

STATE OF COLORADO )  
 ) ss  
COUNTY OF OURAY )

Resolution No. 2003-060

At a regular meeting of the Board of County Commissioners for Ouray County, Colorado, held at the Ouray County Courthouse, on the 10<sup>th</sup> day of November, 2003, there were present:

Don Batchelder, Chairperson and Tom Hollenbeck, Commissioner

when the following proceedings, among others, were had and done to-wit:

**WHEREAS**, Kinder Morgan, Inc. and Rocky Mountain Natural Gas, Inc., joint applicants, have submitted to Ouray County an application for a Special Use Permit to allow the location and installation of natural gas distribution, transmission lines, and appurtenances to provide natural gas utilities to the unincorporated areas of Ouray County; and

**WHEREAS**, while the Special Use Permit applies strictly to the unincorporated areas of Ouray County Ouray, the Board of County Commissioners recognizes and supports other governmental entities' rights and responsibilities in processing permits, franchise agreements or other requests by the applicants; and.

**WHEREAS**, the Board of County Commissioners has reviewed the request in accordance with Section 5.3 of the Ouray County Land Use Code during regular meetings on September 29, 2003, October 20, 2003, October 27, 2003 and November 10, 2003 is ready to take action.

**NOW, THEREFORE, BE IT RESOLVED**, that in accordance with Section 5.3 of the Ouray County Land Use Code, the Board of County Commissioners of Ouray County do hereby APPROVE the requested Special Use Permit in accordance with the Findings of Fact and Decision attached hereto.

Introduced, read and passed this 10<sup>th</sup> day of November, 2003.

Voting in the affirmative: Don Batchelder and Tom Hollenbeck

Voting in the negative: None

Abstaining: Bill Ferguson

Absent: None

THE BOARD OF COUNTY COMMISSIONERS OF  
OURAY COUNTY, COLORADO

BY: [Signature]  
Don Batchelder  
Chairman, Board of County Commissioners

ATTEST: [Signature]



STATE OF COLORADO )  
 )ss.  
COUNTY OF OURAY )

I, Michelle Olin, County Clerk and ex-officio Clerk of the Board of County Commissioners in and for the County and State aforesaid, do hereby certify that the annexed and foregoing Resolution is truly copied from the records of the Proceedings of the Board of County Commissioners for said Ouray County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Ouray, this 10<sup>th</sup> day of NOVEMBER, A.D. 2003.

Michelle Olin, County Clerk & Recorder

By: [Signature]  
Deputy County Clerk & Recorder

COUNTY OF OURAY, COLORADO  
BOARD OF COUNTY COMMISSIONERS'  
FINDINGS OF FACT AND DECISION

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In re Special Use Permit Request by Kinder Morgan, Inc. ("KMI") and Rocky Mountain Natural Gas, Inc. ("RM"), collectively referred to hereinafter as "Applicant"

Applicants' Legal Representative: Tim Knapp, Esq.

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**Background**

At issue is the Applicant's request for a special use permit to allow the location, construction, installation and operation of 24.5 miles of steel high pressure natural gas pipeline and .5 miles of PE natural gas pipeline and 60 miles of distribution pipeline, and related facilities/appurtenances, including but not limited to 6 district regulator stations; 2 mainline valve sets as required by the Federal Department of Transportation; and 2 town border stations, to provide natural gas utilities to the unincorporated areas of Ouray County.

**Summary of Evidence**

**A. Public Hearing before the Joint Planning Boards and County Planning Commission**

This matter was previously reviewed simultaneously by the Ridgway and Ouray Joint Planning Boards and the Ouray County Planning Commission (collectively referred to as "P&Z") on May 21, 2003, June 25, 2003 and July 22, 2003.

The following documents were presented by the Applicants and admitted into the official record during the public hearings on this matter:

Applicant's Special Use Permit Application dated April 2003 with cover letter dated April 28, 2003 from Jim McClung to Greg Moberg ("Application")

Ouray County Staff Report dated May 15, 2003 containing a 3-page staff analysis; a copy of the Application; a Property Ownership List (8 pages); a Centerline Description of the Proposed KMI Natural Gas Pipeline (2 pages); an Impact Statement (8 pages)

KMI's response to Staff Report dated June 5, 2003 (4 pages)

Letter dated June 16, 2003 from Lawrence A. Nadeau

Letter dated June 19, 2003 from Carolyn Dresler to Ouray County Planning Commission with attachment of newspaper article

Ouray County Land Use and Planning Staff Report dated June 19, 2003 containing a 2-page staff analysis; the County Attorney's memos regarding topics to be discussed and proposed conditions for the special use permit; a memorandum dated June 12, 2003 from Norm Aufderheide, County Engineer to Doug Canright; KMI's Response to Staff report prepared June 5, 2003; letter dated June 16, 2003 from Tim Atwater to Doug Canright with seven attachments as follows: affidavit of mailing dated June 10, 2003 signed by Timothy K. Atwater with copy of public notice of June 25<sup>th</sup> meeting, Project Geotechnical Report, Storm Water Management Plan, Fire Control Measures Plan, Letter of Understanding with Ouray County Road & Bridge Department, updated route maps, check for \$250 to cover costs associated with public meeting; letter dated June 16, 2003 from John and Dorothy Cullen to the Ouray County Planning Commission; letter from Kathy Campbell regarding concerns; and letter dated June 13, 2003 from Job Luning Prak to Planning Commission

Letter dated June 20, 2003 from Samuel S. Yoder to Assistant County Planner

Letter dated June 25, 2003 from Andy Shaver, KMI Project Manager to Land Use  
KMI submittal of "Proposed Montrose to Ouray Pipeline" (3 page document w/ Overview, Project Benefits, About KM, Contacts and Frequently Asked Questions)

KMI submittal of "Montrose to Ouray Proposed Natural Gas Pipeline – Construction Plans and Timeline 2003-2004"

The Application set forth the proposed special use and also contained a copy of the Decision of the Public Utilities Commission of the State of Colorado ("PUC") granting Certificates of Public Convenience and Necessity ("CPCN") authorizing the Applicant's 1) to construct and operate a natural gas pipeline to the towns of Montrose, Ridgway, and Ouray, Colorado, serving the intermediate points (the Ouray Pipeline) and to provide service from that pipeline under its applicable rolled-in system wide tariff rates; 2) to transfer certain pipeline facilities to KMI and for KMI to acquire and operate such facilities (the Olathe/Montrose Pipeline); (3) KMI to construct and operate, as necessary, distribution facilities and to provide natural gas service throughout the

counties of Montrose and Ouray, Colorado in accordance with its applicable tariffs; and 4) for a preliminary Commission determination that it will issue to KMI a CPCN authorizing it to exercise franchise rights within the towns of Ridgway and Ouray, Colorado. The Application also contained a Statement of Beneficial Use stating that the CPCN was granted and mailed on February 24, 2003. In its Statement of Beneficial Use, the Applicant also stated that natural gas is a low cost, clean burning, source of fuel.

At the beginning of the hearing, all P&Zs' members explained that they had not had any previous contacts with the Applicant or the public with two exceptions – Board member Risch indicated that she had received a citizen inquiry and Commissioner Skoumal explained a meeting he had attended with residents of Log Hill. All P&Zs' members, however, indicated that they could make an impartial decision.

Next, KMI Business Relations Manager Natalie Shelbourn, KMI Division Manager Cameron Bingham, and KMI Land and Right of Way Agent Tim Atwater made a presentation including an overview of KMI general operations, community participation programs, safety programs, and environmental programs, as well as the basis of the special use permit request. Costs, conversion and general plans for construction were also presented.

Many citizens attended the public hearings, both in support and opposition to the special use permit. Citizens speaking in support of the special use permit based their support on the benefits of natural gas, including less smoke in the air and the lessening of dangers associated with propane, as well as the manner in which the Applicant has fulfilled its responsibilities in the past.

Opposition to the special use permit was premised upon a number of concerns including, interference with the irrigation of pastureland; weed management issues; wildfire potential; the cost of natural gas utilities and retrofitting; traffic disruption during construction; the potential for condemnation; the potential for interruption of service; and chemical sensitivity. While some appearing in objection to the special use permit did not believe that the special use permit should be issued because they believed that natural gas services were not needed in Ouray County and/or the natural gas services would be too expensive, the majority objected only to the location of pipelines on private properties and advocated that the Applicant place pipelines on County road rights of way.

KMI representatives responded to the concerns expressed by the public. They explained that KMI was not building a new line over the San Juan Mountain range in order to serve developing areas. They also discussed KMI's excellent environmental and safety record and indicated that the Applicant would satisfy weed control concerns, would mitigate the potential for fire hazards by having sufficient equipment and water supply available during construction, would revegetate and reclaim property in accordance with a plan approved by the County, or by contract in the case of private easements, and would mitigate impact on wetlands and streams. They also stated that construction on forested lands would be avoided as much as possible. The representatives indicated that the Applicant would be willing to locate the pipeline on County road right of way as much as possible, but that relocation costs were a concern. There are no future relocation costs on private easements. In response to a proposal to realign a portion of the pipeline to State Highway 550, KMI Project Manager Andy Shaver stated that it would present a number of problems including, but not limited to, Highway 550 closure and traffic delays and having the pipeline traverse two river crossings, as well as a market study indicating an insufficient customer base accessible from Highway 550. Representatives also explained that natural gas is safer than propane because it is lighter than air and disperses more quickly. They further stated that natural gas is cheaper than propane because propane is a derivative of natural gas and processing and transportation costs make propane more expensive. KMI representatives stated that they will strive to minimize disruptions to traffic. Maintenance to the pipelines after construction is minimal due to technology according to KMI representatives. Also, at various points in the pipeline are sensors to notify the company when problems arise.

Based upon the evidence it received at the public hearing, the P&Zs unanimously voted to approve the special use permit subject to conditions and approved three separate resolutions. These recommendations of approval with conditions were carried forward to the BOCC.

**B. Public Hearing before the Board of County Commissioners**

Next, the public hearing on this matter came before the Ouray Board of County Commissioners ("BOCC") on September 29, 2003. Present at this public hearing and all subsequent public hearings were: BOCC Chairperson Don Batchelder ("Batchelder")

and Commissioner Tom Hollenbeck (“Hollenbeck”). Commissioner Bill Ferguson (“Ferguson”) recused from participating in the hearing and decision on this matter due to the appearance of impropriety and a conflict of interest as a large portion of his real property would be affected by the outcome of this matter.

The following documents were introduced by Applicants and admitted into the official record of the proceedings during the public hearings:

Hearing Packet, including all evidence received by the P&Zs, minutes of the P&Zs hearings regarding this matter, resolutions of the Ridgway Area Joint Planning Board, the Ouray Area Joint Planning Board and Ouray County Planning Commission, and County staff reports

Letter dated 9/30/03 from Cass Stainslawski to BOCC

Letter dated October 3, 2003 from Mae A. Fellin and Della May Fellin to BOCC (4 pages and 2 maps as attachments)

Letter dated October 16, 2003 from Bill & Barbara Dickson to BOCC

Letter dated October 27, 2003 from Linda Corwine to BOCC

Letter dated October 27, 2003 from Andrew A. Mueller of the Tisdell Law Firm, P.C. to BOCC (3 pages)

Copy of Slide Presentation made by Kinder Morgan

Petitions (25 pages) expressing opposition to the proposed special use

A set of 5 photographs submitted by Mac Fellin

Applicants made a presentation at the first BOCC public hearing regarding the proposal.

County’s Proposed Conditions dated October 21, 2003

At the first public hearing, the Applicant presented its case to the BOCC. The Applicant’s representatives, including Cameron Bingham, Division Manager; Tim Knapp, attorney for KMI; Andy Shaver; Jim McClung, outside consultant for right of way acquisitions; Timothy Atwater, Right of Way Acquisitions Manager; and Natalie Shelbourn, Business Relations Manager, addressed the criteria for review of the special use permit pursuant to Section 5 of the LUC and responded to various concerns expressed by the public during the hearing. In response to a proposal to relocate a portion of the pipeline to State Highway 550, the Applicant restated that it would present a number of

problems including, but not limited to, Highway 550 closure and traffic delays and having the pipeline traverse two river crossings, as well as a market study indicating an insufficient customer base accessible from Highway 550. The Applicant's representatives stated that there was no plan to construct pipelines through residential structures or septic systems and that the intent was to limit the removal of trees as much as possible. The Applicant's representatives also requested that the requirement that the Applicant pay for the transmission line relocations due to public projects, etc. be postponed for a period of twenty-five years, the equivalent of the economic life of the transmission lines. The Applicant's representatives stated that private easement were preferred over County rights of way due to the possibility of required relocations on the County rights of way, as opposed to the permanency of the pipelines located on private easements. The Applicant also expressed a need for a County encroachment permit process for future distribution lines.

Members of the public also presented their concerns to the BOCC. Their concerns focused on the destruction of trees, impeding access to their homes during construction; and the need to replace damaged culverts. One member of the public expressed concern about the impact of possible chemical contamination on her health due to her special condition.

Bob Wolford, Road and Bridge Superintendent, expressed a desire to work with the Applicant to coordinate effort in building roads and making road improvements to save time, effort, and costs. The Applicant's representatives responded that they were willing to work with the County, but that the Applicant could not forestall repairs which would create road hazards. Mr. Wolford also requested as-built drawings. He stated concerns about possible fractures in the rock shelf on County Road 17 and the need for drainage to prevent fractures due to ice thaw. He requested that the BOCC consider a sufficient warranty period for the work performed on County Road 17. He further suggested that the Applicant be required to use the County seed mix values for revegetation.

There was also discussion about a revegetation bond, visual impacts, dust and noise impacts, weed management, environmental impacts, and stormwater management.

After evidence was received by the BOCC, the public hearing was continued to October 20, 2003 to take additional evidence. At the public hearing on October 20, 2003, the BOCC, without taking additional evidence, announced a continuation of the public hearing to the evening of October 27, 2003 to accommodate attendance for members of the public who work during the day. Upon closing of the public hearing on October 27<sup>th</sup>, the matter was set for November 10, 2003 for an announcement of the decision to include these Findings of Fact and Decision.

At the public hearing on October 27, 2003, the BOCC received additional testimony and evidence. Among those speaking in support of the requested special use permit were: Luis Lurbick, an engineer and local resident, who stated that he believed that natural gas reserves are increasing, rather than decreasing as some had suggested, and that natural gas is an alternative to other energy sources; Larry Coulter, a local resident, who stated that he works with propane and definitely supports the special use permit because natural gas is safer than propane; and Joe Calhoon, a local resident, who stated that he was not opposed to the gas line, but requested that the Applicant install it within the County's rights of way. Among those who spoke in opposition to the special use permit were: including Mac Fellin representing Della Mae Fellin; Andy Mueller, Esq. representing the Fellins; Bill Dickson; Kathy Campbell; James O'Callaghan Patterson; Dave Calhoon; and Gloria Parry. The opposition focused on concerns about: potential interference with irrigation, potential disruption of their agricultural operations, potential increased fuel costs, potential damages, potential litigation with the Applicant, safety concerns arising from the potential for disrupting the gas lines when local residents dig ditches for irrigation; improper siting on unsuitable terrain, such as swamps; insufficient compensation for damages; and the destruction of mature trees and the potential for the spread of IPS beetle infestation associated with the destruction of trees. There was a suggestion that trees would have to be immediately burned on-site to prevent the spread of the IPS beetle and the Applicant's representatives stated that the potential for wildfires would also have to be considered using this method. Many of those appearing in opposition requested that the pipeline be relocated from their private properties to the right of way of County Road 17. Also, several attendees requested that the County add a condition to protect them from a condemnation suit by the Applicant to which the County

responded that the Applicant retained the right of condemnation pursuant to state statutes. Andy Mueller contended that a site specific plan must be submitted in order to properly evaluate the special use permit request under Section 5.3 of the LUC. Mr. Mueller further stated that the special use permit would be in violation of Section 5.3 A (6) of the LUC and the Master Plan if the affected properties could not continue to be used for agricultural purposes. Mr. Mueller requested that the BOCC include within the special conditions for the special permit several items he had outlined in his letter – the same protections for private land owners as the County would have pursuant to the special conditions; a requirement that the Applicant be responsible for three years for all revegetation, weed control, subsidence and damage along the entire pipeline whether on private or public land; and a bond to cover damage to private and County property in the amount of 5% of the total pipeline construction costs. He also objected to a provision in the proposed conditions by which no third-party beneficiary rights would be created by the Special Use Permit. He also suggested the specific language to limit the Applicant's ability to exercise its power of condemnation when a reasonable alternative route exists along and in a County right of way.

KMI representatives, including Cameron Bingham, Division Manager; Tim Knapp, attorney for KMI; Andy Shaver; Jim McClung, outside consultant for right of way acquisitions; Timothy Atwater, Right of Way Acquisitions Manager; and Natalie Shelbourn, Business Relations Manager, responded to various concerns expressed by the public during the hearing. Tim Knapp stated that the Applicant has tried to work with various affected property owners since the first public hearing and that additional easements had been secured. He explained that no final offers or notices of condemnation had been sent out at this time. He explained that the Montrose County Board of Commissioners had required an exact alignment as a condition for approval of the special use permit in Montrose County, which had lead to a significant number of condemnation actions. He expressed his opinion that the corridor layout for the pipelines met the LUC requirement, especially since the affected property owners had been identified and had received notice. He also explained that the reason that pipeline had been located on private property, rather than County right of way, in some instances, was due to several factors: 1) safety and the need to keep the pipelines away from dense

residential areas; 2) relocation would not be required if placed on private easements; 3) sensitivity to environmental concerns such as trees and water; 4) geotechnical hazards; and 5) flow fill requirements. He also stated that private easements could be utilized in many useful ways, including open space or streets in new developments. Andy Shaver stated that the pipeline could not be relocated in some instances from private easements onto County Road 17 because pipeline easements had already been secured on each side (or at both ends) of these properties and that these properties were essential for connecting up the pipeline. Tim Knapp responded to the County's proposed conditions and offered some alternate language in some instances. He expressed concern about the County's intent to inspect the Applicant's facilities as set forth in proposed condition 8 and stated that he believed that the County may want to limit such inspections to facilities located on County rights of way. He also expressed concerns about the proposed insurance and bonding requirements. He requested that the County establish a limit on the amount the Applicant should be required to reimburse the County for engineering review of County Road 17 designs. He asked that notice of revocation be in a written form under condition 24. He also asked for limited ability to assign the special use permit, rather than a prohibition on assignability. He requested that the deadlines for the installation of transmission lines be changed from 12 months to 18 months and for the commencement of installation of transmission lines be changed from 6 months to 9 months. The non-exclusive right to occupy the County's right of way, etc. should be subject to industry standard separations in his opinion. There was a discussion about deleting the procedures related to annexation. Also, the Applicant requested that language be added regarding the Applicant's ability to terminate the special use permit. Mr. Knapp explained that a civil litigation was a remedy for trespass, nuisance, and damages.

At the close of the public hearing, the BOCC Chairperson announced that they would take this matter under advisement and set November 10, 2003 as the date for the announcement of the Findings of Fact and Decision.

#### **Findings of Fact**

In this matter, the BOCC finds the following:

1. The special use permit application was submitted pursuant to Section 5 of the Ouray County Land Use Code.

2. In accordance with the decisions in Wilkinson v. Bd., Comm'rs, 872 P.2d 1269 (Colo. App. 1993); C & M Sand & Gravel v. Board of County Commissioners, 673 P.2d 1013 (Colo. App. 1983); South of Second Associates v. Georgetown, 196 Colo, 89, 280 P.2d 807 (1978); and Theobald v. Board of County Commissioners, 644 P.2d 942 (Colo. 1982) the criteria for evaluation of an application for special use permit are sufficient.

3. All procedural requirements, including but not limited to notice and publication requirements, have been met. According to C.R.S. 29-20-108, the general assembly declares the location, construction, and improvement of major natural gas facilities as a matter of statewide concern. C.R.S. 29-20-108 (4)(a) provides, in pertinent part, that "...following such notification, the public utility shall consult with the affected local governments in order to identify the specific routes or geographic locations under consideration for the site of the major natural gas facility...." The BOCC finds that the corridors established by the Company for siting of its facilities, as presented at the P&Z hearings, meets the statutory requirements for notification to the County. In addition, the adjacent property owners were provided proper notification as required by Section 5.2 of the LUC and notice and publication of the public hearing was proper pursuant to Section 5.4 of the LUC.

4. Pursuant to C.R.S. 29-20-108 (5)(a) a local government may not impose requirements or conditions upon the requested special use permit that will unreasonably impair the ability of the Company to provide safe, reliable, and economical service to the public, the Public Utilities Commission ("PUC") can then find whether there is such impairment and, if so, can enter an order directing the facility be erected in a manner and with the time specified in its order.

5. The conditions outlined in paragraph 4 hereinabove apply to additions, extensions, repairs, or improvements to or changes in the existing plant, equipment, facilities, or other physical property proposed by the Company.

6. In its review of special terms and conditions to which the Special Use Permit would be subject, the BOCC is cognizant of the decision in Douglas County Bd.

of Comm'rs v. Public Utilities Comm., 866 P. 2d 919 (Colo. 1994) which upheld the PUC approval of Public Service Co. of Colorado Daniels Park transmission line upgrade despite noncompliance with the county master plan. The BOCC is also aware of the decision Douglas County Bd. of Comm'rs v. Public Service Co. of Colorado, 829 p.2d 1303 (Colo. 1992), which upheld the criteria used by PUC to review a siting proposal. Thus, while the BOCC has regulatory authority over land use matters, such authority is tempered. The BOCC is aware of limitations to the County's authority to place special conditions on the Special Use Permit in this matter.

7. The BOCC finds that the special use request meets the criteria contained in Section 5.3 A as follows:

a. The use does not create undue danger in surrounding areas as the Company will take all steps necessary to minimize exposure, including the undergrounding of all construction with the exception of six valve sets/regulator stations and two town border stations. In addition, compelling evidence was produced that the Company will not cause water pollution or create substantial amounts of offensive noise, vibration, smoke, dust, odors, heat, glare or other objectionable influences beyond the boundaries of the property on which such use is located.

b. In accordance with Section 5.3 A (2), a written plan may be required as a condition of the special use permit indicating methods to be used to minimize smoke, odors, dust, and similar environmental problems, which might result from the operation of the proposed use. Noise and dust issues are related to the construction, rather than the operations of the special use. Nevertheless, the Company has agreed to the terms and conditions (attached hereto as Exhibit 1 and incorporated herein) to which the special use permit shall be subject, to address potential environmental problems, including the requirement for written plans. The BOCC finds that the overwhelming evidence is that natural gas pipelines are a safe form of transportation. Furthermore, the Company maintains an ongoing pipeline marker program and participates in the statewide "ONE CALL" system to minimize risks. The Company also engages in safety awareness programs,

using various media resources and its own billing functions to present information to its consumers.

c. Adequate access, potable water and sewage disposal is available pursuant to the terms and conditions of the special use permit to which the Company agreed or as provided by Colorado law. See Exhibit 1 attached hereto.

d. The special use is subject to the provisions of the Visual Impact Regulations found in Section 9 of the LUC pursuant to the terms and conditions of the Special Use Permit, which include but are not limited to constructing and installing above-ground structures with such materials and colors so as to blend into the particular landscape. The two town border stations will be subject to these requirements.

e. The requested use will not unduly impact wildlife. The BOCC received compelling evidence that the Company's use will not have long-term detrimental impact on wildlife based upon the Company's assurances that the above-ground facilities will be located in proximity to roads and to existing and proposed residential improvements and that the impacts associated with underground piping are construction-related and are of short-term. In addition, the Company has stated that it intends to honor and comply with recommendations of the Colorado Division of Wildlife regarding the impacts to wildlife of the Company's activities as provided in the terms and conditions of this Special Use Permit.

f. Section 5.3 A (6) provides that the Applicant shall provide "[e]vidence that the use shall not alter, restrict, inhibit or interfere with historic irrigation practices, headgates, ditches and ditch right-of-way." The Applicant has provided evidence that it will meet this condition by its stated intent to construct across properties affected by these conditions during the non-growing season and by fluming the ditches and canals to keep irrigation in service as necessary. Further evidence of compliance with this condition is that the Company has stated that it will restore all ditches to preconstruction conditions and service. While various

individual property owners have expressed concerns about possible effects the Company's construction may have on their irrigated properties, the Company has sufficiently responded to these concerns. In addition, the special terms and conditions of the Special Use Permit address this item. Thus, the BOCC finds that the Company has provided sufficient evidence to meet this criteria.

g. Sufficient evidence has been presented that geological hazards have been avoided as much as possible considering the advantages and disadvantages for the location of the Company's facilities. The Company will mitigate hazards as provided in the terms and conditions of the Special Use Permit. The County will retain the County Engineer or other consultants to ensure that the use can be located in a safe manner. Thus, this criteria has been satisfied.

h. Mitigation plans presented by the Company, as well as the terms and conditions of the Special Use Permit, satisfy condition 5.3 A (8) of the LUC.

i. Based upon the Colorado Public Utilities Commission's issuance of a Certificate of Public Convenience and Necessity to the Company, as well as the testimony and documentation presented throughout the proceedings on this matter, the BOCC finds that the request is consistent and compatible with the community character and surrounding land uses within the area for which the request is being proposed. The BOCC finds that the Company is committed to avoiding adverse impact to the community character.

j. Compelling evidence has presented throughout the proceedings that the request will not have a material adverse effect on the surrounding area. The terms and conditions contained in the special conditions of the Special Use Permit address the Company's responsibilities concerning those matters over which the County has authority.

k. Periodic review is unnecessary in this matter because conditions for revocation are provided in the Special Use Permit.

1. Based upon the terms and conditions of the Special Use Permit attached hereto as Exhibit 1, the use will not create impacts on existing infrastructure beyond what would be created by a use by right. The special conditions of the Special Use Permit require the Company to take specific actions to address impacts on existing infrastructure.

8. The special use request is subject to and meets the following conditions pursuant to Section 5.3 B of the LUC, as follows:

a. All applicable state and federal permits have been obtained or will be obtained before commencement of the proposed use. The Applicant has obtained its CPCN and according to the special conditions of the Special Use Permit, the Applicant must comply with all applicable Federal, State, and Local laws and regulations in the location, construction, and operation of its facilities within the County's jurisdiction.

b. Rehabilitation and reclamation requirements, including but not limited to revegetation and weed management, are provided in the terms and conditions of the Special Use Permit attached as Exhibit 1 hereto and failure to meet these requirements may result in revocation or suspension of the Special Use Permit and subject the Company to legal action.

c. The Company is required to submit a traffic control plan for traffic flow and to coordinate emergency services by the terms and conditions of the Special Use Permit. Any damage to public roads must be mitigated in accordance with the terms and conditions of the Special Use Permit. The BOCC finds that the condition in Section 5.3 B (3) is satisfied.

d. The BOCC does not find that the proposed operation under this Special Use Permit will have an impact on, or will necessitate, improvements to facilities or services provided by the County, the school districts or other governmental entities within the County. Thus, no impact fees will be required as a condition of approval of this Special Use Permit.

**C. Decision**

For the foregoing reasons, the Board of County Commissioners hereby approves the Applicants' request for a special use permit subject to the terms and conditions attached hereto as Exhibit A.

TERMS AND CONDITIONS OF THE  
KINDER MORGAN SPECIAL USE PERMIT  
IN OURAY COUNTY, COLORADO

The special use permit granted to Kinder Morgan, Inc. and Rocky Mountain Natural Gas Company ("Company") shall be subject to the following terms and conditions:

1. Company shall locate and install its facilities, including but not limited to sixty (60) miles of distribution lines and twenty-five (25) miles of transmission lines, plants, works, equipment and appurtenances, within the corridor as presented to the Ouray County Planning Commission during the public hearing on this matter (*attached* as Exhibit 1 and incorporated herein), referred to as "Corridor", unless otherwise approved by the Ouray Board of County Commissioners. The grant of authority conveyed pursuant to this Special Use Permit shall apply to all streets, roads, and rights of way presently platted or otherwise of record, all gas easements presently owned by or dedicated to the County or the public within the unincorporated areas of the County, and to all future streets, roads, rights of way, and gas easements later acquired by or dedicated to the County and located within the unincorporated area of the County, which lie in the Corridor. County rights of way include real property located within thirty feet from either side of the centerline. Any distribution or transmission lines other than those approved pursuant to this Special Use Permit shall be subject to the requirements of the Ouray County Land Use Code, as amended from time to time, the conditions of this Special Use Permit, and shall require either an amendment to this Special Use Permit or a separate application for a Special Use Permit, unless otherwise provided for by the Ouray County Land Use Code.

Whenever the Company determines it to be feasible and practical, it shall utilize the County's streets, roads, and rights of way or other existing easements, including set backs, for location and installation of its facilities, rather than unencumbered private property. In the event that location and installation must occur on private property, the Company shall negotiate in good faith with property owners.

2. The Company shall comply with all applicable Ouray County, State of Colorado, and federal laws and regulations in the location, construction, and operation of its facilities within the County's jurisdiction. Included with these requirements is the Company's duty to prepare and file amended plats in instances in which Company facilities are installed in newly acquired easements on properties which are part of an approved Planned Unit Development. In addition, the Company shall obtain building permits for structures as required by the County. The Company shall maintain its facilities in good condition and repair at all times. The Company facilities shall be installed in a manner and location within the County's right of way to meet with the approval of the County and shall be installed using due care so as to minimize damage to County roads and to minimize interference with existing water facilities (including, but

EXHIBITS 1 & 2  
RESTORED IN  
BOCC FILE  
CABINET IN  
VAULT IN  
COMMISSIONERS  
ROOM.

not limited to, historic irrigation practices, headgates, ditches and ditch right-of-way), sanitary sewer facilities, storm water facilities or other existing uses of the County streets, roads, and easements. Company facilities shall be installed and maintained so as to minimize interference with other property, trees and landscaping, and other improvements and natural features, noise impacts, and dust as contemplated by Section 5.3 of the Ouray County Land Use Code. To the extent applicable, the Company shall minimize visual impacts in accordance with the Visual Impact Regulations contained in Section 9 of the Land Use Code, including but not limited to constructing and installing above-ground structures with such materials and colors so as to blend into the particular landscape. The Company shall protect the public health, safety and welfare at all times during which this Special Use Permit is in effect.

3. Company shall comply with all State and Federal rehabilitation and reclamation requirements.

4. Except as expressly agreed upon by the parties, the Company shall promptly repair all damages, including but not limited to damages to streets, roads or other private and public improvements within the County's right-of-way caused by Company activities or facilities at its own expense and in a workmanlike manner, subject to review and approval by the County. If such damage poses an immediate threat to the health, safety or welfare of the public or individuals and the Company is unable to or fails to repair said damage in a timely manner upon receiving prior notice from the County, the County may make repairs or cause repairs to be made. If the Company fails to make non-emergency repairs within thirty (30) days after notice has been provided to the Company, the County may make repairs or cause repairs to be made. Any such work performed by the County shall be completed and billed to the Company at overtime rates. The Company shall reimburse the County for its costs and expenses in making such repairs within thirty (30) days from the invoice date. If the Company fails to pay such charges within the prescribed time period, the County may, in addition to taking other collection remedies, seek reimbursement for its costs and expenses in making the repairs through the performance security. The Company shall also reimburse the County for its costs, expenses, and attorneys fees incurred in pursuing collections against the Company.

Furthermore, the Company shall take all actions necessary to perform the work subject to this Permit in a manner acceptable to the County. The Company's obligations under this Permit include all repairs and actions necessary as a result of:

- a. Defects in workmanship;
- b. Settling of fills or excavations;
- c. Any unauthorized deviations from the approved plans and specifications;
- d. Failure to barricade or properly barricade;
- e. Failure to clean up during and after performance of the work;
- f. Any other violation of this Permit, or State, Federal or local law, ordinances, rules, regulations, or orders.

Specifically, the Company shall repair trenches or cuts in the traveled portion of County road rights of way with flow fill as required by the County, unless otherwise provided herein or as otherwise specifically approved in writing by the County Road and Bridge Superintendent. In the event that the Company sites its pipeline in the County right of way on County Road 23 between Coal Creek Road and Park Way and on County Road 17 between the south end of Black Lakes Subdivision to the bridge connecting Whispering Pines Subdivision to Highway 550, compaction requirements on those sections shall be sufficient to protect road integrity and covered with three inches (3") of gravel for a the length described hereinabove and as depicted on the map attached as Exhibit 2; provided, however, that this work shall be warranted by the Company for a period of three (3) years subsequent to acceptance by the County. This warranty shall be in addition to any other protection, remedies, warranties, insurance, and indemnification provisions contained in the special conditions. Within thirty (30) days' written notice from the County, the Company shall repair any deficiencies.

5. All construction upon and repair of County property and infrastructure related to Company's activities pursuant to this Special Use Permit shall be subject to inspection by the County and a determination by the County that said construction and repair has been performed in accordance with all applicable ordinance, rules, and regulations of the County. County agrees that prior to entering upon the Company's work site, its inspectors and personnel will have attended and completed the Company's safety orientation and project kick-off meeting; provided, however, if in the County's opinion an inspection of the Company's facilities is necessary due to an immediate threat to health, safety and welfare, the County may enter the Company's worksite notwithstanding completion of safety orientation.

6. The County shall have the right to inspect and supervise any work on or to County property and infrastructure.

7. Prior to commencing the work permitted by this Special Use Permit, the Company shall obtain an excavation permit pursuant to the Ouray County Land Use Code prior to any excavation on property covered by the grant of authority of this Special Use Permit except for emergencies of minor work which does not disturb road or street pavement or other public or private improvements or utilities, and does not involve use of backhoes, trenchers, or similar equipment.

8. All Company facilities constructed pursuant to this permit, including but not limited to distribution lines, transmission lines and appurtenances, are subject to County inspection and review to determine if conditions of the Special Use Permit are being met and to protect health, safety and welfare; provided, however, that this provision does not establish a duty on the part of the County to inspect such facilities.

9. The Company agrees to warrant its repairs to the County's property and infrastructure, including but not limited to roads, streets, barrow ditches, etc, for a period of two (2) years after acceptance by the County.

10. Backhoe equipment outriggers shall be fitted with rubber pads whenever outriggers are placed on any paved surface. Tracked vehicles with grousers are not permitted on paved or improved surfaces unless specific precautions are taken to protect the surface. The Company will be responsible for any damage caused to the surface by the operation of such equipment and shall repair such surfaces.

11. As the work progresses, all public rights-of-way and adjoining private property shall be thoroughly cleaned of all rubbish, excess dirt, rock and other debris. The Company shall restore all ditches to at least preconstruction conditions and service. All clean-up operations shall be done at the Company's expense.

12. The Company shall not disturb any surface monuments or survey hubs and points found on the line or work unless approval is obtained from the County. Any monuments, hubs and points disturbed will be replaced by a Colorado registered surveyor at the Company's expense.

13. For any facility installed, removed, or replaced after the effective date of this Special Use Permit, the Company shall provide the County with as-built drawings of the transmission lines as soon as possible, but in no event later than May 1, 2005 and the as-built drawings of the distribution lines and appurtenances subject to this Special Use Permit annually no later than May 1<sup>st</sup> of each calendar year with the first delivery of such drawings being May 1, 2005. The Company shall furnish such information in both hard copy and in digital format referencing state plane coordinates.

14. Company shall use its best efforts to coordinate the timing of the installation of its distribution and transmission lines with the County and with private property owners.

15. Prior to construction, the Company shall submit a traffic control plan, subject to the review and approval by the County Road and Bridge Department. Such plan shall include a requirement to coordinate daily activities affecting traffic patterns and flow with local emergency medical services and the Ouray County Sheriff.

16. Relocation of Transmission Lines. If at any time within twenty-five (25) years after the issuance of this Special Use Permit the County requests the Company to relocate, remove, or change its transmission lines installed or maintained in the public right of way, in order to permit the County to make any public use of the public right of way, to construct any public improvement, to build any public project, to pursue any governmental purpose in which the County has a financial or ownership interest, or if at any time it shall become necessary or convenient, because of a change in the grade or by reason of the improving, repairing, constructing, or maintaining of any street, road, or rights-of-way, by reason of traffic conditions or public safety to move or change the Company's facilities within or adjacent to such streets, roads or rights-of-way, either temporarily or permanently, such relocation shall be made by the Company at the County's expense.

Beginning December 1, 2028 and thereafter, if at any time the County requests the Company to relocate, remove, or change its transmission lines installed or maintained in the public right of way, in order to permit the County to make any public use of the public right of way, to construct any public improvement, to build any public project, to pursue any governmental purpose in which the County has a financial or ownership interest, or if it shall become necessary or convenient, because of a change in the grade or by reason of the improving, repairing, constructing, or maintaining of any street, road, or rights-of-way, by reason of traffic conditions or public safety to move or change the Company's facilities within or adjacent to such streets, roads or rights-of-way, either temporarily or permanently, such relocation shall be made by the Company at the Company's expense. The County uses its best efforts to confer with the Company and seek the Company's input during the initial planning and engineering phase of any such improvement project, in order to explore means of minimizing such relocation costs at no detriment to the County. The Company shall complete such relocations as soon as practicable, but no later than nine (9) months from the date of the County's request, except that the Company may be granted an extension of time for completion equivalent to any delay caused by conditions not under its control. Following relocation, the Company shall restore all property and infrastructure to its former condition at its expense.

In the event that the Company fails to accomplish the necessary relocation, removal or change within the time specified above, the County may perform such work at the Company's expense and the Company shall reimburse the County within thirty (30) days after receipt of a written invoice.

In addition, the County may require the relocation of facilities, which are not installed in the approved location or corridor.

With respect to Ouray County Road 17, the Company shall:

a. Procure and maintain, at its own expense, a Commercial General Liability policy with a limit of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and including coverage for claims arising from bodily injury, sickness, disease, death, property loss or damage, including but not limited to damage to Ouray County Road 17, or such other liability which arises out of or is in any manner connected with the act, omission, error, professional error, mistake, negligence, or other fault of the Company, any contractor or subcontractor of the Company, or any officer, employee or representative of the Company and/or work performed by the Company pursuant to this Special Use Permit on County Road 17 for the entire term of this Special Use Permit and for two (2) years following the County's acceptance of the work performed by the Company. The Company shall also procure and maintain, during the entire term of this Special Use Permit, Workers' Compensation insurance in accordance with State Law and Employer's Liability insurance with a limit of not less than FIVE HUNDRED THOUSAND (\$500,000) per occurrence. The obligation of this paragraph shall not extend to any injury, loss, or damages to the extent it is caused by the act, omission, error, professional error, mistake, negligence, or other fault of the county, its officers or

employees. In addition, the Company shall comply with the indemnification and hold harmless provisions contained in paragraph 26 hereinbelow.

17. Company will reimburse the County up to Twenty Thousand Dollars (\$20,000) for its expense and costs incurred for the County Road and Bridge Superintendent's oversight of and the County consulting engineer's review of the Company's facilities' designs and inspection oversight for the work authorized under this Special Use Permit. In the case of County Road 17, the Company shall provide detailed drawings and designs, particularly with respect to, but not limited to, road cuts and drainages. The Company shall pay the County within thirty (30) days of receipt of the County's invoice for such reimbursement.

18. Prior to construction, Company shall submit a weed control and revegetation plan, subject to the County's review and approval, for work to be performed pursuant to this Special Use Permit. Such weed control plan shall incorporate all formal and informal County policies on notification and chemical weed control methods as these relate to chemically sensitive individuals. The Company shall provide the County with a performance bond in the amount of Twenty Thousand Dollars (\$20,000) for revegetation and weed control compliance. Such bond is subject to the review and acceptance of the County. The Company's performance bond shall remain in full force and effect for a minimum of three (3) years beyond the anticipated County's acceptance date of the work subject to this Special Use Permit. Such security shall be extended if requested by the County, or, in the event the projected acceptance date is not met, for three (3) years beyond the actual acceptance date. Any security provided hereunder may be used for the performance of work necessary to revegetate areas which have not been properly revegetated by the Company and for weed control not performed by the Company in a timely manner in the County's sole discretion. The security may also be used to reimburse the County for any costs it incurs as a result of the Company's failure to revegetate or control weeds related to the work subject to this Permit provided it has given the Company reasonable written notice prior to commencing said work. Thirty (30) days prior to the termination of the effective period of the performance bond, the Board of County Commissioners shall review recommendations of the Road and Bridge Superintendent regarding the Company's revegetation and weed control efforts and the Board of County Commissioners shall determine whether the performance security shall be released or extended or additional performance security shall be required.

19. Prior to construction, Company shall submit for the County's review and approval a geotechnical report identifying geotechnical areas of concern and recommending mitigation practices. Company agrees to comply with the County-approved mitigation practices.

20. Company agrees to comply with the Colorado Department of Wildlife's final recommendations regarding the impacts to wildlife of Company's activities pursuant to this Special Use Permit.

21. Company shall use best management practices to avoid causing environmental contamination. In the event the Company contaminates the site, it agrees to promptly and effectively remedy such environmental contamination.

22. Company shall keep equipment sufficient for fire-fighting purposes on site at all times during welding and associated construction activities creating a potential fire hazard.

23. Company shall provide adequate access to and supply of potable water and sewage disposal during construction.

24. Revocation or Suspension of the Special Use Permit. This Special Use Permit may be revoked or suspended by the Board of County Commissioners if, at any time:

a. the Company is in non-compliance with the terms and conditions of this Special Use Permit; or

b. the Company is in non-compliance any federal, state, or local law, ordinance, rule, regulation or order

c. the Company has created any condition or performed work which the County determines does constitute or cause a condition endangering life or damage to property.

d. for any reason as deemed appropriate in the County's sole discretion to protect the public health, safety or welfare.

In addition, a Stop Work Order may be issued by the County to the Company's local or on-site representative or any contractor or subcontractor or other person(s) performing work for or on behalf of the Company in non-compliance with the terms and conditions of this Special Use Permit, any federal, state, or local law, ordinance, rule, regulation, or order, or performing work which constitutes or causes a condition endangering life or damage to property.

Any revocation or suspension by the Board of County Commissioners upon a public hearing or any Stop Work Order issued by the County Road and Bridge Superintendent shall become effective immediately upon the delivery of written notice to Company and/or the contractor, subcontractor, or other person(s) performing the work or to the last known address of the contractor, subcontractor, or other person(s) performing the work. Such Stop Work Order may be appealed by the Company to the Board of County Commissioners.

Upon revocation, any encroachment may be removed and the surface restored at the Company's expense.

All notices to the Company, except in the instance of Stop Work Orders, shall be addressed to:

Rocky Mountain Natural Gas Company  
Land & Right of Way Department  
370 Van Gordon  
Lakewood, CO 80228

With a copy to:

Rocky Mountain Natural Gas Company  
Legal Department  
370 Van Gordon  
Lakewood, CO 80228

25. Barring from Additional Work and Permits. In the event the Company shall fail to comply with the terms and conditions of this Special Use Permit, or any federal, state, or local law, ordinance, rules, regulation, or order, the Company shall be barred from performing any work in the public right-of-way until such Company is in compliance. Under no circumstances shall the County issue any further permits of any kind to the Company until all undisputed outstanding monies owed to County pursuant to this Special Use Permit have been paid in full.

26. Insurance/Indemnification/Hold Harmless provisions.

- a. To the fullest extent permitted by law, the Company shall indemnify and hold harmless the County, its officers, its employees, its insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Special Use Permit, if such injury, loss, or damage, or any portion thereof, is caused by, or claimed to be caused by the act, omission, error, professional error, mistake, negligence, or other fault of the Company or any Company officer, employee, representative, agent, contractor, subcontractor, or other person for which the Company is responsible, or which arise out of any Worker's Compensation claim of any employee of the Company or of any employee of any contractor or subcontractor of the Company. The Company agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of the Company, or at the option of the County, agrees to pay the County or reimburse the County for the reasonable defense costs incurred by the County in connection with any such liability, claims, or demands. The Company also agrees to bear all other costs and expense related thereto, including court costs and attorney fees, whether or not such

liability claims and demands alleged are groundless, false, or fraudulent. The obligation of this paragraph a. shall not extend to any injury, loss, or damages to the extent it is caused by the act, omission, error, professional error, mistake, negligence, or other fault of the County, its officers or its employees.

b. Company hereby waives any claim for damages to its property within the streets, alleys, roads, and gas easements against the County, its officers and employees, except for damages caused by the negligence, recklessness, or the specific intent of the County, its officers or employees.

c. Company shall procure and maintain the minimum insurance coverages listed below. Such coverages and the coverages required in Paragraph 16 hereinabove and those listed below shall be procured and maintained with forms and insurers reasonably acceptable to the County. All coverages shall be continuously maintained to cover liability claims, demands, and other obligations assumed by the Company pursuant to Paragraphs 16 and 26.a. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1) At all times the company shall maintain Workers' Compensation liability insurance to cover obligations imposed by applicable laws for any Company employee engaged in the performance of work under this Special Use Permit and Employer's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-each employee. Evidence of qualified self-insured status may be substituted for the Worker's Compensation requirements of this paragraph.

2) The Company shall further maintain Commercial General Liability Insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards,. The policy shall contain a severability of interests provision.

- 3) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of the Company's owned, hired and non-owned vehicles assigned to or used in the performance of the services connected with this Special Use Permit. The policy shall contain a severability of interests provision. If the Company has no owned automobiles, the requirements of this paragraph 4) shall be met by each employee of the Company providing services to the County under this Special Use Permit.
- 4) The policy or policies required by Paragraphs 16 and 26.d 2) and 3) hereinabove shall be endorsed to include the County and the County's officer and employees as additional insureds.
- 5) Every required policy shall be primary insurance and any insurance carried by the County, its officer, or its employees, or carried by or provided through any insurance pool of the County, shall be excess and not contributory insurance to that provided by the Company. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Company shall be solely responsible for any deductible losses under any policy required herein.
- 6) The Company shall file with the County certificate(s) signed by a qualified agent of any insurance company evidencing the existence of valid and effective policies required herein. Such certificates shall identify the additional insureds on the liability policies at least to the limits required herein, the limits of each policy, the policy number, the name of the insurer, the effective date and expiration date of each policy, and a copy of an endorsement placed on each policy requiring thirty (30) days' notice by mail to the County before the insurer may cancel the policy for any reason, except nonpayment of premium in which case the County shall be provided ten (10) days' notice.
- 7) Failure on the part of the Company to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of this Special Use Permit after the County has provided Company written notice of this failure, and the Company has thirty (30) days thereafter to cure any failure to procure or maintain such policies. Thereafter, if Company has failed to cure, the County may revoke this Special Use Permit, or

at its discretion, the County may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the County shall be repaid by the Company to the County upon demand, or the County may offset the cost of the premiums against any monies due to the Company from the County.

- 8) The parties hereto understand and agree that the County is relying on, and does not waive or intend to waive by any provision of this Special Use Permit, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., as from time to time amended, or otherwise available to the County, its officers, or its employees.

27. The Company shall provide the County, at the Company's expense, a performance security. This security shall be in the form of a surety bond approved by the County. The security shall be in an amount equal to five percent (5%) of the completed value of Company's work within the County. The surety bond shall run for a period of time of at least two years beyond the anticipated County's acceptance date of the work subject to this Special Use Permit. Such security shall be extended if request by the County, or in the event the projected acceptance date is not met, for two years beyond the actual acceptance date.

The security provided hereunder may be used for the performance of work necessary to repair the public right-of-way if the Company fails to make the necessary repairs or to complete the work under this Permit, and to reimburse the County for any costs or expenses it incurs as a result of any violations of or non-compliance with the terms and conditions of this Permit.

28. In the event the County incurs any expenses, costs or attorney's fees for the County's enforcement of this Permit, the County may recover such expenses, costs, and attorney's fees from the Company.

29. This Special Use Permit is assignable only to affiliates and subsidiaries of Kinder Morgan, Inc. and Rocky Mountain Natural Gas Company.

30. This Special Use Permit is subject to any changes required by law.

31. The installation of transmission lines approved pursuant to this Special Use Permit shall be completed within eighteen (18) months from the date this Special Use Permit is issued, unless such time period is otherwise extended by the Board of County Commissioners in writing for a period of no more than additional twelve (12) months; provided, however, that if installation of transmission lines has not commenced within nine (9) months from the date of issuance, such permit shall be void. The

installation of distribution lines approved pursuant to this Special Use Permit shall be completed with twenty-four (24) months from the date this Special Use Permit is issued, unless such time period is otherwise extended by the Board of County Commissioners in writing for a period of no more than an additional twelve (12) months. Other than the installation of the transmission and distribution lines permitted by this Special Use Permit, Company's operations, repair, and maintenance of the transmission and distribution lines permitted pursuant to this Special Use Permit shall be subject to the terms and conditions of this Special Use Permit for a period of ninety nine (99) years, unless 1) abandoned by the Company; or 2) such period is extended by the Board of County Commissioners in writing; or 3) this Special Use Permit is revoked by the Board of County Commissioners. Letters of credit or cash deposited as a performance security shall be returned subsequent to the voiding of the permit less deductions for administrative and other costs and expenses incurred by the County related to this Special Use Permit.

32. The right to use and occupy said County roads, streets, public ways and places under this Special Use Permit shall not be exclusive. Notwithstanding this provision, the County reserves the right to grant the use of said roads, streets, public ways and places to any person, firm, partnership, association, corporation, company or organization of any kind during the term of this Special Use Permit so long as said future permitted use does not interfere with the Company's operation, maintenance, and access to its pipeline. For purposes of defining interference, the County shall not permit any structure and/or utility within ten (10) feet horizontally and two (2) feet vertically from the Company's transmission pipelines without the Company's consent; provided, however, that such consent shall not be unreasonably withheld.

33. If during the term of this Special Use Permit, there occurs a failure or partial failure of the supply of natural gas available to the Company's utility customers in the unincorporated area of Ouray County because of depletion of such supply, the Company shall take all reasonable steps to obtain an additional natural gas supply from other sources to be delivered to the Company's utility customers in the unincorporated area of Ouray County, and if unable to procure same, it is here by authorized to supply artificial or mixed gas for the unexpired term of this Special Use Permit. If Company, within a reasonable period after its failure to supply natural gas, fails to supply to its customers artificial and/or mixed gas, the County may revoke this Special Use Permit.

34. Upon the expiration of this Special Use Permit, if the Company shall not have obtained an extension or renewal thereof and accepted the same, or upon revocation of this Special Use Permit, subject to the provision of paragraph 35 hereinbelow, the Company may enter upon the County roads, streets, right of way, and other public ways and places of the unincorporated areas of the County for the purpose of removing therefrom any or all of its plants, structures, pipes, mains, or equipment pertaining thereto. In so removing said pipes, mains or other property, the Company shall, at its own expense, obtain an encroachment permit and in a workmanlike manner, refill any excavations that shall be made by it in the graveled or paved roads, streets, and other public ways and places after removal of its mains, pipes or other structures.

35. In the event that this Special Use Permit is revoked, the Company agrees to continue to render service as theretofore for a period of six (6) months, such service to be provided in the County's sole discretion.

36. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Special Use Permit is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

37. This Special Use Permit does not create any third party beneficiary rights.

38. This Special Use Permit may be enforced by the County in any lawful manner notwithstanding any other provisions of this Special Use Permit.

39. This Special Use Permit shall be governed by the Federal law and the laws of Ouray County and State of Colorado and venue for any action in court shall be in Ouray County, Colorado District Court. The Company shall submit to in personam jurisdiction of said Court and any dispute regarding this Special Use Permit shall be tried on the merits in said Court.

40. The Company shall submit and comply with a mitigation plan for IPS beetle infestation approved by the Colorado State Forester. The purpose of the plan is to minimize the potential spread of the IPS beetle infestation.

41. Upon sixty (60) days' written notice to the County, the Company may terminate this Special Use Permit; however, the Company shall not be relieved of its obligations and responsibilities regarding reclamation, weed control, and damage to County roads as set forth herein for three (3) years after the termination date.