

KINDER MORGAN, INC.  
Form POS AM  
March 01, 2012  
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As filed with the Securities and Exchange Commission on March 1, 2012

Registration No. 333-177895

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**POST-EFFECTIVE AMENDMENT NO. 2**

**TO**

**Form S-4**

**REGISTRATION STATEMENT**

*UNDER*

*THE SECURITIES ACT OF 1933*

**KINDER MORGAN, INC.**

(Exact name of registrant as specified in its charter)

Delaware

4922

80-0682103

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(State of Incorporation)

(Primary Standard Industrial  
Classification Code Number)  
500 Dallas Street,

(I.R.S. Employer  
Identification No.)

Suite 1000

Houston, Texas 77002

713-369-9000

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Joseph Listengart, Esq.

Vice President, General Counsel and Secretary

Kinder Morgan, Inc.

500 Dallas Street,

Suite 1000

Houston, Texas 77002

713-369-9000

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*With copies to:*

Thomas A. Roberts, Esq.	Gary W. Orloff, Esq.	Robert W. Baker, Esq.	Daniel A. Neff, Esq.
R. Jay Tabor, Esq.	R. Daniel Witschey, Jr., Esq.	Executive Vice President	David A. Katz, Esq.
Weil, Gotshal & Manges LLP	Troy L. Harder, Esq.	and General Counsel	Wachtell, Lipton, Rosen & Katz
767 Fifth Avenue	Bracewell & Giuliani LLP	El Paso Corporation	51 West 52nd Street
New York, New York 10153	711 Louisiana Street,	1001 Louisiana Street	New York, New York 10019
(212) 310-8000	Suite 2300	Houston, Texas 77002	(212) 403-1000
	Houston, Texas 77002	(713) 420-2600	
	(713) 221-2300		

# Edgar Filing: KINDER MORGAN, INC. - Form POS AM

**Approximate date of commencement of proposed sale of the securities to the public:** As soon as practicable after this registration statement is declared effective and upon completion of the transactions described in the enclosed information statement/proxy statement/prospectus.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, please check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, as amended (referred to as the Securities Act ), check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Accelerated filer

Smaller reporting company

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third Party Tender Offer)

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until this registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

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**EXPLANATORY NOTE**

This Post-Effective Amendment No. 2 to the Registration Statement on Form S-4 (File No. 333-177895) is being filed to provide for incorporation by reference by the Registrant of the filings listed therein and any future filings the Registrant makes with the Securities and Exchange Commission under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until the termination of the offering.

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**The information in this document is not complete and may be changed. Kinder Morgan, Inc. may not issue these securities until the registration statement filed with the Securities and Exchange Commission is effective. This document is not an offer to sell these securities and is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION DATED MARCH 1, 2012**

**INFORMATION STATEMENT/PROXY STATEMENT/PROSPECTUS**

**PROPOSED MERGER YOUR VOTE IS IMPORTANT**

March [ ], 2012

We are very pleased to provide this document to you. It is a prospectus related to a proposed issuance by Kinder Morgan, Inc., referred to as Kinder Morgan, of shares of its Class P common stock and warrants to purchase shares of its Class P common stock, or warrants, pursuant to an Agreement and Plan of Merger, referred to as the merger agreement, entered into by, among others, Kinder Morgan and El Paso Corporation, referred to as El Paso. Upon the terms and subject to the conditions set forth in the merger agreement and the Agreement and Plan of Merger entered into among El Paso and certain of its subsidiaries, referred to as the first merger agreement, if the requisite stockholder and other approvals are obtained and other closing conditions are satisfied or waived, through a series of transactions which are further described in this document, El Paso will become an indirect, wholly owned subsidiary of Kinder Morgan. This document is also a proxy statement for El Paso to use in soliciting proxies for its special meeting of stockholders, at which meeting El Paso's stockholders will vote on, among other things, the proposal to adopt the merger agreement and the first merger agreement and to approve the transactions contemplated by the merger agreement and the first merger agreement. In addition, this document is an information statement for Kinder Morgan stockholders to inform them of the transactions and the approvals to be given at the Kinder Morgan special meeting with respect to the proposal to approve the issuance of shares of Kinder Morgan Class P common stock and warrants to be issued as part of the merger consideration and the issuance of shares of Kinder Morgan Class P common stock to be issued upon exercise of the warrants, which we refer to as the share and warrant issuance proposal.

This is an exciting and important event in each of our companies' histories. The boards of directors of each of Kinder Morgan and El Paso have approved the proposed transactions. Under the Delaware General Corporation Law, the approval of El Paso's stockholders must be obtained before the transactions can be completed. Under the rules of the New York Stock Exchange, referred to as the NYSE, Kinder Morgan is required to obtain stockholder approval prior to issuing its Class P common stock and the warrants in connection with the transactions contemplated by the merger agreement. Richard Kinder and certain other stockholders of Kinder Morgan who currently hold, in the aggregate, approximately 75% of the voting power of Kinder Morgan have agreed to vote their shares of Kinder Morgan Class P and Class A common stock, referred to together as Kinder Morgan voting common stock, in favor of the share and warrant issuance proposal. In addition, these stockholders agreed to retain collectively, until the approval of the share and warrant issuance proposal or until the voting agreement is terminated, whichever is earlier, an amount of shares of Kinder Morgan voting common stock that is sufficient to approve the share and warrant issuance proposal. **As a result, approval of the share and warrant issuance proposal at the Kinder Morgan special meeting is assured. Kinder Morgan stockholders are invited to attend the special meeting, at which they will have the opportunity to vote on the share and warrant issuance proposal in person, but no additional votes by other Kinder Morgan stockholders are required to approve the share and warrant issuance proposal. Kinder Morgan is not asking Kinder Morgan stockholders for a proxy, and Kinder Morgan stockholders are requested not to send a proxy.**

The series of transactions described in this document include, among others, what are referred to as the first merger and the second merger. The first merger involves only El Paso and two of its subsidiaries. Pursuant to the first merger agreement, at the effective time of the first merger, each outstanding share of El Paso common stock will be converted into one share of common stock of Sirius Holdings Merger Corporation, or New El Paso. The first merger will result in a holding company structure for El Paso but will not affect the merger consideration that El Paso stockholders will receive at the effective time of the second merger pursuant to the merger agreement. Pursuant to the merger agreement, at the effective time of the second merger, each share of New El Paso common stock issued and outstanding immediately prior to the effective time of the second merger (excluding shares held by New El Paso in treasury, any shares held by Kinder Morgan or any of Kinder Morgan's or New El Paso's subsidiaries and dissenting shares in accordance with Delaware law) will be

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converted into the right to receive, at the election of the holder but subject to proration with respect to the stock and cash portion so that approximately 57% of the aggregate merger consideration (excluding the warrants) is paid in cash and approximately 43% (excluding the warrants) is paid in Kinder Morgan Class P common stock, one of the following: (1) 0.9635 of a share of Kinder Morgan Class P common stock and 0.640 of a warrant to purchase one share of Kinder Morgan Class P common stock; (2) \$25.91 in cash without interest and 0.640 of a warrant to purchase one share of Kinder Morgan Class P common stock; or (3) 0.4187 of a share of Kinder Morgan Class P common stock, \$14.65 in cash without interest and 0.640 of a warrant to purchase one share of Kinder Morgan Class P common stock. The second merger will result in El Paso and New El Paso becoming wholly owned subsidiaries of Kinder Morgan.

El Paso's common stock currently trades on the NYSE under the ticker symbol EP, and Kinder Morgan's Class P common stock currently trades on the NYSE under the ticker symbol KMI. The Kinder Morgan Class P common stock being registered pursuant to this information statement/proxy statement/prospectus (including the Kinder Morgan Class P common stock issuable upon exercise of the warrants) will be listed on the NYSE, and the warrants being registered pursuant to this information statement/proxy statement/prospectus will be listed on the NYSE, NASDAQ or another exchange agreed upon by Kinder Morgan and El Paso.

The special meeting of El Paso stockholders will be held on March 6, 2012 at 9 a.m., local time, at the Hyatt Regency Houston, 1200 Louisiana Street, Houston, Texas 77002. At the special meeting, El Paso stockholders will be asked to vote on, among other things, the adoption of the merger agreement and the first merger agreement and the approval of the transactions contemplated by the merger agreement and the first merger agreement. **El Paso's board of directors has approved and declared advisable the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement, including the first merger on the terms set forth in the first merger agreement, and the second merger on the terms set forth in the merger agreement. El Paso's board of directors recommends that El Paso stockholders vote FOR the adoption of the merger agreement and the first merger agreement and approval of the transactions contemplated by the merger agreement and the first merger agreement; FOR any adjournment of the special meeting, if necessary, to solicit additional proxies if there are not sufficient votes to adopt the merger agreement and the first merger agreement at the time of the special meeting; and FOR the approval on an advisory (non-binding) basis of the compensation that may be paid or become payable to El Paso's named executive officers that is based on or otherwise relates to the proposed transactions.** The special meeting of Kinder Morgan stockholders will be held on March 2, 2012 at 10 a.m. local time, at 500 Dallas Street, Suite 1000, Houston, Texas, 77002.

This information statement/proxy statement/prospectus is an important document containing answers to frequently asked questions and a summary description of the transactions, the merger agreement and the first merger agreement, followed by more detailed information about Kinder Morgan, El Paso, the transactions, and the other matters to be voted upon by Kinder Morgan and El Paso stockholders as part of the special meetings. We urge you to read this document carefully and in its entirety. **In particular, you should consider the matters discussed under Risk Factors beginning on page 45.**

We look forward to the successful merger of Kinder Morgan and El Paso.

Sincerely,

Richard D. Kinder

Chairman and Chief Executive Officer

Kinder Morgan, Inc.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities to be issued under this document or determined that this document is accurate or complete. Any representation to the contrary is a criminal offense.**

This document is dated March [ ], 2012 and a prior version was first mailed to stockholders of Kinder Morgan and El Paso on or about January 31, 2012.

Douglas L. Foshee

Chairman, President and Chief Executive Officer

El Paso Corporation

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**EL PASO CORPORATION**

**1001 Louisiana Street**

**Houston, Texas 77002**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

**TO BE HELD ON MARCH 6, 2012**

This is a notice that a special meeting of stockholders of El Paso Corporation (referred to as "El Paso") will be held on March 6, 2012, beginning at 9 a.m., local time, at the Hyatt Regency Houston, 1200 Louisiana Street, Houston, Texas 77002, unless postponed or adjourned to a later date. This special meeting will be held for the following purposes:

1. to consider and vote upon a proposal to adopt the Agreement and Plan of Merger, dated October 16, 2011 (as it may be amended from time to time, the "merger agreement"), by and among El Paso, Sirius Holdings Merger Corporation (a direct, wholly owned subsidiary of El Paso referred to as "New El Paso"), Sirius Merger Corporation (a direct, wholly owned subsidiary of New El Paso), Kinder Morgan, Inc. (referred to as "Kinder Morgan"), Sherpa Merger Sub, Inc. and Sherpa Acquisition, LLC (which are direct, wholly owned subsidiaries of Kinder Morgan) and the Agreement and Plan of Merger, dated October 16, 2011, by and among El Paso, New El Paso and Sirius Merger Corporation (as it may be amended from time to time, the "first merger agreement") and to approve the transactions contemplated by the merger agreement and the first merger agreement, including:

a merger of Sirius Merger Corporation with and into El Paso (the "first merger"), as a result of which El Paso will become a wholly owned subsidiary of New El Paso and each outstanding share of El Paso common stock will be converted into one share of New El Paso common stock; and

a merger of Sherpa Merger Sub, Inc., a corporation directly, wholly owned by Kinder Morgan, with and into New El Paso (the "second merger"), at which time stockholders of New El Paso will be entitled to receive the merger consideration described in the merger agreement in exchange for their shares;

2. to consider and vote upon any adjournment of the special meeting, if necessary, to solicit additional proxies if there are not sufficient votes to adopt the merger agreement and the first merger agreement at the time of the special meeting;

3. to consider and cast an advisory (non-binding) vote on the compensation that may be paid or become payable to El Paso's named executive officers that is based on or otherwise relates to the proposed transactions; and

4. to transact any other business as may properly come before the special meeting or any adjournment or postponement of such special meeting.

Only holders of record of El Paso common stock at the close of business on January 20, 2012, the record date for the special meeting, are entitled to receive this notice and to vote at the special meeting or at any adjournment or postponement of such special meeting.

The accompanying information statement/proxy statement/prospectus describes the proposals listed above in more detail. Please refer to the attached document, including the merger agreement, the first merger agreement and all other Annexes and including any documents incorporated by reference, for further information with respect to the business to be transacted at the special meeting. You are encouraged to read the entire document carefully before voting. **In particular, see the section entitled "Risk Factors" beginning on page 45.**

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El Paso's board of directors has approved and declared advisable the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement, including the first merger on the terms set forth in the first merger agreement, and the second merger on the terms set forth in the merger agreement. El Paso's board of directors recommends that you vote **FOR** the adoption of the merger agreement and the first merger agreement and approval of the transactions contemplated by the merger agreement and the first merger agreement; **FOR** any adjournment of the special meeting, if necessary, to solicit additional proxies if there are not sufficient votes to adopt the merger agreement and the first merger agreement at the time of the special meeting; and **FOR** the approval on an advisory (non-binding) basis of the compensation that may be paid or become payable to El Paso's named executive officers that is based on or otherwise relates to the proposed transactions.

**YOUR VOTE IS IMPORTANT REGARDLESS OF THE NUMBER OF SHARES THAT YOU OWN.** The acquisition of El Paso by Kinder Morgan cannot be completed without the affirmative vote on the merger proposal of the holders of at least a majority of the outstanding shares of El Paso common stock entitled to vote as of the record date for the special meeting. If you do not vote, the effect will be the same as a vote against the proposal to adopt the merger agreement and the first merger agreement and to approve the transactions contemplated by the merger agreement and the first merger agreement. You may vote your shares by proxy electronically via the Internet, by telephone, by sending in an appropriately completed paper proxy card or in person by ballot at the special meeting.

If you have any questions concerning the transactions or this information statement/proxy statement/prospectus or would like additional copies, please contact:

MacKenzie Partners, Inc.

105 Madison Avenue

New York, NY 10016

Call Collect: (212) 929-5500

Toll Free: (800) 322-2885

email: [proxy@mackenziepartners.com](mailto:proxy@mackenziepartners.com)

By Order of the Board of Directors

MARGUERITE N. WOUNG-CHAPMAN

*Corporate Secretary*

March [ ], 2012



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**KINDER MORGAN, INC.**

**NOTICE OF SPECIAL MEETING AND ACTION TO BE TAKEN**

**Kinder Morgan is Not Asking You for a Proxy and You are Requested Not to Send Kinder Morgan a Proxy**

Dear Stockholder:

On March 2, 2012, Kinder Morgan, Inc. (referred to as "Kinder Morgan") will hold a special meeting of the holders of Class P common stock and Class A common stock at 500 Dallas Street, Suite 1000, Houston, Texas 77002. The meeting will begin at 10 a.m., local time.

At the meeting Kinder Morgan proposes to consider and vote upon a proposal (referred to as the "share and warrant issuance proposal") to approve the issuance of shares of Kinder Morgan Class P common stock and warrants to purchase shares of Kinder Morgan Class P common stock to be issued as part of the merger consideration, as well as the issuance of shares of Kinder Morgan Class P common stock to be issued upon exercise of such warrants, in each case, in connection with an Agreement and Plan of Merger, pursuant to which El Paso Corporation will become a wholly owned subsidiary of Kinder Morgan.

Kinder Morgan's board of directors has approved the share and warrant issuance proposal and recommends that you vote "FOR" the share and warrant issuance proposal, which is discussed in more detail in the accompanying information statement/proxy statement/prospectus. Richard Kinder and certain other stockholders of Kinder Morgan who currently hold, in the aggregate, approximately 75% of the voting power of Kinder Morgan have agreed to vote their shares of Kinder Morgan voting common stock in favor of the share and warrant issuance proposal. In addition, these stockholders agreed to retain collectively until the approval of the share and warrant issuance or until the voting agreement is terminated, whichever is earlier, an amount of shares of Kinder Morgan voting common stock that is sufficient to approve the share and warrant issuance proposal. **As a result, approval of the share and warrant issuance proposal at the Kinder Morgan special meeting is assured. Kinder Morgan stockholders are invited to attend the special meeting, at which they will have the opportunity to vote on the share and warrant issuance proposal in person, but no additional votes by other Kinder Morgan stockholders are required to approve the share and warrant issuance proposal.**

Kinder Morgan's board of directors has fixed the close of business on January 20, 2012, as the record date for determining those stockholders entitled to vote at the Kinder Morgan special meeting. Accordingly, only holders of record of Kinder Morgan voting common stock at the close of business on that date are entitled to notice of, and to vote at, the Kinder Morgan special meeting. A complete list of our stockholders will be available for inspection at the Kinder Morgan special meeting.

The accompanying information statement/proxy statement/prospectus provides information about the transactions. You are encouraged to read this information statement/proxy statement/prospectus, including any documents incorporated by reference, and the Annexes carefully and in their entirety. In particular, see the section entitled "Risk Factors" beginning on page 45 in the accompanying information statement/proxy statement/prospectus. If you have any questions concerning the transactions or this information statement/proxy statement/prospectus or would like additional copies, please contact:

MacKenzie Partners, Inc.

105 Madison Avenue

New York, NY 10016

Call Collect: (212) 929-5500

Toll Free: (800) 322-2885

email: [proxy@mackenziepartners.com](mailto:proxy@mackenziepartners.com)

By order of the Board of Directors,

Joseph Listengart

*Secretary*

March [ ], 2012

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**REFERENCES TO ADDITIONAL INFORMATION**

This document incorporates by reference important business and financial information about El Paso and Kinder Morgan from documents that they have filed with the Securities and Exchange Commission (referred to as the "SEC") but that are not being included in or delivered with this document. This information is available to you without charge upon your written or oral request. You may read and copy documents incorporated by reference in this information statement/proxy statement/prospectus, other than certain exhibits to those documents, and other information about El Paso and Kinder Morgan that is filed with the SEC under the Securities Exchange Act of 1934, as amended, and the rules thereunder (referred to as the "Exchange Act") at the SEC's Public Reference Room at 100 F Street, N.E., Washington, DC 20549. You may obtain information on the operations of the Public Reference Room by calling the SEC at 1-800-SEC-0330. You can also obtain such documents free of charge through the SEC's website ([www.sec.gov](http://www.sec.gov)) or by requesting them in writing or by telephone at the following address and telephone number:

**For information about Kinder Morgan, Inc.:**

By Mail: Kinder Morgan, Inc.  
  
500 Dallas Street, Suite 1000  
  
Houston, Texas 77002  
  
Attention: Investor Relations  
  
By Telephone: (713) 369-9000  
By Internet: [www.kindermorgan.com](http://www.kindermorgan.com)

**For information about El Paso Corporation:**

By Mail: El Paso Corporation  
  
1001 Louisiana Street  
  
Houston, Texas 77002  
  
Attention: Investor Relations  
  
By Telephone: (713) 420-5855  
By Internet: [www.elpaso.com](http://www.elpaso.com)

**In addition, if you are an El Paso stockholder and would like to request any documents incorporated by reference in this information statement/proxy statement/prospectus prior to deciding what merger consideration to elect, please do so at least 5 business days prior to the election deadline, which will be identified in the form of election provided to you in a separate mailing following the El Paso special meeting.**

For additional information on documents incorporated by reference in this document, please see "Where You Can Find More Information."

**The firm assisting El Paso with the solicitation of proxies and serving as information agent for Kinder Morgan is:**

MacKenzie Partners, Inc.  
  
105 Madison Avenue  
  
New York, NY 10016  
  
Call Collect: (212) 929-5500

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Toll Free: (800) 322-2885

email: [proxy@mackenziepartners.com](mailto:proxy@mackenziepartners.com)

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**ABOUT THIS DOCUMENT**

Kinder Morgan has supplied all information contained in or incorporated by reference into this information statement/proxy statement/prospectus relating to Kinder Morgan. El Paso has supplied all information contained in or incorporated by reference into this information statement/proxy statement/prospectus relating to El Paso. Kinder Morgan and El Paso have both contributed information relating to the transactions.

This information statement/proxy statement/prospectus forms a part of a registration statement on Form S-4 (Registration No. 333-177895) filed by Kinder Morgan with the SEC. It constitutes a prospectus of Kinder Morgan under Section 5 of the Securities Act of 1933, as amended, and the rules thereunder, with respect to the shares of Kinder Morgan Class P common stock and warrants to purchase shares of Kinder Morgan Class P common stock to be issued to El Paso stockholders in the transactions and shares of Kinder Morgan Class P common stock to be issued upon exercise of such warrants. It also constitutes a proxy statement under Section 14(a) of the Exchange Act and a notice of meeting and action to be taken with respect to the El Paso special meeting of stockholders at which El Paso stockholders will consider and vote on the proposal to adopt the merger agreement and the first merger agreement and to approve the transactions contemplated by the merger agreement and the first merger agreement and the other proposals described in this information statement/proxy statement/prospectus. In addition, it constitutes an information statement under Section 14(c) of the Exchange Act and a notice of meeting and action to be taken with respect to the Kinder Morgan special meeting of stockholders at which holders of Kinder Morgan voting common stock will vote on the proposal to approve the issuance of shares of Kinder Morgan Class P common stock and the warrants to be issued as part of the merger consideration, and the issuance of shares of Kinder Morgan Class P common stock to be issued upon exercise of the warrants.

You should rely only on the information contained in or incorporated by reference into this document. No one has been authorized to provide you with information that is different from that contained in or incorporated by reference into this document. This document is dated March [ ], 2012. You should not assume that the information contained in this document is accurate as of any date other than the date hereof. You should not assume that the information contained in any document incorporated by reference herein is accurate as of any date other than the date of such document. Any statement contained in a document incorporated or deemed to be incorporated by reference into this document will be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference into this document modifies or supersedes that statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this document. Neither the mailing of this document to the respective stockholders of Kinder Morgan and El Paso, nor the taking of any actions contemplated hereby by Kinder Morgan or El Paso at any time will create any implication to the contrary.

**This document does not constitute an offer to sell, or a solicitation of an offer to buy, any securities, or the solicitation of a proxy, in any jurisdiction in which or from any person to whom it is unlawful to make any such offer or solicitation in such jurisdiction.**

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**QUESTIONS AND ANSWERS**

The questions and answers below highlight only selected information from this information statement/proxy statement/prospectus. They do not contain all of the information that may be important to you. El Paso's board of directors is soliciting proxies from its stockholders to vote at the special meeting of El Paso stockholders, to be held on March 6, 2012 at 9 a.m., local time, at the Hyatt Regency Houston, 1200 Louisiana Street, Houston, Texas 77002. This information statement/proxy statement/prospectus also provides information about the special meeting of holders of Kinder Morgan Class P common stock and Class A common stock, to be held on March 2, 2012 at 10 a.m. local time, at 500 Dallas Street, Suite 1000, Houston, Texas 77002, but for which Kinder Morgan is not soliciting proxies. You should read carefully the entire information statement/proxy statement/prospectus, including the Annexes, and the additional documents incorporated by reference into this information statement/proxy statement/prospectus, to fully understand the matters to be acted upon and the voting procedures for El Paso's special meeting and Kinder Morgan's special meeting. For a list of documents incorporated by reference into this document and information on how to obtain them, see the sections entitled "Where You Can Find More Information" and "Incorporation by Reference."

**Frequently Used Terms**

A few frequently used terms may be helpful for you to have in mind at the outset. This document refers to:

Kinder Morgan, Inc., a Delaware corporation, as "Kinder Morgan";

Kinder Morgan Energy Partners, L.P., a Delaware limited partnership, as "KMP";

Kinder Morgan Management, LLC, a Delaware limited liability company, as "KMR";

Kinder Morgan Kansas, Inc., a Kansas Corporation, as "KMK";

Sherpa Merger Sub, Inc., a Delaware corporation and a direct, wholly owned subsidiary of Kinder Morgan, as "Merger Sub Two";

Sherpa Acquisition, LLC, a Delaware limited liability company and a direct, wholly owned subsidiary of Kinder Morgan, as "Merger Sub Three";

the investment funds advised by or affiliated with Goldman Sachs, Highstar Capital LP, The Carlyle Group and Riverstone Holdings LLC, that are investors in Kinder Morgan, collectively as the "Sponsor Investors";

Fayez Sarofim, one of Kinder Morgan's directors, and investment entities affiliated with him, and an investment entity affiliated with Michael C. Morgan, another of Kinder Morgan's directors, and William V. Morgan, one of Kinder Morgan's founders, collectively as the "Original Stockholders";

El Paso Corporation, a Delaware corporation, as "El Paso";

El Paso Pipeline Partners, L.P., a Delaware limited partnership, as "EPB";

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Sirius Holdings Merger Corporation, a Delaware corporation and a direct, wholly owned subsidiary of El Paso, as New El Paso ;

Sirius Merger Corporation, a Delaware corporation and a direct, wholly owned subsidiary of New El Paso, as Merger Sub One ;

the merger of Merger Sub One with and into El Paso with El Paso being the surviving corporation, as the first merger ;

the surviving entity from the first merger, as the EP Surviving Company ;

the merger of Merger Sub Two with and into New El Paso with New El Paso being the surviving corporation, as the second merger ;

the surviving entity from the second merger, as the New EP Surviving Company ;

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the conversion of the EP Surviving Company into a Delaware limited liability company, as the LLC conversion ;

the converted entity after the LLC conversion, as the El Paso Converted LLC ;

the merger of the New EP Surviving Company with and into Merger Sub Three with Merger Sub Three being the surviving entity, as the third merger ;

the first merger, the second merger, the third merger and the LLC conversion, as the transactions ;

Kinder Morgan Class P common stock, \$0.01 par value, as Kinder Morgan Class P common stock ;

shares of Kinder Morgan Class P common stock and Kinder Morgan Class A common stock currently outstanding and entitled to vote at the Kinder Morgan special meeting, as Kinder Morgan voting common stock ;

Kinder Morgan Class P common stock purchase warrants to be issued in connection with the second merger, as the warrants ;

the proposal to approve the issuance of shares of Kinder Morgan Class P common stock and the warrants as part of the consideration in the second merger, and the issuance of shares of Kinder Morgan Class P common stock to be issued upon exercise of the warrants, as the share and warrant issuance proposal ;

the transaction whereby Kinder Morgan, Inc., a Kansas corporation renamed Kinder Morgan Kansas, Inc. which indirectly owned all of the common equity of the general partner of KMP, was acquired by Knight Holdco LLC, the predecessor to Kinder Morgan, in May 2007, as the Going Private Transaction ;

Natural Gas Pipeline Company of America LLC, owner of a major interstate natural gas pipeline and storage system which Kinder Morgan operates, as NGPL ;

El Paso common stock, par value \$3.00 per share, as El Paso common stock ;

the shares of New El Paso common stock, par value \$0.01, which will be issued in exchange for shares of El Paso common stock in connection with the first merger, as New El Paso common stock ;

the Agreement and Plan of Merger, dated as of October 16, 2011, by and among El Paso, New El Paso, Merger Sub One, Kinder Morgan, Merger Sub Two and Merger Sub Three, as the merger agreement ;

the Agreement and Plan of Merger, dated as of October 16, 2011, by and among El Paso, New El Paso and Merger Sub One, as the first merger agreement ;

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the Voting Agreement, dated as of October 16, 2011, by and among El Paso and certain stockholders of Kinder Morgan, as the voting agreement ;

the Warrant Agreement to be entered into at the closing of the transactions by and among Kinder Morgan and a party to be determined at a later date, as the warrant agreement ;

the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, as the HSR Act or the Hart-Scott-Rodino Act ;

the New York Stock Exchange, as the NYSE ;

the General Corporation Law of the State of Delaware, as the DGCL ;

the Delaware Limited Liability Company Act, as the DLLCA ; and

the Internal Revenue Code of 1986, as amended, as the Code.

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### **Q: Why have I received these materials?**

A: You are receiving this information statement/proxy statement/prospectus as a stockholder of one or both of El Paso and Kinder Morgan. El Paso has agreed to be acquired by Kinder Morgan pursuant to the terms and subject to the conditions of the merger agreement, which is attached as Annex A and described in more detail elsewhere in this document. See The Merger Agreement. The merger agreement provides that the acquisition of El Paso by Kinder Morgan will occur through a series of steps, which are referred to in this document as the first merger, the LLC conversion, the second merger and the third merger. These transactions are also described in more detail elsewhere in this document. See The Merger Agreement The Transactions. In connection with the transactions, New El Paso stockholders will be entitled to receive, at their election but subject to proration, cash and/or Kinder Morgan Class P common stock, and in each case, warrants to purchase Kinder Morgan Class P common stock. The merger consideration, proration mechanisms and election procedures are described in more detail in the sections entitled The Merger Agreement Transaction Consideration and The Transactions New El Paso Stockholders Making Elections.

In order to complete the proposed transactions, among other things, El Paso's and Kinder Morgan's stockholders must vote on, and approve, proposals that are described in this information statement/proxy statement/prospectus. El Paso and Kinder Morgan will hold separate special meetings of their respective stockholders to seek these approvals. If you are a stockholder of El Paso, you are being asked to cast a vote on certain proposals, including adoption of the merger agreement and the first merger agreement and approval of the transactions contemplated by the merger agreement and the first merger agreement.

This information statement/proxy statement/prospectus serves as the proxy statement through which El Paso will solicit proxies to obtain the necessary approvals for the proposed transactions. It also serves as the prospectus by which Kinder Morgan will issue shares of its Class P common stock and the warrants as part of the merger consideration. Further, it serves as an information statement for Kinder Morgan stockholders to inform them of the proposed transactions and of the approvals to be given at the Kinder Morgan special meeting. This information statement/proxy statement/prospectus contains important information and you should read it carefully and in its entirety.

### **Questions and Answers for El Paso Stockholders**

#### **Q: What matters are to be voted on at the El Paso special meeting?**

A: The special meeting of El Paso stockholders is being held for the following purposes:

**Proposal 1:** to consider and vote upon a proposal to adopt the merger agreement (which is attached as Annex A) and the first merger agreement (which is attached as Annex B) and to approve the transactions contemplated by the merger agreement and the first merger agreement, including the first merger on the terms set forth in the first merger agreement and the second merger on the terms set forth in the merger agreement;

**Proposal 2:** to consider and vote upon any adjournment of the special meeting, if necessary, to solicit additional proxies if there are not sufficient votes to adopt the merger agreement and the first merger agreement at the time of the special meeting;

**Proposal 3:** to consider and cast an advisory (non-binding) vote on the compensation that may be paid or become payable to El Paso's named executive officers that is based on or otherwise relates to the proposed transactions; and

**Other Matters:** to transact any other business as may properly come before the special meeting or any adjournment or postponement of such special meeting.

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**Q: What is the recommendation of El Paso's board of directors with respect to each proposal?**

A: The board of directors of El Paso recommends that the stockholders of El Paso vote:

**Proposal 1: FOR** adoption of the merger agreement and the first merger agreement and approval of the transactions contemplated by the merger agreement and the first merger agreement;

**Proposal 2: FOR** any adjournment of the special meeting, if necessary, to solicit additional proxies if there are not sufficient votes to adopt the merger agreement and the first merger agreement at the time of the special meeting;

**Proposal 3: FOR** the approval on an advisory (non-binding) basis the compensation that may be paid or become payable to El Paso's named executive officers that is based on or otherwise relates to the proposed transactions; and

**Other Matters:** At this time, El Paso is not aware of any other matters that will be presented for a vote at the El Paso special meeting. If any other matters properly come before the special meeting, the proxy holders will have the discretion to vote upon such matters in accordance with their best judgment. To the extent El Paso receives proper notice of a stockholder's intent to bring a matter before the special meeting, El Paso will advise stockholders in advance of the special meeting as to how the proxies intend to vote on such matter.

**El Paso's board of directors has approved and declared advisable the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement, including the first merger on the terms set forth in the first merger agreement, and the second merger on the terms set forth in the merger agreement.** See The Transactions Recommendation of El Paso's Board of Directors and Reasons for the Transactions.

In considering the recommendation of the El Paso board of directors with respect to the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement, you should be aware that some of El Paso's directors and executive officers may have interests that are different from, or in addition to, the interests of El Paso stockholders more generally and that Goldman Sachs may have interests in the transactions that are different from, or in addition to, those of El Paso's stockholders more generally. See The Transactions Interests of Certain Persons in the Transactions El Paso Executive Officers and Directors and Interests of Certain Persons in the Transactions Goldman Sachs.

**Q: When and where is the El Paso special meeting?**

A: The El Paso special meeting will be held on March 6, 2012, beginning at 9 a.m., local time, at the Hyatt Regency Houston, 1200 Louisiana Street, Houston, Texas 77002 unless postponed or adjourned to a later date.

**Q: Who can attend the El Paso special meeting?**

A: You are entitled to attend the El Paso special meeting only if you are an El Paso stockholder of record or a beneficial owner as of the record date, if you hold a valid proxy for the special meeting or if you are an invited guest of El Paso.

If your shares are registered directly in your name with El Paso's transfer agent, you are a stockholder of record, and stockholders of record who wish to attend the special meeting in person must bring government-issued photo identification to the special meeting.

If your shares are held in street name through a broker, bank, trustee or other nominee, you are a beneficial owner, and beneficial owners will need to show proof of beneficial ownership and government-issued photo identification in order to be admitted to the special meeting.

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If you are a proxy holder for an El Paso stockholder, you will need to bring a validly executed proxy naming you as the proxy holder, proof of record or beneficial ownership of the El Paso stockholder naming you as proxy holder and government-issued photo identification.

No cameras, recording equipment or other electronic devices will be allowed in the meeting room. Please read carefully the requirements for attendance set forth in El Paso Special Meeting, since failure to comply may prevent you from attending the El Paso special meeting.

### **Q: Who can vote at the El Paso special meeting?**

A: All El Paso stockholders who held shares of record at the close of business on January 20, 2012, the record date for the special meeting, are entitled to receive notice of and to vote at the special meeting and any adjournment or postponement of the special meeting, provided that such shares remain outstanding on the date of the special meeting.

### **Q: How many shares of El Paso common stock were outstanding on the record date?**

A: There were 773,738,056 shares of El Paso common stock outstanding at the close of business on January 20, 2012.

### **Q: What constitutes a quorum for the El Paso special meeting?**

A: In order for business to be conducted at the special meeting, a quorum must be present. A quorum requires the presence, in person or by proxy, of holders of a majority of the outstanding shares of El Paso common stock entitled to vote at the special meeting. For purposes of determining whether there is a quorum, all shares that are present, including abstentions and broker non-votes, will count towards the quorum.

### **Q: How do I vote my El Paso shares?**

A: If you are a stockholder of record, you may vote your El Paso shares by proxy electronically via the Internet, by telephone or by sending in an appropriately completed paper proxy card, or you may vote your shares in person by ballot at the El Paso special meeting. You can specify how you want your El Paso shares voted on each proposal by marking the appropriate boxes on the proxy card or indicating your vote on each proposal via the Internet or by telephone. Please review the voting instructions on the proxy card and carefully read this information statement/proxy statement/prospectus prior to voting. See El Paso Special Meeting.

### **Q: If I am planning on attending the El Paso special meeting in person, should I still submit a proxy?**

A: Yes. Whether or not you plan to attend the special meeting, you should submit a proxy. Even if you submit a proxy, you may change your vote by voting in person by ballot at the special meeting. Attendance at the special meeting will not, in and of itself, serve to revoke your proxy.

### **Q: How do I vote if my shares are held in street name ?**

A: If you are a beneficial owner holding your shares in street name, you should direct your broker, bank, trustee or other nominee on how to vote the shares. You should complete a voting instruction card provided to you by your broker, bank, trustee or other nominee or provide your voting instructions via Internet or by telephone, if Internet or telephone voting is made available to your broker, bank, trustee or other nominee. If you wish to vote in person at the meeting, you must first obtain from the broker, bank, trustee or other nominee that is the holder of record of your shares a proxy issued in your name.

Your broker, bank, trustee or other nominee does not have discretionary voting on Proposals 1, 2 and 3, which means that such broker, bank, trustee or other nominee will not be able to vote your El Paso shares on these proposals without instructions from you. See El Paso Special Meeting.



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### **Q: Can I change my vote after I have delivered my proxy?**

A: Yes. You can change your vote at any time before your shares are voted at the El Paso special meeting. If you are a holder of record, you can do so in any of the following ways:

sending a written notice of revocation to El Paso Corporation, Attn: Corporate Secretary, 1001 Louisiana Street, Houston, Texas, 77002, which must be received before your shares are voted at the special meeting;

properly submitting a new proxy card, which must be received before your shares are voted at the special meeting (in which case only the later-submitted proxy is counted and your earlier proxy is revoked);

voting via Internet or by telephone at a later date (in which case only the later-submitted proxy is counted and your earlier proxy is revoked); or

attending the El Paso special meeting and voting by ballot in person.

If you are a beneficial owner holding your shares in street name, you may change your vote only by submitting new voting instructions to your broker, bank, trustee or other nominee. See El Paso Special Meeting.

### **Q: What if I receive more than one set of proxy cards or more than one e-mail instructing me to vote?**

A: If you receive more than one set of proxy cards or more than one e-mail instructing you to vote, it means your shares are registered in more than one name or are registered in different accounts. Please complete, date, sign and return each proxy card or respond to each e-mail, to ensure that all your shares are voted.

### **Q: Who is the inspector of election?**

A: The board of directors of El Paso has appointed a representative of Computershare Trust Company, N.A. to act as the inspector of election at the El Paso special meeting.

### **Q: What if I do not vote on the proposed transactions?**

A: If you fail to respond with a vote on Proposal 1, the merger proposal, or if you respond and indicate that you are abstaining from voting on such Proposal, it will have the same effect as a vote against Proposal 1. If you are a beneficial owner holding your shares in street name and do not provide voting instructions to the broker, bank, trustee or other nominee that holds your shares of record (referred to as a broker non-vote), such broker non-vote will have the same effect as a vote against Proposal 1.

### **Q: Where can I find the voting results of the El Paso special meeting?**

A: The preliminary voting results will be announced at the El Paso special meeting. In addition, within four business days following certification of the final voting results, El Paso intends to file the final voting results with the SEC on Form 8-K.

### **Q: What are the proposed transactions with Kinder Morgan upon which I am being asked to vote?**

A: On October 16, 2011, El Paso, New El Paso, Merger Sub One, Kinder Morgan, Merger Sub Two and Merger Sub Three entered into the merger agreement attached as Annex A.

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The merger agreement contemplates the acquisition of El Paso by Kinder Morgan through a series of steps:

***The First Merger:*** First, Merger Sub One will merge with and into El Paso, with El Paso as the surviving corporation. This merger is referred to in this document as the first merger and the surviving corporation of the first merger is referred to as the EP Surviving Company. The first merger will occur on the terms and subject to the conditions of the first merger agreement. At the effective time of the first merger, each share of El Paso common stock will be converted into a share of New El Paso common stock.

***The LLC Conversion:*** Second, the EP Surviving Company will be converted from a Delaware corporation into a Delaware limited liability company.

***The Second Merger:*** Third, at least twenty days after the LLC conversion, Merger Sub Two will merge with and into New El Paso, with New El Paso as the surviving corporation. This merger is referred to in this document as the second merger, and the surviving corporation of the second merger is referred to as the New EP Surviving Company. At the effective time of the second merger, each share of New El Paso common stock will be converted into the right to receive the merger consideration, as described below. It is upon completion of this step that El Paso stockholders, who will be New El Paso stockholders following the first merger, will be entitled to receive the merger consideration in exchange for their shares.

***The Third Merger:*** Last, the New EP Surviving Company will merge with and into Merger Sub Three, with Merger Sub Three as the surviving limited liability company.

Upon completion of the transactions, El Paso will be a direct, wholly owned subsidiary of Merger Sub Three, and Merger Sub Three, in turn, will be a direct, wholly owned subsidiary of Kinder Morgan. See The Merger Agreement The Transactions.

**Q: What will I receive for my El Paso shares in the proposed transactions with Kinder Morgan?**

A: At the effective time of the first merger, each outstanding share of El Paso common stock will be converted into one share of New El Paso common stock. At the effective time of the second merger, each share of New El Paso common stock issued and outstanding immediately prior to the effective time of the second merger (excluding shares held by New El Paso in treasury, any shares held by Kinder Morgan, Merger Sub Two or Merger Sub Three and any shares held by any other subsidiary of Kinder Morgan or New El Paso and dissenting shares in accordance with Delaware law) will be converted into the right to receive, at the election of the holder but subject to proration with respect to the stock and cash portion so that approximately 57% of the aggregate merger consideration (excluding the warrants) is paid in cash and approximately 43% (excluding the warrants) is paid in Kinder Morgan Class P common stock, one of the following:

0.9635 of a share of Kinder Morgan Class P common stock (which, based on \$32.32, the closing price of Kinder Morgan Class P common stock as of February 23, 2012, had a value of \$31.14 on a rounded basis) and 0.640 of a warrant (which has an assumed value of \$0.96 and is referred to as the Per Share Warrant Consideration ) to purchase one share of Kinder Morgan Class P common stock (any such election referred to as a stock election );

\$25.91 in cash without interest and the Per Share Warrant Consideration (any such election referred to as a cash election ); or

0.4187 of a share of Kinder Morgan Class P common stock (which, based on \$32.32, the closing price of Kinder Morgan Class P common stock as of February 23, 2012, had a value of \$13.53 on a rounded basis), \$14.65 in cash without interest and the Per Share Warrant Consideration (any such election referred to as a mixed election ).

The closing price of El Paso common stock as of February 23, 2012 was \$26.77 per share.

See The Merger Agreement Transaction Consideration.



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**Q: What will happen to my El Paso stock options, restricted shares and performance-based restricted stock units in the proposed transactions with Kinder Morgan?**

A: At the effective time of the first merger, each outstanding stock option to purchase shares of El Paso common stock, restricted share of El Paso common stock and performance-based restricted stock unit will be converted into an equivalent award of New El Paso. At the effective time of the second merger, each such converted stock option, restricted share and performance-based restricted stock unit will be converted into the right to receive, at the election of the holder (which election will apply to all, but not less than all, of such holder's outstanding equity awards), but subject to proration, as described elsewhere in this document, with respect to the cash portion, either cash or a mixture of cash and shares of Kinder Morgan Class P common stock for all shares subject to such awards (in the case of stock options, less the aggregate exercise price). Such holders will also receive the warrants as part of the merger consideration. Holders of such converted stock options, restricted shares and performance-based restricted stock units (and, as described in more detail on pages 198, 199 and 200 of this information statement/proxy statement/prospectus, common stock purchased in respect of options, if any, outstanding under the El Paso ESPP as of immediately prior to closing) will not be able to make a stock election. In the case of performance-based restricted stock units, performance will be deemed to be attained at target. See The Merger Agreement Treatment of New El Paso Stock Options, Restricted Shares, Performance Restricted Stock Units and Employee Stock Purchase Plan.

**Q: Why are holders of El Paso stock options, restricted shares, performance-based restricted stock units and shares of New El Paso common stock purchased in respect of options, if any, outstanding under the El Paso ESPP as of immediately prior to closing not permitted to make a stock election?**

A: The qualification of the second merger and the third merger, taken together, as a reorganization for U.S. federal income tax purposes depends on compliance with certain technical requirements, including whether holders of New El Paso's common stock will receive a sufficient amount of Kinder Morgan Class P common stock to satisfy the continuity of interest test set forth in the Treasury regulations promulgated under Section 368(a) of the Code. The continuity of interest test requires that, after the second merger, a substantial part of the value of the proprietary interests in New El Paso be maintained through ownership of Kinder Morgan Class P common stock. Kinder Morgan Class P common stock issued to holders of New El Paso common stock is taken into account in determining whether the continuity of interest test is satisfied. However, Kinder Morgan Class P common stock issued to holders of New El Paso restricted shares or with respect to New El Paso stock options, New El Paso performance RSUs and New El Paso ESPP options is not so taken into account. Therefore, if the holders of such equity awards are permitted to make a stock election, it is possible that an insufficient number of shares of Kinder Morgan Class P common stock would be available (based on the aggregate number of shares of Kinder Morgan Class P common stock that the parties had agreed would be issued as consideration in the transaction) for issuance to holders of New El Paso common stock to satisfy the continuity of interest test.

**Q: What will happen to El Paso shares held in the El Paso 401(k) plan?**

A: As of the date of this document, shares of El Paso common stock are held by the El Paso Corporation Retirement Savings Plan trust (referred to as the 401(k) Trust). At the effective time of the second merger, such shares are expected to be converted into the merger consideration pursuant to the terms and conditions described above for other outstanding shares of El Paso common stock and in accordance with the terms and conditions of the El Paso Corporation Retirement Savings Plan and 401(k) Trust. El Paso anticipates taking certain actions required to ensure that the acquisition by the 401(k) Trust of warrants to purchase shares of Kinder Morgan Class P common stock in connection with the transactions, and the subsequent holding and disposition by the 401(k) Trust of such warrants, will comply with applicable law.

**Q: What are the terms of the warrants to be used as part of the merger consideration?**

A: The warrants will be issued pursuant to a warrant agreement in the form of and on the terms specified in the form of warrant agreement (attached as Annex D to this document). Each warrant will entitle its holder to

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purchase one share of Kinder Morgan Class P common stock at an exercise price of \$40.00 per share, subject to specified adjustments, at any time during the 5-year period following the closing of the transactions. See The Warrant Agreement.

### **Q: Why is El Paso proposing the transactions with Kinder Morgan?**

A: In the course of reaching its decision to approve the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement, El Paso's board of directors considered a number of factors in its deliberations. For a more complete discussion of these factors, see The Transactions Recommendation of El Paso's Board of Directors and Reasons for the Transactions.

### **Q: What votes of El Paso stockholders are needed to approve the proposed transactions with Kinder Morgan?**

A: The affirmative vote, in person or by proxy, of the holders of a majority of the outstanding shares of El Paso common stock is required to approve the proposed transactions with Kinder Morgan.

### **Q: How and when do I make my cash, stock or mixed election?**

A: You will receive a form of election in a separate mailing following the El Paso special meeting. You should carefully review and follow the instructions accompanying that form of election. You will make your cash, stock or mixed election by properly completing, signing and returning the form of election along with stock certificates (or evidence of shares in book-entry form) representing El Paso shares to Computershare Trust Company, N.A., the entity expected to serve as exchange agent in connection with the transactions.

New El Paso will disseminate a copy of this information statement/proxy statement/prospectus to its stockholders at the time the election forms are mailed. New El Paso stockholders will have a minimum of twenty business days from the mailing of the form of election to make their election. Kinder Morgan will publicly announce the anticipated election deadline at least five business days prior to the election deadline.

Do NOT submit any stock certificates (or evidence of shares in book-entry form) with your proxy card.

For more details on the election procedures, see The Transactions New El Paso Stockholders Making Elections.

### **Q: Can I change my election after the form of election has been submitted?**

A: Yes. You may revoke your election prior to the election deadline by submitting a written notice of revocation to the exchange agent or by submitting new election materials. Revocations must specify the name in which your shares are registered on the stock transfer books of El Paso and such other information as the exchange agent may request. If you wish to submit a new election, you must do so in accordance with the election procedures described in this information statement/proxy statement/prospectus and in the form of election that you will receive in a separate mailing. If you instructed a broker, bank, trustee or other nominee to submit an election for your shares, you must follow the directions of your broker, bank, trustee or other nominee for changing those instructions. **Whether you revoke your election by submitting a written notice of revocation or by submitting new election materials, the notice of materials must be received by the exchange agent by the election deadline in order for the revocation or new election to be valid.** See The Transactions New El Paso Stockholders Making Elections Election Revocation and Changes.

### **Q: How may I transfer El Paso shares after I make my election?**

A: El Paso stockholders who have made elections will be unable to sell or otherwise transfer their shares after making the election, unless the election is properly revoked before the election deadline or unless the merger

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agreement is terminated. See [The Transactions](#) [New El Paso Stockholders Making Elections](#) [Impact of Selling Shares as to which an Election has Already Been Made](#).

### **Q: What if I do not send a form of election or it is not received?**

A: If the exchange agent does not receive a properly completed form of election from you before the election deadline, together with any stock certificates (or evidence of shares in book-entry form) representing the shares you wish to exchange for the merger consideration, properly endorsed for transfer, book-entry transfer shares or a guarantee of delivery and any additional documents required by the procedures set forth in the form of election, then you will have no control over the type of merger consideration you receive. El Paso stockholders not making an election will be deemed to have made a mixed election. See [The Transactions](#) [New El Paso Stockholders Making Elections](#) [Non-Electing Holders](#). **You bear the risk of delivery and should send any form of election by courier or by hand to the appropriate address shown in the form of election.**

If you do not make a valid election with respect to any El Paso shares you own of record, you will receive written instructions from the exchange agent after completion of the proposed transactions on how to exchange your El Paso shares for the merger consideration.

### **Q: May I submit a form of election even if I do not vote to adopt the merger agreement and the first merger agreement and to approve the transactions contemplated by the merger agreement and the first merger agreement?**

A: Yes. You may submit a form of election even if you vote against the adoption of the merger agreement and the first merger agreement and approval of the transactions contemplated by the merger agreement and the first merger agreement or if you abstain from voting.

### **Q: How will I receive the merger consideration to which I am entitled?**

A: You will be paid the merger consideration as promptly as practicable after the effective time of the second merger and after receipt by the exchange agent of your stock certificates (or evidence of shares in book-entry form), a duly executed letter of transmittal and any additional documents required by the procedures set forth in the form of election or the letter of transmittal. In lieu of any fractional shares of Kinder Morgan Class P common stock or warrants to which an El Paso stockholder would otherwise be entitled, such stockholder will receive cash. No interest will be paid or accrued on any cash amounts received as merger consideration or in lieu of any fractional shares or warrants. See [The Transactions](#) [Exchange of Shares](#).

### **Q: What happens if I sell my El Paso shares after the record date but before the special meeting?**

A: If you transfer your El Paso shares after the record date but before the date of the special meeting, you will retain your right to vote at the special meeting (provided that such shares remain outstanding on the date of the special meeting), but you will not have the right to receive the merger consideration. In order to receive the merger consideration, you must hold your shares through the completion of the transactions.

### **Q: Am I entitled to appraisal rights under the DGCL instead of receiving the merger consideration?**

A: Yes. As a holder of El Paso common stock, you are entitled to exercise appraisal rights under Delaware law in connection with the second merger by taking certain actions and meeting certain conditions. Holders of El Paso common stock do not, however, have appraisal rights in connection with the first merger.

See [The Transactions](#) [Appraisal Rights in Connection with the Second Merger](#) and [The First Merger Agreement](#). In addition, a copy of Section 262 of the DGCL is attached to this document as Annex H.

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**Q: What are the expected tax consequences to El Paso stockholders of the proposed transactions with Kinder Morgan?**

A: The parties intend for each of (1) the first merger and the LLC conversion, taken together, and (2) the second merger and the third merger, taken together, to be treated as a reorganization for United States federal income tax purposes within the meaning of Section 368(a) of the Code.

It is a condition to El Paso's obligation and Kinder Morgan's obligation to complete the transactions that El Paso receive an opinion from Wachtell, Lipton, Rosen & Katz, dated as of the date of the first merger, to the effect that the first merger and the LLC conversion, taken together, will qualify for U.S. federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code. It is also a condition to El Paso's obligation and Kinder Morgan's obligation to complete the transactions that El Paso receive an opinion from Wachtell, Lipton, Rosen & Katz, dated as of the closing date of the second merger and the third merger, to the effect that the second merger and third merger, taken together, will qualify for U.S. federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code. In addition, in connection with the filing of the registration statement of which this document is a part, Wachtell, Lipton, Rosen & Katz has delivered an opinion to El Paso and Kinder Morgan to the same effect as the opinions described above and addressing the U.S. federal income tax consequences of the transactions as described in The Transactions Material U.S. Federal Income Tax Consequences of the Transactions. These opinions will be based on facts, representations and assumptions set forth or referred to in the opinions and on representation letters provided by El Paso and Kinder Morgan.

Accordingly, and based on the foregoing opinions, (a) a holder of El Paso common stock will not recognize any gain or loss on the exchange of such holder's El Paso common stock for New El Paso common stock in the first merger, and (b) a holder of New El Paso common stock who receives consideration including Kinder Morgan Class P common stock in the second merger will recognize gain (but not loss) on the exchange of such holder's New El Paso common stock for Kinder Morgan Class P common stock and/or cash (other than cash received in lieu of a fractional share or fractional warrant) and warrants in an amount equal to the lesser of (1) the sum of the amount of cash and the fair market value of the Kinder Morgan Class P common stock and warrants received by such holder in the exchange, minus the adjusted tax basis of such holder's New El Paso common stock surrendered in exchange therefor, and (2) the amount of cash (other than cash in lieu of a fractional share or fractional warrant) received by such holder in the exchange. The second merger will be a fully taxable transaction to a holder who receives solely cash and warrants in the second merger.

The tax consequences of the transactions to each holder of El Paso common stock may depend on such holder's particular facts and circumstances. El Paso shareholders are urged to consult their tax advisors to understand fully the consequences to them of the transactions in their specific circumstances. A discussion of the material U.S. federal income tax consequences of the transactions can be found in the section entitled The Transactions Material U.S. Federal Income Tax Consequences of the Transactions.

**Q: What do I need to know about the first merger and the first merger agreement?**

A: If you vote in favor of Proposal 1, you are voting in favor of, among other things, adoption of the first merger agreement and approval of the first merger.

The first merger is an internal step occurring among El Paso and two of its merger subsidiaries. El Paso's indirect, wholly owned subsidiary will be merged with and into it, and El Paso will continue as the surviving corporation. At the effective time of the first merger, each share of El Paso common stock will be converted into a share of New El Paso common stock. This will result in a new holding company structure but will not affect the merger consideration that El Paso stockholders will receive at the effective time of the second merger. Pursuant to the terms of the first merger agreement, the first merger will take place only if El Paso stockholders vote in favor of Proposal 1.

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For additional details on the first merger and the terms of the first merger agreement, see [The First Merger Agreement](#) and refer to the full text of the first merger agreement, a copy of which is attached as Annex B.

**Q: What are the terms of the voting agreement entered into in connection with the merger agreement?**

A: Simultaneously with the execution of the merger agreement, El Paso entered into a voting agreement with certain of Kinder Morgan's stockholders who currently hold, in the aggregate, approximately 75% of the voting power of Kinder Morgan. Pursuant to the terms of the voting agreement, these stockholders agreed, among other things, to vote their shares of Kinder Morgan voting common stock in favor of the issuance of Kinder Morgan Class P common stock and warrants to be issued as part of the merger consideration and of Kinder Morgan Class P common stock issuable upon exercise of the warrants. In addition, these stockholders agreed to retain collectively, until Kinder Morgan stockholder approval of such issuance is obtained or until the voting agreement is terminated, whichever is earlier, an amount of shares of Kinder Morgan voting common stock that is sufficient to approve such issuance of Kinder Morgan Class P common stock and warrants.

For additional details on the terms of the voting agreement, see [The Voting Agreement](#) and refer to the full text of the agreement, a copy of which is attached as Annex C.

**Q: Is completion of the proposed transactions with Kinder Morgan subject to any conditions?**

A: Yes. In addition to the approval of the El Paso stockholders, the completion of the proposed transactions is subject to satisfaction or waiver of a number of closing conditions, including:

Approval of the issuance of Kinder Morgan Class P common stock and warrants by Kinder Morgan stockholders;

Approval for listing of the shares of Kinder Morgan Class P common stock that are deliverable to the stockholders of New El Paso as contemplated by the merger agreement on the NYSE and of the warrants that are deliverable to the stockholders of New El Paso as contemplated by the merger agreement on the NYSE, NASDAQ or such other exchanges, electronic trading networks or other suitable trading platforms as reasonably agreed by El Paso and Kinder Morgan;

There being no law or injunction preventing or prohibiting consummation of the transactions;

Expiration or termination of any applicable waiting period under the HSR Act;

Effectiveness of a registration statement on Form S-4;

Subject to specified materiality standards, the accuracy of the representations and warranties of the other party;

Compliance by the other party in all material respects with its covenants;

There not being a reduction in El Paso's good faith estimate of its net operating loss carryforwards for income tax purposes below \$2.6 billion; and

El Paso's receipt of a tax opinion from outside legal counsel.



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The completion of the proposed transactions is not, however, conditioned on receipt of financing by Kinder Morgan. See The Merger Agreement Conditions to Completion of the Transactions and Financing Covenant; El Paso Cooperation.

**Q: When are the proposed transactions with Kinder Morgan expected to be completed?**

A: El Paso and Kinder Morgan hope to complete the transactions as soon as reasonably practicable and currently expect the closing of the second merger to occur in the second quarter of 2012. However, the transactions are subject to stockholder approvals and regulatory approvals and the satisfaction or waiver of other

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conditions, as described in the merger agreement, and it is possible that factors outside the control of El Paso or Kinder Morgan could result in the second merger being completed at an earlier time, a later time or not at all. There can be no assurance as to when or if the second merger will close.

**Q: What happens if the merger agreement is terminated?**

A: The merger agreement contains certain termination rights for both El Paso and Kinder Morgan, which are described in more detail in The Merger Agreement Termination. The merger agreement also provides that, upon termination of the merger agreement, under certain circumstances, El Paso may be required to pay Kinder Morgan a termination fee of \$650 million or, in certain other circumstances, to reimburse Kinder Morgan for up to \$20 million of its expenses plus certain of Kinder Morgan's financing-related expenses. In addition, the termination of the merger agreement will not relieve the parties from liability for fraud or willful breach of any covenant or agreement contained in the merger agreement. See The Merger Agreement Termination Fee.

**Q: Are there risks associated with the proposed transactions with Kinder Morgan that I should consider in deciding how to vote?**

A: Yes. There are a number of risks associated with all business combinations, including the proposed transactions. These risks and other risks particular to the proposed transactions are discussed in more detail in the section entitled Risk Factors. You are encouraged to read this entire section with particular care and also to refer to the SEC filings of El Paso incorporated by reference into this document. See the section entitled Where You Can Find More Information.

**Q: What happens if the proposed transactions with Kinder Morgan are not completed?**

A: If the merger agreement and first merger agreement are not adopted and the transactions contemplated by the merger agreement and the first merger agreement are not approved by El Paso stockholders, or if the transactions are not completed for any other reason, El Paso stockholders will not receive the merger consideration.

**Q: Why am I being asked to consider and cast an advisory (non-binding) vote on the compensation that may be paid or become payable to El Paso's named executive officers that is based on or otherwise relates to the proposed transactions?**

A: In July 2010, the SEC adopted new rules that require El Paso to seek a non-binding, advisory vote with respect to certain compensation that may be paid or become payable to El Paso's named executive officers that is based on or otherwise relates to the proposed transactions (such payments referred to as change of control payments). See El Paso Special Meeting Proposal No. 3 Advisory Vote on Change of Control Payments to El Paso Named Executive Officers.

**Q: What will happen if El Paso stockholders do not approve, on an advisory (non-binding) basis, the change of control payments?**

A: The vote on the change of control payments is a vote separate and apart from the vote to adopt the merger agreement and the first merger agreement and to approve the transactions contemplated by the merger agreement and the first merger agreement. Accordingly, you may vote in favor of Proposal 3 and not in favor of Proposal 1, or vice versa. Approval of the change of control payments on an advisory (non-binding) basis is not a condition to consummation of the proposed transactions with Kinder Morgan, and it is advisory in nature only, meaning it will not be binding on either El Paso or Kinder Morgan. Accordingly, because El Paso is contractually obligated to pay the compensation, if the proposed transactions with Kinder Morgan are completed, the compensation will be payable, subject only to the conditions applicable to such compensation payments, regardless of the outcome of the advisory vote.

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### **Q: Who can help answer my questions?**

A: You may contact El Paso's proxy solicitor, MacKenzie Partners, Inc., with any questions about the proposals or how to vote or to request additional copies of any materials at:

MacKenzie Partners, Inc.

105 Madison Avenue

New York, NY 10016

Call Collect: (212) 929-5500

Toll Free: (800) 322-2885

email: proxy@mackenziepartners.com

### **Questions and Answers for Kinder Morgan Stockholders**

#### **Q: Why have I received this information statement/proxy statement/prospectus?**

A: This document is being delivered to you as an information statement to provide you notice of Kinder Morgan's special meeting and other information.

#### **Q: What actions are going to be taken by Kinder Morgan?**

A: Assuming the first merger agreement and the merger agreement are approved and adopted by El Paso's stockholders, and the transactions are thereafter completed, El Paso will become a wholly owned subsidiary of Kinder Morgan, and Kinder Morgan will pay to New El Paso stockholders (who, prior to the first merger, were El Paso stockholders), at the election of such stockholders but subject to proration, cash and/or newly issued shares of Kinder Morgan Class P common stock and, in each case, warrants to purchase shares of Kinder Morgan Class P common stock.

#### **Q: Is Kinder Morgan soliciting proxies to vote on any of these matters at the special meeting?**

A: No. Richard Kinder and certain other stockholders of Kinder Morgan who are party to a voting agreement with El Paso and who currently hold, in the aggregate, approximately 75% of the voting power of Kinder Morgan have agreed to vote their shares of Kinder Morgan voting common stock at the Kinder Morgan special meeting, in favor of the share and warrant issuance proposal. In addition, these stockholders agreed to retain collectively, until Kinder Morgan stockholder approval of such issuance is obtained or until the voting agreement is terminated, whichever is earlier, an amount of Kinder Morgan stock that is sufficient to approve the share and warrant issuance proposal. As a result, approval at the Kinder Morgan special meeting of the share and warrant issuance proposal is assured and no additional votes by other Kinder Morgan stockholders are required to effectuate the transactions.

#### **Q: If the vote is already assured, why is the Kinder Morgan board of directors holding a special meeting?**

A: The certificate of incorporation of Kinder Morgan requires that any vote or similar action required or permitted to be taken by holders of Kinder Morgan Class P common stock must be effected at a duly called annual or special meeting of holders of Kinder Morgan common stock who would be entitled to vote on the particular action.

#### **Q: What is the recommendation of Kinder Morgan's board of directors with respect to the share and warrant issuance proposal?**

A: The Kinder Morgan board of directors recommends that the holders of Kinder Morgan voting common stock vote FOR the share and warrant issuance proposal.



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**Q: Will any other matters be presented for a vote at the Kinder Morgan special meeting?**

A: At this time, Kinder Morgan is not aware of any other matters that will be presented for a vote at the Kinder Morgan special meeting.

**Q: When and where is the Kinder Morgan special meeting?**

A: The Kinder Morgan special meeting will be held at 10 a.m., local time, on March 2, 2012 at 500 Dallas Street, Suite 1000, Houston, Texas 77002.

**Q: Who can attend the Kinder Morgan special meeting?**

A: You are entitled to attend the special meeting if you are a holder of record or a beneficial owner of Kinder Morgan Class P common stock or Class A common stock as of the record date, if you hold a valid proxy to vote at the special meeting or if you are an invited guest of Kinder Morgan. See Kinder Morgan Special Meeting.

**Q: Who can vote at the Kinder Morgan special meeting?**

A: Holders of record at the close of business on January 20, 2012, the record date for the Kinder Morgan special meeting, of Kinder Morgan voting common stock will be entitled to notice of, and to vote at, the Kinder Morgan special meeting with respect to the proposal described above. Each of the shares of Kinder Morgan voting common stock issued and outstanding on the record date is entitled to one vote at the special meeting. However, because approval of the proposal is assured, **Kinder Morgan's board of directors is not soliciting your proxy to vote for the share and warrant issuance proposal.**

**Q: What is a quorum?**

A: In order for business to be conducted at the special meeting, a quorum must be present. A majority of the outstanding shares entitled to vote, present in person or by proxy, shall constitute a quorum.

**Q: What will I receive in the transactions?**

A: If the transactions are completed, Kinder Morgan stockholders will not receive any merger consideration and will continue to hold their shares of Kinder Morgan stock.

**Q: How many shares of Kinder Morgan Class P common stock will be issued in the transactions?**

A: Pursuant to the merger agreement, Kinder Morgan expects to issue approximately 329.1 million shares of Kinder Morgan Class P common stock, with the exact number of shares of Kinder Morgan Class P common stock to be issued dependent upon the number of shares of New El Paso common stock issued and outstanding as of the effective time of the second merger.

**Q: How many warrants to purchase shares of Kinder Morgan Class P common stock will be issued in the transactions?**

A: Pursuant to the merger agreement, Kinder Morgan expects to issue approximately 503.1 million warrants to purchase shares of Kinder Morgan Class P common stock, with the exact number of warrants to be issued dependent on the number of shares of New El Paso common stock issued and outstanding as of the effective time of the second merger.

**Q: Are there risks associated with these matters that I should be aware of?**

A: Yes. You should consider the risk factors set out in the section entitled Risk Factors.

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**Q: When do you expect the transactions to be completed?**

A: Kinder Morgan and El Paso hope to complete the transactions as soon as reasonably practicable and currently expect the closing of the second merger to occur in the second quarter of 2012. However, the transactions are subject to stockholder approvals, regulatory approvals and the satisfaction or waiver of other conditions, as described in the merger agreement, and it is possible that factors outside the control of Kinder Morgan or El Paso could result in the second merger being completed at an earlier time, a later time or not at all. There can be no assurance as to when or if the second merger will close.

**Q: Do I have dissenters rights or appraisal rights in connection with any of these transactions?**

A: Holders of shares of Kinder Morgan stock are not entitled to any dissenters rights or appraisal rights under the DGCL in connection with the second merger or any of the related transactions.

**Q: Who can help answer my questions?**

A: If you have any questions about any of these matters, including the transactions, or if you need additional copies of this document, you should contact:

MacKenzie Partners, Inc.

105 Madison Avenue

New York, NY 10016

Call Collect: (212) 929-5500

Toll Free: (800) 322-2885

email: [proxy@mackenziepartners.com](mailto:proxy@mackenziepartners.com)

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**SUMMARY**

*This summary highlights selected information described in more detail elsewhere in this document and the documents incorporated herein by reference, and may not contain all of the information that is important to you. To understand the transactions and the matters being voted on by Kinder Morgan and El Paso stockholders at their respective special meetings more fully, and to obtain a more complete description of the legal terms of the merger agreement, you should carefully read this entire document, including the Annexes, and the documents to which Kinder Morgan and El Paso refer you. Please see *Where You Can Find More Information* and *Incorporation by Reference*.*

**The Parties**

**Kinder Morgan, Inc.**

500 Dallas Street, Suite 1000

Houston, Texas 77002

(713) 369-9000

Kinder Morgan is a publicly traded Delaware corporation, whose stock trades on the NYSE under the ticker KMI. Kinder Morgan is a leading pipeline transportation and energy storage company in North America. It owns an interest in or operates more than 37,000 miles of pipeline and 180 terminals. Its pipelines transport natural gas, gasoline, crude oil, CO<sub>2</sub> and other products, and its terminals store petroleum products and chemicals and handle such products as ethanol, coal, petroleum coke and steel. Kinder Morgan owns the general partner interest of Kinder Morgan Energy Partners, L.P., referred to as KMP, one of the largest publicly-traded pipeline limited partnerships in America. Combined, Kinder Morgan and KMP constitute the largest mid-stream energy entity in the United States with an enterprise value of approximately \$65 billion.

More information about Kinder Morgan is also available on its website, [www.kindermorgan.com](http://www.kindermorgan.com). See also *Information About Kinder Morgan*. You should read carefully the business and financial information contained in this document and the documents incorporated by reference into this document. See *Where You Can Find More Information* and *Incorporation by Reference*.

**Sherpa Merger Sub, Inc.**

500 Dallas Street, Suite 1000

Houston, Texas 77002

(713) 369-9000

Sherpa Merger Sub, Inc., a Delaware corporation, is a direct wholly owned subsidiary of Kinder Morgan that was formed solely in contemplation of the transactions, has not commenced any operations, has only nominal assets and has no liabilities or contingent liabilities, nor any outstanding commitments other than as set forth in the merger agreement. Sherpa Merger Sub, Inc. has not incurred any obligations, engaged in any business activities or entered into any agreements or arrangements with any third parties other than the merger agreement.

**Sherpa Acquisition, LLC**

500 Dallas Street, Suite 1000

Houston, Texas 77002

(713) 369-9000

Sherpa Acquisition, LLC, a Delaware limited liability company, is a direct wholly owned subsidiary of Kinder Morgan that was formed solely in contemplation of the transactions, has not commenced any operations, has only nominal assets and has no liabilities or contingent liabilities, nor any outstanding commitments other than as set forth in the merger agreement. Sherpa Acquisition, LLC has not incurred any obligations,

engaged in any business activities or entered into any agreements or arrangements with any third parties other than the merger agreement.



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### **El Paso Corporation**

1001 Louisiana Street

Houston, Texas 77002

(713) 420-2600

El Paso Corporation is a publicly traded Delaware corporation, whose common stock trades on the NYSE under the ticker *EP*. It is an energy company that operates primarily in the natural gas transmission, exploration and production sectors of the energy industry. El Paso's purpose is to provide natural gas and related energy products in a safe, efficient and dependable manner. It offers natural gas transmission services to a range of customers, including natural gas producers, marketers and end-users, as well as other natural gas transmission, distribution and electric generation companies. El Paso's operations are conducted through two core segments: (1) pipelines and (2) exploration and production. El Paso is also the general partner of El Paso Pipeline Partners, L.P., referred to as *EPB*.

More information about El Paso is also available on its website, *www.elpaso.com*. See also *Information About El Paso*. You should read carefully the business and financial information contained in this document and the documents incorporated by reference into this document. See *Where You Can Find More Information* and *Incorporation by Reference*.

### **Sirius Holdings Merger Corporation**

1001 Louisiana Street

Houston, Texas 77002

(713) 420-2600

Sirius Holdings Merger Corporation, a Delaware corporation, is a direct, wholly owned subsidiary of El Paso Corporation. It was formed by El Paso solely for the purpose of engaging in the transactions contemplated by the merger agreement, has not commenced any operations, has only nominal assets and has no liabilities or contingent liabilities, nor any outstanding commitments other than as set forth in the merger agreement and the first merger agreement. Sirius Holdings Merger Corporation has not incurred any obligations, engaged in any business activities or entered into any agreements or arrangements with any third parties other than the merger agreement.

### **Sirius Merger Corporation**

1001 Louisiana Street

Houston, Texas 77002

(713) 420-2600

Sirius Merger Corporation, a Delaware corporation, is a direct, wholly owned subsidiary of Sirius Holdings Merger Corporation and an indirect, wholly owned subsidiary of El Paso Corporation. It was formed by El Paso solely for the purpose of engaging in the transactions contemplated by the merger agreement, has not commenced any operations, has only nominal assets and has no liabilities or contingent liabilities, nor any outstanding commitments other than as set forth in the merger agreement and the first merger agreement. Sirius Merger Corporation has not incurred any obligations, engaged in any business activities or entered into any agreements or arrangements with any third parties other than the merger agreement.

### **Recent Developments**

On February 24, 2012, certain subsidiaries of El Paso entered into a Purchase and Sale Agreement with affiliates of Apollo Global Management L.L.C., Riverstone Holdings, LLC, Access Industries, Inc. and certain other parties to sell all of El Paso's exploration and production business

(referred to as EP Energy and the sale

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referred to as the EP Energy Sale ). The purchase price to be paid in the EP Energy Sale is approximately \$7.15 billion payable in cash or other immediately available funds, subject to adjustments for certain items such as cash contributions or distributions, incurrence of indebtedness and title defects. El Paso's net operating loss carryforwards are expected to largely offset taxes associated with the sale of EP Energy, and thus almost the entirety of the proceeds from the EP Energy Sale are expected to be used to substantially reduce the debt borrowed by Kinder Morgan to fund the cash portion of its purchase of El Paso. The EP Energy Sale is subject to customary closing conditions, including clearance under the antitrust laws of the United States and the closing of the second merger. The Purchase and Sale Agreement also provides under certain circumstances for the payment of a termination fee by Kinder Morgan of \$400 million. Pursuant to the merger agreement, Kinder Morgan is required to indemnify El Paso and its subsidiaries from any and all costs incurred by El Paso or its subsidiaries arising from or relating to the EP Energy Sale.

### **The Transactions**

El Paso stockholders are receiving this document in connection with El Paso's solicitation of proxies for its special meeting of stockholders to vote on, among other things, the proposal to adopt the merger agreement and the first merger agreement and to approve the transactions contemplated by the merger agreement and the first merger agreement.

Kinder Morgan and El Paso, among others, have entered into the merger agreement. Kinder Morgan stockholders are receiving this document to inform them of the special meeting of Kinder Morgan stockholders to vote on the share and warrant issuance proposal. Richard Kinder and certain other stockholders of Kinder Morgan who currently hold, in the aggregate, approximately 75% of the voting power of Kinder Morgan, have agreed to vote their shares of Kinder Morgan voting common stock in favor of the share and warrant issuance proposal. In addition, these stockholders agreed to retain collectively, until the approval of the share and warrant issuance proposal or until the voting agreement is terminated, whichever is earlier, an amount of shares of Kinder Morgan voting common stock that is sufficient to approve the share and warrant issuance proposal. **As a result, approval of the share and warrant issuance proposal at the Kinder Morgan special meeting is assured and no additional votes by other Kinder Morgan stockholders are required to effectuate the transactions.**

### **Structure of the Transactions (See page 189)**

Upon the terms and subject to the conditions set forth in the merger agreement and in accordance with the DGCL and the DLLCA: (1) at the effective time of the first merger, Merger Sub One will merge with and into El Paso, with El Paso being the surviving corporation; (2) immediately thereafter, El Paso, as the surviving company of the first merger and a wholly owned subsidiary of New El Paso, will be converted into a Delaware limited liability company; (3) at least twenty days thereafter, Merger Sub Two will merge with and into New El Paso, with New El Paso being the surviving corporation and becoming a wholly owned subsidiary of Kinder Morgan; and (4) immediately thereafter, the surviving company of the second merger will merge with and into Merger Sub Three, with Merger Sub Three as the surviving company and remaining a wholly owned subsidiary of Kinder Morgan. The effect of the first merger will be that shares of El Paso common stock will be converted into shares of New El Paso common stock on a one-for-one basis. Similarly, each outstanding equity award with respect to El Paso common stock will be converted, on the same terms and conditions, into an equivalent equity award with respect to New El Paso common stock. At the effective time of the first merger, shares of El Paso common stock will cease to trade on the NYSE and the shares of New El Paso common stock will commence trading on the NYSE. The effect of the second merger will be that New El Paso and El Paso, a wholly owned subsidiary of New El Paso as a result of the first merger, will be acquired by Kinder Morgan and shares of New El Paso common stock will no longer be publicly traded. For diagrams depicting the structure of the mergers described above, see The Transactions Effect of the Transactions.

**Table of Contents****Transaction Consideration (See page 197)**

Upon completion of the first merger, each share of El Paso common stock issued and outstanding immediately prior to the effective time of the first merger will be converted into and exchanged for one share of New El Paso common stock. The rights pertaining to New El Paso common stock will be the same as the rights pertaining to El Paso common stock. Similarly, each outstanding equity award with respect to El Paso common stock will be converted, on the same terms and conditions, into an equivalent equity award with respect to New El Paso common stock.

Upon completion of the second merger, each share of New El Paso common stock issued and outstanding immediately prior to the effective time of the second merger (excluding shares held by New El Paso in treasury, any shares held by Kinder Morgan, Merger Sub Two or Merger Sub Three and any shares held by any other subsidiary of Kinder Morgan or New El Paso and dissenting shares in accordance with Delaware law) will be converted into the right to receive, at the election of the holder but subject to proration with respect to the stock and cash portion so that approximately 57% of the aggregate merger consideration (excluding the warrants) is paid in cash and approximately 43% (excluding the warrants) is paid in Kinder Morgan Class P common stock, one of the following:

0.9635 of a share of Kinder Morgan Class P common stock (which, based on \$32.32, the closing price of Kinder Morgan Class P common stock as of February 23, 2012, had a value of \$31.14 on a rounded basis) and 0.640 of a warrant (which has an assumed value of \$0.96 and is referred to as the Per Share Warrant Consideration ) to purchase one share of Kinder Morgan Class P common stock (any such election referred to as a stock election );

\$25.91 in cash without interest and the Per Share Warrant Consideration (any such election referred to as a cash election ); or

0.4187 of a share of Kinder Morgan Class P common stock (which, based on \$32.32, the closing price of Kinder Morgan Class P common stock as of February 23, 2012, had a value of \$13.53 on a rounded basis), \$14.65 in cash without interest and the Per Share Warrant Consideration (any such election referred to as a mixed election ).

The closing price of El Paso common stock as of February 23, 2012 was \$26.77 per share.

Below are two examples of how the proration and adjustment procedures would work with respect to the stockholder elections if (a) the cash consideration is oversubscribed and (b) the cash consideration is undersubscribed.

If 75% of the shares made a cash election and 25% made a stock election (so that the cash consideration is oversubscribed), then the cash election shares would be prorated such that rather than receiving \$25.91 per share in cash, each share would receive \$19.53 in cash and 0.2371 shares of Kinder Morgan Class P common stock. Each stock election share would receive 0.9635 shares of Class P common stock. Each New El Paso share would also receive 0.640 of a warrant to purchase one share of Kinder Morgan Class P common stock.

If 25% of the shares made a cash election and 75% made a stock election (so that the cash consideration is undersubscribed), then the stock election shares would be prorated such that rather than receiving 0.9635 shares of Class P common stock each, each share would receive \$10.90 in cash and 0.5583 shares of Kinder Morgan Class P common stock. The cash election shares would receive \$25.91 per share in cash. Each New El Paso share would also receive 0.640 of a warrant to purchase one share of Kinder Morgan Class P common stock.

Across the potential scenarios, regardless of the outcome of the elections, there will be the same aggregate number of shares of Kinder Morgan Class P common stock issued and the same aggregate amount of cash paid to New El Paso stockholders.

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See [The Transactions](#) [New El Paso Stockholders Making Elections](#) [Proration and Adjustment Procedures](#) for more information on how the proration and adjustment procedures work.

Kinder Morgan will not issue any fractional shares of Kinder Morgan Class P common stock or fractional warrants in the second merger. Instead, a stockholder of New El Paso who otherwise would have received a fractional share of Kinder Morgan Class P common stock or fractional warrant will be entitled to receive, from the exchange agent appointed by Kinder Morgan pursuant to the merger agreement, a cash payment in lieu of such fractional shares or fractional warrants representing such holder's proportionate interest in the proceeds from the sale by the exchange agent of the number of excess shares of Kinder Morgan Class P common stock or excess warrants, as applicable, represented by the aggregate amount of fractional shares of Kinder Morgan Class P common stock and fractional warrants, as applicable.

Because the exchange ratios were fixed at the time the merger agreement was executed and because the market value of Kinder Morgan Class P common stock and the El Paso common stock/New El Paso common stock will fluctuate during the pendency of the transactions, New El Paso stockholders cannot be sure of the value of the merger consideration they elect to receive relative to the value of the shares of New El Paso common stock that they are exchanging. For example, for New El Paso stockholders receiving Kinder Morgan Class P common stock and/or warrants as part of the merger consideration, decreases in the market value of Kinder Morgan Class P common stock will negatively affect the value of the merger consideration that New El Paso stockholders receive, and increases in the market value of New El Paso common stock may mean that the merger consideration that New El Paso stockholders receive will be worth less than the market value of the shares of New El Paso common stock such stockholders are exchanging. See [Risk Factors](#) [Risk Factors Relating to the Transactions](#) Because the exchange ratios are fixed and because the market price of Kinder Morgan Class P common stock and El Paso common stock/New El Paso common stock will fluctuate, New El Paso stockholders receiving Kinder Morgan Class P common stock and/or warrants as part of the merger consideration cannot be sure of the market value of such merger consideration relative to the value of their shares of New El Paso common stock that they are exchanging. New El Paso stockholders are urged to obtain current market quotations for Kinder Morgan Class P common stock when they make their elections.

The value of the warrants is speculative because there is no existing trading market for them. Kinder Morgan and El Paso jointly agreed upon an assumed value of \$0.96 for the Per Share Warrant Consideration for U.S. federal income tax purposes, which may not reflect the actual value of the Per Share Warrant Consideration. The agreed upon, assumed value of \$0.96 for the Per Share Warrant Consideration is within the ranges of potential values calculated by Kinder Morgan's and El Paso's financial advisors. See [Risk Factors](#) [Risk Factors Relating to the Transactions](#) The value of the warrants that New El Paso stockholders will receive as part of the merger consideration is uncertain, and the warrants may have limited or no value.

**Treatment of El Paso Shares Held in El Paso 401(k) Plan Trust (See page 198)**

As of the date of this information statement/proxy statement/prospectus, shares of El Paso common stock are held by the El Paso Corporation Retirement Savings Plan trust (referred to as the 401(k) Trust). El Paso anticipates taking certain actions required to ensure that the acquisition by the 401(k) Trust of warrants to purchase shares of Kinder Morgan Class P common stock in connection with the transactions, and the subsequent holding and disposition by the 401(k) Trust of such warrants, will comply with applicable law.

**Treatment of New El Paso Stock Options, Restricted Shares, Performance Restricted Stock Units and Employee Stock Purchase Plan (See page 198)**

For details on how New El Paso stock options, restricted shares, performance restricted stock units and the El Paso employee stock purchase plan will be treated pursuant to the transactions, see [The Merger Agreement](#) [Treatment of New El Paso Stock Options, Restricted Shares, Performance Restricted Stock Units and Employee Stock Purchase Plan](#).

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### **El Paso Special Meeting (See page 76)**

The El Paso special meeting will be held on March 6, 2012, beginning at 9 a.m., local time, at the Hyatt Regency Houston, 1200 Louisiana Street, Houston, Texas 77002, unless postponed or adjourned to a later date.

All El Paso stockholders who held shares of record at the close of business on January 20, 2012, the record date for the special meeting, are entitled to receive notice of and to vote at the special meeting and any adjournment or postponement of the special meeting, provided that such shares remain outstanding on the date of the special meeting.

As of the record date, there were 773,738,056 shares of El Paso common stock outstanding, held by 24,815 holders of record. The affirmative vote of a majority of the outstanding shares of El Paso common stock as of the record date is required to adopt the merger agreement and the first merger agreement and to approve the transactions contemplated by the merger agreement and the first merger agreement. As of the record date, El Paso directors and executive officers and their affiliates, as a group, owned and were entitled to vote 4,462,083 shares of El Paso common stock, or approximately 0.577% of the outstanding El Paso common stock. These directors and executive officers have informed El Paso that they intend to vote their shares in favor of Proposals 1, 2 and 3, but none of El Paso's directors and executive officers has entered into any agreement obligating such director or executive officer to do so or to retain their currently owned shares of El Paso common stock.

For important information on the El Paso special meeting, see El Paso Special Meeting.

### **Kinder Morgan Special Meeting (See page 84)**

The Kinder Morgan special meeting will be held on March 2, 2012, beginning at 10 a.m., local time, at 500 Dallas Street, Suite 1000, Houston, Texas 77002, unless postponed or adjourned to a later date. Only holders of Kinder Morgan voting common stock as of the record date will be entitled to notice of, and vote at, the special meeting. On January 20, 2012, the record date, there were 170,921,140 shares of Class P common stock and 535,972,387 shares of Class A common stock of Kinder Morgan issued and outstanding, representing all of the voting common stock of Kinder Morgan allowed to vote on the share and warrant issuance proposal to be presented at the special meeting. Each share of Class P common stock and each share of Class A common stock is entitled to one vote.

As of the record date, Kinder Morgan's directors and executive officers beneficially owned approximately 54,004,648 of the outstanding shares of Kinder Morgan Class P common stock, representing approximately 31.6% of the total outstanding shares of Kinder Morgan Class P common stock, and beneficially owned approximately 433,479,425 of the outstanding shares of Kinder Morgan Class A common stock, representing approximately 80.9% of the total outstanding shares of Kinder Morgan Class A common stock. The shares of Class P common stock and Class A common stock beneficially owned by Kinder Morgan directors and executive officers include 454,960,928 shares that are subject to the voting agreement. Kinder Morgan believes that each of its directors and executive officers intends to vote his or her shares in favor of approval of the share and warrant issuance proposal.

The affirmative vote of at least a majority of the votes cast (including abstentions) on the share and warrant issuance proposal by holders of shares of Kinder Morgan voting common stock present in person or by proxy and entitled to vote on the share and warrant issuance proposal is required to approve the proposal, so long as the total vote cast on the proposal represents at least a majority of the shares of Kinder Morgan voting common stock entitled to vote on the proposal, assuming a quorum is present. Richard Kinder and certain other stockholders of Kinder Morgan who currently hold, in the aggregate, approximately 75% of the voting power of Kinder Morgan, have agreed to vote their shares of Kinder Morgan voting common stock in favor of the share and warrant issuance proposal. In addition, these stockholders agreed to retain collectively, until the approval of the share and warrant issuance proposal or until the voting agreement is terminated, whichever is earlier, an amount of shares

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of Kinder Morgan voting common stock that is sufficient to approve the share and warrant issuance proposal. Approval of the share and warrant issuance proposal being voted on at the Kinder Morgan special meeting is therefore assured and no further votes with respect to the proposal are needed.

### **Recommendation of El Paso's Board of Directors and Reasons for the Transactions (See page 106)**

El Paso's board of directors recommends that El Paso stockholders vote FOR adoption of the merger agreement and the first merger agreement and approval of the transactions contemplated by the merger agreement and the first merger agreement.

In the course of reaching its decision to approve the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement, El Paso's board of directors considered a number of factors in its deliberations. For a more complete discussion of these factors, see The Transactions Recommendation of El Paso's Board of Directors and Reasons for the Transactions.

### **Opinion of El Paso's Financial Advisor (See page 115)**

At a meeting of El Paso's board of directors on October 16, 2011, Morgan Stanley & Co. LLC, which is referred to as Morgan Stanley, rendered to El Paso's board of directors its oral opinion, subsequently confirmed in writing, that as of October 16, 2011, and based upon and subject to the various assumptions, factors, qualifications and limitations set forth in its written opinion, the merger consideration to be received by the holders of shares of El Paso common stock pursuant to the merger agreement was fair from a financial point of view to such holders.

**The full text of the written fairness opinion of Morgan Stanley, dated October 16, 2011, is attached as Annex E to this information statement/proxy statement/prospectus and is incorporated herein by reference. The opinion sets forth, among other things, the assumptions made, procedures followed, matters considered and qualifications and limitations on the scope of the review undertaken by Morgan Stanley in rendering its opinion. You should read the opinion carefully and in its entirety. Morgan Stanley's opinion is directed to El Paso's board of directors and addresses only the fairness from a financial point of view of the consideration to be received by the holders of shares of El Paso common stock pursuant to the merger agreement, as of the date of the opinion. It does not address any other aspect of the transactions contemplated by the merger agreement and expresses no opinion or recommendation as to the underlying decision of El Paso to engage in the proposed transactions or as to how any stockholder of El Paso or Kinder Morgan should vote at any stockholders' meeting held in connection with the proposed transactions. Morgan Stanley's opinion does not in any manner address the prices at which the Kinder Morgan Class P common stock and the Kinder Morgan warrants will trade following consummation of the transactions or any time in the future. For additional information relating to the opinion of Morgan Stanley, see The Transactions Opinion of El Paso's Financial Advisor.**

### **Recommendation of Kinder Morgan's Board of Directors and Reasons for the Transactions (See page 110)**

The Kinder Morgan board of directors recommends that holders of Kinder Morgan voting common stock vote FOR the share and warrant issuance proposal.

In the course of reaching its decision to approve the merger agreement and the transactions contemplated thereby, the Kinder Morgan board of directors considered a number of factors in its deliberations. Those factors are described in The Transactions Recommendation of Kinder Morgan's Board of Directors and Reasons for the Transactions.

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**Opinions of Kinder Morgan's Financial Advisors (See page 130)**

***Opinion of Evercore Group L.L.C. to the Kinder Morgan Board of Directors***

In connection with the transactions, Kinder Morgan retained Evercore Group L.L.C. (referred to as "Evercore"), to act as a financial advisor to the Kinder Morgan board of directors. On October 16, 2011, at a meeting of the Kinder Morgan board of directors, Evercore rendered its oral opinion, subsequently confirmed by delivery of a written opinion on October 16, 2011, that, as of October 16, 2011 and based upon and subject to the factors, procedures, assumptions, qualifications and limitations set forth in its opinion, the merger consideration to be paid by Kinder Morgan pursuant to the merger agreement was fair, from a financial point of view, to Kinder Morgan.

**The full text of the written opinion of Evercore, dated as of October 16, 2011, which sets forth, among other things, the procedures followed, assumptions made, matters considered and qualifications and limitations on the scope of review undertaken in rendering its opinion, is attached as Annex F to this information statement/proxy statement/prospectus and is incorporated by reference in its entirety into this information statement/proxy statement/prospectus. You are urged to read this opinion carefully and in its entirety. Evercore's opinion was addressed to, and provided for the information and benefit of, the Kinder Morgan board of directors (in its capacity as such) in connection with its evaluation of the merger consideration from a financial point of view and did not address any other aspects or implications of the transactions. The opinion does not constitute a recommendation to the Kinder Morgan board of directors or to any other persons in respect of the transactions, including as to how any holder of shares of Kinder Morgan voting common stock should act or vote in respect of the Kinder Morgan share and warrant issuance proposal. Evercore's opinion does not address the relative merits of the transactions as compared to any other business or financial strategies that might be available to Kinder Morgan, nor does it address the underlying business decision of Kinder Morgan to engage in the transactions. Finally, Evercore did not express any opinion as to the price at which Kinder Morgan Class P common stock and, when listed for trading, the Kinder Morgan warrants, the common units of KMP, the shares of KMR, El Paso common stock or the common units of EPB will trade at any time.**

***Opinion of Barclays Capital Inc. to the Kinder Morgan Board of Directors***

Kinder Morgan engaged Barclays Capital Inc. (referred to as "Barclays Capital") to act as a financial advisor with respect to the transactions. On October 16, 2011, Barclays Capital rendered its oral opinion (which was subsequently confirmed in writing) to Kinder Morgan's board of directors that, as of such date and based upon and subject to the qualifications, limitations and assumptions stated in its opinion, the merger consideration to be paid by Kinder Morgan in the transactions was fair, from a financial point of view, to Kinder Morgan.

**The full text of Barclays Capital's written opinion, dated as of October 16, 2011, is attached as Annex G to this information statement/proxy statement/prospectus. Barclays Capital's written opinion sets forth, among other things, the assumptions made, procedures followed, factors considered and limitations upon the review undertaken by Barclays Capital in rendering its opinion. You are encouraged to read the opinion carefully in its entirety. The summary of Barclays Capital's opinion and the methodology that Barclays Capital used to render its opinion included herein is qualified in its entirety by reference to the full text of the opinion.**



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### **The First Merger and the First Merger Agreement (See page 187)**

The first merger is one of the transactions contemplated by the merger agreement and is the first in a series of steps through which Kinder Morgan would acquire El Paso. El Paso stockholders who vote in favor of Proposal 1 are voting in favor of, among other things, adoption of the first merger agreement and approval of the first merger.

For additional details on the first merger and the terms of the first merger agreement, see [The First Merger Agreement](#) and refer to the full text of the agreement, a copy of which is attached as Annex B.

### **The Second Merger and the Merger Agreement (See page 189)**

The second merger is the merger pursuant to which El Paso will become a wholly owned subsidiary of Kinder Morgan. El Paso stockholders who vote in favor of Proposal 1 are voting in favor of, among other things, adoption of the merger agreement and approval of the second merger. Kinder Morgan and El Paso encourage you to read the entire merger agreement carefully because it is the principal document governing the transactions.

For additional details on the second merger and the merger agreement, see [The Merger Agreement](#) and refer to the full text of the agreement, a copy of which is attached as Annex A.

### **The Voting Agreement (See page 216)**

Simultaneously with the execution of the merger agreement, El Paso entered into a voting agreement with certain of Kinder Morgan's stockholders who currently hold, in the aggregate, approximately 75% of the voting power of Kinder Morgan. Pursuant to the terms of the voting agreement, these stockholders agreed, among other things, to vote their shares of Kinder Morgan voting common stock in favor of the share and warrant issuance proposal. In addition, these stockholders agreed to retain collectively, until Kinder Morgan stockholder approval of such proposal is obtained or until the voting agreement is terminated, whichever is earlier, an amount of shares of Kinder Morgan voting common stock that is sufficient to approve the share and warrant issuance proposal.

For additional details on the terms of the voting agreement, see [The Voting Agreement](#) and refer to the full text of the agreement, a copy of which is attached as Annex C.

### **Interests of Certain Persons in the Transactions El Paso Executive Officers and Directors (See page 160)**

When considering the recommendation of the board of directors of El Paso with respect to the transactions, you should be aware that El Paso's executive officers and directors may have interests in the transactions that are different from, or in addition to, those of El Paso's stockholders more generally. These interests may present such executive officers and directors with actual or potential conflicts of interest. The board of directors of El Paso was aware of these interests during its deliberations on the merits of the transactions and in deciding to recommend that El Paso stockholders vote for the adoption of the merger agreement and the first merger agreement and approval of the transactions contemplated by the merger agreement and the first merger agreement at the special meeting. These interests include:

The automatic vesting and conversion upon the consummation of the second merger of outstanding stock options to purchase shares of El Paso common stock, restricted shares of El Paso common stock and performance-based restricted stock units into the right to receive, at the election of the holder (which election will apply to all of such holder's outstanding equity awards), but subject to proration with respect to the cash portion, either (1) cash and warrants or (2) a mixture of cash, shares of Kinder Morgan Class P common stock and warrants for all shares subject to such awards (in the case of stock options, less the aggregate exercise price). Performance-based restricted stock units will vest upon the consummation of the second merger based on the target (i.e., 100%) level of attainment. El Paso estimates that the

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aggregate amount that would be received by El Paso's executive officers who are not named executive officers for their unvested equity-based awards if the effective time of the second merger were October 31, 2011 is approximately \$16 million. El Paso's non-employee directors do not hold any unvested equity-based awards. The aggregate amount that would be received by El Paso's executive officers who are named executive officers for their unvested equity-based awards if the effective time of the second merger were October 31, 2011 is approximately \$53 million. For a more detailed description of these payments, the circumstances under which they become payable and the assumptions used to calculate the above amount, please refer to the table and the accompanying footnotes under The Transactions Interests of Certain Persons in the Transactions El Paso Executive Officers and Directors Quantification of Change of Control and Termination Payments and Benefits to the El Paso Named Executive Officers.

In the event of a termination of employment without cause or a resignation for good reason, in each case within two years following (or, under certain circumstances, in anticipation of) a change of control of El Paso, which would include the second merger, all of El Paso's executive officers (except for James J. Cleary) would receive certain compensation and benefits under El Paso's 2004 Key Executive Severance Protection Plan, including (1) a lump-sum cash severance payment, (2) payment of a prorated amount in respect of the target bonus granted to the executive for the year in which the termination occurs, (3) continuation of life insurance and flexible spending account, medical and dental benefits for the executive and the executive's dependents for a number of years equal to the executive's severance multiple and (4) payment of legal fees and expenses incurred by the executive to enforce any rights or benefits under the plan. In addition, El Paso's executive officers would also be eligible for reimbursement of excise taxes imposed under Section 4999 of the Code on any severance payments and other benefits provided by El Paso or any of its affiliates under the plan or otherwise, unless the value of the payments and benefits does not exceed 110% of the maximum amount payable without triggering such excise taxes (referred to as the safe harbor amount), in which case the payments and benefits will be reduced to such safe harbor amount. In the case of Mr. Cleary, in the event of a termination of employment without cause or a resignation for good reason, in each case within two years following (or, under certain circumstances, in anticipation of) a change of control of El Paso, which would include the second merger, he would receive certain compensation and benefits under El Paso's 1998 Key Executive Severance Protection Plan, including (1) a lump-sum cash severance payment, (2) continuation of life insurance and flexible spending account, medical and dental benefits for the executive and the executive's dependents (on a tax-free basis) for eighteen months, (3) payment of legal fees and expenses incurred by the executive to enforce any rights or benefits under the plan, (4) a lump-sum supplemental pension payment pursuant to El Paso's supplemental pension plan calculated by adding three years of additional service and (5) a transfer to the executive of any right, title or other ownership interest El Paso has in any car or club membership then being provided to the executive. In addition, Mr. Cleary is entitled to receive full reimbursement of any excise taxes imposed under Section 4999 of the Code on any severance payments and other benefits provided by El Paso or any of its affiliates under the plan or otherwise. The aggregate amount of payments that would be payable to El Paso's executive officers who are named executive officers in the event of a termination of employment without cause or a resignation for good reason, in each case within two years following (or, under certain circumstances, in anticipation of) a change of control of El Paso, which would include the second merger, is approximately \$19 million. For a more detailed description of these payments, the circumstances under which they become payable and the assumptions used to calculate the above amount, please refer to the table and the accompanying footnotes under The Transactions Interests of Certain Persons in the Transactions El Paso Executive Officers and Directors Quantification of Change of Control and Termination Payments and Benefits to the El Paso Named Executive Officers.

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As of the date of mailing of this information statement/proxy statement/prospectus, certain of El Paso's executive officers, including Brent Smolik and Dane Whitehead, have been designated as participants in the El Paso Corporation EP Energy Retention Plan adopted pursuant to the merger agreement and will be eligible to receive certain retention bonus payments (to the extent earned). As described in more detail under The Transactions Interests of Certain Persons in the Transactions El Paso Executive Officers and Directors Retention Plan Bonus Payments, the value of any retention bonuses payable pursuant to the El Paso Corporation EP Energy Retention Plan will be dependent upon the level of gross sale proceeds from the sale of EP Energy assets and the time such assets are sold.

Two individuals to be designated by El Paso are expected to become directors of Kinder Morgan. Kinder Morgan has agreed in the merger agreement to take all action necessary, including increasing the size of its board of directors and amending its shareholders agreement, to elect two individuals designated by El Paso to the Kinder Morgan board of directors as of the effective time of the merger.

For a more detailed discussion of these interests, see The Transactions Interests of Certain Persons in the Transactions El Paso Executive Officers and Directors.

### **Interests of Certain Persons in the Transactions Goldman Sachs (See page 165)**

When considering the recommendation of the board of directors of El Paso with respect to the transactions, you should be aware that Goldman Sachs may have interests in the transactions that are different from, or in addition to, those of El Paso's stockholders generally. Prior to the receipt of Kinder Morgan's acquisition proposal, El Paso engaged Goldman Sachs to advise it with respect to the proposed spin-off of its exploration and production business and paid Goldman Sachs \$5 million in connection with that engagement. Following receipt of Kinder Morgan's proposal, El Paso engaged Goldman Sachs to continue to act as a financial advisor to El Paso, including reviewing and analyzing El Paso's business plan in connection with the proposed spin-off for purposes of aiding El Paso in its analysis of the potential Kinder Morgan transaction. In the engagement letter for these latter services, El Paso agreed to pay Goldman Sachs a fee of \$20 million upon completion of a transaction with Kinder Morgan. In both engagement letters, El Paso agreed to reimburse Goldman Sachs for certain of its fees and expenses and indemnify it against certain liabilities if they were to arise. In addition to its role as a financial advisor to El Paso, Goldman Sachs is also a stockholder of Kinder Morgan and, prior to consummation of the proposed transactions, may be deemed to beneficially own approximately 19 percent of the shares of Kinder Morgan Class P common stock on a fully converted basis, making it the second largest beneficial holder. Two representatives of Goldman Sachs and its affiliates also serve on the board of directors of Kinder Morgan. For more information relating to Goldman Sachs' role as a financial advisor to El Paso, Goldman Sachs' investment in Kinder Morgan and El Paso's and Goldman Sachs' actions to address any potential conflicts, see The Transactions Background of the Transactions, El Paso's Engagement of Goldman Sachs and Interests of Certain Persons in the Transactions Goldman Sachs.

### **Accounting Treatment of the Transactions (See page 174)**

In accordance with accounting principles generally accepted in the United States and in accordance with the Financial Accounting Standards Board's Accounting Standards Codification Topic 805 *Business Combinations*, Kinder Morgan will account for the transactions as an acquisition of a business.

### **Material U.S. Federal Income Tax Consequences of the Transactions (See page 170)**

The parties intend for each of (1) the first merger and the LLC conversion, taken together, and (2) the second merger and the third merger, taken together, to be treated as a reorganization for United States federal income tax purposes within the meaning of Section 368(a) of the Code.

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It is a condition to El Paso's obligation and Kinder Morgan's obligation to complete the transactions that El Paso receive an opinion from Wachtell, Lipton, Rosen & Katz, dated as of the date of the first merger, to the effect that the first merger and the LLC conversion, taken together, will qualify for U.S. federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code. It is also a condition to El Paso's obligation and Kinder Morgan's obligation to complete the transactions that El Paso receive an opinion from Wachtell, Lipton, Rosen & Katz, dated as of the closing date of the second merger and the third merger, to the effect that the second merger and third merger, taken together, will qualify for U.S. federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code. These conditions are waivable, and El Paso and Kinder Morgan will undertake to recirculate and resolicit if either condition is waived and the change in tax consequences is material. In addition, in connection with the filing of the registration statement of which this document is a part, Wachtell, Lipton, Rosen & Katz has delivered an opinion to El Paso and Kinder Morgan to the same effect as the opinions described above and addressing the U.S. federal income tax consequences of the transactions as described in *The Transactions Material U.S. Federal Income Tax Consequences of the Transactions*. These opinions will be based on facts, representations and assumptions set forth or referred to in the opinions and on representation letters provided by El Paso and Kinder Morgan.

Accordingly, and based on the foregoing opinions, (a) a holder of El Paso common stock will not recognize any gain or loss on the exchange of such holder's El Paso common stock for New El Paso common stock in the first merger and (b) a holder of New El Paso common stock who receives consideration including Kinder Morgan Class P common stock in the second merger will recognize gain (but not loss) on the exchange of such holder's New El Paso common stock for Kinder Morgan Class P common stock and/or cash (other than cash received in lieu of a fractional share or fractional warrant) and warrants in an amount equal to the lesser of (1) the sum of the amount of cash and the fair market value of the Kinder Morgan Class P common stock and warrants received by such holder in the exchange, minus the adjusted tax basis of such holder's New El Paso common stock surrendered in exchange therefor, and (2) the amount of cash (other than cash in lieu of a fractional share or fractional warrant) received by such holder in the exchange. The second merger will be a fully taxable transaction to a holder who receives solely cash and warrants in the second merger.

The tax consequences of the transactions to each holder of El Paso common stock may depend on such holder's particular facts and circumstances. El Paso stockholders are urged to consult their tax advisors to understand fully the consequences to them of the transactions in their specific circumstances.

### **Board of Directors and Management of Kinder Morgan After the Transactions (See page 166)**

The directors and executive officers of Kinder Morgan prior to the transactions will continue as the directors and executive officers of Kinder Morgan immediately after the transactions. In addition, the merger agreement provides that Kinder Morgan will take all action necessary, including increasing the size of the Kinder Morgan board and amending Kinder Morgan's shareholders agreement to effect such increase, to elect two individuals designated by El Paso to the Kinder Morgan board of directors.

### **Conditions to Completion of the Transactions (See page 191)**

Kinder Morgan and El Paso currently expect to complete the transactions during the second quarter of 2012, subject to receipt of required stockholder and regulatory approvals and the satisfaction or waiver of the conditions to the transactions. As more fully described in this document and in the first merger agreement, El Paso's and Merger Sub One's obligation to complete the first merger is conditioned upon the merger agreement and the first merger agreement having been approved by the affirmative vote of the holders of a majority of the outstanding El Paso common stock as of the record date.

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As more fully described in this document and in the merger agreement, each party's obligation to complete the transactions depends on a number of conditions being satisfied or, where legally permissible, waived, including the following:

the merger agreement and the first merger agreement must have been approved by the affirmative vote of the holders of a majority of the outstanding El Paso common stock as of the record date;

the waiting period applicable to the merger under the HSR Act must have been terminated or expired;

no law, injunction, judgment or ruling enacted, promulgated, issued, entered amended or enforced by any governmental authority shall be in effect enjoining, restraining, preventing or prohibiting consummation of the transactions or making the consummation of the transactions illegal;

the registration statement of which this information statement/proxy statement/prospectus forms a part must have been declared effective by the SEC and must not be subject to any stop order or proceedings initiated or threatened by the SEC; and

El Paso must have received from Wachtell, Lipton, Rosen & Katz, tax counsel to El Paso, (1) at the effective time of the first merger, a written opinion 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 U.S. federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code, and (2) a written opinion dated as of the date of the closing of the second merger and third merger 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 U.S. federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code.

The obligations of each of Kinder Morgan, Merger Sub Two and Merger Sub Three to effect the transactions are subject to the satisfaction or waiver of the following additional conditions:

the accuracy of the representations and warranties of El Paso, subject to certain standards, including materiality and material adverse effect qualifications, as described under *The Merger Agreement Conditions to Completion of the Transactions* and receipt of a certificate signed by an executive officer of El Paso on its behalf to that effect;

the performance by El Paso in all material respects of its obligations under the merger agreement and receipt of a certificate signed by an executive officer of El Paso on its behalf to that effect; and

(1) the receipt of a certification from an authorized officer of El Paso, no earlier than thirty days prior to, and no later than ten days prior to, the date of the consummation of the second merger and third merger, setting forth El Paso's good faith estimate of El Paso's net operating loss carryforwards for U.S. federal income tax purposes as of January 1, 2012 (taking into account certain assumptions), and (2) that there shall not have been an NOL MAE, as described under *The Merger Agreement Conditions to Completion of the Transactions*.

The obligations of each of El Paso, New El Paso and Merger Sub One to effect the transactions are subject to the satisfaction or waiver of the following additional conditions:

the accuracy of the representations and warranties of Kinder Morgan, subject to certain standards, including materiality and material adverse effect qualifications, as described under *The Merger Agreement Conditions to Completion of the Transactions*, and receipt of

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a certificate signed by an executive officer of Kinder Morgan on its behalf to that effect;

the performance by Kinder Morgan in all material respects of its obligations under the merger agreement and receipt of a certificate signed by an executive officer of Kinder Morgan on its behalf to that effect;

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the issuance of shares of Kinder Morgan Class P common stock and the warrants (including shares of Kinder Morgan Class P common stock to be issued upon exercise of the warrants) to be issued in connection with the second merger must have been approved by a majority of the votes cast at its special meeting by the holders of a majority of the aggregate voting power of Kinder Morgan capital stock in accordance with requirements of the NYSE; and

(1) the shares of Kinder Morgan Class P common stock that are deliverable to the stockholders of New El Paso as contemplated by the merger agreement must have been authorized for listing on the NYSE, subject to official notice of issuance and (2) the warrants that are deliverable to the stockholders of New El Paso as contemplated by the merger agreement must have been authorized for listing on either the NYSE, NASDAQ or such other exchange(s), electronic trading networks or other suitable trading platforms as are reasonably agreed to by Kinder Morgan and El Paso.

**Regulatory Approvals Required to Complete the Transactions (See page 174)**

Completion of the transactions contemplated by the merger agreement is subject to the expiration or termination of any applicable waiting period under the HSR Act. Kinder Morgan and El Paso have filed the required notification and report forms with the U.S. antitrust authorities, and on December 5, 2011, Kinder Morgan and El Paso each received a Request for Additional Information and Documentary Materials from the FTC. In addition, the parties have sought the approval of the Federal Energy Regulatory Commission (referred to as the FERC ) under Section 203 of the Federal Power Act with respect to the indirect transfer of control to Kinder Morgan of El Paso's wholesale electric power marketing subsidiary and the wholesale power contracts to which it is a party. See The Transactions Regulatory Approvals.

**Termination of the Merger Agreement (See page 202)**

Kinder Morgan and El Paso may terminate the merger agreement at any time prior to effective time of the second merger, whether before or after the stockholders of El Paso have approved the merger agreement and the first merger agreement:

by the mutual consent of Kinder Morgan and El Paso;

by either Kinder Morgan or El Paso, if:

the closing of the second merger has not occurred on or before June 30, 2012 or, if the condition requiring expiration or termination of any applicable waiting period under the HSR Act is not met or if the condition that there is no law prohibiting the transactions is not met, either party may elect to extend until December 31, 2012, subject to certain exceptions discussed in The Merger Agreement Termination;

any governmental entity has issued a final and non-appealable law or order or taken any other final and non-appealable action enjoining or otherwise prohibiting consummation of the transactions contemplated by the merger agreement;

stockholders of El Paso do not adopt the merger agreement and the first merger agreement at a meeting of the stockholders of El Paso or any adjournment or postponement of such meeting; or

there is a breach by the non-terminating party of any of its representations, warranties, covenants or agreements in the merger agreement such that certain closing conditions would not be satisfied, or if capable of being cured, such breach has not been cured within 30 days following delivery of written notice by the terminating party;





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by Kinder Morgan, if:

either (1) El Paso withdraws, modifies or qualifies, or proposes publicly to withdraw, modify or qualify, in a manner adverse to Kinder Morgan, El Paso's board of directors' recommendation that its stockholders adopt the merger agreement or publicly recommends the approval or adoption of, or publicly approves or adopts, or proposes to publicly recommend, approve or adopt, any takeover proposal or (2) within five business days of receipt of a written request from Kinder Morgan (which request must be reasonable in terms of number and timing), El Paso fails to publicly reconfirm El Paso's board of directors' recommendation that its stockholders adopt the merger agreement; or

prior to the adoption of the merger agreement and the first merger agreement by the stockholders of El Paso, El Paso is in willful breach of its obligations to (1) hold a special meeting of its stockholders and, through El Paso's board of directors, recommend the adoption of the merger agreement to El Paso's stockholders or (2) comply with its non-solicitation obligations relating to takeover proposal described under The Merger Agreement No-Solicitation by El Paso of Takeover Proposals, subject to certain exceptions discussed in The Merger Agreement Termination;

by El Paso, if:

prior to the receipt of approval from Kinder Morgan's stockholders of the share and warrant issuance proposal, Kinder Morgan is in willful breach of its obligations to hold a special meeting of its stockholders for the purpose of obtaining such approval and through Kinder Morgan's board of directors, recommend to its stockholders that such approval be obtained; or

prior to the adoption of the merger agreement and the first merger agreement by the stockholders of El Paso, if El Paso enters into an agreement with respect to a superior proposal, so long as (1) El Paso, in compliance with the terms of the merger agreement (including its requirements described under The Merger Agreement No-Solicitation by El Paso of Takeover Proposals, concurrently enters into a definitive acquisition agreement with respect to a superior proposal and (2) prior to or concurrently with such termination, El Paso pays the termination fee described under The Merger Agreement Termination Fee.

**Expenses and Termination Fees Relating to the Transactions (See pages 204 and 205)**

Generally, all fees and expenses incurred in connection with the transactions will be the obligation of the respective party incurring such fees and expenses, except Kinder Morgan and El Paso will each pay one-half of the expenses incurred in connection with the filing, printing and mailing of this information statement/proxy statement/prospectus. Further, Kinder Morgan has agreed to pay the amount of any documentary, sales, use, real property transfer, real property gains, registration, value-added, transfer, stamp, recording and other similar taxes imposed on Kinder Morgan, El Paso, or any of New El Paso's subsidiaries or stockholders in connection with the merger agreement and the transactions.

Following termination of the merger agreement under specified circumstances, El Paso may be required to pay Kinder Morgan a termination fee of \$650 million and, under specified circumstances, El Paso may be required to pay all documented out-of-pocket expenses incurred by Kinder Morgan in connection with the transactions (subject to a cap of \$20 million) and certain financing-related expenses of Kinder Morgan.

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### **Financing (See page 217)**

On February 10, 2012, Kinder Morgan entered into the following agreements: (i) an amendment (referred to as the **Revolving Amendment**) to KMK's existing \$1.0 billion revolving credit facility dated May 30, 2007 (such facility, prior to its amendment and restatement pursuant to such amendment, referred to as the **Existing Revolving Facility**) to permit, among other things, the transactions contemplated by the merger agreement, to fund, in part, the transactions and related costs and expenses, to provide for KMK to directly or indirectly merge with Kinder Morgan, with Kinder Morgan succeeding KMK as borrower under such facility (referred to as the **KMK Merger**) and to provide for ongoing working capital and for other general corporate purposes, (ii) an incremental joinder agreement (the **Incremental Joinder**) which provides for \$750 million in additional commitments under the Existing Revolving Facility, effective upon the amendment and restatement of the Existing Revolving Facility (such Existing Revolving Facility, as amended and restated by the Revolving Amendment and as modified by the Incremental Joinder, referred to as the **Amended and Restated Credit Facility**) and (iii) an acquisition debt facilities credit agreement containing a \$6.8 billion 364-day facility and a \$5.0 billion 3-year term loan facility (referred to as the **Acquisition Credit Facility**), the proceeds of which shall be used to finance a portion of the cash consideration and related fees and expenses to be paid in connection with the transactions.

For a full description of Kinder Morgan's debt financing for the transactions, see the section entitled **Description of the Debt Financing**. The proceeds of this financing will be used (1) to repay or redeem certain indebtedness of El Paso outstanding on the closing date of the second merger, which at December 31, 2011 was approximately \$575 million, (2) to fund the cash consideration for the transactions of approximately \$11.5 billion, (3) to pay fees and expenses in connection with the transactions and the debt financing of approximately \$300 million, and (4) in the case of the undrawn portion of the Amended and Restated Credit Facility, to finance working capital needs and for general corporate purposes.

### **Comparison of Rights of Holders of El Paso Common Stock and Kinder Morgan Common Stock**

(See page 241)

As a result of the second merger, the holders of El Paso common stock that receive shares of Kinder Morgan Class P common stock will become stockholders of Kinder Morgan. Following the second merger, these El Paso stockholders will have different rights as stockholders of Kinder Morgan than as stockholders of El Paso due to the different provisions of the governing documents of El Paso and Kinder Morgan. These differences are described in more detail under **Comparison of Rights of Common Stockholders of Kinder Morgan and El Paso**.

### **Appraisal Rights in Connection with the Transactions (See page 181)**

**Under the DGCL, El Paso stockholders have the right to seek appraisal in connection with the second merger. Failure to strictly comply with the procedures and requirements of Section 262 of the DGCL may result in termination or waiver of such stockholder's appraisal rights. Due to the complexity of Delaware law relating to appraisal rights, if any El Paso stockholder is considering exercise of his or her appraisal rights, such stockholder is encouraged to seek the advice of his or her own legal counsel. A summary of the procedures and requirements under Delaware law to exercise appraisal rights is included in the section entitled **The Transactions Appraisal Rights in Connection with the Second Merger** and the text of Section 262 of the DGCL is included as Annex H.**

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**Selected Historical Consolidated Financial Data**

**Kinder Morgan Selected Historical Consolidated Financial Data**

You should read the following selected historical consolidated financial data of Kinder Morgan and KMK together with Kinder Morgan's Annual Report on Form 10-K for the year ended December 31, 2011, which is incorporated by reference into this information statement/proxy statement/prospectus. For accounting purposes, KMK is considered the predecessor of Kinder Morgan for the period ended on May 31, 2007, the date of closing for Kinder Morgan's Going Private Transaction.

The statement of income and statement of cash flows data for the years ended December 31, 2011, 2010 and 2009 and the balance sheet data as of December 31, 2011 and 2010 have been derived from the audited consolidated financial statements of Kinder Morgan incorporated by reference into this information statement/proxy statement/prospectus. The statement of operations and statement of cash flows data for the year ended December 31, 2008 and the seven months ended December 31, 2007 and the balance sheet data as of December 31, 2009, 2008 and 2007 have been derived from audited consolidated financial statements of Kinder Morgan which are not incorporated by reference into this information statement/proxy statement/prospectus. The statement of operations and statement of cash flows data for the five months ended May 31, 2007 have been derived from audited consolidated financial statements of KMK which are not incorporated by reference into this information statement/proxy statement/prospectus.

The selected historical consolidated financial data is not indicative of Kinder Morgan's expected future operating results. Further, the selected historical financial information

for periods prior to February 15, 2008, does not reflect Kinder Morgan's sale of 80% of NGPL and the application of the approximately \$5.9 billion of proceeds from that sale; and

for the period ended May 31, 2007, does not reflect the Going Private Transaction which was accounted for as a business combination, requiring that Kinder Morgan record the assets acquired and liabilities assumed at their estimated fair values as of the date of the Going Private Transaction, resulting in a new basis of accounting.

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	Kinder Morgan, Inc.(1)				Seven Months Ended December 31, 2007	KMK Five Months Ended May 31, 2007
	Year Ended December 31,					
	2011	2010	2009	2008		
	(In millions, except per share amounts)					
<b>Statement of income data:</b>						
Revenues	\$ 8,264.9	\$ 8,190.6	\$ 7,185.2	\$ 12,094.8	\$ 6,394.7	\$ 4,165.1
Operating income (loss)(2)(3)(4)(5)(6)	1,538.7	1,280.7	1,407.2	(2,472.1)	1,042.8	204.8
Earnings (loss) from equity investments(7)	313.1	(186.2)	221.9	201.1	56.8	40.7
Income (loss) from continuing operations(8)	652.2	300.3	772.8	(3,202.3)	286.6	(142.0)
Income (loss) from discontinued operations, net of tax(9)	7.8	(0.7)	0.3	(0.9)	(1.5)	298.6
Net income (loss)	660.0	299.6	773.1	(3,203.2)	285.1	156.6
Net income attributable to noncontrolling interests(10)	(65.6)	(340.9)	(278.1)	(396.1)	(37.6)	(90.7)
Net income (loss) attributable to Kinder Morgan, Inc./KMK(11)	594.4	(41.3)	495.0	(3,599.3)	247.5	65.9
Net income per share of Class P common stock (basic and diluted)(12)	0.74					
Unaudited pro forma net income (loss) per share of Class P common stock (basic and diluted)(13)		(0.06)	0.70	(5.09)	0.35	
<b>Statement of cash flows data:</b>						
<b>Capital expenditures(14):</b>						
Kinder Morgan, Inc./KMK	0.6	1.6	0.5	12.3	170.9	77.3
KMP and its subsidiaries(15)	1,199.5	1,000.9	1,323.8	2,533.0	1,116.1	575.5
Cash dividends/distributions to stockholders/members(16)	769.6	700.0	650.0		83.7	234.9
Declared dividends per share of Class P common stock(17)	1.05					
<b>Balance sheet data (end of period):</b>						
Net property, plant and equipment	17,926.0	17,070.7	16,803.5	16,109.8	14,803.9	
Total assets	30,717.0	28,908.1	27,581.0	25,444.9	36,195.8	
<b>Long-term debt:</b>						
Kinder Morgan, Inc./KMK(18)	2,045.6	2,879.2	2,882.0	2,880.9	8,641.8	
KMP and its subsidiaries(19)	11,159.5	10,277.4	9,997.7	8,274.9	6,455.9	
Total long-term debt(20)	13,205.1	13,156.6	12,879.7	11,155.8	15,097.7	

- (1) Includes significant impacts resulting from the Going Private Transaction. See note 2 to Kinder Morgan's consolidated financial statements in Kinder Morgan's Annual Report on Form 10-K for the year ended December 31, 2011, which is incorporated by reference into this information statement/proxy statement/prospectus, for additional information.
- (2) Includes non-cash goodwill impairment charges of \$4,033.3 million in the year ended December 31, 2008.
- (3) Includes a goodwill impairment charge of \$377.1 million in the five months ended May 31, 2007 relating to KMP's acquisition of Trans Mountain Pipeline from KMK effective April 30, 2007.
- (4) Includes a \$172.0 million litigation reserve in the year ended December 31, 2010 related to KMP's West Coast pipeline rate cases.
- (5) Includes a \$200.0 million litigation reserve in the year ended December 31, 2010 related to the Going Private Transaction litigation settlement. See note 16 to Kinder Morgan's consolidated financial statements in Kinder Morgan's Annual Report on Form 10-K for the year ended December 31, 2011, which is incorporated by reference into this information statement/proxy statement/prospectus, for additional information.
- (6) Includes (i) a \$234.3 million increase in expense primarily associated with adjustments to KMP's rate case reserve and rights-of-way lease payment obligations and (ii) \$100 million for a special bonus paid to certain non-senior management employees that was funded through \$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 in the year ended December 31, 2011.
- (7) Includes a \$430.0 million impairment charge in the year ended December 31, 2010 to reduce the carrying value of Kinder Morgan's investment in NGPL.
- (8) 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 in the year ended December 31, 2011.
- (9) In the five months ended May 31, 2007, primarily relates to the Canada-based and U.S. retail gas distribution businesses and the Corridor Pipeline System that Kinder Morgan owned.
- (10) Includes application of new accounting policies for noncontrolling interests adopted in 2009 in accordance with Accounting Standards Codification Topic 810, Consolidation, and applied to all years presented. See note 2 to Kinder Morgan's consolidated financial statements in Kinder Morgan's Annual Report on Form 10-K for the year ended December 31, 2011, which is incorporated by reference into this information statement/proxy statement/prospectus, for additional information.
- (11) Includes an approximate \$106.6 million reduction in the income Kinder Morgan recognized for its general partner interest in KMP due to a KMP distribution of cash from an interim capital transaction in the year ended December 31, 2010. See note 16 to Kinder Morgan's consolidated financial statements in Kinder

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Morgan's Annual Report on Form 10-K for the year ended December 31, 2011, which is incorporated by reference into this information statement/proxy statement/prospectus, for additional information.

- (12) Net income per share of Class P common stock is calculated using the two-class method, and Kinder Morgan's Class A, Class B and Class C shares, collectively referred to as the investor retained stock, are participating securities. The investor retained stock is convertible into a fixed aggregate number of Class P shares. Earnings are allocated to each class of stock based on the amount of

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dividends declared in the current period for each class of stock plus an allocation of the undistributed earnings or the excess distribution over earnings to the extent each security shares in earnings, which for the investor retained stock is in direct proportion to the maximum number of Class P shares it can convert. Thus, there is no difference between 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.

- (13) Earnings per share are pro forma for the Kinder Morgan initial public offering and the conversion of Kinder Morgan Holdco LLC from a Delaware limited liability company to a Delaware corporation named Kinder Morgan, Inc., both of which occurred in February 2011. The diluted per share computation is calculated by dividing total net income attributable to Kinder Morgan by 707,000,000 shares, which includes (i) the 109,786,590 shares of Class P common stock sold in Kinder Morgan's initial public offering, (ii) the related conversions of 1,110,738 Class A shares into Class P shares made shortly thereafter and (iii) the 596,102,672 shares of Class P common stock into which the investor retained stock was then convertible.
- (14) Capital expenditures shown are for continuing operations only.
- (15) Includes capital expenditures of Trans Mountain Pipeline, which KMP acquired from KMK effective April 30, 2007. In accordance with applicable accounting standards, amount for 2007 includes capital expenditures of Trans Mountain for the four months prior to the acquisition date.
- (16) Represents dividends or distributions paid during the period.
- (17) The declared dividend for the first quarter of 2011 was \$0.14, which was a prorated amount from February 16, 2011, the day Kinder Morgan closed its initial public offering. Based on a full quarter, the first quarter dividend amounted to \$0.29 per share. If Kinder Morgan had been a public company for the entire year, the declared dividend would have been \$1.20 per share (\$0.29, \$0.30, \$0.30 and \$0.31 per share for the first, second, third and fourth quarters of 2011, respectively).
- (18) Includes the preferred stock interest in the general partner of KMP. Excludes value of interest rate swaps. Increases to long-term debt for value of interest rate swaps for KMK and its subsidiaries (excluding KMP and its subsidiaries) totaled \$72.4 million, \$51.4 million, \$28.5 million, \$19.7 million and \$47.5 million as of December 31, 2011, 2010, 2009, 2008 and 2007, respectively.
- (19) Excludes value of interest rate swaps. Increases to long-term debt for value of interest rate swaps for KMP and its subsidiaries totaled \$1,078.9 million, \$604.9 million, \$332.5 million, \$951.3 million and \$152.2 million as of December 31, 2011, 2010, 2009, 2008 and 2007, respectively.
- (20) Excludes value of interest rate swaps. Increases to long-term debt for value of interest rate swaps totaled \$1,151.3 million, \$656.3 million, \$361.0 million, \$971.0 million and \$199.7 million as of December 31, 2011, 2010, 2009, 2008 and 2007, respectively.

**Table of Contents****El Paso Selected Historical Consolidated Financial Data**

The following selected historical consolidated financial data as of December 31, 2011 to 2008 and for the years ended December 31, 2011 to 2007 is derived from the audited consolidated financial statements for El Paso and its subsidiaries. The selected financial data as of December 31, 2007 is derived from the unaudited consolidated financial statements adjusted to reflect the adoption in 2009 of new presentation and disclosure requirements for noncontrolling interests. The selected financial data is not necessarily indicative of results to be expected in future periods and should be read together with El Paso's Annual Report on Form 10-K for the year ended December 31, 2011 incorporated by reference into this information statement/proxy statement/prospectus.

	<b>El Paso Corporation and Subsidiaries</b>				
	<b>2011</b>	<b>Year Ended December 31,</b>			<b>2007</b>
	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>(in millions, except per share amounts)</b>	
<b>Operating Results data:</b>					
Operating revenues	\$ 4,860	\$ 4,616	\$ 4,631	\$ 5,363	\$ 4,648
Net income (loss)	427	924	(474)	(789)	442
Net income (loss) attributable to El Paso's common stockholders	141	721	(576)	(860)	1,073
Earnings (loss) per common share from continuing operations attributable to El Paso's common stockholders:					
Basic	0.19	1.03	(0.83)	(1.24)	0.57
Diluted	0.18	1.00	(0.83)	(1.24)	0.57
Cash dividends declared per common share	0.04	0.04	0.16	0.18	0.16
<b>Balance Sheet data (end of period):</b>					
Total assets	24,314	25,270	22,505	23,668	24,579
Long-term financing obligations, less current maturities	12,605	13,517	13,391	12,818	12,483
Preferred stock of subsidiaries		698	145		
Total equity	7,135	6,064	3,991	4,596	5,845

During the year ended December 31, 2011, El Paso recorded non-cash charges in conjunction with the deconsolidation of Ruby Pipeline Holding Company, L.L.C., referred to as Ruby, of approximately \$475 million based on the difference between the net carrying value of Ruby and the estimated fair value of El Paso's investment in Ruby and \$125 million related to the recognition of the accumulated other comprehensive loss associated with interest rate swaps on Ruby's debt. El Paso also recognized a non-cash full cost ceiling test charge in its Brazilian full cost pool of approximately \$152 million, and debt extinguishment losses of approximately \$169 million associated with debt repurchase activity. During 2011 and 2010, EPB issued common units, net of issuance costs, of approximately \$0.9 billion and \$1.3 billion, respectively. During 2009 and 2008, El Paso recorded non-cash full cost ceiling test charges of \$2.1 billion and \$2.7 billion, principally as a result of declines in commodity prices. In 2007, El Paso sold its ANR pipeline system and related assets and also completed the initial public offering of common units in EPB.

**Table of Contents****Selected Unaudited Pro Forma Condensed Combined Financial Information**

The transactions will be accounted for under the purchase method of accounting, which means the assets and liabilities of El Paso will be recorded, as of the closing date of the transactions, at their respective estimated fair values and added to those of Kinder Morgan. For a more detailed description of the purchase method of accounting, see "The Transactions Accounting Treatment of the Transactions" in this information statement/proxy statement/prospectus.

Set forth below is selected unaudited pro forma condensed combined financial information that reflects the purchase method of accounting and gives effect to the transactions, in the case of the statement of income information, as though the second merger had occurred as of January 1, 2011 and, in the case of the balance sheet information, as though the second merger had occurred as of December 31, 2011.

The unaudited pro forma condensed combined financial information has been prepared giving effect to (1) the issuance of shares of Kinder Morgan Class P common stock, (2) the incurrence of debt primarily associated with the cash portion of the purchase price and (3) the issuance of warrants, all as part of the merger consideration.

The unaudited pro forma condensed combined financial information is 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 does it 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 condensed combined financial information does not give effect to any cost savings, operating synergies, and revenue enhancements expected to result from the acquisition or the costs to achieve these cost savings, operating synergies, and revenue enhancements. In addition, the unaudited pro forma condensed combined financial information presents EP Energy Corporation, El Paso's exploration and production business, as current assets and liabilities held for sale as of December 31, 2011 and discontinued operations beginning January 1, 2011, as Kinder Morgan intends to sell the assets of EP Energy in conjunction with the closing of the second merger.

The following selected unaudited pro forma condensed combined financial information has been derived from, and should be read in conjunction with, the unaudited pro forma condensed combined financial statements and related notes presented elsewhere in this information statement/proxy statement/prospectus.

	<b>Year Ended December 31, 2011 (in millions, except per share data)</b>
<b>Condensed Combined Statement of Income from Continuing Operations Information:</b>	
Operating revenues	\$ 11,213.6
Income from continuing operations	714.2
Net income attributable to Kinder Morgan	443.4
Diluted earnings per share of Class P common stock from continuing operations	0.33
Diluted weighted average number of Class P shares outstanding	1,036.8



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	As of December 31, 2011 (in millions)
<b>Condensed Combined Balance Sheet Information:</b>	
Total assets	\$ 77,156.3
Long-term debt	\$ 31,965.6
Total liabilities	\$ 52,963.1
Total Kinder Morgan stockholders' equity	\$ 14,531.0
Non-controlling interest	9,662.2
Total stockholders' equity	\$ 24,193.2

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### **Unaudited Comparative Per Share Information of Kinder Morgan and El Paso**

The following table sets forth selected historical, unaudited pro forma for IPO, unaudited pro forma for IPO and EP and unaudited pro forma equivalent per share information of Kinder Morgan and El Paso.

#### **Kinder Morgan Per Share of Class P Common Stock**

*Historical.* The Kinder Morgan historical per share information set forth below is derived from Kinder Morgan's audited consolidated financial statements as of and for the year ended December 31, 2011.

*Pro Forma for IPO.* The unaudited pro forma for IPO per share information of Kinder Morgan set forth below gives pro forma effect to Kinder Morgan's conversion from a limited liability company to a corporation and its initial public offering, both of which occurred in February 2011, as if they had been effective on January 1, 2011. These transactions are referred to as the IPO. Since Kinder Morgan was a limited liability company that converted into a corporation in February 2011, the unaudited Kinder Morgan pro forma for IPO per share information provides comparable period to period information and a baseline of that information for comparison to the unaudited pro forma for IPO and EP per share information described below.

*Pro Forma for IPO and EP.* The unaudited pro forma for IPO and EP per share information of Kinder Morgan set forth below gives effect to (i) the above described IPO and (ii) the second merger under the purchase method of accounting, as if the second merger had been effective on January 1, 2011, in the case of earnings per share and cash dividends per share data, and December 31, 2011, in the case of book value per share data, and assuming that 0.4187 of a share of Kinder Morgan Class P common stock, and 0.640 of a Kinder Morgan warrant, had been issued in exchange for each outstanding share of El Paso common stock. In addition, this unaudited pro forma combined per share information assumes the impact to earnings from continuing operations for the debt to be incurred in conjunction with the transactions that was not allocated to discontinued operations.

#### **El Paso Per Share of Common Stock**

*Historical.* The El Paso historical per share information set forth below is derived from El Paso's audited consolidated financial statements as of and for the year ended December 31, 2011.

*Equivalent Pro Forma.* The unaudited El Paso equivalent pro forma per share amounts below are calculated by multiplying the unaudited Kinder Morgan Per Share of Class P Common Stock pro forma for IPO and EP amounts by the exchange ratio for the stock only election of 0.9635.

#### **General**

You should read the information set forth below in conjunction with the selected historical and pro forma financial information of Kinder Morgan and El Paso and the historical financial statements and related notes of Kinder Morgan that are incorporated by reference into this information statement/proxy statement/prospectus, and the historical financial statements and related notes of El Paso that are incorporated into this information statement/proxy statement/prospectus by reference. See Unaudited Pro Forma Condensed Combined Financial Information, Where You Can Find More Information and Incorporation by Reference.

The accounting for an acquisition of a business is based on the authoritative guidance for business combinations. Purchase accounting requires, among other things, that the assets acquired and liabilities assumed be recognized at their fair values as of the date the second merger is completed. The allocation of the purchase price is dependent upon certain valuations of El Paso's assets and liabilities and other studies that have yet to commence or progress to a stage where there is sufficient information for a definitive measurement. Accordingly, the pro forma adjustments reflect the assets and liabilities of El Paso at their preliminary estimated fair values.

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Differences between these preliminary estimates and the final purchase accounting will occur, and these differences could have a material impact on the unaudited pro forma combined per share information set forth in the following table.

The unaudited pro forma for IPO and EP per share information of Kinder Morgan does not purport to represent the actual results of operations that Kinder Morgan would have achieved or dividends that would have been declared had the companies been combined during this period or to project the future results of operations that Kinder Morgan may achieve or the dividends it may declare after the second merger.

	<b>As of and for the Year Ended December 31, 2011</b>
<b>Kinder Morgan Per Share of Class P Common Stock</b>	
Income from continuing operations basic (a)	
Historical	\$ 0.73
Pro forma for IPO (b)	\$ 0.83
Pro forma for IPO and EP (c) (d)	\$ 0.33
Income from continuing operations diluted (a)	
Historical	\$ 0.73
Pro forma for IPO (b)	\$ 0.83
Pro forma for IPO and EP (c) (d)	\$ 0.33
Cash dividends declared	
Historical (e)	\$ 1.05
Pro forma for IPO (b) (f)	\$ 1.20
Pro forma for IPO and EP (c) (g)	\$ 0.85
Book Value	
Historical	\$ 4.70
Pro forma for IPO (b) (h)	\$ 4.70
Pro forma for IPO and EP (c) (i)	\$ 14.02
<b>El Paso Per Share of Common Stock</b>	
Income (loss) from continuing operations basic	
Historical	\$ 0.19
Equivalent pro forma (j)	\$ 0.32
Income (loss) from continuing operations diluted	
Historical	\$ 0.18
Equivalent pro forma (j)	\$ 0.32
Cash dividends declared	
Historical	\$ 0.04
Equivalent pro forma (j)	\$ 0.82
Book Value	
Historical	\$ 5.69
Equivalent pro forma (j)	\$ 13.51

- (a) Earnings per share amounts are 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 undistributed 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.

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For the Class P diluted per share computations, total net income attributable to Kinder Morgan is divided by the adjusted weighted average shares outstanding during the period, including all dilutive potential shares. This includes the weighted average number of Class P shares into which the investor retained stock was convertible during the period. Thus, the number of Class P shares on a fully-converted basis is the same before and after any conversion of 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 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.

Earnings per share from discontinued operations was \$0.01 for the period from February 16, 2011 to December 31, 2011.

- (b) The pro forma for IPO amounts give pro forma effect to Kinder Morgan's conversion from a limited liability company to a corporation and its initial public offering as if they had occurred on January 1, 2011. Until February 10, 2011, Kinder Morgan was a Delaware limited liability company named Kinder Morgan Holdco LLC, which on that date was converted into a Delaware corporation named Kinder Morgan, Inc. On February 16, 2011, Kinder Morgan closed its initial public offering of common stock, in which 109,786,590 shares of Class P common stock were sold to the public. Shortly thereafter, there was a related conversion of 1,110,738 Class A shares to Class P shares. The outstanding shares of Kinder Morgan Class A, Class B and Class C common stock, or the investor retained stock, were then convertible into an aggregate of 596,102,672 shares of Class P common stock.
- (c) The pro forma for IPO and EP amounts give effect to the IPO as described above and to the second merger under the purchase method of accounting, as if the second merger had been effective on January 1, 2011, in the earnings per share and cash dividends declared per share amounts, and December 31, 2011, in the book value per share amounts.
- (d) Amounts are from the unaudited pro forma condensed combined financial statements included elsewhere in this information statement/proxy statement/prospectus.
- (e) Amount represents cash dividends declared of \$0.14 per share, \$0.30 per share, \$0.30 per share and \$0.31 per share for the first, second, third and fourth quarters of 2011, respectively. The first quarter dividend of \$0.14 per share was a prorated amount from February 16, 2011, the day Kinder Morgan closed its IPO.
- (f) The amount is equal to the \$0.91 per share historical cash dividends declared for the second, third and fourth quarters plus a full first quarter dividend. The first quarter cash dividend declared of \$0.14 per share was a prorated amount as discussed in (e) above. Based on a full quarter, the cash dividend declared amount would have been \$0.29 per share.
- (g) The pro forma for IPO and EP cash dividends declared amount was computed as follows:

	Year Ended December 31, 2011 (per share)
<b>Kinder Morgan Per Share of Class P Common Stock</b>	
Cash dividends declared pro forma for IPO	\$ 1.20
Dilution for new Class P shares issued(1)	(0.38)
El Paso cash dividends declared(2)	0.03

Cash dividends declared pro forma for IPO and EP	\$ 0.85
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(1) This amount was computed by multiplying Kinder Morgan's \$1.20 per share cash dividends

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declared pro forma for IPO by the 329.2 million Class P shares expected to be issued in the second merger divided by the 1,036.8 million fully diluted Class P pro forma average shares outstanding during the period.

- (2) This amount was computed by dividing El Paso's \$30 million of cash dividends declared historically by 1,036.8 million fully diluted Class P pro forma average shares outstanding.
  
- (h) This amount was calculated as \$3,320.5 million of Kinder Morgan net book value divided by 706.9 million total Class P and Class A shares outstanding as of December 31, 2011.
  
- (i) This amount was calculated by dividing shareholders' equity as presented in the unaudited pro forma condensed combined financial statements included elsewhere in this information statement/proxy statement/prospectus by 1,036.1 million Class P and Class A pro forma shares outstanding as of December 31, 2011.
  
- (j) Pro forma equivalent amounts are calculated by multiplying the Kinder Morgan per share of Class P common stock pro forma for IPO and EP amounts by the exchange ratio for the stock only election of 0.9635.

**Table of Contents****Comparative Stock Prices And Dividends**

Kinder Morgan Class P common stock is listed on the NYSE under the symbol KMI. El Paso common stock is listed on the NYSE under the symbol EP. The following tables set forth the high and low sales prices per share of Kinder Morgan Class P common stock and El Paso common stock for the quarterly periods indicated, and the amount of cash dividends declared per share in respect of the periods indicated. Kinder Morgan Class P common stock began trading on the NYSE upon Kinder Morgan's initial public offering in February 2011.

	Kinder Morgan Class P Common Stock Price Range		Cash Dividends
	High	Low	
<b>2012</b>			
First quarter (through February 23, 2012)	\$ 34.25	\$ 31.76	
<b>2011</b>			
Fourth quarter	32.25	24.66	\$ 0.31
Third quarter	29.45	23.51	0.30
Second quarter	29.97	26.87	0.30
First quarter (beginning February 11, 2011)	32.14	29.50	0.14(1)

- (1) This dividend was prorated from February 16, 2011, the day Kinder Morgan closed its initial public offering. Based on a full quarter, the dividend amounts to \$0.29 per share.

	El Paso Common Stock Price Range		Cash Dividends
	High	Low	
<b>2012</b>			
First quarter (through February 23, 2012)	\$ 27.39	\$ 25.80	
<b>2011</b>			
Fourth quarter	26.57	16.30	\$ 0.01
Third quarter	21.18	16.64	0.01
Second quarter	21.54	16.72	0.01
First quarter	18.77	13.42	0.01
<b>2010</b>			
Fourth quarter	14.08	12.00	0.01
Third quarter	12.93	10.60	0.01
Second quarter	13.00	10.17	0.01
First quarter	11.59	9.55	0.01

The following table sets forth the closing prices per share for Kinder Morgan Class P common stock and El Paso common stock on October 14, 2011, the last trading day prior to the public announcement of the merger, and on [ ], 2012, the last practicable trading day prior to the date of this information statement/proxy statement/prospectus. The table also sets forth the equivalent market value per share of El Paso common stock for the mixed consideration election shares and the stock election shares, assuming no proration and excluding the value of the warrants.

	Closing Price per Share	
	October 14, 2011	[ ], 2012
Kinder Morgan Class P common stock	\$ 26.89	\$ [ ]
El Paso common stock	19.59	[ ]
El Paso mixed consideration election share equivalent	25.91	[ ]
El Paso stock election share equivalent	25.91	[ ]





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Because the merger consideration will not be adjusted for changes in the market price of either Kinder Morgan Class P common stock or El Paso common stock, the market value of the shares of Kinder Morgan Class P common stock that holders of El Paso common stock will have the right to receive on the date the second merger becomes effective may vary significantly from the market value of the shares of Kinder Morgan Class P common stock that holders of El Paso common stock would receive if the second merger were completed on the date of this information statement/proxy statement/prospectus. Therefore, you should obtain recent market prices of the Kinder Morgan and El Paso shares prior to voting. See Risk Factors Risk Factors Relating to the Transactions Because the exchange ratios are fixed and because the market price of Kinder Morgan Class P common stock and El Paso common stock/New El Paso common stock will fluctuate, New El Paso stockholders receiving Kinder Morgan Class P common stock and/or warrants as part of the merger consideration cannot be sure of the market value of such merger consideration relative to the value of their shares of New El Paso common stock that they are exchanging.

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**Table of Contents****RISK FACTORS**

*In evaluating Kinder Morgan, El Paso, their respective businesses, the combined company and the transactions, you should carefully consider the following risk factors, as well as the other information included in or incorporated by reference into this information statement/proxy statement/prospectus, before deciding how to vote. Additional risk factors may be found under Part I, Item 1A in each of Kinder Morgan's Annual Report on Form 10-K for the year ended December 31, 2011 and El Paso's Annual Report on Form 10-K for the year ended December 31, 2011, each of which is incorporated by reference into this information statement/proxy statement/prospectus. Realization of any of the risks described below, any of the events described under Cautionary Statement Regarding Forward-Looking Statements or any of the risks or events described in the information incorporated by reference could have a material adverse effect on Kinder Morgan's, El Paso's or the combined company's respective businesses, financial condition, cash flows and results of operations and could result in a decline in the trading price of their respective shares of common stock.*

**Risk Factors Relating to the Transactions**

***Kinder Morgan and El Paso may be unable to obtain the regulatory clearances and approvals required to complete the transactions or, in order to do so, Kinder Morgan and El Paso may be required to comply with material restrictions or satisfy material conditions.***

The transactions are subject to review by the Antitrust Division of the Department of Justice (referred to as the Antitrust Division) and the Federal Trade Commission (referred to as the FTC) under the HSR Act, the Mexican Federal Competition Commission, the FERC under Section 203 of the Federal Power Act with respect to the indirect transfer of control to Kinder Morgan of El Paso's wholesale electric power marketing subsidiary and the wholesale power contracts to which it is a party, and potentially state regulatory authorities or foreign governmental authorities. The closing of the transactions is also subject to the condition that there be no law, injunction, judgment or ruling by a governmental authority in effect enjoining, restraining, preventing or prohibiting the transactions contemplated by the merger agreement. Kinder Morgan and El Paso can provide no assurance that all required regulatory approvals will be obtained. Further, Kinder Morgan has agreed to avoid or eliminate any impediment to the transactions that may be asserted by governmental entities under the antitrust laws, including divesting assets, terminating relationships or committing to limit Kinder Morgan's future freedom of action. If any governmental authority asserts any objections to the transactions, Kinder Morgan anticipates that it may be required to divest some assets in order to obtain antitrust approval. There can be no assurance as to the cost, scope or impact of the actions that may be required to obtain antitrust approval. If Kinder Morgan must take such actions, it could be detrimental to it or to the combined company following the consummation of the transactions. Furthermore, these actions could have the effect of delaying or preventing completion of the proposed transactions or imposing additional costs on or limiting the revenues of the combined company following the consummation of the transactions. See The Merger Agreement Regulatory Matters.

On December 5, 2011, Kinder Morgan and El Paso each received a Request for Additional Information and Documentary Materials (referred to as the Second Request) from the FTC. Consequently, the waiting period under the HSR Act is extended until 11:59 p.m., Eastern Time, on the 30th day after both Kinder Morgan and El Paso have certified their substantial compliance with the Second Request, unless earlier terminated by the FTC. At any time before or after such statutory waiting period under the HSR Act expires or the parties receive early termination of the waiting period, the Antitrust Division or the FTC could take action under the antitrust laws to prevent or rescind the transactions, require the divestiture of assets or seek other remedies. Additionally, the FERC, state attorneys general or foreign governmental authorities could seek to block or challenge the transactions as they deem necessary or desirable in the public interest at any time, including after completion of the transactions. In addition, in some circumstances, a competitor, customer or other third party could initiate a private action under antitrust laws challenging or seeking to enjoin the transactions, before or after it is completed. Kinder Morgan may not prevail and may incur significant costs in defending or settling any action under the antitrust laws.

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***If Kinder Morgan's financing for the transactions is not funded, the transactions may not be completed and Kinder Morgan may be in breach of the merger agreement.***

Kinder Morgan intends to finance the cash required in connection with the transactions, including for expenses incurred in connection with the transactions, with debt financing. On February 10, 2012, Kinder Morgan entered into an amendment to KMK's existing \$1.0 billion revolving credit facility to, among other things, permit the transactions contemplated by the merger agreement, and a new credit agreement to provide a \$6.8 billion senior secured 364-day bridge term loan facility, a \$5.0 billion senior secured three-year term loan facility and an incremental joinder agreement to provide an additional \$750 million in commitments under the existing revolving credit facility, all effective upon completion of the merger. The obligation of the lenders to provide the debt financing is subject to various conditions, including the repayment of all amounts outstanding under and termination of El Paso's existing credit facility, consummation of the direct or indirect merger of KMK with Kinder Morgan and other customary closing conditions. In the event any of the closing conditions is not satisfied or waived, or to the extent one or more of the lenders is unwilling to, or unable to, fund its commitments under the debt financing, Kinder Morgan may be required to seek alternative financing or fund the cash required in connection with the merger itself. Due to the fact that there is no funding condition in the merger agreement, if Kinder Morgan is unable to obtain funding from its financing sources for the cash required in connection with the transactions, Kinder Morgan could be in breach of the merger agreement assuming all other conditions to closing are satisfied and may be liable to El Paso for damages.

***Due to a disagreement between El Paso and one of its joint venture partners, Kinder Morgan's and El Paso's ability to obtain the consents of the independent auditors of the joint venture and of El Paso to include or incorporate by reference their respective audit reports in Kinder Morgan's and El Paso's filings under the Securities Act and the Exchange Act may be severely limited. As a result, Kinder Morgan and/or El Paso may be inhibited or prevented from accessing the capital markets and/or making filings under the Securities Act and the Exchange Act.***

El Paso and another party are partners in a pipeline joint venture (referred to as the "Joint Venture") in which the other party is currently acting as the operator (referred to as the "JV Operator"). In connection with a planned amendment to Kinder Morgan's Registration Statement on Form S-4, the JV Operator previously refused to provide a management representation letter to the independent auditor of the Joint Venture. The JV Operator has also indicated that it will continue to refuse to provide such management representation letters to the independent auditor for the Joint Venture except in connection with El Paso's annual and quarterly filings under the Exchange Act. As a result, from time to time, Kinder Morgan and El Paso may be unable to include or incorporate by reference in their respective filings under the Securities Act and the Exchange Act, the audited financial statements of the Joint Venture. Furthermore, Kinder Morgan and El Paso may be unable to obtain the consent of the independent auditor of El Paso (which relies on the audit report of the independent auditor of the Joint Venture in its audit report on the audited financial statements of El Paso) to include or incorporate by reference its audit reports.

The inability to obtain a management representation letter from the JV Operator except in connection with the filing of El Paso's annual report on Form 10-K and quarterly reports on Form 10-Q, and therefore, the inability to obtain the consent of the independent auditors of the Joint Venture and of El Paso to include or incorporate by reference their respective audit reports, may limit the ability of Kinder Morgan to timely make necessary post-effective amendments to its Registration Statement on Form S-4 and the ability of Kinder Morgan and/or El Paso (and their affiliates) to access capital. Notwithstanding the fact the JV Operator has indicated that it will provide a management representation letter to the independent auditor of the Joint Venture in connection with the filing of El Paso's annual report on Form 10-K and quarterly reports on Form 10-Q, there can be no assurance that the JV Operator will, in fact, do so. Failure of the JV Operator to provide a management representation letter in connection with the filing of El Paso's annual report on Form 10-K and quarterly reports on Form 10-Q could inhibit or prevent Kinder Morgan and/or El Paso from accessing the capital markets and/or making filings required under the Securities Act and Exchange Act and could have a material adverse impact on the business and operations of Kinder Morgan and/or El Paso.

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***New El Paso stockholders may not receive all consideration in the form they elect, and the form of consideration that they receive may have a lower value or less favorable tax consequences than the form of consideration that they elect to receive.***

New El Paso stockholders that make either the cash election or the stock election will be subject to proration if holders of New El Paso common stock, in the aggregate, elect to receive more or less than the aggregate amount of cash consideration to be paid in the transactions. Accordingly, some of the consideration El Paso stockholders receive in the transactions may differ from the type of consideration they select and such difference may be significant. This may result in, among other things, tax consequences that differ from those that would have resulted if New El Paso stockholders had received solely the form of consideration that they elected. The relative proportion of stock and cash that a New El Paso stockholder receives may also have a value that is higher or lower than the relative proportion of stock and cash that the New El Paso stockholder elected to receive. A discussion of the proration mechanism can be found under the heading *The Transactions* *New El Paso Stockholders Making Elections* *Proration and Adjustment Procedures* and a discussion of the material federal income tax consequences of the transactions can be found under the heading *The Transactions* *Material U.S. Federal Income Tax Consequences of the Transactions*.

***The fairness opinions rendered to the boards of directors of Kinder Morgan and El Paso by their respective financial advisors were based on the respective financial analyses they performed, which considered factors such as market and other conditions then in effect, and financial forecasts and other information made available to them, as of the date of their respective opinions. As a result, these opinions do not reflect changes in events or circumstances after the date of these opinions. Kinder Morgan and El Paso have not obtained, and do not expect to obtain, updated fairness opinions from their respective financial advisors reflecting changes in circumstances that may have occurred since the signing of the merger agreement.***

The fairness opinions rendered to the board of directors of Kinder Morgan by Evercore and Barclays Capital and the fairness opinion rendered to the board of directors of El Paso by Morgan Stanley were provided in connection with, and at the time of, the boards of directors' respective evaluation of the transactions. These opinions were based on the respective financial analyses performed, which considered market and other conditions then in effect, and financial forecasts and other information made available to them, as of the date of their respective opinions, which may have changed, or may change, after the date of the opinions. Kinder Morgan and El Paso have not obtained updated opinions as of the date of this information statement/proxy statement/prospectus from their respective financial advisors. They do not expect to obtain updated opinions prior to completion of the transactions. Changes in the operations and prospects of Kinder Morgan or El Paso, general market and economic conditions and other factors which may be beyond the control of Kinder Morgan and El Paso, and on which the fairness opinions were based, may have altered the value of Kinder Morgan or El Paso or the prices of shares of Kinder Morgan Class P common stock or shares of El Paso common stock since the dates of such opinions, or may alter such values and prices by the time the transactions are completed. The opinions do not speak as of any date other than the dates of those opinions. For a description of the opinions that Kinder Morgan and El Paso received from their respective financial advisors, please refer to *The Transactions* *Opinions of Kinder Morgan's Financial Advisors* and *Opinion of El Paso's Financial Advisor*.

***The merger agreement contains provisions that limit each party's ability to pursue alternatives to the transactions, could discourage a potential competing acquirer of either El Paso or Kinder Morgan from making a favorable alternative transaction proposal and, in specified circumstances, could require El Paso to pay a termination fee of \$650 million to Kinder Morgan.***

Under the merger agreement, El Paso and Kinder Morgan are restricted from entering into alternative transactions. Unless and until the merger agreement is terminated, subject to specified exceptions (which are discussed in more detail in *The Merger Agreement* *Termination* ), both Kinder Morgan and El Paso are

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restricted from soliciting, initiating, knowingly facilitating, knowingly encouraging or knowingly inducing or negotiating, any inquiry, proposal or offer for a competing acquisition proposal with any person. The merger agreement does not permit Kinder Morgan to terminate the merger agreement and pursue an alternative transaction, even if the Kinder Morgan board believed it would be more favorable to the Kinder Morgan stockholders. Additionally, under the merger agreement, in the event of a potential change by the board of directors of El Paso of its recommendation with respect to the transactions in light of a superior proposal, El Paso must provide Kinder Morgan with five days notice to allow Kinder Morgan to propose an adjustment to the terms and conditions of the merger agreement. El Paso may terminate the merger agreement and enter into an agreement with respect to a superior proposal only if specified conditions have been satisfied, including compliance with the no solicitation and termination provisions of the merger agreement. These provisions could discourage a third party that may have an interest in acquiring all or a significant part of El Paso or Kinder Morgan from considering or proposing that acquisition, even if such third party were prepared to pay consideration with a higher per share cash or market value than the market value proposed to be received or realized in the transactions, or might result in a potential competing acquirer of El Paso proposing to pay a lower price than it would otherwise have proposed to pay because of the added expense of the termination fee that may become payable in specified circumstances.

Under the merger agreement, El Paso may be required to pay to Kinder Morgan a termination fee of \$650 million if the merger agreement is terminated under specified circumstances. If such a termination fee is payable, the payment of this fee could have material and adverse consequences to the financial condition and operations of El Paso. For a discussion of the restrictions on El Paso and Kinder Morgan soliciting or entering into a takeover proposal or alternative transaction and El Paso's board of directors' ability to change its recommendation, see *The Merger Agreement*, *No-Solicitation by El Paso of Takeover Proposals*, *No-Solicitation by Kinder Morgan of an Alternative Transaction* and *El Paso Board Recommendation*.

***Directors and executive officers of El Paso have certain interests that are different from those of El Paso stockholders generally.***

The executive officers of El Paso who negotiated the terms of the merger agreement and the members of the El Paso board of directors who approved the merger agreement have certain interests in the transactions that may be different from, or in addition to, the interests of El Paso stockholders generally. These interests include the following:

Under the merger agreement, each outstanding equity award (including equity awards held by El Paso's executive officers and directors) will (to the extent unvested) automatically vest upon the second merger and be converted into the right to receive, at the election of the holder, either cash (and warrants) or a mixture of cash and shares of Kinder Morgan Class P common stock (and warrants) for all shares subject to such awards (in the case of stock options, less the aggregate exercise price);

El Paso's executive officers participate in El Paso's executive severance plans, which provide severance and other termination benefits in the case of a qualifying termination of employment upon or within the two-year period immediately following a change of control, which would include the second merger; and

Under the merger agreement, El Paso must, in consultation with Kinder Morgan, adopt a retention plan for certain full-time employees of El Paso, including executive officers Brent Smolik and Dane Whitehead, pursuant to which retention bonuses may be earned by such executive officers based on (1) the performance of services, (2) attainment of specified levels of gross sale proceeds in respect of EP Energy business assets sold within 12 months after closing of the second merger and (3) the date the EP Energy business assets are sold.

The merger agreement provides that Kinder Morgan will take such actions (including increasing the size of the Kinder Morgan board of directors) as are necessary to elect two individuals designated by El Paso to the

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Kinder Morgan board of directors effective as of, and subject to the occurrence of, the effective time of the second merger. As of the date of this information statement/proxy statement/prospectus, El Paso has not yet determined which individuals will be its designees on the Kinder Morgan board of directors.

The merger agreement also provides for indemnification in favor of the current and former directors and officers of El Paso and its subsidiaries and for the purchase of directors' and officers' liability insurance and fiduciary liability insurance tail or run-off policies with respect to matters existing or occurring at or prior to the effective time of the transactions.

For a discussion of the interests of directors and executive officers in the transactions, see *The Transactions*, *Interests of Certain Persons in the Transactions*, *El Paso Executive Officers and Directors*.

***Goldman Sachs served as one of El Paso's financial advisors and is the second largest beneficial owner of stock in Kinder Morgan and may have interests that are different from those of El Paso stockholders generally.***

Goldman Sachs may have interests in the transactions that are different from, or in addition to, the interests of El Paso stockholders generally. These interests may present Goldman Sachs with actual or potential conflicts of interest. Prior to the receipt of Kinder Morgan's acquisition proposal, El Paso engaged Goldman Sachs to advise it with respect to the proposed spin-off of its exploration and production business and paid Goldman Sachs \$5 million in connection with that engagement. Following receipt of Kinder Morgan's proposal, El Paso engaged Goldman Sachs to continue to act as a financial advisor to El Paso, including reviewing and analyzing El Paso's business plan in connection with the proposed spin-off for purposes of aiding El Paso in its analysis of the potential Kinder Morgan transaction. In the engagement letter for these latter services, El Paso agreed to pay Goldman Sachs a fee of \$20 million upon completion of a transaction with Kinder Morgan. In both engagement letters, El Paso agreed to reimburse Goldman Sachs for certain of its fees and expenses and indemnify it against certain liabilities if they were to arise. In addition to its role as a financial advisor to El Paso, Goldman Sachs is also a stockholder of Kinder Morgan and, prior to consummation of the proposed transactions, may be deemed to beneficially own approximately 19 percent of the shares of Kinder Morgan Class P common stock on a fully converted basis, making it the second largest beneficial holder. Two representatives of Goldman Sachs and its affiliates also serve on the board of directors of Kinder Morgan. For more information relating to Goldman Sachs' role as a financial advisor to El Paso, Goldman Sachs' investment in Kinder Morgan and El Paso's and Goldman Sachs' actions to address any potential conflicts, see *The Transactions*, *Background of the Transactions*, *El Paso's Engagement of Goldman Sachs* and *Interests of Certain Persons in the Transactions*, *Goldman Sachs*.

***Kinder Morgan and El Paso may have difficulty attracting, motivating and retaining executives and other employees in light of the transactions.***

Uncertainty about the effect of the transactions on Kinder Morgan and El Paso employees may have an adverse effect on Kinder Morgan and El Paso and consequently the combined company. This uncertainty may impair Kinder Morgan's and El Paso's ability to attract, retain and motivate personnel until the transactions are completed. Employee retention may be particularly challenging during the pendency of the transactions, as employees may feel uncertain about their future roles with the combined company. In addition, Kinder Morgan and El Paso may have to provide additional compensation in order to retain employees. If employees of Kinder Morgan or El Paso depart because of issues relating to the uncertainty and difficulty of integration or a desire not to become employees of the combined company, the combined company's ability to realize the anticipated benefits of the transactions could be reduced.

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***Kinder Morgan and El Paso will incur substantial transaction-related costs in connection with the transactions.***

Kinder Morgan and El Paso expect to incur a number of non-recurring transaction-related costs associated with completing the transactions, combining the operations of the two companies and achieving desired synergies. These fees and costs will be substantial. Non-recurring transaction costs include, but are not limited to, fees paid to legal, financial and accounting advisors, filing fees and printing costs. Additional unanticipated costs may be incurred in the integration of the businesses of Kinder Morgan and El Paso. There can be no assurance that the elimination of certain duplicative costs, as well as the realization of other efficiencies related to the integration of the two businesses, will offset the incremental transaction-related costs over time. Thus, any net benefit may not be achieved in the near term, the long term or at all.

***Failure to successfully combine the businesses of El Paso and Kinder Morgan in the expected time frame may adversely affect the future results of the combined company, and, consequently, the value of any Kinder Morgan Class P common stock and/or Kinder Morgan warrants that El Paso stockholders receive as part of the merger consideration.***

The success of the proposed transactions will depend, in part, on the ability of Kinder Morgan to realize the anticipated benefits and synergies from combining the businesses of Kinder Morgan and El Paso. To realize these anticipated benefits, the businesses must be successfully combined. If the combined company is not able to achieve these objectives, or is not able to achieve these objectives on a timely basis, the anticipated benefits of the transactions may not be realized fully or at all. In addition, the actual integration may result in additional and unforeseen expenses, which could reduce the anticipated benefits of the transactions. These integration difficulties could result in declines in the market value of Kinder Morgan Class P common stock and, consequently, result in declines in the market value of the Kinder Morgan Class P common stock and warrants that El Paso stockholders receive as part of the merger consideration and continue to hold following consummation of the proposed transactions.

***Failure to complete the transactions, or significant delays in completing the transactions, could negatively affect the trading prices of Kinder Morgan Class P common stock and El Paso common stock and the future business and financial results of Kinder Morgan and El Paso.***

Completion of the transactions is not assured and is subject to risks, including the risks that approval of the transactions by the respective stockholders of Kinder Morgan and El Paso or by governmental agencies is not obtained or that other closing conditions are not satisfied. If the transactions are not completed, or if there are significant delays in completing the transactions, it could negatively affect the trading prices of Kinder Morgan Class P common stock and El Paso common stock and the respective future business and financial results of Kinder Morgan and El Paso, and each of them will be subject to several risks, including the following:

the parties may be liable for damages to one another under the terms and conditions of the merger agreement;

negative reactions from the financial markets, including declines in the price of Kinder Morgan Class P common stock or El Paso common stock due to the fact that current prices may reflect a market assumption that the transactions will be completed;

having to pay certain significant costs relating to the transactions, including, in the case of El Paso in certain circumstances, a termination fee of \$650 million as described in The Merger Agreement Termination Fee ; and

the attention of management of Kinder Morgan and El Paso will have been diverted to the transactions rather than each company's own operations and pursuit of other opportunities that could have been beneficial to that company.

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***Purported stockholder class action complaints have been filed against El Paso, Kinder Morgan, the members of El Paso's board of directors, El Paso's and Kinder Morgan's merger subsidiaries and Goldman Sachs, challenging the transactions, and an unfavorable judgment or ruling in these lawsuits could prevent or delay the consummation of the proposed transactions and result in substantial costs.***

In connection with the proposed transactions, purported stockholders of El Paso have filed numerous purported stockholder class action lawsuits in the District Court of Harris County, Texas and in the Delaware Court of Chancery. Those lawsuits name as defendants El Paso, Kinder Morgan, the members of the board of directors of El Paso, and, in certain cases, the affiliates of El Paso and Kinder Morgan and Goldman, Sachs & Co., whose role is further described in the section entitled "The Transactions - El Paso's Engagement of Goldman Sachs." Among other remedies, the plaintiffs seek to enjoin the proposed transactions. If a final settlement is not reached, or if a dismissal is not obtained, these lawsuits could prevent and/or delay completion of the transactions and result in substantial costs to El Paso and Kinder Morgan, including any costs associated with the indemnification of directors. Additional lawsuits may be filed against El Paso and Kinder Morgan, their respective affiliates and El Paso's directors related to the proposed transactions. The defense or settlement of any lawsuit or claim may adversely affect the combined company's business, financial condition or results of operations. See "The Transactions - Litigation Related to the Transactions."

***Closing of the first merger and/or second merger may trigger change in control provisions in certain agreements to which El Paso is a party.***

Closing of the first merger and/or second merger may trigger change in control provisions in certain agreements to which El Paso is a party. If El Paso and Kinder Morgan are unable to negotiate waivers of those provisions, the counterparties may exercise their rights and remedies under the agreements, potentially terminating the agreements or seeking monetary damages. Even if El Paso and Kinder Morgan are able to negotiate waivers, the counterparties may require a fee for such waiver or seek to renegotiate the agreements on terms less favorable to El Paso or the combined company.

***During the pendency of the proposed transactions, a decrease in Kinder Morgan's perceived creditworthiness may have an adverse effect on El Paso's perceived creditworthiness, possibly resulting in a downgrade of credit ratings.***

During the pendency of the proposed transactions, changes in Kinder Morgan's perceived creditworthiness may affect El Paso's perceived creditworthiness. To the extent that there are concerns about Kinder Morgan's ability to satisfy its obligations to its creditors, those concerns may be imputed to El Paso, causing similar concerns about El Paso's ability to satisfy its obligations to its creditors. If El Paso's perceived creditworthiness suffers, it could result in, among other things, lowered credit ratings, reduced access to capital and increased borrowing costs.

***El Paso is subject to business uncertainties and contractual restrictions while the proposed transactions are pending, which could adversely affect El Paso's business and operations.***

Under the terms of the merger agreement, El Paso is subject to certain restrictions on the conduct of its business prior to completing the proposed transactions, which may adversely affect its ability to execute certain of its business strategies, including the ability in certain cases to enter into contracts or incur capital expenditures to grow its business. Such limitations could negatively affect El Paso's businesses and operations prior to the completion of the proposed transactions. Furthermore, the process of planning to integrate two businesses and organizations for the post-merger period can divert management attention and company resources and could ultimately have an adverse effect on each of Kinder Morgan and El Paso.

In connection with the pending transactions, it is possible that some customers, suppliers and other persons with whom El Paso has a business relationship may delay or defer certain business decisions or might decide to



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seek to terminate, change or renegotiate their relationships with El Paso as a result of the proposed transactions, which could negatively affect El Paso's revenues, earnings and cash flows, as well as the market price of shares of its common stock, regardless of whether the transactions are completed.

***Because the exchange ratios are fixed and because the market price of Kinder Morgan Class P common stock and El Paso common stock/New El Paso common stock will fluctuate, New El Paso stockholders receiving Kinder Morgan Class P common stock and/or warrants as part of the merger consideration cannot be sure of the market value of such merger consideration relative to the value of their shares of New El Paso common stock that they are exchanging.***

If the transactions are completed, each share of New El Paso common stock will be converted into the right to receive 0.640 of a warrant to purchase shares of Kinder Morgan Class P common stock and may, depending on the election of the New El Paso stockholder and subject to proration, be converted into the right to receive a fixed number of shares (as opposed to a fixed market value) of Kinder Morgan Class P common stock. During the pendency of the transactions, the market value of Kinder Morgan Class P common stock will fluctuate, and decreases in the market value of Kinder Morgan Class P common stock will negatively affect the value of the merger consideration that New El Paso stockholders receive. The market value of New El Paso common stock will also fluctuate during the pendency of the transactions, and increases in the market value of New El Paso common stock may mean that the merger consideration issued to New El Paso common stockholders will be worth less than the market value of the shares of New El Paso common stock such stockholders are exchanging. The exchange ratios were fixed at the time the merger agreement was executed, and the value of Kinder Morgan and New El Paso stock may vary significantly from their values on the date of the merger agreement, the date of this information statement/proxy statement/prospectus, the date on which El Paso stockholders vote on the merger agreement, the date on which New El Paso stockholders make their election and the date on which New El Paso stockholders receive the merger consolidation. Neither El Paso nor Kinder Morgan is permitted to terminate the merger agreement solely due to changes in the market price of either party's common stock.

There will be a time lapse between the date on which New El Paso stockholders make an election with respect to the form of merger consideration to be received by them in exchange for their New El Paso common stock and the date on which New El Paso stockholders actually receive warrants of Kinder Morgan and, depending on their election and subject to proration, shares of Kinder Morgan Class P common stock. Fluctuations in the market value of Kinder Morgan stock during this time period will also affect the value of the merger consideration, once it is actually received.

If a New El Paso stockholder makes a stock election or mixed election and the market value of Kinder Morgan Class P common stock falls between the time of the election and the time the merger consideration is actually received, the value of the merger consideration received may be less than the value of the merger consideration such stockholder would have received under a cash election. Conversely, if a New El Paso stockholder makes a cash election and the market value of Kinder Morgan Class P common stock rises between the time of the election and the time the merger consideration is actually received, the value of the merger consideration received may be less than the value of the merger consideration such stockholder would have received under a stock or mixed election. New El Paso stockholders are urged to obtain current market quotations for Kinder Morgan Class P common stock when they make their elections.

***If the transactions are approved, the date that New El Paso stockholders will receive the merger consideration is uncertain.***

If the proposed transactions are approved, the date that New El Paso stockholders will receive the merger consideration depends on the completion date of the transactions, which is uncertain.

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***When making their elections, New El Paso stockholders must deliver stock certificates (or evidence of shares in book-entry form) to the exchange agent, and, unless they revoke their election, will not be able to transfer those shares following delivery.***

When New El Paso stockholders make their election and return the properly completed form of election by the applicable deadline, they must also deliver to the exchange agent stock certificates (or evidence of shares in book-entry form) representing their shares of New El Paso common stock. Unless they revoke this election, such stockholders may not transfer those shares following their election, and such stockholders may therefore be unable to gain access to cash or make other investments, or otherwise attempt to reduce the potential for a decrease in the value of their investment, as they otherwise would like.

***The value of the warrants that New El Paso stockholders will receive as part of the merger consideration is uncertain, and the warrants may have limited or no value.***

The value of the warrants to be issued as part of the merger consideration is speculative. In the event that the value of Kinder Morgan Class P common stock does not exceed the exercise price of the warrants during the five-year period when the warrants are exercisable, the warrants may have limited or no value. Because the market for the warrants may be limited, volatile or sporadic, warrant holders may have to bear the economic consequences of holding such warrants for the entire term of the warrants.

***If the merger agreement is terminated, El Paso may be obligated to reimburse Kinder Morgan for costs incurred related to the transactions and, under certain circumstances, pay a termination fee to Kinder Morgan.***

In certain circumstances, upon termination of the merger agreement, El Paso would be responsible for reimbursing Kinder Morgan for up to \$20 million in expenses related to the transaction, plus certain financing-related expenses of Kinder Morgan, and may be obligated to pay a termination fee to Kinder Morgan of \$650 million. If the merger agreement is terminated, the expense reimbursements and the termination fee required to be paid, if any, by El Paso under the merger agreement may require El Paso to incur significant amounts that would reduce the cash and liquidity it has available for operations, dividends or other general corporate purposes. See The Merger Agreement Expenses.

***The unaudited pro forma financial information in this information statement/proxy statement/prospectus is presented for illustrative purposes only and may not be reflective of the operating results and financial condition of the combined company following completion of the proposed transactions.***

The unaudited pro forma financial information in this information statement/proxy statement/prospectus is presented for illustrative purposes only and is not necessarily indicative of what the combined company's actual financial position or results of operations would have been had the transactions been completed on the dates indicated. The unaudited pro forma financial information reflects adjustments, which are based upon preliminary estimates, to allocate the purchase price to El Paso's net assets. The purchase price allocation reflected in this document is preliminary, and final allocation of the purchase price will be based upon the actual purchase price and the fair value of the assets and liabilities of El Paso as of the date of the completion of the transactions. In addition, subsequent to the closing date, there may be further refinements of the purchase price allocation as additional information becomes available. Accordingly, the final purchase accounting adjustments may differ materially from the pro forma adjustments reflected in this document. See Unaudited Pro Forma Condensed Combined Financial Information for more information.

***Kinder Morgan's and El Paso's financial estimates are based on various assumptions that may not prove to be correct.***

The financial estimates set forth in the forecast included under The Transactions Certain Kinder Morgan Financial Projections and Certain El Paso Financial Projections are based on assumptions of, and information available to, Kinder Morgan and El Paso, respectively, at the time they were prepared and provided

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to Kinder Morgan's and El Paso's respective boards of directors and financial advisors. Kinder Morgan and El Paso do not know whether the assumptions they made will prove correct. Any or all of such estimates may turn out to be wrong. They can be adversely affected by inaccurate assumptions or by known or unknown risks and uncertainties, many of which are beyond Kinder Morgan's and/or El Paso's control. Many factors mentioned in this information statement/proxy statement/prospectus, including the risks outlined in this Risk Factors section and the events and/or circumstances described under Cautionary Statement Regarding Forward-Looking Statements will be important in determining Kinder Morgan's and/or El Paso's future results. As a result of these contingencies, actual future results may vary materially from Kinder Morgan's and/or El Paso's estimates. In view of these uncertainties, the inclusion of Kinder Morgan's and El Paso's financial estimates in this information statement/proxy statement/prospectus is not and should not be viewed as a representation that the forecasted results will be achieved.

These financial estimates are Kinder Morgan's and El Paso's internal financial forecasts and were not prepared with a view toward public disclosure or toward compliance with published guidelines of any regulatory or professional body. Further, any forward-looking statement speaks only as of the date on which it is made, and each of Kinder Morgan and El Paso undertakes no obligation, other than as required by applicable law, to update its financial estimates herein to reflect events or circumstances after the date those financial estimates were prepared or to reflect the occurrence of anticipated or unanticipated events or circumstances.

The financial estimates included in this information statement/proxy statement/prospectus have been prepared by, and are the responsibility of, Kinder Morgan and El Paso, as applicable. Moreover, neither Kinder Morgan's independent accountants, PricewaterhouseCoopers LLP, El Paso's independent accountants, Ernst & Young LLP, nor any other independent accountants have compiled, examined or performed any procedures with respect to Kinder Morgan's or El Paso's prospective financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and, accordingly, each of PricewaterhouseCoopers LLP and Ernst & Young LLP assumes no responsibility for, and disclaims any association with, Kinder Morgan's and El Paso's prospective financial information. The reports of PricewaterhouseCoopers LLP and of Ernst & Young LLP incorporated by reference into this information statement/proxy statement/prospectus relate exclusively to the historical financial information of the entities named in those reports and do not cover any other information in this information statement/proxy statement/prospectus and should not be read to do so. See The Transactions Certain El Paso Financial Projections and Certain Kinder Morgan Financial Projections for more information.

### **Risk Factors Relating to Kinder Morgan After Completion of the Transactions**

*In this section, Kinder Morgan refers to Kinder Morgan, Inc. after the transactions, at which time El Paso, which owns the general partner of EPB, will be a wholly owned subsidiary. Except as indicated below, this section also assumes the completion of the disposition of El Paso's oil and gas properties and business before or promptly after the transactions. All of Kinder Morgan's operations are, and after completion of the transactions will continue to be, conducted by its subsidiaries, including KMP and El Paso and their subsidiaries and joint ventures, and its equity investees. To the extent that a risk described below relates generally to the business of the combined entity, the risk factor refers to the risk to Kinder Morgan. Where the risk described is particular to KMP's business or to El Paso's business, the risk factor refers specifically to that entity. In this section, KMP and EPB are sometimes referred to as the Partnerships.*

***El Paso has entered into a Purchase and Sale Agreement to sell EP Energy. There can be no assurance that El Paso and Kinder Morgan will be able to complete the sale EP Energy in the anticipated time frame, or at all. In the event the transactions contemplated by the Purchase and Sale Agreement are terminated, under certain circumstances Kinder Morgan may be required to pay to the purchaser of EP Energy a termination fee of \$400 million.***

On February 24, 2012, certain subsidiaries of El Paso entered into a Purchase and Sale Agreement with affiliates of Apollo Global Management L.L.C., Riverstone Holdings, LLC, Access Industries, Inc. and certain other parties to sell EP Energy around the same time as the consummation of the transactions in order to help

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reduce the level of indebtedness incurred to finance the transactions. The sale of EP Energy is subject to customary closing conditions, including clearance under the antitrust laws of the United States and the closing of the second merger. There can be no assurance that El Paso and Kinder Morgan will be able to sell EP Energy in the anticipated time frame, or at all. In the event El Paso and Kinder Morgan are unable to sell EP Energy as expected, the combined company will have an increased amount of indebtedness which may adversely affect its profitability. The Purchase and Sale Agreement also provides under certain circumstances for the payment of a termination fee by Kinder Morgan of \$400 million. Pursuant to the merger agreement, Kinder Morgan is required to indemnify El Paso and its subsidiaries from any and all costs incurred by El Paso or its subsidiaries arising from or relating to the EP Energy Sale.

***Following consummation of the transactions, the credit rating of El Paso and/or Kinder Morgan could be downgraded, which may increase its borrowing costs and could give rise to an obligation to redeem existing indebtedness.***

Kinder Morgan will have considerably higher aggregate levels of indebtedness than Kinder Morgan and El Paso currently have in the aggregate due to the debt incurred to finance the transactions. There can be no assurance that the credit ratings of the existing Kinder Morgan debt or El Paso debt will not be subject to a downgrade.

If, as a result of the transactions, certain notes issued by El Paso and certain of its subsidiaries are subject to a ratings downgrade (which, in some instances, results in having a credit rating below investment grade) by a credit ratings agency during the period continuing until up to 120 days after consummation of the transactions, each holder of such notes would have the right to require El Paso or its applicable subsidiary to repurchase all or part of such holder's notes (possibly at a premium) as provided in the applicable debt documents. If such an event occurs, Kinder Morgan would likely be required to refinance such indebtedness.

Any such obligation to offer to repurchase such El Paso indebtedness could necessitate obtaining significant amounts of refinancing capital. No assurance can be given as to the terms or availability of refinancing capital. Any such obligation could have an adverse effect on Kinder Morgan's financial condition after the consummation of the transactions. Moreover, if a ratings downgrade were to occur, even if such event does not give rise to a redemption obligation, the combined El Paso and Kinder Morgan company could experience higher borrowing costs in the future and more restrictive covenants which may reduce profitability and diminish operational flexibility.

***Kinder Morgan depends on distributions from its subsidiaries and joint ventures to meet its needs.***

Kinder Morgan is a holding company, a company with no significant assets other than its ownership interests in its operating subsidiaries, and has debt outstanding at the holding company level. It is dependent on the earnings and cash flows, dividends and other distributions from its subsidiaries, including KMP, and following the consummation of the proposed transactions, El Paso and its subsidiaries, including EPB, and joint ventures to generate the funds necessary to meet its obligations and pay dividends. Applicable law and contractual restrictions (including restrictions in its subsidiaries' credit facilities and in its joint venture or partnership agreements) may negatively impact Kinder Morgan's ability to obtain such distributions from its subsidiaries, including the rights of the creditors of its subsidiaries that would often be superior to Kinder Morgan's interests. Furthermore, a decline in KMP's or El Paso's revenues or increases in their general and administrative expenses, principal and interest payments under existing and future debt instruments, expenditures for taxes, working capital requirements or other cash needs will limit the amount of cash they can distribute to Kinder Morgan, which would reduce the amount of cash available for payment of its debt and for distribution to its stockholders, which could be material.

***Kinder Morgan may not be able to sell (drop-down) El Paso's natural gas pipeline assets to EPB and KMP in a timely manner or on satisfactory terms and conditions.***

Kinder Morgan expects to sell (drop-down) El Paso's natural gas pipeline assets to EPB and KMP. The drop-down of El Paso's natural gas pipeline assets is dependent upon a number of factors, including reaching

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agreement with respect to the purchase price of such assets and negotiating definitive documentation upon satisfactory terms and conditions. Each of these transactions will be subject to approval by KMP's or EPB's independent directors. There can be no assurance that Kinder Morgan will be able to drop-down El Paso's natural gas pipeline assets in a timely manner or at all. In the event Kinder Morgan is unable to drop-down El Paso's natural gas pipeline assets as expected, the combined company will have an increased amount of indebtedness which may adversely affect its profitability.

***Kinder Morgan is dependent upon KMP's and EPB's ability to access the capital markets and/or other sources of financing.***

Kinder Morgan's ability to sell (drop-down) assets to, and to receive distributions relating to expansion projects or acquisitions at, KMP and/or EPB is dependent, in part, on KMP's and EPB's ability to access the capital markets and/or other sources of financing. In the event KMP's or EPB's credit rating is downgraded, it may make it more difficult, expensive or impossible for KMP or EPB, as applicable, to access the capital markets and/or other sources of financing. Accordingly, projects may not occur or may be less profitable. Any such event could materially adversely affect the future earnings, cash flows and financial condition of Kinder Morgan.

***If the proposed transactions are completed, conflicts of interest may arise between KMI, on the one hand, and EPB and/or KMP, on the other hand.***

Conflicts of interest may arise following completion of the proposed transactions because of the relationships among EPB, KMP and Kinder Morgan, as the indirect owner of their general partners. Kinder Morgan's directors and officers will have fiduciary duties to manage its business in a manner beneficial to Kinder Morgan and Kinder Morgan's stockholders. Some of Kinder Morgan's directors will also be directors and officers of EPB's general partner or KMP's general partner, and will have duties as provided in their respective partnership agreements to manage the respective businesses of EPB and KMP in a manner beneficial to EPB and KMP and their respective unitholders. The resolution of these conflicts may not always be in Kinder Morgan's best interest or that of Kinder Morgan's stockholders.

***New regulations, rulemaking and oversight, as well as changes in regulations, by regulatory agencies having jurisdiction over Kinder Morgan's operations could adversely impact its income and operations.***

Kinder Morgan's pipelines and storage facilities are subject to regulation and oversight by federal, state and local regulatory authorities, such as the FERC, the California Public Utilities Commission, referred to as the CPUC, and Canada's National Energy Board. Regulatory actions taken by these agencies have the potential to adversely affect Kinder Morgan's profitability. Regulation affects almost every part of its business and extends to such matters as:

rates (which include reservation, commodity, surcharges, fuel and gas lost and unaccounted for), operating terms and conditions of service;

the types of services Kinder Morgan may offer to its customers;

the contracts for service entered into with its customers;

the certification and construction of new facilities;

the integrity, safety and security of facilities and operations;

the acquisition of other businesses;

the acquisition, extension, disposition or abandonment of services or facilities;

reporting and information posting requirements;

the maintenance of accounts and records; and

relationships with affiliated companies involved in various aspects of the natural gas and energy businesses.

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Should Kinder Morgan fail to comply with any applicable statutes, rules, regulations, and orders of such regulatory authorities, it could be subject to substantial penalties and fines.

New regulations sometimes arise from unexpected sources. For example, the Department of Homeland Security Appropriation Act of 2007 required the Department of Homeland Security to issue regulations establishing risk-based performance standards for the security of chemical and industrial facilities, including oil and gas facilities that are deemed to present high levels of security risk.

New laws or regulations or different interpretations of existing laws or regulations, including unexpected policy changes, applicable to Kinder Morgan or its assets could have a material adverse impact on its business, financial condition and results of operations.

***The FERC may establish pipeline tariff rates that have a negative impact on Kinder Morgan. In addition, the FERC or Kinder Morgan's customers could file complaints challenging the tariff rates charged by Kinder Morgan's pipelines, and a successful complaint could have an adverse impact on Kinder Morgan.***

The profitability of Kinder Morgan's regulated pipelines is influenced by fluctuations in costs and its ability to recover any increases in its costs in the rates charged to its shippers. To the extent that such costs increase in an amount greater than what Kinder Morgan is permitted by the FERC to recover in its rates, or to the extent that there is a lag before the pipeline can file and obtain rate increases, such events can have a negative impact upon Kinder Morgan's operating results.

Kinder Morgan's existing rates may also be challenged by complaint. Regulators and shippers on Kinder Morgan's pipelines have rights to challenge, and have challenged, the rates they charge under certain circumstances prescribed by applicable regulations. Some shippers on various KMP pipelines have filed complaints with the FERC and the CPUC that seek substantial refunds for alleged overcharges during the years in question and prospective reductions in the tariff rates on KMP's Pacific operations pipeline system. Further, the FERC has initiated investigations to determine whether some interstate natural gas pipelines have over-collected on rates charged to shippers. Kinder Morgan could face additional challenges to the rates it charges on its pipelines. Any successful challenge could materially adversely affect its future earnings, cash flows and financial condition.

***Energy commodity transportation and storage activities involve numerous risks that may result in accidents or otherwise adversely affect Kinder Morgan's operations.***

There are a variety of hazards and operating risks inherent to natural gas transmission and storage activities and refined petroleum products and carbon dioxide transportation activities such as leaks, explosions and mechanical problems that could result in substantial financial losses. In addition, these risks could result in serious injury and loss of human life, significant damage to property and natural resources, environmental pollution and impairment of operations, any of which also could result in substantial financial losses. For pipeline and storage assets located near populated areas, including residential areas, commercial business centers, industrial sites and other public gathering areas, the level of damage resulting from these risks could be greater. Incidents that cause an interruption of service, such as when unrelated third party construction damages a pipeline or a newly completed expansion experiences a weld failure, may negatively impact Kinder Morgan's revenues and earnings while the affected asset is temporarily out of service. In addition, if losses in excess of Kinder Morgan's insurance coverage were to occur, they could have a material adverse effect on its business, financial condition and results of operations.

***Increased regulatory requirements relating to the integrity of Kinder Morgan's pipelines will require it to spend additional money to comply with these requirements.***

Through Kinder Morgan's regulated pipeline subsidiaries, it is subject to extensive laws and regulations related to pipeline integrity. There are, for example, federal guidelines for the U.S. Department of Transportation and pipeline companies in the areas of testing, education, training and communication. The U.S. Department of Transportation issued final rules (effective February 2004 with respect to natural gas pipelines) requiring pipeline

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operators to develop integrity management programs to comprehensively evaluate their pipelines and take measures to protect pipeline segments located in what the rules refer to as High Consequence Areas. The ultimate costs of compliance with the integrity management rules are difficult to predict. The majority of the costs to comply with the rules are associated with pipeline integrity testing and the repairs found to be necessary. Changes such as advances of in-line inspection tools, identification of additional threats to a pipeline's integrity and changes to the amount of pipeline determined to be located in High Consequence Areas can have a significant impact on the costs to perform integrity testing and repairs. Kinder Morgan plans to continue its pipeline integrity testing programs to assess and maintain the integrity of its existing and future pipelines as required by the U.S. Department of Transportation rules. The results of these tests could cause Kinder Morgan to incur significant and unanticipated capital and operating expenditures for repairs or upgrades deemed necessary to ensure the continued safe and reliable operation of its pipelines.

Further, additional laws and regulations that may be enacted in the future or a new interpretation of existing laws and regulations could significantly increase the amount of these expenditures. There can be no assurance as to the amount or timing of future expenditures for pipeline integrity regulation, and actual future expenditures may be different from the amounts Kinder Morgan currently anticipates. Revised or additional regulations that result in increased compliance costs or additional operating restrictions, particularly if those costs are not deemed by regulators to be fully recoverable from its customers, could have a material adverse effect on its business, financial position, results of operations and prospects.

***Kinder Morgan may face competition from competing pipelines and other forms of transportation into the areas it serves as well as with respect to the supply for its pipeline systems.***

Any current or future pipeline system or other form of transportation that delivers petroleum products or natural gas into the areas that Kinder Morgan's pipelines serve could offer transportation services that are more desirable to shippers than those it provides because of price, location, facilities or other factors. To the extent that an excess of supply into these areas is created and persists, Kinder Morgan's ability to recontract for expiring transportation capacity at favorable rates or otherwise to retain existing customers could be impaired. Kinder Morgan also could experience competition for the supply of petroleum products or natural gas from both existing and proposed pipeline systems. Several pipelines access many of the same areas of supply as its pipeline systems and transport to destinations not served by Kinder Morgan.

***Cost overruns and delays on expansion and new build projects could adversely affect Kinder Morgan's business.***

KMP has recently completed several major expansion and new build projects, including the joint venture projects Rockies Express Pipeline, Midcontinent Express Pipeline and Fayetteville Express Pipeline, and in July 2011, El Paso placed its new joint venture project, Ruby Pipeline, into service. KMP also is conducting and conducts from time to time alone or with others what are referred to as "open seasons" to evaluate the potential customer interest for new construction projects. A variety of factors outside Kinder Morgan's control, such as weather, natural disasters and difficulties in obtaining permits and rights-of-way or other regulatory approvals, as well as performance by third-party contractors, have resulted in, and may continue to result in, increased costs or delays in construction. Significant cost overruns or delays in completing a project could have a material adverse effect on Kinder Morgan's return on investment, results of operations and cash flows.

***Kinder Morgan must either obtain the right from landowners or exercise the power of eminent domain in order to use most of the land on which its pipelines are constructed, and it is subject to the possibility of increased costs to retain necessary land use.***

Kinder Morgan obtains the right to construct and operate pipelines on other owners' land for a period of time. If it were to lose these rights or be required to relocate its pipelines, its business could be affected negatively. In addition, Kinder Morgan is subject to the possibility of increased costs under its rental agreements with landowners, primarily through rental increases and renewals of expired agreements.



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Whether Kinder Morgan has the power of eminent domain for its pipelines, other than interstate natural gas pipelines, varies from state to state depending upon the type of pipeline – petroleum liquids, natural gas or carbon dioxide – and the laws of the particular state. Its interstate natural gas pipelines have federal eminent domain authority. In either case, Kinder Morgan must compensate landowners for the use of their property and, in eminent domain actions, such compensation may be determined by a court. Kinder Morgan’s inability to exercise the power of eminent domain could negatively affect its business if it was to lose the right to use or occupy the property on which its pipelines are located.

***The Partnerships’ acquisition strategies and expansion programs require access to new capital. Tightened capital markets or more expensive capital would impair their ability to grow.***

Consistent with the terms of their partnership agreements, KMP and EPB have distributed most of the cash generated by their operations. As a result, they have relied on external financing sources, including commercial borrowings and issuances of debt and equity securities, to fund their acquisition and for KMP, its growth capital expenditures. However, to the extent the Partnerships are unable to continue to finance growth through external sources, their cash distribution policies may significantly impair their ability to grow. The Partnerships may need new capital to finance these activities. Limitations on the Partnerships’ access to capital will impair their ability to execute this strategy.

***KMP’s growth strategy may cause difficulties integrating and constructing new operations, and Kinder Morgan may not be able to achieve the expected benefits from any future acquisitions.***

Part of KMP’s business strategy includes acquiring additional businesses, expanding existing assets and constructing new facilities. If KMP does not successfully integrate acquisitions, expansions or newly constructed facilities, they may not realize anticipated operating advantages and cost savings. The integration of companies that have previously operated separately involves a number of risks, including:

demands on management related to the increase in the size of KMP after an acquisition, expansion or completed construction project;

the diversion of management’s attention from the management of daily operations;

difficulties in implementing or unanticipated costs of accounting, estimating, reporting and other systems;

difficulties in the assimilation and retention of necessary employees; and

potential adverse effects on operating results.

KMP may not be able to maintain the levels of operating efficiency that acquired companies have achieved or might achieve separately. Successful integration of each acquisition, expansion or construction project will depend upon KMP’s ability to manage those operations and to eliminate redundant and excess costs. Because of difficulties in combining and expanding operations, KMP may not be able to achieve the cost savings and other size-related benefits that it hoped to achieve after these acquisitions, which would harm its financial condition and results of operations.

***Environmental, health and safety laws and regulations could expose Kinder Morgan to significant costs and liabilities.***

Kinder Morgan’s operations are subject to federal, state, provincial and local laws, regulations and potential liabilities arising under or relating to the protection or preservation of the environment, natural resources and human health and safety. Such laws and regulations affect many aspects of its present and future operations, and generally require Kinder Morgan to obtain and comply with various environmental registrations, licenses, permits, inspections and other approvals. Liability under such laws and regulations may be incurred without regard to fault under the Comprehensive Environmental Response, Compensation, and Liability Act, commonly

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known as CERCLA or Superfund, the Resource Conservation and Recovery Act, the Federal Clean Water Act or analogous state laws for the remediation of contaminated areas. Private parties, including the owners of properties through which Kinder Morgan's pipelines pass, also may have the right to pursue legal actions to enforce compliance as well as to seek damages for non-compliance with such laws and regulations or for personal injury or property damage. Kinder Morgan's insurance may not cover all environmental risks and costs and/or may not provide sufficient coverage in the event an environmental claim is made against Kinder Morgan.

Failure to comply with these laws and regulations also may expose Kinder Morgan to civil, criminal and administrative fines, penalties and/or interruptions in its operations that could influence its business, financial position, results of operations and prospects. For example, if an accidental leak, release or spill of liquid petroleum products, chemicals or other hazardous substances occurs at or from Kinder Morgan's pipelines or its storage or other facilities, it may experience significant operational disruptions, and it may have to pay a significant amount to clean up or otherwise respond to the leak, release or spill, pay for government penalties, address natural resource damage, compensate for human exposure or property damage, install costly pollution control equipment or undertake a combination of these and other measures. The resulting costs and liabilities could materially and negatively affect Kinder Morgan's level of earnings and cash flows. In addition, emission controls required under the Federal Clean Air Act and other similar federal, state and provincial laws could require significant capital expenditures at its facilities.

Kinder Morgan owns and/or operates numerous properties that have been used for many years in connection with its business activities. While Kinder Morgan has utilized operating, handling and disposal practices that were consistent with the industry at the time, hydrocarbons or other hazardous substances may have been released at or from properties owned, operated or used by it or its predecessors, or at or from properties where it or its predecessors' wastes have been taken for disposal. In addition, many of these properties have been owned and/or operated by third parties whose management, handling and disposal of hydrocarbons or other hazardous substances were not under Kinder Morgan's control. These properties and the hazardous substances released and wastes disposed on them may be subject to laws in the United States such as CERCLA, which impose joint and several liability without regard to fault or the legality of the original conduct. Under the regulatory schemes of the various Canadian provinces, such as British Columbia's Environmental Management Act, Canada has similar laws with respect to properties owned, operated or used by Kinder Morgan or its predecessors. Under such laws and implementing regulations, Kinder Morgan could be required to remove or remediate previously disposed wastes or property contamination, including contamination caused by prior owners or operators. Imposition of such liability schemes could have a material adverse impact on its operations and financial position.

In addition, Kinder Morgan's oil and gas development and production activities are subject to numerous federal, state and local laws and regulations relating to environmental quality and pollution control. These laws and regulations increase the costs of these activities and may prevent or delay the commencement or continuance of a given operation. Specifically, these activities are subject to laws and regulations regarding the acquisition of permits before drilling, restrictions on drilling activities in restricted areas, emissions into the environment, water discharges, transportation of hazardous materials and storage and disposition of wastes. In addition, legislation has been enacted that requires well and facility sites to be abandoned and reclaimed to the satisfaction of state authorities.

Further, Kinder Morgan cannot ensure that such existing laws and regulations will not be revised or that new laws or regulations will not be adopted or become applicable to it. There can be no assurance as to the amount or timing of future expenditures for environmental compliance or remediation, and actual future expenditures may be different from the amounts Kinder Morgan currently anticipates. Revised or additional regulations that result in increased compliance costs or additional operating restrictions, particularly if those costs are not fully recoverable from Kinder Morgan's customers, could have a material adverse effect on its business, financial position, results of operations and prospects. For more information, see Kinder Morgan's Annual Report on Form 10-K for the year ended December 31, 2011, which is incorporated by reference into this information statement/proxy statement/prospectus.

**Table of Contents*****Climate change regulation at the federal, state, provincial or regional levels could result in increased operating and capital costs for Kinder Morgan.***

Methane, a primary component of natural gas, and carbon dioxide, a byproduct of the burning of natural gas, are examples of greenhouse gases. The U.S. Environmental Protection Agency began regulating the greenhouse gas emissions of certain stationary sources on January 2, 2011, and has issued a final rule requiring the reporting of greenhouse gas emissions in the United States beginning in 2011 for emissions occurring in 2010 from specified large greenhouse gas emission sources, fractionated natural gas liquids, and the production of naturally occurring carbon dioxide, like the Partnership's McElmo Dome carbon dioxide field, even when such production is not emitted to the atmosphere.

Because Kinder Morgan's operations, including its compressor stations and natural gas processing plants in its Natural Gas Pipelines and NGPL segments, emit various types of greenhouse gases, primarily methane and carbon dioxide, such new legislation or regulation could increase its costs related to operating and maintaining its facilities and require it to install new emission controls on its facilities, acquire allowances for its greenhouse gas emissions, pay taxes related to its greenhouse gas emissions and administer and manage a greenhouse gas emissions program. Kinder Morgan is not able at this time to estimate such increased costs; however, they could be significant. Recovery of such increased costs from its customers is uncertain in all cases and may depend on events beyond its control, including the outcome of future rate proceedings before the FERC and the provisions of any final legislation or other regulations. Any of the foregoing could have adverse effects on Kinder Morgan's business, financial position, results of operations and prospects. For more information about climate change regulation, see Kinder Morgan's Annual Report on Form 10-K for the year ended December 31, 2011, which is incorporated by reference into this information statement/proxy statement/prospectus.

***Increased regulation of exploration and production activities, including hydraulic fracturing, could result in reductions or delays in drilling and completing new oil and natural gas wells, which could adversely impact revenues by decreasing the volumes of natural gas transported on KMP's or El Paso's or their joint ventures' natural gas pipelines.***

The natural gas industry is increasingly relying on natural gas supplies from unconventional sources, such as shale, tight sands and coal bed methane. Natural gas extracted from these sources frequently requires hydraulic fracturing. Hydraulic fracturing involves the pressurized injection of water, sand, and chemicals into the geologic formation to stimulate gas production and is a commonly used stimulation process employed by oil and gas exploration and production operators in the completion of certain oil and gas wells. Recently, there have been initiatives at the federal and state levels to regulate or otherwise restrict the use of hydraulic fracturing. Adoption of legislation or regulations placing restrictions on hydraulic fracturing activities could impose operational delays, increased operating costs and additional regulatory burdens on exploration and production operators, which could reduce their production of natural gas and, in turn, adversely affect revenues and results of operations by decreasing the volumes of natural gas transported on KMP's or El Paso's or their joint ventures' natural gas pipelines, several of which gather gas from areas in which the use of hydraulic fracturing is prevalent.

***Kinder Morgan's consolidated debt could adversely affect its financial health and make it more vulnerable to adverse economic conditions.***

As of December 31, 2011, on a basis pro forma for the transactions, Kinder Morgan and its subsidiaries would have had outstanding approximately \$42.0 billion of debt (including debt incurred in connection with the transactions and debt classified as held for sale in connection with the intended sale of EP Energy and excluding the fair value of interest rate swaps and unamortized purchase accounting adjustments), including \$12.8 billion at KMP and \$3.9 billion at EPB. This level of debt could have important consequences, such as:

limiting Kinder Morgan's and the Partnerships' abilities to obtain additional financing to fund their working capital, capital expenditures, debt service requirements or potential growth or for other purposes;

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limiting Kinder Morgan's and the Partnerships' abilities to use operating cash flow in other areas of their business or to pay dividends because they must dedicate a substantial portion of these funds to make payments on their debt;

placing Kinder Morgan and the Partnerships at a competitive disadvantage compared to competitors with less debt; and

increasing Kinder Morgan's and the Partnerships' vulnerability to adverse economic and industry conditions.

Kinder Morgan's and the Partnerships' abilities to service their debt will depend upon, among other things, their future financial and operating performance, which will be affected by prevailing economic conditions and financial, business, regulatory and other factors, many of which are beyond their control. If their operating results are not sufficient to service their indebtedness, or any future indebtedness that they incur, Kinder Morgan and the Partnerships will be forced to take actions such as reducing dividends, reducing or delaying their business activities, acquisitions, investments or capital expenditures, selling assets or seeking additional equity capital. Kinder Morgan and the Partnerships may not be able to effect any of these actions on satisfactory terms or at all.

***Kinder Morgan's large amount of variable rate debt makes it vulnerable to increases in interest rates.***

As of December 31, 2011, on a basis pro forma for the transactions, Kinder Morgan would have had outstanding approximately \$42.0 billion of consolidated debt (including debt incurred in connection with the transactions and debt classified as held for sale and excluding the fair value of interest rate swaps and unamortized purchase accounting adjustments), including \$12.8 billion at KMP and \$3.9 billion at EPB. Of this amount, approximately 50% was subject to variable interest rates, either as short-term or long-term debt of variable rate credit facilities or as long-term fixed-rate debt converted to variable rates through the use of interest rate swaps. Should interest rates increase, the amount of cash required to service this debt would increase and Kinder Morgan's and the Partnerships' earnings could be adversely affected.

***Current or future distressed financial conditions of Kinder Morgan's customers could have an adverse impact on it in the event these customers are unable to pay Kinder Morgan for the products or services it provides.***

Some of Kinder Morgan's customers are experiencing, or may experience in the future, severe financial problems that have had or may have a significant impact on their creditworthiness. Kinder Morgan cannot provide assurance that one or more of its financially distressed customers will not default on their obligations to it or that such a default or defaults will not have a material adverse effect on its business, financial position, future results of operations or future cash flows. Furthermore, the bankruptcy of one or more of Kinder Morgan's customers, or some other similar proceeding or liquidity constraint, might make it unlikely that it would be able to collect all or a significant portion of amounts owed by the distressed entity or entities. In addition, such events might force such customers to reduce or curtail their future use of Kinder Morgan's products and services, which could have a material adverse effect on its results of operations and financial condition.

***Terrorist attacks, or the threat of them, may adversely affect Kinder Morgan's business.***

The U.S. government has issued public warnings that indicate that pipelines and other energy assets might be specific targets of terrorist organizations. These potential targets might include Kinder Morgan's pipeline systems or storage facilities. Kinder Morgan's operations could become subject to increased governmental scrutiny that would require increased security measures. There is no assurance that adequate sabotage and terrorism insurance will be available at rates Kinder Morgan believes are reasonable in the near future. These developments may subject its operations to increased risks, as well as increased costs, and, depending on their ultimate magnitude, could have a material adverse effect on its business, results of operations and financial condition.

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***Future business development of Kinder Morgan's pipelines is dependent on the supply of and demand for the commodities transported by its pipelines.***

Kinder Morgan's pipelines depend on production of natural gas, oil and other products in the areas served by its pipelines. Without reserve additions, production will decline over time as reserves are depleted and production costs may rise. Producers may shut down production at lower product prices or higher production costs, especially where the existing cost of production exceeds other extraction methodologies, such as in the Alberta oil sands. Producers in areas served by Kinder Morgan may not be successful in exploring for and developing additional reserves, and Kinder Morgan's gas plants and pipelines may not be able to maintain existing volumes of throughput. Commodity prices and tax incentives may not remain at a level that encourages producers to explore for and develop additional reserves, produce existing marginal reserves or renew transportation contracts as they expire.

Changes in the business environment, such as a decline in crude oil or natural gas prices, an increase in production costs from higher feedstock prices, supply disruptions, or higher development costs, could result in a slowing of supply from oil and natural gas producing areas. In addition, with respect to the CO<sub>2</sub> business segment, changes in the regulatory environment or governmental policies may have an impact on the supply of crude oil. Each of these factors impact Kinder Morgan's customers shipping through its pipelines, which in turn could impact the prospects of new transportation contracts or renewals of existing contracts.

Throughput on Kinder Morgan's products pipelines also may decline as a result of changes in business conditions. Over the long term, business will depend, in part, on the level of demand for oil and natural gas in the geographic areas in which deliveries are made by pipelines and the ability and willingness of shippers having access or rights to utilize the pipelines to supply such demand.

The implementation of new regulations or the modification of existing regulations affecting the oil and gas industry could reduce demand for natural gas and crude oil, increase Kinder Morgan's costs and may have a material adverse effect on its results of operations and financial condition. Kinder Morgan cannot predict the impact of future economic conditions, fuel conservation measures, alternative fuel requirements, governmental regulation or technological advances in fuel economy and energy generation devices, all of which could reduce the demand for natural gas and oil.

***Kinder Morgan's use of hedging arrangements could result in financial losses or reduce its income.***

Kinder Morgan engages in hedging arrangements to reduce its exposure to fluctuations in the prices of oil and natural gas. These hedging arrangements expose Kinder Morgan to risk of financial loss in some circumstances, including when production is less than expected, when the counterparty to the hedging contract defaults on its contract obligations, or when there is a change in the expected differential between the underlying price in the hedging agreement and the actual price received. In addition, these hedging arrangements may limit the benefit Kinder Morgan would otherwise receive from increases in prices for oil and natural gas.

The accounting standards regarding hedge accounting are very complex, and even when Kinder Morgan engages in hedging transactions (for example, to mitigate its exposure to fluctuations in commodity prices or currency exchange rates or to balance its exposure to fixed and variable interest rates) that are effective economically, these transactions may not be considered effective for accounting purposes. Accordingly, Kinder Morgan's consolidated financial statements may reflect some volatility due to these hedges, even when there is no underlying economic impact at the dates of those statements. In addition, it is not always possible for Kinder Morgan to engage in hedging transactions that completely mitigate its exposure to commodity prices. Kinder Morgan's consolidated financial statements may reflect a gain or loss arising from an exposure to commodity prices for which it is unable to enter into a completely effective hedge.

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***The recent adoption of derivatives legislation by the U.S. Congress could have an adverse effect on Kinder Morgan's ability to hedge risks associated with its business.***

The Dodd-Frank Act was signed into law by the President on July 21, 2010, and required the Commodities Futures Trading Commission, referred to as the CFTC, and the SEC to promulgate rules and regulations establishing federal oversight and regulation of the over-the-counter derivatives market and entities that participate in that market. The act also requires the CFTC to institute broad new position limits for futures and options traded on regulated exchanges. As the law favors exchange trading and clearing, the Dodd-Frank Act also may require Kinder Morgan to move certain derivatives transactions to exchanges where no trade credit is provided and also comply with margin requirements in connection with its derivatives activities that are not exchange traded, although the application of those provisions to Kinder Morgan is uncertain at this time. The Dodd-Frank Act also requires many counterparties to Kinder Morgan's derivatives instruments to spin off some of their derivatives activities to a separate entity, which may not be as creditworthy as the current counterparty, or cause the entity to comply with the capital requirements, which could result in increased costs to counterparties such as Kinder Morgan. The Dodd-Frank Act and any new regulations could

significantly increase the cost of derivative contracts, including those requirements to post collateral which could adversely affect Kinder Morgan's available liquidity,

reduce the availability of derivatives to protect against risks Kinder Morgan encounters and

reduce the liquidity of energy related derivatives.

If Kinder Morgan reduces its use of derivatives as a result of the legislation and regulations, its results of operations may become more volatile and its cash flows may be less predictable, which could adversely affect its ability to plan for and fund capital expenditures. Increased volatility may make Kinder Morgan less attractive to certain types of investors. Finally, the Dodd-Frank Act was intended, in part, to reduce the volatility of oil and natural gas prices, which some legislators attributed to speculative trading in derivatives and commodity instruments related to oil and natural gas. Kinder Morgan's revenues could therefore be adversely affected if a consequence of the legislation and regulations is to lower commodity prices. Any of these consequences could have a material adverse effect on Kinder Morgan's financial condition and results of operations.

***Kinder Morgan's operating results may be adversely affected by unfavorable economic and market conditions.***

Economic conditions worldwide have from time to time contributed to slowdowns in several industries, including the oil and gas industry, the steel industry and in specific segments and markets in which Kinder Morgan operates, resulting in reduced demand and increased price competition for its products and services. Its operating results in one or more geographic regions also may be affected by uncertain or changing economic conditions within that region, such as the challenges that are currently affecting economic conditions in the United States and Canada. Volatility in commodity prices might have an impact on many of Kinder Morgan's customers, which in turn could have a negative impact on their ability to meet their obligations to Kinder Morgan. In addition, decreases in the prices of crude oil and natural gas liquids will have a negative impact on the results of the CO<sub>2</sub> business segment. If global economic and market conditions (including volatility in commodity markets), or economic conditions in the United States or other key markets, remain uncertain or persist, spread or deteriorate further, Kinder Morgan may experience material impacts on its business, financial condition and results of operations.

***Hurricanes and other natural disasters could have an adverse effect on Kinder Morgan's business, financial condition and results of operations.***

Some of Kinder Morgan's pipelines, terminals and other assets are located in areas that are susceptible to hurricanes and other natural disasters. These natural disasters could potentially damage or destroy Kinder Morgan's pipelines, terminals and other assets and disrupt the supply of the products it transports through its pipelines. Natural disasters can similarly affect the facilities of its customers. In either case, losses could exceed its insurance coverage and Kinder Morgan's business, financial condition and results of operations could be adversely affected, perhaps materially. In addition, Kinder Morgan's insurance premiums may increase as a result of the acquisition of El Paso's pipeline assets.



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*The tax treatment applied to KMP and EPB depends on their status as partnerships for U.S. federal income tax purposes, as well as their not being subject to a material amount of entity-level taxation by individual states. If the Internal Revenue Service treats KMP or EPB as a corporation for U.S. federal income tax purposes or if KMP or EPB becomes subject to a material amount of entity-level taxation for state tax purposes, the amount of cash available for distribution to KMP's or EPB's respective partners, including Kinder Morgan, would be substantially reduced.*

Kinder Morgan owns the general partner interest and approximately 11% of the limited partner interests of KMP and, if the transactions are completed, will own the general partner interest and approximately 42.1% of the limited partner interests of EPB. The anticipated after-tax economic benefit of Kinder Morgan's investment in KMP and EPB depends largely on those entities being treated as partnerships for U.S. federal income tax purposes. To maintain their status as partnerships for U.S. federal income tax purposes, current law requires that 90% or more of their gross income for every taxable year consist of "qualifying income," as defined in Section 7704 of the Code. Neither KMP nor EPB has requested, or plans to request, a ruling from the Internal Revenue Service, which is referred to as the "IRS," on this or any other matter affecting it.

Despite the fact that KMP and EPB are limited partnerships under Delaware law, it is possible under certain circumstances for such an entity to be treated as a corporation for U.S. federal income tax purposes. If KMP or EPB was to be treated as a corporation for U.S. federal income tax purposes, it would pay U.S. federal income tax on its income at the corporate tax rate, which is currently a maximum of 35%, and would pay state income taxes at varying rates. In such case, distributions by KMP or EPB, as applicable, to its partners, including Kinder Morgan, would generally be taxed again as corporate distributions, and no income, gains, losses or deductions would flow through to its partners, including Kinder Morgan. Because a tax would be imposed on the Partnership as a corporation, its cash available for distribution would be substantially reduced. Therefore, treatment of KMP or EPB as a corporation would result in a material reduction in the anticipated cash flow and after-tax return to its partners, including Kinder Morgan, likely causing a substantial reduction in the amount of distributions Kinder Morgan receives from such Partnership, in the value of its investment in such Partnership and in the value of Kinder Morgan's common stock.

Current law or the business of KMP or EPB may change so as to cause either or both of KMP and EPB to be treated as a corporation for U.S. federal income tax purposes or otherwise subject it to entity-level taxation. Members of Congress are considering substantive changes to the existing U.S. federal income tax laws that would affect the tax treatment of certain publicly-traded partnerships. For example, federal income tax legislation recently has been considered by Congress that would eliminate partnership tax treatment for certain publicly-traded partnerships. Although the legislation most recently considered by Congress would not appear to affect KMP's or EPB's tax treatment as a partnership for U.S. federal income tax purposes, Kinder Morgan is unable to predict whether any other proposals will ultimately be enacted. Any such changes could negatively impact Kinder Morgan's cash flows, the value of its investment in the Partnerships and the value of Kinder Morgan's common stock.

In addition, because of widespread state budget deficits and other reasons, several states are evaluating ways to subject partnerships to entity-level taxation through the imposition of state income, franchise or other forms of taxation. For example, KMP is now subject to an entity-level tax on the portion of its total revenue that is generated in Texas. Specifically, the Texas margin tax is imposed at a maximum effective rate of 0.7% of its gross income that is apportioned to Texas. This tax reduces, and the imposition of such a tax on KMP by another state will reduce, the cash available for distribution by KMP to its partners, including Kinder Morgan.

KMP's and EPB's respective partnership agreements provide that if a law is enacted that subjects KMP or EPB, respectively, to taxation as a corporation or otherwise subjects it to entity-level taxation for U.S. federal income tax purposes, the minimum quarterly distribution and the target distribution levels for such Partnership will be adjusted to reflect the impact of such law on such Partnership.



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***KMP and EPB each have adopted certain valuation methodologies that may result in a shift of income, gain, loss and deduction between it and its unitholders. The IRS may challenge this treatment, which could adversely affect the value of KMP's and EPB's common units.***

When KMP or EPB issues additional units or engages in certain other transactions, it determines the fair market value of its assets and allocates any unrealized gain or loss attributable to its assets to the capital accounts of its unitholders and Kinder Morgan. This methodology may be viewed as understating the value of its assets. In that case, there may be a shift of income, gain, loss and deduction between certain unitholders and Kinder Morgan, which may be unfavorable to such unitholders. Moreover, under each of KMP's and EPB's current valuation methods, subsequent purchasers of the common units of KMP or EPB may have a greater portion of their adjustment under Section 743(b) of the Code allocated to the tangible assets and a lesser portion allocated to its intangible assets of KMP or EPB, respectively. The IRS may challenge these valuation methods, or the Partnerships' allocation of the adjustment under Section 743(b) of the Code attributable to their tangible and intangible assets, and allocations of income, gain, loss and deduction between Kinder Morgan and certain of their unitholders.

A successful IRS challenge to these methods or allocations could adversely affect the amount of taxable income or loss being allocated to the respective Partnership's unitholders, including Kinder Morgan. It also could affect the amount of gain from the Partnerships' unitholders' sale of common units and could have a negative impact on the value of the common units or result in audit adjustments to their unitholders' or their general partner's tax returns without the benefit of additional deductions.

***The Partnerships' treatment of a purchaser of common units as having the same tax benefits as the seller could be challenged, resulting in a reduction in value of their common units.***

Because the Partnerships cannot match transferors and transferees of common units, they are required to maintain the uniformity of the economic and tax characteristics of these units in the hands of the purchasers and sellers of these units. The Partnerships do so by adopting certain depreciation conventions that do not conform to all aspects of the U.S. Treasury regulations. A successful IRS challenge to these conventions could adversely affect the tax benefits to a unitholder, such as Kinder Morgan, of ownership of the Partnerships' common units and could have a negative impact on their value or result in audit adjustments to unitholders' tax returns.

***If the unitholders of KMP or EPB remove their respective Partnership's general partner, Kinder Morgan would lose its general partner interest, including the right to incentive distributions, and the ability to manage the particular Partnership.***

Kinder Morgan owns the general partner of KMP and all of the voting shares of KMR, to which the general partner has delegated its rights and powers to control the business and affairs of KMP, subject to the approval of the general partner for certain actions. KMP's partnership agreement, however, gives unitholders of KMP the right to remove the general partner if

the holders of  $66\frac{2}{3}\%$  of KMP's outstanding units (including the common units, Class B units and i-units) voting as a single class vote for such removal; in such a vote, the common units and Class B units owned by the general partner and its affiliates would be excluded, a number of i-units equal to the number of KMR shares owned by the general partner and its affiliates also would be excluded, and the remaining i-units would be voted in the same proportion as the vote of the other holders of the KMR shares;

the holders of KMP's outstanding units approve the election and succession of a new general partner by the same vote; and

KMP receives an opinion of counsel that the removal and succession of the general partner would not result in the loss of the limited liability of any limited partner of KMP or its operating partnership subsidiaries or cause KMP or its operating partnership subsidiaries to be taxed as a corporation for federal income tax purposes.

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If the general partner were removed as general partner of KMP, it would lose its ability to manage KMP and its delegation of authority to KMR would terminate at the same time.

If the transactions are completed, Kinder Morgan will own the general partner of EPB, and EPB's partnership agreement provides for similar unitholder rights with respect to the removal of the general partner. Under both partnership agreements, the general partner would receive cash or common units in exchange for its general partner interest. While the cash or common units the general partner would receive are intended under the terms of the partnership agreements to fully compensate Kinder Morgan, as the owner of the general partner, in the event such an exchange is required, the value of the investments Kinder Morgan might make with the cash or the common units may not over time be equivalent to the value of the general partner interest and the related incentive distributions had the general partner retained its general partner interest. Currently, EPB's unitholders are unable to remove its general partner without its consent because affiliates of its general partner own sufficient units to be able to prevent the general partner's removal.

***In the future, if the general partners of KMP and EPB cease to manage and control KMP and EPB, respectively, then Kinder Morgan may be deemed to be an investment company under the Investment Company Act of 1940.***

If Kinder Morgan's subsidiaries, KMR and Kinder Morgan G.P., Inc., which is the general partner of KMP, cease to manage and control KMP, and/or if EPB's general partner ceases to manage and control EPB, Kinder Morgan may be deemed to be an investment company under the Investment Company Act of 1940. In that case, it would either have to register as an investment company under the Investment Company Act, obtain exemptive relief from the SEC or modify its organizational structure or its contractual rights so as to fall outside the definition of an investment company. Registering as an investment company could, among other things, materially limit Kinder Morgan's ability to engage in transactions with affiliates, including the purchase and sale of certain securities or other property to or from its affiliates, restrict its ability to borrow funds or engage in other transactions involving leverage and require it to add additional directors who are independent of it and its affiliates, and could adversely affect the price of Kinder Morgan's common stock.

***There is the potential for a change of control of the general partner of KMP if Kinder Morgan defaults on debt.***

Kinder Morgan indirectly owns all of the common equity of Kinder Morgan G.P., Inc., the general partner of KMP. If Kinder Morgan defaults on debt, then the lenders under such debt, in exercising their rights as lenders, could acquire control of Kinder Morgan G.P., Inc. or otherwise influence Kinder Morgan G.P., Inc. through their control of Kinder Morgan. A change of control of Kinder Morgan G.P., Inc. could materially adversely affect the distributions Kinder Morgan receives from KMP, which could have a material adverse impact on Kinder Morgan or its cash available for distribution to its stockholders.

***The future success of KMP's oil and gas development and production operations depends in part upon its ability to develop additional oil and gas reserves that are economically recoverable.***

The rate of production from oil and natural gas properties declines as reserves are depleted. Without successful development activities, the reserves and revenues of the oil producing assets within the CO<sub>2</sub> business segment will decline. KMP may not be able to develop or acquire additional reserves at an acceptable cost or have necessary financing for these activities in the future. Additionally, if KMP does not realize production volumes greater than, or equal to, its hedged volumes, it may suffer financial losses not offset by physical transactions.

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***KMP's development of oil and gas properties involves risks that may result in a total loss of investment.***

The business of developing and operating oil and gas properties involves a high degree of business and financial risk that even a combination of experience, knowledge and careful evaluation may not be able to overcome. Acquisition and development decisions generally are based on subjective judgments and assumptions that, while they may be reasonable, are by their nature speculative. It is impossible to predict with certainty the production potential of a particular property or well. Furthermore, the successful completion of a well does not ensure a profitable return on the investment. A variety of geological, operational and market-related factors, including, but not limited to, unusual or unexpected geological formations, pressures, equipment failures or accidents, fires, explosions, blowouts, cratering, pollution and other environmental risks, shortages or delays in the availability of drilling rigs and the delivery of equipment, loss of circulation of drilling fluids or other conditions, may substantially delay or prevent completion of any well or otherwise prevent a property or well from being profitable. A productive well may become uneconomic in the event water or other deleterious substances are encountered, which impair or prevent the production of oil and/or gas from the well. In addition, production from any well may be unmarketable if it is contaminated with water or other deleterious substances.

***The volatility of natural gas and oil prices could have a material adverse effect on KMP's business and, as a result, on the distributions from KMP to Kinder Morgan.***

The revenues, profitability and future growth of the CO<sub>2</sub> business segment and the carrying value of its oil, natural gas liquids and natural gas properties depend to a large degree on prevailing oil and gas prices. For 2012, KMP estimates that every \$1 change in the average West Texas Intermediate crude oil price per barrel would impact the CO<sub>2</sub> business segment's cash flows by approximately \$5.8 million. Prices for oil, natural gas liquids and natural gas are subject to large fluctuations in response to relatively minor changes in the supply and demand for oil, natural gas liquids and natural gas, uncertainties within the market and a variety of other factors beyond KMP's control. These factors include, among other things:

weather conditions and events such as hurricanes in the United States;

the condition of the United States economy;

the activities of the Organization of Petroleum Exporting Countries;

governmental regulation;

political stability in the Middle East and elsewhere;

the foreign supply of and demand for oil and natural gas;

the price of foreign imports; and

the availability of alternative fuel sources.

A sharp decline in the price of natural gas, natural gas liquids or oil would result in a commensurate reduction in KMP's revenues, income and cash flows from the production of oil and natural gas and could have a material adverse effect on the carrying value of its proved reserves. In the event prices fall substantially, KMP may not be able to realize a profit from its production and would operate at a loss. In recent decades, there have been periods of both worldwide overproduction and underproduction of hydrocarbons and periods of both increased and relaxed energy conservation efforts. Such conditions have resulted in periods of excess supply of, and reduced demand for, crude oil on a worldwide basis and for natural gas on a domestic basis. These periods have been followed by periods of short supply of, and increased demand for, crude oil and natural gas. The excess or short supply of crude oil or natural gas has placed pressures on prices and has resulted in dramatic price fluctuations

even during relatively short periods of seasonal market demand. These fluctuations impact the accuracy of assumptions used in KMP's budgeting process.

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*The KMP Canada segment is subject to U.S. dollar/Canadian dollar exchange rate fluctuations.*

Kinder Morgan is a U.S. dollar reporting company. As a result of the operations of the KMP Canada segment, a portion of Kinder Morgan's consolidated assets, liabilities, revenues and expenses are denominated in Canadian dollars. Fluctuations in the exchange rate between United States and Canadian dollars could expose Kinder Morgan to reductions in the U.S. dollar value of its earnings and cash flows and a reduction in its stockholders' equity under applicable accounting rules.

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**CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

This information statement/proxy statement/prospectus and the documents incorporated by reference in this information statement/proxy statement/prospectus contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are subject to risks and uncertainties and are based on the beliefs and assumptions of our respective managements, based on information currently available to our respective managements. Forward-looking statements can be identified by the use of the future tense or other forward-looking words such as believe, expect, anticipate, intend, plan, estimate, should, may, will, objective, project, management believes, continue, strategy, position or the negative of those terms or other variations of them or by comparable terminology. In particular, statements, express or implied, concerning future actions, conditions or events, future operating results, the ability to generate sales, income or cash flow, to realize cost savings or other benefits associated with the transactions or to pay dividends are forward-looking statements. Forward-looking statements include the information concerning possible or assumed future results of operations of our companies set forth under:

Summary Selected Historical Consolidated Financial Data, Selected Unaudited Pro Forma Condensed Combined Financial Information, Unaudited Comparative Per Share Information of Kinder Morgan and El Paso, The Transactions Recommendation of Kinder Morgan's Board of Directors and Reasons for the Transactions, Recommendation of the El Paso's Board of Directors and Reasons for the Transactions, Certain El Paso Financial Projections, Certain Kinder Morgan Financial Projections, Opinions of Kinder Morgan's Financial Advisors, Opinion of El Paso's Financial Advisor and Unaudited Pro Forma Condensed Combined Financial Information;

Business and Properties and Management's Discussion and Analysis of Financial Condition and Results of Operations of Kinder Morgan in its Annual Report on Form 10-K and Management's Discussion and Analysis of Financial Condition and Results of Operations in its Quarterly Reports on Form 10-Q, in each case incorporated by reference into this information statement/proxy statement/prospectus; and

Business and Management's Discussion and Analysis of Financial Condition and Results of Operations of El Paso in its Annual Report on Form 10-K and Management's Discussion and Analysis of Financial Condition and Results of Operations in its Quarterly Reports on Form 10-Q, in each case incorporated by reference into this information statement/proxy statement/prospectus.

Although Kinder Morgan and El Paso believe that these estimates and forward-looking statements are based on reasonable assumptions, they are subject to risks and uncertainties and are made in light of information currently available to them. Many factors, in addition to the factors described in this information statement/proxy statement/prospectus, may adversely affect results as indicated in forward-looking statements. Kinder Morgan and El Paso urge you to read carefully this entire information statement/proxy statement/prospectus, the documents incorporated by reference into this information statement/proxy statement/prospectus and the documents that are filed as exhibits to the registration statement of which this information statement/proxy statement/prospectus is a part with the understanding that actual future results may be materially different from what Kinder Morgan and El Paso expect. Many of the factors that will determine these results are beyond the ability of Kinder Morgan or El Paso to control or predict. Specific factors that could cause actual results to differ from those in the forward-looking statements include:

the ability to complete the transactions;

failure to obtain, delays in obtaining or adverse conditions contained in, any required regulatory approvals;

the ability to complete the disposition of El Paso's oil and gas properties and operations on a timely or satisfactory basis;

Kinder Morgan's ability to successfully integrate El Paso's operations and to realize synergies from the transactions;



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price trends and overall demand for natural gas liquids, refined petroleum products, oil, carbon dioxide, natural gas, electricity, coal, steel and other bulk materials and chemicals in North America;

economic activity, weather, alternative energy sources, conservation and technological advances that may affect price trends and demand;

changes in tax laws, principally related to KMP and EPB;

indebtedness, not only at the Kinder Morgan level, but also at the El Paso, KMP and EPB levels, which could make each vulnerable to general adverse economic and industry conditions, limit their ability to borrow additional funds, and/or place them at competitive disadvantages compared to their competitors that have less debt or have other adverse consequences;

possible changes in credit ratings;

capital markets conditions, inflation and interest rates;

changes in laws or regulations, third-party relations and approvals and decisions of courts, regulators and governmental bodies that may adversely affect the business or ability to compete of Kinder Morgan or El Paso;

changes in the tariff rates charged by Kinder Morgan's and El Paso's pipeline subsidiaries implemented by the FERC, the CPUC, Canada's National Energy Board or another regulatory agency;

the ability to acquire new businesses and assets and integrate those operations into existing operations, as well as the ability to expand facilities;

difficulties or delays experienced by railroads, barges, trucks, ships or pipelines in delivering products to or from terminals or pipelines;

the ability to successfully identify and close acquisitions and dispositions and make cost-saving changes in operations;

the ability to achieve cost savings and revenue growth;

the ability to complete expansion projects on time and on budget;

shut-downs or cutbacks at major refineries, petrochemical or chemical plants, ports, utilities, military bases or other businesses that use Kinder Morgan's or El Paso's services or provide services or products to them;



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crude oil and natural gas production from exploration and production areas that Kinder Morgan or El Paso serves, such as the Permian and Anadarko basins of West Texas, the U.S. Rocky Mountains, the Marcellus shale gas formation in Pennsylvania, the areas of shale gas formation in Texas, Louisiana and along the Gulf Coast and the Alberta oil sands;

changes in accounting pronouncements that affect the measurement of results of operations, the timing of when such measurements are to be made and recorded and the disclosures surrounding these activities;

the ability to offer and sell equity securities and debt securities or obtain debt financing in sufficient amounts and on acceptable terms to implement that portion of the business plan that contemplates growth through acquisitions of operating businesses and assets and expansions of facilities;

interruptions of electric power supply to Kinder Morgan's or El Paso's facilities due to natural disasters, power shortages, strikes, riots, terrorism, war or other causes;

the ability to obtain insurance coverage without significant levels of self-retention of risk;

acts of nature, sabotage, terrorism or other similar acts causing damage greater than insurance coverage limits;

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the political and economic stability of the oil producing nations of the world;

national, international, regional and local economic, competitive and regulatory conditions and developments;

foreign exchange fluctuations;

the extent of Kinder Morgan's and El Paso's success in discovering, developing and producing oil and gas reserves, including the risks inherent in exploration and development drilling, well completion and other development activities;

engineering and mechanical or technological difficulties that may be experienced with operational equipment, in well completions and workovers, and in drilling new wells;

the uncertainty inherent in estimating future oil and natural gas production or reserves;

the timing and success of business development efforts;

unfavorable results of litigation and the fruition of contingencies referred to in the notes to the financial statements included in and incorporated by reference in this information statement/proxy statement/prospectus;

Kinder Morgan's dependence on cash distributions from El Paso, KMP and EPB;

Kinder Morgan's ability to pay the anticipated level of dividends;

the impact of Kinder Morgan's and its subsidiaries' financial results on Kinder Morgan's ability to pay dividends;

the effect of steps taken to support KMP and EPB that reduce cash distributions received from those partnerships;

changes in Kinder Morgan's dividend policy implemented by its board of directors or resulting from restrictions under Delaware law or the terms of any future indebtedness, including indebtedness incurred in connection with the transactions; and

those other factors discussed in the section entitled "Risk Factors."

Forward-looking statements speak only as of the date they were made, and, except to the extent required by law, Kinder Morgan and El Paso undertake no obligation to update or to review any forward-looking statement because of new information, future events or other factors. Forward-looking statements involve risks and uncertainties and are not guarantees of future performance. There is no assurance that any of the risks described under the caption "Risk Factors" or that any of the uncertainties associated with the forward-looking statements discussed in this information statement/proxy statement/prospectus will occur, or if any of them do, when they will occur or what impact they will have on Kinder Morgan's or El Paso's operations or financial condition. Future results and performance may differ materially from those expressed in these forward-looking statements due to, but not limited to, the factors mentioned above. Because of these uncertainties, you should not place undue reliance on these forward-looking statements when making an investment decision.

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Stockholders should understand that the foregoing important factors, in addition to those discussed elsewhere in this information statement/proxy statement/prospectus or in the documents which are incorporated by reference into this information statement/proxy statement/prospectus, could affect Kinder Morgan's or El Paso's future results and could cause results to differ materially from those expressed in such forward-looking statements.

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**INFORMATION ABOUT KINDER MORGAN**

**Overview**

Kinder Morgan owns the general partner and approximately 11% of the limited partner interests of Kinder Morgan Energy Partners, L.P., a publicly traded pipeline limited partnership whose limited partner units are traded on the NYSE under the ticker symbol KMP. Additionally, the shares of Kinder Morgan's subsidiary that manages KMP, Kinder Morgan Management, LLC, are traded on the NYSE under the ticker symbol KMR. Through Kinder Morgan's indirect ownership of all of KMR's voting shares, Kinder Morgan has the ability to elect all of the directors of KMR. KMP is one of the largest energy transportation and storage companies in North America in terms of market capitalization.

As of December 31, 2011, Kinder Morgan's interests in KMP and its affiliates consisted of the following:

the general partner interest, which Kinder Morgan holds through its ownership of the common equity of the general partner of KMP and which entitles Kinder Morgan to receive incentive distributions;

21.7 million of the 238.0 million outstanding KMP units, representing an approximately 6.4% limited partner interest; and

14.1 million of KMP's 98.5 million outstanding i-units, representing an approximately 4.2% limited partner interest, through Kinder Morgan's ownership of 14.1 million KMR shares (i-units are a class of KMP's limited partner interests that receive distributions in the form of additional i-units instead of cash).

Kinder Morgan also owns a 20% equity interest in NGPL, the owner of Natural Gas Pipeline Company of America, a major interstate natural gas pipeline and storage system which Kinder Morgan operates.

Through Kinder Morgan's subsidiaries, including KMP, it operates or owns 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 and chemicals and handle bulk materials like coal and petroleum coke.

**Recent History**

In May 2007, Kinder Morgan, Inc., a Kansas corporation which indirectly owned all of the common equity of the general partner of KMP, was acquired by Knight Holdco LLC in a transaction referred to in this information statement/proxy statement/prospectus as the Going Private Transaction. In July 2009, Knight Holdco LLC was renamed Kinder Morgan Holdco LLC. In connection with Kinder Morgan's initial public offering in February 2011, Kinder Morgan Holdco LLC was converted into a Delaware corporation named Kinder Morgan, Inc., referred to as Kinder Morgan, and the then existing Kinder Morgan, Inc. was renamed Kinder Morgan Kansas, Inc., referred to as KMK. On February 29, 2012, KMK and Kinder Morgan Holdco DE Inc., its direct parent, were merged with and into Kinder Morgan.

Kinder Morgan is currently owned by the public and by individuals and entities that were the owners of Kinder Morgan Holdco LLC, which are referred to collectively in this information statement/proxy statement/prospectus as the Investors. The Investors are:

Richard D. Kinder, Kinder Morgan's Chairman and Chief Executive Officer;

the Sponsor Investors;

the Original Stockholders; and

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a number of other members of Kinder Morgan's management, who are referred to collectively as Other Management.

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The Investors currently own all of Kinder Morgan's outstanding Class A shares, Class B shares and Class C shares, which are sometimes referred to in this information statement/proxy statement/prospectus as the investor retained stock. As of December 31, 2011, there were 170,921,140 shares of Kinder Morgan Class P common stock outstanding, and the shares of the investor retained stock were convertible into an aggregate of 535,972,387 shares of Kinder Morgan Class P common stock. As a result, as of December 31, 2011 Kinder Morgan had 706,893,527 shares of Class P common stock outstanding on a fully-converted basis.

Kinder Morgan's Class A shares represent the total capital contributed by the Investors (and a notional amount of capital allocated to the contribution of the holders of the Class C shares) at the time of the Going Private Transaction. The Class B shares and Class C shares represent incentive compensation that is held by members of Kinder Morgan management, including Mr. Kinder only in the case of the Class B shares. See Executive Compensation Compensation Discussion and Analysis Compensation Related to the Going Private Transaction in Kinder Morgan's Annual Report on Form 10-K for the year ended December 31, 2011 which is incorporated by reference into this information statement/proxy statement/prospectus.

Kinder Morgan's principal executive offices are located at 500 Dallas Street, Suite 1000, Houston, Texas 77002, and its telephone number is (713) 369-9000. More information about Kinder Morgan is also available on its website, [www.kindermorgan.com](http://www.kindermorgan.com). You should read carefully the business and financial information contained in this document and the documents incorporated by reference into this document, a list of which is contained in the section entitled Incorporation by Reference.

### **Sherpa Merger Sub, Inc.**

Sherpa Merger Sub, Inc., a Delaware corporation, is a direct wholly owned subsidiary of Kinder Morgan that was formed solely in contemplation of the transactions, has not commenced any operations, has only nominal assets and has no liabilities or contingent liabilities, nor any outstanding commitments other than as set forth in the merger agreement. Sherpa Merger Sub, Inc. has not incurred any obligations, engaged in any business activities or entered into any agreements or arrangements with any third parties other than the merger agreement. Its principal executive offices are located at 500 Dallas Street, Suite 1000, Houston, Texas 77002, and its telephone number is (713) 369-9000.

### **Sherpa Acquisition, LLC**

Sherpa Acquisition, LLC, a Delaware limited liability company, is a direct wholly owned subsidiary of Kinder Morgan that was formed solely in contemplation of the transactions, has not commenced any operations, has only nominal assets and has no liabilities or contingent liabilities, nor any outstanding commitments other than as set forth in the merger agreement. Sherpa Acquisition, LLC has not incurred any obligations, engaged in any business activities or entered into any agreements or arrangements with any third parties other than the merger agreement. Its principal executive offices are located at 500 Dallas Street, Suite 1000, Houston, Texas 77002, and its telephone number is (713) 369-9000.

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**INFORMATION ABOUT EL PASO**

**El Paso Corporation**

***Overview***

El Paso Corporation is a publicly traded Delaware corporation, whose common stock trades on the NYSE under the ticker EP. It is an energy company that operates primarily in the natural gas transmission, exploration and production sectors of the energy industry. El Paso's purpose is to provide natural gas and related energy products in a safe, efficient and dependable manner. It offers natural gas transmission services to a range of customers, including natural gas producers, marketers and end-users, as well as other natural gas transmission, distribution and electric generation companies. El Paso's operations are conducted through two core segments: (1) pipelines and (2) exploration and production.

El Paso is also the general partner of EPB. As of December 31, 2011, El Paso's equity interest in EPB consisted of a 2% general partner interest and a 42.1% limited partner interest.

Its pipelines group is the nation's largest interstate natural gas pipeline franchise, transporting natural gas through interstate natural gas pipelines that connect the nation's principal supply regions to its major consuming regions (the Gulf Coast, California, the northeast, the southwest and the southeast). The pipelines business also includes storage and liquefied natural gas terminalling facilities. El Paso's exploration and production segment is a leading natural gas producer that is active in all phases of the value chain (exploring for, acquiring, developing and producing natural gas and oil) and has a substantial footprint in the emerging shale plays across the U.S. and international developments in Brazil and Egypt.

El Paso's principal executive offices are located at 1001 Louisiana Street, Houston, Texas 77002, and its telephone number is (713) 420-2600. More information about El Paso is also available on its website, [www.elpaso.com](http://www.elpaso.com). You should read carefully the business and financial information contained in this document and the documents incorporated by reference into this document, a list of which is contained in the section entitled Incorporation by Reference.

***Recent Developments***

On December 19, 2011, El Paso announced estimated proved oil and natural gas reserves of approximately 4.0 trillion cubic feet equivalent (Tcfe) as of December 31, 2011, which is an increase of approximately 18 percent from the 3.4 Tcfe reported as of December 31, 2010.

**Sirius Holdings Merger Corporation**

Sirius Holdings Merger Corporation, a Delaware corporation, is a direct, wholly owned subsidiary of El Paso Corporation. It was formed by El Paso solely for the purpose of engaging in the transactions contemplated by the merger agreement. Sirius Holdings Merger Corporation has not incurred any obligations, engaged in any business activities or entered into any agreements or arrangements with any third parties other than the merger agreement and the first merger agreement. Its principal executive offices are located at 1001 Louisiana Street, Houston, Texas 77002, and its telephone number is (713) 420-2600.

**Sirius Merger Corporation**

Sirius Merger Corporation, a Delaware corporation, is a direct, wholly owned subsidiary of Sirius Holdings Merger Corporation and an indirect, wholly owned subsidiary of El Paso Corporation. It was formed by El Paso solely for the purpose of engaging in the transactions contemplated by the merger agreement and the first merger agreement. Sirius Merger Corporation has not incurred any obligations, engaged in any business activities or entered into any agreements or arrangements with any third parties other than the merger agreement. Its principal executive offices are located at 1001 Louisiana Street, Houston, Texas 77002, and its telephone number is (713) 420-2600.

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**EL PASO SPECIAL MEETING**

**General**

This information statement/proxy statement/prospectus is being provided to El Paso stockholders as part of a solicitation of proxies by the board of directors of El Paso for use at the special meeting of El Paso stockholders and at any adjournments or postponements of such special meeting. This information statement/proxy statement/prospectus provides El Paso stockholders with the information they need to know to be able to vote or instruct their vote to be cast at the special meeting of El Paso stockholders.

A prior version of this information statement/proxy statement/prospectus and the enclosed proxy card(s) was first sent to El Paso stockholders on or about January 31, 2012.

**Purposes of the El Paso Special Meeting**

The special meeting of El Paso stockholders is being held for the following purposes:

**Proposal 1:** to consider and vote upon a proposal to adopt the merger agreement (attached as Annex A) and the first merger agreement (attached as Annex B) and to approve the transactions contemplated by the merger agreement and the first merger agreement, including the first merger on the terms set forth in the first merger agreement and the second merger on the terms set forth in the merger agreement;

**Proposal 2:** to consider and vote upon any adjournment of the special meeting, if necessary, to solicit additional proxies if there are not sufficient votes to adopt the merger agreement and the first merger agreement at the time of the special meeting;

**Proposal 3:** to consider and cast an advisory (non-binding) vote on the compensation that may be paid or become payable to El Paso's named executive officers that is based on or otherwise relates to the proposed transactions; and

**Other Matters:** to transact any other business as may properly come before the special meeting or any adjournment or postponement of such special meeting.

**Recommendation of El Paso's Board of Directors**

The board of directors of El Paso recommends that the stockholders of El Paso vote:

**Proposal 1: FOR** adoption of the merger agreement and the first merger agreement and approval of the transactions contemplated by the merger agreement and the first merger agreement;

**Proposal 2: FOR** any adjournment of the special meeting, if necessary, to solicit additional proxies if there are not sufficient votes to adopt the merger agreement and the first merger agreement at the time of the special meeting; and

**Proposal 3: FOR** the approval on an advisory (non-binding) basis the compensation that may be paid or become payable to El Paso's named executive officers that is based on or otherwise relates to the proposed transactions.

**El Paso's board of directors has approved and declared advisable the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement, including the first merger on the terms set forth in the first merger agreement, and the second merger on the terms set forth in the merger agreement. See The Transactions Recommendation of El Paso's Board of Directors and Reasons for the Transactions. El Paso's board of directors did not, and does not, make any recommendation as**



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to whether or to what extent any El Paso stockholder should make a cash election, stock election or mixed election with respect to the merger consideration.

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In considering the recommendation of the El Paso board of directors with respect to the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement, El Paso stockholders should be aware that some of El Paso's directors and executive officers may have interests that are different from, or in addition to, the interests of El Paso stockholders more generally and that Goldman Sachs may have interests in the transactions that are different from, or in addition to, El Paso stockholders more generally. See "The Transactions" "Interests of Certain Persons in the Transactions" "El Paso Executive Officers and Directors" and "Interests of Certain Persons in the Transactions" "Goldman Sachs."

This information statement/proxy statement/prospectus contains important information regarding these proposals and factors that El Paso stockholders should consider when deciding how to cast their votes. El Paso stockholders are encouraged to read the entire document carefully, including the annexes and documents incorporated by reference into this document, for more detailed information regarding the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement.

### **Date, Time and Place of the El Paso Special Meeting**

The El Paso special meeting will be held on March 6, 2012, beginning at 9 a.m., local time, at the Hyatt Regency Houston, 1200 Louisiana Street, Houston, Texas 77002, unless postponed or adjourned to a later date.

### **Attendance at the El Paso Special Meeting**

Only El Paso stockholders of record as of the record date, beneficial owners as of the record date, holders of valid proxies for the special meeting and invited guests of El Paso may attend the special meeting.

All attendees should be prepared to present government-issued photo identification (such as a driver's license or passport) for admittance. The additional items, if any, that attendees must bring depend on whether they are stockholders of record, beneficial owners or proxy holders.

An El Paso stockholder who holds shares directly registered in such stockholder's name with El Paso's transfer agent, Computershare Trust Company, N.A. (referred to as a "stockholder of record"), who wishes to attend the special meeting in person should bring government-issued photo identification.

A stockholder who holds shares in street name through a broker, bank, trustee or other nominee (referred to as a "beneficial owner") who wishes to attend the special meeting in person should bring:

government-issued photo identification; and

proof of beneficial ownership as of the record date (e.g., a letter from the broker, bank, trustee or other nominee that is the record owner of such beneficial owner's shares, a brokerage account statement or the voting instruction form provided by the broker).

A person who holds a validly executed proxy entitling such person to vote on behalf of a record or beneficial owner of El Paso shares (referred to as a "proxy holder") who wishes to attend the special meeting in person should bring:

government-issued photo identification;

the validly executed proxy naming such person as the proxy holder, signed by the El Paso stockholder; and

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proof of the signing stockholder's record or beneficial ownership as of the record date.

No cameras, recording equipment or other electronic devices will be allowed in the meeting room. Failure to provide the requested documents at the door or failure to comply with the procedures for the special meeting may prevent stockholders from being admitted to the El Paso special meeting.

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El Paso is able to provide reasonable assistance to help persons with disabilities participate in the special meeting if El Paso is notified in advance of requested accommodations. Please write to El Paso Corporation, Attn: Corporate Secretary, 1001 Louisiana Street, Houston, Texas, 77002.

### **Record Date**

The record date for the El Paso special meeting is January 20, 2012. That means that all El Paso stockholders who held shares of record at the close of business on January 20, 2012 are entitled to vote at the special meeting and any adjournment or postponement of the special meeting, provided that such shares remain outstanding on the date of the special meeting.

### **Outstanding Shares as of Record Date**

As of the record date, there were 773,738,056 shares of El Paso common stock outstanding, held by 24,815 holders of record. Each of the 773,738,056 shares is entitled to one vote at the El Paso special meeting. Common stock is the only class of stock entitled to vote, and holders of common stock are entitled to vote on each proposal presented at the El Paso special meeting.

A complete list of registered El Paso stockholders entitled to vote at the El Paso special meeting will be available for inspection at the principal place of business of El Paso during regular business hours for a period of no less than 10 days before the special meeting and at the place of the El Paso special meeting during the meeting.

### **Shares and Voting of El Paso's Directors and Executive Officers**

As of the record date, El Paso directors and executive officers, as a group, owned and were entitled to vote 4,462,083 shares of El Paso common stock, or approximately 0.577% of the outstanding shares of El Paso common stock. These directors and executive officers have informed El Paso that they intend to vote their shares in favor of Proposals 1, 2 and 3, but none of El Paso's directors and executive officers has entered into any agreement obligating such director or executive officer to do so or to retain their currently owned shares of El Paso common stock.

### **Quorum**

In order for business to be conducted at the special meeting, a quorum must be present. A quorum requires the presence, in person or by proxy, of holders of a majority of the outstanding El Paso shares entitled to vote at the special meeting. For purposes of determining whether there is a quorum, all shares that are present, including abstentions and broker non-votes, will count towards the quorum.

### **Vote Required**

The votes required for each proposal are as follows:

**Proposal 1.** The affirmative vote, in person or by proxy, of the holders of a majority of the outstanding shares of El Paso common stock is required to adopt the merger agreement and the first merger agreement and to approve the transactions contemplated by the merger agreement and the first merger agreement. The required vote on Proposal 1 is based on the number of outstanding shares not the number of shares actually voted. The failure of any El Paso stockholder to submit a vote (i.e., not submitting a proxy and not voting in person) and any abstention from voting by an El Paso stockholder will have the same effect as a vote against Proposal 1. Likewise, broker non-votes will have the same effect as voting against Proposal 1. Broker non-votes occur when a beneficial owner holding shares in street name does not instruct the broker, bank, trustee or other nominee that is the record owner of such stockholder's shares on how to vote those shares on a particular proposal, and the

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broker, bank, trustee or other nominee does not have discretionary voting power with respect to such proposal. In this case, brokers, banks and other nominees do not have discretionary authority to vote on Proposal 1, because Proposal 1 is not routine. Consequently, the failure of a beneficial owner to provide voting instructions to its broker, bank, trustee or other nominee will have the same effect as a vote against Proposal 1.

**Proposal 2.** The affirmative vote, in person or by proxy, of the holders of a majority of the shares of El Paso common stock present, in person or by proxy, at the special meeting and entitled to vote on the matter is required to approve any adjournment of the special meeting, if necessary, to solicit additional proxies if there are not sufficient votes to adopt the merger agreement and the first merger agreement at the time of the special meeting. The required vote on Proposal 2 is based on the number of shares present not the number of outstanding shares. Abstentions from voting will therefore have the same effect as a vote against Proposal 2. Brokers, banks, trustees and other nominees do not have discretionary authority to vote on Proposal 2 and therefore will not be able to vote on Proposal 2 absent instructions from the beneficial owner; however, broker non-votes or the failure to otherwise submit a proxy will have no effect on the outcome of Proposal 2.

**Proposal 3.** The affirmative vote, in person or by proxy, of the holders of a majority of the shares of El Paso common stock present, in person or by proxy, at the special meeting and entitled to vote is required to approve, on an advisory (non-binding) basis, the compensation that may be paid or become payable to El Paso's named executive officers that is based on or otherwise relates to the proposed transactions. The required vote on Proposal 3 is based on the number of shares present not the number of outstanding shares. However, while the El Paso board of directors intends to consider the vote resulting from this proposal, the vote is advisory only and therefore not binding on El Paso or Kinder Morgan, and, if the proposed transactions with Kinder Morgan are approved by El Paso stockholders and consummated, the compensation will be payable even if Proposal 3 is not approved. Brokers, banks, trustees and other nominees do not have discretionary authority with respect to Proposal 3; however, broker non-votes or the failure to otherwise submit a proxy will not affect the outcome of Proposal 3. Abstentions from voting on Proposal 3 will have the same effect as a vote against Proposal 3.

## **Other Matters of Business**

At this time, El Paso is not aware of any other matters that will be presented for a vote at the El Paso special meeting. If any other matters properly come before the special meeting, the proxies will have the discretion to vote upon such matters in accordance with their best judgment. To the extent El Paso receives proper notice of a stockholder's intent to bring a matter before the special meeting, El Paso will in advance of the special meeting advise stockholders as to how the proxies intend to vote on such matter.

## **How to Vote**

El Paso stockholders as of the record date may vote by proxy or in person by ballot at the special meeting by following the instructions provided on the enclosed proxy card. El Paso recommends that El Paso stockholders entitled to vote submit a proxy even if they plan to attend the special meeting.

El Paso stockholders who hold their shares beneficially in street name and wish to vote by proxy must provide instructions to the broker, bank, trustee or other nominee that holds their shares of record as to how to vote their shares with respect to Proposals 1 and 2. El Paso stockholders who hold their shares beneficially and wish to vote in person at the special meeting must obtain proxies issued in their own names (known as a legal proxy).

El Paso stockholders of record may vote by proxy in one of three ways or in person at the special meeting:

*Internet:* El Paso stockholders may submit their proxy over the Internet at the web address shown on their proxy card. Internet voting is available 24 hours a day and will be accessible until 11:59 p.m., Eastern time, on March 5, 2012. Stockholders will be given an opportunity to confirm that their voting instructions have been properly recorded. El Paso stockholders who vote this way should NOT send in their proxy card.

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*Telephone:* El Paso stockholders may submit their proxy by calling the toll-free telephone number shown on their proxy card. Telephone voting is available 24 hours a day and will be accessible until 11:59 p.m., Eastern time, on March 5, 2012. Easy-to-follow voice prompts will guide stockholders through the voting and allow them to confirm that their instructions have been properly recorded. El Paso stockholders who vote this way should NOT send in their proxy card.

*Mail:* El Paso stockholders may submit their proxy by properly completing, signing, dating and mailing their proxy card in the postage-paid envelope (if mailed in the United States) included with this information statement/proxy statement/prospectus. El Paso stockholders who vote this way should mail the proxy card early enough so that it is received before the date of the special meeting.

*In Person:* El Paso stockholders may vote in person at the special meeting or by sending a representative with an acceptable proxy that has been signed and dated. El Paso will provide a ballot for voting at the special meeting. Attendance at the special meeting will not, in and of itself, constitute a vote or a revocation of a prior proxy, however.

El Paso stockholders are encouraged to vote and to vote promptly. Each valid proxy received in time will be voted at the special meeting according to the choice specified, if any. Executed but uninstructed proxies (i.e., proxies that are properly signed, dated and returned but are not marked to tell the proxies how to vote) will be voted in accordance with the recommendations of El Paso's board of directors.

## **Revocability of Proxies**

El Paso stockholders of record may change their vote at any time before their shares are voted at the El Paso special meeting in any of the following ways:

sending a written notice of revocation to El Paso Corporation, Attn: Corporate Secretary, 1001 Louisiana Street, Houston, Texas, 77002, which must be received before their shares are voted at the special meeting;

properly submitting a new proxy card, which must be received before their shares are voted at the special meeting (in which case only the later-submitted proxy is counted and the earlier proxy is revoked);

voting via Internet or by telephone at a later date (in which case only the later-submitted proxy is counted and the earlier proxy is revoked); or

attending the El Paso special meeting and voting by ballot in person.

El Paso beneficial owners may change their vote only by submitting new voting instructions to the brokers, banks or other nominees that hold their shares of record.

## **Inspector of Election**

The board of directors of El Paso has appointed a representative of Computershare Trust Company, N.A. to act as the inspector of election at the El Paso special meeting.

## **Proxy Solicitations**

El Paso will pay for the proxy solicitation costs related to the El Paso special meeting, except that El Paso and Kinder Morgan will share equally the expenses incurred in connection with the printing, filing and mailing of the Form S-4 and the information statement/proxy statement/prospectus. In addition to sending and making available these materials, some of El Paso's directors, officers and other employees may solicit proxies by contacting El Paso stockholders by telephone, by mail, by e-mail or in person. El Paso stockholders may also be solicited by press releases issued by El Paso and/or Kinder Morgan, postings on El Paso's or Kinder Morgan's



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websites and advertisements in periodicals. None of El Paso's directors, officers or employees will receive any extra compensation for their solicitation services. El Paso has also retained MacKenzie Partners, Inc. to assist in the solicitation of proxies for an estimated fee of approximately \$60,000, plus reasonable out-of-pocket expenses. El Paso will also reimburse brokers, banks and other nominees for their expenses in sending proxy solicitation materials to the beneficial owners of El Paso common stock and obtaining their proxies.

### **Results of the El Paso Special Meeting**

The preliminary voting results will be announced at the El Paso special meeting. In addition, within four business days following certification of the final voting results, El Paso intends to file the final voting results with the SEC on Form 8-K.

### **Adjournments**

The El Paso special meeting may be adjourned in the absence of a quorum by the affirmative vote of a holders of a majority of the outstanding shares having voting power represented at the special meeting either in person or by proxy.

Even if a quorum is present, the El Paso special meeting could also be adjourned in order to provide more time to solicit additional proxies in favor of adoption of the merger agreement and the first merger agreement, provided sufficient votes are cast in favor of Proposal 2.

If the adjournment is for more than 30 days or if a new record date is set, a notice of the adjourned meeting must be given to each stockholder of record entitled to vote at the special meeting. However, no notice must be given if the time and place and the means of remote communication, if any, of the adjourned meeting is announced at the special meeting being adjourned.

### **Questions**

El Paso stockholders may contact El Paso's proxy solicitor, MacKenzie Partners, Inc., with any questions about the proposals or how to vote or to request additional copies of any materials at (800) 322-2885.

### **Proposal No. 1 Adoption of the Merger Agreement and the First Merger Agreement and Approval of the Transactions Contemplated by the Merger Agreement and the First Merger Agreement**

(Item 1 on the El Paso proxy card)

This information statement/proxy statement/prospectus is being furnished to you as a stockholder of El Paso as part of the solicitation of proxies by El Paso's board of directors for use at the El Paso special meeting to consider and vote upon a proposal to adopt the merger agreement (which is attached as Annex A) and the first merger agreement (which is attached as Annex B) and to approve the transactions contemplated by the merger agreement and the first merger agreement, including the first merger on the terms set forth in the first merger agreement and the second merger on the terms set forth in the merger agreement.

The acquisition of El Paso by Kinder Morgan cannot be completed without the affirmative vote of the holders of at least a majority of the outstanding shares of El Paso common stock entitled to vote as of the record date for the special meeting. If you do not vote, the effect will be the same as a vote against the proposal to adopt the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement.

El Paso urges you to read this entire information statement/proxy statement/prospectus carefully, including the merger agreement, first merger agreement and other annexes and any documents incorporated by reference



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into this document. For a list of documents incorporated by reference into this document and information on how to obtain them, see the section entitled "Where You Can Find More Information."

**El Paso's board of directors has approved and declared advisable the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement, including the first merger on the terms set forth in the first merger agreement, and the second merger on the terms set forth in the merger agreement.**

**EL PASO'S BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE ADOPTION OF THE MERGER AGREEMENT AND THE FIRST MERGER AGREEMENT AND APPROVAL OF THE TRANSACTIONS CONTEMPLATED BY THE MERGER AGREEMENT AND THE FIRST MERGER AGREEMENT.**

**Proposal No. 2 Any Adjournment to Solicit Additional Proxies, if Necessary**

(Item 2 on the El Paso proxy card)

The El Paso special meeting may be adjourned to another time and place, if necessary or appropriate, to permit, among other things, further solicitation of proxies if necessary to obtain additional votes in favor of adoption of the merger agreement and the first merger agreement.

El Paso is asking you to authorize the holder of any proxy solicited by El Paso's board of directors to vote in favor of any adjournment of the special meeting, if necessary, to solicit additional proxies if there are not sufficient votes to adopt the merger agreement and the first merger agreement at the time of the special meeting.

**EL PASO'S BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR ANY ADJOURNMENT OF THE SPECIAL MEETING, IF NECESSARY, TO SOLICIT ADDITIONAL PROXIES IF THERE ARE NOT SUFFICIENT VOTES TO ADOPT THE MERGER AGREEMENT AND THE FIRST MERGER AGREEMENT.**

**Proposal No. 3 Advisory Vote on Change of Control Payments to El Paso Named Executive Officers**

(Item 3 on the El Paso proxy card)

The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted in July 2010, requires that we provide stockholders with the opportunity to vote to approve, on a non-binding, advisory basis, the compensation of El Paso's named executive officers that is based on or otherwise relates to the proposed transactions, as disclosed in this information statement/proxy statement/prospectus, including the compensation table and the related narrative named executive officer compensation disclosures set forth in "The Transactions Interests of Certain Persons in the Transactions El Paso Executive Officers and Directors" (referred to as the "change of control payments"). This vote is commonly referred to as a "golden parachute say on pay" vote. Accordingly, El Paso's stockholders are being provided with the opportunity to cast an advisory vote on such change of control payments.

As an advisory vote, this proposal is not binding upon El Paso or the board of directors of El Paso, and approval of this proposal is not a condition to completion of the proposed transactions. However, El Paso seeks your support and thinks that your support is appropriate because El Paso has a comprehensive executive compensation program that is designed to link its executives' compensation as closely as possible with El Paso's performance and to align the executives' interests with yours as stockholders. The plans and arrangements pursuant to which the change of control payments are payable were, except with respect to any new arrangements entered into in connection with the proposed transactions, previously disclosed to El Paso's stockholders as part of the Compensation Discussion and Analysis and related sections of El Paso's annual proxy statements. The change of control payments are a part of El Paso's comprehensive executive compensation program and are

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intended to align El Paso's named executive officers' interests with yours as stockholders by ensuring their continued retention and commitment during critical events such as the proposed transactions, which may create significant personal uncertainty for them.

Accordingly, El Paso asks you to vote on the following resolution:

RESOLVED, that El Paso's stockholders approve, on an advisory (non-binding) basis, the compensation of El Paso's named executive officers that is based on or otherwise relates to the proposed transactions, as disclosed pursuant to Item 402(t) of Regulation S-K under the heading "The Transactions Interests of Certain Persons in the Transactions El Paso Executive Officers and Directors" (which disclosure includes the compensation table and related narrative named executive officer compensation disclosures required pursuant to Item 402(t) of Regulation S-K).

**EL PASO'S BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE APPROVAL ON AN ADVISORY (NON-BINDING) BASIS OF THE COMPENSATION THAT MAY BE PAID OR BECOME PAYABLE TO EL PASO'S NAMED EXECUTIVE OFFICERS THAT IS BASED ON OR OTHERWISE RELATES TO THE PROPOSED TRANSACTIONS, AS DISCLOSED IN THIS INFORMATION STATEMENT/PROXY STATEMENT/PROSPECTUS.**

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**KINDER MORGAN SPECIAL MEETING**

**Date, Time and Place**

The special meeting of holders of Kinder Morgan Class P common stock and Class A common stock, referred to together as the Kinder Morgan voting common stock, will be held at 10 a.m., local time, on March 2, 2012, at 500 Dallas Street, Suite 1000, Houston, Texas 77002, unless postponed or adjourned to a later date. Kinder Morgan is sending this information statement/proxy statement/prospectus to the holders of Kinder Morgan Class P common stock and Class A common stock in order to provide such stockholders with information on the proposal being voted on at the special meeting.

**Purpose of the Meeting**

At the Kinder Morgan special meeting, Kinder Morgan will ask the holders of Kinder Morgan voting common stock to consider and vote on a proposal to approve the issuance of shares of Kinder Morgan Class P common stock and the warrants as part of the merger consideration, and the issuance of shares of Kinder Morgan Class P common stock to be issued upon exercise of those warrants, referred to in this information statement/proxy statement/prospectus as the share and warrant issuance proposal.

**Record Date and Vote Required**

Only holders of record of Kinder Morgan's Class P common stock, \$0.01 par value per share, and Class A common stock, \$0.01 par value per share, at the close of business on January 20, 2012, or the record date, will be entitled to notice of, and vote at, the special meeting. On January 20, 2012, there were 170,921,140 shares of Kinder Morgan Class P common stock and 535,972,387 shares of Kinder Morgan Class A common stock issued and outstanding, representing all of the voting securities of Kinder Morgan allowed to vote on the share and warrant issuance proposal to be presented at the special meeting. Each share of Kinder Morgan Class P common stock is entitled to one vote and each share of Kinder Morgan Class A common stock is entitled to one vote, and they will be voted as a single class.

The affirmative vote of at least a majority of the votes cast (including abstentions) on the share and warrant issuance proposal by holders of shares of Kinder Morgan voting common stock present in person or by proxy and entitled to vote on the share and warrant issuance proposal is required to approve the proposal, so long as the total vote cast on the proposal represents at least a majority of the shares of Kinder Morgan voting common stock entitled to vote on the proposal, assuming a quorum is present. **Richard Kinder and certain other stockholders of Kinder Morgan who currently hold, in the aggregate, approximately 75% of the voting power of Kinder Morgan have agreed to vote their shares of Kinder Morgan voting common stock in favor of the share and warrant issuance proposal. In addition, these stockholders agreed to retain collectively, until the approval of the share and warrant issuance proposal or until the voting agreement is terminated, whichever is earlier, an amount of shares of Kinder Morgan voting common stock that is sufficient to approve the share and warrant issuance proposal. Therefore, proxies are not being solicited from the holders of Kinder Morgan voting common stock and no further votes are required to approve the share and warrant issuance proposal.**

Kinder Morgan believes that each of its directors and executive officers intends to vote his or her shares in favor of approval of the share and warrant issuance proposal. As of the record date, Kinder Morgan's directors and executive officers beneficially owned approximately 54,004,648 of the outstanding shares of Kinder Morgan Class P common stock, representing approximately 31.6% of the total outstanding shares of Kinder Morgan Class P common stock, and beneficially owned approximately 433,479,425 of the outstanding shares of Kinder Morgan Class A common stock, representing approximately 80.9% of the total outstanding shares of Kinder Morgan Class A common stock. The shares of Class P common stock and Class A common stock beneficially owned by Kinder Morgan directors and executive officers include 454,960,928 shares that are subject to the voting agreement. See Security Ownership of Kinder Morgan.

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### **Quorum**

In order for business to be conducted at the Kinder Morgan special meeting, a quorum must be present. The presence of holders of a majority of the shares of Kinder Morgan Class P common stock and Class A common stock, counted as a single class, is necessary to constitute a quorum at the Kinder Morgan special meeting.

### **Voting on Matters Presented**

As proxies are not being solicited, all voting will be done in person at the special meeting. Ballots will be available to all holders of Kinder Morgan voting common stock in attendance at the meeting; provided that they comply with the requirements under the caption "Attendance at the Kinder Morgan Special Meeting" below.

Kinder Morgan's board of directors recommends that the holders of Kinder Morgan voting common stock vote **FOR** the share and warrant issuance proposal.

### **Shares Held in Street Name**

Generally, a broker, bank, trustee or other nominee may only vote the Kinder Morgan voting common stock that it holds in street name for you in accordance with your instructions. Therefore, if a stockholder is the beneficial owner of shares held in street name by a broker, and wishes to vote on the share and warrant issuance proposal, such stockholders must give instructions to his or her broker on how to vote the shares. If a stockholder plans to attend the special meeting and wishes to vote in person, but his or her shares are held in street name, such stockholder must obtain a legal proxy from the appropriate broker, bank, trustee or other nominee authorizing the stockholder to vote the shares in person, which the stockholder must bring to the meeting.

### **Attendance at the Kinder Morgan Special Meeting**

Only holders of Kinder Morgan Class P common stock and Class A shares of record as of the record date, beneficial owners as of the record date, holders of valid proxies for the special meeting and invited guests of Kinder Morgan may attend the special meeting.

All attendees should be prepared to present government-issued photo identification (such as a driver's license or passport) for admittance. The additional items, if any, that attendees must bring depend on whether they are stockholders of record, beneficial owners or proxy holders.

A Kinder Morgan stockholder who holds shares directly registered in such stockholder's name with Kinder Morgan's transfer agent, Computershare Trust Company, N.A. (referred to as a stockholder of record) who wishes to attend the special meeting in person should bring government-issued photo identification.

A stockholder who holds shares in street name through a broker, bank, trustee or other nominee (referred to as a beneficial owner) who wishes to attend the special meeting in person should bring:

government-issued photo identification; and

proof of beneficial ownership as of the record date (e.g., a letter from the broker, bank, trustee or other nominee that is the record owner of such beneficial owner's shares or a brokerage account statement provided by the broker).

A person who holds a validly executed proxy entitling such person to vote on behalf of a record or beneficial owner of Kinder Morgan shares entitled to vote at the meeting (referred to as a proxy holder) who wishes to attend the special meeting in person should bring:

government-issued photo identification;

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the validly executed proxy naming such person as the proxy holder, signed by the Kinder Morgan record stockholder; and

proof of the signing stockholder's record or beneficial ownership as of the record date.

No cameras, recording equipment or other electronic devices will be allowed in the meeting room. Failure to provide the requested documents at the door or failure to comply with the procedures for the special meeting may prevent stockholders from being admitted to the Kinder Morgan special meeting.

**Assistance**

If you have questions regarding Kinder Morgan's special meeting, please contact:

MacKenzie Partners, Inc.

105 Madison Avenue

New York, NY 10016

Call Collect: (212) 929-5500

Toll Free: (800) 322-2885

email: [proxy@mackenziepartners.com](mailto:proxy@mackenziepartners.com)

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**THE TRANSACTIONS**

*This section of the information statement/proxy statement/prospectus describes the material aspects of the proposed transactions. This section may not contain all of the information that is important to you. You should carefully read this entire information statement/proxy statement/prospectus and the documents incorporated herein by reference, including the full text of the merger agreement (which is attached as Annex A) and the first merger agreement (which is attached as Annex B), for a more complete understanding of the transactions. In addition, important business and financial information about each of Kinder Morgan and El Paso is included in or incorporated into this information statement/proxy statement/prospectus by reference and is included in the Annexes hereto. See *Where You Can Find More Information*.*

**Effect of the Transactions**

Upon satisfaction or waiver of the condition to closing in the first merger agreement, Merger Sub One will merge with and into El Paso in the first merger. El Paso will be the surviving corporation in the first merger. In the first merger, each share of El Paso common stock issued and outstanding immediately prior to the effective time of the first merger will be converted into and exchanged for one share of New El Paso common stock. The rights pertaining to New El Paso common stock will be the same as the rights pertaining to El Paso common stock. Similarly, each outstanding equity award with respect to El Paso common stock will be converted, on the same terms and conditions, into an equivalent equity award with respect to New El Paso common stock. At the effective time of the first merger, shares of El Paso common stock will cease to trade on the NYSE and the shares of New El Paso common stock will commence trading on the NYSE. Upon consummation of the first merger, El Paso will become a wholly owned subsidiary of New El Paso. Immediately after the consummation of the first merger, El Paso will be converted into a Delaware limited liability company and will remain a wholly owned subsidiary of New El Paso. Set forth below is a diagram depicting the structure of the transactions described above.

\* In the first merger, shares of El Paso will be converted into shares of New El Paso, so the former holders of El Paso stock will, upon completion of the first merger, own all of the outstanding shares of New El Paso. Following the time of the first merger, El Paso will be converted into a limited liability company.

Upon satisfaction or waiver of the conditions to closing in the merger agreement, and at least twenty days after the consummation of the first merger, Merger Sub Two will merge with and into New El Paso in the second merger. New El Paso will be the surviving corporation in the second merger and will become a wholly owned

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subsidiary of Kinder Morgan. At the effective time of the second merger, each share of New El Paso common stock issued and outstanding immediately prior to the effective time of the second merger (excluding shares held by New El Paso in treasury, any shares held by Kinder Morgan, Merger Sub Two or Merger Sub Three and any shares held by any other subsidiary of Kinder Morgan or New El Paso and dissenting shares in accordance with Delaware law) will be converted into the right to receive, at the election of the holder but subject to proration with respect to the stock and cash portion so that approximately 57% of the aggregate merger consideration (excluding the warrants) is paid in cash and approximately 43% (excluding the warrants) is paid in Kinder Morgan Class P common stock, one of the following:

0.9635 of a share of Kinder Morgan Class P common stock (referred to as the *Exchange Ratio*) (which, based on \$32.32, the closing price of Kinder Morgan Class P common stock as of February 23, 2012, had a value of \$31.14 on a rounded basis) and 0.640 of a warrant (which has an assumed value of \$0.96 and is referred to as the *Per Share Warrant Consideration*) to purchase one share of Kinder Morgan Class P common stock (any such election referred to as a *stock election* and such New El Paso shares referred to as the *stock election shares*);

\$25.91 in cash without interest (referred to as the *Per Share Cash Election Consideration*) and the *Per Share Warrant Consideration* (any such election referred to as a *cash election* and such New El Paso shares referred to as the *cash election shares*); or

0.4187 of a share of Kinder Morgan Class P common stock (referred to as the *Mixed Election Stock Exchange Ratio*) (which, based on \$32.32, the closing price of Kinder Morgan Class P common stock as of February 23, 2012, had a value of \$13.53 on a rounded basis), \$14.65 in cash without interest (referred to as the *Per Share Cash Amount*) and the *Per Share Warrant Consideration* (any such election referred to as a *mixed election* and such New El Paso shares referred to as the *mixed consideration election shares*).

The closing price of El Paso common stock as of February 23, 2012 was \$26.77 per share.

Because the exchange ratios were fixed at the time the merger agreement was executed and because the market value of Kinder Morgan Class P common stock and El Paso common stock/New El Paso common stock will fluctuate during the pendency of the transactions, New El Paso stockholders cannot be sure of the value of the merger consideration they elect to receive relative to the value of the shares of New El Paso common stock that they are exchanging. For example, for New El Paso stockholders receiving Kinder Morgan Class P common stock and/or warrants as part of the merger consideration, decreases in the market value of Kinder Morgan Class P common stock will negatively affect the value of the merger consideration that they receive, and increases in the market value of New El Paso common stock may mean that the merger consideration that they receive will be worth less than the market value of the shares of New El Paso common stock such stockholders are exchanging. See *Risk Factors Risk Factors Relating to the Transactions* Because the exchange ratios are fixed and because the market price of Kinder Morgan Class P common stock and El Paso common stock/New El Paso common stock will fluctuate, New El Paso stockholders receiving Kinder Morgan Class P common stock and/or warrants as part of the merger consideration cannot be sure of the market value of such merger consideration relative to the value of their shares of New El Paso common stock that they are exchanging. New El Paso stockholders are urged to obtain current market quotations for Kinder Morgan Class P common stock when they make their elections.

The value of the warrants is speculative because there is no existing trading market for them. Kinder Morgan and El Paso jointly agreed upon an assumed value of \$0.96 for the *Per Share Warrant Consideration* for U.S. federal income tax purposes, which may not reflect the actual value of the *Per Share Warrant Consideration*. The agreed upon, assumed value of \$0.96 for the *Per Share Warrant Consideration* is within the ranges of potential values calculated by Kinder Morgan's and El Paso's financial advisors. See *Risk Factors Risk Factors Relating to the Transactions* The value of the warrants that New El Paso stockholders will receive as part of the merger consideration is uncertain, and the warrants may have limited or no value.



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Set forth below is a diagram depicting the structure of the transactions described above.

The decision to structure the transactions as described and depicted above was made to avoid triggering provisions in certain contracts of El Paso and its subsidiaries, while at the same time preserving tax-free reorganization treatment with respect to the Kinder Morgan Class P common stock being issued in the transactions.

Each option or similar right to purchase shares of New El Paso common stock (other than an option to purchase New El Paso common stock granted under the El Paso ESPP, as converted in connection with the first merger) outstanding immediately prior to the effective time of the second merger (whether or not then vested or exercisable), by virtue of the occurrence of the consummation of the transactions and without any action on the part of any holder of any New El Paso stock option, will, immediately prior to the effective time of the second merger, be deemed exercised pursuant to a cashless exercise for that number of shares of New El Paso common stock (referred to as the "net exercise shares") equal to, rounded down to the nearest whole share, (1) the number of shares of New El Paso common stock subject to such New El Paso stock option immediately prior to the effective time of the second merger minus (2) the number of whole and partial (computed to the nearest four decimal places) shares of New El Paso common stock subject to such New El Paso stock option which, when multiplied by the fair market value (as such term is defined in the applicable plan governing such option to purchase shares of New El Paso common stock) of a share of New El Paso common stock as of immediately prior to the effective time of the second merger, is equal to the aggregate exercise price of such New El Paso stock option. Each net exercise share will be deemed to be an outstanding share of New El Paso common stock as provided for in the merger agreement. Each holder of net exercise shares, subject to the terms and conditions of the merger agreement and proration, will be permitted to make either a mixed election or cash election with respect to all (but not less than all) of the net exercise shares (and, to the extent applicable, New El Paso restricted shares, New El Paso performance RSUs and shares of New El Paso common stock deemed purchased through the El Paso ESPP) held by such holder. The holders of net exercise shares will not be permitted to make a stock election.

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Each award of restricted New El Paso common stock (as converted in connection with the first merger and referred to as a New El Paso restricted share ) that is outstanding immediately prior to the effective time of the second merger will, as of the effective time of the second merger, automatically and without any action on the part of the holder thereof, vest and the restrictions with respect thereto will lapse, and each New El Paso restricted share will, subject to the terms and conditions of the merger agreement, be treated as an outstanding share of New El Paso common stock as provided for in the merger agreement. Each holder of New El Paso restricted shares, subject to the terms and conditions of the merger agreement and proration, will be permitted to make either a mixed election or cash election with respect to all (but not less than all) of the New El Paso restricted shares (and, to the extent applicable, net exercise shares, New El Paso performance RSUs and shares of New El Paso common stock deemed purchased through the El Paso ESPP) held by such holder. The holders of New El Paso restricted shares will not be permitted to make a stock election.

Each New El Paso restricted stock unit that is subject to vesting based on the achievement of performance conditions (as converted in connection with the first merger and referred to as a New El Paso performance RSU ) that is outstanding immediately prior to the effective time of the second merger will, effective immediately prior to the effective time of the second merger, vest based on a target payout percentage of 100%, and the shares of New El Paso common stock deemed to be issued in settlement thereof will, subject to the terms and conditions of the merger agreement, be deemed to be outstanding shares of New El Paso common stock as provided for in the merger agreement. Each holder of New El Paso performance RSUs, subject to the terms and conditions of the merger agreement and proration, will be permitted to make either a mixed election or cash election with respect to all (but not less than all) of the New El Paso performance RSUs (and, to the extent applicable, net exercise shares, New El Paso restricted shares, and shares of New El Paso common stock deemed purchased through the El Paso ESPP) held by such holder. The holders of New El Paso performance RSUs will not be permitted to make a stock election.

The El Paso employee stock purchase plan (referred to as the El Paso ESPP ) will continue to be operated in accordance with its terms and past practice for the Offering Period (as defined in the El Paso ESPP) in effect as of October 16, 2011 (referred to as the Current Offering Period ) and any subsequent Offering Period that begins after October 16, 2011 pursuant to the terms and conditions of the El Paso ESPP. However, if the effective time of the second merger occurs prior to the end of the Current Offering Period or any such subsequent Offering Period, New El Paso will take all action as may be necessary to shorten the Current Offering Period or such subsequent Offering Period so that (1) the Change of Control Exercise Date (as defined in the El Paso ESPP) will occur prior to the effective time of the second merger (referred to as the Last Exercise Date ) and (2) the Current Offering Period or such subsequent Offering Period ends on the Last Exercise Date. New El Paso will, pursuant to, and in accordance with, the terms of the El Paso ESPP, notify each El Paso ESPP participant in writing at least ten Trading Days (as defined in the El Paso ESPP) prior to the Last Exercise Date, and by a date that is no later than the mailing date of the election form, that the last date during the Current Offering Period or such subsequent Offering Period on which a deemed purchase of shares of New El Paso common stock will 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 share of New El Paso common stock deemed to be purchased in connection with the treatment of options granted under the ESPP described above will be deemed to be an outstanding share of New El Paso common stock as provided for in the merger agreement. Each holder of shares of New El Paso common stock deemed to be purchased through the El Paso ESPP, subject to the terms and conditions of the merger agreement and proration, will be permitted to make either a mixed election or cash election with respect to all (but not less than all) of such shares (and, to the extent applicable, net exercise shares, New El Paso restricted shares, and New El Paso performance RSUs) held by such holder. The holders of shares of New El Paso common stock deemed to be purchased through the El Paso ESPP will not be permitted to make a stock election.

The holders of net exercise shares, New El Paso restricted shares, New El Paso performance RSUs and shares of New El Paso common stock purchased in respect of options, if any, outstanding under the El Paso

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ESPP as of immediately prior to closing will not be permitted to make a stock election because the qualification of the second merger and the third merger, taken together, as a reorganization for U.S. federal income tax purposes depends on compliance with certain technical requirements, including whether holders of New El Paso's common stock will receive a sufficient amount of Kinder Morgan Class P common stock to satisfy the continuity of interest test set forth in the Treasury regulations promulgated under Section 368(a) of the Code. The continuity of interest test requires that, after the second merger, a substantial part of the value of the proprietary interests in New El Paso be maintained through ownership of Kinder Morgan Class P common stock. Kinder Morgan Class P common stock issued to holders of New El Paso common stock is taken into account in determining whether the continuity of interest test is satisfied. However, Kinder Morgan Class P common stock issued to holders of New El Paso restricted shares or with respect to New El Paso stock options, New El Paso performance RSUs and New El Paso ESPP options is not so taken into account. Therefore, if the holders of such equity awards are permitted to make a stock election, it is possible that an insufficient number of shares of Kinder Morgan Class P common stock would be available (based on the aggregate number of shares of Kinder Morgan Class P common stock that the parties had agreed would be issued as consideration in the transaction) for issuance to holders of New El Paso common stock to satisfy the continuity of interest test.

Upon the effective times of the first merger and the second merger, El Paso's 4/4% subordinated convertible debentures due 2028 (referred to as a debenture) issued under the first supplemental indenture, dated March 17, 1998, between El Paso (as assigned from El Paso Natural Gas Company) and The Chase Manhattan Bank shall remain outstanding and be treated in accordance with their terms. In accordance with, and pursuant to, the terms of the first supplemental indenture, after the effective time of the second merger, each debenture will be entitled thereafter to be convertible (when and if converted at the option of such holder) into the merger consideration that a holder of New El Paso common stock making no election will otherwise be entitled to receive.

See New El Paso Stockholders Making Elections Proration and Adjustment Procedures for more information on how the proration procedures will work.

## **Background of the Transactions**

The management and board of directors of El Paso continually review El Paso's results of operations as well as strategic and other options to create value for El Paso's stockholders. In connection with these reviews, El Paso from time to time has evaluated potential transactions that would further its strategic objectives. Similarly, El Paso's management periodically explores and evaluates, and discusses with El Paso's board of directors on a regular basis, the strategic alternatives available to El Paso, including strategic acquisitions and divestitures, mergers, mergers of equals and other business combinations.

Kinder Morgan regularly looks for opportunities with other entities in the midstream energy industry, including joint ventures, mergers or acquisitions. During the five years prior to September 2010, Kinder Morgan and El Paso had not had any discussions regarding a potential merger, nor had Kinder Morgan made any offer to acquire El Paso. In September 2010, Kinder Morgan approached El Paso about a possible combination of the two companies at an indicated value of \$16.50 per El Paso share, but El Paso expressed no interest in pursuing such transaction. In determining not to pursue the transaction with Kinder Morgan as proposed in September 2010, El Paso's board of directors did not find that the value and form of consideration offered by Kinder Morgan warranted further discussion.

Beginning in early 2011, the discussions between El Paso's senior management and El Paso's board of directors focused on, among other things, the proposed separation of El Paso's exploration and production business from its pipeline business (referred to as the spin-off) and the opportunities that could be available to the two businesses as independent public companies.

In February 2011, Kinder Morgan completed its initial public offering, which was unrelated to the transactions.

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From March 29, 2011 through March 31, 2011, the El Paso board of directors met with management and representatives from Morgan Stanley and Goldman, Sachs & Co. (referred to as Goldman Sachs). On March 29, 2011, a representative from Morgan Stanley presented an overview of recently announced spin-off transactions, their performance and the market's reactions to the announcements. On March 30, 2011 representatives from Goldman Sachs presented financial analyses of a potential separation of El Paso's pipeline and exploration and production businesses, including analyses regarding whether El Paso's pipeline and exploration and production businesses have greater capacity to create value together or apart, and whether investors would more highly value the businesses as independent entities. Later that day, the board of directors of El Paso and management met and discussed the presentation, including the separation analysis presented by the representatives from Goldman Sachs. Subsequent to such meeting, Goldman Sachs was retained as a financial advisor to El Paso in connection with a potential spin-off of its exploration and production business.

On May 17, 2011, the El Paso board of directors met with management and representatives of Goldman Sachs, El Paso's financial advisor in connection with the potential spin-off, and Wachtell, Lipton, Rosen & Katz (referred to as Wachtell Lipton), counsel to El Paso and its board of directors. At the meeting, representatives from Goldman Sachs presented revised financial analyses of a potential separation of El Paso's pipeline and exploration and production businesses, including analyses regarding whether El Paso's two businesses have greater capacity to create value together or apart and whether investors would more highly value the businesses as independent entities. The financial analyses related to a potential spin-off included a range of hypothetical trading prices for the exploration and production business as a standalone entity of \$7.51 to \$10.12 per share based on trading multiples of selected exploration and production companies and a range of hypothetical trading prices for the pipeline business as a standalone entity of \$10.55 to \$15.78 per share based on trading yields of selected pipeline companies or \$6.63 to \$11.86 per share based on trading multiples of selected pipeline companies, resulting in ranges of aggregate hypothetical trading prices of \$18.06 to \$25.90 per share and \$14.14 to \$21.98 per share, respectively. These financial analyses were based on forecasts for El Paso's exploration and production business and pipeline business provided by El Paso management and forecasts from Wall Street research for the selected exploration and production and pipeline companies utilized in the analysis. The board of directors, management and representatives from Goldman Sachs and Wachtell Lipton then discussed feedback from El Paso's stockholders, potential mergers and acquisitions activity for the two independent companies and execution risks for a proposed separation. The board of directors of El Paso also discussed the potential for an initial public offering for the exploration and production business prior to a full spin-off.

On May 24, 2011 the El Paso board of directors resolved that El Paso should proceed with the proposed spin-off, and on that date El Paso publicly announced that it was considering a possible spin-off of its exploration and production business.

It was anticipated that the proposed spin-off would provide for a distribution by El Paso to its stockholders of all of the stock of EP Energy Corporation, following which El Paso and EP Energy Corporation would be two separate public companies. In connection with the spin-off, it was anticipated that EP Energy Corporation would generally own the assets and assume the liabilities of El Paso's exploration and production business while El Paso would generally retain the assets and liabilities of El Paso's pipeline and midstream businesses. In connection with the spin-off, it was also anticipated that EP Energy Corporation would issue approximately \$2.0 to \$2.25 billion in new debt securities and would use the proceeds to (1) repay certain outstanding intercompany debt owed to El Paso, which at June 30, 2011 was \$636 million, (2) repay EP Energy Corporation's outstanding debt under its existing revolving line of credit, which at June 30, 2011 was \$400 million and (3) make a cash distribution of approximately \$1.2 billion to El Paso.

On June 24, 2011, at the request of Evercore, members of Kinder Morgan senior management met with Evercore in order to hear Evercore's ideas regarding a possible transaction between Kinder Morgan and El Paso.

On June 30, 2011, El Paso filed a request for a ruling under Section 355 of the Code with the IRS in connection with the proposed spin-off.

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On July 13, 2011 and July 14, 2011, the El Paso board of directors met with management to discuss ongoing developments with respect to the proposed spin-off, including the expectation of receiving a ruling from the IRS by the end of October, the expected filing of a registration statement on Form 10 by EP Energy Corporation (referred to as the Form 10), the expectation that the SEC would clear the Form 10 by November and that the marketing of the proposed debt to be incurred by EP Energy Corporation would occur around that time.

During July and August 2011, representatives of Kinder Morgan, Evercore and Bracewell & Giuliani LLP, counsel to Kinder Morgan and its board (referred to as Bracewell), continued to analyze, based on publicly available information, and to discuss, a possible transaction with El Paso.

On August 11, 2011, EP Energy Corporation filed a registration statement on Form 10 with the SEC in connection with the proposed spin-off.

On August 26, 2011, the Kinder Morgan board of directors discussed with management and representatives of Evercore the possibility of making an offer to acquire El Paso. The Kinder Morgan directors expressed their support for management delivering a letter to El Paso setting forth Kinder Morgan's offer to acquire El Paso for a purchase price of \$25.50 per share on the terms described below. The Kinder Morgan directors' determination to support the offer at such per share price was based on the anticipated dividend per share accretion to Kinder Morgan stockholders, anticipated debt ratios, certain assumptions (including with respect to the value of El Paso's exploration and production business and the size of El Paso's net operating loss carry forwards), and an assessment of negotiation strategy. The Kinder Morgan board of directors also considered a number of risks associated with the transaction, including with respect to commodity prices, the sale of El Paso's exploration and production business, financing of the transactions, financing on the part of KMP and EPB for potential drop-downs of assets and regulatory approval. Throughout the entire course of the negotiations, Kinder Morgan continually assessed the potential transaction based on the foregoing factors. The two representatives of Goldman Sachs on the board of directors of Kinder Morgan (the Goldman Directors), who had joined the board of directors in May 2007 in connection with the Going Private Transaction, did not attend the discussion, though on August 25, 2011 they did receive the materials prepared by management for the discussion. Neither of the Goldman Directors was aware of the proposed transaction with El Paso prior to August 25, 2011. Neither of the Goldman Directors had any involvement with Kinder Morgan's September 2010 offer or any prior discussions with El Paso regarding a potential merger. One of the Goldman Directors called Mr. Richard D. Kinder, the Chairman and CEO of Kinder Morgan, after receiving the materials and informed Mr. Kinder that Goldman Sachs was advising El Paso in connection with its proposed spin-off and that, as a result, the Goldman Directors would not be participating in the board of directors discussion.

On August 28, 2011, one of the Goldman Directors informed Kinder Morgan's general counsel that the Goldman Directors would recuse themselves from all subsequent Kinder Morgan board of directors discussions and meetings to the extent relating to the possible acquisition of El Paso and that the Goldman Directors should not receive any materials distributed to the Kinder Morgan board of directors to the extent relating to such possible acquisition. Thereafter, the Goldman Directors did not participate in any Kinder Morgan board of directors discussions or meetings relating to, and had no involvement in Kinder Morgan's consideration of, the possible acquisition of El Paso and, except as otherwise indicated below, were not sent any board meeting materials relating to the possible acquisition of El Paso.

On August 30, 2011, Mr. Kinder delivered a letter to Mr. Douglas L. Foshee, the Chairman, President and CEO of El Paso, addressed to the board of directors of El Paso setting forth a proposal to acquire El Paso. The proposed terms indicated a purchase price of \$25.50 per share, payable 60% in cash and 40% in stock of Kinder Morgan. The amounts of the stock and cash components of this offer were determined with reference to desired dividend accretion to Kinder Morgan stockholders, the resulting debt ratios and a desire to make the stock component tax free to El Paso stockholders. For a discussion of the material U.S. federal income tax consequences of the transactions to El Paso stockholders, see Material U.S. Federal Income Tax Consequences of the Transactions. The proposed consideration represented a premium of approximately 34.8%

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over El Paso's closing share price of \$18.91 on August 29, 2011. The letter noted that the offer was based solely on publicly available information and that, as part of a private negotiation, Kinder Morgan would conduct due diligence and provide El Paso the opportunity to conduct due diligence with respect to Kinder Morgan. The letter also noted that the proposal was not subject to any financing contingency, that Kinder Morgan was confident that it would receive all required regulatory approvals and that Kinder Morgan was willing to enter into appropriate contractual provisions reflecting its commitment to completing the transaction. The letter also noted the expectation that Kinder Morgan would retain a number of El Paso's executives in important roles within the combined company.

On August 31, 2011, the management of El Paso, together with representatives of Goldman Sachs, updated the members of the board of directors with regard to the proposal received from Kinder Morgan and management's proposed steps in response to the proposal, including preparation of a financial analysis of the proposal and El Paso's alternatives, and the need to retain another financial advisor (other than Goldman Sachs) in connection with Kinder Morgan's proposal.

Between August 31, 2011 and September 5, 2011, El Paso management met with Morgan Stanley and Morgan Stanley was retained as a financial advisor to El Paso in connection with Kinder Morgan's proposal, subject to approval of the board of directors of El Paso. Morgan Stanley entered into an agreement with respect to such engagement on October 6, 2011. For El Paso's arrangement with Morgan Stanley, see Opinion of El Paso's Financial Advisor. El Paso also engaged Goldman Sachs in connection with the possible sale of El Paso, including to Kinder Morgan, and in this regard Goldman Sachs specifically agreed to review and analyze El Paso's business plan in connection with the proposed spin-off for purposes of aiding El Paso in its analysis of the Kinder Morgan transaction and entered into an agreement with respect to such engagement on October 6, 2011. In that engagement letter, El Paso agreed to pay Goldman Sachs a fee of \$20 million upon completion of a transaction with Kinder Morgan. For a description of El Paso's arrangement with Goldman Sachs, see the section entitled El Paso's Engagement of Goldman Sachs.

On September 5, 2011, the El Paso board of directors met with management and representatives of Morgan Stanley, Goldman Sachs and Wachtell Lipton. Prior to the meeting, in light of Goldman Sachs' ownership interest in Kinder Morgan and recognizing that El Paso would be sharing confidential information relating to the valuation of El Paso with Goldman Sachs prior to the meeting and potentially discussing valuation matters at the meeting, a representative of Goldman Sachs was advised by a representative of El Paso that any such information shared with Goldman Sachs prior to, at or after the meeting, must be kept within the Goldman Sachs team involved in the El Paso representation and could not be shared with Kinder Morgan, Goldman Sachs personnel involved in the management of Goldman Sachs' investment in Kinder Morgan, or with any other Goldman Sachs personnel not involved in the El Paso representation. As of the date of this information statement/proxy statement/prospectus, to the best of El Paso's and Kinder Morgan's knowledge, this confidentiality obligation was maintained throughout the course of the discussions between Kinder Morgan and El Paso. For a further discussion of confidentiality obligations of Goldman Sachs, see El Paso's Engagement of Goldman Sachs. At the meeting, Kinder Morgan's proposal was discussed, as were possible different approaches to respond to Kinder Morgan, including, among others, whether to allow Kinder Morgan to conduct due diligence based on its proposal but noting to Kinder Morgan that El Paso would require a higher price, whether to propose a specific higher price or whether to communicate that the offer was not compelling enough to engage. Discussion ensued on how to communicate to Kinder Morgan that El Paso would be willing to complete a transaction at a price higher than the proposal. In addition, there was discussion as to other third parties, including domestic and international energy industry participants, that could be interested and able to proceed with a transaction with El Paso as well as the likely reaction of El Paso's stockholders to a transaction with Kinder Morgan. Following the discussion, the El Paso board of directors authorized management to notify Kinder Morgan that its proposal of August 30, 2011 was not compelling enough to proceed with a transaction as it was expected that such a response would lead to a higher offer from Kinder Morgan. In addition, the board directed management to continue to proceed with the proposed spin-off. Following the departure of Morgan Stanley and Goldman Sachs, the board of directors was provided with further details about, and discussed, Goldman Sachs' relationship with and

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approximately 19 percent ownership interest in Kinder Morgan. Being aware of Goldman Sachs' ownership interest in Kinder Morgan and the related potential conflicts of interest, the board determined to engage a financial advisor other than Goldman Sachs in connection with the Kinder Morgan proposal and engaged Morgan Stanley for that purpose. The board's decision to engage Morgan Stanley was based on Morgan Stanley's qualifications, expertise, reputation, independence and prior work with El Paso. The board also retained Morgan Stanley to provide it with a fairness opinion in connection with the potential acquisition of El Paso by Kinder Morgan, and subsequent to this meeting, in conducting its financial analyses and presenting those analyses to El Paso's board of directors, Morgan Stanley worked independently of Goldman Sachs. At this meeting, the board also determined that it was still beneficial for the time being to continue to receive valuation advice from Goldman Sachs so that the El Paso board of directors could be in the best position to compare all alternatives, specifically including the proposed spin-off transaction and related matters.

Also on September 5, 2011, following the meeting of the board of directors of El Paso, Mr. Foshee met with Mr. Kinder to discuss Kinder Morgan's proposal, and Mr. Foshee provided Mr. Kinder with a response letter on behalf of the board of directors of El Paso. El Paso's response letter noted that Kinder Morgan's proposal of August 30, 2011 was not compelling as it significantly undervalued El Paso and its prospects as it separates into two independent publicly traded companies. The letter also noted that El Paso's board of directors and management team are committed to creating value for El Paso's stockholders.

Between September 5, 2011 and September 8, 2011, management of Kinder Morgan had a series of discussions with representatives of Evercore and Weil, Gotshal & Manges LLP, counsel to Kinder Morgan and its board of directors (referred to as "Weil"), to discuss potential responses to the El Paso letter. On September 8, 2011, representatives of Kinder Morgan began discussions with Barclays Capital with respect to the potential transaction involving El Paso.

On September 9, 2011, the Kinder Morgan board of directors held a discussion with management, Evercore and Barclays Capital to receive an update on the status of discussions between Messrs. Kinder and Foshee and to discuss possible responses to the letter received from El Paso on September 5, 2011. The members of the Kinder Morgan board of directors who participated in the discussion expressed their support for sending a letter to El Paso that would indicate that Kinder Morgan would expect to release its offer to El Paso's stockholders and the public should El Paso again reject its proposal.

On September 9, 2011, Mr. Kinder sent a response letter to Mr. Foshee noting Kinder Morgan's disappointment with El Paso's rejection of its August 30, 2011 offer but noting that Kinder Morgan would consider improving its offer if permitted to conduct limited due diligence. The letter noted Kinder Morgan's belief that given that El Paso had previously outlined the potential advantages of the proposed spin-off in public filings, El Paso's then-current share price (which was \$18.69, based on the closing price on September 8, 2011) reflected the market's view of that strategy. The letter also noted that, should El Paso's board of directors reject its proposal even with the additional potential price flexibility, Kinder Morgan would expect to release its \$25.50 per share proposal to El Paso's stockholders and to the public.

In the period between September 5 and September 12, 2011, representatives of Morgan Stanley and Goldman Sachs met with members of El Paso's management to discuss El Paso's operations and forecasts. Following the receipt of Kinder Morgan's September 9th letter, the letter was shared with representatives of Morgan Stanley and Goldman Sachs and members of management had discussions with representatives of Morgan Stanley and Goldman Sachs regarding potential responses to Kinder Morgan and Kinder Morgan's threat to make its proposal public. In the course of discussing how to respond to Kinder Morgan's September 9th letter (which indicated that Kinder Morgan expected to publicly release its proposal to El Paso's stockholders), El Paso management became concerned, in light of some of the advice received from the Goldman Sachs investment banking team in Houston, that the Goldman Sachs investment bankers were receiving pressure from other parts of Goldman Sachs to avoid a strategy that might result in Kinder Morgan going public with its proposal and employing a hostile approach to acquiring El Paso. As a result, El Paso management decided to limit Goldman

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Sachs' role in providing valuation advice on El Paso's spin-off and determined that Goldman Sachs thereafter would not be providing tactical advice in response to the Kinder Morgan proposal or have involvement in negotiations with Kinder Morgan. After September 12, 2011, El Paso's board and management relied only on Morgan Stanley for tactical advice in connection with the Kinder Morgan proposal and informed Goldman Sachs that, despite Goldman Sachs' long-term role in providing financial advisory services to El Paso, going forward El Paso would not involve Goldman Sachs in any negotiations with Kinder Morgan nor would El Paso be requesting any tactical advice from Goldman Sachs or a fairness opinion from Goldman Sachs in connection with the Kinder Morgan transaction. Management's decision to limit Goldman Sachs' role as described above was later confirmed by the El Paso board of directors at its first meeting following receipt of Kinder Morgan's September 9th letter. Goldman Sachs acted in accordance with such limited role after September 12, 2011, although the engagement letter between Goldman Sachs and El Paso was not executed until October 6, 2011.

Between September 9, 2011 and September 15, 2011, management of Kinder Morgan had a number of discussions with Evercore, Barclays Capital and Weil regarding the potential public announcement of Kinder Morgan's offer for El Paso and other potential steps that the board of directors of Kinder Morgan might consider if El Paso continued to reject Kinder Morgan's offer.

On September 15, 2011, the El Paso board of directors met with management and its legal and financial advisors. At the meeting, before the financial advisors were present, Wachtell Lipton discussed with the board the legal framework relevant to consideration of Kinder Morgan's letter. Discussion then ensued about Goldman Sachs' ownership interest in Kinder Morgan and its role advising El Paso. While the board continued to believe that it was beneficial to continue to receive valuation advice from Goldman Sachs in connection with the proposed spin-off transaction, because of the potential conflict of interest of Goldman Sachs, the board determined that Goldman Sachs was not to be involved in any negotiations with Kinder Morgan or any tactical discussions with management or the board with respect to the Kinder Morgan proposal or how to respond to Kinder Morgan or any discussions with management or the board regarding the price or proposal that El Paso would be willing to entertain and that El Paso would not be requesting a fairness opinion from Goldman Sachs.

Following such time, Goldman Sachs joined the meeting, provided a description of Kinder Morgan's proposal and presented an overview of premiums paid in selected precedent transactions (noting that there were not a lot of precedent transactions in the energy industry of comparable size). Goldman Sachs then presented the results of (1) certain financial analyses in connection with Kinder Morgan's proposal and (2) revised financial analyses for hypothetical trading prices relating to a potential spin-off of El Paso's exploration and production businesses. As described below in more detail, the analyses in connection with Kinder Morgan's proposal resulted in a combined range of illustrative values for El Paso of \$19.90 to \$33.16 and \$20.92 to \$33.26, and a representative of Goldman Sachs indicated that the midpoints of the analyses were in the range of approximately \$25.00 to \$27.00 per share. As described below in more detail, the revised financial analyses of hypothetical trading prices relating to a potential spin-off resulted in an aggregate hypothetical trading range of \$18.04 to \$25.53 per share. The financial analyses performed with respect to El Paso's exploration and production business in connection with Kinder Morgan's proposal included an illustrative analysis of the present value of future stock prices as well as an illustrative unlevered discounted cash flow analysis.

The illustrative present value of future stock price analysis presented by Goldman Sachs discounted a hypothetical range of terminal equity values per share at an illustrative range of estimated cost of equity of 12.0% to 14.0%. The hypothetical terminal equity values per share were estimated using two methodologies:

One methodology applied an illustrative range of enterprise value to EBITDA multiples of 4.5x to 6.5x as applied to estimated EBITDA for 2015 as provided by management of El Paso, subtracting future net debt and dividing by future fully diluted shares. This analysis resulted in a range of illustrative values of \$8.03 to \$13.21 per share for the exploration and production business (referred to as the Exploration EV / EBITDA Present Value Analysis).



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The other methodology applied and an illustrative range of equity price to cash flow multiples of 3.5x to 5.5x as applied to estimated cash flows for 2015 per diluted share as provided by management of El Paso. This analysis resulted in a range of illustrative values of \$7.07 to \$11.71 per share for the exploration and production business (referred to as the Exploration P / CFPS Present Value Analysis ).

The illustrative unlevered discounted cash flow analysis presented by Goldman Sachs discounted a hypothetical range of terminal enterprise values and estimated interim asset cash flows (pre interest costs and after tax) as estimated by management of El Paso at an illustrative range of estimated weighted average cost of capital of 10.0% to 12.0%. The hypothetical terminal enterprise values were estimated using an illustrative range of enterprise value to EBITDA multiples of 4.5x to 6.5x as applied to estimated EBITDA for 2015 as provided by management of El Paso. Net debt was subtracted from the discounted value and the resulting discounted equity value was divided by the fully diluted share count. This analysis resulted in a range of illustrative values of \$8.02 to \$13.66 per share for the exploration and production business.

The financial analyses presented by Goldman Sachs with respect to El Paso's pipeline business included an illustrative analysis of the present value of future stock prices as well as an illustrative levered discounted cash flow analysis.

The illustrative present value of future stock price analysis presented by Goldman Sachs discounted a hypothetical range of terminal equity values per share and interim dividends per share at an illustrative range of estimated cost of equity of 8.5% to 10.5%. The hypothetical terminal equity values per share were estimated using an illustrative range of current yields of 5.0% to 3.0% as applied to the estimated dividend per share paid in 2015 as provided by management of El Paso. This analysis resulted in a range of illustrative values of \$12.35 to \$20.70 per share.

The illustrative levered discounted cash flow analysis presented by Goldman Sachs discounted a hypothetical range of terminal equity values and estimated interim equity cash flows as estimated by El Paso management at an illustrative range of estimated cost of equity of 8.5% to 10.5%. The result was divided by the fully diluted share count. The hypothetical terminal equity values were estimated using two methodologies:

One methodology applied an illustrative range of current yields of 5.0% to 3.0% as applied to estimated cash available for dividends in 2015 (as normalized for cash taxes and coverage ratio) as estimated by management of El Paso. This analysis resulted in a range of illustrative values of \$13.13 to \$21.26 per share (referred to as the Pipeline Yield DCF Analysis ).

The other methodology calculated an illustrative range of future net asset values for the pipeline business based on estimates provided by management of El Paso. This analysis resulted in a range of illustrative values of \$12.66 to \$17.93 per share (referred to as the Pipeline Future NAV DCF Analysis ).

A representative of Goldman Sachs then presented a combined analysis of the exploration and production business and pipeline business which provided a range of per share illustrative values applying each of the present value of future stock price analyses and discounted cash flow analyses. The combined present value of future stock price range of illustrative values was derived by taking the sum of the range of illustrative values based on the present value of future stock price for the pipeline business and adding that to the average of the ranges derived from the Exploration EV / EBITDA Present Value Analysis and the Exploration P / CFPS Present Value Analysis, which resulted in a combined range of illustrative values of \$19.90 to \$33.16 per share.

The combined discounted cash flow analysis range of illustrative values presented by Goldman Sachs was derived by taking the sum of the range of illustrative values based on the unlevered discounted cash flow for the exploration and production business and adding that to the average of the illustrative ranges derived from the Pipeline Yield DCF Analysis and Pipeline Future NAV DCF Analysis, which resulted in a combined range of illustrative values of \$20.92 to \$33.26 per share.

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A representative of Goldman Sachs noted that the midpoints of the illustrative combined present value of future stock price analyses and combined discounted cash flow analyses were in the range of approximately \$25.00 to \$27.00 per El Paso share.

The revised financial analyses relating to a potential spin-off presented by Goldman Sachs included a range of hypothetical trading prices for the exploration and production business as a standalone entity of \$6.13 to \$8.66 per share based on trading multiples of selected exploration and production companies and a range of hypothetical trading prices for the pipeline business as a standalone entity of \$11.92 to \$16.87 per share based on trading yields of selected pipeline companies, resulting in an aggregate hypothetical trading range of \$18.04 to \$25.53 per share.

These financial analyses presented by Goldman Sachs were based on forecasts for El Paso's exploration and production business and pipeline business that assumed a spin-off of the exploration and production business on December 31, 2011 as provided by El Paso management and forecasts from Wall Street research for the selected exploration and production and pipeline companies utilized in the analyses. Goldman Sachs indicated that the lower hypothetical trading prices for El Paso's exploration and production business relative to Goldman Sachs' prior similar analysis resulted primarily from applying lower trading multiples given market conditions and the trading multiples of the selected exploration and production companies utilized in the analysis.

Following its presentation, Goldman Sachs left the meeting and Morgan Stanley entered the meeting and presented its analysis of the proposal from Kinder Morgan which analysis included a Historical Share Price Analysis, an Equity Research Future Price Targets Analysis, a Comparable Company Sum-of-the-Parts Analysis, a Discounted Future Equity Value Analysis, a Discounted Cash Flow Analysis, and a Precedent Transaction Analysis. Several of these analyses included segment-level valuation ranges as follows. The comparable company sum-of-the-parts analysis included a range of implied public trading values for the exploration and production business of \$5.50 to \$8.55 per share and a range of implied public trading values for the pipeline business of \$11.28 to \$14.82 per share, resulting in an aggregate range of implied public trading values of \$16.78 to \$23.37 per share. The discounted future equity value analysis based on estimates of El Paso management included an implied value range for the exploration and production business of \$6.24 to \$10.70 per share and an implied value range for the pipeline business of \$11.79 to \$15.47 per share, resulting in an aggregate implied value range of \$18.03 to \$26.18 per share. The discounted future equity value analysis based on estimates of equity research analysts included an implied value range for the exploration and production business of \$5.92 to \$8.12 per share and an implied value range for the pipeline business of \$12.50 to \$15.82 per share, resulting in an aggregate implied value range of \$18.42 to \$23.95 per share. The aggregated discounted cash flow analysis based on estimates of El Paso management included a range of implied present values for the exploration and production business of \$8.87 to \$11.83 per share and a range of implied present values for the pipeline business of \$12.92 to \$18.23 per share (using an aggregated approach), as well as a range of implied present values for El Paso's net operating loss carry forwards of \$1.11 to \$1.16 per share, resulting in an aggregate range of implied present values of \$22.90 to \$31.22 per share. The disaggregated discounted cash flow analysis based on estimates of El Paso management included a range of implied present values for the exploration and production business of \$8.87 to \$11.83 per share and a range of implied present values for the pipeline business of \$12.54 to \$16.64 per share (using a disaggregated approach), as well as a range of implied present values for El Paso's net operating loss carry forwards of \$1.11 to \$1.16 per share, resulting in an aggregate range of implied present values of \$22.52 to \$29.63 per share. At such time, a discussion ensued between the directors, management, and representatives of Morgan Stanley and Wachtell Lipton on how to respond to Kinder Morgan. In addition, there was discussion as to the advantages and disadvantages of publicly disclosing Kinder Morgan's proposal or engaging with third parties on a transaction and whether that could result in greater value for El Paso stockholders. It was determined that because it was unlikely that a third party would emerge from taking such actions, given market conditions and the size of the transaction, and because the board was resolved that any transaction agreed with Kinder Morgan would include only such protective provisions as were consistent with the ability of a capable bidder to successfully top the price term of a Kinder Morgan agreement, no third parties would be contacted. Management then provided an update to the board of directors on

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the status of the proposed spin-off. Following the discussion, the El Paso board of directors authorized Mr. Foshee to notify Kinder Morgan that its proposal of September 9, 2011 was not compelling but that El Paso would be willing to pursue a transaction with Kinder Morgan at a value of \$28.00 per share in cash and stock of Kinder Morgan. The board of directors of El Paso was informed of the payments that Mr. Foshee would receive should a transaction with Kinder Morgan be completed (see *Interests of Certain Persons in the Transactions*, *El Paso Executive Officers and Directors*, *Quantification of Change of Control and Termination Payments and Benefits to the El Paso Named Executive Officers* for a discussion of the change of control and termination related payments and benefits Mr. Foshee would receive in connection with the transactions, based on certain assumptions stated therein, and see *Security Ownership of a Certain Beneficial Owner and Management* in El Paso's Proxy Statement on Schedule 14A filed on March 29, 2011, for information regarding beneficial ownership of El Paso common stock by Mr. Foshee as of March 11, 2011) and was of the view that this would not affect his negotiations with Mr. Kinder. In addition, Mr. Foshee and the board of directors of El Paso understood that any merger agreement with Kinder Morgan would require the approval of the board of directors of El Paso. The El Paso board of directors also directed management to continue the process to effectuate the proposed spin-off so that El Paso would be in a position to timely execute the spin-off should a transaction with Kinder Morgan on terms acceptable to the El Paso board of directors not materialize.

On September 16, 2011, Mr. Foshee met with Mr. Kinder and provided Mr. Kinder with a response letter on behalf of the board of directors of El Paso. The letter noted that the El Paso board of directors would not support any proposal that would transfer the value and potential that belongs to El Paso's stockholders to Kinder Morgan at an inadequate price. The letter further noted that the board of directors of El Paso would be willing to pursue a transaction with Kinder Morgan at a value of \$28.00 per share in cash and Kinder Morgan stock so long as it provides certainty of completion and El Paso is satisfied with its review of the value to El Paso's stockholders of the Kinder Morgan stock component of the potential transaction. The letter also noted that El Paso's board and management team are committed to creating value for El Paso stockholders and that they continue to believe that the separation of their exploration and production business is the right strategy for El Paso, absent a transaction that delivers compelling value to El Paso's stockholders.

On September 16, 2011 and September 17, 2011, Mr. Foshee had two separate conversations with Mr. Kinder. During these conversations, Mr. Kinder indicated to Mr. Foshee that Kinder Morgan would be willing to consider a transaction at a price of \$26.50 per share in cash and Kinder Morgan stock and that it might be willing to raise its price subject to completion of due diligence. The willingness to consider a price higher than \$26.50 was based on the continued analysis of anticipated dividend per share accretion to Kinder Morgan stockholders, anticipated debt ratios, certain assumptions (including with respect to the value of El Paso's exploration and production business and the size of El Paso's net operating loss carry forwards for U.S. federal income tax purposes), and an assessment of negotiation strategy. In this regard, the Kinder Morgan board of directors also considered a number of risks associated with the transaction, including with respect to commodity prices, the sale of El Paso's exploration and production business, financing of the transactions, financing on the part of KMP and EPB for potential dropdowns of assets and regulatory approval. Mr. Foshee told Mr. Kinder that he believed there were a number of factors that should provide a basis for Kinder Morgan to increase its offer, including the fact that the amount of El Paso's net operating loss carryforwards for U.S. federal income tax purposes would likely be greater than Kinder Morgan had previously assumed. Mr. Foshee indicated that El Paso might consider a slightly lower price and that \$27.80 per share might be acceptable. On September 16 and 17, 2011, Kinder Morgan management had a number of conversations with Evercore, Barclays Capital, Bracewell and Weil regarding the terms of the potential acquisition of El Paso and the process for completing a merger agreement.

On September 18, 2011, the Kinder Morgan board of directors held a discussion with management and representatives of Evercore, Barclays Capital and Weil to receive an update on the status of negotiations between Kinder Morgan and El Paso. The members of the Kinder Morgan board of directors indicated their support for Kinder Morgan management to continue discussions with El Paso regarding a possible transaction at a price higher than \$26.50 per El Paso share.

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Later on September 18, 2011, after further discussion, Mr. Kinder and Mr. Foshee preliminarily agreed that a price of \$27.55 per share in cash and Kinder Morgan stock, subject to agreement on certain material terms and completion of mutual due diligence and negotiation of definitive documentation, could be a basis for further negotiation. This discussion between Mr. Kinder and Mr. Foshee on September 18, 2011 was designed to arrive

at a price which could form a basis for permitting Kinder Morgan to perform due diligence and for the transaction to proceed to the next step. There was no new information exchanged and no new issues or factors raised. It was exclusively a pricing discussion.

On September 19, 2011, EP Energy Corporation filed an amended registration statement on Form 10 with the SEC in connection with the proposed spin-off.

On September 20, 2011, El Paso and Kinder Morgan executed a confidentiality agreement with respect to certain limited information. The agreement did not include standstill provisions, as Kinder Morgan indicated that it would only be willing to execute a confidentiality agreement with standstill provisions if Kinder Morgan first received certain tax information from El Paso and if El Paso and Kinder Morgan could agree in concept on the general terms of a proposed transaction. In this regard, Weil delivered a draft term sheet to El Paso and Wachtell Lipton summarizing Kinder Morgan's proposed terms for a merger agreement to be entered into between El Paso and Kinder Morgan.

In the initial meetings involving senior management and financial advisors of Kinder Morgan and El Paso and prior to the execution of the confidentiality agreement that included any standstill provisions, Kinder Morgan indicated that Kinder Morgan intended to sell El Paso's exploration and production business as soon as possible after the closing of the proposed combination. The draft term sheet noted Kinder Morgan's desire that El Paso cooperate with Kinder Morgan to prepare for a sale of El Paso's exploration and production business.

On September 21, 2011, representatives from El Paso, Kinder Morgan, Wachtell Lipton, and Weil met in Houston, Texas to discuss the proposed term sheet delivered by Weil, and later that night El Paso and Kinder Morgan discussed certain preliminary terms for the proposed transaction, including a proposed purchase price of \$27.55, 60% of which would be paid in cash and 40% of which would be paid in Kinder Morgan stock (with cash and stock election options), subject to completion of mutual due diligence and negotiation of definitive documentation. The cash and stock election options were determined during the negotiation of the term sheet at this meeting.

On September 22, 2011, El Paso and Kinder Morgan executed an additional confidentiality agreement. The agreement included customary provisions for the confidentiality of discussions and the exchange of information. It also included a mutual standstill agreement effective for six months. The standstill provisions did not impede El Paso's ability to pursue an asset sale or spin-off of its exploration and production business. Also on September 22, 2011, Wachtell Lipton delivered a draft voting agreement to Weil.

Commencing September 22, 2011, officers and other representatives and advisors of El Paso (other than Goldman Sachs) and Kinder Morgan conducted mutual due diligence. Representatives and advisors of the companies held a number of in person and telephonic meetings with each other, and each company established virtual data rooms to enable the parties and their representatives and advisors to engage in documentary due diligence.

On September 23, 2011, Weil delivered a draft merger agreement to Wachtell Lipton, and on September 24, 2011, Wachtell Lipton delivered a revised draft merger agreement to Weil.

On September 25, 2011, the board of directors of Kinder Morgan held a discussion with management and representatives of Evercore, Barclays Capital and Weil to review the preliminary findings of the due diligence regarding El Paso. The assumptions used by Kinder Morgan in arriving at the \$27.55 per share price were based on publicly available information, including research reports of securities analysts, and certain information provided by El Paso regarding net operating loss carry forwards. During due diligence Kinder Morgan became

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concerned that assumptions underlying its model were too aggressive. Kinder Morgan believed EBITDA generated as a result of the merger could be less than modeled and could adversely impact dividend accretion for its stockholders, as well as its debt ratios.

From September 25, 2011 through September 29, 2011, members of senior management of Kinder Morgan and Evercore had several meetings and discussions with members of senior management of El Paso and Morgan Stanley concerning valuation matters. Such meetings involved a discussion of the concerns that Kinder Morgan had regarding its model.

On September 28, 2011, in light of the matters discussed following September 25, 2011, representatives of Kinder Morgan notified representatives of El Paso that they would not be able to proceed with a transaction on the terms discussed on September 18, 2011 and as set forth in the term sheet discussed on September 21, 2011. Kinder Morgan then presented an alternative proposal to purchase each El Paso share for consideration equal to \$15.30 in cash, 0.3774 of a share of Kinder Morgan and 0.577 warrants to purchase Kinder Morgan stock with an exercise price of \$40.00 per share of Kinder Morgan stock and a term of five years, with an indicated aggregate value of \$25.50 per El Paso share (excluding the value of the warrant consideration) and based on Kinder Morgan's closing price on September 27, 2011. The representatives of Kinder Morgan indicated their view that the aggregate consideration (including the value of the warrant consideration, which was added to attempt to bridge any potential valuation gaps between the parties) was \$27.55 per El Paso share. Senior management of El Paso was of the view that Kinder Morgan's September 28 proposal had a value less than \$27.55 per El Paso share.

From September 28, 2011 to September 29, 2011, representatives of Morgan Stanley held several meetings and discussions with members of El Paso senior management to discuss a response to Kinder Morgan's proposal of September 28, 2011. In formulating its response, El Paso considered its desire to obtain a purchase price valued at no less than \$27.55 per share, Kinder Morgan's position that it would not be willing to improve the cash and stock portion of the consideration and Kinder Morgan's willingness to provide warrants as part of the consideration.

On September 29, 2011, representatives of El Paso met with representatives of Kinder Morgan. El Paso presented an alternative proposal. El Paso's alternative proposal provided for consideration for each El Paso share of \$15.73 in cash, \$11.02 worth of Kinder Morgan Class P common stock (with the appropriate exchange ratio to result in \$11.02 per share to be agreed by the parties) and 0.640 of a warrant to purchase Kinder Morgan Class P common stock, with the warrant terms including an exercise price of \$40.00, a term of five years and customary dividend protection, which El Paso was advised by Morgan Stanley could have a potential value of \$0.80 per share of El Paso common stock (using a Black-Scholes option valuation model, assuming a volatility of 25% as well as certain other assumptions) and which would represent an indicated aggregate proposal value of \$27.55 per share.

On September 30, 2011, Mr. Kinder sent a letter to Mr. Foshee with a revised proposal to purchase each outstanding El Paso share for consideration equal to \$14.65 in cash, 0.4187 of a share of Kinder Morgan stock and 0.577 of a warrant to purchase a share of Kinder Morgan stock with an exercise price of \$40.00 per share of Kinder Morgan Class P common stock and a term of five years, with an indicated aggregate value of \$25.67 per El Paso share (excluding the value of the warrant consideration) and based on Kinder Morgan's closing price on September 29, 2011. The proposal indicated that in Kinder Morgan's view the aggregate consideration (including the value of the warrant consideration) was \$27.55 per El Paso share. In addition, Mr. Kinder had a telephonic conversation with Mr. Foshee indicating that this represented Kinder Morgan's best and final offer.

Also, on September 30, 2011, the El Paso board of directors met with management and representatives from Morgan Stanley and Wachtell Lipton. At the meeting, Mr. Foshee provided the board with an update on the discussions with Kinder Morgan and the terms of Kinder Morgan's latest proposal. The board discussed Kinder Morgan's latest proposal as well as the mix of consideration and Morgan Stanley's preliminary views on the warrant portion of the consideration and indicative value of the proposal, including Morgan Stanley's view that

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the value of the warrant consideration was less than that stated by Kinder Morgan and that therefore Kinder Morgan's proposal should be considered to have a value below \$27.55 per El Paso share. The board of directors authorized Mr. Foshee to negotiate further with Kinder Morgan to obtain more consideration for El Paso's stockholders in the transaction.

Later on September 30, 2011, Mr. Foshee delivered a letter to Mr. Kinder noting that the El Paso board of directors believes that Kinder Morgan's latest offer reflects a value to El Paso's stockholders of less than \$27.55. In addition, the letter noted that El Paso would be willing to proceed to further negotiate a transaction that included cash and Kinder Morgan stock consideration equal to \$26.00 per share and warrants that had a value approximately 10% in excess of the warrants proposed by Kinder Morgan so long as the warrants included certain dividend protection. Later on September 30, 2011, Kinder Morgan confirmed to El Paso that its offer of September 30, 2011 represented Kinder Morgan's best and final offer.

From October 1, 2011 through October 5, 2011, representatives of Kinder Morgan and Evercore had several meetings and discussions with representatives of El Paso and Morgan Stanley concerning valuation matters, including the valuation of the proposed warrant portion of the consideration.

On October 5, 2011, Mr. Kinder delivered a letter to Mr. Foshee that included a revised proposal. The letter noted that while there has been weakness in commodity prices and capital markets since Kinder Morgan's August 30, 2011 proposal, Kinder Morgan would propose to exchange an improved combination of cash, stock and warrants structured to preserve the tax-free attributes of the transaction. The revised offer was for \$14.65 in cash, 0.4187 shares of Kinder Morgan stock and 0.640 Kinder Morgan warrants with an exercise price of \$40.00 per Kinder Morgan share and a term of five years, for an indicated aggregate value of \$25.78 (excluding the value of the warrant consideration), based on Kinder Morgan's closing price on October 5, 2011. Kinder Morgan decided to increase the warrant consideration from 0.577 Kinder Morgan warrants to 0.640 Kinder Morgan warrants in order to successfully conclude the negotiations. Although Kinder Morgan's original proposal had provided for 40% of the merger consideration to be paid in the form of Kinder Morgan Class P common stock, the warrants would not be treated as stock for purposes of the 40% continuity of interest threshold necessary in order to make the stock component tax free to El Paso stockholders. As a result, and due to a desire to maintain a cushion above the 40% threshold, the total number of shares of Kinder Morgan Class P common stock to be issued as merger consideration will be greater than 40% of the total amount of cash and stock. The letter indicated Kinder Morgan's belief that the value of the offered consideration, including the warrants, could significantly exceed \$27.55 per share, given Kinder Morgan's expectations for future share price performance. The letter further provided that the warrants would not have dividend protection, as such dividend protection is neither customary nor reasonable with respect to a company such as Kinder Morgan, where stock value increases as quarterly dividends increase. The letter stated, however, that Kinder Morgan would be willing to provide for protection in connection with extraordinary, special dividends.

On October 6, 2011, the El Paso board of directors met with management and representatives from Morgan Stanley, Goldman Sachs and Wachtell Lipton. At the meeting, with Morgan Stanley present, representatives from Goldman Sachs presented a revised financial analysis of a potential separation of El Paso's pipeline and exploration and production businesses in connection with the proposed spin-off. The revised financial analyses related to a potential spin-off included a range of hypothetical trading prices for the exploration and production business as a standalone entity of \$4.84 to \$7.42 per share based on trading multiples of selected exploration and production companies and a range of hypothetical trading prices for the pipeline business as a standalone entity of \$11.92 to \$16.87 per share based on trading yields of selected pipeline companies, resulting in an aggregate hypothetical trading range of \$16.75 to \$24.29 per share. These financial analyses were based on forecasts for El Paso's exploration and production business and pipeline business provided by El Paso management and forecasts from Wall Street research for the selected exploration and production and pipeline companies utilized in the analysis. Goldman Sachs indicated that the lower hypothetical trading prices for El Paso's exploration and production business relative to Goldman Sachs' prior similar analysis resulted primarily from applying lower trading multiples given market conditions and the trading multiples of the selected exploration and production

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companies utilized in the analysis. Following such presentation, Goldman Sachs left the meeting and Mr. Foshee then provided the board with an update on the discussions with Kinder Morgan and the terms of Kinder Morgan's latest proposal. Morgan Stanley then presented an analysis of Kinder Morgan's latest proposal and related matters, including indicative values of the proposal. The analysis also set forth a comparable company sum-of-the-parts analysis for the pipeline business and exploration and production business resulting in an aggregate potential trading range of \$14.86 to \$21.93 per share. Morgan Stanley indicated that the decreased estimated trading range relative to its prior analysis resulted primarily from applying lower valuation multiples to the exploration and production business, given market conditions and trading multiples of companies in the exploration and production business. In addition, Wachtell Lipton discussed with the board the legal framework relevant to consideration of Kinder Morgan's latest proposal. The board discussed Kinder Morgan's latest proposal, and the board of directors authorized Mr. Foshee to negotiate a transaction based on the terms set forth in Kinder Morgan's latest proposal, subject to the satisfactory completion of definitive documentation and resolution of certain matters. Later on October 6, 2011, Mr. Foshee met with Mr. Kinder and noted that the board of directors of El Paso had authorized him to negotiate a transaction based on the terms set forth in Kinder Morgan's October 5th proposal.

While Goldman Sachs was available to continue to provide advice to El Paso with respect to the spin-off following the October 6, 2011 meeting of El Paso's board, no further advice was requested by El Paso or provided by Goldman Sachs.

On October 7, 2011, Kinder Morgan management held a discussion with the Kinder Morgan board of directors to update the directors on the status of discussions with El Paso and El Paso's willingness to negotiate a transaction based on Kinder Morgan's October 5th proposal.

On October 7, 2011, Wachtell Lipton delivered a draft form of warrant agreement to Weil. On or about October 7, 2011, Kinder Morgan and El Paso also agreed to provide El Paso stockholders with the ability to make a mixed election with respect to the merger consideration.

Between October 7, 2011 and October 15, 2011, each of Kinder Morgan and El Paso completed its due diligence with respect to the other company.

On October 9, 2011, Weil delivered a revised draft of a merger agreement to Wachtell Lipton.

On October 10, 2011, Kinder Morgan delivered to El Paso a draft of the debt commitment letter to be received from Barclays Bank to finance the cash portion of the merger consideration and, if necessary, to refinance certain indebtedness of El Paso and Kinder Morgan. Also on October 10, 2011, Weil delivered a revised draft of the voting agreement to Wachtell Lipton.

On October 11, 2011, the Kinder Morgan board of directors held a discussion with management and representatives of Evercore, Barclays Capital and Weil to review, in detail, the due diligence findings regarding El Paso.

On October 12, 2011, Wachtell Lipton delivered a revised draft of the merger agreement to Weil, and during the period from October 13, 2011 through October 16, 2011, representatives of El Paso, Kinder Morgan, Wachtell Lipton, Weil and Bracewell negotiated the provisions of the proposed merger agreement and the form of warrant agreement. The negotiations, among other things, addressed the structure for the transaction, the nature of the representations and warranties to be made by the parties, the conditions to closing, financing related matters, termination rights and the fees payable upon termination in certain circumstances, remedies for breaches of the covenants and agreements in the merger agreement, non-solicitation obligations, matching right provisions, the limitations on the conduct of business by both parties between signing and closing and the anti-dilution provisions and other terms of the form of warrant agreement. Although a go-shop provision was previously discussed internally by members of El Paso's management and its advisors, as well as with Kinder Morgan, El Paso determined that given the ability of El Paso to terminate the transaction for a superior proposal

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and that a go-shop provision was not customary in strategic transactions of this type, pursuing such a provision was not necessary or appropriate. Also during such time, Wachtell Lipton and the legal advisors to certain of the stockholders to the voting agreement negotiated certain provisions of the voting agreement.

On October 12, 2011, a representative of Weil had a telephone conversation with in-house counsel for Goldman Sachs to discuss whether Goldman Sachs would agree to become a party to the voting agreement in its capacity as a stockholder of Kinder Morgan. Later that day, Weil sent a draft of the voting agreement to in-house counsel for Goldman Sachs. On October 14, 2011, Weil also forwarded the most recent drafts of the proposed merger agreement and proposed warrant agreement to in-house counsel for Goldman Sachs. Also on October 14, 2011, El Paso's general counsel informed in-house counsel for Goldman Sachs that El Paso had no objection to Goldman Sachs executing the voting agreement. Between October 12, 2011 and October 14, 2011, representatives of Weil had discussions with in-house counsel for Goldman Sachs (and a member of Kinder Morgan's senior management had discussions with one of the Goldman Directors) regarding whether or not the Goldman Directors would continue to recuse themselves with respect to Kinder Morgan board of director meetings and discussions to the extent relating to the proposed acquisition of El Paso. On October 14, 2011, in-house counsel for Goldman Sachs informed Weil that the Goldman Directors would not participate in any Kinder Morgan board of directors meetings to the extent relating to the proposed acquisition of El Paso but that the Goldman Directors would like to receive board materials to be sent in connection with the meeting at which such acquisition would be considered for approval. One of the Goldman Directors also confirmed to a member of Kinder Morgan's senior management that the Goldman Directors would not participate in any Kinder Morgan board of directors meeting to the extent relating to the proposed acquisition of El Paso but that, given that Goldman Sachs would be signing the voting agreement as a stockholder of Kinder Morgan, the Goldman Directors would like to receive the materials being sent to Kinder Morgan directors. On October 14, 2011, in preparation for a board of directors meeting to be held on October 16, 2011, Kinder Morgan sent such materials to all members of the Kinder Morgan board of directors, including the Goldman Directors.

On October 13, 2011, Sherpa Merger Sub, Inc. was incorporated in the State of Delaware and Sherpa Acquisition, LLC was formed in the State of Delaware.

On October 14, 2011, Sirius Holdings Merger Corporation and Sirius Merger Corporation were incorporated in the State of Delaware.

On or about October 14, 2011, El Paso and Kinder Morgan jointly agreed on an indicative value of \$1.50 per warrant (\$0.96 per share of El Paso common stock applying the 0.640 Kinder Morgan warrants per share of El Paso common stock exchange ratio) as of the date prior to the announcement of the transaction, which was within the ranges calculated by Morgan Stanley, Evercore and Barclays in their independent valuations conducted using Black-Scholes and other valuation methods.

On October 15, 2011, the Kinder Morgan board of directors had a telephone conference with management and representatives of Weil to discuss the regulatory implications of a transaction with El Paso.

During the period from the receipt of Kinder Morgan's initial proposal through October 16, 2011, El Paso continued to work on the proposed spin-off and on October 14, 2011, EP Energy Corporation received comments from the SEC with respect to the amended registration statement on Form 10 that it filed with the SEC in connection with the proposed spin-off on September 19, 2011.

On October 16, 2011, the El Paso board of directors held a special board meeting attended by all members of the El Paso board, as well as members of management and representatives of Morgan Stanley and Wachtell Lipton. At the meeting, Wachtell Lipton reviewed with the El Paso board of directors the legal framework relevant to consideration of the transactions. Wachtell Lipton explained and discussed with the board the principal terms and conditions of the merger agreement. Morgan Stanley presented its financial analyses of the proposed transactions with Kinder Morgan and delivered its oral opinion to the El Paso board of directors, which



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was confirmed by delivery of a written opinion dated October 16, 2011, that, as of such date and based upon and subject to the limitations and assumptions set forth therein, the merger consideration to be received by the El Paso stockholders pursuant to the merger agreement was fair, from a financial point of view, to such holders, which analysis also set forth a comparable company sum-of-the-parts analysis for the pipeline business and exploration and production business resulting in an aggregate potential trading range of \$14.47 to \$22.20 per share. Mr. Foshee discussed his view of the principal benefits to El Paso and its stockholders of the combination of the two companies and recommended, on behalf of management, that the board approve the transaction. For a discussion of such principal benefits of the transaction, see

Recommendation of El Paso's Board of Directors and Reasons for the Transactions. Following review and discussion among the members of the El Paso board of directors, the El Paso board of directors unanimously determined that the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement were advisable and in the best interests of El Paso stockholders, and all of the El Paso directors voted to approve the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement.

On October 16, 2011, the Kinder Morgan board of directors held a special board meeting attended by all members of the Kinder Morgan board (other than the Goldman Directors), as well as members of management and representatives of Evercore, Barclays Capital, Weil and Bracewell. At the meeting, Weil reviewed with the Kinder Morgan board of directors the legal framework relevant to consideration of the transactions. Weil explained and discussed with the board the principal terms and conditions of the merger agreement. Each of Evercore and Barclays Capital presented its financial analyses of the proposed transactions with El Paso and delivered its oral opinion to the Kinder Morgan board of directors, which was confirmed by delivery of a written opinion dated October 16, 2011, that, as of such date and based upon and subject to the limitations and assumptions set forth therein, the merger consideration to be paid by Kinder Morgan pursuant to the merger agreement was fair, from a financial point of view, to Kinder Morgan. Mr. Kinder discussed his view of the principal benefits to Kinder Morgan and its stockholders of the combination of the two companies and recommended, on behalf of management, that the board approve the transaction. For a discussion of such principal benefits of the transaction, see Recommendation of Kinder Morgan's Board of Directors and Reasons for the Transactions. Following review and discussion among the members of the Kinder Morgan board of directors present at the meeting, the Kinder Morgan board of directors determined that the merger agreement and the transactions contemplated by the merger agreement were advisable and in the best interests of Kinder Morgan stockholders, and all of the Kinder Morgan directors present at the meeting voted to approve the merger agreement and the transactions contemplated by the merger agreement and recommend that Kinder Morgan stockholders approve the share and warrant issuance proposal.

On October 16, 2011, Mr. Foshee and Mr. Kinder conferred to discuss the results of the El Paso and Kinder Morgan board meetings.

Later on October 16, 2011, the merger agreement was finalized and was executed and delivered by El Paso and Kinder Morgan, the voting agreement was finalized and was executed and delivered by El Paso and the Kinder Morgan stockholders signatory to the voting agreement and the first merger agreement was executed and delivered by El Paso, Merger Sub One and New El Paso. Also on October 16, 2011, the debt commitment letter was finalized, executed and delivered by Kinder Morgan and Barclays Capital.

Following the execution and delivery of the merger agreement and the voting agreement, El Paso and Kinder Morgan issued a joint press release announcing the transaction. Various communications and the merger agreement, voting agreement and form of warrant agreement were filed with the SEC on October 17, 2011 and thereafter.

On October 17, 2011, EP Energy Corporation filed a request with the SEC that its registration statement on Form 10 previously filed in connection with the proposed spin-off be withdrawn. Also on October 17, 2011, EP Energy Corporation sent a request to the IRS to withdraw its request for a ruling in connection with the proposed spin-off.

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### **Recommendation of El Paso's Board of Directors and Reasons for the Transactions**

By a vote at a meeting held on October 16, 2011, the El Paso board of directors unanimously determined that the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement were advisable and in the best interests of El Paso and its stockholders and approved the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement, including the first merger and second merger. **The El Paso board of directors unanimously recommends that the El Paso stockholders vote FOR the proposal to adopt the merger agreement and the first merger agreement and to approve the transactions contemplated by the merger agreement and the first merger agreement at the El Paso special meeting.**

In evaluating the proposed transactions, the El Paso board of directors consulted with El Paso's management and legal and financial advisors and, in reaching its determination and recommendation, the El Paso board of directors considered a number of factors. The El Paso board of directors also consulted with outside legal counsel regarding its obligations, legal due diligence matters and the terms of the merger agreement and the first merger agreement.

Many of the factors considered favored the conclusion of the El Paso board of directors that the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement are advisable and in the best interests of El Paso and its stockholders, including the following:

The aggregate value and composition of the merger consideration to be received by El Paso stockholders in the merger;

That the merger consideration with a value of \$26.87 per share of El Paso common stock, based upon the closing price of Kinder Morgan Class P Common Stock on October 14, 2011 (the last trading date before the date of the El Paso board meeting) and a value per fractional warrant of \$0.96 per share of El Paso common stock, represented a premium of:

37.2% to the closing price of El Paso common stock on the same date;

45.5% to the average closing prices of El Paso common stock for the 30 days prior to such date; and

24.7% to El Paso's 52-week intraday high.

The potential stockholder value that might result from other alternatives available to El Paso, including the alternative of completing the previously announced spin-off of El Paso's exploration and production business, entering into an alternative transaction with another third party, or remaining an independent public company, in each case, considering the potential for El Paso stockholders to share in any future earnings growth of El Paso's businesses and continued costs, as well as the risks and uncertainties associated with continuing to operate as one or two public companies and the ability to achieve the valuations in comparison to the proposed transaction.

The belief of the El Paso board of directors that the shared core values of the two companies, including those of safety, employee development, ethics, operational excellence and customer satisfaction, will assist in integration of the companies and enhance customer service going forward.

That the proposed transactions would enhance El Paso's assets, customer opportunities and service offerings by creating the largest energy infrastructure company in North America with an enterprise value of approximately \$94 billion and approximately 80,000 miles of pipelines.

The complementary nature and geographic diversity of the respective businesses.

The board's familiarity with, and understanding of, El Paso's business, assets, financial condition, results of operations, current business strategy and prospects.

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The financial analysis of Morgan Stanley presented to the El Paso board of directors at the meeting held on October 16, 2011 and the oral opinion of that firm delivered to El Paso's board on that date, which was confirmed by delivery of a written opinion dated October 16, 2011, that, as of such date and based upon and subject to the limitations and assumptions set forth therein, the merger consideration to be received by the El Paso stockholders pursuant to the merger agreement was fair, from a financial point of view, to such holders, as more fully described below under Opinion of El Paso's Financial Advisor. The full text of the written opinion of Morgan Stanley, dated October 16, 2011, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex E to this information statement/proxy statement/prospectus.

Information and discussions with El Paso's management and Morgan Stanley regarding Kinder Morgan's business, assets, financial condition, results of operations, business plan and prospects, including the size and scale of the combined company and the expected pro forma effect of the proposed transactions on the combined company.

Information and discussions with El Paso's management and Morgan Stanley with respect to Kinder Morgan's credit profile following the proposed transactions, including the viability of the financing plan and expected proceeds from the sale of assets.

The possibility that the combined company would achieve a higher trading multiple than El Paso as a stand-alone company or as two publicly traded companies should the spin-off have been consummated and the risk to consummation of the proposed spin-off given market conditions.

That the merger consideration is payable in cash and Kinder Morgan stock, providing El Paso stockholders with the opportunity to participate in the equity value of the combined company following the proposed transactions while at the same time providing immediate value through the cash component of the merger consideration, with El Paso stockholders expected to hold approximately 32% of the combined company's stock outstanding immediately after the proposed transactions and two El Paso directors bringing their experience to the combined company's board.

That although the market for the warrant portion of the merger consideration could be less liquid and the trading range of the warrants could be more volatile relative to other forms of consideration, it would provide the El Paso stockholders with an additional opportunity to participate in the value of the combined company following the proposed transactions.

That stockholders currently holding more than 75% of the outstanding voting power of Kinder Morgan have agreed to vote in favor of the share and warrant issuance proposal.

That the merger agreement has no financing condition and the belief of the El Paso board of directors, supported by the financing commitment letter, and established after consultation with El Paso's financial and legal advisors regarding the terms and degree of conditionality of the financing commitment letter, that Kinder Morgan would be able to obtain the financing necessary to pay the cash portion of the merger consideration payable under the merger agreement.

That Kinder Morgan currently pays regular quarterly cash dividends on its Class P common stock and that, after the transactions, El Paso's stockholders will be entitled to receive dividends, if any, paid by Kinder Morgan on its Class P common stock.

The review by the El Paso board of directors with its legal and financial advisors of the structure of the proposed transactions and the financial and other terms of the merger agreement, including the parties' representations, warranties and covenants, the conditions to their respective obligations and the termination provisions, as well as the likelihood of consummation of the proposed transactions and the El Paso board's evaluation of the likely time period necessary to close the transactions. The El Paso board of directors also

considered the following specific aspects of the merger agreement:

The combination of stock, cash and warrant consideration contemplated by the merger agreement and the election between the stock and cash components (and that such elections are subject to proration).

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The nature of the closing conditions included in the merger agreement, including the exceptions to the events that would constitute a material adverse effect on either El Paso or Kinder Morgan for purposes of the agreement, as well as the likelihood of satisfaction of all conditions to the consummation of the transactions.

The agreement to use best efforts to obtain approvals of applicable antitrust and competition authorities, including disposing of any assets and agreeing to any limitations on the combined company's freedom of action.

The obligation of Kinder Morgan to use its best efforts to take all actions necessary to arrange the financing provided for in the commitment letter and, if such financing is unavailable, to use its best efforts to arrange to obtain alternate financing for an amount that will enable Kinder Morgan to consummate the transactions.

The fact that Kinder Morgan's obligation to close the transactions is not subject to a financing condition.

That, while El Paso agreed to reasonably assist Kinder Morgan in the preparation for the sale of certain or all of El Paso's exploration and production business, the entering into of an agreement or the consummation of any such sale is not, in and of itself, a condition to Kinder Morgan's obligation to close the transaction.

El Paso's right to engage in negotiations with, and provide information to, a third party that makes an unsolicited written acquisition proposal, if the El Paso board of directors determines in good faith, after consultation with its legal and financial advisors, that such proposal constitutes or could reasonably be expected to result in a transaction that is superior to the proposed transactions with Kinder Morgan.

The right of El Paso's board to change its recommendation in favor of adoption of the merger and/or terminate the merger agreement in order to accept a superior proposal, subject to certain conditions (including considering any adjustments to the merger agreement proposed by Kinder Morgan and payment to Kinder Morgan of a \$650 million termination fee).

The right of El Paso's board to change its recommendation in favor of the adoption of the merger agreement if, in response to a material event that arises after the date of the merger agreement and was not, prior to the date of the merger agreement, reasonably foreseeable by El Paso (other than the existence or terms of a takeover proposal or any matter relating thereto or consequences thereof), El Paso's board of directors determines in good faith after consultation with outside counsel and its financial advisors, that the exercise of its fiduciary duties require such action.

The obligation of El Paso to hold a shareholders meeting to vote on the merger agreement even if the El Paso board changes its recommendation in favor of adoption of the merger agreement, unless certain conditions are met.

That the termination fee of \$650 million or the expense reimbursement up to \$20 million plus certain of Kinder Morgan's financing related expenses, in each case, payable by El Paso to Kinder Morgan under the circumstances specified in the merger agreement, were not unreasonable in the judgment of the El Paso board of directors after consultation with its legal and financial advisors.

The requirement that El Paso stockholder approval be obtained as a condition to consummation of the transactions.

## Edgar Filing: KINDER MORGAN, INC. - Form POS AM

El Paso's right to designate two individuals to the board of directors of Kinder Morgan and that one of such directors will be appointed to Kinder Morgan's audit committee and one to Kinder Morgan's governance committee.

That the Kinder Morgan stock and warrant portion of the merger consideration will generally not be taxable for U.S. federal income tax purposes to El Paso's stockholders.

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The review by the El Paso board of directors with its legal and financial advisors of the terms of the form of warrant agreement, including the 5-year term, \$40 exercise price and anti-dilution protections.

In the course of its deliberations, the El Paso board of directors also considered a variety of risks and other potentially negative factors, including the following:

That because the merger consideration is a fixed dollar amount and a fixed exchange ratio of Kinder Morgan stock and warrants to El Paso common stock, El Paso stockholders could be adversely affected by a decrease in the trading price of Kinder Morgan's stock during the pendency of the transactions and the fact that the merger agreement does not provide El Paso with a price-based termination right or other similar protection.

That El Paso will no longer continue to proceed with the proposed spin-off and that Kinder Morgan indicated an intent to sell El Paso's exploration and production business, in which case El Paso stockholders who continued to hold stock in the combined company following consummation of the transactions would no longer have exposure to the exploration and production business and therefore no longer be able to participate in potential upsides associated with the business.

That, while retention arrangements would be put in place, the intent of Kinder Morgan to sell El Paso's exploration and production business may have a negative impact on such business.

That, while the transactions are expected to be completed, there is no assurance that all conditions to the parties' obligations to complete the transactions will be satisfied or waived, and as a result, it is possible that the transactions might not be completed even if approved by El Paso's stockholders.

That, while there is no financing condition in the merger agreement and Kinder Morgan is required to enforce its rights under the debt commitment letter, El Paso does not have the right to bring claims against Kinder Morgan's financing sources and El Paso cannot seek specific performance to cause Kinder Morgan to effect the closing if the debt financing would not be funded at the closing.

That completion of the second merger is subject to the satisfaction of a condition that there has not been a reduction in El Paso's good faith estimate of its net operating loss carryforwards for federal income tax purposes as of January 1, 2012 below \$2.6 billion (subject to certain assumptions and exclusions).

The restrictions on the conduct of El Paso's business prior to completion of the proposed transactions, requiring El Paso to conduct its business only in the ordinary course, subject to specific limitations, which could delay or prevent El Paso from undertaking business opportunities that may arise pending completion of the transactions and could negatively impact El Paso's ability to attract and retain employees and decisions of customers and vendors.

That the cash portion of the merger consideration will generally be taxable for U.S. federal income tax purposes to El Paso's stockholders.

The limitations imposed on El Paso's ability to solicit alternative transactions prior to closing or termination of the merger agreement, including the requirement to pay a \$650 million termination fee in the event El Paso accepts a superior proposal.



## Edgar Filing: KINDER MORGAN, INC. - Form POS AM

That, if the merger agreement is terminated under certain circumstances, El Paso would be required to reimburse Kinder Morgan for its expenses up to \$20 million plus certain of its financing related expenses.

The governance structure of Kinder Morgan, including the ability of Mr. Kinder and the Sponsor Investors to nominate a majority of the board of directors of Kinder Morgan and their ability to control many actions of the combined company and the right of El Paso to designate only two directors to the board of directors of Kinder Morgan.

That sales of Kinder Morgan stock by the Sponsor Investors could have a negative impact on the trading price of Kinder Morgan's Class P common stock and warrants and decrease the value of the stock and warrant portion of the merger consideration.

The transaction costs to be incurred in connection with the proposed transactions.

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Risks of the type and nature described under the section titled Risk Factors.

El Paso's board of directors considered all of these factors as a whole and, on balance, concluded that they supported a determination to approve the merger agreement. The foregoing discussion of the information and factors considered by the El Paso board of directors is not exhaustive. In view of the wide variety of factors considered by the El Paso board of directors in connection with its evaluation of the proposed transactions and the complexity of these matters, the El Paso board of directors did not consider it practical to, nor did it attempt to, quantify, rank or otherwise assign relative weights to the specific factors that it considered in reaching its decision. The El Paso board of directors evaluated the factors described above, among others, and reached a consensus that the proposed transactions were advisable, fair to and in the best interests of El Paso and its stockholders. In considering the factors described above and any other factors, individual members of the El Paso board of directors may have viewed factors differently or given different weight or merit to different factors.

In considering the recommendation of the El Paso board of directors to adopt the merger agreement and the first merger agreement and to approve the transactions contemplated by the merger agreement and the first merger agreement, El Paso stockholders should be aware that the executive officers and directors of El Paso may have certain interests in the proposed transactions that may be different from, or in addition to, the interests of El Paso stockholders more generally and that Goldman Sachs may have certain interests in the proposed transactions that may be different from, or in addition to, the interests of El Paso stockholders more generally. The El Paso board of directors was aware of these interests and considered them when approving the merger agreement and the first merger agreement and recommending that El Paso stockholders vote to adopt the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement. See The Transactions Interests of Certain Persons in the Transactions El Paso Executive Officers and Directors and Interests of Certain Persons in the Transactions Goldman Sachs.

**Recommendation of Kinder Morgan's Board of Directors and Reasons for the Transactions**

At its meeting on October 16, 2011, the Kinder Morgan board of directors determined that the merger agreement and the transactions contemplated thereby were advisable and in the best interests of Kinder Morgan and its stockholders, and approved the merger agreement. The Kinder Morgan board of directors recommends that Kinder Morgan stockholders vote FOR the share and warrant issuance proposal. In making this determination, the Kinder Morgan board of directors consulted with Kinder Morgan's management and with its financial and legal advisors, and considered a number of factors. The decision of the Kinder Morgan board of directors was based upon a number of potential benefits of the transactions and other factors that it believed would contribute to the success of the combined company, and thus benefit the Kinder Morgan stockholders, including the following factors, the order of which does not necessarily reflect their relative significance:

*Increased Scale, Scope and Growth Opportunities.* The combination of Kinder Morgan and El Paso would create the largest midstream and natural gas pipeline company in North America. In addition, the combined company is expected to create growth opportunities through expansions and extensions of existing pipelines.

*Complementary Assets.* El Paso's and Kinder Morgan's natural gas pipeline assets are complementary in that they primarily serve different supply sources and markets in the United States.

*Accretive Impact.* The transactions are expected to deliver meaningful accretion, both immediate and long-term, to stockholders of Kinder Morgan. In addition, based upon the expected sale (drop-down) of certain of El Paso's natural gas pipeline assets to KMP, the transactions are expected to be accretive to unitholders and shareholders of KMP and KMR.

*Future Sales to Reduce Leverage.* The opportunity to sell (drop-down) El Paso's natural gas pipeline assets to KMP and EPB and sell El Paso's exploration and production business, and the availability of certain net operating loss carryforwards to help offset taxable gains in connection with such sales, is expected to reduce substantially the level of indebtedness incurred to finance the transactions.

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*Impact on Liquidity.* The issuance of additional shares of Kinder Morgan Class P common stock in the second merger is expected to significantly increase the liquidity of Kinder Morgan Class P common stock.

*Synergies.* The combined company is expected to have the opportunity to achieve improvements in both organic growth and synergies, including approximately \$350 million of cost savings per year.

*Stable Cash Flow.* El Paso's natural gas pipeline assets are expected to provide additional steady, fee-based cash flow.

*Opinions of Financial Advisors to Kinder Morgan.* The Kinder Morgan board of directors took into account the opinions of each of Evercore and Barclays Capital to the effect that, as of October 16, 2011, and based upon and subject to the assumptions and qualifications set forth therein, the merger consideration to be paid by Kinder Morgan pursuant to the merger agreement was fair to Kinder Morgan from a financial point of view, in each case, as more fully described under "Opinions of Kinder Morgan's Financial Advisors."

In addition, the Kinder Morgan board of directors also identified and considered several potentially negative factors to be balanced against the positive factors listed above, including the following, the order of which does not necessarily reflect their relative significance:

that the pendency of the transactions for an extended period of time following the announcement of the execution of the merger agreement could have an adverse impact on Kinder Morgan or El Paso;

the potential for diversion of management and employee attention during the period prior to completion of the merger, and the potential negative effect on Kinder Morgan's and El Paso's business;

the risk that Kinder Morgan may not be able to sell El Paso's exploration and production assets in a timely manner, on satisfactory terms and conditions, at a satisfactory price, or at all;

the risk that potential benefits and synergies sought in the transactions may not be realized, or may not be realized within the expected time period, and the risks associated with integration of the operations of the two companies;

the risks that the regulatory approvals and clearances necessary to complete the transactions might not be obtained or that governmental authorities would condition approval of the transactions on the companies' compliance with certain burdensome conditions or require certain burdensome divestitures, or that regulatory approvals may be delayed;

the risks inherent in completing over \$11.5 billion in new financing necessary to consummate the transactions, given the recent volatility in the U.S. debt markets;

the risk that Kinder Morgan may be liable for damages to El Paso if it is unable to obtain the financing necessary to consummate the transactions;

the potential negative consequences that could result from the combined company's significant amount of indebtedness following the closing of the transactions;

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the risk that Kinder Morgan may not be able to consummate the sale (drop-down) of El Paso's natural gas pipeline assets to KMP and EPB on satisfactory terms and conditions;

the risks inherent in completing financing on the part of KMP and EPB for the potential drop-down of assets from Kinder Morgan;

the risk that commodity prices may fluctuate and impact the proceeds expected to be received from the anticipated sale of El Paso's exploration and production assets;

the merger agreement's restrictions on the conduct of Kinder Morgan's and El Paso's business during the period between execution of the merger agreement and the consummation of the transactions;

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the risk that, despite the efforts of Kinder Morgan and El Paso prior to the consummation of the transactions, the combined company may lose key personnel; and

the potential that the combined company might not achieve its projected financial results.

In view of the variety of factors and the quality and amount of information considered, the Kinder Morgan board of directors as a whole did not find it practicable to and did not quantify or otherwise assign relative weights to the specific factors considered in reaching its determination but conducted an overall analysis of the transaction. Individual members of the Kinder Morgan board of directors may have given different relative considerations to different factors.

The explanation of the reasoning of the Kinder Morgan board of directors and certain information presented in this section are forward-looking in nature and, therefore, the information should be read in light of the factors discussed in the sections entitled "Cautionary Statement Regarding Forward-Looking Statements" and "Risk Factors."

**Certain El Paso Financial Projections**

El Paso does not as a matter of course make public forecasts as to future performance, earnings or other results, and El Paso is especially reluctant to disclose forecasts due to the unpredictability of the underlying assumptions and estimates. However, El Paso has included below certain information that was furnished to third parties and that was considered by El Paso's financial advisor and by the board of directors of El Paso for the purposes of evaluating the proposed transactions with Kinder Morgan.

	2011E	2012E	2013E	2014E	2015E
	(in millions)				
Pipeline Segment EBITDA(1)(2)	\$ 2,050	\$ 2,077	\$ 2,171	\$ 2,374	\$ 2,509
Exploration and Production Segment EBITDA(1)(2)	\$ 1,374	\$ 1,630	\$ 1,997	\$ 2,396	\$ 2,811
Total El Paso Consolidated Segment EBITDA(1)(2)	\$ 3,423	\$ 3,707	\$ 4,167	\$ 4,771	\$ 5,320

(1) Segment EBITDA is defined as net income (loss) adjusted for interest and debt expense, depreciation, depletion and amortization and income taxes. The projected Segment EBITDA was also adjusted for certain items that El Paso has historically adjusted for in reporting its earnings that it believes are useful in analyzing the company's ongoing earnings potential and understanding certain significant items impacting the comparability of El Paso's results. It does not reflect a reduction for any amounts attributable to noncontrolling interests. Segment EBITDA is not a measurement of financial performance under GAAP and should not be considered as an alternative to net income (loss), operating income or other performance measures derived in accordance with GAAP.

(2) With respect to El Paso's unconsolidated affiliates, Segment EBITDA includes El Paso's equity income.

El Paso had previously furnished to Morgan Stanley information relevant to the calculation of Pipeline Segment EBITDA and Total El Paso Consolidated Segment EBITDA which would have resulted in an estimate for such items of \$2,120 million and \$3,493 million for 2011, respectively. Morgan Stanley has advised El Paso that it did not utilize a 2011 estimate of Pipeline Segment EBITDA or Total El Paso Consolidated Segment EBITDA in its analysis or its opinion.

The internal financial forecasts were not prepared with a view toward public disclosure, nor were they prepared with a view toward compliance with the published guidelines of the SEC, the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of financial forecasts or generally accepted accounting principles in the United States, referred to as "GAAP." Neither Ernst & Young LLP, nor any other independent accountants, have compiled, examined or performed any procedures with respect to the prospective financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, the prospective financial information. The Ernst & Young LLP report incorporated by reference in this document relates to El Paso's historical financial information. It does not extend to the prospective financial information and should not be read to do so. The summary of these internal financial forecasts is being included in this information statement/proxy statement/prospectus not to influence your decision whether to vote for adoption of the merger agreement and the first merger agreement and approval of the transactions.



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contemplated by the merger agreement and the first merger agreement, but because these internal financial forecasts were made available to Kinder Morgan and to El Paso's and Kinder Morgan's financial advisors.

These internal financial forecasts were based on numerous variables and assumptions that are inherently uncertain and may be beyond the control of El Paso's management. Important factors that may affect actual results and cause the internal financial forecasts not to be achieved include, but are not limited to, risks and uncertainties relating to El Paso's business (including its ability to achieve strategic goals, objectives and targets over applicable periods), industry performance, the regulatory environment, general business and economic conditions and other matters described under the section entitled "Cautionary Statement Regarding Forward-Looking Statements." The internal financial forecasts also reflect assumptions as to certain business decisions that are subject to change. As a result, actual results may differ materially from those contained in these internal financial forecasts. Accordingly, there can be no assurance that the internal financial forecasts will be realized.

The inclusion of these internal financial forecasts in this information statement/proxy statement/prospectus should not be regarded as an indication that any of El Paso, Kinder Morgan or any of their respective affiliates, advisors, officers, directors, partners or representatives considered the internal financial forecasts to be predictive of actual future events, and the internal financial forecasts should not be relied upon as such. None of El Paso, Kinder Morgan or any of their respective affiliates, advisors, officers, directors, partners or representatives can give you any assurance that actual results will not differ from these internal financial forecasts, and none undertakes any obligation to update or otherwise revise or reconcile these internal financial forecasts to reflect circumstances existing after the date the internal financial forecasts were generated or to reflect the occurrence of future events in the event that any or all of the assumptions underlying the projections are shown to be in error. El Paso does not intend to make publicly available any update or other revision to these internal financial forecasts. El Paso has made publicly available its actual results of operations for the fiscal year ended December 31, 2011, and you should review carefully El Paso's Form 10-K for such period, which is incorporated by reference into this document. None of El Paso or its affiliates, advisors, officers, directors, partners or representatives has made or makes any representation to any stockholder or other person regarding El Paso's ultimate performance compared to the information contained in these internal financial forecasts or that forecasted results will be achieved. El Paso has made no representation to Kinder Morgan, in the merger agreement or otherwise, concerning these internal financial forecasts.

**Certain Kinder Morgan Financial Projections**

Kinder Morgan does not as a matter of course make public forecasts as to future performance, earnings or other results, and Kinder Morgan is especially reluctant to disclose forecasts due to the unpredictability of the underlying assumptions and estimates. However, Kinder Morgan has included below certain information that was furnished to third parties and that was considered by Kinder Morgan's financial advisors and by the board of directors of Kinder Morgan for the purposes of evaluating the proposed transactions with El Paso.

*Projections Provided by Kinder Morgan's Management:*

	2011E	2012E	2013E	2014E	2015E
			(in millions)		
Kinder Morgan Distributable Cash Flow(1)(2)	\$ 834.8	\$ 923.2	\$ 1,012.2	\$ 1,104.3	\$ 1,186.8
KMP EBITDA(1)(3)	3,516.9	4,120.2	4,520.2	4,907.9	5,118.1
El Paso Consolidated EBITDA(1)(4)	3,458.2	3,896.4	4,378.6	4,920.8	5,426.9

- (1) Distributable cash flow and EBITDA are not measurements of financial performance under GAAP and should not be considered as alternatives to net income (loss), operating income, or other performance measures derived in accordance with GAAP.

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- (2) Kinder Morgan Distributable Cash Flow is defined as total distributions (including share distributions from KMR) received by Kinder Morgan from its investments in KMP and NGPL less cash interest expense, cash taxes, G&A, and sustaining capital expenditures.
- (3) KMP EBITDA is defined as net income plus DD&A, including KMP's share of DD&A for REX, MEP, FEP, KinderHawk, Cypress, Parkway and EagleHawk (in the case of KinderHawk through the second quarter of 2011), plus income tax expense and interest expense.
- (4) Including EPB. With respect to El Paso's unconsolidated joint ventures, EBITDA only takes into account El Paso's proportional share of its joint ventures' free cash flow.

The internal financial forecasts were not prepared with a view toward public disclosure, nor were they prepared with a view toward compliance with the published guidelines of the SEC, the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of prospective financial information or GAAP. The prospective financial information of Kinder Morgan included in this document was prepared by, and is the responsibility of, Kinder Morgan. Neither Kinder Morgan's independent accountants, PricewaterhouseCoopers LLP, nor any other independent accountants, have compiled, examined or performed any procedures with respect to the prospective financial information contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability, and assume no responsibility for, and disclaims any association with, the prospective financial information. The PricewaterhouseCoopers LLP report incorporated by reference into this document relates to Kinder Morgan's historical financial information. It does not extend to the prospective financial information and should not be read to do so. The summary of these internal financial forecasts is not being included in this document to influence your decision on how to vote on any proposal, but because these internal financial forecasts were made available to El Paso (with respect to Kinder Morgan only) and to Kinder Morgan's and El Paso's financial advisors.

These internal financial forecasts were based on numerous variables and assumptions that are inherently uncertain and may be beyond the control of Kinder Morgan's management. Important factors that may affect actual results and cause the internal financial forecasts not to be achieved include, but are not limited to, risks and uncertainties relating to Kinder Morgan's business (including its ability to achieve strategic goals, objectives and targets over applicable periods), industry performance, the regulatory environment, general business and economic conditions and other matters described under the sections entitled "Cautionary Statement Regarding Forward-Looking Statements" and "Risk Factors." The internal financial forecasts also reflect assumptions as to certain business decisions that are subject to change. As a result, actual results may differ materially from those contained in these internal financial forecasts. Accordingly, there can be no assurance that the internal financial forecasts will be realized.

The inclusion of these internal financial forecasts in this information statement/proxy statement/prospectus should not be regarded as an indication that any of Kinder Morgan, El Paso or any of their respective affiliates, advisors, officers, directors, partners or representatives considered the internal financial forecasts to be predictive of actual future events, and the internal financial forecasts should not be relied upon as such. None of Kinder Morgan, El Paso or any of their respective affiliates, advisors, officers, directors, partners or representatives can give you any assurance that actual results will not differ from these internal financial forecasts, and none undertakes any obligation to update or otherwise revise or reconcile these internal financial forecasts to reflect circumstances existing after the date the internal financial forecasts were generated or to reflect the occurrence of future events in the event that any or all of the assumptions underlying the projections are shown to be in error. Kinder Morgan does not intend to make publicly available any update or other revision to these internal financial forecasts. None of Kinder Morgan or its affiliates, advisors, officers, directors, partners or representatives has made or makes any representation to any stockholder or other person regarding Kinder Morgan's ultimate performance compared to the information contained in these internal financial forecasts or that forecasted results will be achieved. Kinder Morgan has made no representation to El Paso in the merger agreement or otherwise, concerning these internal financial forecasts.



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**Opinion of El Paso's Financial Advisor**

El Paso retained Morgan Stanley to provide it with financial advisory services and a financial opinion in connection with the potential acquisition of El Paso by Kinder Morgan. El Paso's management recommended the retention of Morgan Stanley to El Paso's board of directors. Due to the prior relationship with Morgan Stanley and concerns regarding maintaining confidentiality in the context of the discussions with Kinder Morgan, the El Paso board of directors and management did not interview any other financial advisors in connection with the proposed transaction. El Paso's board of directors selected Morgan Stanley to act as its financial advisor based on Morgan Stanley's qualifications, reputation, expertise and experience in mergers and acquisitions. El Paso's board of directors also considered Morgan Stanley's knowledge of and familiarity with El Paso's business affairs, operations and management. El Paso's board of directors also took into account that Morgan Stanley represented the special committee of the board of directors of Kinder Morgan when Kinder Morgan was purchased in a going-private transaction in 2006. At the meeting of El Paso's board of directors on October 16, 2011, Morgan Stanley rendered to El Paso's board of directors its oral opinion, subsequently confirmed in writing, that as of October 16, 2011, and based upon and subject to the various assumptions, factors, qualifications and limitations set forth in the written opinion, the merger consideration to be received by the holders of shares of El Paso common stock pursuant to the merger agreement was fair from a financial point of view to such holders.

**The full text of the written opinion of Morgan Stanley, dated as of October 16, 2011, is attached hereto as Annex E and is incorporated into this information statement/proxy statement/prospectus by reference. The opinion sets forth, among other things, the assumptions made, procedures followed, matters considered and qualifications and limitations on the scope of the review undertaken by Morgan Stanley in rendering its opinion. Stockholders are urged to, and should, read the opinion carefully and in its entirety. Morgan Stanley's opinion is directed to El Paso's board of directors and addresses only the fairness from a financial point of view of the consideration to be received by the holders of shares of El Paso common stock pursuant to the merger agreement, as of the date of the opinion. Morgan Stanley's opinion does not address any other aspect of the transactions contemplated by the merger agreement and expresses no opinion or recommendation as to the underlying decision of El Paso to engage in the proposed transactions or as to how any stockholder of El Paso or Kinder Morgan should vote at any stockholders' meeting held in connection with the proposed transactions. Morgan Stanley's opinion does not in any manner address the prices at which the Kinder Morgan Class P common stock and the Kinder Morgan warrants will trade following consummation of the transactions or any time in the future. The summary of the opinion of Morgan Stanley set forth in this information statement/proxy statement/prospectus is qualified in its entirety by reference to the full text of the opinion.**

In connection with rendering its opinion, Morgan Stanley, among other things:

reviewed certain publicly available financial statements and other business and financial information of El Paso and Kinder Morgan, respectively;

reviewed certain internal financial statements and other financial and operating data concerning El Paso and Kinder Morgan, respectively;

reviewed certain financial projections prepared by the managements of El Paso and Kinder Morgan, respectively;

attended a presentation made by the financial advisor engaged by El Paso in connection with the proposed spin-off of El Paso's exploration and production business;

discussed the past and current operations and financial condition and the prospects of El Paso with senior executives of El Paso;

discussed the past and current operations and financial condition and the prospects of Kinder Morgan with senior executives of Kinder Morgan;



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reviewed the pro forma impact of the transactions on Kinder Morgan's cash flow, cash flow per share and various credit statistics;

reviewed the reported prices and trading activity for El Paso common stock and Kinder Morgan Class P common stock;

compared the financial performance of El Paso and Kinder Morgan and the prices and trading activity of El Paso common stock and Kinder Morgan Class P common stock with that of certain other publicly traded companies comparable with El Paso and Kinder Morgan, respectively, and their securities;

compared the implied volatility of call options of Kinder Morgan, call options of El Paso and call options of certain other publicly traded companies comparable with Kinder Morgan;

reviewed the historical stock price volatility of El Paso and of certain other publicly traded companies comparable with Kinder Morgan;

reviewed the financial terms, to the extent publicly available, of certain comparable acquisition transactions;

participated in certain discussions and negotiations among management representatives of El Paso and Kinder Morgan and each of their respective financial and legal advisors;

reviewed the merger agreement and certain related documents; and

performed such other analyses, reviewed such other information and considered such other factors as Morgan Stanley deemed appropriate.

In arriving at its opinion, Morgan Stanley 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 Morgan Stanley by El Paso and Kinder Morgan, and formed a substantial basis for its opinion. With respect to the financial projections, or material derived or extrapolated therefrom, Morgan Stanley assumed that they had been reasonably prepared on bases reflecting the best currently available estimates and judgments of the respective managements of El Paso and Kinder Morgan of the future financial performance of El Paso and Kinder Morgan.

In addition, Morgan Stanley 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 Code. Morgan Stanley assumed that in connection with the receipt of all the necessary governmental, regulatory or other approvals and consents required for the 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 transactions. Morgan Stanley is not a legal, tax or regulatory advisor. Morgan Stanley is a financial advisor only and relied upon, without independent verification, the assessment of El Paso and its legal, tax or regulatory advisors with respect to legal, tax or regulatory matters. Morgan Stanley expressed no opinion with respect to the fairness of the amount or nature of the compensation to any of El Paso's officers, directors or employees, or any class of such persons, relative to the consideration to be received by the holders of shares of El Paso common stock in the transactions. Morgan Stanley did not make any independent valuation or appraisal of the assets or liabilities of El Paso or Kinder Morgan, nor was Morgan Stanley furnished with any such valuations or appraisals. Morgan Stanley's opinion was necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to Morgan Stanley as of, October 16, 2011. Events occurring after October 16, 2011 may affect Morgan Stanley's opinion and the assumptions used in preparing it, and Morgan Stanley did not assume any obligation to update, revise or reaffirm its opinion. See the section entitled "Risk Factors."

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In arriving at its opinion, Morgan Stanley was not authorized to solicit, and did not solicit, interest from any party with respect to an acquisition, business combination or other extraordinary transaction, involving El Paso or certain of its constituent businesses, nor did Morgan Stanley negotiate with any party, other than Kinder Morgan.

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The following is a brief summary of the material analyses performed by Morgan Stanley in connection with its oral opinion and the preparation of its written opinion letter dated October 16, 2011. Some of these summaries of financial analyses include information presented in tabular format. In order to fully understand the financial analyses used by Morgan Stanley, the tables must be read together with the text of each summary. The tables alone do not constitute a complete description of the financial analyses.

In arriving at its opinion regarding the consideration to be paid to holders of El Paso common stock, Morgan Stanley performed an analysis of the value of 0.640 Kinder Morgan warrants per share of El Paso common stock (referred to as the Per Share Warrant Consideration) using a Black-Scholes option valuation model, assuming a volatility range of 25% to 35% as well as certain other assumptions. The assumed volatility range was based on the historical stock price volatility and implied volatility of call options for Kinder Morgan, El Paso and other companies engaged in a business similar to Kinder Morgan (including Spectra Energy Corp., Energy Transfer Equity, L.P. and ONEOK, Inc.). The analysis indicated an estimated value range for the Per Share Warrant Consideration of \$0.33 to \$2.02 per share of El Paso common stock. Based on the experience and judgment of Morgan Stanley, Morgan Stanley estimated a value of \$0.96 per share of El Paso common stock. Morgan Stanley then noted that the consideration to be received by holders of shares of El Paso common stock in the proposed transactions pursuant to the merger agreement is \$25.91 (excluding the Per Share Warrant Consideration) and \$26.87 (including the Per Share Warrant Consideration), each based on the closing share price for Kinder Morgan Class P common stock on October 14, 2011 of \$26.89.

**Historical Share Price Analysis**

Morgan Stanley reviewed the share price performance of El Paso and Kinder Morgan during various periods ending on October 14, 2011 (the last trading day prior to El Paso board meeting approving the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement). Morgan Stanley noted that the range of low and high intra-day prices of El Paso common stock during the prior 52-week period was \$12.51 to \$21.54. Morgan Stanley noted that the range of low and high intra-day prices of Kinder Morgan Class P common stock during the period since Kinder Morgan's February 10, 2011 initial public offering was \$23.51 to \$32.14.

Morgan Stanley next compared the implied transaction consideration of \$25.91 (excluding the Per Share Warrant Consideration) and \$26.87 (including the Per Share Warrant Consideration) to each of (1) the closing share price of El Paso common stock on October 14, 2011 of \$19.59, (2) the average closing price per share of El Paso common stock during the 30-day period ending October 14, 2011 of \$18.47 and (3) the 52-week intra-day high price of \$21.54 per share of El Paso common stock. The following table lists the implied transaction premiums based on such calculations:

<b>Date/Time Period</b>	<b>Transaction Premium Excluding the Per Share Warrant Consideration</b>	<b>Transaction Premium Including the Per Share Warrant Consideration</b>
October 14, 2011 Price of \$19.59	32.3%	37.2%
Last 30 Trading Day Price of \$18.47	40.3%	45.5%
52-Week Intra-Day High Price of \$21.54	20.3%	24.7%

**Equity Research Future Price Targets**

Morgan Stanley reviewed the public market trading price targets for El Paso common stock prepared and published by equity research analysts prior to October 14, 2011 (the last trading day prior to El Paso board meeting approving the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement). These targets reflected each analyst's estimate of the future public market trading price of El Paso common stock one year in the future. Morgan Stanley noted that the range of one-year research analyst price targets for El Paso was \$22.00 to \$29.50 per share. Using a discount rate

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of 10%, reflecting estimates of the cost of equity for El Paso, Morgan Stanley discounted the analysts' price targets back one-year to arrive at a range of present values for these targets. Morgan Stanley's analysis of the present value of equity research analysts' future price targets implied a value per share of El Paso common stock in the range of approximately \$20.00 to \$26.82 per share.

Morgan Stanley noted that the consideration to be received by holders of shares of El Paso common stock in the proposed transactions pursuant to the merger agreement is \$25.91 (excluding the Per Share Warrant Consideration) and \$26.87 (including the Per Share Warrant Consideration), each based on the closing share price for Kinder Morgan common stock on October 14, 2011 of \$26.89.

In addition, Morgan Stanley reviewed the public market trading price targets for Kinder Morgan Class P common stock prepared and published by equity research analysts prior to October 14, 2011. These targets reflected each analyst's estimate of the future public market trading price of Kinder Morgan Class P common stock one year in the future. Morgan Stanley noted that the range of one-year research analyst price targets for Kinder Morgan was \$29.50 to \$34.00 per share. Using a discount rate of 7.5%, reflecting estimates of the cost of equity for Kinder Morgan, Morgan Stanley discounted the analysts' price targets back one-year to arrive at a range of present values for these targets. Morgan Stanley's analysis of the present value of equity research analysts' future price targets implied a value per share of Kinder Morgan Class P common stock in the range of approximately \$27.44 to \$31.63 per share.

The public market trading price targets published by equity research analysts do not necessarily reflect current market trading prices for El Paso common stock or Kinder Morgan Class P common stock, and these estimates are subject to uncertainties, including the future financial performance of El Paso, Kinder Morgan and future financial market conditions.

### ***Comparable Company Sum-of-the-Parts Analysis***

Morgan Stanley performed a comparable company sum-of-the-parts analysis with respect to El Paso and Kinder Morgan. This valuation methodology is designed to provide an implied public trading value of a company by comparing segments of a company's business to trading levels of other companies engaged in a similar business and aggregating the implied valuations of each segment. With respect to El Paso, Morgan Stanley compared certain financial information of El Paso with publicly available information for peers that operate in and are exposed to similar lines of business as El Paso's primary two segments of business (1) the pipeline segment, primarily consisting of United States-based interstate natural gas transmission systems (referred to in this section as the Pipeline Segment) and (2) the exploration and production segment, primarily consisting of exploration and production of crude oil, natural gas and natural gas liquids (referred to in this section as the Exploration and Production Segment).

With respect to the Pipeline Segment, the peer group included the following companies (collectively referred to in this section as the Pipeline Peer Group Companies):

Enbridge Inc.

Kinder Morgan

ONEOK, Inc.

Spectra Energy Corp

Questar Corporation

Targa Resources, Inc.

TransCanada Corporation

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With respect to analysis of the Pipeline Segment, Morgan Stanley analyzed the following statistics, among other things, for each of these companies, as of October 14, 2011, and based on estimates for the peer group companies provided by Institutional Broker's Estimate System (referred to in this section as IBES), equity research analysts, and public filings:

the ratio of aggregate value, defined as market capitalization, plus consolidated total debt, plus minority interests (including market value of minority interests associated with master limited partnership (referred to in this section as MLP) interests, as applicable) and less consolidated total cash and cash equivalents (referred to in this section as Aggregate Value), to estimated calendar year 2012 earnings before interest taxes and depreciation on a fully consolidated basis (including minority interests associated with MLP interests, as applicable) (referred to in this section as Aggregated EBITDA or EBITDA);

the ratio of disaggregated value, defined as Aggregate Value less debt associated with MLPs, less minority interests and plus cash and cash equivalents associated with MLPs, to disaggregated EBITDA, defined as estimated calendar year 2012 EBITDA, less EBITDA associated with MLPs, plus cash flows associated with MLP general partnership (referred to in this section as GP) interests and plus cash flows associated with MLP limited partnership (referred to in this section as LP) interests (referred to in this section as Disaggregated EBITDA); and

yield, defined as annualized estimated calendar year dividends per share divided by current market trading price per share (referred to in this section as Yield) for 2012.

A summary of the reference ranges of trading multiples is set forth below:

<b>Trading Multiples</b>	<b>Mean</b>	<b>Median</b>	<b>High</b>	<b>Low</b>
Aggregate Value to Estimated 2012 EBITDA	11.0x	11.0x	14.1x	8.4x
Disaggregated Value to Disaggregated EBITDA	13.0x	13.0x	18.5x	8.5x
Estimated 2012 Yield	4.0%	4.1%	4.9%	3.3%

Based on the analysis of the relevant metrics for each of the comparable companies and on the experience and judgment of Morgan Stanley, Morgan Stanley selected a representative range of financial multiples of the comparable companies and applied this range of multiples to the relevant financial statistics for the Pipeline Segment.

For purposes of valuing the Pipeline Segment, Morgan Stanley also employed a disaggregated valuation approach (referred to in this section as the Disaggregated Approach), pursuant to which Morgan Stanley aggregated the separate valuations of El Paso's Disaggregated EBITDA for the Pipeline Segment, the value of El Paso's limited partner units held in EPB as of October 14, 2011 and the value of El Paso's GP cash flows using the following multiples and statistics. The value of El Paso's Disaggregated EBITDA for the Pipeline Segment were valued based on a comparable company multiple range of 9.5x to 11.0x (which range was computed using applicable estimates for the Pipeline Peer Group Companies provided by IBES, equity research analysts and public filings and based on the experience and judgment of Morgan Stanley). The value of El Paso's limited partner units held in EPB were valued based on the number of limited partner units held by El Paso and the closing price on October 14, 2011 of \$38.01 per unit of EPB. The value of El Paso's GP cash flows were valued based on a comparable company yield range of 4.0% to 3.0% (which range was computed using applicable estimates for the Pipeline Peer Group Companies provided by IBES, equity research analysts and public filings and based on the experience and judgment of Morgan Stanley).

For purposes of estimated EBITDA, dividends and GP and LP cash flows of El Paso, Morgan Stanley utilized financial forecasts prepared by the management of El Paso.



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Based on El Paso's current outstanding shares and options, Morgan Stanley estimated the implied equity value per share of the Pipeline Segment as of October 14, 2011 as follows:

<b>Ratio</b>	<b>Comparable Company Multiple Statistic Range</b>	<b>Pipeline Segment Implied Equity Value Per Share of El Paso Common Stock</b>
Aggregate Value to Estimated 2012 EBITDA	10.0x - 12.0x	\$ 9.10 - \$15.31
Aggregate Value to Estimated 2012 Disaggregated EBITDA	12.0x - 14.0x	\$ 10.82 - \$14.55
Estimated 2012 Yield per share	5.00% - 3.75%	\$ 12.00 - \$16.00
Disaggregated Approach	Various <sup>(1)</sup>	\$ 10.55 - \$14.03

(1) The various multiple statistic ranges used in the Disaggregated Approach are as described in the above paragraph.

Based on the data in the table above, Morgan Stanley calculated an implied equity value per share of El Paso's Pipeline Segment of \$10.62 to \$14.97 as of October 14, 2011 (referred to in this section as the Pipeline Comparable Company Valuation).

With respect to the Exploration and Production Segment, the peer group included the following (collectively referred to in this section as the E&P Peer Group Companies):

Cabot Oil & Gas Corporation

Comstock Resources, Inc.

EXCO Resources Inc.

Forest Oil Corporation

Newfield Exploration Company

QEP Resources, Inc.

SM Energy Company

With respect to analysis of the Exploration and Production Segment, Morgan Stanley analyzed the following statistics for each of these companies, as of October 14, 2011, and based on estimates for the peer group companies provided by IBES, equity research analysts and public filings:

the ratio of Aggregate Value to estimated calendar year 2012 EBITDA;

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the ratio of adjusted Aggregate Value, defined as Aggregate Value less Aggregate Value associated with non-exploration and production assets, as applicable (referred to in this section as Adjusted Aggregate Value ), to estimated calendar year 2011 production; and

the ratio of Adjusted Aggregate Value to proved reserves for the calendar year 2010.

A summary of the reference ranges of trading multiples is set forth below:

Trading Multiples	Mean	Median	High	Low
Aggregate Value to Estimated 2012 EBITDA	4.7x	4.2x	8.2x	3.0x
Adjusted Aggregate Value to Estimated 2011 Production (MMcfepd)	\$ 8,851	\$ 8,347	\$ 16,451	\$ 4,297
Adjusted Aggregate Value to 2010 Proved Reserves (\$ / Mcfe)	\$ 2.41	\$ 1.51	\$ 5.29	\$ 1.40

Based on the analysis of the relevant metrics for each of the comparable companies and on the experience and judgment of Morgan Stanley, Morgan Stanley selected a representative range of financial multiples of the comparable companies and applied this range of multiples to the relevant financial statistics for the Exploration and Production Segment. For purposes of estimated EBITDA, estimated production and proved reserves data, Morgan Stanley utilized financial forecasts prepared by the management of El Paso.

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Based on El Paso's current outstanding shares and options and an estimated net debt of \$2.25 billion for the Exploration and Production Segment, Morgan Stanley estimated the implied equity value per share of the Exploration and Production Segment as of October 14, 2011 as follows:

Ratio	Comparable Company		Exploration and Production Segment	
	Multiple Statistic Range		Implied Equity Value Per Share of El Paso Common Stock	
Aggregate Value to Estimated 2012 EBITDA	3.5x	4.5x	\$4.40	\$6.47
Adjusted Aggregate Value to Estimated 2011 Production	\$6,000	\$9,500	\$3.60	\$7.37
	(per MMcfepd)			
Adjusted Aggregate Value to 2010 Proved Reserves	\$1.50	\$2.50 (per Mcfe)	\$3.56	\$7.84

Based on the data in the table above, Morgan Stanley calculated an implied equity value per share of the Exploration and Production Segment of \$3.85 to \$7.23 as of October 14, 2011 (referred to in this section as the E&P Comparable Company Valuation).

Morgan Stanley aggregated the Pipeline Comparable Company Valuation and the E&P Comparable Company Valuation and, based on El Paso's current outstanding shares and options, estimated the implied equity value per share of El Paso common stock as of October 14, 2011 to be \$14.47 to \$22.20.

Morgan Stanley noted that the consideration to be received by holders of shares of El Paso common stock in the transactions pursuant to the merger agreement is \$25.91 (excluding the Per Share Warrant Consideration) and \$26.87 (including the Per Share Warrant Consideration), each based on the closing share price for Kinder Morgan common stock on October 14, 2011 of \$26.89.

With respect to Kinder Morgan, Morgan Stanley compared certain financial information of Kinder Morgan with publicly available information for peer group companies that operate in and are exposed to similar lines of business as Kinder Morgan, primarily consisting of United States-based interstate natural gas transmission systems. Specifically, Morgan Stanley looked at the Pipeline Peer Group Companies and analyzed statistics for such companies that are similar to those described above for the comparable company sum-of-the-parts analysis of El Paso's Pipeline Segment.

Based on the analysis of the relevant metrics for each of the comparable companies and on the experience and judgment of Morgan Stanley, Morgan Stanley selected a representative range of financial multiples of the comparable companies and applied this range of multiples to the relevant financial statistics for Kinder Morgan.

Based on Kinder Morgan's current outstanding shares, Morgan Stanley estimated the implied equity value per share of Kinder Morgan Class P common stock as of October 14, 2011 by using a Disaggregated Approach. The value of Kinder Morgan's limited partner units held in KMP and shares in KMR were valued based on the number of units or shares held by Kinder Morgan and the closing prices on October 14, 2011 of KMP (\$71.51 per unit) and KMR (\$62.46 per share). The value of Kinder Morgan's after-tax GP cash flows were valued based on a comparable company Yield range of 5.5% to 4.5%. The value of Kinder Morgan's after-tax distributions from its equity interest in NGPL were valued based on a comparable company multiple of 10.0x. For purposes of estimated GP cash flows and after-tax distributions from NGPL, Morgan Stanley utilized estimates of equity research analysts. Based on the Disaggregated Approach, Morgan Stanley calculated an implied equity value per share of Kinder Morgan Class P common stock of \$24.07 to \$31.19.

No company utilized in the comparable company sum-of-the-parts analysis is identical to El Paso or Kinder Morgan. In evaluating peer companies, Morgan Stanley made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the control of El Paso and Kinder Morgan, such as the impact of competition on the businesses of El Paso.

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and Kinder Morgan and the industry generally, industry growth and the absence of any adverse material change in the financial condition and prospects of El Paso, Kinder Morgan or the industry or in the financial markets in general. Mathematical analysis, such as determining the average or median, is not in itself a meaningful method of using peer group data.

***Discounted Future Equity Value Analysis***

Morgan Stanley performed a discounted future equity value analysis with respect to El Paso, which is designed to provide insight into the estimated future implied value of a company's common equity as a function of (1) with respect to the Pipeline Segment, estimated future dividends per share and a potential range of Yields and (2) with respect to the Exploration and Production Segment, estimated future EBITDA and a potential range of Aggregate Value to EBITDA multiples. Each of the resulting implied value is subsequently discounted and then aggregated to arrive at an implied present value for such company's stock price. In connection with this analysis, Morgan Stanley calculated a range of present equity values per share of the common stock on a standalone basis of each of the Pipeline Segment and the Exploration and Production Segment and using both estimates from El Paso's management and estimates of equity research analysts, as follows:

*Estimates of El Paso Management:* To calculate the discounted equity value for the Pipeline Segment, Morgan Stanley computed the 2012-2014 calendar year-end hypothetical stock price using next twelve months dividend per share for such calendar year based on El Paso's management estimates, applied an assumed Yield of 3.75% to 5.00%, which was based on Yield for the Pipeline Peer Group Companies, to each such calendar year next twelve months dividend per share, added the estimated interim dividends paid between September 30, 2011 and the respective 2012-2014 calendar year-end period and discounted such aggregated per share values back to September 30, 2011 using a discount rate of 8.0% to 9.0%, reflecting estimates of the cost of equity for El Paso's Pipeline Segment. To calculate the discounted equity value for the Exploration and Production Segment, Morgan Stanley computed the 2012-2014 calendar year-end hypothetical stock price using next twelve months EBITDA for such calendar year based on El Paso's management estimates, applied an assumed next twelve months EBITDA multiple of 3.5x to 4.5x, which was based on EBITDA multiples for the E&P Peer Group Companies, to each such calendar year next twelve months EBITDA, subtracted estimated net debt and discounted such per share values back to September 30, 2011 using a discount rate of 10.5% to 11.5%, reflecting estimates of the cost of equity for El Paso's Exploration and Production Segment. Morgan Stanley then aggregated the calculated values for each of the Pipeline Segment and the Exploration and Production Segment. Based on the calculations set forth above, this analysis implied a value range for El Paso's common stock of approximately \$17.49 to \$27.49 based on El Paso's management estimates.

*Estimates of Equity Research Analysts:* To calculate the discounted equity value for the Pipeline Segment, Morgan Stanley computed the 2012 calendar year-end hypothetical stock price based on 2013 calendar year dividend per share from estimates of equity research analysts, applied an assumed Yield of 3.75% to 5.00%, which was based on Yield for the Pipeline Peer Group Companies, to such dividend per share, added the estimated interim dividends paid between September 30, 2011 and the 2012 calendar year-end period and discounted such aggregated per share values back to September 30, 2011 using a discount rate of 8.0% to 9.0%, reflecting estimates of the cost of equity for El Paso's Pipeline Segment. To calculate the discounted equity value for the Exploration and Production Segment, Morgan Stanley computed the 2012 calendar year-end hypothetical stock price based on 2013 calendar year EBITDA from estimates of equity research analysts, applied an assumed next twelve months EBITDA multiple of 3.5x to 4.5x, which was based on EBITDA multiples for the E&P Peer Group Companies, to such calendar year EBITDA, subtracted estimated 2012 net debt and discounted such per share values back to September 30, 2011 using a discount rate of 10.5% to 11.5%, reflecting estimates of the cost of equity for El Paso's Exploration and Production Segment. Morgan Stanley then aggregated the calculated values for each of the Pipeline Segment and the Exploration and Production Segment. Based on the calculations set forth above, this analysis implied a value range for El Paso's common stock of approximately \$17.94 to \$24.50 based on estimates of equity research analysts.

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Morgan Stanley noted that the consideration to be received by holders of shares of El Paso common stock in the proposed transactions pursuant to the merger agreement is \$25.91 (excluding the Per Share Warrant Consideration) and \$26.87 (including the Per Share Warrant Consideration), each based on the closing share price for Kinder Morgan common stock on October 14, 2011 of \$26.89.

In addition, Morgan Stanley performed a discounted future equity value analysis with respect to Kinder Morgan, which is designed to provide insight into the estimated future implied value of a company's common equity as a function of estimated future dividends per share and a range of potential Yields. The resulting implied value is subsequently discounted to arrive at an implied present value for such company's stock price. In connection with this analysis, Morgan Stanley calculated a range of present equity values per share of the common stock using both estimates from Kinder Morgan's management and estimates of equity research analysts, as follows:

*Estimates of Kinder Morgan Management:* To calculate the discounted equity value for Kinder Morgan, Morgan Stanley computed the 2012-2014 calendar year-end hypothetical stock price using next twelve months dividend per share for such calendar year based on Kinder Morgan's management estimates, applied an assumed Yield of 4.5% to 5.5%, which was based on Yield for the Pipeline Peer Group Companies, to each such calendar year next twelve months dividend per share, added the estimated interim dividends paid between September 30, 2011 and the respective 2012-2014 calendar year-end period and discounted such aggregated per share values back to September 30, 2011 using a discount rate of 7.0% to 8.0%, reflecting estimates of the cost of equity for Kinder Morgan. Based on the calculations set forth above, this analysis implied a value range for Kinder Morgan's common stock of approximately \$25.45 to \$34.29 based on Kinder Morgan's management estimates.

*Estimates of Equity Research Analysts:* To calculate the discounted equity value for Kinder Morgan, Morgan Stanley computed the 2012-2014 calendar year-end hypothetical stock price using next twelve months dividend per share for such calendar year based on estimates of equity research analysts, applied an assumed Yield of 4.5% to 5.5%, which was based on Yield for the Pipeline Peer Group Companies, to each such calendar year next twelve months dividend per share, added the estimated interim dividends paid between September 30, 2011 and the respective 2012-2014 calendar year-end period and discounted such aggregated per share values back to September 30, 2011 using a discount rate of 7.0% to 8.0%, reflecting estimates of the cost of equity for Kinder Morgan. Based on the calculations set forth above, this analysis implied a value range for Kinder Morgan's common stock of approximately \$25.27 to \$32.16 based on estimates of equity research analysts.

**Morgan Stanley noted this was merely an illustrative hypothetical market value analysis and should not be interpreted as a market value or stock price prediction.**

***Discounted Cash Flow Analysis***

Morgan Stanley calculated a range of implied equity values per share for El Paso and Kinder Morgan based on a discounted cash flow analysis. A discounted cash flow analysis is designed to provide an implied value of the present value of a company's future cash flows and terminal value of a company.

With respect to the valuation of El Paso common stock using estimates of El Paso's management, Morgan Stanley separately valued (i) the Pipeline Segment, (ii) the Exploration and Production Segment and (iii) the value of net operating loss carryforwards for U.S. federal income tax purposes of El Paso (referred to in this section as the "NOLs") using the following methodologies:

The value of the Pipeline Segment was based on an aggregated valuation approach and a Disaggregated Approach.

The aggregated approach for the Pipeline Segment was based on the net present value of the consolidated free cash flows for the years 2012 through 2015 based on the estimates of El Paso management and terminal values in the year 2015 based on an EBITDA exit multiple of 9.25x to 10.75x, which was based on EBITDA multiples for the Pipeline Peer Group Companies. These

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values were discounted to present values as of September 30, 2011 at a discount rate ranging from 5.0% to 6.5%, reflecting estimates of the weighted average cost of capital for the Pipeline Segment.

The Disaggregated Approach for the Pipeline Segment separately valued the cash flows for El Paso for the years 2012 through 2015 associated with (a) LP distributions received, (b) GP distributions received and (c) the remaining value of the Pipeline Segment. For the LP distributions received, terminal values in the year 2015 were based on a terminal Yield of 5.25% to 6.25%, which was based on Yield for the Pipeline Peer Group Companies, and these values were discounted to present values as of September 30, 2011 at a discount rate ranging from 9.5% to 10.5%, reflecting estimates of the cost of equity based on EPB and selected comparable companies. For the GP distributions received terminal values in the year 2015 were based on a terminal Yield of 3.5% to 4.5%, which was based on Yield for the Pipeline Peer Group Companies and these values were discounted to present values as of September 30, 2011 at a discount rate ranging from 11.5% to 12.5%, reflecting estimates of the cost of equity based on selected comparable companies. For the remaining value of the Pipeline Segment, terminal values in the year 2015 were based on an exit EBITDA multiple of 8.75x to 10.25x, which was based on EBITDA multiples for the Pipeline Peer Group Companies and these values were discounted to present values as of September 30, 2011 at a discount rate ranging from 5.0% to 6.5%, reflecting estimates of the weighted average cost of capital for the Pipeline Segment.

With respect to the Exploration and Production Segment, Morgan Stanley calculated the net present value of free cash flows for the years 2012 through 2015 based on the estimates of El Paso management and calculated terminal values in the year 2015 based on an EBITDA exit multiple of 4.75x to 5.50x, which was based on EBITDA multiples for the E&P Peer Group Companies. These values were discounted to present values as of September 30, 2011 at a discount rate ranging from 8.0% to 9.5%, reflecting estimates of the weighted average cost of capital for the Exploration and Production Segment.

With respect to the valuation of the NOLs, Morgan Stanley calculated the net present value of free cash flows for the years 2012 through 2015 based on the estimates of El Paso management. These values were discounted to present values as of September 30, 2011 at a discount rate ranging from 6.5% to 8.0%, reflecting estimates of the weighted average cost of capital for El Paso. Morgan Stanley then aggregated the valuation of the Pipeline Segment, the Exploration and Production Segment and the NOLs.

With respect to the valuation of El Paso common stock using estimates of equity research analysts, Morgan Stanley calculated (i) the net present value of consolidated free cash flows for El Paso for the years 2012 through 2015 based on the estimates of equity research analysts and (ii) the NOLs based on estimates of El Paso management. Morgan Stanley then calculated terminal values in the year 2015 based on an EBITDA exit multiple of 7.0x to 8.5x, which was based on EBITDA multiples for selected comparable companies. These values were discounted to present values as of September 30, 2011 at a discount rate ranging from 6.5% to 8.0%, reflecting estimates of the weighted average cost of capital for El Paso.

The following table summarizes Morgan Stanley's analysis with respect to El Paso:

Estimate Source	<b>Implied Present Value Per Share of El Paso Common Stock</b>	
El Paso Management	\$ 22.13	\$30.37
Equity Research Analysts	\$ 18.43	\$26.21

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Morgan Stanley noted that the consideration to be received by holders of shares of El Paso common stock in the proposed transactions pursuant to the merger agreement is \$25.91 (excluding the Per Share Warrant Consideration) and \$26.87 (including the Per Share Warrant Consideration), each based on the closing share price for Kinder Morgan common stock on October 14, 2011 of \$26.89.

With respect to valuation of Kinder Morgan Class P common stock using estimates of Kinder Morgan's management, Morgan Stanley utilized projections from estimates of Kinder Morgan management and estimates of equity research analysts. With respect to estimates from Kinder Morgan management, Morgan Stanley calculated the net present value of dividends per share for Kinder Morgan for the second half of 2011 through 2015 based on the estimates of Kinder Morgan management and calculated terminal values in the year 2015 based on a terminal Yield of 4.0% to 5.0%, which was based on Yield for the Pipeline Peer Group Companies. These values were discounted to present values as of September 30, 2011 at a discount rate ranging from 7.0% to 8.0%, reflecting estimates of the cost of equity for Kinder Morgan.

With respect to valuation of Kinder Morgan Class P common stock using estimates of equity research analysts, Morgan Stanley calculated the net present value of dividends per share for Kinder Morgan for the second half of 2011 through 2015 based on the estimates of equity research analysts and calculated terminal values in the year 2015 based on a terminal Yield of 4.0% to 5.0%, which was based on Yield for the Pipeline Peer Group Companies. These values were discounted to present values as of September 30, 2011 at a discount rate ranging from 7.0% to 8.0%, reflecting estimates of the cost of equity for Kinder Morgan.

The following table summarizes Morgan Stanley's analysis with respect to Kinder Morgan:

Estimate Source	Implied Present Value Per Share of Kinder Morgan Class P Common Stock	
Kinder Morgan Management	\$ 29.74	\$37.11
Equity Research Analysts	\$ 27.92	\$34.79

**Precedent Transaction Analysis**

Morgan Stanley performed a precedent transactions analysis with respect to El Paso, which is designed to imply a value of a company based on publicly available financial terms of selected transactions that share some characteristics with the transactions pursuant to the merger agreement. In connection with its analysis, Morgan Stanley compared publicly available statistics for both transactions in the same sector as the Pipeline Segment (occurring between January 18, 2000 and July 19, 2011) and transactions in the same sector as the Exploration and Production Segment (occurring between May 7, 2001 and July 15, 2011). The following is a list of the transactions reviewed:

Selected transactions for the Pipeline Segment analysis (Acquiror/Target (date of transaction)):

Energy Transfer Equity, L.P. / Southern Union Company (7/19/2011)

Enterprise Products Partners L.P. / TEPPCO Partners, L.P. (6/29/2009)

Investor Group / Kinder Morgan (5/29/2006)

Kinder Morgan / Terasen (8/1/2005)

CCE Holdings / CrossCountry Energy (9/2/2004)

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Enterprise Products Partners, L.P. / GulfTerra Energy Partners, L.P. (12/15/2003)

Duke Energy / Westcoast Energy Inc. (9/20/2001)

NiSource Inc. / Columbia Energy Group (2/28/2000)

El Paso / Coastal Corp. (1/18/2000)



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Selected transactions for the Exploration and Production Segment analysis (Acquiror/Target (date of transaction)):

BHP Billiton Group / Petrohawk Energy Corporation (7/15/2011)

Chevron Corporation / Atlas Energy Inc. (11/8/2010)

SandRidge Energy Inc. / Arena Resources Inc. (6/2/2010)

Apache Corporation / Mariner Energy Inc. (4/15/2010)

Exxon Mobil Corporation / XTO Energy Inc. (12/14/2009)

Denbury Resources Inc. / Encore Acquisition Company (11/1/2009)

Plains Exploration & Production Co. / Pogo Producing Company (7/17/2007)

Anadarko Petroleum Corporation / Western Gas Resources Inc. (6/23/2006)

Anadarko Petroleum Corporation / Kerr-McGee Corporation (6/23/2006)

Petrohawk Energy Corporation / KCS Energy Inc. (4/21/2006)

ConocoPhillips / Burlington Resources Inc. (12/12/2005)

Occidental Petroleum Corporation / Vintage Petroleum Inc. (10/13/2005)

Chevron Corporation / Unocal Corporation (7/18/2005)

Noble Energy Inc. / Patina Oil & Gas Corporation (12/16/2004)

En Cana Corporation / Tom Brown Inc. (4/15/2004)

Kerr-McGee Corporation / Westport Resources Corporation (4/7/2004)

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Devon Energy Corporation / Ocean Energy Inc. (2/24/2003)

Phillips Petroleum Corporation / Conoco Inc. (11/18/2001)

Devon Energy Corporation / Mitchell Energy & Development Corp. (8/14/2001)

Williams Companies Inc. / Barrett Resources Corp. (5/7/2001)

Based on the analysis of the relevant metrics for each of the comparable transactions related to the Pipeline Segment, and on the experience and judgment of Morgan Stanley, Morgan Stanley selected a representative range of Aggregate Value divided by next twelve months EBITDA multiples of the comparable transactions listed above of 11.0x to 12.0x and applied this range of multiples to the relevant Disaggregated EBITDA for the Pipeline Segment. In addition, Morgan Stanley applied a range of premia of 0% to 30%, which was based on premia for select comparable transactions, to the market price of the units of EPB held by El Paso and a range of multiples of 30x to 50x, which was based on multiples for select comparable transactions, to GP distributions received by El Paso. Based on the analysis of the relevant metrics for each of the comparable transactions related to the Exploration and Production Segment, and on the experience and judgment of Morgan Stanley, Morgan Stanley selected a representative range of Aggregate Value divided by last twelve months EBITDA multiples of the comparable transactions listed above of 5.5x to 7.0x and applied this range of multiples to the relevant EBITDA for the Exploration and Production Segment. Morgan Stanley then aggregated the valuations of the Pipeline Segment and the Exploration and Production Segment and, based on El Paso's current outstanding shares and options, estimated the implied equity value per share of El Paso common stock as of October 14, 2011 to be \$20.21 to \$28.60.

In addition, Morgan Stanley analyzed data with respect to historical premiums paid for precedent transactions for U.S. publicly listed targets with transaction values greater \$1 billion since September 15, 1991, since September 15, 2001 and since October 1, 2008, each as provided by Thomson Reuters. From such analysis, Morgan Stanley selected a representative range of implied premia of 30% to 40% and applied it to the closing share price of El Paso common stock on October 14, 2011 of \$19.59. Morgan Stanley estimated the implied equity value per share of El Paso common stock as of October 14, 2011 to be \$25.47 to \$27.43.

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Morgan Stanley noted that the consideration to be received by holders of shares of El Paso common stock in the proposed transactions pursuant to the merger agreement is \$25.91 (excluding the Per Share Warrant Consideration) and \$26.87 (including the Per Share Warrant Consideration), each based on the closing share price for Kinder Morgan common stock on October 14, 2011 of \$26.89.

No company or transaction utilized as a comparison in the selected precedent transactions analysis is identical to El Paso or Kinder Morgan, nor are the transactions identical to the transactions contemplated by the merger agreement. In evaluating the transactions listed above, Morgan Stanley made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the control of El Paso and Kinder Morgan, such as the impact of competition on the business of El Paso, Kinder Morgan or the industry generally, industry growth and the absence of any adverse material change in the financial condition and prospects of El Paso, Kinder Morgan or the industry or in the financial markets in general, which could affect the public trading value of the companies and the aggregate value of the transactions to which they are being compared. Mathematical analysis, such as determining the average or median, is not in itself a meaningful method of using comparable transaction data.

**Relative Implied Exchange Ratio Analysis**

Morgan Stanley also performed an implied exchange ratio analysis which reviewed implied exchange ratios based on certain analyses for El Paso and Kinder Morgan compared to an estimated all-stock exchange ratio. The estimated all-stock exchange ratio for the transactions based on El Paso and Kinder Morgan share prices on October 14, 2011 was 0.9635x (excluding the Per Share Warrant Consideration) and 0.9992x (including the Per Share Warrant Consideration). This metric is calculated by taking the consideration to be received by holders of shares of El Paso common stock in the proposed transactions pursuant to the merger agreement, \$25.91 (excluding the Per Share Warrant Consideration) and \$26.87 (including the Per Share Warrant Consideration), and dividing such consideration by Kinder Morgan Class P common stock price of \$26.89 on October 14, 2011. Such analyses included in this implied exchange ratio analysis include 52-week share price ranges, discounted analyst price targets, comparable company sum-of-the-parts analysis, discounted equity value analysis, discounted cash flow analysis and precedent transactions analysis. Implied exchange ratios were calculated by estimated share prices for El Paso and Kinder Morgan based on the metrics and analyses below and dividing the applicable implied El Paso common stock price by the implied Kinder Morgan Class P common stock price. For the precedent transactions analysis, Kinder Morgan Class P common stock price of \$26.89 on October 14, 2011 was used.

The computations resulted in the following relative implied exchange ratios:

<b>Metric</b>	<b>Low</b>	<b>High</b>
52-Week Trading Range	0.5321x	0.6702x
Discounted Analyst Price Targets	0.6515x	0.7761x
Comparable Company Sum-of-the-Parts Analysis	0.6012x	0.7118x
Discounted Equity Value Analysis		
(using estimates of El Paso and Kinder Morgan management)	0.6871x	0.8019x
Discounted Equity Value Analysis		
(using estimates of equity research analysts)	0.7099x	0.7619x
Discounted Cash Flow Analysis		
(using estimates of El Paso and Kinder Morgan management)	0.7441x	0.8182x
Discounted Cash Flow Analysis		
(using estimates of equity research analysts)	0.6601x	0.7535x
Precedent Transactions Premium Paid Analysis	0.9471x	1.0199x
Precedent Transactions Analysis	0.7516x	1.0636x

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Morgan Stanley also performed an implied offer value analysis which reviewed the implied offer values to holders of El Paso common stock based on the per share value of Kinder Morgan Class P common stock computed using certain analyses. The implied offer value per share of El Paso common stock was calculated using (i) \$14.65 per share cash consideration, (ii) \$0.96 value of the Per Share Warrant Consideration and (iii) 0.4187 shares of Kinder Morgan Class P common stock per share of El Paso common stock (converted to dollars per share using the per share value of Kinder Morgan Class P common stock computed using certain analyses). Morgan Stanley compared the resulting implied offer values per share of El Paso common stock to the estimated per share values of El Paso common stock computed using certain corresponding analyses described herein (referred to in this section as the "El Paso Reference Range"). Such analyses included in this implied offer value analysis include 52-week share price ranges, discounted analyst price targets, comparable company sum-of-the-parts analysis, discounted equity value analysis and discounted cash flow analysis.

The computations resulted in the following implied offer values per share of El Paso common stock compared to the applicable El Paso Reference Range:

Metric	Implied Offer Value Per Share of El Paso Common Stock		El Paso Reference Range	
	Low	High	Low	High
52-Week Trading Range	\$ 25.45	\$ 29.07	\$ 12.51	\$ 21.54
Discounted Analyst Price Targets	\$ 27.10	\$ 28.85	\$ 20.00	\$ 26.82
Comparable Company Sum-of-the-Parts Analysis	\$ 25.69	\$ 28.67	\$ 14.47	\$ 22.20
Discounted Equity Value Analysis (using estimates of El Paso and Kinder Morgan management)	\$ 26.27	\$ 29.97	\$ 17.49	\$ 27.49
Discounted Equity Value Analysis (using estimates of equity research analysts)	\$ 26.19	\$ 29.07	\$ 17.94	\$ 24.50
Discounted Cash Flow Analysis (using estimates of El Paso and Kinder Morgan management)	\$ 28.06	\$ 31.15	\$ 22.13	\$ 30.37
Discounted Cash Flow Analysis (using estimates of equity research analysts)	\$ 27.30	\$ 30.17	\$ 18.43	\$ 26.21

***General***

In connection with the review of the proposed transactions by El Paso's board of directors, Morgan Stanley performed a variety of financial and comparative analyses for purposes of rendering its opinion. The preparation of a financial opinion is a complex process and is not necessarily susceptible to a partial analysis or summary description. In arriving at its opinion, Morgan Stanley considered the results of all of its analyses as a whole and did not attribute any particular weight to any analysis or factor it considered. Furthermore, Morgan Stanley believes that selecting any portion of its analyses, without considering all analyses as a whole, would create an incomplete view of the process underlying Morgan Stanley's analyses and opinion. In addition, Morgan Stanley may have given various analyses and factors more or less weight than other analyses and factors, and may have deemed various assumptions more or less probable than other assumptions. As a result, the ranges of valuations resulting from any particular analysis or combination of analyses described above should not be taken to be Morgan Stanley's view of the actual value of El Paso or Kinder Morgan.

In performing its analyses, Morgan Stanley made numerous assumptions with respect to industry performance, general business, regulatory, economic, market and financial conditions and other matters. Many of these assumptions are beyond the control of El Paso and Kinder Morgan. Any estimates contained in Morgan Stanley's analyses are not necessarily indicative of future results or actual values, which may be significantly more or less favorable than those suggested by such estimates.

Morgan Stanley conducted the analyses described above solely as part of its analysis of the fairness from a financial point of view of the consideration to be received by the holders of shares of El Paso common stock



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pursuant to the merger agreement in the proposed transactions to such holders and in connection with the delivery of its opinion, dated October 16, 2011, to El Paso's board of directors. These analyses do not purport to be appraisals or to reflect the prices at which shares of El Paso common stock or Kinder Morgan Class P common stock might actually trade. The consideration to be received by the holders of shares of El Paso common stock was determined through arm's length negotiations between El Paso and Kinder Morgan and was approved by El Paso's board of directors. Morgan Stanley provided advice to El Paso's board of directors during these negotiations. Morgan Stanley did not, however, recommend any specific consideration to El Paso or El Paso's board of directors or that any specific consideration constituted the only appropriate consideration for the transactions. In addition, Morgan Stanley's opinion and its presentation to El Paso's board of directors was one of many factors taken into consideration by El Paso's board of directors in deciding to approve and declare advisable the merger agreement and the first merger agreement and the transactions contemplated by the merger agreement and the first merger agreement. Consequently, the Morgan Stanley analyses as described above should not be viewed as determinative of the opinion of El Paso's board of directors with respect to the consideration or the value of El Paso or Kinder Morgan, or of whether El Paso's board of directors would have been willing to agree to different consideration.

Morgan Stanley's opinion was approved by a committee of Morgan Stanley investment banking and other professionals in accordance with its customary practice.

El Paso's board of directors selected Morgan Stanley to act as its financial adviser based upon Morgan Stanley's qualifications, experience and expertise and its knowledge of the business affairs of El Paso and took into account that Morgan Stanley advised the special committee of the board of directors of Kinder Morgan when Kinder Morgan was purchased in a going-private transaction in 2006. Morgan Stanley is a global financial services firm engaged in the securities, investment management and individual wealth management businesses. Its 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 El Paso, Kinder Morgan, or any other company, or any currency or commodity, that may be involved in the transactions, or any related derivative instrument. In the two years prior to the date of its opinion, Morgan Stanley has not provided financial advisory or financing services to Kinder Morgan and has not received fees from Kinder Morgan. In the two years prior to the date of its opinion, Morgan Stanley has provided financial advisory and financing services to El Paso, its affiliates and certain affiliates of Kinder Morgan and has received fees in connection with such services. Morgan Stanley may also seek to provide such services to El Paso and its affiliates and Kinder Morgan and its affiliates in the future and expects to receive fees for the rendering of those services.

Under the terms of its engagement letter, Morgan Stanley provided El Paso financial advisory services and a financial opinion in connection with the transactions, and El Paso has agreed to pay Morgan Stanley an aggregate fee of \$35 million, \$7 million of which was payable upon public announcement of the merger agreement and the balance of which is contingent upon completion of the transactions. El Paso has also agreed to reimburse Morgan Stanley for its expenses incurred in performing its services, including reasonable fees and expenses of its legal counsel. In addition, El Paso has agreed to indemnify Morgan Stanley and its affiliates, their respective directors, officers, agents and employees and each person, if any, controlling Morgan Stanley or any of its affiliates against certain liabilities and expenses, including certain liabilities under the federal securities laws, relating to or arising out of Morgan Stanley's engagement.

**El Paso's Engagement of Goldman Sachs**

El Paso engaged Goldman Sachs to act as its financial advisor in connection with its previously announced spin-off transaction and related matters in connection with the transaction with Kinder Morgan. Prior to receipt

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of Kinder Morgan's proposal, El Paso entered into an engagement letter with Goldman Sachs related to the spin-off and had paid Goldman Sachs \$5 million in connection with advice provided prior to El Paso's public announcement of its consideration of the proposed spin-off. Under the terms of such engagement letter, El Paso also agreed to pay Goldman Sachs a fee of \$25 million upon the closing of the spin-off. On October 6, 2011, El Paso entered into another engagement letter with Goldman Sachs pursuant to which Goldman Sachs agreed to provide El Paso with financial advice and assistance in connection with the possible sale of El Paso, including to Kinder Morgan, and in this regard Goldman Sachs specifically agreed to review and analyze El Paso's business plan in connection with the proposed spin-off for purposes of aiding El Paso in its analysis of the Kinder Morgan transaction. For these services, El Paso agreed to pay Goldman Sachs a fee of \$20 million upon completion of the transaction with Kinder Morgan. El Paso has also agreed under both engagement letters to reimburse Goldman Sachs for its expenses incurred in performing its services, including fees and expenses of its legal counsel. In addition, under both engagement letters El Paso has agreed to indemnify Goldman Sachs and its affiliates and their respective partners, directors, agents, employees and controlling persons against certain liabilities in connection with or as a result of Goldman Sachs' engagement. The engagement letter related to the Kinder Morgan transaction also contained an acknowledgment that none of the Goldman Sachs personnel working for El Paso had communicated or shared, and provided that none of such persons would communicate or share, any confidential information with respect to the transactions with Goldman Sachs personnel having responsibility for managing the investment by funds managed by an affiliate of Goldman Sachs in Kinder Morgan or any other member of such affiliate and that Goldman Sachs implemented procedures reasonably designed to monitor compliance with such restrictions. As of the date of this information statement/proxy statement/prospectus, to the best of El Paso's and Kinder Morgan's knowledge, this confidentiality was maintained throughout the course of the discussions between Kinder Morgan and El Paso. Furthermore, Goldman Sachs and El Paso agreed that Goldman Sachs personnel who are working for El Paso who have historically been involved in banking transactions for Kinder Morgan and its affiliates would continue to work with El Paso on the transactions and would not work on any transaction for Kinder Morgan during the term of the engagement. At the request of El Paso, on October 15, 2011, Goldman Sachs also delivered a letter to El Paso confirming that there would be no obligation of El Paso to retain Goldman Sachs as exclusive financial advisor in connection with sales of all or any portion of El Paso's exploration and production business in connection with the sale of El Paso to another party or to Kinder Morgan. See "Background of the Transactions" for a further description of Goldman Sachs' role in connection with the transactions.

**Opinions of Kinder Morgan's Financial Advisors*****Opinion of Evercore Group L.L.C. to the Kinder Morgan Board of Directors***

In connection with the transactions, Kinder Morgan retained Evercore Group L.L.C., or Evercore, to act as a financial advisor to the Kinder Morgan board of directors. On October 16, 2011, at a meeting of the Kinder Morgan board of directors, Evercore rendered its oral opinion, subsequently confirmed by delivery of a written opinion on October 16, 2011, that, as of October 16, 2011 and based upon and subject to the factors, procedures, assumptions, qualifications and limitations set forth in its opinion, the merger consideration pursuant to the merger agreement was fair, from a financial point of view, to Kinder Morgan.

**The full text of the written opinion of Evercore, dated as of October 16, 2011, which sets forth, among other things, the procedures followed, assumptions made, matters considered and qualifications and limitations on the scope of review undertaken in rendering its opinion, is attached as Annex F to this information statement/proxy statement/prospectus and is incorporated by reference in its entirety into this information statement/proxy statement/prospectus. You are urged to read this opinion carefully and in its entirety. Evercore's opinion was addressed to, and provided for the information and benefit of, the Kinder Morgan board of directors (in its capacity as such) in connection with its evaluation of the merger consideration from a financial point of view, and did not address any other aspects or implications of the transactions. The opinion does not constitute a recommendation to the Kinder Morgan board of directors or to any other persons in respect of the transactions, including as to how any holder of shares of Kinder Morgan common stock should act or vote in respect of the Kinder Morgan share and warrant issuances.**

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**Evercore's opinion does not address the relative merits of the transactions as compared to any other business or financial strategies that might be available to Kinder Morgan, nor does it address the underlying business decision of Kinder Morgan to engage in the transactions. Finally, Evercore did not express any opinion as to the price at which Kinder Morgan common stock and, when listed for trading, the Kinder Morgan warrants, the common units of KMP, the shares of KMR, El Paso common stock or the common units of EPB will trade at any time.**

In connection with rendering its opinion and performing its related financial analysis, Evercore, among other things:

reviewed certain publicly available business and financial information that Evercore deemed to be relevant filed with the SEC by Kinder Morgan and certain of its affiliates, including KMP, and by El Paso and certain of its affiliates, including EPB, as well as publicly available research analysts' estimates;

reviewed certain oil and gas reserve reports of El Paso (referred to in this section as the Reserve Reports) prepared by El Paso and audited by Ryder Scott Company, L.P.;

reviewed certain non-public projected financial and operating data and assumptions relating to Kinder Morgan and certain of its affiliates, including KMP, prepared and furnished to Evercore by management of Kinder Morgan;

reviewed certain non-public projected financial and operating data and assumptions relating to El Paso and certain of its affiliates, including EPB, prepared and furnished to Evercore by management of El Paso;

discussed past and current operations, current financial condition and financial projections of Kinder Morgan and certain of its affiliates, including KMP, with management of Kinder Morgan;

discussed past and current operations, current financial condition and financial projections of El Paso and certain of its affiliates, including EPB, with management of El Paso;

reviewed the amount and timing of the synergies expected to result from the transactions, the timing and use of certain tax attributes of El Paso, as well as certain transaction expenses and one-time cash costs arising from the transaction, each as estimated by management of Kinder Morgan;

reviewed certain non-public pro forma projected financial data and assumptions regarding Kinder Morgan and certain of its affiliates, including KMP, and El Paso and certain of its affiliates, including EPB, prepared and furnished to Evercore by management of Kinder Morgan and El Paso;

reviewed the reported prices and the historical trading activities for Kinder Morgan common stock, El Paso common stock, KMP common units, EPB common units, and KMR common stock;

compared the financial performance of Kinder Morgan and El Paso and their market trading multiples with those of certain other publicly traded master limited partnerships that Evercore deemed relevant;



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compared the financial performance of KMP and EPB and their market trading multiples with those of certain other publicly traded companies that Evercore deemed relevant;

compared the proposed financial terms of the transactions with publicly available financial terms of certain transactions that Evercore deemed relevant;

reviewed a draft merger agreement dated October 16, 2011, which Evercore assumed was in substantially final form and from which Evercore assumed the final form would not vary in any respect material to its analyses; and

performed such other analyses and studies and considered such other information and factors as Evercore deemed appropriate. For purposes of its analysis and opinion, Evercore assumed and relied upon, without undertaking any independent verification of, the accuracy and completeness of all of the information publicly available, and all of

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the information supplied or otherwise made available to, discussed with, or reviewed by Evercore, and Evercore assumed no liability therefor. With respect to the projected financial and operating data relating to Kinder Morgan, El Paso and certain of their respective affiliates (including KMP and EPB) prepared by the respective managements of Kinder Morgan and El Paso, Evercore assumed, based on the advice of the respective managements of Kinder Morgan and El Paso, that such data had been reasonably prepared on bases reflecting the best currently available estimates and good faith judgments of the respective managements of Kinder Morgan and El Paso as to the future financial and operating performance of Kinder Morgan, El Paso and such affiliates. Evercore relied on the projections prepared by the respective managements of Kinder Morgan and El Paso with respect to projected financial and operating data of Kinder Morgan, El Paso and certain of their respective affiliates (including KMP and EPB). Evercore expressed no view as to such financial and operating data, or as to the assumptions on which they were based. Evercore was made aware that the management of Kinder Morgan 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 transactions, and that such asset divestitures and concessions were reflected in the projected financial and operating data relating to Kinder Morgan and certain of its affiliates, including KMP, prepared and furnished to Evercore by the management of Kinder Morgan. Evercore expressed no view as to the sufficiency of, or the assumptions underlying such projected financial and operating data regarding such possible divestitures and concessions. With respect to the expected synergies and integration costs estimated by Kinder Morgan management to result from the transactions, and the timing and use of the tax attributes of El Paso, Evercore assumed that the timing, use and amounts of such synergies, integration costs and tax attributes were reasonable and that the transactions will qualify for federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code.

For purposes of rendering its opinion, Evercore assumed, in all respects material to its analysis, that the executed merger agreement was substantially the same as the draft dated October 16, 2011 and reviewed by Evercore, that the representations and warranties of each party contained in the merger agreement are true and correct, that each party will perform all of the covenants and agreements required to be performed by it under the merger agreement, and that all conditions to the consummation of the transactions will be satisfied without any material modification or waiver thereof. Evercore further assumed that there has been no material change in the business, assets, liabilities, financial condition, results of operations, cash flows or prospects of Kinder Morgan, El Paso or any of their respective affiliates since the date of the most recent financial statements provided to Evercore. Finally, Evercore assumed that all governmental, regulatory and other consents, approvals and releases necessary for the consummation of the transactions will be obtained without any material delay, limitation, restriction or condition that would have an adverse effect on Kinder Morgan, El Paso or the consummation of the transactions or materially reduce the benefits of the transactions to Kinder Morgan other than with respect to the possible asset divestitures and concessions.

Evercore did not make or assume any responsibility for making any physical inspection, independent valuation or appraisal of the assets or liabilities of Kinder Morgan, El Paso or any of their respective affiliates and, except for the Reserve Reports, Evercore was not furnished with any such valuation or appraisal. Evercore did not evaluate the solvency or fair value of Kinder Morgan, El Paso or any of their respective affiliates under any state or federal laws relating to bankruptcy, insolvency or similar matters. In addition, at Kinder Morgan's direction, Evercore assumed that the outcome of any current and pending litigation affecting El Paso would not be material to Evercore's analysis. Evercore's opinion was necessarily based upon information made available to it as of the date of the opinion and financial, economic, market and other conditions as they existed and as could be evaluated on the date of the opinion. It is understood that subsequent developments may affect Evercore's opinion and that Evercore does not have any obligation to update, revise or reaffirm its opinion.

Evercore was not asked to opine upon, and expressed no opinion with respect to, any matter other than the fairness, from a financial point of view, to Kinder Morgan of the merger consideration to be paid by Kinder Morgan to holders of shares of El Paso common stock, taken together in the aggregate, pursuant to the merger agreement. Evercore did not express any view on, and its opinion did not address, any other term or aspect of the

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merger agreement or the transactions 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 transactions, including, without limitation (i) the fairness of the transactions to, or of the merger consideration received in connection therewith by, the creditors or other constituencies of Kinder Morgan or El Paso or the stockholders of El Paso, 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 Kinder Morgan, or any class of such persons, whether relative to the merger consideration or otherwise. Evercore's opinion did not address the relative merits of the transactions as compared to other business or financial strategies that might be available to Kinder Morgan, nor did it address the underlying business decision of Kinder Morgan to engage in the transactions. Evercore's opinion did not constitute a recommendation as to how any holder of Kinder Morgan common stock or Kinder Morgan warrants should act or, if applicable, vote in respect of the issuance of Kinder Morgan common stock or Kinder Morgan warrants in the transactions. Evercore expressed no opinion as to the price at which Kinder Morgan common stock and, when listed, the Kinder Morgan warrants, the common units of KMP, the shares of KMR, El Paso common stock or EPB common units will trade at any time. Evercore is not a legal, regulatory, accounting or tax expert and assumed, with Kinder Morgan's consent, the accuracy and completeness of assessments by Kinder Morgan, El Paso and their respective advisors with respect to legal, regulatory, accounting and tax matters.

Set forth below is a summary of the material financial analyses performed and reviewed by Evercore with the Kinder Morgan board of directors on October 16, 2011 in connection with rendering its oral opinion and the preparation of its written opinion letter dated October 16, 2011. Each analysis was provided to the Kinder Morgan board of directors. The following summary, however, does not purport to be a complete description of the analyses performed and reviewed by Evercore. In connection with arriving at its opinion, Evercore considered all of its analyses as a whole and the order of the analyses described and the results of these analyses do not represent any relative importance or particular weight given to these analyses by Evercore. Except as otherwise noted, the following quantitative information, to the extent that it is based on market data, is based on market data (including the closing prices for the common stock or common units, as the case may be, of Kinder Morgan, El Paso, KMP, KMR and EPB) that existed on October 13, 2011, and is not necessarily indicative of current market conditions.

**The following summary of financial analyses includes information presented in tabular format. These tables must be read together with the text of each summary in order to fully understand the financial analyses performed by Evercore. The tables alone do not constitute a complete description of the financial analyses performed by Evercore. Considering the tables below without considering the full narrative description of the financial analyses, including the methodologies and assumptions underlying the analyses, could create a misleading or incomplete view of Evercore's financial analyses.**

*Valuation of the Merger Consideration*

Evercore performed a series of analyses to derive an indicative valuation range of the per share merger consideration, which includes cash and Kinder Morgan common stock and warrants to be issued by Kinder Morgan pursuant to the merger agreement, by utilizing the following methodologies to value the Kinder Morgan common stock and warrants.

*Kinder Morgan Common Stock: Discounted Cash Flow Analysis*

Evercore performed a discounted cash flow analysis of Kinder Morgan to determine indicative values of Kinder Morgan common stock based on the present value as of July 1, 2011 of its projected standalone dividends from July 1, 2011 through December 31, 2015 and forecasted terminal values as of December 31, 2015. In performing this discounted cash flow analysis, Evercore utilized Kinder Morgan management forecasts of projected standalone dividends for each calendar year and terminal values as of December 31, 2015 based on a range of terminal value yields ranging from 3.75% to 5.50%, relative to Kinder Morgan's yield range of 3.70% to 5.07% since Kinder Morgan's initial public offering in February 2011. Evercore discounted all free cash flows

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and the terminal values to July 1, 2011 using discount rates ranging from 9.0% to 10.0% derived from the capital asset pricing model and 14.0% to 18.0%, derived from the total expected annual market return model from comparable general partners as of October 13, 2011.

Using the discount rates derived from the capital asset pricing model, Evercore's analysis indicated a range of implied values per share of Kinder Morgan common stock of \$23.86 to \$32.51. Using the discount rates derived from the total annual expected market return of comparable general partners as of October 31, 2011, Evercore's analysis indicated a range of implied values per share of Kinder Morgan common stock of \$18.24 to \$24.56. Evercore then used the mean of the low ends and the high ends of these calculations to arrive at a range of implied values per share of Kinder Morgan common stock of \$21.05 to \$28.53. This equals a range of implied values for 0.4187 shares of Kinder Morgan common stock of \$8.81 to \$11.95.

*Kinder Morgan Common Stock: Peer Group Trading Analysis*

Evercore performed a peer group trading analysis of Kinder Morgan by reviewing the market values and trading multiples of the following six publicly traded general partners of master limited partnerships that Evercore deemed comparable to KMP's general partner:

**Peer Group:**

Alliance Holdings GP, L.P.

Atlas Energy, L.P.

Crosstex Energy, Inc.

Energy Transfer Equity, L.P.

NuStar GP Holdings, LLC

Targa Resources Corp.

Although the peer group was compared to KMP's general partner for purposes of this analysis, no entity included in the peer group analysis is identical to KMP's general partner because of differences between the business mix of the underlying master limited partnership, position in the general partner incentive distribution right tier and also other characteristics of the peer group and KMP's general partner. In evaluating the peer group, Evercore relied on publicly available filings and equity research analyst estimates, which estimates are based in part on judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the control of KMP's general partner, such as the impact of competition on the business of KMP's general partner, as well as on the industry, generally, industry growth and the absence of any adverse material change in the financial condition and prospects of KMP's general partner or the industry or in the markets generally.

All peer group multiples were based on closing stock or unit prices on October 13, 2011. For each of the peer group entities, Evercore calculated the following:

Enterprise Value of GP Only/2011E GP Distribution, which is defined as market value of equity, plus debt and preferred stock, less cash and the value of limited partner units at their current common unit price (Enterprise Value of GP Only), as a multiple of the general partner's estimated general partner unit and incentive distribution right (GP-IDR) cash flows to be received by the general partner for the calendar year 2011.

Enterprise Value of GP Only/2012E GP Distribution, which is defined as Enterprise Value of GP Only as a multiple of the general partner's estimated GP-IDR cash flows to be received by the general partner for the calendar year 2012.

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A summary of the reference ranges of trading multiples is set forth below:

<b>Peer Group Comparable Companies</b>	<b>Mean</b>	<b>Median</b>	<b>High</b>	<b>Low</b>
Enterprise Value of GP Only /2011E GP Distribution	20.9x	19.4x	29.5x	15.5x
Enterprise Value of GP Only / 2012E GP Distribution	17.7x	17.2x	21.7x	14.5x

Evercore calculated a range of implied values of Kinder Morgan's interest in KMP's general partner by applying comparable trading value multiples to estimates of the GP-IDR cash flows for calendar years 2011 and 2012, as provided by Kinder Morgan management. Based on trading value multiples ranging from 16.0x to 20.0x applied to estimated GP-IDR cash flows for calendar year 2011, Evercore arrived at a range of implied values of Kinder Morgan's interest in KMP's general partner of approximately \$19.0 billion to approximately \$23.7 billion. Based on trading value multiples ranging from 15.0x to 18.0x applied to estimated GP-IDR cash flows for calendar year 2012, Evercore calculated a range of implied values of Kinder Morgan's interest in KMP's general partner of approximately \$21.2 billion to approximately \$25.4 billion. Evercore then used the mean of the low ends and the high ends of these calculations to determine a range of implied values of Kinder Morgan's interest in KMP's general partner of approximately \$20.1 billion to approximately \$24.6 billion. Evercore then added the market values of the KMP common units and KMR common stock as of October 13, 2011 held by Kinder Morgan to determine a range of implied enterprise values of Kinder Morgan of approximately \$22.4 billion to approximately \$26.9 billion. Evercore then subtracted the unconsolidated net debt of Kinder Morgan as of June 30, 2011 of approximately \$3.2 billion and divided the resulting range of implied total equity values of Kinder Morgan of approximately \$19.3 billion to approximately \$23.7 billion by the number of fully diluted shares of outstanding Kinder Morgan common stock to determine a range of implied values per share of Kinder Morgan common stock of \$27.24 to \$33.59. This equals a range of implied values for 0.4187 shares of Kinder Morgan common stock of \$11.41 to \$14.07.

*Kinder Morgan Common Stock: Present Value of Future Share Price Analysis*

Evercore performed a present value of future share price analysis of Kinder Morgan to determine indications of the implied value per share of Kinder Morgan common stock based on the present value as of July 1, 2011. In performing this analysis, Evercore calculated the potential future share prices of Kinder Morgan common stock in the calendar years 2011 through 2015 by applying the Kinder Morgan common stock yield of 4.46% as of October 13, 2011 to the projected standalone Kinder Morgan dividend. Evercore then discounted the resulting potential future share prices of Kinder Morgan common stock to July 1, 2011 using discount rates ranging from 9.0% to 10.0% derived from the capital asset pricing model and 14.0% to 18.0%, derived from the total expected annual market return from comparable general partners as October 13, 2011.

Using the discount rates derived from the capital asset pricing model, Evercore's analysis indicated a range of implied values per share of Kinder Morgan common stock of \$25.72 to \$27.06. Using the discount rates derived from the total expected annual market return, Evercore's analysis indicated a range of implied values per share of Kinder Morgan common stock of \$19.42 to \$26.05. Evercore then used the mean of the low ends and the high ends of these calculations to arrive at a range of implied values per share of Kinder Morgan common stock of \$22.57 to \$26.56. This equals a range of implied values for 0.4187 shares of Kinder Morgan common stock of \$9.45 to \$11.12.

*Kinder Morgan Common Stock: Summary*

Evercore's discounted cash flow analysis, peer group trading analysis and present value of future stock price analysis of Kinder Morgan resulted in indicative valuation ranges for 0.4187 shares of Kinder Morgan common stock of \$8.81 to \$11.95, \$11.41 to \$14.07 and \$9.45 to \$11.12, respectively. Given these results, Evercore arrived at a final range of implied values for 0.4187 shares of Kinder Morgan common stock of \$8.81 to \$14.07.

**Table of Contents***Kinder Morgan Warrants: Black-Scholes Analysis*

Evercore performed an analysis for the Kinder Morgan warrants included in the merger consideration based on the Black-Scholes pricing model. The Kinder Morgan warrant is an American-style option that can be exercised any time prior to its expiration in five years. Evercore assumed a volatility range of 20.0% to 30.0% relative to: (i) Kinder Morgan common stock's 100-day and 150-day historical volatility as of October 13, 2011 of 34.2632% and 29.6370%, respectively; (ii) other C-corporation pipeline companies that Evercore deemed to have certain characteristics similar to that of Kinder Morgan (including El Paso, Enbridge Inc., Spectra Energy Corp., TransCanada Corporation and The Williams Companies, Inc.), which as of October 13, 2011 traded at a median 100-day, 200-day, 250-day and 400-day historical volatility of 29.7972%, 24.6460%, 23.1366% and 25.0684%, respectively; and (iii) the Alerian MLP Index, which as of October 13, 2011 traded at a 100-day, 200-day, 250-day and 400-day historical volatility of 26.1845%, 20.7129%, 19.0322% and 18.6770%, respectively. Evercore's Black-Scholes analysis indicated an implied value range for 0.640 Kinder Morgan warrants of \$0.51 to \$1.57.

*Kinder Morgan Warrants: Theoretical Present Value Analysis*

Evercore performed a theoretical present value analysis to determine indications of the implied value for Kinder Morgan warrants included in the merger consideration. In performing this analysis, Evercore calculated an implied future share price of Kinder Morgan common stock for calendar year 2016 by assuming an estimated pro forma dividend per share of \$2.00 for calendar year 2016 and applying a yield range of 4.25% to 5.00%. Evercore then subtracted the strike price of \$40.00 per warrant from such implied future share price of Kinder Morgan common stock to determine the implied future value per Kinder Morgan warrant. Evercore then discounted the implied future value per Kinder Morgan warrant to July 1, 2011 using discount rates ranging from 9.0% to 10.0% derived from the capital asset pricing model and 14.0% to 18.0%, derived from the total expected annual market return model from comparable general partners as of October 13, 2011.

Using the discount rates derived from the capital asset pricing model, Evercore's analysis indicated a range of implied values per Kinder Morgan warrant of \$0.04 to \$4.84. Using the discount rates derived from the total expected market return model, Evercore's analysis indicated a range of implied values per Kinder Morgan warrant of \$0.03 to \$3.95. Evercore then used the mean of the low ends and the high ends of these calculations to arrive at a range of implied values per Kinder Morgan warrant of \$0.03 to \$4.84. Evercore then multiplied each value per Kinder Morgan warrant by 0.640 to derive a value of \$0.02 to \$2.69 for 0.640 Kinder Morgan warrants.

*Kinder Morgan Warrants: Summary*

Evercore's Black-Scholes analysis and theoretical present value analysis of the Kinder Morgan warrants resulted in indicative valuation ranges for 0.640 Kinder Morgan warrants of \$0.51 to \$1.57 and \$0.02 to \$2.69, respectively. Using the mean of the low ends and the high ends of these calculations, Evercore determined a final indicative valuation range for 0.640 Kinder Morgan warrants of \$0.27 to \$2.13.

*Valuation of Per Share Merger Consideration*

Based on the sum of the indicative valuations of each of the cash, stock and warrant components, Evercore calculated an indicative valuation range of the per share merger consideration. As discussed above, Evercore's analysis arrived at indicative valuation ranges for 0.4187 shares of Kinder Morgan common stock of \$8.81 to \$14.07, and Evercore determined a range of implied values for 0.640 Kinder Morgan warrants of \$0.27 to \$2.13. Adding the cash consideration of \$14.65 per share, Evercore arrived at an indicative valuation range for the per share merger consideration pursuant to the discounted cash flow analysis, peer group trading analysis and present value of future stock price analysis of \$23.46 to \$30.85, excluding and including the value of the Kinder Morgan warrants. From that range, Evercore then selected a range of \$23.46 to \$28.73 as the indicative value of the per share merger consideration.

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**Table of Contents***Valuation of El Paso*

Evercore performed a series of analyses to derive an indicative valuation range for shares of El Paso common stock and compared each one of the resulting implied values per share from its various analyses to the indicative valuation range of the per share merger consideration of \$23.46 to \$28.73.

*Sum-of-the-Parts Analysis*

Given the different natures of the constituent business segments operated and interests owned by El Paso, Evercore analyzed El Paso on the basis of the sum of its constituent business segments and interests, or as the sum of the parts of El Paso. In this analysis, Evercore valued separately El Paso's (1) pipelines segment (including its midstream business), (2) exploration and production (E&P) segment, (3) general partner interest in EPB, and (4) limited partner interest in EPB. Evercore valued each part by performing a discounted cash flow analysis, peer group trading analysis and precedent transactions analysis and applying various multiples to selected financial or operational measures of each part of El Paso.

*(a) Discounted Cash Flow/Risked Net Asset Value Analyses*

Evercore calculated a range of implied values of El Paso common stock based on the sum of its parts resulting from Evercore's discounted cash flow analyses of El Paso's pipelines segment, general partner interest in EPB and limited partner interest in EPB, and from its risked net asset value analysis of El Paso's E&P segment. By totaling the low ends and the high ends of the valuations range for each of El Paso's parts, Evercore determined a range of implied enterprise values for El Paso of approximately \$23.6 billion to approximately \$32.1 billion. Evercore then subtracted El Paso's unconsolidated net debt as of June 30, 2011 of approximately \$10.1 billion from the range of implied enterprise values to arrive at a range of implied total equity values for El Paso of approximately \$13.4 billion to approximately \$22.0 billion. By dividing the range of implied total equity values by the number of fully diluted shares of outstanding El Paso common stock, Evercore determined a range of implied values per share of El Paso common stock of \$17.26 to \$28.00. Evercore then added the estimated net present value of synergies of \$3.85 to \$4.86 per share. Evercore based the implied value per share of the expected synergies on a discounted cash flow analysis of the after-tax cash flows projected to be derived from the expected synergies from July 1, 2011 through December 31, 2015 and a forecasted terminal value as of December 31, 2015 using the perpetuity growth method based on perpetuity growth rates ranging from (0.5%) to 0.5%. Evercore discounted the projected free cash flows projected to be derived from the expected synergies and the resulting terminal value to July 1, 2011 using discount rates ranging from 7.0% to 8.0%, reflecting estimates of the weighted average cost of capital of El Paso, to arrive at a range of implied values per share of El Paso common stock of \$21.11 to \$32.86.

*(b) Peer Group Trading Analyses*

Evercore calculated a range of implied values of El Paso common stock based on the sum of its parts resulting from Evercore's peer group analysis. By totaling the low ends and the high ends of the valuations range for each of El Paso's parts, Evercore determined a range of implied enterprise values for El Paso of approximately \$22.2 billion to approximately \$30.5 billion. Evercore then subtracted El Paso's unconsolidated net debt as of June 30, 2011 of approximately \$10.1 billion from the range of implied enterprise values to arrive at a range of implied total equity values for El Paso of approximately \$12.1 billion to approximately \$20.4 billion. By dividing the range of implied total equity values by the number of fully diluted shares of outstanding El Paso common stock, Evercore determined a range of implied values per share of El Paso common stock of \$15.55 to \$25.98. Evercore then added the estimated net present value of synergies to arrive at a range of implied values per share of El Paso common stock of \$19.39 to \$30.84.

*(c) Precedent Transactions Analyses*

Evercore calculated a range of implied values of El Paso common stock based on the sum of its parts resulting from its precedent transactions analysis. By totaling the low ends and the high ends of the valuations

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range for each of El Paso's parts, Evercore determined a range of implied enterprise values for El Paso of approximately \$22.0 billion to approximately \$29.5 billion. Evercore then subtracted El Paso's unconsolidated net debt as of June 30, 2011 of approximately \$10.1 billion from the range of implied enterprise values to arrive at a range of implied total equity values for El Paso of approximately \$11.9 billion to approximately \$19.4 billion. By dividing the range of implied total equity values by the number of fully diluted shares of outstanding El Paso common stock, Evercore determined a range of implied values per share of El Paso common stock of \$15.30 to \$24.71. Evercore then added the estimated net present value of synergies to arrive at a range of implied values per share of El Paso common stock of \$19.15 to \$29.57.

*El Paso Consolidated*

## (a) Discounted Cash Flow Analysis

Evercore performed a discounted cash flow analysis of El Paso to determine indications of implied values of El Paso common stock based on the present value as of July 1, 2011 of its unlevered free cash flows from July 1, 2011 through December 31, 2015 and forecasted terminal values as of December 31, 2015. In performing the discounted cash flow analysis, Evercore calculated unlevered free cash flows using El Paso management forecasts of EBITDA as adjusted by Kinder Morgan, existing tax, depreciation and capital expenditure bases, and net operating loss carryforwards available to El Paso. Evercore calculated terminal values based on estimated terminal value multiples ranging from 8.0x to 9.0x based on enterprise value multiples of a selected group of similar publicly traded companies. Evercore also calculated terminal values using the perpetuity growth method based on perpetuity growth rates ranging from 0.5% to 1.5%. Evercore discounted all free cash flows and terminal values to July 1, 2011 using discount rates ranging from 7.0% to 8.0%, reflecting estimates of the weighted average cost of capital for El Paso.

Using terminal value multiples, Evercore's analysis indicated a range of implied values per share of El Paso common stock of \$25.45 to \$31.50. Using the perpetuity growth method, Evercore's analysis indicated a range of implied values per share of El Paso common stock of \$17.32 to \$28.87. Evercore determined a range of implied values per share of El Paso common stock of \$17.32 and \$31.50 and added the estimated net present value of synergies to arrive at a range of implied values per share of El Paso common stock of \$21.17 to \$36.37.

## (b) Peer Group Trading Analysis

Evercore performed a peer group trading analysis of El Paso by reviewing the market values and trading multiples of the following seven publicly traded companies that Evercore deemed comparable to El Paso:

**Peer Group:**

Enbridge Inc.

EQT Corporation

National Fuel Gas Company

NiSource Inc.

Spectra Energy Corporation

TransCanada Corporation

The Williams Companies, Inc.

Although the peer group was compared to El Paso for purposes of this analysis, no company used in the peer group analysis is identical to El Paso because of differences between the business mix, markets served, operations and other characteristics of the peer group and El Paso. In evaluating the peer group, Evercore relied on publicly available filings and equity research analyst estimates, which estimates are based in part on judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the control of El Paso, such as the impact of competition on the business of El Paso, as well as on the industry, generally, industry growth and the absence of any adverse material change in the financial condition and prospects of El Paso or the industry or in the markets generally.





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All peer group multiples were based on closing stock prices on October 13, 2011. For each of the peer group companies, Evercore calculated the following:

Total Enterprise Value/2011E EBITDA, which is defined as market value of equity, plus debt and preferred stock, less cash (Total Enterprise Value), as a multiple of estimated EBITDA for the calendar year 2011.

Total Enterprise Value/2012E EBITDA, which is defined as Total Enterprise Value as a multiple of estimated EBITDA for the calendar year 2012.

A summary of the reference ranges of trading multiples is set forth below:

<b>Peer Group Comparable Companies</b>	<b>Mean</b>	<b>Median</b>	<b>High</b>	<b>Low</b>
Total Enterprise Value/2011E EBITDA	9.8x	9.5x	13.5x	7.1x
Total Enterprise Value/2012E EBITDA	8.8x	8.7x	12.4x	6.3x

Evercore calculated a range of implied enterprise values of El Paso by applying comparable trading value multiples to estimates of EBITDA of El Paso for calendar years 2011 and 2012, net of unallocated general and administrative expenses, as provided by El Paso and adjusted by Kinder Morgan. Based on trading value multiples ranging from 9.0x to 10.5x applied to estimated EBITDA of El Paso for calendar year 2011, net of unallocated general and administrative expenses, Evercore arrived at a range of implied enterprise values of El Paso of approximately \$24.4 billion to approximately \$28.5 billion. Based on trading value multiples ranging from 7.5x to 9.0x applied to estimated EBITDA of El Paso for calendar year 2012, net of unallocated general and administrative expenses, Evercore calculated a range of implied enterprise values of El Paso of approximately \$24.4 billion to approximately \$29.3 billion. Evercore then used the mean of the low ends and the high ends of these calculations to determine a range of implied enterprise values of El Paso of approximately \$24.4 billion to approximately \$28.9 billion. Evercore then subtracted El Paso's unconsolidated net debt as of June 30, 2011 of approximately \$10.1 billion from the range of implied enterprise values to arrive at a range of implied total equity values for El Paso of approximately \$14.3 billion to approximately \$18.8 billion. By dividing the range of implied total equity values by the number of fully diluted shares of outstanding El Paso common stock, Evercore determined a range of implied values per share of El Paso common stock of \$18.32 to \$23.95. Evercore then added the estimated net present value of synergies to arrive at a range of implied values per share of El Paso common stock of \$22.17 to \$28.81.

(c) Present Value of Future Stock Price Analysis

Evercore performed a present value of future share price analysis of El Paso to determine indications of the implied value per share of El Paso common stock based on the present value as of July 1, 2011.

In performing this analysis, Evercore calculated the potential future share prices of El Paso common stock in the calendar years 2011 through 2015 by applying El Paso's enterprise value/estimated 2011 EBITDA multiple as of October 13, 2011 of 9.5x to arrive at a range of implied enterprise values of El Paso of approximately \$25.2 billion to approximately \$45.4 billion. Evercore then subtracted El Paso's unconsolidated net debt as of June 30, 2011 of approximately \$10.1 billion from the range of implied enterprise values to arrive at a range of implied total equity values for El Paso of approximately \$15.1 billion to approximately \$35.2 billion. By dividing the range of implied total equity values by the number of fully diluted shares of outstanding El Paso common stock, Evercore determined a range of implied future values per share of El Paso common stock of \$19.28 to \$44.65. Evercore then discounted the potential future share prices of El Paso common stock to July 1, 2011 using discount rates ranging from 10.5% to 11.5% derived from the capital asset pricing model to arrive at range of implied values per share of El Paso common stock of \$18.26 to \$28.49.

In performing this analysis, Evercore also applied El Paso's latest twelve months price/earnings multiple as of October 13, 2011 of 27.0x to El Paso management estimates of earnings per share of El Paso common stock as

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adjusted by Kinder Morgan for the calendar years 2011 through 2015 to arrive at a range of implied future values per share of El Paso common stock of \$28.35 to \$65.34. Evercore then discounted the potential future share prices of El Paso common stock to July 1, 2011 using discount rates ranging from 10.5% to 11.5% derived from the capital asset pricing model to arrive at a range of implied values per share of El Paso common stock of \$26.85 to \$41.69.

Evercore then used the low ends and the high ends of these calculations to arrive at a range of implied values per share of Kinder Morgan common stock of \$18.26 to \$41.69. Evercore then added the estimated net present value of synergies to arrive at a range of implied values per share of El Paso common stock of \$22.10 to \$46.55.

**(d) Premiums Paid Analysis**

Evercore reviewed the premiums offered or paid in 26 U.S. mergers and acquisitions transactions since January 1, 2009 with transaction values of greater than \$5.0 billion and applied the relevant range of premiums to El Paso's relevant share price as of October 13, 2011. These precedent transactions involved premiums ranging from a discount of 42.0% as compared to the 52-week high stock price to a premium of 130.2% as compared to the one-month average stock price. Additionally, Evercore reviewed the premiums offered or paid in a subset of the transactions described above that included both cash and stock in the consideration. This subset of the precedent transactions involved premiums ranging from a discount of 36.9% as compared to the 52-week high stock price to a premium of 96.8% as compared to the stock price one day prior to the transaction announcement. Evercore then applied the premium ranges for these transactions as compared to the stock price one day prior to transaction announcement to El Paso's closing share price on October 13, 2011, which indicated an implied per share value range for El Paso common stock of \$20.34 to \$37.69 for all transactions as well as for transactions with cash and stock consideration.

*Pro Forma Analysis*

Evercore analyzed the projected pro forma impact of the transactions on Kinder Morgan common stock, EPB common units and KMP common units by analyzing its accretive or dilutive effect on the dividend per share of common stock or distributable cash flow per common unit, as the case may be, of Kinder Morgan, El Paso, KMP and EPB for the calendar years 2012 through 2015. The results of this analysis were based on forecasts of financial data for Kinder Morgan, KMP and EPB provided by Kinder Morgan and El Paso management, including estimates of dividends per share or distributable cash flows per unit for each calendar year and, in each case, using estimates of synergies resulting from the transactions provided by Kinder Morgan management and of the impact from certain contemplated divestitures and drop downs of assets into KMP and EPB following the completion of the transactions. The results of this analysis were based on the closing prices per share of Kinder Morgan common stock and El Paso common stock as of October 13, 2011.

*Miscellaneous*

The foregoing summary of certain material financial analyses does not purport to be a complete description of the analyses or data presented by Evercore. In connection with the review of the transactions by the Kinder Morgan board of directors, Evercore performed a variety of financial and comparative analyses for purposes of rendering its opinion. The preparation of a fairness opinion is a complex process and is not necessarily susceptible to partial analysis or summary description. Selecting portions of the analyses or of the summary described above, without considering the analyses as a whole, could create an incomplete view of the processes underlying Evercore's opinion. In arriving at its fairness determination, Evercore considered the results of all the analyses and did not draw, in isolation, conclusions from or with regard to any one analysis or factor considered by it for purposes of its opinion. Rather, Evercore made its determination as to fairness on the basis of its experience and professional judgment after considering the results of all the analyses. In addition, Evercore may have given various analyses and factors more or less weight than other analyses and factors, and may have

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deemed various assumptions more or less probable than other assumptions. As a result, the ranges of valuations resulting from any particular analysis or combination of analyses described above should not be taken to be the view of Evercore with respect to the actual value of the common stock or common units, as the case may be, of Kinder Morgan, El Paso, KMP or EPB. No company or partnership used in the above analyses as a comparison is directly comparable to Kinder Morgan, El Paso, KMP or EPB, and no transaction used is directly comparable to the transactions. Furthermore, Evercore's analyses involve complex considerations and judgments concerning financial and operating characteristics and other factors that could affect the acquisition, public trading or other values of the companies or transactions used, including judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the control of Kinder Morgan, El Paso and their respective advisors.

Evercore prepared these analyses solely for the purpose of providing an opinion to the Kinder Morgan board of directors as to the fairness, from a financial point of view, of the merger consideration to be paid by Kinder Morgan pursuant to the merger agreement to Kinder Morgan. These analyses do not purport to be appraisals or to necessarily reflect the prices at which the business or securities actually may be sold. Any estimates contained in these analyses are not necessarily indicative of actual future results, which may be significantly more or less favorable than those suggested by such estimates. Accordingly, estimates used in, and the results derived from, Evercore's analyses are inherently subject to substantial uncertainty, and Evercore assumes no responsibility if future results are materially different from those forecasted in such estimates.

The issuance of the fairness opinion was approved by an opinion committee of Evercore.

The merger consideration pursuant to the merger agreement was determined through arm's-length negotiations between Kinder Morgan and El Paso and was approved by the Kinder Morgan board of directors. Evercore provided advice to Kinder Morgan during these negotiations. Evercore did not, however, recommend any specific merger consideration to Kinder Morgan or the Kinder Morgan board of directors or that any specific merger consideration constituted the only appropriate consideration for the transaction. Evercore's opinion to the Kinder Morgan board of directors was one of many factors taken into consideration by the Kinder Morgan board of directors in deciding to approve the transaction. Consequently, the analyses as described above should not be viewed as determinative of the opinion of the Kinder Morgan board of directors with respect to the merger consideration or of whether the Kinder Morgan board of directors would have been willing to agree to different consideration.

Under the terms of Evercore's engagement letter with Kinder Morgan, Evercore provided Kinder Morgan financial advisory services and a financial opinion in connection with the transactions. Pursuant to the terms of its engagement letter, a success fee of \$15.0 million is payable to Evercore upon consummation of the transactions. Of the success fee, \$2.0 million was payable upon delivery of Evercore's fairness opinion to the Kinder Morgan board of directors. In addition, Kinder Morgan has agreed to reimburse Evercore for its reasonable out-of-pocket expenses (including reasonable legal fees, expenses and disbursements) incurred in connection with its engagement and to indemnify Evercore and any of its members, parties, officers, directors, advisors, representatives, employees, agents, affiliates or controlling persons, if any, against certain liabilities and expenses arising out of its engagement and any related transaction.

During the two year period prior to the date of Evercore's opinion, no material relationship existed between Evercore and its affiliates, on the one hand, and Kinder Morgan, El Paso or any of their respective affiliates, on the other hand, pursuant to which compensation was received or was intended to be received by Evercore or its affiliates as a result of such a relationship, and no such relationship was mutually understood to have been contemplated. Evercore may provide financial or other services to Kinder Morgan, El Paso or any of their respective affiliates in the future (including in connection with the contemplated divestitures of assets following the completion of the transactions) and in connection with any such services Evercore may receive compensation.

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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 Kinder Morgan, El Paso, KMP, EPB, KMR 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.

The management of Kinder Morgan recommended, and the Kinder Morgan board of directors determined, to engage Evercore to act as a financial advisor based on its qualifications, experience and reputation, because Evercore presented the transaction to Kinder Morgan and had a historical relationship with Kinder Morgan. For these reasons and concerns regarding maintaining confidentiality, the Kinder Morgan board of directors did not consider any other financial advisors in connection with the transactions (other than Barclays Capital). Evercore is an internationally recognized investment banking firm and is regularly engaged in the valuation of businesses in connection with mergers and acquisitions, leveraged buyouts, competitive biddings, private placements and valuations for corporate and other purposes.

***Opinion of Barclays Capital to the Kinder Morgan Board of Directors***

Kinder Morgan engaged Barclays Capital to act as a financial advisor with respect to the transactions. On October 16, 2011, Barclays Capital rendered its oral opinion (which was subsequently confirmed in writing) to Kinder Morgan's board of directors that, as of such date and based upon and subject to the qualifications, limitations and assumptions stated in its opinion, the merger consideration to be paid by Kinder Morgan in the transactions was fair, from a financial point of view, to Kinder Morgan.

**The full text of Barclays Capital's written opinion, dated as of October 16, 2011, is attached as Annex G to this information statement/proxy statement/prospectus. Barclays Capital's written opinion sets forth, among other things, the assumptions made, procedures followed, factors considered and limitations upon the review undertaken by Barclays Capital in rendering its opinion. You are encouraged to read the opinion carefully in its entirety. The following is a summary of Barclays Capital's opinion and the methodology that Barclays Capital used to render its opinion. This summary is qualified in its entirety by reference to the full text of the opinion.**

Barclays Capital's opinion, the issuance of which was approved by Barclays Capital's Fairness Opinion Committee, is addressed to the board of directors of Kinder Morgan, addresses only the fairness, from a financial point of view, of the consideration to be paid by Kinder Morgan in the transactions and does not constitute a recommendation to any stockholder of Kinder Morgan as to how such stockholder should vote with respect to the transactions or any other matter. The terms of the transactions were determined through arm's-length negotiations between Kinder Morgan and El Paso and were approved by Kinder Morgan's board of directors. Barclays Capital did not recommend any specific form of consideration to Kinder Morgan or that any specific form of consideration constituted the only appropriate consideration for the transactions. Barclays Capital was not requested to address, and its opinion does not in any manner address, Kinder Morgan's underlying business decision to proceed with or effect the transactions or the likelihood of consummation of the transactions. In addition, Barclays Capital expressed no opinion on, and its 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 transactions, or any class of such persons, relative to the merger consideration to be paid by Kinder Morgan in the transactions or otherwise. No limitations were imposed by Kinder Morgan's board of directors upon Barclays Capital with respect to the investigations made or procedures followed by it in rendering its opinion.

In arriving at its opinion, Barclays Capital reviewed and analyzed, among other things:

the merger agreement and the specific terms of the transactions;

publicly available information concerning Kinder Morgan, KMP, KMR, El Paso and EPB that Barclays Capital believed to be relevant to its analysis, including, without limitation, each of their respective Annual Reports on Form 10-K for the fiscal year ended 2010 and Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2011 and June 30, 2011;

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financial and operating information with respect to the businesses, operations and prospects of Kinder Morgan, KMP and KMR furnished to Barclays Capital by Kinder Morgan, including financial projections of Kinder Morgan prepared by management of Kinder Morgan (referred to in this section as the Kinder Morgan Projections );

financial and operating information with respect to the businesses, operations and prospects of El Paso and EPB furnished to Barclays Capital by the management of El Paso and Kinder Morgan, including (i) financial projections of El Paso and EPB prepared by management of El Paso (the El Paso Projections ) and (ii) financial projections of El Paso and EPB prepared by management of Kinder Morgan (referred to in this section as the Kinder Morgan El Paso Projections );

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 Barclays Capital deemed relevant;

the trading history of Kinder Morgan 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 Barclays Capital deemed relevant;

a comparison of the historical financial results and present financial condition of Kinder Morgan and El Paso with each other and with those of other companies that Barclays Capital deemed relevant;

a comparison of the financial terms of the transactions with the financial terms of certain other transactions that Barclays Capital deemed relevant;

the potential pro forma impact of the transactions on the current and future financial performance of the combined company, including (i) the amounts and timing of the cost savings and operating synergies (referred to in this section as the Expected Synergies ) expected by the management of Kinder Morgan to result from the transactions, (ii) the anticipated impact of certain asset dispositions and transfers discussed with the management of Kinder Morgan and (iii) the estimated tax savings expected to result from the historical net operating losses of El Paso expected by the management of Kinder Morgan to result from the transactions ((i) through (iii) collectively, referred to in this section as the Expected Benefits );

published estimates by independent equity research analysts with respect to the future financial performance of Kinder Morgan and El Paso;

the relative trading liquidity of Kinder Morgan common stock and the common stock of the pro forma combined company; and

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, referred to in this section as the El Paso Reserve Reports ).

In addition, Barclays Capital had discussions with the managements of Kinder Morgan and El Paso concerning their respective businesses, operations, assets, liabilities, financial conditions and prospects and undertook such other studies, analyses and investigations as Barclays Capital deemed appropriate.

In arriving at its opinion, Barclays Capital assumed and relied upon the accuracy and completeness of the financial and other information used by Barclays Capital without any independent verification of such information and without assuming any responsibility or liability for any independent verification of such information and further relied upon the assurances of the managements of Kinder Morgan and El Paso they are not aware of any facts or circumstances that would make such information inaccurate or misleading. With respect to the Kinder Morgan

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Projections, upon the advice of Kinder Morgan, Barclays Capital assumed that such projections had been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of Kinder Morgan as to the future financial performance of Kinder Morgan and

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Barclays Capital relied on such projections in arriving at its opinion. With respect to the El Paso Projections, upon the advice of El Paso and Kinder Morgan, Barclays Capital assumed that such projections had 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 Kinder Morgan El Paso Projections, upon the advice of Kinder Morgan, Barclays Capital assumed that such projections had been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of Kinder Morgan as to the future financial performance of El Paso and Barclays Capital relied on such projections in arriving at its opinion. With respect to the Expected Benefits, Barclays Capital assumed that the amount and timing of the Expected Benefits were reasonable as estimated by the management of Kinder Morgan and Barclays Capital also assumed, upon the advice of Kinder Morgan, that the Expected Benefits would be realized substantially in accordance with such estimates. With respect to the El Paso Reserve Reports, Barclays Capital discussed these reports with the managements of Kinder Morgan and El Paso and upon the advice of Kinder Morgan and El Paso, Barclays Capital assumed that the El Paso Reserve Reports were 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 Kinder Morgan, Barclays Capital considered the possible asset divestitures and concessions that Kinder Morgan may have to make in connection with the process to obtain governmental and regulatory approval for the transactions (referred to in this section as the Possible Divestitures ), which were discussed with Barclays Capital by the management of Kinder Morgan. Barclays Capital assumes no responsibility for and Barclays Capital expressed no view as to any projections or estimates described above in this paragraph or the assumptions on which they were based.

In arriving at its opinion, Barclays Capital did not conduct a physical inspection of the properties and facilities of either Kinder Morgan or El Paso, and did not make or obtain any evaluations or appraisals of the assets or liabilities of either Kinder Morgan or El Paso. Barclays Capital's opinion necessarily is based upon market, economic and other conditions as they existed on, and could be evaluated as of, the date of its opinion letter. Barclays Capital assumes no responsibility for updating or revising its opinion based on events or circumstances that may occur after the date of its opinion. In addition, Barclays Capital expressed no opinion as to the prices at which shares of (i) Kinder Morgan Class P common stock or El Paso common stock would trade at any time following the announcement of the transactions or (ii) Kinder Morgan Class P common stock would trade at any time following the consummation of the transactions.

Barclays Capital assumed the accuracy of the representations and warranties contained in the merger agreement and all agreements related thereto. In addition, Barclays Capital assumed that the transactions would be consummated in accordance with the terms of the merger agreement without waiver, modification or amendment of any material term, condition or agreement thereof. Other than as contemplated by the Possible Divestitures, Barclays Capital also assumed, upon the advice of Kinder Morgan, that necessary governmental, regulatory and third party approvals, consents and releases for the transactions would be obtained without any adverse effect that is material to Kinder Morgan, the combined company or the benefits expected by the management of Kinder Morgan to be realized from the transactions. Barclays Capital did not express any opinion as to any tax or other consequences that might result from the transactions, nor did its opinion address any legal, tax, regulatory or accounting matters, as to which Barclays Capital understands that Kinder Morgan obtained such advice as it deemed necessary from qualified professionals.

In connection with rendering its opinion, Barclays Capital performed certain financial, comparative and other analyses as summarized below. In arriving at its opinion, Barclays Capital did not ascribe a specific range of values to the shares of El Paso common stock but rather made its determination as to fairness, from a financial point of view, to Kinder Morgan of the merger consideration to be paid by Kinder Morgan in the transactions on the basis of various financial and comparative analyses. The preparation of a fairness opinion is a complex process and involves various determinations as to the most appropriate and relevant methods of financial and comparative analyses and the application of those methods to the particular circumstances. Therefore, a fairness opinion is not readily susceptible to summary description.



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In arriving at its opinion, Barclays Capital did not attribute any particular weight to any single analysis or factor considered by it but rather made qualitative judgments as to the significance and relevance of each analysis and factor relative to all other analyses and factors performed and considered by it and in the context of the circumstances of the particular transaction. Accordingly, Barclays Capital believes that its analyses must be considered as a whole, as considering any portion of such analyses and factors, without considering all analyses and factors as a whole, could create a misleading or incomplete view of the process underlying its opinion.

The following is a summary of the material financial, comparative and other analyses used by Barclays Capital in preparing its opinion to Kinder Morgan's board of directors. Certain financial, comparative and other analyses summarized below include information presented in tabular format. In order to fully understand the financial, comparative and other analyses used by Barclays Capital, the tables must be read together with the text of each summary, as the tables alone do not constitute a complete description of the financial, comparative and other analyses. In performing its analyses, Barclays Capital made numerous assumptions with respect to industry performance, general business and economic conditions and other matters, many of which are beyond the control of Kinder Morgan or any other parties to the proposed transaction. None of Kinder Morgan, El Paso, Barclays Capital or any other person assumes responsibility if future results are materially different from those discussed. Any estimates contained in these analyses are not necessarily indicative of actual values or predictive of future results or values, which may be significantly more or less favorable than as set forth below. In addition, analyses relating to the value of the businesses do not purport to be appraisals or reflect the prices at which the businesses may actually be sold.

*Summary of Analyses*

Barclays Capital prepared separate valuations of El Paso both before and after considering the pro forma impact of the Expected Synergies from the transactions, and Kinder Morgan before considering the pro forma impact of the Expected Synergies in the transactions. In determining valuation for El Paso, Barclays Capital used the following methodologies:

discounted cash flows analysis,

comparable companies analysis,

comparable transactions analysis,

analysis of equity research analyst price targets and

sum of the parts analysis.

In determining valuation for Kinder Morgan, Barclays Capital used the following methodologies:

discounted cash flows analysis,

comparable companies analysis,

comparable transactions analysis and

analysis of equity research analyst price targets.

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Each of these methodologies was used to generate reference enterprise or equity value ranges for each of El Paso and Kinder Morgan, respectively. The enterprise value ranges for each company were adjusted for appropriate on-balance sheet and off-balance sheet assets and liabilities to arrive at implied equity value ranges (in aggregate dollars) for each company, including, as applicable without limitation, for El Paso: the after-tax net present value of El Paso's commodity hedging portfolio; the net present value of the tax savings expected to result from El Paso's historical net operating losses; the pro forma impact of applicable divestiture activity by El Paso; and El Paso's interests in EPB. The implied equity value ranges for each of El Paso and Kinder Morgan, respectively, were then divided by diluted shares outstanding, comprised of primary shares and incorporating the dilutive effect of outstanding options and restricted stock, as appropriate, in order to derive implied equity value ranges per share for each company.

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The implied equity value ranges per share of El Paso common stock were compared to the value of the merger consideration to be paid by Kinder Morgan in the transactions. In addition, the value of the merger consideration to be paid by Kinder Morgan in the transactions was compared, for each valuation methodology, to the total summation of the implied equity value range per share of Kinder Morgan common stock multiplied by the 0.4187 exchange ratio plus the cash consideration of \$14.65 per share and a range of values for the 0.640 Kinder Morgan warrants per El Paso share calculated as described below. In addition, the implied equity value ranges per share of Kinder Morgan common stock were compared to Kinder Morgan's closing stock price of \$26.89 on October 14, 2011.

Barclays Capital analyzed the equity value ranges per share of El Paso before considering the pro forma impact of the Expected Synergies from the transactions under each of the analyses listed above. In addition, Barclays Capital estimated the enterprise value range of the value attributable to the Expected Synergies using the same discounted cash flow analysis methodology outlined below for El Paso. The resultant enterprise value ranges were added to the results of the discounted cash flow analysis, the comparable companies analysis and the sum of the parts analysis, respectively, as outlined below to provide additional analyses of equity value ranges per share for El Paso after considering the pro forma impact of the Expected Synergies from the transactions.

In addition to analyzing the value of El Paso and Kinder Morgan, Barclays Capital also analyzed and reviewed (i) the pro forma impact of the transactions on the current and future financial performance of the combined company including the pro forma impact of the Expected Benefits on the projected estimates for 2012, 2013, 2014 and 2015 for (a) distributable cash flow per share and dividends per share for Kinder Morgan, (b) distributable cash flow and distributions per limited partner (referred to in this section as an LP) unit for KMP and (c) distributable cash flow and distributions per LP unit for EPB and (ii) certain publicly available information related to selected corporate transactions to calculate the amount of premiums paid by the acquirers to the acquired company's stockholders.

The range of values for the 0.640 Kinder Morgan warrants per El Paso share used in each of the analyses below was calculated based on (i) the Black-Scholes option valuation model and (ii) the net present value of the expected warrant valuation at the end of the warrant term. For the Black-Scholes option valuation model, Barclays Capital used a volatility range of 25% to 35% for the pro forma combined company based upon the historical volatility of each of El Paso and Kinder Morgan. For the net present value of the expected warrant valuation analysis, Barclays Capital used a discount rate range of 11.0% to 14.0% (consistent with the discount rate range for Kinder Morgan in the Discounted Cash Flow Analysis below) and an assumed dividend yield range of 4.30% to 4.70%. These analyses produced an estimated value per warrant range of \$1.25 to \$3.00, or a range of values for the 0.640 Kinder Morgan warrants per El Paso share of \$0.75 to \$2.00.

In particular, in applying the various valuation methodologies to the particular businesses, operations and prospects of El Paso and Kinder Morgan, and the particular circumstances of the transactions, Barclays Capital made qualitative judgments as to the significance and relevance of each analysis. In addition, Barclays Capital made numerous assumptions with respect to industry performance, general business and economic conditions and other matters, many of which are beyond the control of El Paso and Kinder Morgan. Accordingly, the methodologies and the implied common equity value ranges derived therefrom must be considered as a whole and in the context of the narrative description of the financial analyses, including the assumptions underlying these analyses. Considering the implied common equity value ranges without considering the full narrative description of the financial analyses, including the assumptions underlying these analyses, could create a misleading or incomplete view of the process underlying, and conclusions represented by, Barclays Capital's opinion.

The implied equity value ranges per share, derived using the various valuation methodologies listed above, supported the conclusion that the merger consideration to be paid by Kinder Morgan in the transactions was fair, from a financial point of view, to Kinder Morgan.

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**Table of Contents***Discounted Cash Flow Analysis*

In order to estimate the present values of El Paso common stock and Kinder Morgan common stock, Barclays Capital performed discounted cash flow analyses of each of El Paso and Kinder Morgan. A discounted cash flow analysis is a traditional valuation methodology used to derive the valuation of an asset by calculating the present value of estimated future cash flows of the asset. Present value refers to the current value of future cash flows or amounts and is obtained by discounting those future cash flows or amounts by a range of discount rates that takes into account macroeconomic assumptions and estimates of risk, the opportunity cost of capital, expected returns and other appropriate factors.

To calculate the estimated enterprise value ranges of El Paso using discounted cash flow analysis, Barclays Capital added (i) projected after-tax unlevered free cash flows for fiscal years 2012 through 2015 based on the Kinder Morgan El Paso Projections to (ii) the terminal value of El Paso, as of December 31, 2015, and discounted such amounts to their present value using a range of selected discount rates. Specifically, Barclays Capital used a discount rate range of 7.0% to 10.0%. The discount rates were based on Barclays Capital's analysis of the weighted average cost of capital for El Paso as well as the weighted average cost of capital for companies with similar size and with regulated pipelines and oil and gas exploration and production (referred to in this section as E&P) operations, as applicable. The residual value of El Paso at the end of the forecast period, or terminal value, was estimated by applying enterprise value multiples ranging from 5.0x to 9.0x to Kinder Morgan's 2015 estimate of earnings before interest, taxes and depreciation and amortization (referred to in this section as EBITDA). The enterprise value range for El Paso yielded by the El Paso discounted cash flow analysis implied an equity value range for El Paso of \$20.13 to \$33.13 per share before considering the pro forma impact of the Expected Synergies from the transactions and an equity range for El Paso of \$21.98 to \$35.85 per share after considering the pro forma impact of the Expected Synergies from the transactions.

To calculate the estimated equity value ranges for Kinder Morgan, Barclays Capital added (i) projected after-tax levered free cash flows for the fiscal years 2012 through 2015 based on the Kinder Morgan Projections to (ii) the terminal value of Kinder Morgan, as of December 31, 2015, and discounted such amounts to their present value using a range of selected discount rates. Specifically, for Kinder Morgan, Barclays Capital used a discount rate range of 11.0% to 14.0%. The discount rates were based on Barclays Capital analysis of the estimated cost of Kinder Morgan equity based upon equity research analysts' estimates of 3-year compound annual growth rates for equity cash distributions to Kinder Morgan stockholders and equity analysts' estimates of long-term yields for Kinder Morgan's common stock. For Kinder Morgan, the terminal value assumed an equity yield range of 4.0% to 5.0%, which was selected based on the trading yields of selected comparable publicly traded companies with a similar focus in pipelines and midstream assets. The equity value range for Kinder Morgan yielded by the Kinder Morgan discounted cash flow analysis implied an equity value range for Kinder Morgan of \$24.75 to \$31.82 per share, as compared to Kinder Morgan's closing stock price of \$26.89 on October 14, 2011.

The valuation of the merger consideration to be paid by Kinder Morgan in the transactions implied by the discounted cash flow analysis for Kinder Morgan before considering the pro forma impact of the Expected Synergies from the transactions and the merger consideration, taken as the exchange ratio plus cash consideration of \$14.65 and the value range for the 0.640 Kinder Morgan warrants per El Paso share, implied an equity value range of \$25.76 to \$29.97 per El Paso share. Barclays Capital noted that this implied equity value range per El Paso share was in line with the implied equity value range per El Paso share yielded by Barclays Capital's discounted cash flow analysis before considering the pro forma impact of the Expected Synergies from the transactions for El Paso.

*Comparable Company Analysis*

In order to assess how the public market values shares of similar publicly traded companies, Barclays Capital reviewed and compared specific financial and operating data relating to El Paso and Kinder Morgan with selected companies that Barclays Capital deemed comparable to El Paso and Kinder Morgan, based on Barclays Capital's experience in the pipelines and midstream and E&P industries.

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With respect to El Paso, Barclays Capital reviewed the public stock market trading multiples for the following companies, which Barclays Capital selected because of their size and focus in pipelines and midstream and, for one selected company, E&P. The companies selected were:

Enbridge Inc. ( Enbridge )

ONEOK, Inc. ( ONEOK )

Spectra Energy Corp ( Spectra )

TransCanada Corporation ( TransCanada )

The Williams Companies, Inc. ( Williams )

Using publicly available information, Barclays Capital calculated and analyzed enterprise value multiples of each comparable company's estimated EBITDA for 2011, 2012 and 2013 and, in the case of El Paso's E&P business, earnings before interest, taxes, depreciation and amortization and exploration expense (referred to in this section as EBITDAX), for 2011 and 2012. The enterprise value of each comparable company was obtained by adding its outstanding debt to the sum of the market value of its common stock, the book value of its preferred stock and the book value of any minority interest minus its cash balance, as appropriate. Barclays Capital calculated the enterprise multiples of estimated EBITDA or EBITDAX, respectively, by dividing each company's calculated enterprise value by its estimated EBITDA for 2011, 2012 and 2013 or by its estimated EBITDAX for 2011 and 2012, respectively.

In addition, using publicly available information, Barclays Capital reviewed the public stock market trading multiples for selected comparable companies for each of El Paso's pipelines business and E&P business. The companies selected were:

*Pipelines Business*

Boardwalk Pipeline Partners, LP

Spectra Energy Partners, LP

Enbridge

Spectra

TransCanada

Williams

*E&P Business*

Bill Barrett Corporation

Cimarex Energy Co.

Newfield Exploration Company

Noble Energy, Inc.

Plains Exploration & Production Company ( Plains )

QEP Resources, Inc.

SM Energy Company

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The results of the El Paso comparable companies analysis are summarized below:

Enterprise Value as a Multiple of:	Multiple Range of Comparable Companies of El Paso:		
	Low	Median	High
<b>El Paso</b>			
2011E EBITDA	7.2x	10.5x	15.3x
2012E EBITDA	6.4x	9.5x	14.0x
2013E EBITDA	5.7x	8.4x	13.1x
<b>Pipelines</b>			
2011E EBITDA	7.2x	11.9x	15.3x
2012E EBITDA	6.4x	10.8x	14.0x
2013E EBITDA	5.7x	9.4x	13.1x
<b>E&amp;P</b>			
2011E EBITDAX	4.2x	5.3x	6.2x
2012E EBITDAX	3.6x	4.5x	5.3x
Latest Daily Production (\$/MMcfepd)	\$ 8,950	\$ 10,468	\$ 12,684
12/31/10 Pro Forma Proved Reserves (\$/Mcf)	\$ 2.19	\$ 2.48	\$ 4.96

Barclays Capital selected the comparable companies listed above because their business and operating profiles are reasonably similar to that of El Paso. However, because of the inherent differences between the business, operations and prospects of El Paso and those of the selected comparable companies, Barclays Capital believed that it was inappropriate to, and therefore did not, rely solely on the quantitative results of the selected comparable companies analysis. Accordingly, Barclays Capital also made qualitative judgments concerning differences between the business, financial and operating characteristics and prospects of El Paso and the selected comparable companies that could affect the public trading values of each of El Paso, El Paso's pipelines business and El Paso's E&P business in order to provide a context in which to consider the results of the quantitative analysis. These qualitative judgments related primarily to the differing sizes, growth prospects, profitability levels and degrees of operational risk between El Paso and the selected companies included in the comparable companies analysis. The enterprise value range for El Paso yielded by the El Paso comparable companies analysis implied an equity value range for El Paso of \$16.28 to \$27.56 per share before considering the pro forma impact of the Expected Synergies from the transactions and an equity range for El Paso of \$18.21 to \$30.28 per share after considering the pro forma impact of the Expected Synergies from the transactions.

With respect to Kinder Morgan, Barclays Capital reviewed the public stock market trading multiples for the following pipeline companies, which Barclays Capital selected because of their focus on pipelines and midstream businesses:

Energy Transfer Equity, L.P. ( Energy Transfer )

ONEOK

Targa Resources Corp.

Using publicly available information, Barclays Capital calculated and analyzed equity value yields based upon each comparable company's annualized latest quarterly distribution and equity research consensus estimates for 2012 and 2013 distributions. The results of the Kinder Morgan comparable companies analysis are summarized below:

Implied Equity Yield:	Range of Comparable Companies of Kinder Morgan:		
	Low	Median	High
Annualized Latest Quarterly Distribution	3.3%	3.6%	7.0%
2012E Distribution	3.7%	4.7%	7.5%
2013E Distribution	4.4%	5.5%	7.8%





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Barclays Capital selected the comparable companies listed above because their businesses and operating profiles are reasonably similar to that of Kinder Morgan. However, because of the inherent differences between the business, operations and prospects of Kinder Morgan and those of the selected comparable companies, Barclays Capital believed that it was inappropriate to, and therefore did not, rely solely on the quantitative results of the selected comparable companies analysis. Accordingly, Barclays Capital also made qualitative judgments concerning differences between the business, financial and operating characteristics and prospects of Kinder Morgan and the selected comparable companies that could affect the public trading values of each in order to provide a context in which to consider the results of the quantitative analysis. These qualitative judgments related primarily to the differing sizes, growth prospects, profitability levels and degrees of operational risk between Kinder Morgan and the selected companies included in the comparable companies analysis. The comparable companies analysis implied an equity value range for Kinder Morgan of \$23.34 to \$30.41 per share, as compared to Kinder Morgan's closing stock price of \$26.89 on October 14, 2011.

The valuation of the merger consideration to be paid by Kinder Morgan in the transactions implied by the comparable companies analysis for Kinder Morgan before considering the pro forma impact of the Expected Synergies from the transactions and the merger consideration, taken as the exchange ratio plus cash consideration of \$14.65 and the value range for the 0.640 Kinder Morgan warrants per El Paso share, implied an equity value range of \$25.17 to \$29.38 per El Paso share. Barclays Capital noted that this implied equity value range per El Paso share was generally in line with the implied equity value range per El Paso share yielded by Barclays Capital's comparable companies analysis before considering the pro forma impact of the Expected Synergies from the transactions for El Paso.

*Comparable Transaction Analysis*

With respect to the comparable transactions analysis for El Paso, Barclays Capital reviewed and compared the purchase prices and financial multiples paid in selected transactions that Barclays Capital deemed relevant, based on its experience with merger and acquisition transactions, for each of El Paso's pipelines business and E&P business. Barclays Capital chose such transactions based on, among other things, the similarity of the applicable target assets and companies in the selected transactions to El Paso's pipelines business and E&P business, respectively, with respect to size, focus, portfolio composition and other characteristics of their businesses.

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The following table sets forth the transactions analyzed for El Paso's pipelines business based on such characteristics:

*Pipelines Business*

Acquirer	Seller	Target	Announcement Date
Regency Energy Partners, LP	Energy Transfer	49.9% of Midcontinent Express Pipeline LLC	May 11, 2010
Enterprise Products Partners, LP ( EPLP )	TEPPCO Partners, LP	TEPPCO Partners, LP	June 29, 2009
Myria Acquisition, Inc.	Knight Inc. (which is now known as KMK)	80% of the ownership interests of MidCon, a wholly owned subsidiary of Knight Inc.	December 12, 2007
TC Pipelines, LP	El Paso	46.45% in Great Lakes Gas Transmission Limited Partnership	December 22, 2006
TransCanada	El Paso	ANR Pipeline Company and 3.55% interest in Great Lakes Gas Transmission	December 22, 2006
Energy Transfer	GE Energy Financial Services	Transwestern Pipeline Company, LLC	September 15, 2006
Plains All American Pipeline, LP	Pacific Energy Partners, LP	Pacific Energy Partners, LP	June 12, 2006
American International Group, Goldman Sachs Capital Partners, Kinder Morgan, Inc. Chairman and CEO Richard Kinder, Co-Founder Bill Morgan and a consortium of other investors	Kinder Morgan	Kinder Morgan	August 28, 2006
Loews Corporation ( Loews ), wholly owned subsidiary, TGT Pipeline, LLC	Energy-Koch, LP	Gulf South Pipeline, LP	November 22, 2004
Southern Union Company ( SUG ) / GE Commercial Finance Energy Financial Services	Enron Corporation	CrossCountry Energy, LLC	September 1, 2004
TransCanada	National Energy & Gas Transmission, Inc.	Gas Transmission Northwest Corporation	February 24, 2004
Loews	Williams Companies	Texas Gas Transmission Corporation	April 14, 2003
SUG	CMS Energy Corporation	CMS Panhandle Companies	December 22, 2002

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Acquirer	Seller	Target	Announcement Date
MidAmerican Energy Holdings Company	Dynege Incorporated	Northern Natural Gas Company	July 29, 2002
Duke Energy Corporation	Westcoast Energy Inc.	Westcoast Energy Inc.	September 20, 2001
NiSource Inc.	Columbia Energy Group	Columbia Energy Group	February 28, 2000
El Paso	Coastal Corporation	Coastal Corporation	January 18, 2000
El Paso	Sonat Inc.	Sonat Inc.	March 15, 1999
Dominion Resources, Inc.	Consolidated Natural Gas Company	Consolidated Natural Gas Company	February 22, 1999
CMS Energy Corporation	Duke Energy Corporation	Panhandle Eastern Pipe Line Company, Trunkline Gas Company and Trunkline LNG Company	November 2, 1998
TransCanada	NOVA Corporation	NOVA Corporation	January 26, 1998
Houston Industries Inc.	NorAm Energy Corporation	NorAm Energy Corporation	August 11, 1996
El Paso	Tenneco Corporation	Tenneco Energy	June 19, 1996

The following table sets forth transactions analyzed for El Paso's E&P business based on such characteristics:

*E&P Business*

Acquirer	Target	Announcement Date
BHP Billiton Group	Petrohawk Energy Corporation ( Petrohawk )	July 15, 2011
ExxonMobil Corporation ( XOM )	Phillips Resources Inc.	June 8, 2011
Eagle Rock Energy Partners, LP	Crow Creek Energy II, LLC	April 4, 2011
Chevron Corporation	Atlas Energy Corporation	November 9, 2010
ExxonMobil Corporation ( XOM )	Ellora Energy, Inc.	July 21, 2010
Apache Corporation	Mariner Energy, Inc.	April 15, 2010
XOM	XTO Energy, Inc. ( XTO )	December 14, 2009
XTO	Hunt Petroleum Corporation	June 10, 2008
Plains	Pogo Producing Company	July 17, 2007
Forest Oil Corporation	The Houston Exploration Company	January 7, 2007
Sandridge Energy, Inc.	American Real Estate Partners, LP	September 8, 2006
Anadarko Petroleum Corporation	Western Gas Resources, Inc.	June 23, 2006
Devon Energy Corporation	Chief Holding LLC	May 2, 2006
Petrohawk	KCS Energy, Inc.	April 21, 2006
ConocoPhillips Company	Burlington Resources Inc.	December 12, 2005
Chesapeake Energy Corporation	Columbia Natural Resources LLC	October 3, 2005
El Paso	Medicine Bow Energy Corporation	July 19, 2005
Petrohawk	Mission Resources Corporation	April 4, 2005
Cimarex Energy Corporation	Magnum Hunter Resources Inc.	January 26, 2005
XTO	Antero Resources Corporation	January 11, 2005

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Using publicly available information, Barclays Capital calculated and analyzed enterprise multiples for 2011 estimated EBITDA for the pipeline business and latest daily production and proved reserves for the E&P business, respectively, in the comparable transactions analysis. The results of the comparable transaction analysis are summarized below:

<b>Enterprise Value as a Multiple of:</b>	<b>Multiple Range of Comparable Transactions of El Paso:</b>		
	<b>Low</b>	<b>Median</b>	<b>High</b>
<b>Pipelines</b>			
Latest Twelve Months ( LTM ) EBITDA	6.6x	9.5x	15.0x
<b>E&amp;P</b>			
Latest Daily Production (\$/MMcfepd)	\$ 8,097	\$ 14,041	\$ 43,182
Proved Reserves (\$/Mcf)	\$ 1.96	\$ 2.91	\$ 9.34

The reasons for and the circumstances surrounding each of the selected comparable transactions analyzed were diverse and there are inherent differences between the businesses, operations, financial conditions and prospects of El Paso's pipelines business and El Paso's E&P business and the companies and assets included in the comparable transactions analysis. Accordingly, Barclays Capital believed that a purely quantitative comparable transactions analysis would not be particularly meaningful in the context of considering the transactions. Barclays Capital therefore made qualitative judgments concerning differences between the characteristics of the selected precedent transactions and the transactions which would affect the acquisition values of the selected target companies and El Paso. Based upon these judgments, Barclays Capital selected enterprise value ranges, which implied an equity value range for El Paso before considering the pro forma impact of the Expected Synergies from the transactions of \$17.57 to \$28.80 per El Paso share.

With respect to the comparable transactions analysis for Kinder Morgan, Barclays Capital reviewed and compared the purchase prices and financial multiples paid in selected transactions for comparable acquisitions of general partner (referred to in this section as a "GP") interests of master limited partnerships that Barclays Capital deemed relevant, based on its experience with merger and acquisition transactions. Barclays Capital chose such transactions based on, among other things, the similarity of the applicable target assets and partnerships in the transactions to Kinder Morgan's businesses with respect to structure, focus, portfolio composition and other characteristics of their businesses.

The following table sets forth the transactions analyzed for Kinder Morgan based on such characteristics:

<b>Acquirer</b>	<b>Seller</b>	<b>Announcement Date</b>
Penn Virginia Resource Partners, LP	Penn Virginia GP Holdings, LP	September 21, 2010
EPLP	Enterprise GP Holdings, LP	September 7, 2010
Inergy, LP	Inergy Holding, LP	August 9, 2010
Buckeye Partners, LP	Buckeye GP Holdings, LP	June 11, 2010
Magellan Midstream Partners, LP	Magellan Midstream Holdings, LP	March 3, 2009
Markwest Energy Partners, LP	Markwest Hydrocarbon, Inc.	September 5, 2007
Valero, LP	Kaneb Pipe Line Partners, LP & Kaneb Services LLC	November 1, 2004
Vulcan Capital	Plains Resources Inc.	November 20, 2003

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Using publicly available information, Barclays Capital calculated and analyzed enterprise multiples for Kinder Morgan based upon the annualized latest quarterly cash flow before interest expense distributed to the GP interest and distributable cash flow before interest expense to the GP interest based upon last twelve months (referred to in this section as LTM ) and one-year forward estimates, respectively, for the comparable transactions. The results of the comparable transactions analysis are summarized below:

<b>Enterprise Value as a Multiple of:</b>	<b>Multiple Range of Comparable Transactions of Kinder Morgan:</b>		
	<b>Low</b>	<b>Median</b>	<b>High</b>
Annualized Latest Quarterly GP Cash Flow Distribution	12.7x	18.8x	26.1x
LTM GP Distributable Cash Flow	9.7x	15.5x	39.1x
1-Year Forward Distributable Cash Flow	9.0x	14.4x	25.6x

The reasons for and the circumstances surrounding each of the selected comparable transactions analyzed were diverse and there are inherent differences between the businesses, operations, financial conditions and prospects of Kinder Morgan's business and the companies and assets included in the comparable transactions analysis. Accordingly, Barclays Capital believed that a purely quantitative comparable transactions analysis would not be particularly meaningful in the context of considering the transactions. Barclays Capital therefore made qualitative judgments concerning differences between the characteristics of the selected precedent transactions and the transactions, which would affect the acquisition values of the selected target companies and assets and Kinder Morgan.

To the enterprise value ranges selected for the GP interest of Kinder Morgan in the comparable transactions analysis, Barclays Capital added value for the LP common units that Kinder Morgan owns of KMP and for the common units that Kinder Morgan owns of KMR, respectively, based upon the publicly traded market value of those units as of the close on October 14, 2011 and the book value of Kinder Morgan's 20% interest in Natural Gas Pipeline Company of America to calculate an enterprise value range for Kinder Morgan. Based upon these assessments, Barclays Capital selected enterprise value ranges, which implied an equity value range for Kinder Morgan of \$19.59 to \$29.49 per share, as compared to Kinder Morgan's closing stock price of \$26.89 on October 14, 2011.

The valuation of the merger consideration to be paid by Kinder Morgan in the transactions implied by the comparable transactions analysis for Kinder Morgan before considering the pro forma impact of the Expected Synergies from the transactions and the merger consideration, taken as the exchange ratio plus cash consideration of \$14.65 and the value range for the 0.640 Kinder Morgan warrants per El Paso share, implied an equity value range of \$23.60 to \$29.00 per El Paso share. Barclays Capital noted that this implied equity value range per El Paso share was in line with the implied equity value range per El Paso share yielded by Barclays Capital's comparable transactions analysis before considering the pro forma impact of the Expected Synergies from the transactions for El Paso.

*Equity Research Analyst Price Targets*

Barclays Capital evaluated the publicly available price targets of El Paso and Kinder Morgan published by independent equity research analysts associated with various Wall Street firms. Barclays Capital used these research analyst price targets to calculate implied equity value per share ranges for each of El Paso and Kinder Morgan. Barclays Capital's analysis of equity research analyst price targets for El Paso implied an equity value range for El Paso of \$22.00 to \$29.50 per share. Barclays Capital's analysis of equity research analyst price targets for Kinder Morgan implied an equity value range for Kinder Morgan of \$30.00 to \$34.00 per share, as compared to Kinder Morgan's closing stock price of \$26.89 on October 14, 2011.

The valuation of the merger consideration to be paid by Kinder Morgan in the transactions implied by the analysis of equity research analyst price targets for Kinder Morgan before considering the pro forma impact of

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the Expected Synergies from the transactions and the merger consideration, taken as the exchange ratio plus cash consideration of \$14.65 and the value range for the 0.640 Kinder Morgan warrants per El Paso share, implied an equity value range of \$27.96 to \$30.89 per El Paso share. Barclays Capital noted that this implied equity value range per El Paso share was generally in line with the implied equity value range per El Paso share yielded by Barclays Capital's analysis of equity research analyst price targets before considering the pro forma impact of the Expected Synergies from the transactions for El Paso.

### *Sum of the Parts Analysis*

Barclays Capital performed a sum of the parts analysis for El Paso by performing discounted cash flow analysis and comparable transactions analysis for the pipelines business and net asset valuation analyses, comparable companies analysis and comparable transactions analysis for the E&P business.

### *Pipelines Business*

With respect to the pipelines business, Barclays Capital segmented the pipelines business into the following separate enterprises:

Tennessee Gas Pipeline

Rockies Pipelines System

El Paso Natural Gas Pipeline

Citrus / Florida Gas Transmission (El Paso's 50% interest)

Ruby Pipeline (El Paso's 50% interest)

Gulf LNG (El Paso's 50% interest)

To calculate the estimated enterprise value ranges of each of the above outlined pipelines and other assets using discounted cash flow analysis, Barclays Capital added (i) projected after-tax unlevered free cash flows for fiscal years 2012 through 2015 based on the Kinder Morgan El Paso Projections to (ii) the terminal value of each pipeline and other asset, as of December 31, 2015, and discounted such amounts to their present value using a range of selected discount rates. The discount rates were based on Barclays Capital's analysis of the discount rates implied by comparable pipeline transactions. The terminal value for each pipeline and other assets was estimated by applying enterprise value multiples to each pipeline's and other assets' 2015 estimate of EBITDA minus an estimate of 2015 maintenance capital expenditures (referred to as the maintenance capex or, the annual capital cost to maintain a constant level of EBITDA). The terminal value multiples were based on Barclays Capital's analysis of EBITDA minus maintenance capex terminal value multiples implied by comparable pipeline transactions.

In addition to the discounted cash flow analysis performed for each of the above outlined pipelines and other assets, Barclays Capital performed a comparable transactions analysis for each pipeline and other asset. Barclays Capital reviewed and compared the purchase prices and financial multiples paid in selected other regulated pipeline transactions that Barclays Capital deemed relevant, based on its experience with merger and acquisition transactions. Barclays Capital chose such transactions based upon, among other things, the similarity of the applicable target in each selected transaction to El Paso's pipelines business with respect to size, location of assets, prospects and other characteristics that Barclays Capital deemed relevant. Using publicly available information, Barclays Capital calculated and analyzed enterprise value multiples of LTM EBITDA, one-year forward projected EBITDA and EBITDA minus maintenance capex. Barclays Capital calculated the enterprise value multiples of LTM EBITDA, one-year forward EBITDA and EBITDA minus maintenance capex by dividing each transaction's value by the latest disclosed LTM EBITDA, projected one-year forward EBITDA and EBITDA minus maintenance capex, respectively. Based upon the comparable regulated pipeline transactions, Barclays Capital applied multiples to estimates for each pipeline and other asset's 2012 and 2013 EBITDA as well as 2012 and 2013 EBITDA minus maintenance capex.



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The reasons for and the circumstances surrounding each of the selected comparable transactions analyzed were diverse and there are inherent differences between the businesses, operations, financial conditions and prospects of El Paso's pipelines business and the companies and assets included in the comparable transactions analysis. Accordingly, Barclays Capital believed that a purely quantitative comparable transactions analysis would not be particularly meaningful in the context of considering the transactions. Barclays Capital therefore made qualitative judgments concerning differences between the characteristics of the selected precedent transactions and El Paso's Pipelines business which would affect the acquisition values of the selected target companies and assets and El Paso's Pipelines business.

Barclays Capital calculated and analyzed the enterprise value ranges for each pipeline and other asset outlined above as estimated by each discounted cash flow analysis and comparable transactions analysis to determine an enterprise value range for El Paso's pipelines business.

*E&P Business*

With respect to the E&P business, Barclays Capital performed two types of net asset valuation analyses (under different commodity price scenarios), comparable companies analysis and comparable transactions analysis.

For the first type of net asset valuation analysis (referred to in this section as Reserve Report NAV) performed for El Paso's E&P business, Barclays Capital estimated the present value of the future after-tax cash flows expected to be generated from El Paso's proved, probable and possible reserves as of July 1, 2011, based on reserve, production and capital cost estimates as of July 1, 2011. The present value of the future after-tax cash flows was determined using a range of discount rates and risk factors. The Reserve Report NAV analysis assumed a tax rate of 35% and a full step-up in tax basis. Barclays Capital added to such estimated value for proved, probable and possible reserves, assessments of the value of certain other assets and liabilities including, but not limited to, estimates of value for contingent resources (as estimated by El Paso), El Paso's commodity hedging portfolio and El Paso estimates of divestiture activity in the E&P business since July 1, 2011. The net asset valuation analysis was performed under four commodity price scenarios (Case I, Case II, Case III and Case IV), which are described below.

Certain of the natural gas and oil price forecasts employed by Barclays Capital were based on New York Mercantile Exchange (NYMEX) price forecasts (Henry Hub, Louisiana delivery for natural gas and West Texas Intermediate, Cushing, Oklahoma delivery for oil) to which adjustments were made to reflect location and quality differentials. NYMEX gas price quotations stated in heating value equivalents per million British Thermal Units (MMBtu) were assumed to reflect the value per thousand cubic feet (Mcf) of gas. NYMEX oil price quotations are stated in dollars per barrel (Bbl) of crude oil.

The following table summarizes the natural gas and oil price forecasts Barclays Capital employed to estimate future after-tax cash flows for each of the reserve categories Barclays Capital considered for El Paso's E&P business Reserve Report NAV. Case IV reflects the NYMEX strip as of the close of business on October 14, 2011.

	2012E	2013E	2014E	2015E	2016E	Thereafter
<b>Oil WTI (\$/bbl)</b>						
Case I	\$ 75.00	\$ 75.00	\$ 75.00	\$ 75.00	\$ 75.00	\$ 75.00
Case II	\$ 85.00	\$ 85.00	\$ 85.00	\$ 85.00	\$ 85.00	\$ 85.00
Case III	\$ 95.00	\$ 95.00	\$ 95.00	\$ 95.00	\$ 95.00	\$ 95.00
Case IV	\$ 88.21	\$ 89.59	\$ 90.20	\$ 90.92	\$ 91.73	\$ 91.73
<b>Gas HHUB (\$/Mcf)</b>						
Case I	\$ 4.25	\$ 4.25	\$ 4.25	\$ 4.25	\$ 4.25	\$ 4.25
Case II	\$ 4.75	\$ 4.75	\$ 4.75	\$ 4.75	\$ 4.75	\$ 4.75
Case III	\$ 5.25	\$ 5.25	\$ 5.25	\$ 5.25	\$ 5.25	\$ 5.25
Case IV	\$ 4.20	\$ 4.73	\$ 5.05	\$ 5.30	\$ 5.51	\$ 5.51



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For the second type of net asset valuation analysis for El Paso's E&P business (referred to in this section as "Drill-out Plan NAV"), Barclays Capital added together (i) the estimated present value of the future after-tax cash flows expected to be generated from El Paso's proved developed reserves as per the Reserve Report NAV analysis for the (a) Eagle Ford Central, (b) Wolfcamp, (c) Altamont and (d) Haynesville Holly areas ((a)-(d) collectively, the (referred to in this section as "Development Areas"), (ii) the estimated present value of the future after-tax cash flows expected to be generated by development of the undeveloped portion of the Development Areas (referred to in this section as the "Development Areas Drill-out NAV") and (iii) values for the remainder of the E&P business consistent with the Reserve Report NAV analysis. The Development Areas Drill-out NAV was determined by using a range of discount rates and risk factors and assumed development generally consistent with El Paso's public disclosures regarding development of those respective areas. The Development Areas Drill-out NAV assumed a tax rate of 35% and a full step-up in tax basis. The Drill-out Plan NAV was performed under two commodity price scenarios consistent with Case II and Case IV, as described above. Barclays Capital added to such estimated value for the Drill-out Plan NAV, assessments of the value of certain other assets and liabilities including, but not limited to, estimates of El Paso's commodity hedging portfolio and El Paso estimates of divestiture activity in the E&P business since July 1, 2011.

In addition to the Reserve Report NAV analyses and Drill-out Plan NAV analyses for the El Paso E&P business, Barclays Capital utilized publicly available information including a review of public stock market trading multiples for selected comparable companies for El Paso's E&P business. Barclays Capital calculated and analyzed enterprise value multiples of each comparable company's estimated EBITDA for 2011 and 2012 as well as enterprise value multiples of each comparable company's latest daily production and proved reserves pro forma for any acquisition or divestiture activity. The enterprise value of each comparable company was obtained by adding its outstanding debt to the sum of the market value of its common stock, the book value of its preferred stock and the book value of any minority interest minus its cash balance, as appropriate.

Barclays Capital selected the comparable companies utilized in the comparable companies analysis of the El Paso E&P business because their business and operating profiles are reasonably similar to that of El Paso's E&P business. However, because of the inherent differences between the business, operations and prospects of El Paso's E&P business and those of the selected comparable companies, Barclays Capital believed that it was inappropriate to, and therefore did not, rely solely on the quantitative results of the selected comparable companies analysis. Accordingly, Barclays Capital also made qualitative judgments concerning differences between the business, financial and operating characteristics and prospects of El Paso's E&P business and the selected comparable companies that could affect the public trading values of each in order to provide a context in which to consider the results of the quantitative analysis. These qualitative judgments related primarily to the differing sizes, growth prospects, profitability levels and degrees of operational risk between El Paso's E&P business and the selected companies included in the El Paso E&P business comparable companies analysis.

Further, with respect to El Paso's E&P business, Barclays Capital also performed a comparable transactions analysis. Barclays Capital reviewed and compared the purchase prices and financial multiples paid in selected other corporate E&P transactions that Barclays Capital deemed relevant, based on its experience with merger and acquisition transactions. Barclays Capital chose such transactions based upon, among other things, the similarity of the applicable target in each transaction to El Paso's E&P business with respect to size, location of assets, gas weighting and other characteristics that Barclays Capital deemed relevant. Using publicly available information, Barclays Capital calculated and analyzed enterprise value multiples of latest daily production and proved reserves in the comparable transactions. Barclays Capital calculated the enterprise value multiples of latest daily production and proved reserves by dividing each transaction's value by the disclosed latest daily production and proved reserves, respectively.

The reasons for and the circumstances surrounding each of the selected comparable transactions analyzed were diverse and there are inherent differences between the businesses, operations, financial conditions and prospects of El Paso's E&P business and the targets included in the comparable transactions analysis. Accordingly, Barclays Capital believed that a purely quantitative comparable transactions analysis would not be

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particularly meaningful in the context of considering El Paso's E&P business. Barclays Capital therefore made qualitative judgments concerning differences between the characteristics of the selected precedent transactions and El Paso's E&P business which would affect the acquisition values of the selected target companies and assets and El Paso's E&P business.

Barclays Capital calculated and analyzed the enterprise value ranges for the Reserve Report NAV analyses, Drill-out NAV analyses, comparable companies analysis and comparable transactions analysis for El Paso's E&P business to determine an enterprise value range for El Paso's E&P business.

### *Other Businesses*

To calculate the sum of parts analysis enterprise value range for El Paso, Barclays Capital added (i) an assessment of the range of value for El Paso's midstream business (based upon multiples implied by comparable midstream transactions Barclays Capital deemed relevant), (ii) an assessment of the range of value of El Paso's GP interest in EPB (based upon multiples of comparable publicly traded GP interests Barclays Capital deemed relevant), (iii) an assessment of the range of value attributable to the EPB LP units owned by El Paso (based upon the range of prices the EPB LP units traded in the public market from October 15, 2010 to October 14, 2011); (iv) an assessment of the after-tax net present value of unallocated corporate expenses at El Paso; (v) the enterprise value range for El Paso's pipelines business as outlined above and (vi) the enterprise value range for El Paso's E&P business as outlined above.

The enterprise value range for El Paso yielded by the El Paso sum of the parts analysis implied an equity value range for El Paso of \$18.86 to \$28.18 per share before considering the pro forma impact of the Expected Synergies from the transactions and an equity range for El Paso of \$20.75 to \$30.90 per share after considering the pro forma impact of the Expected Synergies from the transactions.

### *Pro Forma Merger Consequences Analysis*

Barclays Capital analyzed the pro forma impact of the transactions including the expected pro forma impact of the Expected Benefits from the transactions on Kinder Morgan's projected distributable cash flow per share and dividends per share, KMP's projected distributable cash flow per LP unit and distribution per LP unit and EPB's projected distributable cash flow per LP unit and distribution per LP unit, respectively, for each of 2012, 2013, 2014 and 2015. Barclays Capital prepared a pro forma merger model, which was based upon the Kinder Morgan El Paso Projections and the Kinder Morgan Projections and the expected pro forma impact of the Expected Benefits of the transactions. Barclays Capital then compared the pro forma distributable cash flow per share and dividends per share for Kinder Morgan and the distributable cash flow per LP unit and distribution per LP unit for each of KMP and EPB, respectively, on a standalone basis to the corresponding amounts in the pro forma combined company. Barclays Capital noted that, on a pro forma basis, assuming the achievement of the assumptions in the pro forma merger model, the transactions would be accretive to the 2012, 2013, 2014 and 2015 distributable cash flow per share and dividends per share at Kinder Morgan; 2013, 2014 and 2015 distributable cash flow per LP unit and distributions per LP unit at KMP and 2012, 2013, 2014 and 2015 distributable cash flow per LP unit and distributions per LP unit at EPB, respectively.

### *Premiums Analysis*

Barclays Capital reviewed certain publicly available information related to selected corporate transactions to calculate the amount of the premiums paid by the acquirers to the acquired company's stockholders. Barclays Capital analyzed all domestic corporate energy transactions announced for the period from January 26, 1995 to October 14, 2011 with total transaction values in excess of \$1 billion.

For each of the precedent transactions analyzed, Barclays Capital calculated the premiums paid by the acquirer by comparing the per share purchase price in each transaction to the historical stock price of the acquired company as of 1-day, 5-days, and 20-days prior to the announcement date as well as based upon the

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52-week high prior to the announcement date. Barclays Capital compared the premiums paid in the precedent transactions to the premium levels in the transactions based on closing prices as of October 14, 2011. The table below sets forth the summary results of the analysis:

	Percentage Premium / (Discount) to the Closing Price Prior to Transaction Announcement			52-Week High
	1-Day	5-Days	20-Days	
<b>Selected corporate energy transactions greater than \$1 billion since January 26, 1995</b>				
Median	20.9%	22.0%	22.6%	7.6%
Mean	22.0%	22.6%	25.2%	5.8%
High	65.0%	58.0%	68.0%	43.2%
Low	(4.3%)	(5.8%)	(4.0%)	(29.4%)
Implied premium based on the merger consideration (as of October 14, 2011 close)	37.2%	46.3%	56.5%	24.7%

The premiums paid analysis yielded median premiums per share ranging from 7.6% to 20.9% for the selected corporate energy transactions greater than \$1 billion since January 26, 1995 as compared to the range of implied premiums of 24.7% to 56.5% based on the merger consideration of \$26.87 per El Paso share to be paid by Kinder Morgan in the transactions.

*General*

Barclays Capital is an internationally recognized investment banking firm and, as part of its investment banking activities, is regularly engaged in the valuation of businesses and their securities in connection with: mergers and acquisitions, investments for passive and control purposes, negotiated underwritings, competitive bids, secondary distributions of listed and unlisted securities, private placements and valuations for estate, corporate and other purposes. The management of Kinder Morgan recommended, and the Kinder Morgan board of directors determined, to select Barclays Capital because of its familiarity with El Paso and Kinder Morgan, its historical relationship with Kinder Morgan, and because of Barclays Capital's qualifications, reputation and experience in the valuation of businesses and securities in connection with mergers and acquisitions generally, knowledge of the industries in which El Paso and Kinder Morgan operate, as well as substantial experience in transactions comparable to the proposed transactions. For these reasons and concerns regarding maintaining confidentiality, the Kinder Morgan board of directors did not consider any other financial advisors in connection with the transactions (other than Evercore).

Barclays Capital is acting as financial advisor to Kinder Morgan in connection with transactions. As compensation for its services in connection with the transactions, an opinion fee of \$1,000,000 was earned by Barclays Capital upon the delivery of its fairness opinion. Additionally, an advisory fee of \$14,000,000 will be payable on consummation of the transactions. In addition, Kinder Morgan has agreed to reimburse Barclays Capital for its expenses and indemnify Barclays Capital for certain liabilities that may arise out of its engagement. Barclays Capital has performed various investment banking and financial services for Kinder Morgan and its affiliates and El Paso and its affiliates in the past, and expects to perform such services in the future, and has received, and expects to receive, customary fees for such services. Specifically, in the past two years, Barclays Capital has performed the following investment banking and financial services for Kinder Morgan and KMP and their affiliates, for which Barclays Capital received customary compensation: (i) in August 2011, Barclays Capital acted as joint bookrunner on Kinder Morgan's \$750 million notes offering; (ii) in June 2011, Barclays Capital acted as joint bookrunner on KMP's 6.7 million units offering; (iii) in February 2011, Barclays Capital acted as joint bookrunner on Kinder Morgan's 109.8 million share initial public offering; (iv) in November 2010, Barclays Capital acted as joint bookrunner on Kinder Morgan's \$750 million notes offering; (v) in May 2010, Barclays Capital acted as joint bookrunner on KMP's 6.5 million units offering, (vi) in

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May 2010, Barclays Capital acted as co-manager on KMP's \$1.0 billion notes offering and (vii) in December 2009, Barclays Capital acted as joint bookrunner on KMP's 4.5 million units offering. In addition, Barclays Capital has performed the following investment banking and financial services for El Paso and EPB and their affiliates, for which Barclays Capital received customary compensation; (i) in May 2011, Barclays Capital acted as joint bookrunner on EPB's 14.0 million units offering; (ii) in March 2011, Barclays Capital acted as joint bookrunner on EPB's 13.8 million units offering; (iii) in November 2010, Barclays Capital acted as joint bookrunner on EPB's 11.9 million units offering; (iv) in September 2010, Barclays Capital acted as co-manager on EPB's 11.5 million units offering; (v) in June 2010, Barclays Capital acted as joint bookrunner on EPB's 11.5 million units offering and (vi) in January 2010, Barclays Capital acted as joint bookrunner on EPB's 9.9 million units offering. In addition, Kinder Morgan has requested and Barclays Capital is participating in the financing required in connection with the consummation of the transactions and Barclays Capital will receive customary fees in connection therewith.

Barclays Capital is a full service securities firm engaged 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 its business, Barclays Capital and its 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 Kinder Morgan and its affiliates and El Paso and its affiliates for its own account and for the accounts of its customers and, accordingly, may at any time hold long or short positions and investments in such securities and financial instruments.

**Interests of Certain Persons in the Transactions El Paso Executive Officers and Directors**

When considering the recommendation of the board of directors of El Paso with respect to the transactions, you should be aware that El Paso's executive officers and directors may have interests in the transactions that are different from, or in addition to, those of El Paso's stockholders more generally. These interests may present such executive officers and directors with actual or potential conflicts of interest. The board of directors of El Paso was aware of these interests during its deliberations on the merits of the transactions and in deciding to recommend that you vote for the adoption of the merger agreement and approval of the transactions contemplated by the merger agreement at the special meeting.

***Acceleration of Vesting and Conversion of Equity Awards***

All of El Paso's executive officers hold vested and unvested stock options to purchase shares of El Paso common stock, restricted shares of El Paso common stock and/or performance-based restricted stock units granted under El Paso's equity compensation plans. In addition, certain non-employee members of the board of directors of El Paso hold vested stock options to purchase shares of El Paso common stock granted under El Paso's director stock option plans. Upon the second merger, each outstanding stock option, restricted share and performance-based restricted stock unit will, to the extent unvested, automatically vest (in the case of performance-based restricted stock units, at the target (i.e., 100%) level of attainment) and be converted into the right to receive, at the election of the holder (which election will apply to all, but not less than all, of such holder's outstanding equity awards), but subject to proration with respect to the cash portion, either cash or a mixture of cash and shares of Kinder Morgan Class P common stock for all shares subject to such awards (in the case of stock options, less the aggregate exercise price). Each holder will also receive warrants as part of the merger consideration in respect of such equity awards.

For an estimate of the amounts that would be payable to each of El Paso's named executive officers, including Douglas L. Foshee (Chairman, President and Chief Executive Officer (referred to as "CEO")), John R. Sult (Executive Vice President and Chief Financial Officer), Brent J. Smolik (Executive Vice President and President of EP Energy), James C. Yardley (Executive Vice President, Pipeline Group) and D. Mark Leland (Executive Vice President and President of Midstream), for their unvested equity-based awards in connection with the second merger, see "Quantification of Change of Control and Termination Payments and Benefits to

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the El Paso Named Executive Officers. El Paso estimates that the aggregate amount that would be payable to El Paso's executive officers who are not named executive officers for their unvested equity-based awards if the effective time of the second merger were October 31, 2011 is approximately \$15,992,093. El Paso's non-employee directors do not hold any unvested equity-based awards.

***Change of Control and Termination Benefits Under El Paso Plans***

In the event of a termination of employment without cause or a resignation for good reason, in each case within two years following (or, under certain circumstances, in anticipation of) a change of control of El Paso, which would include the second merger, all of El Paso's executive officers (other than James J. Cleary) would receive certain compensation and benefits paid or provided by El Paso under its 2004 Key Executive Severance Protection Plan. Such benefits include:

(1) a lump-sum cash severance payment within 30 days of the executive's termination of employment (subject to a six-month delay to the extent necessary to avoid the imposition of penalty taxes under Section 409A of the Code) equal to the sum of (A) a prorated amount in respect of the target bonus granted to the executive for the year in which the termination occurs, and (B) the product of (x) a severance multiple of two or three (with three applying to Mr. Foshee, the CEO, and two applying to executive vice presidents and senior vice presidents, including all other named executive officers), and (y) the sum of the executive's then-current base salary and target bonus;

(2) continuation of life insurance and flexible spending account, medical and dental benefits for the executive and the executive's dependents for a number of years equal to the executive's severance multiple (i.e., three years for Mr. Foshee and two years for executive vice presidents and senior vice presidents, including all other named executive officers);

(3) reimbursement, on an after-tax basis, of excise taxes imposed under Section 4999 of the Code on any severance payments and other benefits provided by El Paso or any of its affiliates under the plan or otherwise, unless the value of the payments and benefits does not exceed 110% of the maximum amount payable without triggering such excise taxes (referred to as the safe harbor amount), in which case the payments and benefits will be reduced to such safe harbor amount; and

(4) payment of legal fees and expenses incurred by the executive to enforce any rights or benefits under the plan.

Under the 2004 Key Executive Severance Plan, good reason means any of the following events after (or, under certain circumstances, in anticipation of) the second merger: (i) a change in the executive's status, position or responsibilities (including reporting responsibilities) which, in the executive's reasonable judgment, represents a substantial reduction of the executive's status, position or responsibilities as in effect immediately prior thereto; (ii) the assignment to the executive of any duties or responsibilities which are, in the executive's reasonable judgment, inconsistent with such status, position or responsibilities; (iii) any removal of the executive from or failure to reappoint or reelect the executive to any of such positions, except in connection with the termination of the executive's employment for cause (as defined in the plan), permanent disability (as defined in the plan), as a result of the executive's death, or by the executive other than for good reason; (iv) a reduction in annual base salary; (v) the requirement (without the consent of the executive) that the executive have a principal place of employment which is outside a 35-mile radius of the principal place of employment immediately prior to the second merger, except for reasonably required travel on company business which is not materially greater than such travel requirements prior to the second merger; (vi) the failure by El Paso or any of its affiliates to (A) continue in effect any material compensation or benefit plan, program or practice in which the executive was participating immediately prior to the second merger, including, without limitation, the 2001 Omnibus Incentive Compensation Plan, the El Paso Corporation Pension Plan, the El Paso Corporation Supplemental Benefits Plan and the El Paso Corporation Retirement Savings Plan, with any amendments and restatements of such plans made prior to the second merger, or (B) provide the executive with compensation and benefits at least equal (in terms of benefit levels and/or reward opportunities) to those provided for under each compensation or employee

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benefit plan, program and practice of El Paso and its affiliates as in effect immediately prior to the second merger (or as in effect following the second merger, if greater); (vii) a material breach by El Paso of any provision of the plan; or (viii) any purported termination of the executive's employment for cause which does not otherwise comply with the terms of the 2004 Key Executive Severance Plan.

In the case of Mr. Cleary, in the event of a termination of employment without cause or a resignation for good reason, in each case within two years following (or, under certain circumstances, in anticipation of) a change of control of El Paso, which would include the second merger, he would receive certain compensation and benefits under the El Paso 1998 Key Executive Severance Protection Plan, including (i) a lump-sum cash severance payment within 30 days of the termination of his employment (subject to a six month delay to the extent necessary to avoid the imposition of penalty taxes under Section 409A of the Code) equal to the product of (x) a severance multiple of three, and (y) the sum of his then-current base salary and maximum bonus, (ii) continuation of life insurance and flexible spending account, medical and dental benefits for the executive and the executive's dependents (on a tax-free basis) for eighteen months, (iii) payment of legal fees and expenses incurred by the executive to enforce any rights or benefits under the plan and (iv) a lump-sum supplemental pension payment pursuant to El Paso's supplemental pension plan calculated by adding three years of additional service. In addition, Mr. Cleary is entitled to receive full reimbursement of any excise taxes imposed under Section 4999 of the Code on any severance payments and other benefits provided by El Paso or any of its affiliates under the plan or otherwise. Under the 1998 Key Executive Severance Plan, good reason, in relevant part, has the meaning set forth above in the 2004 Key Executive Severance Plan.

With respect to El Paso's executive officers, for the one-year period beginning upon a change of control of El Paso, which would include the second merger, El Paso must pay for financial and tax-planning benefits provided to each of the executives pursuant to an arrangement between El Paso and a third-party provider. Under El Paso's nonqualified deferred compensation plans for non-employee members of the board of directors of El Paso, amounts deferred under the plans with respect to a non-employee director become payable at the time such director ceases to be a member of the board of directors of El Paso, which is expected to occur for certain of El Paso's non-employee directors in connection with the transactions. Following a change of control of El Paso, which would include the second merger, El Paso's commitment to donate charitable awards designated by members of the board of directors of El Paso who participate in the El Paso Charitable Award Plan, as amended and restated, become irrevocable, and after a change of control of El Paso the board of directors may not amend, modify, or terminate a charitable award in any manner that would decrease the value of the award.

***Retention Plan Bonus Payments***

Pursuant to the merger agreement, El Paso must, in consultation with Kinder Morgan, adopt a retention plan for full-time employees of El Paso who primarily provides services to El Paso's exploration and production business (referred to as the El Paso Corporation EP Energy Retention Plan). Amounts will be earned under the El Paso Corporation EP Energy Retention Plan based on (i) the continued performance of services, (ii) the attainment of specified levels of gross sale proceeds in respect of EP Energy business assets sold within no later than 12 months after closing of the second merger and (iii) the date the EP Energy business assets are sold. As of the date of mailing of this information statement/proxy statement/prospectus, certain of El Paso's executive officers, including Brent J. Smolik and Dane Whitehead, have been designated as participants in the El Paso Corporation EP Energy Retention Plan and will be eligible to receive retention bonus payments described above (to the extent earned) in amounts expressed as a percentage interest in a pool, the value of which will depend on the attainment of specified levels of gross sale proceeds in respect of EP Energy business assets sold within no later than 12 months after closing of the second merger and the date the EP Energy business assets are sold, which is not determinable at this time. Mr. Smolik's percentage interest in the pool will be no less than 12.97%, and Mr. Whitehead's percentage interest in the pool will be no less than 8.78%. Assuming \$8.0 billion in gross sales proceeds and the EP Energy business assets are sold on or within 30 days following the closing of the second merger, Mr. Smolik's payment would be no less than approximately \$810,625, and Mr. Whitehead's payment would be no less than approximately \$548,750. Neither the overall size of, nor the allocations to particular participants in, the El Paso Corporation EP Energy Retention Plan has yet been determined.

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### ***Funding of Benefits Under Benefits Protection Trust***

In connection with the proposed transactions, El Paso and its affiliates may, to the extent required by the trustee of the El Paso Corporation Benefits Protection Trust, be required to contribute amounts to the El Paso Corporation Benefits Protection Trust to fund a portion of the unfunded present value of benefit and payment liabilities that may be triggered in the future under certain compensation plans of El Paso, including El Paso equity compensation plans (excluding the 2005 Omnibus Incentive Compensation Plan), the El Paso Supplemental Benefits Plan, and nonqualified deferred compensation plans for non-employee members of the El Paso board of directors. Certain of El Paso's executive officers and directors participate in such plans, and benefits and payments under the plans may therefore be funded in respect of such executive officers and directors under the El Paso Corporation Benefits Protection Trust in connection with the proposed transactions.

### ***Directors of Kinder Morgan***

The merger agreement provides that Kinder Morgan will take such actions as are necessary to expand the size of the Kinder Morgan board of directors and to appoint two individuals designated by El Paso to fill such vacancies effective as of the effective time of the second merger. As of the date of this information statement/proxy statement/prospectus, El Paso has not yet determined which two individuals will be its designees on the Kinder Morgan board of directors.

### ***Code Section 280G Tax Mitigation Actions***

Pursuant to the merger agreement, El Paso and Kinder Morgan may agree to take certain actions to mitigate any adverse tax consequences triggered under Code Sections 280G and 4999 in connection with the proposed transactions, including, for example, accelerating the vesting of payments or accelerating the payment of amounts that would otherwise be paid in 2012 into 2011.

### ***Indemnification of Executive Officers and Directors***

The merger agreement provides for indemnification in favor of the current and former directors and officers of El Paso and its subsidiaries (including El Paso's executive officers) and for the purchase of directors' and officers' liability insurance and fiduciary liability insurance tail or run-off policies with respect to matters existing or occurring at or prior to the effective time of the merger.

### ***New Arrangements with Kinder Morgan and 2012 Equity Grants***

Prior to the effective time of the second merger, Kinder Morgan and its affiliates may initiate negotiations of agreements, arrangements and understandings with El Paso's executive officers regarding compensation and benefits and may enter into definitive agreements regarding employment with, or the right to participate in the equity of, Kinder Morgan, in each case on a going-forward basis following the completion of the second merger.

In addition, El Paso and Kinder Morgan have agreed that on or about July 15, 2012 (if the effective time of the second merger occurs prior to July 15, 2012), or as soon as reasonably practicable after the effective time of the second merger if the second merger occurs on or after July 15, 2012), Kinder Morgan shall grant equity awards to certain El Paso employees who are retained by Kinder Morgan following the closing of the second merger on terms and conditions (including vesting) generally consistent with Kinder Morgan's equity compensation program for grants made by Kinder Morgan to its employees in 2012, as if such El Paso employees had been Kinder Morgan employees as of the date Kinder Morgan made equity grants to its employees in July 2012.

### ***Ownership of Equity Interests in Kinder Morgan and Affiliates***

Steven J. Shapiro, Thomas Hix, Robert Goldman and Ferrell McClean, each of whom is a member of the board of directors of El Paso, as of the date of board approval of the proposed transactions each held of record or

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may be deemed to have owned beneficially, and as of the date of mailing of this information statement/proxy statement/prospectus each continued to hold of record or may be deemed to own beneficially, shares of common stock of Kinder Morgan and/or equity interests in KMP and other affiliates of Kinder Morgan, the value of which may be affected in connection with the proposed transactions.

***Quantification of Change of Control and Termination Payments and Benefits to the El Paso Named Executive Officers***

The following table sets forth the amount of payments and benefits that each El Paso named executive officer would receive in connection with the transactions, assuming the consummation of the second merger occurred on October 31, 2011, and (except as provided otherwise in the footnotes to the table) the employment of the named executive officer were terminated other than for cause or the named executive officer resigned for good reason, in each case on such date. The payments and benefits are subject to a non-binding advisory vote of El Paso's stockholders, as described under *Interests of Certain Persons in the Transactions - El Paso Executive Officers and Directors*. For additional details regarding the terms of the payments quantified below, see *Interests of Certain Persons in the Transactions - El Paso Executive Officers and Directors*.

**Change of Control and Termination Compensation**

Named Executive Officer	Tax						Total <sup>(6)</sup>
	Cash <sup>(1)</sup>	Equity <sup>(2)</sup>	Pension/ NQDC	Perquisites / Benefits <sup>(3)</sup>	Reimbursement <sup>(4)</sup>	Other <sup>(5)</sup>	
Douglas L. Foshee	\$ 8,580,031	\$ 25,830,411	\$ 0	\$ 55,361	\$ 0	\$ 0	\$ 34,465,803
John R. Sult	1,957,015	4,465,613	0	27,126	972,932	0	7,622,686
Brent J. Smolik	2,820,000	7,855,473	0	42,126	0	0	10,717,599
James C. Yardley	2,316,267	7,557,302	0	35,958	0	0	9,909,527
D. Mark Leland	2,316,267	7,454,561	0	42,126	0	0	9,812,954

- (1) As described above, this amount equals the double-trigger lump-sum cash severance payment provided to the executive under the terms of the 2004 Key Executive Severance Protection Plan within 30 days following a qualifying termination of employment after (or, in certain circumstances, in anticipation of) the second merger (subject to a six-month delay to the extent necessary to avoid the imposition of penalty taxes under Section 409A of the Code), which equals the sum of (A) a prorated amount in respect of the target bonus granted to the executive for the year in which the termination occurs, and (B) the product of (x) two (three in the case of Mr. Foshee, El Paso's CEO), and (y) the sum of the executive's then-current base salary and target bonus. For purposes of calculating the pro-rated amount in respect of each executive's target bonus granted for the year in which the termination occurs, El Paso has assumed that the termination of employment occurs on the last day of the year in which the termination of employment occurs (which, for this purpose, is assumed to be December 31, 2011), which would trigger a payment equal to 100% of the target bonus granted to the executive for the 2011 fiscal year.
- (2) As described above, the amount equals the value of the single-trigger conversion upon the consummation of the second merger of all in-the-money unvested stock options to purchase El Paso common stock, restricted shares of El Paso common stock, and performance-based restricted stock units held by the executive that as of October 31, 2011 convert into the right to receive, at the election of the executive (which election applies to all, but not less than all, of the executive's outstanding equity awards), but subject to proration with respect to the cash portion, either cash or a mixture of cash and shares of Kinder Morgan Class P common stock for all shares subject to such awards (in the case of stock options, less the aggregate exercise price). Performance-based restricted stock units single-trigger vest upon the consummation of the second merger based on target (i.e., 100%) level of attainment. Set forth below are the values of each type of equity-based award that would be converted upon the consummation of the second merger. For purposes of these calculations, because the price per share that El Paso stockholders will receive is not a fixed dollar amount, El Paso has (as required under Item 402(t) of Regulation S-K) used the average closing price per



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share of El Paso common stock over the five business days following the public announcement of the transactions on October 16, 2011. The value reported in respect of awards of performance-based restricted stock units includes the value of dividend equivalents that would become payable with respect to the portion of the award that vests upon the effective time of the second merger (i.e., the target amount, or 100%). These amounts are:

Named Executive	Single-Trigger Vesting		Performance-based Restricted	Total
	Restricted Shares of El Paso	Common Stock		
<b>Officers</b>	<b>Stock Options</b>	<b>Common Stock</b>	<b>Stock Units</b>	<b>Total</b>
Douglas L. Foshee	\$ 10,747,128	\$ 12,111,778	\$ 2,971,505	\$ 25,830,411
John R. Sult	1,838,780	1,943,726	683,107	4,465,613
Brent J. Smolik	3,088,262	3,571,793	1,195,418	7,855,473
James C. Yardley	3,088,262	3,275,076	1,193,964	7,557,302
D. Mark Leland	3,088,262	3,341,651	1,024,648	7,454,561

- (3) As described above, the amount equals the value of the double-trigger health and welfare and life insurance continuation benefits provided to each executive under the terms of the 2004 Key Executive Severance Protection Plan upon a qualifying termination of employment. With respect to Messrs. Foshee, Smolik, Yardley and Leland, the amount also includes the single trigger cost of financial and tax-planning benefits (\$20,000 in the case of Mr. Foshee and \$15,000 in the case of each of Messrs. Smolik, Yardley and Leland) required to be paid for by El Paso pursuant to an arrangement between El Paso and a third-party provider for the one-year period immediately following a change of control of El Paso, which would include the second merger. Mr. Sult elected not to participate in such program.
- (4) As described above, the amount equals the value of the double-trigger tax reimbursement benefits provided to each executive under the terms of the 2004 Key Executive Severance Protection Plan for any excise taxes triggered under Section 4999 of the Code, assuming that the second merger occurs on October 31, 2011. If the second merger occurs in 2012 (which is the expectation of the parties), the amount of the tax reimbursement benefits provided to each executive for excise taxes triggered under Section 4999 of the Code may be different than the amount reported in the table above. Additionally, as described above, El Paso and Kinder Morgan may agree to take certain actions to mitigate any adverse tax consequences triggered under Code Sections 280G and 4999 in connection with the proposed transactions, including, for example, accelerating the vesting of payments or accelerating the payment of amounts that would otherwise be paid in 2012 into 2011, which actions could reduce the amount of each executive's tax reimbursement benefits.
- (5) As described above, the value of Mr. Smolik's retention bonus payable pursuant to the El Paso Corporation EP Energy Retention Plan will be dependent upon the level of gross sale proceeds from the sale of EP Energy assets and the time such assets are sold. Neither the overall size of, nor the allocations to particular participants in, the El Paso Corporation EP Energy Retention Plan has yet been determined. Mr. Smolik's percentage interest in the pool will be no less than 12.97%. Assuming \$8.0 billion in gross sales proceeds and the EP Energy business assets are sold on or within 30 days following the closing of the second merger, Mr. Smolik's payment would be no less than approximately \$810,625.
- (6) The amount includes the aggregate dollar value of the sum of all amounts reported in the preceding columns.

**Interests of Certain Persons in the Transactions – Goldman Sachs**

When considering the recommendation of the board of directors of El Paso with respect to the transactions, you should be aware that Goldman Sachs may have interests in the transactions that are different from, or in addition to, those of El Paso's stockholders generally. These interests may present Goldman Sachs with actual or potential conflicts of interest. The board of directors of El Paso was aware of these interests during its deliberation on the merits of the transactions and in deciding to recommend that you vote for the adoption of the merger agreement and approval of the transactions contemplated by the merger agreement at the special meeting.

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Prior to the receipt of Kinder Morgan's acquisition proposal, El Paso engaged Goldman Sachs to advise it with respect to the proposed spin-off of its exploration and production business and paid Goldman Sachs \$5 million in connection with that engagement. Following receipt of Kinder Morgan's proposal, El Paso engaged Goldman Sachs to continue to act as a financial advisor to El Paso, including reviewing and analyzing El Paso's business plan in connection with the proposed spin-off for purposes of aiding El Paso in its analysis of the potential Kinder Morgan transaction. In the engagement letter for these latter services, El Paso agreed to pay Goldman Sachs a fee of \$20 million upon completion of a transaction with Kinder Morgan. In both engagement letters, El Paso agreed to reimburse Goldman Sachs for certain of its fees and expenses and indemnify it against certain liabilities if they were to arise. In addition to its role as financial advisor to El Paso, Goldman Sachs is also a stockholder of Kinder Morgan and, prior to consummation of the proposed transactions, may be deemed to beneficially own approximately 19 percent of the shares of Kinder Morgan Class P common stock on a fully converted basis, making it the second largest beneficial owner of Kinder Morgan. Two representatives of Goldman Sachs and its affiliates also serve on the board of directors of Kinder Morgan.

For more information relating to Goldman Sachs' role as a financial advisor to El Paso, Goldman Sachs' investment in Kinder Morgan and El Paso's and Goldman Sachs' actions to address any potential conflicts, see "Background of the Transactions" and "El Paso's Engagement of Goldman Sachs."

**Board of Directors and Management of Kinder Morgan After the Transactions**

The directors and executive officers of Kinder Morgan prior to the transactions will continue as the directors and executive officers of Kinder Morgan immediately after the transactions. In addition, the merger agreement provides that Kinder Morgan will take all action necessary, including increasing the size of the Kinder Morgan board and amending Kinder Morgan's shareholders agreement to effect such increase, to elect two individuals designated by El Paso to the Kinder Morgan board. As of the date of this information statement/proxy statement/prospectus, El Paso has not determined whom it will designate to join the Kinder Morgan board.

Set forth below is information concerning Kinder Morgan's current directors and executive officers. Kinder Morgan's directors are elected by the vote of a plurality of Kinder Morgan's various classes of capital stock, voting as a single class, each to serve until his or her successor is duly elected or appointed and qualified or until his or her earlier death, retirement, disqualification, resignation or removal. All of Kinder Morgan's officers serve at the discretion of its board of directors. The ages set forth below are as of December 31, 2011.

<b>Name</b>	<b>Age</b>	<b>Position</b>
Richard D. Kinder	67	Director, Chairman and Chief Executive Officer
C. Park Shaper	43	Director and President
Steven J. Kean	50	Director, Executive Vice President and Chief Operating Officer
Henry Cornell	55	Director
Deborah A. Macdonald	60	Director
Michael Miller	53	Director
Michael C. Morgan	43	Director
Kenneth A. Pontarelli	41	Director
Fayez Sarofim	83	Director
Joel V. Staff	67	Director
John Stokes	60	Director
R. Baran Tekkora	38	Director
Glenn A. Youngkin	45	Director
Kimberly A. Dang	41	Vice President and Chief Financial Officer
David D. Kinder	37	Vice President, Corporate Development and Treasurer
Joseph Listengart	43	Vice President, General Counsel and Secretary
James E. Street	55	Vice President, Human Resources and Administration

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*Richard D. Kinder* served as Chief Manager and Chief Executive Officer of Kinder Morgan Holdco LLC from May 2007 until completion of the initial public offering in February 2011, at which time he assumed the positions of Director, Chairman and Chief Executive Officer. He is also Director, Chairman and Chief Executive Officer of KMR, Kinder Morgan G.P., Inc. and KMK. Mr. Kinder has served as Director, Chairman and Chief Executive Officer of KMR since its formation in February 2001. He was elected Director, Chairman and Chief Executive Officer of KMK in October 1999. He was elected Director, Chairman and Chief Executive Officer of Kinder Morgan G.P., Inc. in February 1997. Mr. Kinder was elected President of KMR, Kinder Morgan G.P., Inc. and KMK in July 2004 and served as President until May 2005. Mr. Kinder is the uncle of David D. Kinder, Vice President, Corporate Development and Treasurer of Kinder Morgan, KMR, Kinder Morgan G.P., Inc. and KMK. Mr. Kinder's experience as Chief Executive Officer of KMK and of KMR, combined with his service as Kinder Morgan's Chairman and Chief Executive Officer provide him with a familiarity with Kinder Morgan's strategy, operations and finances that can be matched by no one else. In addition, Mr. Kinder's significant equity ownership in Kinder Morgan aligns his economic interests with those of Kinder Morgan's other stockholders.

*C. Park Shaper* served as Manager and President of Kinder Morgan Holdco LLC from May 2007 until completion of the initial public offering in February 2011, at which time he assumed the positions of Director and President. He is also Director and President of KMR, Kinder Morgan G.P., Inc. and KMK. Mr. Shaper was elected President of KMR, Kinder Morgan G.P., Inc. and KMK in May 2005. He served as Executive Vice President of KMR, Kinder Morgan G.P., Inc. and KMK from July 2004 until May 2005. Mr. Shaper was elected Director of KMR and Kinder Morgan G.P., Inc. in January 2003 and of KMK in May 2007. He was elected Vice President, Treasurer and Chief Financial Officer of KMR upon its formation in February 2001, and served as its Treasurer until January 2004, and its Chief Financial Officer until May 2005. He was elected Vice President, Treasurer and Chief Financial Officer of KMK in January 2000, and served as its Treasurer until January 2004, and its Chief Financial Officer until May 2005. Mr. Shaper was elected Vice President, Treasurer and Chief Financial Officer of Kinder Morgan G.P., Inc. in January 2000, and served as its Treasurer until January 2004 and its Chief Financial Officer until May 2005. He received a Masters of Business Administration degree from the J.L. Kellogg Graduate School of Management at Northwestern University. Mr. Shaper also has a Bachelor of Science degree in Industrial Engineering and a Bachelor of Arts degree in Quantitative Economics from Stanford University. Mr. Shaper is also a trust manager of Weingarten Realty Investors. Mr. Shaper's experience as Kinder Morgan's President, together with his experience as an executive officer of various Kinder Morgan entities, provide him valuable management and operational expertise and intimate knowledge of Kinder Morgan's business operations, finances and strategy.

*Steven J. Kean* served as Manager and Chief Operating Officer of Kinder Morgan Holdco LLC from May 2007 until completion of the initial public offering in February 2011, at which time he assumed the positions of Director, Executive Vice President and Chief Operating Officer. He is also Executive Vice President and Chief Operating Officer of KMR, Kinder Morgan G.P., Inc. and KMK. Mr. Kean was elected Executive Vice President and Chief Operating Officer of KMR, Kinder Morgan G.P., Inc. and KMK in January 2006. He served as Executive Vice President, Operations of KMR, Kinder Morgan G.P., Inc. and KMK from May 2005 to January 2006. He served as President, Natural Gas Pipelines of KMR and Kinder Morgan G.P., Inc. from July 2008 to November 2009. He served as President, Texas Intrastate Pipeline Group from June 2002 until May 2005. He served as Vice President of Strategic Planning for the Kinder Morgan Gas Pipeline Group from January 2002 until June 2002. Mr. Kean received his Juris Doctor from the University of Iowa in May 1985 and received a Bachelor of Arts degree from Iowa State University in May 1982. Mr. Kean's experience as one of Kinder Morgan's executives since 2002 provides him valuable management and operational expertise and a thorough understanding of Kinder Morgan's business operations and strategy.

*Henry Cornell* served as a Manager of Kinder Morgan Holdco LLC from May 2007 until completion of the initial public offering in February 2011, at which time he continued as a Director. He is a managing director of Goldman, Sachs & Co. and the Chief Operating Officer of its Merchant Banking Division, which includes all of the firm's corporate, real estate and infrastructure investment committees. He is a member of all of its global

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Merchant Banking Investment Committees. Mr. Cornell serves on the boards of directors of Apple American Group, LLC, Pro Sight Specialty Insurance, Kenan Advantage Group, McJunkin Red Man Corporation and USI Holdings Corporation. Mr. Cornell is Chairman of The Citizens Committee of New York City, Treasurer and Trustee of the Whitney Museum of American Art, a member of The Council on Foreign Relations, Trustee Emeritus of the Asia Society, Trustee Emeritus of the Japan Society and a member of Sotheby's International Advisory Board.

Mr. Cornell joined Goldman, Sachs & Co. in 1984 and became a partner in 1994. Prior to joining Goldman, Sachs & Co., Mr. Cornell practiced law with Davis Polk & Wardwell from 1981 to 1984 in New York and London. Mr. Cornell holds a B.A. from Grinnell College and a J.D. from New York Law School. Mr. Cornell has significant experience with energy companies and investments and familiarity with Kinder Morgan's industry and capital markets activity, which enhance his contributions to the board of directors.

*Deborah A. Macdonald* was elected as a Director in April 2011. For the past five years, Ms. Macdonald has served on the boards of several private charitable organizations. Ms. Macdonald served as Vice President (President, Natural Gas Pipelines) of KMK, KMR and Kinder Morgan G.P., Inc. from June 2002 until September 2005 and served as President of NGPL from October 1999 until March 2003. Ms. Macdonald received her Juris Doctor, summa cum laude, from Creighton University in May 1980 and received a Bachelors degree, magna cum laude, from Creighton University in December 1972. As a result of Ms. Macdonald's prior service as an executive officer of KMK, she possesses a familiarity with Kinder Morgan's business operations, financial strategy and organizational structure which enhance her contributions to the board of directors.

*Michael Miller* served as a Manager of Kinder Morgan Holdco LLC from May 2007 until completion of the initial public offering in February 2011, at which time he continued as a Director. Mr. Miller is a Partner at Highstar Capital LP and has been with the firm since 2001. He serves on Highstar's Investment Committee and Executive Committee. Mr. Miller has over 20 years of experience in direct investments, principally in the energy, waste-to-energy, conventional and renewable power sectors and utilities. Mr. Miller currently serves on the boards of directors of Star Atlantic Waste Holdings, L.P. and Utilities, Inc. Mr. Miller received a B.S. from Rensselaer Polytechnic Institute, an M.B.A. from the University of Chicago and is a CFA charter holder. Mr. Miller has significant experience with public companies and investments and familiarity with Kinder Morgan's industry and capital markets activity, which enhance his contributions to the board of directors.

*Michael C. Morgan* served as a Manager of Kinder Morgan Holdco LLC from May 2007 until completion of the initial public offering in February 2011, at which time he continued as a Director. From 2003 until the Going Private Transaction, Mr. Morgan served as a director of KMK. He has been Chairman and Chief Executive Officer of Triangle Peak Partners, LP, a registered investment adviser and fund manager, since April 2008. He also has been President of Portcullis Partners, L.P., a private investment partnership, since October 2004. Mr. Morgan has been a director of Bunchball, Inc. since June 2011, a director of DriveCam, Inc. since July 2009, and an observer to the board of directors of SCienergy Inc., since April 2011 and was a director of Kayne Anderson MLP Investment Company and Kayne Anderson Energy Total Return Fund, Inc. from May 2007 until March 2008. Mr. Morgan was President of KMK, KMR and Kinder Morgan G.P., Inc. from July 2001 to July 2004. Mr. Morgan served as Vice President Strategy and Investor Relations of KMR from February 2001 to July 2001. He served as Vice President-Strategy and Investor Relations of KMK and Kinder Morgan G.P., Inc. from January 2000 to July 2001. He served as Vice President, Corporate Development of Kinder Morgan G.P., Inc. from February 1997 to January 2000. Mr. Morgan was Vice President, Corporate Development of KMK from October 1999 to January 2000. Mr. Morgan received an M.B.A. from Harvard Business School and a Bachelor of Arts and a Masters of Arts from Stanford University. As a result of Mr. Morgan's prior service as a director of KMK, he possesses a familiarity with Kinder Morgan's business operations, financial strategy and organizational structure which enhance his contributions to the board of directors.

*Kenneth A. Pontarelli* served as a Manager of Kinder Morgan Holdco LLC from May 2007 until completion of the initial public offering in February 2011, at which time he continued as a Director. He is also a Director of KMK. Mr. Pontarelli is a managing director of Goldman, Sachs & Co. Mr. Pontarelli was elected Director of

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KMK upon the consummation of the Going Private Transaction in May 2007. He joined Goldman, Sachs & Co. in 1997, became a managing director in 2004 and became a partner in 2006. Mr. Pontarelli serves on the boards of directors of CCS Corporation, Cobalt International Energy, Inc., Energy Future Holdings Corp. and Expro International Group Ltd. He received a B.S. from Syracuse University and an M.B.A. from the Harvard Business School. Mr. Pontarelli's over 10 years of experience as an investment banker and experience as a director of both public and private companies provide him with an understanding of strategic planning, management and financial matters which enhance his contributions to the board of directors.

*Fayez Sarofim* served as a Manager of Kinder Morgan Holdco LLC from May 2007 until completion of the initial public offering in February 2011, at which time he continued as a Director. He has been Chairman of the Board and President of Fayez Sarofim & Co., a registered investment advisor, for more than five years. Over the past five years, Mr. Sarofim has served as a director of Unitrin, Inc. and Argo Group International Holdings, Ltd. and was a director of KMK prior to the Going Private Transaction. As a result of Mr. Sarofim's prior service as a director of KMK, he possesses a familiarity with Kinder Morgan's business operations, financial strategy and organizational structure which enhance his contributions to the board of directors.

*Joel V. Staff* was elected as a Director in April 2011. Since May 2007, Mr. Staff has acted as a private investor. Mr. Staff was Chief Executive Officer of RRI Energy, Inc. from April 2003 until his retirement in May 2007. He also served as RRI Energy, Inc.'s Chairman of the Board from April 2003 to October 2008 and Executive Chairman of the Board from October 2008 until his retirement from the board in June 2009. Mr. Staff was a director of Ensco International Incorporated between May 2002 and May 2008. Mr. Staff's experience as a senior executive in the energy industry provide him with an understanding of the issues Kinder Morgan faces, which enhance his contributions to Kinder Morgan's board of directors.

*John Stokes* served as a Manager of Kinder Morgan Holdco LLC from September 2008 until completion of the initial public offering in February 2011, at which time he continued as a Director. Mr. Stokes joined Highstar Capital LP in 2002 as a full-time consultant and became a partner in 2005. Mr. Stokes currently serves on the board of directors of Utilities, Inc. Mr. Stokes received a BS in Mechanical Engineering from Clemson University and an MBA from the University of Miami. Mr. Stokes has over 35 years of experience in various sectors of the infrastructure industry, including conventional and renewable electric power generation, fuel procurement, energy trading, and project development and finance, which enhance his contributions to the board of directors.

*R. Baran Tekkora* served as a Manager of Kinder Morgan Holdco LLC from November 2010 until completion of the initial public offering in February 2011, at which time he continued as a Director. Mr. Tekkora is a Managing Director of Riverstone Holdings LLC and has been with the firm since 2005. He is primarily engaged in generating and managing the firm's investments in the midstream and oil field services segments of the energy industry. Prior to joining Riverstone, Mr. Tekkora was a Vice President at Goldman, Sachs & Co. in the Natural Resources Group. Mr. Tekkora joined Goldman, Sachs & Co. in 1996 and focused on all segments of the energy and power industry. Mr. Tekkora serves on the boards of directors of Hudson Products Corp. and Permian Tank & Manufacturing, Inc. Previously, he served on the boards of directors of Petroplus Holdings AG and FDR Holdings Ltd. Mr. Tekkora graduated summa cum laude with a Bachelor degree in Economics and Mathematics from Hamilton College in 1996. Mr. Tekkora has a wide variety of mergers and acquisitions, strategic advisory and capital markets experience in many sectors of the energy industry, which enhance his contributions to the board of directors.

*Glenn A. Youngkin* served as a Manager of Kinder Morgan Holdco LLC from May 2007 until completion of the initial public offering in February 2011, at which time he continued as a Director. Mr. Youngkin is Chief Operating Officer of The Carlyle Group and serves on Carlyle's Management Committee. From October 2010 until March 2011, Mr. Youngkin served as Carlyle's interim chief financial officer. From 2005 to early 2008, Mr. Youngkin was the Global Head of the Industrial investment team. From 2000 to 2005, Mr. Youngkin led

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Carlyle's buyout activities in the United Kingdom, and from 1995 to 2000 he was part of the U.S. buyout team. Prior to joining Carlyle, Mr. Youngkin was a management consultant with McKinsey & Company. Mr. Youngkin also previously worked in the investment banking group at CS First Boston. Mr. Youngkin received a B.S. in mechanical engineering and a B.A. in managerial studies from Rice University and his M.B.A. from the Harvard Business School, where he was a Baker Scholar. Mr. Youngkin currently serves on the Board of Directors of PQ Corporation, and Scalina S.A., both Carlyle portfolio companies. Mr. Youngkin also serves on the Board of Trustees of the Langley School and AlphaUSA, and the Board of Directors of the Rice Management Company. Mr. Youngkin has significant experience with public companies and investments and familiarity with Kinder Morgan's industry and capital markets activity, which enhance his contributions to the board of directors.

*Kimberly A. Dang* served as Chief Financial Officer of Kinder Morgan Holdco LLC from May 2007 until completion of the initial public offering in February 2011, at which time she continued as Vice President and Chief Financial Officer. She is also Vice President and Chief Financial Officer of KMR, Kinder Morgan G.P., Inc. and KMK. Mrs. Dang was elected Chief Financial Officer of KMR, Kinder Morgan G.P., Inc. and KMK in May 2005. She served as Treasurer of KMR, Kinder Morgan G.P., Inc. and KMK from January 2004 to May 2005. She was elected Vice President, Investor Relations of KMR, Kinder Morgan G.P., Inc. and KMK in July 2002 and served in that role until January 2009. From November 2001 to July 2002, she served as Director, Investor Relations of KMR, Kinder Morgan G.P., and KMK. Mrs. Dang has received a Masters in Business Administration degree from the J.L. Kellogg Graduate School of Management at Northwestern University and a Bachelor of Business Administration degree in accounting from Texas A&M University.

*David D. Kinder* served as Treasurer of Kinder Morgan Holdco LLC from May 2007 until completion of the initial public offering in February 2011, at which time he continued as Vice President, Corporate Development and Treasurer. He is also Vice President, Corporate Development and Treasurer of KMR, Kinder Morgan G.P., Inc. and KMK. Mr. Kinder was elected Treasurer of KMR, Kinder Morgan G.P., Inc. and KMK in May 2005. He was elected Vice President, Corporate Development of KMR, Kinder Morgan G.P., Inc. and KMK in October 2002. He served as manager of corporate development for KMK and Kinder Morgan G.P., Inc. from January 2000 to October 2002. Mr. Kinder graduated cum laude with a Bachelors degree in Finance from Texas Christian University in 1996. Mr. Kinder is the nephew of Richard D. Kinder.

*Joseph Listengart* served as General Counsel and Secretary of Kinder Morgan Holdco LLC from May 2007 until completion of the initial public offering in February 2011, at which time he continued as Vice President, General Counsel and Secretary. He is also Vice President, General Counsel and Secretary of KMR, Kinder Morgan G.P., Inc. and KMK. Mr. Listengart was elected Vice President, General Counsel and Secretary of KMR upon its formation in February 2001. He was elected Vice President and General Counsel of Kinder Morgan G.P., Inc. and Vice President, General Counsel and Secretary of KMK in October 1999. Mr. Listengart was elected Secretary of Kinder Morgan G.P., Inc. in November 1998 and has been an employee of Kinder Morgan G.P., Inc. since March 1998. Mr. Listengart received his Masters in Business Administration from Boston University in January 1995, his Juris Doctor, magna cum laude, from Boston University in May 1994, and his Bachelor of Arts degree in Economics from Stanford University in June 1990.

*James E. Street* is Vice President, Human Resources and Administration of KMR, Kinder Morgan G.P., Inc. and KMK and assumed the position of Vice President, Human Resources and Administration of Kinder Morgan, Inc. upon completion of the initial public offering in February 2011. Mr. Street was elected Vice President, Human Resources and Administration of KMR upon its formation in February 2001. He was elected Vice President, Human Resources and Administration of Kinder Morgan G.P., Inc. and KMK in August 1999. Mr. Street received a Masters of Business Administration degree from the University of Nebraska at Omaha and a Bachelor of Science degree from the University of Nebraska at Kearney.

**Material U.S. Federal Income Tax Consequences of the Transactions**

The following is a general discussion of the material U.S. federal income tax consequences of the transactions to U.S. holders (as defined below) of El Paso common stock. This discussion does not address any

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tax consequences arising under the unearned income Medicare contribution tax pursuant to the Health Care and Education Reconciliation Act of 2010, nor does it address any tax consequences arising under the laws of any state, local or foreign jurisdiction, or under any U.S. federal laws other than those pertaining to the income tax. This discussion is based upon the Code, the regulations promulgated under the Code and court and administrative rulings and decisions, all as in effect on the date of this information statement/proxy statement/prospectus. These authorities may change, possibly retroactively, and any change could affect the accuracy of the statements and conclusions set forth in this discussion.

This discussion addresses only those U.S. holders (as defined below) of El Paso common stock that hold their shares of El Paso common stock and will hold their shares of New El Paso common stock as a capital asset within the meaning of Section 1221 of the Code (generally, property held for investment). Further, this discussion does not address all aspects of U.S. federal income taxation that may be relevant to you in light of your individual circumstances or that may be applicable to you if you are subject to special treatment under the U.S. federal income tax laws, including if you are:

a financial institution;

a tax-exempt organization;

a real estate investment trust;

an S corporation or other pass-through entity (or an investor in an S corporation or other pass-through entity);

an insurance company;

a regulated investment company or a mutual fund;

a controlled foreign corporation or a passive foreign investment company ;

a dealer or broker in stocks and securities, or currencies;

a trader in securities that elects mark-to-market treatment;

a holder of El Paso common stock subject to the alternative minimum tax provisions of the Code;

a holder of El Paso common stock that received El Paso common stock through the exercise of an employee stock option, through a tax qualified retirement plan or otherwise as compensation;

a holder of El Paso common stock that has a functional currency other than the U.S. dollar;

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a holder of El Paso common stock that holds El Paso common stock as part of a hedge, straddle, constructive sale, conversion or other integrated transaction;

a person that is not a U.S. holder (as defined below); or

a U.S. expatriate.

For purposes of this discussion, the term "U.S. holder" means a beneficial owner of El Paso common stock that is for U.S. federal income tax purposes (1) an individual citizen or resident of the United States, (2) a corporation (or any other entity treated as a corporation for U.S. federal income tax purposes) organized in or under the laws of the United States or any state thereof or the District of Columbia, (3) a trust if (a) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (b) such trust has made a valid election to be treated as a U.S. person for U.S. federal income tax purposes or (4) an estate, the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source.

If an entity or an arrangement treated as a partnership for U.S. federal income tax purposes holds El Paso common stock, the U.S. federal income tax consequences of the transactions of a partner in such partnership (or owner of such entity) generally will depend on the status of the partner and the activities of the partnership (or



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entity). Any entity treated as a partnership for U.S. federal income tax purposes that holds El Paso common stock, and any partners in such partnership, should consult their own tax advisors with respect to the tax consequences of the transactions in their specific circumstances.

The tax consequences of the transactions will depend on your specific situation. You should consult with your own tax advisor as to the tax consequences of the transactions in your particular circumstances, including the applicability and effect of the alternative minimum tax and any state, local, foreign or other tax laws and of changes in those laws.

***Tax Consequences of the Transactions***

The parties intend for each of (i) the first merger and the LLC conversion, taken together, and (ii) the second merger and the third merger, taken together, to be treated as a reorganization for U.S. federal income tax purposes within the meaning of Section 368(a) of the Code. It is a condition to El Paso's obligation and Kinder Morgan's obligation to complete the transactions that El Paso receive an opinion from Wachtell Lipton, dated as of the date of the first merger, to the effect that the first merger and the LLC conversion, taken together, will qualify for U.S. federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code. It is also a condition to El Paso's obligation and Kinder Morgan's obligation to complete the transactions that El Paso receive an opinion from Wachtell Lipton dated as of the closing date of the second merger and the third merger, to the effect that the second merger and third merger, taken together, will qualify for U.S. federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code. These conditions are waivable, and El Paso and Kinder Morgan will undertake to recirculate and resolicit if either condition is waived and the change in tax consequences is material. In addition, in connection with the filing of the registration statement of which this document is a part, Wachtell Lipton has delivered an opinion to El Paso and Kinder Morgan to the same effect as the opinions described above and addressing the U.S. federal income tax consequences of the transactions as described in the succeeding paragraphs and below under Cash Instead of a Fractional Share or Fractional Warrant. These opinions will be based on facts, representations and assumptions set forth or referred to in the opinions and on representation letters provided by El Paso and Kinder Morgan, including (i) that at least 40 percent of the proprietary interest in New El Paso will be exchanged for Kinder Morgan Class P common stock (measuring the value of Kinder Morgan Class P common stock as of the last business day before the date of the merger agreement and taking into account that the proprietary interest in New El Paso will not be preserved to the extent of any cash paid to dissenting stockholders), and (ii) that the value of the warrant per share of New El Paso common stock, based on the Black-Scholes options valuation methodology and measured as of the last business day before the date of the merger agreement, is \$0.96. None of the opinions described above will be binding on the Internal Revenue Service or any court. El Paso and Kinder Morgan have not sought and will not seek any ruling from the Internal Revenue Service regarding any matters relating to the transactions, and as a result, there can be no assurance that the Internal Revenue Service will not assert, or that a court would not sustain, a position contrary to any of the conclusions set forth below.

Accordingly, and as described in the opinion of Wachtell, Lipton, Rosen & Katz filed as Exhibit 8.1 to the registration statement of which this information statement/proxy statement/prospectus is a part, the material U.S. federal income tax consequences of the transactions will be as follows.

You will not recognize gain or loss upon exchanging your El Paso common stock for New El Paso common stock. The aggregate tax basis in the shares of New El Paso common stock that you receive in the first merger will equal your aggregate adjusted tax basis in the shares of El Paso common stock you surrender. Your holding period for the shares of New El Paso common stock that you receive in the first merger will include your holding period for the shares of El Paso common stock that you surrender.

*If the merger consideration you receive pursuant to the second merger includes Kinder Morgan Class P common stock:*

Upon exchanging your New El Paso common stock for Kinder Morgan Class P common stock, warrants and, if applicable, cash (other than cash in lieu of a fractional share or fractional

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warrant), you will recognize gain (but not loss) in an amount equal to the lesser of (i) the sum of the amount of cash (other than cash in lieu of a fractional share or fractional warrant) and the fair market value of the Kinder Morgan Class P common stock and warrants received, minus the adjusted tax basis of the New El Paso common stock surrendered in exchange therefor, and (ii) the amount of cash (other than cash in lieu of a fractional share or fractional warrant) you receive;

Your aggregate adjusted tax basis in the shares of Kinder Morgan Class P common stock and warrants that you receive in the transactions, including any fractional share or fractional warrant deemed received and sold as described below, will equal your aggregate adjusted tax basis in the New El Paso common stock you surrender (determined as described above), reduced by the amount of cash (excluding any cash received in lieu of a fractional share or fractional warrant) received and increased by the amount of gain, if any, recognized by you on the exchange (excluding any gain recognized with respect to cash received in lieu of a fractional share or fractional warrant); such aggregate adjusted tax basis will be allocated to the Kinder Morgan Class P common stock and warrants received by you based on their relative fair market values; and

Your holding period for the Kinder Morgan Class P common stock and warrants that you receive in the transactions (including any fractional share or fractional warrant deemed received and sold as described below) will include your holding period for the shares of New El Paso common stock that you surrender in the exchange (determined as described above).

*If the merger consideration you receive consists only of cash and warrants:*

Upon exchanging your New El Paso common stock for cash (other than cash in lieu of a fractional share or fractional warrant) and warrants, you will recognize gain or loss in an amount equal to the sum of the amount of cash (other than cash in lieu of a fractional share or fractional warrant) and the fair market value of the warrants received, minus the adjusted tax basis of the New El Paso common stock surrendered in exchange therefor;

Your aggregate adjusted tax basis in the warrants that you receive in the transactions, including any fractional warrant deemed received and sold as described below, will equal the fair market value thereof as of the effective time of the second merger; and

Your holding period in the warrants that you receive in the transactions will begin on the day after the effective time of the second merger.

If you acquired different blocks of El Paso common stock at different times or different prices, you should consult your tax advisor regarding the manner in which gain or loss should be determined in your specific circumstances.

Any gain recognized will generally be capital gain, and will be long-term capital gain if, as of the closing date of the second merger and third merger, your holding period with respect to New El Paso common stock surrendered (determined as described above) exceeds one year. Long-term capital gains of individuals are generally eligible for reduced rates of taxation. In some cases, if you actually or constructively own Kinder Morgan Class P common stock other than the Kinder Morgan Class P common stock you receive pursuant to the transactions, the recognized gain could be treated as having the effect of a dividend under the tests set forth in Section 302 of the Code, in which case such gain would be treated as dividend income.

In such cases, U.S. holders that are corporations should consult their own tax advisors regarding the potential applicability of the extraordinary dividend provisions of the Code in their specific circumstances. If the second merger and the third merger, taken together, were not to qualify as a reorganization within the meaning of Section 368(a) of the Code, the second merger would be a fully taxable transaction to each U.S. holder of New El Paso common stock, and each U.S. holder would recognize gain or loss equal to the difference between the sum of the amount of cash and the fair market value of the Kinder Morgan Class P common stock



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and warrants received and the U.S. holder's adjusted tax basis in the New El Paso common stock surrendered (determined as described above) in the exchange therefor.

### ***Cash Instead of a Fractional Share or Fractional Warrant***

If you receive cash instead of a fractional share of Kinder Morgan Class P common stock or fractional warrant, you will be treated as having received the fractional share of Kinder Morgan Class P common stock or fractional warrant pursuant to the transactions and then as having sold that fractional share of Kinder Morgan Class P common stock or fractional warrant for cash. As a result, you will recognize gain or loss equal to the difference between the amount of cash received and the basis in your fractional share of Kinder Morgan Class P common stock or fractional warrant as set forth above. This gain or loss generally will be capital gain or loss, and will be long-term capital gain or loss if, as of the closing date of the second merger and third merger, the holding period for such fractional share or fractional warrant (including the holding period of New El Paso common stock surrendered therefor, determined as described above) is greater than one year. Long-term capital gains of individuals are generally eligible for reduced rates of taxation. The deductibility of capital losses is subject to limitations.

### ***Backup Withholding***

If you are a non-corporate holder of El Paso common stock you may be subject, under certain circumstances, to backup withholding (currently at a rate of 28% and scheduled to increase to 31% in 2013) on any cash payments you receive. You generally will not be subject to backup withholding, however, if you:

furnish a correct taxpayer identification number, certify that you are not subject to backup withholding on the substitute Form W-9 or successor form included in the election form/letter of transmittal you will receive and otherwise comply with all the applicable requirements of the backup withholding rules; or

provide proof acceptable to Kinder Morgan and the exchange agent that you are otherwise exempt from backup withholding. Any amounts withheld under the backup withholding rules are not an additional tax and will generally be allowed as a refund or credit against your U.S. federal income tax liability, provided you timely furnish the required information to the Internal Revenue Service.

**Holders of El Paso common stock are urged to consult their tax advisors with respect to the tax consequences of the transactions in their particular circumstances, including the applicability and effect of the alternative minimum tax and any state, local, foreign or other tax laws and of changes in those laws.**

### **Accounting Treatment of the Transactions**

In accordance with accounting principles generally accepted in the United States and in accordance with the Financial Accounting Standards Board's Accounting Standards Codification Topic 805-*Business Combinations*, Kinder Morgan will account for the transactions as an acquisition of a business.

### **Regulatory Approvals**

The following is a summary of the material regulatory requirements for completion of the transactions. There can be no guarantee if and when any of the consents or approvals required for the transactions will be obtained or as to the conditions that such consents and approvals may contain.

*United States Antitrust.* Under the HSR Act, and related rules, certain transactions, including the merger, may not be completed until notifications have been given and information furnished to the Antitrust Division and

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the FTC and all statutory waiting period requirements have been satisfied. Kinder Morgan and El Paso filed Notification and Report Forms with the Antitrust Division and the FTC on November 4, 2011. On December 5, 2011, Kinder Morgan and El Paso each received a Request for Additional Information and Documentary Materials (referred to as a Second Request ) from the FTC. Consequently, the waiting period under the HSR Act is extended until 11:59 p.m., Eastern Time, on the 30th day after both Kinder Morgan and El Paso have certified their substantial compliance with the Second Request, unless earlier terminated by the FTC.

At any time before or after the effective time of the second merger, the Antitrust Division or the FTC could take action under the antitrust laws, including seeking to prevent the second merger, to rescind the second merger or to conditionally approve the second merger upon the divestiture of assets of Kinder Morgan, El Paso, KMP or EPB or subject to other remedies. In addition, U.S. state attorneys general could take action under the antitrust laws as they deem necessary or desirable in the public interest including without limitation seeking to enjoin the completion of the merger or permitting completion subject to regulatory concessions or conditions. Private parties may also seek to take legal action under the antitrust laws under some circumstances. There can be no assurance that a challenge to the second merger on antitrust grounds will not be made or, if such a challenge is made, that it would not be successful.

*Mexico Antitrust Notification.* Under Mexico's Federal Law on Economic Competition (referred to as the FLEC ), the parties must file a pre-merger notification with the Mexican Federal Competition Commission (referred to as the MFCC ) if certain economic thresholds are met. The FLEC authorizes the MFCC to issue an order within ten business days of the submission of a complete notification prohibiting the parties from consummating their transaction in Mexico until a clearance decision is issued by the MFCC. The MFCC may also request additional information from the filing parties within 15 business days of submission of a complete notification. The filing parties have up to 15 business days from the MFCC's request to provide the additional information to the MFCC. Once the parties produce the additional information, the MFCC has 35 business days to complete its review of the transaction, but the MFCC may extend its review period by an additional 40 business days for complex transactions. Pursuant to the FLEC, the parties notified the MFCC on December 20, 2011. On January 16, 2012, the MFCC issued an order prohibiting the parties from consummating the transaction in Mexico until the MFCC issues a clearance decision. The parties are cooperating with the MFCC's review of the transaction and have submitted additional information to the MFCC on March 1, 2012. At the conclusion of its review, the MFCC could take action under the FLEC, including seeking to prevent the second merger, or to conditionally approve the second merger upon the divestiture of assets of Kinder Morgan, El Paso, KMP or EPB or subject to other remedies.

*FERC Approval.* The parties have sought the approval of the FERC under Section 203 of the Federal Power Act with respect to the indirect transfer of control to Kinder Morgan of El Paso's wholesale electric power marketing subsidiary and the wholesale power contracts to which it is a party. On January 30, 2012, the FERC issued its order approving such transfer of control to Kinder Morgan.

*Other Regulatory Approvals.* In addition to the regulatory approvals described above, the second merger may require the approval of other governmental agencies under foreign regulatory laws, such as under foreign merger control laws. Kinder Morgan and El Paso are currently in the process of reviewing whether filings or approvals may be required or advisable in other jurisdictions. If it is determined that other filings are required or advisable, it is possible that any of the governmental entities with which filings are made may seek, as conditions for granting approval of the second merger, various regulatory concessions.

Neither Kinder Morgan nor El Paso is aware of any material governmental approvals or actions that are required for completion of the second merger other than those described above. It is presently contemplated that if any such additional material governmental approvals or actions are required, those approvals or actions will be sought.

*General.* Pursuant to the terms of the merger agreement, Kinder Morgan and El Paso have agreed to use their respective best efforts to take, or cause their subsidiaries to take, all actions necessary to obtain all

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regulatory approvals required to consummate the second merger. In connection with seeking to obtain the expiration or termination of the waiting period under the HSR Act and approval of any other applicable foreign merger control law, and in order to complete the merger, Kinder Morgan also has agreed to take, or cause its subsidiaries to take, all actions necessary to resolve any objections raised by any applicable antitrust governmental authority, including the FTC and the Antitrust Division under the HSR Act, and undertake any action to obtain antitrust clearance for, and remove any antitrust impediment to, the closing of the merger.

In furtherance of its obligation in the merger agreement, Kinder Morgan has agreed to, among other things, divest or dispose of any businesses, assets, equity interests, product lines or properties of Kinder Morgan, El Paso, KMP or EPB (or any of their subsidiaries) that are necessary to address issues raised by applicable antitrust authorities. Further, in order for Kinder Morgan to comply with its obligations related to antitrust matters, if requested by Kinder Morgan, El Paso has agreed to cooperate with Kinder Morgan with respect to any transaction to divest or hold separate any of El Paso's or EPB's (or their subsidiaries') businesses, assets, equity interests, product lines or properties, including negotiating and entering into definitive contracts for such divestitures of El Paso or EPB (or their subsidiaries') assets prior to the closing of the merger; provided, that (i) any transactions to divest El Paso's or EPB's (or their subsidiaries') assets must be conditioned upon the closing of the merger or the satisfaction of all the conditions to the closing in a case where the closing will occur immediately following such transactions, and (ii) Kinder Morgan must agree to indemnify El Paso and its subsidiaries for all costs, expenses and liabilities incurred by El Paso in connection with the divestiture of any of El Paso's or EPB's or their respective subsidiaries' assets in furtherance of seeking governmental approval to complete the merger.

### **New El Paso Stockholders Making Elections**

No less than thirty days prior to the anticipated effective time of the second merger, New El Paso stockholders will be receiving under separate cover a form of election for making cash, stock, mixed or no elections. New El Paso will disseminate a copy of this information statement/proxy statement/prospectus to its stockholders at the time the election forms are mailed. New El Paso stockholders will have a minimum of twenty business days from the mailing of the form of election to make their election. Any New El Paso stockholder who became a New El Paso stockholder after the record date established for the mailing of form of elections, or who did not otherwise receive a form of election, should contact MacKenzie Partners, Inc. at (800) 322-2885 or their broker, bank or other nominee to obtain a form of election. New El Paso stockholders who vote against approving the merger agreement are still entitled to make elections with respect to their shares. The form of election allows holders of New El Paso common stock to make cash, stock or mixed elections for some or all of their shares of New El Paso common stock or no election for their shares of New El Paso common stock. Shares of New El Paso common stock as to which the holder has not made a valid election prior to the election deadline will be treated as though no election has been made. To validly make a cash, stock, mixed or no election, New El Paso stockholders must properly complete, sign and send the form of election and stock certificates (or evidence of shares in book-entry form) to the exchange agent prior to the election deadline.

For information regarding the tax consequences of the transactions, please see [Material U.S. Federal Income Tax Consequences of the Transactions](#).

### ***Exchange Agent***

Computershare Trust Company, N.A. is expected to serve as the exchange agent for purposes of effecting the election and proration procedures.

### ***Election Deadline***

Unless otherwise designated on the election form, the election deadline will be 5:00 p.m., New York City time, on the second business day prior to the effective time of the second merger. Kinder Morgan will publicly

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announce the anticipated election deadline at least five business days prior to the election deadline. If the effective time of the second merger is delayed to a subsequent date, the election deadline will be similarly delayed to a subsequent date (which will be the second business day prior to the new effective time of the second merger), and Kinder Morgan will promptly announce any such delay.

New El Paso stockholders who hold their shares in street name may be subject to an earlier deadline. Therefore, New El Paso stockholders should carefully read any materials received from their broker, bank, trustee or other nominee.

### ***Form of Election***

The applicable form of election must be properly completed and signed and accompanied by:

duly endorsed certificates representing all of the New El Paso shares to which such form of election relates, duly endorsed in blank or otherwise in a form acceptable for transfer on New El Paso's books (or appropriate evidence as to loss, theft or destruction, appropriate evidence as to the ownership of that certificate by the claimant, and appropriate and customary indemnification, as described in the form of election); or

a properly completed and signed notice of guaranteed delivery, as described in the instructions accompanying the form of election, from a firm which is a member of a registered national securities exchange or commercial bank or trust company having an office or correspondent in the United States, provided that the actual stock certificates are in fact delivered to the exchange agent by the time set forth in the notice of guaranteed delivery; or

if the New El Paso shares are held in book-entry form, the documents specified in the instructions accompanying the form of election.

In connection with the consummation of the first merger, New El Paso does not intend to exchange New El Paso stock certificates for El Paso stock certificates. As a result, when completing the form of election, New El Paso stockholders will be expected to submit their El Paso stock certificate(s) (or evidence of share(s) in book-entry form) with their form of election in accordance with the instructions accompanying the form of election.

In order to make a cash, stock, mixed and/or no election, the properly completed and signed form of election, together with one of the items described above, must be actually received by the exchange agent at or prior to the election deadline in accordance with the instructions accompanying the form of election.

### ***Impact of Selling Shares as to which an Election has Already Been Made***

New El Paso stockholders who have made elections will be unable to sell or otherwise transfer their shares after making the election, unless the election is properly revoked before the election deadline or unless the merger agreement is terminated.

### ***Election Revocation and Changes***

An election may be revoked or changed with respect to all or a portion of the New El Paso shares covered by the election by the holder who submitted the applicable form of election, but only by written notice received by the exchange agent prior to the election deadline. If an election is revoked, or the merger agreement is terminated, and any stock certificates have been transmitted to the exchange agent, the exchange agent will promptly return those certificates to the stockholder who submitted those certificates. New El Paso stockholders will not be entitled to revoke or change their elections following the election deadline, unless the merger agreement is thereafter terminated. As a result, New El Paso stockholders who have made elections will be unable to revoke their elections or sell their New El Paso shares during the period between the election deadline and the date of completion of the second merger or termination of the merger agreement.

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New El Paso stockholders not making a valid election in respect of their shares prior to the election deadline, including as a result of revocation, will be deemed non-electing holders. If it is determined that any purported cash election, share election or mixed election was not properly made, the purported election will be deemed to be of no force or effect and the holder making the purported election will be deemed not to have made an election for these purposes, unless a proper election is subsequently made on a timely basis.

### ***Non-Electing Holders***

New El Paso stockholders who make no election to receive cash consideration, stock consideration or mixed consideration in the merger, whose election forms are not received by the exchange agent by the election deadline, or whose election forms are improperly completed or not signed will be deemed not to have made an election (and such shares referred to as no election shares). New El Paso stockholders not making an election in respect of some or all of their New El Paso shares will receive mixed consideration, subject to proration in accordance with the terms of the merger agreement, with respect to the New El Paso shares for which no election has been made. See Proration and Adjustment Procedures below.

### ***Proration and Adjustment Procedures***

New El Paso stockholders should be aware that cash elections, stock elections or mixed elections they make may be subject to the proration and adjustment procedures provided in the merger agreement. The proration and adjustment procedures work as follows:

#### ***Proration Adjustment if Cash Consideration is Oversubscribed***

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 New El Paso common stock (excluding shares held by New El Paso in treasury, any shares held by Kinder Morgan, Merger Sub Two or Merger Sub Three and any shares held by any other subsidiary of Kinder Morgan or New El Paso and dissenting shares in accordance with Delaware law, but including, for the avoidance of doubt, New El Paso restricted shares, shares of New El Paso common stock issued or deemed to be issued under or in respect of New El Paso stock options, New El Paso performance RSUs and the El Paso ESPP (on the Last Exercise Date) pursuant to the terms and conditions of the merger agreement) issued and outstanding immediately prior to the effective time of the second merger minus (y) the product of the number of mixed consideration election shares (provided that no election shares will be deemed to be mixed consideration election shares for purposes of this proration provision) 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 will 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 will be the Available Cash Election Amount and the denominator of which will be the Cash Election Amount (such fraction being the Cash Fraction), (2) a number of validly issued, fully paid and nonassessable shares of Kinder Morgan Class P common 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 shares dissenting in accordance with Delaware law and (y) the sum of the Per Share Cash Election Consideration and the Per Share Warrant Consideration Value.

The Per Share Warrant Consideration Value is \$0.96.

For example, if 75% of the shares made a cash election and 25% made a stock election (so that the cash consideration is oversubscribed), then the cash election shares would be prorated such that rather than receiving



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\$25.91 per share in cash, each share would receive \$19.53 in cash and 0.2371 shares of Kinder Morgan Class P common stock. Each stock election share would receive 0.9635 shares of Class P common stock. Each New El Paso share would also receive 0.640 of a warrant to purchase one share of Kinder Morgan Class P common stock.

*Proration Adjustment if Cash Consideration is Undersubscribed*

If the Available Cash Election Amount exceeds the Cash Election Amount, then each stock election share will 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 Kinder Morgan Class P common stock equal to the product of (x) the Exchange Ratio and (y) a fraction, the numerator of which will be the Per Share Cash Election Consideration minus the amount calculated in clause (1) of this paragraph and the denominator of which will be the Per Share Cash Election Consideration and (3) the Per Share Warrant Consideration.

For example, if 25% of the shares made a cash election and 75% made a stock election (so that the cash consideration is undersubscribed), then the stock election shares would be prorated such that rather than receiving 0.9635 shares of Class P common stock each, each share would receive \$10.90 in cash and 0.5583 shares of Kinder Morgan Class P common stock. The cash election shares would receive \$25.91 per share in cash. Each New El Paso share would also receive 0.640 of a warrant to purchase one share of Kinder Morgan Class P common stock.

Across the potential scenarios, regardless of the outcome of the elections, there will be the same aggregate number of shares of Kinder Morgan Class P common stock issued and the same aggregate amount of cash paid to New El Paso stockholders.

*Proration Adjustment to Preserve Reorganization Treatment of Transactions*

If the tax opinion condition is unable to be satisfied because the Threshold Percentage would be less than 41%, then a number of shares for which a cash election has been made will instead be converted, on a pro rata basis, into the right to received the mixed consideration such that the Threshold Percentage is equal to 41%. If following this adjustment the tax opinion condition is still unable to be satisfied because the Threshold Percentage would be less than 41%, then with respect to mixed consideration election shares (including no election shares), the Per Share Cash Amount paid for such shares will be decreased, and the Mixed Election Stock Exchange Ratio will be correspondingly increased such that the recomputed Threshold Percentage is equal to 41%.

The term **Threshold Percentage** means 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 New El Paso 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 New El Paso common stock issued or deemed to be issued under or in respect of New El Paso stock options, New El Paso performance RSUs and the El Paso ESPP (on the Last Exercise Date) pursuant to the terms and conditions of the merger agreement), (C) the 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 New El Paso pursuant to the terms of the merger agreement.

The term **Total Stock Consideration** means the product of (x) the aggregate number of shares of Kinder Morgan Class P common stock (determined after giving effect to adjustment in accordance with the merger agreement) issued to holders of New El Paso common stock (other than holders of Non-Section 83(b) Restricted Shares or with respect to shares of New El Paso common stock issued or deemed to be issued under or in respect

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of New El Paso stock options, New El Paso performance RSUs and the El Paso ESPP (on the Last Exercise Date) pursuant to the terms and conditions of the merger agreement), and (y) \$26.89.

The term **Total Warrant Consideration** means the product of (x) the aggregate number of Warrants issued to holders of New El Paso common stock (other than holders of Non-Section 83(b) Restricted Shares or with respect to shares of New El Paso common stock issued or deemed to be issued under or in respect of New El Paso stock options, New El Paso performance RSUs and the El Paso ESPP (on the Last Exercise Date) pursuant to the terms and conditions of the merger agreement), and (y) the Per Share Warrant Consideration Value.

The term **tax opinion condition** means the condition to closing that Wachtell, Lipton, Rosen & Katz, tax counsel to El Paso, deliver to El Paso (i) at the effective time of the first merger, a written opinion dated as of the date of the first merger to the effect that, on the basis of the 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 of the second merger and the third merger to the effect that, on the basis of the 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.

**None of Kinder Morgan, El Paso or New El Paso is making any recommendation as to whether New El Paso stockholders should make a cash election, stock election, mixed election or no election in the transactions. You must make your own decision with respect to such election. No guarantee can be made that you will receive the amount of cash consideration or stock consideration you elect. As a result of the proration procedures and other limitations described in this information statement/proxy statement/prospectus and in the merger agreement, you may receive stock consideration or cash consideration in amounts that are different from the amounts you elect to receive. Because the value of the stock consideration and cash consideration may differ, you may receive consideration having an aggregate value less than that you elected to receive. The U.S. federal income tax consequences of the transactions to an El Paso stockholder are complex and are dependent on a number of factors specific to each stockholder, including the type of consideration received in the second merger. Please see the discussion set forth in the section entitled **Material U.S. Federal Income Tax Consequences of the Transactions** for a description of the material U.S. federal income tax consequences of the transactions. You are urged to consult your own independent tax advisor concerning the U.S. federal income tax consequences to you of the transactions, as well as the application of state, local and foreign income and other tax laws.**

## **Exchange of Shares**

Kinder Morgan expects to appoint Computershare Trust Company, N.A. as exchange agent for the purpose of:

receiving election forms;

determining in accordance with the merger agreement (and the election form) the merger consideration to be received by each holder of shares of New El Paso common stock; and

exchanging the applicable merger consideration for certificates formerly representing shares of New El Paso common stock or for New El Paso shares represented by book-entry.

Promptly after the closing date of the second merger, the exchange agent will send to each record holder of New El Paso common stock at the effective time of the second merger who has not submitted an effective form of election a letter of transmittal and instructions for exchanging shares of New El Paso common stock for the applicable merger consideration.

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**Listing of Kinder Morgan Class P Common Stock and Warrants Issued in the Transactions; Delisting and Deregistration of New El Paso Common Stock After the Transactions**

It is a condition to the completion of the transactions that the shares of Kinder Morgan Class P common stock deliverable to the stockholders of New El Paso as contemplated by the merger agreement will have been approved for listing (subject, if applicable, to notice of issuance) for trading on the NYSE. In addition, it is a condition to the completion of the transactions that the warrants deliverable to the stockholders of New El Paso as contemplated by the merger agreement will have been approved for listing (subject, if applicable, to notice of issuance) for trading on the NYSE, NASDAQ or such other exchange(s), electronic trading networks or other suitable trading platforms as are reasonably agreed to by Kinder Morgan and El Paso. Upon completion of the transactions, the New El Paso common stock, which will be listed on the NYSE at the effective time of the first merger, will cease to be listed on the NYSE and will subsequently be deregistered under the Exchange Act.

**Appraisal Rights in Connection with the Second Merger**

Holders of El Paso common stock will become holders of common stock of New El Paso as a result of the first merger. Holders of El Paso common stock will not have appraisal rights under Section 262 of the DGCL in connection with the first merger. The holders of common stock of New El Paso will be entitled to appraisal rights under Section 262 of the DGCL in connection with the second merger. After the effective time of the first merger, a notice of appraisal rights will be delivered to the holders of common stock of New El Paso, which notice will describe the appraisal rights and the procedures that holders of the common stock of New El Paso must follow in order to exercise and perfect appraisal rights and provide certain summary financial information concerning New El Paso.

Section 262 of the DGCL is reprinted in its entirety as Annex H to this document. The information in this section describing certain material aspects of Section 262 of the DGCL is summary in nature, and is qualified in its entirety by reference to Annex H. Failure to comply strictly with the procedures set forth in Section 262 of the DGCL will result in the loss of appraisal rights.

Under the DGCL, record holders of common stock of New El Paso (whether they become such holders before or after the first merger) who follow the procedures set forth in Section 262 of the DGCL will be entitled to have their shares appraised by the Delaware Court of Chancery and to receive payment in cash of the fair value of those shares, exclusive of any element of value arising from the accomplishment or expectation of the merger, together with interest from the date of the second merger to the date of the determination of appraised value. The value determined in any such proceeding could more than, less than, or the same as the consideration payable in the second merger.

If you wish to exercise appraisal rights, you must not transfer your shares of New El Paso common stock with respect to which you wish to exercise appraisal rights and you must continuously hold such shares through the effective date of the second merger. You must deliver to New El Paso a written demand for appraisal of your shares of common stock of New El Paso within 20 days after the date of mailing of the notice of appraisal that you will receive after the effective time of the first merger. A vote against the adoption of the merger agreement and the first merger agreement will not, in and of itself, constitute a demand for appraisal.

If you wish to exercise your appraisal rights, you must be the record holder of such shares of common stock of New El Paso continuously through the effective time of the second merger. Accordingly, a stockholder who is the record holder of shares of common stock of New El Paso on the date the written demand for appraisal is made, but who thereafter transfers such shares prior to the effective time of the second merger, will lose any right to appraisal in respect of such shares. If you hold shares of New El Paso in street name and wish to exercise your appraisal rights, you are not the record holder and must direct your broker, bank, trustee or other nominee to comply with the rules outlined in this section.

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Within 120 days after the effective time of the second merger, but not thereafter, any stockholder who has complied with the required conditions of Section 262 may commence an appraisal proceeding by filing a petition in the Delaware Court of Chancery, with a copy served on the New EP Surviving Company (in the case of a petition filed by a stockholder), demanding a determination of the fair value of the shares held by all dissenting stockholders. If no such petition is filed, appraisal rights will cease, and all dissenting stockholders will become entitled to receive payment of the applicable per share merger consideration, as provided in the merger agreement, without interest. Neither Kinder Morgan nor the New EP Surviving Company is under any obligation, and they have no intention, to file a petition with respect to appraisal of the fair value of the shares. Accordingly, if you wish to exercise your appraisal rights, you should regard it as your obligation to take all steps necessary to perfect your appraisal rights in the manner prescribed in Section 262 of the DGCL.

Within 120 days after the effective time of the second merger, any stockholder who has complied with the provisions of Section 262 of the DGCL will be entitled, upon written request, to receive from Merger Sub Three, as the successor in interest to New El Paso in the third merger, a statement setting forth the aggregate number of shares of common stock of the New El Paso with respect to which demands for appraisal were received by New El Paso, and the aggregate number of holders of such shares. Such written statement must be mailed to the stockholder within ten days after the written request therefor has been received by Merger Sub Three or within ten days after expiration of the period for delivery of appraisal demands, whichever is later. 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 an appraisal petition or request from Merger Sub Three the statement described in this paragraph.

If a petition for an appraisal is timely filed and a copy thereof served upon Merger Sub Three, as the successor in interest to New El Paso in the third merger, Merger Sub Three will then be obligated, within 20 days, to file with the Delaware Register in Chancery a duly verified list containing the names and addresses of all stockholders who have demanded appraisal of their shares and with whom agreements as to the value of their shares have not been reached. After notice to the stockholders as required by the Delaware Court of Chancery, the Delaware Court of Chancery is empowered to conduct a hearing on such petition to determine those stockholders who have complied with Section 262 of the DGCL and who have become entitled to appraisal rights thereunder. The Delaware Court of Chancery may require the stockholders who demanded appraisal rights of the shares of common stock of New El Paso to submit their stock certificates to the Register in Chancery for notation thereon of the pendency of the appraisal proceeding; and if any stockholder fails to comply with such direction, the Delaware Court of Chancery may dismiss the proceedings as to such stockholder.

After the Delaware Court of Chancery determines which stockholders are entitled to appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Delaware Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding, the Delaware Court of Chancery shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger. If you are considering seeking appraisal, you should be aware that the fair value of your shares as determined under Section 262 of the DGCL could be more than, the same as or less than the per share merger consideration you are entitled to receive pursuant to the merger agreement if you did not seek appraisal of your shares and that investment banking opinions as to the fairness from a financial point of view of the per share merger consideration payable in a merger are not necessarily opinions as to fair value under Section 262 of the DGCL. In determining fair value of shares, the Delaware Court of Chancery will take into account all relevant factors. In *Weinberger v. UOP, Inc.*, the Delaware Supreme Court has stated that such factors include market value, asset value, dividends, earnings prospects, the nature of the enterprise and any other facts which were known or which could be ascertained as of the date of the merger which throw any light on future prospects of the merged corporation. In *Weinberger*, the Delaware Supreme Court stated, among other things, that proof of value by any techniques or methods generally considered acceptable in the financial community and otherwise admissible in court should be considered in an appraisal proceeding. In addition, the Delaware Court of Chancery has decided that the statutory appraisal remedy, depending on factual circumstances, may or may not be a dissenter's exclusive remedy.

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The Delaware Court of Chancery will direct the payment of the fair value of the shares of common stock of New El Paso to dissenting stockholders entitled thereto. Unless the Delaware Court of Chancery in its discretion determines otherwise for good cause shown, interest from the effective time of the second 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 effective time of the second merger and the date of payment of the judgment. The costs of the action (which do not include attorneys' or expert fees or expenses) may be determined by the Delaware Court of Chancery and taxed upon the parties as the Delaware Court of Chancery deems equitable. Upon application by a stockholder, the Delaware Court of Chancery may order that all or a portion of the expenses incurred by any stockholder in connection with an appraisal, including without limitation reasonable attorneys' fees and the fees and expenses of experts utilized in the appraisal proceeding, be charged pro rata against the value of all of the shares entitled to appraisal. In the absence of such determination or assessment, each party bears its own expenses.

Any stockholder who has duly demanded and perfected an appraisal in compliance with Section 262 of the DGCL will not, from and after the effective time of the second merger, be entitled to vote his, her or its shares for any purpose or be entitled to the payment of dividends or other distributions thereon, except dividends or other distributions payable to holders of record of shares of common stock of the merger as of a date prior to the effective time of the second merger.

At any time within 60 days after the effective time of the second merger, any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party will have the right to withdraw his, her or its demand for appraisal and to accept the applicable per share merger consideration, as set forth in the merger agreement, for his, her or its shares pursuant to the merger agreement by delivering a written withdrawal of such demand to Merger Sub Three, as the successor in interest to New El Paso in the third merger. After this period, a stockholder may withdraw his, her or its demand for appraisal and receive the applicable per share merger consideration, as set forth in the merger agreement, for his, her or its shares pursuant to the merger agreement only with the written consent of Merger Sub Three. If no petition for appraisal is filed with the Delaware Court of Chancery within 120 days after the effective time of the second merger, stockholders' rights to appraisal will cease, and all stockholders will be entitled to receive the applicable per share merger consideration, as set forth in the merger agreement, for his, her or its shares pursuant to the merger agreement, as if such stockholders had not demanded appraisal of his, her or its shares. No petition timely filed in the Delaware Court of Chancery demanding appraisal will be dismissed as to any stockholder without the approval of the Delaware Court of Chancery, and such approval may be conditioned on such terms as the Delaware Court of Chancery deems just; provided, however, that any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party may withdraw his, her or its demand for appraisal and accept the per share merger consideration, as set forth in the merger agreement, within 60 days after the effective time of the second merger.

If you properly demand appraisal of your shares of common stock of New El Paso under Section 262 of the DGCL and you fail to perfect, or effectively withdraw or lose, your right to appraisal, as provided in the DGCL, your shares will be converted into the right to receive the applicable per share merger consideration, as set forth in the merger agreement, with respect to such shares. If you fail to perfect, or effectively withdraw or lose, your right to appraisal, as provided in the DGCL, following the Election Deadline (as defined above), your shares shall be treated as if they had been converted into and become exchangeable for the right to receive the Per Share Mixed Election Consideration, except that each of your shares shall instead be converted into the right to receive the Per Share Stock Election Consideration if the condition with respect to receiving a the Tax Opinion (as defined above) is otherwise unable to be satisfied.

You will fail to perfect, or effectively lose or withdraw, your right to appraisal if, among other things, no petition for appraisal is filed within 120 days after the effective time of the second merger, or if you deliver to New El Paso a written withdrawal of your demand for appraisal. Any such attempt to withdraw an appraisal demand more than 60 days after the effective time of the second merger will require the written approval of Merger Sub Three, as the successor in interest to New El Paso in the third merger.

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Failure to take any required step in connection with the exercise of appraisal rights will result in the termination or waiver of such rights.

APPRAISAL RIGHTS CANNOT BE EXERCISED AT THIS TIME. THE INFORMATION SET FORTH ABOVE IS FOR INFORMATIONAL PURPOSES ONLY WITH RESPECT TO ALTERNATIVES AVAILABLE TO STOCKHOLDERS IF THE FIRST MERGER AND THE SECOND MERGER ARE COMPLETED. STOCKHOLDERS WHO WILL BE ENTITLED TO APPRAISAL RIGHTS IN CONNECTION WITH THE SECOND MERGER WILL RECEIVE ADDITIONAL INFORMATION CONCERNING APPRAISAL RIGHTS AND THE PROCEDURES TO BE FOLLOWED IN CONNECTION THEREWITH BEFORE SUCH STOCKHOLDERS HAVE TO TAKE ANY ACTION RELATING THERETO.

### **Litigation Related to the Transactions**

Kinder Morgan and/or El Paso have been named in twenty-two putative class action lawsuits filed in connection with the transactions.

The following lawsuits have been filed in the Court of Chancery of the State of Delaware (referred to as the Delaware Court ): (i) Kahn v. Foshee, et al. (Case No. 6949), filed on October 19, 2011; (ii) Isabella v. El Paso Corp., et al. (Case No. 6952), filed on October 19, 2011; (iii) Pipefitters Local Union #537 Trust Funds v. Braniff, et al. (Case No. 6953), filed on October 19, 2011; (iv) Bacher v. El Paso Corp., et al. (Case No. 6954), filed on October 20, 2011; (v) Saratoga Advantage Trust Energy & Basic Materials Portfolio, et al. v. El Paso Corp., et al. (Case No. 6958), filed on October 20, 2011; (vi) Louisiana Municipal Police Employees Retirement System v. Braniff, et al. (Case No. 6960), filed on October 20, 2011; (vii) Oklahoma Firefighters Pension and Retirement System v. Braniff, et al. (Case No. 6967), filed on October 24, 2011; (viii) Shaev v. Braniff, et al. (Case No. 6966), filed on October 24, 2011; (ix) KBC Asset Management NV v. Braniff, et al. (Case No. 6965), filed on October 24, 2011; (x) International Brotherhood of Electrical Workers Local 98 Pension Fund v. Foshee, et al. (Case No. 6978), filed on October 25, 2011; (xi) Pompano Beach Police and Firefighters Retirement System v. Foshee, et al. (Case No. 6986), filed on October 27, 2011; and (xii) Vitelli v. El Paso Corp., et al. (Case No. 7004), filed on November 2, 2011, and (xiii) Knowles v. Broniff, et al. (Case No. 7028) filed on November 10, 2011.

The above-referenced litigations have been consolidated in *In re El Paso Corporation Shareholder Litigation*, Case No. 6949-CS (the Delaware Action ) and the Court has appointed lead counsel and lead plaintiffs. A Verified Consolidated Class Action Complaint (the Delaware Complaint ) was filed in the Delaware Action on November 29, 2011. The Court has scheduled a preliminary injunction hearing for February 9, 2012.

The following lawsuits have been filed in the District Court of Harris County, Texas (referred to as the Texas Court ): (i) Johnson v. El Paso Corp., et al. (Case No. 62339), filed on October 17, 2011; (ii) Insulators and Asbestos Workers Local No. 14 v. El Paso Corp., et al. (Case No. 63235), filed on October 19, 2011; (iii) Southeastern Pennsylvania Transportation Authority v. El Paso Corp., et al. (Case No. 63284), filed on October 19, 2011; (iv) City of Roseville Employees Retirement System v. El Paso Corp., et al. (Case No. 63772), filed on October 20, 2011; (v) Abigt, et al. v. El Paso Corp., et al. (Case No. 63791), filed on October 20, 2011; (vi) Bushansky v. Braniff, et al. (Case No. 64336), filed on October 24, 2011; (vii) Oakland County Employees Retirement System v. El Paso Corp., et al. (Case No. 64652), filed on October 25, 2011; and (viii) Melton v. El Paso Corp., et al. (Case No. 66384), filed on November 1, 2011.

The above-referenced actions have been consolidated in *Rebecca Johnson v. El Paso Corporation*, Case No., 2011-62339 (the Texas Action ). A Consolidated Amended Petition for Breach of Fiduciary Duty (the Texas Complaint ) was filed in the Texas Action on November 22, 2011. The parties in the Texas Action have agreed to coordinate discovery with the Delaware Action and that any motion for preliminary injunctive relief related to the transactions will be adjudicated before the Delaware Court of Chancery.

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Each lawsuit is brought by purported holders of El Paso common stock, both individually and on behalf of a putative class of El Paso's stockholders, seeking to enjoin the transactions and alleging, among other things, that the members of the El Paso Board of Directors (the El Paso Board or the Individual Defendants) breached their fiduciary duties by agreeing to sell El Paso for inadequate and unfair consideration and pursuant to an inadequate and unfair process, and that El Paso (and, in the Texas Complaint, Sirius Holdings Merger Corporation and Sirius Merger Corporation), Kinder Morgan (and Sherpa Merger Sub, Inc. and Sherpa Acquisition, LLC) and/or The Goldman Sachs Group, Inc. and its subsidiary (referred to in this section collectively as Goldman, Sachs & Co.) aided and abetted such alleged breaches.

The Delaware Complaint alleges that the merger agreement is the result of a flawed process because the El Paso Board did not conduct any meaningful pre- or post-signing market check and relied on a conflicted advisor, Goldman Sachs, as to whether the spin-off would produce better value for El Paso than the transactions. Plaintiffs claim that the El Paso Board was steered by Goldman Sachs to enter into the merger agreement rather than pursue the spin-off thereby advancing Goldman Sachs' own interests in seeing its investment in Kinder Morgan increase in value. The Delaware Complaint further alleges that having followed a flawed process, the El Paso Board agreed to an unfair price that provides for inadequate consideration to be paid to the company's stockholders and wrongfully transferred to Kinder Morgan the opportunity to spin off or sell the E&P assets, effectively transferring the benefits of the spin-off from El Paso stockholders to Kinder Morgan. The Delaware Complaint also alleges that the El Paso Board eliminated the prospect of a superior offer emerging for the company by agreeing to disproportionate and unreasonable deal protection devices in the merger agreement, including a prohibition on the solicitation of higher offers, allowing Kinder Morgan the right to match a superior offer, agreeing to a \$650 million termination fee and accepting a provision restricting the Board's ability to exercise its fiduciary out in the event of a third party bid for El Paso's E&P business or a proposal to otherwise acquire less than 50% of El Paso. Plaintiffs further allege that the process was tainted by the participation of supposedly interested Board members in the sales process; in particular, the Delaware Complaint alleges that Mr. Foshee was conflicted because he is allegedly to receive a \$95 million severance package in the event that the transactions are consummated that would not be paid to him if the spin-off were pursued.

The Delaware Complaint also alleges that the Individual Defendants violated their fiduciary duty of candor by disseminating a Form S-4 on November 10, 2011 (the Preliminary Proxy) that allegedly contains material misstatements and/or omissions regarding: (i) the value the El Paso Board ascribed to the proposed spin-off and how that value compares to the merger transaction; (ii) the financial fairness of the transactions; (iii) Goldman Sachs' alleged conflict of interest; and (iv) the negotiation of the merger transactions.

The Delaware Complaint seeks compensatory damages, pre- and post-judgment interest and costs (including attorneys' and expert fees), as well as declaratory and injunctive relief, including, among other things: (i) preliminarily and permanently enjoining defendants from taking any action to consummate the transactions until such time as the Individual Defendants have fully complied with their fiduciary duties; and (ii) enjoining the El Paso shareholders' vote on the transactions until the Individual Defendants' breaches of the fiduciary duty of candor have been rectified.

The Texas Complaint similarly alleges that the proposed merger price is inadequate and is the product of a conflicted process. Plaintiffs allege that the members of the El Paso Board of Directors breached their fiduciary duties to stockholders by, among other things: (i) conducting an unfair and conflicted process to evaluate El Paso's strategic alternatives; (ii) retaining conflicted financial and legal advisors (including Goldman Sachs, Morgan Stanley and Wachtell Lipton), and otherwise failing to address and resolve conflicts on the part of its advisors and El Paso management; (iii) permitting El Paso management to manage the process and meet with Kinder Morgan outside of the presence of El Paso Board members; (iv) undervaluing El Paso's inherent value and its value to Kinder Morgan, and, in particular, El Paso's proposed spin-off of its E&P business and the stockholder value it would create; (v) transferring the value of the spin-off to Kinder Morgan to the detriment of El Paso stockholders; and (vi) including certain deal-protection mechanisms in the merger agreement. In addition, the Texas Complaint alleges that the Preliminary Proxy contains material omissions and misstatements,

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including information concerning (i) the sales process; (ii) the alleged conflicts of interest affecting the Board, management and their advisors; (iii) El Paso's intrinsic value and prospects going forward; and (iv) data and inputs underlying the financial analysis supporting the fairness opinions of Morgan Stanley, Evercore and Barclays.

The Texas Complaint seeks declaratory and injunctive relief, including, among other things, orders (i) enjoining defendants from consummating the transactions until El Paso adopts a procedure or process to maximize shareholder value; (ii) directing the Individual Defendants to exercise their fiduciary duties in connection with any transaction; (iii) rescinding the transactions to the extent already implemented; (iv) requiring defendants to issue an amended S-4 to remedy the supposed misrepresentations and omissions alleged in the Texas Complaint; and (v) awarding costs and disbursements, including attorneys' and experts' fees to plaintiffs.

Plaintiffs in the consolidated Delaware action have moved to preliminarily enjoin the vote on the transactions. The plaintiffs in the Texas Action have agreed to coordinate discovery with the Delaware action and further that any motion to enjoin the shareholder meeting or the closing will be heard by the Delaware Court of Chancery.

On January 13, 2012, plaintiffs in the consolidated Delaware action filed a brief in support of their motion for a preliminary injunction seeking to enjoin the shareholder vote on the Merger as well as the enforcement of the deal protection provisions in the merger agreement so that the El Paso board could retain what plaintiffs allege would be an independent financial advisor to assist it in evaluating its strategic alternatives. Defendants in the consolidated Delaware action filed briefs in opposition to plaintiffs' motion for a preliminary injunction on January 23, 2012. On January 27, 2012, the Court of Chancery entered a revised scheduling order providing, among other things, for a hearing on plaintiffs' preliminary injunction motion on February 9, 2012.

On February 9, 2012, a hearing on plaintiffs' preliminary injunction motion was held before Chancellor Leo E. Strine, Jr. of the Delaware Court of Chancery. Following extensive oral argument, the Chancellor reserved judgment on the motion and indicated that he would issue a ruling prior to March 6, 2012, the current date of the El Paso stockholders' meeting. In a memorandum opinion, dated February 29, 2012, the Delaware Court of Chancery denied plaintiffs' motion for a preliminary injunction. The Delaware Court of Chancery found that plaintiffs had demonstrated a probability of success on the merits and irreparable injury, but denied the injunction after balancing the hardships. El Paso intends to (i) make available a copy of the memorandum opinion on its website at [investor.elpaso.com](http://investor.elpaso.com) and (ii) file a Current Report on Form 8-K attaching the memorandum opinion as an exhibit.

Kinder Morgan and El Paso believe the claims asserted in these lawsuits are without merit.

The following lawsuit was filed on November 7, 2011, in the Supreme Court of the State of New York against Goldman Sachs: *Grossman v. The Goldman Sachs Group, Inc.* (Index No. 11112770). The lawsuit is brought by a purported holder of El Paso common stock, both individually and on behalf of a putative class of El Paso stockholders, alleging that Goldman Sachs aided and abetted a breach of fiduciary duties by the members of the El Paso Board of Directors in connection with their agreement to sell El Paso. The lawsuit seeks damages in an unspecified amount. Neither Kinder Morgan nor El Paso is named as a defendant in the lawsuit.

The following lawsuit was filed on December 16, 2011, in the Delaware Court against El Paso and the members of the El Paso Board of Directors: *Hite Hedge LP, et al. v. El Paso Corporation, et al.* (Case No. 7117). The lawsuit is brought by purported holders of common units of EPB, both individually and on behalf of a putative class of EPB unitholders, alleging that El Paso and the members of the El Paso Board of Directors breached fiduciary duties supposedly owed to the common unitholders of EPB by agreeing to the terms of the sale of El Paso to Kinder Morgan. The lawsuit seeks damages in an unspecified amount. El Paso and the members of El Paso's Board of Directors moved to dismiss the complaint on January 10, 2012. Briefing on the motion is not complete, and no hearing on the motion has been scheduled.



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**THE FIRST MERGER AGREEMENT**

*The following describes the material provisions of the first merger agreement, which is attached as Annex B to this information statement/proxy statement/prospectus and which is incorporated by reference herein.*

*The description in this section and elsewhere in this information statement/proxy statement/prospectus is qualified in its entirety by reference to the first merger agreement. This summary does not purport to be complete and may not contain all of the information about the first merger agreement that is important to you. El Paso encourages you to read carefully the first merger agreement in its entirety before making any decisions regarding the transactions. The first merger agreement and this summary of its terms have been included to provide you with information regarding the terms of the first merger agreement.*

**The First Merger Agreement**

The first merger agreement, dated October 16, 2011, by and among El Paso and its two merger subsidiaries, New El Paso and Merger Sub One, sets forth the terms and conditions of the first merger, which is the first step in the series of proposed transactions pursuant to which Kinder Morgan will acquire El Paso.

***The First Merger.*** Pursuant to the terms of the first merger agreement and in accordance with Delaware law, Merger Sub One will be merged with and into El Paso. El Paso will survive the merger (referred to as the EP Surviving Company), automatically succeeding to all rights and property and becoming subject to all debts and liabilities of Merger Sub One, and the separate existence of Merger Sub One will cease. Pursuant to the first merger, El Paso will become a wholly owned subsidiary of New El Paso, and the stockholders of El Paso will become the stockholders of New El Paso.

***First Effective Time.*** The first merger will become effective at the time the certificate of merger is filed with the Secretary of the State of Delaware or at such later time as is specified in the certificate of merger (referred to as the first effective time).

***Common Stock.*** At the first effective time, each outstanding share of common stock of Merger Sub One will be converted into one share of common stock of the EP Surviving Company; each outstanding share of common stock of El Paso will be converted into one share of common stock of New El Paso; and each share of common stock of New El Paso that is owned by El Paso will be contributed to the capital of New El Paso. From and after the first effective time, each outstanding certificate representing shares of El Paso common stock will be deemed converted and exchanged for shares of New El Paso common stock, without any action on the part of El Paso stockholders.

***Stock Options, Restricted Shares, Performance-Based Restricted Stock Units and Other Securities of El Paso.*** El Paso will take all actions as may be necessary so that at the first effective time, each El Paso stock option, restricted share, performance-based restricted stock unit and other security of El Paso will automatically be converted into an equivalent New El Paso stock option, restricted share, performance-based restricted stock unit or other security of New El Paso, as applicable.

***Appraisal Rights.*** In accordance with Section 262 of the DGCL, no appraisal rights are available to the stockholders of El Paso (or to New El Paso as the sole stockholder of Merger Sub One) in connection with the first merger.

***Governance Documents.*** The certificate of incorporation and the bylaws of El Paso will be unaffected by the first merger and will become the certificate of incorporation and the bylaws of El Paso as the EP Surviving Company. The certificate of incorporation and bylaws of New El Paso will be substantially identical to those of El Paso.

***Directors and Officers.*** The directors and officers of El Paso immediately prior to the first effective time will become the directors and officers of the EP Surviving Company and will also be the directors and officers of New El Paso.

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***Conditions to the First Merger.*** Consummation of the first merger is conditioned upon the adoption of the merger agreement and the first merger agreement and approval of the transactions contemplated by the merger agreement and the first merger agreement by the stockholders of El Paso. In other words, consummation of the first merger is conditioned upon Proposal 1 receiving the affirmative vote of a majority of the outstanding shares of El Paso common stock at the El Paso special meeting.

***Termination of the First Merger Agreement.*** The first merger agreement may be terminated, and the first merger abandoned, by mutual consent of the board of directors of El Paso and the board of directors of Merger Sub One at any time prior to the first effective time, notwithstanding any approval of the first merger agreement by the stockholders of El Paso or of Merger Sub One.

***Governing Law.*** The first merger agreement is governed by the laws of the State of Delaware.

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**THE MERGER AGREEMENT**

*The following describes the material provisions of the merger agreement, which is attached as Annex A to this information statement/proxy statement/prospectus and incorporated by reference herein. The description in this section and elsewhere in this information statement/proxy statement/prospectus is qualified in its entirety by reference to the merger agreement. This summary does not purport to be complete and may not contain all of the information about the merger agreement that is important to you. Kinder Morgan and El Paso encourage you to read carefully the merger agreement in its entirety before making any decisions regarding the transactions as it is the legal document governing the second merger.*

*The merger agreement and this summary of its terms have been included to provide you with information regarding the terms of the merger agreement. Kinder Morgan and El Paso are responsible for considering whether additional disclosure of material information regarding material contractual provisions is required to make the statements in this information statement/proxy statement/prospectus not misleading. Factual disclosures about Kinder Morgan or El Paso contained in this information statement/proxy statement/prospectus or El Paso's public reports filed with the SEC may supplement, update or modify the factual disclosures about El Paso contained in the merger agreement and described in this summary. The representations, warranties and covenants made in the merger agreement by Kinder Morgan, El Paso, New El Paso, Merger Sub One, Merger Sub Two and Merger Sub Three were qualified and subject to important limitations agreed to by Kinder Morgan, El Paso, New El Paso, Merger Sub One, Merger Sub Two and Merger Sub Three in connection with negotiating the terms of the merger agreement. In particular, in your review of the representations and warranties contained in the merger agreement and described in this summary, it is important to bear in mind that the representations and warranties were made solely for the benefit of the parties to the merger agreement, and were negotiated with the principal purposes of allocating risk between the parties to the merger agreement, rather than establishing matters as facts. The representations and warranties may also be subject to a contractual standard of materiality different from those generally applicable to stockholders and reports and documents filed with the SEC and in some cases were qualified by confidential disclosures that were made by each party to the other, which disclosures are not reflected in the merger agreement or otherwise publicly disclosed. Moreover, information concerning the subject matter of the representations and warranties may have changed since the date of the merger agreement and subsequent developments or new information qualifying a representation or warranty may have been included in this information statement/proxy statement/prospectus. For the foregoing reasons, the representations, warranties and covenants or any descriptions of those provisions should not be read alone.*

**The Transactions**

Subject to the terms and conditions of the merger agreement and in accordance with Delaware law:

as soon as reasonably practicable following the affirmative vote of the holders of a majority of the outstanding shares of El Paso common stock in favor of the adoption of the merger agreement and the first merger agreement, the first merger will occur in which Merger Sub One, an indirect wholly owned subsidiary of El Paso and a party to the merger agreement, will merge with and into El Paso. El Paso will survive the merger as an indirect wholly owned subsidiary of New El Paso and the separate corporate existence of Merger Sub One will cease;

immediately following the first merger, the LLC conversion will occur in which the EP Surviving Company will be converted into a Delaware limited liability company in accordance with Section 266 of the DGCL and Section 18-214 of the DLLCA;

as soon as practicable on the closing date (which in no event will occur prior to a date that is at least twenty 20 days following the first merger), the second merger will occur in which Merger Sub Two, a direct wholly owned subsidiary of Kinder Morgan and a party to the merger agreement, will merge with and into New El Paso. New El Paso will survive the second merger as a direct wholly owned subsidiary of Kinder Morgan and the separate corporate existence of Merger Sub Two will cease; and

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immediately following the second merger, the third merger will occur in which New EP Surviving Company, a direct wholly owned subsidiary of Kinder Morgan as a result of the second merger, will merge with and into Merger Sub Three, a party to the merger agreement. Merger Sub Three will survive the merger as a direct wholly owned subsidiary of Kinder Morgan and the separate corporate existence of New EP Surviving Company will cease.

**Effective Time; Closing**

The effective time of the first merger will occur at 12:01 a.m. (Eastern time) on the date immediately following the date that El Paso files 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, or at such other time as is agreed to by the parties to the merger agreement and specified in the certificate of merger providing for the first merger.

The effective time of the LLC conversion will occur at 12:02 a.m. (Eastern time) on the date immediately following the date that EP Surviving Company files 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, which filing time shall be as soon as practicable following the effective time of the first merger or at such other time as is agreed to by the parties to the merger agreement and specified in the certificate of conversion for the LLC conversion.

The effective time of the second merger will occur at 12:01 a.m. (Eastern time) on the date immediately following the date that New El Paso files with the Secretary of State of the State of Delaware a certificate of merger for the second merger (which in no event will occur prior to a date that is at least twenty 20 days following the first merger), executed in accordance with the relevant provisions of the DGCL, or at such other time as is agreed to by the parties to the merger agreement and specified in the certificate of merger providing for the second merger.

The effective time of the third merger will occur at 12:02 a.m. (Eastern time) on the date immediately following the date that Merger Sub Three files with the Secretary of State of the State of Delaware a certificate of merger for the third merger, executed in accordance with the relevant provisions of the DGCL and DLLCA, which filing date shall be the same date that the certificate of merger providing for the second merger is filed or at such other time as is agreed to by the parties to the merger agreement and specified in the certificate of merger providing for the third merger.

Unless the parties agree otherwise, the closing of the (i) first merger and the LLC conversion will occur as soon as reasonably practicable following the affirmative vote of the holders of a majority of the outstanding shares of El Paso common stock in favor of the adoption of the merger agreement and the first merger agreement and (ii) second merger and third merger will occur on the second business day after the satisfaction or waiver of the conditions to the second merger and third merger provided in the merger agreement (other than conditions that by their nature are to be satisfied at the closing of the second merger and third merger, but subject to the satisfaction or waiver of those conditions), or at such other date and time as Kinder Morgan and El Paso agree. For further discussion on the conditions to the second merger and third merger, see Conditions to Completion of the Transactions.

Kinder Morgan and El Paso currently expect to complete the second merger and third merger during the second calendar quarter of 2012, subject to receipt of required stockholder and regulatory approvals and to the satisfaction or waiver of the other conditions to the transactions described below.

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**Conditions to Completion of the Transactions**

Kinder Morgan and El Paso may not complete the transactions unless each of the following conditions is satisfied or waived:

the merger agreement and first merger agreement must have been approved by the affirmative vote of the holders of a majority of the outstanding El Paso common stock as of the record date;

the waiting period applicable to the merger under the HSR Act must have been terminated or expired;

no law, injunction, judgment or ruling enacted, promulgated, issued, entered amended or enforced by any governmental authority shall be in effect enjoining, restraining, preventing or prohibiting consummation of the transactions or making the consummation of the transactions illegal;

this registration statement of which this information statement/proxy statement/prospectus forms a part must have been declared effective by the SEC and must not be subject to any stop order or proceedings initiated or threatened by the SEC; and

El Paso must have received from Wachtell, Lipton, Rosen & Katz, tax counsel to El Paso, (i) at the effective time of the first merger, a written opinion 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 U.S. 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 date of the closing of the second merger and third merger 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 U.S. federal income tax purposes as a reorganization within the meaning of Section 368(a) of the Code.

The obligations of each of Kinder Morgan, Merger Sub Two and Merger Sub Three to effect the transactions are subject to the satisfaction or waiver of the following additional conditions:

the representations and warranties in the merger agreement of El Paso being true and correct both when made and at and as of the date of the closing of the second merger and third merger, except to the extent expressly made as of an earlier date, in which case as of such date, except where the failure of such representations and warranties to not be so true and correct (without giving effect to any limitation as to material adverse effect or materiality contained in each representation or warranty), does not have and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on El Paso (apart from certain identified representations and warranties (i) providing that there shall not have been a material adverse effect on El Paso from June 30, 2011 through the date of the merger agreement and from the date of the merger agreement through the closing date, and certain tax representations, which must be true and correct in all respects, (ii) with respect to such El Paso's capitalization, which must be true and correct in all respects other than immaterial misstatements and omissions and (iii) with respect to the authority to execute the merger agreement and consummate the transactions, which must be true and correct in all respects other than as would not materially delay or prevent the closing of the second merger and third merger);

El Paso, Merger Sub One and New El Paso having performed, in all material respects, all obligations required to be performed by them under the merger agreement;

the receipt of an officer's certificate executed by an executive officer of El Paso certifying that the two preceding conditions have been satisfied; and

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(1) the receipt of a certification from an authorized officer of El Paso, no earlier than 30 days prior to, and no later than ten days prior to, the date of consummation of the second merger and third merger, setting forth El Paso's good faith estimate of El Paso's net operating loss carryforwards for U.S. federal income tax purposes as of January 1, 2012 (taking into account certain assumptions), and (2) that there shall not have been an NOL MAE (as described below).

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The obligations of each of El Paso, New El Paso and Merger Sub One to effect the transactions are subject to the satisfaction or waiver of the following additional conditions:

the representations and warranties in the merger agreement of Kinder Morgan being true and correct both when made and at and as of the date of the closing of the second merger and third merger, except to the extent expressly made as of an earlier date, in which case as of such date, except where the failure of such representations and warranties to not be so true and correct (without giving effect to any limitation as to material adverse effect or materiality contained in each representation or warranty), does not have and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Kinder Morgan (apart from certain identified representations and warranties (i) providing that there shall not have been a material adverse effect on Kinder Morgan from June 30, 2011 through the date of the merger agreement and from the date of the merger agreement through the closing date, which must be true and correct in all respects, (ii) with respect to Kinder Morgan's capitalization, which must be true and correct in all respects other than immaterial misstatements and omissions and (iii) with respect to the authority to execute the merger agreement and consummate the transactions, which must be true and correct in all respects other than as would not materially delay or prevent the closing of the second merger and third merger);

Kinder Morgan, Merger Sub Two and Merger Sub Three having performed, in all material respects, all obligations required to be performed by them under the merger agreement prior to the closing date; and

the receipt of an officer's certificate executed by an executive officer of Kinder Morgan certifying that the two preceding conditions have been satisfied.

the issuance of shares of Kinder Morgan Class P common stock and the warrants (including shares of Kinder Morgan Class P common stock to be issued upon the exercise of the warrants) to be issued in connection with the second merger must have been approved by the affirmative vote of the holders of a majority of the aggregate voting power of Kinder Morgan capital stock in accordance with requirements of the NYSE; and

(i) the shares of Kinder Morgan Class P common stock to be issued in the second merger must have been authorized for listing on the NYSE, subject to official notice of issuance and (ii) the warrants to be issued in the second merger must have been authorized for listing on either the NYSE, NASDAQ or such other exchange(s), electronic trading networks or other suitable trading platforms as are reasonably agreed to by Kinder Morgan and El Paso.

For purposes of the merger agreement, the term "material adverse effect" means, when used with respect to party to the merger agreement, 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 party or 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 party operates; (ii) the announcement or pendency of the merger agreement or the transactions contemplated thereby; (iii) any change in the market price or trading volume of the shares of common stock of such party (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 party or applicable accounting regulations or principles or the interpretation thereof; (vi) the performance of the merger agreement and the transactions contemplated thereby, including compliance with covenants set forth herein (excluding such party 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 party (on their own or on behalf of such party) arising out of or related to

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the merger agreement or the transactions contemplated thereby; (viii) any failure by such party 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 El Paso'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 party and its subsidiaries, as compared to other companies operating in the industries in which such party and its subsidiaries operate.

For purposes of the merger agreement, an NOL MAE means a reduction in El Paso's good faith estimate of its net operating loss carryforwards for U.S. federal income tax purposes as of January 1, 2012 from the Signing Estimated NOL (as defined in the merger agreement) 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 the merger agreement, (ii) resulting from an increase of the taxable income of El Paso (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 \$568,000,000 (which excludes any gain resulting from transfers of assets to EPB, during the fourth calendar quarter of 2011) or any increase in taxable income of El Paso for the year ending December 31, 2011 resulting from transfer of assets to EPB during the fourth calendar quarter of 2011, 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.

**El Paso Stockholder Approval**

El Paso has agreed to hold a meeting of its stockholders as soon as is reasonably practicable after this information statement/proxy statement/prospectus is declared effective by the SEC for the purpose of such stockholders voting on the adoption of the merger agreement and the first merger agreement. So long as the merger agreement remains in effect, the merger agreement requires El Paso to submit the merger agreement and first merger agreement to a stockholder vote (i) even if its board of directors no longer recommends adoption of the merger agreement or first merger agreement and (ii) irrespective of the commencement, public proposal, public disclosure or communication to El Paso of any takeover proposal (as described below). The board of directors of El Paso has approved the merger agreement, the first merger agreement and the transactions contemplated thereby by a unanimous vote and authorized that the merger agreement and first merger agreement be submitted to the El Paso stockholders for their consideration and agreed to recommend to El Paso stockholders that they vote to adopt the merger agreement.

For purposes of the merger agreement, the term 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 Kinder Morgan and its subsidiaries, relating to any (i) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of assets of El Paso and its subsidiaries (including securities of subsidiaries) equal to 20% or more of El Paso's consolidated assets or to which 20% or more of El Paso's revenues or earnings on a consolidated basis are attributable, (ii) 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 El Paso, (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 El Paso or (D) merger, consolidation, share exchange, business combination, recapitalization, liquidation, dissolution or similar transaction involving El Paso which is structured to permit such person or group to acquire beneficial ownership of at least 20% of El Paso's consolidated assets or equity interests; in each case, other than the transactions contemplated by the merger agreement.



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### **Kinder Morgan Stockholder Approval**

Kinder Morgan has agreed to hold a meeting of its stockholders as soon as is reasonably practicable after this information statement/proxy statement/prospectus is declared effective by the SEC for the purpose of approving the share and warrant issuance proposal. For further discussion on the vote required by Kinder Morgan stockholders to approve the issuance of the Kinder Morgan Class P common stock and warrants (including shares of Kinder Morgan Class P common stock to be issued upon the exercise of the warrants), see The Voting Agreement.

The board of directors of Kinder Morgan has approved the merger agreement and the transactions contemplated thereby and authorized that the share and warrant issuance proposal be submitted to shareholders of Kinder Morgan for their consideration.

### **No-Solicitation by El Paso of Takeover Proposals**

The merger agreement contains detailed provisions prohibiting El Paso from seeking an alternative proposal to the transactions. Under these no solicitation provisions, El Paso has agreed that it will not, and will cause its subsidiaries and use reasonable best efforts to cause its directors, officers, employees, investment bankers, financial advisors, attorneys, accountants, agents and other representatives not to, 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 takeover proposal; or

except as permitted by the merger agreement, 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.

The merger agreement requires El Paso and its subsidiaries to cease and terminate any discussions or negotiations with any persons conducted prior to the execution of the merger agreement regarding a takeover proposal and request the prompt return or destruction of all confidential information previously furnished to any such persons or their representatives.

Prior to El Paso's stockholders voting in favor of adopting the merger agreement and the first merger agreement (but in no event after such El Paso stockholder approval has been obtained), the merger agreement permits El Paso to furnish information with respect to it and its subsidiaries to any third party making a takeover proposal, and participate in discussions or negotiations regarding such takeover proposal, with regard to any written takeover proposal received by El Paso that its board believes is *bona fide* and after consultation with its financial advisors and outside legal counsel, the board determines in good faith that such takeover proposal could reasonably be expected to result in a superior proposal and such takeover proposal does not result from a material breach of the non-solicitation provisions of the merger agreement.

El Paso has also agreed in the merger agreement that it (i) will promptly, and in any event within 24 hours after receipt, notify Kinder Morgan of any takeover proposal or any request for information or inquiry with regard to any takeover proposal and the identity of the person making any such takeover proposal, request or inquiry, and (ii) that it will provide Kinder Morgan the material terms of any such takeover proposal, request or inquiry (including providing Kinder Morgan with copies of any written materials received from or on behalf of such person making a takeover proposal). In addition, El Paso has agreed to promptly keep Kinder Morgan reasonably informed of all material developments affecting the status and terms of any such takeover proposals, offers, inquiries or requests (and El Paso shall promptly provide Kinder Morgan with copies of any additional written materials received by El Paso or that El Paso has delivered to any third party making a takeover proposal) and of the status of any such discussions or negotiations.

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The merger agreement permits El Paso's board of directors to comply with Rule 14d-9, Rule 14e-2(a) and Item 1012(a) of Regulation M-A promulgated under the Exchange Act if the board of directors of El Paso determines in good faith (after consultation with outside legal counsel) that the failure to take such action could constitute a violation of applicable law.

For purposes of the merger agreement, a superior proposal means a *bona fide* written offer, obtained after the date of the merger agreement and not in breach of El Paso's no-solicitation obligations described above (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 El Paso or assets of El Paso and its subsidiaries on a consolidated basis, made by a third party, which is on terms and conditions which El Paso's board of directors determines in its good faith (after consultation with outside counsel and an independent financial advisor) to be more favorable to El Paso's stockholders from a financial point of view than the transactions contemplated by the merger agreement, taking into account at the time of such determination any changes to the terms of the merger agreement that as of that time had been proposed by Kinder Morgan in writing.

### **No-Solicitation by Kinder Morgan of an Alternative Transaction**

Kinder Morgan has agreed that it will not (and Kinder Morgan agrees to cause its subsidiaries not to and use reasonable best efforts to cause its directors, officers, employees, investment bankers, financial advisors, attorneys, accountants, agents and other representatives not to), 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 transaction (which prohibition does not include, with certain exceptions, actions in connection with transfers of equity securities by Kinder Morgan stockholders that are parties to the voting agreement which are not prohibited by the voting agreement); or

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 the merger agreement (which prohibition does not include, with certain exceptions, actions in connection with transfers of equity securities by Kinder Morgan stockholders that are parties to the voting agreement which are not prohibited by the voting agreement).

For purposes of the merger agreement, *parent alternative transaction* means, any inquiry, proposal or offer from a person or group relating to any (i) direct or indirect acquisition (whether in a single transaction or a series of related transactions) of assets of Kinder Morgan and its subsidiaries (including securities of its subsidiaries) equal to 20% or more of Kinder Morgan's consolidated assets or to which 20% or more of Kinder Morgan's revenues or earnings on a consolidated basis are attributable, (ii) 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 Kinder Morgan, (iii) 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 Kinder Morgan or (iv) merger, consolidation, share exchange, business combination, recapitalization, liquidation, dissolution or similar transaction involving Kinder Morgan or any of its subsidiaries which is structured to permit such person or group to acquire beneficial ownership of at least 20% of Kinder Morgan's consolidated assets or equity interests.

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**El Paso Board Recommendation**

The merger agreement provides that El Paso will not, and will cause its subsidiaries and use reasonable best efforts to cause its directors, officers, employees, investment bankers, financial advisors, attorneys, accountants, agents and other representatives not to, directly or indirectly withdraw, modify or qualify, or propose publicly to withdraw, modify or qualify, in a manner adverse to Kinder Morgan, El Paso's board of directors' recommendation that its stockholders adopt the merger agreement or publicly recommend the approval or adoption of, or publicly approve or adopt, or propose to publicly recommend, approve or adopt, any takeover proposal. In addition, within five business days of receipt of a written request from Kinder Morgan, El Paso shall publicly reconfirm El Paso's board of directors' recommendation that its stockholders adopt the merger agreement; provided, that, in the event that Kinder Morgan requests such public reconfirmation of El Paso's board of directors' recommendation, then Kinder Morgan's request must be reasonable (in terms of number and timing) and El Paso may not unreasonably withhold, delay (beyond the five business day period) or condition such public reconfirmation.

El Paso taking or failing to take, as applicable, either of the actions described above is referred to as an adverse recommendation change.

Notwithstanding the terms above or any other term in the merger agreement to the contrary, subject to the conditions described below, the board of directors of El Paso may, at any time prior to the adoption of the merger agreement and the first merger agreement by the stockholders of El Paso, effect an adverse recommendation change and/or terminate the merger agreement and concurrently enter into an acquisition agreement with respect to a superior proposal if El Paso receives a written takeover proposal that El Paso's board of directors believes is bona fide and the El Paso board of directors, after consultation with its financial advisors and outside legal counsel, concludes in good faith that such takeover proposal constitutes a superior proposal and if it determines in good faith, after consultation with outside counsel, that failing to take any such action could be inconsistent with the directors' fiduciary duties under applicable law and only:

if the board of directors of El Paso provides prior written notice to Kinder Morgan (in reasonable detail) of the reasons for such action (including a description of the material terms of such takeover proposal and delivering to Kinder Morgan a copy of (i) the acquisition agreement for such superior proposal and (ii) any other relevant documents that are reasonably relevant to the assessment of such superior proposal) at least five calendar days in advance of El Paso's 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 calendar days prior to El Paso's special meeting, in which case El Paso shall provide as much notice as is reasonably practicable); and

during such five calendar day period, (i) El Paso negotiates, and uses its reasonable best efforts to cause its financial advisors and outside legal counsel to negotiate, with Kinder Morgan in good faith (to the extent Kinder Morgan desires to negotiate), (ii) El Paso shall take into account all changes to the terms of the merger agreement proposed by Kinder Morgan in determining whether the takeover proposal continues to constitute a superior proposal and (iii) any material amendment to the terms of such superior proposal requires a new two-day notice period that will be afforded Kinder Morgan before El Paso may effect an adverse recommendation change and terminate the merger agreement.

Further, notwithstanding the terms above to the contrary, El Paso's board of directors may, at any time prior to the adoption of the merger agreement and the first merger agreement by the stockholders of El Paso, effect an adverse recommendation change in response to an intervening event (as described below) if El Paso's board of directors concludes in good faith, after consultation with outside counsel and its financial advisors, that the exercise of its fiduciary duties require such adverse recommendation change.

An intervening event means, with respect to El Paso, a material event or circumstance that arises or occurs after the date of the merger agreement and was not, prior to such date, reasonably foreseeable by El Paso's board of directors; 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.

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### **Transaction Consideration**

#### ***First Merger and LLC Conversion***

The merger agreement provides that (i) at the effective time of the first merger, each issued and outstanding share of capital stock of El Paso will be converted into and become one validly issued, fully paid and nonassessable share common stock of New El Paso and (ii) at the effective time of the LLC conversion, each issued and outstanding share of capital stock of the EP Surviving Company shall be converted into and become one validly issued, fully paid and nonassessable limited liability company interest of El Paso Converted LLC. In addition, at the effective time of the first merger, each outstanding stock option, restricted stock unit, performance-based restricted stock unit and other equity award denominated in shares of El Paso common stock granted under any El Paso stock plan will be converted into an equivalent equity award denominated in shares of common stock of New El Paso with the same terms and conditions (including vesting terms and conditions) as applied pre-conversion.

The merger agreement requires El Paso to use its reasonable best efforts to cause the shares of common stock of New El Paso to be issued 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 effective time of the first merger.

#### ***Second Merger***

The merger agreement provides that, at the effective time of the second merger, each share of New El Paso common stock issued and outstanding immediately prior to the effective time of the second merger (excluding (1) shares held by New El Paso in treasury and any shares held by Kinder Morgan, Merger Sub Two or Merger Sub Three, which shall be cancelled and cease to exist for no consideration, (2) any shares held by any other subsidiary of Kinder Morgan or New El Paso, which shall receive the Per Share Stock Election Consideration and (3) dissenting shares in accordance with Delaware law) will be converted into the right to receive, at the election of the holder but subject to proration with respect to the stock and cash portion so that approximately 57% of the aggregate merger consideration (excluding the warrants) is paid in cash and approximately 43% (excluding the warrants) is paid in Kinder Morgan Class P common stock, one of the following:

0.9635 of a share of Kinder Morgan Class P common stock (referred to as the *Exchange Ratio* ) and 0.640 of a warrant (referred to as the *Per Share Warrant Consideration* and with the Exchange Ratio, the *Per Share Stock Election Consideration* ) to purchase one share of Kinder Morgan Class P common stock (any such election referred to as a *stock election* and such New El Paso shares referred to as the *stock election shares* );

\$25.91 in cash without interest (referred to as the *Per Share Cash Election Consideration* ) and the Per Share Warrant Consideration (any such election referred to as a *cash election* and such New El Paso shares referred to as the *cash election shares* ); or

0.4187 of a share of Kinder Morgan Class P common stock (referred to as the *Mixed Election Stock Exchange Ratio* ), \$14.65 in cash without interest (referred to as the *Per Share Cash Amount* ) and the Per Share Warrant Consideration (collectively, the *Per Share Mixed Election Consideration* ) (any such election referred to as a *mixed election* and such New El Paso shares referred to as the *mixed consideration election shares* ).

See *The Transactions New El Paso Stockholders Making Elections* for more information on how the proration procedures will work.

The merger agreement provides that each share of New El Paso common stock owned by El Paso as treasury stock or owned by Kinder Morgan, Merger Sub Two or Merger Sub Three will be cancelled without any conversion or payment of consideration and any shares held by any other subsidiary of Kinder Morgan or New El Paso shall be exchanged for the Per Share Stock Election Consideration. Shares of New El Paso common stock owned by stockholders with respect to which appraisal has been properly demanded under Delaware law, unless

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the holder shall have failed to perfect or shall have effectively withdrawn or lost rights to appraisal, will be cancelled. Such stockholders will instead be entitled to the appraisal rights provided under Delaware law as described under The Transactions Appraisal Rights in Connection with the Second Merger. If any such holder of dissenting shares failed to perfect or shall have effectively withdrawn or lost such right following the Election Deadline (as defined below), such holder's shares shall be treated as if they had been converted into and become exchangeable for the right to receive the Per Share Mixed Election Consideration, except that such share shall instead be converted into the right to receive the Per Share Stock Election Consideration if the condition with respect to receiving a the Tax Opinion (as defined above) is otherwise unable to be satisfied.

Kinder Morgan will not issue any fractional shares of Kinder Morgan Class P common stock or fractional warrants in the second merger. Instead, a stockholder of New El Paso who otherwise would have received a fractional share of Kinder Morgan Class P common stock or fractional warrant will be entitled to receive, from the exchange agent appointed by Kinder Morgan pursuant to the merger agreement, a cash payment in lieu of such fractional shares or fractional warrants representing such holder's proportionate interest in the proceeds from the sale by the exchange agent of the number of excess shares of Kinder Morgan Class P common stock or excess warrants, as applicable, represented by the aggregate amount of fractional shares of Kinder Morgan Class P common stock and fractional warrants, as applicable.

***Third Merger***

The merger agreement provides that, at the effective time of the third merger, each issued and outstanding share of capital stock of New El Paso will be converted into and become one validly issued, fully paid and nonassessable limited liability company interest of Merger Sub Three.

**Treatment of El Paso Shares Held in El Paso 401(k) Plan Trust**

As of the date of this information statement/proxy statement/prospectus, shares of El Paso common stock are held by the El Paso Corporation Retirement Savings Plan trust (referred to as the 401(k) Trust). El Paso anticipates taking certain actions required to ensure that the acquisition by the 401(k) Trust of warrants to purchase shares of Kinder Morgan Class P common stock in connection with the transactions, and the subsequent holding and disposition by the 401(k) Trust of such warrants, will comply with applicable law.

**Treatment of New El Paso Stock Options, Restricted Shares, Performance Restricted Stock Units and Employee Stock Purchase Plan**

Each option or similar right to purchase shares of New El Paso common stock (as converted in connection with the first merger) (other than an option to purchase New El Paso common stock granted under the El Paso employee stock purchase plan (referred to as the El Paso ESPP), as converted in connection with the first merger) outstanding immediately prior to the effective time of the second merger (whether or not then vested or exercisable), by virtue of the occurrence of the consummation of the transactions and without any action on the part of any holder of any New El Paso stock option, will, immediately prior to the effective time of the second merger, be deemed exercised pursuant to a cashless exercise for the number of net exercise shares equal to, rounded down to the nearest whole share, (i) the number of shares of New El Paso common stock subject to such New El Paso stock option immediately prior to the effective time of the second merger minus (ii) the number of whole and partial (computed to the nearest four decimal places) shares of New El Paso common stock subject to such New El Paso stock option which, when multiplied by the fair market value (as such term is defined in the applicable plan governing such option to purchase shares of New El Paso common stock) of a share of New El Paso common stock as of immediately prior to the effective time of the second merger, is equal to the aggregate exercise price of such New El Paso stock option. Each net exercise share shall be deemed to be an outstanding share of New El Paso common stock as provided for in the merger agreement. Each holder of net exercise shares, subject to the terms and conditions of the merger agreement and proration, will be permitted to make either a mixed election or cash election with respect to all (but not less than all) of the net exercise shares (and, to the

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extent applicable, New El Paso restricted shares, New El Paso performance RSUs and shares of New El Paso common stock deemed purchased through the El Paso ESPP) held by such holder. The holders of net exercise shares will not be able to make a stock election.

Each award of restricted New El Paso common stock (as converted in connection with the first merger and referred to as a New El Paso restricted share ) that is outstanding immediately prior to the effective time of the second merger will, as of the effective time of the second merger, automatically and without any action on the part of the holder thereof, vest and the restrictions with respect thereto will lapse, and each New El Paso restricted share will, subject to the terms and conditions of the merger agreement, be treated as an outstanding share of New El Paso common stock as provided for in the merger agreement. Each holder of New El Paso restricted shares, subject to the terms and conditions of the merger agreement and proration, will be permitted to make either a mixed election or cash election with respect to all (but not less than all) of the New El Paso restricted shares (and, to the extent applicable, net exercise shares, New El Paso performance RSUs and shares of New El Paso common stock deemed purchased through the El Paso ESPP) held by such holder. The holders of New El Paso restricted shares will not be able to make a stock election.

Each New El Paso restricted stock unit that is subject to vesting based on the achievement of performance conditions (as converted in connection with the first merger and referred to as a New El Paso performance RSU ) that is outstanding immediately prior to the effective time of the second merger will, effective immediately prior to the effective time of the second merger, vest based on a target payout percentage of 100%, and the shares of New El Paso common stock deemed to be issued in settlement thereof will, subject to the terms and conditions of the merger agreement, be deemed to be outstanding shares of New El Paso common stock as provided for in the merger agreement. Each holder of New El Paso performance RSUs, subject to the terms and conditions of the merger agreement and proration, will be permitted to make either a mixed election or cash election with respect to all (but not less than all) of the New El Paso performance RSUs (and, to the extent applicable, net exercise shares, New El Paso restricted shares, and shares of New El Paso common stock deemed purchased through the El Paso ESPP) held by such holder. The holders of New El Paso performance RSUs will not be able to make a stock election.

The El Paso ESPP will continue to be operated in accordance with its terms and past practice for the Offering Period (as defined in the El Paso ESPP) in effect as of October 16, 2011 (referred to as the Current Offering Period ) and any subsequent Offering Period that begins after October 16, 2011 pursuant to the terms and conditions of the El Paso ESPP. However, if the effective time of the second merger occurs prior to the end of the Current Offering Period or any such subsequent Offering Period, New El Paso 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 El Paso ESPP) will occur prior to the effective time of the second merger (referred to as the Last Exercise Date ) and (ii) the Current Offering Period or such subsequent Offering Period ends on the Last Exercise Date. New El Paso will, pursuant to, and in accordance with, the terms of the El Paso ESPP, notify each El Paso ESPP participant in writing at least ten Trading Days (as defined in the El Paso ESPP) prior to the Last Exercise Date, and by a date that is no later than the mailing date of the election form, that the last date during the Current Offering Period or such subsequent Offering Period on which a deemed purchase of shares of New El Paso common stock will 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 share of New El Paso common stock deemed to be purchased in connection with the treatment of options granted under the ESPP described above will be deemed to be an outstanding share of New El Paso common stock as provided for in the merger agreement. Each holder of shares of New El Paso common stock deemed to be purchased in respect of options, if any, outstanding as of the Last Exercise Date under the El Paso ESPP, subject to the terms and conditions of the merger agreement and proration, will be permitted to make either a mixed election or cash election with respect to all (but not less than all) of such shares (and, to the extent applicable, net exercise shares, New El Paso restricted shares, and New El Paso performance RSUs) held by such holder. The holders of shares of New El Paso common stock deemed to be purchased in respect of options, if

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any, outstanding as of the Last Exercise Date under the El Paso ESPP will not be able to make a stock election. However, shares of El Paso common stock purchased through the El Paso ESPP prior to the Last Exercise Date (and converted into shares of New El Paso common stock at the time of the first merger) will be treated like all other shares of New El Paso common stock outstanding at the time of the second merger and may make a cash, stock or mixed election.

### **Adjustments to Prevent Dilution**

The transaction consideration described above under Transaction Consideration and Treatment of New El Paso Stock Options, Restricted Shares, Performance Restricted Stock Units and Employee Stock Purchase Plan (and any other similarly dependent items) will be appropriately adjusted to reflect fully the effect of any stock dividend, subdivision, reclassification, split, combination, exchange of shares or similar transaction (other than upon the conversion of any shares of Kinder Morgan Class A, Class B or Class C common stock in accordance with Kinder Morgan's certificate of incorporation and bylaws as in effect on the date of the merger agreement) or other similar change with respect to New El Paso common stock (or El Paso common stock prior to the effective time of the first merger) or Kinder Morgan Class P common stock prior to the effective time of the second merger.

### **Withholding**

Kinder Morgan, Merger Sub Two, Merger Sub Three and the exchange agent will be entitled to deduct and withhold from the consideration otherwise payable to a holder of New El Paso stock options, New El Paso performance RSUs, shares of New El Paso common stock (including, for the avoidance of doubt, New El Paso restricted shares) or a participant in the El Paso ESPP 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 U.S. federal, state, local or foreign tax law. To the extent withheld, such withheld amounts will be treated as having been paid to the former holder of New El Paso stock options, New El Paso performance RSUs, shares of New El Paso common stock (including, for the avoidance of doubt, New El Paso restricted shares) or the former participant in the El Paso ESPP, as applicable, in respect of whom such withholding was made.

### **Dividends and Distributions**

No dividends or other distributions with respect to shares of Kinder Morgan Class P common stock issued in the second merger shall be paid to the holder of any unsurrendered certificates until such certificates are surrendered. Following such surrender, there shall be paid, without interest, to the record holder of the shares of Kinder Morgan Class P common stock issued in exchange therefor (i) at the time of such surrender, all dividends and other distributions payable in respect of any such shares of Kinder Morgan Class P common stock with a record date after the effective time of the second merger 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 Kinder Morgan Class P common stock with a record date after the effective time of the second merger but with a payment date subsequent to such surrender. For purposes of dividends or other distributions in respect of shares of Kinder Morgan Class P common stock, all shares of Kinder Morgan Class P common stock to be issued pursuant to the second merger shall be entitled to dividends as if issued and outstanding as of the effective time of the second merger.

### **Financing Covenant; El Paso Cooperation**

Kinder Morgan, Merger Sub Two and Merger Sub Three have agreed to use their best efforts to:

negotiate and enter into the definitive agreements with respect to the debt commitment letter executed in connection with the merger agreement on the terms and conditions contained therein by a date no later than the date that is three months from the date of the merger agreement (which El Paso has agreed to extend until February 13, 2012);

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satisfy (or if determined advisable by Kinder Morgan, Merger Sub Two and Merger Sub Three obtain the waiver of) on a timely basis all conditions to obtaining the financing agreements contemplated by the debt commitment letter within Kinder Morgan's, Merger Sub Two's and Merger Sub Three's control and to comply with all obligations pursuant to the debt commitment letter and the definitive agreements related thereto;

in the event that all conditions to funding the commitments contained in the debt commitment letter have been satisfied, cause the financing sources to fund the debt financing required to consummate the transactions and to pay related fees and expenses on the date of closing of the second merger (including by taking enforcement action to cause the financing sources to provide the debt financing); and

enforce all of their rights under the debt commitment letter.

Kinder Morgan, Merger Sub Two and Merger Sub Three will give El Paso prompt notice of any material breach by any party to, or termination of, the debt commitment letter or the definitive agreements related thereto. Pursuant to the merger agreement, Kinder Morgan, Merger Sub Two and Merger Sub Three have also agreed that without El Paso's prior written consent (such consent not to be unreasonably withheld) they will not permit amendments or modifications to, or waivers of, any provision or remedy under the debt commitment letter and related financing agreements unless the terms of such letters or agreements, in each case as so amended, modified or waived, are substantially similar to those in such letters or agreements prior to giving effect to such amendment, modification or waiver (other than economic terms, which shall be as good as or better for Kinder Morgan, Merger Sub Two and Merger Sub Three than those in such letters and agreements prior to giving effect to such amendment, modification or waiver). Further, Kinder Morgan is required to keep El Paso reasonably informed on a reasonably current basis of the status of Kinder Morgan's, Merger Sub Two's and Merger Sub Three's efforts to consummate the debt financing.

In addition, if any portion of the amount of the financing necessary to consummate the transactions contemplated by the merger agreement becomes unavailable, (i) Kinder Morgan is required to promptly notify El Paso and (ii) Kinder Morgan has agreed to use its best efforts to arrange and obtain alternative financing from alternative sources in an amount sufficient to consummate the transactions contemplated by the merger agreement, as promptly as practicable following the occurrence of such event.

Pursuant to the merger agreement, El Paso has agreed to, and has agreed to cause its subsidiaries and representatives to, among other things, cooperate in connection with the marketing, arrangement and consummation of and satisfaction of the conditions to the debt financing as may be reasonably requested by Kinder Morgan (so long as such requested cooperation does not materially and adversely interfere with the ongoing operations of El Paso and its subsidiaries). Kinder Morgan has agreed to promptly, upon request by El Paso, reimburse El Paso for all reasonable and documented out-of-pocket costs (including reasonable and documented attorneys' fees) incurred by El Paso or any of its subsidiaries in connection with such cooperation of El Paso and its subsidiaries and Kinder Morgan has agreed to indemnify El Paso, its subsidiaries and their respective representatives from and against any and all losses, damages, claims, costs or expenses suffered or incurred by any of them in connection with the arrangement of the financing and any information used in connection therewith (other than with respect of any information relating to El Paso or its subsidiaries provided by or on behalf of El Paso or any of its subsidiaries).

Kinder Morgan, in its sole discretion, may replace any existing debt commitment letter with another debt commitment letter pursuant to which financial institutions selected by Kinder Morgan in its sole discretion commit to provide debt financing to finance the transactions; provided that, without El Paso's consent (such consent not to be unreasonably withheld), the terms of such replacement debt commitment letter shall be substantially similar to the terms of the debt commitment letter being replaced (other than economic terms, which shall be as good as or better for Kinder Morgan, Merger Sub Two and Merger Sub Three than those in the debt commitment letter being replaced). Promptly following the execution of a replacement debt commitment letter, Kinder Morgan will notify El Paso to such effect and will provide a fully executed copy of such replacement debt commitment letter and any related agreements (other than any fee letters or engagement letters).



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### **Filings**

Pursuant to the merger agreement, Kinder Morgan and El Paso agreed to cooperate and use (and 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 December 31, 2012) 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 December 31, 2012) 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 the merger agreement or the consummation of the transactions and (iv) obtain all necessary consents, approvals or waivers from third parties.

### **Regulatory Matters**

See The Transactions Regulatory Approvals for a description of the material regulatory requirements for completion of the transactions.

Pursuant to the terms of the merger agreement, Kinder Morgan and El Paso have agreed to use their respective best efforts to take, or cause their subsidiaries to take, all actions necessary to obtain all regulatory approvals required to consummate the second merger. In connection with seeking to obtain the termination of the waiting period under the HSR Act and approval of any other applicable foreign merger control law, and in order to complete the merger, Kinder Morgan also has agreed to take, or cause its subsidiaries to take, all actions necessary to resolve any objections raised by any applicable antitrust governmental authority, including the FTC and the Antitrust Division under the HSR Act, and undertake any action to obtain antitrust clearance for, and remove any antitrust impediment to, the closing of the transactions.

In furtherance of its obligation in the merger agreement, Kinder Morgan has agreed to, among other things, divest or dispose of any businesses, assets, equity interests, product lines or properties of Kinder Morgan, El Paso, KMP or EPB (or any of their subsidiaries) that are necessary to address issues raised by applicable antitrust authorities. Further, in order for Kinder Morgan to comply with its obligations related to antitrust matters, if requested by Kinder Morgan, El Paso has agreed to cooperate with Kinder Morgan with respect to any transaction to divest or hold separate any of El Paso's or EPB's (or their subsidiaries') businesses, assets, equity interests, product lines or properties, including negotiating and entering into definitive contracts for such divestitures of El Paso or EPB (or their subsidiaries') assets prior to the closing of the merger; provided, that (i) any transactions to divest El Paso's or EPB's (or their subsidiaries') assets must be conditioned upon the closing of the merger or the satisfaction of all of the conditions to the closing in a case where the closing will occur immediately following such transactions, and (ii) Kinder Morgan must agree to indemnify El Paso and its subsidiaries for all costs, expenses and liabilities incurred by El Paso in connection with the divestiture of any of El Paso's or EPB's or their subsidiaries' assets in furtherance of seeking governmental approval to complete the merger.

### **Termination**

Kinder Morgan or El Paso may terminate the merger agreement at any time prior to effective time of the second merger, whether before or after stockholders of El Paso have approved the merger agreement, by mutual written consent.

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In addition, either Kinder Morgan and El Paso may terminate the merger agreement at any time prior to the effective time of the second merger by written notice to the other party if:

the closing of the second merger has not occurred on or before June 30, 2012 (such date, as may be extended, the termination date), except that, if, as of the termination date, the condition requiring the expiration or termination of any applicable waiting period under the HSR Act has not been satisfied or the condition that there is no law prohibiting the transactions has not been satisfied, the termination date may be extended to December 31, 2012 by either Kinder Morgan or El Paso; *provided*, that the right to terminate the merger agreement upon the termination date (as it may be extended) will not be available (i) to a party if the inability to satisfy the condition was due to the failure of such party to perform any of its obligations under the merger agreement, (ii) to a party if the other party has filed (and is then pursuing) an action seeking specific performance to enforce the obligations under the merger agreement or (iii) to El Paso if Kinder Morgan, Merger Sub Two or Merger Sub Three is pursuing an action in good faith to enforce the obligations of the lenders to fund amounts under the debt commitment letter or the definitive documents relating to the debt financing;

any governmental entity has issued a final and non-appealable law or order or taken any other final and non-appealable action that is in effect enjoining or otherwise prohibiting consummation of the transactions contemplated by the merger agreement provided, that the right to terminate the merger agreement for this reason will not be available 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 the merger agreement;

stockholders of El Paso do not adopt the merger agreement and the first merger agreement at a meeting of the stockholders of El Paso or any adjournment or postponement of such meeting; or

there is a breach by the non-terminating party of any of its representations, warranties, covenants or agreements in the merger agreement such that certain closing conditions to the second merger would not be satisfied, or if capable of being cured, such breach has not been cured within 30 days following delivery of written notice by the terminating party; provided, the terminating party will not have the right to terminate the merger agreement if it is then in material breach of any of its representations, warranties, covenants or agreements contained in the merger agreement.

In addition, Kinder Morgan may terminate the merger agreement if:

either El Paso withdraws, modifies or qualifies, or proposes publicly to withdraw, modify or qualify, in a manner adverse to Kinder Morgan, El Paso's board of directors' recommendation that its stockholders adopt the merger agreement or publicly recommends the approval or adoption of, or publicly approves or adopts, or proposes to publicly recommend, approve or adopt, any takeover proposal or within five business days of receipt of a written request from Kinder Morgan (which request must be reasonable in terms of number and timing), El Paso fails to publicly reconfirm El Paso's board of directors' recommendation that its stockholders adopt the merger agreement; or

prior to the adoption of the merger agreement and the first merger agreement by the stockholders of El Paso, El Paso is in willful breach of its obligations to (i) hold a special meeting of its stockholders and, through El Paso's board of directors, recommend the adoption of the merger agreement to El Paso's stockholders or (ii) comply with the requirements described under "No-Solicitation by El Paso of Takeover Proposals"; other than in the case where (A) such willful breach is a result of an isolated action by an El Paso representative (other than an El Paso director or officer) and not caused by, or within the knowledge of, El Paso, (B) El Paso takes appropriate actions to remedy such willful breach upon discovery thereof and (C) Kinder Morgan is not significantly harmed as a result of such willful breach.

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In addition, El Paso may terminate the merger agreement if:

prior to the receipt of approval from Kinder Morgan's stockholders to issue shares of Kinder Morgan Class P common stock and the warrants (including shares of Kinder Morgan Class P common stock to be issued upon exercise of the warrants), Kinder Morgan is in willful breach of its obligations to (i) hold a special meeting of its stockholders for the purpose of obtaining such approval and (ii) through Kinder Morgan's board of directors, recommend to its stockholders that such approval be obtained; or

prior to the adoption of the merger agreement by the stockholders of El Paso, if El Paso's board of directors authorizes El Paso, in compliance with the terms of the merger agreement, to enter into an agreement with respect to a superior proposal, El Paso, in compliance with the terms of the merger agreement (including its requirements under No-Solicitation by El Paso of Takeover Proposals, concurrently enters into a definitive acquisition agreement with respect to a superior proposal, and prior to or concurrently with such termination, El Paso pays the termination fee described under Termination Fee.

In some cases, termination of the merger agreement may require El Paso to pay a termination fee and expenses to Kinder Morgan, as described below under Termination Fee and Expenses.

### **Termination Fee**

The merger agreement provides that El Paso is required to pay a termination fee of \$650,000,000 to Kinder Morgan in each of the following circumstances:

- (i) there was a takeover proposal made known to El Paso or been made directly to El Paso's shareholders generally or any person shall have publicly disclosed an intention to make a takeover proposal which was not withdrawn prior to the date of the special meeting of El Paso stockholders called for the purpose of adopting the merger agreement and the first merger agreement,
- (ii) following such takeover proposal, the merger agreement is terminated by Kinder Morgan or El Paso because the adoption of the merger agreement by El Paso stockholders was not obtained at a meeting of El Paso stockholders called for such purpose, and
- (iii) within 12 months of the date of such termination of the merger agreement, El Paso enters into a definitive agreement with respect to, or consummates, any takeover proposal; provided, that for purposes of the payment of the termination fee as described above, takeover proposal has the meaning provided above under El Paso Stockholder Approval, except that the references to 20% or more shall be deemed to be references to more than 50% ;

if Kinder Morgan terminates the merger agreement due to:

either (i) El Paso withdrawing, modifying or qualifying, or proposing publicly to withdraw, modify or qualify, in a manner adverse to Kinder Morgan, El Paso's board of directors' recommendation that its stockholders adopt the merger agreement or publicly recommending the approval or adoption of, or publicly approving or adopting, or proposing to publicly recommend, approve or adopt, any takeover proposal or (ii) within five business days of receipt of a written request from Kinder Morgan, El Paso failing to publicly reconfirm El Paso's board of directors' recommendation that its stockholders adopt the merger agreement (provided, that, in the event that Kinder Morgan requests such public reconfirmation of El Paso's board of directors' recommendation, then Kinder Morgan's request must be reasonable (in terms of number and timing) and El Paso may not unreasonably withhold, delay (beyond the five business day period) or condition such public reconfirmation); or

prior to the adoption of the merger agreement and the first merger agreement by the stockholders of El Paso, El Paso being in willful breach of its obligations to (i) hold a special meeting of its stockholders and, through El Paso's board of directors, recommend the adoption of the merger agreement to El Paso's stockholders or (ii) comply with the requirements described under No-



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Solicitation by El Paso of Takeover Proposals ; other than in the case where (A) such willful breach is a result of an isolated action by an El Paso representative (other than an El Paso director or officer) and not caused by, or within the knowledge of, El Paso, (B) El Paso takes appropriate actions to remedy such willful breach upon discovery thereof and (C) Kinder Morgan is not significantly harmed as a result of such willful breach.

if El Paso terminates the merger agreement prior to the adoption of the merger agreement by the stockholders of El Paso in order to concurrently enter into a definitive acquisition agreement with respect to a takeover proposal that constitutes a superior proposal.

### **Expenses**

Generally, all fees and expenses incurred in connection with the transactions will be the obligation of the respective party incurring such fees and expenses, except Kinder Morgan and El Paso will each pay one-half of the expenses incurred in connection with the filing, printing and mailing of this information statement/proxy statement/prospectus. Further, Kinder Morgan has agreed to pay the amount of any documentary, sales, use, real property transfer, real property gains, registration, value-added, transfer, stamp, recording and other similar taxes imposed on Kinder Morgan, El Paso, any of El Paso's and New El Paso's subsidiaries or stockholders in connection with the merger agreement and the transactions.

If the merger agreement is terminated by either Kinder Morgan or El Paso because the requisite stockholder approval of El Paso is not obtained at the stockholders meeting duly convened therefor or any adjournment or postponement thereof, El Paso is required to pay all documented out-of-pocket expenses incurred by Kinder Morgan in connection with the transactions contemplated by the merger agreement (subject to a cap of \$20 million) plus certain documented fees required to be paid under the debt commitment letter, any fee letters related thereto or the definitive documents relating to the debt financing.

### **Conduct of Business Pending the Second Merger**

Under the merger agreement, each of Kinder Morgan and El Paso have undertaken certain covenants that place restrictions on them and their respective subsidiaries from the date of the merger agreement until the earlier of the termination of the merger agreement in accordance with its terms and the effective time of the merger, unless the other party gives its prior written consent (which, in certain instances, cannot be unreasonably withheld, conditioned or delayed). In general, each party has agreed to (i) cause their business to be conducted in all material respects in the ordinary course and (ii) use commercially reasonable efforts to preserve intact their business organizations.

Subject to certain exceptions set forth in the merger agreement and the disclosure schedules delivered by El Paso to Kinder Morgan in connection with the merger agreement, unless Kinder Morgan consents in writing (which consent cannot be unreasonably withheld, conditioned or delayed), El Paso has agreed to certain restrictions limiting its and its respective subsidiaries' ability to, among other things:

sell, transfer, lease, farmout or otherwise dispose of any properties or assets with a fair market value in excess of \$75 million in the aggregate, except (i) pursuant to certain contracts listed in the disclosure schedules, (ii) dispositions of obsolete or worthless equipment that is replaced with comparable or better equipment and materials, (iii) sales of produced hydrocarbons in the ordinary course of business consistent with past practice and (iii) any transfers to El Paso or its subsidiaries, including certain transfers to EPB;

make any capital expenditures in excess of \$150 million through September 30, 2012 and \$25 million thereafter, in the aggregate, other than capital expenditures provided for in El Paso's expenditure forecast or as reasonably required to conduct emergency operations, repairs or replacements on a pipeline or as required by a change in law;

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directly or indirectly acquire any entity, division, business or equity interest of any third party or, 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 million;

make (i) any investments in excess of \$50 million in the aggregate, or (ii) any loans or advances (A) in excess of \$5 million in the aggregate (other than travel and similar advances to its employees in the ordinary course of business consistent with past practice and loans and advances to El Paso or any of its subsidiaries), or (B) to any employee of El Paso 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);

except as required by applicable law (including to avoid the imposition of penalty taxed under Section 409A of the Code) or as set forth in the disclosure schedules delivered by El Paso to Kinder Morgan in connection with the merger agreement, (i) increase the salary or wages of any of its employees or directors, (ii) pay any bonus or incentive compensation, (iii) grant any new equity or non-equity based compensation award, (iv) enter into, establish, amend or terminate any El Paso benefit plan, collective bargaining agreement or trust or fund with, for or in respect of, any stockholder, director, officer, other employee, or consultant, (v) hire any new employees or (vi) except as required under or in respect of any El Paso benefit plan, fund any El Paso benefit plan or trust relating thereto;

(i) enter into, terminate or amend any material El Paso contract other than in the ordinary course of business, (ii) enter into or extend the term or scope of any contract that materially restricts El Paso or any subsidiaries or affiliates from engaging in any line of business or in any geographic area, (iii) amend or modify the engagement letters with financial advisors, (iv) enter into any material El Paso 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, (v) release any person from, or modify or waive any provision of, any standstill agreement or any confidentiality agreement, (vi) enter into any commitment or agreement to license or purchase seismic data, other than in the ordinary course of business consistent with past practice, (vii) make or assume any additional derivative transaction, other than in the ordinary course of business consistent with past practice, and not exceeding seventy percent (70%) of El Paso's and its subsidiaries collective expected hydrocarbon production volumes for the current, or any subsequent, calendar year;

adopt a plan or agreement of complete or partial liquidation, dissolution, restructuring, recapitalization, merger, consolidation or other reorganization (other than transactions between wholly owned subsidiaries of El Paso);

except as provided under any agreement entered into prior to the date of the merger agreement, pay, discharge, settle or satisfy any suit, action, claims or proceeding, in excess of \$10 million individually or \$25 million in the aggregate;

settle or discharge any rate case with FERC relating to any assets of El Paso or any of its subsidiaries; or

voluntarily resign, transfer, or relinquish any right as operator of any asset in El Paso's exploration and production business segment having a present value greater than, or equal to, \$125 million.

El Paso has further agreed that, subject to certain exceptions in the merger agreement and the disclosure schedules delivered by El Paso to Kinder Morgan, El Paso will not, and will not permit any of its subsidiaries to, among other things, undertake the following actions without the consent of Kinder Morgan (which consent may be withheld in Kinder Morgan's sole discretion):

issue, sell, grant, dispose of, accelerate the vesting of or modify, any shares of El Paso capital stock, voting securities or equity interests, or any securities convertible into or exchangeable for El Paso capital stock, voting securities or equity interests, except that El Paso may issue shares of El Paso common stock upon the exercise of options granted under certain plans;

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redeem, purchase or otherwise acquire any of El Paso's outstanding shares of capital stock, voting securities or equity interests, except in connection with the exercise of stock options or the vesting, settlement or forfeiture of, or tax withholding with respect to, equity or equity-based awards under certain plans;

declare, set aside for payment or pay any dividend on, or make any other distribution in respect of, any shares of El Paso's capital stock, or otherwise make any payments to El Paso's stockholders in their capacity as such, other than (i) dividends by a subsidiary to its parent, (ii) El Paso's regular quarterly dividend up to \$0.01 per share and (iii) certain permitted distributions by EPB;

split, combined, subdivide or reclassify any shares of its capital stock;

incur, refinance or assume any indebtedness for borrowed money or guarantee any such indebtedness for borrowed money or issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of El Paso or any of its subsidiaries or joint ventures, except that El Paso may borrow up to \$100 million in the aggregate and

if doing so would not breach, conflict with or require the consent of any third party, El Paso also may:

borrow under certain existing credit agreements;

borrow under El Paso's Fourth Amended and Restated Credit Agreement up to \$700 million and borrow under the E&P BNP Paribas Credit Agreement up to \$700 million, except that El Paso will not be subject to the maximum limits (\$700 million for each) until the last day of the month preceding the month that the closing occurs and El Paso will not be subject to the maximum limits at any time if it does not sell assets to EPB valued above a certain amount by the last day of such month;

refinance, replace or amend any indebtedness that may default or come due as a result of the transactions (provided El Paso consults with Kinder Morgan in connection with any such action) or that is required to be repaid or repurchased pursuant to its terms;

borrow from or repay a subsidiary, and El Paso's subsidiaries may borrow from or repay El Paso; and

EPB may make certain borrowings.

prepay or repurchase any long-term indebtedness for borrowed money or debt securities of El Paso or any of its subsidiaries, other than revolving indebtedness, borrowings from El Paso to a subsidiary (or vice versa) and repayments or repurchases required pursuant to the terms of such indebtedness or debt securities;

(i) make, change or revoke any material election concerning taxes or tax returns, (ii) file any U.S. federal income tax return for the taxable year ending December 31, 2011 prior to September 10, 2012 or, if the closing of the second merger 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), (iii) file any amended tax return, (iv) change any method of tax accounting or any tax accounting period, (v) enter into any closing agreement with respect to taxes, (vi) settle any material tax claim or assessment for an amount

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materially in excess of the reserves therefor or (vii) surrender any right to claim a material refund of taxes or obtain any tax ruling;

initiate, file or terminate any rate case with the FERC relating to the assets of El Paso or its subsidiaries or make any material change to any FERC tariff;



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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; or

amend El Paso's certificate of incorporation or bylaws.

Subject to certain exceptions set forth in the merger agreement and the disclosure schedules delivered by Kinder Morgan to El Paso in connection with the merger agreement, unless El Paso consents in writing (which consent cannot be unreasonably withheld, conditioned or delayed), Kinder Morgan has agreed to certain restrictions limiting its and its subsidiaries' (other than KMP and KMR and their respective subsidiaries) ability to, among other things:

issue, sell, grant, dispose of, accelerate the vesting of or modify, any shares of Kinder Morgan capital stock, voting securities or equity interests, or any securities convertible into or exchangeable for Kinder Morgan capital stock, other than in connection with (i) the exercise of certain options that are outstanding on the date of the merger agreement or thereafter granted in accordance with their terms or (ii) the conversion of Kinder Morgan common stock in accordance with its governing documents;

redeem, purchase or otherwise acquire any of Kinder Morgan's outstanding shares of capital stock, voting securities or equity interests, except in connection with (i) the exercise of stock options or the vesting, settlement or forfeiture of, or tax withholding with respect to, equity or equity-based awards outstanding on the date of the merger agreement or thereafter granted in accordance with their terms or (ii) the conversion of Kinder Morgan common stock in accordance with its governing documents;

split, combine, subdivide or reclassify any shares of its capital stock;

declare, set aside for payment or pay any dividend on, or make any other distribution in respect of, any shares of Kinder Morgan's capital stock, or otherwise make any payments to Kinder Morgan's stockholders in their capacity as such other than (i) dividends by a direct or indirect subsidiary to its parent or (ii) Kinder Morgan's regular quarterly dividend in an amount not to exceed \$0.60 per share of Kinder Morgan common stock;

incur or assume any indebtedness for borrowed money or guarantee any such indebtedness for borrowed money or issue or sell any debt securities or options, warrants, calls or other rights to acquire any debt securities of Kinder Morgan or any of its subsidiaries or joint ventures, other than (i) borrowings up to \$1 billion in the aggregate outstanding at any time and (ii) borrowings from Kinder Morgan by a wholly owned subsidiary in the ordinary course of business;

make any capital expenditures in excess of \$50 million, in the aggregate, other than as reasonably required to conduct emergency operations on a pipeline or as required by a change in law;

acquire any entity, division, business or equity interest of any third party or, 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 million;

make any investments in, or any loans or advances (other than travel and similar advances to its employees in the ordinary course of business consistent with past practice) to, any person or entity in excess of \$50 million, in the aggregate;

amend Kinder Morgan's certificate of incorporation or bylaws or its shareholders agreement; or

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adopt a plan or agreement of complete or partial liquidation, dissolution, restructuring, recapitalization, merger, consolidation or other reorganization (other than transactions between wholly owned subsidiaries of Kinder Morgan).

### **Sale of El Paso's Exploration and Production Business**

The merger agreement contemplates that it is the intent of Kinder Morgan to sell El Paso's exploration and production business segment, if reasonably practicable, around the same time as the closing of the second merger. In furtherance of selling such assets, El Paso will, and will cause its controlled subsidiaries to, (i) reasonably assist Kinder Morgan in the preparation for the sale of certain or all of El Paso's exploration and production assets, and

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(ii) as may be reasonably requested by Kinder Morgan, enter into agreement(s) with third parties to facilitate the sale of such assets; provided, however, that (i) the consummation of the sale of such exploration and production assets will be conditioned upon the requirement that the second merger will close immediately thereafter and on Kinder Morgan irrevocably confirming that it is ready, willing and able to consummate the closing, and it and its financing sources have irrevocably committed to effectuate the closing immediately following the sale of such assets and (ii) Kinder Morgan will indemnify El Paso and its subsidiaries from any and all costs, expenses, losses and liabilities incurred in connection with the sale of such exploration and production assets.

### **Governance of Kinder Morgan Following the Completion of the Transactions**

Kinder Morgan has agreed to take all action necessary, including increasing the size of its board of directors and amending the Shareholders Agreement, dated as of February 10, 2011, among Kinder Morgan and certain of its stockholders, to elect two individuals designated by El Paso to Kinder Morgan's board of directors (one of which will be appointed to Kinder Morgan's audit committee and one of which will be appointed to Kinder Morgan's nominating and governance committee) as of, and subject to, the effective time of the second merger. In furtherance of the foregoing, Kinder Morgan also agreed to amend its bylaws to amend the definition of supermajority board vote from eight to ten directors.

### **Indemnification; Directors and Officers Insurance**

The merger agreement provides that, upon the effective time of the second merger, Kinder Morgan and New EP Surviving Company will, jointly and severally, to the fullest extent permitted by law, indemnify, defend and hold harmless, and provide advance and reimbursement of reasonable expenses to, all past and present directors and officers of El Paso or any of its subsidiaries.

In addition, as provided by the merger agreement, Kinder Morgan and New EP Surviving Company will (i) honor the provisions regarding the elimination of liability of directors, indemnification of officers, directors and employees and advancement of expenses contained in El Paso's certificate of incorporation and bylaws and comparable governing instruments of any of its subsidiaries immediately prior to the effective time of the second merger and ensure that the certificate of incorporation and bylaws of the New EP Surviving Company will, for a period of six years following effective time of the second merger, contain provisions no less favorable with respect to indemnification, advancement of expenses and exculpation than are presently set forth in such El Paso governing documents and (ii) maintain in effect for six years from the effective time of the second merger El Paso's current directors' and officers' liability insurance policies covering acts or omissions occurring at or prior to the effective time of the second merger with respect to such indemnified persons, so long as New EP Surviving Company is not required to expend more than an amount per year equal to 300% of current annual premiums paid by El Paso for such insurance. The Company may, in its sole discretion prior to the effective time of the second merger, purchase a tail policy with respect to acts or omissions occurring or alleged to have occurred prior to the effective time of the second merger that were committed or alleged to have been committed by any past and present directors and officers and employees of El Paso or any of its subsidiaries in their capacity as such; provided, that in no event may the cost of such policy exceed six times an amount equal to 300% of the current annual premiums paid by El Paso for directors' and officers' liability insurance policies and, if such a tail policy is purchased, Kinder Morgan and the New EP Surviving Company will have no further obligations with respect to maintaining directors' and officers' liability insurance.

### **Employee Matters**

Pursuant to the merger agreement, Kinder Morgan has agreed that, after completion of the second merger, it will, subject to certain exceptions as provided in the merger agreement:

honor all El Paso benefit plans and compensation arrangements and agreements in accordance with their terms as in effect immediately before the effective time of the second merger, provided that nothing shall limit the right of Kinder Morgan to amend or terminate such plans, arrangements and agreements to the extent permitted by their terms;

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for one year following the effective time of the second merger, provide, or shall cause to be provided, to each employee of El Paso or any of its subsidiaries as of immediately prior to the effective time of the second merger (other than any employee covered by a collective bargaining agreement), for so long as such employee remains employed, (i) base salary and annual bonus opportunities, each of which are no less than that provided to such employee immediately before the second merger, (ii) other than any such employee who is not a full-time employee, compensation opportunities (other than annual bonus opportunities) and benefits eligibility which are the same as those provided to similarly situated employees of Kinder Morgan and its subsidiaries; provided, that during such one year period, Kinder Morgan will provide each employee of El Paso or any of its subsidiaries as of immediately prior to the effective time of the second merger (and such employee's eligible dependents) who, as of immediately prior to the effective time of the second merger, is receiving medical care or treatment under El Paso's Select Plus Program continued medical care and treatment under the terms of such program as in effect immediately prior to the effective time of the second merger;

during the one year period following the second merger (or such longer period as may be required under the applicable El Paso benefit plan), provide severance pay and benefits to employees of El Paso and its subsidiaries, other than any employees covered by a collective bargaining agreement, whose employment terminates during the one year period following the second merger that would have been provided to such employees under the applicable severance pay plan maintained by El Paso as in effect immediately prior to the effective time of the second merger; provided, to the extent any portion of El Paso's assets are sold during the one year period following the second merger, Kinder Morgan will use its commercially reasonable efforts to ensure that the purchaser of such assets provides the foregoing benefits to the applicable employees of El Paso or its subsidiaries who will be employees of the purchaser of such assets, through the end of such one year period;

for all purposes (including purposes of vesting, eligibility to participate and level of benefits) credit years of service with El Paso or any of its subsidiaries as if such service were with Kinder Morgan with respect to Kinder Morgan retirement, welfare benefit and similar plans (provided that no credit for years will be given for purposes of benefit accrual under any defined benefit pension plan of Kinder Morgan or where the application of such credit would result in the duplication of benefits);

entitle employees of El Paso and its subsidiaries to participate in Kinder Morgan retirement, welfare benefit and similar plans without regard to waiting periods, exceptions for pre-existing conditions, requirements of insurability or any actively at work requirement or exclusion; and

take into account under Kinder Morgan's group health plans all deductibles and co-payments and amounts paid toward out-of-pocket limits by El Paso employees under the group health plans maintained by El Paso prior to the effective time of the second merger. In addition, El Paso, Kinder Morgan, New El Paso and their respective subsidiaries and controlled affiliates, as applicable, agreed to take all actions necessary to implement (i) the retention plan listed in El Paso's disclosures schedules to the merger agreement regarding employees of El Paso's exploration and production business segment (see Sale of El Paso's Exploration and Production Business for a discussion of the sale of such business segment in connection with the closing of the second merger) and (ii) the grant of equity awards on or about July 15, 2012 described in the disclosure schedules to the merger agreement in respect of Kinder Morgan Class P common stock to El Paso employees on terms and conditions generally consistent with the Kinder Morgan equity compensation program for grants made by Kinder Morgan in 2012 as if such El Paso employees were Kinder Morgan employees on the date of such grant.

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**Amendment and Waiver**

Subject to compliance with applicable law, at any time prior to the effective time of the second merger, whether before or after adoption of the merger agreement and first merger agreement by the stockholders of El Paso, the parties may, by written agreement, amend the merger agreement; provided, however, that following approval of the transactions by the stockholders of El Paso or Kinder Morgan, no amendment or change to the provisions of the merger agreement will be made which by law would require further approval by the stockholders of El Paso or by the stockholders of Kinder Morgan without such approval.

At any time prior to the effective time of the second merger, Kinder Morgan and El Paso may by written agreement, to the extent legally allowed:

extend the time for the performance of any of the obligations or other acts of the other party provided for in the merger agreement;

waive any inaccuracies in the representations and warranties of the other party contained in the merger agreement; and

waive compliance by the other party with any of the agreements or conditions contained in the merger agreement.

**Remedies; Specific Performance**

The merger agreement provides that, in the event El Paso pays the termination fee (described under Termination Fee and Expenses ) to Kinder Morgan when required, El Paso will have no further liability to Kinder Morgan, Merger Sub Two or Merger Sub Three except that nothing contained in the merger agreement will relieve El Paso from liability for its fraud or a willful breach of any covenant or other agreement contained in the merger agreement. In addition, notwithstanding any termination of the merger agreement, the merger agreement provides that nothing in the agreement will relieve any party from any liability for any failure to consummate the transactions when required pursuant to the merger agreement (it being understood that the failure of Kinder Morgan to receive the proceeds of the debt financing or the approval of its shareholders for the share and warrant issuance does not relieve Kinder Morgan from any such liability under the merger agreement) or any party from liability for fraud or a willful breach of any covenant or agreement contained in the merger agreement. In addition, the merger agreement provides that each party to the merger agreement agrees and acknowledges that in the event of a party's willful breach or failure to consummate the transactions when required pursuant to the merger agreement or fraud, 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.

The merger agreement also provides that the parties are entitled to obtain an injunction to prevent breaches of the merger agreement and to specifically enforce the merger agreement. El Paso may seek specific performance to cause Kinder Morgan, Merger Sub Two or Merger Sub Three to consummate the transactions contemplated by the merger agreement, including the closing of the second merger if, and only if, (i) all conditions to the closing of the second merger of Kinder Morgan, Merger Sub Two and Merger Sub Three (other than those conditions that by their nature are to be satisfied at the closing of the second merger) have been satisfied or are then capable of being satisfied on or prior to the closing of the second merger, (ii) Kinder Morgan Merger Sub Two and Merger Sub Three fail to complete the closing of the second merger by the date required in the merger agreement, (iii) the debt financing has been funded or will be funded at the closing of the second merger and (iv) El Paso has irrevocably confirmed that if specific performance is granted and the debt financing is funded, then the closing of the second merger will occur. Further, El Paso is entitled to seek specific performance to cause Kinder Morgan, 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 letter or definitive agreements relating thereto, but only in the event that each of the following has been satisfied: (i) all conditions to the closing of the second merger of Kinder Morgan, Merger Sub Two and Merger Sub Three (other

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than those conditions that by their nature are to be satisfied at the closing of the second merger) have been satisfied or are then capable of being satisfied on or prior to the closing of the second merger, (ii) Kinder Morgan, Merger Sub Two and Merger Sub Three fail to complete the closing of the second merger by the date required in the merger agreement, (iii) all of the conditions to the consummation of the financing provided by the debt commitment letters (or, if alternative financing is being used, 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 of the second merger).

### **Representations and Warranties**

The merger agreement contains representations and warranties by Kinder Morgan and El Paso. These representations and warranties have been made solely for the benefit of the other parties to the merger agreement and:

may be intended not as statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;

have been qualified by disclosures that were made to the other parties in connection with the negotiation of the merger agreement, which disclosures may not be reflected in the merger agreement;

may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and

were made only as of the date of the merger agreement or such other date or dates as may be specified in the merger agreement and are subject to more recent developments.

The representations and warranties made by both Kinder Morgan and El Paso relate to, among other things:

corporate organization, standing and similar corporate matters;

capital structure;

subsidiaries;

approval and authorization of the merger agreement and the transactions contemplated by the merger agreement and any conflicts created by such transactions;

required consents and approvals of governmental entities in connection with the transactions contemplated by the merger agreement;

documents filed with the SEC, financial statements included in those documents and regulatory reports filed with governmental entities;

absence of undisclosed liabilities since June 30, 2011;

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absence of certain changes or events from June 30, 2011 through the date of the merger agreement and from the date of the merger agreement;

legal proceedings;

tax matters;

property;

compliance with applicable laws, licenses and permits;

environmental matters;

labor matters;

employee benefits;

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intellectual property;

contracts of each party;

opinion of financial advisor;

information supplied in connection with this information statement/proxy statement/prospectus and the registration statement of which it is a part;

insurance;

state takeover statutes and rights plan;

brokers and finders;

the reorganization treatment of the transactions under the Code; and

absence of additional representations and warranties.

Additional representations and warranties made only by El Paso relate to, among other things:

a report containing estimates of the hydrocarbon reserves that are owned by El Paso or its subsidiaries;

El Paso's exploration and production business segment; and

certain of El Paso's net operating loss carryforwards for U.S. federal income tax purposes.

Additional representations and warranties made only by Kinder Morgan relate to, among other things, financing of the transactions.

**Additional Agreements**

The merger agreement also contains covenants relating to cooperation in the preparation of this information statement/proxy statement/prospectus and additional agreements relating to, among other things, access to information, notice of specified matters and public announcements.



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**THE WARRANT AGREEMENT**

*The following describes the material provisions of the warrant agreement, which is attached as Annex D to this information statement/proxy statement/prospectus and which is incorporated by reference herein, and the warrants to purchase shares of Kinder Morgan Class P common stock that will be issued as part of the merger consideration to New El Paso stockholders in connection with the closing of the second merger (see The Merger Agreement Transaction Consideration ). The warrant agreement will be entered into at or prior to the effective time of the second merger.*

*The description in this section and elsewhere in this information statement/proxy statement/prospectus is qualified in its entirety by reference to the warrant agreement. This summary does not purport to be complete and may not contain all of the information about the warrant agreement that is important to you. Kinder Morgan and El Paso encourage you to read carefully the warrant agreement in its entirety before making any decisions regarding the transactions. The warrant agreement and this summary of its terms have been included to provide you with information regarding the terms of the warrant agreement and the issuance of the warrants thereunder.*

**Exercise Price; Expiration**

The warrants issued as part of the consideration to New El Paso stockholders in connection with the closing of the second merger will entitle holders to purchase shares of Kinder Morgan Class P common stock, on a one-for-one basis, subject to adjustments as provided by the warrant agreement and summarized below. The warrants will be exercisable at an exercise price of \$40.00 per share of Kinder Morgan Class P common stock, subject to adjustments as provided by the warrant agreement and summarized below. All of the warrants to purchase shares of Kinder Morgan Class P common stock will be exercisable at any time prior to five years from the date of closing of the second merger.

**Exercise**

The registered holder of warrants to purchase shares of Kinder Morgan Class P common stock can exercise all or any portion of the warrants evidenced by a warrant certificate by delivering to the warrant agent identified in the warrant agreement: (1) a warrant certificate duly completed and signed, which signature shall be guaranteed by a member of a recognized guarantee medallion program and (2) either (i) an amount equal to the aggregate exercise price for the number of full shares of Kinder Morgan Class P common stock as to which warrants are exercised, which such exercise price may be delivered either in cash or by certified or official bank check payable to the warrant agent or (ii) by directions to the warrant agent to exercise the warrants pursuant to a cashless exercise , in which case the registered holder will receive a number of shares of Kinder Morgan Class P common stock that is equal to the aggregate number of shares of Kinder Morgan Class P common stock for which the warrants are being exercised less the number of shares of Kinder Morgan Class P common stock that have an aggregate Market Price (as such term is defined in the warrant agreement) on the trading day on which such warrants are exercised that is equal to the aggregate exercise price for all such shares of Kinder Morgan Class P common stock. The warrant agreement also provides that if warrants are exercised such that the aggregate exercise price would exceed the aggregate Market Price of the shares of Class P common stock issuable upon exercise, the exercise shall be null and void, no shares will be issued upon that exercise, and such warrants will continue in effect subject to their terms.

**Adjustments to Prevent Dilution**

The number of shares of Kinder Morgan Class P common stock issuable upon exercise of a warrant, and the exercise price of such warrant, will be subject to adjustment in order to protect warrant holders from dilution in case of:

stock splits or combinations;

cash dividends that exceed:

\$0.50 per share of Kinder Morgan Class P common stock in any quarter during the fiscal year ended December 31, 2012;

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\$0.60 per share of Kinder Morgan Class P common stock in any quarter during the fiscal year ended December 31, 2013;

\$0.70 per share of Kinder Morgan Class P common stock in any quarter during the fiscal year ended December 31, 2014;

\$0.80 per share of Kinder Morgan Class P common stock in any quarter during the fiscal year ended December 31, 2015;

\$0.90 per share of Kinder Morgan Class P common stock in any quarter during the fiscal year ended December 31, 2016; and

\$1.00 per share of Kinder Morgan Class P 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;

distributions of securities, evidences of indebtedness, assets, rights or warrants; and

specified share repurchases.

## **Listing of Warrants**

The warrant agreement provides that Kinder Morgan will register the warrants with the SEC and list them on the NYSE, NASDAQ or such other exchange as is reasonably agreed to by Kinder Morgan and El Paso.

## **Effect of a Business Combination Transaction**

In case of any merger, consolidation, statutory share exchange or similar transaction that requires the approval of Kinder Morgan's stockholders or reclassification of the Kinder Morgan Class P common stock (other than a reclassification that is otherwise provided for in the anti-dilution provisions of the warrant agreement), the warrant holder will upon exercise be entitled to receive, during the period specified by the warrant, an equivalent number of shares of common stock or other securities or property of the surviving entity that the holder would have been entitled to in such sale if the warrant to purchase shares of Kinder Morgan Class P common stock had been exercised immediately prior to such transaction. Appropriate adjustments shall be made to the warrant to purchase shares of Kinder Morgan Class P common stock so that the right to exercise the warrant in exchange for any such shares of stock or other securities or property will remain substantially the same as prior to such transaction.

## **Transfer**

At the option of the holder of a warrant, each warrant and all rights thereunder 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.

## **Share Rights**

A warrant will not, prior to its exercise, confer upon its holder or such holder's transferee, 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 Kinder Morgan or any other matter, or any rights whatsoever as stockholders of Kinder Morgan.

## **Legends**

Each certificate evidencing a warrant will have such insertions as are required or permitted by the warrant 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 the warrant agreement, any applicable law or any rule of any securities exchange on which the warrants may be listed.



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**THE VOTING AGREEMENT**

*The following describes the material provisions of the voting agreement, which is attached as Annex C to this information statement/proxy statement/prospectus and which is incorporated by reference herein.*

*The description in this section and elsewhere in this information statement/proxy statement/prospectus is qualified in its entirety by reference to the voting agreement. This summary does not purport to be complete and may not contain all of the information about the voting agreement that is important to you. Kinder Morgan and El Paso encourage you to read carefully the voting agreement in its entirety before making any decisions regarding the transactions. The voting agreement and this summary of its terms have been included to provide you with information regarding the terms of the voting agreement.*

In order to issue Kinder Morgan Class P common stock and warrants as part of the merger consideration, and the Kinder Morgan Class P common stock issuable upon exercise of the warrants, Kinder Morgan must obtain approval of the share and warrant issuance proposal by its stockholders. Approval of the share and warrant issuance proposal is being submitted to Kinder Morgan's stockholders at the Kinder Morgan special meeting. As a result of the voting agreement, approval of the share and warrant issuance proposal at the Kinder Morgan special meeting is assured.

The voting agreement was entered into simultaneously with the execution of the merger agreement, on October 16, 2011, by and among El Paso and certain of Kinder Morgan's stockholders, solely in their capacity as stockholders, including Richard Kinder (the Chairman and CEO of Kinder Morgan) and the Sponsor Investors. In the aggregate, these stockholders held shares of Kinder Morgan representing approximately 75% of the voting power of the outstanding capital stock of Kinder Morgan. Pursuant to the terms of the voting agreement, each of these stockholders agreed, among other things, to vote all of its shares:

in favor of the share and warrant issuance proposal;

against an acquisition proposal, if any, for at least 20% of the assets or equity of Kinder Morgan and its subsidiaries, on a consolidated basis;

against any proposal that would reasonably be expected to materially impede or materially delay consummation of the transactions contemplated by the merger agreement; and

in favor of the election of El Paso's two nominees to the board of directors of Kinder Morgan (if such stockholder is still a stockholder at the time of the first annual stockholders meeting of Kinder Morgan following the acquisition of El Paso).

Each such stockholder also agreed to execute the amendment to the shareholders agreement of Kinder Morgan in order to increase the size of the board to accommodate the two director nominees of El Paso. In addition, these stockholders agreed to retain collectively, until Kinder Morgan stockholder approval of the share and warrant issuance proposal is obtained or until the voting agreement is terminated, whichever is earlier, an amount of shares of Kinder Morgan voting common stock that is sufficient to approve the issuance.

The voting agreement will remain in effect until the earlier to occur of the termination of the merger agreement in accordance with its terms and completion of the acquisition of El Paso by Kinder Morgan. The covenant to vote in favor of El Paso's director nominees, however, will survive until the first annual shareholders meeting of Kinder Morgan following the acquisition of El Paso.

**Table of Contents****DESCRIPTION OF THE DEBT FINANCING****Overview**

On February 10, 2012, Kinder Morgan entered into the following agreements: (i) an amendment (referred to as the *Revolving Amendment*) to KMK's existing \$1.0 billion revolving credit facility dated May 30, 2007 (such facility, prior to its amendment and restatement pursuant to such amendment, referred to as the *Existing Revolving Facility*) to permit, among other things, the transactions contemplated by the merger agreement, to fund, in part, the transactions and related costs and expenses, to provide for KMK to directly or indirectly merge with Kinder Morgan, with Kinder Morgan succeeding KMK as borrower under such facility (referred to as the *KMK Merger*) and to provide for ongoing working capital and for other general corporate purposes, (ii) an incremental joinder agreement (the *Incremental Joinder*) which provides for \$750 million in additional commitments under the Existing Revolving Facility, effective upon the amendment and restatement of the Existing Revolving Facility (such Existing Revolving Facility, as amended and restated by the *Revolving Amendment* and as modified by the *Incremental Joinder*, referred to as the *Amended and Restated Credit Facility*) and (iii) an acquisition debt facilities credit agreement containing a \$6.8 billion 364-day facility and a \$5.0 billion 3-year term loan facility (referred to as the *Acquisition Credit Facility*), the proceeds of which shall be used to finance a portion of the cash consideration and related fees and expenses to be paid in connection with the transactions.

The *Revolving Amendment*, *Incremental Joinder* and *Acquisition Credit Facility* are herein collectively referred to as the *Financing Documentation*. The *Amended and Restated Credit Facility* and the *Acquisition Credit Facility* are herein collectively referred to as the *Credit Facilities*.

**Interest Rate and Amortization*****Amended and Restated Credit Facility***

The *Amended and Restated Credit Facility* provides that revolving loans thereunder will bear interest, at Kinder Morgan's option, at either (i) adjusted LIBOR plus an applicable margin per annum varying from 2.50% per annum to 4.25% per annum depending on the publicly announced debt ratings for senior secured non-credit enhanced long term indebtedness for borrowed money of Kinder Morgan (such applicable debt rating the *Debt Rating*) or (ii) an alternate base rate plus an applicable margin varying from 1.50% per annum to 3.25% per annum depending on the *Debt Rating*.

The *Amended and Restated Credit Facility* will mature on May 30, 2013 (or if such day is not a business day, the next preceding business day).

***Acquisition Credit Facility***

The *Acquisition Credit Facility* provides that (i) loans under the 364-day facility will bear interest, at Kinder Morgan's option, at either (a) adjusted LIBOR plus an applicable margin varying from 2.50% per annum to 4.25% per annum depending on the *Debt Rating* or (b) an alternate base rate plus an applicable margin varying from 1.50% per annum to 3.25% per annum depending on the *Debt Rating* and (ii) term loans under the 3-year term loan facility will bear interest, at Kinder Morgan's option, at either (a) adjusted LIBOR plus an applicable margin varying from 3.00% per annum to 4.75% per annum depending on the *Debt Rating* or (b) an alternate base rate plus an applicable margin varying from 2.00% per annum to 3.75% per annum depending on the *Debt Rating*.

The *Acquisition Credit Facility* provides that (i) the entire outstanding principal amount of the 364-day facility, together with all amounts owed with respect thereto, will be repayable on the date that is 364 days after the closing date of the second merger (referred to in this section as the *Closing Date*), subject to, at Kinder Morgan's option, a 180-day extension of such maturity date on a portion of the 364-day facility conditioned on, among other things, the payment of an extension fee on the extension date and (ii) the outstanding principal

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amount of the term facility will be repayable in an amount equal to \$500,000,000 on each of the dates that is 18 months following the Closing Date, 24 months following the Closing Date and 30 months following the Closing Date, with any remaining balance, together with all amounts owed with respect thereto, payable on the third anniversary of the Closing Date.

### ***Certain Ticking and Duration Fees***

The Acquisition Credit Facility and Incremental Joinder each provide for a ticking fee, payable at a rate varying from 0.25% per annum to 0.50% per annum, depending on the Debt Rating, on the amount of the outstanding commitments thereunder from February 10, 2012 through the earlier of the Closing Date and the Outside Date (as defined below).

The 364-day facility under the Acquisition Credit Facility provides for a duration fee equal to (i) 0.50% of the outstanding principal amount of loans under the 364-day facility outstanding on the later of May 16, 2012 and the date that is 90 days after the Closing Date (such date referred to as the Reference Date ), (ii) 1.00% of the outstanding principal amount of loans under the 364-day facility outstanding on the date that is 90 days after the Reference Date and (iii) 1.75% of the outstanding principal amount of loans under the 364-day facility outstanding on the date that is 180 days after the Reference Date.

### ***Guarantees and Security***

The Credit Facilities provide that all obligations thereunder, certain hedging arrangements and certain cash management arrangements will, subject to certain exceptions, be jointly and severally guaranteed by:

the guarantors under the Existing Revolving Facility;

El Paso;

Sherpa Acquisition, LLC, which will be the direct parent company of El Paso; and

the guarantors under El Paso's existing Fourth Amended and Restated Credit Agreement dated May 27, 2011 (referred to as the Existing EP Facility ), in each case subject to certain terms and exceptions.

The Credit Facilities provide that all obligations thereunder and the guarantees will be secured by:

a lien on all assets and a pledge of all of the capital stock of Kinder Morgan's restricted subsidiaries that secure the Existing KMK Facility;

upon consummation of the transactions, a pledge of 100% of the capital stock of El Paso; and

a lien on the assets and a pledge of all equity interests of El Paso and its restricted subsidiaries that secure the Existing EP Facility, in each case subject to certain terms and exceptions.

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Certain existing notes and hedging agreements of Kinder Morgan and its restricted subsidiaries (other than El Paso and its subsidiaries) shall be secured on a pari passu basis with the Credit Facilities and benefit from the same guarantees as the Credit Facilities. Certain existing notes and indebtedness of El Paso and certain of its restricted subsidiaries will benefit from the collateral and guarantees provided by El Paso and its restricted subsidiaries to the same extent as, and on a pari passu basis with, the collateral and guarantees provided by El Paso and its restricted subsidiaries that benefit the Credit Facilities.

### *Prepayments and Commitment Reductions*

On or prior to the Closing Date, the commitments in respect of the 364-day facility and the term facility under the Acquisition Credit Facility shall be reduced by, and after the Closing Date Kinder Morgan shall make, the following mandatory prepayments in respect of the 364-day facility and term facility (after giving effect to

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any prepayment required pursuant to the terms of indebtedness of Kinder Morgan's subsidiaries): (a) 100% of the net cash proceeds of issuances of debt obligations, subject to certain exceptions and thresholds, (b) 100% of the net cash proceeds of issuances of equity of Kinder Morgan, subject to certain exceptions and thresholds and (c) 100% of the net cash proceeds of asset sales (including insurance and condemnation proceeds), subject to thresholds, reinvestment rights (in the case of insurance and condemnation proceeds) and certain other exceptions; provided that in each case, in no event shall the commitments in respect of the 364-day facility and term facility under the Acquisition Credit Facility be reduced prior to the Closing Date as a result of any mandatory prepayment event at El Paso or its subsidiaries, except to the extent the net cash proceeds thereof are dividended or distributed to the shareholders of El Paso; provided further that dividends and distributions permitted by the merger agreement as in effect on October 16, 2011 shall not reduce the commitments thereunder. All mandatory prepayments shall be applied first, pro rata to loans outstanding under the 364-day facility and second, pro rata to loans outstanding under the term facility.

Kinder Morgan shall be permitted at any time to make voluntary prepayments of the loans under the Credit Facilities without premium or penalty, subject only to the obligation to reimburse the lenders under the Credit Facilities for breakage costs.

***Representations, Covenants and Events of Default***

The Credit Facilities provide for (a) certain representations, warranties and affirmative covenants, (b) certain negative covenants, including limitations on incurring indebtedness, liens, fundamental changes, asset sales, investments, dividends and repayment of certain indebtedness, sale leasebacks and change of business, in each case with baskets, thresholds and exceptions and (c) certain events of default, including for non-payment of principal and interest, breach of affirmative or negative covenants, certain cross defaults, change in control, bankruptcy events, certain ERISA events, certain unsatisfied judgments, actual or asserted invalidity of guarantees or security documents and certain events relating to the consummation of the transactions. The Credit Facilities provide that commencing with the last date of the fourth full fiscal quarter following the Closing Date, Kinder Morgan shall be required to comply with a financial maintenance covenant requiring a maximum leverage ratio of 6.00 to 1.00.

***Conditions***

The obligation of the lenders to provide loans under the Acquisition Credit Facility and the effectiveness of the Amended and Restated Revolving Facility, in each case on the Closing Date, is subject to a number of conditions, including, without limitation:

the execution and delivery of the credit agreement governing the Amended and Restated Revolving Facility, certain security documentation and certain other ancillary documentation substantially consistent with the forms of such documentation attached as exhibits to the Revolving Amendment and Acquisition Credit Facility;

the accuracy of certain representations and warranties of El Paso in the merger agreement and certain specified representations and warranties in the Financing Documentation;

consummation of the Acquisition in accordance with the merger agreement (without giving effect to any waivers, amendments, supplements or modifications to the merger agreement that are materially adverse to any material interest of the lenders under the Acquisition Credit Facilities without the consent of the administrative agent thereunder);

the termination of the Existing EP Facility and the repayment in full of amounts outstanding thereunder;

delivery of certain customary closing documents (including, among others, a customary solvency certificate and a customary borrowing notice), specified items of collateral and certain financial statements;



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compliance with certain know your customer and anti-money laundering rules and regulations;

consummation of the KMK Merger;

absence of a default (subject to certain exceptions) under certain agreements governing material indebtedness of Kinder Morgan, El Paso and their respective subsidiaries resulting from the execution, delivery and borrowings under the documentation governing the Credit Facilities; and

payment of applicable costs, fees and expenses.

The final termination date for the availability of the loans under the Acquisition Credit Facility and the effectiveness of the Amended and Restated Revolving Facility is 11:59 p.m (New York time) on June 30, 2012 (referred to as the Outside Date ); provided that the Outside Date may be extended to December 31, 2012 under certain circumstances at Kinder Morgan's election, such election obligating Kinder Morgan to pay an extension fee.

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**DESCRIPTION OF KINDER MORGAN CAPITAL STOCK**

The following information is a summary of the material terms of the Kinder Morgan certificate of incorporation and bylaws. Kinder Morgan's certificate of incorporation and bylaws are filed as exhibits to the registration statement of which this information statement/proxy statement/prospectus forms a part.

**General**

Kinder Morgan's authorized capital stock consists of:

2,000,000,000 shares of Class P common stock, \$0.01 par value per share, 170,921,140 of which were outstanding as of December 31, 2011;

707,000,000 shares of Class A convertible common stock, \$0.01 par value per share, issued in nine series, which are referred to as Kinder Morgan's Class A common stock or Class A shares, 535,972,387 of which were outstanding as of December 31, 2011, and none of the rest of which may be reissued;

100,000,000 shares of Class B convertible common stock, \$0.01 par value per share, issued in nine series, which are referred to as Kinder Morgan's Class B shares, 94,132,596 of which were outstanding as of December 31, 2011, and none of the rest of which may be reissued;

2,462,927 shares of Class C convertible common stock, \$0.01 par value per share, issued in nine series, which are referred to as Kinder Morgan's Class C shares, 2,318,258 of which were outstanding as of December 31, 2011, and none of the rest of which may be reissued; and

10,000,000 shares of preferred stock, \$0.01 par value per share, none of which were outstanding as of December 31, 2011.

**Classes of Kinder Morgan Common Stock**

***General***

As of December 31, 2011, the Class A shares, the Class B shares and the Class C shares were convertible into a total of 535,972,387 shares of Kinder Morgan Class P common stock, which represented 75.8% of the outstanding shares of Kinder Morgan Class P common stock on a fully-converted basis. The number of shares of Kinder Morgan Class P common stock into which the Class A shares, Class B shares and Class C shares will convert is determined in accordance with Kinder Morgan's certificate of incorporation. As described under "Voluntary Conversion Automatic Conversion of Class B Shares and Class C Shares," the relative portion of the total number of shares of Kinder Morgan Class P common stock issuable upon conversion to the holders of the Class A Shares, the Class B Shares and the Class C Shares, respectively, and the portion of Kinder Morgan's dividends to be received by the holders of the Class A Shares, the Class B Shares and the Class C Shares, respectively, will depend on the total value that has been received by such holders in connection with dividends and conversions of such shares into shares of Kinder Morgan Class P common stock. Because the aggregate amount of Kinder Morgan Class P common stock into which the Class A shares, Class B shares and Class C shares can convert is fixed, however, neither conversions of any Class A shares, Class B shares or Class C shares into Kinder Morgan Class P common stock, nor the portion of Kinder Morgan's distributions that may be received by the Class B shares or Class C shares rather than the Class A shares, will impact the per share distribution paid on Kinder Morgan Class P common stock or the aggregate distributions Kinder Morgan pays to its stockholders. The conversion of Kinder Morgan's Class B shares and Class C shares into shares of Kinder Morgan Class P common stock will result in a corresponding decrease in the number of shares of Kinder Morgan Class P common stock into which Kinder Morgan's Class A shares will be able to convert because its Class A shares, Class B shares and Class C shares are convertible into a fixed aggregate number of shares of Kinder Morgan Class P common stock.



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Since the Investors may decide to sell shares at different times and at different prices or values, and because those sales may affect the relative conversion and distribution rights of the Class B shares and the Class C shares vis-a-vis the Class A shares, Kinder Morgan's Class A shares were issued in nine series to the following groups of Investors:

five series to the Sponsor Investors;

one series to Richard D. Kinder;

two series to the Original Stockholders; and

one series to Other Management.

Each series of Class A shares has a corresponding series of Class B shares and of Class C shares in order to track the dividends and conversions of each series. Class B shares are held by members of management, and each series of Class A shares has a similar corresponding series of Class B shares. Class C shares also are held by members of management, and each series of Class A shares has a similar corresponding series of Class C shares. The relationship among the Class A shares, Class B shares and Class C shares is the same for all series of Class A shares. The determinations described below are made on a series-by-series basis.

The economic rights of the holders of the Class A shares, Class B shares and Class C shares will adjust as described in Kinder Morgan's certificate of incorporation. The holders of the Class C shares are not entitled to any distributions until the holders of the Class A shares have received total value of distributions and of shares of Kinder Morgan Class P common stock issued upon conversion of Class A shares equal to 100% of their originally invested capital; thereafter, the holders of the Class C shares are entitled to a proportion of distributions as if the Class C shares were Class A shares. Other than the priority distributions described below under Dividends, the holders of the Class B shares are not entitled to any distributions until the holders of the Class A shares and the holders of the Class C shares have received total value equal to 150% of their original capital, which includes the capital originally invested by the holders of the Class A shares and an amount of notional capital for the Class C shares (collectively referred to in this information statement/proxy statement/prospectus as the original capital). Thereafter, the holders of Class B shares as a group are entitled to varying percentages of distributions that would cause such holders to have received total value equal to between 5% and 20% of the amount by which the total value of distributions and of shares of Kinder Morgan Class P common stock issued upon conversion received with respect to Kinder Morgan's Class A shares, Class B shares and Class C shares exceeds the original capital. At May 31, 2015, any remaining Class A shares, Class B shares and Class C shares will convert into shares of Kinder Morgan Class P common stock based on the fair market value of those shares of Kinder Morgan Class P common stock, which will be calculated based on the volume weighted average price of one share of Kinder Morgan Class P common stock during the regular director and officer blackout period for its first quarterly periodic report for the 2015 calendar year. A mandatory conversion event may occur earlier with respect to one or more series of the Class A shares, Class B shares and Class C shares upon the occurrence of specified events. See Mandatory Conversion.

The number of shares of Kinder Morgan Class P common stock into which the Class A shares, the Class B shares and the Class C shares in the aggregate can convert was fixed in connection with Kinder Morgan's February 2011 initial public offering. Out of that aggregate number, the portion into which the Class A shares can convert may grow smaller, to the extent the Class B shares and Class C shares convert into Kinder Morgan Class P common stock, depending on the amount by which the total value received with respect to Kinder Morgan's Class A shares, Class B shares and Class C shares exceeds the original capital. The Class C shares will not convert into any shares of Kinder Morgan Class P common stock unless the holders of Class A shares have received total value in excess of 100% of the originally invested capital of the holders of the Class A shares, after which time the Class C shares will generally be treated as Class A shares. The Class B shares will not convert into any shares of Kinder Morgan Class P common stock unless the holders of Class A shares and Class C shares have received total value in excess of 150% of the original capital of the holders of the Class A shares and Class C shares. Class B shares and Class C shares will automatically convert into shares of Kinder Morgan

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Class P common stock after specified thresholds of total value received have been exceeded as a result of the voluntary conversion of Class A shares. See [Voluntary Conversion](#) [Automatic Conversion of Class B Shares and Class C Shares](#).

All of the Class A shares of the two series issued to the Original Stockholders and the series issued to Other Management, together with the corresponding series of Class B shares and Class C shares, have been converted into Kinder Morgan Class P common stock, and those three series of Class A shares, Class B shares and Class C shares are no longer outstanding. See [Mandatory Conversion](#).

### ***Voluntary Conversion***

*Voluntary Conversion of Class A Shares.* A holder of Class A shares may elect to convert some, or all, of its Class A shares in order to sell the resulting shares of Kinder Morgan Class P common stock to a third party or to make a distribution of such resulting shares of Kinder Morgan Class P common stock to its investors or partners by delivering a conversion notice to Kinder Morgan and its transfer agent. Richard D. Kinder, Kinder Morgan's chief executive officer, also may convert his Class A shares in order to donate the resulting shares of Kinder Morgan Class P common stock to certain charitable organizations. Mr. Kinder and Park Shaper, Kinder Morgan's president, are subject to certain transfer restrictions on the sale of Kinder Morgan Class P common stock resulting from their conversion of Class A shares. See [Shareholders Agreement](#) [Transfer Restrictions](#).

Holders of Class A shares, or shares of Kinder Morgan Class P common stock received by such holder upon a mandatory conversion occurring prior to May 31, 2015, may not convert any Class A shares or transfer any shares of Kinder Morgan Class P common stock during the fair market value calculation period prior to the final conversion date on May 31, 2015. See [General](#). Holders of Class B shares and Class C shares are not entitled to voluntarily convert their shares.

*Automatic Conversion of Class B Shares and Class C Shares.* The voluntary conversion of shares of a Class A series that causes certain thresholds of total value received to be exceeded will result in the automatic conversion of Class B shares or Class C shares. Class C shares will not convert into any shares of Kinder Morgan Class P common stock unless the holders of the corresponding series of Class A shares have received total value in excess of 100% of the originally invested capital of the holders of those Class A shares, after which time such Class C shares will generally be treated as Class A shares. Thereafter, each time that a holder of Class A shares voluntarily converts some, or all, of its Class A shares in order to sell, distribute or donate the resulting shares of Kinder Morgan Class P common stock, a number of Class C shares will automatically convert into shares of Kinder Morgan Class P common stock so that the holders of Class C shares receive their proportion of the total value that the holders of Class A shares received in such transaction. The Class B shares of a series will not convert into any shares of Kinder Morgan Class P common stock unless the holders of the corresponding Class A shares and Class C shares have received total value in excess of 150% of the original invested and notional capital of the holders of the Class A shares and Class C shares. Thereafter, the holders of Class B shares as a group will begin receiving their proportion of total value. Each time thereafter that a holder of Class A shares voluntarily converts some, or all, of its Class A shares in order to sell, distribute or donate the resulting shares of Kinder Morgan Class P common stock, a number of Class B shares will automatically convert into shares of Kinder Morgan Class P common stock so that the holders of Class B shares receive their proportion of total value, which is equal to between 5% and 20% of the amount by which the total value of distributions and of shares of Kinder Morgan Class P common stock issued upon conversion received with respect to Class A shares, Class B shares and Class C shares exceeds the original capital.

### ***Mandatory Conversion***

Any Class A shares, Class B shares and Class C shares of a series outstanding on May 31, 2015 will automatically convert into the remaining shares of Kinder Morgan Class P common stock allocable to such

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series, as described above under General. Mandatory conversion may occur earlier if the holders of two-thirds of the shares of a Class A series and two-thirds of the shares of the corresponding Class B series select an earlier date, if the remaining number of shares of Kinder Morgan Class P common stock originally allocable to such series falls below 0.5% of the maximum number of shares of Kinder Morgan Class P common stock allocable to such series or upon the occurrence of specified change of control events. See Certain Anti-takeover Provisions of Kinder Morgan's Charter and Bylaws and Delaware Law Approval Requirements for Certain Changes of Control. An early mandatory conversion date may not be selected with respect to Richard D. Kinder's Class A shares until at least two of the Sponsor Investors have selected an early mandatory conversion date or unless no Sponsor Investor holds any Class A shares or shares of Kinder Morgan Class P common stock received upon a mandatory conversion. In November 2011, an early mandatory conversion date was selected by the requisite holders of the two series of Class A shares issued to the Original Stockholders and the series of Class A shares issued to Other Management and by the requisite holders of the corresponding series of Class B shares. Accordingly, all of the Class A shares in those three series, and all shares in the corresponding three series of Class B shares and Class C shares, were converted into Kinder Morgan Class P common stock, and none of the Class A shares, Class B shares or Class C shares in those three series remain outstanding.

***Accelerated Conversion of Class B Shares and Class C Shares***

A holder of Class B shares or Class C shares may convert all or a portion of such shares into shares of Kinder Morgan Class P common stock in order to provide such holder with liquidity in the event that such holder must pay certain taxes with respect to its ownership of such Class B shares or Class C shares that exceed the amount of total value received by such holder with respect to such Class B shares or Class C shares as of such time. Adjustments would be made to subsequent distributions or conversions that otherwise would be made or would occur with respect to the Class B shares or Class C shares that are subject to such accelerated conversion. Alternatively, the holders of Class A shares of the series corresponding to such Class B shares or Class C shares may elect to make a non-interest-bearing cash loan to the holder of such Class B shares or Class C shares to provide such holder with the required liquidity and, to the extent that such holder would incur certain taxable compensation income in connection with such non-interest-bearing loan, will make a tax gross-up payment in cash to such holder.

***Voting Rights***

Each share of Kinder Morgan Class P common stock and each Class A share entitles the holder to one vote (subject to anti-dilution adjustments in the case of the Class A shares) with respect to each matter presented to Kinder Morgan's stockholders on which the holders of Kinder Morgan Class P common stock are entitled to vote. Each Class B share and Class C share entitles the holder to 1/10th of a vote with respect to the election of directors. All classes of capital stock vote as a single class for the election and removal of directors on Kinder Morgan's board of directors and as provided by law, and the Kinder Morgan Class P common stock and the Class A shares vote as a single class on most other matters. Certain classes have specific votes with respect to certain amendments of Kinder Morgan's certificate of incorporation. See Certain Other Provisions of Kinder Morgan's Charter and Bylaws and Delaware Law Amending Kinder Morgan's Certificate of Incorporation and Bylaws.

Holders of Kinder Morgan's capital stock do not have cumulative voting rights.

***Dividends***

Holders of Kinder Morgan Class P common stock share equally in any dividend declared by Kinder Morgan's board of directors, subject to the rights of the holders of any outstanding preferred stock. The holders of Kinder Morgan's outstanding Class A shares, Class B shares and Class C shares are entitled to receive in the aggregate the proportion of any such dividend allocable to the maximum number of shares of Kinder Morgan Class P common stock into which they would then convert (measured on the record date for such dividend). The

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dividends received by holders of Class A shares, Class B shares and Class C shares will adjust over time as described above under General. The Class A shares, Class B shares and Class C shares will receive in the aggregate dividends on a fully-converted Kinder Morgan Class P common stock basis, and the payment of those dividends will not otherwise affect the per share dividends received by holders of Kinder Morgan Class P common stock since the aggregate number of shares of Kinder Morgan Class P common stock into which Kinder Morgan's Class A shares, Class B shares and Class C shares can convert was fixed in connection with its initial public offering.

Kinder Morgan's certificate of incorporation provides that, in general, no dividends will be paid to holders of Class A shares and Class C shares until annual dividends of up to \$50 million are paid to the holders of Class B shares. Subject to certain limitations set forth in Kinder Morgan's charter, such priority dividends are payable to the holders of Class B shares until such holders have received dividends of approximately \$200 million, sixteen quarters have elapsed since Kinder Morgan's first dividend payment date after the closing of its initial public offering, or the holders of the Class A shares, the holders of the Class B shares and the holders of the Class C shares have received total value equal to 150% of the original capital, whichever is earlier.

### ***Liquidation Rights***

In the event of any voluntary or involuntary liquidation, dissolution or winding up of Kinder Morgan's affairs, holders of Kinder Morgan's capital stock would be entitled to share ratably in its assets that are legally available for distribution to its stockholders after payment of liabilities in accordance with the provisions regarding the payment of dividends in Kinder Morgan's certificate of incorporation. See Dividends above. If Kinder Morgan has any preferred stock outstanding at such time, holders of the preferred stock may be entitled to distributions and/or liquidation preferences. In either such case, Kinder Morgan must pay the applicable distribution to the holders of its preferred stock, if required pursuant to the terms of any such preferred stock, before it may pay distributions to the holders of Kinder Morgan Class P common stock, Class A shares, Class B shares or Class C shares.

### ***Other Rights***

Kinder Morgan's stockholders have no preemptive or other rights to subscribe for additional shares. All outstanding shares are, and all shares issued in the second merger will be, when issued, validly issued, fully paid and nonassessable.

### ***Appraisal Procedure***

Kinder Morgan's certificate of incorporation provides for appraisal procedures to be used in the event of disputes relating to, among other things, the calculation of fair market value of illiquid consideration and determination of values upon a mandatory conversion. Kinder Morgan has agreed to pay all costs of such dispute resolution procedures, including the fees of all appointed investment banking firms or other appraisers.

### **Kinder Morgan Preferred Stock**

Kinder Morgan's board of directors is authorized, subject to the limits imposed by the DGCL, and the board of directors approval requirements contained in Kinder Morgan's bylaws, to issue up to 10,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each series of preferred stock, and to fix the rights, preferences, privileges, qualifications, limitations and restrictions of the shares of each wholly unissued series of preferred stock. Kinder Morgan's board of directors also is authorized to increase or decrease the number of shares of any series, but not below the number of shares of that series of preferred stock then outstanding and not above the total number of shares of preferred stock authorized by Kinder Morgan's certificate of incorporation, without any further vote or action by its stockholders.

Kinder Morgan's board of directors may authorize the issuance of preferred stock with voting rights that affect adversely the voting power or other rights of its other classes of stock. The issuance of preferred stock,

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while providing flexibility in connection with possible acquisitions and other corporate purposes, also could have the effect of delaying, deferring or preventing a change in control or causing the market price of Kinder Morgan Class P common stock to decline. Kinder Morgan has no current plans to issue any shares of preferred stock.

### **Certain Anti-takeover Provisions of Kinder Morgan's Charter and Bylaws and Delaware Law**

In addition to the supermajority board voting approvals required by Kinder Morgan's bylaws, its certificate of incorporation and bylaws have the following provisions that could deter, delay or prevent a third party from acquiring Kinder Morgan, even if doing so would benefit its stockholders.

#### ***Undesignated Preferred Stock***

The ability to authorize undesignated preferred stock makes it possible for Kinder Morgan's board of directors to issue preferred stock with super voting, special approval, dividend or other rights or preferences on a discriminatory basis that could impede the success of any attempt to acquire Kinder Morgan. These and other provisions may have the effect of deferring, delaying or discouraging hostile takeovers, or changes in control or management of Kinder Morgan. Further, the rights of the holders of Kinder Morgan's other classes of stock will be subject to, and may be adversely affected by, the rights of the holders of any preferred shares that may be issued in the future.

#### ***Requirements for Advance Notification of Stockholder Meetings, Nominations and Proposals***

Kinder Morgan's bylaws provide that special meetings of the stockholders may be called only upon the request of the chairman of the board, the chief executive officer, the president or the board of directors or upon the written request of stockholders of record of not less than 10% of all voting power entitled to vote at such meeting. Kinder Morgan's bylaws prohibit the conduct of any business at a special meeting other than as specified in the notice for such meeting.

Kinder Morgan's bylaws establish advance notice procedures with respect to stockholder proposals for annual meetings and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors. In order for any matter to be properly brought before a meeting, a stockholder will have to comply with advance notice requirements and provide Kinder Morgan with specified information. Kinder Morgan's bylaws provide that any director or the board of directors may be removed, with or without cause, by an affirmative vote of shares representing the majority of all voting power then entitled to vote at an election of directors. Its bylaws also provide that vacancies may be filled only by a vote of a majority of the directors then in office, even though less than a quorum, and not by its stockholders. Kinder Morgan's bylaws allow the chairman of a meeting of the stockholders to adopt rules and regulations for the conduct of meetings that may have the effect of precluding the conduct of certain business at a meeting if the rules and regulations are not followed. These provisions also may defer, delay or discourage a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of Kinder Morgan. In addition, the nomination and removal of directors, including the filling of board vacancies, must comply with the provisions of the shareholders agreement regarding composition of Kinder Morgan's board of directors. See Shareholders Agreement.

#### ***No Stockholder Action by Written Consent***

Kinder Morgan's certificate of incorporation provides that any vote or similar action required or permitted to be taken by holders of Kinder Morgan Class P common stock must be effected at a duly called annual or special meeting of its stockholders and may not be effected by consent in writing by such stockholders. Holders of Kinder Morgan's Class A shares, Class B shares and Class C shares may effect any action requiring the consent of such class of stock by written consent.



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***Approval Requirements for Certain Changes of Control***

Kinder Morgan's organizational documents contain additional approval requirements for certain non-cash changes of control. Kinder Morgan's shareholders agreement prohibits it from directly or indirectly engaging in any merger, amalgamation, consolidation or other business combination or similar transaction or series of transactions (other than for solely cash consideration) without obtaining the unanimous approval of its stockholders unless the organizational documents and capital structure of the acquiring, surviving or resulting entity preserve in all material respects the economic and other rights (including conversion, transfer, distribution and governance rights as set forth in Kinder Morgan's certificate of incorporation, bylaws and shareholders agreement), characteristics and tax treatment, including on a relative basis, of the Sponsor Investors, the Class A shares, the Class B shares, the Class C shares and the shares of Kinder Morgan Class P common stock as they exist on the date of such transaction. A determination that a change of control meets the above requirements requires approval by each of the following:

Sponsor Investors holding a majority of Kinder Morgan's outstanding shares of capital stock then entitled to vote for the election of directors then held by Sponsor Investors that hold Class A shares,

Richard D. Kinder (so long as he and his permitted transferees hold Class A shares),

holders of a majority of Kinder Morgan's outstanding Class B shares and

holders of a majority of Kinder Morgan's outstanding Class C shares.

If all requisite stockholders other than the holders of Class C shares approve such a transaction, Kinder Morgan generally may engage in such transaction so long as the Class C shares receive the consideration provided in its charter. In addition, if the transaction is otherwise approved by the requisite holders of Kinder Morgan's capital stock, the Sponsor Investors and Mr. Kinder may decide that the holders of Kinder Morgan Class P common stock, Class A shares, Class B shares and Class C shares receive the consideration provided in Kinder Morgan's charter, regardless of whether such transaction is determined to meet the above requirements. See Shareholders Agreement Certain Actions Relating to Kinder Morgan and Its Subsidiaries and Other Affiliates.

***Section 203 of the DGCL***

Kinder Morgan is subject to the provisions of Section 203 of the DGCL. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination with any interested stockholder for a three-year period following the time that such stockholder becomes an interested stockholder, unless the business combination is approved in a prescribed manner. A business combination includes, among other things, a merger, asset or stock sale or other transaction resulting in a financial benefit to the interested stockholder. An interested stockholder is a person who, together with affiliates and associates, owns, or did own within three years prior to the determination of interested stockholder status, 15% or more of the corporation's voting stock. Under Section 203, a business combination between a corporation and an interested stockholder is prohibited unless:

before the stockholder became an interested stockholder, the board of directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;

upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, shares owned by persons who are directors and also officers, and employee stock plans, in some instances, but not the outstanding voting stock owned by the interested stockholder; or

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at or after the time the stockholder became an interested stockholder, the business combination was approved by the board of directors of the corporation and authorized at an annual or special meeting of

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the stockholders, but not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 defines a business combination to include:

any merger or consolidation involving the corporation and the interested stockholder;

any sale, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;

subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;

subject to exceptions, any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; and

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

A Delaware corporation may opt out of this provision either with an express provision in its original certificate of incorporation or in an amendment to its certificate of incorporation or bylaws approved by its stockholders. Kinder Morgan has not opted out, and does not currently intend to opt out, of this provision so Section 203 will apply to any stockholder that becomes an interested stockholder after Kinder Morgan's initial public offering. The statute, as it applies to interested stockholders other than Richard D. Kinder or any Sponsor Investor that is an interested stockholder prior to Kinder Morgan's initial public offering, could prohibit or delay mergers or other takeover or change in control attempts and, accordingly, may discourage attempts to acquire Kinder Morgan. These provisions of the DGCL could have the effect of deferring, delaying or discouraging hostile takeovers, and may also have the effect of preventing changes in control or management of Kinder Morgan. It is possible that these provisions could make it more difficult to accomplish transactions other Kinder Morgan stockholders might deem desirable.

## **Certain Other Provisions of Kinder Morgan's Charter and Bylaws and Delaware Law**

### ***Board of Directors***

Kinder Morgan's certificate of incorporation provides that the number of directors will be fixed in the manner provided in its bylaws. Its bylaws provide that the number of directors initially will be thirteen, subject to increase or decrease in accordance with its shareholders agreement. The shareholders agreement provides that the number of directors may not be reduced below eleven until such time that the Sponsor Investors have the right to choose fewer than three director nominees and a majority of the board approves such reduction. In such case, the number of director nominees that Richard D. Kinder has the right to choose also will be reduced. The shareholders agreement also provides that the number of directors may be increased in order to meet the majority independence requirements of the NYSE if Kinder Morgan is unable to qualify for a controlled company exemption at such time. See Shareholders Agreement.

Kinder Morgan has agreed in the merger agreement to take all action necessary, including increasing the size of its board of directors and amending the shareholders agreement to effect such increase, to elect two individuals designated by El Paso to the Kinder Morgan board of directors as of the effective time of the merger. In the voting agreement, Kinder Morgan stockholders owning sufficient shares to amend the shareholders agreement have agreed to sign such amendment. Kinder Morgan also agreed that one of those individuals would be appointed to its audit committee and one to its nominating and governance committee.

### ***Supermajority Board Approval***

Kinder Morgan's bylaws state that, unless otherwise provided, so long as the Sponsor Investors have the right to choose at least five nominees to the board of directors pursuant to the shareholders agreement, any matter



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brought before the board of directors will be decided by a supermajority vote, which is defined as the affirmative vote of eight directors. Kinder Morgan has agreed in the merger agreement to take all action necessary to cause its bylaws to be amended to provide that a supermajority vote is defined as the affirmative vote of ten directors rather than eight.

Kinder Morgan's bylaws further provide a list of actions that, so long as the Sponsor Investors have the right to choose at least five nominees to the board of directors pursuant to the shareholders agreement, must be brought before the board of directors and decided by supermajority vote, including the following actions with respect to Kinder Morgan and its subsidiaries (other than KMR or KMP or any of their respective subsidiaries and other than Kinder Morgan G.P., Inc. solely to the extent it is acting to approve actions taken by KMR or matters on behalf of KMP, in its capacity as a shareholder of KMR or as the general partner of KMP):

commencement of any bankruptcy or similar proceeding by Kinder Morgan or any of its subsidiaries,

commencement of any liquidation or dissolution proceedings,

commencement or settlement of any litigation over \$50 million,

any change to Kinder Morgan's dividend policy or distributions made outside of the dividend policy,

amendment or waiver of any material terms of Kinder Morgan's or its subsidiaries' corporate governance documents, outstanding securities, or governance structure (to the extent not required by law),

adoption of Kinder Morgan's annual budget,

approval of certain actions not contemplated by the annual budget, including the issuance of equity securities or the entry into mergers or divestitures, with various exceptions,

certain transactions with affiliates (including KMP and KMR),

increase of employee compensation or benefits of management, with certain exceptions,

material changes to or waivers of material terms of any agreement or transaction that requires a supermajority board approval,

take certain actions in its capacity as shareholder, member or partner of its subsidiaries (other than Kinder Morgan G.P., Inc. solely to the extent it is acting in its capacity as a shareholder of KMR or as the general partner of KMP, but not, among other things, to amend or waive its rights under KMP's organizational documents),

enter into an agreement or take an action that would restrict Kinder Morgan's ability to make distributions or limit the rights of the board and/or its stockholders under its certificate of incorporation, bylaws or shareholders agreement and

adoption or modification of a shareholder rights plan.

***Limitations of Liability and Indemnification of Officers and Directors***

The DGCL authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breaches of directors' fiduciary duties. Kinder Morgan's certificate of incorporation eliminates the personal liability of directors for monetary damages for actions taken as a director to the fullest extent authorized by the DGCL. The DGCL does not permit exculpation for liability:

for breach of duty of loyalty;

for acts or omissions not in good faith or involving intentional misconduct or knowing violation of law;

under Section 174 of the DGCL (unlawful dividends and stock repurchases); or

for transactions from which the director derived improper personal benefit.

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Kinder Morgan's certificate of incorporation and bylaws provide that it shall indemnify its directors and officers, and may indemnify its employees, agents and other persons, to the fullest extent permitted by law. Kinder Morgan also is expressly authorized to carry directors' and officers' insurance providing indemnification for its directors, officers and certain employees and agents for any liabilities incurred in any such capacity, whether or not it would have the power to indemnify such person against such liability. Kinder Morgan believes that these indemnification provisions and insurance are useful to attract and retain qualified directors and executive officers.

The limitation of liability and indemnification provisions in Kinder Morgan's certificate of incorporation and bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty. These provisions also may have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit Kinder Morgan and its stockholders. In addition, an investment in Kinder Morgan stock may be adversely affected to the extent Kinder Morgan pays the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

***Corporate Opportunities***

Kinder Morgan's certificate of incorporation provides that the Sponsor Investors and certain of their affiliates (including any director nominated by the Sponsor Investors) have no obligation to offer Kinder Morgan or its wholly owned subsidiaries an opportunity to participate in business opportunities presented to the Sponsor Investors or such affiliates (other than Kinder Morgan and its wholly owned subsidiaries) even if the opportunity is one that Kinder Morgan or one of its wholly owned subsidiaries might reasonably have pursued, and that neither the Sponsor Investors nor their respective affiliates will be liable to Kinder Morgan or any of its wholly owned subsidiaries for breach of any duty by reason of any such activities. However, each such person serving as a director of Kinder Morgan or one of its wholly owned subsidiaries must tell Kinder Morgan about any business opportunity offered to such person solely in his or her capacity as such a director.

***Amending Kinder Morgan's Certificate of Incorporation and Bylaws***

Kinder Morgan's certificate of incorporation may be amended in any manner provided by the DGCL. Kinder Morgan's bylaws provide that amendments of its certificate of incorporation require supermajority approval by the board of directors. See Supermajority Board Approval. In addition, certain amendments of Kinder Morgan's certificate of incorporation may only be effected with the following additional affirmative votes:

any amendment to provisions of Kinder Morgan's certificate of incorporation relating to its authorized shares, distributions, conversions, voting, amendments, anti-dilution, delivery of notices or corporate opportunities requires the affirmative vote of holders of at least a majority of the issued and outstanding Class A shares of each Class A series issued to the Sponsor Investors and Richard D. Kinder;

any amendment to provisions of Kinder Morgan's certificate of incorporation other than as described above requires the affirmative vote of holders of at least seventy-five percent (75%) of the issued and outstanding Class A shares;

any amendment to Kinder Morgan's certificate of incorporation that amends, alters, repeals, impairs or modifies the rights of a particular class of stock requires the affirmative vote of holders of at least a majority of the issued and outstanding shares of such class of stock; and

any amendment to any provision of Kinder Morgan's certificate of incorporation that modifies the rights of a particular series of a class of stock in a manner adversely and differently from other series of the same class of stock requires the affirmative vote of holders of at least a majority of the issued and outstanding shares of such series of stock.

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Kinder Morgan's certificate of incorporation and its bylaws provide that its bylaws may be amended, altered, repealed or new bylaws may be adopted by its board of directors (with supermajority approval of the board of directors so long as the Sponsor Investors have the right to nominate five of Kinder Morgan's director nominees) or by the affirmative vote of holders of shares representing two-thirds of the total voting power of all of Kinder Morgan's outstanding capital stock then entitled to vote at any annual or special meeting for the election of directors. In addition, any adoption, alteration, amendment or repeal of any bylaw by the board of directors requires the affirmative vote of:

a majority of the directors chosen for nomination by Richard D. Kinder (if any),

a majority of the directors chosen for nomination by the Sponsor Investors (if any),

two-thirds of the directors chosen for nomination by the Sponsor Investors in the case of an alteration, amendment or repeal of specified provisions of Kinder Morgan's bylaws with respect to directors, removal of officers, securities of other corporations and amendments of the bylaws, and

the director(s) chosen by a Sponsor Investor in the case of an alteration, amendment or repeal of any provision of Kinder Morgan's bylaws that would treat such Sponsor Investor adversely.

### **Transfer Agent and Registrar**

The transfer agent and registrar of Kinder Morgan Class P common stock is Computershare Trust Company, N.A. It may be contacted at 525 Washington Blvd., Jersey City, New Jersey 07310.

### **New York Stock Exchange Listing**

Kinder Morgan Class P common stock is listed on the NYSE under the symbol **KMI**.

### **Conflicts of Interest**

The Investors collectively hold all of Kinder Morgan's Class A shares, Class B shares and Class C shares, which as of the date of this information statement/proxy statement/prospectus, together represented 76.1% of the total voting power of all of Kinder Morgan's outstanding capital stock for the election of directors and 75.8% of the total voting power of all of its outstanding capital stock for other matters. Many of Kinder Morgan's directors and officers are Investors or affiliates of Investors. Some of Kinder Morgan's directors and many of its officers are officers or directors of KMR, NGPL or other entities in which Kinder Morgan owns an interest or subsidiaries of Kinder Morgan that are not wholly owned. Conflicts of interest exist and may arise in the future as a result of the relationships between Kinder Morgan's directors, officers and their affiliates, on the one hand, and Kinder Morgan and its Class P common stockholders, on the other hand.

### **Shareholders Agreement**

Kinder Morgan is party to a shareholders agreement with the Investors regarding voting, transfer and registration for resale of shares of Kinder Morgan stock held by them, among other things. Holders of El Paso common stock who receive shares of Kinder Morgan Class P common stock in the second merger will not become parties to the shareholders agreement, but the shareholders agreement will continue in effect. Although only Kinder Morgan and the Investors are parties to the shareholders agreement, it contains a number of provisions affecting the governance of Kinder Morgan. Below is a summary of the material terms of Kinder Morgan's shareholders agreement, which is filed as an exhibit to the registration statement of which this information statement/proxy statement/prospectus forms a part.

### **Board, Committee and Observer Rights**

Kinder Morgan's shareholders agreement provides that Richard D. Kinder and the Sponsor Investors have the following rights to appoint director nominees to Kinder Morgan's board of directors and committees, which may be adjusted as described below. At present, Kinder Morgan's board has thirteen members, with five





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directors chosen by Mr. Kinder, two directors chosen by the funds affiliated with each of Goldman Sachs and Highstar Capital LP, one director chosen by the funds affiliated with each of The Carlyle Group and Riverstone Holdings LLC, and two additional independent directors. Kinder Morgan has agreed in the merger agreement to take all action necessary, including increasing the size of its board of directors and amending the shareholders agreement to effect such increase, to elect two individuals designated by El Paso to the Kinder Morgan board of directors as of the effective time of the merger. In the voting agreement, Kinder Morgan stockholders owning sufficient shares to amend the shareholders agreement have agreed to sign such amendment. Kinder Morgan also agreed that one of those El Paso designees would be appointed to its audit committee and one to its nominating and governance committee.

Richard D. Kinder may appoint five nominees (one of whom may be Mr. Kinder) so long as Mr. Kinder is chief executive officer of Kinder Morgan and owns shares representing at least 2.5% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors. One of those nominees must meet the audit committee independence requirements of the NYSE. The number of directors Mr. Kinder may nominate may decrease as follows:

If Mr. Kinder ceases to be chief executive officer for any reason other than termination for cause (as defined in the shareholders agreement), then instead of the five nominees noted above, Mr. Kinder may appoint two nominees (one of whom may be Mr. Kinder), the then-current chief executive officer will be one nominee and Other Management (excluding any individuals whose employment with Kinder Morgan has terminated) and the Original Stockholders will appoint two nominees. If Other Management and the Original Stockholders cease to own at least a majority of their original holdings of Kinder Morgan's Class A shares and shares of Kinder Morgan Class P common stock issued upon conversion of such Class A shares, then their right to appoint those two nominees will be transferred to Kinder Morgan's nominating and governance committee.

If Mr. Kinder is terminated as chief executive officer for cause (as defined in the shareholders agreement), then instead of the five nominees noted above, Mr. Kinder may only appoint one nominee, the then-current chief executive officer will be one nominee, the nominating and governance committee will appoint one nominee and Other Management (excluding any individuals whose employment with Kinder Morgan has terminated) and the Original Stockholders will appoint two nominees. None of these nominees may be Mr. Kinder. If Other Management and the Original Stockholders cease to own at least a majority of their original holdings of the Class A shares and shares of Kinder Morgan Class P common stock issued upon conversion of such Class A shares, then their right to appoint those two nominees will be transferred to the nominating and governance committee.

If the board of directors approves a reduction in the number of directors below eleven while Mr. Kinder has the right to appoint five nominees, then Mr. Kinder's nominees will be reduced to four. In addition, Mr. Kinder will no longer be required to appoint a nominee that meets the audit committee independence requirements and instead Kinder Morgan's nominating and governance committee will be required to appoint such nominee.

If Mr. Kinder no longer owns shares representing at least 2.5% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors, then Mr. Kinder may no longer appoint any nominees, and instead, the then-current chief executive officer will be one nominee and the nominating and governance committee will appoint four nominees (or three if the number of directors has been reduced below eleven).

Affiliates of Goldman Sachs may appoint two nominees so long as they own shares representing at least 5% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors.

If affiliates of Goldman Sachs own shares representing between 2.5% and 5% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors, then affiliates of Goldman Sachs may only appoint one nominee.



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Affiliates of Highstar Capital LP may appoint two nominees so long as they own shares representing at least 5% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors.

If affiliates of Highstar Capital LP own shares representing between 2.5% and 5% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors, then affiliates of Highstar Capital LP may only appoint one nominee.

Affiliates of The Carlyle Group may appoint one nominee so long as they own shares representing at least 2.5% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors.

Affiliates of Riverstone Holdings LLC may appoint one nominee so long as they own shares representing at least 2.5% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors.

If any Sponsor Investor ceases to have the right to appoint a director nominee, then Kinder Morgan's board of directors will decrease in size by the corresponding number of directors, down to a minimum of eleven directorships. Once the Sponsor Investors collectively have the right to appoint less than three director nominees, Kinder Morgan's board of directors can elect to further decrease the size of Kinder Morgan's board, down to a minimum of nine directorships. Appointments to any directorships which are not specifically allocated pursuant to the above description will be made by Kinder Morgan's nominating and governance committee.

Under the shareholders agreement, share ownership for Mr. Kinder includes shares owned by his permitted transferees, and share ownership for Sponsor Investors includes specified transferees and successors. In the event of Mr. Kinder's death, his nomination rights described above may be exercised by his heirs, executors and beneficiaries so long as they own shares representing at least 2.5% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors.

The shareholders agreement provides that Kinder Morgan's nominating and governance committee will be comprised of three members. The members will be selected by the board, and must include one of the directors nominated for election by Richard D. Kinder (so long as Mr. Kinder has the right to appoint any nominees), one of the directors nominated for election by the Sponsor Investors (so long as the Sponsor Investors have the right to collectively appoint at least three nominees) and one of the directors nominated for election by Kinder Morgan's nominating and governance committee. The merger agreement provides that one of El Paso's designees will be appointed to the nominating and governance committee. All decisions of Kinder Morgan's nominating and governance committee with respect to nominations, designations and appointments to the board of directors and committees of the board of directors, including independence determinations, will require unanimous approval so long as the Sponsor Investors have the right to collectively appoint at least three nominees to Kinder Morgan's board. All members of the nominating and governance committee will be required to meet the applicable New York Stock Exchange independence requirements. No nominee of Mr. Kinder selected to serve on this committee can serve as chair of such committee.

The shareholders agreement provides that Kinder Morgan's audit committee will be comprised of three members. The members will be selected by the board, and must include one of the directors nominated for election by Richard D. Kinder (so long as Mr. Kinder has the right to appoint a nominee that meets such requirements) and two of the directors nominated for election by Kinder Morgan's nominating and governance committee. The merger agreement provides that one of El Paso's designees will be appointed to the audit committee. All members of Kinder Morgan's audit committee will be required to meet the applicable New York Stock Exchange audit committee independence requirements, and one member will be required to be a financial expert as defined by the SEC. No nominee of Mr. Kinder selected to serve on this committee can serve as chair of such committee.

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The shareholders agreement provides that Kinder Morgan's compensation committee will be comprised of five members. The members will be selected by the board, and must include two of the directors nominated for election by the Sponsor Investors (so long as the Sponsor Investors have the right to collectively appoint at least three nominees). All members of the compensation committee will be required to meet the applicable New York Stock Exchange independence requirements and any additional requirements imposed by law. No nominee of Mr. Kinder selected to serve on this committee can serve as chair of such committee.

Each of Kinder Morgan's other committees will be comprised of five members. The members will be selected by the board, and must include two of the directors nominated for election by the Sponsor Investors so long as the Sponsor Investors have the right to collectively appoint at least three nominees. If either the Sponsor Investors or Richard D. Kinder loses the right to select, or their nominees are ineligible to serve as, members of any of Kinder Morgan's committees, then that committee member must be one of the directors nominated for election by the nominating and governance committee.

In the shareholders agreement, Kinder Morgan agrees to include the persons nominated as directors in accordance with the shareholders agreement in the slate of nominees recommended by the board of directors, and Richard D. Kinder and the Sponsor Investors agree with each other to take all necessary action within their power as stockholders to vote in favor of such persons nominated to the board of directors in accordance with the shareholders agreement and to remove any directors as required by the shareholders agreement. If Mr. Kinder or the Sponsor Investors do not vote in accordance with the shareholders agreement to elect or remove any directors, they have granted each other an irrevocable proxy so that their shares may be voted in accordance with the shareholders agreement.

Under the shareholders agreement, if affiliates of either Goldman Sachs or Highstar Capital LP own between 2.5% and 5% of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors, then such Sponsor Investor may appoint an observer to participate in meetings of Kinder Morgan's board of directors or any committee. Any Sponsor Investor that owns at least 1% of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors also may appoint an observer to participate in meetings of Kinder Morgan's board of directors or any committee. In addition, the Sponsor Investors have specified rights to appoint observers to the boards and committees of Kinder Morgan G.P., Inc., which is the general partner of KMP, and KMR. Observers may be excluded from the deliberations of any board or committee at the direction of a majority of the members of such board or committee and must comply with applicable laws and regulations. In the event that the participation of an observer appointed by a Sponsor Investor would create a conflict of interest at a meeting, such observer will recuse himself or herself from the related portion of such meeting. See the section entitled "The Transactions Board of Directors and Management of Kinder Morgan After the Transactions" for a discussion related to El Paso's ability to designate two individuals to Kinder Morgan's board of directors following consummation of the transactions.

***Controlled Company Exemption***

If Kinder Morgan's board of directors does not satisfy the majority independence requirements of the New York Stock Exchange, the shareholders agreement provides that Kinder Morgan will elect to operate under the controlled company exemption to such independence requirements, if such exemption is available to it. This would mean that Kinder Morgan's board would not be required to have a majority of independent directors, and its nominating and governance committee and its compensation committee would not be required to consist only of independent directors. If such exemption is not available, Kinder Morgan's nominating and governance committee will appoint a number of additional directors that meet the independence requirements of the New York Stock Exchange to cause Kinder Morgan's board to meet the applicable majority independence standards and the number of directors on its board shall be increased by the number of such additional directors appointed by the nominating and governance committee.

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***Certain Actions Relating to Kinder Morgan and Its Subsidiaries and Other Affiliates***

So long as any Sponsor Investor owns any Class A shares or shares of Kinder Morgan Class P common stock received upon conversion of such Class A shares as a result of a mandatory conversion, Kinder Morgan has agreed in the shareholders agreement to take certain actions with respect to it and its subsidiaries and affiliates, including the following:

upon the reasonable request of the Sponsor Investors, causing director nominees of the Sponsor Investors serving on Kinder Morgan's board to be appointed to the boards or governing bodies of certain of its subsidiaries (other than Kinder Morgan G.P., Inc., which is the general partner of the Partnership, KMP or KMR or any of their subsidiaries);

permitting director nominees of the Sponsor Investors to attend meetings of the Kinder Morgan G.P., Inc. board, the KMR board and any committees of such boards, subject to the rights of such boards and committees to exclude them, to applicable regulatory requirements and to such observers' obligation to recuse themselves under specified circumstances;

informing the Sponsor Investors that own at least 2.5% of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors of any action that Kinder Morgan's chief executive officer reasonably believes could impose any filing obligation, restriction or regulatory burden on such Sponsor Investor or its affiliates and not taking specified actions without approval by such Sponsor Investor;

keeping the Sponsor Investors that own at least 2.5% of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors informed of any events or changes with respect to any criminal or regulatory investigation involving Kinder Morgan or any of its affiliates;

reasonably cooperating with the Sponsor Investors that own at least 2.5% of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors and their affiliates in efforts to mitigate consequences of the events described in the two bullets immediately above;

so long as any Sponsor Investor owns at least 2.5% of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors, not taking any action (and taking all stockholder action to prevent Kinder Morgan's subsidiaries from taking any action) to cause the board of Kinder Morgan G.P., Inc. to consist of less than a majority of independent directors under the applicable New York Stock Exchange standards; and

Kinder Morgan not engaging in any merger, amalgamation, consolidation or other business combination or similar transaction or series of transactions (other than for solely cash consideration) without obtaining the unanimous approval of its stockholders unless the organizational documents and capital structure of the acquiring, surviving or resulting entity preserve in all material respects the economic and other rights (including conversion, transfer, distribution and governance rights as set forth in Kinder Morgan's certificate of incorporation, bylaws and shareholders agreement), characteristics and tax treatment, including on a relative basis, of the Sponsor Investors, the Class A shares, the Class B shares, the Class C shares and the shares of Kinder Morgan Class P common stock as they exist on the date of such transaction. A determination that a transaction meets the above requirements requires approval by each of the following: (1) Sponsor Investors holding a majority of Kinder Morgan's outstanding shares of capital stock then entitled to vote for the election of directors then held by Sponsor Investors that hold Class A shares, (2) Richard D. Kinder (so long as he and his permitted transferees hold Class A shares), (3) holders of a majority of Kinder Morgan's outstanding Class B shares, and (4) holders of a majority of Kinder Morgan's outstanding Class C shares. If all requisite stockholders other than the holders of Class C shares approve such a transaction, Kinder Morgan generally may engage in such transaction so long as the Class C shares receive the consideration provided in Kinder Morgan's charter. In addition, if the transaction is otherwise approved by the requisite holders of Kinder Morgan's capital stock, the Sponsor Investors and Mr. Kinder may decide that the holders of Kinder Morgan Class P common stock, Class A shares, Class B shares and Class C shares receive the consideration provided in Kinder Morgan's charter, regardless of whether such transaction

is determined to meet the above requirements.

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In addition, Mr. Kinder has agreed until May 15, 2015 to notify the Sponsor Investors prior to his acquisition of, or offer to acquire, any securities of Kinder Morgan or any of its publicly-traded subsidiaries in a transaction or a series of related transactions involving a value in excess of \$50 million.

***Registration Rights***

The shareholders agreement contains registration rights provisions pursuant to which Kinder Morgan may be required to register the sale of shares of Kinder Morgan Class P common stock issuable upon the conversion of Class A shares owned by the Sponsor Investors or of Class A shares and Class B shares owned by Richard D. Kinder. Under the registration rights provisions, the Sponsor Investors and Richard D. Kinder will each have the right to require that Kinder Morgan register resales of shares of Kinder Morgan Class P common stock having an aggregate value of at least \$200 million issuable upon the conversion of such Class A shares or Class B shares held by the Sponsor Investors or Richard D. Kinder, as applicable, on their behalf, or such lesser amount that represents all of such holder's remaining shares. Mr. Kinder's shares are subject to specified transfer restrictions. See Transfer Restrictions. Kinder Morgan will not be obligated to effect such a demand registration at any time that a shelf registration statement is effective, or if, in its good faith reasonable judgment, it is not feasible for it to proceed because of the unavailability of required financial statements, or during a blackout period. A blackout period, for this purpose, is any of (1) a regular quarterly blackout period when Kinder Morgan's directors and executive officers are not permitted to trade, (2) a seven day period (which Kinder Morgan may not invoke more than twice in any 12 month period) relating to a securities offering of \$150 million or more by KMP or KMR, or (3) a 30 day period (which Kinder Morgan may not invoke more than twice in any 12 month period) if the registration would cause the disclosure of specified types of non-public information. The registration rights provisions contain holdback provisions for Kinder Morgan and certain holders of shares in the event of an underwritten offering of Kinder Morgan Class P common stock having an aggregate value of at least \$500 million.

Under the registration rights provisions, the Sponsor Investors or Richard D. Kinder also can require Kinder Morgan to file a shelf registration statement on Form S-3 for the resale of Kinder Morgan Class P common stock they may receive upon the conversion of their Class A shares or Class B shares, as applicable. In such event, Kinder Morgan has agreed to use its reasonable best efforts to keep a shelf registration statement continuously effective until the earlier of the date on which all registrable securities covered by the shelf registration statement have been sold or otherwise cease to be registrable securities or the date on which the Sponsor Investors no longer collectively hold registrable securities that represent at least 1% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors.

Kinder Morgan also has granted piggyback registration rights to holders of Class A shares, Class B shares and Class C shares whenever it proposes to register any of its securities under the Securities Act (other than a registration by Kinder Morgan on a registration statement on Form S-4 or on a registration statement on Form S-8).

Kinder Morgan has also agreed not to effect any merger, amalgamation, consolidation, business combination or change of control or reorganization event or similar transaction or series of transactions in which it is not the surviving entity (other than solely for cash consideration) unless the surviving entity assumes these registration obligations.

Kinder Morgan has agreed to indemnify and hold harmless each selling shareholder for whom it files a registration statement and such selling stockholder's affiliates and their respective officers, directors, managers, partners, agents and control persons against any losses relating to violations of applicable securities law by Kinder Morgan in connection with such registration or offering (except to the extent such violations were caused by such selling shareholder) or untrue statement of a material fact contained in such registration statement, prospectus or preliminary prospectus or free writing prospectus or any omission of a material fact required to be stated therein or necessary to make the statement therein, in light of the circumstances under which they were made, not misleading.



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**Table of Contents*****Non-Compete Agreements***

The executive management stockholders identified in the shareholders agreement, which include Richard D. Kinder and all of Kinder Morgan's named executive officers, have agreed to certain non-competition and non-solicitation provisions during the term of their employment and for a specified period of time following their employment, which ranges from one year to two years, if they are terminated on or prior to May 31, 2015.

***Corporate Opportunities***

The shareholders agreement provides that the Sponsor Investors and certain of their respective affiliates, including any director nominated by a Sponsor Investor, have no obligation to offer Kinder Morgan or its wholly owned subsidiaries an opportunity to participate in business opportunities presented to the Sponsor Investors or such affiliates (other than Kinder Morgan and its wholly owned subsidiaries) even if the opportunity is one that Kinder Morgan or one of its wholly owned subsidiaries might reasonably have pursued, and that neither the Sponsor Investors nor their respective affiliates will be liable to Kinder Morgan or any of its wholly owned subsidiaries for breach of any duty by reason of any such activities. However, each such person serving as a director of Kinder Morgan or one of its wholly owned subsidiaries must tell Kinder Morgan about any business opportunity offered to it solely in its capacity as such a director. Each director nominated by a Sponsor Investor has agreed to recuse himself or herself from any portion of a board or committee meeting if such director has actual knowledge that the Sponsor Investor that appointed such director (or one of its controlled affiliates) is engaged in or pursuing any business opportunity that such director has actual knowledge that Kinder Morgan is also engaged in or evaluating and if such director's participation would cause a conflict of interest.

***Transfer Restrictions***

Prior to May 31, 2013, Kinder Morgan's chief executive officer, Richard D. Kinder, and its president, Park Shaper, will be restricted from voluntarily converting a portion of their Class A shares into Kinder Morgan Class P common stock and selling the resulting shares of Kinder Morgan Class P common stock. Mr. Kinder may transfer shares of Kinder Morgan Class P common stock up to an amount equal to approximately 10% of his Class A shares to a third party and shares of Kinder Morgan Class P common stock up to an amount equal to approximately 10% of his Class A shares to a permitted foundation. Mr. Shaper may transfer shares of Kinder Morgan Class P common stock up to an amount equal to approximately 50% of his Class A shares to a third party. All such transfer restrictions terminate in the event of the termination of Mr. Kinder's or Mr. Shaper's employment with Kinder Morgan, as applicable. See the section entitled "The Voting Agreement" for a discussion of certain other transfer restrictions related to Richard D. Kinder's and the Sponsor Investors' shares of Kinder Morgan common stock.

Class A shares may only be transferred by Other Management and Kinder Morgan's chief executive officer to a permitted transferee of such holder of Class A shares, which includes family members, heirs, trusts or other entities over which such holder (or his or her heir in the event of such holder's death) retains control. Class A shares may be transferred by holders other than Other Management and Kinder Morgan's chief executive officer to a permitted transferee or to an affiliate or successor of such holder.

Class B shares and Class C shares may only be transferred to a permitted transferee of such holder of Class B shares or Class C shares, as applicable, which includes family members, heirs, trusts or other entities over which such holder (or his or her heir in the event of such holder's death) retains control.

The shareholders agreement also provides that no holder of Class A shares, or shares of Kinder Morgan Class P common stock received by such holder upon conversion of such Class A shares as the result of a prior mandatory conversion, will be permitted to transfer any shares of Kinder Morgan Class P common stock during the fair market value calculation period prior to May 31, 2015, the date on which any of Kinder Morgan's remaining Class A shares, Class B shares and Class C shares will be converted into Kinder Morgan Class P common stock. See "Classes of Kinder Morgan Common Stock - Voluntary Conversion."

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**Table of Contents*****Forfeiture of Class B Shares***

The shareholders agreement provides that holders of Kinder Morgan's Class B shares may forfeit all or a portion of such shares in specified circumstances upon the termination of such holder's employment with Kinder Morgan and its subsidiaries. All Class B shares will be no longer subject to forfeiture upon a change of control (as defined in the shareholders agreement and described under Kinder Morgan's Executive Compensation Compensation Discussion and Analysis Compensation Related to the Going Private Transaction in Kinder Morgan's Annual Report on Form 10-K for the year ended December 31, 2011 which is incorporated by reference into this information statement/proxy statement/prospectus), and all Class B shares of a certain series will be no longer subject to forfeiture upon a mandatory conversion date for that series, which will occur upon the occurrence of certain events pertaining to that series and in any case no later than May 31, 2015 for all series. If a holder's employment is terminated after specified value thresholds with respect to his or her Class B shares have been met, but before certain related amounts are received by such terminated employee, then such terminated employee may retain all of his or her Class B shares until such related amounts are received.

Forfeited Class B shares will automatically become treasury shares, and Kinder Morgan will transfer the forfeited Class B shares to a trust. Any property in the trust, including dividends and earnings in respect of the Class B shares, may be distributed to members of Kinder Morgan's management, other than Richard D. Kinder, as designated by Kinder Morgan's chief executive officer and approved by a majority of the members of its board of directors nominated by the Sponsor Investors. Any Class B shares, any shares of Kinder Morgan Class P common stock issued in connection with the conversion of Class B shares held in the trust and any dividends and earnings in respect of such Class B shares and/or shares of Kinder Morgan Class P common stock, that remain in the trust account on May 31, 2015 will be distributed proportionally to the holders of Class B shares as of May 31, 2015.

***Payment of Certain Costs and Expenses***

KMK's certificate of incorporation generally obligates it to indemnify its officers and directors in connection with litigation against them in connection with their duties as its officers and directors, and the shareholders agreement requires Kinder Morgan to cause KMK to pay any costs and expenses of the Investors associated with the Going Private Transaction, including amounts paid as damages or in settlement of related shareholder litigation. In connection with this litigation, since January 1, 2008, KMK has paid approximately \$214.3 million, including \$200 million in connection with the settlement of the litigation. See also note 16 to Kinder Morgan's consolidated financial statements included in Kinder Morgan's Annual Report on Form 10-K for the year ended December 31, 2011 which is incorporated by reference into this information statement/proxy statement/prospectus. Kinder Morgan also is obligated to pay all reasonable fees and expenses of the Sponsor Investors and their counsel related to the administration of, and their rights and obligations under, Kinder Morgan's certificate of incorporation, bylaws and shareholders agreement that are approved in advance by Kinder Morgan and all fees and expenses of the Sponsor Investors and their affiliates incident to Kinder Morgan's February 2011 initial public offering and previously contemplated structures for an initial public offering. Since January 1, 2008, Kinder Morgan has paid approximately \$16 million in such fees and expenses of the Sponsor Investors.

Kinder Morgan's certificate of incorporation provides for the accelerated conversion of Class B shares and Class C shares into shares of Kinder Morgan Class P common stock by a holder of such Class B shares or Class C shares in the event such holder incurs certain tax liabilities. Pursuant to the shareholders agreement, Kinder Morgan has agreed to pay certain costs in the event that such a result occurs, including the fees of an independent accountant in a dispute resolution procedure related to such accelerated conversion and certain tax compliance expenses for such holder of Class B shares or Class C shares, as applicable. While Kinder Morgan cannot quantify such costs in advance, they will not be substantial or material. See Classes of Kinder Morgan Common Stock Accelerated Conversion of Class B Shares and Class C Shares.

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***Other Provisions***

Certain provisions in the shareholders agreement will terminate with respect to a Sponsor Investor when it no longer owns shares representing at least 2.5% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors, including the right to nominate director and committee members. If no Sponsor Investor owns shares representing at least 2.5% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors, then certain sections of the shareholders agreement will terminate with respect to all Investors, including transfer restrictions, rights to nominate director and committee nominees, and certain actions relating to Kinder Morgan's subsidiaries and other affiliates. The shareholders agreement will terminate when none of the shareholder parties thereto hold any Class A shares, Class B shares, Class C shares or shares of Kinder Morgan Class P common stock.

Amendments to the shareholders agreement must be signed by Kinder Morgan, if the amendment modifies Kinder Morgan's rights or obligations, and by the following holders:

Richard D. Kinder so long as he (together with his permitted transferees) owns shares representing at least 1% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors,

the Sponsor Investors holding shares representing a majority of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors then held by the Sponsor Investors so long as the Sponsor Investors collectively own shares representing at least an aggregate amount of 1% of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors,

in the case of an amendment or waiver with respect to transfer restrictions, director and committee nominees, observers, independence requirements, voting agreements or proxies, certain actions relating to Kinder Morgan's subsidiaries and other affiliates, Kinder Morgan's dividend policy, forfeiture of Class B shares and termination of the shareholders agreement, the Sponsor Investors owning shares representing at least two-thirds of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors then held by the Sponsor Investors so long as the Sponsor Investors collectively own at least an aggregate amount of 1% of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors,

in the case of an amendment or waiver that would modify the rights or obligations of any Sponsor Investor adversely, such Sponsor Investor so affected so long as such Sponsor Investor owns any of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors,

the holders of shares representing a majority of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors held by Other Management and the Original Stockholders at the closing of Kinder Morgan's February 2011 initial public offering so long as Other Management and the Original Stockholders own a majority of the voting power held by such holders at the closing of that offering and the applicable amendment or waiver would modify the rights or obligations of Other Management and the Original Stockholders (taken as a whole) adversely and differently from other holders of the same class or classes of capital stock and

in the case of an amendment or waiver that would modify the rights or obligations of the holders (taken as a whole) of Class B shares or Class C shares, as applicable, adversely as compared to the holders of other classes of common stock, the holders of Class B shares representing a majority of the issued and outstanding Class B shares or the holders of Class C shares representing a majority of the issued and outstanding Class C shares, as applicable.

If no parties meet the conditions set forth in the bullets above, then the holders of shares representing a majority of the voting power of Kinder Morgan's outstanding shares of capital stock entitled to vote on the election of directors then held by holders who are party to the shareholders agreement must sign an amendment.



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Kinder Morgan has agreed to use its reasonable best efforts to take necessary or appropriate actions upon the request of a Sponsor Investor to ensure that Class A shares can timely convert into shares of Kinder Morgan Class P common stock as contemplated by Kinder Morgan's certificate of incorporation. Kinder Morgan has also agreed to use its best efforts to obtain governmental and/or regulatory permits or authorizations to enable it to issue and deliver shares of Kinder Morgan Class P common stock upon the conversion of its Class A shares, Class B shares and Class C shares.

**Indemnification of Directors and Officers**

Pursuant to Kinder Morgan's certificate of incorporation and bylaws, Kinder Morgan has agreed to indemnify each of its directors and officers, and may additionally indemnify any of its employees, agents or other persons, to the fullest extent permitted by law against all expense, liability and loss (including attorney's fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) incurred or suffered by its directors or officers or these other persons. Kinder Morgan has agreed to provide this indemnification for civil, criminal, administrative, arbitrative or investigative proceedings to the fullest extent permitted under the Delaware General Corporation Law. Thus, Kinder Morgan's directors and officers could be indemnified for their negligent acts if they met the requirements set forth above. Kinder Morgan also has acknowledged that it is the indemnitor of first resort with respect to such indemnification obligations and that any obligations of a Sponsor Investor and its affiliates to advance expenses or to provide indemnification and/or insurance for the same expenses or liabilities are secondary. Kinder Morgan also is expressly authorized to carry directors' and officers' insurance providing indemnification for its directors, officers and certain employees and agents for any liabilities incurred in any such capacity, whether or not it would have the power to indemnify such person against such liability. See Certain Other Provisions of Kinder Morgan's Charter and Bylaws and Delaware Law Limitations of Liability and Indemnification of Officers and Directors.

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**COMPARISON OF RIGHTS OF COMMON STOCKHOLDERS OF  
KINDER MORGAN AND EL PASO**

Kinder Morgan and El Paso are both Delaware corporations subject to the provisions of the DGCL. El Paso stockholders' rights are currently governed by El Paso's certificate of incorporation and bylaws. If the merger is completed, the rights of El Paso stockholders who become stockholders of Kinder Morgan will continue to be governed by the DGCL, but also will be governed by Kinder Morgan's certificate of incorporation and bylaws. Although El Paso stockholders will not become parties to Kinder Morgan's shareholders agreement, that agreement affects the nomination and election of Kinder Morgan's directors, the composition and operation of its board of directors and other matters. The following description summarizes the material differences that may affect the rights of Kinder Morgan stockholders and El Paso stockholders but does not purport to be a complete statement of all those differences, or a complete description of the specific provisions referred to in this summary. The identification of specific differences is not intended to indicate that other equally significant or more significant differences do not exist. Stockholders should read carefully the relevant provisions of the Kinder Morgan certificate of incorporation, bylaws and shareholders agreement, and of the El Paso certificate of incorporation and bylaws. Copies of the documents referred to in this summary may be obtained as described under [Where You Can Find More Information](#).

**Capital Stock**

*Classes of Capital Stock*

*Kinder Morgan*

Kinder Morgan's authorized capital stock consists of:

2,000,000,000 shares of Class P common stock, \$0.01 par value per share, 170,921,140 of which were outstanding as of December 31, 2011;

707,000,000 shares of Class A convertible common stock, \$0.01 par value per share, issued in nine series, which are referred to as Kinder Morgan's Class A common stock or Class A shares, 535,972,387 of which were outstanding as of December 31, 2011, and none of the rest of which may be reissued;

100,000,000 shares of Class B convertible common stock, \$0.01 par value per share, issued in nine series, which are referred to as Kinder Morgan's Class B shares, 94,132,596 of which were outstanding as of December 31, 2011, and none of the rest of which may be reissued;

2,462,927 shares of Class C convertible common stock, \$0.01 par value per share, issued in nine series, which are referred to as Kinder Morgan's Class C shares, 2,318,258 of which were outstanding as of December 31, 2011, and none of the rest of which may be reissued; and

10,000,000 shares of preferred stock, \$0.01 par value per share, none of which were outstanding as of December 31, 2011. Kinder Morgan's board of directors is authorized, subject to the limits imposed by the DGCL, and the board of directors approval requirements contained in Kinder Morgan's bylaws, to issue the preferred stock in one or more series, to establish from time to time the number of shares to be included in each series of preferred stock, and to fix the rights, preferences, privileges, qualifications, limitations and restrictions, including voting rights, dividend rights, liquidation preferences, conversion privileges and redemption rights, of the shares of each wholly unissued series of preferred stock.

*El Paso*

El Paso's authorized capital stock consists of:

1,500,000,000 shares of common stock, \$3.00 par value per share, 773,432,040 of which were outstanding as of December 31, 2011;  
and

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50,000,000 shares of preferred stock having a par value of \$0.01 per share, 900,000 of which are designated as 4.99% Convertible Perpetual Preferred Stock, none of which were outstanding as of December 31, 2011. El Paso's board of directors is authorized to fix by resolution any of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions which are permitted by the DGCL in respect of any class or classes of stock or any series of any class of stock of El Paso.

***Convertibility of Capital Stock***

*Kinder Morgan*

As of December 31, 2011, the Class A shares, the Class B shares and the Class C shares were convertible into a total of 535,972,387 shares of Kinder Morgan Class P common stock, which represented 75.8% of the outstanding shares of Kinder Morgan Class P common stock on a fully-converted basis.

The aggregate number of shares of Kinder Morgan Class P common stock into which Class A shares, Class B shares and Class C shares will convert is fixed.

As described under Description of Kinder Morgan Capital Stock Classes of Kinder Morgan Common Stock Voluntary Conversion Automatic Conversion of Class B Shares and Class C Shares, the relative portion of the total number of shares of Kinder Morgan Class P common stock issuable upon conversion to the holders of the Class A shares, the Class B shares and the Class C shares, respectively, and the portion of Kinder Morgan's dividends to be received by the holders of the Class A shares, the Class B shares and the Class C shares, respectively, will depend on the total value that has been received by such holders in connection with dividends and conversions of those shares into shares of Kinder Morgan Class P common stock. The conversion of Kinder Morgan's Class B shares and Class C shares into shares of Kinder Morgan Class P common stock will result in a corresponding decrease in the number of shares of Kinder Morgan Class P common stock into which Kinder Morgan's Class A shares will be able to convert because its Class A shares, Class B shares and Class C shares are convertible into a fixed aggregate number of shares of Kinder Morgan Class P common stock.

The aggregate amount of Kinder Morgan Class P common stock into which the Class A shares, Class B shares and Class C shares can convert is fixed. Therefore, neither conversions of any Class A shares, Class B shares or Class C shares into Kinder Morgan Class P common stock, nor the portion of Kinder Morgan's distributions that may be received by the Class B shares or Class C shares rather than the Class A shares, will impact the per share distribution paid on Kinder Morgan Class P common stock or the aggregate distributions it pays to its stockholders.

For additional information with respect to the conversion of Class A shares, Class B shares and Class C shares into Kinder Morgan Class P common stock, see Description of Kinder Morgan Capital Stock Classes of Kinder Morgan Common Stock.

*El Paso*

None of El Paso's outstanding capital stock is convertible.

***Voting Rights***

*Kinder Morgan*

Each share of Kinder Morgan Class P common stock and each Class A share entitles the holder to one vote (subject to anti-dilution adjustments in the case of the Class A shares) with respect to each matter presented to Kinder Morgan's stockholders on which the holders of Kinder Morgan Class P common stock are entitled to vote. Each Class B share and Class C share entitles the holder to 1/10th of a vote with respect to the election of directors. All classes of capital stock vote as a single class for the election and removal of directors on Kinder



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Morgan's board of directors and as provided by law, and the Kinder Morgan Class P common stock and the Class A shares vote as a single class on most other matters. Certain classes have specific votes with respect to certain amendments of Kinder Morgan's certificate of incorporation. See Amending the Certificate of Incorporation and Bylaws.

*El Paso*

Each share of El Paso common stock entitles the holder to one vote with respect to each matter presented to El Paso's stockholders on which a vote is to be taken. In all matters other than the election of directors, if a quorum is present, the affirmative vote of a majority in voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter will be the act of the El Paso stockholders. With respect to the election of directors, a nominee for director shall be elected to the El Paso board of directors if the votes cast for such nominee's election exceed the votes cast against such nominee's election; provided, however, that El Paso directors are to be elected by a plurality of the votes cast at any meeting of stockholders for which (i) the Secretary of El Paso receives a notice that a stockholder has nominated a person for election to the El Paso board of directors in compliance with the advance notice requirements for stockholder nominees for director set forth in El Paso's bylaws and (ii) such nomination has not been withdrawn by such stockholder on or prior to the day next preceding the date El Paso first mails its notice of meeting for such meeting to the stockholders.

**Board of Directors**

***Number of Directors***

*Kinder Morgan*

Kinder Morgan's certificate of incorporation provides that the number of directors will be fixed in the manner provided in its bylaws. Its bylaws provide that the board at present will have thirteen directors, subject to increase or decrease in accordance with its shareholders agreement.

The shareholders agreement provides that Richard D. Kinder and the Sponsor Investors have rights to appoint eleven of the director nominees to Kinder Morgan's board of directors and committees, subject to adjustment as described under Description of Kinder Morgan Capital Stock Shareholders Agreement.

At present five directors were chosen for nomination by Mr. Kinder, two directors were chosen for nomination by the funds affiliated with each of Goldman Sachs and Highstar Capital LP, one director was chosen for nomination by the funds affiliated with each of The Carlyle Group and Riverstone Holdings LLC, and two additional independent directors were chosen for nomination by Kinder Morgan's nominating and governance committee.

Kinder Morgan has agreed in the merger agreement to take all action necessary, including increasing the size of its board of directors and amending the shareholders agreement to effect such increase, to elect two individuals designated by El Paso to the Kinder Morgan board of directors as of the effective time of the merger. In the voting agreement, Kinder Morgan stockholders owning sufficient shares to amend the shareholders agreement have agreed to sign such amendment. Kinder Morgan also agreed that one of El Paso's designees would be appointed to its audit committee, and one would be appointed to its nominating and governance committee.

The shareholders agreement provides that the number of directors may not be reduced below eleven until such time that the Sponsor Investors have the right to choose fewer than three director nominees and a majority of the board approves such reduction. In such case, the number of director nominees that Richard D. Kinder has the right to choose also will be reduced. The shareholders agreement also provides that the number of directors may be increased in order to meet the majority independence requirements of the NYSE if Kinder Morgan is unable to qualify for a controlled company exemption at such time.

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### *El Paso*

El Paso's bylaws provide that the number of directors will be fixed, from time to time, by a vote of a majority of the directors then in office. At present, El Paso has twelve directors.

### ***Nomination and Election of Directors***

#### *Kinder Morgan*

Directors are elected by a plurality of the votes of the shares present in person or represented by proxy and entitled to vote on the election of directors.

At a meeting of the stockholders, only such nominations of persons for the election of directors and such other business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, nominations or such other business must be: (1) specified in Kinder Morgan's notice of meeting, (2) otherwise properly brought before the meeting by or at the direction of its board of directors or any committee thereof, or (3) otherwise properly brought before an annual meeting by a stockholder who is a stockholder of record of Kinder Morgan at the time such notice of meeting is given, who is entitled to vote at the meeting and who complies with the procedures described under "Stockholder Proposals and Director Nominations."

In the shareholders agreement, Kinder Morgan agrees to include the persons nominated as directors in accordance with the shareholders agreement in the slate of nominees recommended by the board of directors, and Richard D. Kinder and the Sponsor Investors agree with each other to take all necessary action within their power as stockholders to vote in favor of such persons nominated to the board of directors in accordance with the shareholders agreement and to remove any directors as required by the shareholders agreement. As of December 31, 2011, Mr. Kinder and the Sponsor Investors held approximately 78.4% of the total voting power for the election of Kinder Morgan's directors. Immediately after the completion of the transactions, assuming Mr. Kinder and the Sponsor Directors retain all the Kinder Morgan stock they currently hold, Mr. Kinder and the Sponsor Investors are expected to have at least 53.7% of the total voting power for the election of Kinder Morgan's directors. The shareholders agreement also provides that nominees of Mr. Kinder and the Sponsor Investors must be appointed to specified committees of the Board. For additional information with respect to the shareholders agreement provision relating to the nomination, election and removal of directors and board committees, see "Description of Kinder Morgan Capital Stock Shareholders Agreement."

#### *El Paso*

Directors are elected if the votes cast for such nominee's election by the shares present in person or represented by proxy and entitled to vote on the election of directors exceed the votes cast against such nominee's election.

Only persons nominated in accordance with the procedures set forth in the bylaws shall be eligible for election as directors at an annual meeting of stockholders of El Paso. Nominations may be made only by or at the direction of the board of directors or by any holder of El Paso's common stock entitled to vote for the election of directors at such annual meeting who complies with the required notice procedure. To comply with the notice procedure, a stockholder's notice must: (1) be received by the Secretary at the principal executive offices of the corporation not earlier than 120 days nor less than 90 days prior to the first anniversary of the preceding year's annual meeting and (2) provide information with respect to the nominee and the nominating stockholder as required by the bylaws.

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### ***Removal of Directors***

#### ***Kinder Morgan***

Kinder Morgan's bylaws provide that except as otherwise provided in its charter or bylaws, at any meeting of stockholders expressly called for that purpose, any director or the entire board of directors may be removed, with or without cause, by a vote of holders of shares representing a majority of the total voting power in the election of directors. As described above, in the shareholders agreement Mr. Kinder and the Sponsor Investors have made agreements about how their shares will be voted.

#### ***El Paso***

El Paso's bylaws provide that any director may be removed, with or without cause, at any special meeting of stockholders called for that purpose, by the affirmative vote of the holders of a majority in number of shares entitled to vote for the election of such director.

### ***Filling Vacancies on the Board***

#### ***Kinder Morgan***

Vacancies on the board of directors, however resulting, may be filled by the affirmative vote of a majority of the directors then in office, even if less than a quorum. However, at any time prior to the termination of a specified provision of the shareholders agreement, such vacancies shall be filled only with nominees chosen to fill such vacancies in accordance with the provisions of the shareholders agreement. Vacancies may not be filled by the stockholders.

#### ***El Paso***

Vacancies on the board of directors, however resulting, may be filled by a vote of a majority of the directors then in office, although less than a quorum, at any regular or special meeting of the board.

### ***Term of Office***

#### ***Kinder Morgan***

Each director chosen shall hold office until the first annual meeting of stockholders held after his or her election and until his or her successor is elected and qualified or, if earlier, until his death, resignation, or removal from office.

#### ***El Paso***

Each director chosen shall hold office until the first annual meeting of stockholders held after his or her election and until his or her successor is elected and qualified.

### ***Supermajority Board Voting Provisions***

#### ***Kinder Morgan***

Kinder Morgan's bylaws state that, unless otherwise provided, so long as the Sponsor Investors have the right to choose at least five nominees to the board of directors pursuant to Kinder Morgan's shareholders agreement, any matter brought before the board of directors will be decided by a supermajority vote, which is defined as the affirmative vote of eight directors. Kinder Morgan has agreed in the merger agreement to take all action necessary to cause its bylaws to be amended to provide that a supermajority vote is defined as the affirmative vote of ten directors rather than eight.

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Kinder Morgan's bylaws further provide a list of actions that, so long as the Sponsor Investors have the right to choose at least five nominees to the board of directors pursuant to the shareholders agreement, must be brought before the board of directors and decided by supermajority vote. See Description of Kinder Morgan Capital Stock Certain Other Provisions of Kinder Morgan's Charter and Bylaws and Delaware Law Supermajority Board Approval.

### *El Paso*

El Paso has no supermajority board voting provisions.

## **Dividends**

### *Kinder Morgan*

Holders of Kinder Morgan Class P common stock share equally in any dividend declared by Kinder Morgan's board of directors. If any preferred stock were outstanding, dividends on Kinder Morgan Class P common stock would be subject to the rights of the holders of that preferred stock. Dividends may be paid out of the corporation's surplus, or in the case no surplus exists, out of the net profits for the fiscal year and may be paid in cash, property, or shares of the corporation's capital stock.

The holders of Kinder Morgan's outstanding Class A shares, Class B shares and Class C shares are entitled to receive in the aggregate the proportion of any such dividend allocable to the maximum number of shares of Kinder Morgan Class P common stock into which they would then convert (measured on the record date for such dividend). The dividends received by holders of Class A shares, Class B shares and Class C shares will adjust over time as described under Description of Kinder Morgan Capital Stock Classes of Kinder Morgan Common Stock Dividends.

The Class A shares, Class B shares and Class C shares will receive in the aggregate dividends on a fully-converted Kinder Morgan Class P common stock basis, and the payment of those dividends will not otherwise affect the per share dividends of the holders of Kinder Morgan Class P common stock since the aggregate number of Kinder Morgan Class P common shares into which Kinder Morgan's Class A shares, Class B shares and Class C shares can convert was fixed at the closing of its initial public offering.

Kinder Morgan has adopted a dividend policy providing that, subject to applicable law, Kinder Morgan will pay quarterly cash dividends on all classes of its capital stock equal to the cash it receives from its subsidiaries and other sources less any cash disbursements and reserves established by a majority vote of its board of directors, including for general and administrative expenses, interest and cash taxes. Any change to this dividend policy or distributions made outside of this dividend policy require supermajority board vote. The division of Kinder Morgan's dividends among its classes of capital stock will be in accordance with its charter.

### *El Paso*

The board of directors may declare dividends upon the shares of El Paso's capital stock whenever, and in such amounts as, in its opinion, the condition of the affairs of the corporation renders such payment advisable. Dividends may be paid out of the corporation's surplus, or in the case no surplus exists, out of the net profits for the fiscal year and may be paid in cash, property, or shares of the corporation's capital stock.

## **Written Consents by Stockholders**

### *Kinder Morgan*

Kinder Morgan's certificate of incorporation provides that any vote or similar action required or permitted to be taken by holders of Kinder Morgan Class P common stock must be effected at a duly called annual or special meeting of its stockholders and may not be effected by consent in writing by such stockholders.

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Holders of Kinder Morgan's Class A shares, Class B shares and Class C shares may effect any action requiring the consent of such class of stock by written consent.

### ***El Paso***

El Paso's certificate of incorporation states that action to be taken by holders of El Paso's common stock may not be effected by the written consent of such stockholders.

## **Stockholder Proposals and Director Nominations**

### ***Kinder Morgan***

Kinder Morgan's bylaws establish advance notice procedures with respect to stockholder proposals for annual meetings and stockholder nomination of candidates for election as directors. In order for any matter to be properly brought before a meeting, a stockholder will have to comply with advance notice requirements and provide Kinder Morgan with specified information. Generally, that notice must be given to the Secretary of Kinder Morgan no later than the 90th day, and no earlier and the 120th day, in advance of the anniversary of the previous year's annual meeting. In the case of Kinder Morgan's first annual meeting, which will occur in 2012, such notice must be delivered not later than the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the meeting date is first made. In addition, the nomination and removal of directors, including the filling of board vacancies, must comply with the provisions of the shareholders agreement regarding composition of Kinder Morgan's board of directors.

### ***El Paso***

El Paso's bylaws establish advance notice procedures with respect to stockholder proposals for annual meetings and stockholder nomination of candidates for election as directors. In order for any matter to be properly brought before a meeting, a stockholder will have to comply with advance notice requirements and provide El Paso with specified information. Generally, that notice must be given to the Secretary of El Paso no later than the 90th day, and no earlier and the 120th day, in advance of the anniversary of the previous year's annual meeting.

## **Special Meetings of Stockholders**

### ***Kinder Morgan***

Kinder Morgan's bylaws provide that special meetings of the stockholders may be called only upon the request of the chairman of the board, the chief executive officer, the president or the board of directors or upon the written request of stockholders of record of not less than 10% of all voting power entitled to vote at such meeting. Kinder Morgan's bylaws prohibit the conduct of any business at a special meeting other than as specified in the notice for such meeting.

### ***El Paso***

El Paso's bylaws provide that special meetings of the stockholders may be called only by a majority of the board of directors, the chairman of the board, the chief executive officer, the president or the lead director or upon the written request of holders of at least 25% of the outstanding common stock of El Paso. El Paso's bylaws limit the business conducted at a special meeting to the proposals set forth in the notice of such meeting; provided that the board of directors may submit additional matters to the stockholders at any special meeting.

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### **Business Combinations**

#### ***General***

Under the DGCL, the consummation of a merger or consolidation requires the approval of the board of directors of a corporation that is a constituent corporation in the merger or consolidation and requires that the agreement of merger or consolidation be adopted by the affirmative vote of the holders of a majority of the stock of that corporation entitled to vote thereon at an annual or special meeting for the purpose of acting on the agreement. However, no such approval and vote are required if such constituent corporation is the surviving corporation and:

such corporation's certificate of incorporation is not amended;

the stockholders of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and rights, immediately after; and

either no shares of common stock of the surviving corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered under the plan of merger, or the authorized unissued shares or the treasury shares of common stock of the surviving corporation to be issued or delivered under the plan of merger do not exceed 20% of the shares of common stock of such corporation outstanding immediately prior to the effective date of the merger.

In the case of the merger, although Kinder Morgan's Class P common stock and warrants are being issued in the merger, it is not one of the constituent corporations in the merger. Therefore the only stockholder vote necessary is that required by the NYSE to approve the issuance of the Kinder Morgan Class P common stock and warrants in the second merger.

#### ***Section 203 of the DGCL***

Kinder Morgan and El Paso are both subject to the provisions of Section 203 of the DGCL. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination with any interested stockholder for a three-year period following the time that such stockholder becomes an interested stockholder, unless the business combination is approved in a prescribed manner. A business combination includes, among other things, a merger, asset or stock sale or other transaction resulting in a financial benefit to the interested stockholder. An interested stockholder is a person who, together with affiliates and associates, owns, or did own within three years prior to the determination of interested stockholder status, 15% or more of the corporation's voting stock. For a description of the prohibitions and requirements of Section 203, see Description of Kinder Morgan Capital Stock Certain Anti-takeover Provisions of Kinder Morgan's Charter and Bylaws and Delaware Law Section 203 of the DGCL.

#### ***Kinder Morgan***

Kinder Morgan's organizational documents contain additional approval requirements for certain non-cash changes of control. Kinder Morgan's shareholders agreement prohibits it from directly or indirectly engaging in any merger, amalgamation, consolidation or other business combination or similar transaction or series of transactions (other than for solely cash consideration) without obtaining the unanimous approval of its stockholders unless the organizational documents and capital structure of the acquiring, surviving or resulting entity preserve in all material respects the economic and other rights (including conversion, transfer, distribution and governance rights as set forth in Kinder Morgan's certificate of incorporation, bylaws and shareholders agreement), characteristics and tax treatment, including on a relative basis, of the Sponsor Investors, the Class A shares, the Class B shares, the Class C shares and the shares of Kinder Morgan Class P common stock as they exist on the date of such transaction. A determination that a change of control meets the above requirements requires approval by each of the following:

Sponsor Investors holding a majority of Kinder Morgan's outstanding shares of capital stock then entitled to vote for the election of directors then held by Sponsor Investors that hold Class A shares,



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Richard D. Kinder (so long as he and his permitted transferees hold Class A shares),

holders of a majority of Kinder Morgan's outstanding Class B shares and

holders of a majority of Kinder Morgan's outstanding Class C shares.

If all requisite stockholders other than the holders of Class C shares approve such a transaction, Kinder Morgan generally may engage in such transaction so long as the Class C shares receive the consideration provided in Kinder Morgan's charter. In addition, if the transaction is otherwise approved by the requisite holders of Kinder Morgan's capital stock, the Sponsor Investors and Mr. Kinder may decide that the holders of Kinder Morgan Class P common stock, Class A shares, Class B shares and Class C shares receive the consideration provided in Kinder Morgan's charter, regardless of whether such transaction is determined to meet the above requirements.

### ***El Paso***

El Paso's organizational documents have no additional provisions with respect to business combinations or changes of control.

## **Limitations of Liability and Indemnification of Officers and Directors**

### ***Limitations of Liability***

The DGCL authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breaches of directors' fiduciary duties. The DGCL does not permit exculpation for liability:

for breach of duty of loyalty;

for acts or omissions not in good faith or involving intentional misconduct or knowing violation of law;

under Section 174 of the DGCL (unlawful dividends and stock repurchases); or

for transactions from which the director derived improper personal benefit.

### ***Kinder Morgan***

Kinder Morgan's certificate of incorporation eliminates the personal liability of directors for monetary damages for actions taken as a director to the fullest extent authorized by the DGCL.

Kinder Morgan's certificate of incorporation also provides that the Sponsor Investors and certain of their affiliates (including any director nominated by the Sponsor Investors) have no obligation to offer Kinder Morgan or its wholly owned subsidiaries an opportunity to participate in business opportunities presented to the Sponsor Investors or such affiliates (other than Kinder Morgan and its wholly owned subsidiaries) even if the opportunity is one that Kinder Morgan or one of its wholly owned subsidiaries might reasonably have pursued, and that neither the Sponsor Investors nor their respective affiliates will be liable to Kinder Morgan or any of its wholly-owned subsidiaries for breach of any duty by reason of any such activities. However, each such person serving as a director of Kinder Morgan or one of its wholly owned subsidiaries must tell Kinder Morgan about any business opportunity offered to such person solely in his or her capacity as such a director.

### ***El Paso***

El Paso's certificate of incorporation eliminates the personal liability of directors for monetary damages for actions taken as a director to the fullest extent authorized by the DGCL.



***Indemnification***

*Kinder Morgan*

Kinder Morgan's certificate of incorporation and bylaws provide that it shall indemnify its directors and officers, and may indemnify its employees, agents and other persons, to the fullest extent permitted by law.

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Kinder Morgan also is expressly authorized to carry directors' and officers' insurance providing indemnification for its directors, officers and certain employees and agents for any liabilities incurred in any such capacity, whether or not it would have the power to indemnify such person against such liability.

### *El Paso*

El Paso's bylaws provide that it will indemnify its directors and officers, and may indemnify its employees, agents and other persons, to the fullest extent permitted by law. El Paso also is expressly authorized to carry directors' and officers' insurance providing indemnification for its directors, officers, employees and agents for any liabilities incurred in any such capacity, whether or not it would have the power to indemnify such person against such liability.

## **Amending the Certificate of Incorporation and Bylaws**

### ***Certificate of Incorporation***

#### *Kinder Morgan*

Kinder Morgan's certificate of incorporation may be amended in any manner provided by the DGCL. Kinder Morgan's bylaws provide that amendments of its certificate of incorporation require supermajority approval by the board of directors. See Board of Directors Supermajority Board Voting Provisions. In addition, certain amendments of Kinder Morgan's certificate of incorporation may only be effected with the following additional affirmative votes:

any amendment to provisions of Kinder Morgan's certificate of incorporation relating to its authorized shares, distributions, conversions, voting, amendments, anti-dilution, delivery of notices or corporate opportunities requires the affirmative vote of holders of at least a majority of the issued and outstanding Class A shares of each Class A series issued to the Sponsor Investors and Richard D. Kinder;

any amendment to provisions of Kinder Morgan's certificate of incorporation other than as described above requires the affirmative vote of holders of at least 75% of the issued and outstanding Class A shares;

any amendment to Kinder Morgan's certificate of incorporation that amends, alters, repeals, impairs or modifies the rights of a particular class of stock requires the affirmative vote of holders of at least a majority of the issued and outstanding shares of such class of stock; and

any amendment to any provision of Kinder Morgan's certificate of incorporation that modifies the rights of a particular series of a class of stock in a manner adversely and differently from other series of the same class of stock requires the affirmative vote of holders of at least a majority of the issued and outstanding shares of such series of stock.

#### *El Paso*

In its certificate of incorporation, El Paso reserves the right to amend or repeal any of the provisions contained in its certificate of incorporation in any manner provided by law, and the rights of the stockholders are granted subject to such reservation.

### ***Bylaws***

#### *Kinder Morgan*

Kinder Morgan's certificate of incorporation and its bylaws provide that its bylaws may be amended, altered, repealed or new bylaws may be adopted by its board of directors (with supermajority approval of the board of directors so long as the Sponsor Investors have the right to nominate five of Kinder Morgan's director nominees) or by the affirmative vote of holders of shares representing two-thirds of the total voting

power of all

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of Kinder Morgan's outstanding capital stock then entitled to vote at any annual or special meeting for the election of directors. In addition, any adoption, alteration, amendment or repeal of any bylaw by the board of directors requires the affirmative vote of:

a majority of the directors chosen for nomination by Richard D. Kinder (if any),

a majority of the directors chosen for nomination by the Sponsor Investors (if any),

two-thirds of the directors chosen for nomination by the Sponsor Investors in the case of an alteration, amendment or repeal of specified provisions of Kinder Morgan's bylaws with respect to directors, removal of officers, securities of other corporations and amendments of the bylaws and

the director(s) chosen by a Sponsor Investor in the case of an alteration, amendment or repeal of any provision of Kinder Morgan's bylaws that would treat such Sponsor Investor adversely.

*El Paso*

El Paso's certificate of incorporation and its bylaws provide that its bylaws may be adopted, amended, or repealed by its board of directors, subject to the rights of the stockholders to adopt, amend or repeal such bylaws. The bylaws may also be adopted, amended or repealed by the affirmative vote of holders of record of a majority in aggregate voting power of the shares of the outstanding stock of El Paso present or represented at any meeting of the stockholders and entitled to vote thereon.

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**SECURITY OWNERSHIP OF KINDER MORGAN**

The following tables set forth, as of the close of business on January 20, 2012, information known to Kinder Morgan regarding the beneficial ownership of each class of its capital stock by:

each of its directors, each of its named executive officers and all of its directors and executive officers as a group, and

each person known by it to own beneficially more than 5% of any class of its capital stock.

Kinder Morgan's named executive officers consist of its principal executive officer, its principal financial officer and its three most highly compensated executive officers (other than its principal executive officer and principal financial officer) serving at fiscal year end 2011.

Beneficial ownership is determined in accordance with the rules of the SEC. Based on information provided to Kinder Morgan, except as indicated in the footnotes to this table or as provided by applicable community property laws, the persons named in the tables have sole voting and investment power with respect to the shares indicated. Except as otherwise indicated, the address for each of the following is c/o Kinder Morgan, Inc., 500 Dallas Street, Suite 1000, Houston, Texas 77002.

**Table of Contents****Amount and Nature of Beneficial Ownership of Kinder Morgan Class P common stock**

The following table sets forth as of January 20, 2012, the number of shares of Kinder Morgan Class P common stock of which the individuals and entities have beneficial ownership, assuming the outstanding Class A shares are fully converted into all the shares of Class P common stock underlying the investor retained stock on a one-for-one basis and that the Class B and Class C shares are converted into zero shares of Class P common stock. As of January 20, 2012, there were 170,921,140 shares of Class P common stock and 535,972,387 Class A shares outstanding, resulting in a total of 706,893,527 Class P shares outstanding on a fully converted basis. Since the Kinder Morgan Class A shares, Class B shares and Class C shares are convertible into a fixed aggregate number of shares of Kinder Morgan Class P common stock, the conversion of Class B shares and Class C shares into shares of Class P common stock will result in a corresponding decrease in the number of shares of Class P common stock into which the Class A shares will be able to convert. See Description of Kinder Morgan Capital Stock Classes of Kinder Morgan Common Stock Voluntary Conversion and Mandatory Conversion.

Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership	
	Number	% of Class
Richard D. Kinder(1)	238,067,001	33.7
C. Park Shaper(2)	1,581,861	*
Steven J. Kean	884,774	*
Henry Cornell(3)	134,826,138	19.1
Deborah Macdonald	10,000	*
Michael Miller(4)	82,114,453	11.6
Michael C. Morgan(5)	5,174,537	*
Kenneth A. Pontarelli(3)	134,826,138	19.1
Fayez Sarofim(6)	29,011,743	4.1
Joel V. Staff	14,270	*
John Stokes(4)	82,114,453	11.6
R. Baran Tekkora(7)		
Glenn A. Youngkin(8)		
Kimberly A. Dang(9)	165,549	*
Joseph Listengart	667,576	*
Directors and executive officers as a group (17 persons)(10)	493,191,811	69.8
The Goldman Sachs Group, Inc.(3)	134,826,138	19.1
TCG Holdings, L.L.C.(11)	51,246,481	7.2
Investment funds associated with Carlyle/Riverstone Global Energy and Power Fund III, L.P.(12)	51,246,481	7.2
Highstar Capital LP(4)	82,114,453	11.6

\* Represents ownership of less than 1%.

- (1) Includes 46,664 Class A shares owned by Mr. Kinder's wife. Mr. Kinder disclaims any and all beneficial or pecuniary interest in these shares. Also includes 551,434 Class P shares held by a limited partnership of which Mr. Kinder controls the voting and disposition power. Mr. Kinder disclaims 99% of any beneficial and pecuniary interest in these shares.
- (2) Includes 97,504 Class P shares held by a limited partnership of which Mr. Shaper controls the voting and disposition power. Mr. Shaper disclaims 98% of any beneficial and pecuniary interest in these shares.
- (3) Consists of 16,227,644 Class A shares owned by GS Capital Partners V Fund, L.P.; 8,382,523 Class A shares owned by GSCP V Offshore Knight Holdings, L.P., which is controlled by GS Capital Partners V Offshore Fund, L.P.; 5,564,682 Class A shares owned by GS Capital Partners V Institutional, L.P.; 643,371 Class A shares owned by GSCP V Germany Knight Holdings, L.P., which is controlled by GS Capital

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- Partners V GmbH & Co. KG; 15,764,854 Class A shares owned by GS Capital Partners VI Fund, L.P., 13,112,651 Class A shares owned by GSCP VI Offshore Knight Holdings, L.P., which is controlled by GS Capital Partners VI Offshore Fund, L.P.; 4,335,066 Class A shares owned by GS Capital Partners VI Parallel, L.P.; 560,283 Class A shares owned by GSCP VI Germany Knight Holdings, L.P., which is controlled by GS Capital Partners VI GmbH & Co. KG; 6,784,786 Class A Shares owned by GS Global Infrastructure Partners I, L.P.; 724,828 Class A shares owned by GS Institutional Infrastructure Partners I, L.P.; 19,227,228 Class A shares owned by GS Infrastructure Knight Holdings, L.P., which is controlled by GS International Infrastructure Partners I, L.P.; 16,886,427 Class A shares owned by Goldman Sachs KMI Investors, L.P.; 23,245,978 Class A shares owned by GSCP KMI Investors, L.P.; 3,365,816 Class A shares owned by GSCP KMI Investors Offshore, L.P. (collectively the GS Entities ). The Goldman Sachs Group, Inc. and certain affiliates, including Goldman, Sachs & Co., may be deemed to directly or indirectly own the 134,826,138 Class A shares which are owned directly or indirectly by the GS Entities, of which affiliates of The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. are the general partner, limited partner or the managing partner. Goldman, Sachs & Co. is the investment manager for certain of the GS Entities. Goldman, Sachs & Co. is a direct and indirect wholly owned subsidiary of The Goldman Sachs Group, Inc. The Goldman Sachs Group, Inc., Goldman, Sachs & Co. and the GS Entities share voting power and investment power with certain of their respective affiliates. Henry Cornell and Kenneth Pontarelli are managing directors of Goldman, Sachs & Co. Each of Mr. Cornell, Mr. Pontarelli, The Goldman Sachs Group, Inc., Goldman, Sachs & Co. and the GS Entities disclaims beneficial ownership of the shares owned directly or indirectly by the GS Entities except to the extent of their pecuniary interest therein, if any. The address of the GS Entities, The Goldman Sachs Group, Inc., Goldman, Sachs & Co., Mr. Cornell and Mr. Pontarelli is 200 West Street, 28th Floor, New York, New York 10282.
- (4) Consists of 20,743,460 Class A shares owned by Highstar III Knight Acquisition Sub, L.P.; 41,131,509 Class A shares owned by Highstar KMI Blocker LLC; and 20,239,484 Class A shares owned by Highstar Knight Partners, L.P. (collectively the Highstar Entities ). Affiliates of PineBridge Investments LLC ( PineBridge ) serve as the general partner of Highstar III Knight Acquisition Sub, L.P. and Highstar Knight Partners, L.P., and the managing member of Highstar KMI Blocker LLC, and accordingly may be deemed to beneficially own the Class A shares owned of record by the Highstar Entities. PineBridge has delegated management authority for such general partners and managing member to Highstar Capital LP, which also serves as the investment manager for the Highstar Entities. Highstar Capital LP is controlled by Christopher Lee, Mr. Miller, Mr. Stokes, Christopher Beall and Scott Litman and, in such capacities, these individuals may be deemed to share beneficial ownership of the Class A shares beneficially owned by the Highstar Entities. Such individuals expressly disclaim any such beneficial ownership, except to the extent of their pecuniary interest therein, if any. The address of Highstar Capital LP and the Highstar Entities is 277 Park Avenue, 45th floor, New York, New York 10172.
- (5) Consists of 5,174,537 Class P shares owned by Portcullis Partners, LP, a private investment partnership. Mr. Morgan is President of Portcullis Partners, LP and therefore may be deemed to have beneficial ownership of the shares owned by Portcullis Partners, LP.
- (6) Includes 7,608,288 Class P shares held in entities indirectly controlled by Mr. Sarofim, in trusts and/or in advisory/managed accounts over which Mr. Sarofim or entities controlled by him have shared voting and/or dispositive power. Also includes 13,800 Class P shares held by trusts of which Mr. Sarofim is the sole trustee, but in which he has no pecuniary interest.
- (7) Does not include Class A shares held by the Carlyle/Riverstone Funds (as defined in footnote (12) below) or Riverstone Coinvestment (as defined in footnote (12) below), each of which is an affiliate of Riverstone, or Class A shares held by Carlyle Coinvestment (as defined in footnote (12) below). Mr. Tekkora is a director of Kinder Morgan and a Managing Director of Riverstone. Mr. Tekkora disclaims beneficial ownership of the shares held by Carlyle/Riverstone Funds, Riverstone Coinvestment or Carlyle Coinvestment.
- (8) Does not include Class A shares held by Carlyle Partners IV Knight, L.P. and CP IV Coinvestment, L.P., each of which is an affiliate of Carlyle. Mr. Youngkin is a director of Kinder Morgan and a Managing Director of Carlyle. Mr. Youngkin disclaims beneficial ownership of the shares held by Carlyle Partners IV Knight, L.P. and CP IV Coinvestment, L.P.

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- (9) Includes 103,394 Class P shares held by a limited partnership of which Mrs. Dang controls the voting and disposition power. Mrs. Dang disclaims 10% of any beneficial and pecuniary interest in these shares.
- (10) Includes 46,664 Class A shares owned by Mr. Kinder's wife, in which Mr. Kinder disclaims any and all beneficial or pecuniary interest. Also includes 551,434, 97,504 and 103,394 Class P shares held by limited partnerships of which Mr. Kinder, Mr. Shaper and Mrs. Dang, respectively, control the voting and disposition power. These executive officers disclaim 99%, 98% and 10%, respectively, of any beneficial and pecuniary interest in such Class P shares. Also includes 134,826,138 Class A shares in which Mr. Cornell and Mr. Pontarelli disclaim beneficial ownership except to the extent of their pecuniary interest therein, if any.
- (11) Consists of 46,933,698 Class A shares owned by Carlyle Partners IV Knight, L.P. and 4,312,782 Class A shares owned by CP IV Coinvestment, L.P. TC Group IV, L.P. is the sole general partner of Carlyle Partners IV Knight, L.P. and CP IV Coinvestment, L.P. TC Group IV Managing GP, L.L.C. is the sole general partner of TC Group IV, L.P. TC Group, L.L.C. is the sole managing member of TC Group IV Managing GP, L.L.C. TCG Holdings, L.L.C. is the sole managing member of TC Group, L.L.C. Accordingly, TC Group IV, L.P., TC Group IV Managing GP, L.L.C., TC Group, L.L.C. and TCG Holdings, L.L.C. each may be deemed to share beneficial ownership of Class A shares owned of record by each of Carlyle Partners IV Knight, L.P. and CP IV Coinvestment, L.P. William E. Conway, Jr., Daniel A. D. Aniello and David M. Rubenstein are managing members of TCG Holdings, L.L.C. and, in such capacity, may be deemed to share beneficial ownership of the Class A shares beneficially owned by TCG Holdings, L.L.C. Such individuals expressly disclaim any such beneficial ownership. The principal address and principal offices of TCG Holdings, L.L.C. and certain affiliates is c/o The Carlyle Group, 1001 Pennsylvania Avenue, N.W., Suite 220 South, Washington, D.C. 20004-2505.
- (12) Consists of 7,442,137 Class A shares owned by C/R Energy III Knight Non-U.S. Partnership, L.P. ( Knight Partnership ), 25,623,240 Class A shares owned by C/R Knight Partners, L.P. ( Knight Partners ), 17,318,221 Class A shares owned by Carlyle/Riverstone Knight Investment Partnership, L.P. ( Knight Investment Partnership ) and together with Knight Partnership and Knight Partners, the Carlyle/Riverstone Funds ), 711,382 Class A shares owned by Riverstone Energy Coinvestment III, L.P. ( Riverstone Coinvestment ) and 151,500 Class A shares owned by Carlyle Energy Coinvestment III, L.P. ( Carlyle Coinvestment ). C/R Energy GP III, LLC exercises investment discretion and control over the shares held by each of Knight Partnership, Knight Partners and Knight Investment Partnership through their mutual general partner, Carlyle/Riverstone Energy Partners III, L.P., of which C/R Energy GP III, LLC is the sole general partner. Riverstone Coinvestment GP LLC, a subsidiary of Riverstone Holdings, LLC, exercises investment discretion and control over the shares held by Riverstone Coinvestment, subject to contractual commitments that Riverstone Coinvestment invest and divest side-by-side with the Carlyle/Riverstone Funds. Carlyle Energy Coinvestment III GP, L.L.C., a subsidiary of TCG Holdings, L.L.C., exercises investment discretion and control over the shares held by Carlyle Coinvestment, subject to contractual commitments that Carlyle Coinvestment invest and divest side-by-side with the Carlyle/Riverstone Funds. C/R Energy GP III, LLC is managed by a managing committee comprising Daniel A. D. Aniello, William E. Conway, Jr., David M. Rubenstein and Edward J. Mathias, as Carlyle designees, and Pierre F. Lapeyre, Jr., David M. Leuschen and Michael B. Hoffman, as Riverstone designees. Actions of the managing committee require consent of at least five members of the managing committee, including at least one Carlyle designee and one Riverstone designee. The members of the managing committee of C/R Energy GP III, LLC may be deemed to share beneficial ownership of the shares beneficially owned by C/R Energy GP III, LLC. Such individuals expressly disclaim any such beneficial ownership. The principal address and principal offices of the Carlyle/Riverstone Funds and Riverstone Coinvestment and certain affiliates is 712 Fifth Avenue, 51st Floor, New York, NY 10019. The principal address and principal offices of Carlyle Coinvestment, TCG Holdings, L.L.C. and certain affiliates is c/o The Carlyle Group, 1001 Pennsylvania Avenue, N.W., Suite 220 South, Washington, D.C. 20004-2505.



**Table of Contents****Amount and Nature of Beneficial Ownership of Kinder Morgan Class A, Class B and Class C Shares**

The following table sets forth as of January 20, 2012, the number of shares of Kinder Morgan Class A shares, Class B shares and Class C shares of which the individuals and entities listed below have beneficial ownership. The Class A shares, Class B shares and Class C shares are convertible into shares of Class P common stock under certain circumstances. See Description of Kinder Morgan Capital Stock Classes of Kinder Morgan Common Stock Voluntary Conversion and Mandatory Conversion.

Name and Address of Beneficial Owner	Class A Shares		Class B Shares		Class C Shares	
	Number	% of Class(1)	Number	% of Class(1)	Number	% of Class(1)
Richard D. Kinder(2)	216,538,834	40.4	37,653,039	40.0		
C. Park Shaper(3)			10,354,586	11.0	655,836	28.3
Steven J. Kean			7,530,608	8.0	322,360	13.9
Henry Cornell	134,826,138	25.2				
Deborah Macdonald						
Michael Miller	82,114,453	15.3				
Michael C. Morgan						
Kenneth A. Pontarelli	134,826,138	25.2				
Fayez Sarofim						
Joel V. Staff						
John Stokes	82,114,453	15.3				
R. Baran Tekkora						
Glenn A. Youngkin						
Kimberly A. Dang(4)			2,353,315	2.5	36,172	1.6
Joseph Listengart			3,765,304	4.0	292,232	12.6
Directors and executive officers as a group (17 persons)(5)	433,479,425	80.9	66,645,880	70.8	1,542,384	66.5
The Goldman Sachs Group, Inc.	134,826,138	25.2				
TCG Holdings, L.L.C.	51,246,481	9.6				
Investment funds associated with Carlyle/Riverstone						
Global Energy and Power Fund III, L.P.	51,246,481	9.6				
Highstar Capital LP	82,114,453	15.3				

- (1) As of January 20, 2012, Kinder Morgan had 535,972,387 Class A shares, 94,132,596 Class B shares and 2,318,258 Class C shares issued and outstanding.
- (2) Includes 46,664 Class A shares owned by Mr. Kinder's wife. Mr. Kinder disclaims any and all beneficial or pecuniary interest in these shares. Also includes 12,551,013 Class B shares that Mr. Kinder transferred to a limited partnership of which Mr. Kinder controls the voting and disposition power. Mr. Kinder disclaims 99% of any beneficial and pecuniary interest in these shares.
- (3) Includes 10,354,586 Class B shares that Mr. Shaper transferred to a limited partnership of which Mr. Shaper controls the voting and disposition power. Mr. Shaper disclaims 21% of any beneficial and pecuniary interest in these shares.
- (4) Includes 2,353,315 Class B shares that Mrs. Dang transferred to a limited partnership of which Mrs. Dang has voting and disposition power. Mrs. Dang disclaims 10% of any beneficial and pecuniary interest in these shares.
- (5) Includes 46,664 Class A shares owned by Mr. Kinder's wife. Mr. Kinder disclaims any and all beneficial or pecuniary interest in these shares. Also includes 12,551,013 Class B shares that Mr. Kinder transferred to a limited partnership, 10,354,586 Class B shares that Mr. Shaper transferred to a limited partnership and 2,353,315 Class B shares that Mrs. Dang transferred to a limited partnership. These executive officers disclaim 99%, 21% and 10%, respectively, of any beneficial and pecuniary interest in such Class B shares.

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**LEGAL MATTERS**

The legality of the shares of Kinder Morgan Class P common stock issuable pursuant to the second merger will be passed upon for Kinder Morgan by Weil, Gotshal & Manges LLP. The legality of the warrants (and the shares underlying the warrants) issuable pursuant to the second merger will be passed upon for Kinder Morgan by Seitz Ross Aronstan & Moritz LLP. Bracewell & Giuliani LLP has also represented Kinder Morgan in connection with the transactions described herein. Certain U.S. federal income tax consequences relating to the transactions will be passed upon by Wachtell, Lipton, Rosen & Katz, tax counsel to El Paso.

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**EXPERTS**

**Kinder Morgan**

The consolidated financial statements of Kinder Morgan, Inc. (formerly known as Kinder Morgan Holdco LLC), and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report on Internal Control over Financial Reporting) incorporated in this information statement/proxy statement/prospectus, have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The descriptions of the review performed by Netherland, Sewell & Associates, Inc., independent petroleum consultants, included in note 21 to the consolidated financial statements of Kinder Morgan, Inc. (formerly known as Kinder Morgan Holdco LLC) included in Kinder Morgan's Annual Report on Form 10-K for the year ended December 31, 2011 and incorporated by reference into this information statement/proxy statement/prospectus, are incorporated herein in reliance upon the authority of such firm as experts in petroleum engineering.

**El Paso**

The consolidated financial statements and schedule of El Paso Corporation appearing in El Paso Corporation's Annual Report (Form 10-K) for the year ended December 31, 2011, and the effectiveness of El Paso Corporation's internal control over financial reporting as of December 31, 2011, have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon included therein, and incorporated by reference in this information statement/proxy statement/prospectus, which is referred to and made a part of the Registration Statement on Form S-4 filed by Kinder Morgan, Inc. for the issuance of shares of its Class P common stock and warrants to purchase shares of Class P common stock. The report of Ernst & Young LLP on the consolidated financial statements and schedule of El Paso Corporation as of December 31, 2011 and 2010 and for each of the three years in the period ended December 31, 2011 is based in part on the report of PricewaterhouseCoopers LLP, independent registered public accounting firm. The financial statements referred to above are incorporated by reference in reliance upon such reports given on the authority of such firms as experts in accounting and auditing.

The consolidated financial statements of Citrus Corp. and Subsidiaries as of December 31, 2011 and 2010 and for each of the three years in the period ended December 31, 2011 included in El Paso Corporation's Annual Report on Form 10-K for the year ended December 31, 2011 and incorporated by reference herein, and the consolidated financial statements of El Paso Corporation, to the extent they relate to Citrus Corp. and Subsidiaries, are so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm given on the authority of said firm as experts in auditing and accounting.

Information incorporated by reference in this information statement/proxy statement/prospectus regarding the estimated reserves attributable to certain of El Paso Corporation's natural gas and oil properties were prepared by El Paso and audited by Ryder Scott Company, L.P., independent petroleum engineers, as stated in their report with respect thereto and is incorporated herein upon the authority of such firm as experts in petroleum engineering.

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**OTHER MATTERS**

As of the date of this information statement/proxy statement/prospectus, El Paso's board of directors knows of no matters that will be presented for consideration at the El Paso special meeting other than as described in this information statement/proxy statement/prospectus. If any other matters properly come before the El Paso special meeting or any adjournments or postponements of the meeting and are voted upon, the enclosed proxies will confer discretionary authority on the individuals named as proxy to vote the shares represented by such proxy as to any other matters. The individuals named as proxies intend to vote in accordance with their best judgment as to any other matters.

As of the date of this information statement/proxy statement/prospectus, Kinder Morgan's board of directors knows of no other matters that will be presented for consideration at the Kinder Morgan special meeting other than as described in this information statement/proxy statement/prospectus.

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**EL PASO STOCKHOLDER PROPOSALS**

El Paso will not hold an annual meeting of its stockholders in 2012 if the transactions have been completed. If, however, El Paso does hold its 2012 annual meeting, under the rules of the SEC, in order to be considered for possible inclusion in the proxy statement for El Paso's 2012 annual meeting, all El Paso stockholder proposals must be submitted *in writing* to El Paso Corporation, Attn: Corporate Secretary, 1001 Louisiana Street, Houston, Texas, 77002. El Paso must receive all such stockholder proposals on or before December 7, 2011. El Paso will consider only proposals meeting the requirements of the applicable rules of the SEC.

Additionally, under the bylaws of El Paso, for a stockholder to bring any matter before the 2012 annual meeting that is not included in the 2012 proxy statement, the stockholder's written notice must be received not less than 90 days and not more than 120 days prior to the anniversary of the 2011 annual meeting (which was held on May 17, 2011). Under this rule, stockholders must provide El Paso with a notice of a matter to be brought before the 2012 annual meeting during the period from January 18, 2012 to February 17, 2012. If the 2012 annual meeting is held more than 30 days before or 60 days after May 17, 2012, for a stockholder seeking to bring any matter before the 2012 annual meeting, the stockholder's written notice must be received not less than 90 days and not more than 120 days before the date of the 2012 annual meeting or, if it would result in a later deadline, by the tenth day after El Paso publicly announces the date of the 2012 annual meeting. All such notices must contain the information required by and otherwise comply with the bylaws of El Paso.

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**KINDER MORGAN STOCKHOLDER PROPOSALS**

Kinder Morgan will hold a regular annual meeting in 2012 regardless of whether the transactions are completed.

In order for a stockholder proposal to be considered for inclusion in Kinder Morgan's proxy statement for its 2012 annual meeting of stockholders, the written proposal must have been received at Kinder Morgan's principal office on or before the date described below. Such a proposal should have been addressed to Kinder Morgan, Inc., Attention: Corporate Secretary, Kinder Morgan, Inc., 500 Dallas Street, Suite 1000, Houston, Texas 77002. Such a proposal must comply with SEC regulations regarding the inclusion of stockholder proposals in company-sponsored proxy materials.

In accordance with Kinder Morgan's bylaws, a Kinder Morgan stockholder who wishes to present a proposal in consideration at Kinder Morgan's 2012 annual meeting must deliver a notice of the matter the Kinder Morgan Stockholder wishes to present to Kinder Morgan's executive offices in Houston, Texas, at the address identified in the preceding paragraph, not later than the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of the meeting is first made. Accordingly, any notice by or on behalf of Kinder Morgan stockholder pursuant to these provisions of Kinder Morgan's bylaws and not pursuant Rule 14a-8 of the SEC must be received by that time. The notice should include: (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) any other information relating to such stockholder and beneficial owner, if any, on whose behalf the proposal is being made, required to be disclosed in an proxy statement or other filings required to be made in connection with solicitation of proxies for the proposal and pursuant to and in accordance with Section 14(a) of the Exchange Act and (iii) with respect to the proposing stockholder (A) the name and address of the proposing stockholder as they appear on the Kinder Morgan's books and of the beneficial owner, if any, on whose behalf the nomination is being made, (B) the number, class and series of shares of Kinder Morgan which are owned by the proposing stockholder (beneficially and of record) and owned by the beneficial owner, if any, on whose behalf the nomination is being made, as of the date of the proposing stockholder's notice, and a representation that the proposing stockholder will notify Kinder Morgan in writing of the number, class and series of such shares owned of record and beneficially as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed, (C) a description of any agreement, arrangement or understanding with respect to such nomination between or among the proposing stockholder and any of its affiliates or associates, and any others (including their names) acting in concert with any of the foregoing, and a representation that the proposing stockholder will notify Kinder Morgan in writing of any such agreement, arrangement or understanding in effect as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed, (D) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the proposing stockholder's notice by, or on behalf of, the proposing stockholder or any of its affiliates or associates, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of the proposing stockholder or any of its affiliates or associates with respect to shares of stock of the Kinder Morgan, and a representation that the proposing stockholder will notify the Kinder Morgan in writing of any such agreement, arrangement or understanding in effect as of the record date for the meeting promptly following the later of the record date or the date notice of the record date is first publicly disclosed, (E) a representation that the proposing stockholder is a holder of record of shares of the Kinder Morgan entitled to vote at the meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice and (F) a representation whether the proposing stockholder intends to deliver a proxy statement and/or form of proxy to holders of a majority of the total voting power and/or otherwise to solicit proxies from stockholders in support of the nomination.

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**WHERE YOU CAN FIND MORE INFORMATION**

Kinder Morgan and El Paso each file annual, quarterly and other reports, proxy statements and other information with the Securities and Exchange Commission through the SEC's Electronic Data Gathering Analysis and Retrieval (EDGAR) System. These current SEC filings are available to the public over the Internet at the SEC's web site at <http://www.sec.gov>. You may also read and copy any document they file at the SEC's public reference room located at:

100 F Street, N.W.

Washington, D.C. 20549

Please call the SEC at 1-800-SEC-0330 for further information on the public reference rooms and their copy charges.

Should you want more information regarding Kinder Morgan Energy Partners, L.P., Kinder Morgan Management, LLC or El Paso Pipeline Partners, L.P., please refer to the annual, quarterly and special reports, as applicable, filed with the SEC regarding those entities.

Because Kinder Morgan's Class P common stock and El Paso's common stock are both listed on the New York Stock Exchange, both company's reports, proxy statements and other information can be reviewed and copied at the office of that exchange at 20 Broad Street, New York, New York 10005.

Kinder Morgan filed a registration statement, which term includes all amendments thereto, on Form S-4 to register with the SEC the Kinder Morgan Class P common stock and warrants to be issued to El Paso stockholders in the merger. This information statement/proxy statement/prospectus is a part of that registration statement and constitutes a prospectus of Kinder Morgan in addition to being an information statement and proxy statement for the special meetings. As allowed by SEC rules, this information statement/proxy statement/prospectus does not contain all of the information you can find in the registration statement or the exhibits to the registration statement.

**Table of Contents****INCORPORATION BY REFERENCE**

As allowed by SEC rules, El Paso and Kinder Morgan may incorporate by reference the information they file with the SEC, which means that important information may be disclosed to you by referring you to those documents. This information statement/proxy statement/prospectus contains summaries of certain provisions contained in some of the El Paso and Kinder Morgan documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by reference to the actual documents. The El Paso and Kinder Morgan information incorporated by reference is an important part of this information statement/proxy statement/prospectus, and information that El Paso or Kinder Morgan files later with the SEC will automatically update and supersede this information. Some documents or information, such as that called for by Item 2.02 and 7.01 of Form 8-K, or the exhibits related thereto under Item 9.01 of Form 8-K, are deemed furnished and not filed in accordance with SEC rules. None of those documents and none of that information is incorporated by reference into this information statement/proxy statement/prospectus. El Paso and Kinder Morgan incorporate by reference the documents listed below and any future filings they make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until the termination of the offering:

<b>Kinder Morgan SEC Filings (File No. 1-35081)</b>	<b>Period or File Date</b>
Annual Report on Form 10-K	Year Ended December 31, 2011
Current Reports on Form 8-K or 8-K/A	Filed on February 16, 2012, February 27, 2012 and February 28, 2012 (only to the extent filed and not furnished )
Registration Statement on Form 8-A	Filed on February 10, 2011

Kinder Morgan will provide a copy of any document incorporated by reference in this information statement/proxy statement/prospectus and any exhibit specifically incorporated by reference in those documents, without charge, by written or oral request directed to Kinder Morgan at the following address and telephone number:

Kinder Morgan, Inc.

500 Dallas Street, Suite 1000

Houston, Texas 77002

Attention: Investor Relations

Telephone No.: (713) 369-9000

<b>El Paso SEC Filings (File No. 1-14365)</b>	<b>Period or File Date</b>
Annual Report on Form 10-K	Year Ended December 31, 2011
Current Reports on Form 8-K or 8-K/A	Filed on January 30, 2012, February 16, 2012 and February 27, 2012 (only to the extent filed and not furnished )
Registration Statement on Form 8-A and amendments thereto	Filed on April 5, 2001, August 26, 2003 and March 7, 2006
Proxy Statement on Schedule 14A	Filed on March 29, 2011

El Paso will provide a copy of any document incorporated by reference in this information statement/proxy statement/prospectus and any exhibit specifically incorporated by reference in those documents, without charge, by written or oral request directed to El Paso at the following address and telephone number:

El Paso Corporation

Office of Investor Relations



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El Paso Building

1001 Louisiana Street

Houston, Texas 77002

Telephone No.: (713) 420-2600

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**In addition, if you are an El Paso stockholder and you would like to request any documents incorporated by reference in this information statement/proxy statement/prospectus prior to making your cash, stock or mixed election, please do so at least 5 business days prior to the election deadline (which will be identified in the form of election provided to you in a separate mailing following the El Paso special meeting).**

The information statement/proxy statement/prospectus contains references to the Internet websites of Kinder Morgan and El Paso. However, information contained on those Internet websites is not incorporated by reference into, and does not constitute part of, this information statement/proxy statement/prospectus.

The information concerning Kinder Morgan contained in or incorporated by reference into this information statement/proxy statement/prospectus has been provided by Kinder Morgan, and the information concerning El Paso contained or incorporated by reference in this information statement/proxy statement/prospectus has been provided by El Paso.

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**You should rely only on the information contained or incorporated by reference in this information statement/proxy statement/prospectus to vote on the merger or the Kinder Morgan share and warrant issuance proposal. Neither Kinder Morgan nor El Paso has authorized anyone to provide you with information that is different from what is contained in this information statement/proxy statement/prospectus. You should not assume that the information contained in this information statement/proxy statement/prospectus is accurate as of any date other than the date on the cover, and neither the mailing of the information statement/proxy statement/prospectus to shareholders nor the issuance of Kinder Morgan Class P common stock or warrants pursuant to the merger shall create any implication to the contrary.**

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**UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION**

The following pro forma condensed combined financial information has been developed by applying pro forma adjustments to the individual historical audited financial statements of Kinder Morgan and El Paso incorporated by reference in this information statement/proxy statement/prospectus. The following unaudited pro forma condensed combined balance sheet data as of December 31, 2011 of Kinder Morgan has been prepared to give effect to the transactions as if the second merger had occurred on December 31, 2011. The following unaudited pro forma condensed combined statement of income data of Kinder Morgan for the year ended December 31, 2011 has been prepared to give effect to the transactions as if the second merger had occurred on January 1, 2011.

The unaudited pro forma condensed combined financial information includes pro forma adjustments that are factually supportable and directly attributable to the transactions. In addition, with respect to the unaudited pro forma condensed combined statement of income, the unaudited pro forma adjustments are expected to have a continuing impact on the combined results. The unaudited pro forma statements present EP Energy as current assets and liabilities held for sale as of December 31, 2011 and as discontinued operations beginning January 1, 2011, as Kinder Morgan intends to sell the assets of EP Energy. This unaudited pro forma condensed combined financial information has been prepared in accordance with accounting principles generally accepted in the United States of America (referred to as U.S. GAAP), in U.S. dollars, in accordance with the Financial Accounting Standards Board's Accounting Standards Codification Topic 805 *Business Combinations* and the regulations of the SEC.

The unaudited pro forma condensed combined statement of income does not include the following non-recurring items: (i) costs associated with the transactions which are not capitalized as part of the transactions, (ii) the elimination of El Paso's debt issuance costs, which are reflected as an asset on its balance sheet as of December 31, 2011, (iii) known contractual severance costs based on identifying certain employees that will be involuntarily terminated, and (iv) the additional expense associated with accelerated vesting of El Paso's share-based arrangements. The unaudited pro forma condensed combined balance sheet has been adjusted to reflect these non-recurring items. The unaudited pro forma condensed combined financial information does 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 adjustments are based on available preliminary information and certain assumptions that Kinder Morgan believes are reasonable under the circumstances. The unaudited pro forma condensed combined financial information is presented for informational purposes only. The following unaudited pro forma condensed combined financial information is not necessarily indicative of the results that might have occurred had the second merger taken place on December 31, 2011 for balance sheet purposes, and on January 1, 2011 for statement of income purposes, and is not intended to be a projection of future results. Future results may vary significantly from the results reflected because of various factors, including those discussed in the following sections titled *Risk Factors*, *Cautionary Statement Regarding Forward-Looking Statements* and the consolidated audited financial statements of Kinder Morgan and El Paso incorporated by reference in this information statement/proxy statement/prospectus. All pro forma adjustments and their underlying assumptions are described more fully in the notes to the unaudited pro forma condensed combined financial information.

**Table of Contents****KINDER MORGAN, INC.****UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET**

AS OF DECEMBER 31, 2011

(In millions)

	Historical		Pro Forma Adjustments			Pro Forma
	Kinder Morgan	El Paso	EP Energy Sale(a)	El Paso Acquisition(b)		Combined
<b>ASSETS</b>						
Current assets	\$ 1,663.3	\$ 1,577.0	\$ (520.0)	\$ (4.0)	(c)	\$ 2,851.0
				134.7	(d)	
Current assets held for sale			4,961.0	3,290.0	(a)	8,251.0
Total current assets	1,663.3	1,577.0	4,441.0	3,420.7		11,102.0
Property, plant and equipment, net	17,926.0	19,170.0	(4,067.0)	(1,937.7)	(e)	31,091.3
Investments	3,744.4	2,739.0	(346.0)	484.0	(f)	6,621.4
Goodwill	5,073.5			19,337.7	(g)	24,411.2
Deferred charges and other assets	2,309.8	828.0	(28.0)	820.6	(h)	3,930.4
Total Assets	\$ 30,717.0	\$ 24,314.0	\$	\$ 22,125.3		\$ 77,156.3
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>						
Current liabilities	\$ 4,529.0	\$ 2,148.0	\$ (542.0)	\$ 7,375.0	(i)	\$ 13,531.0
				25.0	(j)	
				(4.0)	(c)	
Current liabilities held for sale			1,952.0			1,952.0
Total current liabilities	4,529.0	2,148.0	1,410.0	7,396.0		15,483.0
Long-term debt	14,356.4	12,605.0	(851.0)	5,855.2	(i)	31,965.6
Deferred income taxes	2,199.1	612.0	(291.0)	383.5	(k)	2,903.6
Other long-term liabilities and deferred credits	1,064.9	1,814.0	(268.0)			2,610.9
Total other long-term liabilities and deferred credits	3,264.0	2,426.0	(559.0)	383.5		5,514.5
<b>Stockholders equity</b>						
Class P shares	1.7			3.3	(m)	5.0
Class A shares	5.4					5.4
Class B shares	0.9					0.9
Class C shares						
Common stock		2,362.0		(2,362.0)	(l)	
Additional paid-in capital	3,430.1	5,364.0		(5,364.0)	(l)	14,653.2
				11,223.1	(m)	
Retained earnings (accumulated deficit)	(3.0)	(2,293.0)		2,293.0	(l)	(18.9)
				(15.9)	(j)	
Accumulated other comprehensive loss	(114.6)	(796.0)		796.0	(l)	(114.6)
Treasury stock		(283.0)		283.0	(l)	
Total Kinder Morgan Stockholders Equity	3,320.5	4,354.0		6,856.5		14,531.0

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Noncontrolling interests	5,247.1	2,781.0	1,634.1	(n)	9,662.2
Total Stockholders Equity	8,567.6	7,135.0	8,490.6		24,193.2
Total Liabilities and Stockholders Equity	\$ 30,717.0	\$ 24,314.0	\$ 22,125.3		\$ 77,156.3

The accompanying notes are an integral part of these  
 unaudited pro forma condensed combined financial statements.

**Table of Contents****KINDER MORGAN, INC.****UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF INCOME****FOR THE YEAR ENDED DECEMBER 31, 2011****(In millions, except per share amounts)**

	Historical		Pro Forma Adjustments		Pro Forma
	Kinder Morgan	El Paso	EP Energy Sale(a)	El Paso Acquisition(b)	Combined
Operating revenues	\$8,264.9	\$ 4,860.0	\$ (1,867.0)	\$ (44.3) (o)	\$ 11,213.6
Operating costs and expenses					
Gas purchases and other costs of sales	3,400.8	181.0	(85.0)	(44.3) (o)	3,452.5
Other operating expenses	3,325.4	3,547.0	(1,244.1)	(42.0) (p)	5,586.3
Total operating costs and expenses	6,726.2	3,728.0	(1,329.1)	(86.3)	9,038.8
Operating income	1,538.7	1,132.0	(537.9)	42.0	2,174.8
Other income and (expenses)					
Equity in earnings of other equity investments	313.1	151.0	7.0		471.1
Interest expense, net	(703.3)	(948.0)	9.0	(180.4) (q)	(1,822.7)
Other, net	(133.5)	42.0	2.0		(89.5)
Total other income and (expenses)	(523.7)	(755.0)	18.0	(180.4)	(1,441.1)
Income (loss) from continuing operations before income taxes	1,015.0	377.0	(519.9)	(138.4)	733.7
Income tax expense (benefit)	362.8	(50.0)	(237.3)	(56.0) (r)	19.5
Income (loss) from continuing operations	652.2	427.0	(282.6)	(82.4)	714.2
Income (loss) from discontinued operations, net of tax	7.8		282.6	(193.7) (s)	96.7
Net income (loss)	660.0	427.0		(276.1)	810.9
Net income attributable to noncontrolling interests	(65.6)	(286.0)		(15.9) (t)	(367.5)
Net income (loss) attributable to Kinder Morgan	\$594.4	\$ 141.0	\$	\$ (292.0)	\$ 443.4
Basic Earnings Per Common Share from Continuing Operations					
Class P shares	\$ 0.73 (u)				\$ 0.33 (x)
Class A shares	\$ 0.67 (u)				\$ 0.27 (x)
Basic Weighted Average Number of Shares Outstanding					
Class P shares	118.0			329.2 (v)	446.4
Class A shares	589.0			(0.8) (w)	589.8
Diluted Earnings Per Common Share from Continuing Operations					
Class P shares	\$ 0.73 (u)				\$ 0.33 (x)
Class A shares	\$ 0.67 (u)				\$ 0.27 (x)
Diluted Weighted Average Number of Shares Outstanding					
Class P shares	707.6			329.2 (v)	1,036.8

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Class A shares	589.0	0.8 (w)	589.8
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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 December 31, 2011. The unaudited pro forma condensed combined statement of income for the year ended December 31, 2011 gives effect to the transactions as if the second merger had occurred on January 1, 2011. The Unaudited Pro Forma Statements present EP Energy as current assets and liabilities held for sale as of December 31, 2011 and discontinued operations beginning January 1, 2011, 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) Kinder Morgan's Annual Report on Form 10-K for the year ended December 31, 2011, which is incorporated by reference into this information statement/proxy statement/prospectus and (ii) El Paso's Annual Report on Form 10-K for the year ended December 31, 2011, which is incorporated by reference into this information statement/proxy statement/prospectus.

**Note 2 Pro Forma Adjustments and Assumptions**

(a) Sale of EP Energy

On February 24, 2012, certain subsidiaries of El Paso entered into a Purchase and Sale Agreement to sell EP Energy to Apollo Global Management L.L.C., Riverstone Holdings, LLC, Access Industries, Inc. and certain other parties for \$7.15 billion, subject to adjustments for certain items. The EP Energy sale is conditioned upon the closing of the second merger. 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, 2011. 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 the price in the Purchase and Sale Agreement. 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 statement:

Interest expense will shift from continuing operations to discontinued operations in the amount of \$4.9 million. Net of income taxes of 36.3% the impact is \$3.2 million.

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):

<b>Purchase Price:</b>	
El Paso shares outstanding	765.8
Dilutive effect of El Paso outstanding restricted stock and stock options	20.5
Total El Paso shares assumed to be subject to conversion	786.3
Cash conversion amount per El Paso share	\$ 14.65
Cash portion of purchase price (assumed to be funded through borrowings)	\$ 11,520.0
Total El Paso shares assumed to be subject to conversion	786.3
El Paso share conversion rate	0.4187
Total Kinder Morgan Class P common shares assumed to be issued	329.2
Kinder Morgan Class P common share closing price as of February 23, 2012 (1)	\$ 32.32
Assumed fair value of equity portion of purchase price	\$ 10,641.1
Total El Paso shares assumed to be subject to conversion	786.3
Exchange rate for Kinder Morgan warrants	0.64
Total Kinder Morgan warrants assumed to be issued	503.3
Kinder Morgan warrant estimated fair value per warrant	\$ 1.50
Assumed fair value of Kinder Morgan warrants portion of purchase price	\$ 754.9
Total consideration assumed to be paid (excluding debt assumed)	\$ 22,916.0
Less: El Paso share based awards to be expensed (2)	(169.6)
Purchase price before noncontrolling interest	22,746.4
Fair value of noncontrolling interests in EPB (3)	4,415.1
Total purchase price and fair value of noncontrolling interests	\$ 27,161.5

- (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 \$532 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 December 31, 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

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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 March 31, 2012 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 \$169.6 million to \$128.1 million.

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- (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 December 31, 2011, and valued at EPB's February 23, 2012 closing price of \$37.64 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	\$ 1,053.0
Current assets held for sale	8,251.0
Goodwill	19,337.7
Investments	2,877.0
Property, plant and equipment, net	13,165.3
Deferred charges and other assets	1,475.3
Current liabilities	(2,177.0)
Current liabilities held for sale	(1,952.0)
Deferred income taxes	(713.6)
Other deferred credits	(1,546.0)
Long-term debt	(12,609.2)
<b>Total purchase price and fair value of noncontrolling interests</b>	<b>\$ 27,161.5</b>

- (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 \$280.0 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) a \$783.3 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 \$108.0 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 \$575.0 million repayment of El Paso s

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December 31, 2011 outstanding balance on its revolving credit facility which is classified as long term debt and a \$575.0 million borrowing on Kinder Morgan's upsized credit facility which is classified as short term debt, (iv) reflect the issuance of \$280.0 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 December 31, 2011 (\$1.4 billion).

- (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 December 31, 2011 and valued at EPB's February 23, 2012 closing price of \$37.64 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 Statement 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)

	<b>Year Ended December 31, 2011 (in millions)</b>
Interest expense on debt issued in these transactions (1)	\$ (219.2)
Amortization of debt issuance costs (2)	(46.3)
Debt refinanced in conjunction with these transactions (3)	(10.4)
Amortization of fair value adjustment to El Paso's debt (4)	138.9
Amortization of regulatory offset to fair value adjustment to El Paso's debt (5)	(71.4)
Reversal of El Paso's amortization of capitalized debt issuance costs (6)	28.0
<b>Pro forma adjustments to interest expense</b>	<b>\$ (180.4)</b>

- (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

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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.



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For purposes of this Unaudited Pro Forma Statement, 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.
- (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 \$1.75 billion, repay the \$575.0 million outstanding as of December 31, 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 \$139 million, \$136 million, \$129 million, \$124 million and \$106 million, respectively.
- (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 \$71 million, \$74 million, \$77 million, \$80 million and \$65 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 year ended December 31, 2011.
- (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) Earnings per share from continuing operations. Does not include \$0.01 of earnings per share from discontinued operations.
- (v) Assumes the 329.2 million Class P shares issued in conjunction with the second merger were outstanding as of January 1, 2011.

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- (w) 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, 2011.
- (x) The following table sets forth the computation of basic and diluted earnings per share from continuing operations (in millions, except per share amounts):

	Net Income Available to Shareholders			
	Class P	Class A	Participating Securities(1)	Total
Net income from continuing operations				\$ 714.2
Less: noncontrolling interests				(367.5)
Net income attributable to shareholders from continuing operations				346.7
Kinder Morgan dividends declared during period	\$ 331.4	\$ 400.0	\$ 38.2	(769.6)
Excess distributions over earnings	(182.1)	(240.6)	(0.2)	\$ (422.9)
Total net income attributable to shareholders from continuing operations	\$ 149.3	\$ 159.4	\$ 38.0	\$ 346.7
<b>Basic Earnings Per Share from Continuing Operations</b>				
Basic Weighted Average Number of Shares Outstanding	446.4	589.8	N/A	
Basic Earnings per Common Share from Continuing Operations(2)	\$ 0.33	\$ 0.27	N/A	
<b>Diluted Earnings per Share from Continuing Operations</b>				
Total net income attributable to shareholders from continuing operations (assuming conversions)(2)(3)	\$ 346.7	\$ 159.4	N/A	
Diluted Weighted Average Number of Shares	1,036.8	589.8	N/A	
Diluted Earnings per Common Share from Continuing Operations(2)	\$ 0.33	\$ 0.27	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 year ended December 31, 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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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 ).

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(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.

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(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.

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(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).

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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

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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.

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(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

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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 4.2, 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,

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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

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(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

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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

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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

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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

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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.

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**Table of Contents****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

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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 entered 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 Subsidiaries' 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 Subsidiaries') 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;



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(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

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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.

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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

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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

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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



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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

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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 (45<sup>th</sup>) 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

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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.

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(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 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 matter 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

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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 , herein 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]

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**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 ).

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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

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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 ).

WITNESSETH:

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 52<sup>nd</sup> 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 be 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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**Table of Contents****EXHIBIT A****BUYER STOCK OWNERSHIP**

<b>Stockholder</b>	<b>Number of Shares Class A Shares</b>
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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**Exhibit A** Warrant Certificate

**Exhibit B** Notice of Exercise

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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.

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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



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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



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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

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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

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Members of the Board of Directors

of Kinder Morgan, Inc.

October 16, 2011

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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 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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Members of the Board of Directors

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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

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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.

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**PART II.**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

***Item 20. Indemnification of Directors and Officers***

Section 145 of the Delaware General Corporation Law, or DGCL, provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Section 145 further provides that a corporation similarly may indemnify any such person serving in any such capacity who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or such other court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

As permitted by the DGCL, the registrant's certificate of incorporation includes a provision that eliminates the personal liability of its directors for monetary damages for breach of fiduciary duty as a director, except for liability:

for any breach of the director's duty of loyalty to the registrant or its stockholders;

for acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law;

under Section 174 of the DGCL regarding unlawful dividends and stock purchases; or

for any transaction from which the director derived an improper personal benefit.

As permitted by the DGCL, the registrant's certificate of incorporation and bylaws provide that:

the registrant is required to indemnify its directors and officers to the fullest extent permitted under the DGCL, subject to very limited exceptions;

the registrant may indemnify its other employees and agents to the fullest extent permitted by law, subject to very limited exceptions;

the registrant is required to advance expenses, as incurred, to its directors and officers in connection with a proceeding to the maximum extent permitted under the DGCL, subject to very limited exceptions;



the rights conferred in the certificate of incorporation or bylaws are not exclusive.  
Kinder Morgan's shareholders agreement requires it to cause KMK to pay any costs and expenses of the Investors associated with the Going Private Transaction, including amounts paid as damages or in settlement of

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related shareholder litigation. Kinder Morgan also is obligated to pay all reasonable fees and expenses of the Sponsor Investors and their counsel related to the administration of, and their rights and obligations under, Kinder Morgan's certificate of incorporation, bylaws and shareholders agreement that are approved in advance by it.

The registrant maintains liability insurance policies covering its officers and directors against some liabilities, including certain liabilities under the Securities Act, that may be incurred by them.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling Kinder Morgan pursuant to the foregoing provisions, Kinder Morgan has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

### ***Item 21. Exhibits and Financial Statement Schedules***

(a) Exhibits.

Reference is made to the Index to Exhibits following the signature pages hereto, which Index to Exhibits is hereby incorporated into this item.

(b) Financial Statement Schedule.

Financial statement schedules are omitted because they are not required or the required information is shown in the consolidated financial statements or the notes thereto included in the information statement/proxy statement/prospectus that forms a part of this registration statement.

(c) Opinions.

The opinions of Evercore and Barclays Capital, financial advisors to the Kinder Morgan board of directors, are attached as Annex F and Annex G, respectively, to the information statement/proxy statement/prospectus contained herein. The opinion of Morgan Stanley, financial advisor to the El Paso board of directors, is attached as Annex E to the information statement/proxy statement/prospectus contained herein.

### ***Item 22. Undertakings***

The undersigned Registrant hereby undertakes:

(a)(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in the registration statement.

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(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser: if the registrant is subject to Rule 430C, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at the time shall be deemed to be the initial bona fide offering thereof.

(c) That prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other items of the applicable form.

(d) That every prospectus (i) that is filed pursuant to paragraph (c) immediately preceding, or (ii) that purports to meet the requirements of Section 10(a)(3) of the Securities Act of 1933 and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(e) To respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of this form, within one business day of receipt of such request, and to send the

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incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of this registration statement through the date of responding to the request.

(f) To supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in this registration statement when it became effective.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question as to whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement, or amendment thereto, to be signed on its behalf by the undersigned, thereunto duly authorized, in Houston, Texas on March 1, 2012.

KINDER MORGAN, INC.

By: */s/ JOSEPH LISTENGART*  
 Name: Joseph Listengart  
 Title: Vice President, General Counsel and  
 Secretary

Pursuant to the requirements of the Securities Act, this registration statement, or amendment thereto, has been signed by the following persons in the capacities indicated on March 1, 2012.

Signature	Title
<i>/s/ RICHARD D. KINDER</i>	Chairman and Chief Executive Officer
Richard D. Kinder	(Principal Executive Officer)
<i>/s/ KIMBERLY A. DANG</i>	Vice President and Chief Financial Officer
Kimberly A. Dang	(Principal Financial and Accounting Officer)
<i>/s/ HENRY CORNELL*</i>	
Henry Cornell	Director
<i>/s/ STEVEN J. KEAN*</i>	Director
Steven J. Kean	
<i>/s/ MICHAEL MILLER*</i>	Director
Michael Miller	
<i>/s/ MICHAEL C. MORGAN*</i>	Director
Michael C. Morgan	
<i>/s/ KENNETH A. PONTARELLI*</i>	Director
Kenneth A. Pontarelli	
<i>/s/ FAYEZ SAROFIM*</i>	Director
Fayez Sarofim	
<i>/s/ C. PARK SHAPER*</i>	Director

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C. Park Shaper

/s/ JOEL V. STAFF\*

Director

Joel V. Staff

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/s/ R. BARAN TEKKORA\* Director

R. Baran Tekkora

/s/ GLENN A. YOUNGKIN\* Director

Glenn A. Youngkin

\*By: /s/ JOSEPH LISTENGART

Joseph Listengart

Attorney-in-fact for persons indicated which constitutes a majority of the board of directors of Kinder Morgan, Inc.

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- 2.1 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 (included as Annex A to the information statement/proxy statement/prospectus forming a part of this Registration Statement and incorporated herein by reference). (Schedules and exhibits have been omitted from this exhibit pursuant to Item 601(b)(2) of Regulation S-K and are not filed herewith. The Registrant agrees to furnish supplementally a copy of the omitted schedules and exhibits to the Securities and Exchange Commission upon request.)
- 2.2 Agreement and Plan of Merger, dated as of October 16, 2011, by and among El Paso Corporation, Sirius Holdings Merger Corporation and Sirius Merger Corporation (included as Annex B to the information statement/proxy statement/prospectus forming a part of this Registration Statement and incorporated herein by reference). (Schedules and exhibits have been omitted from this exhibit pursuant to Item 601(b)(2) of Regulation S-K and are not filed herewith. The Registrant agrees to furnish supplementally a copy of the omitted schedules and exhibits to the Securities and Exchange Commission upon request.)
- 2.3\*\* Purchase and Sale Agreement, dated as of February 24, 2012, by and among, EP Energy Corporation, EP Energy Holding Company, El Paso Brazil, L.L.C., EPE Acquisition, LLC and solely for the obligations in Section 9.2(c) and Article XI and for no other purpose, Kinder Morgan, Inc. (Schedules and exhibits have been omitted from this exhibit pursuant to Item 601(b)(2) of Regulation S-K and are not filed herewith. The Registrant agrees to furnish supplementally a copy of the omitted schedules and exhibits to the Securities and Exchange Commission upon request.)
- 3.1 Certificate of Incorporation of Kinder Morgan, Inc. (filed as Exhibit 3.1 to Kinder Morgan, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (File No. 1-35081) and incorporated herein by reference).
- 3.2 Bylaws of Kinder Morgan, Inc. (filed as Exhibit 3.2 to Kinder Morgan, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (File No. 1-35081) and incorporated herein by reference).
- 4.1 Form of certificate representing Class P common shares of Kinder Morgan, Inc. (filed as Exhibit 4.1 to Kinder Morgan, Inc.'s Registration Statement on Form S-1 filed on January 18, 2011 (File No. 333-170773) and incorporated herein by reference).
- 4.2 Shareholders Agreement among Kinder Morgan, Inc. and certain holders of common stock (filed as Exhibit 4.2 to Kinder Morgan, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (File No. 1-35081) and incorporated herein by reference).
- 5.1\*\* Opinion of Weil, Gotshal & Manges LLP as to the legality of the shares being offered.
- 5.2\*\* Opinion of Seitz Ross Aronstan & Moritz LLP as to the legality of the warrants (and the shares underlying the warrants) being offered.
- 8.1 Opinion of Wachtell, Lipton, Rosen & Katz as to certain tax matters (filed as Exhibit 8.1 to El Paso Corporation's Current Report on Form 8-K filed on January 30, 2012 and incorporated herein by reference).
- 10.1 Voting Agreement, dated as of October 16, 2011, by and among El Paso Corporation, Richard D. Kinder, GS Capital Partners V Fund, L.P., GSCP V Offshore Knight Holdings, L.P., GSCP V Germany Knight Holdings, L.P., GS Capital Partners V Institutional, L.P., GS Capital Partners VI Fund, L.P., GSCP VI Offshore Knight Holdings, L.P., GSCP VI Germany Knight Holdings, L.P., GS Capital Partners VI Parallel, L.P., Goldman Sachs KMI Investors, L.P., GSCP KMI Investors, L.P., GSCP KMI Investors Offshore, L.P., GS Infrastructure Knight Holdings, L.P., GS Institutional Infrastructure Partners I, L.P., GS Global Infrastructure Partners I, L.P., Highstar II Knight Acquisition Sub, L.P., Highstar III Knight Acquisition Sub, L.P., Highstar Knight Partners, L.P., Highstar KMI Blocker LLC, Carlyle Partners IV Knight, L.P., CP IV Coinvestment, L.P., Carlyle Energy Coinvestment III, L.P., Carlyle/Riverstone Knight Investment Partnership, L.P., C/R Knight Partners, L.P., C/R Energy III Knight Non-U.S. Partnership, L.P., and Riverstone Energy Coinvestment III, L.P. (included as Annex C to the information statement/proxy statement/prospectus forming a part of this Registration Statement and incorporated herein by reference).



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- 10.2 Kinder Morgan, Inc. 2011 Stock Incentive Plan (filed as Exhibit 10.1 to Kinder Morgan, Inc. s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (File No. 1-35081) and incorporated herein by reference).
- 10.3 Form of Restricted Stock Agreement (filed as Exhibit 10.2 to Kinder Morgan, Inc. s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (File No. 1-35081) and incorporated herein by reference).
- 10.4 Kinder Morgan, Inc. Stock Compensation Plan for Non-Employee Directors (filed as Exhibit 10.4 to Kinder Morgan, Inc. s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (File No. 1-35081) and incorporated herein by reference).
- 10.5 Form of Non-Employee Director Stock Compensation Agreement (filed as Exhibit 10.3 to Kinder Morgan, Inc. s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (File No. 1-35081) and incorporated herein by reference).
- 10.6 Kinder Morgan, Inc. Employees Stock Purchase Plan (filed as Exhibit 10.5 to Kinder Morgan, Inc. s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (File No. 1-35081) and incorporated herein by reference).
- 10.7 Kinder Morgan, Inc. Annual Incentive Plan (filed as Exhibit 10.6 to Kinder Morgan, Inc. s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (File No. 1-35081) and incorporated herein by reference).
- 10.8 2010 Annual Incentive Plan of Kinder Morgan Kansas, Inc. (filed as Exhibit 10.1 to KMK s Annual Report on Form 10-K for the year ended December 31, 2009 (File No. 1-06446) and incorporated herein by reference).
- 10.9 Employment Agreement dated October 7, 1999, between K N Energy, Inc. and Richard D. Kinder (filed as Exhibit 99.D of the Schedule 13D filed by Mr. Kinder on November 16, 1999 (File No. 5-06259) and incorporated herein by reference).
- 10.10 Form of Purchase Provisions between Kinder Morgan Management, LLC and Kinder Morgan Kansas, Inc. (included as Annex B to the Second Amended and Restated Limited Liability Company Agreement of Kinder Morgan Management, LLC filed as Exhibit 3.1 to Kinder Morgan Management, LLC s Current Report on Form 8-K filed on May 30, 2007 (File No. 1-16459) and incorporated herein by reference).
- 10.11 Credit Agreement, dated as of May 30, 2007, among Kinder Morgan Kansas, Inc. and Kinder Morgan Acquisition Co., as the borrower, the several lenders from time to time parties thereto, and Citibank, N.A., as administrative agent and collateral agent (filed as Exhibit 10.10 to Kinder Morgan, Inc. s Registration Statement on Form S-1 filed on December 30, 2010 (File No. 333-170773) and incorporated herein by reference).
- 10.12 Indenture dated as of September 1, 1988, between K N Energy, Inc. and Continental Illinois National Bank and Trust Company of Chicago (filed as Exhibit 4(a) to Kinder Morgan Kansas, Inc. s Annual Report on Form 10-K/A, Amendment No. 1 (File No. 1-06446) and incorporated herein by reference).
- 10.13 First supplemental indenture dated as of January 15, 1992, between K N Energy, Inc. and Continental Illinois National Bank and Trust Company of Chicago (filed as Exhibit 4.2 to the Registration Statement on Form S-3 of K N Energy, Inc. filed on January 17, 1992 (File No. 33-45091) and incorporated herein by reference).
- 10.14 Second supplemental indenture dated as of December 15, 1992, between K N Energy, Inc. and Continental Bank, National Association (filed as Exhibit 4(c) to Kinder Morgan Kansas, Inc. s Annual Report on Form 10-K/A, Amendment No. 1 filed on May 23, 2000 (File No. 1-06446) and incorporated herein by reference).

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- 10.15 Indenture dated as of November 20, 1993, between K N Energy, Inc. and Continental Bank, National Association (filed as Exhibit 4.1 to the Registration Statement on Form S-3 of K N Energy, Inc. filed on November 19, 1993 (File No. 33-51115) and incorporated herein by reference).
- 10.16 Registration Rights Agreement among Kinder Morgan Management, LLC, Kinder Morgan Energy Partners, L.P. and Kinder Morgan Kansas, Inc. dated May 18, 2001 (filed as Exhibit 4.7 to Kinder Morgan Kansas, Inc. s Annual Report on Form 10-K for the year ended December 31, 2002 (File No. 1-06446) and incorporated herein by reference).
- 10.17 Form of Indenture dated as of August 27, 2002 between Kinder Morgan Kansas, Inc. and Wachovia Bank, National Association, as Trustee (filed as Exhibit 4.1 to Kinder Morgan Kansas, Inc. s Registration Statement on Form S-4 filed on October 4, 2002 (File No. 333-100338) and incorporated herein by reference).
- 10.18 Form of First Supplemental Indenture dated as of December 6, 2002 between Kinder Morgan Kansas, Inc. and Wachovia Bank, National Association, as Trustee (filed as Exhibit 4.2 to Kinder Morgan Kansas, Inc. s Registration Statement on Form S-4 filed on January 31, 2003 (File No. 333-102873) and incorporated herein by reference).
- 10.19 Form of 6.50% Note (included in the Indenture filed as Exhibit 4.1 to Kinder Morgan Kansas, Inc. s Registration Statement on Form S-4 filed on October 4, 2002 (File No. 333-100338) and incorporated herein by reference).
- 10.20 Form of Senior Indenture between Kinder Morgan Kansas, Inc. and Wachovia Bank, National Association, as Trustee (filed as Exhibit 4.2 to Kinder Morgan Kansas, Inc. s Registration Statement on Form S-3 filed on February 4, 2003 (File No. 333-102963) and incorporated herein by reference).
- 10.21 Form of Senior Note of Kinder Morgan Kansas, Inc. (included in the Form of Senior Indenture filed as Exhibit 4.2 to Kinder Morgan Kansas, Inc. s Registration Statement on Form S-3 filed on February 4, 2003 (File No. 333-102963) and incorporated herein by reference).
- 10.22 Indenture dated as of December 9, 2005, among Kinder Morgan Finance Company LLC (formerly Kinder Morgan Finance Company, ULC), Kinder Morgan Kansas, Inc. and Wachovia Bank, National Association, as Trustee (filed as Exhibit 4.1 to Kinder Morgan Kansas, Inc. s Current Report on Form 8-K filed on December 15, 2005 (File No. 1-06446) and incorporated herein by reference).
- 10.23 Forms of Kinder Morgan Finance Company LLC notes (included in the Indenture filed as Exhibit 4.1 to Kinder Morgan Kansas, Inc. s Current Report on Form 8-K filed on December 15, 2005 (File No. 1-06446) and incorporated herein by reference).
- 10.24 Form of Indemnification Agreement between Kinder Morgan Kansas, Inc. and each member of the Special Committee of the Board of Directors formed in connection with the Going Private Transaction (filed as Exhibit 10.1 to Kinder Morgan Kansas, Inc. s Current Report on Form 8-K filed on June 16, 2006 (File No. 1-06446) and incorporated herein by reference).
- 10.25 Delegation of Control Agreement among Kinder Morgan Management, LLC, Kinder Morgan G.P., Inc. and Kinder Morgan Energy Partners, L.P. and its operating partnerships (filed as Exhibit 10.1 to the Kinder Morgan Energy Partners, L.P. Form 10-Q for the quarter ended June 30, 2001 (File No. 1-11234) and incorporated herein by reference).
- 10.26 Amendment No. 1 to Delegation of Control Agreement, dated as of July 20, 2007, among Kinder Morgan G.P., Inc., Kinder Morgan Management, LLC, Kinder Morgan Energy Partners, L.P. and its operating partnerships (filed as Exhibit 10.1 to Kinder Morgan Energy Partners, L.P. s Current Report on Form 8-K on July 20, 2007 (File No. 1-11234) and incorporated herein by reference).
- 10.27 Third Amended and Restated Agreement of Limited Partnership of Kinder Morgan Energy Partners, L.P. (filed as Exhibit 3.1 to Kinder Morgan Energy Partners, L.P. Form 10-Q for the quarter ended June 30, 2001 (File No. 1-11234) and incorporated herein by reference).

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10.28	Amendment No. 1 dated November 19, 2004 to Third Amended and Restated Agreement of Limited Partnership of Kinder Morgan Energy Partners, L.P. (filed as Exhibit 99.1 to Kinder Morgan Energy Partners, L.P. Form 8-K filed November 22, 2004 (File No. 1-11234) and incorporated herein by reference).
10.29	Amendment No. 2 to Third Amended and Restated Agreement of Limited Partnership of Kinder Morgan Energy Partners, L.P. (filed as Exhibit 99.1 to Kinder Morgan Energy Partners, L.P. Form 8-K filed May 5, 2005 (File No. 1-11234) and incorporated herein by reference).
10.30	Amendment No. 3 to Third Amended and Restated Agreement of Limited Partnership of Kinder Morgan Energy Partners, L.P. (filed as Exhibit 3.1 to Kinder Morgan Energy Partners, L.P. Form 8-K filed April 21, 2008 (File No. 1-11234) and incorporated herein by reference).
10.31	Kinder Morgan Energy Partners, L.P. Common Unit Compensation Plan for Non-Employee Directors (filed as Exhibit 10.2 to Kinder Morgan Energy Partners, L.P. Form 8-K filed January 21, 2005 (File No. 1-11234) and incorporated herein by reference).
10.32	Form of Common Unit Compensation Agreement entered into with Non-Employee Directors (filed as Exhibit 10.1 to Kinder Morgan Energy Partners, L.P. Form 8-K filed January 21, 2005 (File No. 1-11234) and incorporated herein by reference).
10.33	Credit Agreement dated as of June 23, 2010 among Kinder Morgan Energy Partners, L.P., Kinder Morgan Operating L.P. B , the lenders party thereto, Wells Fargo Bank, National Association as Administrative Agent, Bank of America, N.A., Citibank, N.A., JPMorgan Chase Bank, N.A., and DnB NOR Bank ASA (filed as exhibit 10.1 to Kinder Morgan Energy Partners, L.P. Current Report on Form 8-K filed June 24, 2010 (File No. 1-11234) and incorporated herein by reference).
10.34	First Amendment to Credit Agreement, dated as of July 1, 2011, among Kinder Morgan Energy Partners, L.P., Kinder Morgan Operating L.P. B , the lenders party thereto and Wells Fargo Bank, National Association, as Administrative Agent (filed as Exhibit 10.1 to Kinder Morgan Energy Partners, L.P. s Quarterly Report on Form 10-Q for the quarter ended June 30, 2011 (File No. 1-11234) and incorporated herein by reference).
10.35	Indenture dated as of January 29, 1999 among Kinder Morgan Energy Partners, L.P., the guarantors listed on the signature page thereto and U.S. Trust Company of Texas, N.A., as trustee, relating to Senior Debt Securities (filed as Exhibit 4.1 to Kinder Morgan Energy Partners, L.P. s Current Report on Form 8-K filed February 16, 1999 (File No. 1-11234) and incorporated herein by reference).
10.36	Indenture dated November 8, 2000 between Kinder Morgan Energy Partners, L.P. and First Union National Bank, as Trustee (filed as Exhibit 4.8 to Kinder Morgan Energy Partners, L.P. s Annual Report on Form 10-K for the year ended December 31, 2001 (File No. 1-11234) and incorporated herein by reference).
10.37	Form of 7.50% Notes due November 1, 2010 (contained in the Indenture filed as Exhibit 4.8 to the Kinder Morgan Energy Partners, L.P. Annual Report on Form 10-K for the year ended December 31, 2001 (File No. 1-11234) and incorporated herein by reference).
10.38	Indenture dated January 2, 2001 between Kinder Morgan Energy Partners, L.P. and First Union National Bank, as trustee, relating to Senior Debt Securities (including form of Senior Debt Securities) (filed as Exhibit 4.11 to Kinder Morgan Energy Partners, L.P. Annual Report on Form 10-K for the year ended December 31, 2000 (File No. 1-11234) and incorporated herein by reference).
10.39	Certificate of Vice President and Chief Financial Officer of Kinder Morgan Energy Partners, L.P. establishing the terms of the 6.75% Notes due March 15, 2011 and the 7.40% Notes due March 15, 2031 (filed as Exhibit 4.1 to Kinder Morgan Energy Partners, L.P. Current Report on Form 8-K filed on March 14, 2001 (File No. 1-11234) and incorporated herein by reference).
10.40	Specimen of 6.75% Notes due March 15, 2011 in book-entry form (filed as Exhibit 4.2 to Kinder Morgan Energy Partners, L.P. Current Report on Form 8-K filed on March 14, 2001 (File No. 1-11234) and incorporated herein by reference).

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- 10.41 Specimen of 7.40% Notes due March 15, 2031 in book-entry form (filed as Exhibit 4.3 to Kinder Morgan Energy Partners, L.P. Current Report on Form 8-K filed on March 14, 2001 (File No. 1-11234) and incorporated herein by reference).
- 10.42 Certificate of Vice President and Chief Financial Officer of Kinder Morgan Energy Partners, L.P. establishing the terms of the 7.125% Notes due March 15, 2012 and the 7.750% Notes due March 15, 2032 (filed as Exhibit 4.1 to Kinder Morgan Energy Partners, L.P. Quarterly Report on Form 10-Q for the quarter ended March 31, 2002 (File No. 1-11234) and incorporated herein by reference).
- 10.43 Specimen of 7.125% Notes due March 15, 2012 in book-entry form (filed as Exhibit 4.2 to Kinder Morgan Energy Partners, L.P. Quarterly Report on Form 10-Q for the quarter ended March 31, 2002 (File No. 1-11234) and incorporated herein by reference).
- 10.44 Specimen of 7.750% Notes due March 15, 2032 in book-entry form (filed as Exhibit 4.3 to Kinder Morgan Energy Partners, L.P. Quarterly Report on Form 10-Q for the quarter ended March 31, 2002 (File No. 1-11234) and incorporated herein by reference).
- 10.45 Indenture dated August 19, 2002 between Kinder Morgan Energy Partners, L.P. and Wachovia Bank, National Association, as Trustee (filed as Exhibit 4.1 to the Kinder Morgan Energy Partners, L.P. Registration Statement on Form S-4 filed on October 4, 2002 (File No. 333-100346) and incorporated herein by reference).
- 10.46 First Supplemental Indenture to Indenture dated August 19, 2002, dated August 23, 2002 between Kinder Morgan Energy Partners, L.P. and Wachovia Bank, National Association, as Trustee (filed as Exhibit 4.2 to Kinder Morgan Energy Partners, L.P. Registration Statement on Form S-4 filed on October 4, 2002 (File No. 333-100346) and incorporated herein by reference).
- 10.47 Form of 7.30% Note (contained in the Indenture filed as Exhibit 4.1 to the Kinder Morgan Energy Partners, L.P. Registration Statement on Form S-4 filed on October 4, 2002 (File No. 333-100346) and incorporated herein by reference).
- 10.48 Senior Indenture dated January 31, 2003 between Kinder Morgan Energy Partners, L.P. and Wachovia Bank, National Association (filed as Exhibit 4.2 to the Kinder Morgan Energy Partners, L.P. Registration Statement on Form S-3 filed on February 4, 2003 (File No. 333-102961) and incorporated herein by reference).
- 10.49 Form of Senior Note of Kinder Morgan Energy Partners, L.P. (included in the Form of Senior Indenture filed as Exhibit 4.2 to the Kinder Morgan Energy Partners, L.P. Registration Statement on Form S-3 filed on February 4, 2003 (File No. 333-102961) and incorporated herein by reference).
- 10.50 Certificate of Vice President, Treasurer and Chief Financial Officer and Vice President, General Counsel and Secretary of Kinder Morgan Management, LLC and Kinder Morgan G.P., Inc., on behalf of Kinder Morgan Energy Partners, L.P. establishing the terms of the 5.00% Notes due December 15, 2013 (filed as Exhibit 4.25 to Kinder Morgan Energy Partners, L.P. Annual Report on Form 10-K for the year ended December 31, 2003 (File No. 1-11234) and incorporated herein by reference).
- 10.51 Certificate of Executive Vice President and Chief Financial Officer and Vice President, General Counsel and Secretary of Kinder Morgan Management, LLC and Kinder Morgan G.P., Inc., on behalf of Kinder Morgan Energy Partners, L.P. establishing the terms of the 5.125% Notes due November 15, 2014 (filed as Exhibit 4.27 to Kinder Morgan Energy Partners, L.P. Annual Report on Form 10-K for the year ended December 3, 2004 (File No. 1-11234) and incorporated herein by reference).
- 10.52 Certificate of Vice President, Treasurer and Chief Financial Officer and Vice President, General Counsel and Secretary of Kinder Morgan Management, LLC and Kinder Morgan G.P., Inc., on behalf of Kinder Morgan Energy Partners, L.P. establishing the terms of the 5.80% Notes due March 15, 2035 (filed as Exhibit 4.1 to Kinder Morgan Energy Partners, L.P. Quarterly Report on Form 10-Q for the quarter ended March 31, 2005 (File No. 1-11234) and incorporated herein by reference).

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- 10.53 Certificate of Vice President and Chief Financial Officer of Kinder Morgan Management, LLC and Kinder Morgan G.P., Inc., on behalf of Kinder Morgan Energy Partners, L.P. establishing the terms of the 6.00% Senior Notes due 2017 and 6.50% Senior Notes due 2037 (filed as Exhibit 4.28 to Kinder Morgan Energy Partners, L.P. Annual Report on Form 10-K for the year ended December 31, 2006 (File No. 1-11234) and incorporated herein by reference).
- 10.54 Certificate of the Vice President and Treasurer and the Vice President and Chief Financial Officer of Kinder Morgan Management, LLC and Kinder Morgan G.P., Inc., on behalf of Kinder Morgan Energy Partners, L.P., establishing the terms of the 6.95% Senior Notes due 2038 (filed as Exhibit 4.2 to Kinder Morgan Energy Partners, L.P. Quarterly Report on Form 10-Q for the quarter ended June 30, 2007 (File No. 1-11234) and incorporated herein by reference).
- 10.55 Certificate of the Vice President and Treasurer and the Vice President and Chief Financial Officer of Kinder Morgan Management, LLC and Kinder Morgan G.P., Inc., on behalf of Kinder Morgan Energy Partners, L.P., establishing the terms of the 5.85% Senior Notes due 2012 (filed as Exhibit 4.2 to Kinder Morgan Energy Partners, L.P. Quarterly Report on Form 10-Q for the quarter ended September 30, 2007 (File No. 1-11234) and incorporated herein by reference).
- 10.56 Certificate of the Vice President and Treasurer and the Vice President and Chief Financial Officer of Kinder Morgan Management, LLC and Kinder Morgan G.P., Inc., on behalf of Kinder Morgan Energy Partners, L.P., establishing the terms of the 5.95% Senior Notes due 2018 (filed as Exhibit 4.28 to Kinder Morgan Energy Partners, L.P. Annual Report on Form 10-K for the year ended December 31, 2007 (File No. 1-11234) and incorporated herein by reference).
- 10.57 Certificate of the Vice President and Treasurer and the Vice President and Chief Financial Officer of Kinder Morgan Management, LLC and Kinder Morgan G.P., Inc., on behalf of Kinder Morgan Energy Partners, L.P., establishing the terms of the 9.00% Senior Notes due 2019 (filed as Exhibit 4.29 to Kinder Morgan Energy Partners, L.P. Annual Report on Form 10-K for the year ended December 31, 2008 (File No. 1-11234) and incorporated herein by reference).
- 10.58 Certificate of the Vice President and Chief Financial Officer and the Vice President and Treasurer of Kinder Morgan Management, LLC and Kinder Morgan G.P., Inc., on behalf of Kinder Morgan Energy Partners, L.P., establishing the terms of the 5.625% Senior Notes due 2015, and the 6.85% Senior Notes due 2020 (filed as Exhibit 4.2 to Kinder Morgan Energy Partners, L.P. Quarterly Report on Form 10-Q for the quarter ended June 30, 2009 (File No. 1-11234) and incorporated herein by reference).
- 10.59 Certificate of the Vice President and Chief Financial Officer and the Vice President and Treasurer of Kinder Morgan Management, LLC and Kinder Morgan G.P., Inc., on behalf of Kinder Morgan Energy Partners, L.P., establishing the terms of the 5.80% Senior Notes due 2021, and the 6.50% Senior Notes due 2039 (filed as Exhibit 4.2 to Kinder Morgan Energy Partners, L.P. Quarterly Report on Form 10-Q for the quarter ended September 30, 2009 (File No. 1-11234) and incorporated herein by reference).
- 10.60 Certificate of the Vice President and Chief Financial Officer and the Vice President and Treasurer of Kinder Morgan Management, LLC and Kinder Morgan G.P., Inc., on behalf of Kinder Morgan Energy Partners, L.P., establishing the terms of the 5.30% Senior Notes due 2020, and the 6.55% Senior Notes due 2040 (filed as Exhibit 4.2 to Kinder Morgan Energy Partners, L.P. Quarterly Report on Form 10-Q for the quarter ended June 30, 2010 (File No. 1-11234) and incorporated herein by reference).
- 10.61 Indenture, dated December 20, 2010, among Kinder Morgan Finance Company LLC, Kinder Morgan Kansas, Inc. and U.S. Bank National Association, as Trustee (filed as Exhibit 4.1 to Kinder Morgan Kansas, Inc. s Current Report on Form 8-K filed on December 23, 2010 (File No. 1-06446) and incorporated herein by reference).
- 10.62 Officers Certificate establishing the terms of the 6.000% senior notes due 2018 of Kinder Morgan Finance Company LLC (with the form of note attached thereto) (filed as Exhibit 4.2 to Kinder Morgan Kansas, Inc. s Current Report on Form 8-K filed on December 23, 2010 (File No. 1-06446) and incorporated herein by reference).

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10.63	Certificate of the Vice President and Chief Financial Officer and the Vice President and Treasurer of Kinder Morgan Management, LLC and Kinder Morgan G.P., Inc., on behalf of Kinder Morgan Energy Partners, L.P., establishing the terms of the 3.500% Senior Notes due 2016, and the 6.375% Senior Notes due 2041 (filed as Exhibit 4.1 to Kinder Morgan Energy Partners, L.P.'s Quarterly Report on Form 10-K for the quarter ended March 31, 2011 and incorporated herein by reference).
10.64	Certificate of the Vice President and Chief Financial Officer and the Vice President and Treasurer of Kinder Morgan Management, LLC and Kinder Morgan G.P., Inc., on behalf of Kinder Morgan Energy Partners, L.P., establishing the terms of the 4.150% Senior Notes due 2022, and the 5.625% Senior Notes due 2041 (filed as Exhibit 4.1 to Kinder Morgan Energy Partners, L.P.'s Quarterly Report on Form 10-K for the quarter ended September 30, 2011 and incorporated herein by reference).
10.65	Severance Agreement with C. Park Shaper (filed as Exhibit 10.7 to Kinder Morgan, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (File No. 1-35081) and incorporated herein by reference).
10.66	Severance Agreement with Steven J. Kean (filed as Exhibit 10.8 to Kinder Morgan, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (File No. 1-35081) and incorporated herein by reference).
10.67	Severance Agreement with Kimberly A. Dang (filed as Exhibit 10.9 to Kinder Morgan, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (File No. 1-35081) and incorporated herein by reference).
10.68	Severance Agreement with Joseph Listengart (filed as Exhibit 10.10 to Kinder Morgan, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 2011 (File No. 1-35081) and incorporated herein by reference).
10.69	Class B Share Plan (filed as Exhibit 10.65 to Kinder Morgan, Inc.'s Registration Statement on Form S-1 filed on January 26, 2011 (File No. 333-170773) and incorporated herein by reference).
10.70	Class B Trust Agreement (filed as Exhibit 10.66 to Kinder Morgan, Inc.'s Registration Statement on Form S-1 filed on January 26, 2011 (File No. 333-170773) and incorporated herein by reference).
10.71**	Debt Commitment Letter between Kinder Morgan, Inc. and Barclays Capital PLC, dated as of October 16, 2011.
10.72**	Amendment No. 2, dated as of February 10, 2012, to Credit Agreement dated as of May 30, 2007, among Kinder Morgan, Inc., Kinder Morgan Kansas, Inc., Citibank, N.A., as current administrative agent and current collateral agent, Barclays Bank PLC, as successor administrative agent and successor collateral agent, and the other parties thereto.
10.73**	Acquisition Incremental Joinder, dated as of February 10, 2012, among Kinder Morgan, Inc., Kinder Morgan Kansas, Inc., Citibank, N.A., as current administrative agent, Barclays Bank PLC, as successor administrative agent, and the other parties thereto.
10.74**	Credit Agreement, dated as of February 10, 2012, among Kinder Morgan, Inc., Barclays Bank PLC, as administrative agent and collateral agent, and the other parties thereto.
21.1	Subsidiaries of Kinder Morgan, Inc. (filed as Exhibit 21.1 to Kinder Morgan, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2011 (File No. 1-35081) and incorporated herein by reference).
23.1**	Consent of Weil, Gotshal & Manges LLP (included in their opinion filed as Exhibit 5.1).
23.2**	Consent of Wachtell, Lipton, Rosen & Katz (included in their opinion filed as Exhibit 8.1).
23.3	Consent of PricewaterhouseCoopers LLP.
23.4	Consent of Ernst & Young LLP.

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23.5	Consent of PricewaterhouseCoopers LLP.
23.6	Consent of Netherland, Sewell & Associates, Inc.
23.7	Consent of Ryder Scott Company, L.P.
23.8**	Consent of Seitz Ross Aronstan & Moritz LLP (included in their opinion filed as Exhibit 5.2).
24.1**	Powers of Attorney.
24.2**	Power of Attorney.
99.1	Estimates of the net reserves and future net revenues as of December 31, 2011 to Kinder Morgan CO2 Company, L.P.'s interests in certain oil and gas properties located in the state of Texas (filed as Exhibit 99.2 to Kinder Morgan, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2011 (File No. 1-35081) and incorporated herein by reference).
99.2	Consent of Barclays Capital Inc.
99.3	Consent of Evercore Group L.L.C.
99.4	Consent of Morgan Stanley & Co. LLC.
99.5**	Form of Proxy Card for El Paso Corporation Special Meeting.
99.6	Form of Election for holders of shares of El Paso common stock (filed as Exhibit 99.1 to El Paso Corporation's Current Report on Form 8-K filed on January 30, 2012 and incorporated herein by reference).
99.7**	Form of Proxy Card for holders of shares of El Paso common stock under certain El Paso employee plans.
99.8	Form of Election for holders of shares of El Paso common stock under certain El Paso employee plans (filed as Exhibit 99.2 to El Paso Corporation's Current Report on Form 8-K filed on January 30, 2012 and incorporated herein by reference).
101**	Interactive data files pursuant to Rule 405 of Regulation S-T: (i) Kinder Morgan's Consolidated Statements of Income for the years ended December 31, 2011, 2010 and 2009; (ii) Kinder Morgan's Consolidated Statements of Comprehensive Income for the years ended December 31, 2011, 2010 and 2009; (iii) Kinder Morgan's Consolidated Balance Sheets as of December 31, 2011 and 2010; (iv) Kinder Morgan's Consolidated Statements of Cash Flows for the years ended December 31, 2011, 2010 and 2009; (v) Kinder Morgan's Consolidated Statement of Stockholders' Equity for the years ended December 31, 2011, 2010 and 2009; and (vi) the notes to such annual Consolidated Financial Statements, tagged as blocks of text.

\*\* Previously filed.