



February 27, 2020

Mr. Stephen R. Bruce  
Stephen R. Bruce Law Offices  
1667 K Street, NW, Suite 410  
Washington, DC 20006

**Re: Kinder Morgan Retirement Plan A – Curtis T. Pedersen Claim for Benefits**

Dear Mr. Bruce:

This letter responds to your letter dated November 5, 2019 (“Claim Letter”) on behalf of your client Curtis T. Pedersen (“Mr. Pedersen”) that was received by the Kinder Morgan Benefits Service Center (“Benefits Service Center”) on November 8, 2019 and forwarded to Kinder Morgan on November 11, 2019. Your letter requests a review of Mr. Pedersen’s potential pension distribution from the Kinder Morgan Retirement Plan A (“Plan”). Under the Plan’s claims procedures, the Fiduciary Committee for the Plan (the “Committee”) has delegated review of initial claims to the “Claims Administrator” as defined in Section 10.6(a) of the Plan. On December 5, 2019, the Claims Administrator sent you a letter informing you that an extension of time to respond was necessary and a decision would be made on Mr. Pedersen’s claim after the next Committee meeting, which was scheduled for February 13, 2020. While the Committee did not review Mr. Pedersen’s Claim Letter, they considered an appeal that included issues in common with Mr. Pedersen’s claims that are relevant for this determination. The Committee held a follow up meeting on that appeal on February 24, 2020. The appeal decision included an interpretation that addresses an issue raised in Mr. Pedersen’s claim.

You also sent a letter dated December 19, 2019 that was received by Kinder Morgan on December 27, 2019 challenging the extension of time to respond on Mr. Pedersen’s claim and requesting various documents. On January 17, 2020, the Claims Administrator responded to your request.

The Claims Administrator has examined the relevant facts and relevant Plan terms, as interpreted by the Committee, and has made a determination. The background of Mr. Pedersen’s claim for benefits, the documents the Claims Administrator reviewed, the relevant provisions of the Plan and its predecessor plans, and the Claims Administrator’s determination of benefits are summarized below.

**Claim for Benefits - Background**

Mr. Pedersen was hired by ANR Pipeline Company (“ANR”) on June 25, 1979 and participated in the American Natural Resources System Retirement Plan (“ANR Plan”). ANR was acquired by The Coastal Corporation (“Coastal”), and the ANR Plan was merged into the Pension Plan for

Employees of The Coastal Corporation (“Coastal Plan”). Coastal was later acquired by El Paso Corporation (“El Paso”), and the Coastal Plan was merged into the El Paso Corporation Pension Plan (“El Paso Plan”). Based on this series of pension plan mergers, Mr. Pedersen’s benefit payable under the El Paso Plan included benefits Mr. Pedersen earned from the start of his employment with ANR. Mr. Pedersen’s employment with El Paso for purposes of the El Paso Plan terminated on February 22, 2007 (“Sale Date”), when El Paso sold ANR to TransCanada American Investments LTD (“TransCanada”). Mr. Pedersen’s date of birth is November 11, 1957, and on the Sale Date he was age 49. Please let us know if any of this information regarding Mr. Pedersen is incorrect.

The El Paso Plan was merged into the Kinder Morgan Retirement Plan (“KMI Plan”) on December 31, 2012, and Mr. Pedersen’s benefit in the KMI Plan was transferred to the Plan effective December 4, 2017. Mr. Pedersen’s benefit is now payable from the Plan. The Plan, Appendix L, Section 4.7 provides that Mr. Pedersen’s benefits “shall be determined and paid in accordance with the provisions of the Plan (or the El Paso Plan, as applicable) in effect on the most recent date of termination.” In this case, the terms of the El Paso Plan, as amended by the Ninth Amendment to the El Paso Corporation Pension Plan (“Ninth Amendment”) (copy enclosed), govern Mr. Pedersen’s benefit calculation. These terms appear in Appendix L to the Plan and related Sub-Appendix X and in Appendix X to the El Paso Plan.

On February 14, 2007, Mr. Pedersen was sent the “Notice to Certain Participants and Alternate Payees Regarding the El Paso Corporation Pension Plan” (“Notice”) (copy enclosed) regarding the consequences of the sale of ANR to TransCanada, and its impact on benefits under the El Paso Plan. The Notice included the following regarding eligibility for early retirement:

With respect to Affected Participants, as of the earlier of the closing date of the Sale or February 28, 2007, no further service will accrue for the purpose of satisfying the requirements for early retirement eligibility. Thus, if an Affected Participant has not attained age 55 with at least five years of service as of the earlier of the closing date of the Sale or February 28, 2007, he or she will not be eligible for the more favorable 4 percent reduction factors upon termination of employment. Any benefits that commence prior to such Affected Participant’s normal retirement date shall be reduced using actuarial factors.

In May 2019, the Benefits Service Center notified Mr. Pedersen and other similarly situated former employees of ANR that certain projections under the Plan had been incorrectly presented on the Plan’s online pension estimate tool.

Mr. Pedersen sent a letter dated June 28, 2019 (“Inquiry Letter”) to the Benefits Service Center requesting Kinder Morgan’s position on the early retirement benefits provided under the Plan to him and other similarly situated former employees of ANR. The Benefits Service Center responded to Mr. Pedersen in a letter dated August 28, 2019 (the “Response Letter”) with an explanation of the Plan terms governing early retirement benefits for former employees of ANR who terminated employment with El Paso due to the sale of ANR to TransCanada. That response also addressed Mr. Pedersen’s assertion that the Ninth Amendment to the El Paso Plan violated

the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) Sections 204(g)(1) and 204(g)(2) with respect to those early retirement benefits.

On October 11, 2019, the Benefits Service Center responded to a phone call from Mr. Pedersen and sent a Calculation Detailed Summary (the “Calculation”). The Claim Letter followed, along with the subsequent communications referenced above.

### **Documentation Reviewed**

The Claims Administrator has reviewed the following documents in connection with Mr. Pedersen’s claim:

1. The Claim Letter to the Benefits Service Center and all enclosures, including the Calculation
2. The Response Letter, the Inquiry Letter and all enclosures
3. The Notice
4. IRS General Counsel Memorandum 39824 (“GCM”)

### **Plan Provisions**

The Claims Administrator has reviewed the following Plan provisions, El Paso Plan provisions, and Coastal Plan provisions in connection with your claim:

1. Section 3.2 of the Plan
2. Section 4.7 of Appendix L of the Plan
3. Appendix L, Sub-Appendix X of the Plan
4. Section 3.2(b) of the El Paso Plan
5. Section 3.4 of the El Paso Plan
6. Section 11.1 of the El Paso Plan
7. Section 11.3 of the El Paso Plan
8. Appendix X of the El Paso Plan
9. Section 5.1 of the Coastal Plan

Copies of these provisions or the plan documents containing these provisions are attached, along with a copy of the Plan’s claims procedures in Section 10.6.

## **Determination**

The Claims Administrator has considered all of the information that you provided in conjunction with Mr. Pedersen's claim, as well as the documents listed above. After considering all such information and the relevant Plan provisions, the Claims Administrator must deny three of the four claims. The Claims Administrator has made a favorable determination with respect to the pre-1986 ANR Grandfathered benefit.

## **Specific Reasons for Adverse Benefit Determination**

### **I. ERISA Sections 204(b)(1)(A) and 204(g)(1)**

The first item in the Claim Letter alleges that the benefit formula applicable to Mr. Pedersen under Section 4.1(c)(i)(A) of Sub-Appendix X of Appendix L reflected in the Calculation violates the fractional rule codified in ERISA Section 204(b)(1)(A). It also asserts that the benefit formula is not in the El Paso Plan, and the interpretation in the Calculation constitutes an impermissible cut-back under ERISA Section 204(g)(1). These two assertions are not accurate.

The benefit payable to Mr. Pedersen under the Plan is determined by the terms of Section 4.7 of Appendix L of the Plan (copy enclosed), which provides that his benefits "shall be determined and paid in accordance with the provisions of the Plan (or the El Paso Plan, as applicable) in effect on the most recent date of termination." In Mr. Pedersen's case, the terms of the El Paso Plan, as amended by the Ninth Amendment govern his benefit calculation. The Plan provides that a participant with a Coastal Transition Benefit who terminates after attaining age 55 and completing 5 years of service ("Early Retirement Criteria") shall receive an "Early Retirement Benefit," which is equal to the vested Coastal Termination Benefit, unreduced for commencement between ages 62 and 65 and reduced 4% for each year the benefit commencement date precedes age 62. Based on the Ninth Amendment, a participant who was 53 or older on the Sale Date would be deemed to be 55 for purposes of eligibility for the Early Retirement Benefit.

A participant with a Coastal Transition Benefit who terminates employment prior to satisfying the Early Retirement Criteria is entitled to a "Vested Termination Benefit." If the Vested Termination Benefit is equal to the vested Coastal Transition Benefit, the participant's Vested Termination Benefit is reduced actuarially for commencement prior to the participant's Normal Retirement Date, which is the first day of the month coincident with or next following the date the participant attains age 65.

ERISA Section 204(b)(1)(A) provides that a defined benefit pension plan must provide for a method of accrual that would satisfy one of three different benefit accrual rules. The third method, called the fractional rule, is defined in ERISA Section 204(b)(1)(C). The fractional rule is met when a benefit is at least equal to the projected benefit a participant would receive at normal retirement date, multiplied by a ratio of service at termination divided by projected service at normal retirement date. The purpose of the alternatives provided in ERISA Section 204(b)(1)(A) is to prevent excessive back loading.

Section 4.1(c)(i)(A) of Sub-Appendix X of Appendix L of the Plan defines the Coastal Transition Benefit, and the same language appears in Section 4.1(c)(i)(A) of Appendix X to the El Paso Plan. In relevant part, the Plan and the El Paso Plan state that the Coastal Transition Benefit is calculated as the net of (I) minus (II), multiplied by (III), where:

(I) is 2 percent of the Participant's Final Average Monthly Earnings times his or her projected Credited Service determined as if the Participant continued to be an Active Participant until his or her Normal Retirement Date (up to a maximum of 30 years and determined without regard to the March 31, 2006, cutoff for Credited Service referenced above); and

(II) is 1.5 percent of the Participant's Primary Social Security Amount times his or her projected Credited Service determined as if the Participant continued to be an Active Participant until his or her Normal Retirement Date (up to a maximum of 33.333 years and determined without regard to the March 31, 2006, cutoff for Credited Service referenced above); and

(III) is the Participant's Credited Service at termination of employment divided by the Participant's projected Credited Service determined as if the Participant continued to be an Active Participant until his or her Normal Retirement Date (determined without regard to the March 31, 2006, cutoff for Credited Service referenced above).

At normal retirement date, the Coastal Transition Benefit is equal to (I) plus (II). Part (III) is a ratio defined to accrue benefits ratably over the life of an employee's career through normal retirement date.

Section 5.1(c) of the Coastal Plan does not include a limit on credited service projected to normal retirement date. Credited service is defined elsewhere in the Coastal Plan and includes no limit. The limit on service reflected in calculating the projected benefits in Parts (I) and (II) of the El Paso Plan and the Plan do not apply to credited service in Part (III), reflecting translation of Section 5.1(c) of the Coastal Plan, nor to any other use of service in the Coastal Plan or the El Paso Plan or the Plan. Kinder Morgan confirmed with the Plan's actuaries that the benefit formula complies with the fractional rule codified under ERISA and the Internal Revenue Code (the "Code") and is consistent with the approach taken by other plans that also rely on the fractional rule to satisfy the back loading requirements of ERISA Section 204(b)(1)(C). Furthermore, the Internal Revenue Service has issued favorable determination letters that the terms of the Plan and the El Paso Plan, including the Coastal Transition Benefit formula, conform to the requirements of Code Section 401(a).

The language in both the Plan and the El Paso Plan is based on the language Section 5.1 of the Coastal Plan. Section 5.1(a)(i)(A) and (B) of the Coastal Plan corresponds with Section 4.1(c)(i)(A)(I) and (II) of Sub-Appendix X of Appendix L to the Plan and Appendix X to the El Paso Plan, and Section 5.1(c) of the Coastal Plan corresponds with Section 4.1(c)(i)(A)(III) of

Sub-Appendix X of Appendix L to the Plan and Appendix X to the El Paso Plan. The benefit formula terms trace from the Coastal Plan to the El Paso Plan to the Plan. Since the terms of these plans are clear, there is no need to refer to the summary plan descriptions.

This claim is denied as the Plan language is clear. In essence, this claim is requesting an amendment of the Plan's terms. Amending the Plan is within the purview of Kinder Morgan, Inc. as the plan sponsor, not the Committee or the Claims Administrator.

## **II. ERISA Section 204(g)(2)**

The second item in the Claim Letter makes a legal argument that Mr. Pedersen is entitled to "grow into" his benefits under ERISA Section 204(g)(2). In substance, this item challenges treating the sale of ANR to TransCanada as a termination from employment and the Ninth Amendment as constituting an impermissible cutback. As referenced above, Mr. Pedersen was sent the Notice that explained how affected participants like Mr. Pedersen would terminate employment with all affiliated companies owned by El Paso in connection with the sale and illustrated the impact on early retirement benefits.

The Claim Letter asserts that Mr. Pedersen must be provided the opportunity to "grow into" early retirement eligibility, even though this possibility was clearly addressed and foreclosed by the Notice. Moreover, as explained in the GCM (copy enclosed), a "severance from employment" occurs when an employee ceases to be employed by the employer maintaining the plan. The GCM provides that "[i]n the case of a liquidation, merger, or consolidation, etc. of an employee's employer, severance of the employment relationship with the employer maintaining the plan may be found to have occurred even though the employee continues at the same job with the new employer." "A severance of employment with respect to the employees of the subsidiary will be found to have occurred...if three conditions are met: (1) the pension plan continues to be maintained by the original parent but is no longer maintained by the subsidiary in the hands of its new owner; (2) no assets or liabilities are transferred to the subsidiary in the hands of the new owner or to any other employer who is treated as the same employer as the subsidiary...; and (3) the subsidiary in the hands of the new owner is not treated as the same employer as the original parent under Section 414(b), (c), or (m)."

In this case, El Paso continued to sponsor the El Paso Plan after the Sale Date. ANR ceased to belong to the El Paso controlled group of employers and was not affiliated with El Paso under Code Sections 414(b), (c), or (m), and it became a subsidiary of TransCanada. TransCanada was different from and wholly unrelated to El Paso. Neither ANR nor TransCanada took any action to become a participating employer in the El Paso Plan after the sale of ANR, and El Paso did not give approval (as required by the El Paso Plan terms) for either ANR or TransCanada to become a participating employer in the El Paso Plan. Finally, no portion of the El Paso Plan was spun off and no assets were transferred to a plan sponsored by ANR or TransCanada. According to both the Notice and the GCM, Mr. Pedersen terminated employment with El Paso on the Sale Date, and his age and service on that date determine his eligibility for early retirement benefits.

The Claim Letter also asserts that the Ninth Amendment violates the anti-cutback protection in ERISA Section 204(g)(2). This is not true.

The Ninth Amendment added new early retirement benefits for an expanded class of participants (as described below) and updated the El Paso Plan to clarify the procedures for becoming and ceasing to be a participating employer in the Plan. Section 11.1 of the El Paso Plan provides that participating employers must either be Affiliated Companies, or be approved by the Compensation Committee of the Board of Directors. The Ninth Amendment revised Section 11.3 of the El Paso Plan to clarify that “any Employer that is an Affiliated Company ceases to be a participating Employer upon the closing date of a transaction that results in that Employer ceasing to be an Affiliated Company, and Employees of such Employer shall be considered to have terminated employment with all Affiliated Companies upon the closing date of such corporate transaction.” This was required for consistency with Section 11.1 of the El Paso Plan, since a participating employer that is spun out of the controlled group would need specific approval of the Compensation Committee of the Board of Directors to be a participating employer.

In compliance with the “severance from employment” standard, as clarified in Section 11.3 of the El Paso Plan, employees of ANR became terminated employees entitled to commence a distribution from the El Paso Plan due to termination of employment upon the sale of ANR to TransCanada on the Sale Date. The Notice specifically addresses that the amendment may reduce future benefit accruals under the Plan, as permitted by ERISA Section 204(h) and Code Section 4980F. To the extent the changes made by the Ninth Amendment could be considered to reduce future benefit accruals or an early retirement subsidy, the Notice was timely provided describing these changes.

The Claim Letter does not acknowledge provision of the Notice. Instead, the Claim Letter cites the error in the Plan’s pension estimate system as proof that Mr. Pedersen should receive the Early Retirement Benefit.

Prior to March 31, 2018, an error existed in the Plan recordkeeper’s system which caused Mr. Pedersen and others similarly situated to be incorrectly categorized as having satisfied the Early Retirement Criteria prior to terminating employment. However, because Mr. Pedersen was under 53 when he terminated employment with El Paso, he had not in fact satisfied the Early Retirement Criteria. As a result of the incorrect categorization of his early retirement status, the benefit estimates provided online showed an unreduced benefit at age 62 instead of an actuarial reduction. At all relevant times, the pension estimate tool contained clear disclaimer language that the information provided was an estimate and subject to applicable Plan terms.

The error in the pension estimate tool is not evidence of an intent to expand eligibility for early retirement benefits, nor is the fact that certain employees of ANR who commenced benefits after attaining age 62 and prior to age 65 received the Coastal Termination Benefit, unreduced for commencement between ages 62 and 65. Any such overpayments were in error, and such overpayments commenced prior to the correction of the recordkeeper error described above. The

Plan's pension estimate tool has since been updated to accurately reflect the Plan's eligibility provisions, and Mr. Pedersen was advised of this by the Benefits Service Center in May 2019.

Based on the terms of the Plan, Mr. Pedersen did not meet the Early Retirement Criteria at the Sale Date and is not eligible for an Early Retirement Benefit under Section 4.1(c)(i)(A) of Sub-Appendix X of Appendix L.

Mr. Pedersen did not satisfy the Early Retirement Criteria because he terminated employment under the El Paso Plan before he attained age 53. ERISA Section 204(g)(2) prohibits plan amendments that cut back benefits, but it does not prohibit an employer from terminating employees, either individually or in connection with the sale of a subsidiary. To the extent the Ninth Amendment could be considered providing for a reduction of future accruals or impacting an early retirement benefit, the Notice was provided as required under ERISA Section 204(h).

### **III. Actuarial Assumptions**

The fourth item in the Claim Letter asserts that the Plan used an "outdated" mortality table and an old interest rate to determine Mr. Pedersen's benefit at early retirement age, resulting in a lower benefit in violation of ERISA Section 204(c)(3). These arguments do not dispute the terms of the Plan; instead, they allege that the Plan's early retirement actuarial reduction factors are unreasonable.

There is no current legal requirement under ERISA or the Code that the Plan's early retirement reduction factors be updated. As stated above, the IRS has issued multiple favorable determination letters that the terms of the Plan and the El Paso Plan meet applicable qualification requirements. The Claims Administrator interprets the terms of the Plan, and the Plan language is not ambiguous. It provides for the factors applied in the Calculation; therefore, this claim is denied. To the extent this claim requests an amendment of the Plan's terms, amending the Plan is within the purview of Kinder Morgan, Inc. as the plan sponsor, not the Committee or the Claims Administrator.

### **Partial Favorable Determination**

The third item of the Claim Letter asserts that the ANR Grandfathered portion of Mr. Pedersen's benefit should not be reduced for early retirement after age 62. Mr. Pedersen's claim related to the ANR Grandfathered portion of his benefit is granted.

Section 4.1(c)(iv) of Appendix L of the Plan, Sub-Appendix X, titled "ANR Grandfather" addresses the grandfathered benefit for a participant who had accrued a benefit under the ANR Plan prior to December 1, 1986. It states in relevant part:

This additional ANR grandfathered benefit is subject to the early retirement reduction in Section 4.3(c) or the Vested Termination Benefit reduction in Section 4.5(c), whichever applies, in the event benefits commence prior to age 62.

The Committee has interpreted the Plan terms to mean that the ANR Grandfathered benefit is only subject to an early retirement reduction in the event benefits commence prior to age 62 and has instructed the Plan's recordkeeper to make this update to the pension estimate tool. Since Mr. Pedersen is seeking to commence benefits at or after age 62, the ANR Grandfathered benefit portion of his accrued benefit under the Plan is not subject to reduction for early retirement. Mr. Pedersen will be issued a corrective payment, plus interest, relating to this portion of his accrued benefit. Please confirm whether the check should be sent to you or to Mr. Pedersen.

### **Next Steps**

If Mr. Pedersen does not agree with the determination of his benefits under the Plan, he may appeal or you may appeal on his behalf by requesting a review of this determination by the Committee in accordance with the claims procedures set forth in ERISA Section 503 and Plan Section 10.6. If Mr. Pedersen decides to request a review of this claim determination, the request must be in writing and must be made within 60 days after receipt of this determination. If you do not submit a written request for review within this 60-day period, Mr. Pedersen forfeits his right to a review. Please send all written requests for review to the following address:

Kinder Morgan Retirement Plan A  
Fiduciary Committee  
1001 Louisiana St.  
Suite 1000  
Houston TX, 77002

If Mr. Pederson requests a review or you request a review on Mr. Pedersen's behalf, he or you may submit written comments, documents, records and other information. The Committee will provide a full and fair review that takes into account all comments, documents, records and other information submitted relating to the claim, without regard to whether the information was previously submitted or considered. Upon request, reasonable access to, and copies of, all documents, records and other relevant information will be provided free of charge.

If the request for review is timely, the Committee will review the decision and issue a written decision reaffirming, modifying, or setting aside this determination within a reasonable time and not later than 60 days after receipt of the written request for review, or 120 days after receipt of the written request for review if special circumstances require an extension. If an extension is required, the Committee shall notify you in writing before the end of the initial 60-day review period, of the extension, the special circumstances necessitating the extension, and the date by which the Committee expects to render a determination. A copy of the Committee's decision will be furnished to you. The decision will be binding upon all persons involved. If the determination is adverse, you will have the right to bring a civil action under ERISA Section 502(a). Under the terms of the Plan, any such civil action must be brought within one year of the date of the final determination on review.

Mr. Stephen R. Bruce  
February 27, 2020  
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Sincerely,

A handwritten signature in black ink that reads "Mark Smith". The signature is written in a cursive, flowing style.

T. Mark Smith  
Claims Administrator for the  
Kinder Morgan Retirement Plan A

cc: Chris Noonan

Enclosures (8):

1. Notice to Certain Participants and Alternate Payees Regarding the El Paso Corporation Pension Plan
2. IRS General Counsel Memorandum 39824
3. Section 10.6 of the Plan
4. Section 4.7 of Appendix L of the Plan
5. Appendix L of the Plan, Sub-Appendix X, Sections 4.1 and 4.3
6. Ninth Amendment to El Paso Plan
7. Amended Working Copy of the El Paso Corporation Pension Plan, as amended through the Ninth Amendment
8. Section 5.1 of the Coastal Plan