Action Report

Governance (Sustainability Reporting)

Kinder Morgan

April 18, 2017

Ticker	Exchange	Meeting Date	Record Date	Annual Meeting Location
KMI	NYSE	5-10-17	3-13-17	Houston, Texas

Agenda

Item	Proposal
1	MGT: Elect directors
2	MGT: Ratify accountants
3	SH: Allow proxy access
4	SH: Report on methane emissions and reduction targets
5	**SH: Publish sustainability report**
6	SH: Report on climate change strategy

Si2 Briefing Governance (Sustainability) and Environment (Climate Change)

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Links 2017 Proxy Statement, 2016 Form 10-K

Resolved Clause RESOLVED: Shareholders request Kinder Morgan issue an annual sustainability report describing the company's short- and long-term responses to ESG-related issues, including issues related to human rights and the rights of indigenous communities. The report should be prepared at reasonable cost, omit proprietary information, and be available to shareholders by December 2017.

Lead Proponent New York State Common Retirement Fund

Vote History The proposal is in its fifth year and has received increasing support, with 34.1 percent in 2016.

Summary Not much has changed from last year. The New York State Common Retirement Fund (NYSCRF) believes that companies that manage and report on environmental, social and governance (ESG) enjoy a competitive advantage. It says that ESG issues can present significant business risks, and that absent a detailed report on the subject, investors cannot adequately assess those risks. Management opposes the proposal, saying that Kinder Morgan already has a commitment to "doing the right thing every day," and that the company operates in keeping with sustainable business practices and legal requirements.

Kinder Morgan currently discloses minimal information on its environmental, health and safety performance on its website. Meanwhile, out of the 20 companies it named in its 2016 executive compensation peer group, 11, or 55 percent, have issued sustainability reports with numerous ESG performance metrics.

I. Kinder Morgan and Sustainability Reporting

Kinder Morgan is the largest energy infrastructure company and the third largest energy company in North America. It owns an interest in or operates approximately 84,000 miles of pipelines and 155 terminals. Its pipelines transport natural gas, refined petroleum products, crude oil, carbon dioxide and more. The company also stores or handles a variety of products and materials at its terminals such as gasoline, jet fuel, ethanol, coal, petroleum coke and steel. It operates Trans Mountain, the only oil sands pipeline serving the West Coast of Canada. Kinder Morgan likens its business to a giant toll road, wherein the company receives a fee for its services while generally avoiding commodity price risk. Kinder Morgan's customers include major oil companies, energy producers and shippers, local distribution companies and businesses across many industries. The company invests billions of dollars each year to build new energy infrastructure and expand existing assets.

Financials			
($ millions)	**2015**	**2016**	**% Change**
Total Revenue	$14,403	$13,058	(9.3%)
Net Income	$251	$721	187.3%

Kinder Morgan operates through the following reportable business segments:

- **Natural Gas Pipelines**—Kinder Morgan owns and operates major interstate and intrastate natural gas pipeline and storage systems, associated natural gas gathering systems and natural gas processing and treating facilities and natural gas liquids (NGL) fractionation facilities and transportation systems. This segment accounted for 61.3 percent of Kinder Morgan's 2016 revenues.
- **CO_2**—Kinder Morgan produces, transports and markets CO_2 to oilfields that use CO_2 to increase production of oil. Kinder Morgan has ownership interests in and/or operates oil fields, gas processing plants and a crude oil pipeline system in West Texas. This segment accounted for 9.4 percent of Kinder Morgan's 2016 revenues.
- **Products Pipelines**— Kinder Morgan owns and operates refined petroleum products and crude oil and condensate pipelines that deliver refined petroleum products (gasoline, diesel fuel and jet fuel), NGL, crude oil, condensate and bio-fuels to various markets, as well as the associated product terminals and petroleum pipeline transmix facilities. This segment accounted for 12.6 percent of Kinder Morgan's 2016 revenues.
- **Terminals**—Kinder Morgan owns and operates liquids and bulk terminal facilities and rail transloading and materials handling facilities located throughout the United States and portions of Canada. This segment accounted for 14.7 percent of Kinder Morgan's 2016 revenues.
- **Kinder Morgan Canada**—Kinder Morgan owns and operates the Trans Mountain pipeline system that transports crude oil and refined petroleum products, including oil sands derivatives, from Edmonton, Alberta, Canada, to marketing terminals and refineries in British Columbia, Canada, and the state of Washington, as well as the Jet Fuel aviation turbine fuel pipeline that serves the Vancouver International Airport. This segment accounted for 1.9 percent of Kinder Morgan's 2016 revenues.

Sustainability Reporting

Kinder Morgan covers some basic environmental information in its annual Form 10-K. The company also has a corporate responsibility section on its website that includes sections on environment, health and safety, as well as community engagement and philanthropic activity. Kinder Morgan does not publish a stand-alone sustainability report, nor does it respond to CDP's climate change survey.

Form 10-K: In its 2016 10-K, Kinder Morgan says that an element of its business strategy is to "increase utilization of our existing assets while controlling costs, operating safely, and employing environmentally sound operating practices." The company addresses its climate change and methane emissions risks largely in terms of existing laws and regulations, and the potential for a more stringent regulatory framework that may affect its business. Kinder Morgan does not explicitly acknowledge the link between climate change and greenhouse gas emissions. The company offers the following introduction to climate change in its Form 10-K, under "Environmental Matters":

> Studies have suggested that emissions of certain gases, commonly referred to as greenhouse gases, may be contributing to warming of the Earth's atmosphere. Methane, a primary component of natural gas, and CO_2, which is naturally occurring and also a byproduct of the burning of natural gas, are examples of greenhouse gases.

On matters related to climate change, methane emissions, pipeline leaks and employee health and safety, Kinder Morgan provides a detailed description of the various laws and regulations to which it is subject, and notes that if these laws and regulations are tightened or expanded, it may incur increased compliance costs.

Risk items— In addition to the above, Kinder Morgan outlines the following items as they relate to its environmental and social affairs.

- *Our ability to begin and complete construction on expansion and new-build projects may be inhibited by difficulties in obtaining permits and rights-of-way, public opposition, cost overruns, inclement weather and other delays.*
- *We do not own substantially all of the land on which our pipelines are located. If we are unable to procure and maintain access to land owned by third parties, our revenue and operating costs, and our ability to complete construction projects, could be adversely affected.*
- *The volatility of oil, NGL and natural gas prices could adversely affect our CO2 business segment and businesses within our Natural Gas Pipelines and Products Pipelines business segments.*
- *Hurricanes, earthquakes and other natural disasters could have an adverse effect on our business, financial condition and results of operations.*
- *Environmental, health and safety laws and regulations could expose us to significant costs and liabilities.*
- *Climate change regulation at the federal, state, provincial or regional levels could result in significantly increased operating and capital costs for us and could reduce demand for our products and services.*
- *Increased regulation of exploration and production activities, including hydraulic fracturing, could result in reductions or delays in drilling and completing new oil and natural gas wells, as well as reductions in production from existing wells, which could adversely impact the volumes of natural gas transported on our natural gas pipelines and our own oil and gas development and production activities.*

*(*Si2's Briefing Papers on *Climate Change* and *Sustainability Reporting* provide further details on the legal landscape in which Kinder Morgan operates.)

Website: The company maintains a corporate responsibility section of its website, where it says, "Doing business the right way, every day, is paramount at Kinder Morgan." On this page, the company emphasizes its commitment to pipeline safety and maintenance, ethical conduct and legal compliance. Chairman and CEO Richard D. Kinder says there:

> We pride ourselves on being a different kind of energy company. For example, we eliminate unnecessary expenses, such as corporate aircraft, sponsorships and executive perks. We also believe in aligning senior managements' financial interests with our shareholders. My salary is $1 per year and I do not receive a bonus, stock options or restricted stock grants. In addition, we cap our senior executives' base salaries below industry standards and employ a pay-for-performance model.

Kinder Morgan also emphasizes its annual $1 million donation to its charitable arm, the Kinder Morgan Foundation.

The company publishes its Code of Business Conduct and Ethics on its website, which covers such topics as health, safety and the environment, business integrity, community relations, equal opportunity and more. The Code generally takes a stance of ensuring legal compliance and "continuous improvement."

EHS—Kinder Morgan maintains an Environment, Health and Safety (EHS) section on its website, as well. The company says that it integrates EHS employees into every business unit. In this section, Kinder Morgan publishes information on the following aspects of its EHS performance:

- **OSHA Recordable Injuries/Illnesses and Avoidable Company Vehicle Accidents**: These employee safety statistics show Kinder Morgan's performance against the industry average according to such sources as the Bureau of Labor Statistics (BLS) and the American Gas Association.
- **KM Contractor OSHA Recordable Injuries/Illnesses**: Kinder Morgan compiles and updates these data on a quarterly basis. They reflect incidents incurred while performing work at Kinder Morgan worksites or on a Kinder Morgan right-of-way, compared to the industry average according to the BLS.
- **Gas Pipeline Incidents**: This report shows the number of Department of Transportation reportable incidents and ruptures per 1,000 miles of pipeline that Kinder Morgan operates, with comparison to the industry average.
- **Releases from Onshore Pipeline Right-of-Way**: These data reflect spills that occur on Kinder Morgan pipeline rights-of-way, with comparison to industry average.

Pipeline safety—Kinder Morgan reports on its pipeline safety initiatives on its website. The company's measures include the following:

- Electronic pipeline surveillance
- Regular visual inspections
- Computerized "smart pig" internal pipeline inspections to verify wall thickness
- Corrosion prevention technology
- Public awareness programs to prevent third-party pipeline damage
- Emergency preparedness and planning measures

Risk management—Kinder Morgan describes on its corporate responsibility website its Kinder Morgan Assessment Protocol (KMAP), a pipeline integrity solution designed to search for flaws in longitudinal wells. Developed to help Kinder Morgan to more thoroughly inspect its pipelines, the company now sells KMAP to other pipeline companies for their own use.

Canadian EHS management—Within its broader corporate responsibility section of the website, Kinder Morgan provides a segment on its Canadian EHS efforts. This includes a page detailing five conservation management projects in its operating areas. The page also notes that Kinder Morgan employees had worked two million hours without a safety incident as of June 2014, but says nothing about the time since then.

Political contributions—Under the "about us" section of its website, Kinder Morgan said in 2014 that it "does not have a Political Action Committee (PAC), nor do we make any political contributions. Any political contributions made by executives or employees are made individually as private citizens with their own personal money." This year, the website shows the same statement, except that the clause about not making any political contributions was deleted in 2015.

Corporate governance—Under the "about us" section of its website, Kinder Morgan publishes its governance guidelines for the board of directors. The guidelines deal with such issues as ethics, director independence, board committees and committee membership. The guidelines also note the 2015 establishment of the company's Environmental, Health and Safety Committee. The terms "human rights," "indigenous," "community" and stakeholder" do not appear in the guidelines.

Human and indigenous rights— Kinder Morgan makes reference to a general commitment to human rights in its code of conduct, and asserts its compliance with Canadian human rights laws in particular. The only other mention the company makes of human rights is in its conflict minerals policy, which applies primarily to the Democratic Republic of the Congo. The company's statement is fundamentally one of compliance with legal requirements.

Peer comparison: Kinder Morgan's 2017 proxy statement names 19 companies whose executive compensation practices guided its own. Among those, 11 companies issued sustainability reports or equivalent webpages with annual environmental and social performance metrics. See table below for summary.

Company	Sustainability Report	ESG Performance Metrics	CDP+
Kinder Morgan	No	Some	F*
Anadarko Petroleum	No	Some	C
CenterPoint Energy	No	No	F*
ConocoPhillips	Yes	Yes	B
Dominion Resources	Yes	Yes	F*
Duke Energy	Yes	Yes	C
Enbridge	Yes	Yes	B
Energy Transfer Equity	No	No	F*
Enterprise Products Partners	No	No	F*
EOG Resources	No	Some	D
NiSource	Yes	Yes	D
Occidental Petroleum	Website	Yes	C
ONEOK	Yes	Yes	D
Plains All American Pipeline	No	No	F*
Sempra Energy	Yes	Yes	A-
Southern Company	Website	Yes	F*
Spectra Energy	Yes	Yes	F*
Targa Resources	No	No	NA
TransCanada	Yes	Yes	B
The Williams Companies	No	No	F*
+2016 Climate Change Survey; *Declined to participate			

Allegations

First Nations and Aboriginal communities in Canada: Canada's communities whose roots trace back to pre-Colonial times are known collectively as Aboriginal Canadians. The First Nations are those Aboriginal Canadians who are neither Inuit nor Métis. While there are meaningful cultural distinctions between the two terms, they can be considered interchangeable for the purposes of this report.

Kinder Morgan has an Aboriginal Policy that recognizes Aboriginals' legal protections under Canadian law, and asserts the company's commitment to working with Aboriginals in its areas of operations to assure fair and equal access to employment opportunities and cooperative relationships to "achieve respective business and community objectives." In a 2015 analyst presentation on the Trans Mountain Pipeline expansion, Kinder Morgan said it conducted more than 1,500 meetings with stakeholders and Aboriginal communities, and that the company was "building positive long-term relationships with Aboriginal communities." The company said it had completed 20 Supporting Mutual Benefit Agreements, consulted 135 communities and actively engaged 50 communities.

Kinder Morgan was forced to delay completion of its Trans Mountain Pipeline expansion by one year, to the third quarter of 2019, in the face of fierce opposition from Aboriginal communities that led to delay of the necessary regulatory approval. The affected communities were concerned that the pipeline will put their fishing rights and cultural heritage at risk, and said they were not properly consulted about the pipeline's impact on them. One of the communities at greatest risk in the event of a pipeline spill has filed a lawsuit opposing federal approval of the project. These communities have become emboldened in pushing land rights after multiple court wins, including a historic Supreme Court of Canada decision in 2014 that granted the Tsilqhot'in title to 1,740 square kilometers of traditional territory in Canada's interior. The ruling pushed consultation obligations for the government to a higher threshold.

Oil spills: Kinder Morgan stirred up controversy in April 2014 when it appeared to put a positive spin on pipeline spills. In its application to the Canadian government to triple the capacity of its Trans Mountain pipeline, the company said, "Pipeline spills can have both positive and negative effects on local and regional economies, both in the short- and long-term… Spill response and cleanup creates business and employment opportunities for affected communities, regions, and cleanup service providers." In response to criticism, Kinder Morgan said that its assessment was simply a fulfillment of legal requirements, and that it considers no spill to be acceptable. However, in its response to a request for further information about its expansion plans, Kinder Morgan acknowledged that its Trans Mountain Pipeline (TMP) subsidiary owns 50.9 percent of The Western Canadian Marine Response Corporation (WCMRC), the entity that would respond to a marine oil spill in British Columbia. This has led to speculation that Kinder Morgan would profit financially from an oil spill. Meanwhile, one of Canada's largest climate marches took place in April 2015, seeking among other objectives to halt any further oil sands infrastructure development. Activists specifically highlighted their opposition to Kinder Morgan's activities.

At the end of March 2016, Kinder Morgan announced it was suspending construction of a $1 billion pipeline project that was intended to pump gasoline and diesel fuel across the southeastern United States. The announcement came the same day Georgia state lawmakers sent a bill to the state's governor that would place a moratorium on the 360-mile pipeline's construction until 2017, after they voted overwhelmingly in support of the legislation. Community opposition was based on both objections to the use of eminent domain to secure land rights, and the company's 370,000-gallon spill of gasoline in 2014 on a section of the pipeline already under construction.

Kinder Morgan has been involved in several oil spills in Canada and the United States. The company's most recent spills include two on the Trans Mountain pipeline, which were reported in June 2013. In November 2011, Kinder Morgan and others were fined for a July 2007 oil spill in Burnaby, a section of Vancouver, British Columbia. The spill devastated a neighborhood and damaged the Burrard Inlet habitat, also near Vancouver. About 450 barrels spilled into the inlet, and cleanup costs reached $15 million.

Pipeline maintenance: An analyst at Jefferies Group expressed concerns in 2013 about Kinder Morgan's pipeline maintenance capital expenditures. "Every company defines maintenance [capital expenditures] differently, but we struggle to understand how KMP can safely operate the largest portfolio of transmission and storage assets in the industry for just a fraction of its peers' expenditures," wrote the analyst. Comparing Kinder Morgan with Spectra Energy Partners, another major pipeline operator, the analyst found that Kinder Morgan was spending about half as much in maintenance capital per mile of pipeline as Spectra. An in-depth analysis of how Kinder Morgan's financial structure may create a disincentive to invest in pipeline maintenance appeared in an article in *Barron's* in February 2014. In the absence of a sustainability report such as the one the proponent requests, it is difficult for investors to assess Kinder Morgan's performance in this regard. However, the company recently paid a substantial settlement to resolve two lawsuits on this topic. In December 2015, Kinder Morgan agreed to pay more than $100 million to settle investor lawsuits accusing the company of improperly classifying its pipeline maintenance funds as expenses, rather than capital expenditures.

Company response: In February 2017, Richard Kinder, the executive chairman and co-founder of Kinder Morgan, wrote a guest column for the *Houston Chronicle* that responded to pipeline opposition around the country. He said that "fossil fuels make modern life possible," and, should the small minority of people protesting against pipelines succeed, "millions would be denied of access to better health, wealth and quality of life." He also said the following.

> …Billions of people now live fuller, freer and healthier lives, thanks in large part to fossil fuels.
>
> Indeed, fossil fuels make modern life possible. They get us to work or to travel to see our families, and enable first responders to do their jobs. They heat and cool our homes, hospitals, schools and retirement homes. They are the building blocks for most of what we use and wear.
>
> While there are a small number of people in the world's most prosperous nations "taking a stand" for keeping fossil fuels in the ground, their success would leave a billion people in desperate poverty. And ironically, blocking natural gas production would impede progress on the very objective they claim to seek - addressing global climate change.
>
> Natural gas has been and remains critical to reducing greenhouse gas emissions. Since 1993, the U.S. population increased by 60 million, real GDP rose 70 percent and overall electric power generation went up by 28 percent. But CO2 emissions are back to 1993 levels, mainly because natural gas-fired generation increased its share of the total from 13 percent to 33 percent, while coal dropped from 53 percent to 33 percent.
>
> In addition to reducing emissions from the electricity sector, the natural gas value chain slashed its own emissions during an era of greatly enhanced production - mostly because we have a substantial economic incentive to keep it in our pipes. While domestic natural gas production grew 45 percent from 1990-2014, methane emissions actually declined 6 percent. …
>
> We live in a free society, and we won't all agree on everything. But we can and should agree that where we have disagreements, we'll base our arguments on concrete facts rather than slogans; and that we will abide by the decisions made by the institutions of our free society rather than risk the kind of chaos we see in other parts of the world.

II. Proponent Position

The New York State Common Retirement Fund (NYSCRF) is concerned that Kinder Morgan does not publish a sustainability report or respond to the CDP, positioning the company well behind peers such as **Enbridge** and **Spectra Energy**. It believes that managing and reporting on ESG risks "helps companies compete in a global business environment characterized by finite natural resources, changing legislation, and heightened public expectations." The proponent believes that this is especially true for Kinder Morgan, given its size and prominence in the North American energy landscape. NYSCRF highlights an example of Kinder Morgan's risk, noting the significant and growing resistance to the company's Trans Mountain pipeline expansion from Canada's First Nations communities, which have already succeeded in forestalling construction until 2019.

NYSCRF notes the significant risks that ESG issues can pose to business operations, observing that "without proper disclosure, stakeholders and analysts cannot ascertain whether the company is managing its

ESG exposure." The proponent points to the more than 1,200 institutional investors managing more than $33 trillion who have joined the Principles for Responsible Investment as evidence of the growing market demand for ESG disclosure. NYSCRF posits a link between sustainability management and value creation, highlighting a 2012 Deutsche Bank literature review that found market outperformance among companies with high ESG ratings. The proponent also notes the growing number of large corporations that report on their ESG performance, emphasizing those that use the GRI reporting framework. NYSCRF further points to a 47.7 percent increase from 2009 to 2012 in the number of customers accessing ESG information on Bloomberg terminals as evidence of burgeoning demand for such information.

The proponent seeks a report on the company's long- and short-term efforts to manage environmental, social and governance issues by December 2017, and recommends that the report be prepared according to GRI guidelines.

III. Management Position

Kinder Morgan's board of directors opposes this proposal on the grounds that it is not in the best interests of stockholders. Management emphasizes the company's commitment to "doing the right thing," saying that honesty, integrity and respect for people are among its core values. The board points to Kinder Morgan's Code of Business Conduct and Ethics and Environmental, Health and Safety Policy Statement as evidence of its commitment "to pursue the goal of not harming people, protecting the environment, using material and energy efficiently and promoting best practices, thereby earning the confidence of customers, security holders and society at large, being a good neighbor and contributing to sustainable development." Management says that the company integrates its EHS employees into each business unit, and that it reports its performance on its website. It also points to the Environmental Excellence Award it received from the Southern Gas Association for its recycling program.

Management believes that publication of a report such as the one the proponent describes would be "an expensive and time-consuming exercise," and would largely duplicate the information Kinder Morgan already publishes on its website. The company further believes that the production of such a report would not lead to any changes in its "commitment to doing the right thing every day," and that the systems and disclosures it currently has in place are adequate. The board believes that the cost "of preparing a formal sustainability report would outweigh any potential benefits of such a report."

IV. Analysis

Key Points at Issue

- Are Kinder Morgan's management of and reporting on sustainability issues adequate?
- How does its sustainability reporting practices compare with those of its peers?

Si2's Briefing Paper on Sustainability Reporting provides an in-depth analysis that investors may also find useful. The following discussion is specific to Kinder Morgan.

Kinder Morgan is the biggest energy infrastructure company in North America. Oil and gas wells are predicted to be responsible for almost all the growth in methane emissions from the energy sector between 2011 and 2018. Meanwhile, the company is increasingly investing in its capacity to serve coal and oil sands markets.

Reporting: Kinder Morgan provides limited reporting on its website and in its SEC filings regarding its environment, health and safety initiatives. Its reporting is largely anecdotal and site-specific, and does not offer a full picture of the company's own efforts, nor how it compares with its peers on issues of climate change risk management, methane emissions and general sustainability initiatives. Kinder Morgan does not supply company-wide quantitative goals for any ESG issues, such as greenhouse gases or methane emissions levels, energy efficiency, water use or pollution. It does provide some information related to pipeline spills and worker injury rates, along with industry comparisons. While Kinder Morgan has a stated commitment to engagement with First Nations communities and working with them to protect their interests, it has a history of clashes with these communities that is only intensifying of late.

Kinder Morgan currently faces community backlash in several areas, especially in Canada along its Trans Mountain pipeline route, where the effects of serious spills and the company's awkward response have stirred controversy, so much that delayed regulatory permits have forced the company to postpone construction. Management says that its spill levels are below industry average, but the level of opposition Kinder Morgan faces is notable, irrespective of absolute incident levels. A sustainability report along GRI lines would typically include a detailed analysis of community engagement and spill prevention efforts.

Peer comparison: As noted earlier in this report, out of the 19 companies that Kinder Morgan names as its peers in its 2017 proxy statement, 11—**ConocoPhillips, Dominion Resources, Duke Energy, Enbridge, NiSource, Occidental Petroleum, ONEOK, Sempra Energy, Southern Company, Spectra Energy** and **TransCanada**—or 55 percent have issued sustainability reports or equivalents with numerous ESG performance metrics. Shareholders may want to decide if they want Kinder Morgan to join this majority of peer companies in their sustainability management and reporting, or if they believe it is not necessary for the company to keep up in this area.

Voting Considerations

Votes in favor: Investors who share the proponent's concern that Kinder Morgan does not publish enough information for shareholders and analysts to gauge its ESG risks are likely to support the resolution. These investors may believe that a more rigorous reporting framework such as the GRI would create value for Kinder Morgan shareholders, and would position the company more competitively in relation to its peers. Shareholders who believe that Kinder Morgan should not lag behind its peers will also vote for the resolution.

Votes against: Investors who believe Kinder Morgan has already provided sufficient information on its sustainability management are likely to reject the proposal. These investors may believe that the company's reporting in its SEC filings and on its website are sufficient, and agree with the company that any further such efforts would be an unnecessary drain on company resources. These investors may also believe that it is not necessary for Kinder Morgan to keep up with its peers on sustainability management and reporting.

Resources

- Kinder Morgan's 2016 Proxy Statement
  http://www.sec.gov/Archives/edgar/data/1506307/000104746916011734/a2227858zdef14a.htm
- Kinder Morgan's 2015 Company 10-K
  https://www.sec.gov/Archives/edgar/data/1506307/000150630717000008/kmi-2016x10k.htm