From:	Gutierrez, Ana
To:	WasteRule, EMNRD, EMNRD
Cc:	Jessica Toll; LaManna, Julia; Gutierrez, Ana
Subject:	[EXT] Kinder Morgan, Inc. - Comments on OCD"s Proposed Natural Gas Waste Rules
Date:	Wednesday, September 16, 2020 3:56:16 PM
Attachments:	Kinder Morgan Inc. - Letter RE OCD Proposed Rules (Sept. 16 2020).pdf

On behalf of Kinder Morgan, Inc. and its subsidiaries and affiliates, El Paso Natural Gas Company, L.L.C., TransColorado Gas Transmission Co., LLC, and Natural Gas Pipeline Company of America, LLC, attached please find comments to the Oil Conservation Division regarding the proposed natural gas waste rule.

Regards,
Ana

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If you would like to know more about how we are managing the impact of the COVID-19 pandemic on our firm then take a look at our brief Q&A. If you would like to know more about how to handle the COVID-19 issues facing your business then take a look at our information hub.

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September 16, 2020

New Mexico Energy, Minerals, and Natural Resources Department
Oil Conservation Division
Wendell Chino Building
1220 South St. Francis Drive
Santa Fe, NM 87505
Submitted via electronic mail: EMNRD.wasterule@state.nm.us

Re: Kinder Morgan, Inc. and Its Subsidiaries' and Affiliates' Initial Comments on the New Mexico Energy, Minerals, and Natural Resources Department, Oil Conservation Division's Proposed Natural Gas Waste Rule

On July 20, 2020, the New Mexico Energy, Minerals, and Natural Resources Department, Oil Conservation Division ("OCD"), published a "draft natural gas waste rule" (the "Proposed Rules"). Kinder Morgan, Inc. and its subsidiaries and affiliates, El Paso Natural Gas Company, L.L.C. ("EPNG"), TransColorado Gas Transmission Co., LLC ("TransColorado"), and Natural Gas Pipeline Company of America, LLC ("NGPL") (collectively, "Kinder Morgan" or "we") respectfully submit these comments to the Proposed Rules. Kinder Morgan thanks the OCD for its diligent efforts to consider and address stakeholder feedback prior to a formal rulemaking.

Kinder Morgan operates approximately 3,595 miles of interstate transmission pipelines and owns assets in 23 counties throughout the state of New Mexico. These figures include pipelines operated by each of EPNG, TransColorado, and NGPL, respectively, which all transport natural gas for delivery to customers such as distribution companies for ultimate use in residential homes for heating and cooking as well as to other customers. In New Mexico alone, Kinder Morgan employs approximately 180 individuals, maintains a payroll of over $16.6 million, and pays approximately $8.8 million annually to local and state taxing bodies.

Each of EPNG, TransColorado, and NGPL operate purely *interstate* pipelines and undertake associated operations that are regulated by the Federal Energy Regulatory Commission ("FERC") and the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration ("PHMSA").

The Proposed Rules apply to operators in the production sector as well as the gathering and boosting sector. See OCD, "Summary and FAQs of OCD's Draft Natural Gas Waste Rule"; Proposed Rule 19.15.27.2 ("19.15.27 NMAC applies to persons engaged in oil and gas development and production within New Mexico."); Proposed Rule 19.15.28.2 ("19.15.28 NMAC applies to persons engaged in oil and gas gathering and processing within New Mexico."); Proposed Rule 19.15.7.2 ("19.15.7 NMAC applies to persons or entities engaged in oil and gas development and production in New Mexico."); Proposed Rule 19.15.18.2 ("19.15.18 NMAC

applies to persons engaged in oil and gas development and production in New Mexico."); Proposed Rule 19.15.19.2 ("19.15.19 NMAC applies to persons engaged in gas development and production in New Mexico.").

Kinder Morgan supports that OCD's Proposed Rules appropriately respect the exclusive jurisdiction of FERC and PHMSA over interstate transmission pipelines and interstate storage fields. This is sound policy and consistent with Congress's direction under the federal Natural Gas Act (the "NGA") and the Pipeline Safety Act. See 49 U.S.C. § 60104(c) ("A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.").[1]

Kinder Morgan appreciates the OCD's work in developing an appropriately-tailored rule, and we are happy to answer any questions you may have regarding this comment letter.

Respectfully submitted this 16th day of September, 2020.

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[1] See also ANR Pipeline Co. v. Iowa Slate Commerce Comm'n, 828 F.2d 465, 468 (8th Cir. 1987) ("Congress expressly . . . preempted state regulation of safety in connection with interstate gas pipelines."); Olympic Pipe Line Co. v. City of Seattle, 437 F.3d 872, 878 (9th Cir. 2006) ("For interstate pipelines, state and local authorities generally may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.") (internal quotation marks omitted); Northern Border Pipeline Co. v. Jackson County, 512 F. Supp. 1261, 1265 (D. Minn. 1981) ("Where Congress has 'unmistakenly ordained' a field for exclusive federal regulation there is no room for any state regulation be it consistent with, or more or less stringent than the federal legislation . . . . The Gas Safety Act and its legislative history indicate that Congress has unmistakenly ordained that the federal law preempts state law.") (internal citations omitted). In addition to with respect to safety standards, the NGA also preempts state regulation of interstate natural gas pipelines with respect to rate regulation. The Supreme Court stated in Schneidewind v. ANR Pipeline Co. that "the NGA confers upon FERC exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce for resale." 485 U.S. 293, 300−01 (1988). The Court concluded in Schneidewind that a state law seeking to regulate the issuance of securities to natural gas companies was preempted because it sought to regulate in a field the NGA occupied to the exclusion of state law. See id. at 310.