

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

IN THE MATTER OF:

PROPOSED NEW REGULATION

No. EIB 21-27 (R)

20.2.50 NMAC – Oil and Gas Sector – Ozone Precursor Pollutants

Hearing Date: September 20, 2021

**PRE-FILED NON-TECHNICAL STATEMENT OF KINDER MORGAN, INC. AND ITS
SUBSIDIARIES AND AFFILIATES, EL PASO NATURAL GAS COMPANY, L.L.C.,
TRANSCOLORADO GAS TRANSMISSION CO., LLC, AND NATURAL GAS
PIPELINE COMPANY OF AMERICA, LLC**

Kinder Morgan, Inc. and its subsidiaries and affiliates, El Paso Natural Gas Company, L.L.C., TransColorado Gas Transmission Co., LLC, and Natural Gas Pipeline Company of America, LLC respectfully submit the enclosed pre-filed non-technical statement.

Respectfully submitted this 28th day of July, 2021.

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On May 6, 2021, the New Mexico Environment Department, Bureau of Air Quality (“NMED” or the “Department”), submitted to the New Mexico Environmental Improvement Board (the “Board”) a petition for rulemaking hearing to consider proposed new regulations—20.2.50 NMAC – Oil and Gas Sector – Ozone Precursor Pollutants—regarding emissions standards applicable to oil and gas operations located in certain areas of New Mexico (the “Proposed Rules”). On May 28, 2021, the Board scheduled a rulemaking hearing (No. EIB 21-27 (R)) to consider the Proposed Rules, commencing September 20, 2021. Kinder Morgan, Inc. and its subsidiaries and affiliates, El Paso Natural Gas Company, L.L.C. (“EPNG”), TransColorado Gas Transmission Co., LLC, and Natural Gas Pipeline Company of America, LLC (collectively, “Kinder Morgan,” “we,” or the “Company”) respectfully submit this pre-filed non-technical statement to address certain policy, legal, and practical matters related to the Proposed Rules (“Non-technical Statement”). This Non-technical Statement supplements Kinder Morgan’s Notice of Intent to Present Technical Testimony (“Technical Testimony”), which Kinder Morgan has filed concurrently with this submission and under separate cover. This Non-technical Statement is intended to offer the Board an introduction to Kinder Morgan and its operations in the state of New Mexico, as well as an overview of Kinder Morgan’s primary comments on the Proposed Rules.

Kinder Morgan thanks NMED for its diligent efforts to consider and address stakeholder feedback prior to this formal rulemaking, and we look forward to working with NMED and the Board to resolve outstanding issues and concerns prior to the hearing in this matter.

I. EXECUTIVE SUMMARY OF POLICY, LEGAL, AND PRACTICAL COMMENTS

Below we provide an executive summary of Kinder Morgan's positions regarding the Proposed Rules. Kinder Morgan also provides, as **Exhibit X** to the Technical Testimony, a redline of the Proposed Rules reflecting specific requested revisions to the Proposed Rules as well as certain additional comments that are not summarized herein.

This Non-technical Statement sets out the following comments on the Proposed Rules.

Transmission Segment Operations are Distinct. Kinder Morgan's operations in New Mexico that will be impacted by the Proposed Rules are its natural gas transmission segment operations. As the Board evaluates the Proposed Rules, we request that the Board consider the unique operational distinctions, discussed in more detail below, between the transmission segment and other segments of industry.

20.2.50.2 NMAC. Section 2 of the Proposed Rules, setting out the scope, should be narrowed to apply only to areas in which ozone concentrations exceed 95% of the primary national ambient air quality standard, consistent with the Board's statutory authority for this rulemaking. Kinder Morgan also requests that the Board revise Section 2 to set out a process by which the Proposed Rules will apply to new areas that exceed 95% of the ozone standard, including notice, an opportunity for public comment, and a reasonable schedule for operators to come into compliance with the Proposed Rules.

Statutory Authority. As a general matter, the Board should give due weight to the technical practicability and economic reasonableness of the Proposed Rules, consistent with its statutory authority for this rulemaking.

20.2.50.113 NMAC. Kinder Morgan has a number of comments regarding Section 113, which is the section of the Proposed Rules that has the potential for greatest impact on Kinder Morgan's operations.

- A provision should be added to Section 113 to accommodate circumstances in which meeting the standards applicable to reciprocating engines and combustion turbines is technically impracticable or economically unreasonable.
- New and existing combustion turbines less than 4,000 bhp should not be required to comply with the standards set out in Table 3 because it is economically unreasonable to require such turbines to comply with those standards.
- Section 113 should be revised to include a staggered compliance schedule to retrofit existing combustion turbines because the retrofitting process for turbines will be time-intensive and costly. This revision would be consistent with the proposed approach for reciprocating engines.
- The time limitation on operating emergency engines should be removed for clarity and consistency with federal law, which does not limit the time that emergency engines can be operated during emergencies.
- Operators should be permitted to maintain reciprocating engines and combustion turbines according to good engineering practice, as an alternative to complying with manufacturers' recommended maintenance schedules.

20.2.50.116 NMAC. Participation in the applicable federal leak detection program should exempt an operator from Section 116. This is particularly important for Kinder Morgan's assets in light of the recent changes in federal law, subjecting the transmission segment to federal leak

detection and repair requirements, as well as the Biden Administration's commitment to issuing new standards for existing sources in the oil and gas industry including the transmission sector.

20.2.50.121 NMAC. Section 121 should be removed in its entirety from the Proposed Rules because regulation of pig launching and receiving sites is not supported by the Department's data. In the alternative, if Section 121 is maintained, the Board should revise the monitoring frequencies consistent with Kinder Morgan's proposal in the redline attached the Technical Testimony. *See* Technical Testimony, Ex. X.

20.2.50.122 NMAC. The Board should adopt Colorado's approach to pneumatic controllers, including by excluding transmission compressor stations from the applicability of Section 122. Excluding transmission compressor stations from Section 122 is justified based on the very low VOC content of the natural gas that is moved through such compressor stations.

20.2.50.114 NMAC. Regulation of compressor seals is not justified in light of the Department's data that shows there are minimal emissions from this activity. Regulation of wet seal systems would result, in many cases, in replacement of wet seal systems with dry seal systems, which would be cost-ineffective and could have negative operational consequences.

20.2.50.115 NMAC. Section 115 should be revised to permit operators to conduct inspections of control devices consistent with federally-approved inspection methods. This revision would avoid the unintended outcome that operators would be required to visually inspect the internal components of a catalyst.

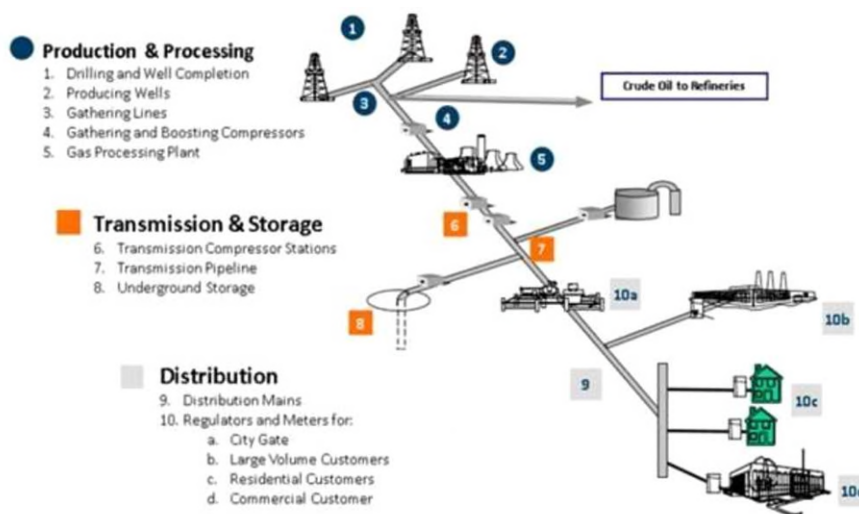
II. INTRODUCTION TO KINDER MORGAN AND ITS OPERATIONS IN NEW MEXICO

Kinder Morgan provides energy transportation and storage services in a safe, efficient, and environmentally responsible manner for the benefit of people, communities, and businesses. In New Mexico, Kinder Morgan operates approximately 3,595 miles of transmission pipelines and

owns assets in 23 counties throughout the state, including in counties that are the subject of the Proposed Rules.¹ In New Mexico alone, Kinder Morgan employs approximately 180 individuals, maintains a payroll of over \$16.6 million, and pays approximately \$8.8 million annually to local and state taxing bodies. Kinder Morgan’s operations are integral to the health and welfare of New Mexico and its communities because the Company delivers affordable and dispatchable pipeline quality natural gas to local distribution companies—meaning the city gates for use in people’s homes for heating, stovetops, water heaters, etc.—and to industrial end users.

Kinder Morgan’s operations in New Mexico that will be impacted by the Proposed Rules are transmission segment operations. See **Figure 1**, Schematic of the natural gas supply chain, American Gas Association and EPA Natural Gas Star Program, (transmission segment identified at numbers 6 and 7).

Figure 1: Schematic of the natural gas supply chain, American Gas Association and EPA Natural Gas Star Program.



Source: Adapted from the American Gas Association and EPA Natural Gas STAR Program.

¹ Kinder Morgan operates assets in the following New Mexico Counties: Chaves, Cibola, Curry, De Baca, Doña Ana, Eddy, Grant, Guadalupe, Hidalgo, Lea, Lincoln, Luna, McKinley, Otero, Quay, Roosevelt, Sandoval, San Juan, Santa Fe, Socorro, Torrance, Union, and Valencia.

As an operator within the transmission segment of the oil and gas industry,² Kinder Morgan's operations in New Mexico are distinct from upstream operations (identified at numbers 1 & 2) as well as midstream gathering and boosting and processing operations (identified at numbers 3, 4, and 5). We discuss these distinctions in more detail in the Technical Testimony. As the Board evaluates the Proposed Rules, we request that the Board consider the unique operational distinctions between the transmission and other segments of industry, including the appropriate application of each of the Proposed Rules.

Prioritizing the protection of public health, safety, welfare, and the environment has always been a priority for Kinder Morgan and is consistent with the Company's Vision and Mission statements,³ which are translated into written internal policies and operating protocols. In fact, enacting procedures to minimize natural gas venting reductions is not new to Kinder Morgan. Kinder Morgan is a founding member of One Nation's Energy Future ("ONE Future"), a unique and voluntary coalition made up of members across the natural gas industry focused on identifying policy and technical solutions that result in improvements in the management and reduction of methane emissions associated with the production, gathering, processing, transmission, and distribution of natural gas.⁴ Members of ONE Future are committed to continuously improving their emissions management to achieve reductions in emissions and to assure efficient use of natural gas. ONE Future's goal is to enhance the energy delivery efficiency of the natural gas supply chain by limiting energy waste and achieving a total methane emission rate of less than one percent of gross natural gas production, well below current estimates for fugitive emissions in the

² Transmission systems are regulated by the Pipeline and Hazardous Materials Safety Administration under 49 C.F.R. Part 192 or 195, as well as the Federal Energy Regulatory Commission under 15 U.S.C. § 717 and 18 C.F.R. Subchapters E, F, G, and I.

³ These statements are available here: <https://www.kindermorgan.com/About-Us/Our-Values>.

⁴ More information about ONE Future can be found here: <https://onefuture.us/>.

sector. The ONE Future coalition represents the entire natural gas value chain, with members from some of the largest natural gas production (upstream), gathering and processing (midstream), and transmission and distribution (downstream) companies in the United States.⁵

In connection with Kinder Morgan's membership in ONE Future, it joined the Environmental Protection Agency's ("EPA's") Methane Challenge program in 2016. As part of this program, Kinder Morgan committed to achieving a methane emission intensity⁶ target of 0.31% by 2025. EPA, *Kinder Morgan Methane Challenge Partner Profile*, available at <https://www.epa.gov/natural-gas-star-program/kinder-morgan-methane-challenge-partner-profile>. By 2018, Kinder Morgan had achieved an emission intensity of 0.03%. *See id.*⁷ This reflects methane emissions reductions of 104,570 metric tons; reductions in carbon dioxide equivalents of 2,614,262 metric tons; and natural gas savings of \$16,339,135 since joining the program. *Id.*

Given the scope of Kinder Morgan's operations in the state of New Mexico, the Proposed Rules would directly and significantly impact the Company, and could impact the end users that the Company serves. In order to ensure that any final rules are reasonable, are grounded in law and sound public policy, and recognize operational limitations specific to the transmission segment of the oil and gas industry, Kinder Morgan submits these comments in response to the Proposed Rules, addressing policy, legal, and practical concerns.

⁵ The transmission segment is sometimes referred to as midstream, however, the critical point is that the transmission segment follows (and is not a part of) the natural gas gathering and boosting and natural gas processing segments.

⁶ In this context, "intensity" means emissions per volume of throughput, and it is expressed as a percentage.

⁷ Kinder Morgan's 2018 emission intensity is reflected as 0.02% on EPA's website due to a rounding error that will be corrected in the near future. Kinder Morgan's 2019 emission intensity, which remains at 0.03%, is not yet reflected on EPA's website. Kinder Morgan has achieved its 2025 target of 0.31% by a wide margin.

III. KINDER MORGAN INCORPORATES BY REFERENCE THE COMMENTS AND PRE-FILED WITNESS TESTIMONY SUBMITTED BY NMOGA

Kinder Morgan has worked closely with the New Mexico Oil and Gas Association (“NMOGA”) to develop industry’s position on the Proposed Rule. Accordingly, except as otherwise provided herein and to the extent consistent with these comments and the Technical Testimony, Kinder Morgan endorses, joins, and incorporates by reference the entirety of the comments, pre-filed technical testimony, and expert witness reports of NMOGA filed in this matter (the “NMOGA Submissions”). For the avoidance of doubt, Kinder Morgan’s incorporation by reference of the NMOGA Submissions includes all content, attachments, exhibits, citations, and documents associated with such submissions.

IV. THE SCOPE SECTION OF THE PROPOSED RULES SHOULD BE REVISED

Section 2 addresses the scope of the Proposed Rules. Kinder Morgan raises two issues for the Board’s consideration regarding this section of the Proposed Rules: (1) the scope of the Proposed Rules appears to be inconsistent with the New Mexico Air Quality Control Act (the “Act”), and (2) the Proposed Rules are set up to apply to new areas of the state after the Rules become effective without any procedural protections afforded to sources and communities affected by such action. We address each of these points in turn.

A. The Scope of the Proposed Rules Must be Narrowed Consistent with Statutory Authority

The Board is limited by statute as to the areas of the state that may be subject to the Proposed Rules, and revisions are required to reflect this limitation. In particular, Section 74-2-5.C of the Act (as recently amended by Senate Bill 8)—the Board’s authority for this rulemaking—states that “[r]ules adopted pursuant to this subsection shall be limited to sources of emissions within the area of the state where the ozone concentrations *exceed* ninety-five percent of the

primary national ambient air quality standard,” (emphasis added). Kinder Morgan has proposed a minor revision to Section 2, shown on **Exhibit X** to the Technical Testimony, to clarify the appropriate scope of the proposed rule, consistent with the Act.

B. The Proposed Rules Must Include a Process by Which Areas of the State Not Covered as of the Effective Date May Become Subject to Rules

Kinder Morgan believes that the public, industry, NMED, and the Board would be well-served by articulating a process by which areas of the state that are not covered by the Proposed Rules as of the effective date may become subject to the Rules in the future. As currently drafted, the Proposed Rules would apply in the future—automatically—to areas that exceed ninety-five percent of the ozone standard. This approach is inconsistent with the Act, which requires notice and public hearing rulemaking for any rule amendment. This approach would also cause the Proposed Rules to abruptly apply to existing operations without adequate time for implementation. Accordingly, Kinder Morgan respectfully requests that the Board adopt the revisions to Paragraph A of Section 2 reflected in the redline attached as **Exhibit X** to the Technical Testimony, which include (1) public notice of the expanded application of the Proposed Rules; (2) an opportunity for public comment and participation in a rulemaking hearing; and (3) a reasonable schedule for operators to come into compliance with the Proposed Rules.

1. Automatic Application of the Proposed Rules to New Areas of the State is Inconsistent with the Act and Fundamental Principles of Due Process

As noted above, the Proposed Rules are currently drafted so that an expansion of the scope of the Proposed Rules would not require notice and a public hearing rulemaking; rather, new areas would be automatically added upon exceedance of the stated threshold. Because adding new areas of the state to the scope of the Proposed Rules would constitute, in substance, an amendment to

the Proposed Rules, this structure appears to contravene the Act and the underlying purposes of public participation in rulemaking.

The Act requires that the board hold a public hearing when it adopts regulations, including *amendments* to regulations. See N.M.S.A. § 74-2-6.B (“No regulations or emission control requirement shall be adopted until after a public hearing by the environmental improvement board or the local board. As used in this section, ‘regulation’ includes any amendment or repeal thereof.”) (emphasis added).⁸ This is consistent with “the fundamental requirements of due process in an administrative context[, which] are reasonable notice and opportunity to be heard and present any claim or defense.” *TW Telecom of New Mexico, L.L.C. v. New Mexico Public Regulation Comm’n*, 256 P.3d 24, 28 (N.M. 2011) (internal quotation marks omitted); see also *Rivas v. Board of Cosmetologists*, 686 P.2d 934, 936 (N.M. 1984) (“[T]he minimum protections upon which administrative action may be based, are according to interested parties a simple notice and right to comment.”) (internal quotation marks omitted); *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (“For more than a century the central meaning of procedural due process has been clear: Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.”) (internal quotation marks omitted). Adding new sources to a rule undoubtedly constitutes a rule amendment, entitling such sources to due process: notice and an opportunity to be heard.⁹

Amending the rule—through notice and public hearing rulemaking—to address new geographical areas is also consistent with analogous circumstances. For example, EPA undertakes

⁸ The Board’s rules require that hearings be noticed to the public at least 60 days prior to the hearing. 20.1.1.301.A. NMAC.

⁹ Amendment broadly means any change to a statute, rule, or other document. See Black’s Law Dictionary, AMENDMENT, (11th ed. 2019) (“A formal and usu. minor revision or addition proposed or made to a statute, constitution, pleading, order, or other instrument; specif., a change made by addition, deletion, or correction; esp., an alteration in wording.”).

notice and comment rulemaking processes before promulgating redesignations of attainment and nonattainment areas under 42 U.S.C. § 7407(d)(3). *See* 42 U.S.C. § 7407(d)(2)(A) (requiring EPA to publish a notice in the Federal Register before promulgating any changes to existing designations under section (d)(3)); 42 U.S.C. § 7407(d)(2)(B) (exempting certain designation processes—but not redesignations under section (d)(3)—from notice and comment). Like an EPA redesignation of an area from attainment to nonattainment, subjecting new areas to the Proposed Rules has major consequences for stakeholders affected by that decision.

Further, there are strong public policy reasons to ensure public participation in rulemaking. The policies underlying the federal Administrative Procedure Act (“APA”)—which inform New Mexico courts assessing issues of administrative law—are “to serve the need for public participation in agency decisionmaking and to ensure the agency has all pertinent information before it when making a decision.” *Elec. Privacy Info. Ctr. v. U.S. Dept. of Homeland Sec.*, 653 F.3d 1, 6 (D.C. Cir. 2011) (internal quotation marks and citations omitted). As noted above, expanded application of the Proposed Rules will have a substantial impact on affected sources and communities such that their participation in the agency’s decisionmaking process is essential. Operators will be subject to different and significantly more stringent emission control requirements than they have been in the past. Moreover, without providing stakeholders the opportunity to comment on the data underlying a decision to subject an area to the Proposed Rules, the Board would not have gathered all of the pertinent information available to it to inform its decision. It is also significant that the triggering event for an area to become subject to the Proposed Rules is outside the control of any single operator or other stakeholder. Thus, such operators and other stakeholders will not be able to anticipate whether or when the Proposed Rules

will apply to them in order to prepare accordingly. This makes notice and an opportunity to participate in the rulemaking process all the more important in this context.

In sum, the law requires—and sound public policy supports—that, prior to being subjected to regulation, persons be afforded notice and an opportunity to submit their views regarding the proposed regulation. To satisfy these requirements in the context of any future expanded application of the Proposed Rules, certain changes are needed. The Proposed Rules must contain a notice and public hearing mechanism for areas and sources that may become subject to the Rules following the effective date.

2. If and When Applied to New Areas Through a Notice and Public Hearing Rulemaking, the Proposed Rules Must Afford Operators a Reasonable Amount of Time to Come into Compliance

The Act also provides that “[n]o regulations or emission control requirements adopted by the environmental improvement board or the local board shall become effective until thirty days after its filing under the State Rules Act.” N.M.S.A. § 74-2-6.F. Subject to certain limited exceptions, the federal APA provides an equivalent protection: “The required publication or service of a substantive rule shall be made not less than 30 days before its effective date.” 5 U.S.C. § 553(d). The purpose of this delay between publication or service and the effective date of a rule is to “afford[affected parties] a reasonable time to adjust to the new regulation.” *American Federation of Government Emp., AFL-CIO v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981). Because newly-added sources will be subject to the Proposed Rules only after its effective date, and presumably immediately, they will not benefit from intentional and scheduled implementation. Operators in any new geographical areas are entitled to a reasonable time to adjust.

It is also not clear how newly-added sources will navigate the compliance schedules set out in certain sections of the Proposed Rules (*e.g.*, Section 113), even with a grace period of thirty

days after adoption. Thus, if and when a geographic area becomes subject to the Proposed Rules, the Board must create implementation schedules for that area consistent with the Proposed Rules' treatment of sources subject to the Proposed Rule as of the effective date. For example, if a new geographic area is added after January 1, 2029, then that area will need a new multi-year schedule to install engine emission controls. Without the addition of such implementation schedules, significant and costly regulatory obligations may be foisted on newly-added sources with unachievable and in some cases past-due compliance dates. An expectation of immediate compliance is inconsistent with the carefully crafted implementation schedules that NMED has included in the Proposed Rules.

For the reasons stated above, Kinder Morgan proposes revisions to Paragraph A of Section 2 that are designed to safeguard the due process rights of sources that become subject to the Proposed Rules following the effective date and to ensure that certain mechanics of the Proposed Rules apply sensibly and equitably to such sources. These proposed revisions are reflected in the redline attached as **Exhibit X** to the Technical Testimony.

V. THE BOARD SHOULD GIVE DUE WEIGHT TO THE TECHNICAL PRACTICABILITY AND ECONOMIC REASONABLENESS OF THE PROPOSED RULES

The Board's authority for this rulemaking derives from NMSA Section 74-2-5, as recently amended by Senate Bill 8. Among other things, that section directs the Board to consider all facts and circumstances when exercising its rulemaking authority. Specifically, Section 74-2-5.F. (emphasis added) provides:

In making its rules, the environmental improvement board or the local board shall give weight it deems appropriate to all facts and circumstances, including:

(1) character and degree of injury to or interference with health, welfare, visibility and property;

(2) the public interest, including the social and economic value of the sources and subjects of air contaminants; and

(3) *technical practicability and economic reasonableness* of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

While this section permits the Board to exercise its professional discretion regarding the weight to attribute to any particular fact or circumstance, the legislature has made clear that all facts and circumstances must be considered, and certain facts and circumstances are of particular importance. Specifically, the legislature directed the Board to take into account the (1) social and economic contributions of the regulated community to the state of New Mexico, (2) technical practicability of any proposed rule, and (3) economic reasonableness of any proposed rule during the course of its rulemaking processes. The Proposed Rules, in particular, warrant that appropriate weight be given to each of these enumerating factors given the expansive scope and broad impacts of the proposals.

In the comments below, and in its supplemental Technical Testimony, Kinder Morgan raises certain concerns regarding technical and cost implications of these Proposed Rules. Kinder Morgan asks that the Board keep in mind its obligation to consider these issues—together with Kinder Morgan's essential role in transporting gas to all corners of New Mexico and beyond—throughout this rulemaking proceeding.

VI. ENGINES AND TURBINES

A. An Introduction to Engines and Turbines

Kinder Morgan operates approximately 15 reciprocating engines and 15 combustion

turbines that it anticipates will be subject to the Proposed Rules. Kinder Morgan utilizes these engines and turbines at compressor stations to enable the movement of natural gas along Federal Energy Regulatory Commission (“FERC”)-certificated interstate transmission pipelines to local distribution companies for ultimate distribution to residential, commercial, and other industrial consumers. Engines and turbines drive transmission compressor stations and are, therefore, critical to ensure timely and necessary availability of and access to natural gas. For example, and as the Board is aware, New Mexico experiences periodic severe weather. In February 2011, December 2015, and February 2021, New Mexico experienced colder than normal temperatures, resulting in increased demand for natural gas for gas heating and gas-fired electricity. In these instances, and as a matter of course, Kinder Morgan typically increases use of its engine and turbine fleet and accesses gas stored at its FERC-regulated underground natural gas storage facilities to enable the Company to keep gas flowing, keeping many communities safe and warm. In this context, it is important that the Board carefully evaluate and ultimately adopt reasonable regulations.

In order to provide further context for the size and nature of these engines and turbines, we refer the Board to **Exhibit VI**, pp.1-2, of our Technical Testimony. Both engines and turbines are incredibly large and complex units, not readily mobile, and very expensive. The size and complexity of these units warrants thoughtful application of the Proposed Rules. The following sections provide an overview of certain policy and practical concerns identified by Kinder Morgan. Where noted below, we refer the Board to our Technical Testimony for an in-depth technical discussion regarding each matter.

B. The Proposed Rules Must Account for Technical Impracticability and Economic Unreasonableness

As described above in Section V, the Board must consider the technical practicability and economic reasonableness of its rules, together with the social and economic contributions of

covered sources to the state, and should give due weight to these considerations in this rulemaking given the potential impact of the Proposed Rules. *See* NMSA § 74-2-5.F.

Kinder Morgan acknowledges that the Board may not have an established methodology for determining economic reasonableness. To provide the Board and the Department with guidance for determining what is and what is not economically reasonable, we researched cost-effectiveness benchmarks employed by other regulatory agencies, which are summarized in our Technical Testimony. *See* Technical Testimony, at Ex. VI, pp.11-14. The benchmarks serve as useful points of reference, and Kinder Morgan encourages the Board and the Department to consider them when evaluating the economic reasonableness of any rule or rule application.

With that background, Kinder Morgan brings to the Board's attention two contexts in which it is particularly concerned about the technical and cost implications of the Proposed Rules: (1) where retrofitting an engine or turbine to comply with the Section 113 would be technically impracticable or economically unreasonable, as demonstrated on a case-by-case basis; and (2) retrofitting turbines with ratings below 4,000 bhp to meet the emissions standards set out in Table 3. Below we provide a high-level summary of the policy and practical implications of these issues, and we provide additional technical discussion and information in the Technical Testimony.

1. The Proposed Rules Must Include an Opportunity to Demonstrate That the Requirements in Table 1 and Table 3 Are Technically Impracticable or Economically Unreasonable, As Determined On a Case-by-Case Basis

Kinder Morgan is concerned that it may be technically impracticable or economically unreasonable to retrofit certain of its existing natural gas-fired spark-ignition engines or stationary natural gas-fired combustion turbines to achieve the respective ambitious emissions standards set out in Table 1 and Table 3. The technical and cost practicability of installing controls on any individual engine or turbine will vary and will depend, in part, on site-specific considerations such

as space for the installation of the control, the availability of sufficient power, and the emissions reductions required to meet the applicable standards. This issue is discussed in greater detail in Kinder Morgan's Technical Testimony. *See* Technical Testimony, at Ex. VI, pp.7-9. Accordingly, Kinder Morgan respectfully requests that the Board include a mechanism in the Proposed Rules by which an owner or operator could be relieved of the obligation to comply with Table 1, and the portion of Table 3 applicable to existing turbines, upon a showing (and determination by the Department) that compliance would be technically impracticable or economically unreasonable. Kinder Morgan has proposed language to this effect in the redline attached as **Exhibit X** to the Technical Testimony.

While the Proposed Rules permit an owner or operator to reduce the operating hours of an engine in lieu of achieving the standards for NO_x and VOC set out in the Proposed Rules,¹⁰ this alternative compliance option is not be feasible for Kinder Morgan.¹¹ As a natural gas transmission company, Kinder Morgan cannot, in all circumstances, limit operation of its units in lieu of achieving the emissions reductions contemplated by the Proposed Rules. As discussed in more detail in the Technical Testimony, doing so could compromise the well-being of the individuals, public institutions, and businesses that rely on the natural gas that Kinder Morgan transports for heat, cooking, and industrial uses, among others, and could result in breach of Kinder Morgan's FERC-regulated delivery obligations.¹²

¹⁰ *See* Section 113.B.(2)(d) ("[I]n lieu of meeting the emission standards for an existing natural gas-fired spark ignition engine, an owner or operator may reduce the annual hours of operation of an engine such that the annual NO_x and VOC emissions are reduced by at least ninety-five percent per year.").

¹¹ Notably, the Proposed Rules omit this provision in the portion of Section 113 addressing turbines, without explanation. In its redline of the Proposed Rules, however, Kinder Morgan has added an equivalent mechanism in the turbine section. *See* Technical Testimony, Ex. X.

¹² Kinder Morgan's proposal is not only justified on the basis of technical and cost considerations, but it is also in the public interest. *See* NMSA § 74-2-5.F (requiring the Board to consider the public interest, including the social and economic value of subject sources). The social and economic value that Kinder Morgan provides to residents of New Mexico cannot be overstated. Without the transmission sector, natural gas would not arrive at homes, schools, businesses, and other locations, and many New Mexicans would be left without, among other things, heat, hot water, and the ability to cook.

Importantly, the mechanisms that Kinder Morgan proposes in the redline attached to the Technical Testimony as **Exhibit X** addressing circumstances of technical impracticability or economic unreasonableness apply only to *existing* engines and turbines for which these concerns might arise, and would only be invoked if absolutely necessary and upon a strong body of evidence to ensure reliable and safe service to its customers.

2. It Is Economically Unreasonable to Require New and Existing Turbines with a Rating Below 4,000 bhp to Comply With the Table 3 Emissions Standards

The Proposed Rules would require existing turbines with a rating greater than or equal to 1,000 bhp and less than 5,000 bhp to achieve (1) NO_x and CO emissions standards of 50 ppmvd @ 15% O₂, and (2) an NMNEHC emission standard, as propane, of 9 ppmvd @ 15% O₂. *See* Section 113.B., Table 3. New units of this size would be required to achieve NO_x and CO emissions standards of 25 ppmvd @ 15% O₂, and the same NMNEHC standard as for existing units. *See id.* For units with ratings below 4,000 bhp, these standards are categorically economically unreasonable. Thus, Kinder Morgan respectfully requests that the Board revise the standards applicable to 1,000-5,000 bhp units to apply only to 4,000-5,000 bhp units, as shown in the redline attached as **Exhibit X** to the Technical Testimony.

Achieving the Table 3 NO_x standard would require installation of selective catalytic reduction (“SCR”). We provide a detailed technical discussion of the necessity for and the cost of installing SCR on certain of Kinder Morgan’s impacted units. *See* Technical Testimony, at Ex. VI, at pp.10-14. While Kinder Morgan is committed to installing, where appropriate, this control technology to the extent it is technically practicable for its larger units. However, for units between 1,000 and 3,999 bhp, the cost of installing SCR is simply exorbitant. As described in greater detail

in the Technical Testimony, the cost of installing SCR on two of Kinder Morgan's 1,051 bhp turbines would be approximately \$974,508 per ton of NO_x reduced for one unit and approximately \$830,527 for the other. See Technical Testimony, at Ex. VI, p.11. On top of that, Kinder Morgan would then need to install an oxidation catalyst to meet the CO and NMNEHC standards in Table 3. This additional expense only further exacerbates the cost-ineffectiveness of the standards as applied to turbines with a rating below 4,000 bhp. We would expect the costs to install SCR in order to achieve the 25-ppmvd NO_x standard for new combustion turbines to be comparable if not higher than these estimates.

Based on the established measures described in the Technical Testimony, a cost of well over \$800,000 per ton of VOC and/or NO_x reduced should clearly be deemed unreasonable. Thus, Kinder Morgan respectfully requests that the Board change the standards applicable to 1,000-5,000 bhp units to apply only to 4,000-5,000 bhp units. This proposal is reflected in the redline included as **Exhibit X** to the Technical Testimony.

C. Similar to the Phased Approach for Engines, the Proposed Rules Must Afford Owners or Operators of Turbines a Reasonable Schedule for Implementation of the Turbine Emission Standards for Existing Turbines

In recognition of the stringency of the standards set out in Table 1 applicable to existing natural gas-fired spark-ignition engines and the challenges associated with meeting those standards on a short timeframe, the Department has set out a phased compliance schedule, which allows owners or operators to retrofit their engines over a period of six years. See Section 113.B.(2). This is a sensible approach and Kinder Morgan commends the Department for developing it. Kinder Morgan also urges the Board to adopt a phased compliance schedule for turbines as shown on the redline attached to the Technical Testimony as **Exhibit X** in lieu of the current requirement that all existing turbines comply with the Table 3 standards within two years of the rule's effective

date.¹³ See Section 113.B., Table 3 (“For each natural gas-fired combustion turbine constructed or reconstructed and installed before the effective date of 20.2.50 NMAC, the owner or operator shall ensure the turbine does not exceed the following emissions standards no later than two years from the effective date of this Part.”).

This phased compliance schedule is necessary for two primary reasons. First, Kinder Morgan operates approximately the same number of turbines as it does engines within the areas that will be subject to the Proposed Rules on the effective date. And, second, the modifications necessary to achieve the thresholds proposed in Tables 1 and 3, respectively, are equally as significant, custom, costly, and time-intensive. We discuss the technical aspects of these issues in greater detail in the Technical Testimony. See Technical Testimony, at Ex. VI, pp.15-18. Because there appears to be no reason for treating engines and turbines differently with respect to the timeline to achieve compliance of the Proposed Rules’ standards, Kinder Morgan respectfully requests that the Board implement the phased compliance schedule to retrofit turbines set out in the redline attached as **Exhibit X** to the Technical Testimony.

D. The Exemption for Emergency Engines Must be Clarified

In their current form, the Proposed Rules exempt emergency use engines that are operated for fewer than 100 hours per year from the standards set out in Section 113. Section 113.B(10) (“The owner or operator of an emergency use engine that is operated less than 100 hours per year is not subject to the emissions standards in this Part but shall be equipped with a non-resettable hour meter to monitor and record any hours of operation.”). While this is an important revision from the pre-petition version of the Proposed Rules, which included no carve-out for emergency

¹³ Even if the Board adopts the proposal in Section VI.B.2 of this Non-technical Statement to change the standards applicable to 1,000-5,000 bhp turbine units to apply only to 4,000-5,000 bhp turbine units (both new and existing), given the number of turbines Kinder Morgan operates and the complexity of the required retrofits, the request in this Section VI.C for a revised implementation schedule applicable to turbines remains a priority request.

use engines, Kinder Morgan believes that clarifying edits are needed to accomplish the apparent intent of this section. Kinder Morgan has proposed revisions in the redline attached to the Technical Testimony as **Exhibit X**, the result of which are that emergency use engines, as that term is used in applicable federal regulations, would be exempted from the standards of Section 113.

As discussed in further detail in the Technical Testimony, emergency engines serve a vital function in Kinder Morgan's, and other operators', operations. See Technical Testimony, Ex. VI, pp.18-20. The concern, however, is that Section 113 is drafted such that it limits the amount of time an emergency engine can operate, even in emergency situations. In effect, the proposal redefines what constitutes an emergency engine in a way that is inconsistent with federal law. Under federal law, there is no time limit on the use of emergency engines during emergencies. See 40 C.F.R. § 60.4211(f)(1); 40 C.F.R. § 60.4243(d)(1). Rather, the 100-hour limit applies only to non-emergency uses of emergency engines (*e.g.*, maintenance and testing). See 40 C.F.R. § 60.4211(f)(2); 40 C.F.R. § 60.4243(d)(2). This makes good sense as a policy matter because an overall cap on operating time would create an impediment—under threat of potential enforcement action for non-compliance—for operators to run their emergency engines to properly respond to and redress emergency situations.

For the foregoing reasons, Kinder Morgan encourages the Board to adopt the minor revisions proposed in the redline attached to the Technical Testimony as **Exhibit X** to exempt emergency engines from Section 113's emission standards, consistent with federal regulation of those engines.

E. Manufacturer's Recommended Maintenance Schedules Should Not Be the Sole Standard for Maintenance Practices

The Proposed Rules require that maintenance and repair of engines and turbines “meet the minimum manufacturer recommended maintenance schedule.” Section 113.C(1). Kinder Morgan proposes a minor edit to this provision to permit operators to conduct maintenance and repair consistent with good engineering and maintenance practices, as an alternative to complying with manufacturers’ recommended maintenance schedules. This revision is consistent with standard Air Quality Bureau permit conditions for engines and turbines. *See* Technical Testimony, at Ex. VI, pp.20-21.

Limiting an operator to conducting maintenance and repair consistent with minimum manufacturer recommended schedules is problematic because the manufacturer recommendations for many older engines may be either unavailable or outdated. Consistent with applicable permit conditions, Kinder Morgan has developed its own maintenance and repair protocols that it uses for certain of its engines and turbines. These protocols are carefully crafted and followed, consistent with good engineering and maintenance practice. Kinder Morgan also notes that its proposal is consistent with Colorado’s more flexible approach to standards for required maintenance. *See, e.g.,* 5 CCR 1001-9.E.I.D.2.b. (“All engines and their associated equipment must be operated and maintained pursuant to the manufacturing specifications or equivalent to the extent practicable, and consistent with technological limitations and good engineering and maintenance practices.”), E.II.A.6.b.(vii) (“The owner or operator must operate and maintain the . . . stationary combustion turbine [or] stationary internal combustion engine . . . consistent with manufacturer’s specifications, if available, or good engineering and maintenance practices.”).

VII. LEAK DETECTION AND REPAIR

As stated above, Kinder Morgan is a founder of and has entered into a methane reduction commitment through the ONE Future coalition and the EPA Natural Gas STAR program. Through involvement in this program, Kinder Morgan has committed to achieving an intensity target of 0.31% by 2025, and is well below that target today. To achieve this target rate, Kinder Morgan has committed to performing annual leak inspections at its natural gas transmission and storage compressor stations. In fact, as of 2020, 100% of Kinder Morgan's natural gas transmission compressor stations located in New Mexico were implementing the ONE Future commitment and associated internal procedures, and, by the end of 2021, all of Kinder Morgan's natural gas transmission compressor stations throughout the country will be implementing the commitment. This further demonstrates Kinder Morgan's commitment to responsible operation.

As the Board is likely aware, Congress recently used the Congressional Review Act to reinstate the methane oil and gas standards for new sources that EPA developed under President Obama and reinstate the application of these standards to the transmission and storage sector. S.J. Res. 14, available at <https://www.congress.gov/bill/117th-congress/senate-joint-resolution/14/text> (disapproving 85 Fed. Reg. 57,018 (Sept. 14, 2020)); *see also* EPA, *Congressional Review Act Resolution to Disapprove EPA's 2020 Oil and Gas Policy Rule: Questions and Answers* (June 30, 2021), at 2–3, available at https://www.epa.gov/sites/production/files/2021-06/documents/qa_cra_for_2020_oil_and_gas_policy_rule.6.30.2021.pdf [hereinafter “EPA Q&A”] (explaining that transmission and storage sector sources constructed or modified after September 2015 are now subject to the methane and VOC NSPS of Subpart OOOOa and transmission and storage sector sources constructed or modified between August 2011 and September 2015 are now subject to the VOC requirements of Subpart OOOO).

While the reinstated Obama-era rules apply only to new sources, President Biden—on his first day in office—directed EPA to consider “proposing new regulations to establish comprehensive standards of performance and emission guidelines for methane and volatile organic compound emissions from existing operations in the oil and gas sector, including the exploration and production, transmission, processing, and storage segments, by September 2021.” *Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (Jan. 20, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>. EPA will be issuing a proposed rule to regulate existing sources in September 2021, consistent with this direction. EPA Q&A, at 2.

With this change in the law, the transmission and storage sector no longer falls in the perceived policy void that existed when the Department proposed this rulemaking and drafted the Proposed Rules. As of June 30, 2021, sources constructed or modified after September 2015 within the transmission sector returned to being subject to the rigorous VOC and methane requirements, including leak detection requirements, set out in Subpart OOOOa. These requirements will almost certainly be extended to sources constructed before September 2015 in the upcoming EPA rulemaking.

In light of these changes, Kinder Morgan respectfully requests that the Board revise the Proposed Rules to state that compliance with NSPS OOOO, OOOOa, or another NSPS subpart, as each may be revised, satisfies the requirements of Section 116. Kinder Morgan respectfully requests that the Board adopt the proposed revision to Section 116.A., shown on the redline attached as **Exhibit X** to the Technical Testimony. A further technical explanation requesting why this revision is necessary to avoid implementing a duplicative leak detection program for sources

already adequately regulated by the federal government is provided in the Technical Testimony at **Exhibit VII**.

VIII. PIG LAUNCHING & RECEIVING

Kinder Morgan supports NMOGA’s comment that Section 121 should be removed in its entirety from the Proposed Rules because its inclusion is not supported by the Department’s own emissions reductions data. Kinder Morgan writes separately only to state that—if the Board retains Section 121—the monthly monitoring requirement that could result from Section 121’s incorporation of Section 112 must be modified as applied to transmission operations. *See* Section 121.C.(4) (“The owner or operator shall comply with the monitoring requirements in 20.2.50.112 NMAC.”); Section 112.B.(1) (“Sources subject to emission standards and monitoring . . . requirements under this Part shall be inspected monthly to ensure proper maintenance and operation, unless a different schedule is specified in the Section applicable to that source type.”).¹⁴

Kinder Morgan uses “mechanical cleaning” pigs to remove liquids that may accumulate in the pipelines that transport natural gas, and, as required by the Pipeline and Hazardous Materials Safety Administration, uses “smart pigs” to detect anomalies in and the integrity of its pipelines. Because transmission lines move pipeline quality natural gas and contain far fewer liquids, transmission lines are pigged less frequently than gathering lines, which might be pigged on a weekly or even a daily basis. Kinder Morgan sometimes mechanically pigs its pipelines annually, and at least every three years, for maintenance purposes. Typically, we also do an in-line “smart pig” inspection once every five to seven years. Monthly monitoring of transmission line pigging operations, then, is misaligned with the realities of these operations and would be entirely unreasonable and cost-ineffective in the transmission context.

¹⁴ Whether the incorporation of Section 112 is intended to impose a monthly monitoring requirement is unclear. Our proposed changes in **Exhibit X** to the Technical Testimony are intended to improve the clarity of this section.

For the reasons described above, and to the extent that the Board retains Section 121, Kinder Morgan proposes revised frequencies for audio, visual, and olfactory; EPA reference method 21; or optical gas imaging inspections of pig launching and receiving sites. Revisions to the Proposed Rules are reflected in **Exhibit X** to the Technical Testimony.

IX. PNEUMATIC CONTROLLERS

Kinder Morgan understands that in developing the Section 122 Pneumatic Controllers and Pumps proposal, NMED intended to model its rule after the Colorado rule regarding new and existing pneumatic controllers that was adopted earlier in 2021 (the “Colorado Rule”).¹⁵ In an effort to reconcile several foundational differences between NMED’s pneumatics proposal and the Colorado Rule, including with respect to scope and applicability, NMOGA has developed and will be submitting substantial rule revisions to Section 122. Kinder Morgan adopts and incorporates by reference those rule revisions proposed by NMOGA. As NMED is aware, the Colorado Rule was a consensus proposal across a variety of stakeholder groups including industry, non-governmental organizations, local governments, and the Colorado Air Pollution Control Division. This balanced rule applies to well production facilities and gathering and boosting natural gas compressor stations, but not to transmission compressor stations.¹⁶ Kinder Morgan submits that in modeling its approach to pneumatic controllers on the Colorado Rule, NMED should, like the AQCC in the Colorado Rule, exclude transmission compressor stations from Section 122. Excluding transmission compressor stations from regulation of pneumatic controllers is justified based on, among other reasons, the low VOC content of the natural gas moved through Kinder

¹⁵ See Colorado Air Quality Control Commission (“AQCC”) Regulation No. 7, Part D, Section III.

¹⁶ Note that prior to 2021, the AQCC adopted rules to regulation pneumatic controllers located at natural gas processing plants. See AQCC Regulation No. 7, Part D, Section III.C.2.

Morgan's transmission compressor stations,¹⁷ which in turn limits the cost-effectiveness of the proposed emissions standards.

X. COMPRESSOR SEALS

Kinder Morgan supports NMOGA in its request and recommendation that Section 114, addressing compressor seals, be removed from the Proposed Rule. According to technical analysis produced by NMED's consultant, VOC emissions from compressor seals is estimated to be particularly low: 13 tpy, comprising at 0.006% of the total VOC emissions from the sources evaluated. Draft Memorandum from Mike Pring, Brian Palmer, and Stephen Treimel of Eastern Research Group, Inc. to Elizabeth Kuehn, of NMED Air Quality Bureau dated June 4, 2021 regarding Emissions Inventory Reductions, at 2, tbl. 2. The consultant further estimates that application of the Proposed Rules will reduce the 13 tpy total VOC emissions by 6 tpy. *Id.* Furthermore, as outlined in Kinder Morgan's Technical Testimony, the costs for replacing wet seals with dry seals (which would be the likely outcome for Kinder Morgan's assets) are unreasonably high. Because the potential emissions that are the subject matter of the proposed compressor seal performance standards are de-minimis at best, even relatively small costs (which are not anticipated) may not be justified.

Compounding this economic feasibility concerns, conversion of a wet seal to a dry seal can cause potential negative operational implications. Kinder Morgan discusses this particular concern in further detail in its Technical Testimony. *See* Technical Testimony, Ex. IX.

Kinder Morgan respectfully requests the Board strike Section 114 from the Proposed Rules, or, in the alternative, that the Board eliminate transmission compressor stations from the applicability of this section.

¹⁷ The VOC content of the natural gas that Kinder Morgan transports is discussed in greater detail in the Technical Testimony. *See* Technical Testimony, at Ex. V, pp.2-3.

XI. CONTROL DEVICES

Kinder Morgan requests one minor clarification with respect to Section 115 regarding control devices. The definition of control devices expressly includes catalytic converters (oxidative, selective, and non-selective). By virtue of the proposed emissions standards in Section 113 of the Proposed Rules, many operators, including Kinder Morgan, will be required to install catalytic converters on turbines. Paragraph B.(2) of Section 115 requires monthly inspection of all control devices. Kinder Morgan does not object to conducting monthly inspections but requests clarification that the inspection may be performed “consistent with federally approved inspection methods.” Without this clarification, we are concerned that the reference to visual or other inspections could be interpreted to mean that Kinder Morgan would have to visually check the internal component parts of the catalyst. A monthly visual check of the catalyst would be a significant undertaking. The engine would need to be shut down and permitted time to cool, and the inspection may require use of a cherry picker to lift the heavy unit for internal inspection. To avoid this unnecessary outcome, operators should be permitted to conduct the required inspection consistent with federally approved methods such as National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (40 C.F.R. Part 62, Subpart ZZZZ).

XII. CONCLUSION

Kinder Morgan appreciates the opportunity to submit this Non-technical Statement, and we look forward to working with the Department and the Board on resolution of these important issues. Kinder Morgan reserves the right to amend and/or supplement the policy, legal, and factual issues presented herein.

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2021, a true and correct copy of the foregoing **PRE-FILED NON-TECHNICAL STATEMENT OF KINDER MORGAN, INC. AND ITS SUBSIDIARIES AND AFFILIATES, EL PASO NATURAL GAS COMPANY, L.L.C., TRANSCOLORADO GAS TRANSMISSION CO., LLC, AND NATURAL GAS PIPELINE COMPANY OF AMERICA, LLC** was served via electronic mail to the following:¹⁸

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¹⁸ This list reflects the Board, the Department, and persons that have entered an appearance in this matter as posted to the Environmental Improvement Board's website as of 2:00 PM Mountain Time on July 28, 2021.

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