

(f) The Independent Fiduciary will:

- (1) Verify that the price of Employer Stock contributed by the Employer is appropriate and, thereafter, monitor the Employer Stock and have sole responsibility for the ongoing management of the Accounts; and (2) take whatever action is necessary to protect the rights of the Plans funded by the Trusts, including, but not limited to, the making of all decisions regarding the acceptance and acquisition of Employer Stock contributed by the Employer, the retention and any disposition of such Stock, and the exercise of any voting rights associated with such Stock;

(g) With certain exceptions described in paragraphs (h) and (i) below, the total amount of: (1) Employer Stock; (2) qualifying employer real property (QERP), as defined by section 407(d)(4) of the Act; and (3) QES other than the Employer Stock (collectively, the Limited Assets) held by each Plan shall not comprise more than twenty-five percent (25%) of the fair market value of the assets held by such Plan as determined on the date of each such transaction;

(h) For purposes of calculating the percentage limitation described in paragraph (g) of this section, and to the extent the conditions of Prohibited Transaction Exemption (PTE) 91-38 have been met,<sup>2</sup> Employer Stock will not constitute a "Limited Asset" to the extent that such Employer Stock:

(1) Is held by an unrelated common or collective trust fund maintained by an independent bank in which any of the Plans through the Trusts may invest; and

(2) Has a total fair market value that does not exceed five percent (5%) of the fair market value of each such common or collective trust fund;

(i) Notwithstanding the requirement set forth in paragraph (g) above, the amount of Limited Assets held by a Plan may exceed 25% of the total assets held by such Plan solely by reason of:

(1) The Limited Assets appreciate in value at a rate that is greater than the rate attributable to the Plan's non-Limited Assets, and such difference in rates causes the value of the Limited Assets to exceed 25% of the Plan's total asset value; or

(2) The non-Limited Assets have declined in value at a rate that is greater than the rate attributable to the Plan's Limited Assets, and such difference in rates causes the value of the Limited

Assets to exceed 25% of the Plan's total asset value; and

(j) At no time will any of the assets of the Trusts revert to the use or benefit of the Employer.

#### Section III. Definitions

(a) The term "Employer" means Kinder Morgan, Inc., any successor to Kinder Morgan, Inc., and/or any affiliates of Kinder Morgan, Inc.;

(b) The term "Employer Stock" means shares of publicly traded common stock of the Employer and includes any replacement publicly traded shares of such stock;

(c) The term "Independent Fiduciary" means a fiduciary with respect to a Plan who is: (1) Qualified as an investment manager; (2) independent of and unrelated to the Employer; and (3) appointed to act on behalf of the Plans with respect to each Contribution. For purposes of this exemption, if granted, a fiduciary will not be deemed to be independent of and unrelated to the Employer if (i) such fiduciary directly or indirectly controls, is controlled by or is under common control with the Employer; or (ii) the Employer pays such fiduciary an amount of income during the fiduciary's current tax year that exceeds one percent (1%) of such fiduciary's gross income (for federal income tax purposes) over its prior tax year;

(d) The term "Plan" means an employee welfare benefit plan maintained by the Employer; and

(e) The term "Trust" means a trust which is qualified under Section 501(c)(9) of the Code, and established for the purpose of funding life, sickness, accident, and other welfare benefits for the participants and beneficiaries of the Plans.

#### Summary of Facts and Representations

1. Kinder Morgan, Inc. (hereinafter, either the Employer or the Applicant) is an energy company that operates more than 30,000 miles of natural gas and products pipelines in various states. The Employer is the sole owner of Natural Gas Pipeline Company of America (NGPL), KN Energy Retail Division, Kinder Morgan Power Company, and KM International Services, Inc. The Employer also owns Kinder Morgan G.P., Inc., the general partner of Kinder Morgan Energy Partners, L.P. (KMP). The Employer had annual operating revenues of \$1,054,918,000 in 2001 and the book value of the Employer's assets as of December 31, 2001 was \$9,533,085,000.

The Employer Stock is common stock issued by the Employer. The Applicant represents that the Employer Stock is

widely held, publicly traded, and may be freely exchanged on the New York Stock Exchange (NYSE symbol: KMI). The applicant states further that the Employer Stock qualifies as a "qualifying employer security", as defined by section 407(d)(5) of the Act, and also satisfies the requirements of section 407(f)(1) of the Act.

2. The Employer sponsors the Plans. The Plans provide various types of welfare benefits to current and/or former employees of the Employer.<sup>3</sup> Included in the Plans is the Retiree Plan, a welfare benefit plan that provides health, life, and disability benefits to all full-time salaried, non-union hourly, and union hourly retirees of the Employer.<sup>4</sup> In addition, the Retiree Plan provides disability benefits and life insurance benefits for a small, closed group of individuals currently employed by the Employer. The Applicant estimates that, as of March 1, 2002, the Retiree Plan had 4,891 participants and beneficiaries and \$67,268,272 in net assets as of January 31, 2002. The Applicant represents that any of the assets held by the Trusts on behalf of the Retiree Plan may be used to support any of the payments made in connection with the benefits provided by the Retiree Plan.

According to the Applicant, the assets of the Retiree Plan are not invested in loans to any party in interest involved in the transactions described herein. However, the Applicant notes that less than one-half of one percent of the Retiree Plan's assets held in the Trusts

<sup>3</sup> Currently, the Plans are: (1) The Retiree Medical Plan covering the United Mine Workers of America; (2) Western Alfalfa Corporation Retiree Medical Plan; (3) Kinder Morgan, Inc. Medical Plan; (4) Kinder Morgan Bulk Terminals, Inc. Health Benefit Plan; (5) Kinder Morgan, Inc. for Elizabeth River Terminals Employees; (6) Kaiser Foundation Health Plans, Inc. (Northern-Southern California); (7) Mountain Medical Affiliates (Colorado) Plan; (8) Health Net of California; (9) Kinder Morgan, Inc. Master Employee Welfare Benefit Plan; (10) Kinder Morgan, Inc. Dental Plan; (11) Kinder Morgan, Inc. Life Insurance Plan; (12) Kinder Morgan, Inc. Group Business Travel Insurance Plan; (13) Kinder Morgan, Inc. Accidental Death & Dismemberment Insurance Plan; (14) Kinder Morgan, Inc. Long Term Disability Insurance Plan; (15) Kinder Morgan, Inc. Flexible Spending Account Plan; (16) Kinder Morgan, Inc. Weekly Accident and Sickness Plan for Liquid Terminals Employees; (17) Kinder Morgan, Inc. Life Insurance Plan for Elizabeth River Terminals Employees; (18) Kinder Morgan, Inc. Weekly Accident and Sickness and Accidental Death and Dismemberment Insurance Plan for Elizabeth River Terminals Employees; (19) Kinder Morgan, Inc. Long Term Disability Insurance Plan for Elizabeth River Terminals Employees; (20) Kinder Morgan, Inc. Dental Expense Insurance Benefit Plan for Elizabeth River Terminals Employees; (21) Kinder Morgan, Inc. Severance Plan; and (22) Kinder Morgan, Inc. Vision Plan.

<sup>4</sup> The Employer currently anticipates pre-funding only the Retiree Plan to the extent this proposed exemption is granted.

<sup>2</sup> PTE 91-38 (56 FR 31966 (July 12, 1991)) requires, among other things, that the interests of a plan in an unrelated common or collective trust fund may not exceed ten percent (10%) of the total of all assets in such common or collective trust fund.