

October 6, 2020

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

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

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Your reference Our reference
Project No. 1598984 1000385944

Dear Ms. Tresoglavic:

Kinder Morgan (Jet Fuel) Inc. (“PKMJF”) 2019 Tariff Filing – Extension Request and Request for Unredacted Copies of Documents

We are counsel for the Vancouver Airport Fuel Facilities Corporation (“VAFFC”) in this matter and write (1) to request an extension to the deadline for the filing of intervener evidence in this proceeding and, in parallel, (2) to request access to unredacted copies of a small subset of the documents that PKMJF unilaterally redacted *after* the BCUC’s decision about relevance and confidentiality.

1. Extension Request

VAFFC received 58 documents comprising nearly 1,700 pages to review on September 22.¹ The material is highly relevant to the issues in this proceeding and critical to the analysis and completion of intervener evidence. Many pages have been unilaterally, partially redacted. VAFFC’s review has been lengthened, not shortened, as a result of the redactions. Given the challenges posed by the amount of material and redactions, as well as the highly relevant content, VAFFC requests a two-week extension to the deadline for the filing of intervener evidence in this proceeding, until **Tuesday, October 27, 2020**.

The current schedule reflects VAFFC’s previous request for “a three week interval”.² Under the circumstances, however, VAFFC submits that a two-week extension is reasonable and necessary.

For context, on August 10, 2020, the Commission directed PKMJF to provide a full and better response to certain information requests (“IRs”) from VAFFC and Parkland by August 20, 2020 (the “**Supplemental Response**”).³

PKMJF required six weeks following the Commission’s August 10, 2020 direction to provide the Supplemental Response, and produced a voluminous amount of material.⁴ VAFFC submits that it is therefore fair to accord the

¹ Exhibits B-48 and B-48-1.

² Exhibit C2-26.

³ Exhibit A-34.

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shippers an additional two weeks to review this material and prepare their evidence, for a total of five weeks after PKMJF filed the Supplemental Response.

The new, previously contested material lies at the heart of the issues before the Commission. It suggests that Kinder Morgan (and now Pembina, having adopted the prior case) presented one set of information regarding the Jet Fuel Line's forecast costs, liabilities and useful life in the context of the sale of the Jet Fuel Line, while its subsidiary, PKMJF, was presenting a different and inconsistent set of information to the Commission.⁵ As a result, VAFFC is only now able to consider highly material information that should have been provided by PKMJF earlier in this proceeding. VAFFC requires additional time to properly formulate and prepare its evidence in light of this late disclosure, and adapt the content already under preparation to these material new facts.

In light of the above considerations, VAFFC submits that a two-week extension to the deadline for the filing of intervenor evidence in this proceeding, until **Tuesday, October 27, 2020**, is fair and reasonable, and requests that the Commission amend the regulatory timetable accordingly. VAFFC does not link this extension request to its below request for counsel access to 90 pages of the 1,686 pages of redacted material, as VAFFC expects the Commission can order PKMJF to comply with its earlier Order without further process, well before the expiry of the two weeks requested.

2. Unredacted Copies of Documents

In its September 21, 2020 letter submitting the Supplemental Response, PKMJF noted that it had redacted a number of the documents included in the confidential Appendix A to that letter, on the basis that a "number of the documents produced in Appendix A contain material related to the Transaction regarding other assets in the Transaction that is not PKMJF information and does not pertain to the JFL", and that such information is accordingly "irrelevant to the JFL acquisition".⁶ PKMJF further noted that "[i]n addition, in some documents, the JFL financial data was aggregated with the financial data for other assets in the transaction, with the result that such financial data did not provide any meaningful information pertaining to the JFL responsive to the Supplemental IRs and the BCUC Supplemental Response Issues".⁷

Generally, it should not be for PKMJF to make these determinations. It is adverse in interest to VAFFC. PKMJF's judgment as to what is relevant and useful to VAFFC in presenting its case against PKMJF's Application may be very different than VAFFC's.

The content of the Supplemental Response demonstrates that PKMJF appears to have redacted material relevant to intervenors. Confidential Schedule 1 provides some examples. The words "Jet Fuel" floating in a sea of blacked out fields that *prima facie* appear to be relevant to the issues in this proceeding does not reflect compliance with the Commission's Order.

The Commission should not rely on PKMJF's impartial judgment concerning relevance. Schedule 1 content also shows that PKMJF has not properly complied with its obligations under the Rules earlier, in that it has failed to provide documents and failed to provide what has proved to be competing sets of financial figures.⁸

VAFFC accordingly requests the Commission to direct PKMJF to provide access to unredacted copies of documents 1-5 and 51-58 from Appendix A to PKMJF's September 21, 2020 letter,⁹ so that VAFFC counsel may consider and confirm the appropriateness of the redactions which have been applied, and in particular that no

⁴ Exhibits B-48 and B-48-1, filed on September 21, 2020.

⁵ See the confidential Schedule 1 to this letter. See also Exhibit C2-23, p. 2 where VAFFC raised this possibility as a concern.

⁶ Exhibit B-48-1, para. 10.

⁷ Exhibit B-48-1, para. 10.

⁸ Schedule 1.

⁹ Exhibits B-48 and B-48-1.

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relevant information has been omitted. These documents are material and critical to the issues, and need to be understood *without* the handicap imposed by PKMJF's unilateral redactions.

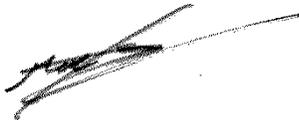
The Commission has already determined that the protection of the existing confidentiality undertakings is sufficient to protect the confidentiality of this information.¹⁰ However, to expedite matters, VAFFC is content to restrict access to fully unredacted copies to shippers' counsel and expert advisors only, and on a temporary basis, to confirm whether the subset of redactions was accurately applied. Any differences of opinion on whether individual redactions within that subset contain material potentially probative to intervener cases (the appropriate lens for relevance) could then be adjudicated by the Commission, if agreement cannot be found.

In no event, however, would VAFFC consider it appropriate for access to the unredacted copies to be restricted to within the Commission only, as PKMJF previously sought for the response to Parkland(IR2)-PKMJF 6.1.5.¹¹ There is no credible harm posed by counsel/expert access, and it is important that counsel for the shippers, at the very least, be permitted access to these documents, to ensure procedural fairness.

Given the potential importance of the redacted information to the outcome of this proceeding, it would be unfair to deprive the shippers of the opportunity to, at the least, have their counsel review this material to ensure that PKMJF's disclosure has been complete. Further, counsel for the shippers are familiar with the record of this proceeding and the cases being prepared, and giving counsel access would avoid the need for the Commission to engage in the exercise of considering and determining the relevance of documents without the benefit of input from shippers' counsel.

Please contact the writer if you have any questions.

Yours very truly,



Matthew D. Keen

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Enclosure

¹⁰ Exhibit A-38.

¹¹ Exhibit B-44, para. 41.