

Norton Rose Fulbright Canada LLP
1800 - 510 West Georgia Street
Vancouver, BC V6B 0M3 CANADA

F: +1 604.641.4949
nortonrosefulbright.com

Matthew D. Keen
+1 604.641.4913
matthew.keen@nortonrosefulbright.com

Assistant
+1 604.641.4527
rosalind.endo@nortonrosefulbright.com

Our reference
18-4005

October 7, 2019

Sent By E-mail

British Columbia Utilities Commission
6th Floor - 900 Howe Street
Vancouver, BC V6Z 2V3

Attention: Patrick Wruck, Commission Secretary

Dear Sir:

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

We are legal counsel to VAFFC in this matter and write on its behalf to reply to KMJF’s response¹ to VAFFC’s application for further and better IR responses.²

Specific replies by IR are set out in **Appendix A** and **Appendix B** to this letter.

Major issues that span the disputed responses are discussed below. These include KMJF withholding information concerning:

- (a) Historical costs;
- (b) Accelerated depreciation and throughput evidence;
- (c) Instructions and data underpinning the Wetmore expert report;
- (d) The legal and regulatory principles the Application relies on; and
- (e) Capital expenditures.

1. KMJF is withholding historical costs data

KMJF has refused to provide the historical cost data needed to assess the accuracy of its forecasts, which impairs VAFFC’s ability to respond to KMJF’s application, and the Commission’s ability to properly assess the

¹ Exhibit B-17. On October 1, KMJF provided supplemental responses to some of VAFFC’s IRs (Exhibit B-18).

² Exhibit C2-5.

application.³ Operating costs (including integrity costs) are the largest component of KMJF's proposed revenue requirement.⁴

As VAFFC noted earlier,⁵ it is important to test KMJF's costs because they have sharply increased over time:

- KMJF forecasted direct field expenses of \$502,000 for 2008,⁶ and \$1.825 million for 2019.⁷ If accurate, this reflects an escalation of 11.5% in this category every year for 12 years.
- Likewise, KMJF indicates that the administrative and general costs allocated to KMJF by its parent company rose from \$919,577 in 2009 to \$1.97 million in 2018, an annual escalation of 11.1%.⁸

Given the length of the previous settlement period, these costs have never been tested, providing a second reason to ensure that they are provided on the record.

KMJF has only so far released a single table, in response to BCUC 4.3, in which the data for each year is reduced to only four broad categories, without any further breakdown.⁹ This compares poorly to the sort of information that BC Hydro¹⁰, FortisBC Energy Inc.,¹¹ and Trans Mountain (Jet Fuel) Inc. have filed.¹² To allow KMJF to proceed in this fashion would set a dangerous precedent. Rate proceedings must deal with information asymmetry in a fair manner, as the Commission, interveners, and ratepayers rely on applicants to make full and accurate disclosure.

KMJF's claim that it cannot provide costs prior to August 31, 2018 because of a change in how accounts were kept must be rejected as a legitimate reason to withhold information. KMJF is obligated to provide such other information as would be of assistance to VAFFC that can be provided with reasonable effort: BCUC Rule 14.04(c)(ii). How to manage, compare and process the information within the context of changes to internal accounting may be issues *after* the information has been provided, but those changes are no reason to accept not providing the information that is, or should be, available to KMJF. Further, providing the requested information under the same categories that it was previously provided to the Commission is not onerous.

2. KMJF is withholding key evidence relevant to accelerated depreciation

To test and challenge KMJF's assertion that accelerated depreciation is justified because the Jet Fuel Line is likely to become unviable, and not merely suffer a throughput decrease, VAFFC requires details as to future

³ See KMJF responses to VAFFC IRs 22 and 23.

⁴ In KMJF's proposed revenue requirement for 2019, operating costs and "integrity costs" amount to \$4.3 million, the "abandonment surcharge" is \$4.1 million, and accelerated depreciation is \$1.9 million. Exhibit B-14, Appendix A, Schedules 14, 18, 19, 21.

⁵ See Exhibit C2-5, Appendix A at pdf pp. 17-18.

⁶ BCUC Project No. 3698466, Exhibit B-1, Appendix D, Schedule 21 at PDF p. 80.

⁷ Exhibit B-14, Schedule 16 at PDF p. 99.

⁸ Exhibit B-11 at p. 17.

⁹ Exhibit B-11 at p. 17.

¹⁰ [BC Hydro F2020-F2021 RRA, Exhibit B-1, Appendix A](#), pdf pp. 1147-1231.

¹¹ [FortisBC Energy Utilities 2012 and 2013 Revenue Requirements and Natural Gas Rates Application, Exhibit B-1, Appendices D-1 to D-6](#), pdf pp. 894-962. See also [Terasen Gas Inc. 2010 and 2011 Revenue Requirements and Delivery Rates Application, Exhibit B-1](#), pdf pp. 702-707, concerning historical costs for five years for a cost-of-service application following six years of PBR rate regulation.

¹² [Trans Mountain \(Jet Fuel\) Inc. Tolling Application for 2008-2012, Exhibit B-1](#), Appendix D, Schedules 17-21, pp. 24-29, pdf pp. 76-81.

market conditions. VAFFC has requested information from KMJF concerning its efforts to assess future market conditions.¹³

The materials are highly relevant and necessary to the application, but KMJF has withheld some of its responses based on settlement privilege. Yet KMJF should have a sense of the likely effect of toll increases on throughput *on its own system* from outside the settlement context.

If the *only* information that KMJF has about its system was obtained from settlement discussions, then VAFFC requests the Commission to direct KMJF to say explicitly, so that untestable evidentiary claims can receive appropriate weight – none. Otherwise, KMJF should have to disclose the diligence that it has conducted not derived specifically from settlement communications

3. KMJF is withholding the instructions and data underpinning the Wetmore report

In IR 13.1 VAFFC requested that KMJF provide key materials necessary to respond to the expert report prepared by Erik Wetmore of Turner Wetmore Collins, LLC; specifically:

- a) Any written instructions or direction given to Mr. Wetmore;
- b) Materials Mr. Wetmore was provided to review; and
- c) Mr. Wetmore's working papers.¹⁴

KMJF's response was to cite an Alberta Utilities Commission decision based on the Ontario Court of Appeal decision *Moore v. Getahun*, 2015 ONCA 55 [*Moore*]. But KMJF ignored that, as in BC, the Ontario rules of court at issue in *Moore* require the expert's report *itself* to include, among other things: the expert's qualifications, the instructions provided to the expert in relation to the proceeding, the nature of the opinion being sought and the issues in the proceeding to which the opinion relates, and a list of every document, if any, relied on by the expert in forming the opinion (Rule 11-6(2)(b)-(d) and Ontario's rule 53.03(2.1), reproduced at para. 39 of *Moore*).

In short, the instructions that VAFFC seeks largely reflect content that is typically directly presented in expert reports, in both provinces, and KMJF's reliance on the decision is misplaced.

Also, in BC, the disclosure of further materials relating to expert files is governed by Rule 11-6(8) of the Supreme Court Civil Rules¹⁵ and the associated case law. Clearly those rules do not apply to the BCUC, but the underlying principles are relevant and should be considered carefully. BC's Rule 11-6(8) requires the following materials to be produced upon request:

- 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

¹³ See KMJF responses to VAFFC IRs 6.2, 8.4, 8.6 and 9.7.

¹⁴ KMJF provided "additional working papers" on October 1, 2019 – no working papers were provided prior to that time.

¹⁵ B.C. Reg. 168/2009

- any other contents of the expert's file relating to the preparation of the opinion set out in the expert's report.¹⁶ [emphasis added]

In the context of this application, all of the materials requested by VAFFC are producible under rule 11-6.

Rather than *Moore*, the applicable standard before BC courts is set out in *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*.¹⁷ That standard requires that a party produce all materials “that are relevant to matters of substance in [the expert’s] opinion or to his or her credibility unless it would be unfair to do so”, with the exception of “materials that relate to the expert’s role as an advisor to counsel about matters that are not addressed in the expert’s report.”¹⁸

Raw data clearly falls into the category of materials producible in a proceeding, as “facts on which the expert’s opinion is based”, per rule 11-6, and materials “relevant to matters of substance in [the expert’s] opinion”, per *Conseil*.¹⁹ Given the unorthodox approach that appears to have been adopted in forecasting future operating costs (i.e., not relying on past costs), the instructions given to Mr. Wetmore are essential to evaluating the credibility and reliability of Mr. Wetmore’s analysis.

VAFFC requests that the BCUC order disclosure of all materials requested in IR 13.1, and where such materials have already been provided, a confirmation that the provided materials represent the entirety of the materials in the requested category.

4. KMJF is withholding responses about the legal and regulatory principles its application relies on

As discussed in VAFFC's application for further and better IR responses,²⁰ KMJF refused to answer a number of IRs on the basis that they would require a legal interpretation, which KMJF asserts is not appropriate to address in the IR process. Despite having the opportunity to substantiate its objection on this basis, KMJF has not provided any authority or precedent for its position, simply stating that these types of submissions are more appropriately submitted during the argument stage of the process.²¹

The legal and regulatory concepts that VAFFC requests KMJF's opinion on are directly relevant to these proceedings and its application: e.g., KMJF's basis for claiming an entitlement to a return on and of capital and offsetting obligations,²² whether KMJF is a natural monopoly,²³ and how and if common carriers are distinguishable from public utilities in British Columbia.²⁴ Those factors directly affect KMJF's entitlement, or not, to depreciation expense and abandonment surcharge rate components.

As VAFFC stated previously,²⁵ applicants before the BCUC typically clearly establish the regulatory and legal basis for their application. There is no reason why it would not be appropriate to ask IRs to clarify the legal basis for the application. Especially in this circumstance, where the legal authority for many of KMJF's assertions is not defined by statute, but rather recourse to rate-making principles and past practice, it is appropriate for VAFFC to seek clarification or confirmation, allowing it to then engage via evidence and argument with precision. This

¹⁶ Rule 11-6(8).

¹⁷ 2014 BCSC 741 [*Conseil*].

¹⁸ *Ibid* at para 44.

¹⁹ See also *Traynor v. Degroot*, 2000 BCSC 1701; *Mitchell v. Soebagio* (March 20, 1998), Doc. Victoria 96/2231 (B.C. Master); *Davies v. Milne* (1999), 10 C.C.L.I. (3d) 44 (B.C. Master).

²⁰ Exhibit C2-5 at PDF p. 4.

²¹ Exhibit B-17 at PDF p. 3.

²² VAFFC IR 13.2.

²³ VAFFC IR 1.7.

²⁴ VAFFC IR 1.6.

²⁵ See VAFFC's submissions regarding VAFFC IR 1.6 in Appendix A.

information is necessary for interveners to meaningfully participate in this process, and accordingly for the process to be procedurally fair.

5. KMJF is withholding details of new capital expenditures that it proposes shippers fund

As VAFFC indicated in its application for better responses,²⁶ information about the rationale and decision-making for capital additions over the last toll period is relevant to two key issues in this proceeding: (1) the reasonableness or prudence of KMJF's capital expenditures; and (2) assessment of whether those capital expenditures are consistent with KMJF's claim that the economic life of the pipeline is limited to three years.

The right that KMJF asserts to recover a return on investment applies only to reasonable or prudent investments. Reasonableness review is a fundamental component of ratemaking. Without scrutiny of these investments, a regulated entity—including a common carrier, per KMJF—can recover unnecessary and unreasonable costs.

The Commission and interveners must be given enough information about individual capital additions to be able to assess their reasonableness. KMJF's response is deficient because the only information it supplies about individual capital additions is limited to the single-line accounting entries in Appendix BCUC-KMJF 6.9.A.

For example, parties are told that in December 2017, KMJF spent \$459,622.19 on something described as "Mainline Repairs". Parties are given no indication of what those "repairs" consist of, whether and why they were necessary, or whether they were carried out in a cost-effective manner.

KMJF's blanket conclusion – that "all capital additions were necessary for continued safe and reliable operations" – must be supported with facts before the Commission concludes that shippers should pay those costs. That concern is heightened by the Application's premise that the pipeline is to be imminently abandoned. In that context it is important to ensure that more recent long-term capital investments were prudently incurred. Or, conversely, whether their implementation undercuts the seriousness of KMJF's assertion that the line is likely to be abandoned.

6. Conclusion

Unless KMJF fully discloses the information that has been requested of it, VAFFC's ability to meaningfully participate in this proceeding via evidence will be prejudiced, as will the Commission's oversight role.

VAFFC therefore respectfully requests that the Commission require KMJF to provide full IR responses as set out in Appendix A and Appendix B below.

Please contact the undersigned if you have any questions.

Yours very truly,



Matthew D. Keen
MDK/roe

²⁶ Exhibit C2-5, Appendix A regarding VAFFC IR 4.1 at pdf p. 10.

Appendix A – VAFFC IR Table

APPENDIX A – VAFFC IR TABLE

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
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>	<p>KMJF submits that it has provided a complete response to VAFFC's original request. To the extent KMJF enjoyed elements of a natural monopoly as the only Jet Fuel Line, it also had the corresponding obligations of a common carrier and was not allowed to charge competitive tolling rates. KMJF's response is applicable to the full time period, and VAFFC is incorrect that BCUC 2.2 only addresses competitiveness in relation to the tolls that KMJF proposes for the current test period. As KMJF stated in its response, KMJF does not have an exclusive right to provide jet fuel transportation service and as a result it faces competition from new pipelines. Those statements are true for the entire time period, even when settlement rates were in place.</p> <p>The rates that were in effect from 2009-2018 were settlement rates agreed to by all parties. They were agreed to by unaffiliated shippers through arm's length negotiations and approved by the BCUC. Abandonment costs are a legitimate cost of providing service and recoverable from users of a system over the Jet Fuel Line's economic life. KMJF does not rely on whether or not the Jet Fuel Line is a "natural monopoly" or faces competition. KMJF attempted to have abandonment costs separately recovered at least as early as 2007, and VAFFC opposed that request. Having argued against the recovery of abandonment costs in 2007,</p>	<p>KMJF states "KMJF's response is applicable to the full time period." VAFFC understands KMJF to mean that its tolls were not representative of those that would be found in a competitive market place during the 2009-2018 period.</p> <p>VAFFC therefore does not require a further response from KMJF.</p>

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
				VAFFC should be foreclosed from asserting that any prior amounts recovered by KMJF during the settlement period were for the cost of abandonment.	
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>62 Rate regulation serves several aims — sustainability, equity and efficiency — which underlie the reasoning as to how rates are fixed:</p> <p>...the regulated company must be able to finance its operations, and any required investment, so that it can continue to operate in the future. Equity is related to the distribution of welfare among members of society. The objective of sustainability already implies that shareholders should not receive “too low” a return (and defines this in terms of the reward necessary to ensure continued investment in the utility), while equity implies that their returns should not be “too high”.</p> <p>(R. Green and M. Rodriguez Pardina, <i>Resetting Price Controls for Privatized Utilities: A Manual for Regulators</i> (1999), at p. 5)</p> <p>63 These goals have</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-</p>	<p>KMJF submits that it has provided a complete response to VAFFC’s original request. KMJF notes that “regulatory compact” is not a term used by KMJF in its application nor did VAFFC provide a definition of the term in its request. The term “regulatory compact” is not a term found in the <i>Utilities Commission Act</i>. Accordingly, KMJF responded based on its understanding of the term and recognition that it is a matter of argument. KMJF questions if the “regulatory compact” is what determines KMJF’s entitlement to a reasonable opportunity to earn a return on and of its capital and collect funds for abandonment costs. For this reason, the relevance of VAFFC’s request is questionable. VAFFC is free to provide its own views on this in the context of its evidence and/or argument.</p> <p>KMJF further notes that only in this motion by VAFFC for further and better IR responses has VAFFC provided its own understanding of the meaning of the term “regulatory compact”:</p> <p><i>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.</i></p> <p>KMJF notes that this definition is</p>	<p>KMJF curiously complains of the absence of a definition of “regulatory compact”, despite making a critical comparison between VAFFC’s later explanation and the reference to the term that KMJF initially provided.</p> <p>While KMJF has not fully responded to the question, its most recent admissions are sufficient for VAFFC’s purposes and VAFFC therefore does not require a response beyond what KMJF has now provided.</p>

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
		<p>resulted in an economic and social arrangement dubbed the "regulatory compact", which ensures that all customers have access to the utility at a fair price - nothing more. As I will further explain, it does not transfer onto the customers any property right. Under the regulatory compact, the regulated utilities are given exclusive rights to sell their services within a specific area at rates that will provide companies the opportunity to earn a fair return for their investors. In return for this right of exclusivity, utilities assume a duty to adequately and reliably serve all customers in their determined territories, and are required to have their rates and certain operations regulated. [Emphasis added]. 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>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>similar, but not identical to, the definition KMJF cited from the Supreme Court of Canada in <i>ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)</i>, 2006 SCC 4.</p> <p>KMJF also submits the following concerns expressed by the NEB in Decision RH-003-2011 would similarly apply in this case:</p> <p><i>... We are not prepared to endorse the concept of the regulatory compact, as a concept that compels the Board to set just and reasonable tolls in a particular manner. In our view, the concept is ill defined. TransCanada's interpretation of the regulatory compact would have the effect of protecting the Mainline from the impact of competition. Some intervenors contended that the concept protects them from a pipeline's market power. We are of the view that the differing characterizations of the regulatory compact evidences a fundamental flaw in using the concept to set just and reasonable tolls: the regulatory compact means different things to different people.</i></p> <p><i>Further, the regulatory compact as described by the Supreme Court of Canada in <i>Stores Block</i> is not directly applicable to TransCanada. The Mainline does not have a franchise area and TransCanada is not compelled by statute to provide service to customers in any area. Certificates of public convenience and necessity confer a right on TransCanada, not an obligation, to construct facilities for gas transportation service. As a result, we do not accept that the "regulatory</i></p>	

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
		<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><i>compact” as described in Stores Block provides much assistance about how we should set tolls for the Mainline.</i></p> <p>When considering the principles underlying the “regulatory compact”, KMJF notes, as stated in its original response, that KMJF does not have an exclusive right to provide jet fuel transportation service on the Jet Fuel Line to YVR.</p> <p>KMJF requests cost of service tolls. A key principle in Canadian regulatory law is that regulated utilities must have the opportunity to recover prudently incurred capital costs and operating costs through rates. Any impact on increased rates on consumers cannot be used as a basis to disallow recovery of such costs. Common carrier’s cost recovery is limited only by what is reasonable and necessary costs to provide the pipeline transportation service. KMJF submits its application, including the projected abandonment costs, are costs to provide jet fuel transportation service on the Jet Fuel Line.</p> <p>The issue that then remains is: over what time period are the costs to be recovered? As set out in the KMJF application, KMJF submits the appropriate time period is the remaining expected economic life of the pipeline asset.</p>	
1.4	In KMJF’s view, are its obligations as a common carrier limited to accepting all volumes tendered in	Please see the response to BCUC 2.2.	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 submits that it has provided a complete response to this request as originally submitted and that VAFFC is instead seeking a response to a question it did not ask.	KMJF states “KMJF indicated that it did have additional obligations [as a common carrier, beyond accepting all volumes tendered in accordance with its tariff conditions].” VAFFC does not require a further

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
	<p>accordance with its tariff conditions? Please fully explain why or why not.</p>		<p>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> <p>Information requests seeking to</p>	<p>VAFFC's asks:</p> <p><i>In KMJF's view, <u>are its obligations as a common carrier limited to accepting all volumes tendered in accordance with its tariff conditions?</u> Please fully explain why or why not. [Emphasis added.]</i></p> <p>The question asks about whether KMJF has any obligations <u>in addition to</u> its obligation to accept all volumes tendered in accordance with its tariff conditions. As stated in BCUC 2.2, KMJF indicated that it did have additional obligations:</p> <p><i>KMJF considers that its obligations as a common carrier are set out in section 65 of the Utilities Commission Act, the common law, <u>the terms and conditions of the approved Tariff No. 39</u>, and such other orders that may be made by the BCUC or the BC Oil and Gas Commission ("OGC") from time to time that apply to KMJF. [Emphasis added.]</i></p> <p>KMJF further notes that its tariff provides the circumstances under which it is obligated to accept tendered volumes, taking into consideration such things as available operational capacity and quality of the product tendered.</p>	<p>response, as VAFFC understands KMJF's response to the question to be "No", because of: (1) additional common law obligations; and (2) transitional legislative provisions applying to Order P-3-08.</p>

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
			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.	<p>While KMJF submits that it has provided a complete response to the request of whether KMJF has an obligation to serve all parties who wish to ship jet fuel on its pipeline, KMJF agrees that it failed to directly answer the question regarding expansion, and will supplement its answer accordingly.</p> <p>To provide clarity, KMJF does have an obligation to serve all parties who wish to ship jet fuel on its pipeline, based on the pipeline's existing capacity and operational limits, as set forth in its tariff, which was referenced in response to BCUC 2.2.</p> <p>KMJF does not believe that it has an obligation to expand its facilities if requested shipper volumes exceed available capacity.</p>	KMJF has now provided a full response. VAFFC does not require anything further.
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	<p>KMJF submits that it has provided a complete response to this request. KMJF did not refuse to answer the question. To the contrary, it noted an objection to the request and provided its response nonetheless.</p> <p>As stated in its response, KMJF considers itself a common carrier. KMJF does not consider that it falls under the definition of "public utility" in the <i>Utilities Commission Act</i>. As a common carrier, KMJF is regulated by the BCUC under Part 4 of the <i>Utilities Commission Act</i>. KMJF is not</p>	<p>KMJF's objection is without merit. It is highly unusual and improper for an applicant to the BCUC to object to identifying the legal basis for aspects of the Application until argument, after evidence has been filed. Here, KMJF relies on rate-making principles that it asserts operate in addition to statutory provisions and accompany the definition of "common carrier". Parties are entitled to know the full extent of those principles.</p> <p>While KMJF does little beyond repeating the basis for VAFFC's questions in its response, VAFFC notes that KMJF</p>

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
			<p>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).</p> <p>KMJF should be required to answer for these reasons and those provided above concerning VAFFC IRs 1.3 and 1.4.</p> <p>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 intervenor expert evidence.</p>	<p>regulated under Part 3 of the <i>Utilities Commission Act</i>, which deals with public utilities.</p> <p>KMJF's application does not rely on KMJF being a public utility as defined under the <i>Utilities Commission Act</i>. The BCUC has held that the Plateau Pipeline Ltd. (also a common carrier), was entitled to a fair return on the costs of its assets that were devoted to public use: BCUC Decision re Plateau Pipe Line Ltd Taylor to Kamloops Pipeline Permanent Tolls (June 26, 2001), p 35 (PDF p 45).</p>	<p>identifies the fair return components of the Plateau Pipeline decision (June 26, 2001) as continuing to apply to KMJF. As such, VAFFC does not require a further response from KMJF.</p>
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	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	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	KMJF submits that it has provided a complete response to this request. As a threshold matter, VAFFC has not provided a definition of the term "natural monopoly", nor is "natural monopoly" a term used in the <i>Utilities Commission Act</i> or by KMJF in its application.	Kinder Morgan is one of the largest energy pipeline operators and regulated entities in North America. KMJF's objections based on purported ignorance of standard rate-setting terminology and "definitions" are without merit. <p>KMJF has still not said whether it considers the jet fuel system to be a</p>

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
	<p>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.</p>	<p>request process.</p>	<p>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.</p>	<p>Factually, KMJF has been the only jet fuel pipeline serving YVR.</p> <p>Again, KMJF is requesting cost of service rates and abandonment costs, based on costs required to provide service on KMJF as a common carrier regulated by the BCUC. In this regard, KMJF notes its following response in BCUC 2.2:</p> <p><i>If the BCUC is going to regulate KMJF as a monopoly provider, as is presently the case, then it is reasonable that tolls be determined on a cost of service basis.</i></p>	<p>"natural monopoly". "Natural monopoly" is an economics concept underlying the regulation of both utilities and common carriers. The extent to which the Jet Fuel System is a natural monopoly affects the applicability of the rate-making principles that KMJF says undergird its Application and that it should benefit from.</p> <p>The request is for a response to a basic question about issues relevant to the cost-of-service rate regulation that KMJF requests. It is relevant and not onerous.</p> <p>VAFFC therefore requests the Commission to direct KMJF to provide plain responses.</p>
1.9	<p>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,</p>	<p>Depreciation rates for the Jet Fuel Line are subject to approval by the BCUC.</p> <p>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.</p> <p>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.</p> <p>Please also see the response to Parkland IR</p>	<p>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.</p> <p>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</p>	<p>While KMJF submits that it has provided a complete response to this request, KMJF agrees that it should have been more specific in citing the applicable legal authority. KMJF will supplement its response as follows:</p> <p>The legal authority for KMJF's view that it cannot change depreciation parameters without BCUC approval is BCUC Order P-5-09, in which the BCUC approved the Settlement Agreement Application, effective January 1, 2010 as filed, which included the 2010 Depreciation Study as part of that application. The Settlement Agreement approved by the BCUC in Order P-5-09 approved an agreement for the period of <u>January 1, 2010 to December 31, 2018</u>. Any changes to depreciation parameters during that period would have required approval by the BCUC.</p> <p>The parties opposed revising the estimated useful life of the utility's assets back in 2008. Uncertainty regarding the VAFD project has remained until it only recently</p>	<p>Given KMJF's supplemental response, VAFFC does not require a further response.</p>

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
	regulations, or lawful orders or decisions that gave rise to that prohibition.	No. 1.1.	response to this IR should be compelled.	received final required permitting. Based on this, KMJF is of the view that a request by KMJF or its predecessors during the settlement period to change depreciation rates would have also been similarly opposed by VAFFC, based on the position it took in 2008, and as it continues to do now.	
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 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 [life] 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	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.	KMJF submits that it has provided a complete response to this request. It is true that KMJF has not calculated a number to represent the benefit of accelerated depreciation, as VAFFC failed to specify in its request what alternative VAFFC was assuming for comparison purposes. As indicated in its response, the benefit to Parkland and Shell of updating depreciation rates based on a three year expected remaining [life] 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. Similarly, the benefit to VAFFC at the cost of the remaining shippers and/or KMJF can also be quantified if VAFFC does not fairly contribute towards its share of both depreciation and abandonment costs over the remaining economic life of the Jet Fuel Line. VAFFC is fully capable of making its own calculations based on any assumptions it believes are relevant, and VAFFC makes no assertion that it lacks any data necessary to make such calculation.	While KMJF continues to refuse to quantify its assertion, VAFFC does not now require a further response. KMJF should not be permitted to adduce such evidence at a later time, however.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
		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>	KMJF has provided a complete list of all capital additions made since 2010 in Appendix BCUC-KMJF 6.9.A. In this response KMJF provided its rationale that all additions were necessary for continued safe and reliable operations. This provides a complete response to this request.	<p>KMJF's response remains deficient:</p> <ol style="list-style-type: none"> 1. KMJF omits 2008 and 2009 in Appendix BCUC-KMJF 6.9.A. 2. KMJF also omits individual project justifications. That information is necessary to assess and weigh KMJF's conclusion that the additions were <u>necessary at the time</u> for safe and reliable operations. <p>As VAFFC indicated in its application for better responses, information about the rationale and decision-making for capital additions over the last toll period is relevant to two key issues in this proceeding: (1) the reasonableness or prudence of KMJF's capital expenditures; and (2) assessment of whether those capital expenditures are consistent with KMJF's claim that the economic life of the pipeline is limited to three years.</p> <p>The right to recover a return on investment that KMJF asserts applies only to reasonable or prudent investments. Reasonableness review is a fundamental component of ratemaking. Without scrutiny of these investments, a regulated entity—and, per KMJF's definition, common carrier—can pass unnecessary and unreasonable costs on to shippers.</p> <p>The BCUC and Intervenors must be given enough information about individual capital additions to be able to assess their reasonableness. KMJF's response is wholly deficient in this regard. The only information it supplies about individual capital additions is limited to the single-line accounting entries in Appendix BCUC-KMJF 6.9.A.</p> <p>For example, parties are told that in</p>

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
					<p>December 2017, KMJF spent \$459,622.19 on something described as “Mainline Repairs”. Parties are given no indication of what those “repairs” consist of, whether and why they were necessary, or whether they were carried out in a cost-effective manner. KMJF’s 2007 application contained significantly more detail, for example.¹</p> <p>KMJF’s blanket statement—that “all capital additions were necessary for continued safe and reliable operations”—does not allow shippers or the BCUC to assess the reasonableness of any capital additions or, conversely, whether the claim of imminent abandonment has an air of reality to it.</p> <p>VAFFC therefore requests the BCUC to direct KMJF to provide enough information about each capital expenditure for the Commission and Interveners to assess its reasonableness.</p> <p>To assist KMJF, information need only be submitted about capital additions in excess of \$50,000 listed in Appendix BCUC-KMJF 6.9.A.</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.	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.	<p>KMJF submits that it has provided a complete response to this request.</p> <p>As stated in its letter dated September 13, 2019:²</p> <p><i>KMJF supports a process that allows for interveners to file evidence in this proceeding and believes that it has provided all the underlying cost data</i></p>	VAFFC’s request asks KMJF to apply on existing methodology to existing accounts. The request is therefore not onerous. The output of the request would identify with precision the financial impact of KMJF’s depreciation related relief. The request is therefore highly relevant, and of a type routinely provided as part of a rates application. KMJF’s objection is without

¹ [Trans Mountain \(Jet Fuel\) Inc. Tolling Application for 2008-2012, Exhibit B-1](#), Appendix D, Schedule 8, pp. 14-15, PDF pp. 66-67.

² Ex. B-16, PDF pp 1-2.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
			<p>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>	<p><i>it has available relevant to the present toll application. Information requests are not intended to facilitate fishing expeditions. Nor is KMJF obligated to produce new evidence for interveners. VAFFC is a sophisticated party fully capable of producing its own evidence and calculations based on the same data on which KMJF relies, and that has been provided to VAFFC. [Footnotes omitted.]</i></p> <p>This request by VAFFC is beyond the scope of the IR process as it would require KMJF to develop new evidence on behalf of VAFFC, and VAFFC has all of the data it needs to make the calculation itself if it believes that such an analysis is relevant.</p>	<p>merit.</p> <p>The Commission should reject any attempt by an applicant to hide the financial effects of an application on customers/shippers.</p> <p>Further, having a clear depreciation alternative on the record is important for any future BCUC decision.</p> <p>VAFFC therefore requests the Commission to direct KMJF to provide a full response.</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><i>KMJF expects the 2018 volumes and allocation between the shippers to continue until the VAFD 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.</i></p> <p><i>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</i></p>	<p>KMJF submits that it has provided a complete response to this request.</p> <p>For ease of reference, KMJF reproduces its full response to VAFFC 6.1:</p> <p><u>Forecast Volumes</u></p> <p><i>KMJF notes that it has not yet been given an opportunity to ask IRs of Parkland in this proceeding.</i></p> <p><i>KMJF expects the 2018 volumes and allocation between the shippers to continue until the VAFD project is in-service, at which time KMJF expects no volumes to move on the Jet Fuel Line. KMJF has received no indication from</i> <u><i>current or potential shippers that this volume will be replaced.</i></u> [Emphasis added.]</p> <p><i>KMJF has no reason to expect the</i></p>	<p>The Commission and shippers are entitled to know: (i) the basis for KMJF's throughput forecast; and (ii) the degree to which shippers may continue to use the KMJF line even after the VAFDP begins operations. These are key issues for this proceeding, given that important issues in 2007 were (i) the Chevron (now Parkland) refinery's operating requirement to produce jet fuel during the refining process, and (ii) the refinery's practical inability to use alternative transportation mechanisms to deliver jet fuel to YVR.</p> <p>KMJF must have investigated the level at which continued Parkland use of its line was economic, if Parkland has transportation alternative, and if Parkland will still have to produce jet fuel as part of its operations. Its understanding of these factors is material to its Application and should form part of it. VAFFC has therefore requested the associated communications.</p>

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
			<p><i>the VAFD project enters service.</i></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><i>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.</i></p> <p>KMJF's response to VAFFC 8.6 simply states:</p> <p><i>KMJF understands that there are today other transportation options available to the refineries.</i></p> <p><i>Additional details regarding KMJF's understanding about other transportation options are set out in BCUC 2.2.</i></p> <p>This is a complete answer to VAFFC's question, other than to the extent discussions took place as part of settlement negotiations. KMJF is not in a position to provide the details of these communications, given their confidential nature.</p> <p>KMJF notes VAFFC did not ask KMJF to confirm the matter in question, but a proper reading of KMJF's responses is that it was providing what it had identified.</p>	<p>If the only communication that KMJF has had with suppliers of jet fuel to its system concerning future supply occurred via settlement discussions then KMJF should say so explicitly, so that those untestable claims can receive zero evidentiary weight.</p> <p>Otherwise, KMJF should file the requested communications.</p> <p>Either way, VAFFC requests the Commission to direct KMJF to provide a complete response to the question.</p>
7.6	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.	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>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</p>	<p>VAFFC alleges that KMJF does not confirm that it did not conduct reports, studies or investigations on the economic viability of the Jet Fuel System in relation to the development of the VAFD project. KMJF provided the analysis it conducted in the response to BCUC 2.2.</p> <p>As stated in its letter dated September 13, 2019, KMJF produced all requested information that was</p>	VAFFC understands KMJF to have now confirmed that it did not undertake any formal study or investigation of the economic viability of the Jet Fuel System, or assess future throughput relative to the refineries connected to its system by pipeline (or otherwise), before filing its Application and that no such reports exist. VAFFC accordingly does not require a further response.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
			<p>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>available, subject to limited claims of settlement privilege regarding shipper communications. KMJF notes VAFFC did not ask KMJF to confirm the matter in question, but a proper reading of KMJF's responses is that it has provided what it had identified.³</p>	
8.4	<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</p>	<p>KMJF submits that it has provided a complete response to this request.</p> <p>KMJF acknowledged that it did engage in discussions with Parkland in conjunction with settlement discussions. These communications cannot be produced as they are subject to settlement privilege and confidential. Parkland has not waived that privilege. The requested information is more appropriately in the possession of the shipper. Therefore, if VAFFC believes the requested information is relevant, it can ask that it be provided with such information from the relevant shipper. KMJF herein also requests an opportunity to request IR's of other shippers.</p> <p>Much of KMJF's analysis relies on the assumptions that shippers are economically rational and will use whatever transportation option is available that can meet its total demand.</p> <p>KMJF objects to VAFFC's unfounded assertion that its responses show a</p>	<p>Please see VAFFC's comments concerning IR 6.2.</p> <p>The Commission and shippers are entitled to know the basis for KMJF's throughput forecast and the reasonableness of its accelerated depreciation request, i.e., which shippers will continue to use the KMJF system even if the VAFFC delivery system begins operations. This will depend on whether sufficient economic transportation alternatives exist to the KMJF system.</p> <p>In 2007, Chevron filed evidence establishing that there were no such options and that its facility was required to produce jet fuel as part of the refining process. KMJF must have investigated the level at which continued Parkland use was economic as part of its revised Application.</p> <p>If KMJF did not undertake any due diligence, or did not do so until settlement discussions, then it should say so clearly</p> <p>Otherwise, its due diligence efforts should be put on the record.</p> <p>Either way, VAFFC requests the Commission to direct KMJF to provide</p>

³ See also Ex. B-16, PDF p 2.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
			<p>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>pattern of asserting facts and conclusions in its Application, by “unreasonably refusing to provide the supporting details and context when asked.”</p> <p>KMJF must make a number of assumptions based on the information it has available. These assumptions include that its shippers will behave in an economically rational manner and its assumptions underlying its conclusions regarding transportation alternatives and the remaining economic life for the Jet Fuel Line are now set out in BCUC 2.2.</p>	<p>a complete response to the question.</p>
8.6	<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>KMJF 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>KMJF made a number of assumptions based on the information it has available about alternate available transportation options, as set out in BCUC 2.2. KMJF is not aware of any additional alternate transportation options available to Parkland beyond those referenced in its response to BCUC 2.2. The requested information is more appropriately in the possession of the shipper. Therefore, if VAFFC believes the requested information is relevant, it can ask that it be provided with such information from the relevant shipper. KMJF herein also requests an opportunity to request IR's of other shippers.</p> <p>This information can more reasonably be obtained by IRs directed to Parkland. As indicated above, any discussions between KMJF and Parkland on this issue occurred in the context of settlement and are subject to the settlement privilege. KMJF notes that the critical difference between 2007 and the present is that</p>	<p>For the reasons provided in relation to IRs 6.2 and 8.4, the Commission should direct KMJF to file a better response.</p> <p>KMJF must have investigated the level at which continued Parkland use was economic as part of its revised Application. If it did not undertake any due diligence, or did not do so until settlement discussions, then it should say so clearly.</p> <p>Otherwise, the requested information outside settlement discussions should be put on the record.</p> <p>VAFFC therefore requests the Commission to direct KMJF to:</p> <ul style="list-style-type: none"> • confirm it did not undertake any due diligence concerning Parkland alternative plans, • confirm it did not undertake any due diligence concerning Parkland alternative plans until settlement discussions, or • provide a complete response to the question.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
				there is now greater certainty that the VAFD Project will be built and placed into service in the near future.	
9.5	Please provide all economics-related studies or analysis undertaken by KMJF to conclude that the Jet Fuel System will become “economically unviable”.	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. Please see the response to BCUC 2.2.	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. 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 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.	KMJF submits that it has provided a complete response to this request. VAFFC alleges that KMJF does not confirm such economic studies or analyses have not been done, or describe or provide them otherwise. As stated in its letter dated September 13, 2019, KMJF produced all requested information that was available, subject to limited claims of settlement privilege regarding shipper communications. KMJF notes VAFFC did not ask KMJF to confirm the matter in question, but a proper reading of KMJF’s responses is that it was providing what it had identified. ⁴	In responses to VAFFC’s request to provide “all economics-related studies as analysis undertaken” KMJF now says “KMJF notes VAFFC did not ask KMJF to confirm the matter in questions but a proper reading of KMJF’s responses is that it was providing what it had identified.” While this statement remains ambiguous, VAFFC understands KMJF to mean that it has conducted no such economic studies or analyses in support of its Application. VAFFC therefore does not require a further response.
9.7	Please describe all long-term planning conducted by KMJF (including dates) to meet YVR fuel requirements through 2030 as an	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	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.	KMJF submits that it has provided a complete response to this request. VAFFC alleges that KMJF does not confirm that no other long term planning regarding YVR fuel requirements was undertaken by	Given KMJF’s reply statement that it has “provided a complete response” to the question of the long-term planning KMJF undertook, VAFFC does not require a further response.

⁴ See also Ex. B-16, PDF p 2.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
	<p>alternative to any VAFFC delivery system (or other delivery services). Please indicate why such plans were not pursued.</p>	<p>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>	<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>	<p>KMJF.</p> <p>As stated in its letter dated September 13, 2019, KMJF produced all requested information that was available, subject to limited claims of settlement privilege regarding shipper communications.⁵ KMJF notes VAFFC did not ask KMJF to confirm the matter in question, but a proper reading of KMJF's responses is that it was providing what it had identified.⁶</p> <p>Whatever the discussions in the past between the VAFFC and KMJF did or did not include, it is clear that the VAFFC elected to pursue its own project. Since the VAFFC is responsible for the existence of the competitor project, as the party creating the redundancy VAFFC/Air Canada should not be permitted to avoid its fair share of the legitimate costs associated with the asset VAFFC's newer facilities are intended to replace.</p>	
9.8	<p>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</p>	<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</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</p>	<p>KMJF submits that it has provided a complete response to this request. KMJF has not to date conducted an analysis of depreciation rates if the pipeline's life is extended to five years.</p> <p>As stated in its letter dated September 13, 2019:⁷</p> <p><i>KMJF supports a process that allows</i></p>	<p>KMJF's claim that it is not "obligated to produce new evidence for interveners" is overbroad and reflects a fundamental misunderstanding of KMJF's obligation in this proceeding as Applicant. It should adhere to the Commission's Rules. BCUC Rule 14.04 prescribes that "if a party who is served with an information request is not able or not willing to prepare a full and adequate response, the party <u>must</u> do one</p>

⁵ See also Ex. B-16, PDF p 2.

⁶ See also Ex. B-16, PDF p 2.

⁷ Ex. B-16, PDF pp 1-2.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
	<p>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>	<p>life of the Jet Fuel Line.</p> <p>Please also see the response to BCUC 2.2.</p>	<p>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>	<p><i>for interveners to file evidence in this proceeding and believes that it has provided all the underlying cost data it has available relevant to the present toll application. Information requests are not intended to facilitate fishing expeditions. Nor is KMJF obligated to produce new evidence for interveners. VAFFC is a sophisticated party fully capable of producing its own evidence and calculations based on the same data on which KMJF relies, and that has been provided to VAFFC. [Footnotes omitted.]</i></p> <p>KMJF submits that VAFFC has all of the information it needs to perform its own calculation (or to hire an expert to calculate it for them) should it believe that such a calculation is relevant.</p>	<p>of the following", and proceeds to list, exhaustively, the bases upon which a party can legitimately refuse to answer an IR. This list does not permit a refusal on the basis that that the answer would require producing new evidence for other parties.</p> <p>For the reasons provided concerning VAFFC IR 5.3, the financial impact of KMJF's proposed Application relative to continuing the current methodology until full depreciation of most of the current assets is highly relevant. KMJF is obviously best positioned to put the material on the record and doing so is in no way onerous.</p> <p>VAFFC therefore requests the Commission to direct KMJF to undertake the minimal depreciation analysis requested, and file it.</p>
12.1	<p>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 underlying documents.</p>	<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, 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>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 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</p>	<p>KMJF submits that it has provided a complete response to this request. The FASB Accounting Standards Codification (ASC) must be read in its entirety. Nonetheless, KMJF notes that ASC 360-10-35-4 is a good starting point for understanding the requirements of GAAP on the topic of depreciation. ASC 360-10-35-4 states that "the cost of a production facility is one of the costs of the services it renders during its useful economic life. Generally accepted accounting principles (GAAP) require that this cost be spread over the expected useful life of the facility in such a way as to allocate it as equitably as possible to the periods during which the services or obtained from the use of the facility. This procedure is known as depreciation accounting, a system of accounting which aims to</p>	<p>The Commission should refuse to permit KMJF to seek a rate increase based on accounting (depreciation) principles but decline to identify with precision the accounting content or authorities.</p> <p>KMJF "cherry picks" from the ASC to its benefit, but refuses to provide pinpoint references and excerpts on the record to support aspects of its Application. While provisions must be read in context of the larger accounting standard, there are particular provisions that apply to how assets should be depreciated, and KMJF cannot avoid this fact by saying that the entirety of the accounting standard is relevant. Leaving the Commission and parties to guess is improper and inconsistent with the Commission's Rules.</p> <p>If KMJF is unable for copyright reasons to file relevant accounting standard excerpts, it should say so clearly, and to what</p>

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
			<p>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>distribute the cost or other basis value of tangible capital assets, less salvage (if any), over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner.”</p> <p>Copies of the FASB accounting standards are copyrighted and available to the public for purchase, and VAFFC is capable of purchasing any copies it considers relevant.</p>	<p><u>extent</u>. Otherwise the response is deficient.</p> <p>VAFFC therefore requests the Commission to direct KMJF to file a full response.</p>
13.1 (b) - (d)	<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</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</p>	<p>At the time of the response, Mr. Wetmore had not identified any additional work papers. KMJF was not and has never asserted that work papers are privileged. Upon further review, Mr. Wetmore has identified calculations that were performed on worksheets outside of the model provided. Accordingly, KMJF will supplement its response to provide those work papers. In addition, Mr. Wetmore has identified additional source data that he reviewed and relied on. KMJF will supplement its response to provide those additional materials that Mr. Wetmore relied on.</p> <p>As for the retainer letter and instructions, as indicated in its response, KMJF considers those items to be subject to the solicitor-client and litigation privilege. VAFFC has provided no valid basis for waiving either of those privileges that make such materials producible.¹⁰</p> <p>VAFFC cites a specific BC Supreme Court case in support of its motion as follows.¹¹</p>	<p>KMJF cites the <i>Moore</i> decision as authority to withhold the Wetmore retainer letter and instructions. But <i>Moore</i> says nothing about those particular materials, and in fact contradicts KMJF in large part. Para. 39 of the decision notes Ontario's rule 53.03(2.1), which requires the expert's report <i>itself</i> to include “<i>The instructions provided to the expert in relation to the proceeding</i>”and “<i>The nature of the opinion being sought and each issue in the proceeding to which the opinion relates.</i>” BC's Rule 11-6(2) requires the same.</p> <p><i>Moore</i> was confined to deeming “<i>draft reports, notes and records of any consultations between experts and counsel</i>” protected by litigation privilege (para. 70). VAFFC has sought instructions from counsel, not drafts. And as more fully set out in the cover letter to this response, the <i>Moore</i> conclusions differ from BC practice in that BC Rules requires further production, on request, of instructions from counsel to an expert concerning the expert report, and the contents of the expert's working file, including drafts.</p> <p>As noted in VAFFC's previous response, it</p>

¹⁰ See: *Moore v. Getahun*, 2015 ONCA 55.

¹¹ Ex. C2-5 2019-09-11 Submission from VAFFC to BCUC re Further Response Further Better IR Responses, PDF p 15.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
		<p>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>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 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</p>	<p><i>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 Bank of Montreal v. Tortora, 2009 BCSC 1224 at para. 34.</i></p> <p>The above excerpt only purports to waive privilege with respect to working papers, which, as indicated above, KMJF is not seeking to protect under any privilege. "Working paper" or "working papers" have been given the following definitions:</p> <ul style="list-style-type: none"> • pre-publication versions of academic articles, book chapters, or reviews. Papers...in progress, under submission, or in press and forthcoming elsewhere;¹² • a paper on which tentative figures, memoranda, data, or analyses of accounts are set down during the conduct of a survey (as an audit) of a business;¹³ 	<p>is well-settled in BC law that privilege is waived in respect of materials underpinning an expert report, once that report has been tendered as evidence (and not confined to a single case, as KMJF implies). The disclosure requirement for such materials is broad in scope, and extends to all contents of the expert's file "that are relevant to matters of substance in his or her opinion or to his or her credibility."¹⁹ This includes all relevant working papers and materials relied upon in the formulation of the expert's opinion.²⁰ Of note, in the ordinary litigation context, disclosure is not required in respect of materials concerning the expert's role as an advisor to counsel – but this is different than when the expert files a report on the record.²¹</p> <p>KMJF's October 1 submission enclosed "additional working papers", implying both that some working papers had already been produced and that the "additional working papers" comprised all remaining working papers. However, KMJF's application does not include materials from Mr. Wetmore's file, and, to date, KMJF has not provided any working papers concerning historical cost data.</p> <p>VAFFC therefore requests that KMJF disclose <u>all</u> working papers contained in Mr. Wetmore's file. If the materials provided to date constitute the entire producible file, VAFFC requests that KMJF</p>

¹² <https://www.princeton.edu/~pswpc/about/about.html>.

¹³ <https://www.merriam-webster.com/dictionary/working%20paper>.

¹⁹ *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2014 BCSC 741 at paras 41 and 44: Such disclosure is required unless it would be unfair. Materials speaking to the expert's role as an advisor to counsel need not be disclosed.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
			<p>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,</p>	<ul style="list-style-type: none"> • a tentative statement prepared to serve as a basis for discussion or negotiation; • an official report produced by a group of people who are studying a particular problem or situation, especially in order to give suggestions or suggest improvements,¹⁴ and • a report about a particular subject that is written in order to provide information for a discussion, rather than one that provides information that will not change.¹⁵ <p>VAFFC also cites the AUC's granting of a motion from the 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.¹⁶ VAFFC notes that "[u]nderpinning 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."¹⁷</p> <p>None of the cited precedent would</p>	<p>confirm as much explicitly.²²</p> <p>Further, VAFFC reiterates its request that KMJF produce <u>all</u> data provided by KMJF to Mr. Wetmore to facilitate his analysis and forecasts. For clarity, this includes any historical accounting or cost records that may have been provided.</p> <p>Finally, VAFFC reiterates its request that KMJF produce any instructions or direction given to Mr. Wetmore by KMJF in respect of the preparation of his report. As noted in VAFFC's previous submission, and documented in the hyperlinked footnote below, it is not unusual for instructions and retainer letters to be submitted to the BCUC in the course of an application.²³</p> <p>In this case, it appears that Mr. Wetmore has taken an unusual approach to forecasting. VAFFC would therefore like to review the instructions given by KMJF to assess the basis upon which his analysis was conducted and the extent to which his approach and/or independence were influenced by his instructions.</p> <p>The BCUC should not provide an Applicant greater protections under privilege than either the Ontario or BC Rules provide, or BCUC past practice. There is nothing about its application that justifies treating KMJF any differently than another BCUC applicant or a litigant before a BC court.</p> <p>The fact that the BCUC is not bound by the rules of evidence weighs in favour of</p>

²⁰ *Ibid*; Supreme Court Civil Rules, B.C. Reg. 168/2009; *Weir-Jones v Taylor*, 2013 BCSC 1633 at para 58; *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2014 BCSC 741 at paras 41 and 44: Such disclosure is required unless it would be unfair. Materials speaking to the expert's role as an advisor to counsel need not be disclosed.

²¹ *Ibid*.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
			depreciation rates and/or the depreciation study. ⁸ 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: ⁹ 1. <i>ATCO Pipelines is</i>	compel the product of instructions from counsel or the retainer letter, which are not work papers. Furthermore, KMJF notes the AUC has more recently refused to grant a motion requiring the production of earlier documents associated with an expert report which were subject to a claim of privilege. ¹⁸ In reaching this conclusion, the AUC referred to section 20 of the <i>Alberta Utilities Commission Act</i> which states that when the Commission is conducting	ordering the production of Mr. Wemore's retainer letter and instructions. KMJF is an applicant to the BCUC subject to public interest considerations, not a private litigant. VAFFC therefore requests the BCUC to direct KMJF to provide a full response to the requests.

¹⁴ <https://dictionary.cambridge.org/dictionary/english/working-paper>.

¹⁵ <https://www.macmillandictionary.com/dictionary/british/working-paper>.

¹⁶ C2-5 2019-09-11 Submission from VAFFC to BCUC re Further Response Further Better IR Responses, PDF p 15, citing Ex. 2322-X0066.02 and Ex. 2322-X0073.01 at p. 3.

¹⁷ C2-5 2019-09-11 Submission from VAFFC to BCUC re Further Response Further Better IR Responses, PDF p 15.

²² For the purposes of this request, VACCF adopts the comprehensive definition of "working papers" provided by KMJF in its last submission.

²³ E.g., [FortisBC Energy Inc. Application for Common Equity Component and Return on Equity for 2016 - Project No.3698852, Exhibit B-10](#) at pdf pp. 59 and 71; [Creative Energy Vancouver Platforms Inc. Application for a Certificate of Public Convenience and Necessity for a Low Carbon Neighbourhood Energy System for Northeast False Creek and Chinatown Neighbourhoods of Vancouver – Project No.3698836, Exhibit C7-9](#) at pdf pp. 5 and 33.

⁸ Exhibit 2322-X0066.02

⁹ Exhibit 2322-X0073.01 at p. 3.

¹⁸ Ex 3585-X0475, 2015-05-27 Letter from AUC Denying CCA Motion for Further and Better Responses. (In a May 27, 2015 ruling, the AUC considered a motion by the Consumer Coalition of Alberta ("CCA") requesting the AUC order that AltaLink Management Ltd. ("AltaLink") produce any prior versions of the reports prepared by experts retained by AltaLink, as well as any communication exchange between the experts with either AltaLink or AltaLink's counsel. The CCA submitted that it was necessary to know what changes the expert made to its report as a result of input from AltaLink and AltaLink's counsel, in order for the Commission to assess whether the experts acted independently or not.

In denying the CCA's motion for production, the AUC adopted the test set out in the Ontario Court of Appeal ("ONCA") decision, *Moore v. Getahun*, 2015 ONCA 55, where the ONCA found that:

1. documentation and consultation between counsel and expert witnesses regarding draft reports are subject to litigation privilege; and
2. disclosure of this information should only be allowed where the party seeking production of draft reports or notes of discussions between counsel and an expert can show reasonable grounds to suspect that counsel communicated with an expert witness in a manner likely to interfere with the expert witness's duties of independence and objectivity.

Applying these principles, the AUC concluded as follows:

Given the continued need for the Commission to assess the weight attributable to the relevant evidence (including opinion evidence), counsel may continue to review the qualifications of witnesses as part of this hearing while opposing counsel may, of course, question a witness' qualifications and the credibility of the evidence provided, and opine on the weight that the Commission should give to the witness' evidence. All of this can be achieved without the need to file draft reports or communications with counsel. The request to file draft reports and any communication, if such communication exists, has been denied.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
			<p><i>directed to provide the UCA with copies of the following:</i></p> <p><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></p> <p><i>all notes that Mr. Robinson or any of his associates took during any meetings with ATCO Pipelines personnel regarding the most recent Depreciation Study</i></p> <p><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></p> <p><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> <p><i>2. 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</i></p>	<p>a hearing, it is not bound by the rules of law concerning evidence that apply to judicial proceedings. Further, the <i>Utilities Commission Act</i> which governs the BCUC, under section 80 provides that the BCUC is not bound by judicial acts.</p>	

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
			<p><i>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>		
13.2	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,	Please see the response to BCUC 2.1.	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	KMJF submits that it has provided a complete response to this request. As far as KMJF is aware, the BCUC has not decided on a fully-contested application by a common carrier for cost-of-service based tolls since the legislative changes noted by VAFFC, namely the repeal of the <i>Pipeline Act</i> and addition of section 65(3.1) and 65(3.2) to the <i>Utilities Commission</i>	VAFFC does not require a further response given KMJF's admissions in its response.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
	<p>regulations and previous regulatory decisions in BC or elsewhere that KMJF relies on with respect to common carriers.</p>		<p>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>Act.</p> <p>KMJF notes that section 75 of the <i>Utilities Commission Act</i> provides as follows:</p> <p><i>The commission must make its decision on the merits and justice of the case, and is not bound to follow its own decisions.</i></p> <p>As a matter of law, a common carrier is obligated to transport goods tendered to it at fair and reasonable rates. KMJF made an application for tolls based on cost of service. The BCUC determines what are fair and reasonable rates. Rates not sufficient to yield for the service rendered are unjust and unreasonable. It is a principle in Canadian regulatory law, that regulated utilities must have the opportunity to recover prudently incurred operating and capital costs through rates. KMJF also reasonably relies on the principle, as has been found by the National Energy Board, that: "Abandonment costs are a legitimate cost of providing service and recoverable upon Board approval from users of the system." KMJF submits these matters can appropriately be addressed during argument submissions and will be determined by the BCUC based on arguments.</p> <p>KMJF notes VAFFC did not ask KMJF to confirm the matter in question in its original request, but a proper reading of KMJF's responses is that it was providing what it had identified.</p>	
18.3	Please provide details on the consultation carried	Please see the ELM Final Report regarding Environmental Liability	VAFFC asked for copies of any communications KMJF has had with stakeholders in KMJF's	KMJF submits that it has provided a complete response to this request.	KMJF's comment of "a proper reading of KMJF's responses is that it was providing what it had identified" is ambiguous, but

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
	<p>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>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>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>As stated in its letter dated September 13, 2019, KMJF produced all requested information that was available, subject to limited claims of settlement privilege regarding shipper communications.²⁴ KMJF notes VAFFC did not ask KMJF to confirm the matter in question, but a proper reading of KMJF's responses is that it was providing what it had identified.²⁵</p> <p>Since providing the response, KMJF has identified emails between ELM and the cities of Richmond and Burnaby underlying the references in the ELM Final Report. KMJF will supplement its response to provide those emails.</p>	<p>irrelevant, as VAFFC's request was for "all relevant correspondence."</p> <p>While KMJF has provided some of the email correspondence between ELM and the Cities of Richmond and Burnaby (ex. B-18, Appendix A 18.3 and 29.7(c)), the BCUC should order KMJF to provide the rest of this correspondence, including (but not limited to) the emails between Milton Chan, Jason Schroeder, and Kala Young that were not produced, as well as all other relevant correspondence.</p> <p>In Ex. B-18, Appendix A 18.3 and 29.7(c), PDF p 2, an email dated June 17, 2019, Jason Schroeder of ELM states to Milton Chan of the City of Richmond, "Thanks for your response to my colleague, Kala Young." That implies that there are at least two emails missing from KMJF's disclosure, i.e., an email from Kala Young to the City of Richmond, and a response from Milton Young to that initial email.</p> <p>VAFFC requests that, on provision of this correspondence, KMJF also provide any information necessary to interpret that correspondence, as well as confirmation that all relevant correspondence has been provided. VAFFC also seeks notes and records of any related telephone conversations.</p>
22.1 (a - i)	<p>Please provide specific details, including supporting documents, on the following Direct Field Expenses for each year dating</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</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</p>	<p>KMJF submits that it has provided a complete response to this request.</p> <p>KMJF submits that its response does provide the information that it was able to obtain after significant effort. The total dollar amounts are</p>	<p>KMJF's claim that "Reclassifying the historical costs into new cost categories is also not relevant to KMJF's cost of service toll application for the 2019-2021 tolling period" is inconsistent with standard practice before Canadian utility tribunals,</p>

²⁴ See also Ex. B-16, PDF p 2.

²⁵ See also Ex. B-16, PDF p 2.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
	<p>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 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</p>	<p>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>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 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>available. What KMJF has not been able to locate is the detail required to re-allocate the total costs into new cost categories. Reclassifying the historical costs into new cost categories is also not relevant to KMJF's cost of service toll application for the 2019-2021 tolling period. KMJF is further concerned that, even if possible after considerable time and effort, and considering that the employees who maintained those records are no longer with the company, it would not be able to fully and completely create the same cost categories for prior years.</p> <p>The intervenors and the BCUC can directly compare the current costs forecasts against actual expenditures to assess the reasonableness of the forecasts if they so choose, as actual expenditures for January 1 through August 31, 2019 can be made available.</p>	<p>and certainly the BCUC.</p> <p>Examples of comparable data in rate applications can be found here: BCUC Project No. 1598990, Exhibit B-1, at Appendix A, PDF pp.1147-1231. Requiring a regulated entity to provide historical cost information in support of a cost-of-service based application should not be treated as onerous. To do so would set a dangerous precedent concerning transparency and customers' ability to meaningfully participate in rate proceedings. The BCUC should reject the response that the information is unavailable. VAFFC doubts that a comparable response would be provided to either the Canada Revenue Agency or Internal Revenue Service by one of the largest regulated energy transportation providers in North America. The point is that KMJF has the necessary information to provide a full and adequate response. VAFFC submits that there is no reason why it should be difficult for KMJF to manipulate the information to provide it in the form requested. VAFFC therefore requests the BCUC to order KMJF to assemble and file the data.</p> <p>These costs are relevant in two ways:</p> <ol style="list-style-type: none"> 1) in assessing whether the forecast amounts estimated by KMJF for the test period are accurate, to assess the reasonableness of the forecasts; and 2) because, as VAFFC has stated elsewhere, VAFFC intends to argue that the financial flows of KMJF in the previous period are relevant to assessing what conditions should be imposed on KMJF's rates for the test period. <p>Both issues take on increased significance for KMJF's operations, where, as VAFFC noted previously, costs have severely</p>

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
	<p>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>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>		<p>increased over the last test period.</p>
22.2	<p>Where itemized Direct Field Expenses have increased above 2%</p>	<p>Please see the response to VAFFC 22.1.</p>	<p>VAFFC requests that KMJF answer VAFFC 22.2 for the same reasons as above for VAFFC 22.1. Basic cost</p>	<p>KMJF submits that it has provided a complete response to this request. The change in Direct Field Expenses for prior years are what they are and</p>	<p>For the reasons concerning IR 22.1, VAFFC requests the BCUC to direct KMJF to assemble and file historical cost data. KMJF's claim that it holds no</p>

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
	<p>year over year during the period dating back to 2007, please provide an explanation for the increase.</p>		<p>information must be within KMJF's possession, is highly relevant to testing the reasonableness of KMJF's forecasts, and should be provided.</p>	<p>KMJF does not have documentation of the reasons for historical changes. KMJF further notes that the reasons for those changes, whatever they were, are irrelevant to the current application, as KMJF is not seeking to recover Direct Field Expenses for prior periods.</p>	<p>records is not credible. Historical costs are relevant to assessing the reasonableness of forecast costs.</p>
<p>23.1 (a-d)</p>	<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</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</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>KMJF submits that it has provided a complete response to this request. The detail being sought by VAFFC is irrelevant to KMJF's application as KMJF is not seeking to recover any of those prior period costs in its requested rates.</p>	<p>As immediately above, and for the reasons concerning IR 22.1, VAFFC requests the BCUC to direct KMJF to assemble and file historical cost data. KMJF's claim that it holds no records is not credible. Historical costs are relevant to assessing the reasonableness of forecast costs.</p>

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
	<p>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>22.1(a)-(i). 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>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</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.</p>	<p>KMJF submits that it has provided a complete response to this request.</p> <p>The question posed by VAFFC asked KMJF to provide copies of any correspondence between KMJF and landowners, municipalities, or regulators regarding specific removal requests.</p> <p>KMJF provided a description of the correspondence between ELM and</p>	<p>KMJF's response remains deficient.</p> <p>KMJF has now provided some, but not all, of the email correspondence between ELM and the Cities of Richmond and Burnaby as Ex. B-18, Appendix A 18.3 and 29.7(c). KMJF should be ordered to provide the rest of this correspondence, including (but not limited to) the emails between Milton Chan, Jason Schroeder, and Kala Young that were not produced.²⁶</p>

²⁶ See Ex. B-18, Appendix A 18.3 and 29.7(c), PDF p 2. In this email dated June 17, 2019, Jason Schroeder of ELM states to Milton Chan of the City of Richmond, "Thanks for your response to my colleague, Kala Young." That implies that there are at least two emails missing from KMJF's disclosure: an email from Kala Young to the City of Richmond, and a response from Milton Young to that initial email.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
	requests.		<p>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>municipalities as follows:</p> <p><i>The ELM Final Report assumes a higher portion of the pipeline removal being required based on site-specific assessments and communications with the City of Richmond. ELM made numerous attempts to contact the City of Burnaby in June 2019, to request a meeting to discuss their requirements for abandonment and removal, but representatives from the City of Burnaby were unable to meet to discuss this City's requirements. The ELM Final Report continues to assume removal of 20 percent of the total pipeline length within the City of Burnaby, or 5.0 kilometers. KMJF notes that this cost could increase depending on the response received from the City of Burnaby regarding abandonment of the Jet Fuel Line.</i></p> <p>In considering its response to VAFFC regarding this request for further and better responses, KMJF reached out to ELM and requested that ELM provide copies of the communications referenced above. As stated, KMJF will supplement its response to provide those e-mail communications.</p>	<p>KMJF has not provided any correspondence between ELM and landowners or regulators, as requested in VAFFC's IR. KMJF has provided no justification for this omission. If no such communications have occurred, KMJF should say so. Without such a confirmation, VAFFC has no assurance that a complete answer to its question has been given.</p> <p>VAFFC therefore requests the BCUC to direct KMJF to file a full response.</p>
29.12	Regarding Reference (iii) above, please discuss which assumptions were made in the 2007 Application's abandonment study	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	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.	KMJF submits that that it has provided a complete response to this request. KMJF has provided the full ELM report and VAFFC clearly has the 2007 Toll Application abandonment study. VAFFC can compare and contrast the assumptions underlying each report	The 2007 Application's abandonment report estimated the abandonment costs for the jet fuel line as \$3.025 million. ²⁷ KMJF's new abandonment report estimates the abandonment cost for the pipeline as \$11,861,577 ²⁸ (~400% over 12 years). KMJF says understanding the different assumptions between the two

²⁷ 2007 Application, Exhibit B-1 at pdf p. 22.

²⁸ Exhibit B-10 at pdf p. 8.

IR	Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
	<p>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>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>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>	<p>as it sees fit.</p> <p>KMJF confirms that ELM did not consider the 2007 abandonment cost estimate report. Instead, ELM developed its own estimate based on its site visit and investigation.</p> <p>KMJF further notes that a large body of NEB precedent has been developed after 2007. The 2007 abandonment cost estimate (opposed by shippers and denied by the BCUC) is completely outdated and its costs estimates have no relevance to the current proceeding.</p>	<p>estimates for the same pipeline is irrelevant because of different approaches applied by a different regulator concerning different pipelines. The BCUC should reject that rationale, because the understanding extent and nature of proposed abandonment work is highly relevant to understanding the reasonableness of the proposed costs. VAFFC therefore requests the BCUC to direct KMJF to provide a clear delineation of where abandonment assumptions have changed between the two estimates filed with the BCUC. The request is highly probative and not onerous.</p>

Appendix B – BCUC IR Table

APPENDIX B – BCUC IR TABLE

IR No.	Information Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
4.2 4.2.1	<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>KMJF submits that it has provided a complete response to this request.</p> <p>In its response to BCUC 4.1, KMJF explained as follows:</p> <p><i>The 2.00% annual escalation factor is an estimate of overall cost increases. It is not intended to suggest that each individual revenue requirement component will increase precisely by 2.00% annually, but rather, that the total revenue requirement will increase by approximately 2.00% annually.</i></p> <p><i>The 2019 revenue requirement is stated in 2019 dollars. Applying the 2.00% annual escalation ensures that the costs recovered by the rate mechanism in 2020 and 2021 have equal value over time. KMJF expects the overall revenue requirements to increase each year consistent with the general rate of inflation.</i></p> <p><i>KMJF considers its proposed 2.00% escalation rate to be fair to both KMJF and its shippers and provides a simple measure of across the board cost pressures. KMJF did consider using multiple inflation assumptions (such as industry specific wage inflation), but decided a single Consumer Price Index (“CPI”)-based inflation assumption for the entire revenue requirement was fair and reasonable in the circumstances.[Emphasis added.]</i></p> <p>VAFFC asks the BCUC to compel a response specific to inflating depreciation expense. While VAFFC might not agree with KMJF’s proposed escalation methodology, KMJF submits that it has explained why the 2% annual rate is an acceptable overall rate. This is an acceptable approach and it does not mean that every individual component, including depreciation, is</p>	<p>VAFFC does not seek a further response given KMJF’s admissions here.</p>

IR No.	Information Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
				necessarily being inflated. To the contrary, it means that is a representative amount by which overall costs are expected to increase each year due to inflation (some cost categories may inflate more, some less, and some not at all).	
7.3	Please provide the details of the actual ROE earned by KMJF for the previous toll period from 2009 to 2018.	<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>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</p>	<p>At the time of answering BCUC IR 7.3, KMJF considered that it could not provide an actual ROE in the absence of any approved debt/equity ratio, cost of debt, and allowed rate of return.</p> <p>However, in this request for further and better IRs VAFFC explains that it is its view that "Actual ROE is calculated by dividing net income by shareholders' equity," and that is information that is readily available to KMJF.</p> <p>Based on VAFFC's clarified request, KMJF provides as Appendix B-7.3 a calculation of net income divided by shareholder equity in the manner suggested by VAFFC. The average "ROE" calculated in this manner for 2009 to 2018 is 5.35%. KMJF will supplement its response to this request accordingly.</p>	<p>KMJF has filed a partial response, that relies on key calculations not present on the record. VAFFC therefore requests the BCUC to direct KMJF to file the documents underpinning the ROE calculation newly set out in Appendix B-7.3, namely the "Income Statements" and "Balance Sheets".</p> <p>Providing this level of information will help VAFFC understand the components leading to the average ROE calculation claimed in KMJF's revised response, including the cause of the large variances in year over year returns.</p>

IR No.	Information Request	Response	Alleged Deficiency	KMJF Response	VAFFC Reply
		<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>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 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>		

APPENDIX B-7.3: CALCULATION OF “NET INCOME DIVIDED BY SHAREHOLDER EQUITY

	Year										
<u>Description</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Average</u>
Net Income [1/]	\$3,410,547	\$1,731,503	\$1,096,173	\$1,420,258	\$25,470	-\$602,981	-\$1,035,335	\$545,768	-\$618,252	\$1,434,321	
Owner's Equity [2/]	\$14,528,939	\$11,260,442	\$12,356,615	\$13,776,873	\$13,802,343	\$13,199,361	\$12,164,026	\$13,225,590	\$16,507,338	\$17,941,659	
Actual ROE	23.47%	15.38%	8.87%	10.31%	0.18%	-4.57%	-8.51%	4.13%	-3.75%	7.99%	5.35%
1/ Per KMJF's Income Statements.											
2/ Per KMJF's Balance Sheets.											