



REGULATORY
LAW CHAMBERS

Rosa Twyman
Ph: 403.930.7991
Rosa.Twyman@RLChambers.ca
Our matter #: 1005.044

April 27, 2020

VIA E-Filing

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Attention: Patrick Wruck, Commission Secretary

Dear Mr. Wruck,

**Re: Project No. 1598984
British Columbia Utilities Commission (“BCUC”)
PKM Canada (Jet Fuel) Inc. (“PKMJF”) Tariff Filing Proceeding (the
“Proceeding”) regarding Application for Tariff No. 40 for 2019-2021 Tolls (the
“Application”) for Services on the Jet Fuel Line (“Jet Fuel Line”)
PKMJF Response to BCUC Order P-2-20**

1. On April 9, 2020, the BCUC issued an order (“**Order P-2-20**”)¹ to PKMJF to provide further and better answers to certain information requests (“**IRs**”) filed by Vancouver Airport Flight Facilities Corporation (“**VAFFC**”) regarding:
 - (a) independent expert, Mr. Erik Wetmore’s retainer letter; and
 - (b) direct field and administrative and general (“**A&G**”) costs.²
2. PKMJF notes that Parkland Refining (BC) Ltd. (“**Parkland**”), the other significant shipper on the Jet Fuel Line has had one information request (“**IR**”)³ compared to VAFFC’s extensive number of approximately seven IRs, subsequent requests for further and better responses and allegations of deficiencies of information provided.⁴ The BCUC has indicated that its respective IRs were answered⁵ and both Parkland and the BCUC have

¹ A-28 2020-04-09 Order P-2-20 from BCUC re Amended Timetable and Supplemental IR Responses.

² C2-3 2019-07-11 VAFFC IR No. 1 to KMJF.

³ C1-2 2019-07-11 Parkland IR No. 1 to KMJF

⁴ C2-3 2019-07-11 VAFFC IR No. 1 to KMJF; C2-4 2019-09-03 VAFFC Request for Further Process Steps and Schedule; C2-5 2019-09-11 Letter from VAFFC to BCUC re Further Response Further Better IR Responses; C2-7 2019-10-08 VAFFC Reply to KMJF on Further Better IR Responses; C2-14 2019-12-19 Submission from VAFFC to BCUC re Request to Suspend Timetable; C2-15 2020-01-08 Letter from VAFFC to BCUC re Reply to KMJF and Parkland; C2-17 2020-03-20 Letter from VAFFC re Response on Process Resumption and PKMJF Submissions.

⁵ A-18 2019-11-19 BCUC Order P-10-19 re Reasons for Decision and Regulatory Timetable, PDF p 9.

acknowledged that PKMJF cannot produce information it does not have.⁶ Neither the BCUC nor Parkland have pursued further information in the same extensive and persistent manner as VAFFC.

3. PKMJF notes the advantage gained by VAFFC through this Proceeding as a competitor pipeline assessing the cost of service for its Vancouver Airport Fuel Delivery project, by having access to commercial information. For example, it will be significantly advantageous for VAFFC to have access to commercially sensitive information, such as the terms and rates of service providers. PKMJF notes its concern that VAFFC may be using this Proceeding for purposes not related to approval of the cost of service tolls for the Jet Fuel Line for the 2019 to 2021 tolling period.
4. In compliance with BCUC Order P-2-20, PKMJF herein provides its responses as set out below.

⁶ C1-7 2020-01-03 Submission from Parkland re Temporary Suspension of Regulatory Timetable; A-28 2020-04-09 Order P-2-20 from BCUC re Amended Timetable.

I. INDEPENDENT EXPERT RETAINER LETTER

5. BCUC Order P-2-20 provides as follows:⁷

... In BCUC Order P-10-19, the Panel noted “KMJF’s position that it considers the retainer letter and instructions to be subject to privilege, [but] the Panel agrees with VAFFC’s submission that parties who file an expert report are deemed to waive privilege over these materials”.¹⁸

Based on the above, **the Panel directs PKMJF to produce in this Proceeding the retainer letter or any other form of engagement agreement with Mr. Wetmore.** [Emphasis in original.]

¹⁸ Exhibit A-18, Appendix B, p. 9.

Response:

6. PKMJF notes that the relevant section of the *BC Rules*⁸ cited by VAFFC⁹ and referenced by the BCUC¹⁰ requires production on request of any other “contents of the expert’s file relating to the preparation of the opinion set out in the expert’s report.”
7. Regarding Kinder Morgan Canada (Jet Fuel) Inc. (“**KMJF**”, now PKMJF)¹¹’s engagement of Mr. Wetmore’s expert opinion, it is PKMJF’s understanding that the April 15, 2019 instruction email from KMJF to Mr. Wetmore (the “**April 5/19 Email**”)¹² comprises the only written instructions by representatives of Kinder Morgan, Inc. (“**Kinder Morgan**”) to Mr. Wetmore regarding the preparation of the subject expert report for KMJF.
8. Although not directly pertaining to the preparation of the subject expert opinion, PKMJF understands from Mr. Wetmore that there was an original 2004 consulting services agreement (the “**2004 Agreement**”) between Kinder Morgan and Turner Wetmore Collins LLC (“**TWC**”). Mr. Wetmore’s partner, who signed the 2004 Agreement passed away. Mr. Wetmore has not been able to find the original 2004 Agreement, and as of the date of this letter nor has Kinder Morgan been able to locate this agreement.
9. PKMJF understands that TWC provided cost of service support for Kinder Morgan since TWC was founded in 2003, and Mr. Wetmore has done work for a Kinder Morgan entity since 1992. During this extensive period of engagement between Mr. Wetmore and Kinder Morgan, it has been a practice for Kinder Morgan to contact Mr. Wetmore and verbally, or by way of a simple email communication, request his support on a project.
10. It is PKMJF’s understanding that KMJF has previously produced:

⁷ A-28 2020-04-09 Order P-2-20 from BCUC re Amended Timetable, PDF p 10.

⁸ *Supreme Court Civil Rules*, BC Reg 168/2009 (“**BC Rules**”), Rule 11-6(8)(b).

⁹ C2-5 2019-09-11 Letter from VAFFC to BCUC re Further Response Further Better IR Responses, PDF p 14.

¹⁰ A-18 2019-11-19 BCUC Order P-10-19 re Further and Better Responses and Regulatory Timetable, PDF p 7.

¹¹ PKMJF is the same entity as KMJF. KMJF was renamed as PKMJF when Pembina Pipeline Corporation acquired Kinder Morgan Canada Ltd. Therefore, PKMJF and KMJF are distinguishable only on the basis of name and there being differing parenting companies in control of the entity at different times.

¹² B-22 2019-11-26 Supplemental IR Response from KMJF re BCUC Order P-10-19, PDF p 6.

- (a) all other instructions provided to Mr. Wetmore verbally during conference calls between KMJF, Mr. Wetmore and external legal counsel;¹³
- (b) all of Mr. Wetmore's work papers;¹⁴ and
- (c) all data provided by KMJF to Mr. Wetmore to facilitate his analysis and forecasts, including any historical accounting or cost records;¹⁵

that Mr. Wetmore relied upon in respect of the preparation of his expert report. As such, PKMJF submits that it is its understanding that the contents of Mr. Wetmore's file relating to the preparation of his opinion set out in the report filed as part of the Application has been produced.

11. Subsequent to the filing of the Application and the subject expert report, on February 24, 2020 PKMJF's external counsel executed a retainer agreement with TWC (the "**PKMJF/Wetmore Retainer Agreement**") for Mr. Wetmore to continue providing expert opinion in the Proceeding. PKMJF undertakes to request filing of the PKMJF/Wetmore Retainer Agreement in the Proceeding on a confidential basis.
12. PKMJF provides the PKMJF/Wetmore Retainer Agreement:
 - (a) without prejudice to maintaining solicitor client, litigation privilege or any other privilege PKMJF is otherwise entitled to in this Proceeding or any other matter; and
 - (b) solely to be in compliance with the BCUC orders in this Proceeding, including BCUC Order P-2-20.

¹³ B-22 2019-11-26 Supplemental IR Response from KMJF re BCUC Order P-10-19, PDF p 9.

¹⁴ B-13 2019-08-22 Response from KMJF to BCUC re VAFFC IR No. 1, PDF p 74; B-18 2019-10-01 KMJF Submission to BCUC re Supplemental Response to VAFFC IR Responses, PDF pp 2-3; B-28 2019-12-23 Letter from KMJF to BCUC re Response to VAFFC, PDF p 2.

¹⁵ B-22 2019-11-26 Supplemental IR Response from KMJF re BCUC Order P-10-19, PDF pp 6-8; B-28 2019-12-23 Letter from KMJF to BCUC re Response to VAFFC, PDF p 2.

II. DIRECT FIELD EXPENSES AND A&G COSTS

13. In Table 1 of Order P-2-20, the BCUC identified IRs regarding Direct Field Expenses and A&G Costs for which it required further and better answers. PKMJF herein provides its responses in the format set out by the BCUC, in the attached Table 1. PKMJF has excluded sections of the information request not specifically referenced in BCUC Order P-2-20, in column 1 of Table 1.
14. As previously indicated in PKMJF's March 12, 2020 letter regarding the resumption of this Proceeding,¹⁶ PKMJF reiterates it accepts the cost of service study previously filed in the Application under KMJF¹⁷ as setting out just and reasonable tolls for providing service on the Jet Fuel Line for the tolling period of 2019 to 2021.

Yours truly,

<Submitted electronically>

Rosa Twyman
Regulatory Law Chambers

cc: Cassia Prentice, Legal Counsel for PKMJF
PKMJF Shippers

¹⁶ B-33 2020-03-12 Letter from PKMJF to BCUC re Resumption of Proceeding, PDF p 2.

¹⁷ B-14 2019-08-23 Application from KMJF to BCUC Regarding Amended Final Tolls for 2019-2021, Appendix A.1.

TABLE 1 - RESPONSES TO BCUC ORDER B-2-20 REGARDING DIRECT FIELD EXPENSES AND A&G COST INFORMATION

IR No.	VAFFC IR	BCUC Direction in ORDER B-2-20	PKMJF Response
22.1	<p>Please provide specific details, including supporting documents, on the following Direct Field Expenses for each year dating back to 2007, as well as the test period: ...</p> <p>(d) 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>...</p> <p>(h) Details related to field major maintenance and supporting documents explaining what work was required and why it was required.</p> <p>(i) ...</p>	<p>PKMJF must provide access to Confidential information filed with respect to (d), if not already provided, and provide a full and better response to (h) including a schedule for all Field Major Maintenance costs for each year from 2009. PKMJF must provide an explanation in any instances where information cannot be provided.</p>	<p><u>(d) Access to Confidential information</u></p> <p>Response:</p> <p>On December 18, 2019, KMJF filed with the BCUC contracts and agreements for outside services of KMJF regarding the Jet Fuel Line with a request that such documents be treated subject to confidentiality.¹⁸ On January 10, 2020, the BCUC issued a letter granting KMJF's request for confidentiality.¹⁹ On January 17, 2020, PKMJF filed a letter with the BCUC confirming that all confidential documents requested by VAFFC and Parkland in this Proceeding, including those filed in response to VAFFC IR 22.1, had been provided to both VAFFC and Parkland.²⁰</p> <p>PKMJF therefore submits that access to the confidential information submitted in response to this IR has been provided.</p> <p><u>(h) Field Major Maintenance costs</u></p> <p>BCUC Order P-2-20 provides as follows:²¹</p> <p>The Panel recognizes that while KMJF was directed to file additional information, the Panel cannot compel PKMJF to provide information it does not have.</p> <p>The Panel, therefore, makes the following findings regarding VAFFC IR ... 22.1 ... as set out in Appendix A of the Adjournment Application:</p> <p>...</p> <p>With respect to VAFFC IR 22.1 (h), the Panel agrees with VAFFC that KMJF has not provided detailed documents and explanation supporting the "Field Major Maintenance" for each of the 2009-2018 period. The Panel directs PKMJF to file this information. If PKMJF is unable to file this information, it must provide sufficient explanation as to why this information is not in its possession or cannot be obtained.</p> <p>Based on the above findings, the Panel directs PKMJF to respond to the following IRs related to direct field expenses ... cost information as set out in Table 1 below:</p> <p>...</p> <p>PKMJF must provide ... a full and better response to (h) including a schedule for all Field Major Maintenance costs for each year from 2009. PKMJF must provide an explanation in any instances where information cannot be provided. [Emphasis in original.]</p> <p>Response:</p> <p>PKMJF submits that there is no existing additional information that it can provide. However, based on its operational experience, it would consider the following line items included in the breakdown of 2009-2018 direct expenses previously provided²² to be included as field major maintenance:</p>

¹⁸ B-27 2019-12-18 Letter from KMJF to BCUC re Request for Confidentiality of Certain Documents re IR 22.1 and 23.1.

¹⁹ A-25 2020-01-10 Letter from BCUC to PKMJF re Response to Confidential IR Request.

²⁰ B-32 2020-01-17 Letter from PKMJF to BCUC re Confirmation of Confidential Documents Provided to VAFFC and Parkland.

²¹ A-28 2020-04-09 Order P-2-20 from BCUC re Amended Timetable, PDF pp 11-12.

²² B-25 2019-12-06 Supplemental Response from KMJF to BCUC re VAFFC IR Numbers 22.1-23.1, Appendix (Suppl.) VAFFC-KMJF 22.1.2, PDF p 9.

			<p>(a) station equipment maintenance;</p> <p>(b) anomaly inspections; and</p> <p>(c) pipeline outside services.</p> <p>Regarding the reasonableness of field major maintenance costs, PKMJF notes that on December 6, 2019, KMJF provided the following response to VAFFC IR 22.1 generally, and specifically to VAFFC IR 22.1(h):²³</p> <p>... Please see the attached <u>Appendix (Suppl.) VAFFC-KMJF 22.1.1</u> for KMJF's analysis which demonstrates that KMJF's forecast 2019 operating expenses are 3.7% lower than the average level for the three-year period 2016-2018. Even looking back to the past five years, KMJF's forecast 2019 operating expenses are less than 5% greater than the average level for the five year period 2016-2018. KMJF excluded normalized rate case costs in its comparison of Direct Field Expenses costs for the applicable periods, since rate case costs were not included in the prior year amounts and therefore need to be excluded for comparability purposes. KMJF submits that its comparison of forecasted compared to historic cost over the five and three year periods set out corroborates the reasonableness of the level of operating expenses included in KMJF's Application. [Emphasis in original.]</p> <p>On December 23, 2019, KMJF responded to VAFFC as follows:²⁴</p> <p>Consistent with the BCUC Order, KMJF provided a schedule for all Direct Field Expenses costs from 2009 to 2018. The information that KMJF provided reflects all the information KMJF obtained and has in its possession.</p>
<p>23.1</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) ...</p> <p>(b) 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>(c) A list of Outside Services that exceed \$10,000. Please include a list of contracts and contract values for amounts in excess of \$10,000. Please also explain which Outside Services are captured in Schedule 16 compared to Schedule 17.</p>	<p>PKMJF must provide a full and better response to (b) including a breakdown and schedule for all Labour Expenses for each year from 2009. PKMJF must clearly explain the difference between "Outside Services" (c), included in Schedule 16 and Schedule 17 of the Application. PKMJF must provide an explanation in any instances where information cannot be provided.</p>	<p><u>(b) Breakdown of Labour Expenses / (c) Difference Between "Outside Services"</u></p> <p>BCUC Order P-2-20 provides as follows:²⁵</p> <p>The Panel recognizes that while KMJF was directed to file additional information, the Panel cannot compel PKMJF to provide information it does not have.</p> <p>The Panel, therefore, makes the following findings regarding VAFFC IR ... 23.1 as set out in Appendix A of the Adjournment Application:</p> <p>...</p> <p>With respect to VAFFC IR 23.1 (b), the Panel agrees with VAFFC that KMJF has not provided a breakdown of the Labour expenses for the years 2009-2018. The Panel directs PKMJF to file this information. If PKMJF is unable to file this information, it must provide sufficient explanation as to why this information is not in its possession or cannot be obtained.</p> <p>With respect to VAFFC IR 23.1 (c), the Panel agrees with VAFCC that KMJF has not explained the differences between Outside Services captured in Schedule 16 and Schedule 17 of the Application. The Panel directs PKMJF to explain the difference between the Outside Services captured in Schedule 16 and Schedule 17 of the Application.</p> <p>Based on the above findings, the Panel directs PKMJF to respond to the following IRs related to ... A&G cost information as set out in Table 1 below:</p> <p>...</p> <p>PKMJF must provide a full and better response to (b) including a breakdown and schedule for all Labour Expenses for each year from 2009. PKMJF must clearly explain the difference between "Outside Services" (c), included in Schedule 16</p>

²³ B-25 2019-12-06 Supplemental Response from KMJF to BCUC re VAFFC IR Numbers 22.1-23.1, PDF pp 2, 5-6.

²⁴ B-28 2019-12-23 Letter from KMJF to BCUC re Response to VAFFC, PDF p 1.

²⁵ A-28 2020-04-09 Order P-2-20 from BCUC re Amended Timetable, PDF pp 11-12.

	...		<p>and Schedule 17 of the Application. PKMJF must provide an explanation in any instances where information cannot be provided. [Emphasis in original]</p> <p>Response:</p> <p>It is PKMJF's understanding that prior to 2019, A&G labour costs were not allocated to the Jet Fuel Line based on the referenced categories. Given that fact, PKMJF is not able to break down those allocated costs into the referenced categories.</p> <p>Outside services accounted for in Schedule 16 of the Application are those services which are incurred directly to operate the Jet Fuel Line. Outside services accounted for in Schedule 17 of the Application are corporate costs allocated to the operations of the Jet Fuel Line.</p> <p>PKMJF notes that on December 18, 2019, KMJF filed <u>Appendix (Suppl.) VAFFC-KMJF 23.1.2 (confid)</u> with a request that the information provided be treated confidentially.²⁶ <u>Appendix (Suppl.) VAFFC-KMJF 23.1.2 (confid)</u> included titles and financial compensation of KMJF employees and contracts and agreements for outside services of KMJF.²⁷ PKMJF notes that the Application is seeking approval for 2019 to 2021 estimated labour costs, and notes that the applied for 2019 costs are in fact lower than the historical actuals. PKMJF submits that this verifies the reasonableness of the outside services costs for the 2019 to 2021 tolling period for the Jet Fuel Line.</p> <p>PKMJF also further notes that on December 23, 2019, KMJF responded to VAFFC as follows with respect to VAFFC-KMJF 23.1.2:²⁸</p> <p style="padding-left: 40px;">KMJF advises that it has provided all information and documents in its possession regarding the information requested by VAFFC.</p>
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²⁶ B-27 2019-12-18 Letter from KMJF to BCUC re Request for Confidentiality of Certain Documents re IR 22.1 and 23.

²⁷ B-27 2019-12-18 Letter from KMJF to BCUC re Request for Confidentiality of Certain Documents re IR 22.1 and 23.1.

²⁸ B-28 2019-12-23 Letter from KMJF to BCUC re Response to VAFFC, PDF p 1.