option s time value are included currently in earnings. During the nine months ended September 30, 2011, we recognized a net gain of $10.4 million related to crude oil hedges and resulting from both hedge ineffectiveness and amounts excluded from effectiveness testing. During the nine months ended September 30, 2010, we recognized a net gain of $4.6 million related to crude oil and natural gas hedges and resulting from both hedge ineffectiveness and amounts excluded from effectiveness testing.

Additionally, during the nine months ended September 30, 2011, we reclassified a loss of $49.5 million from Accumulated other comprehensive loss into earnings, and for the same comparable period last year, we reclassified a loss of $13.0 million into earnings. No material amounts were reclassified into earnings as a result of the discontinuance of cash flow hedges because it was probable that the original forecasted transactions would no longer occur by the end of the originally specified time period or within an additional two-month period of time thereafter, but rather, the amounts reclassified were the result of the hedged forecasted transactions actually affecting earnings (i.e., when the forecasted sales and purchase actually occurred). The proceeds or payments resulting from the settlement of the cash flow hedges are reflected in the operating section of our statement of cash flows as changes to net income and working capital.

The Accumulated other comprehensive loss balance included in our Stockholders Equity (exclusive of the portion included in Noncontrolling interests) was $32.4 million and $136.5 million as of September 30, 2011 and December 31, 2010, respectively. These totals included a $46.0 million gain amount and a $93.3 million loss amount as of September 30, 2011 and December 31, 2010, respectively, associated with energy commodity price risk management activities. Approximately $19.3 million of the total gain amount associated with energy commodity price risk management activities and included in our Stockholders Equity as of September 30, 2011 is expected to be reclassified into earnings during the next twelve months (when the associated forecasted sales and purchases are also expected to occur), however, actual amounts could vary materially as a result of changes in market prices. As of September 30, 2011, the maximum length of time over which we have hedged our exposure to the variability in future cash flows associated with energy commodity price risk is through December 2015.

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(Unaudited)

As of September 30, 2011, KMP had entered into the following outstanding commodity forward contracts to hedge its forecasted energy commodity purchases and sales:

	Net open position long/(short)
Derivatives designated as hedging contracts	
Crude oil	(21.8) million barrels
Natural gas fixed price	(3.6) billion cubic feet
Natural gas basis	(4.2) billion cubic feet
Derivatives not designated as hedging contracts	
Natural gas fixed price	0.2 billion cubic feet
Natural gas basis	2.3 billion cubic feet

For derivative contracts that are not designated as a hedge for accounting purposes, all realized and unrealized gains and losses are recognized in the statement of income during the current period. These types of transactions include basis spreads, basis-only positions and gas daily swap positions. KMP primarily enters into these positions to economically hedge an exposure through a relationship that does not qualify for hedge accounting. Until settlement occurs, this will result in non-cash gains or losses being reported in our operating results.

Interest Rate Risk Management

In order to maintain a cost effective capital structure, it is our policy to borrow funds using a mix of fixed rate debt and variable rate debt. We use interest rate swap agreements to manage the interest rate risk associated with the fair value of our fixed rate borrowings and to effectively convert a portion of the underlying cash flows related to our long-term fixed rate debt securities into variable rate cash flows in order to achieve our desired mix of fixed and variable rate debt.

Since the fair value of fixed rate debt varies inversely with changes in the market rate of interest, we enter into swap agreements to receive a fixed and pay a variable rate of interest in order to convert the interest expense associated with certain of our senior notes from fixed rates to variable rates, resulting in future cash flows that vary with the market rate of interest. These swaps, therefore, hedge against changes in the fair value of our fixed rate debt that result from market interest rate changes. For derivative contracts that are designated and qualify as a fair value hedge, the gain or loss on the derivative as well as the offsetting loss or gain on the hedged item attributable to the hedged risk are recognized in current earnings.

As of September 30, 2011, KMI and KMP had notional principal amounts of $725 million and $5,325 million, respectively, of fixed-to-variable interest rate swap agreements, effectively converting the interest expense associated with certain series of senior notes from fixed rates to variable rates based on an interest rate of LIBOR plus a spread. All of KMI s and KMP s swap agreements have termination dates that correspond to the maturity dates of the related series of senior notes and, as of September 30, 2011, the maximum length of time over which they have hedged a portion of their exposure to the variability in the value of this debt due to interest rate risk is through March 15, 2035.

As of December 31, 2010, KMI and KMP had a combined notional principal amount of $725 million and $4,775 million, respectively, of fixed-to-variable interest rate swap agreements. In March 2011, KMP entered into four additional fixed-to-variable interest rate swap agreements having a combined notional principal amount

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of $500 million. Each agreement effectively converts a portion of the interest expense associated with KMP s 3.50% senior notes due March 1, 2016 from a fixed rate to a variable rate based on an interest rate of LIBOR plus a spread.

In August 2011, KMP entered into two additional fixed-to-variable interest rate swap agreements having a combined notional principal amount of $250 million, effectively converting a portion of the interest expense associated with KMP s 4.15% senior notes due March 1, 2022 from a fixed rate to a variable rate based on an interest rate of LIBOR plus a spread. KMP also terminated two existing fixed-to-variable swap agreements having a combined notional principal amount of $200 million in two separate transactions. KMP received combined proceeds of $73.0 million from the early termination of these swap agreements.

Fair Value of Derivative Contracts

The fair values of the current and non-current asset and liability derivative contracts are each reported separately as Fair value of derivative contracts on our accompanying consolidated balance sheets. The following table summarizes the fair values of our derivative contracts included on our accompanying consolidated balance sheets as of September 30, 2011 and December 31, 2010 (in millions):

Fair Value of Derivative Contracts

		Asset derivatives		Liability derivatives	
	Balance sheet location	September 30, 2011	December 31, 2010	September 30, 2011	December 31, 2010
		Fair value		Fair value	
Derivatives designated as hedging contracts					
Energy commodity derivative contracts	Current	$ 123.7	$ 20.1	$ (67.0)	$ (275.9)
	Non-current	133.0	43.1	(21.4)	(103.0)
Subtotal		256.7	63.2	(88.4)	(378.9)
Interest rate swap agreements	Current	6.1			
	Non-current	638.5	258.6		(69.2)
Subtotal		644.6	258.6		(69.2)
Total		901.3	321.8	(88.4)	(448.1)
Derivatives not designated as hedging contracts					
Energy commodity derivative contracts	Current	5.4	3.9	(4.9)	(5.6)
Total		5.4	3.9	(4.9)	(5.6)
Total derivatives		$ 906.7	$ 325.7	$ (93.3)	$ (453.7)

The offsetting entry to adjust the carrying value of the debt securities whose fair value was being hedged is included within Value of interest rate swaps on our accompanying consolidated balance sheets, which also includes any unamortized portion of proceeds received from the early

termination of interest rate swap agreements. As of September 30, 2011 and December 31, 2010, this unamortized premium totaled $498.1 million and $461.9 million, respectively, and as of September 30, 2011, the weighted average amortization period for this premium was approximately 17.7 years.

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Effect of Derivative Contracts on the Income Statement

The following four tables summarize the impact of KMP s derivative contracts on our accompanying consolidated statements of income for the nine months ended September 30, 2011 and 2010 (in millions):

Derivatives in fair value hedging relationships	Location of gain/(loss) recognized in income on derivatives	Amount of gain/(loss) recognized in income on derivatives(a) Nine Months Ended September 30,	
		2011	2010
Interest rate swap agreements	Interest, net income/(expense)	$ 528.2	$ 685.5
Total		$ 528.2	$ 685.5
Fixed rate debt	Interest, net income/(expense)	$ (528.2)	$ (685.5)
Total		$ (528.2)	$ (685.5)

(a) Amounts reflect the change in the fair value of interest rate swap agreements and the change in the fair value of the associated fixed rate debt which exactly offset each other as a result of no hedge ineffectiveness. Amounts do not reflect the impact on interest expense from the interest rate swap agreements under which we pay variable rate interest and receive fixed rate interest.

Derivatives in cash flow hedging relationships	Amount of gain/(loss) recognized in OCI on derivative (effective portion)	Location of gain/(loss) reclassified from Accumulated OCI into income (effective portion)	Amount of gain/(loss) reclassified from Accumulated OCI into income (effective portion)	Location of gain/(loss) recognized in income on derivative (ineffective portion and amount excluded from effectiveness testing)	Amount of gain/(loss) recognized in income on derivative (ineffective portion and amount excluded from effectiveness testing)

	Nine Months Ended September 30,			Nine Months Ended September 30,			Nine Months Ended September 30,	
	2011	2010		2011	2010		2011	2010
Energy commodity derivative contracts	$ 89.8	$ 33.5	Revenues-natural gas sales	$ 0.3	$ 0.5	Revenues-natural gas sales	$	$
			Revenues-product sales and other	(52.5)	(13.6)	Revenues-product sales and other	10.4	5.4
			Gas purchases and other costs of sales	2.7	0.1	Gas purchases and other costs of sales		(0.8)
Total	$ 89.8	$ 33.5	Total	$ (49.5)	$ (13.0)	Total	$ 10.4	$ 4.6

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Derivatives in net investment hedging relationships	Amount of gain/(loss) recognized in OCI on derivative (effective portion) Nine Months Ended September 30,		Location of gain/(loss) reclassified from Accumulated OCI into income (effective portion)	Amount of gain/(loss) reclassified from Accumulated OCI into income (effective portion) Nine Months Ended September 30,		Location of gain/(loss) recognized in income on derivative (ineffective portion and amount excluded from effectiveness testing)	Amount of gain/(loss) recognized in income on derivative (ineffective portion and amount excluded from effectiveness testing) Nine Months Ended September 30,	
	2011	2010		2011	2010		2011	2010
Cross currency swap agreements	$	$ 9.6	Other, net	$	$	Revenues	$	$
Total	$	$ 9.6	Total	$	$	Total	$	$

Derivatives not designated as hedging contracts	Location of gain/(loss) recognized in income on derivative	Amount of gain/(loss) recognized in income on derivative Nine Months Ended September 30,	
		2011	2010
Energy commodity derivative contracts	Gas purchases and other costs of sales	$ 0.1	$ 1.0
Total		$ 0.1	$ 1.0

Net Investment Hedges

We are exposed to foreign currency risk from our investments in businesses owned and operated outside the United States. In 2005 and 2006, we entered into various cross-currency interest rate swap transactions, which were designated as net investment hedges, in order to hedge the value

of the investment in Canadian operations. Over time, as the exposure to foreign currency risk through our Canadian operations was reduced through dispositions, we began to terminate cross-currency swap agreements. The final cross-currency swap agreements were terminated during the third quarter of 2010 and there were no outstanding cross currency interest rate swaps at September 30, 2011 and December 31, 2010, respectively. In the periods with outstanding cross-currency swap agreements, the effective portion of the changes in fair value of these swap transactions was reported as a cumulative translation adjustment included in the balance sheet caption Accumulated other comprehensive loss.

Credit Risks

We and our subsidiary, KMP, have counterparty credit risk as a result of our use of financial derivative contracts. Our counterparties consist primarily of financial institutions, major energy companies and local distribution companies. This concentration of counterparties may impact our overall exposure to credit risk, either positively or negatively, in that the counterparties may be similarly affected by changes in economic, regulatory or other conditions.

We maintain credit policies with regard to our counterparties that we believe minimize our overall credit risk. These policies include (i) an evaluation of potential counterparties financial condition (including credit ratings); (ii) collateral requirements under certain circumstances; and (iii) the use of standardized agreements which allow for netting of positive and negative exposure associated with a single counterparty. Based on our policies, exposure, credit and other reserves, our management does not anticipate a material adverse effect on our financial position, results of operations, or cash flows as a result of counterparty performance.

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Our over-the-counter swaps and options are entered into with counterparties outside central trading organizations such as futures, options or stock exchanges. These contracts are with a number of parties, all of which have investment grade credit ratings. While we enter into derivative transactions principally with investment grade counterparties and actively monitor their ratings, it is nevertheless possible that from time to time losses will result from counterparty credit risk in the future.

The maximum potential exposure to credit losses on derivative contracts as of September 30, 2011 was (in millions):

	Asset position
Interest rate swap agreements	$ 644.6
Energy commodity derivative contracts	262.1
Gross exposure	906.7
Netting agreement impact	(78.5)
Net exposure	$ 828.2

In conjunction with the purchase of exchange-traded derivative contracts or when the market value of our derivative contracts with specific counterparties exceeds established limits, we are required to provide collateral to our counterparties, which may include posting letters of credit or placing cash in margin accounts. As of both September 30, 2011 and December 31, 2010, KMP had no outstanding letters of credit supporting its hedging of energy commodity price risks associated with the sale of natural gas, natural gas liquids and crude oil.

As of September 30, 2011 and December 31, 2010, KMP s counterparties associated with its energy commodity contract positions and over-the-counter swap agreements had margin deposits with KMP totaling $8.9 million and $2.4 million, respectively, and we reported these amounts as Accrued other current liabilities in our accompanying consolidated balance sheets.

KMP also has agreements with certain counterparties to its derivative contracts that contain provisions requiring it to post additional collateral upon a decrease in its credit rating. Based on contractual provisions as of September 30, 2011, we estimate that if KMP s credit rating was downgraded, KMP would have the following additional collateral obligations (in millions):

Credit ratings downgraded(a)	Incremental obligations	Cumulative obligations(b)
One notch to BBB-/Baa3	$	$
Two notches to below BBB-/Baa3 (below investment grade)	$ 12.8	$ 12.8

(a) If there are split ratings among the independent credit rating agencies, most counterparties use the higher credit rating to determine KMP s incremental collateral obligations, while the remaining use the lower credit rating. Therefore, a two notch downgrade to below BBB-/Baa3 by one agency would not trigger the entire $12.8 million incremental obligation.
(b) Includes current posting at current rating.

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7. Fair Value

The Codification emphasizes that fair value is a market-based measurement that should be determined based on assumptions (inputs) that market participants would use in pricing an asset or liability. Inputs may be observable or unobservable, and valuation techniques used to measure fair value should maximize the use of relevant observable inputs and minimize the use of unobservable inputs. Accordingly, the Codification establishes a hierarchal disclosure framework that ranks the quality and reliability of information used to determine fair values. The hierarchy is associated with the level of pricing observability utilized in measuring fair value and defines three levels of inputs to the fair value measurement process quoted prices are the most reliable valuation inputs, whereas model values that include inputs based on unobservable data are the least reliable. Each fair value measurement must be assigned to a level corresponding to the lowest level input that is significant to the fair value measurement in its entirety.

The three broad levels of inputs defined by the fair value hierarchy are as follows:

Level 1 Inputs quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date;

Level 2 Inputs inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly. If the asset or liability has a specified (contractual) term, a Level 2 input must be observable for substantially the full term of the asset or liability; and

Level 3 Inputs unobservable inputs for the asset or liability. These unobservable inputs reflect the entity s own assumptions about the assumptions that market participants would use in pricing the asset or liability, and are developed based on the best information available in the circumstances (which might include the reporting entity s own data).

Fair Value of Derivative Contracts

The following two tables summarize the fair value measurements of our (i) energy commodity derivative contracts and (ii) interest rate swap agreements as of September 30, 2011 and December 31, 2010, based on the three levels established by the Codification (in millions). The fair value measurements in the tables below do not include cash margin deposits made by KMP or its counterparties, which would be reported within Restricted deposits and Accrued other current liabilities, respectively, in our accompanying consolidated balance sheets.

		Asset fair value measurements using		
	Total	**Quoted prices in active markets for identical assets (Level 1)**	**Significant other observable inputs (Level 2)**	**Significant unobservable inputs (Level 3)**
As of September 30, 2011				
Energy commodity derivative contracts(a)	$ 262.1	$ 25.3	$ 172.2	$ 64.6

Interest rate swap agreements	$ 644.6	$	$ 644.6	$
As of December 31, 2010				
Energy commodity derivative contracts(a)	$ 67.1	$	$ 23.5	$ 43.6
Interest rate swap agreements	$ 258.6	$	$ 258.6	$

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		Liability fair value measurements using		
	Total	Quoted prices in active markets for identical liabilities (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)
As of September 30, 2011				
Energy commodity derivative contracts(a)	$ (93.3)	$ (12.6)	$ (60.7)	$ (20.0)
Interest rate swap agreements	$	$	$	$
As of December 31, 2010				
Energy commodity derivative contracts(a)	$ (384.5)	$	$ (359.7)	$ (24.8)
Interest rate swap agreements	$ (69.2)	$	$ (69.2)	$

(a) Level 1 consists primarily of NYMEX natural gas futures. Level 2 consists primarily of OTC West Texas Intermediate swaps and OTC natural gas swaps that are settled on NYMEX. Level 3 consists primarily of natural gas basis swaps and West Texas Intermediate options.

The table below provides a summary of changes in the fair value of our Level 3 energy commodity derivative contracts for the nine months ended September 30, 2011 and 2010 (in millions):

Significant unobservable inputs (Level 3)

	Nine Months Ended September 30,	
	2011	2010
Derivatives-net asset (liability)		
Beginning of Period	$ 18.8	$ 13.0
Transfers into Level 3		
Transfers out of Level 3		
Total gains or (losses)		
Included in earnings	5.4	3.6
Included in other comprehensive income	21.5	11.7
Purchases	4.6	
Issuances		
Sales		
Settlements	(5.7)	6.3
End of Period	$ 44.6	$ 34.6
	$ 4.4	$ 1.3

The amount of total gains or (losses) for the period included in earnings attributable to the change in unrealized gains or (losses) relating to assets held at the reporting date

Fair Value of Financial Instruments

Fair value as used in the disclosure of financial instruments represents the amount at which an instrument could be exchanged in a current transaction between willing parties. As of each reporting date, the estimated fair value of our outstanding publicly-traded debt is based upon quoted market prices, if available, and for all other debt, fair value is based upon prevailing interest rates currently available to us. In addition, we adjust (discount) the fair value measurement of our long-term debt for the effect of credit risk.

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The estimated fair value of our outstanding debt balance as of September 30, 2011 and December 31, 2010 (both short-term and long-term, but excluding the value of interest rate swaps) is disclosed below (in millions):

	September 30, 2011		December 31, 2010	
	Carrying value	Estimated fair value	Carrying value	Estimated fair value
Total debt(a)	$ 15,765.7	$ 17,175.4	$ 15,169.9	$ 16,129.1

(a) The 2010 amount includes the $750.0 million of 5.35% senior notes paid on January 5, 2011.

8. Reportable Segments

We divide our operations into six reportable business segments. These segments and their principal source of revenues are as follows:

Products Pipelines KMP the transportation and terminaling of refined petroleum products, including gasoline, diesel fuel, jet fuel and natural gas liquids;

Natural Gas Pipelines KMP the sale, transport, processing, treating, storage and gathering of natural gas;

CO_2 KMP the production and sale of crude oil from fields in the Permian Basin of West Texas and the transportation and marketing of carbon dioxide used as a flooding medium for recovering crude oil from mature oil fields;

Terminals KMP the transloading and storing of refined petroleum products and dry and liquid bulk products, including coal, petroleum coke, cement, alumina, salt and other bulk chemicals;

Kinder Morgan Canada KMP the transportation of crude oil and refined products from Alberta, Canada to marketing terminals and refineries in British Columbia, the state of Washington and the Rocky Mountains and Central regions of the United States; and

NGPL PipeCo LLC consists of our 20% interest in NGPL PipeCo LLC, the owner of Natural Gas Pipeline Company of America and certain affiliates, collectively referred to as Natural Gas Pipeline Company of America or NGPL, a major interstate natural gas pipeline and storage system, which we operate.

We evaluate performance principally based on each segment s earnings before depreciation, depletion and amortization expenses (including amortization of excess cost of equity investments), which excludes general and administrative expenses, third-party debt costs and interest expense, unallocable interest income, and unallocable income tax expense. Our reportable segments are strategic business units that offer

different products and services, and they are structured based on how our chief operating decision maker organizes their operations for optimal performance and resource allocation. Each segment is managed separately because each segment involves different products and marketing strategies.

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Financial information by segment follows (in millions):

	Nine Months Ended September 30,	
	2011	2010
Revenues		
Products Pipelines KMP		
Revenues from external customers	$ 694.6	$ 661.5
Natural Gas Pipelines KMP		
Revenues from external customers	3,240.1	3,414.0
CO_2 KMP		
Revenues from external customers	1,076.0	972.2
Terminals KMP		
Revenues from external customers	979.4	945.3
Intersegment revenues	0.9	0.8
Kinder Morgan Canada KMP		
Revenues from external customers	230.3	197.9
Power(a)		
Revenues from external customers		8.9
Other		
NGPL PipeCo LLC fee revenue(b)	26.1	35.4
Other revenue	1.1	1.5
Total segment revenues	6,248.5	6,237.5
Less: Total intersegment revenues	(0.9)	(0.8)
Total consolidated revenues	$ 6,247.6	$ 6,236.7

	Nine Months Ended September 30,	
	2011	2010
Segment earnings (loss) before depreciation, depletion, amortization and amortization of excess cost of equity investments(c)		
Products Pipelines KMP(d)	$ 303.5	$ 331.8
Natural Gas Pipelines KMP(e)	483.7	592.3
CO_2 KMP	836.5	763.9
Terminals KMP	522.1	474.5
Kinder Morgan Canada KMP	150.0	132.9
NGPL PipeCo LLC(f)	12.3	(405.0)
Power(a)		3.8
Total segment earnings before DD&A	2,308.1	1,894.2
Depreciation, depletion and amortization	(807.6)	(813.7)

Amortization of excess cost of equity investments	(4.9)	(4.3)
NGPL PipeCo LLC fee revenue(b)	26.1	35.4
Other revenue	1.1	1.5
General and administrative expense(g)	(399.2)	(528.7)
Unallocable interest and other, net(h)	(521.5)	(492.6)
Unallocable income tax benefit (expense)	(234.7)	41.6
Income from continuing operations	$ 367.4	$ 133.4

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	September 30, 2011	December 31, 2010
Assets		
Products Pipelines KMP	$ 5,671.6	$ 5,650.9
Natural Gas Pipelines KMP	11,856.9	10,960.0
CO_2 KMP	4,203.8	4,057.2
Terminals KMP	5,228.8	5,009.3
Kinder Morgan Canada KMP	1,804.1	1,870.0
NGPL PipeCo LLC	259.7	265.6
Total segment assets	29,024.9	27,813.0
Corporate assets(i)	1,132.5	1,095.1
Total consolidated assets	$ 30,157.4	$ 28,908.1

(a) On October 22, 2010, Kinder Morgan sold its Power facility located in Michigan and as a result, Kinder Morgan no longer reports Power as a business segment.

(b) Effective January 1, 2011, this became a reimbursement of general and administrative costs; see Notes 9 and 11.

(c) Includes revenues, earnings from equity investments, allocable interest income, and other, net, less operating expenses, allocable income taxes, and other expense (income).

(d) Nine month 2011 amount includes an increase in expense of $234.3 million, primarily associated with adjustments to rate case reserves and rights-of-way lease payment obligations. Nine month 2010 amount includes a $158.0 million increase in expense associated with rate case liability adjustments.

(e) Nine month 2011 amount includes a $167.2 million loss from the remeasurement of KMP s previously held 50% equity interest in KinderHawk Field Services LLC to fair value (see Note 2).

(f) Nine month 2010 amount includes a $430.0 million non-cash investment impairment charge (see Note 2).

(g) Nine month 2011 amount includes (i) a $100 million (pre-tax) increase in special bonus expense. In May of 2011, Kinder Morgan paid the bonuses using the $64 million (after-tax) in available earnings and profits reserved for this purpose and not paid in dividends to Kinder Morgan s Class A shareholders (see Note 5); (ii) a reduction to expense for a $45.8 million Going Private transaction litigation insurance reimbursement; and (iii) $11.1 million increase of expense associated with Kinder Morgan s initial public offering. 2010 amounts include a $200.0 million increase in expense associated with the Going Private transaction litigation settlement; see Note 11.

(h) Includes (i) interest expense and (ii) miscellaneous other income and expenses not allocated to reportable segments.

(i) Includes cash and cash equivalents, margin and restricted deposits, unallocable interest receivable, prepaid assets and deferred charges, risk management assets related to the fair value of interest rate swaps and miscellaneous corporate assets (such as information technology and telecommunications equipment) not allocated to individual segments.

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9. Related Party Transactions

Notes Receivable

Plantation Pipe Line Company

As of June 30, 2011, KMP had a current note receivable bearing interest at the rate of 4.72% per annum from Plantation Pipe Line Company, its 51.17%-owned equity investee. The outstanding note receivable balance as of that date was $80.7 million. On July 20, 2011, KMP, ExxonMobil, and Plantation Pipe Line Company amended the term loan agreement covering this current note receivable KMP and ExxonMobil have from Plantation. Together, KMP, ExxonMobil, and Plantation Pipe Line Company agreed to (i) reduce the aggregate loan amount to $100.0 million following payments of $57.9 million made by Plantation to ExxonMobil and KMP on July 20, 2011; (ii) extend the maturity of the note from July 20, 2011 to July 20, 2016; (iii) allow for pre-payment of all or any portion of the principal amount of the loan without a premium penalty; and (iv) revise the interest rate on the note from 4.72% per annum to 4.25% per annum. Following the July 20, 2011 payments to both KMP and ExxonMobil, the note provides for semiannual payments of principal and interest on December 31 and June 30 each year beginning on December 31, 2011, with a final principal payment of $87.8 million due on July 20, 2016.

During the first nine months of 2011, KMP received combined principal repayments of $30.9 million, and as of September 30, 2011, KMP s 51.17% portion of the outstanding principal amount of the note was $51.2 million. We included $1.1 million of this note receivable balance within Accounts, notes and interest receivable, net, on our accompanying consolidated balance sheet, and the remaining outstanding balance within Notes Receivable. As of December 31, 2010, the outstanding note receivable balance was $82.1 million, and we included this amount within Accounts, notes and interest receivable, net, on our accompanying consolidated balance sheet.

Express US Holdings LP

KMP has a long-term investment in a C$113.6 million debt security issued by Express US Holdings LP (the obligor), the partnership that maintains ownership of the U.S. portion of the Express pipeline system. The debenture is denominated in Canadian dollars, due in full on January 9, 2023, bears interest at the rate of 12.0% per annum and provides for quarterly payments of interest in Canadian dollars on March 31, June 30, September 30 and December 31 each year. As of September 30, 2011 and December 31, 2010, the outstanding note receivable balance, representing the translated amount included in our consolidated financial statements in U.S. dollars, was $108.4 million and $114.2 million, respectively, and we included these amounts within Notes receivable on our accompanying consolidated balance sheets.

River Consulting, LLC

In conjunction with the sale of KMP s 51% equity ownership interest in River Consulting, LLC and Devco USA, L.L.C. (discussed in Note 2), it extended separate lines of credit to River Consulting and Devco, allowing them to borrow from KMP in an aggregate amount of $3.0 million for working capital purposes. The lines of credit expire on December 31, 2012, and provide for maximum advances of $2.7 million to River Consulting and $0.3 million to Devco. Advances by KMP pursuant to these lines of credit are evidenced by notes that bear interest at the rate of 9.5% per annum. The notes provide for monthly payments of interest and allow for prepayment of principal borrowings. As of September 30, 2011, River Consulting had borrowed $1.6 million under its line of credit agreement with KMP, and we included this receivable amount within Notes receivable on our accompanying consolidated balance sheet.

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Other Receivables and Payables

As of September 30, 2011 and December 31, 2010, our related party receivables (other than notes receivable discussed above in Notes Receivable) totaled $7.3 million and $23.3 million, respectively. The September 30, 2011 receivables amount consisted of (i) $3.3 million included within Accounts, notes and interest receivable, net on our accompanying consolidated balance sheet and (ii) $4.0 million of natural gas imbalance receivables included within Other current assets. The $3.3 million receivable amount primarily consisted of amounts due from the Express pipeline system and Plantation Pipe Line Company. The $4.0 million natural gas imbalance receivable amount was due from NGPL. The December 31, 2010 receivables amount consisted of (i) $16.1 million included within Accounts, notes and interest receivable, net on our accompanying consolidated balance sheet and (ii) $7.2 million of natural gas imbalance receivables included within Other current assets. The $16.1 million amount primarily related to accounts and interest receivables due from the Express pipeline system, the Rockies Express pipeline system and NGPL. The related party natural gas imbalance receivables consisted of amounts due from NGPL.

As of September 30, 2011 and December 31, 2010, our related party payables totaled $5.7 million and $4.6 million, respectively. The September 30, 2011 amount consisted of (i) $0.9 million, $0.4 million, $0.3 million and $0.2 million due to RGZ, Inc., Devco USA L.L.C., NGPL and River Consulting, LLC, respectively, and we included these amounts within Accounts payable on our accompanying consolidated balance sheet and (ii) $3.9 million of natural gas imbalance payables included within Accrued other current liabilities, consisting of amounts due to the Rockies Express pipeline system. The December 31, 2010 amount consisted of (i) $0.9 million included within Accounts payable and primarily related to amounts due to RGZ, Inc. and (ii) $3.7 million of natural gas imbalance payables included within Accrued other current liabilities consisting of amounts due to the Rockies Express pipeline system.

NGPL PipeCo LLC Fee Revenue and General and Administrative Reimbursement

On February 15, 2008, we entered into an Operations and Reimbursement Agreement (O&R Agreement) with Natural Gas Pipeline Company of America LLC, a wholly owned subsidiary of NGPL PipeCo LLC. The O&R Agreement provides for us to be reimbursed, at cost, for pre-approved operations and maintenance costs, and through December 31, 2010, a general and administration fee charge (Fee) for services provided under the O&R Agreement. Effective January 1, 2011, the general and administrative expenses (G&A Costs) are determined in accordance with and as required by the terms of the O&R Agreement. The Fee and the reimbursement of G&A Costs are included within the caption, Product sales and other in our accompanying consolidated statements of income, and totaled $26.1 million and $35.4 million for the nine months ended September 30, 2011 and 2010, respectively. Also, see Note 11 Litigation, Environmental and Other Contingencies NGPL 2011 Budget Arbitration.

Asset Divestitures

Mr. C. Berdon Lawrence, a non-management director on the boards of Kinder Morgan G.P., Inc. and KMR until July 20, 2011, is also Chairman Emeritus of the Board of Kirby Corporation. On February 9, 2011, KMP sold a marine vessel to Kirby Corporation s subsidiary Kirby Inland Marine, L.P., and additionally, KMP and Kirby Inland Marine L.P. formed a joint venture named Greens Bayou Fleeting, LLC. For more information about these transactions, see Note 2.

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(Unaudited)

Derivative Counterparties

One of our investors, Goldman Sachs Capital Partners and certain of its affiliates (Goldman Sachs), is considered a related party to us as that term is defined by U.S. generally accepted accounting principles. Goldman Sachs has acted in the past, and may act in the future, as an underwriter for equity and/or debt issuances for us, Kinder Morgan Kansas, Inc., KMP and KMR, and Goldman Sachs effectively owned 49% of the terminal assets KMP acquired from US Development Group LLC in January 2010.

In addition, we conduct energy commodity risk management activities in the ordinary course of implementing our risk management strategies in which the counterparty to certain of our derivative transactions is an affiliate of Goldman Sachs and in conjunction with these activities, we are a party (through one of KMP s subsidiaries engaged in the production of crude oil) to a hedging facility with J. Aron & Company/Goldman Sachs. The hedging facility requires us to provide certain periodic information but does not require the posting of margin. As a result of changes in the market value of our derivative positions, we have created both amounts receivable from and payable to Goldman Sachs affiliates. The following table summarizes the fair values of our energy commodity derivative contracts that are (i) associated with commodity price risk management activities with J. Aron & Company/Goldman Sachs and (ii) included within Fair value of derivative contracts in our accompanying consolidated balance sheets as of September 30, 2011 and December 31, 2010 (in millions):

	September 30, 2011	December 31, 2010
Derivatives asset (liability)		
Current assets	$ 36.7	$
Noncurrent assets	$ 49.7	$ 12.7
Current liabilities	$ (41.3)	$ (221.4)
Noncurrent liabilities	$ (11.3)	$ (57.5)

For more information on our risk management activities see Note 6.

10. Income Taxes

Income taxes from continuing operations included in our accompanying consolidated statements of income were as follows (in millions, except percentages):

	Nine Months Ended September 30,	
	2011	2010
Income tax expense (benefit)	$ 250.2	$ (29.1)
Effective tax rate	40.5%	(27.9)%

The effective tax rate for the nine months ended September 30, 2011 is higher than the statutory federal rate of 35% primarily due to (i) the net effect of consolidating KMP; (ii) state income taxes; (iii) the impact of non tax-deductible costs incurred to facilitate the initial public offering; and (iv) an adjustment to the deferred tax liability related to our investment in KMP. These increases were partially offset by (i) a dividends received deduction from our 20% ownership interest in NGPL and (ii) adjustments to our income tax reserve for uncertain tax positions, due primarily to expiration of statute of limitations. Our effective tax rate for the same period of 2010 was lower than the statutory federal rate of 35% primarily due to (i) the net effect of consolidating KMP; (ii) a dividend received deduction from our 20% ownership interest in NGPL and

(iii) an adjustment to the deferred tax liability related to our investment in NGPL. These decreases are partially offset by (i) state income taxes, and (ii) adjustments to our income tax reserve for uncertain tax positions.

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11. Litigation, Environmental and Other Contingencies

Below is a brief description of our ongoing material legal proceedings, including any material developments that occurred in such proceedings during the nine months ended September 30, 2011. Additional information with respect to these proceedings can be found in Note 16 to our consolidated financial statements that were included in our audited December 31, 2010 consolidated financial statements and related notes. This note also contains a description of any material legal proceedings that were initiated against us during the nine months ended September 30, 2011, and a description of any material events occurring subsequent to September 30, 2011, but before the filing of this report.

In this note, we refer to KMP s subsidiary SFPP, L.P. as SFPP; KMP s subsidiary Calnev Pipe Line LLC as Calnev; Chevron Products Company as Chevron; BP West Coast Products, LLC as BP; ConocoPhillips Company as ConocoPhillips; Tesoro Refining and Marketing Company as Tesoro; Western Refining Company, L.P. as Western Refining; Navajo Refining Company, L.L.C. as Navajo; Holly Refining & Marketing Company LLC as Holly; ExxonMobil Oil Corporation as ExxonMobil; Valero Energy Corporation as Valero; Valero Marketing and Supply Company as Valero Marketing; Continental Airlines, Inc., Northwest Airlines, Inc., Southwest Airlines Co. and US Airways, Inc., collectively, as the Airlines; KMP s subsidiary Kinder Morgan CO_2 Company, L.P. (the successor to Shell CO_2 Company, Ltd.) as Kinder Morgan CO_2; the United States Court of Appeals for the District of Columbia Circuit as the D.C. Circuit; the Federal Energy Regulatory Commission as the FERC; the California Public Utilities Commission as the CPUC; the Union Pacific Railroad Company (the successor to Southern Pacific Transportation Company) as UPRR; the Texas Commission of Environmental Quality as the TCEQ; The Premcor Refining Group, Inc. as Premcor; Port Arthur Coker Company as PACC; the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration as the PHMSA; the United States Environmental Protection Agency as the U.S. EPA; the New Jersey Department of Environmental Protection as the NJDEP; KMP s subsidiary Kinder Morgan Bulk Terminals, Inc. as KMBT; KMP s subsidiary Kinder Morgan Liquids Terminals LLC as KMLT; KMP s subsidiary Kinder Morgan Interstate Gas Transmission LLC as KMIGT; Rockies Express Pipeline LLC as Rockies Express; and Plantation Pipe Line Company as Plantation. OR dockets designate complaint proceedings, and IS dockets designate protest proceedings.

Federal Energy Regulatory Commission Proceedings

The tariffs and rates charged by SFPP and Calnev are subject to a number of ongoing proceedings at the FERC, including the shippers complaints and protests regarding interstate rates on the pipeline systems listed below. In general, these complaints and protests allege the rates and tariffs charged by SFPP and Calnev are not just and reasonable. If the shippers are successful in proving their claims, they are entitled to seek reparations (which may reach up to two years prior to the filing of their complaints) or refunds of any excess rates paid, and SFPP may be required to reduce its rates going forward. These proceedings tend to be protracted, with decisions of the FERC often appealed to the federal courts.

The issues involved in these proceedings include, among others: (i) whether certain of KMP s Pacific operations rates are grandfathered under the Energy Policy Act of 1992, and therefore deemed to be just and reasonable; (ii) whether substantially changed circumstances have occurred with respect to any grandfathered rates such that those rates could be challenged; (iii) whether indexed rate increases are justified and (iv) the appropriate level of return and income tax allowance KMP may include in its rates.

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SFPP

Pursuant to FERC approved settlements, SFPP settled with eleven of twelve shipper litigants in May 2010 and with Chevron in March 2011 a wide range of rate challenges dating back to 1992 (Historical Cases Settlements). Settlement payments were made to the eleven shippers in June 2010 and to Chevron in March 2011.

The Historical Cases Settlements and other legal reserves related to SFPP rate litigation resulted in a $172.0 million charge to earnings in 2010. In June 2010, KMP made settlement payments of $206.3 million to eleven of the litigant shippers. Due to this settlement payment and the reserve KMP took at that time for potential future settlements with Chevron (since resolved) and the CPUC cases described below, a portion of KMP s partnership distributions for the second quarter of 2010 (which KMP paid in August 2010) was a distribution of cash from interim capital transactions (rather than a distribution of cash from operations) and our second quarter 2010 distribution from KMP was reduced by $170.0 million. As a result, our second quarter 2010 pre-tax earnings were reduced by $168.3 million.

As provided in KMP s partnership agreement, we receive no incentive distribution on ICT Distributions; therefore, there was no practical impact to KMP s limited partners from this ICT Distribution because (i) the expected cash distribution to the limited partners did not change; (ii) fewer dollars in the aggregate were distributed, because there was no incentive distribution paid to us related to the portion of the quarterly distribution that was an ICT Distribution; and (iii) we, in this instance, agreed to waive any resetting of the incentive distribution target levels, as would otherwise occur according to KMP s partnership agreement. This ICT Distribution also allowed KMP to resolve the Chevron settlement and should allow it to resolve the CPUC rate cases (discussed below) without impacting its future distributions.

The following FERC dockets are currently pending:

FERC Docket No. IS08-390 (West Line Rates) (Opinion 511) Protestants: BP, ExxonMobil, ConocoPhillips, Valero Marketing, Chevron, the Airlines Status: FERC order issued on February 17, 2011. While the order made certain findings that were adverse to SFPP, it ruled in favor of SFPP on many significant issues. Subsequently, SFPP made a compliance filing which estimates approximately $16.0 million in refunds. However, SFPP also filed a rehearing request on certain adverse rulings in the FERC order. It is not possible to predict the outcome of the FERC review of the rehearing request or appellate review of this order;

FERC Docket No. IS09-437 (East Line Rates) Protestants: BP, ExxonMobil, ConocoPhillips, Valero Marketing, Chevron, Western Refining, Navajo, Holly, and Southwest Airlines Status: Initial decision issued on February 10, 2011. A FERC administrative law judge generally made findings adverse to SFPP, found that East Line rates should have been lower, and recommended that SFPP pay refunds for alleged over-collections. SFPP has filed a brief with the FERC taking exception to these and other portions of the initial decision. The FERC will review the initial decision, and while the initial decision is inconsistent with a number of the issues ruled on in FERC s Opinion 511, it is not possible to predict the outcome of FERC or appellate review;

FERC Docket No. IS11-444 (2011 Index Rate Increases) Protestants: BP, ExxonMobil, ConocoPhillips, Valero Marketing, Chevron, the Airlines, Tesoro, Western Refining, Navajo, and Holly Status: SFPP withdrew all index rate increases except those that pertain to the West Line. As to the West Line, the index rate increases are currently accepted and suspended, subject to refund, and the case is before a FERC hearing judge;

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FERC Docket No. IS11-585 (Withdrawal of 2011 Index Rate Increases) Protestants: BP, ConocoPhillips, Valero Marketing, Chevron, the Airlines, Tesoro, Western Refining, Navajo, and Holly Status: SFPP withdrew all index rate increases except those that pertain to the West Line. The Protestants have challenged the index ceiling levels for lines other than the West Line. The protests and SFPP s answer are currently pending before the FERC;

FERC Docket No. OR11-13 (SFPP Base Rates) Complainant: ConocoPhillips Status: SFPP to provide further data within 90 days of the issuance of a final order in Docket No. IS08-390. ConocoPhillips permitted to amend its complaint based on additional data;

FERC Docket No. OR11-14 (SFPP Indexed Rates) Complainant: ConocoPhillips Status: Complaint dismissed;

FERC Docket No. OR11-15 (SFPP Base Rates) Complainant: Chevron Status: SFPP to provide further data within 90 days of the issuance of a final order in Docket No. IS08-390. Chevron permitted to amend its complaint based on additional data;

FERC Docket No. OR11-16 (SFPP Indexed Rates) Complainant: Chevron Status: Complaint dismissed;

FERC Docket No. OR11-18 (SFPP Base Rates) Complainant: Tesoro Status: SFPP to provide further data within 90 days of the issuance of a final order in Docket No. IS08-390. Tesoro permitted to amend its complaint based on additional data; and

FERC Docket No. OR11-19 (SFPP Indexed Rates) Complainant: Tesoro Status: Complaint dismissed.

FERC Docket No. OR11-20 (SFPP North Line Base Rates) Complainant: Tesoro Status: Complaint was filed August 2, 2011. SFPP answered on September 1, 2011. Matter is currently pending before the FERC.

FERC Docket No. OR12-1 (SFPP Index Ceiling Levels) Complainant: Chevron Status: Complaint was filed October 5, 2011. SFPP answered on October 26, 2011. Matter is currently pending before the FERC.

FERC Docket No. OR12-2 (SFPP Index Ceiling Levels) Complainant: Tesoro Status: Complaint was filed October 5, 2011. SFPP answered on October 26, 2011. Matter is currently pending before the FERC.

FERC Docket No. OR12-3 (SFPP Index Ceiling Levels) Complainant: ConocoPhillips Status: Complaint was filed October 5, 2011. SFPP answered on October 26, 2011. Matter is currently pending before the FERC.

With respect to the SFPP proceedings above and the Calnev proceedings discussed below, KMP estimates that the shippers are seeking approximately $50.0 million in annual rate reductions and $140.0 million in refunds. However, applying the principles of Opinion 511, a full

FERC decision on the West Line Rates, to these cases would result in substantially lower rate reductions and refunds. In the first nine months of 2011, KMP recorded a $161.3 million expense and increased its litigation reserve related to these cases and the litigation discussed below involving SFPP and the CPUC. We do not expect refunds in these cases to have an impact on KMP s distributions to its limited partners or our dividends to our shareholders.

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Calnev

On March 17, 2011, the FERC issued an order consolidating the following proceedings and setting them for hearing. The FERC further held the hearing proceedings in abeyance to allow for settlement judge proceedings:

FERC Docket Nos. OR07-7, OR07-18, OR07-19, OR07-22, OR09-15 and OR09-20 (consolidated) (Calnev Rates) Complainants: Tesoro, Airlines, BP, Chevron, ConocoPhillips and Valero Marketing Status: Before a FERC settlement judge.

Trailblazer Pipeline Company LLC

On July 7, 2010, KMP s subsidiary Trailblazer Pipeline Company LLC refunded a total of approximately $0.7 million to natural gas shippers covering the period January 1, 2010 through May 31, 2010 as part of a settlement reached with shippers to eliminate the December 1, 2009 rate filing obligation contained in its Docket No. RP03-162 rate case settlement. As part of the agreement with shippers, Trailblazer commenced billing reduced tariff rates as of June 1, 2010 with an additional reduction in tariff rates that took effect January 1, 2011.

Kinder Morgan Interstate Gas Transmission LLC Section 5 Proceeding

On November 18, 2010, KMP s subsidiary KMIGT was notified by the FERC of a proceeding against it pursuant to Section 5 of the Natural Gas Act. The proceeding set for hearing a determination of whether KMIGT s current rates, which were approved by the FERC in KMIGT s last transportation rate case settlement, remain just and reasonable. The FERC made no findings in its order as to what would constitute just and reasonable rates or a reasonable return for KMIGT. A proceeding under Section 5 of the Natural Gas Act is prospective in nature and any potential change in rates charged customers by KMIGT can only occur after the FERC has issued a final order. Prior to that, an administrative law judge presides over an evidentiary hearing and makes an initial decision (which the FERC has directed to be issued within 47 weeks).

On March 23, 2011, the Chief Judge suspended the procedural schedule in this proceeding because all parties reached a settlement in principle that will resolve all issues set for hearing. On May 5, 2011, KMIGT filed a formal settlement document, referred to in this Note as the Settlement and which is supported or not opposed by all parties of record, and on September 22, 2011, the FERC approved the Settlement.

The Settlement resolves all issues in the proceeding and provides shippers on KMIGT s system with prospective reductions in the fuel and gas and lost and unaccounted for rates, referred to as the Fuel Retention Factors, effective June 1, 2011. The Settlement results in a 27% reduction in the Fuel Retention Factors billed to shippers effective June 1, 2011, as compared to the Fuel Retention Factors approved and in effect on March 1, 2011. The Settlement also provides for a second stepped reduction, resulting in a total 30% reduction in the Fuel Retention Factors billed to shippers and effective January 1, 2012, for certain segments of the former Pony Express pipeline system. Except for these reductions to the Fuel Retention Factors, other transportation and storage rates will not be altered by the Settlement.

California Public Utilities Commission Proceedings

KMP has previously reported ratemaking and complaint proceedings against SFPP pending with the CPUC. The ratemaking and complaint cases generally involve challenges to rates charged by SFPP for intrastate transportation of refined petroleum products through its pipeline system in the state of California and request prospective rate adjustments and refunds with respect to tariffed and previously untariffed charges for certain pipeline transportation and related services. These matters have been consolidated and assigned to two administrative law judges.

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On April 6, 2010, a CPUC administrative law judge issued a proposed decision in several intrastate rate cases involving SFPP and a number of its shippers. The proposed decision includes determinations on issues, such as SFPP s entitlement to an income tax allowance and allocation of environmental expenses, which KMP believes are contrary both to CPUC policy and precedent and to established federal regulatory policies for pipelines. Moreover, the proposed decision orders refunds relating to these issues where the underlying rates were previously deemed reasonable by the CPUC, which KMP believes to be contrary to California law. SFPP filed comments on May 3, 2010 outlining what it believes to be the errors in law and fact within the proposed decision, and on May 5, 2010, SFPP made oral arguments before the full CPUC. On November 12, 2010, an alternate proposed decision was issued.

On May 26, 2011, the CPUC issued an order adopting the proposed decision, which would eliminate from SFPP s transportation rates an allowance for income taxes on income generated by SFPP. The order also calls for partial refund of rates charged to shippers that were previously deemed reasonable by the CPUC. The order would only affect rates for SFPP s intrastate pipeline service within the state of California and would have no effect on SFPP s interstate rates, which do include such an allowance under orders of the FERC and opinions of the U.S. Court of Appeals for the District of Columbia. On this same date, KMP announced that it will seek rehearing and pursue other legal options to overturn the CPUC s order.

On June 22, 2011, a CPUC administrative law judge (ALJ) issued a proposed decision substantially reducing SFPP s authorized cost of service, requiring SFPP s prospective rates to be reduced to reflect the authorized cost of service, and ordering SFPP to pay refunds from May 24, 2007 to the present of revenues collected in excess of the authorized cost of service. SFPP filed comments on the proposed decision on June 22, 2011, outlining what it believes to be errors in law and fact in the proposed decision, including the requirement that refunds be made from May 24, 2007. By subsequent ruling of the ALJ, the referenced proposed decision has been withdrawn. The ALJ ruling indicated that a revised proposed decision would be issued at an unspecified date, subject to comments from the parties and a request for oral argument before the full CPUC.

Based on KMP s review of these CPUC proceedings and the shipper comments thereon, it estimates that the shippers are requesting approximately $360.0 million in reparation payments and approximately $30.0 million in annual rate reductions. The actual amount of reparations will be determined through further proceedings at the CPUC and KMP believes that the appropriate application of the May 26, 2011 CPUC order and the June 22, 2011 administrative law decision will result in a considerably lower amount. In addition, further procedural steps, including motions for rehearing and writ of review to California s Court of Appeals, will be taken with respect to these decisions. We do not expect any reparations that KMP would pay in these matters to have an impact on KMP s distributions to its limited partners or our dividends to our shareholders.

In September 2011, with respect to certain cases, KMP made refund payments of $18.4 million to various intrastate shippers pursuant to orders received from the CPUC.

Carbon Dioxide Litigation

Colorado Severance Tax Assessment

On September 16, 2009, the Colorado Department of Revenue issued three Notices of Deficiency to Kinder Morgan CO_2. The Notices of Deficiency assessed additional state severance tax against Kinder Morgan CO_2 with respect to carbon dioxide produced from the McElmo Dome unit for tax years 2005, 2006, and 2007. The total amount of tax assessed was $5.7 million, plus interest of $1.0 million, plus penalties of $1.7 million. Kinder Morgan CO_2 protested the Notices of Deficiency and paid the tax and interest under protest. Kinder Morgan CO_2 is now awaiting the Colorado Department of Revenue s response to the protest.

KINDER MORGAN, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

Montezuma County, Colorado Property Tax Assessment

In November of 2009, the County Treasurer of Montezuma County, Colorado, issued to Kinder Morgan CO_2, as operator of the McElmo Dome unit, retroactive tax bills for tax year 2008, in the amount of $2 million. Of this amount, 37.2% is attributable to Kinder Morgan CO_2 s interest. The retroactive tax bills were based on the assertion that a portion of the actual value of the carbon dioxide produced from the McElmo Dome unit was omitted from the 2008 tax roll due to an alleged over statement of transportation and other expenses used to calculate the net taxable value. Kinder Morgan CO_2 paid the retroactive tax bills under protest and filed petitions for a refund of the taxes paid under protest. A hearing on its petition is scheduled for December 19, 2011 before the Montezuma County Board of County Commissioners. Kinder Morgan CO_2 will vigorously contest the retroactive tax bills.

Other

In addition to the matters listed above, audits and administrative inquiries concerning Kinder Morgan CO_2 s payments on carbon dioxide produced from the McElmo Dome and Bravo Dome units are currently ongoing. These audits and inquiries involve federal agencies, the states of Colorado and New Mexico, and county taxing authorities in the state of Colorado.

Commercial Litigation Matters

Union Pacific Railroad Company Easements

SFPP and UPRR are engaged in a proceeding to determine the extent, if any, to which the rent payable by SFPP for the use of pipeline easements on rights-of-way held by UPRR should be adjusted pursuant to existing contractual arrangements for the ten year period beginning January 1, 2004 (*Union Pacific Railroad Company v. Santa Fe Pacific Pipelines, Inc., SFPP, L.P., Kinder Morgan Operating L.P. D , Kinder Morgan G.P., Inc., et al.,* Superior Court of the State of California for the County of Los Angeles, filed July 28, 2004). In February 2007, a trial began to determine the amount payable for easements on UPRR rights-of-way. The trial has concluded. In September 2011, the judge determined that the annual rent payable as of January 1, 2004 is $14.8 million, subject to annual consumer price index increases. SFPP intends to appeal the judge s determination, but if that determination is upheld, SFPP would owe approximately $73.9 million in back rent. Accordingly, in September 2011, we recorded a $73.9 million expense and increased our rights-of-way liability related to this legal matter.

SFPP and UPRR are also engaged in multiple disputes over the circumstances under which SFPP must pay for a relocation of its pipeline within the UPRR right-of-way and the safety standards that govern relocations. In July 2006, a trial before a judge regarding the circumstances under which SFPP must pay for relocations concluded, and the judge determined that SFPP must pay for any relocations resulting from any legitimate business purpose of the UPRR. SFPP appealed this decision, and in December 2008, the appellate court affirmed the decision. In addition, UPRR contends that SFPP must comply with the more expensive American Railway Engineering and Maintenance-of-Way standards in determining when relocations are necessary and in completing relocations. Each party is seeking declaratory relief with respect to its positions regarding the application of these standards with respect to relocations. A trial with respect to these matters commenced in October 2011. A decision is expected in the fourth quarter of 2011.

Since SFPP does not know UPRR s plans for projects or other activities that would cause pipeline relocations, it is difficult to quantify the effects of the outcome of these cases on SFPP. Even if SFPP is successful in advancing its positions, significant relocations for which SFPP must nonetheless bear the expense

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(i.e., for railroad purposes, with the standards in the federal Pipeline Safety Act applying) would have an adverse effect on our financial position, our results of operations, and our cash flows. These effects would be even greater in the event SFPP is unsuccessful in one or more of these litigations.

Severstal Sparrows Point Crane Collapse

On June 4, 2008, a bridge crane owned by Severstal Sparrows Point, LLC and located in Sparrows Point, Maryland collapsed while being operated by KMBT. According to KMP s investigation, the collapse was caused by unexpected, sudden and extreme winds. On June 24, 2009, Severstal filed suit against KMBT in the United States District Court for the District of Maryland, cause no. WMN 09CV1668. Severstal alleges that KMBT was contractually obligated to replace the collapsed crane and that its employees were negligent in failing to properly secure the crane prior to the collapse. Severstal seeks unspecified damages for value of the crane and lost profits. KMBT denies each of Severstal s allegations.

The Premcor Refining Group, Inc. v. Kinder Morgan Energy Partners, L.P. and Kinder Morgan Petcoke, L.P.; Arbitration in Houston, Texas

On August 12, 2010, Premcor filed a demand for arbitration against KMP and its subsidiary Kinder Morgan Petcoke, L.P., collectively referred to as Kinder Morgan, asserting claims for breach of contract. Kinder Morgan performs certain petroleum coke handling operations at the Port Arthur, Texas refinery that is the subject of the claim. The arbitration is being administered by the American Arbitration Association in Dallas, Texas. Premcor alleges that Kinder Morgan breached its contract with Premcor by failing to properly manage the water level in the pit of a coker unit at a refinery owned by Premcor, failing to name Premcor as an additional insured, and failing to indemnify Premcor for claims brought against Premcor by PACC. PACC is a wholly owned subsidiary of Premcor. PACC brought its claims against Premcor in a previous separate arbitration seeking to recover damages allegedly suffered by PACC when a pit wall of a coker unit collapsed at its refinery. PACC obtained an arbitration award against Premcor in the amount of $50.3 million, plus post-judgment interest. Premcor is seeking to hold Kinder Morgan liable for the award. Premcor is also seeking to recover an additional $11.4 million of alleged losses and damages in excess of the amount it owes to PACC. Premcor s claim against Kinder Morgan is based in part upon Premcor s allegation that Kinder Morgan is responsible to the extent of Kinder Morgan s alleged proportionate fault in causing the pit wall collapse. The final arbitration hearing concluded on October 3, 2011. On October 21, 2011, we received the arbitrator s findings of fact and rulings of law, which determined that Kinder Morgan has no liability for damages with respect to the claims asserted by PACC in the prior arbitration or by Premcor in the present arbitration.

City of Reno, State of Nevada, et al. its Attorney General s office v. SFPP, LP, Kinder Morgan Operating L.P. D and Kinder Morgan G.P. (Case No. CV09-02277 District Court of Washoe County, Nevada).

The City of Reno asserts claims against the Kinder Morgan defendants for breach of contract, fraud, and violations of the Nevada False Claims Act arising out of a construction project in Reno, Nevada in 2003. The Kinder Morgan defendants were a general contractor for a pipeline relocation project and billed the City of Reno for the costs associated with the pipeline relocation. The City of Reno paid those costs but later claimed that the Kinder Morgan defendants overcharged the City for the project. The City seeks damages of approximately $4 million for the alleged overcharge plus treble damages under the Nevada False Claims Act. The Kinder Morgan defendants deny these allegations. The case will be set for trial in 2012.

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(Unaudited)

South Central Cement, Ltd. v. River Consulting, LLC and CCC Group, Inc., Cause No. 2009-50242 in the District Court of the 61st Judicial District, Harris County, Texas.

South Central Cement, Ltd. (SCC) filed suit against CCC Group, Inc. (CCC) and KMP affiliate, River Consulting, LLC (RCI) alleging claims for negligence and breach of contract in connection with the design and construction of two warehouses and interior retaining walls to store bulk cement, referred to in this Note as the Facilities. SCC alleges that the retaining walls collapsed due to faulty design by RCI and/or construction by CCC. SCC has alleged that its damages, including repair or replacement costs and lost profits, exceed $7.5 million. RCI filed a motion for partial summary judgment to enforce contractual waivers limitations on damages. By order dated October 29, 2010, the trial court ordered that (i) defendant RCI s potential aggregate liability, if any, to plaintiff for damages in this matter is limited to a maximum of $50,000 in tort pursuant to the terms of the agreement between the parties and (ii) plaintiff has by agreement waived all claims in both tort and contract related to lost profits, reduced handling capacity, or other consequential damages. Despite the issuance of the partial summary judgment order in favor of RCI, SCC has persisted in its claim against both RCI and CCC and has continued to assert a purported claim for direct damages in excess of $7.0 million, which SCC has alleged is the cost to repair, rebuild or replace the Facilities. Defendants estimate that the replacement cost of the Facilities is approximately $1 million. The matter is set for trial for the term of court beginning February 27, 2012.

General Litigation Matters

Rick Lewis v. Kinder Morgan Energy Partners, L.P., et al (Case No. A566869 District Court Clark County, Nevada).

The plaintiff s estate asserts claims for wrongful death arising out of the deceased s alleged exposure to gasoline at KMP s Las Vegas Terminal from 2002 to 2008. During this time period, the deceased was employed as a tanker truck driver at Williams Trucking and he loaded gasoline at the KMP Terminal. Plaintiff alleges that KMP failed to provide a safe premise by exposing the deceased to gasoline while he completed his loading operations and that KMP distributed a defective product (gasoline). The plaintiff s estate and survivors seek damages for his medical bills, loss of future income, pain and suffering and past and future loss of companionship. The trial of this case concluded on October 10, 2011. The jury returned a verdict against KMP for $7.5 million. Further procedural steps, including a motion for new trial and an appeal to the Nevada Supreme Court, will be taken if warranted.

Mine Safety Matters

In the third quarter of 2011, KMP s bulk terminals operations that handle coal received five citations under the Mine Safety and Health Act of 1977 which were deemed to be significant and substantial violations of mandatory health and safety standards under section 104 of the act (none of which was under section 104(d) or section 104(b) of the act). The aggregate of proposed assessments outstanding in respect of all citations received under the act in 2011, as of September 30, was $3,888. KMP works to promptly abate violations described in the citations. We do not believe any of such citations or the matters giving rise to such citations will have a material adverse impact on our business, financial position, results of operations or cash flows.

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Employee Matters

James Lugliani vs. Kinder Morgan G.P., Inc. et al. in the Superior Court of California, Orange County

James Lugliani, a former Kinder Morgan employee, filed suit in January 2010 against various Kinder Morgan affiliates. On behalf of himself and other similarly situated current and former employees, Mr. Lugliani claims that the Kinder Morgan defendants have violated the wage and hour provisions of the California Labor Code and Business & Professions Code by failing to provide meal and rest periods; failing to pay meal and rest period premiums; failing to pay all overtime wages due; failing to timely pay wages; failing to pay wages for vacation, holidays and other paid time off; and failing to keep proper payroll records. On September 13, 2011, the court granted preliminary approval to a proposed settlement of $2.2 million for a proposed settlement class of approximately 400 current and former employees. A final hearing on the proposed class action settlement will be held in the first quarter of 2012.

Pipeline Integrity and Releases

From time to time, despite our best efforts, our pipelines experience leaks and ruptures. These leaks and ruptures may cause explosions, fire, and damage to the environment, damage to property and/or personal injury or death. In connection with these incidents, we may be sued for damages caused by an alleged failure to properly mark the locations of our pipelines and/or to properly maintain our pipelines. Depending upon the facts and circumstances of a particular incident, state and federal regulatory authorities may seek civil and/or criminal fines and penalties.

Barstow, California

The United States Department of the Navy has alleged that historic releases of methyl tertiary-butyl ether, or MTBE, from Calnev s Barstow terminal (i) have migrated underneath the Navy s Marine Corps Logistics Base in Barstow; (ii) have impacted the Navy s existing groundwater treatment system for unrelated groundwater contamination not alleged to have been caused by Calnev; and (iii) could affect the Barstow, California Marine Corps Logistic Base s water supply system. Calnev and the Navy entered into an Administrative Settlement Agreement effective October 4, 2011 pursuant to which Calnev reimbursed the Navy $0.5 million in past response costs under the federal Comprehensive Environmental Response, Compensation and Liability Act (referred to as CERCLA).

Westridge Release, Burnaby, British Columbia

On July 24, 2007, a third-party contractor installing a sewer line for the City of Burnaby struck a crude oil pipeline segment included within KMP s Trans Mountain pipeline system near its Westridge terminal in Burnaby, British Columbia, resulting in a release of approximately 1,400 barrels of crude oil. The release impacted the surrounding neighborhood, several homes and nearby Burrard Inlet. No injuries were reported. To address the release, KMP initiated a comprehensive emergency response in collaboration with, among others, the City of Burnaby, the British Columbia Ministry of Environment, the National Energy Board (Canada), and the National Transportation Safety Board (Canada). Cleanup and environmental remediation is complete, and KMP has received a British Columbia Ministry of Environment Certificate of Compliance confirming complete remediation.

Kinder Morgan Canada, Inc. commenced a lawsuit against the parties it believes were responsible for the third party strike, and a number of other parties have commenced related actions. All of the outstanding litigation was settled without assignment of fault on April 8, 2011. Kinder Morgan Canada has recovered the majority of its expended costs in responding to the third party strike.

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On July 22, 2009, the British Columbia Ministry of Environment issued regulatory charges against the third-party contractor, the engineering consultant to the sewer line project, Kinder Morgan Canada Inc., and KMP subsidiary Trans Mountain L.P. The British Columbia Ministry of Environment claims that the parties charged caused the release of crude oil, and in doing so were in violation of various sections of the Environmental, Fisheries and Migratory Bird Act. On October 3, 2011, KMP s subsidiary, Trans Mountain L.P., and each of the City of Burnaby s contractor and engineering consultants agreed to enter a plea of guilty to one count of The Environmental Management Act. Each party agreed to pay a $1,000 fine and will contribute $149,000 into a B.C. environmental trust fund to be used for projects that benefit the environment and wildlife. In addition, Trans Mountain agreed to donate $100,000 to BC Common Ground Alliance to further develop and deliver education to contractors for working safely around pipelines. The Court has taken the matter under advisement and is expected to rule on November 10, 2011.

Rockies Express Pipeline LLC Indiana Construction Incident

In April 2009, Randy Gardner, an employee of Sheehan Pipeline Construction Company (a third-party contractor to Rockies Express and referred to in this note as Sheehan Construction) was fatally injured during construction activities being conducted under the supervision and control of Sheehan Construction. The cause of the incident was investigated by Indiana OSHA, which issued a citation to Sheehan Construction. Rockies Express was not cited in connection with the incident.

In August 2010, the estate of Mr. Gardner filed a wrongful death action against Rockies Express and several other parties in the Superior Court of Marion County, Indiana, at case number 49D111008CT036870. The plaintiff alleges that the defendants were negligent in allegedly failing to provide a safe worksite, and seeks unspecified compensatory damages. Rockies Express denies that it was in any way negligent or otherwise responsible for this incident, and intends to assert contractual claims for complete indemnification for any and all costs arising from this incident, including any costs related to this lawsuit, against third parties and their insurers.

Perth Amboy, New Jersey Tank Release

In May 2011, the PHMSA issued a Notice of Probable Violation, Proposed Civil Penalty and Proposed Compliance Order, or NOPV, to KMLT. The notice alleges violations of PHMSA s regulations related to an October 28, 2009 tank release from KMP s Perth Amboy, New Jersey liquids terminal. No product left the company s property, and additionally, there were no injuries, no impact to the adjacent community or public, and no fire as a result of the release. The notice proposes a penalty in the amount of $425,000. KMLT is cooperating fully with the PHMSA on the response and remediation of this issue.

Central Florida Pipeline Release, Tampa, Florida

On July 22, 2011, KMP s subsidiary Central Florida Pipeline LLC reported a refined petroleum products release on a section of its 10-inch diameter pipeline near Tampa, Florida. The pipeline carries jet fuel and diesel to Orlando and was carrying jet fuel at the time of the incident. There was no fire and no injuries associated with the incident. KMP immediately began clean up operations in coordination with federal, state and local agencies. The cause of the incident is under investigation.

Herscher Illinois Compressor Station Incident

On August 16, 2011, at NGPL s Compressor Station 201 in Herscher, Illinois, a crew was performing work inside a compressor building when a flash fire and explosion occurred. Three workers were injured. NGPL is working with the Department of Transportation Pipeline and Hazardous Materials Safety Administration to investigate the cause of the incident.

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NGPL 2011 Budget Arbitration

Pursuant to a notice of dispute dated December 15, 2010, on April 4, 2011, Natural Gas Pipeline Company of America LLC (NGPL) acting by and through its Myria Holdings, Inc. controlled Board of Directors, filed a notice initiating arbitration against Kinder Morgan Kansas, Inc. pursuant to the terms of the February 2008 Operations and Reimbursement Agreement (O&R Agreement). NGPL alleges that Kinder Morgan Kansas, Inc., as Operator of NGPL, has breached the O&R Agreement relating to Kinder Morgan Kansas, Inc. s proposed allocation of certain general and administrative expenses (G&A Costs) and other budget line items as determined by Kinder Morgan Kansas, Inc. and set forth in the Proposed 2011 Budget submitted in November 2010. The NGPL Board rejected the Proposed 2011 Budget, suggested that G&A Costs budgeted to NGPL should be considerably lower, and also questioned certain other costs set forth in the Proposed 2011 Budget. Kinder Morgan Kansas, Inc. asserts that it determined the amount of G&A Costs and direct costs budgeted to NGPL for 2011 as required by and in accordance with the terms of the O&R Agreement. The arbitration proceeding was conducted on July 14-17, 2011, and a written decision was issued on August 18, 2011. The Arbitrator ruled that: KMI had properly allocated G&A Costs in accordance with the Operating Agreement; KMI should furnish NGPL with information necessary to verify certain costs included in budgeted line items and G&A Costs; and each party would bear its own fees and expenses incurred in the arbitration, effectively denying KMI s claim for indemnification of such fees and expenses. On September 16, 2011, KMI filed an Application to Confirm the Arbitration Award in the District Court of Harris County, Texas, which is currently pending. We do not anticipate that the resolution of this matter will have a material adverse impact on our business, financial position, results of operations or cash flows.

Litigation Regarding KMI s Proposed Acquisition of El Paso Corporation

On October 16, 2011, we and El Paso Corporation (NYSE: EP) announced a definitive agreement whereby KMI will acquire all of the outstanding shares of EP. Prior to closing, the transaction will require approval of both KMI and EP shareholders. The transaction is expected to close in the second quarter of 2012 and is subject to customary regulatory approvals. Beginning on October 17, 2011, the day after the agreement was announced, and in the days following, several putative Class Action lawsuits were filed in Harris County (Houston), Texas and in the Court of Chancery of the State of Delaware against the Board of Directors of EP alleging that the director-defendants breached their fiduciary duties to EP shareholders in connection with their negotiation of and entry into the merger agreement. The lawsuits also assert that EP and KMI aided and abetted the alleged breaches by the EP directors. The actions seek, among other things, to enjoin the proposed merger, disgorgement of any improper profits received by the defendants, and attorneys fees. Defendants believe that the lawsuits are meritless and intend to defend them vigorously.

General

Although no assurance can be given, we believe that we have meritorious defenses to the actions set forth in this note and, to the extent an assessment of the matter is reasonably possible, if it is probable that a liability has been incurred and the amount of loss can be reasonably estimated, we believe that we have established an adequate reserve to cover potential liability.

Additionally, although it is not possible to predict the ultimate outcomes, we also believe, based on our experiences to date and the reserves we have established, that the ultimate resolution of these matters will not have a material adverse impact on our business, financial position, results of operations or distributions to limited partners. As of September 30, 2011 and December 31, 2010, we have recorded a total reserve for legal fees, transportation rate cases and other litigation liabilities in the amount of $325.2 million and $169.8 million,

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respectively. The reserve is primarily related to various claims from regulatory proceedings arising from KMP s West Coast products pipeline transportation rates, and the contingent amount is based on both the circumstances of probability and reasonability of dollar estimates. The overall change in the reserve from December 31, 2010 includes both payments of $81.4 million (for interstate and California intrastate transportation rate settlements on KMP s Pacific operations pipelines) in the first nine months of 2011 that reduced the liability, and a $241.9 million increase in expense in the first nine months of 2011, which increased the liability. We regularly assess the likelihood of adverse outcomes resulting from these claims in order to determine the adequacy of our liability provision.

Environmental Matters

New Jersey Department of Environmental Protection v. Occidental Chemical Corporation, et al. (Defendants), Maxus Energy Corp. and Tierra Solutions, Inc. (Third Party Plaintiffs) v. 3M Company et al., Superior Court of New Jersey, Law Division Essex County, Docket No. L-9868-05.

The NJDEP sued Occidental Chemical and others under the New Jersey Spill Act for contamination in the Newark Bay Complex including numerous waterways and rivers. Occidental et al. then brought in approximately 300 third party defendants for contribution. NJDEP claimed damages related to forty years of discharges of TCDD (form of dioxin), DDT and other hazardous substances. GATX Terminals Corporation (n/k/a/ KMLT) was brought in as a third party defendant because of the noted hazardous substances language and because the Carteret, New Jersey facility (former GATX Terminals facility) is located on the Arthur Kill River, one of the waterways included in the litigation. This case was filed against third party defendants in 2009. The Judge issued his trial plan for this case during the first quarter of 2011. According to the trial plan, he allowed the State to file summary judgment motions against Occidental, Maxus and Tierra on liability issues immediately. Numerous third party defendants filed motions to dismiss, which were denied, and now have filed interlocutory appeals from those motions. KMLT is part of the third party defendant Joint Defense Group. KMP has filed an Answer and initial disclosures. The Judge put off trial of Maxus/Tierra s claims against the third party defendants until April 2013 with damages to be tried in September 2013.

Portland Harbor Superfund Site, Willamette River, Portland, Oregon.

In December 2000, the U.S. EPA sent out General Notice letters to potentially responsible parties (PRPs) including GATX Terminals Corporation (n/k/a KMLT). At that time, GATX owned two liquids terminals along the lower reach of the Willamette River, an industrialized area known as Portland Harbor. Portland Harbor is listed on the National Priorities List and is designated as a Superfund Site under CERCLA. The major PRPs formed what is known as the Lower Willamette Group (LWG), of which KMLT is a non-voting member and pays a minimal fee to be part of the group. The LWG agreed to conduct the Remedial Investigation and Feasibility Study leading to the proposed remedy for cleanup of the Portland Harbor site. Once the U.S. EPA determines the cleanup remedy from the remedial investigations and feasibility studies conducted during the last decade at the site, it will issue a Record of Decision. Currently, KMLT and 90 other parties are involved in an allocation process to determine each party s respective share of the cleanup costs. This is a non-judicial allocation process. KMP is participating in the allocation process on behalf of both KMLT and KMBT. Each entity has two facilities located in Portland Harbor. KMP expects the allocation to conclude in 2013 or 2014, depending upon when the Record of Decision is issued by the U.S. EPA.

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Roosevelt Irrigation District v. Kinder Morgan G.P., Kinder Morgan Energy Partners, L.P. , U.S. District Court, Arizona.

This is a CERCLA case brought against a number of defendants by a water purveyor whose wells have allegedly been contaminated due to the presence of number of contaminants. The Roosevelt Irrigation District is seeking up to $175 million from approximately 70 defendants. The plume of contaminates has traveled under KMP s Phoenix Terminal. The plaintiffs have advanced a novel theory that the releases of petroleum from the Phoenix Terminal (which are exempt under the petroleum exclusion under CERCLA) have facilitated the natural degradation of certain hazardous substances and thereby have resulted in a release of hazardous substances regulated under CERCLA. KMP is part of a joint defense group consisting of other terminal operators at the Phoenix Terminal including Chevron, BP, Salt River Project, Shell and a number of others, collectively referred to as the terminal defendants. Together KMP filed a motion to dismiss all claims based on the petroleum exclusion under CERCLA. This case was recently assigned to a new judge, who has deemed all previous motions withdrawn and will grant leave to re-file such motions at a later date. KMP plans to re-file the motion to dismiss as well as numerous summary judgment motions.

Y & S Enterprises v. Kinder Morgan Energy Partners, L.P., California Superior Court, Los Angeles, California.

The plaintiffs own property adjacent to the former KMLT Gaffey Street Terminal. Plaintiffs allege that contamination from the Terminal migrated onto their property. The Gaffey Street site has been remediated and sold to developers for construction of single family residences. Currently, the plaintiffs and KMLT have contracted with a third party consultant to conduct soil and groundwater investigations on the plaintiffs property. We expect the majority of contamination at the Y & S property is due to their own contamination. Plaintiffs have not stated an alleged damages amount in their complaint or in discovery.

Casper and Douglas, EPA Notice of Violation

In March 2011, the EPA conducted inspections of several environmental programs at the Douglas and Casper Gas Plants in Wyoming. In June 2011, KMP received two letters from the EPA alleging violations at both gas plants of the Risk Management Program requirements under the Clean Air Act. KMP is cooperating with the EPA and working with the EPA to resolve these allegations.

The City of Los Angeles v. Kinder Morgan Liquids Terminals, LLC, Shell Oil Company, Equilon Enterprises LLC; California Superior Court, County of Los Angeles, Case No. NC041463.

KMLT is a defendant in a lawsuit filed in 2005 alleging claims for environmental cleanup costs at the former Los Angeles Marine Terminal in the Port of Los Angeles. The lawsuit was stayed beginning in 2009 and remained stayed through the end of 2010. A hearing was held on December 13, 2010 to hear the City s motion to remove the litigation stay. At the hearing, the judge denied the motion to lift the stay without prejudice. At the next case management conference held on June 13, 2011, the judge again continued the full litigation stay. During the stay, the parties deemed responsible by the local regulatory agency have worked with that agency concerning the scope of the required cleanup and are now starting a sampling and testing program at the site. The local regulatory agency issued specific cleanup goals in early 2010, and two of those parties, including KMLT, have appealed those cleanup goals to the state water board. The state water board has not yet taken any action with regard to KMP s appeal petitions.

Plaintiff s Third Amended Complaint alleges that future environmental cleanup costs at the former terminal will exceed $10 million, and that the plaintiff s past damages exceed $2 million. No trial date has yet been set.

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Exxon Mobil Corporation v. GATX Corporation, Kinder Morgan Liquids Terminals, LLC and ST Services, Inc.

On April 23, 2003, Exxon Mobil Corporation filed a complaint in the Superior Court of New Jersey, Gloucester County. The lawsuit relates to environmental remediation obligations at a Paulsboro, New Jersey liquids terminal owned by ExxonMobil from the mid-1950s through November 1989, by GATX Terminals Corp. from 1989 through September 2000, and later owned by Support Terminals and Pacific Atlantic Terminals, LLC. The terminal is now owned by Plains Products, and it too is a party to the lawsuit.

The complaint seeks any and all damages related to remediating all environmental contamination at the terminal, and, according to the New Jersey Spill Compensation and Control Act, treble damages may be available for actual dollars incorrectly spent by the successful party in the lawsuit. The parties engaged in court ordered mediation in 2008 through 2009, which did not result in settlement. The trial judge has issued a Case Management Order and the parties are actively engaged in discovery.

On June 25, 2007, the NJDEP, the Commissioner of the New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund, referred to collectively as the plaintiffs, filed a complaint against Exxon Mobil Corporation and KMLT, formerly known as GATX Terminals Corporation, alleging natural resource damages related to historic contamination at the Paulsboro terminal. The complaint was filed in Gloucester County, New Jersey. Both ExxonMobil and KMLT filed third party complaints against Support Terminals/Plains seeking to bring Support Terminals/Plains into the case. Support Terminals/Plains filed motions to dismiss the third party complaints, which were denied. Support Terminals/Plains is now joined in the case, and it filed an Answer denying all claims. The court has consolidated the two cases. All private parties and the state participated in two mediation conferences in 2010.

In December 2010, KMLT and Plains Products entered into an agreement in principle with the NJDEP for settlement of the state s alleged natural resource damages claim. The parties then entered into a Consent Judgment which was subject to public notice and comment and court approval. The natural resource damage settlement includes a monetary award of $1.1 million and a series of remediation and restoration activities at the terminal site. KMLT and Plains Products have joint responsibility for this settlement. Simultaneously, KMLT and Plains Products entered into a settlement agreement that settled each parties relative share of responsibility (50/50) to the NJDEP under the Consent Judgment noted above. The Consent Judgment is now entered with the Court and the settlement is final. Now Plains will begin conducting remediation activities at the site and KMLT will provide oversight and 50% of the costs. The settlement with the state does not resolve the original complaint brought by ExxonMobil, however we are now approaching settlement discussions with ExxonMobil. There is no trial date set.

Mission Valley Terminal Lawsuit

In August 2007, the City of San Diego, on its own behalf and purporting to act on behalf of the People of the State of California, filed a lawsuit against KMP and several affiliates seeking injunctive relief and unspecified damages allegedly resulting from hydrocarbon and MTBE impacted soils and groundwater beneath the City s stadium property in San Diego arising from historic operations at the Mission Valley terminal facility. The case was filed in the Superior Court of California, San Diego County, case number 37-2007-00073033-CU-OR-CTL. On September 26, 2007, KMP removed the case to the United States District Court, Southern District of California, case number 07CV1883WCAB. The City disclosed in discovery that it is seeking approximately $170 million in damages for alleged lost value/lost profit from the redevelopment of the

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City s property and alleged lost use of the water resources underlying the property. Later, in 2010, the City amended its initial disclosures to add claims for restoration of the site as well as a number of other claims that increased their claim for damages to approximately $365 million.

The Court issued a Case Management Order on January 6, 2011, setting dates for completion of discovery and setting a trial date. In April, 2011, the parties filed a joint stipulation to extend the discovery schedule by approximately 3 months. Now, the parties must complete all fact discovery by January 23, 2012. A mandatory settlement conference is now set for November 2, 2011 and the trial is set for September 25, 2012. KMP has been and will continue to aggressively defend this action. This site has been, and currently is, under the regulatory oversight and order of the California Regional Water Quality Control Board. KMP continues to be in compliance with this agency order as it conducts an extensive remediation effort at the City s stadium property site.

Kinder Morgan, EPA Section 114 Information Request

On January 8, 2010, Kinder Morgan, Inc., on behalf of Natural Gas Pipeline Company of America LLC, Horizon Pipeline Company and Rockies Express Pipeline LLC, received a Clean Air Act Section 114 information request from the U.S. Environmental Protection Agency, Region V. This information request requires that the three affiliated companies provide the EPA with air permit and various other information related to their natural gas pipeline compressor station operations in Illinois, Indiana, and Ohio. The affiliated companies have responded to the request and believe the relevant natural gas compressor station operations are in substantial compliance with applicable air quality laws and regulations.

Notice of Proposed Debarment

In April 2011, we received Notices of Proposed Debarment from the United States Environmental Protection Agency s Suspension and Debarment Division, referred to in this Note as the EPA SDD. The Notices propose the debarment of Kinder Morgan Energy Partners, L.P., Kinder Morgan, Inc., Kinder Morgan G.P., Inc., and Kinder Morgan Management, LLC, along with four of KMP s subsidiaries, from participation in future federal contracting and assistance activities. The Notices allege that certain of the respondents past environmental violations indicate a lack of present responsibility warranting debarment. Our objective is to fully comply with all applicable legal requirements and to operate our assets in accordance with our processes, procedures and compliance plans. We are performing better than industry averages in our incident rates and in our safety performance, all of which is publicly reported on our website. We take environmental compliance very seriously, and look forward to demonstrating our present responsibility to the EPA SDD through this administrative process and KMP is engaged in discussions with the EPA SDD with the goal of resolving this matter in a cooperative fashion. We do not anticipate that the resolution of this matter will have a material adverse impact on our business, financial position, results of operations or cash flows.

Other Environmental

We are subject to environmental cleanup and enforcement actions from time to time. In particular, CERCLA generally imposes joint and several liability for cleanup and enforcement costs on current and predecessor owners and operators of a site, among others, without regard to fault or the legality of the original conduct, subject to the right of a liable party to establish a reasonable basis for apportionment of costs. Our operations are also subject to federal, state and local laws and regulations relating to protection of the environment. Although we believe our operations are in substantial compliance with applicable environmental law and regulations, risks of additional costs and liabilities are inherent in pipeline, terminal and carbon dioxide field and oil field operations, and there can be no assurance that we will not incur significant costs and liabilities.

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Moreover, it is possible that other developments, such as increasingly stringent environmental laws, regulations and enforcement policies under the terms of authority of those laws, and claims for damages to property or persons resulting from our operations, could result in substantial costs and liabilities to us.

We are currently involved in several governmental proceedings involving alleged violations of environmental and safety regulations. As we receive notices of non-compliance, we negotiate and settle these matters. We do not believe that these alleged violations will have a material adverse effect on our business, financial position, results of operations or cash flows.

We are also currently involved in several governmental proceedings involving groundwater and soil remediation efforts under administrative orders or related state remediation programs. We have established a reserve to address the costs associated with the cleanup.

In addition, we are involved with and have been identified as a potentially responsible party in several federal and state superfund sites. Environmental reserves have been established for those sites where our contribution is probable and reasonably estimable. In addition, we are from time to time involved in civil proceedings relating to damages alleged to have occurred as a result of accidental leaks or spills of refined petroleum products, natural gas liquids, natural gas and carbon dioxide. See Pipeline Integrity and Releases above for additional information with respect to ruptures and leaks from our pipelines.

General

Although it is not possible to predict the ultimate outcomes, we believe that the resolution of the environmental matters set forth in this note will not have a material adverse effect on our business, financial position, results of operations or cash flows. However, we are not able to reasonably estimate when the eventual settlements of these claims will occur and changing circumstances could cause these matters to have a material adverse impact. As of September 30, 2011, we have accrued an environmental reserve of $81.9 million, and we believe that these pending environmental matters will not have a material adverse impact on our business, cash flows, financial position or results of operations. In addition, as of September 30, 2011, we have recorded a receivable of $5.4 million for expected cost recoveries that have been deemed probable. As of December 31, 2010, our environmental reserve totaled $79.8 million and our estimated receivable for environmental cost recoveries totaled $8.6 million. Additionally, many factors may change in the future affecting our reserve estimates, such as (i) regulatory changes; (ii) groundwater and land use near our sites; and (iii) changes in cleanup technology.

Other

We are a defendant in various lawsuits arising from the day-to-day operations of our businesses. Although no assurance can be given, we believe, based on our experiences to date and taking into account established reserves, that the ultimate resolution of such items will not have a material adverse impact on our business, financial position, results of operations or cash flows.

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12. Regulatory Matters

Kinder Morgan Interstate Gas Transmission Pipeline Franklin to Hastings Expansion Project

KMIGT has filed a prior notice request to expand and replace certain mainline pipeline facilities to create up to 10,000 dekatherms per day of firm transportation capacity to serve an ethanol plant located near Aurora, Nebraska. The estimated cost of the facilities is $18.4 million. The project was constructed and went into service on April 14, 2011.

FERC Natural Gas Fuel Tracker Proceedings

Trailblazer Pipeline Company LLC

On April 28, 2011, the FERC issued an Order Rejecting Tariff Record and Denying Waiver in Trailblazer Pipeline Company LLC s annual fuel tracker filing at Docket No. RP11-1939-000. The order required Trailblazer to make a compliance filing for its annual Expansion Fuel Adjustment Percentage (EFAP) pursuant to its tariff. In its previous two annual tracker filings, Trailblazer received authorization by the FERC to defer collection of its fuel deferred account until a future period by granting a waiver of various fuel tracker provisions. In the Docket No. RP11-1939 filing, Trailblazer again asked for tariff waivers that would defer the collection of its fuel deferred account to a future period, which the FERC denied. Trailblazer has filed for rehearing of the FERC s April 28, 2011 order, which is pending before the FERC.

On May 2, 2011, Trailblazer filed to re-determine its EFAP in compliance with the April 28, 2011 order, implementing a revised EFAP rate of 8.14%, which included the proposed recovery of the deferred account. On May 18, 2011, the FERC issued an order rejecting the May 2, 2011 filing, on the basis that the filing to implement a revised EFAP must be accomplished as a new proceeding, not as a compliance filing. Trailblazer has filed for rehearing of the May 18, 2011 order, which is also pending before the FERC.

On June 3, 2011, Trailblazer filed in a new proceeding, Docket No. RP11-2168-000, revised tariff records to redetermine its EFAP, with a proposed effective date of July 1, 2011. Trailblazer included three EFAP rate options. In addition, under two of the options, Trailblazer proposed to continue to defer collection of the deferred account until a future date. In an order dated July 1, 2011, referred to in this Note as the July 1 Order, the FERC rejected the two options to defer recovery of the deferred account and accepted the option that included recovery of the entire deferred account. Specifically, the FERC approved an EFAP rate of 8.69%, subject to refund, effective July 1, 2011 and established hearing proceedings to determine the appropriate throughput, revenue and cost data to use for determining the EFAP and the composition, accounting and proposed recovery methodology for amounts in the deferred account. In the July 1 Order, the FERC determined that Trailblazer could not charge negotiated rate shippers a fuel rate above the caps established in their negotiated rate agreements with Trailblazer and that operation of the cap was not an issue for hearing. As a result of this determination, Trailblazer recognized a $13.1 million operating expense in the second quarter of 2011 for the amount of the deferred costs that is potentially attributable to the negotiated rate shippers. Trailblazer sought rehearing of the July 1 Order, and a prehearing conference held on July 14, 2011 established a procedural schedule that results in a hearing in April 2012. Trailblazer continues to pursue full recovery of the amount reserved pursuant to the Docket No. RP11-2168-000 proceeding. Trailblazer has been engaged in settlement discussions with the active parties to this proceeding and has reached an agreement in principle with such parties. As a result, on October 7, 2011, Trailblazer filed a motion to suspend the procedural schedule for 15 days to allow the parties to resolve the remaining issues in this proceeding and avoid the need for a hearing. The Chief Judge granted Trailblazer s motion to suspend the procedural schedule and required a status report on the timing for filing the settlement by October 28, 2011. Given that the parties continue to finalize the settlement documents, Trailblazer will file to

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continue to suspend the procedural schedule for another 15-day period. Upon execution of the necessary settlement documents, Trailblazer will file a motion to terminate the hearing procedure.

On July 25, 2011, Trailblazer filed, in Docket No. RP11-2295-000, to apply the EFAP rate to additional classes of shippers, including interruptible transportation, backhaul transportation, and overrun transportation to be effective September 1, 2011. On August 31, 2011, the FERC issued an order rejecting Trailblazer s proposed tariff records on the basis that the tariff changes are contrary to Trailblazer s Docket No. RP10-492-000 Settlement and violate the prohibition against retroactive ratemaking by proposing to charge shippers for under-recoveries that occurred prior to the effective date of the tariff provision. Trailblazer has filed for rehearing of the August 31, 2011 order, which is pending before the FERC. Furthermore, Trailblazer does not expect the entire fuel tracker proceedings discussed above to have a material adverse impact on its business, financial position, results of operations or cash flows.

Rockies Express Pipeline LLC

On March 1, 2011, Rockies Express Pipeline LLC made its annual filing to revise its fuel lost and unaccounted for percentage, referred to as its FL&U rate, applicable to its shippers effective April 1, 2011. In this filing, Rockies Express requested an increase in its FL&U rate due to a decline in the price of natural gas used to index its FL&U rate that had resulted in a fuel tracker receivable balance as of December 31, 2010. Rockies Express proposed two options to allow it to recover these costs.

On March 30, 2011, the FERC notified Rockies Express that it had rejected the first option and that the second option, while accepted effective April 1, 2011, was under further FERC review. This event caused Rockies Express to reconsider the recoverability of a portion of its fuel tracker receivable balance that would have been recovered from one shipper. Therefore, in the first quarter of 2011, Rockies Express reduced its fuel tracker receivable balance by $8.2 million and recorded the same amount as additional operations and maintenance expense.

NGPL 2012 Storage Optimization Project Docket No. CP11-547

On September 20, 2011, NGPL filed with FERC a certificate application regarding its 2012 NGPL Storage Optimization Project. Specifically, NGPL requested to: (i) construct and operate a new 3,550 horsepower (hp) gas fired compressor unit at NGPL s existing Compressor Station No. 205 located near Keota in Washington County, Iowa (CS 205); (ii) construct and operate a new greenfield compressor station consisting of 22,000 hp electric compressor unit to be located near Altamont in Effingham County, Illinois; (iii) reduce cushion gas inventory by 5 Bcf at NGPL s North Lansing Storage Field located near Longview in Harrison County, Texas; (iv) abandon in place various gas fired compressor units at NGPL s Compressor Station No. 310 and 311 located respectively near Centralia in Clinton County, Illinois and near Hammond in Piatt County, Illinois; and (v) obtain a pre-determination that rolled-in rate treatment for the costs of the proposed facilities is appropriate. The project has a total cost of $57.6 million. NGPL requested that FERC issue its order in this proceeding on or before April 30, 2012 to allow for a December 2012 commencement of service for the proposed new facilities.

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KINDER MORGAN, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

13. Recent Accounting Pronouncements

Accounting Standards Updates

None of the Accounting Standards Updates (ASU) that we adopted and that became effective January 1, 2011 had a material impact on our consolidated financial statements.

ASU No. 2011-04

On May 12, 2011, the Financial Accounting Standards Board (FASB) issued ASU No. 2011-04, Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs. This ASU amends U.S. generally accepted accounting principles (GAAP) and results in a consistent definition of fair value and common requirements for measurement of and disclosure about fair value between U.S. GAAP and international financial reporting standards (IFRS). The amendments in this ASU change the wording used to describe many of the requirements in U.S. GAAP for measuring fair value and for disclosing information about fair value measurements; however, the amendment s requirements do not extend the use of fair value accounting, and for many of the requirements, the FASB does not intend for the amendments to result in a change in the application of the requirements in the Fair Value Measurement Topic of the Codification. Additionally, ASU No. 2011-04 includes some enhanced disclosure requirements, including an expansion of the information required for Level 3 fair value measurements. ASU No. 2011-04 is effective for interim and annual periods beginning on or after December 15, 2011 (January 1, 2012 for us). The amendments in this ASU are to be applied prospectively, and early adoption is prohibited. We are currently reviewing the effects of ASU No. 2011-04.

ASU No. 2011-05

On June 16, 2011, the FASB issued ASU No. 2011-05, Presentation of Comprehensive Income. This ASU eliminates the current option to report other comprehensive income and its components in the statement of changes in equity. An entity can elect to present items of net income and other comprehensive income in one continuous statement or in two separate, but consecutive, statements. ASU No. 2011-05 is effective for fiscal years, and interim periods within those years, beginning after December 15, 2011 (January 1, 2012 for us) and interim and annual periods thereafter. Early adoption is permitted, and full retrospective application is required. Since this ASU pertains to disclosure requirements only, the adoption of this ASU will not have a material impact on our consolidated financial statements.

ASU No. 2011-08

On September 15, 2011, the FASB issued ASU No. 2011-8, Testing Goodwill for Impairment. This ASU allows an entity to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test prescribed by current accounting principles. However, the quantitative impairment test is required if an entity believes, as a result of its qualitative assessment, that it is more-likely-than-not that the fair value of a reporting unit is less than its carrying amount. An entity can choose to perform the qualitative assessment on none, some or all of its reporting units. Moreover, an entity can bypass the qualitative assessment for any reporting unit in any period and proceed directly to the quantitative goodwill impairment test, and then resume performing the qualitative assessment in any subsequent period. ASU No. 2011-8 is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011 (January 1, 2012 for us), and early adoption is permitted. We performed our 2011 annual goodwill impairment test on May 31, and we are currently reviewing the effects of ASU No. 2011-8.

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KINDER MORGAN, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

ASU No. 2011-09

On September 21, 2011, the FASB issued ASU No. 2011-9, Compensation Retirement Benefits Multiemployer Plans (Subtopic 715-80). The amendments in this ASU require that employers provide, on an annual basis, additional separate disclosures for all individually significant multiemployer pension plans and multiemployer other postretirement benefit plans. The revisions do not change the current recognition and measurement guidance for an employer s participation in a multiemployer plan. ASU No. 2011-9 is effective for fiscal years ending after December 15, 2011 (December 31, 2011 for us). Early adoption is permitted and retrospective application is required. We are currently reviewing the effects of ASU No. 2011-9.

14. Reconciliation of Significant Asset Balances

The following is a reconciliation between KMP s significant asset balances as reported in KMP s Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, incorporated by reference, and our consolidated asset balances as shown on our accompanying consolidated balance sheets (in millions):

	September 30, 2011	December 31, 2010
Property, plant and equipment, net KMP	$ 15,344.1	$ 14,603.9
Purchase accounting adjustments associated with our investment in KMP	2,344.7	2,445.2
Property, plant and equipment, net KMI	27.1	21.6
Property, plant and equipment, net	$ 17,715.9	$ 17,070.7
Investments KMP	$ 3,272.5	$ 3,886.0
Purchase accounting adjustments associated with our investment in KMP	136.5	139.3
Investments KMI	259.7	265.8
Investments	$ 3,668.7	$ 4,291.1
Goodwill KMP	$ 1,303.3	$ 1,233.6
Purchase accounting adjustments associated with our investment in KMP	3,637.3	3,597.3
Goodwill	$ 4,940.6	$ 4,830.9

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Annex A

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

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER, dated as of October 16, 2011 (this Agreement), is by and among El Paso Corporation, a Delaware corporation (the Company), Sirius Holdings Merger Corporation, a Delaware corporation and direct, wholly owned subsidiary of the Company (New EP), Sirius Merger Corporation, a Delaware corporation and direct, wholly owned Subsidiary of New EP (Merger Sub One), Kinder Morgan, Inc., a Delaware corporation (Parent), Sherpa Merger Sub, Inc., a Delaware corporation and a direct, wholly owned Subsidiary of Parent (Merger Sub Two) and Sherpa Acquisition, LLC, a Delaware limited liability company and a direct, wholly owned Subsidiary of Parent (Merger Sub Three). Certain terms used in this Agreement are defined in Section 8.11.

WHEREAS, the Boards of Directors of the Company (the Company Board), New EP, Merger Sub One and Merger Sub Two have, and the sole member of Merger Sub Three has, approved and declared advisable, and the Board of Directors of Parent (the Parent Board) has approved, this Agreement and the Transactions, on the terms and subject to the conditions provided for in this Agreement;

WHEREAS, as a condition to the Company entering into this Agreement and incurring the obligations set forth herein, concurrently with the execution and delivery of this Agreement, the Company is entering into a voting agreement with certain stockholders of Parent (the Voting Agreement) pursuant to which, among other things, each of those stockholders has agreed, subject to the terms of the Voting Agreement, to vote all shares of Parent Common Stock owned by such stockholder in accordance with the terms of the Voting Agreement;

WHEREAS, Parent will enter into a warrant agreement in the form attached hereto as Exhibit A at or prior to the Second Effective Time; and

WHEREAS, for federal income tax purposes, it is intended that the (i) the First Merger and the LLC Conversion, taken together and (ii) the Second Merger and the Third Merger, taken together will each qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder (the Code) and that this Agreement constitutes, and is adopted as, a plan of reorganization for purposes of Sections 354 and 361 of the Code.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained in this Agreement, and intending to be legally bound, Parent, Merger Sub One, Merger Sub Two, Merger Sub Three, New EP and the Company agree as follows:

ARTICLE I

The Transactions

SECTION 1.1. The Mergers and LLC Conversion.

(a) Upon the terms and subject to the conditions set forth in this Agreement and the Agreement and Plan of Merger attached hereto as Exhibit B (the First Merger Agreement), and in accordance with the General Corporation Law of the State of Delaware (the DGCL), at the First Effective Time (as defined below), Merger Sub One shall be merged with and into the Company (the First Merger) and the separate corporate existence of Merger Sub One shall cease, and the Company shall be the surviving corporation in the First Merger (the EP Surviving Company).

(b) Immediately following the First Effective Time, upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL and the Limited Liability Company Act of the State of Delaware (the DLLCA), at the Conversion Effective Time, the EP Surviving Company shall be converted into a Delaware limited liability company (the EP Converted LLC) in accordance with Section 266 of the DGCL and Section 18-214 of the DLLCA (the LLC Conversion).

(c) Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, at the Second Effective Time (as defined below), Merger Sub Two shall be merged with and into New EP (the Second Merger) and the separate corporate existence of Merger Sub Two shall cease, and New EP shall be the surviving corporation in the Second Merger (the New EP Surviving Corporation).

(d) Immediately following the Second Effective Time (as defined below), upon the terms and subject to the conditions set forth in this Agreement and in accordance with the DGCL and the DLLCA, the New EP Surviving Corporation shall be merged with and into Merger Sub Three (the Third Merger) and the separate corporate existence of New EP Surviving Corporation shall cease, and Merger Sub Three shall be the surviving limited liability company in the Third Merger (the New EP Surviving LLC).

SECTION 1.2. Closing. Subject to the provisions of Article VI, the closing of the Transactions (other than the closing of the First Merger and the LLC Conversion which are intended to occur prior to the Closing) (the Closing) shall take place at the offices of Weil, Gotshal & Manges LLP, 700 Louisiana Street, Suite 1600, Houston, TX 77002, at 10:00 a.m. local time, on the second (2nd) business day after the satisfaction or waiver of the conditions set forth in Article VI (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions), or at such other place, date and time as the Company and Parent shall agree; provided, that the parties agree that in no event shall the Closing occur prior to a date that is at least twenty 20 days after the mailing of the Appraisal Notice (as defined in Section 5.1(a)). The date on which the Closing actually occurs is referred to as the Closing Date.

SECTION 1.3. Effective Times.

(a) Subject to the provisions of this Agreement and the First Step Merger Agreement, as soon as reasonably practicable following the Company Stockholder Approval the parties shall file with the Secretary of State of the State of Delaware a certificate of merger for the First Merger, executed in accordance with the relevant provisions of the DGCL (the First Certificate of Merger) and shall make all other filings or recordings required under the DGCL in connection with the First Merger. The First Certificate of Merger will provide that the First Merger shall become effective at 12:01 a.m. (Eastern time) on the date immediately following the date of the filing of the First Certificate of Merger or at such other time as is agreed to by the parties to this Agreement and specified in the First Certificate of Merger (the time at which the First Merger becomes effective is herein referred to as the First Effective Time).

(b) Subject to the provisions of this Agreement, as soon as practicable following the First Effective Time the parties shall file with the Secretary of State of the State of Delaware a certificate of conversion for the LLC Conversion, executed in accordance with the relevant provisions of the DLLCA (the Certificate of Conversion) and shall make all other filings or recordings required under the DGCL and DLLCA in connection with the LLC Conversion. The Certificate of Conversion will provide that the LLC Conversion shall become effective at 12:02 a.m. (Eastern time) on the date immediately following the date of the filing of the Certificate of Conversion or at such other time as is agreed to by the parties to this Agreement and specified in the Certificate of Conversion (the time at which the LLC Conversion becomes effective is herein referred to as the Conversion Effective Time).

(c) Subject to the provisions of this Agreement, as soon as practicable on the Closing Date the parties shall file with the Secretary of State of the State of Delaware a certificate of merger for the Second Merger, executed in accordance with the relevant provisions of the DGCL (the Second Certificate of Merger) and shall make all other filings or recordings required under the DGCL in connection with the Second Merger. The Second Certificate of Merger will provide that the Second Merger shall become effective at 12:01 a.m. (Eastern time) on the date immediately following the date of the filing of the Second Certificate of Merger or at such other time as is agreed to by the parties to this Agreement and specified in the Second Certificate of Merger (the time at which the Second Merger becomes effective is herein referred to as the Second Effective Time).

(d) Subject to the provisions of this Agreement, as soon as practicable on the Closing Date the parties shall file with the Secretary of State of the State of Delaware a certificate of merger for the Third Merger, executed in

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accordance with the relevant provisions of the DGCL and DLLCA (the Third Certificate of Merger and collectively with the First Certificate of Merger, the Certificate of Conversion and the Second Certificate of Merger, the Delaware Filings) and shall make all other filings or recordings required under the DGCL and DLLCA in connection with the Third Merger. The Third Certificate of Merger will provide that the Third Merger shall become effective at 12:02 a.m. (Eastern time) on the date immediately following the date of the filing of the Third Certificate of Merger or at such other time as is agreed to by the parties to this Agreement and specified in the Third Certificate of Merger (the time at which the Third Merger becomes effective is herein referred to as the Third Effective Time).

SECTION 1.4. Effects of the Mergers and Conversion.

(a) The First Merger shall have the effects set forth in the First Step Merger Agreement and the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the First Effective Time, all the properties, rights, privileges, powers and franchises of the Company and Merger Sub One shall vest in the EP Surviving Company, and all debts, liabilities and duties of the Company and Merger Sub One shall become the debts, liabilities and duties of the EP Surviving Company. After the consummation of the First Merger, all references in this Agreement to the Company, including, but not limited to, references to shares of Company Common Stock, Company Stock Options, Restricted Shares, Company Performance RSUs and/or other securities of the Company shall be deemed, where applicable, to be references to New EP and the same securities of New EP.

(b) The LLC Conversion shall have the effects set forth in the DGCL and the DLLCA.

(c) The Second Merger shall have the effects set forth in this Agreement and the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Second Effective Time, all the properties, rights, privileges, powers and franchises of New EP and Merger Sub Two shall vest in the New EP Surviving Corporation and all debts, liabilities and duties of New EP and Merger Sub Two shall become the debts, liabilities and duties of the New EP Surviving Corporation.

(d) The Third Merger shall have the effects set forth in the DGCL and the DLLCA. Without limiting the generality of the foregoing, and subject thereto, at the Third Effective Time, all the properties, rights, privileges, powers and franchises of the New EP Surviving Corporation and Merger Sub Three shall vest in the New EP Surviving LLC and all debts, liabilities and duties of New EP Surviving Corporation and Merger Sub Three shall become the debts, liabilities and duties of the New EP Surviving LLC.

SECTION 1.5. Organizational Documents of New EP Surviving Corporation.

(a) The certificate of incorporation of New EP, as in effect immediately prior to the Second Effective Time, shall be the certificate of incorporation of the New EP Surviving Corporation from and after the Second Effective Time, and thereafter may be amended as provided therein or by Law, in each case consistent with the obligations set forth in Section 5.8 (the New EP Surviving Corporation Certificate).

(b) The by-laws of New EP, as in effect immediately prior to the Second Effective Time, shall be the by-laws of the New EP Surviving Corporation from and after the Second Effective Time, and thereafter may be amended as provided therein or by Law, in each case consistent with the obligations set forth in Section 5.8 (the New EP Surviving Corporation By-Laws).

SECTION 1.6. Directors and Officers of New EP Surviving Corporation.

(a) Each of the parties hereto shall take all necessary action to cause the directors of Merger Sub Two immediately prior to the Second Effective Time to be the directors of the New EP Surviving Corporation immediately following the Second Effective Time, until their respective successors are duly elected or appointed and qualified or their earlier death, resignation or removal in accordance with the certificate of incorporation and by-laws of the New EP Surviving Corporation.

(b) The officers of Merger Sub Two immediately prior to the Second Effective Time shall be the officers of the New EP Surviving Corporation until their respective successors are duly appointed and qualified or their earlier death, resignation or removal in accordance with the certificate of incorporation and by-laws of the New EP Surviving Corporation.

ARTICLE II

Effect on Capital Stock

SECTION 2.1. Effect of LLC Conversion and First Merger. At the Conversion Effective Time, by virtue of the LLC Conversion and without any action on the part of the holder of any shares of capital stock of the EP Surviving Company, each issued and outstanding share of capital stock of the EP Surviving Company shall be converted into one (1) limited liability company interest of the EP Converted LLC. At the First Effective Time, by virtue of the First Merger and without any action on the part of the holder of any shares of common stock, par value $3.00 per share, of the Company (the Company Common Stock), each issued and outstanding share of capital stock of the Company will be converted into one (1) share of common stock of New EP.

SECTION 2.2. Effect of Second Merger. At the Second Effective Time, by virtue of the Second Merger and without any action on the part of the holder of any shares of Company Common Stock or any shares of capital stock of Merger Sub Two:

(a) Capital Stock of Merger Sub Two. Each issued and outstanding share of capital stock of Merger Sub Two shall be converted into and become one validly issued, fully paid and nonassessable share of common stock, par value $0.01 per share, of the New EP Surviving Corporation and shall constitute the only outstanding shares of capital stock of the New EP Surviving Corporation. From and after the Second Effective Time, all certificates representing the common stock of Merger Sub Two shall be deemed for all purposes to represent the number of shares of common stock of the New EP Surviving Corporation into which they were converted in accordance with the immediately preceding sentence.

(b) Cancellation of Treasury Stock and Parent-Owned Stock. Any shares of Company Common Stock that are owned by the Company as treasury stock, and any shares of Company Common Stock owned by Parent, Merger Sub Two or Merger Sub Three, shall be automatically canceled and shall cease to exist and no consideration shall be delivered in exchange for such cancelled shares, and any shares held by any other Subsidiary of Parent or the Company shall be exchanged for the Per Share Stock Consideration (collectively, the Excluded Shares). For the avoidance of doubt, this Section 2.2(b) shall not apply to shares of Company Common Stock held in trust or otherwise set aside from shares held in the Company s treasury pursuant to or in respect of a Company Benefit Plan.

(c) Conversion of Company Common Stock. Subject to Sections 2.4(h), 2.4(i) and 2.6, each share of Company Common Stock issued and outstanding immediately prior to the Second Effective Time (other than Excluded Shares and Dissenting Shares but, for the avoidance of doubt and subject to the terms and conditions of Section 2.5, including any Restricted Shares and shares of Company Common Stock deemed to be issued under or in respect of Company Stock Options, Company Performance RSUs and the Company ESPP (on the Last Exercise Date) pursuant to the terms and conditions of Section 2.5) shall be converted into and shall thereafter represent the right to receive the following consideration (the Merger Consideration):

(i) Mixed Election Shares. Each share of Company Common Stock with respect to which an election to receive a combination of stock and cash (a Mixed Election) has been effectively made and not revoked pursuant to Section 2.2 (each, a Mixed Consideration Election Share) and, except to the extent provided in Section 2.2(e), each No Election Share (as that term is defined in Section 2.3(b)) shall be converted into the right to receive the combination (which combination shall hereinafter be referred to as the Per Share Mixed Consideration) of (x) $14.65 in cash without interest (the Per Share Cash Amount), (y) 0.4187 of a share of validly issued, fully paid and nonassessable shares of Class P common stock, par value $0.01 per share of

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Parent (Parent Class P Stock, and such fraction of a share, the Mixed Election Stock Exchange Ratio) and (z) 0.640 of a warrant, in the form and on the terms specified in the form of warrant agreement attached hereto as Exhibit A which Parent hereby agrees to enter into at or prior to the Second Effective Time (each, a Parent Class P Warrant) to purchase one fully paid and nonassessable share of Parent Class P Stock at an exercise price equal to $40.00 per share of Parent Class P Stock (the Per Share Warrant Consideration), in each case, subject to adjustment in accordance with Sections 2.2(f) and 2.6.

(ii) Cash Election Shares. Each share of Company Common Stock with respect to which an election to receive cash (a Cash Election) has been effectively made and not revoked (each, a Cash Election Share) shall be converted (provided that the Available Cash Election Amount (as defined below) equals or exceeds the Cash Election Amount (as defined below)) into the right to receive (x) $25.91 in cash without interest (the Per Share Cash Election Consideration) and (y) the Per Share Warrant Consideration, subject to adjustment in accordance with Sections 2.2(c)(ii), 2.2(f) and 2.6; provided, however, that if, (A) the product of the number of Cash Election Shares and the Per Share Cash Election Consideration (such product being the Cash Election Amount) exceeds (B) the difference between (x) the product of the Per Share Cash Amount and the total number of shares of Company Common Stock (other than the Excluded Shares, but including, for the avoidance of doubt, Restricted Shares, shares of Company Common Stock issued or deemed to be issued under or in respect of Company Stock Options, Company Performance RSUs and the Company ESPP (on the Last Exercise Date) pursuant to the terms and conditions of Section 2.5) issued and outstanding immediately prior to the First Effective Time minus (y) the product of the number of Mixed Consideration Election Shares (provided that No Election Shares shall be deemed to be Mixed Consideration Election Shares for purposes of this Section 2.2(c)(ii)) and the Per Share Cash Amount (the Aggregate Mixed Consideration Cash Amount) minus (z) the Provisional Dissenters Cash Amount (such difference being the Available Cash Election Amount), then each Cash Election Share shall be converted into a right to receive (1) an amount of cash (without interest) equal to the product of (p) the Per Share Cash Election Consideration and (q) a fraction, the numerator of which shall be the Available Cash Election Amount and the denominator of which shall be the Cash Election Amount (such fraction being the Cash Fraction), (2) a number of validly issued, fully paid and nonassessable shares of Parent Class P Stock equal to the product of (r) the Exchange Ratio and (s) one (1) minus the Cash Fraction and (3) the Per Share Warrant Consideration. The Provisional Dissenters Cash Amount means the product of (x) the number of Dissenting Shares and (y) the sum of the Per Share Cash Election Consideration and the Per Share Warrant Consideration Value.

(iii) Stock Election Shares. Each share of Company Common Stock with respect to which an election to receive stock consideration (a Stock Election) is properly made and not revoked (each, a Stock Election Share) shall be converted (provided that the Cash Election Amount equals or exceeds the Available Cash Election Amount), into the right to receive (x) 0.9635 shares (the Exchange Ratio) of validly issued, fully paid and nonassessable shares of Parent Class P Stock and (y) the Per Share Warrant Consideration, subject to adjustment in accordance with Sections 2.2(c)(iii), 2.2(f) and 2.6 (the Per Share Stock Consideration); provided, however, that if the Available Cash Election Amount exceeds the Cash Election Amount, then each Stock Election Share shall be converted into the right to receive (1) an amount of cash (without interest) equal to the amount of such excess divided by the number of Stock Election Shares, (2) a number of validly issued, fully paid and nonassessable shares of Parent Class P Stock equal to the product of (x) the Exchange Ratio and (y) a fraction, the numerator of which shall be the Per Share Cash Election Consideration minus the amount calculated in clause (1) of this paragraph and the denominator of which shall be the Per Share Cash Election Consideration and (3) the Per Share Warrant Consideration.

(d) Certificates. As of the Second Effective Time, all such shares of Company Common Stock shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of a certificate (or evidence of shares in book-entry form) which immediately prior to the Second Effective Time represented any such shares of Company Common Stock (each, a Certificate) shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration, any dividends or other distributions to which such holder is entitled pursuant to Section 2.4(g) and cash in lieu of any fractional shares of Parent Class P Stock or

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Fractional Parent Class P Warrants to which such holder is entitled pursuant to Section 2.4(h) or Section 2.4(i), respectively, in each case to be issued or paid in consideration therefor upon surrender of such Certificate in accordance with Section 2.4(c), without interest.

(e) Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, shares of Company Common Stock that are issued and outstanding immediately prior to the Second Effective Time and which are held by a stockholder who is entitled to demand and properly demands appraisal of such shares pursuant to, and who complies in all respects with, the provisions of Section 262 of the DGCL (such stockholders, the Dissenting Stockholders and such shares of Company Common Stock, the Dissenting Shares), shall not be converted into or be exchangeable for the right to receive the Merger Consideration, but instead such holder shall be entitled to payment of the fair value of such Dissenting Shares in accordance with the provisions of Section 262 of the DGCL (and at the Second Effective Time, such Dissenting Shares shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and such holder shall cease to have any rights with respect thereto, except the right to receive the fair value of such Dissenting Shares in accordance with the provisions of Section 262 of the DGCL), unless and until such holder shall have failed to perfect or shall have effectively withdrawn or lost rights to appraisal under the DGCL. If any Dissenting Stockholder shall have failed to perfect or shall have effectively withdrawn or lost such right following the Election Deadline, such holder s shares shall thereupon be treated as if they had been converted into and become exchangeable for the right to receive, as of the Second Effective Time, the Per Share Mixed Consideration payable in accordance with Section 2.2(c), without any interest thereon; provided, however, that each such share shall instead be converted into the right to receive the Per Share Stock Consideration if the condition set forth in Section 6.1(e) is otherwise unable to be satisfied. The Company shall give Parent (A) prompt notice of any written demands for appraisal of any shares of Company Common Stock, attempted withdrawals of such demands and any other instruments served pursuant to the DGCL and received by the Company relating to stockholders rights of appraisal in accordance with the provisions of Section 262 of the DGCL, and (B) the opportunity to participate in all negotiations and proceedings with respect to such demands for appraisal under the DGCL. The Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to, or settle, or offer or agree to settle, any such demand for payment. Any portion of the Merger Consideration made available to the Exchange Agent pursuant to Section 2.4 to pay for shares of Company Common Stock for which appraisal rights have been perfected shall be returned to Parent upon demand.

(f) Tax Treatment.

(i) If the condition set forth in Section 6.1(e) is unable to be satisfied because the Threshold Percentage (determined without regard to this sentence) would be less than 41%, then a number of Cash Election Shares shall instead be converted, on a pro rata basis, into the right to receive the Per Share Mixed Consideration such that the recomputed Threshold Percentage is equal to 41%, and

(ii) if following the adjustment set forth in clause (i) the condition set forth in Section 6.1(e) is unable to be satisfied because the Threshold Percentage (determined without regard to this sentence) would be less than 41% , then with respect to the Mixed Consideration Election Shares (including No Election Shares) the Per Share Cash Amount shall be decreased, and the Mixed Election Stock Exchange Ratio shall be correspondingly increased, such that the recomputed Threshold Percentage is equal to 41%.

(iii) The term Threshold Percentage shall mean the quotient, expressed as a percentage, of (x) the Total Stock Consideration, divided by (y) the sum of (A) the Available Cash Election Amount, (B) the Aggregate Mixed Consideration Cash Amount (excluding any portion of such amount payable to holders of Restricted Shares as to which a valid and timely election under Section 83(b) of the Code was not made (Non-Section 83(b) Restricted Shares) or with respect to shares of Company Common Stock issued or deemed to be issued under or in respect of Company Stock Options, Company Performance RSUs and the Company ESPP (on the Last Exercise Date) pursuant to the terms and conditions of Section 2.5), (C) Total Stock Consideration, (D) the Total Warrant Consideration, (E) the Provisional Dissenters Cash Amount (excluding any portion of such amount attributable to holders of Non-Section 83(b) Restricted Shares) and (F) Transfer Taxes paid by the Company pursuant to Section 5.10(b)(i).

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(iv) The term Total Stock Consideration shall mean the product of (x) the aggregate number of shares of Parent Class P Stock (determined after giving effect to adjustment in accordance with Section 2.2(c)) issued to holders of Company Common Stock (other than holders of Non-Section 83(b) Restricted Shares or with respect to shares of Company Common Stock issued or deemed to be issued under or in respect of Company Stock Options, Company Performance RSUs and the Company ESPP (on the Last Exercise Date) pursuant to the terms and conditions of Section 2.5) hereunder, and (y) $26.89.

(v) The term Total Warrant Consideration shall mean the product of (x) the aggregate number of Warrants issued to holders of Company Common Stock (other than holders of Non-Section 83(b) Restricted Shares or with respect to shares of Company Common Stock issued or deemed to be issued under or in respect of Company Stock Options, Company Performance RSUs and the Company ESPP (on the Last Exercise Date) pursuant to the terms and conditions of Section 2.5) hereunder, and (y) the Per Share Warrant Consideration Value.

SECTION 2.3. Election Procedures.

(a) Election Form. Not less than thirty (30) days prior to the anticipated Second Effective Time (the Mailing Date), an election form in such form as Parent shall reasonably specify (the Election Form) shall be mailed to each holder of record of shares of Company Common Stock (subject to the terms and conditions of Section 2.5 in respect of each holder of record of Restricted Shares) and, subject to the terms and conditions of Section 2.5, to each holder of record of Company Stock Options, each holder of record of Company Performance RSUs and each participant in the Company ESPP, in each case as of a record date that is five (5) business days prior to the Mailing Date (the Election Form Record Date).

(b) Choice of Election. Each Election Form shall permit the holder (or the beneficial owner through customary documentation and instructions), other than Dissenting Stockholders, to specify (i) the number of shares of such holder s Company Common Stock with respect to which such holder elects to receive the Per Share Mixed Consideration, (ii) the number of shares of such holder s Company Common Stock with respect to which such holder elects to receive the Per Share Stock Consideration, (iii) the number of shares of such holder s Company Common Stock with respect to which such holder elects to receive the Per Share Cash Election Consideration or (iv) that such holder makes no election with respect to such holder s Company Common Stock. For the avoidance of doubt, each holder of shares of Company Common Stock that ultimately are to be converted into the Merger Consideration in accordance with Section 2.2, each holder of Restricted Shares, each holder of Company Stock Options and each holder of Company Performance RSUs, and each participant in the Company ESPP as of the Last Exercise Date, shall receive the Per Share Warrant Consideration as part of the overall Merger Consideration paid to such holder in respect of each share of Company Common Stock and in no event shall any such holder be entitled to elect not to receive the Per Share Warrant Consideration. Any shares of Company Common Stock (other than Dissenting Shares) with respect to which the Exchange Agent does not receive a properly completed Election Form during the period (the Election Period) from the Mailing Date to 5:00 p.m., New York time, on the second (2nd) business day prior to the Second Effective Time (the Election Deadline) shall be deemed to be No Election Shares. Parent shall publicly announce the anticipated Election Deadline at least five (5) business days prior to the Election Deadline. If the Second Effective Time is delayed to a subsequent date, the Election Deadline shall be similarly delayed to a subsequent date (which shall be the second (2nd) business day prior to the Second Effective Time), and Parent shall promptly announce any such delay and, when determined, the rescheduled Election Deadline. For the purposes of this Agreement, No Election Share means each share of Company Common Stock for which no election to receive Per Share Mixed Consideration, Per Share Cash Election Consideration or Per Share Stock Consideration has been properly made and received (the No Election Shares) in accordance with the terms of this Section 2.3.

(c) New Holders. Parent shall make available one or more Election Forms as may reasonably be requested from time to time by all persons who become holders or beneficial owners of Company Common Stock, Restricted Shares, Company Stock Options or Company Performance RSUs during the Election Period, and the Company shall provide the Exchange Agent all information reasonably necessary for it to perform its duties as specified herein.

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(d) Revocations; Exchange Agent. Any election shall have been properly made only if the Exchange Agent shall have actually received a properly completed Election Form during the Election Period. After a Cash Election, a Stock Election or a Mixed Election is validly made with respect to any shares of Company Common Stock, any subsequent transfer of such shares of Company Common Stock shall automatically revoke such election. Any Election Form may be revoked or changed by the person submitting it, by written notice received by the Exchange Agent during the Election Period. In the event an Election Form is revoked during the Election Period, the shares of Company Common Stock represented by such Election Form shall be deemed to be No Election Shares, except to the extent a subsequent election is properly made during the Election Period. Subject to the terms of this Agreement and of the Election Form, the Exchange Agent shall have reasonable discretion to determine whether any election, revocation or change has been properly or timely made and to disregard immaterial defects in the Election Forms, and any good faith decisions of the Exchange Agent regarding such matters shall be binding and conclusive. None of Parent or the Company or the Exchange Agent shall be under any obligation to notify any person of any defect in an Election Form.

SECTION 2.4. Exchange of Certificates.

(a) Exchange Agent. Prior to the Mailing Date, Parent shall appoint an exchange agent reasonably acceptable to the Company (the Exchange Agent) for the purpose of exchanging Certificates for Merger Consideration. As soon as reasonably practicable after the Second Effective Time, but in no event more than five (5) business days following the Second Effective Time, Parent will send, or will cause the Exchange Agent to send, to each holder of record of shares of Company Common Stock as of the Second Effective Time (and, to the extent commercially practicable, to make available for collection by hand if so elected by such holder of record), whose shares of Company Common Stock were converted into the right to receive the Merger Consideration, a letter of transmittal (which shall specify that the delivery shall be effected, and risk of loss and title shall pass, only upon proper delivery of the Certificates (or effective affidavits of loss in lieu thereof) to the Exchange Agent) in such form as the Company and Parent may reasonably agree, including instructions for use in effecting the surrender of Certificates (or effective affidavits of loss in lieu thereof) to the Exchange Agent in exchange for the Merger Consideration, cash in lieu of any fractional shares payable pursuant to Section 2.4(h) and cash in lieu of any fractional warrants payable pursuant to Section 2.4(i).

(b) Deposit. At or prior to the Second Effective Time, Parent shall cause to be deposited with the Exchange Agent, in trust for the benefit of the holders of shares of Company Common Stock, Restricted Shares, Company Stock Options and Company Performance RSUs, shares of Parent Class P Stock (which shall be in non-certificated book-entry form), Parent Class P Warrants (which shall be in non-certificated book-entry form) and an amount of cash in U.S. dollars sufficient to be issued and paid pursuant to Section 2.2 and Section 2.4(h), payable upon due surrender of the Certificates or other evidence of Restricted Shares, Company Stock Options and Company Performance RSUs (or effective affidavits of loss in lieu thereof) pursuant to the provisions of this Article II. Following the Second Effective Time, Parent agrees to make available to the Exchange Agent, from time to time as needed, cash in U.S. dollars sufficient to pay any dividends and other distributions pursuant to Section 2.4(g), any Parent Class P Stock sufficient to pay any Stock Consideration and Parent Class P Warrants sufficient to pay any Per Share Warrant Consideration, in each case, that may be payable from time to time following the Second Effective Time. All cash, book-entry certificates representing Parent Class P Stock and book-entry certificates representing Parent Class P Warrants deposited with the Exchange Agent shall be referred to in this Agreement as the Exchange Fund. The Exchange Agent shall, pursuant to irrevocable instructions, deliver the Merger Consideration contemplated to be issued or paid pursuant to this Article II out of the Exchange Fund. The Exchange Fund shall not be used for any other purpose. The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent; provided that no such investment or losses thereon shall affect the Merger Consideration payable to holders of Company Common Stock entitled to receive such consideration or cash in lieu of fractional interests and Parent shall promptly cause to be provided additional funds to the Exchange Agent for the benefit of holders of Company Common Stock entitled to receive such consideration in the amount of any such losses. Any interest and other income resulting from such investments shall be the property of, and paid to, Parent upon termination of the Exchange Fund.

(c) Exchange. Each holder of shares of Company Common Stock that have been converted into the right to receive the Merger Consideration, upon surrender to the Exchange Agent of a Certificate (or effective affidavits of loss in lieu thereof), together with a properly completed letter of transmittal, duly executed and completed in accordance with the instructions thereto, and such other documents as may reasonably be required by the Exchange Agent, will be entitled to receive in exchange therefor (i) the number of shares of Parent Class P Stock (which shall be in non-certificated book-entry form unless a physical certificate is specifically requested) representing, in the aggregate, the whole number of shares of Parent Class P Stock that such holder has the right to receive, (ii) the number of Parent Class P Warrants (which shall be in non-certificated book-entry form unless a physical certificate is specifically requested) representing, in the aggregate, the whole number of Parent Class P Warrants that such holder has the right to receive and/or (iii) a check in the amount that such holder has the right to receive pursuant to this Article II. The Merger Consideration shall be paid as promptly as practicable (by mail or, to the extent commercially practicable, made available for collection by hand if so elected by the surrendering holder of a Certificate) after receipt by the Exchange Agent of the Certificate and letter of transmittal in accordance with the foregoing. No interest shall be paid or accrued on any Merger Consideration, cash in lieu of fractional shares or on any unpaid dividends and distributions payable to holders of Certificates. Until so surrendered, each such Certificate shall, after the Second Effective Time, represent for all purposes only the right to receive such Merger Consideration.

(d) Other Payees. If any cash payment is to be made to a Person other than the Person in whose name the applicable surrendered Certificate is registered, it shall be a condition of such payment that the Person requesting such payment shall pay any transfer or other similar Taxes required by reason of the making of such cash payment to a Person other than the registered holder of the surrendered Certificate or shall establish to the satisfaction of the Exchange Agent that such Tax has been paid or is not payable. If any portion of the Merger Consideration is to be registered in the name of a Person other than the Person in whose name the applicable surrendered Certificate is registered, it shall be a condition to the registration thereof that the surrendered Certificate shall be properly endorsed or otherwise be in proper form for transfer and that the Person requesting such delivery of the Merger Consideration shall pay to the Exchange Agent any transfer or other similar Taxes required as a result of such registration in the name of a Person other than the registered holder of such Certificate or establish to the satisfaction of the Exchange Agent that such Tax has been paid or is not payable.

(e) No Further Transfers. From and after the Second Effective Time, there shall be no further registration of transfers of shares of Company Common Stock. From and after the Second Effective Time, the holders of Certificates representing shares of Company Common Stock outstanding immediately prior to the Second Effective Time shall cease to have any rights with respect to such shares of Company Common Stock except as otherwise provided in this Agreement or by applicable Law. If, after the Second Effective Time, Certificates are presented to the Exchange Agent or Parent, they shall be canceled and exchanged for the consideration provided for, and in accordance with the procedures set forth, in this Article II.

(f) Termination of Exchange Fund. Any portion of the Exchange Fund that remains unclaimed by the holders of shares of Company Common Stock nine (9) months after the Second Effective Time shall be returned to Parent, upon demand, and any such holder who has not exchanged his or her shares of Company Common Stock for the Merger Consideration in accordance with this Section 2.4 prior to that time shall thereafter look only to Parent for delivery of the Merger Consideration in respect of such holder s shares of Company Common Stock. Notwithstanding the foregoing, Parent, Merger Sub One, Merger Sub Two, Merger Sub Three, New EP and the Company shall not be liable to any holder of shares of Company Common Stock for any Merger Consideration delivered to a public official pursuant to applicable abandoned property Laws. Any Merger Consideration remaining unclaimed by holders of shares of Company Common Stock immediately prior to such time as such amounts would otherwise escheat to or become property of any Governmental Authority shall, to the extent permitted by applicable Law, become the property of Parent free and clear of any claims or interest of any Person previously entitled thereto.

(g) Dividends and Distributions. No dividends or other distributions with respect to shares of Parent Class P Stock issued in the Merger shall be paid to the holder of any unsurrendered Certificates until such Certificates are

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surrendered as provided in this Section 2.4. Following such surrender, subject to the effect of escheat, Tax or other applicable Law, there shall be paid, without interest, to the record holder of the shares of Parent Class P Stock, if any, issued in exchange therefor (i) at the time of such surrender, all dividends and other distributions payable in respect of any such shares of Parent Class P Stock with a record date after the Second Effective Time and a payment date on or prior to the date of such surrender and not previously paid and (ii) at the appropriate payment date, the dividends or other distributions payable with respect to such shares of Parent Class P Stock with a record date after the Second Effective Time but with a payment date subsequent to such surrender. For purposes of dividends or other distributions in respect of shares of Parent Class P Stock, all shares of Parent Class P Stock to be issued pursuant to the Merger shall be entitled to dividends pursuant to the immediately preceding sentence as if issued and outstanding as of the Second Effective Time.

(h) No Fractional Shares. No certificates or scrip representing fractional shares of Parent Class P Stock shall be issued upon the surrender for exchange of Certificates. Notwithstanding any other provision of this Agreement, each holder of shares of Company Common Stock converted pursuant to the Second Merger who would otherwise have been entitled to receive a fraction of a share of Parent Class P Stock (after taking into account all Certificates (or effective affidavits of loss in lieu thereof) delivered by such holder) shall be entitled to receive, from the Exchange Agent in accordance with the provisions of this Section 2.4(h), a cash payment in lieu of such fractional shares representing such holder s proportionate interest, if any, in the proceeds from the sale by the Exchange Agent (reduced by any fees of the Exchange Agent attributable to such sale) (as so reduced, the share proceeds) in one or more transactions of a number of shares of Parent Class P Stock, such number equal to the excess of (i) the aggregate number of shares of Parent Class P Stock to be delivered to the Exchange Agent by Parent pursuant to Section 2.4(b) over (ii) the aggregate number of whole shares of Parent Class P Stock to be distributed to the holders of Certificates pursuant to Section 2.4(c) (such excess being, the Excess Shares). The parties acknowledge that payment of the cash share proceeds in lieu of issuing certificates or scrip for fractional shares was not separately bargained-for consideration but merely represents a mechanical rounding off for purposes of avoiding the expense and inconvenience to Parent that would otherwise be caused by the issuance of fractional shares. As soon as practicable after the Second Effective Time, the Exchange Agent, as agent for the holders of the certificates representing Parent Class P Stock that would otherwise receive fractional shares, shall sell the Excess Shares at then-prevailing prices on the New York Stock Exchange (NYSE) in the manner provided in this Section 2.4(h) and shall be executed in round lots to the extent practicable. Until the share proceeds of such sale or sales have been distributed to the holders of such shares of Company Common Stock, or the Exchange Fund is terminated, the Exchange Agent shall hold such share proceeds in trust for the benefit of the holders of such shares of Company Common Stock (the Fractional Share Proceeds). The Exchange Agent shall determine the portion of the Fractional Share Proceeds to which each holder of such shares of Company Common Stock shall be entitled, if any, by multiplying the amount of the aggregate share proceeds comprising the Fractional Share Proceeds by a fraction, the numerator of which is the amount of the fractional share interest to which such holder of such shares of Company Common Stock would otherwise be entitled and the denominator of which is the aggregate amount of fractional share interests to which all holders of such shares of Company Common Stock would otherwise be entitled.

(i) No Fractional Parent Class P Warrants. No certificates or scrip representing fractional Parent Class P Warrants shall be issued upon the surrender for exchange of Certificates. Notwithstanding any other provision of this Agreement, each holder of shares of Company Common Stock converted pursuant to the Second Merger who would otherwise have been entitled to receive a fraction of a Parent Class P Warrant (after taking into account all Certificates (or effective affidavits of loss in lieu thereof) delivered by such holder) shall be entitled to receive, from the Exchange Agent in accordance with the provisions of this Section 2.4(i), a cash payment in lieu of such fractional warrants representing such holder s proportionate interest, if any, in the proceeds from the sale by the Exchange Agent (reduced by any fees of the Exchange Agent attributable to such sale) (as so reduced, the warrant proceeds) in one or more transactions of a number of Parent Class P Warrants, such number equal to the excess of (i) the aggregate number of Parent Class P Warrants to be delivered to the Exchange Agent by Parent pursuant to Section 2.4(b) over (ii) the aggregate number of whole Parent Class P Warrants to be distributed to the holders of Certificates pursuant to Section 2.4(c) (such excess being, the Excess Warrants).

The parties acknowledge that payment of the cash warrant proceeds in lieu of issuing certificates or scrip for fractional Parent Class P Warrants was not separately bargained-for consideration but merely represents a mechanical rounding off for purposes of avoiding the expense and inconvenience to Parent that would otherwise be caused by the issuance of fractional warrants. As soon as practicable after the Second Effective Time, the Exchange Agent, as agent for the holders of the certificates representing Parent Class P Warrants that would otherwise receive fractional Parent Class P Warrants, shall sell the Excess Warrants at then-prevailing prices on the NYSE or NASDAQ, as applicable, in the manner provided in this Section 2.4(i) and shall be executed in round lots to the extent practicable. Until the warrant proceeds of such sale or sales have been distributed to the holders of such shares of Company Common Stock, or the Exchange Fund is terminated, the Exchange Agent shall hold such warrant proceeds in trust for the benefit of the holders of such shares of Company Common Stock (the Fractional Warrant Proceeds). The Exchange Agent shall determine the portion of the Fractional Warrant Proceeds to which each holder of such shares of Company Common Stock shall be entitled, if any, by multiplying the amount of the aggregate warrant proceeds comprising the Fractional Warrant Proceeds by a fraction, the numerator of which is the amount of the fractional warrant interest to which such holder of such shares of Company Common Stock would otherwise be entitled and the denominator of which is the aggregate amount of fractional warrant interests to which all holders of such shares of Company Common Stock would otherwise be entitled.

(j) Lost, Stolen or Destroyed Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent, the posting by such Person of a bond, in such reasonable amount as Parent may direct, as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration to be paid in respect of the shares of Company Common Stock represented by such Certificate as contemplated by this Article II.

(k) Withholding Taxes. Parent, Merger Sub Two, Merger Sub Three and the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable to a holder of Company Stock Options, Company Performance RSUs, shares of Company Common Stock (including, for the avoidance of doubt, Restricted Shares) or a participant in the Company ESPP pursuant to this Agreement such amounts as are required to be deducted and withheld with respect to the making of such payment under the Code, or under any provision of state, local or foreign tax Law. To the extent amounts are so withheld and paid over to the appropriate taxing authority, such withheld amounts shall be treated for the purposes of this Agreement as having been paid to the former holder of the Company Stock Options, Company Performance RSUs, shares of Company Common Stock (including, for the avoidance of doubt, Restricted Shares) or the former participant in the Company ESPP, as applicable, in respect of whom such withholding was made. If withholding is required from shares of Parent Class P Stock or Parent Class P Warrants, Parent and the Exchange Agent shall be treated as having sold such consideration for an amount of cash equal to the fair market value of such consideration at the time of such deemed sale and paid such cash proceeds to the appropriate taxing authority.

SECTION 2.5. Treatment of Stock Options, Restricted Shares, Company Performance RSUs and Company ESPP. As soon as reasonably practicable following the date of this Agreement, and in any event prior to the Second Effective Time, the Company Board (or, if appropriate, any committee administering any Company Stock Plan or the Company ESPP) will adopt resolutions, and the Company will take all other actions as may be necessary or required in accordance with applicable Law, each Company Stock Plan (including, the award agreements in respect of awards granted thereunder) and the Company ESPP to give effect to this Section 2.5 to provide that:

(a) Treatment of Company Stock Options. Each Company Stock Option outstanding immediately prior to the Second Effective Time (whether or not then vested or exercisable), by virtue of the occurrence of the Closing and without any action on the part of any holder of any Company Stock Option, will be deemed exercised pursuant to a cashless exercise for that number of shares of Company Common Stock (the Net Exercise Shares) equal to, rounded down to the nearest whole share, (i) the number of shares of Company Common

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Stock subject to such Company Stock Option immediately prior to the Second Effective Time minus (ii) the number of whole and partial (computed to the nearest four decimal places) shares of Company Common Stock subject to such Company Stock Option which, when multiplied by the Fair Market Value (as such term is defined in the applicable Company Stock Plan) of a share of Company Common Stock as of immediately prior to the Second Effective Time, is equal to the aggregate exercise price of such Company Stock Option. Each Net Exercise Share shall, subject to the terms and conditions of Section 2.5(d), be deemed to be an outstanding share of Company Common Stock for purposes of Sections 2.2(c) and 2.3; provided, that, subject to the terms and conditions of Section 2.5(d), only a Mixed Election or Cash Election may be made in respect of such share.

(b) Treatment of Restricted Stock. Each Restricted Share that is outstanding immediately prior to the Second Effective Time shall, as of the Second Effective Time, automatically and without any action on the part of the holder thereof, vest and the restrictions with respect thereto shall lapse, and each Restricted Share shall, subject to the terms and conditions of Section 2.5(d), be treated as an outstanding share of Company Common Stock for purposes of this Article II; provided that, subject to the terms and conditions of Section 2.5(d), only a Mixed Election or Cash Election may be made in respect of such share.

(c) Treatment of Restricted Stock Units. Each Company restricted stock unit that is subject to vesting based on the achievement of performance conditions (Company Performance RSU) that is outstanding immediately prior to the Second Effective Time will, effective immediately prior to the Second Effective Time, vest based on a target payout percentage of 100%, and the shares of Company Common Stock deemed to be issued in settlement thereof shall, subject to the terms and conditions of Section 2.5(d), be treated as an outstanding shares of Company Common Stock for purposes of Sections 2.2(c) and 2.3; provided that, subject to the terms and conditions of Section 2.5(d), only a Mixed Election or Cash Election may be made in respect of such shares.

(d) One Election with Respect to Company Equity Awards. Each holder of record of any Company Stock Options, Company Performance RSUs or Restricted Shares or participant in the Company ESPP who receives an Election Form pursuant to Section 2.3 shall, notwithstanding anything in Section 2.3 to the contrary, be permitted to make either a Mixed Election or Cash Election pursuant to Sections 2.2 and 2.3 with respect to all (but not less than all) shares of Company Common Stock issued or deemed to be issued under or in respect of such holder s aggregate Company Stock Options, Company Performance RSUs, Restricted Shares and rights under the Company ESPP (as of the Last Exercise Date), as applicable, pursuant to the terms and conditions of this Section 2.5. For the avoidance of doubt, all terms and conditions of this Article II (except that Section 2.2(e) shall apply only to shares of Company Common Stock that are actually issued) not otherwise contradicted by this Section 2.5 shall apply with respect to all shares of Company Common Stock issued or deemed to be issued under or in respect of such holder s aggregate Company Stock Options, Company Performance RSUs, Restricted Shares and participation in the Company ESPP, as applicable.

(e) Company ESPP. The Company ESPP will continue to be operated in accordance with its terms and past practice for the Offering Period (as defined in the Company ESPP) in effect as of the date of this Agreement (the Current Offering Period) and any subsequent Offering Period that begins after the date of this Agreement pursuant to the terms and conditions of the Company ESPP; provided, that if the Second Effective Time occurs prior to the end of the Current Offering Period or any such subsequent Offering Period, the Company will take all action as may be necessary to shorten the Current Offering Period or such subsequent Offering Period so that (i) the Change of Control Exercise Date (as defined in the Company ESPP) shall occur prior to the Second Effective Time (the Last Exercise Date) and (ii) the Current Offering Period or such subsequent Offering Period ends on the Last Exercise Date. The Company will, pursuant to, and in accordance with, the terms of the Company ESPP, notify each Company ESPP participant in writing at least ten (10) Trading Days (as defined in the Company ESPP) prior to the Last Exercise Date, and by a date that is no later than the Mailing Date, that the last date during the Current Offering Period or such subsequent Offering Period on which a deemed purchase of shares of Company Common Stock shall occur has been changed to the Last Exercise Date and that his or her deemed purchase right will be exercised automatically on the Last Exercise Date, unless prior to such date, he or she has canceled his or her election to participate in the Current Offering Period, to the extent applicable. Each

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share of Company Common Stock deemed to be purchased in connection with the application of this Section 2.5(e) shall be deemed to be an outstanding share of Company Common Stock for purposes of Section 2.2(c) and 2.3; provided, that, subject to the terms and conditions of Section 2.5(d), only a Mixed Election or Cash Election may be made in respect of such share.

(f) Notices. Prior to the Second Effective Time, the Company shall deliver to the holders of the Company Stock Options, Company Performance RSUs and Restricted Shares and the participants in the Company ESPP notices, in form and substance reasonably acceptable to Parent, setting forth such holders rights pursuant to this Agreement.

(g) Termination of Stock Plans. Prior to the Second Effective Time, the Company shall take all actions necessary to terminate all of its Company Stock Plans and the Company ESPP, such termination to be effective at the Second Effective Time. After the Second Effective Time, all Company Stock Plans and the Company ESPP shall be terminated and no further Company Stock Options or other rights with respect to shares of Company Common Stock shall be granted thereunder.

SECTION 2.6. Adjustments. Notwithstanding any provision of this Article II to the contrary (but without in any way limiting the covenants in Section 5.2), if between the date of this Agreement and the Second Effective Time the outstanding shares of Company Common Stock or Parent Class P Stock shall have been changed into a different number of shares or a different class by reason of the occurrence or record date of any stock dividend, subdivision, reclassification, split, combination, exchange of shares or similar transaction (other than upon the conversion of any shares of Parent Common Stock in accordance with the Parent Charter Documents as in effect on the date of this Agreement), the Merger Consideration, the Per Share Cash Amount, the Per Share Cash Election Consideration, the Per Share Stock Consideration, the Mixed Election Stock Exchange Ratio, the Per Share Warrant Consideration, the Exchange Ratio and any other similarly dependent item, as the case may be, shall be appropriately adjusted to reflect fully the effect of such stock dividend, subdivision, reclassification, split, combination, exchange of shares or similar transaction and to provide the holder of share of Company Common Stock the same economic effect as contemplated by this Agreement prior to such event.

ARTICLE III

Representations and Warranties of the Company

Except as disclosed in (a) the disclosure letter delivered by the Company to Parent (the Company Disclosure Schedule) prior to the execution of this Agreement; provided that (i) disclosure in any section of such Company Disclosure Schedule shall be deemed to be disclosed with respect to any other section of this Agreement to the extent that it is reasonably apparent on the face of the Company Disclosure Schedule that such disclosure is applicable to such other section notwithstanding the omission of a reference or cross reference thereto and (ii) the mere inclusion of an item in such Company Disclosure Schedule as an exception to a representation or warranty shall not be deemed an admission that such item represents a material exception or material fact, event or circumstance or that such item has had, would have or would reasonably be expected to have a Company Material Adverse Effect or (b) the Company SEC Documents filed with the SEC on or after January 1, 2010 and prior to the date of this Agreement, the relevance of such disclosure being reasonably apparent on its face, but excluding any disclosure contained in any such Company SEC Documents under the heading Risk Factors or Cautionary Note Regarding Forward-Looking Statements or similar heading, the Company represents and warrants to Parent as follows:

SECTION 3.1. Organization, Standing and Corporate Power.

(a) Each of the Company and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of the jurisdiction in which it is incorporated and has all requisite corporate, partnership

or other applicable power and authority necessary to own or lease all of its properties and assets and to carry on its business as it is now being conducted, except where the failure to have such power or authority would not, individually or in the aggregate, have a Material Adverse Effect on the Company (Company Material Adverse Effect).

(b) Each of the Company and its Subsidiaries is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, have a Company Material Adverse Effect.

(c) All the outstanding shares of capital stock of, or other equity interests in, each material Subsidiary of the Company have been duly authorized and validly issued and are fully paid and nonassessable and are owned directly or indirectly by the Company free and clear of all liens, pledges, charges, mortgages, encumbrances, adverse rights or claims and security interests of any kind or nature whatsoever (including any restriction on the right to vote or transfer the same, except for such transfer restrictions of general applicability as may be provided under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the Securities Act), and the blue sky laws of the various States of the United States) (collectively, Liens). The Company does not own, directly or indirectly, any capital stock, voting securities or equity interests in any Person material to the Company.

(d) The Company has made available to Parent correct and complete copies of its certificate of incorporation and by-laws (the Company Charter Documents) and correct and complete copies of the certificates of incorporation and by-laws (or comparable organizational documents) of each of its material Subsidiaries (the Company Subsidiary Documents), in each case as amended to the date of this Agreement. All such Company Charter Documents are in full force and effect and the Company is not in violation of any of its provisions.

SECTION 3.2. Capitalization.

(a) The authorized capital stock of the Company consists of 1,500,000,000 shares of Company Common Stock and 50,000,000 shares of preferred stock, par value $.01 per share (Company Preferred Stock), of which 900,000 shares of Company Preferred Stock are designated as 4.99% Convertible Perpetual Preferred Stock. At the close of business on October 13, 2011, (i) 771,852,913 shares of Company Common Stock (which number includes 6,580,269 shares of Company Common Stock which are Restricted Shares and 1,197,016 held in the El Paso Corporation Benefits Protection Trust II) were issued and outstanding, (ii) 13,873,363 shares of Company Common Stock were held by the Company in its treasury, (iii) 15,153,844 shares of Company Common Stock were reserved for issuance under the Company Stock Plans and 24,368,095 shares of Company Common Stock were subject to outstanding Company Stock Options granted under the Company Stock Plans, (iv) 674,427 shares of Company Common Stock reserved for issuance upon the settlement of outstanding Company Performance RSUs (which number assumes a payout percentage of 100%), (v) 1,988,182 shares of Company Common Stock were eligible for issuance under the Company ESPP, and (vi) no shares of Company Preferred Stock were issued or outstanding. All outstanding shares of Company Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. Section 3.2(a) of the Company Disclosure Schedule sets forth, as of October 13, 2011, the aggregate number of outstanding options or other rights to purchase or receive shares of Company Common Stock granted under the Company Stock Plans, the Company ESPP or otherwise by the Company. Except (A) as set forth above in this Section 3.2(a) or (B) as otherwise expressly permitted by Section 5.2(a), as of the date of this Agreement there are not, and as of the Second Effective Time there will not be, any shares of capital stock, voting securities or equity interests of the Company issued and outstanding or any subscriptions, options, warrants, calls, convertible or exchangeable securities, rights, commitments or agreements of any character providing for the issuance of any shares of capital stock, voting securities or equity interests of the Company, including any representing the right to purchase or otherwise receive any Company Common Stock.

(b) Since the Balance Sheet Date, the Company has not issued any shares of its capital stock, voting securities or equity interests, or any securities convertible into or exchangeable or exercisable for any shares of its capital stock, voting securities or equity interests, other than pursuant to the outstanding options referred to above in Section 3.2(a) or as provided in Section 5.2(a) or the schedules thereto. None of the Company or any of its Subsidiaries has issued or is bound by any outstanding subscriptions, options, warrants, calls, convertible or exchangeable securities, rights, commitments or agreements of any character providing for the issuance or disposition of any shares of capital stock, voting securities or equity interests of any Subsidiary of the Company. Except in connection with the exercise of any Company Stock Options or the vesting, settlement or forfeiture of, or tax withholding with respect to, any equity or equity-based awards granted under the Company Stock Plans and outstanding as of the date of this Agreement, there are no outstanding obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any shares of capital stock, voting securities or equity interests (or any options, warrants or other rights to acquire any shares of capital stock, voting securities or equity interests) of the Company or any of its Subsidiaries.

(c) The authorized equity interests of El Paso Pipeline Partners, L.P., a Delaware limited partnership (EPB) consist of common units representing limited partner interests in EPB (EPB Common Units), Class B units representing limited partner interests in EPB (EPB Class B Units), subordinated units representing limited partner interests in EPB (EPB Subordinated Units), incentive distribution rights of EPB (the EPB IDRs), and general partner units in EPB (EPB GP Units). At the close of business on October 13, 2011, the issued and outstanding limited partner interests and general partner interests of EPP consisted of (i) 205,693,269 EPB Common Units, (ii) no EPB Class B Units, (iii) no EPB Subordinated Units, (iv) no outstanding units related to EPB IDRs and (v) 4,197,822 EPB GP Units. No additional EPB GP units are issued to represent IDR payments which are calculated cash payments. All outstanding equity interests of EPB are duly authorized, validly issued, fully-paid and nonassessable and free of preemptive rights.

(d) As of the date of this Agreement, the authorized capital stock of New EP consists of 1,000 shares of common stock, par value $0.01 per share, all of which are duly authorized, validly issued, fully paid and nonassessable and free of preemptive rights. Prior to the First Effective Time, the certificate of incorporation and by-laws of New EP will be amended (the New EP Charter Amendment) to be substantially in the same form as the Company s certificate of incorporation and by-laws, including to authorize the same number of shares of capital stock as currently authorized by the Company s certificate of incorporation. As of the date of this agreement, all of the issued and outstanding capital stock of New EP is, and until the First Effective Time will be, owned, beneficially and of record, by the Company. New EP was formed solely for the purpose of engaging in the Transactions contemplated by this Agreement. Except for obligations and liabilities incurred in connection with its formation and the Transactions contemplated by this Agreement, New EP has not and will not have incurred, directly or indirectly, an obligations or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any Person.

(e) The authorized capital stock of Merger Sub One consists of 1,000 shares of common stock, par value $0.01 per share, all of which are duly authorized, validly issued, fully paid and nonassessable and free of preemptive rights. All of the issued and outstanding capital stock of Merger Sub One is owned, beneficially and of record, by New EP. Merger Sub One was formed solely for the purpose of engaging in the Transactions contemplated by this Agreement. Except for obligations and liabilities incurred in connection with its formation and the Transactions contemplated by this Agreement, Merger Sub One has not and will not have incurred, directly or indirectly, an obligations or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any Person.

SECTION 3.3. Authority; Noncontravention; Voting Requirements.

(a) Each of the Company, New EP and Merger Sub One has all necessary corporate power and authority to execute and deliver this Agreement and, subject to obtaining (i) the Company Stockholder Approval, (ii) the consent of New EP to the Conversion following the First Effective Time, and (iii) approval by the Company of

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the New EP Charter Amendment and the Second Merger, to perform their respective obligations hereunder and to consummate the Transactions. The execution, delivery and performance by the Company, New EP and Merger Sub One of this Agreement, and the consummation by the Company, New EP and Merger Sub One of the Transactions, have been duly authorized and approved by the Company Board and the board of directors of New EP and Merger Sub One, and except for obtaining (i) the Company Stockholder Approval for the adoption of this Agreement and the First Merger Agreement, (ii) the consent of New EP to the Conversion following the First Effective Time, and (iii) approval by the Company of the New EP Charter Amendment and the Second Merger, no other corporate action on the part of the Company, New EP and Merger Sub One is necessary to authorize the execution, delivery and performance by the Company, New EP and Merger Sub One of this Agreement and the consummation by them of the Transactions. This Agreement has been duly executed and delivered by the Company, New EP and Merger Sub One and, assuming due authorization, execution and delivery of this Agreement by the other parties hereto, constitutes a legal, valid and binding obligation of the Company, enforceable against each of them in accordance with its terms.

(b) The Company Board, at a meeting duly called and held, has unanimously (i) approved and declared advisable this Agreement and the Transactions and (ii) resolved to recommend that stockholders of the Company adopt this Agreement.

(c) Neither the execution and delivery of this Agreement by the Company, New EP and Merger Sub One nor the consummation by the Company, New EP and Merger Sub One of the Transactions, nor compliance by the Company, New EP and Merger Sub One with any of the terms or provisions of this Agreement, will (i) conflict with or violate any provision of the Company Charter Documents or any of the Company Subsidiary Documents or (ii) assuming that the authorizations, consents and approvals referred to in Section 3.4 and the Company Stockholder Approval are obtained and the filings referred to in Section 3.4 are made, (x) violate any Law, judgment, writ or injunction of any Governmental Authority applicable to the Company or any of its Subsidiaries or any of their respective properties or assets, or (y) violate, conflict with, result in the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of, the Company or any of its Subsidiaries under, any of the terms, conditions or provisions of any loan or credit agreement, debenture, note, bond, mortgage, indenture, deed of trust, license, lease, contract or other agreement, instrument or obligation (each, a Contract) or Permit, to which the Company or any of its Subsidiaries is a party, or by which they or any of their respective properties or assets may be bound or affected except, in the case of clauses (x) and (y), for such violations, conflicts, losses, defaults, terminations, cancellations, accelerations or Liens as, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect.

(d) The affirmative vote (in person or by proxy) of the holders of a majority of the outstanding shares of Company Common Stock at the Company Stockholders Meeting or any adjournment or postponement thereof in favor of the adoption of this Agreement and the First Merger Agreement (the Company Stockholder Approval) is the only vote or approval of the holders of any class or series of capital stock of the Company or (except as provided in the next sentence) any of its Subsidiaries which is necessary to adopt this Agreement and the Transactions. The vote or consent of New EP as the sole stockholder of the Company following the First Effective Time is the only vote or approval of the holders of any class or series of capital stock of the Company to approve the LLC Conversion. The vote or consent of the Company as the sole stockholder of New EP prior to the First Effective Time is the only vote or consent of the stockholders of New EP necessary to adopt this Agreement and approve the Transactions. The vote or consent of New EP as the sole stockholder of Merger Sub One is the only vote or consent of the stockholders of Merger Sub One necessary to adopt this Agreement and approve the Transactions.

SECTION 3.4. Governmental Approvals. Except for (i) the filing with the SEC of a joint proxy/information statement (or, if Parent reasonably determines that it is required under applicable Law, a joint proxy statement) relating to the Company Stockholders Meeting and Parent Stockholders Meeting (as amended or supplemented

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from time to time, the Joint Proxy/Information Statement), and other filings required under, and compliance with other applicable requirements of, the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the Exchange Act), and the rules of the NYSE, (ii) the Delaware Filings, (iii) filings required under, and compliance with other applicable requirements of, the HSR Act and (iv) filings required under, and compliance with other applicable requirements of, non-U.S. Laws intended to prohibit, restrict or regulate actions or transactions having the purpose or effect of monopolization, restraint of trade, harm to competition or effectuating foreign investment (collectively, Foreign Antitrust Laws), no consents or approvals of, or filings, declarations or registrations with, any Governmental Authority are necessary for the execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the Transactions, other than such other consents, approvals, filings, declarations or registrations that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to (A) prevent or materially impede, interfere with or hinder the consummation of the Transactions or (B) result in a Company Material Adverse Effect.

SECTION 3.5. Company SEC Documents; Undisclosed Liabilities.

(a) The Company and its Subsidiaries have filed and furnished all required reports, schedules, forms, certifications, prospectuses, and registration, proxy and other statements with the SEC since December 31, 2009 (collectively and together with all documents filed on a voluntary basis on Form 8-K, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein, the Company SEC Documents). As of their respective effective dates (in the case of Company SEC Documents that are registration statements filed pursuant to the requirements of the Securities Act) and as of their respective SEC filing dates (in the case of all other Company SEC Documents), the Company SEC Documents complied in all material respects with the requirements of the Exchange Act, the Securities Act and the Sarbanes-Oxley Act, as the case may be, applicable to such Company SEC Documents, and none of the Company SEC Documents as of such respective dates contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of the date of this Agreement, there are no outstanding or unresolved comments received from the SEC staff with respect to the Company SEC Documents. To the Knowledge of the Company, none of the Company SEC Documents is the subject of ongoing SEC review or investigation.

(b) The consolidated financial statements of the Company included in the Company SEC Documents, including, without limitation, the audited financial statements of the Company for the fiscal years ended December 31, 2008, 2009 and 2010, comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of unaudited quarterly statements, as indicated in the notes thereto) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited quarterly statements, to normal year-end audit adjustments, none of which has been or will be, individually or in the aggregate, material to the Company and its Subsidiaries, taken as a whole).

(c) The Company has established and maintains internal control over financial reporting and disclosure controls and procedures (as such terms are defined in Rule 13a-15 and Rule 15d-15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its consolidated Subsidiaries, required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company s principal executive officer and its principal financial officer to allow timely decisions regarding required disclosure; and such disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms. The Company s principal executive officer

and its principal financial officer have disclosed, based on their most recent evaluation, to the Company s auditors and the audit committee of the Company Board (x) all significant deficiencies in the design or operation of internal controls which could adversely affect the Company s ability to record, process, summarize and report financial data and have identified for the Company s auditors any material weaknesses in internal controls and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company s internal controls. The principal executive officer and the principal financial officer of the Company have made all certifications required by the Sarbanes-Oxley Act, the Exchange Act and any related rules and regulations promulgated by the SEC with respect to the Company SEC Documents, and the statements contained in such certifications are complete and correct. The management of the Company has completed its assessment of the effectiveness of the Company s internal control over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the year ended December 31, 2010, and such assessment concluded that such controls were effective. To the Knowledge of the Company, there are no facts or circumstances that would prevent its chief executive officer and chief financial officer from giving the certifications and attestations required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act, without qualification, when next due.

(d) Except (i) as reflected or otherwise reserved against on the balance sheet of the Company and its Subsidiaries as of June 30, 2011 (the Balance Sheet Date) (including the notes thereto) included in the Company SEC Documents filed by the Company and publicly available prior to the date of this Agreement, (ii) for liabilities and obligations incurred since the Balance Sheet Date in the ordinary course of business and (iii) for liabilities and obligations incurred under or in accordance with this Agreement or in connection with the Transactions, neither the Company nor any of its Subsidiaries has any liabilities or obligations of any nature (whether or not accrued or contingent), that would be required to be reflected or reserved against on a consolidated balance sheet of the Company prepared in accordance with GAAP or the notes thereto, other than as have not and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(e) Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract (including any Contract or arrangement relating to any transaction or relationship between or among the Company and any of its Subsidiaries, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand, or any off-balance sheet arrangements (as defined in Item 303(a) of Regulation S-K of the SEC)), where the result, purpose or effect of such Contract is to avoid disclosure of any material transaction involving, or material liabilities of, the Company in the Company s published financial statements or any Company SEC Documents.

SECTION 3.6. Absence of Certain Changes or Events.

(a) Since the Balance Sheet Date through the date of this Agreement, there have not been any changes, effects, events or occurrences that, individually or in the aggregate, have had or would reasonably be expected to have a Company Material Adverse Effect.

(b) From the date of this Agreement there have not been any changes, effects, events or occurrences that, individually or in the aggregate, have had or would reasonably be expected to have a Company Material Adverse Effect.

(c) Since the Balance Sheet Date (i) the Company and its Subsidiaries have carried on and operated their respective businesses in all material respects in the ordinary course of business consistent with past practice and (ii) neither the Company nor any of its Subsidiaries has taken any action described in Sections 5.2(a)(ii), (iii), (v), (vi), (ix) or (xiv) that if taken after the date of this Agreement and prior to the Second Effective Time without the prior written consent of Parent would violate such provision.

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SECTION 3.7. Legal Proceedings. There are no (i) investigations or proceedings pending (or, to the Knowledge of the Company, threatened) by any Governmental Authority with respect to the Company or any of its Subsidiaries or (ii) actions, suits or proceedings pending (or, to the Knowledge of the Company, threatened) against the Company or any of its Subsidiaries or any of their respective properties at law or in equity before, and there are no orders, judgments or decrees of any Governmental Authority against the Company or any of its Subsidiaries, in each case of clause (i) or (ii), which would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

SECTION 3.8. Compliance With Laws; Permits.

(a) The Company and its Subsidiaries are, and since the later of December 31, 2009 and their respective dates of formation or organization have been, in compliance with and are not in default under or in violation of any applicable federal, state, local or foreign or provincial law, statute, ordinance, rule, regulation, judgment, order, injunction, decree or agency requirement of or undertaking to any Governmental Authority, including common law (collectively, Laws and each, a Law), except where such non-compliance, default or violation would not have, individually or in the aggregate, a Company Material Adverse Effect.

(b) The Company and its Subsidiaries are in possession of all franchises, tariffs, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Authority necessary for the Company and its Subsidiaries to own, lease and operate their properties and assets or to carry on their businesses as they are now being conducted (the Company Permits), except where the failure to have any of the Company Permits would not have, individually or in the aggregate, a Company Material Adverse Effect. All Company Permits are in full force and effect, except where the failure to be in full force and effect would not have, individually or in the aggregate, a Company Material Adverse Effect. No suspension or cancellation of any of the Company Permits is pending or, to the Knowledge of the Company, threatened, except where such suspension or cancellation would not, individually or in the aggregate, have a Company Material Adverse Effect. The Company and its Subsidiaries are not, and since December 31, 2008 have not been, in violation or breach of, or default under, any Company Permit, except where such violation, breach or default would not, individually or in the aggregate, have a Company Material Adverse Effect. As of the date of this Agreement, to the Knowledge of the Company, no event or condition has occurred or exists which would result in a violation of, breach, default or loss of a benefit under, or acceleration of an obligation of the Company or any of its Subsidiaries under, any Company Permit, or has caused (or would cause) an applicable Governmental Authority to fail or refuse to issue, renew, extend, any Company Permit (in each case, with or without notice or lapse of time or both), except for violations, breaches, defaults, losses, accelerations or failures that would not, individually or in the aggregate, have a Company Material Adverse Effect.

(c) Without limiting the generality of Section 3.8(a), the Company, each of its Subsidiaries, and, to the Knowledge of the Company, each joint venture partner, joint interest owner, consultant, agent, or representative of any of the foregoing, (i) is in compliance with the U.S. Foreign Corrupt Practices Act, and any other U.S. and foreign anti-corruption Laws that are applicable to the Company or its Subsidiaries; (ii) has not, to the knowledge of the Persons set forth on Section 3.8(c) of the Company Disclosure Schedule after due inquiry, been given written notice by any Governmental Authority of any facts which, if true, would constitute a violation of the U.S. Foreign Corrupt Practices Act or any other U.S. or foreign anti-corruption Laws by any such person; and (iii) is not, to the Knowledge of the Company, being (and has not been) investigated by any Governmental Authority except, in each case of the foregoing clauses (i) through (iii), as would not, individually or in the aggregate, have a Company Material Adverse Effect.

SECTION 3.9. Information Supplied. Subject to the accuracy of the representations and warranties of Parent and Merger Sub set forth in Section 4.9, none of the information supplied (or to be supplied) in writing by or on behalf of the Company specifically for inclusion or incorporation by reference in (a) the registration statement on Form S-4 to be filed with the SEC by Parent in connection with the issuance of shares of Parent Class P Stock (and the shares of Parent Class P Stock to be issued upon any subsequent exercise of the Parent Class P Warrants) and Parent Class P Warrants in the Second Merger (as amended or supplemented from time to time,

the "Form S-4") will, at the time the Form S-4, or any amendments or supplements thereto, are filed with the SEC or at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading, and (b) the Joint Proxy/Information Statement will, on the date it is first mailed to stockholders of the Company and the stockholders of Parent, and at the time of the Company Stockholders Meeting and the Parent Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Joint Proxy/Information Statement (except for such portions thereof that relate only to Parent or any Subsidiary of Parent) will comply as to form in all material respects with the applicable requirements of the Exchange Act. Notwithstanding the foregoing, the Company makes no representation or warranty with respect to information supplied by or on behalf of Parent or Merger Sub for inclusion or incorporation by reference in any of the foregoing documents.

SECTION 3.10. Tax Matters.

(a) Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and each of its Subsidiaries have prepared and timely filed (taking into account any extension of time within which to file) all Tax Returns required to be filed by any of them and all such Tax Returns are complete and accurate, (ii) the Company and each of its Subsidiaries have timely paid all Taxes that are required to be paid by any of them (whether or not shown on any Tax Return), except with respect to matters contested in good faith by appropriate proceedings and for which adequate reserves have been established on the financial statements of the Company and its Subsidiaries in accordance with GAAP, (iii) the U.S. consolidated federal income Tax Returns of the Company through the tax year ending 2010 have been examined or are currently being examined by the Internal Revenue Service (or the period for assessment of the Taxes in respect of which such Tax Returns were required to be filed has expired), (iv) all assessments for Taxes due with respect to completed and settled examinations or any concluded litigation have been fully paid, (v) there are no audits, examinations, investigations or other proceedings pending or threatened in writing in respect of Taxes or Tax matters of the Company or any of its Subsidiaries, (vi) there are no Liens for Taxes on any of the assets of the Company or any of its Subsidiaries other than statutory Liens for Taxes not yet due and payable or Liens for Taxes that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established on the financial statements of the Company and its Subsidiaries in accordance with GAAP, (vii) none of the Company or any of its Subsidiaries has been a "controlled corporation" or a "distributing corporation" in any distribution that was intended to be governed by Section 355 of the Code (or any similar provision of state, local or foreign Law) (A) occurring during the two-year period ending on the date of this Agreement, or (B) that otherwise constitutes part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) that includes the Transactions, (viii) the Company and each of its Subsidiaries has timely withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, creditor, independent contractor, shareholder or other third party, (ix) none of the Company or any of its Subsidiaries has participated in any "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(1), (x) neither the Company nor any of its Subsidiaries is a party to, or bound by, any agreement or arrangement relating to the apportionment, sharing, assignment, indemnification or allocation of any Tax or Tax asset (other than an agreement or arrangement solely among members of a group the common parent of which is the Company) or has any liability for Taxes of any Person (other than the Company or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any predecessor or successor thereof or any analogous or similar provision of Law), by contract, agreement or otherwise and (xi) there are no currently effective waivers or extensions of any statute of limitations with respect to any Taxes of the Company or any of its Subsidiaries.

(b) As of the date of this Agreement, there is no limitation under Section 382 or 383 of the Code or the separate return limitation year rules (for the avoidance of doubt, other than such a limitation arising as a result of the transactions contemplated herein) that will have a material adverse impact on the ability of the Company and

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the members of its affiliated group to utilize their net operating losses, net capital losses and credit carryforwards, taken as a whole. The information contained in IRS Form 4562 and all attachments and supporting statements relating thereto included in the Company s 2010 U.S. federal income tax return is accurate, other than such inaccuracies as will not have a material adverse impact on the aggregate tax basis position of the Company and the members of its affiliated group with respect to their assets.

(c) The Company and the members of its affiliated group for U.S. federal income tax purposes reported net operating loss carryforwards of $3,118,560,993 for U.S. federal income tax purposes on their 2010 Federal Income Tax Return and such reported amount is accurate in all material respects. The Company s good faith estimate of the Company s net operating loss carryforward for U.S. federal income tax purposes as of January 1, 2012 is approximately $4,500,000,000, provided that such estimate (i) includes bonus depreciation deductions for U.S. federal income tax purposes with respect to the Upstream Assets of no more than $190,000,000, (ii) is based on taxable income of the Company for the year ending December 31, 2011 set forth on Section 3.10(c) of the Company Disclosure Schedule which does not give effect to any deductions of net operating losses and any bonus depreciation deductions, and (iii) assumes that no action will be taken to elect out of any entitlement of the Company to bonus depreciation deductions for U.S. federal income tax purposes with respect to the year ending December 31, 2011 (such estimate, the Signing Estimated NOL).

(d) As used in this Agreement, (i) Tax or Taxes means any and all federal, state, local or foreign or provincial taxes, charges, fees, imposts, levies or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever, including any and all interest, penalties, fines, additions to tax or additional amounts imposed by any Governmental Authority in connection with respect thereto and (ii) Tax Return means any return, report or similar filing (including any attached schedules, supplements and additional or supporting material) filed or required to be filed with respect to Taxes, including any information return, claim for refund, amended return or declaration of estimated Taxes (and including any amendments with respect thereto).

SECTION 3.11. Employee Benefits.

(a) Section 3.11(a) of the Company Disclosure Schedule lists all material Company Benefit Plans. Company Benefit Plans means (i) all employee benefit plans (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (ERISA)) and (ii) all other compensation or employee benefit plans, programs, policies, agreements or other arrangements, whether or not subject to ERISA, including, cash- or equity or equity-based, employment, retention, change of control, health, medical, dental, disability, accident, life insurance, vacation, severance, retirement, pension, savings, or termination, in each case of (i) and (ii) that are sponsored, maintained, contributed to or required to be contributed to by the Company or any of its Subsidiaries for the benefit of current or former employees, directors or consultants of the Company or its Subsidiaries, or with respect to which the Company or its Subsidiaries have any current or contingent liability. For purposes of this Agreement, the term Company Foreign Benefit Plan shall mean any Company Benefit Plan subject to the Laws of any jurisdiction other than the United States.

(b) Except for such claims which would not have, individually or in the aggregate, a Company Material Adverse Effect, no action, dispute, suit, claim, arbitration, or legal, administrative or other proceeding or governmental action is pending or, to the Knowledge of the Company, threatened (x) with respect to any Company Benefit Plan (other than a multiemployer plan (within the meaning of Section 4001(a)(3) of ERISA) (a Multiemployer Plan)) other than claims for benefits in the ordinary course, (y) alleging any breach of the material terms of any Company Benefit Plan (other than a Multiemployer Plan) or any fiduciary duties with respect thereto or (z) with respect to any violation of any applicable Law with respect to such Company Benefit Plan (other than a Multiemployer Plan).

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(c) Each Company Benefit Plan (other than a Multiemployer Plan or a Company Foreign Benefit Plan) has been maintained, funded and administered in compliance with its terms and with applicable Law, including ERISA and the Code, except for such non-compliance which would not have, individually or in the aggregate, a Company Material Adverse Effect. Any Company Benefit Plan (other than a Multiemployer Plan) intended to be qualified under Section 401 of the Code has received a favorable determination letter from the United States Internal Revenue Service that has not been revoked and, to the Knowledge of the Company, no fact or event has occurred since the date of such determination letter or letters from the Internal Revenue Service that would reasonably be expected to adversely affect the qualified status of any such Company Benefit Plan. Neither the Company nor any of its Subsidiaries maintains or contributes to or is required to contribute to any plan, agreement or arrangement which provides post-termination or post-retirement medical benefits to any Person, except as required by applicable Law or as would not have, individually or in the aggregate, a Company Material Adverse Effect.

(d) With respect to each Company Benefit Plan that is subject to Title IV or Section 302 of ERISA or Section 412 or 4971 of the Code, (i) the Company, its Subsidiaries and their respective ERISA Affiliates have complied with the minimum funding requirements under Sections 412, 430 and 431 of the Code and Sections 302, 303 and 304 of ERISA, whether or not waived, (ii) no reportable event within the meaning of Section 4043 of ERISA for which the 30-day notice requirement has not been waived has occurred, (iii) all premiums to the Pension Benefit Guaranty Corporation (the PBGC) have been timely paid in full, (iv) no current or contingent liability under Title IV of ERISA has been or is expected to be incurred by the Company, its Subsidiaries or any of their respective ERISA Affiliates (other than for premiums to the PBGC) and (v) the PBGC has not instituted proceedings to terminate any such Company Benefit Plan, except, in each case of (i)-(v), as would not have, individually or in the aggregate, a Company Material Adverse Effect.

(e) Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, with respect to any Company Benefit Plan (other than a Company Foreign Benefit Plan), all contributions, premiums and other payments due from any of the Company or its Subsidiaries required by Law or any Company Benefit Plan (other than a Company Foreign Benefit Plan) or applicable Company Collective Bargaining Agreement (as defined in Section 3.12(b)) have been made under any such plan to any fund, trust or account established thereunder or in connection therewith by the due date thereof.

(f) Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, the consummation of the Transactions will not, either alone or in combination with another event, (i) entitle any current or former employee, consultant or officer of the Company or any of its Subsidiaries to severance pay, retention bonuses, parachute payments, non-competition payments, unemployment compensation or any other payment, (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee, consultant or officer, (iii) result in any forgiveness of indebtedness or obligation to fund benefits with respect to any such employee, director or officer or (iv) result in any amount failing to be deductible by reason of Section 280G of the Code. Section 3.11(f) of the Company Disclosure Schedule lists the aggregate number of directors, officers, employees and service providers entitled to a gross-up, make whole or other payment as a result of the imposition of taxes under Section 280G, Section 4999 or Section 409A of the Code pursuant to any agreement or arrangement with the Company or any of its Subsidiaries.

(g) Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, (i) each Company Foreign Benefit Plan has been established, maintained and administered in compliance with its terms and all applicable Laws of any controlling Governmental Authority; (ii) each Company Foreign Benefit Plan required to be registered has been registered (and where applicable, accepted for registration) and has been maintained in good standing with applicable regulatory authorities; and no material fact or event has occurred that would reasonably be expected to adversely affect such good standing status or result in the imposition of any liability, penalty or Tax under applicable Law; (iii) each Company Foreign Benefit Plan required to be funded and/or book reserved is funded and/or book reserved, as appropriate, in accordance with applicable Law; (iv) all employer and employee contributions to each Company Foreign Benefit Plan required by applicable Law or by

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the terms of such Company Foreign Benefit Plan have been made, or, if applicable, accrued in accordance with normal accounting practices; and (v) the fair market value of the assets of each funded Company Foreign Benefit Plan, the liability of each insurer for any Company Foreign Benefit Plan funded through insurance or the book reserve established for any Company Foreign Benefit Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the Second Effective Time, with respect to all current or former participants in such plan according to the actuarial assumptions and valuations most recently used to determine employer contributions to such Company Foreign Benefit Plan.

SECTION 3.12. Labor Matters.

(a) Except for such matters which would not have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any of its Subsidiaries has received written notice during the past two years of the intent of any Governmental Authority responsible for the enforcement of labor, employment, occupational health and safety or workplace safety and insurance/workers compensation laws to conduct an investigation of the Company or any of its Subsidiaries and, to the Knowledge of the Company, no such investigation is in progress. Except for such matters which would not have, individually or in the aggregate, a Company Material Adverse Effect, (i) there are no (and have not been during the two year period preceding the date of this Agreement) strikes or lockouts with respect to any employees of the Company or any of its Subsidiaries, (ii) to the Knowledge of the Company, there is no (and has not been during the two year period preceding the date of this Agreement) union organizing effort pending or threatened against the Company or any of its Subsidiaries, (iii) there is no (and has not been during the two year period preceding the date of this Agreement) unfair labor practice, labor dispute (other than routine individual grievances) or labor arbitration proceeding pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries and (iv) there is no (and has not been during the two year period preceding the date of this Agreement) slowdown, or work stoppage in effect or, to the Knowledge of the Company, threatened with respect to any employees of the Company or any of its Subsidiaries. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries has any liabilities under the Worker Adjustment and Retraining Act of 1998 (the WARN Act) as a result of any action taken by the Company that would have, individually or in the aggregate, a Company Material Adverse Effect. Except for such non-compliance which would not have, individually or in the aggregate, a Company Material Adverse Effect, the Company and each of its Subsidiaries is in compliance with all applicable Laws respecting employment and employment practices, terms and conditions of employment, wages and hours and occupational safety and health (including, without limitation, classifications of service providers as employees and/or independent contractors).

(b) Section 3.12(b) of the Company Disclosure Schedule lists all employee representative bodies, including all labor unions, labor organizations and works councils, and all collective bargaining agreements, union contracts and similar labor agreements in effect, including any industry-wide agreement in a non-U.S. jurisdiction, that cover any employees of the Company or any Subsidiary or to which the Company or any Subsidiary is a party or otherwise bound (each, a Company Collective Bargaining Agreement). Neither the Company nor any Subsidiary is subject to any obligation to inform and/or consult with any labor union, labor organization, works council or any other employee representative body in connection with this Agreement, the arrangements proposed in this Agreement and/or the Closing (whether under applicable Law or any written agreement).

SECTION 3.13. Environmental Matters.

(a) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, (i) each of the Company and its Subsidiaries is and has been in compliance with all applicable Environmental Laws, which compliance includes obtaining, maintaining and complying with all Permits required under Environmental Laws (Environmental Permits) and all such Environmental Permits are in good standing, (ii) there has been no release of any Hazardous Substance by the Company or any of its Subsidiaries, or the Knowledge of the Company, any other Person in any manner that would reasonably be expected to give rise to the Company or any

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of its Subsidiaries incurring any remedial obligation or corrective action requirement under applicable Environmental Laws, (iii) there are no investigations, actions, suits or proceedings pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries or involving any real property currently or, to the Knowledge of the Company, formerly owned, operated or leased by or for the Company or any Subsidiary alleging noncompliance with or liability under, any Environmental Law and (iv) to the Company s Knowledge no Hazardous Substance has been disposed of, released or transported in violation of any applicable Environmental Law, from any properties while owned or operated by the Company or any of its Subsidiaries or as a result of any operations or activities of the Company or any of its Subsidiaries.

(b) As used herein, Environmental Law means any Law relating to (i) the protection, preservation or restoration of the environment (including air, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or (ii) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Hazardous Substances, in each case as in effect at the date of this Agreement.

(c) As used herein, Hazardous Substance means any substance, material or waste that is listed, defined, designated or classified as hazardous, toxic, radioactive, dangerous or a pollutant or contaminant or words of similar meaning under any Environmental Law or are otherwise regulated by any Governmental Authority with jurisdiction over the environment or natural resources, including without limitation petroleum or any derivative or byproduct thereof, radon, radioactive material, asbestos or asbestos containing material, urea formaldehyde, foam insulation or polychlorinated biphenyls.

SECTION 3.14. Contracts.

(a) Except for this Agreement, the Company Benefit Plans or as filed with the SEC prior to the date of this Agreement, neither the Company nor any of its Subsidiaries is a party to or bound by, as of the date of this Agreement, any Contract (whether written or oral) (i) which is a material contract (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) to the Company or any of its Subsidiaries; (ii) which constitutes a contract or commitment relating to indebtedness for borrowed money or the deferred purchase price of property (in either case, whether incurred, assumed, guaranteed or secured by any asset) in excess of $50,000,000; or (iii) which contains any provision that prior to or following the Second Effective Time would materially restrict or alter the conduct of business of, or purport to materially restrict or alter the conduct of business of, whether or not binding on, Parent or any controlled Affiliate of the Parent (other than the Company, any of its Subsidiaries or any director, officer or employee of any of the Company or any of its Subsidiaries) (all contracts of the type described in this Section 3.14(a) being referred to herein as Company Material Contracts).

(b)(i) Each Company Material Contract is valid and binding on the Company and its Subsidiaries, as applicable, and is in full force and effect, except where the failure to be valid, binding and in full force and effect, either individually or in the aggregate, would not have a Company Material Adverse Effect, (ii) the Company and each of its Subsidiaries has in all material respects performed all obligations required to be performed by it to date under each Company Material Contract, except where such noncompliance, either individually or in the aggregate, would not have a Company Material Adverse Effect, and (iii) neither the Company nor any of its Subsidiaries has received written notice of, or to the Company s Knowledge, knows of, the existence of any event or condition which constitutes, or, after notice or lapse of time or both, will constitute, a material default on the part of the Company or any of its Subsidiaries under any such Company Material Contract, except where such default, either individually or in the aggregate, would not have a Company Material Adverse Effect.

SECTION 3.15. Property.

(a) Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, the Company or a Subsidiary of the Company owns and has good title to all of its owned real property (other than severed oil, gas and/or mineral rights and other than hydrocarbon interests) and good title to all its owned

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personal property and has valid leasehold interests in all of its leased real properties (other than hydrocarbon interests) free and clear of all Liens (except in all cases for Liens permissible under or not prohibited by any applicable material loan agreements and indentures (together with all related mortgages, deeds of trust and other security agreements) and except for title exceptions, defects in title, encumbrances, liens, charges, easements, rights of way, covenants, declarations, restrictions, restrictive covenants, Revocable Interests and other matters, whether or not of record, which (other than any of the same which are created or suffered by third-party owners and predecessors in title of any leased real or personal property) in the aggregate do not materially affect the continued use of the property for the purposes for which the property is currently being used (assuming the timely discharge (subject to all waivers, modifications, grace periods and extensions) of all obligations owing by the property owner (with respect to the owned real property or owned personal property) or the third-party owner or lessee under the applicable lease (with respect to the leased real properties or personal property) by the Company or a Subsidiary of the Company), sufficient to conduct their respective businesses as currently conducted. Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, all leases under which the Company or any of its Subsidiaries lease any real or personal property (other than hydrocarbon interests) are valid and effective against the Company or any of its Subsidiaries and, to the Company s Knowledge, the counterparties thereto, in accordance with their respective terms, and there is not, under any of such leases, any existing material default by the Company or any of its Subsidiaries or, to the Company s Knowledge, the counterparties thereto, or, to the Company s Knowledge, any event which, with notice or lapse of time or both, would become a material default by the Company or any of its Subsidiaries, or, to the Company s Knowledge, the counterparties thereto.

(b) The Company and its Subsidiaries have such consents, easements, rights-of-way, permits or licenses from each person (collectively, rights-of-way) as are sufficient to conduct their businesses in all material respects as currently conducted, except such rights-of-way that, if not obtained (or which, if obtained, if the same were to expire or be revoked or terminated), would not, individually or in the aggregate, have a Company Material Adverse Effect. Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, each of the Company and its Subsidiaries has fulfilled and performed all its obligations with respect to such rights-of-way which are required to be fulfilled or performed as of the date of this Agreement (subject to all applicable waivers, modifications, grace periods and extensions) and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or would result in any impairment of the rights of the holder of any such rights-of-way, except for such revocations, terminations and impairments that do not materially adversely affect the commercial use of the property for the purposes for which the property is currently being used and except for rights reserved to, or vested in, any municipality or other Governmental Authority or any railroad by the terms of any right, power, franchise, grant, license, permit, or by any other provision of any applicable Law, to terminate or to require annual or other periodic payments as a condition to the continuance of such right (collectively, Revocable Interests).

(c) The Company or one or more Subsidiaries of the Company owns the office building located at 1001 Louisiana Street, Houston, Texas 77002 (which serves as its corporate headquarters) and are the lessees under the various ground leases of the land with respect to the related parking facility located across the street from the office building, subject to all severed and/or reserved oil, gas and/or mineral rights, interests and leases and to the terms and conditions of said ground leases, free and clear of all Liens except for (i) with respect to the ground leases, title defects, exceptions, exclusions, restrictions, easements, covenants, declarations, restrictions, liens, charges, rights of way and all encumbrances which do not and would not reasonably be expected to materially and adversely affect the continued use of the ground leases for the purposes which they are currently being used, (ii) with respect to the office building, title defects, exceptions, exclusions, restrictions, easements, covenants, declarations, restrictions, liens, charges, rights of way and other encumbrances, which, in the aggregate, do not and would not reasonably be expected to materially and adversely affect the continued use of the property for the purposes for which the property is currently being used and (iii) zoning, development, entitlement and other land use and environmental and other laws, ordinances and regulations by any Governmental Authority.

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SECTION 3.16. Intellectual Property. Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, either the Company or a Subsidiary of the Company owns, or is licensed or otherwise possesses adequate rights to use, all material trademarks, trade names, service marks, service names, mark registrations, logos, assumed names, domain names, registered and unregistered copyrights, patents or applications and registrations, and trade secrets (collectively, the Company Intellectual Property) used in their respective businesses as currently conducted. Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, (i) there are no pending or, to the Knowledge of the Company, threatened claims by any person alleging infringement or misappropriation by the Company or any of its Subsidiaries of such person s intellectual property, (ii) to the Knowledge of the Company, the conduct of the business of the Company and its Subsidiaries does not infringe or misappropriate any intellectual property rights of any person, (iii) neither the Company nor any of its Subsidiaries has made any claim of a violation or infringement, or misappropriation by others of its rights to or in connection with the Company Intellectual Property, and (iv) to the Knowledge of the Company, no person is infringing or misappropriating any Company Intellectual Property.

SECTION 3.17. Insurance. The Company and its Subsidiaries maintain, or are entitled to the benefits of, insurance covering their properties, operations, personnel and businesses in amounts customary for the businesses in which they operate. Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, none of the Company or its Subsidiaries has received notice from any insurer or agent of such insurer that substantial capital improvements or other expenditures will have to be made in order to continue such insurance, and all such insurance is outstanding and duly in force.

SECTION 3.18. Opinion of Financial Advisor. The Company Board has received the opinion of Morgan Stanley & Co. LLC (the Company Financial Advisor), dated the date of this Agreement, to the effect that, as of such date, and subject to the various assumptions and qualifications set forth therein, the Merger Consideration is fair from a financial point of view to the holders of shares of Company Common Stock (the Company Fairness Opinion). A correct and complete copy of the form of the Company Fairness Opinion has been made available to Parent. The Company has been authorized by the Company Financial Advisor to permit the inclusion of the Company Fairness Opinion and/or references thereto in the Joint Proxy/Information Statement by the Company Financial Advisor.

SECTION 3.19. Brokers and Other Advisors. Except for the Company Financial Advisor and Goldman, Sachs & Co. (the Spin-Off Financial Advisor), the fees and expenses of which will be paid by the Company, no broker, investment banker or financial advisor is entitled to any broker s, finder s or financial advisor s fee or commission, or the reimbursement of expenses, in connection with the Transactions or the proposed spin-off of the Company s exploration and production business (the Proposed Spin-Off) based upon arrangements made by or on behalf of the Company or any of its Subsidiaries. The Company has heretofore made available to Parent a correct and complete copy of the Company s engagement letters with the Company Financial Advisor and the Spin-Off Financial Advisor, which letters describes all fees payable to the Company Financial Advisor and the Spin-Off Financial Advisor in connection with the Transactions and all agreements under which any such fees or any expenses are payable and all indemnification and other agreements with the Company Financial Advisor and the Spin-Off Financial Advisor entered into in connection with the Transactions (the Company Engagement Letters).

SECTION 3.20. State Takeover Statutes; No Rights Plan. Assuming the accuracy of the representation and warranty contained in Section 4.3(e), the action of the Company Board in approving this Agreement and the Transactions is sufficient to render inapplicable to this Agreement and the Transactions the restrictions on business combinations (as defined in Section 203 of the DGCL) as set forth in Section 203 of the DGCL. There is no stockholder rights plan in effect, to which the Company is a party or otherwise bound.

SECTION 3.21. Reorganization Treatment. Neither the Company nor any of its Affiliates has taken or agreed to take any action or knows of any facts or circumstances that could reasonably be expected to prevent the

(i) the First Merger and the LLC Conversion, taken together, and (ii) the Second Merger and the Third Merger, taken together, from each qualifying as a reorganization within the meaning of Section 368(a) of the Code.

SECTION 3.22. Reserve Report.

(a) The Company has furnished to Parent a reserve report prepared by Ryder Scott Company, L.P. containing estimates of the hydrocarbon reserves that are owned by the Company or its Subsidiaries, or to which the Company or any Subsidiary is entitled, as of December 31, 2010 (the Reserve Report). The factual, non-interpretative data relating to the Upstream Assets on which the Reserve Report was based are, to the Knowledge of the Company, accurate and complete in all material respects as of the date of the Reserve Report. The Reserve Report conforms in all material respects to the guidelines with respect thereto of the SEC.

(b) The Company s (and any relevant Subsidiaries) internal proved reserve estimates prepared by management for the year ended December 31, 2010 as provided in the Company s Form 10-K for the year ended December 31, 2010, were not, taken as a whole, materially lower than the conclusions in the Reserve Report as of December 31, 2010. Except for changes in Law (or interpretations thereof) or changes generally affecting the oil and gas exploration, development and production industry (including changes in commodity prices) and normal depletion by production, there has been no change in respect of the matters addressed in the Reserve Report that, individually or in the aggregate, would have a Company Material Adverse Effect.

SECTION 3.23. Upstream Assets.

(a) Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any Subsidiary of the Company is obligated by virtue of a take-or-pay payment, advance payment, or other similar payment, to deliver hydrocarbons, or proceeds from the sale thereof, attributable to the Company s (or any Subsidiary s) interest in the Upstream Assets at some future time without receiving payment therefor at or after the time of delivery. Section 3.23(a) of the Company Disclosure Schedule lists all material production, transportation, plant, or other imbalances and overlifts with respect to production from the Oil and Gas Assets in excess of two (2) Bcf. To the Company s Knowledge, no imbalance constitutes all of the Company s (or any Subsidiary s) share of ultimately recoverable reserves in any balancing area pursuant to any balancing agreement.

(b) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, and with respect to Material Upstream Asset Groups only, all currently-producing wells and material equipment are in an operable state of repair, adequate to maintain normal operations in accordance with past practices, ordinary wear and tear excepted. Schedule 3.23(b) of the Company Disclosure Schedule sets forth the lease expirations with respect to any Material Upstream Asset Group (whether in whole or in part) that are scheduled to occur within twelve (12) months after the date of this Agreement.

(c) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, the Company and its Subsidiaries have such title to the Upstream Assets, which (i) entitles the Company or its Subsidiaries, as applicable, to receive (after satisfaction of all royalties, overriding royalties, nonparticipating royalties, net profits interests, or other similar burdens on or measured by production), not less than the net revenue interest share shown in the Reserve Report of all hydrocarbons produced from an Upstream Asset throughout the life of such Upstream Asset; (ii) obligates the Company or its Subsidiaries, as applicable, to bear a percentage of the costs and expenses for the maintenance and development of, and operations relating to, the applicable Upstream Asset, of not greater than the working interest shown on the Reserve Report for such Upstream Asset without a corresponding and proportionate increase in the net revenue interest for such Upstream Asset; and (iii) is free and clear of all liens, encumbrances, obligations, or defects. Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, neither the Company nor any Subsidiary of the Company (nor, to the Company s Knowledge, an applicable operator) is in material breach of, or default under, any oil and gas lease, oil, gas, and mineral lease and sublease, royalty, overriding royalty, net

profits interest, mineral fee interest, carried interest, interests under a concession, production sharing, risk service, technical service, service, or similar agreement that is, or constitutes an interest in, a Material Upstream Asset Group.

SECTION 3.24. No Other Representations or Warranties.

(a) Except for the representations and warranties set forth in this Article III, neither the Company nor any other Person makes or has made any express or implied representation or warranty with respect to the Company or with respect to any other information provided to Parent, Merger Sub Two or Merger Sub Three in connection with the Transactions. Without limiting the generality of the foregoing, neither the Company nor any other Person will have or be subject to any liability or other obligation to Parent, Merger Sub Two, Merger Sub Three or any other Person resulting from the distribution to Parent, Merger Sub Two or Merger Sub Three (including their respective Representatives), or Parent s, Merger Sub Two s or Merger Sub Three s (or such Representatives) use of, any such information, including any information, documents, projections, forecasts of other material made available to Parent, Merger Sub Two or Merger Sub Three in certain data rooms or management presentations in expectation of the Transactions.

(b) Each of the Company, Merger Sub One and New EP has conducted its own independent review and analysis of the business, operations, assets, liabilities, results of operations, financial condition and prospects of Parent and its Subsidiaries and acknowledges that each of the Company, Merger Sub One and New EP has been provided access for such purposes. Except for the representations and warranties expressly set forth in this Agreement, in entering into this Agreement, each of the Company, Merger Sub One and New EP has relied solely upon its independent investigation and analysis of Parent and Parent s Subsidiaries, and each of the Company, Merger Sub One and New EP acknowledges and agrees that it has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Parent, its Subsidiaries, or any of their respective affiliates, stockholders, controlling persons or representatives that are not expressly set forth in this Agreement, whether or not such representations, warranties or statements were made in writing or orally. Each of the Company, Merger Sub One and New EP acknowledges and agree that, except for the representations and warranties expressly set forth in this Agreement (a) Parent does not make, or has not made, any representations or warranties relating to itself or its business or otherwise in connection with the Transactions and the Company, Merger Sub One and New EP are not relying on any representation or warranty except for those expressly set forth in this Agreement, (b) no Person has been authorized by Parent to make any representation or warranty relating to itself or its business or otherwise in connection with the Transactions, and if made, such representation or warranty must not be relied upon by the Company, Merger Sub One and New EP as having been authorized by such party and (c) any estimates, projections, predictions, data, financial information, memoranda, presentations or any other materials or information provided or addressed to the Company, Merger Sub One and New EP or any of their representatives are not and shall not be deemed to be or include representations or warranties unless any such materials or information is the subject of any express representation or warranty set forth in Article IV of this Agreement.

ARTICLE IV

Representations and Warranties of Parent and Merger Sub

Except as disclosed in (a) the disclosure letter delivered by Parent to the Company (the Parent Disclosure Schedule) prior to the execution of this Agreement; provided that (i) disclosure in any section of such Parent Disclosure Schedule shall be deemed to be disclosed with respect to any other section of this Agreement to the extent that it is reasonably apparent on the face of Parent Disclosure Schedule that such disclosure is applicable to such other section notwithstanding the omission of a reference or cross reference thereto and (ii) the mere inclusion of an item in such Parent Disclosure Schedule as an exception to a representation or warranty shall not be deemed an admission that such item represents a material exception or material fact, event or circumstance or

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that such item has had, would have or would reasonably be expected to have a Parent Material Adverse Effect or (b) Parent SEC Documents filed with the SEC on or after January 1, 2010 and prior to the date of this Agreement, the relevance of such disclosure being reasonably apparent on its face, but excluding any disclosure contained in any such Parent SEC Documents under the heading Risk Factors or Cautionary Note Regarding Forward-Looking Statements or similar heading, Parent represents and warrants to the Company as follows:

SECTION 4.1. Organization, Standing and Corporate Power.

(a) Each of Parent and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of the jurisdiction in which it is incorporated and has all requisite corporate, partnership or other applicable power and authority necessary to own or lease all of its properties and assets and to carry on its business as it is now being conducted, except where the failure to have such power or authority would not, individually or in the aggregate, have a Material Adverse Effect on Parent (Parent Material Adverse Effect).

(b) Each of Parent and its Subsidiaries is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or leased by it makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, have a Parent Material Adverse Effect.

(c) All the outstanding shares of capital stock of, or other equity interests in, each material Subsidiary of Parent have been duly authorized and validly issued and are fully paid and nonassessable and are owned directly or indirectly by Parent free and clear of all Liens. Parent does not own, directly or indirectly, any capital stock, voting securities or equity interests in any Person material to Parent.

(d) Parent has made available to the Company correct and complete copies of its certificate of incorporation and by-laws (the Parent Charter Documents) and correct and complete copies of the certificates of incorporation and by-laws (or comparable organizational documents) of each of its material Subsidiaries (the Parent Subsidiary Documents), in each case as amended to the date of this Agreement. All such Parent Charter Documents are in full force and effect and Parent is not in violation of any of its provisions.

SECTION 4.2. Capitalization.

(a) The authorized capital stock of Parent consists of 2,819,462,927 shares, of which 10,000,000 shares are preferred stock, par value $0.01 per share (the Parent Preferred Stock), and 2,809,462,927 shares are common stock, par value $0.01 per share (the Parent Common Stock), which are designated as set forth on Section 4.2 of the Parent Disclosure Schedule. At the close of business on October 13, 2011, (i) 110,898,898 shares of Parent Class P Stock were issued and outstanding and no shares of Parent Class P Stock were held by Parent in its treasury, (ii) 596,102,672 shares of Parent Class A Stock were issued and outstanding and no shares of Parent Class A Stock were held by Parent in its treasury, (iii) 100,000,000 shares of Parent Class B Stock were issued and outstanding and no shares of Parent Class B Stock were held by Parent in its treasury, (iv) 2,462,927 shares of Parent Class C Stock were issued and outstanding and no shares of Parent Class C Stock were held by Parent in its treasury and (v) no shares of Parent Preferred Stock were issued or outstanding. At the close of business on October 13, 2011, the issued and outstanding shares of Parent Class A Stock, Parent Class B Stock and Parent Class C Stock were convertible into 596,102,672 shares of Parent Class P Stock, in the aggregate. All outstanding shares of Parent Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights. The shares of Parent Class P Stock and Parent Class P Warrants to be issued pursuant to this Agreement (including shares of Parent Class P Stock issuable upon exercise of the Parent Class P Warrants issued in the Second Merger) will be duly authorized as of the Second Effective Time and, when issued in accordance with the terms of this Agreement and the Warrant Agreement, will be validly issued, fully paid, nonassessable and free of preemptive rights. Section 4.2(a) of the Parent Disclosure Schedule sets forth, as of October 13, 2011, the aggregate number of outstanding options, restricted shares or other rights

to purchase or receive shares of Parent Common Stock. Except (A) as set forth above in this Section 4.2(a) or (B) as otherwise expressly permitted by Section 5.2(b), as of the date of this Agreement there are not, and as of the Second Effective Time there will not be, any shares of capital stock, voting securities or equity interests of Parent issued and outstanding or any subscriptions, options, warrants, calls, convertible or exchangeable securities, rights, commitments or agreements of any character providing for the issuance of any shares of capital stock, voting securities or equity interests of Parent, including any representing the right to purchase or otherwise receive any Parent Common Stock.

(b) Since the Balance Sheet Date, Parent has not issued any shares of its capital stock, voting securities or equity interests, or any securities convertible into or exchangeable or exercisable for any shares of its capital stock, voting securities or equity interests, other than pursuant to the outstanding options referred to above in Section 4.2(a) or as provided in Section 5.2(b) or the schedules thereto. None of Parent or any of its Subsidiaries has issued or is bound by any outstanding subscriptions, options, warrants, calls, convertible or exchangeable securities, rights, commitments or agreements of any character providing for the issuance or disposition of any shares of capital stock, voting securities or equity interests of any Subsidiary of Parent. Except in connection with the exercise of any option to acquire shares of Parent Common Stock or the vesting, settlement or forfeiture of, or tax withholding with respect to, any equity or equity-based awards outstanding as of the date of this Agreement and the conversion of any shares of Parent Common Stock outstanding as of the date of this Agreement in accordance with the Parent Charter Documents, there are no outstanding obligations of Parent or any of its Subsidiaries to repurchase, redeem or otherwise acquire any shares of capital stock, voting securities or equity interests (or any options, warrants or other rights to acquire any shares of capital stock, voting securities or equity interests) of Parent or any of its Subsidiaries.

(c) The authorized equity interests Kinder Morgan Energy Partners, L.P., a Delaware limited partnership (KMP) consist of common units representing limited partner interests in KMP (KMP Common Units), Class B units representing limited partner interests in KMP (KMP Class B Units), I-units representing limited partners interests in KMP (the KMP I-Units), and the general interest in KMP (which includes the right to receive incentive distribution) (KMP GP Interest). At the close of business on October 13, 2011, the issued and outstanding limited partner interests and general partner interests of KMP consisted of (i) 230,901,187 KMP Common Units, (ii) 5,313,400 KMP Class B Units and (iii) 96,807,610 KMP I-Units and (iv) the KMP GP Interest. All outstanding equity interests of KMP are duly authorized, validly issued, fully paid and nonassessable and free of preemptive rights.

(d) The authorized capital stock of Merger Sub Two consists of 1,000 shares of common stock, par value $0.01 per share, all of which are duly authorized, validly issued, fully paid and nonassessable and free of preemptive rights. All of the issued and outstanding capital stock of Merger Sub Two is owned, beneficially and of record, by Parent. Merger Sub Two was formed solely for the purpose of engaging in the Transactions contemplated by this Agreement. Except for obligations and liabilities incurred in connection with its formation and the Transactions contemplated by this Agreement, Merger Sub Two has not and will not have incurred, directly or indirectly, any obligations or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any Person.

(e) All of the issued and outstanding limited liability company interests of Merger Sub Three is owned, beneficially and of record, by Parent. Merger Sub Three was formed solely for the purpose of engaging in the Transactions contemplated by this Agreement. Except for obligations and liabilities incurred in connection with its formation and the Transactions contemplated by this Agreement, Merger Sub Three has not and will not have incurred, directly or indirectly, any obligations or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any Person.

SECTION 4.3. Authority; Noncontravention; Voting Requirements.

(a) Each of Parent, Merger Sub Two and Merger Sub Three has all necessary entity power and authority to execute and deliver this Agreement and, subject to obtaining (i) the Parent Stockholder Approval, (ii) approval

by the board of directors and stockholder of New EP with respect to the Third Merger and (iii) approval by the sole member of Merger Sub Three, to perform their respective obligations hereunder and to consummate the Transactions. The execution, delivery and performance by Parent, Merger Sub Two and Merger Sub Three of this Agreement, and the consummation by Parent, Merger Sub Two and Merger Sub Three of the Transactions, have been duly authorized and approved by the Parent Board and the board of directors of Merger Sub Two and the sole member of Merger Sub Three (and prior to the Second Effective Time will be adopted by Parent as the sole stockholder of Merger Sub Two and the sole member of Merger Sub Three) and, except for obtaining the Parent Stockholder Approval, no other action on the part of Parent, Merger Sub Two and Merger Sub Three is necessary to authorize the execution, delivery and performance by Parent, Merger Sub Two and Merger Sub Three of this Agreement and the consummation by them of the Transactions. This Agreement has been duly executed and delivered by Parent, Merger Sub Two and Merger Sub Three and, assuming due authorization, execution and delivery of this Agreement by the Company, constitutes a legal, valid and binding obligation of each of Parent, Merger Sub Two and Merger Sub Three, enforceable against each of them in accordance with its terms.

(b) The Parent Board, at a meeting duly called and held, has (i) approved and declared advisable this Agreement and the Transactions, including the Share Issuance (as defined below) and (ii) resolved to recommend that stockholders of Parent approve the Share Issuance.

(c) Neither the execution and delivery of this Agreement by Parent, Merger Sub Two and Merger Sub Three, nor the consummation by Parent, Merger Sub Two and Merger Sub Three of the Transactions, nor compliance by Parent, Merger Sub Two and Merger Sub Three with any of the terms or provisions of this Agreement, will (i) conflict with or violate any provision of the Parent Charter Documents or any of the Parent Subsidiary Documents or (ii) assuming that the authorizations, consents and approvals referred to in Section 4.4 and Parent Stockholder Approval are obtained and the filings referred to in Section 4.4 are made, (x) violate any Law, judgment, writ or injunction of any Governmental Authority applicable to Parent or any of its Subsidiaries or any of their respective properties or assets, or (y) violate, conflict with, result in the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of, Parent or any of its Subsidiaries under, any of the terms, conditions or provisions of any Contract to which Parent or any of its respective Subsidiaries is a party, or by which they or any of their respective properties or assets may be bound or affected except, in the case of clauses (x) and (y), for such violations, conflicts, losses, defaults, terminations, cancellations, accelerations or Liens as, individually or in the aggregate, would not reasonably be expected to have a Parent Material Adverse Effect.

(d) The affirmative vote (in person or by proxy) of the holders of a majority of the aggregate voting power cast at the Parent Stockholders Meeting or any adjournment or postponement thereof to approve the issuance of shares of Parent Class P Stock (including shares of Parent Class P Stock issuable upon exercise of the Parent Class P Warrants issued in the Second Merger) and the Parent Class P Warrants (the Share Issuance) in connection with the Second Merger (the Parent Stockholder Approval) is the only vote of the holders of any class or series of the capital stock of Parent necessary to approve the issuance of shares of Parent Class P Stock (including shares of Parent Class P Stock issuable upon exercise of the Parent Class P Warrants issued in the Second Merger) and the Parent Class P Warrants in connection with the Second Merger and the Transactions and to approve and consummate the Transactions contemplated by this Agreement. At all times until the Parent Stockholder Approval is obtained, the shares of capital stock of Parent subject to the Voting Agreement are, and will be, sufficient to obtain the Parent Stockholder Approval. The vote or consent of Parent as the sole stockholder of Merger Sub Two is the only vote or consent of the stockholders of Merger Sub Two necessary to adopt this Agreement and approve the Transactions. The vote or consent of Parent as the sole member of Merger Sub Three is the only vote or consent of the members of Merger Sub Three necessary to adopt this Agreement and approve the Transactions.

(e) None of Parent or any of its Subsidiaries holds any capital stock, voting securities or equity interests of the Company or any of its Subsidiaries, or holds any securities or rights convertible into, exchangeable or

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exercisable for, or evidencing the right to subscribe for any such shares of capital stock, voting securities or equity interests, or any rights, warrants, options, calls, commitments or any other agreements of any character to purchase or acquire any such shares of capital stock, voting securities or equity interests or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for, any such shares of capital stock, voting securities or equity interests. Each of Parent, Merger Sub Two and Merger Sub is not, nor at any time during the last three (3) years has been, an interested stockholder of the Company as defined in Section 203 of the DGCL.

SECTION 4.4. Governmental Approvals. Except for (i) the filing of the Joint Proxy/Information Statement, and other filings required under, and compliance with other applicable requirements of, the Exchange Act, and the rules of the NYSE, (ii) the Delaware Filings, (iii) filings required under, and compliance with other applicable requirements of, the HSR Act and (iv) filings required under, and compliance with other applicable requirements of, Foreign Antitrust Laws, no consents or approvals of, or filings, declarations or registrations with, any Governmental Authority are necessary for the execution, delivery and performance of this Agreement by Parent and the consummation by Parent of the Transactions, other than such other consents, approvals, filings, declarations or registrations that, if not obtained, made or given, would not, individually or in the aggregate, reasonably be expected to (A) prevent or materially impede, interfere with or hinder the consummation of the Transactions or (B) result in a Parent Material Adverse Effect.

SECTION 4.5. Parent SEC Documents; Undisclosed Liabilities.

(a) Parent and its Subsidiaries have filed and furnished all required reports, schedules, forms, certifications, prospectuses, and registration, proxy and other statements with the SEC since November 23, 2010 (collectively and together with all documents filed on a voluntary basis on Form 8-K, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein, the Parent SEC Documents). As of their respective effective dates (in the case of the Parent SEC Documents that are registration statements filed pursuant to the requirements of the Securities Act) and as of their respective SEC filing dates (in the case of all other Parent SEC Documents), the Parent SEC Documents complied in all material respects with the requirements of the Exchange Act, the Securities Act and the Sarbanes-Oxley Act, as the case may be, applicable to such Parent SEC Documents, and none of the Parent SEC Documents as of such respective dates contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of the date of this Agreement, there are no outstanding or unresolved comments received from the SEC staff with respect to the Parent SEC Documents. To the Knowledge of Parent, none of the Parent SEC Documents is the subject of ongoing SEC review or investigation.

(b) The consolidated financial statements of Parent included in the Parent SEC Documents comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of unaudited quarterly statements, as indicated in the notes thereto) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of Parent and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited quarterly statements, to normal year-end audit adjustments, none of which has been or will be, individually or in the aggregate, material to Parent and its Subsidiaries, taken as a whole).

(c) Parent has established and maintains internal control over financial reporting and disclosure controls and procedures (as such terms are defined in Rule 13a- 15 and Rule 15d-15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to Parent, including its consolidated Subsidiaries, required to be disclosed by Parent in the reports that it files or submits under the Exchange Act is accumulated and communicated to Parent s principal executive officer and its principal financial officer to allow timely decisions regarding required disclosure; and such disclosure controls and procedures are

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effective to ensure that information required to be disclosed by Parent in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms. Parent s principal executive officer and its principal financial officer have disclosed, based on their most recent evaluation, to Parent s auditors and the audit committee of Parent Board (x) all significant deficiencies in the design or operation of internal controls which could adversely affect Parent s ability to record, process, summarize and report financial data and have identified for Parent s auditors any material weaknesses in internal controls and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in Parent s internal controls. The principal executive officer and the principal financial officer of Parent have made all certifications required by the Sarbanes-Oxley Act, the Exchange Act and any related rules and regulations promulgated by the SEC with respect to the Parent SEC Documents, and the statements contained in such certifications are complete and correct. The management of Parent has completed its assessment of the effectiveness of Parent s internal control over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the year ended December 31, 2010, and such assessment concluded that such controls were effective. To the Knowledge of Parent, there are no facts or circumstances that would prevent its chief executive officer and chief financial officer from giving the certifications and attestations required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act, without qualification, when next due.

(d) Except (i) as reflected or otherwise reserved against on the balance sheet of Parent and its Subsidiaries as of the Balance Sheet Date (including the notes thereto) included in the Parent SEC Documents filed by Parent and publicly available prior to the date of this Agreement, (ii) for liabilities and obligations incurred since the Balance Sheet Date in the ordinary course of business and (iii) for liabilities and obligations incurred under or in accordance with this Agreement or in connection with the Transactions, neither Parent nor any of its Subsidiaries has any liabilities or obligations of any nature (whether or not accrued or contingent), that would be required to be reflected or reserved against on a consolidated balance sheet of Parent prepared in accordance with GAAP or the notes thereto, other than as have not and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(e) Neither Parent nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract (including any Contract or arrangement relating to any transaction or relationship between or among Parent and any of its Subsidiaries, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand, or any off-balance sheet arrangements (as defined in Item 303(a) of Regulation S-K of the SEC)), where the result, purpose or effect of such Contract is to avoid disclosure of any material transaction involving, or material liabilities of, Parent in Parent s published financial statements or any Parent SEC Documents.

SECTION 4.6. Absence of Certain Changes or Events.

(a) Since the Balance Sheet Date through the date of this Agreement, there have not been any changes, effects, events or occurrences that, individually or in the aggregate, have had or would reasonably be expected to have a Parent Material Adverse Effect.

(b) From the date of this Agreement there have not been any events, changes, effects, events or occurrences that, individually or in the aggregate, have had or would reasonably be expected to have a Parent Material Adverse Effect.

(c) Since the Balance Sheet Date (i) Parent and its Subsidiaries have carried on and operated their respective businesses in all material respects in the ordinary course of business consistent with past practice and (ii) neither Parent nor any of its Subsidiaries has taken any action described in Section 5.2(b) that if taken after the date of this Agreement and prior to the Second Effective Time without the prior written consent of Parent would violate such provision.

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SECTION 4.7. Legal Proceedings. There are no (i) investigations or proceedings pending (or, to the Knowledge of Parent, threatened) by any Governmental Authority with respect to Parent or any of its Subsidiaries or (ii) actions, suits or proceedings pending (or, to the Knowledge of Parent, threatened) against Parent or any of its Subsidiaries or any of their respective properties at law or in equity before, and there are no orders, judgments or decrees of any Governmental Authority against Parent or any of its Subsidiaries, in each case of clause (i) or (ii), which would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

SECTION 4.8. Compliance With Laws; Permits.

(a) Parent and its Subsidiaries are, and since the later of December 31, 2009 and their respective dates of formation or organization have been, in compliance with and are not in default under or in violation of any applicable Laws, except where such non-compliance, default or violation would not have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Parent and its Subsidiaries are in possession of all franchises, tariffs, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Authority necessary for Parent and its Subsidiaries to own, lease and operate their properties and assets or to carry on their businesses as they are now being conducted (the Parent Permits), except where the failure to have any of Parent Permits would not have, individually or in the aggregate, a Parent Material Adverse Effect. All Parent Permits are in full force and effect, except where the failure to be in full force and effect would not have, individually or in the aggregate, a Parent Material Adverse Effect. No suspension or cancellation of any of Parent Permits is pending or, to the Knowledge of Parent, threatened, except where such suspension or cancellation would not, individually or in the aggregate, have a Parent Material Adverse Effect. Parent and its Subsidiaries are not, and since December 31, 2008 have not been, in violation or breach of, or default under, any Parent Permit, except where such violation, breach or default would not, individually or in the aggregate, have a Parent Material Adverse Effect. As of the date of this Agreement, to the Knowledge of Parent, no event or condition has occurred or exists which would result in a violation of, breach, default or loss of a benefit under, or acceleration of an obligation of Parent or any of its Subsidiaries under, any Parent Permit or has caused (or would cause) an applicable Governmental Authority to fail or refuse to issue, renew or extend any Parent Permit (in each case, with or without notice or lapse of time or both), except for violations, breaches, defaults, losses, accelerations or failures that would not, individually or in the aggregate, have a Parent Material Adverse Effect.

SECTION 4.9. Information Supplied. Subject to the accuracy of the representations and warranties of the Company set forth in Section 3.9, none of the information supplied (or to be supplied) in writing by or on behalf of Parent specifically for inclusion or incorporation by reference in (a) the Form S-4 will, at the time the Form S-4, or any amendments or supplements thereto, are filed with the SEC or at the time it becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading, and (b) the Joint Proxy/Information Statement will, on the date it is first mailed to stockholders of Parent and the stockholders of Parent, and at the time of Parent Stockholders Meeting and the Parent Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Joint Proxy/Information Statement (except for such portions thereof that relate only to the Company or any Subsidiary of the Company) will comply as to form in all material respects with the applicable requirements of the Exchange Act. Notwithstanding the foregoing, Parent makes no representation or warranty with respect to information supplied by or on behalf of the Company for inclusion or incorporation by reference in any of the foregoing documents.

SECTION 4.10. Tax Matters. Except as would not have, individually or in the aggregate, a Parent Material Adverse Effect, (i) Parent and each of its Subsidiaries have prepared and timely filed (taking into account any extension of time within which to file) all Tax Returns required to be filed by any of them and all such Tax

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Returns are complete and accurate, (ii) Parent and each of its Subsidiaries have timely paid all Taxes that are required to be paid by any of them (whether or not shown on any Tax Return), except with respect to matters contested in good faith by appropriate proceedings and for which adequate reserves have been established on the financial statements of Parent and its Subsidiaries in accordance with GAAP, (iii) the U.S. consolidated federal income Tax Returns of Parent through the tax year ending December 31, 2007 have been examined or are currently being examined by the Internal Revenue Service (or the period for assessment of the Taxes in respect of which such Tax Returns were required to be filed has expired), (iv) all assessments for Taxes due with respect to completed and settled examinations or any concluded litigation have been fully paid, (v) there are no audits, examinations, investigations or other proceedings pending or threatened in writing in respect of Taxes or Tax matters of Parent or any of its Subsidiaries, (vi) there are no Liens for Taxes on any of the assets of Parent or any of its Subsidiaries other than statutory Liens for Taxes not yet due and payable or Liens for Taxes that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established on the financial statements of Parent and its Subsidiaries in accordance with GAAP, (vii) none of Parent or any of its Subsidiaries has been a controlled corporation or a distributing corporation in any distribution that was intended to be governed by Section 355 of the Code (or any similar provision of state, local or foreign Law) (A) occurring during the two-year period ending on the date of this Agreement, or (B) that otherwise constitutes part of a plan or series of related transactions (within the meaning of Section 355(e) of the Code) that includes the Transactions, (viii) Parent and each of its Subsidiaries has timely withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, creditor, independent contractor, shareholder or other third party, (ix) none of Parent or any of its Subsidiaries has participated in any reportable transaction within the meaning of Treasury Regulation Section 1.6011-4(b)(1), (x) neither Parent nor any of its Subsidiaries is a party to, or bound by, any agreement or arrangement relating to the apportionment, sharing, assignment, indemnification or allocation of any Tax or Tax asset (other than an agreement or arrangement solely among members of a group the common parent of which is Parent) or has any liability for Taxes of any Person (other than Parent or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any predecessor or successor thereof or any analogous or similar provision of Law), by contract, agreement or otherwise and (xi) there are no currently effective waivers or extensions of any statute of limitations with respect to any Taxes of Parent or any of its Subsidiaries.

SECTION 4.11. Employee Benefits.

(a) Section 4.11(a) of the Parent Disclosure Schedule lists all material Parent Benefit Plans. Parent Benefit Plans means (i) all employee benefit plans (within the meaning of Section 3(3) of ERISA) and (ii) all other compensation or employee benefit plans, programs, policies, agreements or other arrangements, whether or not subject to ERISA, including, cash- or equity or equity-based, employment, retention, change of control, health, medical, dental, disability, accident, life insurance, vacation, severance, retirement, pension, savings or termination, in each case of (i) and (ii) that are sponsored, maintained, contributed to or required to be contributed to by Parent or any of its Subsidiaries for the benefit of current or former employees, directors or consultants of Parent or its Subsidiaries or with respect to which Parent or its Subsidiaries have any current or contingent liability. For purposes of this Agreement, the term Parent Foreign Benefit Plan shall mean any Parent Benefit Plan subject to the Laws of any jurisdiction other than the United States.

(b) Except for such claims which would not have, individually or in the aggregate, a Parent Material Adverse Effect, no action, dispute, suit, claim, arbitration, or legal, administrative or other proceeding or governmental action is pending or, to the Knowledge of Parent, threatened (x) with respect to any Parent Benefit Plan (other than a Multiemployer Plan) other than claims for benefits in the ordinary course, (y) alleging any breach of the material terms of any Parent Benefit Plan (other than a Multiemployer Plan) or any fiduciary duties with respect thereto or (z) with respect to any violation of any applicable Law with respect to such Parent Benefit Plan (other than a Multiemployer Plan).

(c) Each Parent Benefit Plan (other than a Multiemployer Plan or a Parent Foreign Benefit Plan) has been maintained, funded and administered in compliance with its terms and with applicable Law, including ERISA

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and the Code, except for such non-compliance which would not have, individually or in the aggregate, a Parent Material Adverse Effect. Any Parent Benefit Plan (other than a Multiemployer Plan) intended to be qualified under Section 401 of the Code has received a favorable determination letter from the United States Internal Revenue Service that has not been revoked and, to the Knowledge of Parent, no fact or event has occurred since the date of such determination letter or letters from the Internal Revenue Service that would reasonably be expected to adversely affect the qualified status of any such Parent Benefit Plan. Neither Parent nor any of its Subsidiaries maintains or contributes to or is required to contribute to any plan, agreement or arrangement which provides post-termination or post-retirement medical benefits to any Person, except as required by applicable Law or as would not have, individually or in the aggregate, a Parent Material Adverse Effect.

(d) With respect to each Parent Benefit Plan that is subject to Title IV or Section 302 of ERISA or Section 412 or 4971 of the Code, (i) Parent, its Subsidiaries and their respective ERISA Affiliates have complied with the minimum funding requirements under Sections 412, 430 and 431 of the Code and Sections 302, 303 and 304 of ERISA, whether or not waived, (ii) no reportable event within the meaning of Section 4043 of ERISA for which the 30-day notice requirement has not been waived has occurred, (iii) all premiums to the PBGC have been timely paid in full, (iv) no current or contingent liability under Title IV of ERISA has been or is expected to be incurred by Parent, its Subsidiaries or any of their respective ERISA Affiliates (other than for premiums to the PBGC) and (v) the PBGC has not instituted proceedings to terminate any such Parent Benefit Plan, except, in each case of (i)-(v), as would not have, individually or in the aggregate, a Parent Material Adverse Effect.

(e) Except as would not have, individually or in the aggregate, a Parent Material Adverse Effect, with respect to any Parent Benefit Plan (other than a Parent Foreign Benefit Plan) all contributions, premiums and other payments due from any of Parent or its Subsidiaries required by Law or any Parent Benefit Plan (other than a Parent Foreign Benefit Plan) or applicable Parent Collective Bargaining Agreement (as defined in Section 4.12(b)) have been made under any such plan to any fund, trust or account established thereunder or in connection therewith by the due date thereof.

(f) Except as would not have, individually or in the aggregate, a Parent Material Adverse Effect, the consummation of the Transactions will not, either alone or in combination with another event, (i) entitle any current or former employee, consultant or officer of Parent or any of its Subsidiaries to severance pay, retention bonuses, parachute payments, non-competition payments, unemployment compensation or any other payment, (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee, consultant or officer, or (iii) result in any forgiveness of indebtedness or obligation to fund benefits with respect to any such employee, director or officer or (iv) result in any amount failing to be deductible by reason of Section 280G of the Code. No director, officer, employee or service provider is entitled to a gross-up, make-whole or other payment as a result of the imposition of taxes under Section 280G, Section 4999 or Section 409A of the Code pursuant to any agreement or arrangement with Parent or any of its Subsidiaries.

(g) Except as would not have, individually or in the aggregate, a Parent Material Adverse Effect, (i) each Parent Foreign Benefit Plan has been established, maintained and administered in compliance with its terms and all applicable Laws of any controlling Governmental Authority; (ii) each Parent Foreign Benefit Plan required to be registered has been registered (and where applicable, accepted for registration) and has been maintained in good standing with applicable regulatory authorities; and no material fact or event has occurred that would reasonably be expected to adversely affect such good standing status or result in the imposition of any liability, penalty or Tax under applicable Law; (iii) each Parent Foreign Benefit Plan required to be funded and/or book reserved is funded and/or book reserved, as appropriate, in accordance with applicable Law; (iv) all employer and employee contributions to each Parent Foreign Benefit Plan required by applicable Law or by the terms of such Parent Foreign Benefit Plan have been made, or, if applicable, accrued in accordance with normal accounting practices; and (v) the fair market value of the assets of each funded Parent Foreign Benefit Plan, the liability of each insurer for any Parent Foreign Benefit Plan funded through insurance or the book reserve established for any Parent Foreign Benefit Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the Second Effective Time, with respect to all current or

former participants in such plan according to the actuarial assumptions and valuations most recently used to determine employer contributions to such Parent Foreign Benefit Plan.

SECTION 4.12. Labor Matters.

(a) Except for such matters which would not have, individually or in the aggregate, a Parent Material Adverse Effect, neither Parent nor any of its Subsidiaries has received written notice during the past two years of the intent of any Governmental Authority responsible for the enforcement of labor, employment, occupational health and safety or workplace safety and insurance/workers compensation laws to conduct an investigation of Parent or any of its Subsidiaries and, to the Knowledge of Parent, no such investigation is in progress. Except for such matters which would not have, individually or in the aggregate, a Parent Material Adverse Effect, (i) there are no (and have not been during the two year period preceding the date of this Agreement) strikes or lockouts with respect to any employees of Parent or any of its Subsidiaries, (ii) to the Knowledge of Parent, there is no (and has not been during the two year period preceding the date of this Agreement) union organizing effort pending or threatened against Parent or any of its Subsidiaries, (iii) there is no (and has not been during the two year period preceding the date of this Agreement) unfair labor practice, labor dispute (other than routine individual grievances) or labor arbitration proceeding pending or, to the Knowledge of Parent, threatened against Parent or any of its Subsidiaries and (iv) there is no (and has not been during the two year period preceding the date of this Agreement) slowdown, or work stoppage in effect or, to the Knowledge of Parent, threatened with respect to any employees of the Parent or any of its Subsidiaries. To the Knowledge of Parent, neither Parent nor any of its Subsidiaries has any liabilities under the WARN Act as a result of any action taken by Parent that would have, individually or in the aggregate, a Parent Material Adverse Effect. Except for such non-compliance which would not have, individually or in the aggregate, a Parent Material Adverse Effect, Parent and each of its Subsidiaries is in compliance with all applicable Laws respecting employment and employment practices, terms and conditions of employment, wages and hours and occupational safety and health (including, without limitation, classifications of service providers as employees and/or independent contractors).

(b) Section 4.12(b) of the Parent Disclosure Schedule lists all employee representative bodies, including all labor unions, labor organizations and works councils, and all collective bargaining agreements, union contracts and similar labor agreements in effect, including any industry-wide agreement in a non-U.S. jurisdiction, that cover any employees of the Parent or any Subsidiary or to which the Parent or any Subsidiary is a party or otherwise bound (each, a Parent Collective Bargaining Agreement). Neither the Parent nor any Subsidiary is subject to any obligation to inform and/or consult with any labor union, labor organization, works council or any other employee representative body in connection with this Agreement, the arrangements proposed in this Agreement and/or the Closing (whether under applicable Law or any written agreement).

SECTION 4.13. Environmental Matters. Except as would not, individually or in the aggregate, have a Parent Material Adverse Effect, (i) each of Parent and its Subsidiaries is and has been in compliance with all applicable Environmental Laws (as hereinafter defined), which compliance includes obtaining, maintaining and complying with all Environmental Permits and all such Environmental Permits are in good standing, (ii) there has been no release of any Hazardous Substance by Parent or any of its Subsidiaries, or the Knowledge of Parent, any other Person in any manner that would reasonably be expected to give rise to Parent or any of its Subsidiaries incurring any remedial obligation or corrective action requirement under applicable Environmental Laws, (iii) there are no investigations, actions, suits or proceedings pending or, to the Knowledge of Parent, threatened against Parent or any of its Subsidiaries or involving any real property currently or, to the Knowledge of Parent, formerly owned, operated or leased by or for Parent or any Subsidiary alleging noncompliance with or liability under, any Environmental Law, and (iv) to Parent s Knowledge no Hazardous Substance has been disposed of, released or transported in violation of any applicable Environmental Law, from any properties while owned or operated by Parent or any of its Subsidiaries or as a result of any operations or activities of Parent or any of its Subsidiaries.

SECTION 4.14. Contracts.

(a) Except for this Agreement, the Parent Benefit Plans, or as filed with the SEC prior to the date of this Agreement, neither Parent nor any of its Subsidiaries is a party to or bound by, as of the date of this Agreement, any Contract (whether written or oral) (i) which is a material contract (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) to Parent or any of its Subsidiaries; (ii) which constitutes a contract or commitment relating to indebtedness for borrowed money or the deferred purchase price of property (in either case, whether incurred, assumed, guaranteed or secured by any asset) in excess of $50,000,000; or (iii) which contains any provision that prior to or following the Second Effective Time would materially restrict or alter the conduct of business of, or purport to materially restrict or alter the conduct of business of, whether or not binding on, the Company or any controlled Affiliate of the Company (all contracts of the type described in this Section 4.14(a) being referred to herein as Parent Material Contracts).

(b)(i) Each Parent Material Contract is valid and binding on Parent and any of its Subsidiaries, as applicable, and is in full force and effect, except where the failure to be valid, binding and in full force and effect, either individually or in the aggregate, would not have a Parent Material Adverse Effect, (ii) Parent and each of its Subsidiaries has in all material respects performed all obligations required to be performed by it to date under each Parent Material Contract, except where such noncompliance, either individually or in the aggregate, would not have a Parent Material Adverse Effect, and (iii) neither Parent nor any of its Subsidiaries has received written notice of, or to Parent s Knowledge, knows of, the existence of any event or condition which constitutes, or, after notice or lapse of time or both, will constitute, a material default on the part of Parent or any of its Subsidiaries under any such Parent Material Contract, except where such default, either individually or in the aggregate, would not have a Parent Material Adverse Effect.

SECTION 4.15. Property.

(a) Except as would not have, individually or in the aggregate, a Parent Material Adverse Effect, Parent or a Subsidiary of Parent owns and has good title to all of its owned real property (other than severed oil, gas and/or mineral rights and other than hydrocarbon interests) and good title to all its owned personal property and has valid leasehold interests in all of its leased real properties free and clear of all Liens (except in all cases for Liens permissible under or not prohibited by any applicable material loan agreements and indentures (together with all related mortgages, deeds of trust and other security agreements) and except for title exceptions, defects in title, encumbrances, liens, charges, easements, rights of way, covenants, declarations, restrictions, restrictive covenants, Revocable Interests and other matters, whether or not of record, which (other than any of the same which are created or suffered by third-party owners of any leased real or personal property) in the aggregate do not materially affect the continued use of the property for the purposes for which the property is currently being used (assuming the timely discharge (subject to all waivers, modifications, grace periods and extensions) of all obligations owing by the property owner (with respect to the owned real property or owned personal property) or the lessee under the applicable lease (with respect to the leased real properties or personal property) by Parent or a Subsidiary of Parent), sufficient to conduct their respective businesses as currently conducted. Except as would not have, individually or in the aggregate, a Parent Material Adverse Effect, all leases under which Parent or any of its Subsidiaries lease any real or personal property (other than hydrocarbon interests) are valid and effective against Parent or any of its Subsidiaries and, to Parent s Knowledge, the counterparties thereto, in accordance with their respective terms, and there is not, under any of such leases, any existing material default by Parent or any of its Subsidiaries or, to Parent s Knowledge, the counterparties thereto, or, to Parent s Knowledge, any event which, with notice or lapse of time or both, would become a material default by Parent or any of its Subsidiaries, or, to Parent s Knowledge, the counterparties thereto.

(b) Parent and its Subsidiaries have such rights-of-way as are sufficient to conduct their businesses in all material respects as currently conducted, except such rights-of-way that, if not obtained (or which, if obtained, if the same were to expire or be revoked or terminated), would not, individually or in the aggregate, have a Parent Material Adverse Effect. Except as would not, individually or in the aggregate, have a Parent Material Adverse

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Effect, each of Parent and its Subsidiaries has fulfilled and performed all its obligations with respect to such rights-of-way which are required to be fulfilled or performed as of the date of this Agreement (subject to all applicable waivers, modifications, grace periods and extensions) and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or would result in any impairment of the rights of the holder of any such rights-of-way, except for such revocations, terminations and impairments that do not materially adversely affect the commercial use of the property for the purposes for which the property is currently being used and except for rights reserved to, or vested in, any municipality or other Governmental Authority or any railroad by the terms of any right, power, franchise, grant, license, permit, or by any other provision of any applicable Law, to terminate or to require annual or other periodic payments as a condition to the continuance of such right.

SECTION 4.16. Intellectual Property. Except as would not have, individually or in the aggregate, a Parent Material Adverse Effect, either Parent or a Subsidiary of Parent owns, or is licensed or otherwise possesses adequate rights to use, all material trademarks, trade names, service marks, service names, mark registrations, logos, assumed names, domain names, registered and unregistered copyrights, patents or applications and registrations, and trade secrets (collectively, the Parent Intellectual Property) used in their respective businesses as currently conducted. Except as would not have, individually or in the aggregate, a Parent Material Adverse Effect, (i) there are no pending or, to the Knowledge of Parent, threatened claims by any person alleging infringement or misappropriation by Parent or any of its Subsidiaries of such person s intellectual property, (ii) to the Knowledge of Parent, the conduct of the business of Parent and its Subsidiaries does not infringe or misappropriate any intellectual property rights of any person, (iii) neither Parent nor any of its Subsidiaries has made any claim of a violation or infringement, or misappropriation by others of its rights to or in connection with the Parent Intellectual Property, and (iv) to the Knowledge of Parent, no person is infringing or misappropriating any Parent Intellectual Property of Parent.

SECTION 4.17. Insurance. Parent and its Subsidiaries maintain, or are entitled to the benefits of, insurance covering their properties, operations, personnel and businesses in amounts customary for the businesses in which they operate. Except as would not have, individually or in the aggregate, a Parent Material Adverse Effect, none of Parent or its Subsidiaries has received notice from any insurer or agent of such insurer that substantial capital improvements or other expenditures will have to be made in order to continue such insurance, and all such insurance is outstanding and duly in force.

SECTION 4.18. Opinions of Parent Financial Advisors. Parent Board has received the opinion of each of Evercore Group L.L.C. and Barclays Capital Inc. (collectively, the Parent Financial Advisors), dated the date of this Agreement, to the effect that, as of such date, and subject to the various assumptions and qualifications set forth therein, the Merger Consideration to be paid by Parent is fair, from a financial point of view, to Parent (the Parent Fairness Opinions). A correct and complete copy of the form of the Parent Fairness Opinions has been made available to the Company. Parent has been authorized by the Parent Financial Advisors to permit the inclusion of the Parent Fairness Opinions and/or references thereto in the Joint Proxy/Information Statement.

SECTION 4.19. Brokers and Other Advisors. Except for the Parent Financial Advisors, the fees and expenses of which will be paid by Parent, no broker, investment banker or financial advisor is entitled to any broker s, finder s or financial advisor s fee or commission, or the reimbursement of expenses, in connection with the Transactions based upon arrangements made by or on behalf of Parent or any of its Subsidiaries.

SECTION 4.20. State Takeover Statutes; No Rights Plan. The action of Parent Board in approving this Agreement and the Transactions is sufficient to render inapplicable to this Agreement and the Transactions the restrictions on business combinations (as defined in Section 203 of the DGCL) as set forth in Section 203 of the DGCL. There is no stockholder rights plan in effect, to which Parent is a party or otherwise bound.

SECTION 4.21. Reorganization Treatment. Neither Parent nor any of its Affiliates has taken or agreed to take any action or knows of any facts or circumstances that could reasonably be expected to prevent the (i) the

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First Merger and the LLC Conversion, taken together, and (ii) the Second Merger and the Third Merger, taken together, from each qualifying as a reorganization within the meaning of Section 368(a) of the Code.

SECTION 4.22. Financing.

(a) Parent has delivered to the Company a complete and correct copy of a fully executed commitment letter from the financial institution(s) named therein (including all exhibits, schedules, and annexes to such letters as and to the extent delivered to the Company on or prior to the date of this Agreement, the Debt Commitment Letter), pursuant to which such financial institutions (including any financial institutions providing Alternative Financing or Replacement Debt Financing, the Financing Sources) have committed, upon the terms and subject to the conditions set forth therein, to provide the debt financing described therein in connection with the Transactions. The Debt Commitment Letter and any other debt commitment letter (including any replacement of the Debt Commitment Letter in connection with any Alternative Financing or Replacement Debt Financing) executed in accordance with Section 5.14, as replaced, amended, supplemented, modified or waived in accordance with Section 5.14, including all exhibits, schedules, and annexes to such letters, are hereinafter referred to together as the Debt Commitment Letters. The financing contemplated pursuant to the Debt Commitment Letters is hereinafter referred to as the Debt Financing.

(b) As of the date of this Agreement, the Debt Commitment Letters are in full force and effect and are legal, valid and binding obligations of Parent, and to the knowledge of Parent, the other parties thereto, and enforceable in accordance with their respective terms against Parent, and to the knowledge of Parent, each of the other parties thereto. All commitment fees required to be paid under the Debt Commitment Letters have been paid in full or will be duly paid in full as and when due, and Parent and Merger Sub have otherwise satisfied all of the other items and conditions required to be satisfied by them pursuant to the terms of the Debt Commitment Letters on or prior to the date of this Agreement. None of the Debt Commitment Letters have been amended, modified or terminated on or prior to the date of this Agreement, no such amendment, modification or termination is contemplated as of the date of this Agreement and no Debt Commitment Letter will be amended or modified as of the Second Effective Time except as consistent with Section 5.14. As of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, would constitute a breach or default by Parent or Merger Sub under any Debt Commitment Letter. Neither Parent nor Merger Sub is, as of the date of this Agreement, aware of any fact, occurrence or condition that makes any of the assumptions or statements set forth in any Debt Commitment Letter inaccurate (assuming the accuracy of the Company s representations and warranties), in any material respect or that would cause the commitments provided in the Debt Commitment Letter to be terminated or ineffective or any of the conditions contained therein not to be met. The consummation of the Debt Financing is subject to no conditions precedent other than those expressly set forth in the copies of the Debt Commitment Letters delivered to the Company, and there are no contingencies that would permit the Financing Sources to reduce the total amount of the Debt Financing other than those expressly set forth in the copies of the Debt Commitment Letters delivered to the Company. Except for fee letters relating to fees with respect to the Debt Financing (redacted copies of which, removing only certain fee and market flex provisions, have been provided to the Company), there are no side letters or other agreements, contracts or arrangements related to the funding of the Debt Financing, other than as expressly set forth in the Debt Commitment Letters delivered to the Company prior to the date of this Agreement. As of the date of this Agreement, assuming no breach by the Company of its representations and warranties under this Agreement (and cooperation and assistance by the Company as provided herein) and no breach or default by the Company of its obligations under this Agreement in either case such that the condition set forth in Section 6.2(a) would fail to be satisfied, and based upon facts and events known by Parent as of the date of this Agreement, neither Parent nor Merger Sub have any reason to believe that any of the conditions to the Debt Financing will not be satisfied or the Debt Financing will not be consummated as contemplated in the Debt Commitment Letters on or prior to the Closing Date. Assuming the accuracy of the representations and warranties of the Company set forth in this Agreement and performance by the Company of its obligations under Section 5.2(a), the aggregate proceeds of the Debt Financing, together with any cash or cash equivalents held by Parent, as of the Second Effective Time, will be sufficient to enable them to pay in cash all amounts required to be paid by them in connection with the

Transactions, including the Merger Consideration (and the treatment of Stock Options, Restricted Shares, Company Performance RSUs and Company ESPP pursuant to Section 2.5) and all payments, fees and expenses payable by them related to or arising out of the consummation of the Transactions.

(c) In no event shall the receipt or availability of any funds or financing (including, for the avoidance of doubt, the Debt Financing) by Parent, Merger Sub or any of their respective Affiliates or any other financing be a condition to any of Parent s or Merger Sub s obligations hereunder.

SECTION 4.23. No Other Representations or Warranties.

(a) Except for the representations and warranties set forth in this Article IV, neither Parent nor any other Person makes or has made any express or implied representation or warranty with respect to Parent or with respect to any other information provided to the Company, Merger Sub One or New EP in connection with the Transactions. Without limiting the generality of the foregoing, neither Parent nor any other Person will have or be subject to any liability or other obligation to the Company, Merger Sub One, New EP or any other Person resulting from the distribution to the Company, Merger Sub One or New EP (including their Representatives), or the Company s, Merger Sub One s or New EP s (or such Representatives) use of, any such information, including any information, documents, projections, forecasts of other material made available to the Company, Merger Sub One or New EP in certain data rooms or management presentations in expectation of the Transactions.

(b) Each of Parent, Merger Sub Two and Merger Sub Three has conducted its own independent review and analysis of the business, operations, assets, liabilities, results of operations, financial condition and prospects of the Company and the Company Subsidiaries and acknowledges that each of Parent, Merger Sub Two and Merger Sub Three has been provided access for such purposes. Except for the representations and warranties expressly set forth in this Agreement, in entering into this Agreement, each of Parent, Merger Sub Two and Merger Sub Three has relied solely upon its independent investigation and analysis of the Company and the Company Subsidiaries, and each of Parent, Merger Sub Two and Merger Sub Three acknowledges and agrees that it has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by the Company, any Company Subsidiaries, or any of their respective affiliates, stockholders, controlling persons or Company representatives that are not expressly set forth in this Agreement, whether or not such representations, warranties or statements were made in writing or orally. Each of Parent, Merger Sub Two and Merger Sub Three acknowledge and agree that, except for the representations and warranties expressly set forth in this Agreement (i) the Company does not make, or has not made, any representations or warranties relating to itself or its business or otherwise in connection with the Transactions and each of Parent, Merger Sub Two and Merger Sub Three are not relying on any representation or warranty except for those expressly set forth in this Agreement, (ii) no Person has been authorized by the Company to make any representation or warranty relating to itself or its business or otherwise in connection with the Transactions, and if made, such representation or warranty must not be relied upon by Parent, Merger Sub Two and Merger Sub Three as having been authorized by such party and (iii) any estimates, projections, predictions, data, financial information, memoranda, presentations or any other materials or information provided or addressed to Parent, Merger Sub Two, Merger Sub Three or any of their representatives are not and shall not be deemed to be or include representations or warranties unless any such materials or information is the subject of any express representation or warranty set forth in Article III of this Agreement.

ARTICLE V

Additional Covenants and Agreements

SECTION 5.1. Preparation of the Form S-4 and the Joint Proxy/Information Statement and the Appraisal Notice; Stockholder Meetings.

(a) As soon as practicable following the date of this Agreement, the Company and Parent shall prepare and file with the SEC the Joint Proxy/Information Statement and the Company and Parent shall prepare and Parent

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shall file with the SEC the Form S-4, in which the Joint Proxy/Information Statement will be included as a prospectus. Each of the Company and Parent shall use its reasonable best efforts to have the Form S-4 declared effective under the Securities Act as promptly as practicable after such filing and keep the Form S-4 effective for so long as necessary to consummate the Transactions. The Company shall use its reasonable best efforts to cause the Joint Proxy/Information Statement to be mailed to the stockholders of the Company and Parent shall use its reasonable best efforts to cause the Joint Proxy/Information Statement to be mailed to the stockholders of Parent, in each case as promptly as practicable after the Form S-4 is declared effective under the Securities Act. No filing of, or amendment or supplement to, the Form S-4 will be made by Parent, and no filing of, or amendment or supplement to, the Joint Proxy/Information Statement will be made by the Company or Parent, in each case without providing the other party a reasonable opportunity to review and comment thereon. If at any time prior to the Second Effective Time any information relating to the Company or Parent, or any of their respective Affiliates, directors or officers, should be discovered by the Company or Parent which should be set forth in an amendment or supplement to either the Form S-4 or the Joint Proxy/Information Statement, so that either such document would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed with the SEC and, to the extent required by Law, disseminated to the stockholders of the Company and the stockholders of Parent. The parties shall notify each other promptly of the receipt of any comments from the SEC or the staff of the SEC and of any request by the SEC or the staff of the SEC for amendments or supplements to the Joint Proxy/Information Statement or the Form S-4 or for additional information and shall supply each other with copies of (i) all correspondence between it or any of its Representatives, on the one hand, and the SEC or the staff of the SEC, on the other hand, with respect to the Joint Proxy/Information Statement, the Form S-4 or the Transactions and (ii) all orders of the SEC relating to the Form S-4. As soon as practicable following the date of the Company Stockholder Approval, the Company shall prepare, in consultation with Parent, a notice that complies with Section 262(d)(2) of the DGCL notifying the shareholders of New EP that the Second Merger has been approved by the Company who was the sole stockholder of New EP prior to the First Effective Time and the availability of appraisal rights in the Second Merger, which notice shall include a copy of Section 262 of the DGCL (the Appraisal Notice). The Company shall use its reasonable best efforts to cause the Appraisal Notice to be mailed to the stockholders of New EP as promptly as practicable after the Company Stockholder Approval. The Company shall use its reasonable best efforts to cause the shares of common stock of New EP to be issued pursuant to and in accordance with this Agreement and the First Merger Agreement in connection with the First Merger to be approved for listing (subject, if applicable, to notice of issuance) for trading on the NYSE prior to the closing of the First Merger.

(b) The Company shall, as soon as practicable following the date of this Agreement, establish a record date for, duly call, give notice of, convene and hold a special meeting of its stockholders (the Company Stockholders Meeting) solely for the purpose of obtaining the Company Stockholder Approval. Subject to Section 5.3, the Company shall, through the Company Board, recommend to its stockholders adoption of this Agreement (the Company Board Recommendation). The Joint Proxy/Information Statement shall include a copy of the Company Fairness Opinion and (subject to Section 5.3) the Company Board Recommendation. Without limiting the generality of the foregoing, but subject to Section 5.3, the Company s obligations pursuant to the first sentence of this Section 5.1(b) shall not be affected by (i) the commencement, public proposal, public disclosure or communication to the Company of any Takeover Proposal or (ii) the withdrawal or modification by the Company Board or any committee thereof of the Company Board Recommendation or the Company Board s or such committee s approval of this Agreement or the Transactions. Notwithstanding anything in this Agreement to the contrary, the Company may postpone or adjourn the Company Stockholder Meeting (i) to solicit additional proxies for the purpose of obtaining the Company Stockholder Approval, (ii) for the absence of quorum, (iii) to allow reasonable additional time for the filing and/or mailing of any supplemental or amended disclosure which the Company has determined after consultation with outside legal counsel is necessary under applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by the stockholders of the Company prior to the Company Stockholder Meeting and (iv) if the Company has delivered any notice contemplated by Section 5.3(d) and the time periods contemplated by Section 5.3(d) have not expired.

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(c) Parent shall, as soon as practicable following the date of this Agreement, establish a record date for, duly call, give notice of, convene and hold a meeting of its stockholders (the "Parent Stockholders Meeting") for the purpose of obtaining the Parent Stockholder Approval. Parent shall, through the Parent Board, recommend to its stockholders to approve the issuance of shares of Parent Class P Stock (including the shares of Parent Class P Stock issuable upon the exercise of the Parent Class P Warrants issued in the Second Merger) and the Parent Class P Warrants (the "Parent Board Recommendation"). The Joint Proxy/Information Statement shall include a copy of the Parent Fairness Opinion and the Parent Board Recommendation.

SECTION 5.2. Conduct of Business.

(a) Except (i) as expressly permitted by this Agreement, (ii) as set forth in the Company Disclosure Schedule, (iii) as required by applicable Law, (iv) as provided for or contemplated by any agreement of the Company in effect as of the date of this Agreement or (v) as agreed in writing by Parent (which consent shall not be unreasonably withheld, delayed or conditioned), during the period from the date of this Agreement until the Second Effective Time, the Company shall, and shall cause each of its Subsidiaries and the Company Joint Ventures to (provided, that with respect to the Company Joint Ventures, the Company shall cause such actions to occur to the maximum extent permitted by the organizational documents and governance arrangements of each Company Joint Venture and, to the extent applicable, its fiduciary duties in relation to each Company Joint Venture): (u) conduct its business in the ordinary course consistent with past practice, (v) comply in all material respects with all applicable Laws and the requirements of all Company Material Contracts, (w) use commercially reasonable efforts to maintain and preserve intact its business organization and the goodwill of those having business relationships with it and retain the services of its present officers and key employees and (x) use its commercially reasonable efforts to keep in full force and effect all material insurance policies maintained by the Company, its Subsidiaries and the Company Joint Ventures, other than changes to such policies made in the ordinary course of business. Without limiting the generality of the foregoing, except (i) as expressly permitted by this Agreement, (ii) as set forth in the Company Disclosure Schedule, (iii) as required by applicable Law, or (iv) as agreed in writing by Parent (in the case of clauses (iii), (iv), (v), (vi), (vii), (viii), (xii), (xiii), (xiv)(C), (xv) and (xvi) (but, with respect to (xvi), only to the extent applicable to the other clauses designated in this Section 5.2(a)(v)) below, such consent shall not be unreasonably withheld, delayed or conditioned), during the period from the date of this Agreement to the Second Effective Time, the Company shall not, and shall not permit any of its Subsidiaries and the Company Joint Ventures to (provided, that with respect to the Company Joint Ventures, the Company shall cause such actions not to occur to the maximum extent permitted by the organizational documents and governance arrangements of each Company Joint Venture and, to the extent applicable, its fiduciary duties in relation to each Company Joint Venture):

(i)(A) issue, sell, grant, dispose of, accelerate the vesting of or modify as applicable, any shares of its capital stock, voting securities or equity interests, or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for any shares of its capital stock, voting securities or equity interests, or any rights, warrants, options, calls, commitments or any other agreements of any character to purchase or acquire any shares of its capital stock, voting securities or equity interests or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for, any shares of its capital stock, voting securities or equity interests, provided that the Company may issue shares of Company Common Stock upon the exercise of options granted under the Company Stock Plans or the Company ESPP or the settlement of any Company Performance RSUs, in each case which are outstanding on the date of this Agreement or granted after the date of this Agreement to the extent permitted by Section 5.2(a)(viii) and in accordance with the terms thereof; (B) redeem, purchase or otherwise acquire any of its outstanding shares of capital stock, voting securities or equity interests, or any rights, warrants, options, calls, commitments or any other agreements of any character to acquire any shares of its capital stock, voting securities or equity interests, except in connection with the exercise of any Company Stock Options or the vesting, settlement or forfeiture of, or tax withholding with respect to, any equity or equity-based awards granted under the Company Stock Plans and outstanding as of the date of this Agreement or granted after the date of this Agreement to the extent permitted by Section 5.2(a)(viii); (C) declare, set aside

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for payment or pay any dividend on, or make any other distribution in respect of, any shares of its capital stock, or otherwise make any payments to its stockholders in their capacity as such (other than (x) dividends by a direct or indirect Subsidiary of the Company to its parent, (y) the Company s regular quarterly dividend in an amount not to exceed $0.01 per share of Company Common Stock or (z) as provided on Section 5.2(a)(i) of the Company Disclosure Schedule in connection with distributions by EPB) or (D) split, combine, subdivide or reclassify any shares of its capital stock;

(ii)(x) incur, refinance or assume any indebtedness for borrowed money or guarantee any such indebtedness for borrowed money (or enter into a keep well or similar agreement with respect to such indebtedness) or issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of the Company or any of its Subsidiaries or the Company Joint Ventures, other than (A) (I) borrowings by the Company in amounts not in excess of $100,000,000 in the aggregate, (II) borrowings under the Company s existing credit agreements listed on Section 5.2(a)(ii)(A) of the Company Disclosure Schedule other than those described in (A)(III) below, (III) borrowings under (1) the Company s Fourth Amended and Restated Credit Agreement, dated as of May 27, 2011 (the Existing EP Credit Agreement) or any replacement thereof, which may not exceed $700,000,000 in the aggregate and (2) the E&P BNP Paribas Credit Agreement or any replacement thereof, which may not exceed $700,000,000 in the aggregate (the Revolver Caps), except that the Company will not be subject to the Revolver Caps until the last day of the month preceding the month that the Closing occurs and the Company will not be subject to the Revolver Caps at any time if the Company does not sell assets to EPB valued at at least the amount set forth on Section 5.2(a)(iii)(E) of the Company Disclosure Schedule by the last day of such month) and guarantees of such borrowings issued by the Company s Subsidiaries to the extent required under the terms of such credit facility and (IV) refinancing replacement, amendment or amendment and restatement of any indebtedness that may default or come due as a result of the Transactions (provided, that the Company will consult with Parent in connection with any such action) or that is required to be repaid or repurchased pursuant to its terms (provided, that (i) neither the Company nor any of its Subsidiaries shall be entitled to incur any indebtedness under the 364-Day Credit Agreement and (ii) except with respect to (A)(II), (III) or (IV) above, the Company and its Subsidiaries shall not be permitted to incur or assume any indebtedness for borrowed money or sell any debt securities to the extent that the terms of such indebtedness or debt securities would be breached by, conflict with or require the consent of any third party in order to continue in full force following, the consummation of the Transactions), (B) borrowings from the Company or any Subsidiary thereof by the Company or any Subsidiary thereof, (C) repayments of borrowings from the Company or any Subsidiary thereof by the Company or any Subsidiary thereof and guarantees by the Company or any Subsidiary thereof of indebtedness of the Company or any Subsidiary thereof and (D) borrowings by EPB as provided on Section 5.2(a)(ii)(D) of the Company Disclosure Schedule, or (y) except as permitted pursuant to clause (x) above, prepay or repurchase any long-term indebtedness for borrowed money or debt securities of the Company or any of the Subsidiaries (other than (i) revolving indebtedness, (ii) borrowing from the Company or any Subsidiary thereof by the Company or any Subsidiary thereof and (iii) repayments or repurchases required pursuant to the terms of such indebtedness or debt securities);

(iii) sell, transfer, lease, farmout or otherwise dispose of (including pursuant to a sale-leaseback transaction or an asset securitization transaction) any of its properties or assets (including securities of Subsidiaries and the Company Joint Ventures) with a fair market value in excess of $75,000,000 in the aggregate, except (A) pursuant to Contracts in force at the date of this Agreement and listed on Section 5.2(a)(iii)(A) of the Company Disclosure Schedule, correct and complete copies of which have been made available to Parent and other potential transactions listed on Section 5.2(a)(iii)(A) of the Company Disclosure Schedule, (B) dispositions of obsolete or worthless equipment which is replaced with equipment and materials of comparable or better value and utility, (C) sales of produced hydrocarbons in the ordinary course of business consistent with past practice, (D) sales, transfers, leases, farmouts or other disposals to the Company or any of its Subsidiaries or (E) sales or transfers to EPB as provided on Section 5.2(a)(iii)(E) of the Company Disclosure Schedule;

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(iv) make any capital expenditure or capital expenditures in excess of $150,000,000 through September 30, 2012 and $25 million thereafter, in the aggregate, in each case, except for any such capital expenditures provided for in the Company s Capital Expenditure Forecast, in each case, as set forth in Section 5.2(a)(iv) of the Company Disclosure Schedule, or in each case except as may be reasonably required to conduct emergency operations, repairs or replacements on any well, pipeline, or other facility or as required by a change in Law;

(v) except as set forth in Section 5.2(a)(v) of the Company Disclosure Schedule, directly or indirectly acquire (A) by merging or consolidating with, or by purchasing all of or a substantial equity interest in, or by any other manner, any Person or division, business or equity interest of any Person or, (B) except in the ordinary course of business consistent with past practice, any assets that, in the aggregate, have a purchase price in excess of $50,000,000;

(vi) except as set forth in Section 5.2(a)(vi) of the Company Disclosure Schedule, make (A) any investments (by contribution to capital, property transfers, purchase of securities or otherwise), other than investments in the Company or any of its Subsidiaries, in excess of $50,000,000, in the aggregate, or (B) any loans or advances (1) in excess of $5,000,000 in the aggregate (other than (x) travel and similar advances to its employees in the ordinary course of business consistent with past practice and (y) loans and advances to the Company or any of its Subsidiaries) or (2) to any employee of the Company or any Subsidiary in excess of $100,000 (other than relocation expenses to its employees in the ordinary course of business consistent with past practice);

(vii)(A) enter into, terminate or amend any Company Material Contract other than in the ordinary course of business or as permitted under clause (ii) above, (B) enter into or extend the term or scope of any Contract that materially restricts the Company, or any existing or future Subsidiary or Affiliate of the Company, from engaging in any line of business or in any geographic area, (C) amend or modify the Company Engagement Letters, (D) enter into any Company Material Contract that would be breached by, or require the consent of any third party in order to continue in full force following, consummation of the Transactions except as permitted under clause (ii) above, (E) release any Person from, or modify or waive any provision of, any standstill or similar agreement, in each case, related to a sale of the Company or any of its material Subsidiaries or, release any Person from, or modify or waive any provision of any confidentiality agreement (but only to the extent a person listed on Section 8.11(a) of the Company Disclosure Schedule has knowledge of the occurrence of such release, modification or waiver at the time of such release, modification or waiver), (F) enter into any commitment or agreement to license or purchase seismic data, other than commitments or agreements enter into in the ordinary course of business consistent with past practice, (G) except as set forth in Section 5.2(a)(vii) of the Company Disclosure Schedule, make or assume any additional Derivative, other than Derivatives entered into in the ordinary course of business, consistent with past practice, and not exceeding seventy percent (70%) of the Company s and its Subsidiary s collective expected hydrocarbon production volumes for the current, or any subsequent, calendar year; provided, however, that any such Derivative shall provide that commercially reasonable substitute credit support may be provided by the Company or its Subsidiary in place of the Company s (or its Subsidiary s) existing credit facility, and, if such condition has been satisfied, there shall be no breach of, or default under, or right of termination, cancellation, or acceleration of any obligation, or to the loss of a benefit under, each such Derivative in connection with the consummation of the transactions contemplated by this Agreement;

(viii) except as required by applicable Law (including to avoid the imposition of any penalty taxes under Section 409A of the Code) or as set forth in Section 5.2(a)(viii) of the Company Disclosure Schedule, (A) increase in any manner the salary or wages of any of its employees or directors, (B) pay any bonus or incentive compensation, (C) grant any new equity or non-equity based compensation award, (D) enter into, establish, amend or terminate any Company Benefit Plan, Company Collective Bargaining Agreement or trust or fund with, for or in respect of, any stockholder, director, officer, other employee, or consultant, (E) hire any new employees, or (F) except as required under or in respect of any Company Benefit Plan, fund any Company Benefit Plan or trust relating thereto;

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(ix) make, change or revoke any material election concerning Taxes or Tax Returns, file any U.S. federal income tax return for the taxable year ending December 31, 2011 prior to September 10, 2012 or, if Closing has not occurred prior to September 10, 2012, make any election not to claim (or take any action that would cause Ruby Pipeline Holding Company, L.L.C., Gulf LNG Holdings Group, LLC, Citrus Corp. or any of their respective Subsidiaries not to claim) bonus depreciation on any U.S. federal income tax return for the taxable year ending December 31, 2011 or approve or join in the making of any such election (or the taking of any such action), file any material amended Tax Return, change any method of Tax accounting or any Tax accounting period, enter into any closing agreement with respect to Taxes, settle any material Tax claim or assessment for an amount materially in excess of the reserves therefor or surrender any right to claim a material refund of Taxes or obtain any Tax ruling;

(x) make any changes in financial accounting methods, principles or practices (or change an annual accounting period), except insofar as may be required by a change in GAAP or applicable Law;

(xi) amend the Company Charter Documents;

(xii) adopt a plan or agreement of complete or partial liquidation, dissolution, restructuring, recapitalization, merger, consolidation or other reorganization (other than transactions exclusively between wholly owned Subsidiaries of the Company);

(xiii) except as provided under any agreement entered into prior to the date of this Agreement or with respect to matters addressed in Section 5.2(a)(xiv) below, pay, discharge, settle or satisfy any suit, action, claims or proceeding, in excess of $10,000,000 individually or $25,000,000 in the aggregate;

(xiv) except as set forth in Section 5.2(a)(xiv) of the Company Disclosure Schedule, (A) initiate, file or terminate any rate case with the Federal Energy Regulatory Commission (FERC) relating to any assets of the Company or any of its Subsidiaries, (B) make any material change to any FERC tariff of the Company or any of its Subsidiaries or (C) settle or discharge any rate case with FERC relating to any assets of the Company or any of its Subsidiaries;

(xv) voluntarily resign, transfer, or relinquish any right as operator of any Material Upstream Asset Group, except as required by Law or as may result automatically and without further action by the Company or any Subsidiary of the Company as a result of the Transactions; or

(xvi) agree, in writing or otherwise, to take any of the foregoing actions, or take any action or agree, in writing or otherwise, to take any action which would in any material respect impede or delay the ability of the parties to satisfy any of the conditions to the Transactions set forth in this Agreement.

(b) Except (i) as expressly permitted by this Agreement, (ii) as set forth in the Parent Disclosure Schedule, (iii) as required by applicable Law, (iv) as provided for or contemplated by any agreement of Parent in effect as of the date of this Agreement or (v) as agreed in writing by the Company (which consent shall not be unreasonably withheld, delayed or conditioned), during the period from the date of this Agreement until the Second Effective Time, Parent shall, and shall cause each of its Subsidiaries and the Parent Joint Ventures to (provided, that with respect to the Parent Joint Ventures, Parent shall cause such actions to occur to the maximum extent permitted by the organizational documents and governance arrangements of each Parent Joint Venture and, to the extent applicable, its fiduciary duties in relation to each Parent Joint Venture): (w) conduct its business in the ordinary course consistent with past practice, (x) comply in all material respects with all applicable Laws and the requirements of all Parent Material Contracts, (y) use commercially reasonable efforts to maintain and preserve intact its business organization and the goodwill of those having business relationships with it and retain the services of its present officers and key employees, and (z) use its commercially reasonable efforts to keep in full force and effect all material insurance policies maintained by Parent, its Subsidiaries and the Parent Joint Ventures, other than changes to such policies made in the ordinary course of business. Without limiting the generality of the foregoing, except (i) as expressly permitted by this Agreement, (ii) as set forth in the Parent Disclosure Schedule, (iii) as required by applicable Law or (iv) as agreed in writing by the Company (such consent shall not be unreasonably withheld, delayed or conditioned) during the period from the date of this

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Agreement to the Second Effective Time, Parent shall not, and shall not permit any of its Subsidiaries (other than KMP and Kinder Morgan Management, LLC and their respective Subsidiaries) and the Parent Joint Ventures to (provided, that with respect to the Parent Joint Ventures, Parent shall cause such actions not to occur to the maximum extent permitted by the organizational documents and governance arrangements of each Parent Joint Venture and, to the extent applicable, its fiduciary duties in relation to each Parent Joint Venture):

(i)(A) issue, sell, or dispose of any shares of its capital stock, voting securities or equity interests, or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for any shares of its capital stock, voting securities or equity interests, or any rights, warrants, options, calls, commitments or any other agreements of any character to purchase or acquire any shares of its capital stock, voting securities or equity interests or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for, any shares of its capital stock, voting securities or equity interests, other than in connection with (x) the exercise of options for Parent stock that are outstanding on, or granted after, the date of this Agreement in accordance with the terms thereof or the vesting or settlement of any equity or equity-based award that is outstanding on, or granted after, the date of this Agreement in accordance with the terms thereof, (y) the conversion of any shares of Parent Common Stock in accordance with the Parent Charter Documents and (z) as set forth on Section 5.2(b)(i) of the Parent Disclosure Schedule; (B) redeem, purchase or otherwise acquire any of its outstanding shares of capital stock, voting securities or equity interests, or any rights, warrants, options, calls, commitments or any other agreements of any character to acquire any shares of its capital stock, voting securities or equity interests, other than in connection with (1) the exercise of options for Parent stock that are outstanding on, or granted after, the date of this Agreement in accordance with the terms thereof or the vesting, settlement or forfeiture of, or tax withholding with respect to, any equity or equity-based award that is outstanding on, or granted after, the date of this Agreement in accordance with the terms thereof and (2) the conversion of any shares of Parent Common Stock in accordance with the Parent Charter Documents; (C) declare, set aside for payment or pay any dividend on, or make any other distribution in respect of, any shares of its capital stock, or otherwise make any payments to its stockholders in their capacity as such (other than (x) dividends by a direct or indirect Subsidiary of Parent to its parent, (y) Parent s regular quarterly dividend in an amount not to exceed $0.60 per share of Parent Common Stock per fiscal quarter or (z) as provided in Section 5.2(b)(i) of the Parent Disclosure Schedule) or (D) split, combine, subdivide or reclassify any shares of its capital stock;

(ii) incur or assume any indebtedness for borrowed money or guarantee any indebtedness (or enter into a keep well or similar agreement) or issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of Parent or any of its Subsidiaries or the Parent Joint Ventures, other than (A) borrowings by Parent or any of its Subsidiaries or the Parent Joint Ventures in amounts not in excess of $1,000,000,000 in the aggregate outstanding at any time and guarantees of such borrowings issued by Parent s Subsidiaries to the extent required under the terms of such credit facility, and (B) borrowings from Parent by a direct or indirect wholly owned Subsidiary of Parent in the ordinary course of business; provided, that for the avoidance of doubt, in no event shall this clause (ii) restrict or prevent in any manner Parent or any of its Subsidiaries from incurring the Debt Financing or the Replacement Debt Financing in order to consummate the Transactions;

(iii) (A) acquire by merging or consolidating with, or by purchasing all of or a substantial equity interest in, or by any other manner, any Person or division, business or equity interest of any Person or, (B) acquire except in the ordinary course of business, any assets that have a purchase price in excess of $50,000,000 in the aggregate or (C) make any capital expenditure or expenditures, except for any such capital expenditures as may be reasonably required to conduct emergency operations on any well, pipeline, or other facility, or as does not exceed $50,000,000, in the aggregate;

(iv) make any investment (by contribution to capital, property transfers, purchase of securities or otherwise) in, or loan or advance (other than travel and similar advances to its employees in the ordinary course of business consistent with past practice) to, any Person in excess of $50,000,000 in the aggregate;

(v) amend the Parent Charter Documents or the Parent Shareholders Agreement;

(vi) adopt a plan or agreement of complete or partial liquidation, dissolution, restructuring, recapitalization, merger, consolidation or other reorganization (other than transactions exclusively between wholly owned Subsidiaries of Parent); or

(vii) agree, in writing or otherwise, to take any of the foregoing actions, or take any action or agree, in writing or otherwise, to take any action which would in any material respect impede or delay the ability of the parties to satisfy any of the conditions to the Transactions set forth in this Agreement (including, but not limited to, entering into any Parent Alternative Transaction if such Parent Alternative Transaction would in any material respect impede or delay the ability of the parties to satisfy any of the conditions to the Transactions set forth in this Agreement).

SECTION 5.3. No Solicitation by the Company; Etc.

(a) The Company shall, and shall cause its Subsidiaries and use reasonable best efforts to cause the Company s and its Subsidiaries respective directors, officers, employees, investment bankers, financial advisors, attorneys, accountants, agents and other representatives (collectively, Representatives) to, immediately cease and cause to be terminated any discussions or negotiations with any Person conducted heretofore with respect to a Takeover Proposal, and request the return or destruction of all confidential information previously provided to such parties by or on behalf of the Company or its Subsidiaries. Except as permitted by this Section 5.3, (x) the Company shall not, and shall cause its Subsidiaries and use reasonable best efforts to cause its Representatives not to, directly or indirectly (i) solicit, initiate, knowingly facilitate, knowingly encourage (including by way of furnishing information) or knowingly induce or take any other action designed to lead to any inquiries or proposals that constitute, or would reasonably be expected to lead to, the submission of a Takeover Proposal, (ii) except for a confidentiality agreement permitted pursuant to Section 5.3(b), enter into any confidentiality agreement, merger agreement, letter of intent, agreement in principle, share purchase agreement, asset purchase agreement or share exchange agreement, option agreement or other similar agreement relating to a Takeover Proposal (an Acquisition Agreement), or (iii) withdraw, modify or qualify, or propose publicly to withdraw, modify or qualify, in a manner adverse to Parent, the Company Board Recommendation or publicly recommend the approval or adoption of, or publicly approve or adopt, or propose to publicly recommend, approve or adopt, any Takeover Proposal and (y) within five (5) business days of receipt of a written request of Parent, the Company shall, publicly reconfirm the Company Board Recommendation; provided, that, in the event that Parent requests such public reconfirmation of the Company Board Recommendation, then Parent s request must be reasonable (in terms of number and timing) and the Company may not unreasonably withhold, delay (beyond the five (5) business day period) or condition the public reconfirmation of the Company Board Recommendation (the taking of any action described in clause (x)(iii) or the failure to take the action described in clause (y) being referred to as an Adverse Recommendation Change). Without limiting the foregoing, it is understood that any violation of the foregoing restrictions by the Company s Subsidiaries or Representatives shall be deemed to be a breach of this Section 5.3 by the Company.

(b) Notwithstanding anything to the contrary contained in Section 5.3(a), if at any time following the date of this Agreement and prior to obtaining the Company Stockholder Approval (but in no event after obtaining the Company Stockholder Approval), (i) the Company has received a written Takeover Proposal that the Company Board believes is *bona fide*, (ii) the Company Board, after consultation with its financial advisors and outside legal counsel, determines in good faith that such Takeover Proposal constitutes or could reasonably be expected to lead to or result in a Superior Proposal and (iii) such Takeover Proposal did not result from a material breach of this Section 5.3, then the Company may, subject to clauses (x) and (y) below, (A) furnish information with respect to the Company and its Subsidiaries to the Person making such Takeover Proposal and (B) participate in discussions or negotiations regarding such Takeover Proposal; provided, that (x) the Company will not, and will use reasonable best efforts to cause its Representatives not to, disclose any non-public information to such Person unless the Company has, or first enters into, a confidentiality agreement with such Person with confidentiality provisions that are not less restrictive to such Person than the provisions of the Confidentiality Agreement are to Parent (provided, that such confidentiality agreement need not include standstill provisions or restrictions of

the type contained in the Confidentiality Agreement) and that would not prohibit compliance by the Company with the provisions of this Section 5.3, and (y) the Company will provide to Parent any non-public information concerning the Company or its Subsidiaries that was not previously provided or made available to Parent prior to or substantially concurrently with providing or making available such non-public information to such other Person.

(c) In addition to the other obligations of the Company set forth in this Section 5.3, the Company shall promptly advise Parent, orally and in writing, and in no event later than twenty-four (24) hours after receipt, if any proposal, offer, inquiry or other contact is received by, any information is requested from, or any discussions or negotiations are sought to be initiated or continued with, the Company in respect of any Takeover Proposal, and shall, in any such notice to Parent, indicate the identity of the Person making such proposal, offer, inquiry or other contact and the terms and conditions of any proposals or offers or the nature of any inquiries or contacts (and shall include with such notice copies of any written materials received from or on behalf of such Person relating to such proposal, offer, inquiry or request), and thereafter shall promptly keep Parent reasonably informed of all material developments affecting the status and terms of any such proposals, offers, inquiries or requests (and the Company shall promptly provide Parent with copies of any additional written materials received by the Company or that the Company has delivered to any third party making a Takeover Proposal that relate to such proposals, offers, inquiries or requests) and of the status of any such discussions or negotiations.

(d) Notwithstanding the foregoing, if (i) the Company receives a written Takeover Proposal that the Company Board believes is *bona fide*, and (ii) the Company Board, after consultation with its financial advisors and outside legal counsel, concludes in good faith that such Takeover Proposal constitutes a Superior Proposal, then, subject to compliance with Section 7.3, the Company Board may at any time prior to obtaining the Company Stockholder Approval (but in no event after obtaining the Company Stockholder Approval), if it determines in good faith, after consultation with outside counsel, that the failure to take such action could be inconsistent with its fiduciary duties under applicable Law, (x) effect an Adverse Recommendation Change and/or (y) terminate this Agreement and concurrent with such termination cause the Company to enter into an Acquisition Agreement with respect to such Superior Proposal; provided, however, that the Company Board may not effect an Adverse Recommendation Change pursuant to the foregoing clause (x) or terminate this Agreement pursuant to the foregoing clause (y) unless the Company has provided prior written notice to Parent specifying in reasonable detail the reasons for such action (including a description of the material terms of such Takeover Proposal and delivering to Parent a copy of (1) the Acquisition Agreement for such Superior Proposal in the form to be entered into and (2) any other relevant documents that are reasonably relevant to the assessment of such Superior Proposal), at least five (5) calendar days in advance of its intention to take such action with respect to such Superior Proposal, unless at the time such notice is otherwise required to be given there are less than five (5) calendar days prior to the Company Stockholders Meeting, in which case the Company shall provide as much notice as is reasonably practicable (the period inclusive of all such days, the Notice Period) (it being understood and agreed that (i) during the Notice Period the Company shall, and shall use reasonable best efforts to cause its financial advisors and outside legal counsel to, negotiate with Parent in good faith (to the extent Parent desires to negotiate), (ii) the Company shall take into account all changes to the terms of this Agreement proposed by Parent in determining whether such Takeover Proposal continues to constitute a Superior Proposal and (iii) any material amendment to the terms of such Superior Proposal shall require a new notice pursuant to this Section 5.3(d) and new Notice Period, except that such new Notice Period in connection with any material amendment shall be for two (2) business days from the time Parent receives such notice (as opposed to five (5) calendar days). After delivery of such written notice pursuant to the immediately preceding sentence, the Company shall promptly keep Parent informed of all material developments affecting the material terms of any such Superior Proposal (and the Company shall provide Parent with copies of any additional written materials received that relate to such Superior Proposal).

(e) Notwithstanding anything in Section 5.3(a) to the contrary, the Company Board may, at any time prior to obtaining the Company Stockholder Approval, effect an Adverse Recommendation Change in response to an Intervening Event if the Company Board concludes in good faith, after consultation with outside counsel and its

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financial advisors, that the exercise of its fiduciary duties require such Adverse Recommendation Change. An Intervening Event means, with respect to the Company, a material event or circumstance that arises or occurs after the date of this Agreement and was not, prior to the date of this Agreement, reasonably foreseeable by the Company Board; provided, however, that in no event shall the receipt, existence or terms of a Takeover Proposal or any matter relating thereto or consequence thereof constitute an Intervening Event.

(f) For purposes of this Agreement:

Takeover Proposal means any inquiry, proposal or offer from any Person or group (as defined in Section 13(d) of the Exchange Act), other than Parent and its Subsidiaries, relating to any (A) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of assets of the Company and its Subsidiaries (including securities of Subsidiaries) equal to 20% or more of the Company s consolidated assets or to which 20% or more of the Company s revenues or earnings on a consolidated basis are attributable, (B) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of beneficial ownership (within the meaning of Section 13 under the Exchange Act) of 20% or more of any class of equity securities of the Company, (C) tender offer or exchange offer that if consummated would result in any Person or group (as defined in Section 13(d) of the Exchange Act) beneficially owning 20% or more of any class of equity securities of the Company or (D) merger, consolidation, share exchange, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company which is structured to permit such Person or group to acquire beneficial ownership of at least 20% of the Company s consolidated assets or equity interests; in each case, other than the Transactions.

Superior Proposal means a *bona fide* written offer, obtained after the date of this Agreement and not in breach of this Section 5.3 (other than an immaterial breach), to acquire, directly or indirectly, for consideration consisting of cash and/or securities, more than 50% of the equity securities of the Company or assets of the Company and its Subsidiaries on a consolidated basis, made by a third party, which is on terms and conditions which the Company Board determines in its good faith (after consultation with outside counsel and an independent financial advisor) to be more favorable to the Company s stockholders from a financial point of view than the Transactions, taking into account at the time of determination any changes to the terms of this Agreement that as of that time had been proposed by Parent in writing.

(g) Nothing in this Section 5.3 shall prohibit the Company Board from taking and disclosing to the Company s stockholders a position contemplated by Rule 14e-2(a), Rule 14d-9 or Item 1012(a) of Regulation M-A promulgated under the Exchange Act if the Company Board determines in good faith, after consultation with outside counsel, that failure to so disclose such position could constitute a violation of applicable Law.

(h) Parent shall not, and shall cause its Subsidiaries not to and shall use reasonable best efforts to cause its Representatives not to, directly or indirectly (i) solicit, initiate, knowingly facilitate, knowingly encourage (including by way of furnishing information) or knowingly induce or take any other action designed to lead to any inquiries or proposals that constitute, or would reasonably be expected to lead to, the submission of a Parent Alternative Transaction or (ii) enter into any confidentiality agreement, merger agreement, letter of intent, agreement in principle, share purchase agreement, asset purchase agreement or share exchange agreement, option agreement or other similar agreement with respect to any transaction that would in any material respect impede or delay the ability of the parties to satisfy any of the conditions to the Transactions set forth in this Agreement. Nothing in this Section 5.3(h) or Section 5.2(b)(vii) shall be deemed to prevent Parent, its Subsidiaries or any of its Representatives from taking any action in connection with any transfer or proposed transfer of equity securities of Parent by the stockholders party to the Voting Agreement that is not in violation of the transfer restrictions set forth in the Voting Agreement to the extent that such transfer does not involve a merger, consolidation, share exchange, business combination, recapitalization, liquidation or similar transaction involving Parent or an exchange offer or tender offer for Parent s equity securities.

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SECTION 5.4. Best Efforts.

(a) Subject to the terms and conditions of this Agreement (including Section 5.4(d)), each of the parties hereto shall cooperate with the other parties and use (and shall cause their respective Subsidiaries to use) their respective best efforts to (i) take, or cause to be taken, all actions, and do, or cause to be done, all things, necessary, proper or advisable to cause the conditions to Closing to be satisfied as promptly as practicable (and in any event no later than the Extended Walk-Away Date) and to consummate and make effective, in the most expeditious manner practicable, the Transactions, including preparing and filing promptly and fully all documentation to effect all necessary filings, notifications, notices, petitions, statements, registrations, submissions of information, applications and other documents (including any required or recommended filings under applicable Antitrust Laws), (ii) obtain promptly (and in any event no later than the Extended Walk-Away Date) all approvals, consents, clearances, expirations or terminations of waiting periods, registrations, permits, authorizations and other confirmations from any Governmental Authority or third party necessary, proper or advisable to consummate the Transactions, (iii) defend any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Transactions and (iv) obtain all necessary consents, approvals or waivers from third parties. For purposes of this Agreement, Antitrust Laws means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, all applicable Foreign Antitrust Laws and all other applicable Laws issued by a Governmental Authority that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

(b) In furtherance and not in limitation of the foregoing, (i) each party hereto (including by their respective Subsidiaries) agrees to make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the Transactions as promptly as practicable and in any event within fifteen (15) business days of the date of this Agreement and to supply as promptly as practicable any additional information and documentary material that may be requested by any Governmental Authority pursuant to the HSR Act or any other Antitrust Law and use its best efforts to take, or cause to be taken (including by their respective Subsidiaries), all other actions consistent with this Section 5.4 necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act as soon as practicable (and in any event no later than the Extended Walk-Away Date); and (ii) the Company and Parent shall each use its reasonable best efforts to (x) take all action necessary to ensure that no state takeover statute or similar Law is or becomes applicable to any of the Transactions and (y) if any state takeover statute or similar Law becomes applicable to any of the Transactions, take all action necessary to ensure that the Transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise minimize the effect of such Law on the Transactions.

(c) Each of the parties hereto shall use (and shall cause their respective Subsidiaries to use) its best efforts to (i) cooperate in all respects with each other in connection with any filing or submission with a Governmental Authority in connection with the Transactions and in connection with any investigation or other inquiry by or before a Governmental Authority relating to the Transactions, including any proceeding initiated by a private party, (ii) promptly inform the other party of (and supply to the other party) any communication received by such party from, or given by such party to, the Federal Trade Commission, the Antitrust Division of the Department of Justice, or any other Governmental Authority and of any material communication received or given in connection with any proceeding by a private party, in each case regarding any of the Transactions, (iii) permit the other party to review in advance and incorporate the other party s reasonable comments in any communication to be given by it to any Governmental Authority with respect to obtaining any clearances required under any Antitrust Law in connection with the Transactions and (iv) consult with the other party in advance of any meeting or teleconference with any Governmental Authority or, in connection with any proceeding by a private party, with any other Person, and, to the extent not prohibited by the Governmental Authority or other Person, give the other party the opportunity to attend and participate in such meetings and teleconferences. Parent shall have the principal responsibility for devising and implementing the strategy for obtaining any clearances required under any Antitrust Law in connection with the Transactions and shall take the lead in all meetings and communications with any Governmental Authority in connection with obtaining such clearances, provided,

however, that Parent shall consult in advance with the Company and in good faith take the Company s views into account regarding the overall strategy. The parties shall take reasonable efforts to share information protected from disclosure under the attorney-client privilege, work product doctrine, joint defense privilege or any other privilege pursuant to this Section in a manner so as to preserve the applicable privilege.

(d) Parent (including by its Subsidiaries) agrees to take, or cause to be taken (including by its Subsidiaries), any and all steps and to make, or cause to be made (including by its Subsidiaries), any and all undertakings necessary to resolve such objections, if any, that a Governmental Authority may assert under any Antitrust Law with respect to the Transactions, and to avoid or eliminate each and every impediment under any Antitrust Law that may be asserted by any Governmental Authority with respect to the Transactions, in each case, so as to enable the Closing to occur as promptly as practicable and in any event no later than the Extended Walk-Away Date, including, without limitation, (x) proposing, negotiating, committing to and effecting, by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of any businesses, assets, equity interests, product lines or properties of Parent or the Company (or any of their respective Subsidiaries) or any equity interest in any joint venture held by Parent or the Company (or any of their respective Subsidiaries), (y) creating, terminating, or divesting relationships, ventures, contractual rights or obligations of the Company or Parent or their respective Subsidiaries and (z) otherwise taking or committing to take any action that would limit Parent s freedom of action with respect to, or its ability to retain or hold, directly or indirectly, any businesses, assets, equity interests, product lines or properties of Parent or the Company (including any of their respective Subsidiaries) or any equity interest in any joint venture held by Parent or the Company (or any of their respective Subsidiaries), in each case as may be required in order to obtain all approvals, consents, clearances, expirations or terminations of waiting periods, registrations, permits, authorizations and other confirmations required directly or indirectly under any Antitrust Law or to avoid the commencement of any action to prohibit the Transactions under any Antitrust Law, or, in the alternative, to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other order in any action or proceeding seeking to prohibit the Transactions or delay the Closing beyond the Extended Walk-Away Date. To assist Parent in complying with its obligations set forth in this Section 5.4, the Company shall, and shall cause its Subsidiaries to, enter into one or more agreements requested by Parent to be entered into by any of them prior to the Closing with respect to any transaction to divest, hold separate or otherwise take any action that limits the Company s or its Subsidiaries freedom of action, ownership or control with respect to, or their ability to retain or hold, directly or indirectly, any of the businesses, assets, equity interests, product lines or properties of the Company or any of its Subsidiaries or any equity interest in any joint venture held by the Company or any of its Subsidiaries (each, a Divestiture Action); provided, however, that (i) the consummation of the transactions provided for in any such agreement for a Divestiture Action (a Divestiture Agreement) shall be conditioned upon the Closing or satisfaction of all of the conditions to Closing in a case where the Closing will occur immediately following such Divestiture Action (and where Parent has irrevocably committed to effect the Closing immediately following such Divestiture Action) and (ii) Parent shall indemnify for and hold the Company and its Subsidiaries harmless from all costs, expenses and liabilities incurred by the Company or its Subsidiaries arising from or relating to such Divestiture Agreement (other than any of the foregoing arising from the breach by the Company or any applicable Subsidiary of such Divestiture Agreement).

(e) In furtherance and not in limitation of the covenants of the parties contained in this Section 5.4, if any administrative or judicial action or proceeding, including any proceeding by a private party, is instituted (or threatened to be instituted) challenging any transaction contemplated by this Agreement as violative of any Antitrust Law, each of the Company and Parent shall use best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Transactions.

SECTION 5.5. Public Announcements. The initial press release with respect to the execution of this Agreement shall be a joint press release to be reasonably agreed upon by Parent and the Company. Thereafter, neither the Company nor Parent shall issue or cause the publication of any press release or other public

announcement (to the extent previously issued or made in accordance with this Agreement) with respect to this Agreement or the Transactions without the prior consent of the other party (which consent shall not be unreasonably withheld or delayed), except as may be required by Law or by any applicable listing agreement with a national securities exchange or Nasdaq as determined in the good faith judgment of the party proposing to make such release (in which case such party shall not issue or cause the publication of such press release or other public announcement without prior consultation with the other party; provided, however that the Company shall not be required to consult with the other party with respect to a public announcement in connection with the receipt and existence of a Takeover Proposal that the board of directors of the Company believes is *bona fide* and matters related thereto or an Adverse Recommendation Change but nothing in this proviso shall limit any obligation of the Company under Section 5.3(d) to negotiate with Parent in good faith; provided, that each party and their respective controlled affiliates may make statements that are not inconsistent with previous press releases, public disclosures or public statements made by Parent or the Company in compliance with this Section 5.5.

SECTION 5.6. Access to Information; Confidentiality.

(a) Upon reasonable notice and subject to applicable Laws relating to the exchange of information, each party shall, and shall cause each of its Subsidiaries to afford to the other party and its Representatives reasonable access during normal business hours (and, with respect to books and records, the right to copy) to all of its and its Subsidiaries properties (including the Upstream Assets), commitments, books, Contracts, records and correspondence (in each case, whether in physical or electronic form), officers, employees, accountants, counsel, financial advisors and other Representatives. Each party shall furnish promptly to the other party (i) a copy of each report, schedule and other document filed or submitted by it pursuant to the requirements of federal or state securities Laws and a copy of any communication (including comment letters) received by such party from the SEC concerning compliance with securities Laws and (ii) all other information concerning its and its Subsidiaries business, properties and personnel as the other party may reasonably request (including information necessary to prepare the Joint Proxy/Information Statement). Except for disclosures permitted by the terms of the Confidentiality Agreement, dated as of September 22, 2011, between Parent and the Company (as it may be amended from time to time, the Confidentiality Agreement), each party and its Representatives shall hold information received from the Company pursuant to this Section 5.6 in confidence in accordance with the terms of the Confidentiality Agreement. The Company shall (and shall cause its Subsidiaries to) use reasonable efforts (including the assertion of any rights of Company or its Subsidiaries to information to which such person is entitled pursuant to an applicable joint operating agreement) to obtain permission for Parent and its representatives to gain access to Upstream Assets operated or held by third persons and the records and files of such third Persons.

(b) This Section 5.6 shall not require either party to permit any access, or to disclose any information, that in the reasonable, good faith judgment (after consultation with counsel, which may be in-house counsel) of such party would reasonably be expected to result in (i) any violation of any contract or Law to which such party or its Subsidiaries is a party or is subject or cause any privilege (including attorney-client privilege) which such party or any of its Subsidiaries would be entitled to assert to be undermined with respect to such information and such undermining of such privilege could in such party s good faith judgment (after consultation with counsel, which may be in-house counsel) adversely affect in any material respect such party s position in any pending or, what such party believes in good faith (after consultation with counsel, which may be in-house counsel) could be, future litigation or (ii) if such party or any of its Subsidiaries, on the one hand, and the other party or any of its Subsidiaries, on the other hand, are adverse parties in a litigation, such information being reasonably pertinent thereto; provided, that, in the cases of clause (i), the parties hereto shall cooperate in seeking to find a way to allow disclosure of such information (including by entering into a joint-defense or similar agreement) to the extent doing so (1) would not (in the good faith belief of the party being requested to disclose the information (after consultation with counsel, which may be in-house counsel)) reasonably be likely to result in the violation of any such contract or Law or reasonably be likely to cause such privilege to be undermined with respect to such information or (2) could reasonably (in the good faith belief of the party being requested to disclose the

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information (after consultation with counsel which may be in-house counsel)) be managed through the use of customary clean-room arrangements pursuant to which non-employee Representatives of the other party shall be provided access to such information; provided, further, that the party being requested to disclose the information shall (x) notify the other party that such disclosures are reasonably likely to violate its or its Subsidiaries obligations under any such contract or Law or are reasonably likely to cause such privilege to be undermined, (y) communicate to the other party in reasonable detail the facts giving rise to such notification and the subject matter of such information (to the extent it is able to do so in accordance with the first proviso in this Section 5.6(b)) and (z) in the case where such disclosures are reasonably likely to violate its or its Subsidiaries obligations under any contract, use reasonable commercial efforts to seek consent from the applicable third party to any such contract with respect to the disclosures prohibited thereby (to the extent not otherwise expressly prohibited by the terms of such contract).

(c) No investigation, or information received, pursuant to this Section 5.6 will modify any of the representations and warranties of the parties hereto.

SECTION 5.7. Notification of Certain Matters. The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, of (i) any notice or other communication received by such party from any Governmental Authority in connection with the Transactions or from any Person alleging that the consent of such Person is or may be required in connection with the Transactions, if the subject matter of such communication or the failure of such party to obtain such consent could be material to the Company, the New EP Surviving LLC or Parent, (ii) any actions, suits, claims, investigations or proceedings commenced or, to such party s knowledge, threatened against, relating to or involving or otherwise affecting such party or any of its Subsidiaries which relate to the Transactions, (iii) the discovery of any fact or circumstance that, or the occurrence or non-occurrence of any event the occurrence or non-occurrence of which, would result in the failure to satisfy any of the conditions to Closing in Article VI (but only to the extent that a person identified on Section 8.11(a) of the Company Disclosure Schedule or Section 8.11(a) of the Parent Disclosure Schedule, as applicable, has actual knowledge of such fact or circumstance or the occurrence or non-occurrence of such event) and (iv) any material failure of such party to comply with or satisfy any covenant or agreement to be complied with or satisfied by it hereunder which would result in the failure to satisfy any of the conditions to Closing in Article VI (but only to the extent that a person identified on Section 8.11(a) of the Company Disclosure Schedule or Section 8.11(b) of the Parent Disclosure Schedule, as applicable, has actual knowledge of such material failure).

SECTION 5.8. Indemnification and Insurance.

(a) For purposes of this Section 5.8, (i) Indemnified Person shall mean any person who is now, or has been or becomes at any time prior to the Second Effective Time, an officer or director of the Company or any of its Subsidiaries, in such capacity, and also with respect to any such Person, in their capacity as a director, officer, member, trustee or fiduciary of another corporation, foundation, partnership, joint venture, trust, pension or other employee benefit plan or enterprise (whether or not such other entity or enterprise is affiliated with the Company) serving at the request of or on behalf of the Company or any Company Subsidiary and together with such Person s heirs, executor or administrators and (ii) Proceeding shall mean any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative, investigative or otherwise and whether or not such claim, action, suit, proceeding or investigation results in a formal civil or criminal litigation or regulatory action.

(b) From and after the Second Effective Time, Parent and the New EP Surviving Corporation jointly and severally shall (i) indemnify and hold harmless against any cost or expenses (including attorneys fees), judgments, fines, losses, claims, damages or liabilities and amounts paid in settlement in connection with any Proceeding, and provide advancement of expenses to, all Indemnified Persons to the fullest extent permitted under applicable Law and (ii) honor the provisions regarding elimination of liability of directors, indemnification of officers, directors and employees and advancement of expenses contained in the Company Charter Documents

and comparable governing instruments of any Subsidiary of the Company immediately prior to the Second Effective Time and ensure that the certificate of incorporation and by-laws of the New EP Surviving Corporation shall, for a period of six (6) years following the Second Effective Time, contain provisions no less favorable with respect to indemnification, advancement of expenses and exculpation of present and former directors, officers, employees and agents of the Company and its Subsidiaries than are presently set forth in the Company Charter Documents. Any right of indemnification of an Indemnified Person pursuant to this Section 5.8(b) shall not be amended, repealed or otherwise modified at any time in a manner that would adversely affect the rights of such Indemnified Person as provided herein.

(c) Parent shall cause the New EP Surviving Corporation to, and the New EP Surviving Corporation shall, maintain in effect for six (6) years from the Second Effective Time the Company s current directors and officers liability insurance policies covering acts or omissions occurring at or prior to the Second Effective Time with respect to Indemnified Persons (provided that the New EP Surviving Corporation may substitute therefor policies with reputable carriers of at least the same coverage containing terms and conditions that are no less favorable to the Indemnified Persons); provided, however, that in no event shall the New EP Surviving Corporation be required to expend pursuant to this Section 5.8(c) more than an amount per year equal to 300% of current annual premiums paid by the Company for such insurance (the Maximum Amount). In the event that, but for the proviso to the immediately preceding sentence, the New EP Surviving Corporation would be required to expend more than the Maximum Amount, the New EP Surviving Corporation shall obtain as much comparable insurance as available for the Maximum Amount. If the Company in its sole discretion elects, then the Company may, prior to the Second Effective Time, purchase a tail policy with respect to acts or omissions occurring or alleged to have occurred prior to the Second Effective Time that were committed or alleged to have been committed by such Indemnified Persons in their capacity as such; provided that in no event shall the cost of such policy exceed six (6) times the Maximum Amount and, if such a tail policy is purchased, Parent and the New EP Surviving Corporation shall have no further obligations under this Section 5.8(c).

(d) The rights of any Indemnified Person under this Section 5.8 shall be in addition to any other rights such Indemnified Person may have under the New EP Surviving Corporation Certificate, the New EP Surviving Corporation By-Laws, the DGCL or the DLLCA. The provisions of this Section 5.8 shall survive the consummation of the Transactions for a period of six (6) years and are expressly intended to benefit each of the Indemnified Persons and their respective heirs and representatives; provided, however, that in the event that any claim or claims for indemnification set forth in Section 5.8 are asserted or made within such six (6) year period, all rights to indemnification in respect of any such claim or claims shall continue until disposition of any and all such claims. If Parent and/or New EP Surviving Corporation, or any of their respective successors or assigns (i) consolidates with or merges into any other Person, or (ii) transfers or conveys all or substantially all of their businesses or assets to any other Person, then, in each such case, to the extent necessary, a proper provision shall be made so that the successors and assigns of Parent and/or New EP Surviving Corporation, as the case may be, shall assume the obligations of Parent and New EP Surviving Corporation set forth in this Section 5.8.

SECTION 5.9. Securityholder Litigation. The Company shall give Parent the opportunity to participate in the defense or settlement of any securityholder litigation against the Company and/or its directors relating to the Transactions, and no such settlement shall be agreed to without Parent s prior consent, such consent not to be unreasonably withheld or delayed.

SECTION 5.10. Fees and Expenses. All fees and expenses incurred in connection with the Transactions including all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties incurred by a party in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby, shall be the obligation of the respective party incurring such fees and expenses, except (a) Parent and the Company shall each bear and pay one-half of the expenses incurred in connection with the filing, printing and mailing of the Form S-4 and Joint Proxy/Information Statement and (b) as provided in Section 7.3. Notwithstanding anything to the contrary contained herein, Parent shall be responsible for and shall pay the amount of any (i) documentary, sales, use, real property transfer, real

property gains, registration, value-added, transfer, stamp, recording and other similar Taxes (Transfer Taxes) imposed on Parent, the Company or any of its Subsidiaries in connection with this Agreement and the transactions contemplated hereby, and (ii) any Transfer Taxes imposed on the stockholders of the Company and New EP in connection with this Agreement and the transactions contemplated hereby in respect of assets that are owned directly or indirectly by the Company or any of its Subsidiaries.

SECTION 5.11. Reorganizations Treatment. The Company, New EP, Merger Sub One, Parent, Merger Sub Two and Merger Sub Three shall execute and deliver to Wachtell, Lipton, Rosen & Katz, counsel to the Company, certificates substantially in the forms attached hereto at Exhibits C and D at such time or times as reasonably requested by such law firm in connection with its delivery of the tax opinion referred to in Section 6.1(e). Prior to the Second Effective Time, none of the Company, New EP, Merger Sub One, Parent, Merger Sub Two or Merger Sub Three shall take or cause to be taken any action which would cause to be untrue any of the representations in such certificates. Each of the Company, New EP, Merger Sub One, Parent, Merger Sub Two and Merger Sub Three agree that the value of the Per Share Warrant Consideration as of the business day immediately prior to the date of this Agreement would have been $0.96 (the Per Share Warrant Consideration Value), including for purposes of applying Treasury Regulation Section 1.368-1T(e)(2)(iv).

SECTION 5.12. Rule 16b-3. Prior to the Second Effective Time, the Company and Parent shall take such steps as may be reasonably necessary or advisable to cause dispositions of Company equity securities (including derivative securities) pursuant to the Transactions by each individual who is a director or officer of the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act in accordance with that certain No-Action Letter dated January 12, 1999 issued by the SEC regarding such matters.

SECTION 5.13. Employee Benefits.

(a) From and after the Second Effective Time, Parent shall honor all Company Benefit Plans and compensation arrangements and agreements in accordance with their terms as in effect immediately before the Second Effective Time, provided that nothing herein shall limit the right of the Company or Parent or any of their respective Affiliates from amending or terminating such plans, arrangements and agreements to the extent permitted by their terms. For a period of one (1) year following the Second Effective Time (the Continuation Period), Parent shall provide, or shall cause to be provided, (i) to each employee of the Company or any of its Subsidiaries as of immediately prior to the Second Effective Time (the Company Employees), other than any such Company Employee covered by a Company Collective Bargaining Agreement, for so long as such Company Employee remains an employee of the Parent, the New EP Surviving Corporation or any of their respective Affiliates during the Continuation Period, base salary and annual bonus opportunities each of which is no less than that provided to such Company Employee immediately before the Second Effective Time, (ii) to each Company Employee, other than any such Company Employee covered by a Collective Bargaining Agreement or who is not a full-time employee, for so long as such Company Employee remains an employee of Parent, the Surviving Company or any of their respective Affiliates during the Continuation Period, compensation opportunities (other than annual bonus opportunities) and benefits eligibility which are the same as those provided to similarly situated employees of Parent and its Subsidiaries; provided, that notwithstanding anything to the contrary contained in this Section 5.13(a)(ii), during the Continuation Period, Parent shall provide, or shall cause to be provided to Company Employees and their eligible dependents who are receiving medical care or treatment under the Company s Select Plus Program (the SPP) and any additional participants who are receiving medical care or treatment under the SPP, in each case immediately prior to the Second Effective Time (and in the case of each Company Employee and his or her eligible dependents,, for so long as such Company Employee remains an employee of the Parent, the Surviving Company or any of their respective Affiliates during the Continuation Period), continued medical care and treatment under the terms of the SPP in effect immediately prior to the Second Effective Time.

(b) Notwithstanding anything to the contrary contained in Section 5.13(a), during the Continuation Period (or such longer period as may be required under any Company Benefit Plan as of the date of this Agreement),

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Parent shall provide to each Company Employee, other than any such Company Employee covered by a Collective Bargaining Agreement, whose employment terminates during such period with such severance pay and benefits that would have been provided to such Company Employee under the applicable severance pay plan maintained by the Company as in effect immediately prior to the Second Effective Time. In addition, to the extent any portion of the Company s assets are sold during the Continuation Period, Parent will use its commercially reasonable efforts to ensure that the purchaser of such assets provides the foregoing benefits to the applicable employees who will be employees of the purchaser of such assets through the end of the Continuation Period.

(c) Without limiting the generality of the foregoing, the Company, Parent, New EP, and their respective Subsidiaries and controlled Affiliates, as applicable, will take all actions necessary to effectuate the provisions of Section 5.13(c) of the Company Disclosure Schedule.

(d) Without limiting the generality of the foregoing, the Company, Parent, New EP, and their respective Subsidiaries and controlled Affiliates, as applicable, will take all actions necessary to effectuate the provisions of Section 5.13(d) of the Company Disclosure Schedule.

(e) For all purposes (including purposes of vesting, eligibility to participate and level of benefits) under the employee benefit plans of Parent and its Subsidiaries providing benefits to any Company Employees after the Second Effective Time as required pursuant to this Section 5.13(e) (the New Plans), each Company Employee shall be credited with his or her years of service with the Company and its Subsidiaries and their respective predecessors before the Second Effective Time, to the same extent as such Company Employee was entitled, before the Second Effective Time, to credit for such service under any similar Company Benefit Plan in which such Company Employee participated or was eligible to participate immediately prior to the Second Effective Time, provided that the foregoing shall not apply with respect to benefit accrual under any defined benefit pension plan or to the extent that its application would result in a duplication of benefits. In addition, and without limiting the generality of the foregoing, (i) each Company Employee shall be immediately eligible to participate, without any waiting time, in any and all New Plans to the extent coverage under such New Plan is comparable to a Company Benefit Plan in which such Company Employee participated immediately before the consummation of the Transactions (such plans, collectively, the Old Plans), and (ii) for purposes of each New Plan providing medical, dental, pharmaceutical and/or vision benefits to any Company Employee, Parent shall cause all pre-existing condition exclusions and actively-at-work requirements of such New Plan to be waived for such employee and his or her covered dependents, unless such conditions would not have been waived under the comparable plans of the Company or its Subsidiaries in which such employee participated immediately prior to the Second Effective Time, and Parent shall cause any eligible expenses incurred by such employee and his or her covered dependents during the portion of the plan year of the Old Plan ending on the date such employee s participation in the corresponding New Plan begins to be taken into account under such New Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan.

(f) Section 280G.

(i) Following the date of this Agreement, but in no event later than November 15, 2011, the Company shall provide to Parent the name of each director, officer, employee and service provider entitled to a gross-up, make whole or other payment as a result of the imposition of taxes under Section 4999 of the Code pursuant to any agreement or arrangement with the Company or any of its Subsidiaries. The Company shall, as soon as reasonably practicable after request from Parent, provide Parent with information necessary for Parent (or its advisor) to calculate the estimated dollar amount (if any) of such gross-up, make whole or other payment payable to each such individual in connection with the consummation of the Transactions.

(ii) Following the date of this Agreement, the Company shall consult with Parent as to, and shall reasonably consider taking, actions which may be reasonably requested by Parent, on or prior to December 31, 2011, to

reduce and/or avoid the application of Section 280G of the Code to the payments, if any, to be made to those individuals disclosed to Parent pursuant to Section 5.13(f)(i) of this Agreement (which actions may include, for example, accelerating the vesting or payment of equity awards or accelerating the payment of 2011 bonuses).

(g) Without limiting the generality of Section 8.6, no provision of this Section 5.13 shall be construed to create any third party beneficiary rights in any employee, officer, current or former director or consultant of the Company or its Subsidiaries, or any beneficiary of such employee, officer, director or consultant under a Company Benefit Plan, Parent Benefit Plan or otherwise.

SECTION 5.14. Debt Financing.

(a) Each of Parent, Merger Sub Two and Merger Sub Three shall use best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary to arrange the Debt Financing on the terms and conditions described in the Debt Commitment Letters, including using best efforts (i) to negotiate and enter into the definitive agreements with respect thereto on the terms and conditions contained in the Debt Commitment Letters (including, as necessary, the flex provisions contained in any related fee letter) by a date no later than the date that is three months from the date hereof and (ii) to satisfy (or if determined advisable by Parent, Merger Sub Two and Merger Sub Three, obtain the waiver of) on a timely basis all conditions to obtaining the Debt Financing within Parent s, Merger Sub Two s and Merger Sub Three s control and to comply with all of its obligations pursuant to the Debt Commitment Letters and the definitive agreements related thereto. In the event that all conditions to funding the commitments contained in the Debt Commitment Letters have been satisfied, each of Parent, Merger Sub Two and Merger Sub Three shall use its best efforts to cause the Financing Sources to fund the Debt Financing required to consummate the transactions contemplated by this Agreement and to pay related fees and expenses on the Closing Date (including by taking enforcement action to cause the Financing Sources to provide the Debt Financing). Each of Parent, Merger Sub Two and Merger Sub Three shall use its best efforts to enforce all of its rights under the Debt Commitment Letters. Parent, Merger Sub Two and Merger Sub Three shall give Seller prompt notice of any material breach by any party to the Debt Commitment Letters or the definitive agreements related thereto of which Parent, Merger Sub Two or Merger Sub Three has become aware or any termination of any of the Commitment Letters or such definitive agreements. In the event that any portion of the Debt Financing becomes unavailable, Parent, Merger Sub Two and Merger Sub Three shall (1) use their best efforts to obtain, as promptly as practicable following the occurrence of such event, alternative debt financing for any such portion from alternative debt sources (Alternative Financing) in an amount that will still enable Parent, Merger Sub Two and Merger Sub Three to consummate the Transactions and (2) promptly notify the Company of such unavailability and the reason therefor. If obtained, Parent shall deliver to the Company true and complete copies of all agreements (other than any fee letters and engagement letters) pursuant to which any such alternative source shall have committed to provide Parent or the New EP Surviving Corporation with Alternative Financing. Parent, Merger Sub Two and Merger Sub Three shall not, without the Company s prior written consent (not to be unreasonably withheld) permit any amendment or modification to, or any waiver of any provision or remedy under, any Debt Commitment Letter or any definitive agreements related thereto unless the terms of such Debt Commitment Letter or definitive agreements related thereto, in each case as so amended, modified or waived, are substantially similar to those in such Debt Commitment Letter or definitive agreement related thereto, prior to giving effect to such amendment, modification or waiver (other than economic terms, which shall as good as or better for Parent, Merger Sub Two and Merger Sub Three than those in the Debt Commitment Letter or definitive agreement relating thereto prior to giving effect to such amendment, modification or waiver). Parent, Merger Sub Two and Merger Sub Three shall provide the Company with prompt written notice of the receipt of any notice or other communication from any financing source with respect to such financing source s failure or anticipated failure to fund its commitments under any Debt Commitment Letters or definitive agreement in connection therewith. Parent, Merger Sub Two and Merger Sub Three shall keep the Company reasonably informed on a reasonably current basis of the status of its efforts to consummate the Debt Financing.

(b) The Company shall provide, shall cause its Subsidiaries to provide and shall use its best efforts to cause its and their Representatives to provide such cooperation in connection with the marketing, arrangement and

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consummation of and satisfaction of the conditions to the Debt Financing as may be reasonably requested by Parent (provided, that such requested cooperation does not materially and adversely interfere with the ongoing business operations of the Company and its Subsidiaries (it being understood that none of the actions listed in clauses (i) through (viii) below shall be deemed to materially and adversely interfere with the ongoing business operations of the Company and its Subsidiaries)), including but not limited to: (i) participation in meetings, drafting sessions, presentations, road shows and due diligence and other sessions with the Financing Sources and lenders, investors and rating agencies; (ii) furnishing Parent and the Financing Sources and their representatives as promptly as practicable with financial and other pertinent information regarding the Company and its Subsidiaries required, or reasonably requested by Parent, to consummate the Debt Financing, including (A) all information to be included in a customary bank information memorandum; (B) all of the information and data related to the Company and its Subsidiaries necessary (and at the times required) to satisfy the condition set forth in paragraph 3 of Exhibit D of the Debt Commitment Letters (or the substantially similar provision thereto in any Replacement Debt Commitment Letters or Debt Commitment Letters relating to an Alternative Financing) (information and data required to be delivered pursuant to this clause (ii) being referred to as the Required Information); (iii) assisting Parent, the Financing Sources and their representatives in the preparation of customary documents and materials, including but not limited to (A) any offering documents, private placement memoranda, bank information memoranda (including a bank information memorandum that does not include material non-public information), prospectuses and other informational and marketing materials and documents for any portion of the Debt Financing and (B) materials for rating agency presentations; (iv) reasonably cooperating with the marketing efforts of Parent and the Financing Sources for any portion of the Debt Financing; (v) executing and delivering (and assisting in the negotiation of) any pledge or security documents and otherwise facilitating the granting of a security interest (and perfection thereof) in collateral and executing and delivering (and assisting in the negotiation of) definitive financing documents, guarantees, mortgages, underwriting and purchase agreements, indentures or other documents or customary certificates contemplated by the Debt Commitment Letters or as reasonably requested by Parent; provided that no pledge or security document, definitive financing document or any other such document or certificate to which the Company or any of its Subsidiaries is a party shall be effective prior to the Second Effective Time; (vi) using best efforts to obtain customary authorization letters with respect to the bank information memoranda and consents of accountants for use of their reports in any materials relating to the Debt Financing, accountants comfort letters and legal opinions as reasonably requested by Parent; and (viii) taking all corporate actions, subject to the occurrence of the Closing, necessary to permit the consummation of the Debt Financing. The foregoing notwithstanding, (I) none of the Company or any of its Subsidiaries nor any of their Representatives shall be required to pay any commitment or other fee or incur any other cost or expense that is not promptly reimbursed by Parent, Merger Sub Two or Merger Sub Three in connection with the Debt Financing prior to the Second Effective Time and (II) no obligation of or security interest granted by the Company, any of its Subsidiaries or any of its or their Representatives undertaken in connection with the Debt Financing shall be effective until the Second Effective Time. In addition, the Company agrees that it will use best efforts to supplement the Required Information to the extent that any such Required Information, to the knowledge of the Company, contains any material misstatement of fact or omits to state any material fact necessary to make such information, taken as a whole, not misleading in any material respect promptly after becoming aware thereof. All non-public or otherwise confidential information regarding the Company or its Subsidiaries obtained by Parent, Merger Sub Two or Merger Sub Three or their respective Representatives pursuant to this Section 5.14(b) shall be kept confidential in accordance with the Confidentiality Agreement; provided that Parent, Merger Sub Two and Merger Sub Three shall be permitted to disclose such information to rating agencies and prospective lenders and investors during syndication of the debt financing contemplated by the Debt Commitment Letters, subject to customary confidentiality undertakings as applicable. The Company hereby consents to the use of its and its Subsidiaries logos in connection with the Debt Financing; provided, that such logos are used solely in a manner that is not intended to or reasonably likely to harm or disparage the Company or any of its Subsidiaries or the reputation or goodwill of the Company or any of its Subsidiaries. Parent (x) shall, promptly upon request by the Company, reimburse the Company for all reasonable and documented out-of-pocket costs (including reasonable and documented attorney s fees) incurred by the Company or any of its Subsidiaries in connection with any cooperation pursuant to Section 5.14, (y) acknowledges and agrees that the Company, its Subsidiaries and their

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respective Representatives shall not have any responsibility for, or incur any liability to any person under, the Debt Financing (other than obligations pursuant to the definitive agreements relating to the Debt Financing, effective as of and from the Second Effective Time, as and to the extent such Persons are party to such documents) and (z) shall indemnify and hold harmless the Company, its Subsidiaries and their respective Representatives from and against any and all losses, damages, claims, costs or expenses suffered or incurred by them in connection with the arrangement of the Debt Financing, any action taken by them at the request of Parent, Merger Sub Two or Merger Sub Three pursuant to Section 5.14 and any information (other than information furnished by or on behalf of the Company and its Subsidiaries) utilized in connection therewith, in each case, other than to the extent any of the foregoing arise from the bad faith, gross negligence or willful misconduct of, or breach of this Agreement by, the Company, any of its Subsidiaries or their respective affiliates and Representatives.

(c) Notwithstanding anything herein to the contrary, the Parent, in its sole discretion, may replace any existing Debt Commitment Letter with a debt commitment letter (a Replacement Debt Commitment Letter) pursuant to which financial institutions selected by it in its sole discretion commit to provide debt financing to finance the Transactions (Replacement Debt Financing) and on or following the effectiveness thereof the Parent may, in its sole discretion terminate the existing Debt Commitment Letter and the commitments thereunder; provided that, without the Company s consent (such consent not to be unreasonably withheld), the terms of such Replacement Debt Financing shall be substantially similar to the terms of the Debt Commitment Letter or definitive agreement relating thereto being replaced (other than economic terms, which shall be as good as or better for Parent and Merger Sub than those in the Debt Commitment Letter or definitive agreement relating thereto being replaced). Promptly following the execution of a Replacement Debt Commitment Letter by Parent, Parent shall notify the Company to such effect and shall promptly provide a fully executed copy of such Replacement Debt Commitment Letter and any related agreements (other than any fee letters or engagement letters). Such notice shall also satisfy the Parent s notification requirements under Section 5.14(a) relating to termination of the existing Debt Commitment Letter.

(d) The Company shall use its best efforts to deliver to Parent on or prior to the second business day prior to the Second Effective Time, a fully executed copy of a payoff letter, in customary form, from the Administrative Agent (as defined in the Existing EP Credit Agreement), which payoff letter shall (i) indicate the total amount required to be paid to fully satisfy all principal, interest, prepayment premiums, penalties, breakage costs or similar obligations related to any Obligations (as defined in the Existing EP Credit Agreement) as of the anticipated Closing Date (and the daily accrual thereafter) (the Payoff Amount) (ii) state that upon receipt of the Payoff Amount, the Existing EP Credit Agreement and related instruments evidencing the Existing EP Credit Agreement shall be terminated and any stock certificates and other physical collateral held by the Collateral Agent (as defined in the Existing EP Credit Agreement) shall be returned, and (iii) state that all Liens and all guarantees in connection therewith relating to the assets and properties of the Company or any of its Subsidiaries securing such Obligations shall be, upon the payment of the Payoff Amount on the Closing Date, released and terminated. The Company shall, and shall cause its Subsidiaries to, use best efforts to deliver all notices and take all other actions, including assistance with respect to the backstop, replacement or termination of any letters of credit issued under the Existing EP Credit Agreement, to facilitate the termination of commitments under the Existing EP Credit Agreement, the repayment in full of all Obligations then outstanding thereunder (using funds arranged by Parent, Merger Sub Two or Merger Sub Three) and the release of all Liens and termination of all guarantees in connection therewith on the Closing Date (such termination, repayment and release, the Credit Facility Termination); provided that in no event shall this Section 5.14(d) require the Company or any of its Subsidiaries to (x) deliver an irrevocable notice of termination or prepayment of any credit facility, (y) cash collateralize any letters of credit or (z) cause such Credit Facility Termination unless the Closing shall occur substantially concurrently and the Company or its Subsidiaries have received funds from Parent to pay in full the Payoff Amount. To the extent the Company or its Subsidiaries do not obtain the any amendment or waiver contemplated in Section 5.14(e) below, either (i) the provisions of this Section 5.14(d) relating to the Existing EP Credit Agreement shall apply to the applicable Waiver Credit Agreement or (ii) the Company and its Subsidiaries shall, at the request of Parent, and at Parent s expense, use their best efforts to refinance the credit

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facilities set forth in the applicable Waiver Credit Agreement, effective upon the Second Effective Time on terms that permit the Transactions and are reasonably acceptable to the Parent (and such refinancing shall not be subject to the refinancing restriction set forth in Section 5.2(b)(i)).

(e) The Company shall use its best efforts to assist Parent in obtaining, at Parent s expense, as soon as possible after the date of this Agreement and in any event on or prior to the forty-fifth (45th) business day prior to the Second Effective Time, a fully executed copy of an amendment or waiver of each of the Waiver Credit Agreements which amends or waives the change of control provisions set forth therein to permit the Transactions, such amendment or waiver to be effective at or prior to the Second Effective Time.

(f) The Company shall, on a weekly basis, give Parent updates on the balances outstanding under the Existing EP Credit Agreement and E&P BNP Paribas Credit Agreement.

(g) The Company shall be permitted, at the Company s expense, to seek and to obtain consent of the lenders under the indebtedness set forth on Section 5.14(g) of the Company Disclosure Schedule to permit the closing of the First Merger.

SECTION 5.15. Parent Board of Directors. Parent agrees to (i) take all action necessary (including increasing the number of directors that constitute the Parent Board and amending the Shareholders Agreement, dated as of February 10, 2011, among Parent and the persons set forth on the signature page to such agreement (the Parent Shareholders Agreement) to effect such increase) to elect two (2) individuals designated by the Company to Parent s Board of Directors (one of which shall be appointed to Parent s Audit Committee and one of which shall be appointed to Parent s Governance Committee), effective as of, and subject to the occurrence of, the Second Effective Time and (ii) cause its by-laws to be amended to amend the definition of Supermajority Board Vote to change the reference to eight (8) directors in the first line thereof to ten (10) directors.

SECTION 5.16. Sale of Upstream Assets. The Company shall, and shall cause its controlled Subsidiaries to, reasonably assist Parent in the preparation for the sale of certain or all of the Company s Upstream Assets, it being understood that it is the desire and intent of the parties to, if reasonably practicable, consummate the sale of such Upstream Assets immediately prior to the Closing. As may be reasonably requested by Parent, the Company shall, and shall cause its controlled Subsidiaries to, enter into one or more agreement(s) with third parties to facilitate the sale of any Upstream Assets identified by Parent (such agreements to contain customary covenants and other terms and conditions for transactions of such size and nature); provided, however, that (i) the consummation of the transactions provided for in any such agreement for a sale of Upstream Assets (an Upstream Sale Agreement) shall be conditioned upon the Closing or satisfaction of all of the conditions to Closing in a case where the Closing will occur immediately following the sale of the Upstream Assets and on Parent being and irrevocably confirming that it is ready, willing and able to consummate the Closing, and it and its Financing Source have irrevocably committed to, effect the Closing immediately following the sale of Upstream Assets and (ii) Parent shall indemnify for and hold the Company and its Subsidiaries harmless from any and all costs, expenses (including interest, court and other legal proceeding costs, fees of attorneys, accountants and other experts or other expenses of litigation or other proceedings), losses, damages, fines, penalties, Taxes, and liabilities incurred by the Company or its Subsidiaries arising from or relating to such Upstream Sale Agreement. For the avoidance of doubt, but without prejudice to Section 6.2(b), in no event shall the entering into of an agreement or the consummation of any sale of any Upstream Assets, in and of itself, by Parent, Merger Sub Two, Merger Sub Three, the Company, New EP or Merger Sub One be a condition to any of Parent s, Merger Sub Two s or Merger Sub Three s obligations under this Agreement.

SECTION 5.17. Employee Information and Consultation. The Company, its Subsidiaries and each of its and their Affiliates, as applicable, shall inform and/or consult with, as applicable, all labor unions, labor organizations, works councils and other employee representative bodies with respect to the terms of any Company Collective Bargaining Agreement or applicable Laws in connection with this Agreement and the

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transactions, and shall take all other necessary actions in connection with employees covered thereby as may be required pursuant to applicable Laws.

SECTION 5.18. Listing. Parent shall use its reasonable best efforts to cause the shares of Parent Class P Stock and the Parent Class P Warrants to be issued pursuant to and in accordance with this Agreement (including the Parent Class P Stock issuable upon exercise of the Parent Class P Warrants) to be approved for listing (subject, if applicable, to notice of issuance) for trading on the NYSE prior to the Closing; provided, that if the NYSE will not approve the listing of the Parent Class P Warrants on the NYSE, then Parent shall use its reasonable best efforts to cause such Parent Class P Warrants to be approved for listing (subject, if applicable, to notice of issuance) on either (x) NASDAQ or (y) such other exchange(s), electronic trading networks or other suitable trading platforms as are reasonably agreed to by Parent and the Company.

SECTION 5.19. Approvals. Other than the Parent Stockholder Approval and Company Stockholder Approval, each of Parent, Merger Sub Two, Merger Sub Three, the Company, Merger Sub One and New EP agree to obtain all requisite board of director approval(s), stockholder approval(s) and member approval(s), to the extent not already obtained prior to the date of this Agreement, required to be obtained to consummate the First Merger, Second Merger, Third Merger and LLC Conversion.

ARTICLE VI

Conditions Precedent

SECTION 6.1. Conditions to Each Party s Obligation to Effect the Transactions. The respective obligations of each party hereto to effect the Second Merger shall be subject to the satisfaction (or waiver, if permissible under applicable Law) on or prior to the Closing Date of the following conditions:

(a) Company Stockholder Approval. The Company Stockholder Approval shall have been obtained in accordance with applicable Law and the certificate of incorporation and by-laws of the Company;

(b) Regulatory Approval. Any waiting period applicable to the Transactions under the HSR Act shall have been terminated or shall have expired;

(c) No Injunctions or Restraints. No Law, injunction, judgment or ruling enacted, promulgated, issued, entered, amended or enforced by any Governmental Authority (collectively, Restraints) shall be in effect enjoining, restraining, preventing or prohibiting consummation of the Transactions or making the consummation of the Transactions illegal;

(d) Form S-4. The Form S-4 shall have become effective under the Securities Act and no stop order suspending the effectiveness of the Form S-4 shall have been issued and no proceedings for that purpose shall have been initiated or threatened by the SEC; and

(e) Tax Opinion. The Company shall have received from Wachtell, Lipton, Rosen & Katz, tax counsel to the Company, (i) at the First Effective Time, a written opinion dated as of the date of the First Merger to the effect that, on the basis of facts, representations and assumptions set forth or referred to in such opinion, the First Merger and the LLC Conversion, taken together, will qualify for United States federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code, and (ii) a written opinion dated as of the Closing Date to the effect that, on the basis of facts, representations and assumptions set forth or referred to in such opinion, the Second Merger and the Third Merger, taken together, will qualify for United States federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code. In rendering such opinions, Wachtell, Lipton, Rosen & Katz may rely upon representations and covenants contained in the

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certificates of the Company, New EP, Parent, Merger Sub One, Merger Sub Two and Merger Sub Three referred to in Section 5.11 and upon representations that Wachtell, Lipton, Rosen & Katz reasonably deems relevant.

SECTION 6.2. Conditions to Obligations of Parent, Merger Sub Two and Merger Sub Three. The obligations of Parent, Merger Sub Two and Merger Sub Three to effect the Second Merger are further subject to the satisfaction (or waiver, if permissible under applicable Law) on or prior to the Closing Date of the following conditions:

(a) Representations and Warranties. (i) The representations and warranties of the Company contained in Section 3.6(a), Section 3.6(b) and Section 3.10(b), shall be true and correct in all respects, in each case both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (ii) the representations and warranties of the Company contained in Section 3.3(a) and Section 3.3(d), shall be true and correct in all respects, other than as would not materially delay or prevent the Closing, in each case both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (iii) the representations and warranties of the Company contained in Section 3.2(a) shall be true and correct in all respects, other than immaterial misstatements or omissions, both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); and (iv) all other representations and warranties of the Company set forth herein shall be true and correct both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except, in the case of this clause (iv), where the failure of such representations and warranties to not be so true and correct (without giving effect to any limitation as to materiality or Company Material Adverse Effect set forth therein) does not have, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Parent shall have received a certificate signed on behalf of the Company by an executive officer of the Company to such effect.

(b) Performance of Obligations of the Company. The Company, New EP and Merger Sub One shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and Parent shall have received a certificate signed on behalf of the Company by an executive officer of the Company to such effect.

(c) (A) The Company shall deliver to Parent, no earlier than thirty (30) days prior to the Closing Date and no later than ten (10) days prior to the Closing Date, a certification from an authorized officer of the Company setting forth the Company s then current good faith estimate of the Company s net operating loss carryforwards for federal income tax purposes as of January 1, 2012, computed in the manner, and taking into account the assumptions, set forth in clauses (i) and (iii) of the representation contained in Section 3.10(c) (such estimate, the Closing Estimated NOL), and (B) there shall not have been an NOL MAE in respect of the Closing Estimated NOL as compared to the Signing Estimated NOL.

For purposes of this Agreement, an NOL MAE shall mean a reduction in the Company s good faith estimate of the Company s net operating loss carryforwards for federal income tax purposes as of January 1, 2012 to an amount less than $2,600,000,000, without taking into account any such reduction (i) resulting from a change in the relevant Tax law as in effect as of the date of this Agreement, (ii) resulting from an increase of the taxable income of the Company (before giving effect to any deduction of net operating loss carryforwards and any bonus depreciation deductions) for the year ending December 31, 2011 in excess of the amount set forth on Section 3.10(c) of the Company Disclosure Schedule, or (iii) to the extent that such reduction gives rise to a current deduction in the next succeeding taxable year after the taxable year ending December 31, 2011.

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SECTION 6.3. Conditions to Obligation of the Company, New EP and Merger Sub One. The obligation of the Company, New EP and Merger Sub One to effect the Second Merger is further subject to the satisfaction (or waiver, if permissible under applicable Law) on or prior to the Closing Date of the following conditions:

(a) Representations and Warranties. (i) The representations and warranties of Parent contained in Section 4.6(a) and Section 4.6(b) shall be true and correct in all respects, in each case both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (ii) the representations and warranties of Parent contained in Section 4.3(a) and Section 4.3(d) shall be true and correct in all respects, other than as would not materially delay or prevent the Closing, in each case both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (iii) the representations and warranties of Parent contained in Section 4.2(a) shall be true and correct in all respects, other than immaterial misstatements or omissions, both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); and (iv) all other representations and warranties of Parent set forth herein shall be true and correct both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except, in the case of this clause (iv), where the failure of such representations and warranties to not be so true and correct (without giving effect to any limitation as to materiality or Parent Material Adverse Effect set forth therein) does not have, and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. The Company shall have received a certificate signed on behalf of Parent by an executive officer of Parent to such effect.

(b) Performance of Obligations of Parent, Merger Sub Two and Merger Sub Three. Parent, Merger Sub Two and Merger Sub Three shall have performed in all material respects all obligations required to be performed by them under this Agreement at or prior to the Closing Date, and the Company shall have received a certificate signed on behalf of Parent by an executive officer of Parent to such effect.

(c) Parent Stockholder Approval. The Parent Stockholder Approval shall have been obtained in accordance with the requirements of the NYSE.

(d) Stock and Warrant Listing. (i) The shares of Parent Class P Stock deliverable to the stockholders of the Company as contemplated by this Agreement shall have been approved for listing on the NYSE, subject to official notice of issuance and (ii) the Parent Class P Warrants deliverable to the stockholders of the Company as contemplated by this Agreement shall have been approved for listing (subject, if applicable, to notice of issuance) on either (x) the NYSE, (y) NASDAQ or (z) such other exchange(s), electronic trading networks or other suitable trading platforms as are reasonably agreed to by Parent and the Company.

SECTION 6.4. Frustration of Closing Conditions. None of the Company, Parent, New EP, Merger Sub One, Merger Sub Two or Merger Sub Three may rely on the failure of any condition set forth in Section 6.1, 6.2 or 6.3, as the case may be, to be satisfied if such failure was caused by such party s failure to use its best efforts to consummate the Second Merger and the other Transactions, as required by and subject to Section 5.4.

ARTICLE VII

Termination

SECTION 7.1. Termination. This Agreement may be terminated and the Transactions abandoned at any time prior to the Second Effective Time:

(a) by the mutual written consent of the Company and Parent duly authorized by each of their respective Boards of Directors.

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(b) by either of the Company or Parent:

(i) if the Second Merger shall not have been consummated on or before June 30, 2012 (the "Walk-Away Date"); provided, however, that if, as of such date, the condition set forth in Section 6.1(b) or Section 6.1(c) shall not have been satisfied or duly waived by all parties entitled to the benefit of such condition, either the Company or Parent may, by written notice delivered to the other party, elect to extend the Walk-Away Date to December 31, 2012 (the "Extended Walk-Away Date"); provided, further, that the right to terminate this Agreement under this Section 7.1(b)(i) shall not be available (x) to a party if the inability to satisfy such condition was due to the failure of such party to perform any of its obligations under this Agreement or (y) to a party if the other party has filed (and is then pursuing) an action seeking specific performance as permitted by Section 8.8 or (z) to the Company if Parent or Merger Sub is pursuing an action in good faith to enforce, including against anticipatory breach, the obligations of the lenders to fund the Debt Financing under the Debt Commitment Letters or the definitive documents relating to the Debt Financing.

(ii) if any Restraint having the effect set forth in Section 6.1(c) shall be in effect and shall have become final and nonappealable; provided, however, that the right to terminate this Agreement under this Section 7.1(b)(ii) shall not be available to a party if such Restraint was due to the failure of such party to perform any of its obligations under this Agreement; or

(iii) if the Company Stockholders Meeting shall have concluded and the Company Stockholder Approval shall not have been obtained.

(c) by Parent:

(i) if an Adverse Recommendation Change shall have occurred;

(ii) prior to the receipt of the Company Stockholder Approval, if the Company shall be in Willful Breach of its obligations pursuant to the first two sentences of Section 5.1(b) or Section 5.3(a) through Section 5.3(d), other than in the case where (w) such Willful Breach is a result of an isolated action by a Person that is a Representative of the Company (other than a director or officer of the Company), (x) such Willful Breach was not caused by, or within the Knowledge of, the Company, (y) the Company takes appropriate actions to remedy such Willful Breach upon discovery thereof and (z) Parent is not significantly harmed as a result thereof; or

(iii) if the Company shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement (or if any of the representations or warranties of the Company set forth in this Agreement shall fail to be true), which breach or failure (A) would (if it occurred or was continuing as of the Closing Date) give rise to the failure of a condition set forth in Section 6.2(a) or (b) and (B) is incapable of being cured, or is not cured, by the Company within thirty (30) days following receipt of written notice from Parent of such breach or failure; provided, that Parent shall not have the right to terminate this Agreement pursuant to this Section 7.1(c)(iii) if Parent is then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement.

(d) by the Company:

(i) prior to the receipt of the Parent Stockholder Approval, if Parent shall be in Willful Breach of its obligations pursuant to Section 5.1(c);

(ii) if Parent shall have breached or failed to perform any of its representations, warranties, covenants or agreements set forth in this Agreement (or if any of the representations or warranties of Parent set forth in this Agreement shall fail to be true), which breach or failure (A) would (if it occurred or was continuing as of the Closing Date) give rise to the failure of a condition set forth in Section 6.3(a) or (b) and (B) is incapable of being cured, or is not cured, by Parent within thirty (30) days following receipt of written notice from the Company of such breach or failure; provided, that the Company shall not have the right to

terminate this Agreement pursuant to this Section 7.1(d)(ii) if the Company is then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement; or

(iii) at any time prior to the time the Company Stockholder Approval is obtained, if (i) the Company Board authorizes the Company, subject to complying with the terms of this Agreement, including Section 5.3, to enter into one or more Acquisition Agreements with respect to a Superior Proposal, (ii) immediately prior to or concurrently with the termination of this Agreement the Company, subject to complying with the terms of this Agreement, including Section 5.3, enters into one or more Acquisition Agreements with respect to a Superior Proposal and (iii) the Company immediately prior to or concurrently with such termination pays to Parent in immediately available funds any fees required to be paid pursuant to Section 7.3.

SECTION 7.2. Effect of Termination. In the event of the termination of this Agreement as provided in Section 7.1, written notice thereof shall be given to the other party or parties, specifying the provision of this Agreement pursuant to which such termination is made, and this Agreement shall forthwith become null and void (other than the provisions of the first sentence of Section 3.19, Sections 5.8, 5.10, 7.2 and 7.3, and Article VIII, and Parent s indemnification obligations set forth in Section 5.14 and Section 5.16, all of which shall survive termination of this Agreement), and there shall be no liability on the part of Parent, Merger Sub Two, Merger Sub Three, New EP, Merger Sub One or the Company or their respective directors, officers and Affiliates, except (i) the Company and/or Parent may have liability as provided in Section 7.3, and (ii) nothing shall relieve any party hereto from any liability for any failure to consummate the Transactions when required pursuant to this Agreement (it being understood that the failure of Parent, Merger Sub Two or Merger Sub Three to receive the proceeds of the Debt Financing or of any alternative financing, or the failure to receive the Parent Stockholder Approval, shall not relieve Parent, Merger Sub Two or Merger Sub Three from any such liability) or any party from liability for fraud or a Willful Breach of any covenant or other agreement contained in this Agreement.

SECTION 7.3. Fees and Expenses.

(a) In the event that this Agreement is terminated pursuant to Section 7.1(b)(iii), then the Company shall pay to Parent on the date of such termination, (x) all documented, out of pocket expenses (including financing expenses) not to exceed $20,000,000 in the aggregate plus (y) any documented commitment, underwriting, extension, ticking, structuring, fronting, duration, upfront fees or similar fees required to be paid under the Debt Commitment Letters, any fee letters related thereto or the definitive documents relating to the Debt Financing on or prior to such termination (or notwithstanding such termination) (Parent Expenses), payable by wire transfer of same day funds.

(b) In the event that (A) a Takeover Proposal shall have been made known to the Company or shall have been made directly to its stockholders generally or any Person shall have publicly announced an intention to make a Takeover Proposal which proposal shall not have been withdrawn prior to the date of the Company Stockholder Meeting (or if the Company Stockholder Meeting shall not have occurred, prior to the termination of this Agreement pursuant to Section 7.1(b)(i)) and thereafter, (B) this Agreement is terminated by the Company or Parent pursuant to Section 7.1(b)(iii), and (C) the Company enters into a definitive agreement with respect to, or consummates a Takeover Proposal within twelve (12) months of the date this Agreement is terminated, then the Company shall pay to Parent a termination fee equal to $650,000,000 (the Termination Fee) less any amount of Parent Expenses previously paid, by wire transfer of same day funds, upon the earlier of the public announcement of the Company s entry into any such agreement or the consummation of any such transaction. For purposes of this Section 7.3(b), the term Takeover Proposal shall have meaning assigned to such term in Section 5.3(f), except that the references to 20% or more shall be deemed to be references to more than 50% .

(c) In the event this Agreement is terminated by Parent pursuant to Section 7.1(c)(i) or Section 7.1(c)(ii), then the Company shall pay to Parent, within two (2) business days after the date of termination, the Termination Fee, payable by wire transfer of same day funds.

(d) In the event this Agreement is terminated by the Company pursuant to Section 7.1(d)(iii), then the Company shall pay to Parent, immediately prior to or concurrently with such termination, the Termination Fee, payable by wire transfer of same day funds.

(e) In the event that the Company shall fail to pay the Termination Fee and/or the Parent Expenses required pursuant to this Section 7.3 when due, such fee and/or expenses, as the case may be, shall accrue interest for the period commencing on the date such fee and/or expenses, as the case may be, became past due, at a rate equal to the legal rate of interest provided for in Section 2301 of Title 6 of the Delaware Code. In addition, if the Company shall fail to pay the Termination Fee and/or the Parent Expenses, as the case may be, when due, the Company shall also pay to Parent all of Parent s costs and expenses (including attorneys fees) in connection with efforts to collect such fee and/or expenses, as the case may be. The Company acknowledges that the provisions of this Section 7.3 are an integral part of the Transactions and that, without these agreements, Parent would not enter into this Agreement. The parties agree that in the event the Company pays the Termination Fee to Parent, the Company shall have no further liability to Parent, Merger Sub Two or Merger Sub Three and that in no event shall the Company be required to pay the Termination Fee on more than one occasion; provided, that, nothing contained herein shall relieve the Company from liability for fraud or a Willful Breach of any covenant or other agreement contained in this Agreement. The parties further agree that in the event the Company pays the Parent Expenses to Parent, the Company shall have no further liability to Parent, Merger Sub Two or Merger Sub Three except solely in those circumstances set forth in Section 7.3 when the Termination Fee is payable and then any such further liability shall be limited to an amount equal to the Termination Fee less the Parent Expenses previously paid; provided, that, nothing contained herein shall relieve the Company from liability for fraud or a Willful Breach of any covenant or other agreement contained in this Agreement.

ARTICLE VIII

Miscellaneous

SECTION 8.1. No Survival, Etc. Except as otherwise provided in this Agreement, the representations, warranties and agreements of each party hereto shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any other party hereto, any Person controlling any such party or any of their officers, directors or representatives, whether prior to or after the execution of this Agreement, and no information provided or made available shall be deemed to be disclosed in this Agreement or in the Company Disclosure Schedule, except to the extent actually set forth herein or therein. The representations, warranties and agreements in this Agreement shall terminate at the Second Effective Time or, except as otherwise provided in Section 7.2, upon the termination of this Agreement pursuant to Section 7.1, as the case may be, except that the agreements set forth in Article II and Sections 5.8 and 5.10 and any other agreement in this Agreement which contemplates performance after the Second Effective Time shall survive the Second Effective Time indefinitely and those set forth in Sections 5.10, 7.2 and 7.3 and this Article VIII shall survive termination indefinitely. The Confidentiality Agreement shall (i) survive termination of this Agreement in accordance with its terms, except to the extent that any provision therein with respect to solicitation or other public statements is superseded by the express provisions of this Agreement, and (ii) terminate as of the Second Effective Time.

SECTION 8.2. Amendment or Supplement. At any time prior to the Second Effective Time, this Agreement may be amended or supplemented in any and all respects, whether before or after receipt of the Company Stockholder Approval or Parent Stockholder Approval, by written agreement of the parties hereto, by action taken or authorized by their respective Boards of Directors; provided, however, that following approval of the Transactions by the stockholders of the Company or the stockholders of Parent, there shall be no amendment or change to the provisions of this Agreement which by Law would require further approval by the stockholders of the Company or by the stockholders of Parent without such approval.

SECTION 8.3. Extension of Time, Waiver, Etc. At any time prior to the Second Effective Time, any party may, subject to applicable Law, (a) waive any inaccuracies in the representations and warranties of any other

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party hereto, (b) extend the time for the performance of any of the obligations or acts of any other party hereto or (c) waive compliance by the other party with any of the agreements contained herein or, except as otherwise provided herein, waive any of such party s conditions. Notwithstanding the foregoing, no failure or delay by the Company, New EP, Merger Sub One, Parent, Merger Sub Two or Merger Sub Three in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

SECTION 8.4. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of Law or otherwise, by any of the parties without the prior written consent of the other parties, except that Merger Sub Two or Merger Sub Three may assign, in its sole discretion, any of or all its rights, interests and obligations under this Agreement to any direct, wholly owned Subsidiary of Parent, but no such assignment shall relieve Merger Sub Two or Merger Sub Three of any of its obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Any purported assignment not permitted under this Section shall be null and void.

SECTION 8.5. Counterparts. This Agreement may be executed in counterparts (each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement) and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

SECTION 8.6. Entire Agreement; No Third-Party Beneficiaries. This Agreement, the Company Disclosure Schedule, the Parent Disclosure Schedule, the Voting Agreement and the Confidentiality Agreement (a) constitute the entire agreement, and supersede all other prior agreements and understandings, both written and oral, among the parties, or any of them, with respect to the subject matter of this Agreement and thereof and (b) shall not confer upon any Person other than the parties hereto any rights (including third party beneficiary rights or otherwise) or remedies hereunder, except for in the case of clause (b), (i) the provisions of Section 5.8 and Section 8.13, (ii) with respect to the Financing Sources (who shall be third party beneficiaries thereof and without whose consent such Sections may not be amended in any way adverse to the Financing Sources), Sections 8.6 and 8.7 and (iii) the right of the Company s stockholders to receive the Merger Consideration after the Closing (a claim by the stockholders with respect to which may not be made unless and until the Closing shall have occurred) and the right of holders of Company Stock Options, Restricted Shares, RSUs and other equity awards to receive the Merger Consideration to which they are entitled pursuant to this Agreement after the Closing (a claim by such holders with respect to which may not be made unless and until the Closing shall have occurred). Each party agrees and acknowledges that in the event of a party s Willful Breach or failure to consummate the Transactions when required pursuant to this Agreement or fraud (such party, the Alleged Breaching Party), the other party shall have the right to pursue all legally available damages against such Alleged Breaching Party, and the Alleged Breaching Party shall have the right to assert all legally available defenses.

SECTION 8.7. Governing Law; Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, applicable to contracts executed in and to be performed entirely within that State.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appeal to an appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the agreements delivered in connection herewith or the transactions contemplated hereby or thereby or for recognition or

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enforcement of any judgment relating thereto, and each of the parties hereby irrevocably and unconditionally (i) agrees not to commence any such action or proceeding except in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appellate court from any thereof, (ii) agrees that any claim in respect of any such action or proceeding shall be heard and determined in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appellate court from any thereof, (iii) waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any such action or proceeding in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appellate court from any thereof, (iv) waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appellate court from any thereof, (v) waives, to the fullest extent permitted by Law, any claim that it is not personally subject to the jurisdiction of the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appellate court from any thereof for any reason other than the failure to serve in accordance with this Agreement, (vi) waives, to the fullest extent permitted by Law, any claim that it or its property is exempt or immune from jurisdiction of the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and (vii) waives, to the fullest extent permitted by Law, any claim that this Agreement, or the subject mater of this Agreement, may not be enforced in or by such courts. The Company agrees, on behalf of itself and its Affiliates, stockholders and Representatives (collectively, the Company Related Parties), that the Financing Sources and their Affiliates, stockholders and Representatives (i) shall be subject to no liability or claims by the Company Related Parties arising out of or relating to this Agreement, the Debt Financing or the transactions contemplated hereby or in connection with the Debt Financing, or the performance of services by the Financing Sources or their Affiliates or Representatives with respect to the foregoing, (ii) shall, without limiting the provisions of clause (i), be beneficiaries of all limitations on remedies and damages in this Agreement that apply to Parent and (iii) are express third party beneficiaries of this Section (which may not be changed as to any Financing Source without its prior written consent). Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 8.9. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Law.

(c) The provisions of Section 8.7(a) and (b) supersede any provisions in the Confidentiality Agreement with respect to the matters addressed in such Sections.

(d) EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

SECTION 8.8. Specific Enforcement.

(a) The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and it is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and

provisions of this Agreement (including the parties obligations under Sections 5.4, 5.14 and every other provision of this Agreement and to consummate the Transactions and Parent s and Merger Sub Two s obligation to pay the aggregate Merger Consideration and enforce their rights under the Debt Commitment Letters), in each case, in accordance with this Section 8.8 in the Delaware Court of Chancery or any federal court sitting in the State of Delaware, this being in addition to any other remedy to which they are entitled at law or in equity; provided, however, that the Company shall be entitled to seek specific performance to cause Parent, Merger Sub Two or Merger Sub Three to consummate the Transactions, including to effect the Closing in accordance with Section 1.2, on the terms and subject to the conditions in this Agreement, if, but only if: (A) all conditions in Sections 6.1 and 6.2 (other than those conditions that by their nature are to be satisfied at the Closing) have been satisfied or are then capable of being satisfied on or prior to the Closing, (B) Parent, Merger Sub Two and Merger Sub Three fail to complete the Closing by the date the Closing is required to have occurred pursuant to Section 1.2, (C) the Debt Financing has been funded or will be funded at the Closing and (D) the Company has irrevocably confirmed that if specific performance is granted and the Debt Financing is funded, then the Closing will occur. Notwithstanding anything herein to the contrary, it is hereby acknowledged and agreed that the Company shall be entitled to seek specific performance to cause Parent, Merger Sub Two and Merger Sub Three to enforce, including against anticipatory breach, the obligations of the lenders to fund the Debt Financing under the Debt Commitment Letters or definitive agreements relating thereto, but only in the event that each of the following has been satisfied: (i) all of the conditions set forth in Sections 6.1 and 6.2 have been satisfied or are then capable of being satisfied prior to the Closing (other than those conditions that by their nature are to be satisfied at the Closing), and Parent, Merger Sub Two and Merger Sub Three fail to complete the Closing by the date the Closing is required to have occurred pursuant to Section 1.2 and (ii) all of the conditions to the consummation of the financing provided by the Debt Commitment Letters (or, if alternative financing is being used in accordance with Section 5.14, pursuant to the commitments with respect thereto) have been satisfied (other than those conditions that by their nature are to be satisfied at the Closing). Nothing in the immediately preceding sentence shall be construed to relieve Parent, Merger Sub Two or Merger Sub Three of any of their respective obligations, or to otherwise limit or modify any of Parent s, Merger Sub Two s or Merger Sub Three s obligations, under Section 5.14, it being acknowledged and agreed that in the event that any of the Financing Source(s) initiate litigation against Parent, Merger Sub Two or Merger Sub Three with respect to the Debt Financing, or advise Parent, Merger Sub Two or Merger Sub Three that they intend not to proceed with the Debt Financing in violation of the terms of the Debt Commitment Letters, the Company shall be entitled to specific performance to require Parent, Merger Sub Two and Merger Sub Three to take enforcement action, including seeking specific performance, to cause such Financing Sources to provide such Debt Financing, subject to the satisfaction of the conditions set forth in clauses (i) and (ii) of the immediately preceding sentence. Each of the parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief as provided herein on the basis that (x) either party has an adequate remedy at law or (y) an award of specific performance is not an appropriate remedy for any reason at law or equity. Each party further agrees that no party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 8.8, and each party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

SECTION 8.9. Notices. All notices, requests and other communications to any party hereunder shall be in writing and shall be deemed given if delivered personally, facsimiled (which is confirmed) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses:

If to Parent, Merger Sub Two or Merger Sub Three, to:

Kinder Morgan, Inc.

500 Dallas St., Suite 1000

Houston, TX 77002

Attention: General Counsel

Facsimile: (713) 495-2737

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with a copy (which shall not constitute notice) to:

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, New York 10153

Attention: Thomas A. Roberts

Facsimile: (212) 310-8007

and

Weil, Gotshal & Manges LLP

200 Crescent Court, Suite 300

Dallas, Texas 75201

Attention: R. Jay Tabor

Facsimile: (214) 746-7777

If to the Company, New EP or Merger Sub One to:

El Paso Corporation

1001 Louisiana Street

Houston, Texas 77002

Attention: General Counsel

Facsimile: (713) 420-5043

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz

51 West 52nd Street

New York, New York 10019

Attention: Daniel A. Neff

David A. Katz

Facsimile: (212) 403-2309

or such other address or facsimile number as such party may hereafter specify by like notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5 P.M. in the place of receipt and such day is a business day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding business day in the place of receipt.

SECTION 8.10. Severability. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

SECTION 8.11. Definitions.

(a) As used in this Agreement, the following terms have the meanings ascribed thereto below:

364-Day Credit Agreement means the First Amended and Restated 364-Day Credit Agreement dated as of December 29, 2009, among El Paso Exploration & Production Company, El Paso E&P Company, L.P., Coronado Energy E&P Company, L.L.C., and El Paso E&P Zapata, L.P. as Borrowers, the Bank of Nova Scotia,

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bank of Montreal, BMO Capital Markets and other parties thereto, as amended by that certain Consent and First Amendment dated December 28, 2010 and as further amended, supplemented or modified.

Affiliate means, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person. For this purpose, control (including, with its correlative meanings, controlled by and under common control with) means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

business day means a day except a Saturday, a Sunday or other day on which the SEC or banks in the City of New York are authorized or required by Law to be closed.

Company ESPP means the Everest Employee Stock Purchase Plan (as amended and restated).

Company Joint Ventures means Ruby Pipeline, L.L.C., Gulf LNG Holdings Group, L.L.C. and El Paso Midstream Investment Company, LLC.

Company Stock Option means an option or similar right to purchase Company Common Stock, including any option granted under any Company Stock Plans, but excluding an option or similar right to purchase Company Common Stock granted under the Company ESPP.

Company Stock Plans means any plans of the Company providing for the compensatory grant of awards of Company Common Stock or awards denominated, in whole or in part, in Company Common Stock, including the El Paso Corporation 1995 Compensation Plan for Non-Employee Directors, El Paso Corporation 2001 Stock Option Plan for Non-Employee Directors, El Paso Corporation 1999 Stock Option Plan for Non-Employee Directors, El Paso Corporation 2001 Omnibus Incentive Compensation Plan, El Paso Corporation Strategic Stock Plan, El Paso Corporation Omnibus Plan for Management Employees, El Paso Corporation 2005 Compensation Plan for Non-Employee Directors, and El Paso Corporation 2005 Omnibus Incentive Compensation Plan,, but excluding the Company ESPP.

Derivative means a derivative transaction within the meaning of SFAS No. 133, including any swap, option, warrant, forward purchase or sale, future, cap, floor, collar, or other similar transaction (including any option with respect to any of the foregoing) or combination thereof, or debt or equity instrument imbedding any of the same, and any related credit support, collateral, or similar arrangements relating to the same.

E&P BNP Paribas Credit Agreement means the Third Amended and Restated Credit Agreement, dated as of June 2, 2011, among El Paso Exploration & Production Company and El Paso E&P Company, L.P., as Borrowers, BNP Paribas, BNP Paribas Securities Corp., Scotia Capital, UBS Securities LLC, BMO Capital Markets, SG Americas Securities, LLC, UniCredit Bank AG, New York Branch, UBS Securities LLC, The Bank of Montreal, Société Générale, and the other parties thereto, as amended, supplemented or otherwise modified.

ERISA Affiliate means, with respect to any Person, any trade or business, whether or not incorporated, that, together with such Person, would be deemed, or has in the last six (6) years been deemed, a single employer for purpose of Section 414(b), (c) or (m) of the Code.

GAAP means generally accepted accounting principles in the United States.

Governmental Authority means any government, court, arbitrator, regulatory or administrative agency, commission or authority or other governmental instrumentality, federal, state or local, domestic, foreign or multinational.

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HSR Act means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

Knowledge (i) when used with respect to the Company, means the actual knowledge after due inquiry within the Company and its Subsidiaries of those individuals listed on Section 8.11(a) of the Company Disclosure Schedule (provided, however, that, with respect to Section 3.8(c) only, Knowledge means, in addition to the foregoing, knowing or knowledge, as such terms are defined in 15 U.S.C. §§ 78dd-1, -2, and -3) and (ii) when used with respect to Parent, Merger Sub Two or Merger Sub Three, means the actual knowledge after due inquiry within Parent and its Subsidiaries of those individuals listed on Section 8.11(a) of the Parent Disclosure Schedule.

Material Adverse Effect means, when used with respect to a Person, any change, effect, event or occurrence that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on the business, financial condition or operations of such Person and its Subsidiaries, taken as a whole; provided, however, that any changes, effects, events or occurrences will be deemed not to constitute a Material Adverse Effect to the extent resulting from (i) changes, effects, events or occurrences generally affecting the economy, financial or securities markets or political, legislative or regulatory conditions or changes in the industries in which such Person operates; (ii) the announcement or pendency of this Agreement or the transactions contemplated hereby; (iii) any change in the market price or trading volume of the shares of common stock of such Person (it being understood that the facts and circumstances giving rise to such change may be deemed to constitute, and may be taken into account in determining whether there has been or would reasonably be expected to be, a Material Adverse Effect if such facts and circumstances are not otherwise described in clauses (i), (ii) or (iv) through (ix) of this definition); (iv) acts of war or terrorism (or the escalation of the foregoing) or natural disasters or other force majeure events; (v) changes in any Laws or regulations applicable to such Person or applicable accounting regulations or principles or the interpretation thereof; (vi) the performance of this Agreement and the Transactions, including compliance with covenants set forth herein (excluding such Person operating in the ordinary course of business consistent with past practice; (vii) any legal proceedings commenced by or involving any current or former stockholders of such Person (on their own or on behalf of such Person) arising out of or related to this Agreement or the Transactions; (viii) any failure by such Person to meet any internal or analyst projections or forecasts or estimates of revenues, earnings or other financial metrics for any period (it being understood that the facts and circumstances giving rise to such failure may be deemed to constitute, and may be taken into account in determining whether there has been or would reasonably be expected to be, a Material Adverse Effect if such facts and circumstances are not otherwise described in clauses (i) through (vii) of this definition), (ix) the effects on the Company s and its Subsidiaries business arising from employee departures that result from the announcement of the Transactions and (x) changes, effects, events or occurrences generally affecting the prices of oil, gas, natural gas, natural gas liquids or other commodities; provided, however, that changes, effects, events or occurrences referred to in clauses (i), (iv) and (v) above shall be considered for purposes of determining whether there has been or would reasonably be expected to be a Material Adverse Effect if and to the extent such state of affairs, changes, effects, events or occurrences has had or would reasonably be expected to have a disproportionate adverse effect on such Person and its Subsidiaries, as compared to other companies operating in the industries in which such Person and its Subsidiaries operate.

Material Upstream Asset Group means an Upstream Asset, designated by field or region having a present value, as shown on the Reserve Report of greater than, or equal to, $125,000,000, using a discount rate of ten percent (10%).

Parent Alternative Transaction means, any inquiry, proposal or offer from Person or group relating to any (A) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of assets of Parent and its Subsidiaries (including securities of Subsidiaries) equal to 20% or more of Parent s consolidated assets or to which 20% or more of Parent s revenues or earnings on a consolidated basis are attributable, (B) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of beneficial

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ownership (within the meaning of Section 13 under the Exchange Act) of 20% or more of any class of equity securities of Parent, (C) tender offer or exchange offer that if consummated would result in any Person or group (as defined in Section 13(d) of the Exchange Act) beneficially owning 20% or more of any class of equity securities of Parent or (D) merger, consolidation, share exchange, business combination, recapitalization, liquidation, dissolution or similar transaction involving Parent or any of its Subsidiaries which is structured to permit such Person or group to acquire beneficial ownership of at least 20% of Parent s consolidated assets or equity interests.

Parent Joint Ventures means Midcontinent Express Pipeline LLC, Rockies Express Pipeline LLC and Fayetteville Express Pipeline LLC.

Person means an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity, including a Governmental Authority.

Restricted Share means an award of restricted Company Common Stock granted under a Company Stock Plan.

Subsidiary when used with respect to any party, means any corporation, limited liability company, partnership, association, trust or other entity the accounts of which would be consolidated with those of such party in such party s consolidated financial statements if such financial statements were prepared in accordance with GAAP, as well as any other corporation, limited liability company, partnership, association, trust or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power (or, in the case of a partnership, more than 50% of the general partnership interests or, in the case of a limited liability company, the managing member) are, as of such date, owned by such party or one or more Subsidiaries of such party or by such party and one or more Subsidiaries of such party. For purposes of Article III, when used with respect to the Company, the term Subsidiary shall include the Company Joint Ventures. For purposes of Article III, when used with respect to Parent, the term Subsidiary shall include the Parent Joint Ventures. With respect to the Company, the term Subsidiary shall include Four Star Oil & Gas Company (other than for purposes of Section 3.10) and EPB. With respect to Parent, the term Subsidiary shall include Kinder Morgan Energy Partners, L.P.

Transactions refers collectively to (i) this Agreement, the First Step Merger Agreement, the Warrant Agreement and the transactions contemplated hereby and thereby, including the First Merger, the LLC Conversion, the Second Merger and the Third Merger and (ii) the Voting Agreement and the transactions contemplated thereby.

Unicredit Agreement means the Reimbursement Agreement dated April 28, 2011 between the Company and Unicredit Bank, AG, New York Branch (as amended, supplemented or modified).

Upstream Assets means assets of the Company s Exploration and Production Segment.

Waiver Credit Agreements means collectively, the E&P BNP Paribas Credit Agreement and the Unicredit Agreement or any substitute debt agreement relating thereto to the extent such agreement requires a waiver or consent in connection with the Transactions.

Willful Breach means (i) with respect to any breaches or failures to perform any of the covenants or other agreements contained in this Agreement, a material breach, or failure to perform, that is a consequence of an act or omission undertaken by the breaching party (or, in the case of Section 5.3 with respect to the Company, the consequence of an act or omission of a Representative or a Subsidiary of the Company) with the Knowledge that the taking of, or failure to take, such act would, or would be reasonably expected to, cause a material breach of this Agreement and (ii) the failure by any party to consummate the Transactions after all of the conditions set forth in Article VI have been satisfied or waived (by the party entitled to waive any such applicable conditions).

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SECTION 8.12. Interpretation.

(a) When a reference is made in this Agreement to an Article, a Section, Exhibit or Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words include , includes or including are used in this Agreement, they shall be deemed to be followed by the words without limitation . The words hereof , here and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

(b) The parties hereto have participated jointly in the negotiation and drafting of this Agreement with the assistance of counsel and other advisors and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement or interim drafts of this Agreement.

SECTION 8.13. Non-Recourse. No past, present or future director, officer, employee, incorporator, member, partner, stockholder, agent, attorney, representative or affiliate of any party hereto or of any of their respective affiliates shall have any liability (whether in contract or in tort) for any obligations or liabilities of such party arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby; provided, however, that nothing in this Section 8.13 shall limit any liability of the parties to this Agreement for breaches of the terms and conditions of this Agreement.

[*signature page follows*]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

KINDER MORGAN, INC.

By: /s/ Joseph Listengart
Name: Joseph Listengart
Title: Vice President

SHERPA MERGER SUB, INC.

By: /s/ Joseph Listengart
Name: Joseph Listengart
Title: Vice President

SHERPA ACQUISITION, LLC

By: /s/ Joseph Listengart
Name: Joseph Listengart
Title: Vice President

EL PASO CORPORATION

By: /s/ Douglas L. Foshee
Name: Douglas L. Foshee
Title: Chairman, President and Chief Executive Officer

SIRIUS HOLDINGS MERGER CORPORATION

By: /s/ John R. Sult
Name: John R. Sult
Title: Chief Executive Officer and President

SIRIUS MERGER CORPORATION

By: /s/ John R. Sult
Name: John R. Sult
Title: Chief Executive Officer and President

[SIGNATURE PAGE TO THE AGREEMENT AND PLAN OF MERGER]

Annex B

AGREEMENT AND PLAN OF MERGER

BY AND BETWEEN

EL PASO CORPORATION

AND

SIRIUS MERGER CORPORATION

This Agreement and Plan of Merger (this Agreement), dated as of October 16, 2011, is made by and among El Paso Corporation, a Delaware corporation (the Company), Sirius Merger Corporation, a Delaware corporation and indirect wholly owned subsidiary of the Company (Merger Sub One) (the Company and Merger Sub One, when referred to individually, each a Constituent Corporation and when referred to collectively, Constituent Corporations), and Sirius Holdings Merger Corporation, a Delaware corporation and a direct wholly owned subsidiary of the Company (New EP).

WHEREAS, the Company owns all the outstanding shares of stock of New EP.

WHEREAS, New EP owns all the outstanding shares of stock of Merger Sub One.

WHEREAS, there are no shares of preferred stock of the Company currently issued or outstanding.

WHEREAS, the Board of Directors of each of the Constituent Corporations has approved and declared it advisable and in the best interests of each of the Constituent Corporations and its respective stockholders that Merger Sub One be merged with and into the Company (hereinafter, in such capacity, sometimes referred to as the EP Surviving Company) as permitted by the Delaware General Corporation Law (the DGCL) under and pursuant to the terms hereinafter set forth (the First Merger).

WHEREAS, the Board of Directors of the Company has recommended that the stockholders of the Company approve and adopt this Agreement.

WHEREAS, the Board of Directors of Merger Sub One has recommended that the sole stockholder of Merger Sub One approve and adopt this Agreement.

WHEREAS, the First Merger is the first step in a series of transactions set forth in the Agreement and Plan of Merger, dated as of October 16, 2011, among Kinder Morgan, Inc., Sherpa Merger Sub, Inc., Sherpa Acquisition, LLC, New EP, Merger Sub One and the Company (the Second Step Merger Agreement).

WHEREAS, for federal income tax purposes, it is intended that the First Merger and the LLC Conversion (as such term is defined in the Second Step Merger Agreement), taken together, shall qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the Code) and that this Agreement constitutes, and is adopted as, a plan of reorganization for purposes of Sections 354 and 361 of the Code.

WHEREAS, capitalized terms used herein and not defined have the meanings assigned to such terms in the Second Step Merger Agreement.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained in this Agreement, the parties have agreed as follows:

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ARTICLE 1

PLAN OF MERGER

1.01 Plan Adopted. A plan of merger of each of the Constituent Corporations pursuant to the provisions of Section 251 of the DGCL is adopted as follows:

(a) The Merger. At the First Effective Time (as such term is defined in Section 1.02 of this Agreement), Merger Sub One shall be merged with and into the Company.

(b) Surviving Corporation. The surviving corporation in the First Merger shall be the Company.

(c) Effects of the First Merger. At the First Effective Time, the separate existence of Merger Sub One shall cease, and the EP Surviving Company shall succeed, without other transfer, to all the rights and property of Merger Sub One and shall be subject to all the debts and liabilities of Merger Sub One as provided in Section 259 of the DGCL.

(d) Merger Sub One Common Stock. At the First Effective Time, each share of common stock of Merger Sub One, par value $0.01 per share (the Merger Sub One Common Stock), issued and outstanding immediately prior to the First Effective Time shall be converted into and exchanged for one share of common stock, par value $3.00 per share, of the EP Surviving Company.

(e) Company Common Stock. At the First Effective Time, each share of common stock of the Company, par value $3.00 per share (the Company Common Stock), issued and outstanding immediately prior to the First Effective Time shall be converted into and exchanged for one fully paid and nonassessable share of common stock, par value $3.00 per share, of New EP.

(f) New EP Common Stock. Effective as of the First Effective Time, each share of common stock of New EP, par value $3.00 per share, owned by the Company shall be contributed to the capital of New EP.

(g) Company Stock Options, Restricted Shares, Company Performance RSUs and/or other securities of the Company. The Company shall take all actions as may be necessary so that at the First Effective Time, each Company Stock Option, Restricted Share, Company Performance RSU and other security of the Company (collectively, the Company Securities) shall, automatically and without any action on behalf of the holder thereof, be converted into a stock option, restricted share, performance restricted stock unit or other security, as the case may be, denominated in shares of common stock, par value $3.00 per share, of New EP, with each share of Company Common Stock subject to each such Company Security immediately prior to the First Effective Time converted into a share of common stock, par value $3.00 per share, of New EP. For the avoidance of doubt, all terms and conditions applicable to each such Company Security immediately prior to First Effective Time shall, except as provided in the immediately preceding sentence, remain in effect immediately after the First Effective Time. The conversion of Company Securities pursuant to this Section 1.01(f) shall occur in such manner so as to avoid the imposition of any penalty or other taxes under Section 409A of the Code. New EP shall remain subject to the obligations of the Company with respect to any such Company Security immediately after the First Effective Time. Following the First Effective Time and contingent upon the Second Effective Time (as such term as defined in the Second Step Merger Agreement), the Company Securities shall be treated in the manner set forth in Section 2.5 of the Second Step Merger Agreement.

1.02 Effective Time of the First Merger. The First Merger shall become effective at such time as is specified in the Certificate of Merger that is duly filed with the office of the Secretary of State of the State of Delaware or at such later time as is specified in the Certificate of Merger in

accordance with the DGCL and the Second Merger Agreement (the First Effective Time).

1.03 No Exchange of Stock Certificates is Required. Each outstanding certificate representing shares of Company Common Stock shall be deemed for all purposes, from and after the First Effective Time, to represent the same number of shares of Common Stock of New EP into which such shares of Company Common Stock

shall be converted and exchanged in the First Merger. Each outstanding certificate representing shares of Merger Sub One Common Stock shall be deemed for all purposes, from and after the First Effective Time, to represent the same number of shares of Common Stock of the EP Surviving Company into which such shares of Merger Sub One Common Stock shall be converted and exchanged in the First Merger. Holders of outstanding certificates representing shares of Company Common Stock or Merger Sub One Common Stock, as applicable, shall not be asked to surrender such certificates for cancellation. The registered owner on the books and records of the Company or Merger Sub One, as applicable, of all such outstanding certificates shall have and be entitled to exercise all voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock of New EP or the Common Stock of the EP Surviving Company, as applicable, represented by such outstanding certificates.

1.04 No Appraisal Rights. In accordance with Section 262 of the DGCL, no appraisal rights shall be available to the holders of shares of Company Common Stock or the shares of Merger Sub One Common Stock in connection with the First Merger.

1.05 Tax Consequences. For federal income tax purposes, the First Merger and the LLC Conversion, taken together, are intended to constitute a reorganization within the meaning of Section 368 of the Code.

1.06 Closing. Subject to and in accordance with the terms and conditions of this Agreement, the closing of the Merger shall take place as soon as reasonably practicable after satisfaction of the conditions precedent in Section 6.01 of this Agreement, at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York, 10019, unless another date or place is agreed in writing by the parties to this Agreement.

ARTICLE II

CERTIFICATE OF INCORPORATION AND BYLAWS; DIRECTORS AND OFFICERS

2.01 Certificate of Incorporation and Bylaws of EP Surviving Company. The Certificate of Incorporation and Bylaws of the Company shall be unaffected by the First Merger, and, the Certificate of Incorporation and Bylaws in effect immediately prior to the First Effective Time shall continue in effect as the Certificate of Incorporation and Bylaws of the EP Surviving Company, until amended or repealed in accordance with the provisions thereof and of applicable law.

2.02 Directors. At the First Effective Time, the directors of the Company in office immediately prior to the First Effective Time shall be the directors of the EP Surviving Company and shall continue to hold office until their successors are duly elected or appointed and qualified in the manner provided in the Certificate of Incorporation and Bylaws of the EP Surviving Company or as otherwise provided by law.

2.03 Officers. All persons who are officers of the Company immediately prior to the First Effective Time shall remain as officers of the EP Surviving Company until the Board of Directors of the EP Surviving Company shall otherwise determine. The Board of Directors of the EP Surviving Company may elect or appoint such additional officers as it may determine in accordance with the Certificate of Incorporation and Bylaws of the EP Surviving Company or as otherwise provided by law.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Merger Sub One as follows:

3.01 Organization, Standing, and Power. The Company is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has the corporate power and authority to own, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted.

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3.02 Capital Structure. The authorized capital stock of the Company is as set forth in Section 3.2(a) of the Second Step Merger Agreement.

3.03 Authority; Execution and Delivery; Enforceability.

(a) The Company has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the First Merger. The Company s execution and delivery of this Agreement and consummation of the First Merger have been duly authorized by all necessary corporate action on the part of the Company, subject to receipt of approval of the stockholders of the Company. The Company has duly executed and delivered this Agreement, and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, conservatorship, moratorium or similar laws affecting the enforcement of creditors rights generally and except that the availability of the equitable remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding may be brought).

(b) The Board of Directors of the Company has duly and unanimously adopted resolutions (i) approving, adopting and declaring advisable this Agreement; (ii) determining that entering into this Agreement is in the best interests of the Company and its stockholders; and (iii) recommending that the stockholders of the Company approve and adopt this Agreement.

(c) The only vote of holders of any class or series of capital stock of the Company necessary to approve and adopt this Agreement is the approval and adoption of this Agreement by the affirmative vote of the holders of at least a majority of the votes entitled to be cast by holders of the shares of Company Common Stock then outstanding (the Company Stockholder Approval).

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF MERGER SUB ONE

Merger Sub One represents and warrants to the Company as follows:

4.01 Organization, Standing, and Power. Merger Sub One is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized. Since the date of its incorporation, Merger Sub One has not carried on any business or conducted any operations other than the execution of this Agreement, the Second Step Merger Agreement, the performance of its obligations hereunder and thereunder and matters ancillary thereto.

4.02 Capitalization of Merger Sub One. The authorized capital stock of Merger Sub One consists of one thousand (1,000) shares of Merger Sub One Common Stock, all of which have been validly issued, are fully paid and nonassessable and are owned by New EP free and clear of any lien.

4.03 Authority; Execution and Delivery; Enforceability. Merger Sub One has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the First Merger. Merger Sub One s execution and delivery of this Agreement and consummation of the First Merger have been duly authorized by all necessary corporate action on the part of Merger Sub One, subject to the adoption of this Agreement by New EP, as sole stockholder of Merger Sub One. Merger Sub One has duly executed and delivered this Agreement, and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, receivership, conservatorship, moratorium or similar laws affecting the enforcement of creditors rights generally and except that the availability of the equitable remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding may be brought).

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ARTICLE V

GOVERNING LAW

5.01 Governing Law. This Agreement shall be governed by the laws of the State of Delaware without regard to principles of conflicts of law.

ARTICLE VI

CONDITIONS PRECEDENT

6.01 Conditions to Each Party s Obligation to Effect the First Merger. The respective obligation of each party to effect the First Merger is subject to the satisfaction or waiver (to the extent permitted therein) of the condition to closing set forth under Section 6.1(a) in the Second Step Merger Agreement.

ARTICLE VI

AMENDMENT AND TERMINATION

6.01 Amendment. To the fullest extent permitted by Delaware law, this Agreement may be amended by mutual consent of the Boards of Directors of the Constituent Corporations at any time prior to the First Effective Time, notwithstanding any approval of this Agreement by the stockholders of either or both of the Constituent Corporations.

6.02 Termination. To the fullest extent permitted by Delaware law, this Agreement may be terminated, and the First Merger herein provided for may be abandoned, by mutual consent of the Boards of Directors of the Constituent Corporations at any time prior to the First Effective Time, notwithstanding any approval of this Agreement by the stockholders of either or both of the Constituent Corporations.

ARTICLE VII

GENERAL PROVISIONS

7.01 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

7.02 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party.

7.03 Entire Agreement; No Third-Party Beneficiaries. This Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the First Merger, and is not intended to confer upon any person other than the parties any rights or remedies.

7.04 Assignment. This Agreement shall not be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

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IN WITNESS WHEREOF, this Agreement, having been first duly approved by the respective Boards of Directors of each Constituent Corporation and New EP, is hereby executed on behalf of each Constituent Corporation and of New EP by a duly authorized officer thereof as of the date specified above.

EL PASO CORPORATION

By: /s/ Douglas L. Foshee
Name: Douglas L. Foshee
Title: Chairman, President and

Chief Executive Officer

SIRIUS MERGER CORPORATION

By: /s/ John R. Sult
Name: John R. Sult
Title: Chief Executive Officer and President

SIRIUS HOLDINGS MERGER CORPORATION

By: /s/ John R. Sult
Name: John R. Sult
Title: Chief Executive Officer and President

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Annex C

VOTING AGREEMENT

This VOTING AGREEMENT (this Agreement), is dated as of October 16, 2011, by and among El Paso Corporation (the Company) and the stockholders of Kinder Morgan Inc. (Buyer) listed on the signature pages hereto (each a Stockholder and collectively, the Stockholders).

W I T N E S S E T H:

WHEREAS, the Company, Sherpa Merger Sub, Inc., a Delaware corporation, Sherpa Acquisition, LLC, a Delaware limited liability company, Sirius Merger Corporation, a Delaware corporation, Sirius Holdings Merger Corporation, a Delaware corporation, and Buyer entered into an Agreement and Plan of Merger, dated as of October 16, 2011 (the Merger Agreement), providing for, among other things, the acquisition of the Company by Kinder Morgan through the consummation of the Transactions (as defined in the Merger Agreement), the result of which will include the Company being a wholly owned subsidiary of Buyer (capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Merger Agreement as of the date hereof); and

WHEREAS, as of the date hereof, each Stockholder is the record and beneficial owner of the number of shares of Parent Class A Stock of Buyer set forth on Exhibit A hereto (together with such additional shares of such class or of Parent Class P Stock as become beneficially owned by such Stockholder, whether upon the exercise of options, conversion of convertible securities or otherwise, and any other voting securities of Buyer (whether acquired heretofore or hereafter) but excluding any shares sold or transferred on or after the date hereof in compliance with Section 4.1, the Owned Shares), which shares collectively represent at least 75% of the voting power of the outstanding capital stock of Buyer (as calculated with respect to the vote that is necessary to obtain the Parent Stockholder Approval); and

WHEREAS, as a condition to the Company s willingness to enter into and perform its obligations under the Merger Agreement, the Company has required that each Stockholder agree, and each Stockholder has agreed, subject to the terms of this Agreement, (i) to vote all of such Stockholder s Owned Shares in favor of (a) the issuance of the Parent Class P Stock to the Company s shareholders in connection with the consummation of the Merger (including shares of Parent Class P Stock to be issued upon the exercise of any Parent Class P Warrants) and the Parent Class P Warrants (the Stock Issuance) and (b) any other matters submitted to the shareholders of Buyer in furtherance of the Merger or the other transactions contemplated by the Merger Agreement and (ii) to take the other actions described herein; and

WHEREAS, each Stockholder desires to express its support for the Merger Agreement and the transactions contemplated thereby, including the Stock Issuance.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration given to each party hereto, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Agreement to Vote; Irrevocable Proxy.

1.1 Agreement to Vote. Each Stockholder hereby agrees that, from the date hereof until the earlier of (i) the time that the Parent Stockholder Approval has been obtained and no other vote by the Buyer s shareholders is required to consummate the transactions contemplated by the Merger Agreement and (ii) termination of this Agreement in accordance with Section 5.1, at any meeting of the stockholders of Buyer at which the approval of the Stock Issuance or any other matter requiring a vote of Buyer s shareholders necessary to consummate the transactions contemplated by the Merger Agreement is to be voted upon, however called, or any adjournment or postponement thereof, such Stockholder shall be present (in person or by proxy) and vote (or cause to be voted) all of its Owned Shares at such time (a) in favor of approval of the

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Stock Issuance and (b) against any Parent Alternative Transaction and against any action or agreement that would reasonably be expected to materially impair the ability of the Buyer, Merger Sub or the Company to complete the Merger, or that would otherwise reasonably be expected to prevent or materially impede or materially delay the consummation of the transactions contemplated by the Merger Agreement.

1.2 Irrevocable Proxy. Each Stockholder hereby irrevocably appoints the Company as its attorney-in-fact and proxy with full power of substitution and resubstitution, to the full extent of such Stockholder s voting rights with respect to such Stockholder s Owned Shares (which proxy is irrevocable and which appointment is coupled with an interest, including for purposes of Section 212 of the Delaware General Corporation Law, but for the avoidance of doubt shall be deemed terminated and released with respect to any shares sold or transferred on or after the date hereof in compliance with Section 4.1 or Section 4.7) to vote all such Stockholder s Owned Shares in favor of the Stock Issuance or any other matter requiring a vote of Buyer s shareholders necessary to consummate the transactions contemplated by the Merger Agreement. Upon the Company s reasonable request, each Stockholder agrees to execute any further agreement or form reasonably necessary or appropriate to confirm and effectuate the grant of the proxy contained herein. The proxy granted by each Stockholder in this Section 1.2 shall remain valid until the earlier of (i) the time that the Parent Stockholder Approval has been obtained or (ii) the termination of this Agreement in accordance with Section 5.1, in the case of clause (i) or (ii), immediately upon which each such proxy shall automatically terminate without any further action required by any person.

2. Representations and Warranties of Stockholders. Each Stockholder hereby represents and warrants to the Company as follows:

2.1 Due Organization. Such Stockholder, if a corporation, partnership or other entity, has been duly organized, is validly existing and is in good standing under the laws of the state of its formation or organization.

2.2 Power; Due Authorization; Binding Agreement. Such Stockholder has full legal capacity, power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation by such Stockholder of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate, partnership or other applicable action on the part of such Stockholder, and no other proceedings on the part of such Stockholder are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by such Stockholder and, assuming the due and valid authorization, execution and delivery hereof by the other parties hereto, constitutes a valid and binding agreement of such Stockholder, enforceable against such Stockholder in accordance with its terms.

2.3 Ownership of Shares. On the date hereof, the Owned Shares set forth opposite such Stockholder s name on Exhibit A hereto are owned beneficially by such Stockholder, free and clear of any claims, liens, encumbrances and security interests other than any restrictions existing under Buyer s certificate of incorporation or by-laws or the Buyer Shareholders Agreement (as defined below) (the Buyer Governance Agreements). Other than proxies and restrictions in favor of the Company pursuant to this Agreement and except for such transfer restrictions of general applicability as may be provided under the Securities Act of 1933, as amended, the blue sky laws of the various states of the United States, as of the date hereof, and any restrictions contained in the Buyer Governance Agreements, such Stockholder has, and at any stockholder meeting of Buyer in connection with the Merger Agreement and the transactions contemplated by the Merger Agreement, including approval of the Stock Issuance, such Stockholder will have (except as otherwise permitted by this Agreement, including in connection with the permitted Transfer of any Owned Shares), sole voting power and sole dispositive power with respect to all of the Owned Shares of such Stockholder. As of the date hereof, the Stockholders collectively own and on every date through the date that the Parent Stockholder Approval has been obtained (including the date of any meeting or any adjournment or postponements thereof of the stockholders of the Buyer at which Parent Stockholder Approval is sought and the date of any record date for determining the stockholders entitled to vote at any

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such meeting of the stockholders of Buyer), the Stockholders will own an amount of shares of Buyer s capital stock sufficient to obtain the Parent Stockholder Approval.

2.4 No Conflicts. The execution and delivery of this Agreement by such Stockholder does not, and the performance of the terms of this Agreement by such Stockholder will not, (a) require such Stockholder to obtain the consent or approval of, or make any filing with or notification to, any governmental or regulatory authority, domestic or foreign other than any filings required under U.S. federal or state securities laws, (b) require the consent or approval of any other person pursuant to any agreement, obligation or instrument binding on such Stockholder or its properties and assets, (c) conflict with or violate any organizational document or law, rule, regulation, order, judgment or decree applicable to such Stockholder or pursuant to which any of its or its affiliates respective properties or assets are bound or (d) violate any other agreement to which such Stockholder or any of its affiliates is a party including, without limitation, the Buyer s certificate of incorporation or by-laws or the Shareholders Agreement, dated as of February 10, 2011, among Buyer and the persons set forth on the signature pages thereto (the Buyer Shareholders Agreement) or any other voting agreement, stockholders agreement, irrevocable proxy or voting trust applicable to such Stockholder. Other than the Buyer Shareholders Agreement, the Owned Shares of such Stockholder are not, with respect to the voting or transfer thereof, subject to any other agreement, including any voting agreement, stockholders agreement, irrevocable proxy or voting trust.

2.5 Acknowledgment. Such Stockholder understands and acknowledges that the Company is entering into the Merger Agreement in reliance upon such Stockholder s execution, delivery and performance of this Agreement.

3. Representations and Warranties of the Company. The Company hereby represents and warrants to the Stockholders as follows:

3.1 Due Organization. The Company is duly organized, validly existing and in good standing under the laws of the State of Delaware.

3.2 Power; Due Authorization; Binding Agreement. The Company has full corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation by the Company of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of the Company, and no other proceedings on the part of the Company are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Company and, assuming the due and valid authorization, execution and delivery hereof by the other parties hereto, constitutes a valid and binding agreement of the Company.

4. Certain Covenants of the Stockholders.

4.1 Restriction on Transfer, Proxies and Non-Interference. Each Stockholder hereby agrees, except as permitted by Section 4.7, from the date hereof until the earlier of, (i) the termination of this Agreement in accordance with Section 5.1 and (ii) the time that the Parent Stockholder Approval has been obtained, not to (a) sell, transfer, pledge, encumber, assign or otherwise dispose of, or enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, pledge, encumbrance, assignment or other disposition of, or limitation on the voting rights of, any of the Owned Shares (any such action, a Transfer) that would result in the Stockholders, collectively, owning shares of Buyer s capital stock less than such number of shares necessary to obtain the Parent Stockholder Approval, (b) grant any proxies or powers of attorney with respect to the Owned Shares, deposit any Owned Shares into a voting trust or enter into a voting agreement with respect to any Owned Shares, in each case with respect to any vote on the approval of the Stock Issuance or any other matters set forth in this Agreement including, without limitation, Article I (other than a proxy to the Company as set forth in Section 1.2), (c) take any action that would cause any representation or warranty of such Stockholder contained herein to become untrue or incorrect or have the effect of preventing or disabling such Stockholder from performing its obligations under this Agreement, or

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(d) commit or agree to take any of the foregoing actions. Any action taken in violation of the foregoing sentence shall be null and void and each Stockholder agrees that any such prohibited action may and should be enjoined. If any involuntary Transfer of any of the Owned Shares shall occur (including, but not limited to, a sale by a Stockholder s trustee in any bankruptcy, or a sale to a purchaser at any creditor s or court sale), the transferee (which term, as used herein, shall include any and all transferees and subsequent transferees of the initial transferee) shall take and hold such Owned Shares subject to all of the restrictions, liabilities and rights under this Agreement, which shall continue in full force and effect until valid termination of this Agreement.

4.2 No Limitations on Actions. The parties hereto acknowledge that each Stockholder is entering into this Agreement solely in its capacity as the beneficial owner of the applicable Owned Shares and this Agreement shall not limit or otherwise affect the actions or fiduciary duties of such Stockholder, or any affiliate, employee or designee of such Stockholder or any of its affiliates in its capacity, if applicable, as an officer or director of Buyer.

4.3 Directors. Each Stockholder agrees that, to the extent it is a Stockholder at the time of the first annual shareholders meeting of Buyer following the consummation of the Merger (the First Post-Closing Meeting), it will vote all of its Owned Shares in favor of the election of the nominees designated by the Company pursuant to Section 5.15 of the Merger Agreement to the board of directors of Buyer at such shareholders meeting.

4.4 No Solicitation. Each Stockholder agrees that it shall not, without the Company s written consent, directly or indirectly solicit, initiate, knowingly facilitate, knowingly encourage (including by way of furnishing information) or knowingly induce or take any other action designed to lead to any inquiries or proposals that constitute, or would reasonably be expected to lead to, the submission of a Parent Alternative Proposal. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to prevent the Stockholders from Transferring any equity securities of Buyer or taking any action in connection with any Transfer or proposed Transfer of equity securities of Buyer that is not in violation of the Transfer restrictions set forth in Section 4.1 to the extent that such Transfer does not involve a merger, consolidation, share exchange, business combination, recapitalization, liquidation or similar transaction involving Parent or an exchange offer or tender offer for Buyer s equity securities.

4.5 Amendment to Buyers Shareholders Agreement. Each Stockholder agrees to execute the amendment to the Buyer Shareholders Agreement to give effect to the matters set forth in Section 5.15 of the Merger Agreement on the date hereof.

4.6 Further Assurances. From time to time, at the request of the Company and without further consideration, each Stockholder shall execute and deliver such additional documents and take all such further action as may be reasonably necessary or desirable to consummate and make effective the transactions contemplated by this Agreement.

4.7 Affiliate Transfers. Any Stockholder that Transfers any Owned Shares (a) to Permitted Transferees (as such term is used and defined in the Buyers Shareholders Agreement) and Affiliates (as such term is used and defined in the Buyers Shareholders Agreement) of such Stockholder and (b) in the case of Richard D. Kinder, to a Kinder Foundation (collectively together with such Permitted Transferees and Affiliates, Potential Transferees) shall cause each such Potential Transferee to (i) execute a signature page to this Agreement pursuant to which such Potential Transferee agrees to be a Stockholder pursuant to this Agreement with respect to such Transferred Owned Shares and (ii) provide the requisite contact information for such Potential Transferee as contemplated by Exhibit B. Transfers of Owned Shares to Potential Transferees made pursuant to this Section 4.7 shall not be a breach of this Agreement.

5. Miscellaneous.

5.1 Termination of this Agreement. This Agreement, and all terms and conditions contained herein, shall terminate upon the earlier to occur of (i) the termination of the Merger Agreement in accordance with

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its terms and (ii) the Effective Time; provided, that if the Closing occurs, Section 4.3 of this Agreement shall terminate immediately following the First Post-Closing Meeting.

5.2 Effect of Termination. In the event of termination of this Agreement pursuant to Section 5.1, this Agreement shall become void and of no effect with no liability on the part of any party hereto; provided, however, no such termination shall relieve any party hereto from any liability for any breach of this Agreement occurring prior to such termination.

5.3 Entire Agreement; Assignment. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement; provided, that Buyer shall be an express third party beneficiary of this Agreement solely for the purpose of being permitted, with a Supermajority Board Vote (as such term is used and defined in the bylaws of Buyer on the date hereof) to enforce Section 1.1 in a manner (pursuant and subject to the provisions of Section 1.1) to cause each Stockholder to vote to approve the Stock Issuance and any other matter requiring a vote of Buyer s shareholders necessary to consummate the transactions contemplated by the Merger Agreement, solely to the extent that the Company refuses, in writing upon request of the Buyer, to enforce such provision against the Stockholders. This Agreement shall not be assigned by operation of law or otherwise and, subject only to the immediately preceding sentence, shall be binding upon and inure solely to the benefit of each party hereto.

5.4 Amendments. This Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement executed by each of the parties hereto.

5.5 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally (notice deemed given upon receipt), telecopied (notice deemed given upon confirmation of receipt), by email (notice deemed given upon sending), or sent by a nationally recognized overnight courier service, such as Federal Express (notice deemed given upon receipt of proof of delivery), to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to a Stockholder, to the address and facsimile set forth opposite such Stockholder s name on Exhibit B attached hereto

with copies in any case to:

Kinder Morgan, Inc.

500 Dallas Street, Suite 1000

Houston, Texas 77002

Attn: General Counsel

Facsimile: (713) 369-9410

-and-

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, NY 10153

Attn: Thomas A. Roberts and R. Jay Tabor

Facsimile: (212) 310-6717

If to the Company:

El Paso Corporation

1001 Louisiana Street

Houston, Texas 77002

Attn.: General Counsel

Facsimile: (713) 420-5043

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with a copy to:

Wachtell, Lipton, Rosen & Katz

51 West 52nd Street

New York, New York 10019

Attn.: David A. Katz

Facsimile: (212) 403-2000

5.6 Governing Law; Venue.

(a) This Agreement and all claims or causes of action (whether at Law, in contract, in tort or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance hereof shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to conflicts of laws principles (whether of the State of Delaware or any other jurisdiction) that would result in the application of the Law of any other state.

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the Federal court of the United States of America sitting in the State of Delaware, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the agreements delivered in connection herewith or the transactions contemplated hereby or thereby or for recognition or enforcement of any judgment relating thereto, and each of the parties hereby irrevocably and unconditionally (i) agrees not to commence any such action or proceeding except in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the Federal court of the United States of America sitting in the State of Delaware, and any appellate court from any thereof, (ii) agrees that any claim in respect of any such action or proceeding shall be heard and determined in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in the State of Delaware, and any appellate court from any thereof, (iii) waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any such action or proceeding in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in State of Delaware, and any appellate court from any thereof, (iv) waives, to the fullest extent permitted by Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in the State of Delaware, and any appellate court from any thereof, (v) waives, to the fullest extent permitted by Law, any claim that it is not personally subject to the jurisdiction of the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the federal court of the United States of America sitting in Delaware, and any appellate court from any thereof for any reason other than the failure to serve in accordance with this Agreement, (vi) waives, to the fullest extent permitted by Law, any claim that it or its property is exempt or immune from jurisdiction of the Delaware Court of Chancery, or, if (and only if) such court lacks subject matter jurisdiction, the Federal court of the United States of America sitting in the State of Delaware or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and (vii) waives, to the fullest extent permitted by Law, any claim that this Agreement, or the subject mater hereof, may not be enforced in or by such courts. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 5.5. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Law.

(c) EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE

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TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT OF THIS AGREEMENT.

5.7 Specific Performance. Each Stockholder agrees that, in the event of any breach or threatened breach by such Stockholder of any covenant or obligation contained in this Agreement, the Company would be irreparably harmed and that money damages would not provide an adequate remedy. Accordingly, each Stockholder agrees that Buyer shall be entitled (in addition to any other remedy to which the Company is entitled at law or in equity) to seek and obtain (a) a decree or order of specific performance to enforce the observance and performance of such covenant or obligation, and (b) an injunction restraining such breach or threatened breach. Each Stockholder further agrees that neither the Company nor any other Person shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 5.7, and each Stockholder irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

5.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile transmission.

5.9 Descriptive Headings. The descriptive headings used herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

5.10 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

5.11 Non-Recourse.

(a) No past, present or future director, officer, employee, incorporator, member, partner, stockholder, agent, attorney, representative or affiliate of any party hereto or of any of their respective affiliates shall have any liability (whether in contract or in tort) for any obligations or liabilities of such party arising under, in connection with or related to this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby; provided, however, that nothing in this Section 5.11 shall limit any liability of the parties hereto for breaches of the terms and conditions of this Agreement.

(b) Each party to this Agreement enters into this Agreement solely on its on behalf, each such party shall solely by severally liable for any breaches of this Agreement by such party and in no event shall any party be liable for breaches of this Agreement by any other party hereto.

[*remainder of page intentionally blank*]

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IN WITNESS WHEREOF, the parties hereto have caused this Voting Agreement to be duly executed as of the day and year first above written.

EL PASO CORPORATION

By: /s/ Douglas L. Foshee
Name: Douglas L. Foshee
Title: Chairman, President and

Chief Executive Officer

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STOCKHOLDERS:

/s/ Richard D. Kinder
Richard D. Kinder

GS CAPITAL PARTNERS V FUND, L.P.

By: GSCP V Advisors, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GSCP V OFFSHORE KNIGHT HOLDINGS, L.P.

By: GS Capital Partners V Offshore Fund, L.P.
its General Partner

By: GSCP V Offshore Advisors, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GSCP V GERMANY KNIGHT HOLDINGS, L.P.

By: GSCP V GmbH Knight Holdings
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GS CAPITAL PARTNERS V INSTITUTIONAL, L.P.

By: GS Advisors V, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

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GS CAPITAL PARTNERS VI FUND, L.P.

By: GSCP VI Advisors, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GSCP VI OFFSHORE KNIGHT HOLDINGS, L.P.

By: GS Capital Partners VI Offshore Fund, L.P.
its General Partner

By: GSCP VI Offshore Advisors, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GSCP VI GERMANY KNIGHT HOLDINGS, L.P.

By: GSCP VI GmbH Knight Holdings
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GS CAPITAL PARTNERS VI PARALLEL, L.P.

By: GS Advisors VI, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GOLDMAN SACHS KMI INVESTORS, L.P.

By: GS KMI Advisors, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

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GSCP KMI INVESTORS, L.P.

By: GSCP KMI Advisors, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GSCP KMI INVESTORS OFFSHORE, L.P.

By: GSCP KMI Offshore Advisors, Inc.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GS INFRASTRUCTURE KNIGHT HOLDINGS, L.P.

By: GS International Infrastructure Partners I, L.P.
its General Partner

By: GS Infrastructure Advisors 2006, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GS INSTITUTIONAL INFRASTRUCTURE PARTNERS I, L.P.

By: GS Infrastructure Advisors 2006, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

GS GLOBAL INFRASTRUCTURE PARTNERS I, L.P.

By: GS Infrastructure Advisors 2006, L.L.C.
its General Partner

By: /s/ Kenneth A. Pontarelli
Name: Kenneth A. Pontarelli
Title: Vice President

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HIGHSTAR II KNIGHT ACQUISITION SUB, L.P.

By: Highstar Capital GP II, L.P., its General Partner

By: Highstar Management II, LLC, its General Partner

By: Highstar Capital LP, its attorney-in-fact

By: /s/ Michael J. Miller
Name: Michael J. Miller
Title: Partner

HIGHSTAR III KNIGHT ACQUISITION SUB, L.P.

By: Highstar GP III Prism Fund, L.P., its General Partner

By: Highstar Management III, LLC, its General Partner

By: Highstar Capital LP, its attorney-in-fact

By: /s/ Michael J. Miller
Name: Michael J. Miller
Title: Partner

HIGHSTAR KNIGHT PARTNERS, L.P.

By: Highstar Knight Co-Investment GP, LLC, its General Partner

By: Highstar Capital LP, its attorney-in-fact

By: /s/ Michael J. Miller
Name: Michael J. Miller
Title: Partner

HIGHSTAR KMI BLOCKER LLC

By: Highstar III Knight Acquisition Sub, L.P., its managing member

By: Highstar GP III Prism Fund, L.P., its General Partner

By: Highstar Management III, LLC, its General Partner

By: Highstar Capital LP, its attorney-in-fact

By: /s/ Michael J. Miller
Name: Michael J. Miller
Title: Partner

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CARLYLE PARTNERS IV KNIGHT, L.P.

By: TC Group IV, L.P., its general partner

By: TC Group IV Managing GP, L.L.C., its general partner

By: TC Group, L.L.C., its sole member

By: TCG Holdings L.L.C., its managing member

By: /s/ Daniel A. D Aniello
Name: Daniel A. D Aniello
Title:

CP IV COINVESTMENT, L.P.

By: TC Group IV, L.P., its general partner

By: TC Group IV Managing GP, L.L.C., its general partner

By: TC Group, L.L.C., its sole member

By: TCG Holdings L.L.C., its managing member

By: /s/ Daniel A. D Aniello
Name: Daniel A. D Aniello
Title:

CARLYLE ENERGY COINVESTMENT III, L.P.

By: Carlyle Energy Coinvestment III GP, L.L.C., its General Partner

By: /s/ Daniel A. D Aniello
Name: Daniel A. D Aniello
Title:

CARLYLE/RIVERSTONE KNIGHT INVESTMENT PARTNERSHIP, L.P.

By: Carlyle/Riverstone Energy Partners III, L.P., its General Partner

By: C/R Energy GP III, LLC, its General Partner

By: /s/ Daniel A. D Aniello
Name: Daniel A. D Aniello
Title:

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C/R KNIGHT PARTNERS, L.P.

By: Carlyle/Riverstone Energy Partners III, L.P.,
its General Partner

By: C/R Energy GP III, LLC,
its General Partner

By: /s/ Pierre Lapeyre
Name: Pierre Lapeyre
Title: Authorized Person

C/R ENERGY III KNIGHT NON-U.S. PARTNERSHIP, L.P.

By: Carlyle/Riverstone Energy Partners III, L.P.,
its General Partner

By: C/R Energy GP III, LLC,
its General Partner

By: /s/ Pierre Lapeyre
Name: Pierre Lapeyre
Title: Authorized Person

RIVERSTONE ENERGY COINVESTMENT III, L.P.

By: Riverstone Coinvestment GP LLC,
its General Partner

By: /s/ Pierre Lapeyre
Name: Pierre Lapeyre
Title: Authorized Person

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EXHIBIT A

BUYER STOCK OWNERSHIP

Stockholder	Number of Shares Class A Shares
RICHARD D. KINDER	216,492,170
GS CAPITAL PARTNERS V FUND, L.P.	16,227,644
GSCP V OFFSHORE KNIGHT HOLDINGS, L.P.	8,382,523
GSCP V GERMANY KNIGHT HOLDINGS, L.P.	643,371
GS CAPITAL PARTNERS V INSTITUTIONAL, L.P.	5,564,682
GS CAPITAL PARTNERS VI FUND, L.P.	15,764,853
GSCP VI OFFSHORE KNIGHT HOLDINGS, L.P.	13,112,651
GSCP VI GERMANY KNIGHT HOLDINGS, L.P.	560,283
GS CAPITAL PARTNERS VI PARALLEL, L.P.	4,335,066
GOLDMAN SACHS KMI INVESTORS, L.P.	16,886,427
GSCP KMI INVESTORS, L.P.	23,245,979
GSCP KMI INVESTORS OFFSHORE, L.P.	3,365,816
GS INFRASTRUCTURE KNIGHT HOLDINGS, L.P.	19,227,228
GS INSTITUTIONAL INFRASTRUCTURE PARTNERS I, L.P.	724,828
GS GLOBAL INFRASTRUCTURE PARTNERS I, L.P.	6,784,786
HIGHSTAR II KNIGHT ACQUISITION SUB, L.P.	3,156,297
HIGHSTAR III KNIGHT ACQUISITION SUB, L.P.	20,743,460
HIGHSTAR KNIGHT PARTNERS, L.P.	20,239,484
HIGHSTAR KMI BLOCKER LLC	41,131,509
CARLYLE PARTNERS IV KNIGHT, L.P.	54,536,189
CP IV COINVESTMENT, L.P.	5,011,383
CARLYLE ENERGY COINVESTMENT III, L.P.	176,040
CARLYLE/RIVERSTONE KNIGHT INVESTMENT PARTNERSHIP, L.P.	20,123,490
C/R KNIGHT PARTNERS, L.P.	29,773,786
C/R ENERGY III KNIGHT NON-U.S. PARTNERSHIP, L.P.	8,647,642
RIVERSTONE ENERGY COINVESTMENT III, L.P.	826,614

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Annex D

FORM OF

WARRANT AGREEMENT

Dated as of [ ]

between

KINDER MORGAN, INC.

and

[ ],

as Warrant Agent

Warrants for

Common Stock

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WARRANT AGREEMENT (this Agreement), dated as of [ ], 201[ ], between Kinder Morgan, Inc., a Delaware corporation (the Company), and [ ], a [ ], as warrant agent (the Warrant Agent).

WHEREAS, the Company, Sherpa Merger Sub, Inc., a Delaware corporation, Sherpa Acquisition, LLC, a Delaware limited liability company, Sirius Merger Corporation, a Delaware corporation, Sirius Holdings Merger Corporation, a Delaware corporation, and El Paso Corporation, a Delaware corporation (El Paso), entered into an Agreement and Plan of Merger, dated as of October 16, 2011 (the Merger Agreement), providing for, among other things, the acquisition of El Paso by the Company through the consummation of the Transactions (as defined in the Merger Agreement), the result of which will include El Paso being a wholly owned subsidiary of the Company;

WHEREAS, in partial consideration of the merger and other transactions contemplated by the Merger Agreement, the Company has agreed to issue warrants (each, a Warrant and collectively, the Warrants) to purchase shares of Class P common stock, par value $0.01 per share, of the Company (the Common Stock), to the stockholders of El Paso;

WHEREAS, the Company desires that the Warrant Agent act on behalf of the Company, and the Warrant Agent is willing to so act, in connection with the issuance, transfer, exchange, replacement, cancellation and exercise of the Warrants; and

WHEREAS, the Company desires to provide for the form and provisions of the Warrants, the terms upon which the Warrants shall be issued and exercised and the respective rights and obligations of the Company, the Warrant Agent and the registered owners of the Warrants (each, a Holder and collectively, the Holders).

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration given to each party hereto, the receipt of which is hereby acknowledged, the Company and the Warrant Agent agree as follows:

ARTICLE I

ISSUANCE AND EXERCISE OF WARRANTS

SECTION 1.1 *Form of Warrant.* Each Warrant shall be evidenced by a certificate substantially in the form attached hereto as **Exhibit A** (each, a Warrant Certificate and collectively, Warrant Certificates). Each Warrant Certificate shall have such insertions as are required or permitted by this Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, as may be required to comply with this Agreement, any applicable law or any rule of any securities exchange on which the Warrants may be listed. Each Warrant Certificate shall be executed on behalf of the Company by its Chairman of the Board of Directors, Chief Executive Officer, Chief Financial Officer or one of its Executive Vice Presidents, under its corporate seal reproduced thereon and attested by its Secretary or an Assistant Secretary. The signature of any such officers on the Warrant Certificates may be manual or facsimile. Warrant Certificates bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any one of them shall have ceased to hold such offices prior to the delivery of such Warrants or did not hold such offices on the date of this Agreement.

SECTION 1.2 *Countersignature of Warrants.* Each Warrant Certificate shall be countersigned by the Warrant Agent (or any successor to the Warrant Agent then acting as warrant agent under this Agreement) by manual or facsimile signature and shall not be valid for any purpose unless and until so countersigned. Warrant Certificates may be countersigned and delivered, notwithstanding the fact that the persons or any one of them who countersigned the Warrants shall have ceased to be proper signatories prior to the delivery of such Warrants or were not proper signatories on the date of this Agreement. Each Warrant Certificate shall be dated as of the date of its countersignature by the Warrant Agent. The Warrant Agent s countersignature shall be conclusive evidence that the Warrant Certificate so countersigned has been duly authenticated and issued under this Agreement.

SECTION 1.3 *Exercise Number; Exercise Price.* Each Warrant initially entitles its Holder to purchase from the Company one (1) (the Exercise Number) share of Common Stock (such share or shares of Common Stock issued or issuable upon exercise of any Warrant or Warrants, each, a Warrant Share and collectively, the Warrant Shares) for a purchase price per share of Common Stock of $40.00 (the Exercise Price). The Exercise Number and the Exercise Price are subject to adjustment as provided in Article II, and all references to Exercise Number and Exercise Price in this Agreement shall be deemed to include any such adjustment or series of adjustments.

SECTION 1.4 *Term of Warrants.* All or a portion of the Warrants are exercisable by the Holder at any time and from time to time on or after the date of this Agreement until 5:00 p.m., New York City time, on the five (5)-year anniversary of the date of this Agreement (the Expiration Date).

SECTION 1.5 *Exercise of Warrants.* A Warrant may be exercised by surrender of the Warrant Certificate or Certificates evidencing such Warrant to be exercised and by delivery to the Warrant Agent (or to such other office or agency of the Company in the United States as the Company may designate by notice in writing to the Holders pursuant to Section 4.1) a notice of exercise in the form attached hereto as **Exhibit B**, duly completed and signed, which signature shall be guaranteed by a member of a recognized guarantee medallion program, together with payment of the Exercise Price for the Warrant Shares thereby purchased in accordance with Section 1.6. As promptly as practicable after receiving a notice of exercise to purchase Warrant Shares, the Warrant Agent shall notify the Company.

SECTION 1.6 *Payment of Exercise Price.* Payment of the aggregate Exercise Price for all Warrant Shares purchased may be made, at the option of the Holder, either (a) in cash or by certified or official bank check payable to the Warrant Agent or (b) by delivering a written direction to the Warrant Agent that the Holder desires to exercise the Warrants pursuant to a cashless exercise, in which case the Holder will receive a number of Warrant Shares that is equal to the aggregate number of Warrant Shares for which the Warrants are being exercised less the number of Warrant Shares that have an aggregate Market Price on the trading day on which such Warrants are exercised that is equal to the aggregate Exercise Price for such Warrant Shares. For the avoidance of doubt, if Warrants are exercised such that the aggregate Exercise Price would exceed the aggregate value (as measured by the Market Price) of the Warrant Shares issuable upon exercise, no amount shall be due and payable by the Holder to the Company, and such exercise shall be null and void and no Warrant Shares shall thereupon be issued and the Warrants shall continue in effect.

SECTION 1.7 *Registry of Warrants.* The Company or an agent duly appointed by the Company (which initially shall be the Warrant Agent) shall maintain a registry showing the names and addresses of the respective Holders and the date and number of Warrants evidenced on the face of each of the Warrant Certificates. Except as otherwise provided in this Agreement or in the Warrant Certificate, the Company and the Warrant Agent may deem and treat any Person whose name a Warrant Certificate is registered in the registry as the absolute owner of such Warrant Certificate.

SECTION 1.8 *Exchange of Warrant Certificates.* Each Warrant Certificate may be exchanged for another Warrant Certificate or Certificates of like tenor and representing the same aggregate number of Warrants. Any Holder desiring to exchange a Warrant Certificate or Certificates shall deliver a written request to the Warrant Agent and shall properly endorse and surrender the Warrant Certificate or Certificates to be so exchanged. Thereupon, the Warrant Agent shall countersign and deliver to the Holder a new Warrant Certificate or Certificates, as so requested, in such name or names as such Holder shall designate.

SECTION 1.9 *Cancellation of Warrant Certificates.* If and when any Warrant Certificate has been exercised in full, the Warrant Agent shall promptly cancel and destroy such Warrant Certificate following its receipt from the Holder. Upon exercise of a Warrant Certificate in part and not in full, the Warrant Agent shall issue and deliver or shall cause to be issued and delivered to the Holder a new Warrant Certificate or Certificates evidencing the Holder s remaining Warrants. The Warrant Agent is hereby irrevocably authorized to countersign

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and deliver such required new Warrant Certificate or Certificates, and the Company, whenever requested by the Warrant Agent, shall supply the Warrant Agent with Warrant Certificates duly executed on behalf of the Company for such purpose. The Warrant Agent and no one else may cancel and destroy Warrant Certificates surrendered for transfer, exchange, replacement, cancellation or exercise. The Warrant Agent must deliver a certificate of such destruction and cancellation (or, if requested by the Company, the cancelled Warrant Certificates) to the Company. The Company may not issue new Warrant Certificates to replace cancelled Warrant Certificates that have been exercised or purchased by it.

SECTION 1.10 *No Fractional Shares or Scrip.* No fractional Warrant Shares or scrip representing fractional Warrant Shares shall be issued upon any exercise of Warrants. In lieu of any fractional Warrant Shares that would otherwise be issued to a Holder upon exercise of any Warrants, such Holder shall receive a cash payment equal to the Market Price of the Common Stock on the trading day on which such Warrants are exercised representing such fractional Warrant Share.

SECTION 1.11 *Lost, Stolen, Destroyed or Mutilated Warrants.* Upon receipt by the Company of proof reasonably satisfactory to it of the loss, theft, destruction or mutilation of any Warrant Certificate and, if requested, an indemnity or bond, the Company shall deliver or shall cause to be delivered, in lieu of such lost, stolen, destroyed or mutilated Warrant Certificate, a new Warrant Certificate of like tenor and representing the same aggregate number of Warrants as provided for in such lost, stolen, destroyed or mutilated Warrant Certificate.

SECTION 1.12 *Transferability and Assignment.* At the option of the Holder thereof, the Warrants and all rights under the Warrant Certificate may be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, by the registered Holder or by duly authorized attorney, and one or more new Warrant Certificates shall be made and delivered and registered in the name of one or more transferees, upon surrender in accordance with Section 1.5 and upon compliance with all applicable laws.

SECTION 1.13 *Issuance of Warrant Certificates.* When any Holder, transferee of a Holder or other designee of a Holder is entitled to receive a new or replacement Warrant Certificate, whether pursuant to Section 1.8, 1.9, 1.11 or 1.12, the Company shall issue or shall cause to be issued such new or replacement Warrant Certificate within a reasonable time, not to exceed three (3) business days. The Company shall supply the Warrant Agent with Warrant Certificates duly executed on behalf of the Company for the purpose of issuing any new or replacement Warrant Certificates, and the Warrant Agent shall countersign such Warrant Certificates.

SECTION 1.14 *Issuance of Warrant Shares.* Upon the exercise of any Warrants, the Company shall deliver or shall cause to be delivered the number of full Warrant Shares to which such Holder shall be entitled, together with any cash to which such Holder shall be entitled in respect of fractional Warrant Shares pursuant to Section 1.10, within a reasonable time, not to exceed three (3) business days. All Warrant Shares shall be issued in such name or names as the exercising Holder may designate and delivered to the exercising Holder or its nominee or nominees.

SECTION 1.15 *Charges, Taxes and Expenses.* The Company shall pay all documentary stamp taxes, if any, attributable to the initial issuance of Warrant Shares upon the exercise of Warrants; provided, however, the Company shall not be required to pay any tax or taxes which may be payable in respect of any transfer involved in the issue or delivery of any Warrants or certificates (if any) for Warrant Shares in a name other than that of the registered holder of such Warrants.

SECTION 1.16 *Issued Warrant Shares.* The Company hereby represents and warrants that all Warrant Shares issued in accordance with the terms of this Agreement will be duly and validly authorized and issued, fully paid and nonassessable and free from all taxes, liens and charges (other than liens or charges created by a Holder, income and franchise taxes incurred in connection with the exercise of the Warrant or taxes in respect of any transfer occurring contemporaneously therewith). The Company agrees that the Warrant Shares so issued

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will be deemed to have been issued to a Holder as of the close of business on the date on which the Warrants were duly exercised, notwithstanding that the stock transfer books of the Company may then be closed or certificates (if any) representing such Warrant Shares may not be actually delivered on such date.

SECTION 1.17 *Reservation of Sufficient Warrant Shares.* There have been reserved, and the Company shall at all times through the Expiration Date keep reserved, out of its authorized but unissued Common Stock, solely for the purpose of the issuance of Warrant Shares in accordance with the terms of this Agreement, a number of shares of Common Stock sufficient to provide for the exercise of the rights of purchase represented by the outstanding Warrants. The transfer agent for the Common Stock and every subsequent transfer agent for any shares of the Company s capital stock issuable upon the exercise of any of the rights of purchase aforesaid shall be irrevocably authorized and directed at all times to reserve such number of authorized shares as shall be required for such purpose. The Company shall supply such transfer agents with duly executed stock certificates for such purposes and shall provide or otherwise make available any cash that may be payable upon exercise of Warrants in respect of fractional Warrant Shares pursuant to Section 1.10. The Company shall furnish such transfer agent with a copy of all notices of adjustments and certificates related thereto, transmitted to each Holder pursuant to Section 4.1.

SECTION 1.18 *Registration and Listing*. The Company shall register or shall cause to be registered any and all shares of its Common Stock (including the Warrant Shares) and all the Warrants under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, and the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the Exchange Act), and the Company shall use commercially reasonable efforts to maintain such registration of such shares of its Common Stock (including the Warrant Shares) and all the Warrants. The Company shall use reasonable best efforts to (a) procure, or cause to be procured, at its sole expense, the listing of the Warrant Shares and the Warrants, subject to issuance or notice of issuance, on the New York Stock Exchange or, if prior to the closing of the Merger the New York Stock Exchange will not approve the listing of the Warrants on the New York Stock Exchange, then on the NASDAQ Stock Exchange or, if prior to the closing of the Merger the NASDAQ Stock Exchange will not approve the listing of the Warrants on the NASDAQ Stock Exchange, another stock exchange reasonably agreed by the Company and El Paso, and (b) maintain such listings at all times until the Expiration Date. The Company shall use reasonable best efforts to ensure that the Warrant Shares and the Warrants may be issued without violation of any applicable law or regulation or of any requirement of any securities exchange on which such shares of its Common Stock (including the Warrant Shares) and the Warrants are listed or traded.

SECTION 1.19 *No Impairment.* The Company will not, and the Company will cause its subsidiaries not to, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed by the Company under this Agreement. The Company shall at all times in good faith assist in the carrying out of all provisions of this Agreement and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holders.

SECTION 1.20 *CUSIP Numbers.* The Company, in issuing the Warrants, may use CUSIP numbers (if then generally in use) and, if so, the Warrant Agent shall use CUSIP numbers in notices as a convenience to Holders; provided, however, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Warrant Certificates or as contained in any notice and that reliance may be placed only on the other identification numbers printed on the Warrant Certificates.

SECTION 1.21 *Purchase of Warrants by the Company; Cancellation*. The Company shall have the right, except as limited by law, other agreements or as provided herein, to purchase or otherwise acquire Warrants at such times, in such manner and for such consideration as it and the applicable Holder may deem appropriate. In the event the Company shall purchase or otherwise acquire Warrants, the same shall thereupon be delivered to the Warrant Agent and retired and, for the avoidance of doubt, if the approval of Holders is required to take any action, the Company s (or any of its subsidiaries or affiliates) ownership in any Warrants shall not be considered in calculating whether the requisite number of Warrants have approved such action.

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SECTION 1.22 *No Rights as Stockholders.* A Warrant shall not, prior to its exercise, confer upon its Holder or such Holder s transferee, in such Holder s or such transferee s capacity as a Warrant Holder, the right to vote or receive dividends, or consent or receive notice as stockholders in respect of any meeting of stockholders for the election of directors of the Company or any other matter, or any rights whatsoever as stockholders of the Company.

ARTICLE II

ANTIDILUTION PROVISIONS

SECTION 2.1 *Adjustments and Other Rights.* The Exercise Price and the Exercise Number shall be subject to adjustment from time to time as provided by this Article II; provided, however, that if more than one section of this Article II is applicable to a single event, the section shall be applied that produces the largest adjustment, and no single event shall cause an adjustment under more than one section of this Article II so as to result in duplication.

SECTION 2.2 *Stock Splits, Subdivisions, Reclassifications or Combinations.* If the Company shall (a) declare and pay a dividend or make a distribution on its Common Stock in shares of Common Stock, (b) subdivide or reclassify the outstanding shares of Common Stock into a greater number of shares, or (c) combine or reclassify the outstanding shares of Common Stock into a smaller number of shares, the Exercise Number at the time of the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be adjusted by multiplying the Exercise Number effective immediately prior to such event by a fraction (x) the numerator of which shall be the total number of outstanding shares of Common Stock immediately after such event and (y) the denominator of which shall be the total number of outstanding shares of Common Stock immediately prior to such event. In such event, the Exercise Price per share of Common Stock in effect immediately prior to the record date for such dividend or distribution or the effective date of such subdivision, combination or reclassification shall be adjusted by multiplying such Exercise Price by a fraction (i) the numerator of which shall be the Exercise Number immediately prior to such adjustment and (ii) the denominator of which shall be the new Exercise Number determined pursuant to the immediately preceding sentence.

SECTION 2.3 *Other Distributions.* If the Company shall fix a record date for the making of a distribution to all holders of shares of its Common Stock of securities, evidences of indebtedness, assets, cash, rights or warrants (excluding Ordinary Cash Dividends, dividends of its Common Stock and other dividends or distributions referred to in Section 2.2), in each such case, the Exercise Price in effect prior to such record date shall be reduced immediately upon occurrence of the record date to the price determined by multiplying the Exercise Price in effect immediately prior to the reduction by the quotient of (x) the Market Price of the Common Stock on the last trading day preceding the first date on which the Common Stock trades regular way on the principal national securities exchange on which the Common Stock is listed or admitted to trading without the right to receive such distribution, minus the amount of cash and/or the Fair Market Value of the securities, evidences of indebtedness, assets, rights or warrants to be so distributed in respect of one share of Common Stock (such subtracted amount and/or Fair Market Value, the Per Share Fair Market Value) divided by (y) such Market Price on such date specified in clause (x); such adjustment shall be made successively whenever such a record date is fixed. In such event, the Exercise Number shall be increased to the number obtained by multiplying the Exercise Number immediately prior to such adjustment by the quotient of (x) the Exercise Price in effect immediately prior to the distribution giving rise to this adjustment divided by (y) the new Exercise Price determined in accordance with the immediately preceding sentence. In the case of adjustment for a cash dividend that is, or is coincident with, a regular quarterly cash dividend, the Per Share Fair Market Value would be reduced by the per share amount of the portion of the cash dividend that would constitute an Ordinary Cash Dividend.

SECTION 2.4 *Certain Repurchases of Common Stock.* If the Company effects a Pro Rata Repurchase of Common Stock, then the Exercise Price shall be reduced to the price determined by multiplying the Exercise Price in effect immediately prior to the Effective Date of such Pro Rata Repurchase by a fraction of which (a) the

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numerator shall be (i) the product of (x) the number of shares of Common Stock outstanding immediately before such Pro Rata Repurchase and (y) the Market Price of a share of Common Stock on the trading day immediately preceding the first public announcement by the Company or any of its Affiliates of the intent to effect such Pro Rata Repurchase, minus (ii) the aggregate purchase price of the Pro Rata Repurchase, and of which (b) the denominator shall be the product of (i) the number of shares of Common Stock outstanding immediately prior to such Pro Rata Repurchase minus the number of shares of Common Stock so repurchased and (ii) the Market Price per share of Common Stock on the trading day immediately preceding the first public announcement by the Company or any of its Affiliates of the intent to effect such Pro Rata Repurchase. In such event, the Exercise Number shall be increased to the number obtained by multiplying the Exercise Number immediately prior to such adjustment by the quotient of (x) the Exercise Price in effect immediately prior to the Pro Rata Repurchase giving rise to this adjustment divided by (y) the new Exercise Price determined in accordance with the immediately preceding sentence. For the avoidance of doubt, no increase to the Exercise Price or decrease in the Exercise Number shall be made pursuant to this Section 2.4.

SECTION 2.5 *Business Combinations or Reclassifications of Common Stock.* In case of any Business Combination or reclassification of Common Stock (other than a reclassification of Common Stock referred to in Section 2.2), a Holder s right to receive shares upon exercise of a Warrant shall be converted into the right to exercise such Warrant to acquire the number of shares of stock or other securities or property (including cash) that the Common Stock issuable (at the time of such Business Combination or reclassification) upon exercise of such Warrant immediately prior to such Business Combination or reclassification would have been entitled to receive upon consummation of such Business Combination or reclassification; and in any such case, if necessary, the provisions set forth herein with respect to the rights and interests thereafter of the Holder shall be appropriately adjusted so as to be applicable, as nearly as may reasonably be, to such Holder s right to exercise a Warrant in exchange for any shares of stock or other securities or property pursuant to this section. In determining the kind and amount of stock, securities or the property receivable upon exercise of a Warrant following the consummation of such Business Combination, if the holders of Common Stock have the right to elect the kind or amount of consideration receivable upon consummation of such Business Combination, then the consideration that a Holder shall be entitled to receive upon exercise shall be deemed to be the types and amounts of consideration received by the majority of all holders of the shares of Common Stock that affirmatively make an election (or of all such holders if none make an election). For purposes of determining any amount to be withheld in the case of a cashless exercise pursuant to Section 1.6 from stock, securities or the property that would otherwise be delivered to a Holder upon exercise of Warrants following any Business Combination, the amount of such stock, securities or property to be withheld shall have a Market Price equal to the aggregate Exercise Price as to which such Warrants are so exercised, based on the fair market value of such stock, securities or property on the trading day on which such Warrants are exercised and the Notice of Exercise is delivered to the Warrant Agent; provided, however, that in the case of any property that is not a security, the Market Price of such property shall be deemed to be its fair market value as determined in good faith by the Board of Directors in reliance on an opinion of a nationally recognized independent investment banking firm retained by the Company for this purpose; provided, further, that if making such determination requires the conversion of any currency other than U.S. dollars into U.S. dollars, such conversion shall be done in accordance with customary procedures based on the rate for conversion of such currency into U.S. dollars displayed on the relevant page by Bloomberg L.P. (or any successor or replacement service) on or by 4:00 p.m., New York City time, on such exercise date.

SECTION 2.6 *Rounding of Calculations; Minimum Adjustments*. All calculations under this Article II shall be made to the nearest one-tenth (1/10th) of a cent or to the nearest one-hundredth (1/100th) of a share, as the case may be. Any provision of this Article II to the contrary notwithstanding, no adjustment in the Exercise Price or the Exercise Number shall be made if the amount of such adjustment would be less than $0.01 or one-tenth (1/10th) of a share of Common Stock, but any such amount shall be carried forward and an adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate $0.01 or 1/10th of a share of Common Stock, or more, or on exercise of a Warrant if it shall earlier occur.

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SECTION 2.7 *Timing of Issuance of Additional Common Stock Upon Certain Adjustments.* In any case in which the provisions of this Article II shall require that an adjustment shall become effective immediately after a record date for an event, the Company may defer until the occurrence of such event (a) issuing to a Holder of Warrants exercised after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such exercise by reason of the adjustment required by such event over and above the shares of Common Stock issuable upon such exercise before giving effect to such adjustment and (b) paying to such Holder any amount of cash in lieu of a fractional share of Common Stock; provided, however, that the Company upon request shall deliver to such Holder a due bill or other appropriate instrument evidencing such Holder s right to receive such additional shares, and such cash, upon the occurrence of the event requiring such adjustment, subject to any retroactive readjustment in accordance with Section 2.8(b).

SECTION 2.8 *Other Events; Provisions of General Applicability.*

(a) Neither the Exercise Price nor the Exercise Number shall be adjusted in the event of (i) a change in the par value of the Common Stock, (ii) a change in the jurisdiction of incorporation of the Company or (iii) any conversion of shares of any other class of common stock of the Company outstanding as of the date of this Agreement into shares of Common Stock in accordance with the conversion mechanisms set forth in the Company's certificate of incorporation as of the date of this Agreement.

(b) In the event that any dividend or distribution described in this Article II is not so made, the Exercise Price and the Exercise Number then in effect shall be readjusted, effective as of the date when the Board of Directors determines not to distribute such shares, evidences of indebtedness, assets, rights, cash or warrants, as the case may be, to the Exercise Price and the Exercise Number that would then be in effect if such record date had not been fixed.

SECTION 2.9 *Statement Regarding Adjustments.* Whenever the Exercise Price or the Exercise Number shall be adjusted as provided in this Article II, the Company shall forthwith file at the principal office of the Company a statement showing in reasonable detail the facts requiring such adjustment and the Exercise Price that shall be in effect and the Exercise Number after such adjustment. The Company shall deliver to the Warrant Agent a copy of such statement and shall cause a copy of such statement to be sent or communicated to the Holders pursuant to Section 4.1.

SECTION 2.10 *Notice of Adjustment Event.* In the event that the Company shall propose to take any action of the type described in this Article II (but only if the action of the type described in this Article II would result in an adjustment in the Exercise Price or the Exercise Number or a change in the type of securities or property to be delivered upon exercise of a Warrant), the Company shall deliver to the Warrant Agent a notice and shall cause such notice to be sent or communicated to the Holders in the manner set forth in Section 4.1, which notice shall specify the record date, if any, with respect to any such action and the approximate date on which such action is to take place. Such notice shall also set forth the facts with respect thereto as shall be reasonably necessary to indicate the effect on the Exercise Price and the number, kind or class of shares or other securities or property which shall be deliverable upon exercise of a Warrant. In the case of any action which would require the fixing of a record date, such notice shall be given at least ten (10) days prior to the date so fixed, and in case of all other action, such notice shall be given at least fifteen (15) days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

SECTION 2.11 *Proceedings Prior to Any Action Requiring Adjustment.* As a condition precedent to the taking of any action which would require an adjustment pursuant to this Article II, the Company shall take any action which may be necessary, including obtaining regulatory, New York Stock Exchange, NASDAQ Stock Market or other applicable national securities exchange or stockholder approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and nonassessable all Warrant Shares that a Holder is entitled to receive upon exercise of a Warrant pursuant to this Article II.

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SECTION 2.12 *Adjustment Rules.* Any adjustments pursuant to this Article II shall be made successively whenever an event referred to herein shall occur. If an adjustment in Exercise Price made under this Agreement would reduce the Exercise Price per share of Common Stock to an amount below par value of the Common Stock, then such adjustment in Exercise Price made under this Agreement shall reduce the Exercise Price per share of Common Stock to the par value of the Common Stock.

SECTION 2.13 *Prohibited Actions.* The Company agrees that it will not take any action which would entitle a Holder to an adjustment of the Exercise Price if the total number of shares of Common Stock issuable after such action upon exercise of the Warrants, together with all shares of Common Stock then outstanding and all shares of Common Stock then issuable upon the exercise of all outstanding options, warrants, conversion and other rights, would exceed the total number of shares of Common Stock then authorized by its certificate of incorporation.

SECTION 2.14 *Adjustment to Warrant Certificate.* The form of Warrant Certificate need not be changed because of any adjustment made pursuant to the Warrant Certificate, and Warrant Certificates issued after such adjustment may state the same Exercise Price and the same Exercise Number as are stated in the Warrant Certificates initially issued pursuant to this Agreement. The Company, however, may at any time in its sole discretion make any change in the form of Warrant Certificate that it may deem appropriate to give effect to such adjustments and that does not affect the substance of the Warrant Certificate, and any Warrant Certificate thereafter issued or countersigned, whether in exchange or substitution for an outstanding Warrant Certificate or otherwise, may be in the form as so changed.

ARTICLE III

WARRANT AGENT

SECTION 3.1 *Appointment of Warrant Agent.* The Company hereby appoints the Warrant Agent to act as agent for the Company with respect to the Warrants and in accordance with the provisions of this Agreement, and the Warrant Agent hereby accepts such appointment.

SECTION 3.2 *Liability of Warrant Agent.* The Warrant Agent shall act under this Agreement solely as agent, and its duties shall be determined solely by the provisions of this Agreement. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in connection with this Agreement, except for its own willful misconduct, gross negligence or bad faith.

SECTION 3.3 *Performance of Duties.* The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty under this Agreement either itself or by or through its attorneys or agents (which shall not include its employees).

SECTION 3.4 *Disposition of Proceeds on Exercise of Warrants.* The Warrant Agent shall account as promptly as practicable to the Company with respect to Warrants exercised and shall concurrently pay to the Company all monies received by the Warrant Agent for the purchase of Warrant Shares through the exercise of such Warrants. If the Warrant Agent shall receive any notice, demand or other document addressed to the Company by a Holder with respect to the Warrants, the Warrant Agent shall as promptly as practicable forward such notice, demand or other document to the Company.

SECTION 3.5 *Reliance on Counsel.* The Warrant Agent may consult at any time with legal counsel satisfactory to it (who may be counsel to the Company), and the Warrant Agent shall incur no liability or responsibility for any action taken, suffered or omitted by it under this Agreement in reasonable reliance on and in accordance with the advice of such counsel.

SECTION 3.6 *Reliance on Documents.* The Warrant Agent will not incur any liability or responsibility for any action taken in reasonable reliance on any notice, written statement, resolution, waiver, consent, order, certificate or other paper, document or instrument reasonably believed by it to be genuine and to have been

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signed, sent, presented or made by the proper party or parties. The statements contained herein and in the Warrants shall be taken as statements of the Company, and the Warrant Agent assumes no responsibility for the correctness of any of the same, except as set forth by the Warrant Agent or as evidenced by action taken by the Warrant Agent.

SECTION 3.7 *Validity of Agreement.* The Warrant Agent shall not be responsible for the validity, execution or delivery of this Agreement (except the due execution of this Agreement by the Warrant Agent) or for the validity, execution or delivery of any Warrant (except the due countersignature of such Warrant Certificate by the Warrant Agent), and the Warrant Agent shall not by any act under this Agreement be deemed to make any representation or warranty as to the authorization or reservation of any Warrant Shares (or other stock) to be issued pursuant to this Agreement or any Warrant, or as to whether any Warrant Shares (or other stock) will, pursuant to this Agreement or any Warrant, when issued, be validly issued, fully paid and nonassessable.

SECTION 3.8 *Instructions from Company.* The Warrant Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties under this Agreement from the Chairman of the Board of Directors, Chief Executive Officer, Chief Financial Officer, one of its Executive Vice Presidents or Vice Presidents, the Treasurer or the Controller of the Company, and to make an application to such officers for advice or instructions in connection with its duties, and the Warrant Agent shall not be liable for any action taken or suffered to be taken by it in reasonable reliance and in accordance with instructions of any such officer. The Warrant Agent shall not be liable for any action taken by, or omission of any action by, the Warrant Agent in accordance with a proposal included in any such application to such officers on or after the date specified in such application (which date shall not be less than five (5) business days after the date any such officer of the Company actually receives such application, unless any such officer shall have consented in writing to an earlier date) unless, prior to taking any such action (or the effective date in the case of an omission), the Warrant Agent shall have received written instructions in response to such application specifying the action to be taken or omitted.

SECTION 3.9 *Proof of Actions Taken.* Whenever in the performance of its duties under this Agreement the Warrant Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering or omitting any action under this Agreement, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed conclusively to be proved and established by a certificate signed by the Chairman of the Board of Directors, Chief Executive Officer, Chief Financial Officer, one of its Executive Vice Presidents or Vice Presidents, the Treasurer or the Controller of the Company and delivered to the Warrant Agent, and such certificate shall be full authorization to the Warrant Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon any such certificate.

SECTION 3.10 *Compensation.* The Company agrees to pay the Warrant Agent reasonable compensation for all services rendered by the Warrant Agent in the performance of its duties under this Agreement, to reimburse the Warrant Agent for all reasonable expenses, taxes and governmental charges and other charges incurred by the Warrant Agent in the performance of its duties under this Agreement.

SECTION 3.11 *Indemnity.* The Company shall indemnify the Warrant Agent and save it harmless from and against any and all liabilities, including judgments, costs and counsel fees, for anything done or omitted by the Warrant Agent in the performance of its duties under this Agreement, except as a result of the Warrant Agent s willful misconduct, gross negligence or bad faith. The Warrant Agent shall indemnify the Company and save it harmless from and against any and all liabilities, including judgments, costs and counsel fees, for anything arising out of or attributable to the Warrant Agent s refusal or failure to comply with the terms of this Agreement or which arise out of the Warrant Agent s willful misconduct, gross negligence or bad faith; provided, however, that the Warrant Agent s aggregate liability under this Agreement with respect to, arising from or arising in connection with this Agreement, whether in contract, in tort or otherwise, is limited to and shall not exceed the

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amounts paid under this Agreement by the Company to the Warrant Agent as fees and charges, but not including reimbursable expenses. The Warrant Agent shall notify the Company promptly of any claim for which it may seek indemnity, and the Company shall notify the Warrant Agent promptly of any claim for which it may seek indemnity.

SECTION 3.12 *Legal Proceedings.* The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company or any one or more Holders shall furnish the Warrant Agent with reasonable security and indemnity for any costs and expenses that may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity. All rights of action under this Agreement or under any of the Warrants may be enforced by the Warrant Agent without the possession of any of the Warrants or the production thereof at any trial or other proceeding relative thereto, and any such action, suit or proceeding instituted by the Warrant Agent shall be brought in its name as warrant agent, and any recovery of judgment shall be for the ratable benefit of the Holders, as their respective rights or interests may appear.

SECTION 3.13 *Other Transactions in Securities of Company.* The Warrant Agent and any stockholder, director, officer or employee of the Warrant Agent may buy, sell or deal in any of the Warrants or other securities of the Company, or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not the Warrant Agent under this Agreement. Nothing in this Agreement shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other legal entity.

SECTION 3.14 *Identity of Transfer Agent.* Upon the appointment of any subsequent transfer agent for the Common Stock, or any other shares of the Company s capital stock issuable upon the exercise of the Warrants, the Company shall file with the Warrant Agent a statement setting forth the name and address of such subsequent transfer agent.

SECTION 3.15 *Company to Provide and Maintain Warrant Agent.* The Company agrees for the benefit of the Holders that there shall at all times be a Warrant Agent under this Agreement until all the Warrants have been exercised or cancelled or are no longer exercisable.

SECTION 3.16 *Resignation and Removal.* The Warrant Agent may at any time resign by giving written notice to the Company of such intention on its part, specifying the date on which its desired resignation shall become effective. The Warrant Agent under this Agreement may be removed at any time by the filing with it of an instrument in writing signed by or on behalf of the Company and specifying such removal and the date when it shall become effective. Any removal under this Section 3.16 shall take effect upon the appointment by the Company as hereinafter provided of a successor Warrant Agent (which shall be (a) a bank or trust company, (b) organized under the laws of the United States or one of the states thereof, (c) authorized under the laws of the jurisdiction of its organization to exercise corporate trust powers, (d) having a combined capital and surplus of at least $50,000,000 (as set forth in its most recent reports of condition published pursuant to law or to the requirements of any United States federal or state regulatory or supervisory authority) and (e) having an office in the Borough of Manhattan, The City of New York) and the acceptance of such appointment by such successor Warrant Agent.

SECTION 3.17 *Company to Appoint Successor.* If at any time the Warrant Agent shall resign, shall be removed, shall become incapable of acting, shall be adjudged bankrupt or insolvent or shall commence a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or under any other applicable federal or state bankruptcy, insolvency or similar law or shall consent to the appointment of or the taking possession by a receiver, custodian, liquidator, assignee, trustee, sequestrator (or other similar official) of the Warrant Agent or its property or affairs, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall take corporate action in furtherance of

any such action, or a decree or order for relief by a court having jurisdiction in the premises shall have been entered in respect of the Warrant Agent in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or similar law, or a decree or order by a court having jurisdiction in the premises shall have been entered for the appointment of a receiver, custodian, liquidator, assignee, trustee, sequestrator (or similar official) of the Warrant Agent or of its property or affairs, or any public officer shall take charge or control of the Warrant Agent or of its property or affairs for the purpose of rehabilitation, conservation, winding up or liquidation, a successor Warrant Agent, qualified as aforesaid, shall be appointed by the Company by an instrument in writing, filed with the successor Warrant Agent. In the event that a successor Warrant Agent is not appointed by the Company, a successor Warrant Agent, qualified as aforesaid, may be appointed by the Warrant Agent or the Warrant Agent may petition a court to appoint a successor Warrant Agent. Upon the appointment as aforesaid of a successor Warrant Agent and acceptance by the successor Warrant Agent of such appointment, the Warrant Agent shall cease to be Warrant Agent under this Agreement; provided, however, that in the event of the resignation of the Warrant Agent under this Section 3.17, such resignation shall be effective on the earlier of (i) the date specified in the Warrant Agent s notice of resignation and (ii) the appointment and acceptance of a successor Warrant Agent under this Agreement.

SECTION 3.18 *Successor to Expressly Assume Duties.* Any successor Warrant Agent appointed under this Agreement shall execute, acknowledge and deliver to its predecessor and to the Company an instrument accepting such appointment under this Agreement, and thereupon such successor Warrant Agent, without any further act, deed or conveyance, shall become vested with all the rights and obligations of such predecessor with like effect as if originally named as the Warrant Agent under this Agreement, and such predecessor, upon payment of its charges and disbursements then unpaid, shall thereupon become obligated to transfer, deliver and pay over, and such successor Warrant Agent shall be entitled to receive, all monies, securities and other property on deposit with or held by such predecessor, as the Warrant Agent under this Agreement.

SECTION 3.19 *Successor by Merger.* Any entity into which the Warrant Agent may be merged or consolidated, or any entity resulting from any merger or consolidation to which the Warrant Agent shall be a party, or any entity to which the Warrant Agent shall sell or otherwise transfer all or substantially all of its assets and business, shall be the successor Warrant Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided, however, that it shall be qualified as aforesaid.

ARTICLE IV

MISCELLANEOUS

SECTION 4.1 *Notices.* Any notice pursuant to this Agreement by the Company or by any Holder to the Warrant Agent, or by the Warrant Agent or by any Holder to the Company, shall be in writing and shall be delivered in person or by facsimile transmission, or mailed first class, postage prepaid, (a) to the Company, at its offices at 500 Dallas Street, Suite 1000, Houston, Texas 77002, Attention: General Counsel, or (b) to the Warrant Agent, at its offices at [ ]. Each party to this Agreement may from time to time change the address to which notices to it are to be delivered or mailed by notice to the other party. Any notice mailed pursuant to this Agreement by the Company or the Warrant Agent to the Holders shall be in writing and shall be mailed first class, postage prepaid, or otherwise delivered, to such Holders at their respective addresses on the registry of the Warrant Agent.

SECTION 4.2 *Supplements and Amendments.* The Company and the Warrant Agent may from time to time supplement or amend this Agreement without the approval of any Holder in order to cure any ambiguity or to correct or supplement any provision contained in this Agreement that may be defective or inconsistent with any other provision in this Agreement, or to make any other provisions in regard to matters or questions arising under this Agreement that the Company and the Warrant Agent may deem necessary or desirable; provided, however, that no such supplement or amendment to this Agreement shall be made that adversely affects the

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interests or rights of any of the Holders in any respect. Notwithstanding the foregoing, a supplement or amendment to this Agreement may be made by one or more substantially concurrent written instruments duly signed by the Holders of a majority of the then outstanding Warrants and delivered to the Company; provided, however, that the consent of each Holder affected thereby shall be required for any amendment pursuant to which: (a) the Exercise Price would be increased or the Exercise Number would be decreased (in each case, other than pursuant to adjustments in accordance with Article II), (b) the time period during which the Warrants are exercisable would be shortened or (c) the antidilution provisions set forth in Article II would be changed in such a way as to adversely affect such Holder. In determining whether the Holders of the required number of outstanding Warrants have approved any supplement or amendment to this Agreement, Warrants owned by the Company or its controlled Affiliates, if any, shall be disregarded and deemed not to be outstanding.

SECTION 4.3 *Successors.* All the covenants and provisions of this Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of the respective successors and assigns of the Company or the Warrant Agent under this Agreement.

SECTION 4.4 *Rights Offering.* Prior to the Expiration Date, the Company shall not effect any rights offering for the sale of Common Stock to substantially all of the holders of Common Stock if the per share price payable in such rights offering is less than the Market Price on the trading day immediately prior to the pricing of such rights offering.

SECTION 4.5 *Governing Law; Jurisdiction.* **THIS AGREEMENT AND EACH WARRANT ISSUED UNDER THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICT OF LAWS. IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE WARRANTS, THE PARTIES HERETO AND EACH HOLDER IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY FEDERAL OR STATE COURT LOCATED WITHIN THE COUNTY OF WILMINGTON, STATE OF DELAWARE. NOTICE MAY BE SERVED UPON THE COMPANY AT THE ADDRESS SET FORTH IN SECTION 4.1 AND UPON ANY HOLDER AT THE ADDRESS FOR SUCH HOLDER SET FORTH IN THE REGISTRY MAINTAINED BY THE COMPANY OR WARRANT AGENT PURSUANT TO SECTION 1.7. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO AND EACH HOLDER HEREBY UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR THE WARRANTS.**

SECTION 4.6 *Benefits of this Agreement.* This Agreement shall be for the sole and exclusive benefit of the Company, the Warrant Agent and the Holders of the Warrants. Nothing in this Agreement shall be construed to give to any Person other than the Company, the Warrant Agent and the Holders any legal or equitable right, remedy or claim under this Agreement.

SECTION 4.7 *Counterparts.* This Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 4.8 *Table of Contents; Headings.* The table of contents and headings of the Articles and Sections of this Agreement have been inserted for convenience of reference only, are not intended to be considered a part of this Agreement and shall not modify or restrict any of the terms or provisions of this Agreement.

SECTION 4.9 *Severability.* The provisions of this Agreement are severable, and if any clause or provision shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect in that jurisdiction only such clause or provision, or part thereof, and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision of this Agreement in any jurisdiction.

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SECTION 4.10 *Availability of Agreement.* The Warrant Agent shall keep copies of this Agreement and any notices given or received under this Agreement available for inspection by the Holders during normal business hours at its principal office in New York. The Company shall supply the Warrant Agent from time to time with such numbers of copies of this Agreement as the Warrant Agent may request.

SECTION 4.11 *Saturdays, Sundays, Holidays, etc.* If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a business day, then such action may be taken or such right may be exercised on the next succeeding day that is a business day.

SECTION 4.12 *Definitions.* As used in this Agreement, the following terms having the meanings ascribed thereto below:

Affiliate means, with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with, such other Person. For purposes of this definition, control (including, with correlative meanings, the terms controlled by and under common control with) when used with respect to any Person, means the possession, directly or indirectly, of the power to cause the direction of management and/or policies of such Person, whether through the ownership of voting securities by contract or otherwise.

Agreement has the meaning set forth in the preamble.

Board of Directors means the board of directors of the Company, including any duly authorized committee thereof.

Business Combination means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Company s stockholders.

business day means any day except Saturday, Sunday and (i) at any time when the Warrants are listed on the NASDAQ Stock Market or the New York Stock Exchange, any day on which the NASDAQ Stock Market or the New York Stock Exchange, as applicable, is authorized or required by law or other governmental actions to close or (ii) at any time when the Warrants are not listed on the NASDAQ Stock Market or the New York Stock Exchange, any day on which banking institutions in the State of New York are authorized or required by law or other governmental actions to close.

Common Stock has the meaning set forth in the recitals.

Company has the meaning set forth in the preamble.

El Paso has the meaning set forth in the recitals.

Exchange Act has the meaning set forth in Section 1.18.

Exercise Number has the meaning set forth in Section 1.3.

Exercise Price has the meaning set forth in Section 1.3.

Expiration Date has the meaning set forth in Section 1.4.

Fair Market Value means, with respect to any security or other property, the fair market value of such security or other property as determined by the Board of Directors, acting in good faith.

Holder and Holders has the meaning set forth in the recitals.

Issue Date means, with respect to a Warrant Certificate, the date set forth on such Warrant Certificate.

Market Price means, with respect to a particular security, on any given day, the last reported sale price regular way or, in case no such reported sale takes place on such day, the average of the last closing bid and ask prices regular way, in either case on the principal national securities exchange on which the applicable securities are listed or admitted to trading (the Principal Exchange), or if not listed or admitted

to trading on any national securities exchange, the average of the closing bid and ask prices as furnished by two (2) members of the Financial Industry Regulatory Authority, Inc. selected from time to time by the Company for that purpose. Market Price shall be determined without reference to after hours or extended hours trading. If such security is not listed and traded in a manner that the quotations referred to above are available for the period required under this Agreement, the Market Price per share of Common Stock shall be deemed to be the fair market value per share of such security as determined in good faith by the Board of Directors in reliance on an opinion of a nationally recognized independent investment banking corporation retained by the Company for such purpose; provided, however, that if any such security is listed or traded solely on a non-U.S. market, such fair market value shall be determined by reference to the closing price of such security as of the end of the most recently ended business day in such market prior to the date of determination; provided, further, that if making such determination requires the conversion of any currency other than U.S. dollars into U.S. dollars, such conversion shall be done in accordance with customary procedures based on the rate for conversion of such currency into U.S. dollars displayed on the relevant page by Bloomberg L.P. (or any successor or replacement service) on or by 4:00 p.m., New York City time, on such exercise date. For the purposes of determining the Market Price of the Common Stock on the trading day preceding, on or following the occurrence of an event, (i) that trading day shall be deemed to commence immediately after the regular scheduled closing time of trading on the Principal Exchange or, if trading is closed at an earlier time, such earlier time and (ii) that trading day shall end at the next regular scheduled closing time, or if trading is closed at an earlier time, such earlier time (for the avoidance of doubt, and as an example, if the Market Price is to be determined as of the last trading day preceding a specified event and the closing time of trading on a particular day is 4:00 p.m. and the specified event occurs at 5:00 p.m. on that day, the Market Price would be determined by reference to such 4:00 p.m. closing price).

Merger Agreement has the meaning set forth in the recitals.

Ordinary Cash Dividends means a regular quarterly cash dividend on shares of Common Stock legally available therefor; provided, however, that Ordinary Cash Dividends shall not include any cash dividends paid subsequent to the Issue Date to the extent the aggregate per share dividends paid on the outstanding Common Stock in any quarter exceed (i) $0.50 per share of Common Stock in any quarter during the fiscal year ended December 31, 2012, (ii) $0.60 per share of Common Stock in any quarter during the fiscal year ended December 31, 2013, (iii) $0.70 per share of Common Stock in any quarter during the fiscal year ended December 31, 2014, (iv) $0.80 per share of Common Stock in any quarter during the fiscal year ended December 31, 2015, (v) $0.90 per share of Common Stock in any quarter during the fiscal year ended December 31, 2016 and (vi) $1.00 per share of Common Stock in any quarter during the fiscal year ended December 31, 2017, in each case, as adjusted for any stock split, stock dividend, reverse stock split, reclassification or similar transaction.

Per Share Fair Market Value has the meaning set forth in Section 2.3.

Person has the meaning given to it in Section 3(a)(9) of the Exchange Act and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act.

Pro Rata Repurchase means any purchase of shares of Common Stock by the Company or any Affiliate thereof pursuant to (i) any tender offer or exchange offer made to substantially all holders of Common Stock subject to Section 13(e) or 14(e) of the Exchange Act or Regulation 14E promulgated thereunder or (ii) any other offer available to substantially all holders of Common Stock, in the case of both (i) and (ii), whether for cash, shares of Common Stock of the Company, other securities of the Company, evidences of indebtedness of the Company or any other Person or any other property (including, without limitation, shares of Common Stock, other securities or evidences of indebtedness of a subsidiary), or any combination thereof, effected while any Warrants are outstanding. The Effective Date of a Pro Rata Repurchase shall mean the date of acceptance of shares for purchase or exchange by the Company under any tender or exchange offer which is a Pro Rata Repurchase or the date of purchase with respect to any Pro Rata Repurchase that is not a tender or exchange offer.

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Subsidiary means any corporation, limited liability company, partnership, association, trust or other entity the accounts of which would be consolidated with those of such party in such party s consolidated financial statements if such financial statements were prepared in accordance with U.S. GAAP, as well as any other corporation, limited liability company, partnership, association, trust or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power (or, in the case of a partnership, more than 50% of the general partnership interests or, in the case of a limited liability company, the managing member) are, as of such date, owned by such party or one or more Subsidiaries of such party or by such party and one or more Subsidiaries of such party. The term Subsidiary shall include Kinder Morgan Energy Partners, L.P.

trading day means (i) if the shares of Common Stock are not traded on any national or regional securities exchange or association or over-the-counter market, a business day or (ii) if the shares of Common Stock are traded on any national or regional securities exchange or association or over-the-counter market, a business day on which such relevant exchange or quotation system is scheduled to be open for business and on which the shares of Common Stock (x) are not suspended from trading on any national or regional securities exchange or association or over-the-counter market for any period or periods aggregating one half hour or longer; and (y) have traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of the shares of Common Stock. The term trading day with respect to any security other than the Common Stock shall have a correlative meaning based on the primary exchange or quotation system on which such security is listed or traded.

U.S. GAAP means United States generally accepted accounting principles.

Warrant and Warrants has the meaning set forth in the recitals.

Warrant Agent has the meaning set forth in the preamble.

Warrant Certificate and Warrant Certificates has the meaning set forth in Section 1.1.

Warrant Share and Warrant Shares has the meaning set forth in Section 1.3.

[Signature page follows]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, all as of the day and year first above written.

KINDER MORGAN, INC.

By:
Name:
Title:

[__________],
as Warrant Agent

By:
Name:
Title:

[Signature Page to the Warrant Agreement]

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EXHIBIT A

VOID AFTER 5:00 P.M., New York City Time, [__________], 201[_]

Warrants to Purchase

[__________]

Shares of Class P Common Stock

KINDER MORGAN, INC.

COMMON STOCK PURCHASE WARRANTS

This certifies that, for value received, [__________] or registered assigns (the Holder), is entitled to purchase from Kinder Morgan, Inc., a Delaware corporation (the Company), at any time from 9:00 a.m., New York City time, on [ ], 201[ ] until 5:00 p.m., New York City time, on 201[_] (the Expiration Date), at the purchase price of $40.00 per share (the Exercise Price), the number of shares of Class P common stock, par value $0.01 per share, of the Company (the Common Stock), shown above. The number of shares purchasable upon exercise of the Common Stock Purchase Warrants (the Warrants) and the Exercise Price are subject to adjustment from time to time as set forth in the Warrant Agreement (as defined below).

The Warrants may be exercised in whole or in part by presentation of this Warrant Certificate with the Notice of Exercise on the reverse side hereof duly executed and simultaneous payment of the Exercise Price at the principal office of [__________] (the Warrant Agent). Payment of such price shall be made, at the option of the Holder, either (i) in cash or by certified or official bank check payable to the Warrant Agent or (ii) by delivering a written direction to the Warrant Agent that the Holder desires to exercise Warrants pursuant to a cashless exercise, in which case the Holder will receive a number of shares of Common Stock that is equal to the aggregate number of shares of Common Stock for which the Warrants are being exercised less the number of shares of Common Stock that have an aggregate Market Price (as defined in the Warrant Agreement) on the trading day on which such Warrants are exercised that is equal to the aggregate Exercise Price. The Exercise Price and the number of shares of Common Stock that may be purchased upon the exercise of the Warrants evidenced by this Warrant Certificate are subject to modification and adjustment in accordance with the terms of the Warrant Agreement.

This Warrant Certificate is issued under and in accordance with a Warrant Agreement, dated as of [__________], 201[_], by and between the Company and [__________] (the Warrant Agreement), and is subject to the terms and provisions contained in the Warrant Agreement, to all of which the Holder by acceptance hereof consents. A copy of the Warrant Agreement may be obtained by the Holder upon written request to the Company or at the office of the Warrant Agent.

Upon any partial exercise of the Warrants evidenced by this Warrant Certificate, there shall be countersigned and issued to the Holder a new Warrant Certificate in respect of the shares of Common Stock as to which the Warrants evidenced by this Warrant Certificate shall not have been exercised. This Warrant Certificate may be exchanged at the office of the Warrant Agent by surrender of this Warrant Certificate properly endorsed either separately or in combination with one or more other Warrant Certificates for one or more new Warrant Certificates evidencing the right of the Holder to purchase the same aggregate number of shares of Common Stock as were purchasable on exercise of the Warrants evidenced by the Warrant Certificate or Certificates exchanged. No fractional shares will be issued upon the exercise of any Warrant, but the Company will pay the cash value thereof determined as provided in the Warrant Agreement.

The Holder may be treated by the Company, the Warrant Agent and all other persons dealing with this Warrant Certificate as the absolute owner hereof.

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The Warrants may be sold, assigned, transferred, pledged, encumbered or in any other manner transferred or disposed of, in whole or in part, but only in accordance with the terms of the Warrant Agreement and in compliance with all applicable laws.

This Warrant Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Warrant Agent.

Dated: [__________], 201[_]

KINDER MORGAN, INC.

By:

[Seal]

Countersigned:

[__________],
as Warrant Agent

By:
Authorized Signature

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EXHIBIT B

NOTICE OF EXERCISE

(To be executed upon exercise of Warrant)

To: KINDER MORGAN, INC.

The undersigned hereby irrevocably elects to exercise the right of purchase represented by the Warrant Certificate within for, and to purchase thereunder, __________ shares of the Class P common stock, par value $0.01 per share, of Kinder Morgan, Inc. (the Common Stock), as provided for therein, and tenders herewith payment of the purchase price.

The purchase price shall be paid:

______	in cash, certified check or official bank check; or
______	by electing to receive a number of shares of Common Stock that is equal to the aggregate number of shares of Common Stock for which the Warrants are being exercised less the number of shares of Common Stock that have an aggregate Market Price (as defined in the Warrant Agreement) on the trading day on which such Warrants are exercised that is equal to the aggregate Exercise Price (as defined in the Warrant Agreement).

Please issue a certificate or certificates for such shares of Common Stock in the name of, and pay any cash for any fractional share to:

If in book-entry form:

DEPOSITORY ACCOUNT NUMBER:

NAME OF AGENT MEMBER:
If in definitive/certificated form:

SOCIAL SECURITY NUMBER OR OTHER IDENTIFYING NUMBER OF ASSIGNEE, IF ANY:	NAME:
	ADDRESS:
SIGNATURE:	
NOTE:	The above signature should correspond exactly with the name on the face of this Warrant Certificate or with the name of the assignee appearing in the Permitted Transfer form below and must be guaranteed by a member of a recognized guarantee medallion program.

And, if said number of shares shall not be all the shares purchasable under the within Warrant Certificate, a new Warrant Certificate is to be issued in the name of said undersigned for the balance remaining of the shares purchasable thereunder less any fraction of a share paid in cash.

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PERMITTED TRANSFER

(To be executed only upon transfer of Warrant Certificate to the extent such transfer is

permissible under the terms of the Warrant Agreement)

For value received, __________ hereby sells, assigns and transfers unto the within Warrant Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint __________ attorney, to transfer said Warrant Certificate on the books of Kinder Morgan, Inc., with full power of substitution in the premises.

Dated: __________, 201_

NOTE: The above signature should correspond exactly with the name on the face of this Warrant Certificate and must be guaranteed by a member of a recognized guarantee medallion program.

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Annex E

1585 Broadway

New York, NY 10036

October 16, 2011

Board of Directors

El Paso Corporation

El Paso Building

1001 Louisiana Street

Houston, Texas 77002

Members of the Board:

We understand that El Paso Corporation (the Company), Sirius Holdings Merger Corporation, a wholly owned subsidiary of the Company (New EP), Sirius Merger Corporation, a wholly owned subsidiary of New EP (Merger Sub 1), Kinder Morgan, Inc. (the Buyer), Sherpa Merger Sub, Inc., a wholly owned subsidiary of the Buyer (Merger Sub 2) and Sherpa Acquisition, LLC, a wholly owned subsidiary of the Buyer (Merger Sub 3), propose to enter into an Agreement and Plan of Merger, substantially in the form of the draft dated October 16, 2011 (the Merger Agreement), which provides, among other things, for the following transactions (collectively referred to herein as the Transactions): (1) the merger (the First Merger) of Merger Sub 1 with and into the Company (the resulting corporation being the Surviving Corporation), (2) immediately following the First Merger, the conversion (the LLC Conversion) of the Surviving Corporation into a limited liability company, (3) at least twenty days after the Company s shareholders approve the Transactions,, the merger (the Second Merger) of Merger Sub 2 with and into New EP (the resulting corporation being the New Surviving EP Corporation) and (4) immediately following the Second Merger, the merger (the Third Merger) of the New Surviving EP Corporation with and into Merger Sub 3. Pursuant to the Second Merger, the Company will become a wholly owned subsidiary of the Buyer, and each outstanding share of common stock, par value $3.00 per share of the Company (the Company Common Stock), other than shares held in treasury, held by the Buyer, Merger Sub 2 or Merger Sub 3 or as to which dissenters rights have been perfected, will be converted into the right to receive, at the election of the holder thereof, one of the following: (A) $14.65 per share in cash, 0.4187 of a share of Class P common stock, par value $0.01 per share, of the Buyer (the Buyer Common Stock) and 0.64 of a warrant of the Buyer to purchase one share of the Buyer Common Stock at an exercise price of $40.00 per share (a Buyer Warrant) (the Cash/Stock/Warrant Consideration), (B) $25.91 per share in cash and 0.64 of a Buyer Warrant (the Cash/Warrant Consideration) or (C) 0.9635 of a share of the Buyer Common Stock and 0.64 of a Buyer Warrant (the Stock/Warrant Consideration , and together with the Cash/Stock/Warrant Consideration and the Cash/Warrant Consideration payable pursuant to the Second Merger, the Consideration), each subject to adjustment in certain circumstances. The terms and conditions of the Transactions are more fully set forth in the Merger Agreement.

You have asked for our opinion as to whether the Consideration to be received by the holders of shares of the Company Common Stock pursuant to the Merger Agreement is fair from a financial point of view to the holders of shares of the Company Common Stock.

For purposes of the opinion set forth herein, we have:

1) Reviewed certain publicly available financial statements and other business and financial information of the Company and the Buyer, respectively;

2) Reviewed certain internal financial statements and other financial and operating data concerning the Company and the Buyer, respectively;

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3) Reviewed certain financial projections prepared by the managements of the Company and the Buyer, respectively;

4) Attended a presentation made by the financial advisor engaged by the Company in connection with the proposed spin-off of the Company s exploration and production business;

5) Discussed the past and current operations and financial condition and the prospects of the Company, with senior executives of the Company;

6) Discussed the past and current operations and financial condition and the prospects of the Buyer with senior executives of the Buyer;

7) Reviewed the pro forma impact of the Transactions on the Buyer s cash flow, cash flow per share and various credit statistics;

8) Reviewed the reported prices and trading activity for the Company Common Stock and the Buyer Common Stock;

9) Compared the financial performance of the Company and the Buyer and the prices and trading activity of the Company Common Stock and the Buyer Common Stock with that of certain other publicly-traded companies comparable with the Company and the Buyer, respectively, and their securities;

10) Compared the implied volatility of call options of the Buyer, call options of the Company and call options of certain other publicly-traded companies comparable with the Buyer;

11) Reviewed the historical stock price volatility of the Company and of certain other publicly-traded companies comparable with the Buyer;

12) Reviewed the financial terms, to the extent publicly available, of certain comparable acquisition transactions;

13) Participated in certain discussions among management representatives of the Company and the Buyer and each of their respective financial and legal advisors;

14) Reviewed the Merger Agreement and certain related documents; and

15) Performed such other analyses, reviewed such other information and considered such other factors as we have deemed appropriate.

We have assumed and relied upon, without independent verification, the accuracy and completeness of the information that was publicly available or supplied or otherwise discussed with or made available to us by the Company and the Buyer, and formed a substantial basis for this opinion. With respect to the financial projections, or material derived or extrapolated therefrom, we have assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the respective managements of the Company and the Buyer of the future financial performance of the Company and the Buyer. In addition, we have assumed that the Transactions will be

consummated in accordance with the terms set forth in the Merger Agreement without any waiver, amendment or delay of any terms or conditions, including, among other things, that (1) the First Merger and the LLC Conversion, taken together, and (2) the Second Merger and the Third Merger, taken together, will each be treated as a tax-free reorganization, pursuant to the Internal Revenue Code of 1986, as amended. Morgan Stanley has assumed that in connection with the receipt of all the necessary governmental, regulatory or other approvals and consents required for the proposed Transactions, no delays, limitations, conditions or restrictions will be imposed that would have a material adverse effect on the contemplated benefits expected to be derived in the proposed Transactions. We are not legal, tax, or regulatory advisors. We are financial advisors only and have relied upon, without independent verification, the assessment of the Company and its legal, tax or regulatory advisors with respect to legal, tax or regulatory matters. We express no opinion with respect to the fairness of the amount or nature of the compensation to any of the

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Company s officers, directors or employees, or any class of such persons, relative to the Consideration to be received by the holders of shares of the Company Common Stock in the Transactions. We have not made any independent valuation or appraisal of the assets or liabilities of the Company or the Buyer, nor have we been furnished with any such valuations or appraisals. Our opinion is necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to us as of, the date hereof. Events occurring after the date hereof may affect this opinion and the assumptions used in preparing it, and we do not assume any obligation to update, revise or reaffirm this opinion.

In arriving at our opinion, we were not authorized to solicit, nor did we solicit, interest from any party with respect to the acquisition, business combination or other extraordinary transaction, involving the Company or certain of its constituent businesses, nor did we negotiate with any party, other than the Buyer.

We have acted as financial advisor to the Board of Directors of the Company in connection with the Transactions and will receive a fee for our services, a substantial portion of which is contingent upon the closing of the Transactions. In the two years prior to the date hereof, we have provided financial advisory and financing services for the Company and have received fees in connection with such services. Morgan Stanley may also seek to provide such services to the Buyer and the Company in the future and expects to receive fees for the rendering of these services.

Please note that Morgan Stanley is a global financial services firm engaged in the securities, investment management and individual wealth management businesses. Our securities business is engaged in securities underwriting, trading and brokerage activities, foreign exchange, commodities and derivatives trading, prime brokerage, as well as providing investment banking, financing and financial advisory services. Morgan Stanley, its affiliates, directors and officers may at any time invest on a principal basis or manage funds that invest, hold long or short positions, finance positions, and may trade or otherwise structure and effect transactions, for their own account or the accounts of its customers, in debt or equity securities or loans of the Buyer, the Company, or any other company, or any currency or commodity, that may be involved in the Transactions, or any related derivative instrument.

This opinion has been approved by a committee of Morgan Stanley investment banking and other professionals in accordance with our customary practice. This opinion is for the information of the Board of Directors of the Company (in its capacity as such) and may not be used for any other purpose without our prior written consent, except that a copy of this opinion may be included in its entirety in any filing the Company is required to make with the Securities and Exchange Commission in connection with the Transactions if such inclusion is required by applicable law. In addition, this opinion does not in any manner address the prices at which the Buyer Common Stock and Buyer Warrants will trade following consummation of the Transactions or at any time and Morgan Stanley expresses no opinion or recommendation as to how the shareholders of the Buyer and the Company should vote at the shareholders meetings to be held in connection with the Transactions.

Based on and subject to the foregoing, we are of the opinion on the date hereof that the Consideration to be received by the holders of shares of the Company Common Stock pursuant to the Merger Agreement is fair from a financial point of view to the holders of shares of the Company Common Stock.

Very truly yours,

MORGAN STANLEY & CO. LLC

By: /s/ Jonathan Cox

Jonathan Cox

Managing Director

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Annex F

October 16, 2011

Board of Directors

Kinder Morgan, Inc.

500 Dallas Street, Suite 1000

Houston, TX 77002

Members of the Board of Directors:

You have asked us whether, in our opinion, the Consideration (as defined below) to be paid by Kinder Morgan, Inc., a Delaware corporation (KMI), pursuant to the Merger Agreement (as defined below) is fair, from a financial point of view, to KMI.

Pursuant to and subject to the terms and conditions of an Agreement and Plan of Merger, dated as of October 16, 2011 (the Merger Agreement), by and among KMI, El Paso Corporation, a Delaware corporation (EP), Sirius Holdings Merger Corporation, a Delaware corporation and a direct, wholly owned subsidiary of EP (New EP), Sirius Merger Corporation, a Delaware corporation and a direct, wholly owned subsidiary of New EP (Merger Sub One), Sherpa Merger Sub, Inc., a Delaware corporation and a direct, wholly owned subsidiary of KMI (Merger Sub Two), and Sherpa Acquisition, LLC, a Delaware limited liability company and a direct, wholly owned subsidiary of KMI (Merger Sub Three): (i) Merger Sub One will be merged with and into EP, with EP surviving such merger as a direct, wholly owned subsidiary of New EP; (ii) immediately thereafter, EP will be converted into a Delaware limited liability company; (iii) thereafter, Merger Sub Two will be merged with and into New EP, with New EP surviving such merger as a direct, wholly owned subsidiary of KMI (the Second Merger); and (iv) immediately thereafter, New EP will be merged with and into Merger Sub Three, with Merger Sub Three surviving such merger as a direct, wholly owned subsidiary of KMI (clauses (i) through (iv), collectively, the Merger).

As a result of the Merger, among other things, each issued and outstanding share of common stock of EP, par value $3.00 per share (EP Common Stock), other than the Excluded Shares (as defined in the Merger Agreement) and the Dissenting Shares (as defined in the Merger Agreement), will be converted into the right to receive, at the election of the holder of such share of EP Common Stock: (x) $14.65 in cash, 0.4187 of a share of Class P common stock of KMI, par value $0.01 per share (KMI Common Stock), and 0.640 of a warrant of KMI, each of which entitles the holder thereof to purchase one share of KMI Common Stock at $40.00 per share within five years of the effective time of the Second Merger (each such warrant, a KMI Warrant); (y) $25.91 in cash and 0.640 of a KMI Warrant; or (z) 0.9635 of a share of KMI Common Stock and 0.640 of a KMI Warrant; in each case subject to certain election procedures and limitations and proration mechanisms set forth in the Merger Agreement, as to which we express no opinion (such aggregate cash, KMI Common Stock and KMI Warrant consideration, collectively, the Consideration).

In connection with rendering our opinion, we have, among other things:

(i) reviewed certain publicly available business and financial information that we deemed to be relevant, including as set forth in Annual Reports on Form 10-K for each of the fiscal years in the three-year period ended December 31, 2010, Quarterly Reports on Form 10-Q for the quarters ended June 30, 2011 and March 31, 2011 and Current Reports on Form 8-K since June 24, 2011, in each case filed with the U.S. Securities and Exchange Commission (the SEC) by (A) KMI and certain of its affiliates, including Kinder Morgan Energy Partners, L.P. (KMP), and (B) EP and certain of its affiliates, including El Paso Pipeline Partners, L.P. (EPB), as well as publicly available research analysts estimates;

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Members of the Board of Directors

of Kinder Morgan, Inc.

October 16, 2011

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(ii) reviewed certain oil and gas reserve reports of EP for the years ended December 31, 2008, 2009 and 2010 prepared by EP (the Reserve Reports) and audited by Ryder Scott Company, L.P.

(iii) reviewed certain non-public projected financial and operating data and assumptions relating to KMI and certain of its affiliates, including KMP, prepared and furnished to us by the management of KMI;

(iv) reviewed certain non-public projected financial and operating data and assumptions relating to EP and certain of its affiliates, including EPB, prepared by the management of EP and adjusted by the management of KMI;

(v) discussed past and current operations, current financial condition and financial projections of KMI and certain of its affiliates, including KMP, with management of KMI;

(vi) discussed past and current operations, current financial condition and financial projections of EP and certain of its affiliates, including EPB, with management of EP;

(vii) reviewed the amount and timing of the synergies expected to result from the Merger (the Synergies), the timing and use of certain tax attributes of EP, as well as transaction expenses and one-time cash costs arising from the transaction (the Integration Costs), each as estimated by management of KMI;

(viii) reviewed certain non-public pro forma projected financial data and assumptions regarding KMI and certain of its affiliates, including KMP, and EP and certain of its affiliates, including EPB, prepared and furnished to us by management of KMI and EP;

(ix) reviewed the reported prices and the historical trading activity of KMI Common Stock, the common units of KMP, the shares of Kinder Morgan Management, LLC (KMR), EP Common Stock, and the common units of EPB;

(x) compared the financial performance of KMI and its market trading multiples with those of certain other publicly-traded companies that we deemed relevant;

(xi) compared the financial performance of EP and its market trading multiples with those of certain other publicly-traded companies that we deemed relevant;

(xii) compared the financial performance of KMP and its market trading multiples with those of certain other publicly-traded master limited partnerships that we deemed relevant;

(xiii) compared the financial performance of EPB and its market trading multiples with those of certain other publicly-traded master limited partnerships that we deemed relevant;

(xiv) compared the proposed financial terms of the Merger with publicly available financial terms of certain transactions that we deemed relevant;

(xv) reviewed a draft of the Merger Agreement, dated as of October 16, 2011; and

(xvi) performed such other analyses and examinations and considered such other factors that we deemed appropriate.

For purposes of our analysis and opinion, we have assumed and relied upon, without undertaking any independent verification of, the accuracy and completeness of all of the information publicly available, and all of the information supplied or otherwise made available to, discussed with, or reviewed by us, and we assume no liability therefor. With respect to the projected financial and operating data relating to KMI, EP and certain of their respective affiliates prepared by the respective managements of KMI and EP, we have assumed with your consent that, based on the advice of KMI and EP, respectively, such data has been reasonably prepared on bases

reflecting the best currently available estimates and good faith judgments of the respective managements of KMI and EP as to the future financial and operating performance of KMI, EP and such affiliates. For purposes of our analysis and opinion, at your request, we have relied on the projections prepared by the respective managements of KMI and EP with respect to projected financial and operating data of KMI, EP and certain of their respective affiliates. With respect to the Synergies and the Integration Costs estimated by the management of KMI to result from the Merger and the timing and use of the tax attributes of EP, we have assumed that the timing, use and amounts of such Synergies, Integration Costs and tax attributes are reasonable and that that the Merger will qualify for federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended. We express no view as to such financial and operating data, or as to the assumptions on which they were based. We understand the management of KMI has considered possible asset divestitures and concessions that may have to be made in connection with obtaining governmental, regulatory and other consents, approvals and releases necessary for the consummation of the Merger (the Possible Divestitures), and that such Possible Divestitures are reflected in the projected financial and operating data relating to KMI and certain of its affiliates, including KMP, prepared and furnished to us by the management of KMI. We express no view as to the sufficiency of, or the assumptions underlying such projected financial and operating data regarding, the Possible Divestitures.

For purposes of rendering our opinion, we have assumed, in all respects material to our analysis, that the executed Merger Agreement will be substantially the same as the draft dated October 16, 2011 and reviewed by us, that the representations and warranties of each party contained therein are and will be true and correct, that each party will perform all of the covenants and agreements required to be performed by it thereunder and that all conditions to the consummation of the Merger will be satisfied without material waiver or modification thereof. We have further assumed that there has been no material change in the business, assets, liabilities, financial condition, results of operations, cash flows or prospects of KMI, EP or any of their respective affiliates since the date of the most recent financial statements provided to us. Finally, we have assumed that all governmental, regulatory and other consents, approvals and releases necessary for the consummation of the Merger will be obtained without any material delay, limitation, restriction or condition that would have an adverse effect on KMI, EP or the consummation of the Merger or materially reduce the benefits to KMI of the Merger (other than with respect to the Possible Divestitures).

We have not made nor assumed any responsibility for making any physical inspection, independent valuation or appraisal of the assets or liabilities of KMI, EP, or any of their respective affiliates and, except for the Reserve Reports, we have not been furnished with any such valuation or appraisal. We have not evaluated the solvency or fair value of KMI, EP, or any of their respective affiliates under any state or federal laws relating to bankruptcy, insolvency or similar matters. In addition, at your direction, we have assumed for purposes of this opinion that the outcome of any current and pending litigation affecting EP will not be material to our analysis. Our opinion is necessarily based upon information made available to us as of the date hereof and financial, economic, market and other conditions as they exist and as can be evaluated on the date hereof. You understand that subsequent developments may affect this opinion and that we do not have any obligation to update, revise or reaffirm this opinion.

We have not been asked to opine upon, and express no opinion with respect to, any matter other than the fairness, from a financial point of view, to KMI of the Consideration to be paid by KMI. We do not express any view on, and our opinion does not address, any other term or aspect of the Merger Agreement or the Merger or any term or aspect of any other agreement or instrument contemplated by the Merger Agreement or entered into or amended in connection with the Merger, including, without limitation, (i) the fairness of the Merger to, or of the Consideration or any other consideration to be received in connection therewith by, the creditors or other

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constituencies of KMI or EP or the stockholders of EP, or (ii) the fairness of the amount or nature of any compensation to be paid or payable to any of the directors, officers or employees of KMI, or any class of such persons, whether relative to the Consideration or otherwise. Our opinion does not address the relative merits of the Merger as compared to other business or financial strategies that might be available to KMI, nor does it address the underlying business decision of KMI to engage in the Merger. This letter, and our opinion, do not constitute a recommendation as to how any holder of KMI Common Stock should act or, if applicable, vote in respect of the issuance of KMI Common Stock in the Merger. We express no opinion as to the price at which KMI Common Stock and, when listed for trading, the KMI Warrants, the common units of KMP, the shares of KMR, EP Common Stock or the common units of EPB will trade at any time. We are not legal, regulatory, accounting or tax experts and have assumed with your consent the accuracy and completeness of assessments by KMI, EP and their respective advisors with respect to legal, regulatory, accounting and tax matters.

We will receive a fee for our services upon rendering this opinion in connection with the proposed transaction. We will also be entitled to receive a success fee if the Merger is consummated. KMI has also agreed to reimburse our expenses and to indemnify us against certain liabilities arising out of our engagement. During the two year period prior to the date hereof, no material relationship existed between Evercore Group L.L.C. (Evercore) and its affiliates, on the one hand, and KMI, EP or any of their respective affiliates, on the other hand, pursuant to which compensation was received or is intended to be received by Evercore or its affiliates as a result of such a relationship, and no such relationship was or is mutually understood to have been or be contemplated. We may provide financial or other services to KMI, EP, or any of their respective affiliates in the future and in connection with any such services we may receive compensation.

In the ordinary course of business, Evercore or its affiliates may actively trade the equity, debt or other securities, or related derivative securities, or other financial instruments, including bank loans and other obligations, of KMI, KMP, KMR, EP, EPB or any of their respective affiliates, for its own account and for the accounts of its customers and, accordingly, may at any time hold a long or short position in such securities or instruments.

This letter, and the opinion expressed herein is addressed to, and for the information, assistance and benefit of, the Board of Directors of KMI (the Board) in connection with its evaluation of the proposed Merger. The issuance of this opinion has been approved by an Opinion Committee of Evercore.

The Board may disclose this letter, and the opinion expressed herein, to the management of KMI and its affiliates. Additionally, KMI may publicly disclose that the Board engaged Evercore as its financial advisor in connection with the Merger and provided this opinion in connection with the Merger. Subject to the following sentence, this opinion is for the confidential use of the Board of Directors of KMI only in connection with its evaluation of the Merger and may not be provided to or relied upon by any other person without Evercore s prior consent (which shall not be unreasonably withheld, delayed or conditioned). KMI may not, and may not permit any third party to, use this opinion for any other purpose or disclose or otherwise refer to this opinion, or to Evercore, in any manner without Evercore s prior written consent (which shall not be unreasonably withheld, delayed or conditioned), except that KMI may reproduce this opinion in full in any document relating to the Merger that is required to be filed with the U.S. Securities and Exchange Commission, provided, however, that all references to Evercore or this opinion in any such document and the description or inclusion of this opinion therein shall be subject to Evercore s prior written consent (which shall not be unreasonably withheld, delayed or conditioned) with respect to form and substance.

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Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, the Consideration to be paid by KMI pursuant to the Merger Agreement is fair, from a financial point of view, to KMI.

Very truly yours,

EVERCORE GROUP L.L.C.

By: /s/ Robert A. Pacha
Robert A. Pacha

Senior Managing Director

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Annex G

745 Seventh Avenue

New York, NY 10019

United States

October 16, 2011

Board of Directors

Kinder Morgan, Inc.

One Allen Center

500 Dallas, Suite 1000

Houston, Texas 77002

Members of the Board of Directors:

We understand that Kinder Morgan, Inc. (KMI or the Company) intends to enter into a transaction (the Proposed Transaction) with El Paso Corporation (El Paso) pursuant to which (i) Sirius Merger Corporation, an indirect wholly owned subsidiary of El Paso (Merger Sub One), will merge with and into El Paso (the First Step Merger) with El Paso surviving the First Step Merger (the EP Surviving Company), (ii) immediately following the effectiveness of the First Step Merger, the EP Surviving Company will be converted into a Delaware limited liability company (the LLC Conversion); (iii) following the effectiveness of the LLC Conversion, Sherpa Merger Sub, Inc., a direct, wholly owned subsidiary of KMI (Merger Sub Two) will merge (the Second Step Merger) with and into Sirius Holdings Merger Corporation, a direct, wholly owned subsidiary of El Paso prior to giving effectiveness of the First Merger, and the parent company of Merger Sub One (New EP), with New EP surviving the Second Step Merger (the New EP Surviving Corporation); (iv) immediately following the effectiveness of the Second Step Merger, the New EP Surviving Corporation will merge (the Third Step Merger) with and into Sherpa Acquisition, LLC, a direct wholly owned subsidiary of KMI (Merger Sub Three), with Merger Sub Three surviving the Third Step Merger and (v) upon the effectiveness of the Second Step Merger, each share of common stock of El Paso (El Paso Common Stock) then issued and outstanding (other than the Excluded Shares and the Dissenting Shares, as provided in the Agreement (as defined below)) will be converted into the right to receive, at the election of the holder, either: (I) a mixed election of (a) $14.65 per share in cash, (b) 0.4187 shares of the Class P Common Stock of KMI (KMI Class P Common Stock) and (c) 0.64 warrants to acquire KMI Class P Common Stock at $40 per share (the Per Share Warrant Consideration), in each case, subject to adjustment as set forth in the Agreement; (II) a cash election of (a) $25.91 per share in cash and (b) the Per Share Warrant Consideration, subject to adjustment as set forth in the Agreement; or (III) a stock election of (a) 0.9635 shares of KMI Class P Common Stock and (b) the Per Share Warrant Consideration, subject to adjustment as set forth in the Agreement ((I) through (III) collectively, the Merger Consideration). The terms and conditions of the Proposed Transaction are set forth in more detail in the Agreement and Plan of Merger dated as of October 16, 2011 by and among the Company, Merger Sub One, Merger Sub Two, Merger Sub Three, New EP and El Paso (the Agreement) and the summary of the Proposed Transaction set forth above is qualified in its entirety by the terms of the Agreement.

We have been requested by the Board of Directors of the Company to render our opinion with respect to the fairness, from a financial point of view, to the Company of the Merger Consideration to be paid by the Company in the Proposed Transaction. We have not been requested to opine as to, and our opinion does not in any manner address, the Company s underlying business decision to proceed with or effect the Proposed Transaction or the likelihood of consummation of the Proposed Transaction. In addition, we express no opinion on, and our opinion does not in any manner address, the fairness of the amount or the nature of any compensation to any officers, directors or employees of any parties to the Proposed Transaction, or any class of such persons, relative to the Merger Consideration paid in the Proposed Transaction or otherwise.

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In arriving at our opinion, we reviewed and analyzed: (1) the Agreement and the specific terms of the Proposed Transaction; (2) publicly available information concerning KMI, Kinder Morgan Energy Partners, L.P. (KMP), Kinder Morgan Management, LLC (KMR), El Paso and El Paso Pipeline Partners, L.P. (EPP) that we believe to be relevant to our analysis, including, without limitation, each of KMI s, KMP s, KMR s, El Paso s and EPP s Annual Reports on Form 10-K for the fiscal year ended December 31, 2010 and Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2011 and June 30, 2011; (3) financial and operating information with respect to the businesses, operations and prospects of KMI, KMP and KMR furnished to us by the Company, including financial projections of the Company prepared by management of the Company (the Company s Projections); (4) financial and operating information with respect to the businesses, operations and prospects of El Paso and EPP furnished to us by the management of El Paso and the Company, including (i) financial projections of El Paso and EPP prepared by management of El Paso (the El Paso Projections) and (ii) financial projections of El Paso and EPP prepared by management of the Company (the Company s El Paso Projections); (5) the trading history of El Paso Common Stock from October 15, 2009 to October 14, 2011 and a comparison of that trading history with other companies that we deemed relevant; (6) the trading history of the common stock of the Company (the KMI Common Stock) and El Paso Common Stock from February 10, 2011 to October 14, 2011 and a comparison of those trading histories with each other and with those of other companies that we deemed relevant; (7) a comparison of the historical financial results and present financial condition of KMI and El Paso with each other and with those of other companies that we deemed relevant; (8) a comparison of the financial terms of the Proposed Transaction with the financial terms of certain other transactions that we deemed relevant; (9) the potential pro forma impact of the Proposed Transaction on the current and future financial performance of the combined company, including (i) the amounts and timing of the cost savings and operating synergies expected by the management of the Company to result from the Proposed Transaction, (ii) the anticipated impact of certain asset dispositions and transfers discussed with the management of the Company and (iii) the estimated tax savings expected to result from the historical net operating losses of El Paso expected by the management of the Company to result from the Proposed Transaction ((i) through (iii) collectively, the Expected Benefits); (10) published estimates by independent equity research analysts with respect to the future financial performance of KMI and El Paso; (11) the relative trading liquidity of KMI Common Stock and the common stock of the pro forma combined company and (12) estimates of certain (i) proved reserves, as of December 31, 2010, for El Paso prepared by the management of El Paso and audited by a third-party reserve engineer and rolled forward by the management of El Paso to July 1, 2011 and (ii) probable and possible reserves and contingent resources, as of July 1, 2011, prepared by the management of El Paso ((i) and (ii) collectively, the El Paso Reserve Reports). In addition, we have (i) had discussions with the managements of KMI and El Paso concerning their respective businesses, operations, assets, liabilities, financial conditions and prospects and (ii) have undertaken such other studies, analyses and investigations as we deemed appropriate.

In arriving at our opinion, we have assumed and relied upon the accuracy and completeness of the financial and other information used by us without any independent verification of such information (and have not assumed responsibility or liability for any independent verification of such information) and have further relied upon the assurances of the managements of KMI and El Paso they are not aware of any facts or circumstances that would make such information inaccurate or misleading. With respect to the Company Projections, upon the advice of the Company, we have assumed that such projections have been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of the Company as to the future financial performance of KMI and we have relied on such projections in arriving at our opinion. With respect to the El Paso Projections, upon the advice of El Paso and the Company, we have assumed that such projections have been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of El Paso as to the future financial performance of El Paso. With respect to the

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Company s El Paso Projections, upon the advice of the Company, we have assumed that such projections have been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of the Company as to the future financial performance of El Paso and we have relied on such projections in arriving at our opinion. With respect to the Expected Benefits, we have assumed that the amount and timing of the Expected Benefits are reasonable as estimated by the management of KMI and we have also assumed, upon the advice of KMI, that the Expected Benefits will be realized substantially in accordance with such estimates. With respect to the El Paso Reserve Reports, we have discussed these reports with the managements of the Company and El Paso and upon the advice of KMI and El Paso, we have assumed that the El Paso Reserve Reports are a reasonable basis upon which to evaluate the proved, probable and possible reserve and contingent resource levels of El Paso. In addition, at the direction of the Company, we have considered the possible asset divestitures and concessions that the Company may have to make in connection with the process to obtain governmental and regulatory approval for the Proposed Transaction (the Possible Divestitures) which have been discussed with us by the management of the Company. We assume no responsibility for and we express no view as to any projections or estimates described above in this paragraph or the assumptions on which they are based. In arriving at our opinion, we have not conducted a physical inspection of the properties and facilities of KMI or El Paso and have not made or obtained any evaluations or appraisals of the assets or liabilities of KMI or El Paso. Our opinion necessarily is based upon market, economic and other conditions as they exist on, and can be evaluated as of, the date of this letter. We assume no responsibility for updating or revising our opinion based on events or circumstances that may occur after the date of this letter. In addition, we express no opinion as to the prices at which shares of (i) KMI Common Stock or El Paso Common Stock will trade at any time following the announcement of the Proposed Transaction or (ii) KMI Common Stock will trade at any time following the consummation of the Proposed Transaction.

We have assumed the accuracy of the representations and warranties contained in the Agreement and all agreements related thereto. In addition, we have assumed that the Proposed Transaction will be consummated in accordance with the terms of the Agreement without waiver, modification or amendment of any material term, condition or agreement thereof. Other than as contemplated by the Possible Divestitures, we have also assumed, upon the advice of the Company, that necessary governmental, regulatory and third party approvals, consents and releases for the Proposed Transaction will be obtained without any adverse effect that is material to the Company, the combined company or the benefits expected by the management of the Company to be realized from the Proposed Transaction. We do not express any opinion as to any tax or other consequences that might result from the Proposed Transaction, nor does our opinion address any legal, tax, regulatory or accounting matters, as to which we understand that the Company has obtained such advice as it deemed necessary from qualified professionals.

Based upon and subject to the foregoing, we are of the opinion as of the date hereof that, from a financial point of view, the Merger Consideration to be paid by the Company in the Proposed Transaction is fair to the Company.

We have acted as financial advisor to the Company in connection with the Proposed Transaction and will receive fees for our services a portion of which is earned upon rendering this opinion and a substantial portion of which is contingent upon the consummation of the Proposed Transaction. In addition, the Company has agreed to reimburse our expenses and indemnify us for certain liabilities that may arise out of our engagement. We have performed various investment banking and financial services for KMI and its affiliates and El Paso and its affiliates in the past, and expect to perform such services in the future, and have received, and expect to receive, customary fees for such services. Specifically, in the past two years, we have performed the following investment banking and financial services for KMI and KMP and their affiliates, for which we received customary

compensation: (i) in August 2011, we acted as joint bookrunner on KMI s $750 million notes offering; (ii) in June 2011, we acted as joint bookrunner on KMP s 6.7 million units offering; (iii) in February 2011, we acted as joint bookrunner on KMI s 109.8 million share initial public offering; (iv) in November 2010, we acted as joint bookrunner on KMI s $750 million notes offering; (v) in May 2010, we acted as joint bookrunner on KMP s 6.5 million units offering, (vi) in May 2010, we acted as co-manager on KMP s $1.0 billion notes offering and (vii) in December 2009, we acted as joint bookrunner on KMP s 4.5 million units offering. In addition, we have performed the following investment banking and financial services for El Paso and EPP and their affiliates, for which we received customary compensation; (i) in May 2011, we acted as joint bookrunner on EPP s 14.0 million units offering; (ii) in March 2011, we acted as joint bookrunner on EPP s 13.8 million units offering; (iii) in November 2010, we acted as joint bookrunner on EPP s 11.9 million units offering; (iv) in September 2010, we acted as co-manager on EPP s 11.5 million units offering; (v) in June 2010, we acted as joint bookrunner on EPP s 11.5 million units offering and (vi) in January 2010, we acted as joint bookrunner on EPP s 9.9 million units offering. In addition, the Company has requested and we are participating in the financing required in connection with the consummation of the Proposed Transaction and we will receive customary fees in connection therewith.

Barclays Capital Inc. and its affiliates engage in a wide range of businesses from investment and commercial banking, lending, asset management and other financial and non-financial services. In the ordinary course of our business, we and our affiliates may actively trade and effect transactions in the equity, debt and/or other securities (and any derivatives thereof) and financial instruments (including loans and other obligations) of KMI and its affiliates and El Paso and its affiliates for our own account and for the accounts of our customers and, accordingly, may at any time hold long or short positions and investments in such securities and financial instruments.

This opinion, the issuance of which has been approved by our Fairness Opinion Committee, is for the use and benefit of the Board of Directors of the Company and is rendered to the Board of Directors in connection with its consideration of the Proposed Transaction. This opinion is not intended to be and does not constitute a recommendation to any stockholder of the Company as to how such stockholder should vote with respect to the Proposed Transaction.

Very truly yours,

/s/ Barclays Capital Inc.
BARCLAYS CAPITAL INC.

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Annex H

SECTION 262 OF THE DELAWARE GENERAL CORPORATION LAW

§ 262. Appraisal rights.

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder s shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word stockholder means a holder of record of stock in a corporation; the words stock and share mean and include what is ordinarily meant by those words; and the words depository receipt mean a receipt or other instrument issued by a depository representing an interest in 1 or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 255, § 256, § 257, § 258, § 263 or § 264 of this title:

(1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders to act upon the agreement of merger or consolidation, were either (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in § 251(f) of this title.

(2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 255, 256, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a. and b. of this section; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a., b. and c. of this section.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 or § 267 of this title is not owned by the parent immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all

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or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for notice of such meeting (or such members who received notice in accordance with § 255(c) of this title) with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) of this section that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of § 114 of this title. Each stockholder electing to demand the appraisal of such stockholder s shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder s shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder s shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to § 228, § 253, or § 267 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of § 114 of this title. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder s shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder s shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder s shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

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(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such stockholder s demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) of this section hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder s written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) of this section hereof, whichever is later. Notwithstanding subsection (a) of this section, a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person s own name, file a petition or request from the corporation the statement described in this subsection.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder s certificates of stock to the Register in Chancery, if such is

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required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court s decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney s fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder s demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just; provided, however that this provision shall not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder s demand for appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the effective date of the merger or consolidation, as set forth in subsection (e) of this section.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.