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Your reference                      Our reference  
Project No. 1598984                1000385944

June 18, 2020

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

**Attention: Marija Tresoglavic, Acting Commission  
Secretary**

Dear Ms. Tresoglavic:

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

We are counsel to VAFFC in this matter and write on its behalf further to PKMJF’s June 16, 2020 letter submitting its responses to VAFFC IR No. 2.<sup>1</sup>

**1. Parkland and VAFFC IRs regarding Pembina Transaction and Sales Documents**

VAFFC asked several IRs regarding information and documentation relating to the Jet Fuel Line arising from Pembina Pipeline Corporation’s (“Pembina”) acquisition of PKMJF (the “Pembina Transaction”).<sup>2</sup> VAFFC also asked a further IR, requesting that PKMJF “provide all documents that Pembina or its agents have disseminated or otherwise prepared for the purpose of any potential sale of the Jet Fuel Line to third parties”.<sup>3</sup>

In its responses, which are reproduced in Appendix A, PKMJF refuses to provide the information requested, asserting that it is not relevant to the current proceeding, and that it is “not PKMJF information”. Notably, Parkland asked IRs requesting similar information, which PKMJF refused to provide for similar reasons.<sup>4</sup> PKMJF’s responses to these IRs are reproduced in Appendix B.

PKMJF’s position must be rejected. It would be artificial for the Commission to exclude information which Kinder Morgan and Pembina have disseminated to potential investors in the Jet Fuel Line about matters at issue in this proceeding. The Commission should not risk the perception that investor marketing materials convey a more accurate, less varnished presentation of PKMJF’s forecast costs and liabilities than what is present on the current record.

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<sup>1</sup> Exhibit B-38.

<sup>2</sup> VAFFC IRs 11.1 and 14.1 – 14.2, set out in Appendix A.

<sup>3</sup> VAFFC IR 14.3, set out in Appendix A.

<sup>4</sup> Parkland IRs 6.1.1 – 6.1.3, set out in Appendix B.

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## 2. The Requested Information is Relevant, and the Commission should direct PKMJF to provide it

Contrary to PKMJF's assertion, the information requested by VAFFC is highly relevant to the current proceeding. The marketing materials prepared by Kinder Morgan – while its subsidiary was, in parallel, preparing and filing materials in this proceeding – can be expected to have presented expected revenues and costs and potential environmental and abandonment liabilities to potential investors. If Kinder Morgan's estimates presented differ from what PKMJF provided to the Commission, or if, e.g., abandonment liabilities were omitted, those facts are highly relevant to the weight the Commission should put on PKMJF's estimates in the current proceeding.

Likewise, any documents which Pembina has obtained and analyzed or otherwise prepared regarding the valuation of the Jet Fuel Line for the purposes of the Pembina Transaction, and marketing materials which Pembina has subsequently prepared and disseminated concerning the potential sale of the asset, are relevant for the same reasons. Any difference between the forecast costs and liabilities which Pembina has used for valuation purposes or presented to investors, on the one hand, and those which PKMJF has presented to the Commission, on the other, is highly relevant to the weight the Commission places on PKMJF's current forecasts.

The Commission should further reject PKMJF's claim that the requested information is "not PKMJF information".<sup>5</sup> Pembina controls PKMJF, and the Commission should not allow PKMJF to rely on its corporate structure to avoid producing information to which it has access and which is otherwise relevant, when it is PKMJF that applies to the Commission on a cost of service basis.

Other information in the possession of PKMJF's parent company is relevant to numerous aspects of this proceeding. For example, PKMJF has acknowledged that some of the cost of service costs claimed in the Application are based on the allocation of costs from Kinder Morgan Inc. and Kinder Morgan Canada Service,<sup>6</sup> and PKMJF has already provided information on the record of this proceeding related to the allocation of corporate costs to the Jet Fuel Line by its parent company.<sup>7</sup>

Further, PKMJF requested a 60-day suspension of the regulatory timetable in January 2020 to give PKMJF "additional time to review the Application", given "Pembina's recent acquisition of Kinder Morgan Canada Limited".<sup>8</sup> Given this context it is inconsistent for PKMJF to now claim that its corporate structure disentitles interveners to relevant information.

VAFFC accordingly seeks an order from the Commission, pursuant to Rule 14.05 of the *BCUC Rules of Practice and Procedure*, requiring PKMJF to provide further and better responses to the VAFFC IRs identified in Appendix A. Further to discussions with counsel for Parkland, VAFFC understands that Parkland is also supportive of such an order.

## 3. Regulatory Timetable Suspension

VAFFC further requests that the regulatory timetable be suspended until the Commission rules on VAFFC's motion and PKMJF complies with any resulting order. Although VAFFC has not yet received or had an opportunity to review the information for which PKMJF has undertaken to apply for confidential treatment,<sup>9</sup> VAFFC is filing this motion now to minimize the disruption to the schedule in these proceedings and, for the same reason, requests expedited treatment of its motion.

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<sup>5</sup> Exhibit B-38, VAFFC IR 11.1, pdf p. 63. See Appendix A.

<sup>6</sup> Exhibit B-33, para. 10.

<sup>7</sup> Exhibit B-12, Parkland IR 7.2, pdf p. 17; Exhibit B-38, VAFFC IR 16.1 – 16.4, pdf pp. 78-80.

<sup>8</sup> Exhibit B-30, pdf p. 3.

<sup>9</sup> See, for example: Exhibit B-38, VAFFC IR 1.3, pdf p. 9 ("PKMJF undertakes to file an application to apply for confidential treatment of Appendix(Confid) VAFFC(IR 2)-PKMJF 1.3 - Rate sheets ELM provided to PKMJF").

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Procedural fairness demands that interveners know the case they have to meet *before* they prepare and file their own evidence. As VAFFC has noted before,<sup>10</sup> IRs are an essential tool for interveners and the Commission to understand the accuracy of the information presented in toll applications. Deficient or late IR responses exacerbate the information asymmetry between applicants and interveners.

The sequence and timing of procedural steps is crucial to procedural fairness. Without full, frank, and *timely* IR responses from PKMJF, interveners cannot properly respond to the Application. The result is not only unfair; it also makes for a weaker record, in which the issues are not fully explored with adequate evidence on both sides.

Please contact the writer if you have any questions.

Yours very truly,

A handwritten signature in blue ink, appearing to read "MDK".

For: Matthew D. Keen

MDK/roe

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<sup>10</sup> Exhibit C2-15, VAFFC Reply to KMJF and Parkland, p. 3.

## Appendix A – VAFFC IRs

### a. VAFFC IR 11.1:<sup>11</sup>

11.1 Please provide all documents relating to the Jet Fuel Line that Kinder Morgan and its agents and advisors provided to Pembina as part of the marketing and due diligence process for the Kinder Morgan Acquisition.

(a) Please provide any notes, including further supplemental explanations, which Kinder Morgan provided to Pembina as part of the due diligence process for the Kinder Morgan Acquisition.

#### Response:

See response to Parkland(IR2)- PKMJF 6.1.1 to 6.1.3. Pursuant to Rule 14.03 of the *BCUC Rules of Practice and Procedure* PKMJF submits it is not willing to provide the requested information. The information requested has no bearing on the cost of service Application under consideration in this Proceeding. VAFFC requests information that is not PKMJF information, the information is irrelevant to the cost of service Application, and the information has no bearing on what constitutes just and reasonable rates for cost of service tolling on the JFL.

[Underlining added]

### b. VAFFC IRs 14.1 – 14.3:<sup>12</sup>

14.1 In determining the fair value of the [sic] each of the categories of assets and liabilities Pembina acquired in the Kinder Acquisition, as set out in the table reproduced in Reference (i); above (i.e., “Current assets”, “Property, plant and equipment”, “Intangible assets”, etc.), what value did Pembina’s 2019 Audited Financial Statements assign to the Jet Fuel Line? Please provide the calculations, data, and assumptions supporting this value assigned by Pembina’s auditors.

#### Response:

See response to Parkland(IR2)- PKMJF 6.1.1 to 6.1.3.

14.2 What value did the “independent valuator” retained by Pembina “to assist with determining the fair value of certain tangible and intangible assets within the purchase price equation” assign to the Jet Fuel Line? Please provide the documents and correspondence from the independent valuator that provide and explain the value attributed to the Jet Fuel Line.

#### Response:

See response to Parkland(IR2)- PKMJF 6.1.1 to 6.1.3.

14.3 Please provide all documents that Pembina or its agents have disseminated or otherwise prepared for the purpose of any potential sale of the Jet Fuel Line to third parties.

#### Response:

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<sup>11</sup> Exhibit B-38, pdf p. 63.

<sup>12</sup> Exhibit B-38, pdf pp. 70-71.

Pursuant to Rule 14.03 of the BCUC Rules of Practice and Procedure PKMJF submits the requested information is not relevant. The information requested has no bearing on the cost of service Application under consideration in this Proceeding and specifically has no bearing on what constitutes just and reasonable rates for cost of service tolling on the JFL.

[Underlining added]

## Appendix B – Parkland IRs

### Parkland IRs 6.1.1 – 6.1.3:<sup>13</sup>

6.1. This request focuses on Pembina Pipeline Corporation's (Pembina) considerations with respect to its acquisition of KMJF.<sup>4</sup> Please provide the following:

6.1.1. Working papers and analysis of KMJF by Pembina, or its advisors, as part of its due diligence process prior to the acquisition of Kinder Morgan Canada Limited.

6.1.2. Copies of internal reports relating to KMJF used by management of Pembina in consideration of the acquisition.

6.1.3. Pembina's deal model (or components thereof) showing details of the expected net cash flows related to KMJF.

[...]

#### **Response:**

**6.1.1. to 6.1.3.** Pursuant to Rule 14.03 of the *BCUC Rules of Practice and Procedure* PKMJF submits it is not willing to provide the requested Pembina Pipeline Corporation ("**Pembina**") information. The information requested has no bearing on the cost of service Application under consideration in this Proceeding. Parkland requests information that is not PKMJF information, the information is irrelevant to the cost of service Application, and the information has no bearing on what constitutes just and reasonable rates for cost of service tolling on the JFL.

[Underlining added]

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<sup>13</sup> Exhibit B-39, pdf p. 12.