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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** P-5-08

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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

April 10, 2008

ORDER

WHEREAS:

- A. On June 5, 2007 Trans Mountain (Jet Fuel) Inc. ("TMJ", "Company") applied (the "Application") 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"). In the Application, 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 Intervenor 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. By Order No. P-3-08 and the Reasons for Decision, the Commission did not approve the Application and determined that TMJ is a common carrier for the purposes of Part 7 of the Pipeline Act. The Commission also denied TMJ's request to recover depreciation of the Jet Fuel System over the proposed five years. The Commission also approved TMJ establishing a non-rate base deferral account for Rate Cost with the submission of costs subject to the Commission's review and approval. The Order further required TMJ to recalculate the 2008 rates and re-file the rate schedules in accordance with the Reasons for Decision and Order No. P-3-08; and
- Q. On March 14, 2008, TMJ submitted its 2008 Tariff Filing as required by Order No. P-3-08 (the "Filing"); and
- R. On April 2, 2008, TMJ informed the Commission that the billing of \$7,689.81 for Commission Costs related to the Application (the "Costs") was not an anticipated cost in the Filing and not included in the forecast for hearing costs. TMJ made the request to the Commission to include the Costs in the allowed rate hearing costs; and
- S. The Commission has reviewed the Filing and considers that additional adjustments to the toll calculation are required.

NOW THEREFORE the Commission orders the following:

1. The toll recalculation is accepted as filed subject to Directives 2 to 5 inclusive.
2. The hearing costs that are allowed for recovery in the 2008 tolls are reduced to \$147,689.81.
3. The income tax rates used in the 2008 toll calculation are to include the announced one percent federal and one percent provincial income tax reductions that take effect on January 1, 2008 and July 1, 2008 respectively as stated in Table 3.4 in the Economic Leadership section of the February 26, 2008 "The Budget Plan 2008" from the Department of Finance and in Table 3.1 in the Tax Measures section of the February 19, 2008 "Budget and Fiscal Plan 2008/09 – 2010/11" from the BC Ministry of Finance. In the event that the enabling legislation is not passed, the difference in tax rates is to be recorded in a short-term interest bearing deferral account for recovery in next year's tolls.
4. TMJ is to file recalculated tolls and tariff pages that reflect these revisions in its May 1, 2008 tolls.

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5. TMJ is to provide a copy of this order to the shippers on the Jet Fuel System.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of April 2008.

BY ORDER

Original signed by

L.F. Kelsey
Commissioner

