UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Kinder Morgan Interstate Gas Transmission, LLC — Docket Nos. RP00-343-004, RP00-343-005 and RP00-629-001

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued May 22, 2003)

1. This order addresses Kinder Morgan Interstate Gas Transmission, LLC's (Kinder Morgan) request for rehearing of the Commission's October 19, 2001 order[1] in this proceeding as well as Kinder Morgan's filing to comply with the directives of the October 19, 2001 order. This order benefits the public by permitting Kinder Morgan to implement policies described in Order No. 637 which are designed to enhance competition in the natural gas industry.

Background

2. On October 19, 2001, the Commission issued an order on Kinder Morgan's compliance with Order Nos. 637, 587-G and 587-L. The order required Kinder Morgan to (1) change its scheduling procedures so that replacement shippers would be able to nominate at the next available nominating cycle, upon acquiring capacity; (2) include a reasonable period of time for responding to segmentation requests which entail a change in the direction of gas flow; (3) justify or delete the provision which says that a segmentation request cannot create stranded capacity; (4) revise the tariff language to more closely correspond to the Commission's Texas Eastern/El Paso[2] policy regarding flexible point rights; (5) implement the Commission's CIG[3] discount policy; (6) implement the CIG approach to accommodating third party providers of imbalance management

[1] Kinder Morgan Interstate Gas Transmission, LLC, 97 FERC ¶ 61,062 (2001).

[2] Texas Eastern Transmission Corporation, 63 FERC ¶ 61,100 (1993); El Paso Natural Gas Company, 62 FERC ¶ 61,311 (1993).

[3] Colorado Interstate Gas Company, 95 FERC ¶ 61,321 at 62,121 (2001).

services, unless Kinder Morgan could show why it is not appropriate on its system; (7) revise its unauthorized overrun charges for FT and PALS service during normal operating conditions; (8) revise its penalty revenue crediting mechanism, so that all shippers share in the revenue credit, according to their revenue contribution; (9) remove certain tariff provisions which the Commission found to violate GISB standards; and (10) provide a mechanism to credit to its customers the value of unauthorized gas retained by Kinder Morgan. The Commission directed Kinder Morgan to file two sets of tariff sheets, one containing changes that could be implemented immediately, and the other containing changes which would require a four-month delay for computer modifications.

3. On November 19, 2001, Kinder Morgan submitted a filing to comply with the directives of the October 19, 2001 order. Also on November 19, 2001, Kinder Morgan filed a request for rehearing of the October 26, 2001 order. This order addresses both the rehearing and the compliance filing.

Public Notice, Interventions and Protests

4. Public notice of Kinder Morgan's compliance filing was issued on November 27, 2001. Interventions and protests were due as provided in Section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2002). No motions to intervene were filed. The filing was protested by Midwest United Energy and Indicated Shippers, both of whom were interveners in the base proceeding.

Request for Rehearing

Segmentation

5. Kinder Morgan seeks rehearing of the Commission's ruling disallowing an authorized overrun charge when a shipper simultaneously uses a forwardhaul and backhaul to bring gas to the same delivery point in an amount in excess of its contract demand. Kinder Morgan argues that the Commission's ruling allows shippers to exceed their original contract rights and take, free of charge, additional services. Kinder Morgan asserts that Commission precedent has recognized the need to prohibit simultaneous forwardhauls and backhauls to the same point when the aggregate delivery exceeds the shipper's contract demand.[4] Kinder Morgan argues that the Commission's ruling in the compliance order is inconsistent with Order Nos. 637, et seq., because it effectively abrogates the contract between Kinder Morgan and its customer.

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[4]Citing, Tennessee Gas Pipeline Company, 85 FERC ¶ 61,052 at 61,163 (1998) and Iroquois Gas Transmission System, L.P., 78 FERC ¶ 61,135 at 61,523-24 (1997).

Commission Ruling

6. After Kinder Morgan filed its request for rehearing, the United States Court of Appeals for the District of Columbia Circuit remanded to the Commission the issue of the treatment of forwardhauls and backhauls to the same point. In its Order on Remand in Docket No. RM98-10-011,[5] the Commission concluded that it may require pipelines to permit backhauls and forwardhauls to the same point, each of which is up to the shipper's contract demand, by making the necessary findings under NGA Section 5 to require the pipeline to revise its terms and conditions of service to permit this. The Commission further determined that it is not requiring pipelines to permit the shippers to use the primary point rights defined by its contract demand beyond those set forth in the contract.

7. The Commission then went on to make the necessary Section 5 findings. The Commission found that failure to permit such a segmented transaction where operationally feasible is unjust and unreasonable because it restricts efficient use of capacity without adequate justification. Permitting this type of transaction is just and reasonable because it creates additional supply alternatives for shippers and enhances competition on the pipeline's system.

8. Kinder Morgan does not contest that it has the operational ability to permit forwardhauls and backhauls to the same point. Kinder Morgan argues only that the Commission should permit it to charge an overrun rate, since the combination of segmented forwardhaul and backhaul nominations to a point could exceed the firm entitlements of the underlying contract. However, the remand order expressly rejected the contention that allowing shippers to have a forwardhaul and backhaul to the same point would allow shippers to get more than the capacity for which they have paid. The Commission held that, since a firm shipper must pay the costs of the entire zone, it may use all of the points in a zone for which it is paying on a secondary basis. Thus, when a shipper segments its capacity so as to obtain a forwardhaul and backhaul to the same point, each of which is up to its contract demand, "The shipper is getting no more than what it pays for.'[6]

9. The Commission finds that the issues raised on rehearing by Kinder Morgan regarding forwardhauls and backhauls to the same point have been addressed by the

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[5]Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Service, 101 FERC ¶ 61,127 (2002).

[6]Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, 101 FERC ¶ 61,127 (2002) at P 56.

Commission's Order on Remand. Accordingly, Kinder Morgan's request for rehearing is denied.

Flexible Point Rights

10. Kinder Morgan seeks clarification and/or rehearing of the Commission's ruling on flexible point rights. Kinder Morgan requests clarification and/or rehearing of the statement in the compliance order which directed it to revise its compliance plan in accord with the Commission's policy in Texas Eastern/El Paso. The order specifically requires Kinder Morgan to allow releasing and replacement shippers "to each choose primary points equal to the capacity under their contract."[7] Kinder Morgan asserts that the meaning of this sentence is the crux of its concern. Kinder Morgan states that it is concerned with the amount and quality of point capacity rights at new receipt points and delivery points that will be created under a segmentation. Kinder Morgan states that the quoted sentence may mean that each shipper can select primary point capacity equal to the full contract quantity of the original shipper at each segmented point, thus multiplying the primary rights under the original contract. Kinder Morgan asserts that this result is contrary to the Commission's statements in Order No. 637, contrary to Commission precedent and overrides the terms of existing contracts which specify the primary point rights agreed to by the shipper and Kinder Morgan.

11. Kinder Morgan requests that the Commission grant its request for clarification and/or rehearing and find that segmentation on the Kinder Morgan system will result in the new points selected in the segmentation having secondary-in-path priority, unless new permanent primary point changes are designated with the releasing shipper's consent. Kinder Morgan submits that such a ruling would be consistent with the Commission's Texas Eastern/El Paso policy which does not allow shippers to gain extra primary receipt or delivery point rights as the result of a release of primary point capacity.

Commission Ruling

12. The Commission denies Kinder Morgan's request for clarification and/or rehearing. Contrary to Kinder Morgan's assertions, each shipper can, in fact, select primary point capacity equal to the mainline contract demand of its contract with the pipeline. Thus, if the releasing shipper releases its full contract demand over a particular segment, while retaining its full contract demand over another segment, each shipper may obtain primary point rights equal to the full mainline contract demand of the original contract, subject to

[7] Citing, Kinder Morgan Interstate Gas Transmission, LLC, 97 FERC ¶ 61,062 (2001).

the availability of capacity, Under the Texas Eastern/El Paso policy, each shipper in a capacity release is treated as a separate shipper with the same flexible point rights as any other shipper, including the right to obtain and change primary points within the zone for which they are paying, including points outside the path.[8] Thus, Kinder Morgan's request that segmentation on the Kinder Morgan system will result in the new points selected in the segmentation having no better than secondary-in-path priority is inconsistent with the Texas Eastern/El Paso policy.

13. The purpose of the Commission's policy that replacement shippers should have the opportunity to obtain their own primary points is to enhance competition in the sale of capacity between the pipeline and shippers through segmentation and capacity release. As the Commission explained in Order No. 637-A ,[9] if replacement shippers were limited to the use of segmented points on a secondary basis, the pipeline would still retain the right to sell that point capacity on a primary basis. The ability to sell points on a primary basis would provide the pipeline with a competitive advantage over segmented capacity release transactions.[10]

14. Kinder Morgan also misunderstood the Commission's comments in Order No. 637-A regarding the potential for hoarding of capacity.[11] The hoarding discussion involved a discussion of whether pipelines should permit shippers to have primary point rights that exceed their individual contract demand. As the Commission explained: "on a fully subscribed pipeline where receipt point capacity exceeds mainline capacity fivefold, the pipeline can seemingly permit shippers to select primary receipt point rights well in excess of their mainline contract demand, since the pipeline has no capacity left to sell and, therefore, needs to reserve no receipt point capacity in order to sell unsubscribed capacity."[12] In this situation (where a shipper can obtain primary points exceeding its

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[8]See Great Lakes Gas Transmission Limited Partnership, 101 FERC ¶ 61,206 at P 8 (2002).

[9]Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs., Regulations Preambles (July 1996-December 2000) ¶ 31,099 at 31,594 (May 19, 2000).

[10]See Great Lakes Gas Transmission Limited Partnership, 101 FERC ¶ 61,206 at P 9 (2002).

[11]Order No. 637-A, at 31,594.

[12]Order No. 637-A, at 31,594.

contract demand), the Commission recognized that the pipelines may need to take action to limit hoarding of capacity.[13]

15. But this situation is not at issue here because the Commission has not required Kinder Morgan to provide any shipper with primary point rights that exceed its contract demand. The only issue here is the application of the Commission's long-standing policy that in capacity release situations the releasing and replacement shippers are each permitted to have primary point rights equal to (but not exceeding) their contract demands. Kinder Morgan has not shown that allowing a replacement shipper to obtain primary point capacity equal to its contract demand will result in hoarding of capacity.[14]

16. In addition, the Commission has established policies that ensure that pipelines retain a reasonable ability to market their capacity. These policies establish a reasonable balance between the need to enhance competition by providing replacement shippers with the right to obtain primary points and the pipeline's interest in selling available firm capacity. First, as discussed above, the Commission has permitted the pipeline to limit the primary point capacity a shipper can reserve to its mainline contract demand, so that if a shipper does change to another primary path, the pipeline could require it to give up an existing primary point. Second, replacement shippers can obtain primary points only when those points are available and those points revert to the pipeline for sale at the expiration of the release. Third, if a replacement shipper obtains primary points by changing a releasing shipper's primary points, the change is permanent and the pipeline can sell the newly available capacity at the original primary points to new shippers. All these factors adequately protect the pipeline's ability to market its capacity. Finally, the Commission has allowed the pipeline to use the net present value (NPV) method to allocate point capacity and has treated the bid of an existing shipper (including a replacement shipper) to change to another primary point without increasing its reservation charge as having an NPV of zero, in contrast to the bid of a new shipper bringing new revenue to the pipeline.[15] This ensures that bids providing additional revenue to the pipeline will have priority over point changes by replacement or other existing shippers.

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[13]Order No. 637-B, 92 FERC ¶ 61,062, at 61,167.

[14]In any event, as the Commission stated in Order No. 637-B, Kinder Morgan should be able to craft tariff provisions that limit potential hoarding of capacity, without prohibiting altogether the pro-competitive policy of allowing replacement shippers from acquiring primary points equal to their contract demand. Order No. 637-B, at 61,167.

[15]Process Gas Consumers Group v. FERC, 292 F.3d 831 (D.C. Cir. 2002), aff'g Tennessee Gas Pipeline Co., 94 FERC ¶ 61,097 (2001), 91 FERC ¶ 61,053 (2000); ANR Pipeline Co., 97 FERC ¶ 61,322 (2001).

17. In addition, upon further consideration, the Commission finds that Kinder Morgan's proposal to restrict the designation of new primary points to only those points "within the original primary path of the Service Agreement" is too restrictive and does not conform with the requirements of Order No. 637 regarding flexible point rights. As we stated in Order No. 637, "[f]lexible point rights refer to the rights of firm shippers to change receipt or delivery points so they can receive and deliver gas to any point within the firm capacity rights for which they pay." [16] Kinder Morgan's system is divided into three rate zones. As such, Kinder Morgan's shippers should be permitted to elect primary points outside the primary path in the same zone subject to the availability of capacity. See Great Lakes Gas Transmission Limited Partnership, 101 FERC ¶ 61,206 at 61,897-98 (2002); CenterPoint Energy - Mississippi River Transmission Corporation, 102 FERC ¶ 61,216 (2003) (MRT).[17] Kinder Morgan is directed to revise its tariff to eliminate the language that restricts the change of new primary points to only those points located within the primary path of the original contract.

Discounting

18. In the compliance order, the Commission required Kinder Morgan to implement the Commission's discounting policy established in CIG and refined in Granite State Gas Transmission, Inc. (Granite State).[18] Under that policy, there is a rebuttable presumption that a shipper holding a discount at a point will be eligible for a discounted rate if it chooses to segment, release capacity or use its flexible receipt and delivery point rights to move gas to another point at which the pipeline has granted discounts to a similarly situated shipper. The Commission also generally requires that requests for retention of an existing discount be processed within two hours.

19. Kinder Morgan argues that the imposition of the Commission's newly-created discounting procedure is contrary to Order No. 637, et seq., lacks a basis of substantial

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[16] Order No. 637 at 31,300-01.

[17] In MRT, the Commission stated that it would take appropriate action to ensure a result in this proceeding that is consistent with Commission policy. By requiring Trailblazer to eliminate restrictions on primary points outside the path, subject to available capacity, the Commission's requirement here is consistent with Commission policy, as reflected in the cases cited in the text above.

[18] Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 (2001); reh'g denied, 98 FERC ¶ 61,019 (2002).

evidence, and violates the procedural and substantive requirements of the NGA with which the Commission expressly recognized that it would have to comply in Order No. 637, before imposing any changes to a pipeline's tariff related to segmentation and discounting.

20. Kinder Morgan asserts that, at a minimum, the required response time must fall on a business day. Kinder Morgan contends that pricing decisions involve business judgment and are not simply administrative in nature and the pipeline should be permitted to exercise that judgment. Kinder Morgan asserts that some discount decisions regarding the retention of a discount at an alternate point may be capable of rapid response. However, Kinder Morgan states that others are not, particularly those that are more complex and/or require a higher approval level. Moreover, if a decision-maker is unavailable, even for a short period, it may be impossible to respond within two hours. Similarly, if a pipeline has declared a critical time, pipeline personnel must focus on managing that situation and should not have to be distracted by the need to meet an arbitrary two-hour deadline to respond to a request to retain a discount.

21. Further, Kinder Morgan argues that requiring a two-hour response time to process every request to retain a discount at an alternative point is arbitrary and unreasonable. Kinder Morgan submits that the rule ignores the timing of the transaction. If a long-term deal is being negotiated which involves a discount at an alternative point, the parties will want to start discussing those matters well in advance, not two hours prior to the nomination time. Similarly, if the discount does not start until the first of the month and the shipper approaches Kinder Morgan on the 20th of the prior month, there is no reason to impose such a rigid response time.

22. Kinder Morgan also urges the Commission to consider the expedited processing of discounts in the context of its individual pipeline proceeding where the unique aspects of Kinder Morgan's system can be explored. Kinder Morgan submits that there is no evidentiary support for imposing the two-hour period on Kinder Morgan. Kinder Morgan states that it did not propose such a time requirement and no other party suggested such a truncated period for processing discount requests. Kinder Morgan contends that the Commission has failed to make any findings that Kinder Morgan's existing processing time frame is not just and reasonable and there is no evidence that Kinder Morgan will not act promptly. Moreover, Kinder Morgan asserts that the Commission has not demonstrated that its new procedure would be just and reasonable for Kinder Morgan. Thus, Kinder Morgan argues that this aspect of the Commission's discounting procedure has been unlawfully imposed on Kinder Morgan in violation of the NGA. Therefore, Kinder Morgan argues that any requirement on the timing of responses must recognize that a response can only be required on a business day and it must take into account how far in the future the shipper wants the discount to be effective.

Commission Ruling

23. The Commission denies Kinder Morgan's request for rehearing. In Order No. 637-A, the Commission found that the interaction of its segmentation policies and its current policy of permitting pipelines to limit discounts to particular points needs reexamination. The Commission determined that placing restrictions on discounted transactions could interfere with competition created through released capacity.[19]

24. In Colorado Interstate Gas Company,[20] the Commission examined the effects of its existing discount policy on competition and found that if shippers with a discount would lose the discount and be subject to the maximum rate if such shippers utilized their flexible point rights to move to a secondary point or segmented capacity which would use different points than the primary points contained in the contract, this would have the effect of restricting competition. The Commission, however, also recognized that if the discount were to apply automatically at secondary points, the pipeline may be required to give discounts for other than competitive reasons contrary to the discount policy. Therefore, the Commission found that it could best balance these interests by permitting the shipper to retain its discount when moving to secondary or segmented points, if the pipeline has granted a discount to a similarly situated shipper at the alternate point. This allows a shipper to better compete with primary capacity offered by the pipeline and with other shippers at the alternate points. This policy applied the general requirement that pipelines must not engage in undue discrimination by ensuring that a shipper with a discounted contract can continue to receive a discount at points where it is similarly situated to other shippers receiving a discount. Therefore, the above discussion fully explains the reasoning behind the discount policy the Commission applies here.

25. The Commission also denies Kinder Morgan's request for rehearing concerning the two-hour response time for retaining discounts. The Commission finds no basis for exempting Kinder Morgan from the requirement that it process within two hours any request to transfer an existing discount. In Order No. 637, the Commission sought to foster a more competitive market for the sale of pipeline capacity by enabling released capacity to compete on a comparable basis with pipelines' sale of their primary capacity. As part of that effort, the Commission required pipelines to provide purchasers of released capacity the same ability to submit a nomination at each of four standard scheduling periods as shippers purchasing capacity from the pipeline.

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[19] Order No. 637-A at 61,595.

[20] Colorado Interstate Gas Co., 95 FERC ¶ 61,321 at 62,120-21 (2001).

26. As the Commission explained on rehearing of Granite State, the two-hour processing of discount retention requests is necessary in order to implement this scheduling equality requirement. The two-hour processing time is necessary so that shippers holding discounted contracts can similarly take advantage of the four nomination opportunities. For example, replacement shippers frequently want to use receipt or delivery points different from those in the releasing shipper's contract. If a releasing shipper holding a discount contract and a replacement shipper want to structure a capacity release using alternate points at any one of these four nomination opportunities, the two shippers need to know the capacity price that will apply in order to determine whether to proceed with the capacity release transaction. If the releasing shipper were to lose its discount price as a result of a capacity release at an alternate point, it might not be willing to enter into the release in the first place. On the other hand, if the discount shipper were to retain its discount price the capacity release transaction would be economic. Thus, in order to make the Commission's regulation effective and promote competition in the capacity market, the pipeline must inform shippers whether they retain a discount in sufficient time so that the shippers can submit nominations at each of the four scheduling opportunities.

27. In Granite State, the Commission stated that "pipelines can raise specific factual conditions on their pipeline that they believe warrant a change in the application of the discount policy to their pipeline.'[21] However, Kinder Morgan has not provided specific factual conditions applicable to its pipeline system that would support its claim that it should not be required to implement the two-hour processing requirement.[22] The Commission finds that any burden this imposes on pipelines is justified by the benefits of promoting competition in the pipeline capacity market.

28. Kinder Morgan has not demonstrated why a request to retain a discount in connection with a transaction that will be in effect for an extended term requires more time than a short term request, nor has it shown that two hours is insufficient time to evaluate a shipper's long-term request. Kinder Morgan has only made general assertions that certain requests to retain discounts would be more complex or require higher approval level but has not provided any support for its position. In evaluating a request to retain a discount, the pipeline must consider whether the new transaction is similarly situated to the transaction for which discounts have already been given at the new point. This need not involve a detailed analysis. For example, if the discounts given to existing shippers at the new point are all for relatively short-term transactions of a month or less and the shipper seeks to retain its existing discount in connection with a long-term release transaction of a

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[21] Granite State Gas Transmission, Inc., 98 FERC ¶ 61,019 at 61,055 (2002).

[22] ANR's compliance filing includes the two-hour processing requirement.

year or more, the pipeline could find the long-term release transaction not similarly situated based on the difference in term.

29. The Commission also rejects Kinder Morgan's proposal that the time requirement for processing transactions for which the discount would not take effect until more than 24 hours in the future would be two business days, but not less than 2 hours prior to the timely nomination deadline. Under Kinder Morgan's proposal, a shipper negotiating for a transaction to take effect in two days would receive only two hours notice prior to the nomination deadline. The Commission has explained that the two-hour requirement "will provide shippers with flexibility to determine how much advance notice of a pipeline discount determination the shipper requires to structure the business transaction."[23] For example, if a shipper wants 10 hours within which to make its decision, it would make its request to Kinder Morgan at least 12 hours in advance. Kinder Morgan's proposal conflicts with Commission policy because it deprives the shipper of its ability to determine how much advance notice of Kinder Morgan's discount decision it will receive. In the example above, under Kinder Morgan's proposal, if the shipper places its request 12 hours in advance it only receives two hours notice, rather than the 10 hours it requires. Even where a transaction will not take effect for a number of days, the shipper may need to have a quick decision concerning retention of the discount in order to complete its intended transaction. Finally, with regard to Kinder Morgan's assertion that the required response time must fall on a business day, the Commission has clarified that the two-hour processing time does not require the pipeline to process requests overnight or over a weekend.[24]

Unauthorized Overrun Penalty

30. Kinder Morgan asserts that the Commission erred when it interpreted Kinder Morgan's current tariff as providing for a $6/Dth unauthorized overrun penalty during normal operating conditions. Kinder Morgan states that pursuant to Section 5.2(c)(2) of Rate Schedule FT, Volume 1-A Original Sheet Nos. 16-17 and Section 5.2(c)(2) of Rate Schedule NNS, Volume 1-A Original Sheet No. 75, Kinder Morgan may assess unauthorized overrun charges only after providing notice that its system integrity is at risk and that unauthorized overrun charges will be imposed. Kinder Morgan states that following a notice period of forty-eight (48) hours, or a shorter notice period if deemed necessary to protect system integrity, overrun quantities outside of the tolerance specified in the tariff will be charged the unauthorized overrun rate of $6/Dth. Kinder Morgan states that quantities of overrun gas that are within the tolerance, or for which notice has not been

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[23] Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 at 62,037 (2001).

[24] National Fuel Gas Supply Corp., 98 FERC ¶ 61,123 (2002) and Granite State Gas Transmission, Inc., 98 FERC ¶ 61,019 (2002).

given, will be charged at the authorized overrun rate. Kinder Morgan states that under the current tariff language, it cannot charge for unauthorized overruns during normal operating conditions. Specifically, the operational integrity of the Kinder Morgan system must be at risk and a shipper must be given notice that it would be subject to unauthorized overrun charges if it overruns its capacity, before Kinder Morgan can charge the shipper the unauthorized overrun rate of $6/Dth for an overrun. Therefore, Kinder Morgan submits that only those shippers who violate a specific notice that the operational integrity of the Kinder Morgan system will incur unauthorized overrun charges under Kinder Morgan's current penalty structure.

Commission Ruling

31. The Commission grants Kinder Morgan's request for rehearing. The Commission misinterpreted Kinder Morgan's tariff. The $6/Dth unauthorized overrun rate does not apply under normal operating conditions but only applies in situations where the system integrity is at issue and notice is given to shippers. The Commission finds that Kinder Morgan's request to retain that penalty is reasonable in order to deter conduct that might adversely affect system operations.

Computer System Modifications and Effective Date

32. Kinder Morgan requests rehearing of the Commission’s ruling that Kinder Morgan implement changes related to segmentation and scheduling equality within four months after Commission action on Kinder Morgan's compliance filing. In the July 13, 2001 compliance filing, Kinder Morgan requested an effective date four months after a Commission order approving tariff sheets in either the Kinder Morgan or Natural Gas Pipeline of America (NGPL) Order No. 637 proceeding, whichever is later. In the compliance order, the Commission stated that Kinder Morgan had not demonstrated the need to delay implementation until a Commission order approving the tariff sheets in NGPL’s Order No. 637 proceeding.

33. The Kinder Morgan Pipeline Group consists of Kinder Morgan, NGPL, Trailblazer Pipeline Company, and Canyon Creek Compression Company. Kinder Morgan states that the Commission has previously recognized that the Kinder Morgan Pipelines share a common computer system and, thus, that it would be cost and time effective to allow the Kinder Morgan Pipelines to modify their computer software and hardware in tandem. Indeed, Kinder Morgan states that the implementation of segmentation and scheduling equality will require substantial modifications to the Kinder Morgan Pipeline Group computer system.

34. Kinder Morgan submits that segmentation will require computer system modifications to reflect changes in contracts, nominations, scheduling and invoicing. Under the Commission's ruling, Kinder Morgan states that it will need to make these complex computer system modifications twice: once following a final Kinder Morgan order and another following a final NGPL order. Kinder Morgan asserts that this is neither cost effective nor administratively efficient. Thus, consistent with the ruling in Canyon Creek,[25] Kinder Morgan requests an implementation date for segmentation and scheduling equality based on the later of a Commission final order in the Kinder Morgan or NGPL Order No. 637 proceedings. Kinder Morgan asserts that an effective date four months after the later of a commission order approving tariff sheets in the Kinder Morgan or NGPL Order No. 637 proceedings is appropriate.

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[25] 96 FERC ¶ 61,006 (2001).

Commission Ruling

35. Contemporaneously with this order, the Commission is issuing an order in NGPL's Order No. 637 in Docket No. RP00-409-002, et al. In that order, the Commission accepted NGPL's proposed time line for the implementation of segmentation and accepted the proposed implementation date of the first month which is six months from the date of the order. To be consistent, the Commission will allow the same implementation date for Kinder Morgan.

Compliance Filing

Scheduling Equality

36. The Commission directed Kinder Morgan to revise its tariff sheets so that shippers acquiring capacity through capacity release will be able to nominate at the earliest possible nomination cycle.

Commission Ruling

37. In its August 1, 2002 filing to comply with Order No. 587-O in Docket No. RP02-419-000, Kinder Morgan filed tariff sheets to incorporate NAESB Standard 5.3.2, Version 1.5, into its tariff. On September 27, 2002, the Commission issued a Director letter order accepting the tariff sheets, filed in Docket No. RP02-419-000, including certain tariff sheets relating to scheduling equality issues to become effective October 1, 2002. Consequently, the scheduling equality related tariff sheets filed herein (Sheet Nos. 9A, 45, 45A, 45B, and 52C in Volume No. 1-B) to implement NAESB capacity release timeline in NAESB Standard 5.3.2, Version 1.5, have been superceded and are rejected as moot.

Segmentation, Flexible Point Rights, Secondary Point Priority, and Discounting

38. Kinder Morgan was directed to revise Section 3.14(d) of the GT&C: (1) to conform to the Commission's segmentation policy as it applies to backhauls; (2) to remove language which provided an overrun charge in the event forwardhauls and backhauls resulting from path segmentation to the same point result in a point volume greater than the shipper's mainline contract demand; and (3) to clarify that a segmentation request that results in a reverse flow from the original path will be denied only if it is not operationally feasible to perform such segmentation. The Commission has reviewed Kinder Morgan's tariff sheets and finds that it has complied with the directives of the October 19, 2001 order regarding these issues.

Segmentation requests resulting in a change in flow direction

39. The October 19 order accepted Kinder Morgan's claim that the pipeline would have to make a determination that segmentation resulting in a reversal of flow was operationally feasible. However, the Commission stated that "(s)ince Kinder Morgan's system has a general gas flow direction from the west end of the system to the east end, it appears that any review process ... should not involve an extensive flow study." The Commission directed Kinder Morgan "...to revise its tariff to include a reasonable period of time to respond to a shipper's segmentation request."

40. In its compliance filing, Kinder Morgan states that its system is far more complicated than the Commission represented - that its system extends into several producing basins, has numerous reticulated segments, frequent changes in patterns of flow, limited compression flexibility, 200 receipt points, and thousands of delivery points. Kinder Morgan further states that it will have to rigorously evaluate segmentation requests involving a change in direction of flow. Therefore, Kinder Morgan claims that it may require up to ten business days to evaluate and respond to a request for segmentation involving a reversal of flow.

41. Indicated Shippers protest the use of such a long time period, calling it a collateral attack on the October 19 order. Indicated Shippers further claim that Kinder Morgan has offered little support for its proposal.

42. Kinder Morgan responds that it amply demonstrated the need for a ten-business day response period. It further points out that the Commission in CIG[26] found that a twenty-day time period was reasonable in a reticulated system.

Commission Ruling

43. The Commission directed Kinder Morgan to revise its tariff to include a reasonable period of time to respond to a shipper's segmentation request. Kinder Morgan has proposed a period of up to ten business days to respond to such segmentation requests involving a reversal of flow. While Indicated Shippers object to the proposed period, they have not advocated a reasonable period suitable to Kinder Morgan's system. The Commission finds Kinder Morgan's explanation to support the proposed period reasonable

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[26] Colorado Interstate Gas Company, 95 FERC ¶ 61,321 (2001); order on rehearing, 96 FERC ¶ 61,186 (2001), Second Order on Compliance Filing, 97 FERC ¶ 61,011 (2001) (rehearing pending). This series of orders is collectively referred to as CIG, unless specifically referenced otherwise.

and will accept Kinder Morgan's proposal. However, Kinder Morgan must make a reasonable effort to complete its evaluation as expeditiously as possible.

Segmentation: Point Changes

44. The Commission directed Kinder Morgan to revise Section 3.14(e) of the GT&C. Kinder Morgan was directed to either delete the restriction that choosing new primary points cannot create stranded capacity on the pipeline or explain why the restriction is operationally necessary. Kinder Morgan states that it has elected to delete the referenced language. Kinder Morgan was also directed to revise language relating to point changes in conjunction with a segmented release to conform with the Texas Eastern/El Paso policy. Under that policy, the releasing shipper and the replacement shipper can each choose primary points up to its applicable contract quantity if the resulting paths do not overlap, subject to the availability of point capacity. Kinder Morgan proposes that if the primary points chosen by the segmenting parties are not points under the original agreement, these additional points will be subject to Kinder Morgan's subsequent award of firm capacity at the point to another original shipper. Kinder Morgan states that changes to points that would result in a loss of MDTQ at a primary point under the original contract will be subject to the agreement of the releasing shipper. Kinder Morgan states that if it allows a point change without the consent of the releasing shipper, however, Kinder Morgan will have to reinstate that point at the end of the release.

Commission Ruling

45. The Commission finds that Kinder Morgan has complied with the directives of the October 19, 2001 order with respect to point changes except in one aspect. In Section 3.14(e), which addresses segmentation, Kinder Morgan's tariff reads in pertinent part:

> Any primary point established under this subsection (e) which was not a primary point under the original Service Agreement and is not reflected in an Amendment to the Original Service agreement is subject to the subsequent award of firm Capacity to a Shipper entering into an original contract which includes that firm point capacity.

The Commission directs Kinder Morgan to remove this provision from Section 3.14(e) of its tariff because it conflicts with the Texas Eastern/El Paso policy that in a segmented capacity release both the releasing shipper and replacement shippers are able to change to other primary points in the zone for which they are paying. Under this provision, a sale of firm capacity by Kinder Morgan would be entitled to priority over the capacity release transaction giving Kinder Morgan the type of competitive advantage the Commission's policy is designed to prevent, as discussed above.[27]

Discount Policy

46. The October 19 order required Kinder Morgan to implement the Commission's policy, enunciated in CIG, of a rebuttable presumption that a shipper can retain its discount, negotiated at its primary points, when it switches to different points, either through capacity release, segmentation, or flexible point rights. Under the policy, as elaborated further in (Granite State), the pipeline must respond within two hours to a shipper request to retain a discount at an alternate point.[28] Requests received overnight must be acted on by 8:30 CCT the next morning.

47. Kinder Morgan's compliance filing provides for the rebuttable presumption that discounts can be carried to alternate points, but with several modifications. First, Section 3.14(f) of the General Terms and Conditions states that a shipper may request to retain its discount rate at an alternate receipt or delivery point, but only if this is consistent with its service agreement (or related discount agreement). In other words, a shipper could sign a service agreement (or discount agreement) which bars it from seeking to retain the discount at alternate points.

48. Second, Kinder Morgan's proposed tariff language provides for the two-hour response to shipper discount requests, but only on a "reasonable efforts basis." Third, requests received after 4 p.m. would be deemed to have been received at 9 a.m. the next morning, for response by 11 a.m.. Fourth, for discounts for service to begin more than 24 hours later, the pipeline will respond within two business days, or two hours before timely nominations are due for the day that service is to begin, whichever is earlier.

49. Indicated Shippers object to Kinder Morgan's qualification that discounts are portable only if the service agreement does not provide otherwise. They assert that this tariff provision was effectively barred by the Commission in Natural Gas Pipeline Company (NGPL).[29] In that order, according to Indicated Shippers, the Commission disallowed contract provisions which barred capacity release. Indicated Shippers also

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[27]See also, Trailblazer Pipeline Company, 103 FERC ¶ 61,074 at P 38-39 (2002).

[28]The shipper would have to pay the greater of the contractual rate and the rate being offered at the alternative point. Requests received after 4 PM CCT are to be processed by 8:30 AM the following morning.

[29]82 FERC ¶ 61,298 (1998).

object to the qualifications which Kinder Morgan has added to the two-hour rule for responses to a request to take discounts to alternate points. According to Indicated Shippers, all these deviations from the Commission's discount policy should be rejected.

50. Kinder Morgan responds that a failure to make discount portability contingent on consistency with the underlying service agreement would lead to abrogation of the contract. This, according to Kinder Morgan, is counter to the Commission's regulations, particularly Section 284.7(d), which states that a shipper should be able to use in a flexible manner only the capacity for which it has contracted.

51. Kinder Morgan's reply asserts that it gives discounts to achieve certain purposes on its system, which could be frustrated if the discount were portable. For example, it tries to encourage long hauls and responds to competitive pressure at individual points. According to Kinder Morgan, the result of requiring it to remove the contract consistency clause would be Kinder Morgan offering fewer discounts, since it would not know in advance the scope of the discount.

52. Kinder Morgan also asserts that the Commission in NGPL found that it was acceptable for pipelines to negotiate restrictions on discounts to particular parts of the system.

53. Kinder Morgan also responds to Indicated Shippers' protest concerning the two-hour processing requirement. Kinder Morgan states that the proposed procedures represent a practical approach to implementing the Commission policy. Further, the different treatment of capacity releases that are to become effective in the future is appropriate, given the lack of urgency in those circumstances. Kinder Morgan states that its proposed procedures are consistent with the mandate of Order No. 637-A that discounting procedures should be worked out in individual compliance filings.

Commission Ruling

54. Kinder Morgan's proposed discount portability provisions partially comply with the Commission's CIG/Granite State discount policy. Kinder Morgan's modifications to that policy are unjustified.

55. First, the Commission rejects Kinder Morgan's proposed provision that a shipper can only request to retain a discount if that is consistent with its service agreement. One of the Commission's goals in requiring compliance with Order No. 637 is to promote a vibrant and competitive market by encouraging capacity release. That goal could be thwarted if the Commission allowed contracts which explicitly prohibit or discourage capacity release. Requiring the releasing shipper to pay the maximum rate in such circumstances would thus

discourage capacity release. Replacement shippers often use points different from the releasing shipper. Pipelines' interests are protected by the Commission's policy, since any pipeline can deny the extension of a discount to alternative points by a showing that the discount is not appropriate at the alternative point.

56. Our discussion in NGPL evidenced our concern about developing and promoting a vibrant capacity release market. However, the NGPL order was issued prior to our formulation of the CIG policy on discounting. Therefore, Kinder Morgan's citation of NGPL to show that a pipeline can restrict a discount to one point is not apt. Approval of Kinder Morgan's provision would permit the pipeline to reconstruct the very competitive barriers that the Commission's discount policy seeks to remove. Under Kinder Morgan's proposal, discount portability would be contingent on consistency with the underlying service agreement. But as the Commission explained in Order No. 637-B:

> Once having granted a particular shipper a discount, some pipelines restrict the shipper's use of its capacity through capacity release or segmentation by requiring that shipper to pay the maximum rate for capacity in order to effectuate a segmented or release transaction. Placing such restrictions on discounted transactions could interfere with competition created through released capacity. Replacement shippers frequently need to use points different from those of the releasing shippers, and neither the releasing or replacement shipper may be willing to absorb the differential between the discounted and maximum rate. (Order No. 637-B, 92 FERC ¶ 61,062, at 61,168).

Therefore, we will require Kinder Morgan to remove the clause that makes discount portability contingent on no contravening contractual provisions.

57. Second, we require Kinder Morgan to remove the provision that it will only follow the 2-hour processing rule on a "best efforts" basis. For the reasons discussed in connection with Kinder Morgan's request for rehearing of the two-hour requirement, Kinder Morgan must implement the two-hour processing requirement.

58. Third, Kinder Morgan has not supported its modification of the "overnight rule," which states that discount requests tendered after 4 p.m.CCT should be responded to by 8:30 a.m. the following morning. The Commission previously stated that pipelines must act on such requests no later than 8:30 a.m. the next business day. This schedule permits the releasing shipper submitting a request for a discount at 6:30 a.m. or earlier to have a least half an hour in which to consider the pipeline's determination and still inform the pipeline by the 9 a.m. so that the replacement shipper may nominate at the Intraday 1

nomination at 10 a.m.[30] If we accepted Kinder Morgan's proposal, the shipper would not know of the pipeline's determination until 11:00 a.m. which would be too late to complete the release transaction. Therefore, in the instant case, the requirement that Kinder Morgan act on requests for discounts received after the end of the business day no later than 8:30 a.m. the next business day is reasonable as it evenly divides the amount of time available between the pipeline and the releasing and replacement shippers.

59. The Commission also rejects Kinder Morgan's proposal that the time requirement for processing transactions for which the discount would not take effect until more than 24 hours in the future would be two business days, but not less than two hours prior to the timely nomination deadline. The Commission previously refused to grant exceptions to the 2-hour requirement unless a satisfactory reason has been shown.[31] The Commission explained that the two-hour requirement "will provide shippers with the flexibility to determine how much advance notice of a pipeline's discount determination the shipper requires to structure the business transaction.'[32] Kinder Morgan merely states that it needs this provision because the expedited processing requirement in that situation could hinder agreement on discounts, but Kinder Morgan does not explain how it would cause that problem. Accordingly, Kinder Morgan must remove this from its tariff so that Kinder Morgan will process all discounts under the two-hour requirement for processing discounts.

60. Lastly, we note that the last sentence of Section 3.14(g) of the proposed General Terms and Conditions states as follows:

> In the event that segmentation results in a permanent release to a Replacement Shipper, that Replacement Shipper will be subject to the maximum applicable Transportation rates as set forth in Transporter's Tariff.

61. The Commission accepts Kinder Morgan's proposed tariff provision since the CIG/Granite State discount policy only apply to requests by shippers to retain a discount when shifting to a secondary point. In the event of a permanent release, a new contract would begin with the new shipper. However, Kinder Morgan is reminded to the extent it sells primary capacity at a point to some shippers at a discount, it must offer such discounts

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[30] 18 C.F.R. § 284.12 (a)(1)(v), Capacity Release Related Standards 5.3.2 (Establishing the notification timeline for capacity release transactions).

[31] See, Reliant Energy Transmission Company, 100 FERC ¶ 61,172 at P 19 (2002) (extended contract not a basis for exemption).

[32] Granite State Gas Transmission, Inc., 96 FERC ¶ 61,273 at 62,037 (2001).

to other similarly situated shippers seeking to use the same point as a primary point. This is nothing more than a statement of the requirement in NGA Sections 4 and 5 that pipelines must not engage in undue discrimination among shippers.

Imbalance Services, Penalties and OFOs

Third Party Imbalance Management Services

62. The Commission ordered Kinder Morgan to revise its pro forma tariff to follow the CIG approach to third party imbalance management services, or show why it was not appropriate. In CIG, the Commission approved a simple statement that the pipeline will accommodate third party providers on a nondiscriminatory basis, provided that the third party comply with GISB standards and not adversely affect system operations.

63. Kinder Morgan had also sought to charge customers 200% of the PALS rate, in the event of a default by the third party provider, which the Commission rejected. The Commission stated that PALS is an interruptible service that is available only when there is capacity available. If PALS is not available, then authorized or unauthorized overrun charges may apply.

64. Kinder Morgan's November 19 compliance filing includes the language from CIG; however, it also incorporates sections from a settlement in Panhandle Eastern Pipeline Company's (Panhandle Eastern) Order No. 637 compliance proceeding in Docket No. RP00-395.[33] The conditions in Panhandle Eastern include: 1) the third party provider must enter into an agreement with Kinder Morgan detailing how the service will be provided and the parties' mutual obligations; 2) the customer must enter into an agreement with Kinder Morgan detailing the exact nature of the third party service; 3) the points where the third party imbalance service is to be offered must have real time metering; and 4) the conditions enumerated in the tariff are minimum conditions. Kinder Morgan may require additional conditions at its discretion.

65. Other conditions were carried over from Kinder Morgan's pro forma filing on July 13, 2001, as modified by the October 19 order. Kinder Morgan states that, in case of a third party shipper's failure to perform under its contracts, the customer would be charged the PAL rate, if the service is available. If PAL service is not available, the customer would be subject to authorized or unauthorized overrun charges. Also, Kinder Morgan states that it may pursue collection from a non-performing third party for any damages that were not recouped from the customer.

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[33] 97 FERC ¶ 61,046 (2001).

66. Both Indicated Shippers and MUE object to the inclusion of new provisions that were neither in the original pro forma tariff sheets nor specifically required by the Commission order. Indicated Shippers question the wisdom of including selected provisions from a comprehensive settlement in another case and specifically object to the new requirement of real-time metering found in Section 39D of the tariff. MUE objects to the wide latitude given to Kinder Morgan to add additional conditions on a third party.

67. Kinder Morgan, in its reply, states that, in following the Panhandle Eastern order, it was simply following the most recent Commission precedent. Kinder Morgan also states that the Commission addressed the issue of latitude to add additional conditions on third party providers in the Panhandle Eastern order. In that order, the Commission found that it was reasonable to give the pipeline latitude, since there was no operating history to go on; further, the Commission stated that any additional conditions would have to be reasonable, and any disputes over those conditions could be resolved by the Commission.

Commission Ruling

68. The Commission finds that Kinder Morgan has complied with the requirements of the October 19 order with respect to third party imbalance management services. Further, the Commission finds that the inclusion of the conditions from Panhandle Eastern order are reasonable. As Kinder Morgan explains, the incorporation of the Panhandle Eastern provisions would allow third parties to provide imbalance management services to Kinder Morgan's shippers, while appropriately protecting the integrity of the Kinder Morgan system and ensuring that existing and future shippers suffer no degradation of service.

Advisory Action

69. The October 19 order found that Kinder Morgan need not alter its tariff to state that actions taken to comply with an Advisory Action would not be subject to penalties. The Commission accepted Kinder Morgan's explanation that the actions requested under an Advisory Action might be very general in nature, making it difficult to tell whether an action by a shipper was in compliance with the Advisory Action.

70. MUE requests that the Commission reconsider its prior ruling on this issue and require that Kinder Morgan expressly provide that actions taken in response to an advisory action will not be subject to penalties. MUE states that Kinder Morgan's contention that the type of requests made of shippers under an Advisory Action are very general in nature is not borne out by the list of such proposed actions in Section 29.4 of the General Terms and Conditions. Those actions, such as changing receipt and delivery points, are very specific and could easily result in transitory imbalances or overruns.

Commission Ruling

71. MUE's request for reconsideration is equivalent to an untimely request for rehearing. Rule 713 of the Commission's Rules of Practice and Procedure requires that requests for rehearing be made within 30 days of the date of the order. The only issue in a compliance filing is whether the pipeline adequately complied with the order. Since the Commission did not require any changes to the Advisory Action section of Kinder Morgan's tariff, the order on compliance filing would not be an appropriate forum for addressing MUE's concerns. Further, as the Commission said in its October 19 order, since Advisory Actions are voluntary, Kinder Morgan does not propose any penalty for noncompliance with Advisory Actions.

Penalty Crediting Mechanism

72. The Commission directed Kinder Morgan to revise the penalty crediting mechanism in Section 35.1(c) of the GT&C so that penalty revenue is distributed to both firm and interruptible shippers.

Commission Ruling

73. The Commission finds that Kinder Morgan has complied with the directives of the October 19 order. Kinder Morgan has revised its tariff to indicate that penalty revenues will be credited to all shippers and not just firm shippers as it previously proposed.

Unauthorized Gas

74. The Commission directed Kinder Morgan to revise its tariff to implement a mechanism to credit the value of retained gas to its customers.

Commission Ruling

75. The Commission finds that Kinder Morgan has complied with the October 19 order. Kinder Morgan revised section 29.13 of its GT&C to state that the value of any gas retained pursuant to Section 29.13 (Unauthorized Gas) will be credited back to shippers pursuant to Section 35 (Crediting of Penalty Charges).

Unauthorized Overrun Charges

76. The October 19 order instructed Kinder Morgan to reduce the level of unauthorized overrun charges during non-critical periods for the FT and NNT rate schedules from $6 to a more reasonable amount. For the PALS rate schedule, the Commission instructed Kinder Morgan to reduce the $10 per Dth unauthorized overrun.

77. Kinder Morgan responds in its compliance filing that the Commission misunderstood the intent of Kinder Morgan's tariff provisions: that in fact, the unauthorized overrun was meant to be in effect only when system integrity is in jeopardy, and then only after 48 hours notice. Since the existing tariff was in compliance with Order No. 637, according to Kinder Morgan, it determined that no further tariff change was necessary. Regarding the PALS unauthorized overrun rate, Kinder Morgan stated that it has eliminated the $10 per Dth unauthorized overrun rate from its tariff.

Commission Ruling

78. The Commission finds that Kinder Morgan has complied with the Commission's directives with respect to unauthorized overrun charges. As discussed above in the rehearing section, the Commission misinterpreted Kinder Morgan's tariff. The $6/Dth unauthorized overrun rate does not apply under normal operating conditions but only applies in situations where the system integrity is at issue and notice is given to shippers. The Commission finds that such a penalty is reasonable in order to deter conduct that might adversely affect system operations.

Other Issues

NAESB-Related Changes

79. The October 19 order rejected Kinder Morgan's proposal to replace the word "Day" with a phrase "Business Day" in Section 23.1(c)(1)(I), 23.1(c)(1)(ii), and 23.1(c)(2)(ii) of the GT&C. The order also rejected Kinder Morgan's proposal to replace the phrase "four (4) Business Days" with the phrase "three (3) Business Days" in Section 23.1(c)(2)(I) of the GT&C. Finally, the Commission rejected Kinder Morgan's proposal to replace the phrase "each running from 1:00 p.m. Central Clock Time on a day to 2:00 p.m. Central Clock Time on the following business day" with the phrase "for a period at least running from 1:00 p.m. Central Clock Time on a Business Day to 2:00 p.m. Central Clock Time two (2) Business Days later" in Section 23.7(b) of the GT&C. The Commission found that the proposed changes were not consistent with the GISB standards.

Commission Ruling

80. The Commission finds that Kinder Morgan has removed its proposed changes from its tariff and has reinstated the prior tariff language. Accordingly, Kinder Morgan is in compliance with the October 19 order.

Effective Date

81. The October 19 order gave Kinder Morgan 4 months from the date of Commission action on the compliance with the October 19 order to implement changes related to segmentation and scheduling equality. The order directed Kinder Morgan to indicate which changes could be made immediately, and which would require a delay. Kinder Morgan was required to file two sets of actual tariff sheets reflecting those different effective dates.

82. Kinder Morgan's compliance filing included a set of actual tariff sheets with a January 1, 2001 effective date and a second set of pro forma sheets with no effective date. Kinder Morgan states that the pro forma sheets include segmentation and scheduling equality. Since it could not determine when four months from a final Commission order on compliance would be, it left the effective date blank.

83. MUE requests the rejection of Kinder Morgan's entire filing, stating that it does not adequately comply with the October 19 order. MUE further objects to the delays in Kinder Morgan's full Order No. 637 compliance, citing the lack of an effective date on certain of the tariff sheets, and Kinder Morgan's request for rehearing. Since any delay in full compliance is Kinder Morgan's fault, according to MUE, it requests that the four-month delay for computer changes be lowered to make up for procedural delays caused by Kinder Morgan.

84. Indicated Shippers also objects to the delays in implementation of Order No. 637. They contend that Kinder Morgan has abused the flexibility given by the October 19 order to delay implementation of, not only segmentation and scheduling equality, but the CIG discounting policy, as well as correcting miscellaneous tariff changes rejected by the Commission.

85. Kinder Morgan replies that Indicated Shippers are wrong: that Kinder Morgan included the discount policy implementation provisions on the delayed tariff sheets only because it was part of the segmentation section, for which the Commission allowed a four-month delay. Further, Kinder Morgan states that the miscellaneous tariff provisions which were rejected were part of the scheduling section, for which a four-month delay was also given.

86. Kinder Morgan, in response to MUE, states that MUE is again trying to circumvent the regulations - first in complaining about Kinder Morgan's rehearing request, and secondly, in its failure to request rehearing of the Commission decision allowing a four-month delay in full implementation.

Commission Ruling

87. The Commission finds that Kinder Morgan has adequately complied with the dictates of the October 19 order, with respect to the effective date. While the order directed Kinder Morgan to include actual tariff sheets - rather than pro forma - and Kinder Morgan instead included pro forma tariff sheets for those provisions subject to delay, no harm is done by this oversight. The tariff sheets in Appendix A are accepted effective June 1, 2003. In addition, consistent with the discussion on rehearing concerning the implementation date for segmentation, Kinder Morgan is required to file actual tariff sheets listed in Appendix B to be effective on the first day of the month which is six months from the date of this order.

88. We agree with Kinder Morgan that the CIG discount policy is intimately bound up with segmentation generally. Since we accorded Kinder Morgan a four-month delay for implementation of the segmentation provisions, Kinder Morgan was correct in including the discount provisions with the tariff sheets to be effective in four months.

89. Regarding Indicated Shippers' protest related to miscellaneous tariff changes, it appears that Indicated Shippers misunderstood the requirement of the order. Since the rejected tariff changes altered the existing tariff sheets, it was sufficient that Kinder Morgan took them out of its pro forma tariff sheets. Since the old (approved) language was included in tariff provisions dealing with scheduling equality, for which delayed implementation was allowed, the effectiveness of those tariff sheets is properly delayed for four months.

Missing tariff sheet

90. Kinder Morgan neglected to include a revised Sheet No. 1 (Table of Contents) in Fourth Revised Volume No. 1A to reflect the addition of the Park and Loan Rate Schedule at Sheet Nos. 148A to 148K. Kinder Morgan's compliance with this order should include a revised table of contents.

The Commission orders:

(A) The tariff sheets listed in Appendix A, are accepted, to be effective June 1, 2003. Kinder Morgan is directed to file, within 30 days of the date of issuance of this order, revised tariff sheets consistent with the discussion in the body of this order.

(B) Kinder Morgan is directed to file, within 30 days of the date of the issuance of this order, actual tariff sheets listed in Appendix B, to be effective on the first day of the month which is six months from the date of this order.

(C) The tariff sheets relating to scheduling equality, listed in Appendix C, are rejected as moot.

(D) Kinder Morgan's request for rehearing is granted in part and denied in part as discussed above.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix A

Tariff Sheets to be effective June 1, 2003

Fourth Revised Volume No. 1-A

Second Revised Sheet No. 17
Fourth Revised Sheet No. 76
Third Revised Sheet No. 76A
First Revised Sheet No. 148K

Fourth Revised Volume No. 1-B

Third Revised Sheet No. 3
Fifth Revised Sheet No. 4
Second Revised Sheet No. 10A
Third Revised Sheet No. 31
Second Revised Sheet No. 42
First Revised Sheet No. 71
Second Revised Sheet No. 72
Third Revised Sheet No. 73
Second Revised Sheet No. 74
First Revised Sheet No. 75
First Revised Sheet No. 76
Third Revised Sheet No. 77
Second Revised Sheet No. 78
Second Revised Sheet No. 79
First Revised Sheet No. 80
First Revised Sheet No. 81
Original Sheet No. 81A
Original Sheet No. 81B
Original Sheet No. 81C
First Revised Sheet No. 82
Third Revised Sheet No. 86
Third Sub. Revised Sheet No. 95
Original Sheet No. 96

Appendix B

Tariff Sheets to be effective on the first day of the month which is six months from the date of this order

Fourth Revised Volume No. 1-B

Third Sub. Original Sheet No. 11D
Third Sub. Original Sheet No. 11E
Substitute Original Sheet No. 11F
Substitute Original Sheet No. 11G
Substitute Original Sheet No. 11H
Sub. Third Revised Sheet No. 12
Sub. Second Rev. No. 49
Second Sub. First Rev. Sheet No. 52D

Appendix C

Tariff Sheets Rejected as Moot

Fourth Revised Volume No. 1-B

Sub. Second Revised Sheet No. 9A
Sub. Second Revised Sheet No. 45A
Substitute Original Sheet No. 45B
Second Sub. First Rev. Sheet No. 52C.