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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** P-3-08

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**IN THE MATTER OF
the Pipeline Act, R.S.B.C. 1996, Chapter 364**

and

**An Application by Trans Mountain (Jet Fuel) Inc.
for Approval of Tolls and Accelerated Depreciation**

BEFORE: L.F. Kelsey, Panel Chair and Commissioner
P.E. Vivian, Commissioner

February 13, 2008

ORDER

HEREAS:

- A. On June 5, 2007 Trans Mountain (Jet Fuel) Inc. ("TMJ", "Company") applied to the British Columbia Utilities Commission ("Commission") pursuant to Section 44 of the *Pipeline Act* (the "Act") for an Order approving the adjustment of the Company's tolls for the transportation of turbine (jet) fuel to Vancouver International Airport ("YVR") and to the Burnaby Terminal of the Company's parent, Kinder Morgan Canada Holdings ULC ("KMC"). The Company seeks to increase its tolls effective January 1, 2008 to, among other items, permit TMJ to recover depreciation of the jet fuel system and related facilities (the "Jet Fuel System") and abandonment costs over the proposed five-year economic life of the assets (the "Application"); and
- B. The jet fuel transported to YVR by TMJ is purchased by Vancouver Airport Fuel Facilities Corporation ("VAFFC"), which is owned by a consortium of airlines flying out of YVR; and
- C. By Order No. P-2-07, the Commission scheduled a Pre-hearing Conference for June 20, 2007 to address procedural matters related to the Application including, but not limited to, the identification of principal issues, process options for review of the Application, a regulatory timetable, location of the proceeding and any other matters that would assist the Commission to efficiently review the Application. Order No. P-2-07 also contained a draft regulatory agenda and timetable; and
- D. At the Pre-hearing Conference, the Commission received submissions from TMJ and the Intervenors that depreciating the TMJ assets based on a five-year economic life was the major issue and the majority of the remaining issues were sub-issues; and
- E. The Commission Panel requested submissions on the process steps, the timing of these steps and the filing of evidence (T1: 34-35). The Commission Panel considered the submissions received from TMJ, VAFFC and Chevron Canada Ltd. ("Chevron") (collectively the "Parties") regarding process steps and timing (T1: 40-49) and ordered that the Parties meet by July 10, 2007 to have a comprehensive discussion on the issues around the plans for the supply of jet fuel to YVR and how that impacts on the Jet Fuel System and particularly

Chevron so that the Parties can explore this matter fully. The Parties were directed to report to the Commission by July 17, 2007 on the outcome of that meeting in general terms and the process they would suggest to move this matter forward (T1: 50-51); and

- F. By Order No. P-3-07, the Commission determined that the review of the Application should be temporarily suspended. The Parties were directed to make submissions on the jurisdiction of the Commission to review a potential pipeline abandonment application by TMJ pursuant to Section 41 of the *Utilities Commission Act* (“UCA”) or under Part 7 of the *Act*; and
- G. On July 17, 2007, the Parties submitted a report to the Commission stating that the Parties met on July 4, 2007 on a “without prejudice” basis to discuss the matters contemplated in Order No. P-3-07 (the “Report”). In the Report, the Parties submitted that they did not consider a negotiated settlement process worthwhile, at this time, and that the Company favoured a written hearing, while the VAFFC and Chevron favoured an oral hearing. The Parties also requested that they be permitted to make written submissions regarding a written or oral hearing after intervenor evidence has been filed. The Report also contained a proposed procedural timeline agreed to by the Parties and a submission regarding the implementation of 2008 rates; and
- H. On July 23, 2007, the Parties submitted their comments in response to Commission Directive No. 3 of Order No. P-3-07. In their submissions, Chevron and VAFFC took the position that TMJ is a common carrier, while the Company took the position that TMJ is not a common carrier for the purposes of the *UCA*. The Company submits that the Oil and Gas Commission (“OGC”) has jurisdiction over a pipeline abandonment application and that Section 41 of the *UCA* does not apply to TMJ. Chevron is of the opinion that TMJ is subject to Section 41 of the *UCA* and Part 7 of the *Act* regarding a pipeline abandonment application. VAFFC submits that the Company must obtain leave of the OGC and the Commission before it may abandon operation of the Jet Fuel System and that Section 41 of the *UCA* does not apply to TMJ; and
- I. Commission Order No. P-5-07 established a Public Hearing Process for the review of the Application, set a Regulatory Timetable for the proceeding and requested submissions by October 12, 2007 regarding whether the hearing of this matter should be written or oral; and
- J. TMJ filed a letter dated October 12, 2007 submitting that a written hearing was appropriate. Chevron and VAFFC submissions dated October 12, 2007 indicated that they would support a written process in the event that TMJ did not file rebuttal evidence. TMJ’s letter dated November 16, 2007 informed the Commission that TMJ would not be filing rebuttal evidence; and
- K. By Order No. P-7-07, the Commission amended the Regulatory Timetable to review the Application in a written hearing and established interim rates effective January 1, 2008; and
- L. On November 30, 2007, TMJ filed its Submission requesting that the Commission approve the proposed tolls in the Application to allow for TMJ to recover depreciation of the Jet Fuel System and abandonment costs (negative salvage) over the proposed five-year economic life of the assets; and

- M. On December 10, 2007, Chevron provided its Submission and stated that the evidence presented by TMJ in this proceeding falls short of the evidence the Commission should require before approving a doubling of tolls. Chevron further submits that this proceeding does not have a depreciation study on the record, and there is no requirement of any kind for TMJ to retire the pipeline in five years; and
- N. The December 11, 2007 Submission from VAFFC viewed the Application as premature in that TMJ's view of the Pipeline's five-year life is inappropriate; and
- O. TMJ's Reply Submission on December 17, 2007 asks the Commission to determine the useful life of the Jet Fuel System based on an assessment of the totality of the evidence provided in this Application; and
- P. The Commission has reviewed the Application, Submissions, and Reply Submission received and considers that approval is not warranted.

NOW THEREFORE the Commission orders the following for Trans Mountain (Jet Fuel) Inc. with Reasons for Decision attached as Appendix A to this Order:

1. The Commission finds that Trans Mountain (Jet Fuel) Inc. is a common carrier for the purposes of Part 7 of the *Pipeline Act*.
2. Pursuant to Section 44 of the *Pipeline Act* the Commission denies the request to recover depreciation of the Jet Fuel System over the proposed five years.
3. Pursuant to Section 44 of the *Pipeline Act* the Commission denies the request to recover abandonment costs over the proposed five years.
4. Pursuant to Section 44 of the *Pipeline Act* the Commission approves the establishment of a non-rate base deferral account for Rate Case costs to be amortized over five years. TMJ is to submit the cost to be included in the Rate Case deferral account to the Commission for review and approval.
5. TMJ is to recalculate the 2008 rates and re-file the rate schedules in accordance with the Reasons for Decision and this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 13th day of February 2008.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachment

**TRANS MOUNTAIN (JET FUEL) INC.
APPLICATION FOR APPROVAL OF TOLLS AND ACCELERATED DEPRECIATION**

REASONS FOR DECISION

1.0 APPLICATION

On June 5, 2007, Trans Mountain (Jet Fuel) Inc. (“TMJ”, the “Company”) applied to the British Columbia Utilities Commission (“Commission”) pursuant to Section 44 of the *Pipeline Act* (the “Act”) for an Order approving the adjustment of the Company’s tolls for the transportation of turbine (jet) fuel to the Vancouver International Airport (“YVR”, the “Airport”) and to the Burnaby Terminal of the Company’s parent, Kinder Morgan Canada Holdings ULC (“KMC”). The Company seeks to approximately double its tolls effective January 1, 2008 to, among other items, permit TMJ to recover depreciation of the jet fuel and related facilities (the “Jet Fuel System”, “TMJ Pipeline”) and abandonment costs over the proposed five-year economic life of the assets (the “Application”).

2.0 BACKGROUND

TMJ owns the Jet Fuel System which serves YVR. The TMJ Pipeline transports jet fuel from the connected refineries, storage facilities and marketing terminals in the Greater Vancouver refinery area to the Airport (Exhibit B-1, Letter, p. 2). Since 1969 the Jet Fuel System has been used to transport jet fuel from the Westridge Marine Terminal in Burnaby to YVR. The TMJ Pipeline is 41 kilometers in length and includes five storage tanks with a combined capacity of 7,155 m³ (47,000 bbl) (Exhibit B-1, p. 5).

Chevron Canada Limited (“Chevron”) owns and operates an oil refinery in Burnaby, British Columbia (the “Chevron Refinery”). The crude oil supplied to the Chevron Refinery is from British Columbia and Alberta; it is considered light crude with a high natural yield of jet fuel (Exhibit C1-4, p. 3). The Chevron Refinery is the only refinery on the west coast of Canada and produces approximately 10,000 barrels per day of jet fuel (Chevron Submission, pp. 1, 4). The jet fuel from the Chevron Refinery is shipped to YVR through the TMJ pipeline (Exhibit C1-6, Commission IR 6.1). Chevron sells jet fuel to between fifteen and twenty airlines at YVR and is responsible for approximately half of the fuel transported on the TMJ Pipeline (Exhibit C1-6, Commission IR 1.4; Exhibit B-1, p. 2).

Vancouver Airport Fuel Facilities Corporation (“VAFFC”) is a not-for-profit corporation owned by a consortium of member airlines (“Airlines”) flying out of YVR and represents the interest of the Airlines in regulatory matters related to the TMJ Pipeline. VAFFC owns and operates the aviation fuel storage and delivery infrastructure at YVR (the “VAFFC System”). The Airlines purchase fuel for their own use and arrange delivery to the VAFFC System. VAFFC is not a shipper on the TMJ Pipeline. The fuel inventory within the VAFFC System is owned according to the Airlines’ deliveries into the VAFFC System. According to estimates by VAFFC, 70 to 80 percent of the fuel required at YVR is delivered via the TMJ Pipeline (Exhibit C2-4, VAFFC Evidence, pp. 1-2). The remaining aviation fuel required at YVR is delivered by truck. Individual airlines arrange for truck delivery as required and up to 30 tanker trucks per day supply fuel to YVR from refinery and storage facilities located near Cherry Point in Washington State (Exhibit C2-4, VAFFC Evidence, p. 3).

3.0 REGULATORY PROCESS

In accordance with Order No. P-2-07, a Pre-hearing Conference was held on June 20, 2007. The Pre-hearing Conference addressed procedural matters related to the Application, the principal issues, process options for review of the Application and the regulatory timetable. Commission Order No. P-3-07 temporarily suspended the review of the Application and directed TMJ, Chevron, and VAFFC (the “Parties”) to meet by July 10, 2007 to have a comprehensive discussion on the issues and plans for the supply of jet fuel to YVR. The Parties were also directed to make submissions on the jurisdiction of the Commission to review a potential pipeline abandonment application by TMJ pursuant to Section 41 of the *Utilities Commission Act* (“UCA”) or under Part 7 of the *Act*.

On July 17, 2007, the Parties submitted a report to the Commission stating that the Parties met on July 4, 2007 on a “without prejudice” basis to discuss the matters contemplated in Order No. P-3-07 (the “Report”). In the Report, the Parties submitted that they did not consider a Negotiated Settlement Process worthwhile at this time, and that the Company favored a written hearing, while VAFFC and Chevron favored an oral hearing. The Parties also requested that they be permitted to make written submissions regarding a written or oral hearing after intervenor evidence had been filed. The Report also contained a proposed procedural timeline agreed to by the Parties and a submission regarding the implementation of 2008 rates. As directed by Order No. P-3-07, the Parties also made submissions on the jurisdiction of the Commission to review a potential pipeline abandonment application by TMJ.

In accordance with Order No. P-5-07, TMJ filed a letter dated October 12, 2007, submitting that a written hearing was appropriate. Chevron and VAFFC submissions dated October 12, 2007 indicated that they would support a written process in the event that TMJ did not file rebuttal evidence. In a letter dated November 16, 2007, TMJ informed the Commission that the Company would not be filing rebuttal evidence. By Order No. P-7-07, the Commission amended the Regulatory Timetable for the review of the Application to provide for a written hearing and established the current rates as interim effective January 1, 2008.

4.0 JURISDICTION

4.1 Common Carrier

The Company is of the opinion that TMJ is not a common carrier for the purposes of the *UCA*. In addition, TMJ stated that it is not aware of any order declaring it to be a common carrier. Since the term “common carrier” is not defined in the *Act*, TMJ considers the applicability of this term to TMJ is subject to the interpretation of the common law definition. The Company submits that TMJ is a common carrier at common law (Exhibit B-5, Commission IR 36.1).

Although TMJ has not been declared a common carrier for the purposes of the *UCA*, the Application for the adjustment of tolls is pursuant to Section 44 of the *Act* which applies to common carriers (Exhibit B-1, Letter, p. 1). Since 1997, toll applications by TMJ and its predecessor companies have been decided pursuant to Section 44 of the *Act* (Order No. P-3-98). The Company’s July 23, 2007 submission also states that the Commission has jurisdiction in respect of suspensions of, or delays in resumption of, service (without abandonment) by virtue of Section 42 of the *Act*, which obligates common carriers to receive, transport and deliver all oil subject to exceptions or conditions approved by the Commission (Exhibit B-4, Order No. P-3-07 Submission, p. 2). In their submissions regarding the jurisdiction of the Commission to review a potential pipeline abandonment application by TMJ, both Chevron and VAFFC took the position that TMJ is a common carrier (Exhibit C1-2, p. 1; Exhibit C2-2, p. 1).

Given the Company’s position that TMJ is a common carrier at common law and the submission of the current Application and previous toll applications under Section 44 of the *Act* and TMJ’s acknowledgement of the Commission’s jurisdiction under Section 42 of the *Act*, the Commission concurs with the Chevron and VAFFC view that TMJ is common carrier. **The functions that TMJ performs are consistent with those of common carriers and the Commission concludes that TMJ is a common carrier under the *Act*.**

4.2 Abandonment

In accordance with Order No. P-3-07, the Parties made submissions on the jurisdiction of the Commission to review a potential pipeline abandonment application by TMJ pursuant to Section 41 of the *UCA* or under Part 7 of the *Act*. The Company's July 23, 2007 submission stated that TMJ operates under Section 36 of the *Act* pursuant to leave obtained from the Oil and Gas Commission ("OGC") and that Section 9 of the *Act* expressly confers jurisdiction over abandonment on the OGC (Exhibit B-4, Order No. P-3-07 Submission, pp. 1, 3). TMJ also takes the position that the Commission has no jurisdiction over the Company under Section 41 of the *UCA*, since Section 41 of the *UCA* only applies to "public utilities" and TMJ is not a "public utility" (Exhibit B-4, Order No. P-3-07 Submission, p. 1). TMJ is also of the view that the Commission's jurisdiction under Section 42 of the *Act* is not brought into play because the Company is not seeking to suspend service temporarily (Exhibit B-4, Order No. P-3-07 Submission, p. 8).

Chevron considers the TMJ Pipeline a company pipeline within the meaning of the *Act* and a common carrier within the meaning of the *UCA*. As a result, Chevron is of the view that the TMJ Pipeline is subject to regulation by the OGC with respect to operation and safety, and regulation by the Commission with respect to tolls and tariffs. Chevron also submits that both the OGC and the Commission must acquiesce before a common carrier oil pipeline can cease to operate (Exhibit C1-2, Order No. P-3-07 Submission, p. 1). Given that the Company is a common carrier, Chevron is of the opinion that TMJ is in the same position as a public utility and subject to Section 41 of the *UCA*. In addition, Chevron states that the Commission's jurisdiction is further confirmed by Sections 42 and 43 in Part 7 of the *Act* (Exhibit C1-2, Order No. P-3-07 Submission, p. 2).

VAFFC is of the view that, pursuant to Section 9 of the *Act*, the Company must obtain leave of the OGC before it may abandon operation of the Jet Fuel System. If the Company, pursuant to Section 9 of the *Act*, seeks approval from the OGC to abandon the TMJ Pipeline, VAFFC takes the position that the Company must also apply to the Commission for an exception pursuant to Section 42 of the *Act* to be relieved of its duty as a common carrier (Exhibit C2-2, Order No. P-3-07 Submission, p. 1). VAFFC states that the *Act* contains no explicit requirement to obtain Commission leave to abandon the operation of a pipeline, but the requirement arises by necessary implication from Part 7, Section 42 of the *Act*. Part 7, Sections 42 and 43 of the *Act* impose explicit positive duties on a common carrier and authorize the Commission to regulate the operation of a common carrier (Exhibit C2-2, Order No. P-3-07 Submission, p. 2). VAFFC also considers that Section 41 of the *UCA* does not apply to TMJ, since TMJ is not a public utility as that term is defined under the *UCA* (Exhibit C2-2, Order No. P-3-07 Submission, p. 3).

The Commission accepts that TMJ is not a “public utility” as defined by the *UCA*; therefore, TMJ is not subject to Commission jurisdiction regarding the review of a potential pipeline abandonment under Section 41 of the *UCA*. Given that the Company is a common carrier pursuant to the *Act*, TMJ is subject to Commission jurisdiction under Part 7 of the *Act*. Section 42 of the *Act* states that subject to exceptions the Commission approves, a common carrier must provide service for all oil offered for transportation by its company pipeline. The Commission considers that this requirement applies in the event the common carrier wishes to permanently terminate service, as well as temporarily suspend service. Furthermore, Section 43 of the *Act* provides that the Commission may require a common carrier to provide adequate and suitable facilities to provide service. **The Commission concurs with VAFFC’s position that TMJ must obtain Commission approval to abandon the operation of the TMJ Pipeline due to the positive duties on a common carrier under Sections 42 and 43 of the *Act*.**

5.0 ACCELERATED DEPRECIATION

TMJ requests approval to depreciate the Jet Fuel System over its proposed five-year economic life from 2008 - 2012. The Company considers the economic life of the TMJ Pipeline to be five years based on three factors:

1. VAFFC’s fuel strategy set out in the YVR Master Plan 2027 Technical Report (“YVR Master Plan”);
2. The actions taken by VAFFC to implement one of the three short-listed fuel supply options identified in the YVR Master Plan that will result in the bypass of the TMJ Pipeline; and
3. The Company’s assessment (with the assistance of experts) of the competitive advantage that would be enjoyed by the barging bypass option relative to the TMJ Pipeline.

(Exhibit B-1, pp. 5-9)

5.1 VAFFC Fuel Strategy

The YVR Master Plan forecasts significant growth in VAFFC jet fuel usage in the next 20 years and it is expected that pipeline capacity and jet fuel storage will be exceeded in or around 2010 (Exhibit B-1, p. 6). TMJ states that KMC retained the services of BMB Fuel Consulting Services Inc. (“BMB Fuel”) to assess the YVR Master Plan fuel forecast. The BMB Fuel high-case forecast also indicated additional jet fuel supplies would be required by 2010. The YVR Master Plan also noted VAFFC’s concerns regarding the reliability of the Company’s single pipeline supplying the majority of the fuel to YVR (Exhibit B-1, p. 6). In the YVR Master Plan, VAFFC short-listed three options to address the forecast usage and reliability concerns:

- Option 1 - Increase pipeline capacity by replacing or twinning the existing TMJ Pipeline (“Twinning”);
- Option 2 - Deliver aviation fuel directly to Sea Island by ocean tanker or barge;
- Option 3 - Identify a location on the main arm of the Fraser River for delivery by tanker or barge from US west coast refineries (e.g. BP’s Cherry Point operation in Washington State) to an on-site VAFFC tank facility with a connecting VAFFC pipeline system to YVR (“Barging”).

TMJ takes the position that two of the three options will result in the bypass of the Jet Fuel System (Exhibit B-1, p. 7). Regarding the impact of a VAFFC barge facility on the price Chevron charges for jet fuel, TMJ is of the opinion that Chevron would have a choice of either discounting its product or shutting down production of that product (Exhibit B-5, Commission IR 11.2).

Chevron states that jet fuel is a necessary by-product of the crude oil stream as refined by the Chevron Refinery. Furthermore, Chevron submits that the Chevron Refinery will continue to operate and jet fuel will continue to be produced as long as the overall slate of products from the crude oil stream can be sold profitably (Exhibit C1-4, Chevron Evidence – R. Innis, Q. 11). Regarding the impact of TMJ pipeline tolls, Chevron notes that the tolls do not impact Chevron’s ability to sell jet fuel. The TMJ tolls impact Chevron’s margin on the sale of jet fuel to airlines at YVR (Exhibit C1-6, Commission IR 9.3). Chevron submits that it may discount the price of its jet fuel in order to meet the prevailing market price for jet fuel (Chevron Submission, p. 19, para. 42). Furthermore, Chevron is also of the view that the vast majority of the refinery’s jet fuel output will continue to be purchased by airline customers at YVR. Therefore, Chevron will continue to take the same amount of service on the TMJ Pipeline for so long as the Chevron Refinery remains operational (Exhibit C1-6, Commission IR 9.1).

VAFFC states that the Airlines will continue to take service or buy supply from suppliers who use the TMJ Pipeline as long as that supply option remains competitive (Exhibit C2-6, Commission IR 6.4). VAFFC is of the opinion that a competitor would not make the TMJ Pipeline’s monopoly service redundant; an alternative to the Jet Fuel System would merely provide a choice to shippers. Furthermore, VAFFC states that it is not in the public interest to protect TMJ from competitive risk (VAFFC Submission, p. 1). Because the issue of access to supply sources is not addressed, VAFFC is of the opinion that the ability of twinning or tripling of the Jet Fuel System to meet the future needs of the Airlines at YVR is difficult to determine. VAFFC also submits that the twinning or tripling the TMJ Pipeline in addition to a marine off-loading facility would provide greater security of supply than the marine off-loading facility alone (Exhibit C2-6, Commission IR 3.4).

Given that jet fuel is a necessary by-product of the crude oil stream as refined by the Chevron Refinery and Chevron's statement that it may discount the price of its jet fuel in order to meet the prevailing market price, the Commission accepts that Chevron will continue to take the same amount of service on the TMJ Pipeline for so long as the Chevron Refinery remains operational.

5.2 Actions of the VAFFC

The Company states that in the past TMJ, KMC and the shippers on Jet Fuel System (the "Shippers") discussed the cost of alternatives to increase the throughput on the TMJ Pipeline. Since the discussions, KMC has not been approached regarding Twinning (Exhibit B-1, p. 8). On or about March 2007, VAFFC acquired a property located at 15040 Williams Road in Richmond. TMJ is of the opinion that the purchase of the Williams Road property suggests VAFFC is moving ahead with Barging. The Company also takes the position that Barging will result in the bypass and redundancy of the Jet Fuel System (Exhibit B-1, pp. 8-9).

VAFFC submits the Commission should dismiss this Application as premature, with leave to TMJ to reapply when the future of the Jet Fuel System and the other options available to VAFFC are better understood (Exhibit C2-4, VAFFC Evidence, p. 1). Regarding the acquisition of property located at 15040 Williams Road in Richmond, VAFFC states that when the Fraser River site became available for sale it took the opportunity to buy the land to keep its options open for future planning (Exhibit C2-6, Commission IR 2.5). VAFFC notes that it is considering all reasonable options to ensure investment in the optimal long-term solution, since each of the three options involves a significant investment in fuel delivery infrastructure. In addition, VAFFC states that the investigation and planning are still in the preliminary stages and that VAFFC has not determined a final option (Exhibit C2-4, VAFFC Evidence, p. 6).

Significant regulatory approvals are required before either of the alternatives to the TMJ Pipeline [Twinning] can proceed and TMJ has advised VAFFC that it will oppose any alternative to the Jet Fuel System. VAFFC is of the opinion that TMJ's opposition may frustrate either of the non-TMJ Pipeline options (VAFFC Submission, p. 4). In response to Commission IR 4.6, VAFFC states that it expects it will progress to a defined option within 6 to 12 months. The timetable to complete construction of the final option would depend on the option selected and VAFFC expects that five years is a reasonable minimum time frame for the construction of a marine offloading facility and pipeline (Exhibit C2-6, Commission IR 4.6).

The Commission accepts the VAFFC statement that when the Fraser River site became available for sale it took the opportunity to buy the property located at 15040 Williams Road, Richmond to keep its options open for future planning. Given that VAFFC states that it has not determined a final option, the Commission is not persuaded that the VAFFC has made a firm and final decision to proceed with the Barging option.

5.3 TMJ Analysis of Option 3 - Barging

The Company contends that there appear to be three principle reasons why Barging would be preferable to VAFFC, as compared to Twinning:

1. The assessment of BMB Fuel, that once built the barging solution could meet all of the existing and forecasted fuel requirements at YVR;
2. The barging option would achieve the lowest delivered cost of fuel to VAFFC;
3. Uncertainty regarding the continuity of supply Chevron, the sole producer of jet fuel on the Canadian West Coast.

(Exhibit B-1, pp. 9-12)

5.3.1 Barge option can meet all jet fuel requirements of VAFFC

VAFFC is of the opinion that if the growth trend for jet fuel continues as currently expected, the combined delivery capacity of the TMJ Pipeline and the current daily number of tanker trucks will be insufficient meet the demand by 2010 (Exhibit C2-4, VAFFC Evidence, p. 3). The Application states that BMB Fuel has estimated one 25,000 BBL barge per day from one source, or multiple 25,000 BBL barges several times per week from multiple sources, would be sufficient to supply all YVR fuel requirements through to 2027. The Company estimates, based on its own experience, that the tanker/barging solution could be implemented by 2012 (Exhibit B-1, p. 9).

The Chevron Refinery is already producing its maximum jet fuel output of approximately 10,000 barrels a day and could not produce more jet fuel without being expanded, which is not planned (Exhibit C1-6, Commission IR 9.2 and 9.4). VAFFC submits that in order to meet future jet fuel demand, VAFFC identified three options, one of which would significantly expand the role of TMJ in supplying YVR well into the future, but none of the

options would in itself render the TMJ pipeline obsolete (VAFFC Submission, p. 6). VAFFC states that it does not plan to “bypass the Jet Fuel System” and that VAFFC fuel strategy simply aims to meet growing needs for jet fuel at YVR (VAFFC Submission, p. 6).

The Commission accepts that Barging would be sufficient to supply all YVR fuel requirements through to 2027, but it also accepts VAFFC’s statement that it does not plan to “bypass the Jet Fuel System”.

5.3.2 Lower delivered cost of jet fuel

TMJ states that Barging would provide the capability to access other suppliers in significant volumes, from regional and international jet fuel commodity markets. BMB Fuel notes that a 5 percent commodity price differential exists between Asia and Canada, a sufficiently large commodity price differential to accommodate the increased delivery costs of open ocean shipping (Exhibit B-1, p. 10). Regarding the analysis of the VAFFC fuel delivery options, BMB Fuel states that it was instructed by KMC to assume that VAFFC’s preferred option was Barging (Exhibit B-2, BMB Fuel Report, p. 15). TMJ is of the view that the commodity price differential favouring U.S. and global imports represents an incentive for VAFFC to bypass the Jet Fuel System with barged shipments of jet fuel from elsewhere. Furthermore, TMJ is also of the view that VAFFC could continue to access fuel from the Chevron Refinery by barge and thus preserving this existing supply source (Exhibit B-1, pp. 10-11).

Regarding the BMB Fuel analysis of the proposed new Fraser River jet fuel terminal, Chevron states that an individual from BMB Fuel did contact Mr. Robert Innis, Manager – Supply Division, Chevron once prior to the Application being filed. Chevron submits that at no time was it suggested to Chevron that BMB Fuel would rely on Mr. Innis’ comments in any way, or that his comments would be used to support an application to the Commission (Exhibit C1-4, Chevron Evidence – R. Innis, Q. 17). Furthermore, Mr. Innis states that his comments to BMB Fuel were based on speculation and should not have been used as the basis for any conclusions (Exhibit C1-4, Chevron Evidence – R. Innis, Q. 18).

In response to Commission IR 16.5, TMJ states that the delivered cost for barge and sea-tanker options excludes an allocation of administrative overhead plus transshipment (including the cost of offloading the jet fuel at a new Fraser River barge/tanker facility, storage at a dockside fuel farm and transportation by a new pipeline to the YVR fuel farm). BMB Fuel estimates that the cost to construct the barge facility could be approximately \$200 million Canadian dollars. Regarding the annual cost of operating such a facility, BMB Fuel estimates a cost of

approximately \$4 million Canadian dollars (excluding non-cash depreciation). This is equivalent to two percent of the upfront investment (Exhibit B-5, Commission IR 16.5).

With respect to TMJ's assumption that VAFFC could access jet fuel from the Chevron Refinery by barge or other mode of transportation, Chevron states that facilities at the Chevron dock are heavily utilized for other shipping commitments and would have to be improved in order to ship an additional 10,000 barrels a day. In 2005 Chevron last estimated the cost of upgrading its dock to be approximately \$6 million (Exhibit C1-6, Commission IR 1.2). A shipment of 10,000 barrels of jet fuel is equivalent to about 50 tanker truck loads and Chevron understands that YVR does not have facilities capable of receiving an additional 50 truck loads of jet fuel per day. Chevron submits that there is no rail line to YVR and transporting fuel by truck or rail is far more expensive than transporting it by pipeline (Exhibit C1-6, Commission IR 6.1). Chevron is of the opinion that it would continue to use the TMJ pipeline even if it was the only shipper and its tolls increased substantially (Exhibit C1-6, Commission IR 2.3). Furthermore, VAFFC states that Chevron's analysis of BMB Fuel's calculations show that the cost of barging for Chevron is approximately three times as expensive as using the TMJ Pipeline and more than twice as expensive as a twinned TMJ Pipeline (VAFFC Submission, p. 5, para. 3.12).

Given that that BMB Fuel was instructed by KMC to assume that VAFFC's preferred option was Barging and that the delivered cost for barge and sea-tanker options excludes overheads, transshipment, the cost of operating the barge facility and a return to the owners of the barge facility, the Commission is not persuaded that the commodity price differential favouring imports represents an incentive for VAFFC to bypass the Jet Fuel System with barged shipments of jet fuel. The Commission accepts that Chevron would continue to use the TMJ Pipeline even if it was the only shipper and tolls increased substantially.

5.3.3 Uncertainty regarding Chevron

Chevron and Air Canada account for 90 to 95 percent of the volume on the TMJ Pipeline (Chevron Submission, p. 3). TMJ states that with the completion of the barge system, Chevron will be subject to greater competition from offshore and out of country suppliers. The Company is also of the opinion that Air Canada will be comparing the costs of barging to the Westridge terminal plus the Jet Fuel System as opposed to barging directly to the VAFFC System. Given that Air Canada accounts for approximately half the Jet Fuel System volume, TMJ concludes that the pipeline toll is likely to double once VAFFC commences Barging. TMJ states that the cost of transporting over the Jet Fuel System is slightly in excess of barging. If the toll is doubled TMJ is of the opinion that obsolescence could only be avoided if Chevron agrees to enter into a long-term contract at double the

existing toll. Faced with increased commodity competition and an increased pipeline toll, the Company concludes that Chevron will not enter into long-term contract and the Jet Fuel System will be redundant (Exhibit B-1, p. 12).

Chevron is of the opinion that it will continue to take the same amount of service on the TMJ Pipeline for so long as the Chevron Refinery remains operational, and Chevron has no plans to shut down the Chevron Refinery (Exhibit C1-6, Commission IR 9.1). Chevron submits that commodity price discounts may be available to customers in such circumstances if an alternative transportation mode were to be developed (e.g., a VAFFC barge facility). Furthermore, Chevron states that it would continue to produce jet fuel (a necessary by-product of the light crude oil stream refined at the Chevron Refinery) and sell the jet fuel at the market price (Chevron Submission, p. 19, para. 42). Chevron states that it would continue to use the TMJ Pipeline even if the tolls were increased to reflect a 10-year asset life. Chevron takes the position that shipping jet fuel through the TMJ Pipeline would still be economic and less risky compared to shipping jet fuel to YVR by barge or truck, even under TMJ's application for a five-year asset life (Exhibit C1-6, Commission IR 2.3). In response to Commission IR 2.4, Chevron states that Chevron and TMJ have discussed the possibility of Chevron entering into a long-term take-or-pay commitment to use the TMJ Pipeline, but the parties have not been able to agree on mutually acceptable terms (Exhibit C1-6, Commission IR 2.4).

The Commission accepts that Chevron will continue to take the same amount of service on the TMJ Pipeline for so long as the Chevron Refinery remains operational.

6.0 ABANDONMENT COSTS (TERMINAL NEGATIVE SALVAGE)

The Company seeks Commission approval to set tolls from January 1, 2008 at a level that will allow TMJ to amortize abandonment costs (negative salvage) over the remaining economic life of the assets, rather than the physical life of the asset (Exhibit B-1, p. 3). Based on the requirements of the OGC, the Company has estimated the total cost to be \$3.025 million for the abandonment of the TMJ Pipeline (Exhibit B-1, p. 14). TMJ states that abandonment costs are included in the toll as a depreciation expense. Under the Income Tax Act, terminal negative salvage ("TNS") elements of tolls are treated as income and taxable to the pipeline owners. Since no deduction is allowable in respect of TNS costs until the expenses are incurred, costs are not matched to the related toll revenues. As a result, the spending associated with abandonment will be incurred after the pipeline revenue has substantially been received. The salvage costs in the Application have been grossed up by the taxable amount to accommodate for the current tax treatment (Exhibit B-1, p. 15).

6.1 Industry Proposal

The Company states that the Pipeline Industry (the “Industry”) planned to submit a proposal in the fall of 2007 to the Federal Government to permit Canadian transmission pipeline companies, governed by an independent regulator, to record a deduction from revenue regarding the TNS component of the pipeline tolls (Exhibit B-1, p. 15; Exhibit B-5, Commission IR 8.1). The proposal being developed anticipates that each pipeline facing TNS would create a trust account to accumulate net salvage proceeds. The TNS component of the toll would be deductible if contributed to a qualifying prescribed trust and would be deductible in the year contributed to the trust and not be subject to tax on its investment income on a current basis. The contributions would be limited to the TNS costs allowed for recovery in tolls approved by an independent regulator. The Company proposes to establish a trust fund consistent with the Industry planned recommendation. In the event that the Federal Government acts as requested, the Company would bring another application forward to the Commission to adjust the tolls to reflect lower tax cost (Exhibit B-1, p. 15).

VAFFC submits that the application to deal with TNS is premature given uncertainties surrounding the actual salvage costs and a tax regime which exacerbates the rate impacts of negative salvage. Furthermore, VAFFC is of the opinion that the TMJ Pipeline will continue to operate for many years to come (VAFFC Submission, p. 19). Since abandonment costs are not deductible for income tax purposes until actually incurred, Chevron is of the view that TMJ’s proposed treatment of abandonment costs will increase income tax expenses. Chevron also submits that TMJ’s proposal to capitalize the abandonment costs as part of rate base will increase Shippers’ rates (Chevron Submission, p. 22).

Given the uncertainties regarding the treatment of TNS for income tax purposes and the impact on tolls, the Commission considers the establishment of a trust fund consistent with the industry-planned recommendation premature.

6.2 Depreciation Study

The Company retained the services of Gannett Fleming, Inc. (“Gannett Fleming”) to conduct a depreciation study (“Depreciation Study”) related to the Jet Fuel System (Exhibit B-1, p. 16 and Appendix F, p. 1).

TMJ instructed Gannett Fleming to use a five year remaining life for the pipeline assets and Gannett Fleming developed depreciation rates that will “result in the recovery of the un-depreciated service value by December 31, 2012” (Chevron Submission, p. 18, para. 38).

In response to Chevron IR 12.5, TMJ confirmed that Gannett Fleming did not form a view as to the economic life of the Jet Fuel System (Exhibit B-9, Chevron IR 12.5). Since Gannett Fleming makes no recommendation with respect to the appropriate depreciation rates, Chevron does not consider the report relevant to the determination of the useful life of the pipeline. In Chevron's opinion there is no depreciation study on the record of this proceeding. There is just a calculation of the depreciation rates necessary to recover un-depreciated value over five years (Chevron Submission, p. 18, para. 39).

Given that Gannett Fleming did not form a view as to the economic life of the Jet Fuel System, the Commission is not persuaded that the amortization of the un-depreciated service value over five years is appropriate.

7.0 REGULATORY COSTS

The Application includes regulatory rate case costs of \$140,000 (amortized over the proposed five-year economic life of the pipeline) relating to the use of consultants for this process (Exhibit B-1, Letter, p. 2). TMJ is requesting the establishment of a new deferral account for the Rate Case costs. TMJ believed that a negotiated settlement would be achieved during the preliminary stages of this hearing, but this did not occur. Therefore, TMJ revised its budget for the completion of the proceeding to \$280,000 (Exhibit B-5, Commission IR 27. 1, 27.2).

The Commission approves the establishment of a non-rate base deferral account for the Rate Case costs to be amortized over five years. TMJ is to submit the cost to be included in the Rate Case deferral account to the Commission for review and approval.

8.0 COMMISSION DETERMINATION

The TMJ Application requests Commission approval to recover depreciation of the Jet Fuel System and abandonment costs over the proposed five-year economic life of the assets. TMJ is of the view that VAFFC is moving ahead with the Barging option and that the competitive advantage of Barging relative to the Jet Fuel System that will result in the bypass of the TMJ Pipeline. Given that jet fuel is a necessary by-product of the crude oil stream as refined by the Chevron Refinery, Chevron's willingness to use the TMJ Pipeline even if tolls increase substantially, and that VAFFC has not made a firm and final decision to proceed with the Barging option, **the Commission denies the TMJ request to recover depreciation of the Jet Fuel System and abandonment costs over the proposed five-year economic life of the assets.**