

## Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granting relief from requirement in National Instrument 44-101 *Short Form Prospectus Distributions* to incorporate by reference into a short form prospectus the Specified Exhibits (as defined in the Decision) which are attached or incorporated by reference in Issuer’s Annual Report on Form 10-K – Specified Exhibits are comprised of document types which are generally not required to be incorporated by reference in a Canadian short form prospectus – incorporation of lengthy Specified Exhibits by reference would impose a disproportionately burdensome translation obligation upon the Issuer – information contained in any Specified Exhibit that constitutes a material fact in respect of the Issuer is or will be set out in one or more of the Issuer’s continuous disclosure documents that will be incorporated by reference into a short form prospectus of the Issuer.

## Applicable Legislative Provisions

National Instrument 44-101 *Short Form Prospectus Distributions*, ss. 8.1(1), 8.1(2)  
Form 44-101F1 *Short Form Prospectus*, ss. 11.1(1)1, 11.2

**Citation: Re Kinder Morgan Canada Limited, 2018 ABASC 44**

**Date: 20180320**

In the Matter of  
the Securities Legislation of  
Alberta and Ontario (the **Jurisdictions**)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Kinder Morgan Canada Limited (the **Filer**)

Decision

## Background

The securities regulatory authority or regulator in each of the Jurisdictions (each, a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption (the **Exemption Sought**) from the requirements under sections 11.1(1)1 and 11.2 of Form 44-101F1 (**Form 44-101F1**) to include in the documents incorporated by reference in any short form prospectus of the Filer the following documents attached or incorporated by reference as exhibits to an Annual Report on Form 10-K of the Filer or an amendment thereto (collectively, a **Form 10-K**) that is incorporated by reference in any such short form prospectus (collectively, the **Specified Exhibits**):

- (a) material contracts and agreements, and any amendments thereto;

- (b) the articles and by-laws of the Filer, and any amendments thereto;
- (c) instruments defining the rights of security holders and holders of long-term debt of the Filer, and any amendments thereto;
- (d) indentures and supplemental indentures;
- (e) voting trust agreements, and any amendments thereto;
- (f) management contracts or compensatory plans, contracts or arrangements in which directors or members of management participate, including stock option plans and other award plans, and any amendments thereto or restatements thereof;
- (g) statements regarding the calculation of earnings per share or ratios included in the Form 10-K;
- (h) codes of ethics, and any amendments thereto;
- (i) the certifications required under (i) Rule 13a-14(a) or 15d-14(a) of the 1934 Act and (ii) Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code (Section 906 of the *Sarbanes-Oxley Act of 2002* (United States), as amended from time to time);
- (j) opinions and consents of: (i) legal counsel; (ii) independent registered public accountants; and (iii) other experts or "qualified persons";
- (k) charters of committees of the Filer which are not otherwise required to be included or incorporated in a short form prospectus under applicable securities laws in Canada; and
- (l) financial and related information of the Filer formatted in Extensible Business Reporting Language.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in each of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut (the **Passport Jurisdictions**); and
- (c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) or National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) have the same meanings if used in this decision, unless otherwise defined herein.

**Representations**

The decision is based on the following facts represented by the Filer:

1. The Filer is a corporation existing under the *Business Corporations Act* (Alberta).
2. On May 30, 2017, the Filer completed an initial public offering of its restricted voting shares (the **Restricted Voting Shares**), at which time the Filer became a reporting issuer in each of the jurisdictions of Canada. The Filer continues to be a reporting issuer in each of the jurisdictions of Canada.
3. The Filer is not in default of securities legislation in any jurisdiction of Canada.
4. On July 28, 2017, the Filer filed a short form base shelf prospectus pursuant to which the Filer may offer, from time to time and for a period of 25 months, up to \$2.5 billion aggregate amount of Restricted Voting Shares, preferred shares, warrants, subscription receipts and units of the Filer (the **Current Base Shelf Prospectus**) in each of the jurisdictions of Canada.
5. The Restricted Voting Shares, cumulative redeemable minimum rate reset Preferred Shares, Series 1 in the capital of the Filer and cumulative redeemable minimum rate reset Preferred Shares, Series 3 in the capital of the Filer are listed and posted for trading on the Toronto Stock Exchange under the symbol "KML".
6. The Filer is an SEC issuer.
7. The Filer is in compliance with the requirements of the 1934 Act.
8. The Filer files an AIF completed on Form 10-K under the 1934 Act, as permitted by NI 51-102.
9. Pursuant to the requirements of the 1934 Act, the Specified Exhibits are attached or incorporated by reference as exhibits to a Form 10-K.
10. As the Specified Exhibits are attached or incorporated by reference as exhibits to a Form 10-K of the Filer that is or will be incorporated by reference in the Base Shelf Prospectus and any subsequent short form prospectus of the Filer, such Specified Exhibits are or will be, absent the granting of the Exemption Sought, required to be incorporated by reference in the Base Shelf Prospectus and such subsequent short form prospectus pursuant to the requirements of sections 11.1(1)1 and 11.2 of Form 44-101F1, and as a result of such requirements, deemed to be so incorporated by virtue of sections 3.1 and 3.2 of NI 44-101.

11. If the Filer completed and filed an AIF pursuant to Form 51-102F2 *Annual Information Form* (a **Canadian AIF**) rather than a Form 10-K, none of the Specified Exhibits would be required to be incorporated by reference in the Base Shelf Prospectus or any subsequent short form prospectus of the Filer, as the 1934 Act requirement to attach or incorporate the Specified Exhibits by reference as exhibits to a Form 10-K has no equivalent under securities laws in Canada, and the Specified Exhibits are not otherwise required to be incorporated by reference into a short form prospectus under securities laws in Canada.
12. The Filer has filed on SEDAR the Specified Exhibits attached or incorporated by reference as exhibits to its Form 10-K for the year ended December 31, 2017, and will file on SEDAR any Specified Exhibits attached or incorporated by reference as exhibits to any subsequent Form 10-K of the Filer (in each case, other than any Specified Exhibits previously filed on SEDAR), as soon as practicable following the filing of such disclosure documents with the SEC and, in any event, prior to the filing of any subsequent short form prospectus or prospectus supplement of the Filer on SEDAR.
13. Information contained in any Specified Exhibit that constitutes a material fact in respect of the Filer is or will be set out in the Base Shelf Prospectus and any subsequent short form prospectus of the Filer or in one or more of the Filer's continuous disclosure documents that is or will be incorporated by reference therein.
14. If the Exemption Sought is not granted, the Filer would be required under section 40.1 of the *Securities Act* (Québec) to file French language translations of each of the Specified Exhibits. This translation obligation would impose significant costs and delay, which the Filer would not be required to incur if it filed a Canadian AIF rather than a Form 10-K.

### **Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that:

- (a) the Filer complies with all of the other applicable requirements of NI 44-101 and, if applicable, NI 44-102 *Shelf Distributions*, in respect of the Current Base Shelf Prospectus and any subsequent short form prospectus (except as varied by this decision);
- (b) the Filer discloses in each prospectus supplement to the Current Base Shelf Prospectus and any subsequent short form prospectus that it has obtained exemptive relief from the requirement to incorporate by reference in such prospectus the Specified Exhibits, and includes a statement identifying the decision and explaining how a copy of this decision can be obtained;
- (c) the Filer remains an SEC issuer;

- (d) the Filer files its Form 10-K on SEDAR concurrently with or as soon as practicable after the filing of such Form 10-K with the SEC; and
- (e) the Filer files on SEDAR the Specified Exhibits attached or incorporated by reference as exhibits to any Form 10-K of the Filer, other than the Specified Exhibits previously filed on SEDAR, as soon as practicable following the filing of such disclosure documents with the SEC and, in any event, prior to the filing of any subsequent short form prospectus or prospectus supplement of the Filer on SEDAR.

*“original signed by”*

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