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By Electronic Filing

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

Attention: Patrick Wruck, Commission Secretary

Dear Mr. Wruck:

Kinder Morgan Canada (Jet Fuel) Inc. (“KMJF”) 2019 Tariff Filing – Project No. 1598984 – Vancouver Airport Fuel Facilities Corporation (“VAFFC”) – Reply Regarding the Application for Temporary Suspension of the Regulatory Timetable and Further and Better Information Request Responses (the “Application”)

We are counsel to VAFFC in this proceeding and write on its behalf, pursuant to the Commission’s December 24 direction¹ and in reply to the submissions of KMJF² (which has now been renamed to “PKM Canada (Jet Fuel) Inc.” (“PKMJF”)) and Parkland Refining (B.C.) Ltd.³ (“Parkland”).

VAFFC’s Suspension Request

VAFFC faces an information request (“IR”) deadline of January 14, despite not having received material that the Commission ordered KMJF to provide, and despite PKMJF speculating that it may further amend or supplement its Application in the near term. VAFFC earlier requested the Commission to suspend the procedural schedule until the outstanding material is provided to VAFFC, resuming with the same time intervals initially established. Doing otherwise would unfairly prejudice VAFFC.

The Responding Submissions

Parkland opposes suspending the regulatory timetable, having accepted PKMJF’s December 23, 2019 assertion that it has provided “all information and documents in its possession” as a full response to each of VAFFC’s concerns. Parkland submits that “[PKMJF] has no further information in respect of the matters raised in [the Application] and suspending the regulatory timetable would serve no purpose”. Parkland also cites a concern regarding potential “unnecessary delay of these proceedings”.⁴

PKMJF does not object to a temporary suspension of the regulatory timetable, and itself seeks a 60-day suspension to reflect its new ownership. PKMJF also requests that the Commission provide it “an opportunity to

¹ Exhibit A-24.

² Exhibits B-28, B-29 and B-30.

³ Exhibit C1-7.

⁴ Exhibit C1-7.

file additional materials or amend the Application within 14 days after the suspension of the regulatory timetable, if necessary.”⁵

Parkland’s Submission Ignores and Fails to Address VAFFC’s Primary Issue with the Timetable

Parkland’s submission fails to address VAFFC’s primary rationale for why a suspension of the regulatory timetable is required at this time: VAFFC has yet to receive unredacted copies of the documents that PKMJF has provided in response to IR 22.1 and 23.1 (the “22.1/23.1 Information”), and faces an imminent IR deadline relating to this information. VAFFC therefore disagrees with Parkland’s suggestion that a suspension of the regulatory timetable is unnecessary.

As of today, VAFFC *still* has yet to receive the 22.1/23.1 Information. The parties are currently waiting for the Commission to rule on whether the 22.1/23.1 Information is properly treated as confidential (at which point, if the 22.1/23.1 Information does receive confidential treatment, VAFFC will request access in accordance with s. 24 of the *BCUC Rules*).⁶

The redacted version of the 22.1/23.1 Information that was filed with the Commission⁷ shows that the document contains a significant amount of information — 18 pages of spreadsheets disclosing information about historical costs, and over 15 associated PKMJF contracts. VAFFC has no sense of the scope of the un-redacted documents and writes on the assumptions that a reasonable amount of time will be required to consider their content, and that the content will be the subject of IRs.

At this point a suspension of the regulatory timetable is necessary to be procedurally fair.

PKMJF’s Suspension and Amendment Request Timing Risks Wasted Resources

While VAFFC expects that PKMJF’s ownership would have reviewed this proceeding as part of its acquisition decision, VAFFC does not oppose a small, reasonable amount of additional time for PKMJF to review the record. However, PKMJF’s request concerning a potential amendment is ambiguous. It is not clear whether PKMJF is asking for an opportunity to file any additional materials or amendment within 14 days after the suspension is implemented, or within 14 days after the suspension is lifted and the timetable has resumed. In any event, the regulatory timetable should not resume until VAFFC has the material the Commission ordered produced in hand, and PKMJF has either amended its Application or confirmed that it will not do so.

VAFFC trusts that the regulatory timetable would provide additional discovery on any changes to the Application to maintain procedural fairness, but has concerns about having invested significant resources into responding to an Application when the Applicant now says elements may be made redundant. VAFFC reserves the right to seek relief in the future to respond to any prejudice from such amendments.

PKMJF’s Claim that it has Provided all Information and Documents Cannot be Relied Upon

In addition to the need to suspend the regulatory timetable until the 22.1/23.1 Information is received by interveners, PKMJF’s assertion that it has “provided all information and documents in its possession” as a full answer to VAFFC’s concerns is an overbroad statement. The record shows instances where that is clearly not the case. VAFFC has targeted some of these areas with IRs and the Commission should require full compliance with its earlier disclosure Order.

PKMJF was required to provide qualitative explanations as part of its revised IR responses, notably concerning year over year changes to direct field expenses and A&G costs. While VAFFC was prepared to deal with this via

⁵ Exhibit B-30, p. 3.

⁶ See Exhibit B-27.

⁷ Exhibit B-27-1.

IRs, PKMJF claims in its December 6 letter that it cannot explain year over year cost changes because some costs fluctuate as a matter of course, using integrity expenditures as the only example. PKMJF repeats its reliance on this claim in its January 6 letter and asserts that associated IRs cannot receive a response. This is sophistry. It is specifically because there were large fluctuations that the Commission directed a response. PKMJF's unsupported and hollow premise is that all such costs were required to operate its system, and *none* of them are outliers that should not be expected in the future. But only PKMJF is privy to those details, and for that reason VAFFC has asked IRs.

Further, in PKMJF's example of integrity spending, the technical details and purposes of the work matter a great deal because they are relevant to assessing the reasonableness of PKMJF's claim that it expects the economic life of the system to end by 2022. VAFFC trusts that PKMJF is not claiming that it has no documents or information dealing with the need for, and technical details of, integrity-based pipeline cut outs and repairs (and thereby year over year changes in integrity spending). That would be a safety concern and a breach of statutory and engineering practice obligations requiring such records to be kept.⁸ Parkland and PKMJF ignore these factors in their responding submissions.

Rather than assert the destruction of records associated with the costs of materials and supplies from prior to 2019, or otherwise explain why such records are not "in its possession" PKMJF states that "prior to 2019, costs associated with this type of work were allocated in a different manner than in [PKMJF]'s current Application."⁹ That response is different than not having such records in its "possession", or the records not existing.

The Commission should assess PKMJF's claim that it does not have additional responsive documents "in its possession" critically. PKMJF has continuously been the corporate entity responsible for the Jet Fuel Line and, until this month, PKMJF's parent entity had not changed since 2005. To the extent that a current or previous affiliate of PKMJF may have responsive records that PKMJF does not have copies of, PKMJF has not identified this as an issue, nor explained why it does not have copies of those records or why a request for them was unsuccessful. And, as above, its integrity-related example collapses under scrutiny. The Commission should order PKMJF to disclose records that exist.

In sum, the Commission's Order should be given full effect: as the Application has been filed on a cost of service basis, the usual details of historical costs should be produced. The Commission should reject PKMJF's attempt to file information selectively and piecemeal and require standard complete IR responses.

Conclusion

IRs are an essential tool for interveners and the Commission to understand the accuracy of the information presented in toll applications. There is significant information asymmetry between applicants and interveners (in this case, captive customers who provide the shipping revenues) and IRs are a means to provide a fair testing of the Application. The Commission must be vigilant to ensure that applicants before the BCUC, including PKMJF, are not allowed to avoid their obligations and full scrutiny of a toll application by providing deficient or late IR responses.

If the timetable continues as currently scheduled, VAFFC will be obliged to file IRs by next Tuesday, January 14. As interveners do not yet have the 22.1/23.1 Information, this is not enough time to develop IRs, even if the 22.1/23.1 Information were received before January 14. For this reason, and in light of PKMJF's request for an opportunity to consider or amend the Application, and VAFFC's request for the Commission to require PKMJF to fully comply with the Commission's prior Order, VAFFC submits that a suspension of the regulatory timetable is appropriate at this time.

⁸ See *Pipeline Regulation*, BC Reg. 281/2010, s. 13, prescribing the record retention requirements of CSA Z662 generally and Annex N of CSA Z662 specifically.

⁹ See Exhibit B-25, pdf p. 4.

January 8, 2020

Please contact the writer if you have any questions.

Yours very truly,



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