



ORDER NUMBER
P-13-19

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Kinder Morgan Canada (Jet Fuel) Inc.
2019 Tariff Filing Application

BEFORE:

B. A. Magnan, Panel Chair
T. A. Loski, Commissioner
C. M. Brewer, Commissioner

on December 20, 2019

ORDER

WHEREAS:

- A. On November 29, 2018, Kinder Morgan Canada (Jet Fuel) Inc. (KMJF) filed with the British Columbia Utilities Commission (BCUC) an application for approval of Tariff No. 40, which extends the existing terms of service and tolls payable for the transportation of turbine fuel to Vancouver International Airport and the Burnaby Terminal (Application), effective January 1, 2019;
- B. By Order P-1-18 dated December 14, 2018, the BCUC approved, on an interim and refundable basis, KMJF's Application effective January 1, 2019, to the earlier of December 31, 2019, or the parties reaching a mutual agreement;
- C. By April 24, 2019, the Vancouver Airport Fuel Facilities Corporation (VAFFC) and Parkland Refining (BC) Ltd. (Parkland) registered as interveners in the proceeding;
- D. By letter dated May 16, 2019, VAFFC submitted a request to the BCUC to reverse the KMJF interim tariff established in Order P-1-18 and return to the existing toll in place at the time of the Application;
- E. On June 28, 2019, the BCUC issued Order P-6-19 with reasons for decision, denying VAFFC's request that the BCUC reverse its approval of KMJF's interim tariff approved by Order P-1-18;
- F. On December 2, 2019, KMJF filed an application for the interim tariff approved by Orders P-1-18 and P-6-19, to remain in effect until the earlier of December 31, 2020, the parties reach a mutual agreement or by further order from the BCUC;
- G. KMJF requests the BCUC approval of the interim tariff, which calculates the Annual Revenues and Gather Line Fee based on the existing toll methodology approved by the BCUC in Order P-5-09, issued

December 16, 2009. The existing toll methodology fixes Annual Revenues based on an annual escalation of 2.5 percent per year;

- H. By Order P-12-19 dated December 5, 2019, the BCUC amended the regulatory timetable to include, among other things, submissions on the proposed interim tariff extension from registered interveners and KMJF's response to intervener submissions;
- I. By December 9, 2019, Parkland and VAFFC provided submissions on the proposed interim tariff extension;
- J. On December 12, 2019, KMJF filed their response to intervener on the proposed interim tariff extension; and
- K. The BCUC has reviewed the evidence filed by KMJF and VAFFC regarding the interim tariff and makes the following determinations.

NOW THEREFORE pursuant to section 90 of the *Utilities Commission Act* and for the reasons attached as Appendix A to this order, the BCUC orders as follows:

1. KMJF's request to set an interim toll effective as of January 1, 2020 is approved, however KMJF's request to calculate the interim toll based on the existing toll methodology, is denied.
2. The interim toll shall be set at an amount equal to the interim toll approved by Order P-1-18 and P-6-19. This interim toll shall remain in effect until the earlier of i) December 31, 2020; ii) the date upon which parties reach a mutual agreement; or iii) a further order of the BCUC. The Gathering Line Fee (\$/m³) is set at \$1.318.
3. Any variance between the interim toll and a permanent toll as determined by the BCUC following final disposition of the Application may be subject to refund/recovery, with interest at the average prime rate of KMJF's principal bank for its most recent year, in the manner as set out by a BCUC order that establishes a permanent toll.

DATED at the City of Vancouver, in the Province of British Columbia, this 20th day of December 2019.

BY ORDER

Original signed by:

B. A. Magnan
Commissioner

Attachment

Kinder Morgan Canada (Jet Fuel) Inc.
2019 Tariff Filing Application

REASONS FOR DECISION

1.0 Introduction

On November 29, 2018, Kinder Morgan Canada (Jet Fuel) Inc. (KMJF) filed with the British Columbia Utilities Commission (BCUC) pursuant to section 65 of the *Utilities Commission Act* (UCA), the proposed Tariff No. 40 which governs the terms of service and tolls payable for the transportation of turbine fuel to the Vancouver International Airport and Burnaby Terminal (Application) via the Jet Fuel Line.¹ Pending a final decision on the Application, KMJF sought interim approval of the tariff (Interim Tariff), effective January 1, 2019.²

By Order P-1-18, pursuant to sections 65 and 89 of the UCA, the BCUC approved KMJF's Application on an interim and refundable basis.³ The interim tariff is based on the existing toll methodology established by Order P-5-09, that fixes annual revenues on an annual escalation of 2.5 percent per year.⁴ The interim tariff is effective January 1, 2019, to the earlier of December 31, 2019, or the parties reaching a mutual agreement.

By Order P-6-19 with reasons for decision, the BCUC denied Vancouver Airport Fuel Facilities Corporation's request that the BCUC reverse its approval of KMJF's interim tariff approved by Order P-1-18.

On August 23, 2019, KMJF filed an Amended Revenue Requirement and Final Tolls Application for 2019-2021, which was required as a result of an updated abandonment cost estimate and forecast 2019 rate base (Final Tolls Application).

By Orders P-11-19 and P-12-19, the BCUC amended the regulatory timetable for review of the Final Tolls Application which extends beyond December 31, 2019.

On December 2, 2019, KMJF filed an application with the BCUC, pursuant to section 65 of the UCA, to permit the Interim Tariff approved by Orders P-1-18 and P-6-19 to remain in effect until the earlier of December 31, 2020, the parties reaching a mutual agreement or by further order of the BCUC (2020 Interim Tariff Application). KMJF requests BCUC approval of the interim tariff, which calculates the Annual Revenues and Gathering Line Fee based on the existing toll methodology approved by the BCUC in Order P-5-09, issued December 16, 2009. The existing toll methodology fixes Annual Revenues based on an annual escalation of 2.5 percent per year.

2.0 KMJF's 2020 Interim Tariff Application

In the 2020 Interim Tariff Application, KMJF submits that an extension of the Interim Tariff is reasonable as it implements the existing toll methodology (which fixes annual revenues based on an annual escalation of 2.5 percent per year) as approved by the BCUC in Order P-5-09 and is subject to true-up, including applicable

¹ Exhibit B-1, p. 1.

² Ibid.

³ Exhibit A-2.

⁴ Trans Mountain (Jet Fuel) Inc., An Application for Approval of 2010 Tariff Filing and Toll Setting Agreement for the term 2010 - 2018, Order P-5-09 dated December 16, 2009.

interest, upon the BCUC’s determination of the Final Tolls Application.⁵ KMJF states that since 2009, tolls on the Jet Fuel Line have been based on a negotiated settlement and have been continued on an interim basis by the BCUC.

KMJF further states that the proposed Interim Tariff seeks to “*maintain*” the manner in which the 2019 interim rates were derived by similarly requesting a yearly 2.5% escalation of rates⁶ and that the 2020 Interim Tariff Application proposes rates that are based on a lower revenue requirement than those applied for in the Final Tolls Application.

YEAR	Proposed Interim Tariff ⁶	Application ⁷ applied for Revenue Requirement
2019	\$7,111,026	\$7,150,000
2020	\$7,288,801	\$7,293,000

KMJF submits that continuation of the interim tariff is consistent with earlier BCUC decisions and allows for regulatory efficiency in the current matter. KMJF argues that varying the interim tariff established in Order P-1-18, as requested by VAFFC, would “add unnecessary regulatory and administrative burden” on all parties, including the BCUC and with “minimal to no benefit to shippers.”⁸

3.0 Positions of the Interveners

3.1 Parkland

Parkland submits that while KMJF frames their request as “an extension of the Interim Tariff,” Parkland understands that KMJF is seeking an increase its Annual Revenues and Gathering Line fee based on an annual escalation of 2.5 percent per year. Parkland is opposed to any increase.⁹

Parkland states that there is no evidence that demonstrates the need for an interim increase in revenues or fee; nor, is there any public interest component identified by KMJF that would support such an increase. Further, Parkland submits that KMJF reference to the expired negotiated agreement between KMJF and the shippers from 2009 provides no justification for KMJF’s request to increase its Annual Revenues and Gathering Line Fee as this agreement has long since expired.¹⁰

With the settlement no longer in effect, Parkland asserts that KMJF is obligated to provide the financial evidence to demonstrate the need for the increase, which it has not done. Parkland references the BCUC’s decision in Order G-248-18, regarding Creative Energy Vancouver Platforms Inc.’s Application for 2019 Interim Rates for Core Steam and Northeast False Creek Operations,¹¹ and offers this as an example of a prevailing principle of maintaining the status quo:

⁵ Exhibit B-23, p. 2.

⁶ Exhibit B-26, p. 2. Emphasis added.

⁷ Ibid.

⁸ Exhibit B-23, p. 2.

⁹ Exhibit C1-3, p. 1.

¹⁰ Exhibit C1-3, p. 1.

¹¹ Creative Energy Vancouver Platforms Inc., Application for 2019 Interim Rates for Core Steam and Northeast False Creek Operations, Order G-248-18 dated December 20, 2018.

An interim rate application...should generally seek to maintain the status quo unless the utility is able to provide compelling evidence for changes to be made.¹²

Further, Parkland states the BCUC should maintain the status quo and maintain the current Annual Revenues and Gathering Line Fee until the earlier of a negotiated agreement between the parties or the BCUC's determination of the Final Tolls Application.¹³

Parkland states that there is no "existing toll methodology," instead, a toll methodology was established for a limited time period pursuant to a settlement agreement. The shippers have clearly stated they do not support continuation of this methodology which provides for automatic increases without justification.¹⁴ Parkland includes a reference to their previous submission which applies to the proposed interim tariff as per the 2020 Interim Tariff Application :

The Application and evidentiary record currently before the Commission provides no meaningful justification for the proposed increase in tolls and is seriously deficient in providing the information that would enable the Commission to evaluate whether the proposed tolls are just and reasonable.¹⁵

Parkland states that KMJF has not provided that evidence and has therefore not justified an increase to the existing interim toll.¹⁶

3.2 VAFFC

VAFFC states that it opposes KMJF's request for approval of an interim toll for 2020 that includes a 2.5% escalation over the interim toll the BCUC approved for 2019. VAFFC requests that the BCUC hold the 2020 interim toll at the same amount as the 2019 interim toll¹⁷.

VAFFC states that the BCUC approved the 2019 interim toll in different circumstances than those under which the 2020 Interim Tariff Application has been filed. In 2018, the BCUC found the interim toll was warranted given that it was consistent with the existing toll methodology, based on the 2.5% escalation factor as approved by Order P-5-09, but VAFFC argues KMJF has filed its Final Tolls Application on a cost of service basis and therefore interim tolls using this methodology no longer make sense using a rejected methodology¹⁸.

VAFFC submits that the onus is on KMJF to provide supporting material for the record and that interim rates should not be increased unless KMJF provides "at least *prima facie* evidence both that the final toll is likely to be higher than the previous toll, and that a higher toll is necessary in the meantime. KMJF's request provides no such evidence."¹⁹

VAFFC further argues that unlike at the time of the approval of the 2019 interim toll, the BCUC has the benefit of seeing KMJF's Final Tolls Application and information request responses, which confirm a "fair and reasonable" 2 percent escalation factor is being sought and not the 2.5 percent escalation factor as requested for in the

¹² Ibid., p. 2.

¹³ Exhibit C1-3, p. 2.

¹⁴ Ibid.

¹⁵ Exhibit C1-1, pp.3-4.

¹⁶ Exhibit C1-3, p.2

¹⁷ Exhibit C2-11, p.1

¹⁸ Ibid.

¹⁹ Exhibit C2-11, p. 2.

interim toll. VAFFC submit that the interim toll is therefore inconsistent with KMJF's Final Tolls Application and would risk over-recovery²⁰.

VAFFC is unconvinced by KMJF's argument that the interim toll would allow for regulatory efficiency and denying KMJF's request would add unnecessary regulatory and administrative burden. VAFFC submits that the most efficient approach is to "freeze the interim toll as is, without the 2.5% increase KMJF is requesting."²¹

Further, VAFFC disagrees with KMJF's claim that to avoid overpaying tolls is of minimal to no benefit to shippers as the fact an overpayment could be refunded does not mean overpayment is of no consequence.²²

VAFFC states that in the present circumstances, the appropriate course of action is to hold the interim rate steady without increase until the dispute between KMJF and its shippers is resolved, whether by negotiation or BCUC order.²³

4.0 Panel Determination

Considering the factors outlined below and the evidence submitted in this proceeding, the Panel approves the setting of an interim tariff effective January 1, 2020. However, the Panel denies KMJF's request to calculate the interim tariff based on the existing toll methodology approved by the BCUC in Order P-5-09, issued December 16, 2009. The Panel directs that the 2020 interim tariff shall equal the 2019 interim tariff currently in effect, without escalation. The 2020 interim tariff shall be effective January 1, 2020 until the earlier of December 31, 2020, the parties reach a mutual agreement or by further order of the BCUC.

The Panel notes that while shippers and VAFFC were opposed to KMJF's proposal to set 2020 interim rates by escalating the existing 2019 interim tariff in accordance with the toll methodology approved by P-5-09, no party was opposed to setting the 2020 interim tariff at an amount equal to the existing 2019 interim tariff. The Panel agrees with VAFFC that by extending the 2019 interim tariff into the next year would be a more regulatory efficient way to set the 2020 interim tariff and does not accept KMJF's argument that maintaining these tariffs would be regulatory and administratively burdensome. Further, the Panel acknowledges that any variance between the interim toll and the arrived at permanent toll is subject to refund or recovery, with interest payable at the average prime rate of KMJF's principal bank for its most recent year. The Panel is of the view that this will safeguard shippers and KMJF from any under or over recovery during the interim toll period. As such, the Panel is not convinced that escalating the 2020 interim tariff is necessary and finds that setting 2020 interim tolls at an amount equal to the 2019 interim tolls is both efficient and reasonable.

²⁰ Exhibit C2-11, p. 2.

²¹ Ibid.

²² Ibid.

²³ Exhibit C2-11, p. 3.