

August 14, 2020

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British Columbia Utilities Commission
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Vancouver, BC V6Z 2V3

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

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| Your reference | Our reference |
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Dear Ms. Tresoglavic:

Kinder Morgan (Jet Fuel) Inc. (“PKMJF”) 2019 Tariff Filing – Vancouver Airport Fuel Facilities Corporation (“VAFFC”) Submissions regarding Amended Regulatory Timetable

We are legal counsel for VAFFC in this matter. Further to the Commission’s Order P-4-20 made on August 10, 2020 (the “**Order**”),¹ we write to request that the Commission partially suspend the regulatory timetable (beginning with the deadline for intervener evidence) and change how it handles access to confidentially-filed documents, effective immediately. These steps are necessary to ensure procedural fairness and allow interveners, including VAFFC, to develop evidence responsive to the record. Procedural fairness requires that interveners know the case they must meet and that cannot happen presently, for the reasons we explain below.

In the Order, the Commission directed PKMJF to provide, by August 20, 2020, further and better responses to the majority of the information requests (“**IRs**”) that were the subject of VAFFC’s² and Parkland’s³ June 2020 motions (the “**June Motions**”). Pursuant to the regulatory timetable established by the Order, intervener evidence is subsequently due less than two weeks later, on September 1, 2020.⁴

However, the Order did not address the shippers’ respective June 2020 requests for access to the information for which PKMJF has applied for confidential treatment,⁵ beyond stating that:

The Panel further reminds PMKJF that if it wishes to file any information confidentially, it may do so pursuant to Rule 18 of the BCUC’s Rules and reiterates that any decision on PKMJF’s Confidentiality Request will be addressed after the BCUC Rules on the IR Application No. 2 and PKMJF has filed the requested information.⁶

¹ Exhibit A-34.

² Exhibit C2-23.

³ Exhibit C1-9.

⁴ Exhibit A-34, pdf p. 5.

⁵ **VAFFC**: Exhibit C2-24; **Parkland**: Exhibit C1-10.

⁶ Exhibit A-34, pdf p. 11.

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Accordingly, the Order prescribes the following sequence, in conjunction with the Commission's Rules of Practice and Procedure:

1. PKMJF files the disputed IR responses, likely including some confidential material, by August 20.
2. Interveners file responses to the confidentiality requests, to the extent they may oppose some or all of the basis for the requests.
3. The Commission adjudicates the confidentiality requests, comprising material received in both June and August.
4. The Commission evaluates intervener requests to access any materials it grants confidential protection to (previously filed in June), and/or any intervener objections to confidential treatment, and may direct PKMJF to provide such materials to interveners.
5. PKMJF provides protected IR responses to interveners.
6. Interveners assess whether the IR responses are complete and responsive.⁷
7. Interveners complete and file intervener evidence by September 1.

This timing does not practically allow steps 2 through 6 to complete by September 1, putting interveners in the position of having to develop evidence before significant questions are answered or material facts are known. This is procedurally unfair. It is also inefficient in terms of the regulatory timetable, as incremental evidentiary updates and related filings may well result from any IR responses that arrive after intervener evidence is filed, and inefficient with respect to the cost of participating in the proceeding.

As VAFFC noted in its reply to PKMJF regarding the June Motions, VAFFC requires an opportunity to review **both** the outstanding information for which PKMJF has applied for confidential treatment, as well as the information PKMJF has been directed to provide further to the Order, in order to properly respond to PKMJF's Application.⁸ There is a significant number of IR responses relevant to PKMJF's Application that VAFFC has not yet received due to PKMJF's confidentiality requests. VAFFC is preparing substantial intervener evidence, and requires access to this material in order to formulate and prepare this evidence. Among other things, the outstanding information will be relevant to PKMJF's forecast and historical costs and revenues, including without limitation its abandonment costs estimate. The content of such information will affect important components of VAFFC's evidence.

The sequence and timing of procedural steps is crucial to procedural fairness.⁹ The regulatory timetable established by the Order does not allow sufficient time before the deadline for intervener evidence for shippers to receive, review and analyze both the outstanding information for which PKMJF has applied for confidential treatment, as well as the information PKMJF has been ordered to produce further to the Order (some of which, as the Commission appears to contemplate, may also be subject to requests for confidentiality), and thereby prejudices the shippers.

The Commission also has yet to provide its views on the proposal set out in Parkland's June 19, 2020 letter that "parties filing confidential information in this proceeding provide [Parkland] with unredacted copies of such confidential information at the time of filing", on the basis that "Parkland will treat such confidential information in

⁷ E.g., in Exhibit B-38, pdf pp. 107-108, PKMJF's public responses to VAFFC IRs 24.1, 24.4 and 24.6 direct VAFFC to the confidential response to Parkland(IR2)-PKMJF 1.1. That content may or may not be sufficiently responsive, but VAFFC notes both that the questions posed by the two interveners are different and that to date it has been unable to make that assessment.

⁸ Exhibit C2-25, p. 5.

⁹ Exhibit C2-23, p. 3; Exhibit C2-25, p. 5.

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accordance with the Confidentiality Declaration and Undertaking Forms” which Parkland has already provided in this proceeding.¹⁰

VAFFC accordingly seeks an order from the Commission suspending the regulatory timetable, following the deadline for PKMJF to provide supplementary IR responses on August 20, 2020, until the shippers have received (i) the outstanding information for which PKMJF has applied for confidential treatment; and (ii) the information PKMJF has been ordered to produce further to the Order (including any such information for which PKMJF applies for confidential treatment). The present regulatory timetable also provides less than two weeks (seven business days) to complete evidence after analyzing IR content. A typical interval would be two to three weeks and in the circumstances VAFFC requests a three week interval between the receipt of the material IR responses and the intervener evidence deadline.

In order to minimize any further delay in this proceeding, VAFFC supports the approach to confidential information suggested by Parkland in its June 19, 2020 letter.¹¹ Accordingly, VAFFC requests that the Commission direct PKMJF to provide both VAFFC and Parkland with unredacted copies of the outstanding information for which PKMJF has applied for confidential treatment, as well as any information PKMJF provides in response to the Order for which PKMJF decides to seek confidential treatment, subject to the exception set out below, on the basis that both VAFFC and Parkland will treat such confidential information in accordance with the Confidentiality Declaration and Undertaking Forms which VAFFC and Parkland have already provided in this proceeding. This approach ensures that the information is protected from public disclosure until the Commission makes a determination on confidentiality, while permitting shippers to review, consider and analyze the information in parallel with the Commission’s consideration of confidentiality issues.

Notwithstanding the above, VAFFC recognizes that PKMJF is seeking to restrict access to PKMJF’s response to Parkland(IR2)-PKMJF 6.1.5 (the “**Restricted Confidential Information**”) to within the BCUC.¹² VAFFC continues to oppose this request, for the reasons set out in its July 3, 2020 letter,¹³ but accepts that PKMJF should not be directed to provide the Restricted Confidential Information to shippers (or any other information for which PKMJF may seek Commission-only access) until the Commission rules on PKMJF’s request for restricted access.

Again, VAFFC submits that the regulatory timetable should remain suspended until the Commission issues a determination on any such restricted access requests, and VAFFC accordingly requests that the Commission resolve any such requests on an expedited basis.

Please contact the writer if you have any questions.

Yours very truly,



Matthew D. Keen

MDK/roe

¹⁰ Exhibit C1-10.

¹¹ Exhibit C1-10.

¹² Exhibit B-44, paras. 37-42.

¹³ Exhibit C2-25, p. 2.