

may be invested indirectly (through certain funds maintained by an independent bank) in securities of the Employer that constitute QES. The Applicant represents that such investment is permitted by section 407(a) and 408(e) of the Act.<sup>5</sup>

3. The Trusts are voluntary employees' beneficiary association trusts (VEBAs). The following Trusts are used to fund the Retiree Plan (the Retiree Plan Trusts): (1) The KMI Post-Retirement VEBA Trust (Bargained VEBA); (2) the KMI Post-Retirement Non-Bargaining VEBA Trust (Nonbargained Medical VEBA); (3) the KMI Retiree Life Insurance VEBA Trust (Life Insurance VEBA); and (4) the KMI Retiree Contributions VEBA Trust (Retiree Contribution Funding VEBA). The Applicant states that each Trust is intended to meet the requirements of section 501(c)(9) of the Code. As such, the trust agreement with respect to each Retiree Plan Trust or any other Trust prohibits the reversion to the Employer of the assets held by such Trust.

The Applicant states that the assets held by the Bargained VEBA are used to provide benefits to participants in the Retiree Plan that are covered under collective bargaining agreements. The assets held by the Nonbargained Medical VEBA, meanwhile, are used to provide benefits to participants in the Retiree Plan that are not covered under a collective bargaining agreement. The assets held by the Life Insurance VEBA are used to provide death benefits to both bargained and nonbargained Retiree Plan participants. The assets held by the Retiree Contribution Funding VEBA are used to provide certain benefits to former bargained and nonbargained employees of the Employer and their dependents.

4. The transactions described in this proposed exemption involve the pre-funding of the Retiree Plan by the Employer.<sup>6</sup> The Applicant states that the Employer is not required to make minimum contributions to the Retiree Plan other than the contributions required under certain rate agreements

(discussed below). Nevertheless, the Employer now seeks to pre-fund the Retiree Plan Trusts to a combined level of 100% of the accumulated post-retirement benefit obligation of the Retiree Plan, which is an amount redetermined annually by the third-party administrator of the Retiree Plan, based on the Retiree Plan's future obligations (determined in accordance with Financial Accounting Statement 106).

The Applicant believes that the Retiree Plan, and any other affected Plan, will benefit from the proposed Contributions. In this regard, the Applicant represents that certain opportunities for expansion, acquisition, and debt reduction in the energy industry has re-prioritized the use of cash available to the employer. At no time in the foreseeable future does the Employer anticipate the future funding of retiree welfare benefits through the making of substantial cash contributions to its Retiree Plan (other than those amounts as required under the Rate Agreements). Rather, the Applicant states that the Contributions offer a practical means of pre-funding the Retiree Plan and will make the benefits offered by such Plan more secure.

Initially, the Contributions will involve the transfer of specific amounts of Employer Stock to the Retiree Plan Trusts. With respect to the Bargained VEBA, the Employer seeks to contribute approximately \$3,882,358 in Employer Stock and \$3,430,041 in cash. To the extent this proposed exemption is granted, approximately 50% of the total assets held by the Bargained VEBA will be in the form of Employer Stock. Additionally, with respect to the Nonbargained Medical VEBA, the Employer intends to contribute approximately \$11,920,891 in Employer Stock and approximately \$767,457 in cash. To the extent this proposed exemption is granted, approximately 15.8% of the total assets held by the Nonbargained Medical VEBA will be in the form of Employer Stock. Further, with respect to the Life Insurance VEBA, the Employer intends to contribute approximately \$4,480,667 in Employer Stock and approximately \$2,037,024 in cash. To the extent this proposed exemption is granted, approximately 50% of the total assets held by the Life Insurance VEBA will be in the form of Employer Stock.<sup>7</sup>

Thereafter, if granted, the proposed exemption could affect other Plans that provide welfare benefits. In this regard, the Applicant states that Plans other than the Retiree Plan may prospectively hold Employer Stock contributed by the Employer. The Applicant notes that any Contribution to a Plan other than the Retiree Plan and/or any holding of Employer Stock by such Plan will be subject to the same conditions as those applicable to the Retiree Plan.

5. The Applicant states that each Contribution will be voluntary. In this regard, the Applicant represents that the receipt by a Plan of Employer Stock pursuant to a Contribution will not affect the right of such Plan to receive cash contributions from the Employer. The Applicant notes that the Employer is currently subject to two rate agreements (the Rate Agreements) entered into between the Federal Energy Regulatory Commission and NGPL and Kinder Morgan Interstate Gas Transmission LLC. Both Rate Agreements require the Employer to contribute a specified amount annually to a Trust for an indefinite period of time. The Applicant states that all of the contributions made by the Employer to satisfy the funding requirements under the Rate Agreements will be accounted for separately, and only cash contributions by the Employer will be used to satisfy the funding requirements under the Rate Agreements.

The Applicant notes that subsequent to the contribution of cash to the Retiree Plan pursuant to any Rate Agreement, such cash is not thereafter segregated from any of the assets held under the Retiree Plan. Therefore, the collective assets of the Retiree Plan are used to pay all Retiree Plan participant benefits as they become due. The Applicant represents that to the extent the Retiree Plan is not sufficiently funded at the time a participant's benefits are due, regardless of the reason for the insufficient funding, the Employer will pay from its general assets the benefits owed to such participant.

6. Each Contribution will be subject to several conditions designed to protect the Retiree Plan and any other affected Plans (hereinafter, either, a Plan). In this regard, Employer Stock transferred to a Trust will be held in the Accounts, which are separate accounts under such Trust, for the sole purpose of funding benefits provided by the Plan. Accordingly, at no time will such Employer Stock revert to the use or benefit of the Employer. In addition, each Contribution must be authorized by the appropriate Plan and made in conformity with the terms of such Plan. Further, no Plan will pay any

<sup>5</sup> The Department is expressing no opinion herein as to whether the securities of the Employer held by the Trusts constitute "qualifying employer securities", as defined in section 407(d)(5) of the Act. The Department is also expressing no opinion herein as to whether the acquisition or holding of such securities is permitted by section 407(a) of the Act or covered by the statutory exemption provided by section 408(e) of the Act. Further, the Department is offering no relief herein for transactions other than those described in section I of this proposed exemption.

<sup>6</sup> However, the Applicant notes that other Plans may be affected since the manner in which welfare benefits are provided to the Employer's current and former employees is subject to periodic restructuring.

<sup>7</sup> The Retiree Contribution Funding VEBA is funded through contributions derived from participants in the Retiree Plan. As such, this VEBA will not receive any Employer Stock pursuant to the Contribution.