

September 10, 2019

Sent By E-mail

British Columbia Utilities Commission
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Attention: Patrick Wruck, Commission Secretary

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Project No.	Our reference
1598984	1000385944

Dear Sir:

Kinder Morgan (Jet Fuel) Inc. ("KMJF") 2019 Tariff Filing - Vancouver Airport Fuel Facilities Corporation ("VAFFC") - Application for Further and Better Information Request Responses ("Application")

We are legal counsel to VAFFC in this matter and write on its behalf further to VAFFC's September 3 letter.¹

1. Introduction

VAFFC represents the airline customers of KMJF who operate out of the Vancouver International Airport ("YVR") and ship on KMJF's pipeline. VAFFC member volumes comprise a majority of KMJF deliveries to YVR. Jet fuel is currently delivered to YVR via tanker trucks and KMJF deliveries.

At present, VAFFC members do not have a physical alternative to replace the volumes that KMJF delivers to YVR, i.e., it is not commercially possible to switch those volumes to increased truck deliveries. KMJF is therefore in a natural monopoly position and the British Columbia Utilities Commission's ("BCUC" or the "Commission") decision in this proceeding will significantly affect VAFFC members' interests.

As a matter of administrative law, the BCUC is required to ensure that its process is procedurally fair for parties whose interests may be significantly affected by its decisions. Here, that means that the process must allow affected parties to know the case they have to meet so that they can respond to it. That is, procedural fairness, via the Commission's Rules of Practice and Procedure ("Rules"),² requires proper and complete information request ("IR") responses so that parties can prepare intervenor evidence and make full submissions.

For the reasons set out below, KMJF's IR responses are deficient, and the content they seek is material to VAFFC's participation in the proceeding. Consistent with the Rules, VAFFC requests the Commission to direct KMJF to provide further and better responses to the VAFFC and BCUC IRs detailed in Appendices A and B.

¹ Exhibit C2-4.

² See Order Number G-15-19.

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2. Overview

KMJF's tariff filing claims to be a cost-of-service application based on well-understood principles, but neither the filing nor KMJF's IR responses (to all parties, including the Commission) provide the level of detail necessary to assess the accuracy and reasonableness of KMJF's cost claims. It is uncharacteristic of *applicants* in BCUC proceedings to refuse to answer a significant number of IRs, and correspondingly uncommon for interveners to bring applications for further and better IR responses, but KMJF is exercising an unusual amount of control over the information presented and has evaded many requests. Information asymmetry is a concern in any rates application and an issue for all economic regulators, but should be of particular concern here given that it has been over a decade since KMJF has made a substantive application to the Commission. VAFFC's Application seeks a minimum level of information that will allow VAFFC to meaningfully respond.

Despite its cost-of-service premise, KMJF's tariff filing also raises novel legal and regulatory issues. To VAFFC's knowledge, it is the first time in several decades that the Commission has faced establishing cost-of-service tolls for a liquid products pipeline, certainly since the repeal of the *Pipeline Act's* statutory guidance. It is also the first time that the Commission has been asked to order the collection of abandonment funds from shippers *outside of rates*, over less than three years, and subject to a true-up mechanism. KMJF's related accelerated depreciation request is likewise atypical. Granting these aspects of KMJF's relief would significantly increase shipper costs on the pipeline. VAFFC therefore seeks a clear picture of the basis for KMJF's requests.

For both sets of reasons, it is important for the Commission to ensure that all relevant requested information is provided. Doing so will maintain procedural fairness and allow a complete record with an appropriate exchange of evidence to develop.

3. Deficiencies in KMJF's IR Responses

Rule 14.01 requires parties to provide a full and adequate response to each IR that they receive. If a party is not able or not willing to prepare a full and adequate IR response, Rule 14.04 requires that the party provide "specific reasons" to justify the portions of the response that are withheld or not responded to.

For convenience, Rule 14.04 follows in full below:

(a) If the party considers an information request unclear:

(i) it is incumbent upon that party to make reasonable efforts to contact the requestor to clarify the question and respond in accordance with the deadline for information request responses; and

(ii) where clarification cannot be obtained in a timely manner, the party responding to the information request must state any assumptions made respecting the interpretation of the question;

(b) If the party contends that the information required to answer the information request is not relevant, the party must:

(i) file a response that sets out specific reasons in support of that contention; and

(ii) file any portion of the response that the party does consider relevant;

(c) if the party contends the information necessary to provide an answer is privileged, not available or cannot be provided with reasonable effort, file a response that:

(i) sets out the specific reasons in support of that contention; and

(ii) contains such other information that the party considers would be of assistance to the party making the information request that is available and can be provided with reasonable effort;

(d) if the party contends that the information requested is confidential:

(i) file a request for confidentiality for all or any part of the response in accordance with the rules pertaining to confidential filings; and

(ii) where practicable, file other non-confidential information that the party considers would be of assistance to the party making the information request.

The KMJF IR responses set out in Appendices A and B fall well short of the standard the Commission demands via Rule 14. There are two chief areas of deficiency:

- (a) In several instances KMJF only provided: (i) a partial response, or (ii) a referral to a different IR response that did not fully answer the request at issue.
- (b) In other cases, KMJF declined to provide a full response based on: (i) relevance, (ii) because answering would require legal interpretation, or (iii) privilege objections.

VAFFC responds to these issues and objections at a general level below, and in detail in Appendices A and B.

(a) Incomplete Responses

(i) Partial Responses

In many cases, KMJF evaded fully answering IRs by providing partial responses. As an example, in VAFFC IR 4.11, VAFFC requested KMJF to explain the rationale and process of decision making for all capital additions that occurred since the 2008 proceeding. KMJF withheld individual rationales and stated that “KMJF believes the capital additions were undertaken to provide safe and reliable operations and is not aware of any unnecessary capital additions.” Whether KMJF’s internal decision-making, and its assumptions concerning the expected economic life of its system, are consistent with the content of the Application should affect the weight the Commission affords the Application. This rationale is clear from the remaining text of the request: “...*given KMJF’s assertion that the pipeline is to be abandoned imminently.*” And, in any event, VAFFC is entitled to test whether the capital additions were reasonable before the Commission accepts their costs for ratemaking purposes. VAFFC should not have to rely on KMJF’s bare assertions that they are.

The response is severely deficient relative to Rule 14.04. VAFFC’s request seeks to illuminate two material issues in the proceeding, namely the reasonableness of new capital additions, and whether the claim of a newly discovered three-year remaining economic life has an air of reality. The Commission should accordingly compel a proper response from KMJF in this and similar cases.

(ii) Improper Referrals

Additionally, KMJF often referred to different IR responses that did not fully address the requested information. For example, in VAFFC IR 1.2, VAFFC requested that KMJF confirm that tolls during the 2009 to 2018 period were not representative of those that would be found in a competitive market. In response KMJF referred VAFFC to its response to BCUC IR No. 2.2. The response to BCUC IR No. 2.2 only addressed the current test period, and ignored toll competitiveness for the period from 2009 to 2018 as requested.

If KMJF contests the relevance of whether its rates immediately prior to the test period were competitive, it is incumbent on it under Rule 14.04 to say so, and set out its justification. It should not be allowed to do so for the first time in reply. VAFFC says an understanding of whether KMJF’s past tolls reflected market-competitive tolls or not is fundamental to how the Commission deals with the depreciation issue based on ratemaking principles that may or may not apply to KMJF’s circumstances. VAFFC therefore seeks to identify both the relief that KMJF seeks in its Application and the principles KMJF asserts as justification. The relative competitiveness of KMJF’s tolls is highly relevant to setting tolls for a common carrier in a natural monopoly position, but not encumbered by public utility obligations under the *Utilities Commission Act*.

The pattern of referring to other responses, where the second response is not *fully* responsive to the original request, does not meet the standard that Rule 14.04 demands. Further responses should therefore be ordered.

(b) Refused Responses

(i) Relevance

In many cases, KMJF refused to fully respond to IRs, stating that the material requested was not relevant. As an example, in VAFFC IR Nos. 22.1 and 23.1, VAFFC requested specific details on KMJF's Direct Field Expenses and A&G Costs in multiple categories for each year dating back to 2007. As KMJF's Application is based on its cost of service, VAFFC seeks to understand where and how KMJF's costs have increased, both since the last test period, as well as the last time they were provided to the Commission. VAFFC sought to understand them at generally the same level of detail as in the past, and in any event in comparable detail to other regulators. Historical costs are perhaps the most relevant information of all for a cost-of-service ratemaking application.

Incredibly, KMJF denies their relevance, and referred VAFFC to the single, multi-year chart provided in response to BCUC IR 4.3. KMJF further stated that despite significant effort, it could not obtain actual historical operating expenses prior to 2009 or – critically – provide a breakdown of operating expenses from 2007 to 2018, due to a change in accounting practices.

Asking for comparable expense information for the period immediately preceding the test period is highly relevant. It allows the requesting party to test the veracity and reasonableness of the cost forecast within the test period. KMJF has provided lump sum expenditure amounts, but refused to provide granular actual information. As a result, parties are unable to directly assess whether what KMJF paid in recent years in a certain category is comparable to the same category for the current test period. A change of accounting practice may interject nuance in how costs are treated or categorized, but Rule 14.04 does not allow KMJF to refuse basic cost details on the basis asserted. To the contrary, information that is expected to be helpful is required to be provided. KMJF fails that standard. Further, KMJF's assertions that such information is irrelevant to its 2019-forward forecast costs are unsupported, conflict with common practice, and do not withstand scrutiny.

At the discovery stage, i.e., when parties are seeking to understand and obtain context about the case they have to meet, relevance should be broadly construed and reasonable lines of inquiry should be permitted unless clearly irrelevant. For fairness reasons, in the early stages of a proceeding the Commission should be reticent to exclude content as irrelevant to its ultimate determination.

(ii) Requires Legal Interpretation

In certain cases, KMJF refused to fully respond to an IR, stating that to do so would require KMJF to undertake legal interpretation, which KMJF (incorrectly) considers inappropriate for the information request process. Examples include VAFFC IR No. 1.7, where it refused to address whether *natural monopoly* elements apply to service (an economic term not defined by statute, and obviously relevant to ratemaking). Or, VAFFC IR No. 1.6, where KMJF refused to provide its understanding of its obligations under the definition of "common carrier", and the principles that term imports or does not import into the ratemaking process. KMJF appears to be asserting potentially contradictory ratemaking principles in its application, sourced varyingly from the BCUC, National Energy Board, and general practice. VAFFC therefore seeks a clear understanding of the benefits and burdens that KMJF considers to accompany common carrier regulation under the *Utilities Commission Act*. How and where those principles apply to KMJF's tariff filing and the facts on the record are indeed a matter for legal argument, once the record is complete. But the record is still being developed, and VAFFC's ability to develop responsive evidence would be prejudiced if the Commission allows KMJF to withhold the associated responses.

(iii) Privilege

KMJF also refused to answer certain IRs on the basis that the relevant information was privileged. Notably, in responding to IR 13.1, KMJF claimed privilege over instructions, data, working papers, drafts and counsel

correspondence associated with the cost of service study that KMJF's Application relies heavily on. British Columbia Court Rules explicitly waive privilege over all of this material when an expert report is filed. VAFFC has also not requested the latter two items, and it is common regulatory practice for the remaining content to be provided, precisely because it is highly probative to assessing the conclusions of any expert report (examples are contained in Appendix A). KMJF should be ordered to provide them on that basis.

4. Conclusion

VAFFC seeks further and better responses to the IRs identified in Appendices A and B. As the foregoing and the Appendices demonstrate, the content VAFFC seeks is material to testing and understanding KMJF's Application, and accordingly necessary for VAFFC to be able to properly respond via both evidence and argument to KMJF's Application.

Per its September 1 letter, VAFFC also seeks a second round of IRs concerning the Round 1 IR responses generally (consistent with common practice, particularly absent an oral hearing), the amendments to the Application, and the new engineering reports. Any second round of intervener IRs should be scheduled after KMJF files revised responses to its original IR responses, should the Commission direct any. This sequential scheduling is important because some of the information withheld from KMJF's Round 1 IR responses is necessary for VAFFC to properly draft Round 2 IRs.

Please contact the undersigned if you have any questions.

Yours very truly,



Matthew D. Keen
MDK/roe

Appendix A – VAFFC IR Table

IR No.	Information Request	Response	Deficiency
1.2	Please confirm that during the 2009-2018 period, KMJF tolls were not representative of those that would be found in a competitive market. If not confirmed, please fully explain your response.	Please see the response to BCUC 2.2.	<p>BCUC 2.2 does not address the issue of how KMJF's tolls for 2009-2018 align with what would have been market competitive tolls. BCUC 2.2. addresses the issue of competitiveness in relation to the tolls that KMJF proposes for the current test period, but fails to provide the same analysis in relation to the previous toll period (and had not been asked to do so by the BCUC).</p> <p>The competitiveness of KMJF rates during the 2009 - 2018 period is relevant to whether KMJF enjoyed elements of a natural monopoly, and thereby the justifications that KMJF asserts for recovering <u>all</u> projected abandonment costs over the test period, accelerated depreciation, rate of return and risk-based additional fees.</p>
1.3	Does the “regulatory compact” apply to KMJF? Please fully explain why or why not.	<p>In ATCO, the Supreme Court of Canada stated the following in relation to the “regulatory compact”:</p> <p align="center">[quote not reproduced]</p> <p>To date, KMJF's shippers have had access to the Jet Fuel Line at a fair price established through negotiated settlements, where shippers all understood that recourse to the BCUC would be available to determine cost of service-based tolls if parties were unable to reach negotiated solutions.</p> <p>KMJF does not have an exclusive right to provide jet fuel transportation service on the Jet Fuel Line to YVR.</p> <p>Please also see the response to BCUC 2.2.</p> <p>Further, answering the question of whether the “regulatory compact” applies to KMJF requires providing a legal interpretation and is not appropriately addressed through an information request process.</p>	<p>KMJF asserts variously that it is entitled to a fair return on its investment, that abandonment costs are shipper costs and not a risk that shareholders should face, and that BCUC approval is required to change the depreciation component of its rates, but refuses to clarify whether the regulatory compact applies to it. KMJF quotes one authority but otherwise refers to BCUC 2.2 (which does not answer the question), refusing to answer on the basis that legal interpretation would be required.</p> <p>KMJF nevertheless offers multiple "legal" responses elsewhere, noted above. And, in the very same response, KMJF asserts that KMJF shippers had access at a "fair" price established through negotiated settlements and confirms the absence of an exclusive right to provide jet fuel transportation service.</p> <p>The "regulatory compact" refers to the entitlement to a reasonable return and a degree of exclusivity of service in exchange for assuming certain obligations, including non-discrimination, serving all comers, and justifying costs to a regulator. KMJF asserts that entitlement and some of those obligations by way of its cost-of-service based application. Its application also includes, newly, a full entitlement to be protected from the full cost of abandoning the pipeline.</p>

			<p>KMJF does not rely on BC statutes or BCUC precedents for the latter relief. Instead it relies on NEB precedent and the underpinning regulatory principles, even though the specific relief it seeks differs somewhat from the NEB examples it cites. The “regulatory compact” is a concept at the heart of the principles KMJF suggests apply before the NEB and ought to apply before the BCUC.</p> <p>VAFFC is entitled to know precisely what regulatory and legal principles, assumptions and premises the Application stands upon before developing evidence. Understanding KMJF’s view of the “regulatory compact” relative to its operation is an efficient means to do so, and highly relevant to all parties’ understanding of the basis for KMJF’s tariff filing.</p>
<p>1.4</p>	<p>In KMJF’s view, are its obligations as a common carrier limited to accepting all volumes tendered in accordance with its tariff conditions? Please fully explain why or why not.</p>	<p>Please see the response to BCUC 2.2.</p>	<p>In BCUC 2.2 KMJF acknowledges several obligations it has as a common carrier under the legislation (i.e., KMJF may not exit the market without regulatory approval, KMJF may not unreasonably discriminate between shippers, and KMJF is obligated to incur the costs necessary to ensure ongoing safe, reliable, and efficient service), but does not specifically address its view on the obligation to accept all volumes tendered. KMJF does acknowledge in BCUC 2.2 that it may not unreasonably discriminate, but this is not a full response to the question, as it neither confirms that KMJF must accept all volumes tendered in accordance with its tariff conditions, nor explains what other obligations KMJF has as a common carrier.</p> <p>A response to this answer is necessary to understand KMJF’s view concerning its obligation to serve. The obligation to serve, or not, is a key aspect of utility and pipeline regulation in North America, and common carrier obligations generally at common law. Whether it exists or not here is relevant to understand whether other such principles ought to apply to KMJF. It would be highly unfair for KMJF to assert the benefits of these principles as facts, but refuse to respond to questions concerning the corresponding burdens. As above, KMJF notably seeks to rely on NEB precedent and the underlying principles – but not BCUC precedent or BC statutes – to justify recovering the full cost of abandoning its system over the next three years of the pipeline’s economic life.</p>

			Information requests seeking to identify the regulatory principles that KMJF's application is grounded upon are highly relevant to developing expert evidence in the areas of appropriate regulatory policy and depreciation, and should receive responses.
1.5	Beyond the capacity made available by KMJF's existing pipeline, is it KMJF's understanding that KMJF as a common carrier has an obligation to serve all parties who wish to ship Jet Fuel from the KMJF receiving point to the KMJF delivery point? i.e., is there an obligation on KMJF to expand the pipeline if requested shipper volumes exceed available capacity?	Please see the response to BCUC 2.2.	BCUC 2.2 does not answer this question of whether KMJF has an obligation to serve all parties who wish to ship jet fuel on its pipeline (including the corresponding obligation to expand the pipeline as required to accommodate surplus need). For the reasons provided above concerning the responses to VAFFC IRs 1.3 and 1.4, KMJF should be required to provide a complete response.
1.6	Please provide KMJF's understanding of the definition of "common carrier" in British Columbia and how it compares to a "public utility".	Please see the response to BCUC 2.2. KMJF further notes that this question requires a legal interpretation and is not appropriately addressed through an information request process.	BCUC 2.2 does not answer this question — although BCUC 2.2 addresses some aspects of KMJF's understanding of what is entailed by virtue of being a common carrier, it does not compare that understanding to the legal framework applicable to public utilities. KMJF otherwise refuses to answer on the basis that an answer would require legal interpretation. KMJF is regulated as a common carrier, and not as a public utility, under the BCUC legislation. This distinction must be understood to have a particular meaning. KMJF fails to clarify the extent to which many of the principles it cites apply to public utilities, or also to common carriers, and if it views them as equivalent. Not knowing the legal basis of the case KMJF intends to submit on these matters prejudices participants. It is routine for applications to the BCUC to clearly establish and discuss the statutory basis for the relief sought, and discuss the related regulatory principles (e.g., applying Bonbright criteria to demonstrate why rates are just and reasonable). KMJF should be required to answer for these reasons and those provided above concerning VAFFC IRs 1.3 and 1.4. VAFFC and parties to the proceeding are entitled to understand the principles that ground KMJF's Application

			and, in particular, if the principles are consistently applied. That understanding is a legitimate area of inquiry to inform the development of intervener expert evidence.
1.7	Does KMJF believe the circumstances of the Jet Fuel System support the pipeline as a “natural monopoly”, as that term is used in the standard economic literature on utilities? In your response, please confirm that there are no competing supply services that could currently replace the volumes KMJF supplies to VAFFC. If not confirmed, please fully explain why not.	Please see the response to BCUC 2.2. KMJF further notes that this question requires a legal interpretation of “natural monopoly” and is not appropriately addressed through an information request process.	BCUC 2.2 evades the question. For the reasons provided in relation to KMJF's response to VAFFC 1.6, this information is relevant to the analysis of what regulatory principles are applicable to KMJF. In particular, to justify its claim to entitlements to a reasonable return, risk premiums, avoidance of abandonment costs, and accelerated depreciation. In any event, “natural monopoly” is an economic and not legal term, and high relevant to the record of a rates application.
1.9	Please confirm whether the form of regulations that have applied to KMJF since 2007 has required KMJF to adopt a specific set of depreciation parameters (e.g., assumptions on asset lives) and whether there were prohibitions on KMJF from changing these factors outside of BCUC approval. Please fully explain your answer. If KMJF confirms it was prohibited from changing depreciation factors, please provide specific pinpoint references to the legislative provisions, regulations, or lawful orders or decisions that gave rise to that prohibition.	Depreciation rates for the Jet Fuel Line are subject to approval by the BCUC. The 2010 Depreciation Study is the last depreciation study for the Jet Fuel Line approved by the BCUC. KMJF's predecessor, TMJ, filed the 2010 Depreciation Study for the Jet Fuel Line as part of the 2009 Settlement Application. KMJF believes that BCUC approval is required for a change in the depreciation rates approved in the 2010 Depreciation Study for the purposes of determining the depreciation component of KMJF's applied for 2019-2021 annual revenue requirements. Please also see the response to Parkland IR No. 1.1.	This IR asks for any legal authority that KMJF relies on, and if it is of the opinion that it cannot change depreciation parameters without BCUC approval. KMJF acknowledges that it holds this belief, but does not provide any legal authority for this opinion, evading the question of <u>why</u> . KMJF's response to Parkland 1.1 does not provide any relevant authorities to support this position either. VAFFC seeks to better understand KMJF's views for the appropriate allocation of depreciation expense from the 2009 - 2018 collection period and the impacts of such on accumulated depreciation expense and the depreciation expense proposed for the test period. KMJF's responsibility to update its depreciation parameters over the 2009 – 2018 period is highly relevant to the relief sought and a full response to this IR should be compelled.
3.7	Please explain what the “benefit of accelerated depreciation” is for these shippers, including how such a benefit relates to the potential addition of new shippers to the Jet Fuel System. In your response, please specifically describe and quantify the purported benefit referred to.	The depreciation KMJF proposes in the Application spreads the recovery of the remaining rate base over the existing shippers who have benefited from use of the system and fairly allocates costs to Air Canada who ships on the Jet Fuel Line. The market demand for jet fuel is driven entirely by airlines at the Vancouver Airport (“YVR”), which includes VAFFC members. Once the VAFD project is completed, it is reasonable	KMJF does not attempt to quantify the benefit as requested, despite confirming that doing so is possible based on the assumptions that KMJF makes elsewhere about system usage by airline shippers. The financial impact of KMJF's proposal is highly relevant to whether it is reasonable and a response should be compelled from KMJF.

		to expect that those who have invested in that project will use the new VAFD project pipeline once it is placed in service. The benefit to Parkland and Shell of updating depreciation rates based on a three year expected remaining for the Jet Fuel Line can be quantified directly based on the extent Air Canada does or does not contribute towards depreciation expense and abandonment surcharges over the remaining economic life of the Jet Fuel Line.	
4.11	Please outline the rationale and process for decision-making for all capital additions that have occurred since the 2008 proceeding, given KMJF's assertion that the pipeline is to be abandoned imminently.	KMJF believes the capital additions were undertaken to provide safe and reliable operations and is not aware of any unnecessary capital additions.	<p>KMJF has provided a "straw man" response and elides the question actually asked. Its answer omits the decision-making process or rationale for each capital addition since 2008 as requested.</p> <p>VAFFC requires this information to understand and assess two key issues in the proceeding: the reasonableness of KMJF's requested revenue requirement, and comparing KMJF's past conduct with its recent claim that the economic life of its pipeline system is limited to three years.</p>
5.3	Please provide a calculation of depreciation expense for forecast 2019 based on the last BCUC-approved depreciation rates.	KMJF has not made such a calculation and is not proposing depreciation expenses on this basis.	<p>KMJF has not answered the question, and has not specifically identified why it is unable to do so, alleged that the question is irrelevant or provided alternative information that it can provide. KMJF has therefore failed to comply with Rule 14.04 and should be required to do so. It also should not be permitted to justify a relevance objection for the first time in reply.</p> <p>VAFFC requires this information to assess KMJF's proposal and consider potential alternatives. The financial impact of the proposed change in depreciation rates is relevant to whether those rates ought to be approved. Further, these calculations should have been undertaken as part of KMJF's data gathering for preparation of this application and should therefore be available.</p>
6.2	Please provide copies of any communications with suppliers of jet fuel to the Jet Fuel System, including the Parkland Refinery and the Shell Rail Facility, regarding future supply of jet fuel for throughput on the Jet Fuel System.	Please see the response to VAFFC 6.1.	<p>KMJF neither provides copies of communications with shippers, nor confirms that they do not exist. In VAFFC 6.1 KMJF states:</p> <p style="text-align: center;">KMJF expects the 2018 volumes and allocation between the shippers to continue until the VAFD</p>

			<p>project is in-service, at which time KMJF expects no volumes to move on the Jet Fuel Line. KMJF has received no indication from current or potential shippers that this volume will be replaced.</p> <p>KMJF has no reason to expect the volumes shipped by either Parkland or Shell to decrease below the proportionate volumes of approximately 40% of the 1,182,134 m3 annual throughput volumes observed for 2018, until the VAFD project enters service.</p> <p>VAFFC 6.1 does not otherwise address future throughput or communications with shippers.</p> <p>The request seeks background facts relevant to the Application so that the Application can be understood and tested. In response to VAFFC 8.6, KMJF implies that communications have occurred concerning future operational potential from shippers. As the underlying issue is the reasonableness of KMJF's premise that the pipeline will become uneconomical to operate following the test period due to lack of throughput, this information is clearly relevant to KMJF's Application.</p> <p>KMJF has failed to meet the standard prescribed by Rule 14.04 concerning disputed responses, and it should not be permitted to do so for the first time in reply. KMJF should therefore be directed to file the requested information, or confirm that none exists.</p>
<p>7.6</p>	<p>Please provide copies of any reports, studies or investigations conducted on the economic viability of the Jet Fuel System that were conducted in relation to the development of the VAFD project.</p>	<p>Please see the response to BCUC 2.2. KMJF has no reason to disagree with VAFFC's own assessment that the "existing [Jet Fuel System] will decline to such a point where it's not really economical to maintain it."</p>	<p>KMJF does not confirm that no such reports, studies or investigations have been conducted. If KMJF has not conducted any such diligence activities it should confirm as much. If it has, it should provide copies of those documents, even if it has chosen not to rely on them.</p> <p>VAFFC wishes to understand the process and steps undertaken on due diligence by KMJF regarding potential customer impacts given KMJF's proposal for full asset and abandonment cost recovery in rates. To be clear, given the information asymmetry that characterizes regulatory applications, KMJF should be directed to file any studies it has commissioned.</p>

<p>8.4</p>	<p>Please provide a description of all due diligence activities undertaken by KMJF in respect of the ability of the Parkland Refinery to reduce or eliminate production of jet fuel, or to secure viable alternative markets.</p>	<p>KMJF understands that the continued operation of the Jet Fuel Line is not determinative of whether the Parkland Refinery will continue its own operations or not. KMJF notes that it has not yet been given an opportunity to ask IRs of Parkland in this proceeding. KMJF did engage in discussion with Parkland in conjunction with settlement discussions.</p>	<p>Recovering full abandonment and depreciation costs over the next three years would have very significant impacts on customer rates. If the proposals are serious, KMJF must have undertaken due diligence to understand whether key issues from the last proceeding remain outstanding, if any.</p> <p>KMJF's response ignores the question, despite the fact that KMJF makes claims elsewhere that "it would not be economically rational for shippers to continue to use the Jet Fuel Line" (in response to Parkland IR 2.1, and in conflict with the similar evidence filed by Chevron in 2007).</p> <p>KMJF continues its pattern of asserting facts and conclusions in its Application, but unreasonably refusing to provide the supporting details and context when asked. As the response falls far short of the standard Rule 14.04 demands, and for the reasons provided above concerning the deficient response to VAFFC 8.3, KMJF should be directed to respond to 8.4.</p>
<p>8.6</p>	<p>Please describe any discussions between KMJF and the Parkland Refinery owners regarding the critical nature of the KMJF pipeline to the refinery, including any alternative plans between the parties to address jet fuel that is produced at the refineries but remains "bottled up" without transportation options.</p>	<p>KMJF understands that there are today other transportation options available to the refineries.</p>	<p>KMFJ fails to respond to the question posed. In 2007 the BCUC rejected accelerated depreciation for the KMJF system in part because Chevron filed evidence confirming that there were not economic markets and modes of transportation available to evacuate the jet fuel that was a necessary output of the light crude oil refining process at the Burnaby refinery. KMJF now says it understands that there are alternative transportation options. KMJF's understanding of alternative options is highly relevant to whether its accelerated depreciation request is reasonable. It should therefore be directed to provide a complete response to the question, consistent with the requirements of Rule 14.01.</p>
<p>9.5</p>	<p>Please provide all economics-related studies or analysis undertaken by KMJF to conclude that the Jet Fuel System will become "economically unviable".</p>	<p>KMJF generally agrees with the statements of VAFFC's own spokesman that the economic life of the Jet Fuel Line will come to an end once the VAFD project enters service.</p> <p>Please see the response to BCUC 2.2.</p>	<p>KMJF's response fails to confirm that no such economic studies or analysis have been done, or describe or provide them otherwise. The analysis referred to in BCUC 2.2 is perfunctory on this point, and also does not confirm that no such economic studies of analysis have been conducted otherwise.</p> <p>To test KMJF's Application, VAFFC requires either production of the studies and analyses KMJF may have carried out to assess the economic viability of the line with</p>

			reduced volumes, or confirmation that no such studies were commissioned. To be clear, given the information asymmetry that characterizes regulatory applications, KMJF should be directed to file any studies it has commissioned, even if it has chosen not to rely on them.
9.7	Please describe all long-term planning conducted by KMJF (including dates) to meet YVR fuel requirements through 2030 as an alternative to any VAFFC delivery system (or other delivery services). Please indicate why such plans were not pursued.	TMJ filed as Appendix B to its 2007 Toll Application an excerpt from the YVR Master Plan 2027 Technical Report (Chapter 12), which provided some analysis at that time about the Airport Authority's plan for meeting YVR fuel requirements through 2027. KMJF understands that today, VAFFC expects its VAFD project to meet all YVR's fuel requirements for the next 60 to 100 years.	<p>This answer avoids much of the question and fails to confirm that no other long term planning regarding YVR fuel requirements was undertaken by KMJF.</p> <p>Relative to the VAFD, there is a material question as to whether shippers are somehow now financially responsible to hold KMJF harmless for actions of KMJF that may have allowed the assets to fall into redundancy and caused the premature retirement of long-term assets with robust ongoing physical lives.</p> <p>VAFFC requires background on the types of due diligence undertaken by KMJF, including any long-term planning or prospective opportunity analysis, to ensure its proposal for accelerated depreciation and abandonment cost recovery is appropriate. This information is highly relevant to the issues in this proceeding, and KMJF's response is deficient relative to Rule 14.04. It should be compelled to provide a complete response.</p>
9.8	Please provide a schedule that sets out annual revenue requirements if the current pipeline operations were extended to five years, as opposed to the three currently forecast in KMJF's application. In this schedule, please identify or otherwise explain in detail how the proposed depreciation expense and abandonment cost collection, along with any other material changes to KMJF's application that would result, would be affected by such an amendment.	<p>KMJF has not conducted such an analysis, nor is it proposing to amend its Application in the manner suggested by VAFFC. KMJF notes that it has only applied for a three-year revenue requirement, which KMJF expects will align with the remaining life of the Jet Fuel Line.</p> <p>Please also see the response to BCUC 2.2.</p>	<p>KMJF's answer refuses to provide the requested revenue requirement estimates on the basis that they are not reflective of what KMJF has applied for. KMJF does not specify on what basis the estimates are irrelevant or unreasonably difficult to procure. As such, this response is not compliant with Rule 14.</p> <p>KMJF has applied for accelerated depreciation in this proceeding. The impact of this request relative to the status quo is relevant to whether KMJF's request is reasonable. The information is within KMJF's power and/or possession and it should be ordered to provide it.</p>
12.1	Please confirm the accounting standard applied by KMJF and cite the specific provisions that address the estimates of each asset's remaining economic life. Please include copies of all relevant	<p>KMJF uses GAAP accounting standards.</p> <p>GAAP requires depreciating plant in a manner consistent with an estimate of the remaining economic or physical life,</p>	<p>KMJF does not fully answer the question as posed. The response does not cite the specific provisions that address the accounting standards applied to its application that address the estimates of each asset's remaining economic life. Copies/quotations of these standards are also not</p>

	underlying documents.	<p>whichever is shorter.</p> <p>The FASB Accounting Standards Codification is the source of authoritative GAAP recognized by the FASB to be applied to nongovernmental entities. The Codification is effective for interim and annual periods ending after September 15, 2009.</p>	<p>provided. As KMJF notes, the accounting standards it references create obligations for KMJF that are relevant to its application, and it is accordingly KMJF that should put the associated information on the record.</p> <p>KMJF fails to comply with Rule 14.04 by identifying where and why it is unable to comply with the request, or why it disputes the appropriateness of the request. It should not be permitted to object for the first time in reply, and should therefore be directed to complete its response at the level of detail requested.</p>
<p>13.1 (b) - (d)</p>	<p>Please provide full copies of the following documents:</p> <p>(b) Any written instructions or direction given to Mr. Wetmore (to the extent such directions or instruction was given or supplemented by verbal communications, please describe those verbal communications);</p> <p>(c) Materials Mr. Wetmore was provided with to review;</p> <p>(d) Mr. Wetmore's working papers</p>	<p>(b) As noted in the Application, KMJF retained Erik Wetmore of Turner Wetmore Collins, LLC as an independent expert to conduct a cost of service study regarding KMJF's forecasted annual costs, including a reasonable return on and of its investment, for providing jet fuel transportation services on the Jet Fuel Line for the period from January 1, 2019 to December 31, 2019.</p> <p>(c) KMJF provided Mr. Wetmore with the underlying cost data relied on by Mr. Wetmore to produce a forecasted revenue requirement for the Jet Fuel Line. Mr. Wetmore cites throughout his report the applicable assumptions, authorities, and source of data used to develop each of the Schedules 1 to 21.</p> <p>(d) To the extent that VAFFC is seeking disclosure of any draft reports or notes of discussions between KMJF's legal counsel and Mr. Wetmore, KMJF's independent expert, KMJF considers any such documents or communications to be subject to solicitor-client privilege and litigation privilege.</p>	<p>KMJF relies on the Wetmore report as expert evidence, yet refuses to provide Wetmore's retainer letter, instructions, working papers and source data, on the basis that Wetmore identifies the source of his material and that any instructions are privileged.</p> <p>This response is highly irregular and, if accepted, should cause the Commission to put zero weight on the central piece of evidence in KMJF's Application.</p> <p>VAFFC's request is standard, and a necessary one for any party that seeks to understand, test, and potentially respond with evidence to an expert report. Procedural fairness therefore requires a meaningful response by KMJF. Both litigation and administrative tribunal and court contexts demonstrate this fact.</p> <p>Rule 11-6(8) of the BC <i>Supreme Court Civil Rules</i>, expressly entitles parties to litigation to receive the following when an expert report is tendered for evidence in a litigation proceeding in that Court: any written statement or statements of facts on which the expert's opinion is based; a record of any independent observations made by the expert in relation to the report; any data compiled by the expert in relation to the report; the results of any test conducted by or for the expert, or of any inspection conducted by the expert, if the expert has relied on that test or inspection in forming his or her opinion; and, any other contents of the expert's file relating to the preparation of the opinion set out in the expert's report.</p> <p>VAFFC has only requested a subset of the foregoing, and</p>

			<p>omitted any requests for draft reports. That said, the latter request would be entirely legitimate before the BC Supreme Court. Unlike some other provinces, the BC Rules of Court expressly require production of experts' draft reports and associated written instructions from counsel concerning those drafts. The law in British Columbia is clear that parties who file an expert report are deemed to waive solicitor client and litigation privilege over such drafts and instructions. "If [an] expert report is being tendered for the purpose of enabling the Court to make findings of fact (which often require the Court to resolve issues of credibility) or to weigh evidence, the privilege that protects the expert's working papers is lost": See <i>Bank of Montreal v. Tortora</i>, 2009 BCSC 1224 at para. 34.</p> <p>Energy regulators also typically similarly require the production of instructions to experts and working papers. The BCUC's proceeding records are replete with retainer letters provided to experts. Concerning the specific example of notes and working papers, in Alberta Utility Commission ("AUC") Proceeding 2322, the AUC granted a motion by the Utilities Consumer Advocate ("UCA") for copies of all notes and documents supporting an expert depreciation report that had been provided, in addition to copies of material internal correspondence pertaining to retirement unit costs, depreciation rates and/or the depreciation study.³</p> <p>Underpinning the motion was the fact that the same expert had provided such documents in the process for the previous test period (proceeding ID 13), as well as during a comparable recent proceeding before a Maryland regulator. The AUC ruled as follows:⁴</p> <ol style="list-style-type: none"> 1. <i>ATCO Pipelines is directed to provide the UCA with copies of the following:</i> <ul style="list-style-type: none"> • <i>all notes and all other documents produced during any meetings with company representatives or facility tours attended by Mr. Robinson or any of his associates</i> • <i>all notes that Mr. Robinson or any of his associates took during any meetings with</i>
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³ Exhibit 2322-X0066.02

⁴ Exhibit 2322-X0073.01 at p. 3.

			<p><i>ATCO Pipelines personnel regarding the most recent Depreciation Study</i></p> <ul style="list-style-type: none"> • <i>all information relative to current operations and future expectations provided to Mr. Robinson or any of his associates by ATCO Pipelines operating and financial management personnel, in the same format provided to the consultant</i> • <i>material internal correspondence and any analysis communicated since January 1, 2011 discussing ATCO Pipelines' retirement unit costs, depreciation rates, and/or the Depreciation Study</i> <p>2. <i>If ATCO Pipelines has already filed all records and documents in its possession or available to it relevant to a request, ATCO Pipelines is directed to confirm that all such information has already been provided on the record of this proceeding and specify where it is to be found. The UCA has not applied for, and these directions do not require production by ATCO Pipelines of drafts or preliminary copies of the expert report and evidence prepared by Mr. Robinson or any of his associates for ATCO Pipelines.</i></p> <p>KMJF's claim of privilege, and claim that identifying the source of the data is sufficient and fair (rather than providing the data and associated instructions) must therefore both fail.</p> <p>KMJF did not cite any other basis on which it would refuse to provide these materials and should not be permitted to do so for the first time in reply. It is evident that the directions and material relied on by Mr. Wetmore are relevant to interveners' and the Commission's ability to engage with and assess the significance of Mr. Wetmore's report, and it would be procedurally unfair to deny the request for supporting material if the report is accepted as expert evidence. KMJF should be ordered to provide the materials on this basis.</p>
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<p>13.2</p>	<p>Please fully describe the basis for KMJF's statement that it is entitled to a "reasonable return on and of its investment" with specific pinpoint references to the legislation, regulations and previous regulatory decisions in BC or elsewhere that KMJF relies on with respect to common carriers.</p>	<p>Please see the response to BCUC 2.1.</p>	<p>In response to BCUC 2.1, KMJF references page 45 of the BCUC's Plateau Pipe Line 2001 rate decision as justification to include a fair return on the cost of assets. KMJF also references legislative changes that have occurred since 2001 and notes the BCUC still retains considerable discretion in establishing tolls. KMJF does not specifically provide support for its statement and any other decisions post 2001.</p> <p>This request goes to the heart of KMJF's Application. KMJF should be directed to confirm that PDF page 45 is the full extent of its justification for a "reasonable return on and of investment", or to provide a complete response.</p>
<p>18.3</p>	<p>Please provide details on the consultation carried out by KMJF with persons and groups potentially affected by the proposed abandonment of the pipeline. In your response, please provide copies of all relevant correspondence sent or received by KMJF.</p>	<p>Please see the ELM Final Report regarding Environmental Liability Management Inc. ("ELM")'s communication with and site-visits in the City of Burnaby and the City of Richmond setting out their preliminary views regarding abandonment requirements within those cities. KMJF considers its 2007 Application through to the present to be an ongoing communication with the shippers regarding abandonment of the Jet Fuel Line. KMJF understands that shippers will have a viable alternative once the VAFD project is in service. Furthermore, KMJF has had conversations with shippers that are subject to settlement privilege.</p>	<p>VAFFC asked for copies of any communications KMJF has had with stakeholders in KMJF's abandonment. KMJF acknowledges the conversations it has had with municipalities, but does not describe any other conversations with stakeholders regarding abandonment. It also does not provide copies of any of the correspondence, with municipalities or otherwise, that was requested.</p> <p>If no such consultation outside BCUC filings or related settlement negotiations exist, or if no municipal correspondence exists, KMJF should say so clearly.</p> <p>KMJF's understanding of its abandonment obligations is relevant to these proceedings, as it is requesting an abandonment surcharge. Where and when and to what extent KMJF has prepared to abandon its system is relevant to the weight the Commission should give KMJF's claim concerning the appropriate economic life of its system.</p>
<p>22.1 (a - i)</p>	<p>Please provide specific details, including supporting documents, on the following Direct Field Expenses for each year dating back to 2007, as well as the test period:</p> <p>Forecast number of employees with associated titles and financial compensation (including detailed information about salaries, benefits, bonuses, and other</p>	<p>Response 22.1 (a) - (i): Please see the response to BCUC 4.3 for historical operating expenses for 2009 to 2018.</p> <p>KMJF has expended significant effort to obtain historical cost information related to the Jet Fuel Line. Despite its good-faith efforts, KMJF has not been able to obtain actual historical operating expenses prior to 2009.</p>	<p>KMJF does not provide the information as requested, besides lump sum amounts for the broad category headings associated with the costs requested in BCUC 4.3. KMJF alleges it could not obtain a breakdown of operating expenses based on the same account reported in the 2007 application, because the previous operator of the Jet Fuel Line maintained accounting in a different manner than is currently used by KMJF.</p> <p>VAFFC disputes this response because KMJF must have in its possession the accounting information for these charges</p>

<p>incentives).</p> <p>Actual number of employees with associated titles and financial compensation (including detailed information about salaries, benefits, bonuses, and other incentives).</p> <p>The costs of materials and supplies, and a justification for the 400% increase.</p> <p>A list of all outside services procured by KMJF in relation to the pipeline. For any outside services that exceed \$10,000, please include a list of contracts and contract values.</p> <p>A list of all vehicle expenses, including: repair, fuel, and operating costs. Please provide details for any expenses that exceed \$10,000.</p> <p>Details of rental agreements for each parcel of land/commercial building and item being rented for rentals that exceed \$10,000.</p> <p>Details related to “other” expenses that exceed \$10,000 and justification for those expenses that exceed \$10,000.</p> <p>Details related to field major maintenance and supporting documents explaining what work was required and why it was required.</p> <p>Details related to tank major maintenance and supporting documents explaining what work was required and why it was required.</p>	<p>In addition, KMJF has not been able to obtain a breakdown of operating expenses based on the same accounts reported in the 2007 Toll Application. During the period from 2007 to August 31, 2018, the previous operator of the Jet Fuel Line maintained accounting in a different manner than as is currently used by KMJF, as reflected in the Application. KMJF is therefore also unable to provide the level of detail VAFFC is requesting in 22.1(a)-(i).</p> <p>KMJF further notes that much of the historical cost data being requested by VAFFC that KMJF has been unable to obtain is of no relevance to the costs forecasted for 2019, which are the forecasted costs for which KMJF is requesting BCUC approval in the present Application.</p>	<p>for the relevant years, different standard or not. Providing the requested information under the same categories that it was previously provided to the Commission in should not be onerous. The categories should not be difficult to process, e.g., the actual number of employees and associated details, or what should be a relatively short list of outside services and expenses procured by KMJF in relation to the pipeline that exceeded \$10,000.</p> <p>Without this information, neither interveners nor the BCUC are able to directly compare current cost forecasts against recent actual expenditures to assess the reasonableness of the forecasts. The implications are significant. For example, there is a 400% increase in costs of materials and supplies (KMJF’s Application estimates a 2019 “materials/supplies/parts/etc.” forecast cost of \$121,000, while KMJF’s 2007 application had estimated a 2008 “materials and supplies” forecast cost of \$23,000).</p> <p>Likewise, the Application also forecasts 2019 direct field expenses of \$1.825 million. In the 2007 application, KMJF forecast direct field expenses to cost \$502,000. If accurate, this reflects an <i>annual</i> escalation of 11.5% in this category for a period of 12 years, during which time interest rates have been historically low. Basic cost details are therefore necessary to test KMJF forecasts and the overall reasonableness of KMJF’s proposed revenue requirement.</p>
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22.2	Where itemized Direct Field Expenses have increased above 2% year over year during the period dating back to 2007, please provide an explanation for the increase.	Please see the response to VAFFC 22.1.	VAFFC requests that KMJF answer VAFFC 22.2 for the same reasons as above for VAFFC 22.1. Basic cost information must be within KMJF's possession, is highly relevant to testing the reasonableness of KMJF's forecasts, and should be provided.
23.1 (a-d)	<p>Please provide specific details, including supporting documents, on the following A&G Costs for each year dating back to 2007:</p> <p>A list of Employee Benefits that exceed \$10,000. Please explain which Employee Benefits are captured in Schedule 16 compared to Schedule 17.</p> <p>A breakdown of the Labor expenses associated with each subgroup: Operations, Product Logistics, EHS, Operator Qualification Training, Tax, Insurance, IT, Accounting, Payroll, Human Resources. Please provide a list of any expenses in each subgroup that exceed \$10,000.</p> <p>A list of Outside Services that exceed \$10,000. Please include a list of contracts and contract values for amounts in excess of \$10,000. Please also explain which Outside Services are captured in Schedule 16 compared to Schedule 17.</p> <p>A list of Rent expenses that exceed \$10,000. Please include a list of contracts and contract values for amounts in excess of \$10,000. Please also explain which Rent expenses are captured in Schedule 16 compared to Schedule 17.</p>	<p>Response 23.1(a)-(d): Historical Data Please see the response to BCUC 4.3 for historical operating expenses for 2009 to 2018.</p> <p>KMJF has expended significant effort to obtain historical cost information related to the Jet Fuel Line. Despite its good-faith efforts, KMJF has not been able to obtain actual historical operating expenses prior to 2009.</p> <p>In addition, KMJF has not been able to obtain a breakdown of operating expenses based on the same accounts reported in the 2007 Toll Application. During the period from 2007 to August 31, 2018, the previous operator of the Jet Fuel Line maintained accounting in a different manner than as is currently used by KMJF, as reflected in the Application. KMJF is therefore also unable to provide the level of detail VAFFC is requesting in 22.1(a)-(i).</p> <p>KMJF further notes that much of the historical cost data being requested by VAFFC that KMJF has been unable to obtain is of no relevance to the costs forecasted for 2019, which are the forecasted costs for which KMJF is requesting BCUC approval in the present Application.</p> <p>Allocation of A&G Costs to KMJF Please see the responses to Parkland 7.1 to 7.3.</p>	<p>KMJF does not provide the information as requested, besides lump sum amounts for the broad category headings associated with the costs requested in KMJF's response to BCUC 4.3.</p> <p>VAFFC requests that KMJF answer VAFFC 23.1 for the same reasons as above for VAFFC 22.1. Basic cost information must be within KMJF's possession, is highly relevant to testing the reasonableness of KMJF's forecasts, and should be provided.</p>

<p>29.7</p> <p>29.7 (c)</p>	<p>Regarding Sub-reference (e) above:</p> <p>Please provide copies of any correspondence between KMJF and landowners, municipalities, or regulators regarding specific removal requests.</p>	<p>Please see the response to VAFFC 29.7(b).</p>	<p>In 29.7(b) KMJF addresses correspondence with municipalities. KMJF does not address or otherwise refer to or provide copies of correspondence with other parties as requested. VAFFC wishes to understand what consultation activities took place and what information was communicated to these parties. If specific copies cannot be provided, please provide meeting notes from the consultation and explain in detail the parties consulted, dates consulted, any activities undertaken to estimate removal costs as requested, and any other input that went into ELM's estimations for abandonment costs from consultation activities.</p> <p>VAFFC seeks to understand the methodology employed, level of detail, and overall accuracy of data that went into these cost estimates for abandonment as requested to be collected in rates by KMJF in this proposal.</p>
<p>29.12</p>	<p>Regarding Reference (iii) above, please discuss which assumptions were made in the 2007 Application's abandonment study that were not made or were changed for the 2019 abandonment study. In your response, please address how and why each of those assumptions was changed for the 2019 abandonment study, including all support for each change.</p>	<p>Assumptions made in the 2007 Toll Application abandonment study are not relevant to the present Application and KMJF has not attempted to compare the two. The ELM Final Report provides a detailed discussion of its assumptions and the authorities and information it relied on to reasonably estimate the site-specific costs to abandon the Jet Fuel Line.</p>	<p>KMJF refuses to identify what assumptions have changed between the 2007 abandonment study and this one, because it says the 2007 study is not relevant to the present application. This response does not withstand scrutiny.</p> <p>The 2007 study relates to the same pipeline system and has very different costs. Understanding the difference between the two studies is relevant because it allows the Commission and parties to assess the reasonableness of the costs and approach of the current study.</p> <p>KMJF should therefore be directed to provide a response to the question.</p>

Appendix B – BCUC IR Table

IR No.	Information Request	Response	Deficiency
<p>4.2</p> <p>4.2.1</p>	<p>Please discuss the appropriateness of escalating depreciation and amortization by the inflation escalation factor annually.</p> <p>Please explain how depreciation and amortization expenses are tied to inflationary increases.</p>	<p>Please see the response to BCUC 4.1.</p> <p>Please see the response to BCUC 4.1.</p>	<p>KMJF’s response to BCUC 4.1 only justifies the 2% inflation escalation figure generally, but does not address the relationship between this escalation and depreciation and amortization expenses as requested. A similar request would have been made by VAFFC had the Commission not issued this IR.</p> <p>Depreciation and amortization calculations recover invested capital. The return on the invested capital is accounted for elsewhere. An inflationary depreciation increase is therefore atypical, KMJF’s response is deficient and non-compliant with Rule 14.04, and a response specific to inflating depreciation expense should be compelled.</p>
<p>7.3</p>	<p>Please provide the details of the actual ROE earned by KMJF for the previous toll period from 2009 to 2018.</p>	<p>In the absence of an approved debt/equity ratio, costs of debt data, and approved allowed rate of return, KMJF does not have the information required to provide the actual ROE earned by KMJF for 2009 to 2018.</p> <p>In any event, KMJF respectfully submits that the present Application requests approval of KMJF’s 2019 Forecast Revenue Requirement and 2020-2021 revenue requirements based on a fixed escalation factor. Determining an actual ROE during the previous settlement tolls is not relevant to assessing cost of service and a fair rate of return for the applied for period.</p> <p>More specifically, agreed-to settlement rates were charged during the 2009-2018 toll period and it would be inappropriate to set going-forward rates based on any assumptions about what was or was not recovered in prior “package deal black-box” settlement rates. As indicated in the response to BCUC 7.2, there was no specified ROE component in the settlement rates.</p>	<p>KMJF failed to provide the details of its actual ROE for the previous toll period on the basis that there was no approved debt/equity ratio, costs of debt data or approved allowed rate of return for that time.</p> <p>However, an approved allowed rate of return is not required to calculate an actual rate of return, and KMJF could apply the debt/equity ratio and cost of debt levels KMJF seeks in its tariff filing to be responsive. More fundamentally, and specific to the actual request, internal reporting and accounting will typically identify relative profits and return. Actual ROE is calculated by dividing net income by shareholders’ equity. That information is available to KMJF.</p> <p>KMJF further justifies its refusal by challenging the relevance of the request. The Commission’s request – and, as above, a similar request would have been made by VAFFC had the Commission not issued this IR – reasonably seeks to understand what effect the requested relief will have on KMJF’s profit levels and whether approving the tariff filing will lead to reasonable rates. It is relevant for the same reason that seeking to understand historical costs is relevant (VAFFC notes that those requests have <u>also</u> been refused).</p> <p>The Commission should be aware of any discrepancy between KMJF’s internal reporting (for example, if it reports</p>

			<p>strong profits based on the negotiated settlement) and the Wetmore report's identification of modest profits following significant rate increases and risk mitigation.</p> <p>The basis upon which the BCUC should place conditions on KMJF's rates for the test period is a central issue in this proceeding, and KMJF's earnings in the previous period are directly relevant to the accuracy and credibility of the costs it claims now, and the reasonableness of the rate mechanisms it seeks through its tariff filing.</p> <p>KMJF has unreasonably refused to provide relevant and probative information available to it and thereby failed to comply with Rule 14.04. A response should therefore be compelled.</p>
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