



**ORDER NUMBER**  
**P-2-20**

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 April 9, 2020

**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 established a public written submission process and a regulatory timetable to explore stakeholders' submissions or other potential issues and 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 Orders P-2-18, P-1-19, P-2-19, P-3-19A, P-4-19 and P-5-19, the regulatory timetable was amended to address submissions from KMJF and stakeholders regarding further regulatory process and extension of the regulatory timetable as established by Order P-1-18;
- D. By April 24, 2019, the Vancouver Airport Fuel Facilities Corporation (VAFFC) and Parkland Fuel Corporation (Parkland) registered as interveners in the proceeding;
- E. On September 10, 2019, VAFFC filed an application seeking further and better information request (IR) responses from KMJF (IR Application);
- F. By Orders P-8-19 and P-9-19, the BCUC amended the regulatory timetable to accommodate the IR Application;
- G. On November 19, 2019, the BCUC issued Order P-10-19 with accompanying Reasons for Decision, which directed KMJF to file further and better answers to specific IR and amended the regulatory timetable for review of the Application;

- H. By Orders P-11-19 and P-12-19, the BCUC further amended the regulatory timetable as established by Order P-10-19;
- I. By Letter dated December 19, 2019, VAFFC filed a request with the BCUC that the regulatory timetable be adjourned and for the BCUC to direct KMJF to file outstanding documents the BCUC had directed KMJF file in Order P-10-19 (Adjournment Request);
- J. By Letter dated December 23, 2019, KMJF filed a response to the Adjournment Request, advising that KMJF had provided all information and documents in its possession regarding the information requested by VAFFC;
- K. By January 3, 2020, Parkland and KMJF submitted responses to the Adjournment Request;
- L. In their submission dated January 2, 2020, KMJF informed the BCUC that Pembina Pipeline Corporation (Pembina) acquired Kinder Morgan Canada Ltd., including KMJF;
- M. On January 6, 2020, Pembina filed a letter with the BCUC to: (i) to provide notice of Pembina acquiring KMJF, including the Jet Fuel Line, and subsequently changing the name to PKM Canada (Jet Fuel) Inc. (PKMJF); (ii) request the BCUC deny VAFFC's request for further and better IR responses; and (iii) request the BCUC suspend the regulatory timetable for 60 days to provide PKMJF an opportunity to file additional materials or amend the Application;
- N. On January 8, 2020, VAFFC filed its reply to KMJF, PKMJF and Parkland's responses;
- O. On January 13, 2020, by Order P-1-20, the BCUC adjourned the proceeding for 60 days to provide PKMJF an opportunity to file additional materials or amend the Application;
- P. On March 12, 2020, PKMJF filed a letter submitting no amendments to the Application and requesting resumption of the proceeding. PKMJF also filed a response to the Adjournment Request advising that KMJF had provided all information and documents in its possession regarding the information requested by VAFFC;
- Q. On March 20, 2020, VAFFC filed a letter in response PKMJF's letter stating that PKMJF be directed to comply with BCUC directives in Order P-10-19 to file better IR responses and that the proceeding should only be resumed once the BCUC issues a decision on the Adjournment Request; and
- R. The BCUC has reviewed the IR Application, Adjournment Request and the parties' submissions and makes the following determinations.

**NOW THEREFORE** for reasons attached as Appendix B to this Order, the BCUC orders as follows:

- 1. PKMJF is directed to provide further and better answers to the IRs attached as Appendix B to this Order by Monday, April 27, 2020. Specifically, PKMJF must provide answers that are responsive to the items outlined in Table 1 of the Reasons attached.
- 2. The regulatory timetable for the review of the Application is amended as set out in Appendix A to this Order.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 9<sup>th</sup> day of April, 2020.

BY ORDER

*Original signed by:*

B. A. Magnan  
Commissioner

Attachments

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

**REGULATORY TIMETABLE**

Action	Date (2020)
PKMJF supplementary responses to VAFFC information request (IR)	Monday, April 27
BCUC IR No. 3 to PKMJF	Monday, May 11
Intervener IR No. 2 to PKMJF	Tuesday, May 19
PKMJF responses to BCUC IR No. 3 and Intervener IR No. 2	Tuesday, June 9
Intervener Evidence (if any)	Thursday, June 18
IRs on Intervener Evidence	Thursday, June 25
Intervener Response to IR on Intervener Evidence	Thursday, July 2
PKMJF Rebuttal Evidence	Thursday, July 9
IRs on Rebuttal Evidence	Thursday, July 30
PKMJF response to IR on Rebuttal Evidence	Thursday, August 6
PKMJF Final Submissions	Thursday, August 13
Intervener Final Submissions	Thursday, August 20
PKMJF Reply Submissions	Thursday, September 3

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

**REASONS FOR DECISION**

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## 1.0 Background

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 on its Jet Fuel System (Application).

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 and established a regulatory timetable for review of the Application.

On August 22, 2019, pursuant to order P-7-19, KMJF filed responses to BCUC Information Request (IR) No. 2 and Intervener IR No. 1.

By letter dated September 10, 2019, Vancouver Airport Fuel Facilities Corporation (VAFFC) filed an Application with the BCUC requesting that the BCUC direct KMJF to provide further and better IR responses to VAFFC and BCUC IRs (IR Application), pursuant to Section 14 of the BCUC's Rules of Practice and Procedure (Rules).

To accommodate the IR Application, by Orders P-8-19 and P-9-19, the BCUC amended the regulatory timetable as set out in Order P-7-19 to include KMJF's written reply regarding provision of adequate IR responses, VAFFC's reply to KMJF's response and further process to be determined.

For the reasons provided with Order P-10-19, dated November 19, 2019, the BCUC amended the regulatory timetable and directed KMJF to provide further and better responses to IRs as identified in Tables 1 and 2 of Appendix A to the order.

By letters dated November 26, 2019 and December 6, 2019, KMJF filed further responses to information requests.

On December 19, 2019, VAFFC filed a letter stating that KMJF had not complied with the BCUC directives in Order P-10-19 to provide further and better responses with respect to items enclosed in Appendix A to the letter<sup>1</sup>. VAFFC also requested that the regulatory timetable be suspended until KMJF provided all the information directed (Adjournment Application).

In their submission dated January 2, 2020, KMJF informed the BCUC that Pembina Pipeline Corporation (Pembina) acquired Kinder Morgan Canada Ltd., including KMJF. On January 6, 2020, Pembina filed a letter with the BCUC to: (i) provide notice of Pembina acquiring KMJF, including the Jet Fuel Line, and subsequently changing the name to PKM Canada (Jet Fuel) Inc. (PKMJF); (ii) request the BCUC deny VAFFC's request for further and better information request responses; and (iii) request the BCUC suspend the regulatory timetable for 60 days to provide PKMJF an opportunity to file additional materials or amend the Application (Acquisition Letter).

On January 13, 2020, by Order P-1-20, the BCUC adjourned the proceeding for 60 days to provide PKMJF an opportunity to file additional materials or to amend the Application.

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<sup>1</sup> Exhibit C2-14, Appendix A.

## 2.0 VAFFC request for further and better information request responses

In the Adjournment Application, VAFFC submits that KMJF's supplemental IR responses are deficient and that KMJF has not provided certain information as directed by the BCUC. Further, VAFFC states that the outstanding documents are likely to be subject to IRs and hence relying on the next round of IRs to obtain this information would not be a remedy.<sup>2</sup> VAFFC requests the BCUC to direct KMJF to provide further and better responses to VAFFC IRs attached as a table in Appendix A to the Adjournment Application.

VAFFC submits that these IR responses fall into two categories of deficiency: (i) outstanding documents likely to be subject to IRs; and (ii) deficiencies that VAFFC will address in the forthcoming IR process.<sup>3</sup>

VAFFC submits that the first category of deficiencies relates to the following:<sup>4</sup>

- i. Specific details or supporting documents for the years 2009 to 2018 in the categories of Direct Field Expenses and Administration and General (A&G) Costs; and
- ii. Mr. Wetmore's working papers or confirmation that the materials provided to date constitute the entirety of his working file including all written instructions or direction given to Mr. Wetmore.

VAFFC submits that with respect to the first category of deficiencies, KMJF "has either repeated earlier concerns that the Commission already rejected (for example, the fact that the previous operator of the Jet Fuel Line maintained accounting in a different manner than as is currently used by KMJF), or simply failed to produce information without explanation".<sup>5</sup>

## 3.0 Parkland's Submission

On January 3, 2020, Parkland filed a letter with the BCUC and submitted that "Parkland agrees with VAFFC that KMJF has not provided sufficient responses to certain IRs, as set out in VAFFC's Exhibit C2-14 submission".<sup>6</sup>

Parkland further submitted that since KMJF has reiterated multiple times that it has submitted all information in its possession, the sufficiency of the evidence should be addressed in final arguments.<sup>7</sup>

## 4.0 KMJF and PKMJF's Letter and Reply Submission

On December 23, 2019, KMJF filed a letter with the BCUC in response to VAFFC's Adjournment Application (Response Letter).

In the Response Letter, KMJF confirms that it "has provided all information and documents in its possession regarding the information requested by VAFFC". KMJF submits that "the information KMJF has provided supports the level and types of costs incurred during the previously negotiated toll period. KMJF notes VAFFC statements regarding KMJF's failure to comply with the BCUC's Order are inaccurate".<sup>8</sup>

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<sup>2</sup> Exhibit C2-14, p. 2.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid., p.3

<sup>6</sup> Exhibit C1-7, p. 1.

<sup>7</sup> Ibid.

<sup>8</sup> Exhibit B-28, p. 1.

Further, KMJF also confirmed that the materials provided to date constitute the entirety of Mr. Wetmore's working file and all written instructions or directions given to Mr. Wetmore.<sup>9</sup>

In its Acquisition Letter filed with the BCUC on January 6, 2020, PKMJF reiterated that it had provided sufficient detail to VAFFC to analyze the accounting of the Jet Fuel Line. Further, PKMJF states that "KMJF provided VAFFC with all material contracts and services and all other documentation it has been able to obtain regarding historic costs and expenses. Even if VAFFC were to ask further IR's, PKMJF expects that it will not be able to provide any additional level of information to VAFFC than has already been provided."<sup>10</sup>

On March 12, 2020, PKMJF filed a letter submitting no amendments to the Application and requesting resumption of the proceeding. PKMJF also responded to the Adjournment Application and reiterated that KMJF had provided all information and documents in its possession regarding the information requested by VAFFC.<sup>11</sup>

Further, with respect to the direct field expenses and A&G costs, PKMJF states that it expects these to remain at similar levels for the test period and expects no significant deviations.<sup>12</sup>

## **5.0 VAFFC Reply**

In its letter filed March 20, 2020, VAFFC submitted that "Although PKMJF has now confirmed that it has provided the entirety of Mr. Wetmore's working file and all written instructions or directions given to Mr. Wetmore, it has still not provided any further specific details or supporting documents for the years 2009 to 2018 in the categories of Direct Field Expenses and A&G Costs specified in the Commission's directions in Order P-10-19."<sup>13</sup>

## **6.0 BCUC Determination**

In assessing the reasonableness of outstanding IRs identified in Appendix A of VAFFC's Adjournment Application, the Panel groups the IRs into the following categories:

1. Data and working papers provided by KMJF to Mr. Wetmore;
2. Specific details or supporting documents for the years 2009 to 2018 in the categories of Direct Field Expenses and A&G Costs.

### *Data and working papers provided by KMJF to Mr. Wetmore*

By Order P-10-19, the Panel directed that, "KMJF must file all working papers in Mr. Wetmore's file and if the materials provided to date constitute the entirety of the entire producible file, KMJF is to confirm the same. KMJF must file all data provided to KMJF by Mr. Wetmore to facilitate his analysis and forecasts, including any historical accounting or cost records including any and all instructions or direction given to Mr. Wetmore by KMJF in respect of the preparation of his report."<sup>14</sup>

In the Adjournment Application, VAFFC submits that, "KMJF should therefore be directed to comply with the Commission's direction by confirming that the materials provided to date constitute the entirety of the

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<sup>9</sup> Exhibit B-28, p. 2.

<sup>10</sup> Exhibit B-30, p. 2.

<sup>11</sup> Exhibit B-33, p. 3.

<sup>12</sup> Exhibit B-33, pp. 3-4.

<sup>13</sup> Exhibit C2-17 p. 1.

<sup>14</sup> Exhibit A-18, Appendix B, p. 10.



materials relied on by Mr. Wetmore and directions given to him or, if not applicable: (i) providing all working papers in Mr. Wetmore's file; and (ii) providing any and all written instructions or direction given to Mr. Wetmore by KMJF in respect of the preparation of his report, including his retainer letter and other written directions."<sup>15</sup>

The Panel acknowledges that KMJF has filed supplemental evidence including historical accounting or cost records provided to Mr. Wetmore to facilitate his analysis.<sup>16</sup> The Panel also acknowledges KMJF's confirmation "that the materials provided to date constitute the entirety of Mr. Wetmore's working file and all written instructions or directions given to Mr. Wetmore".<sup>17</sup>

However, the Panel agrees with VAFFC that KMJF has not complied with specific directives provided in Order P-10-19, with respect to Mr. Wetmore's retainer letter.

In BCUC Order P-10-19, the Panel noted "KMJF's position that it considers the retainer letter and instructions to be subject to privilege, [but] the Panel agrees with VAFFC's submission that parties who file an expert report are deemed to waive privilege over these materials".<sup>18</sup>

Based on the above, **the Panel directs PKMJF to produce in this Proceeding the retainer letter or any other form of engagement agreement with Mr. Wetmore.**

*Specific details or supporting documents for the years 2009 to 2018 in the categories of Direct Field Expenses and A&G Costs*

By Order P-10-19, the Panel directed that "KMJF must provide a full and better response to each of the components of the IR (a to i), including a schedule for all Direct Field Expenses costs for each year from 2009. Given that between 2015-16 and 2016-17, Direct Field Expenses increased by 38% and 45%, respectively, KMJF is directed to provide clear explanations for the change in Direct Field Expenses year over year. KMJF must provide an explanation in any instances where information cannot be provided."<sup>19</sup>

The Panel also further directed that "KMJF must provide a full and better response to all components of the IR (a to d) including a schedule for all A&G costs for each year from 2009. Given that between 2015-16 and 2016-17, A&G allocation increased by 34 percent and 10 percent, respectively, KMJF is directed to provide full and better responses for the change in A&G costs year over year. KMJF must provide an explanation in any instances where information cannot be provided."<sup>20</sup>

In its letter dated December 23, 2019, KMJF states, "Consistent with the BCUC Order, KMJF provided a schedule for all Direct Field Expenses costs from 2009 to 2018. The information that KMJF provided reflects all the information KMJF obtained and has in its possession."<sup>21</sup>

The Panel recognizes that while KMJF was directed to file additional information, the Panel cannot compel PKMJF to provide information it does not have.

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<sup>15</sup> Exhibit C2-14, Appendix A, p. 2.

<sup>16</sup> Exhibit B-18, pp. 2-3.

<sup>17</sup> Exhibit B-28, p. 2 .

<sup>18</sup> Exhibit A-18, Appendix B, p. 9.

<sup>19</sup> Exhibit A-18, Appendix B, p. 7.

<sup>20</sup> Exhibit A-18, Appendix B, p. 8.

<sup>21</sup> Exhibit B-28, p. 1.

The Panel, therefore, makes the following findings regarding VAFFC IRs 22.1 and 23.1 as set out in Appendix A of the Adjournment Application:

- With respect to VAFFC IR 22.1 (c), the Panel agrees with VAFFC that KMJF has not filed specific documentation with respect to the cost of materials and supplies for the period 2009-2018 as directed in Order P-10-19. However, the Panel notes that KMJF has filed detailed forecast information including the rationale for the amounts included in Schedule 16 of the Application with respect to materials, supplies and parts<sup>22</sup>. The Panel is satisfied that these costs are required to be in compliance with the Rules and Regulations for the Jet Fuel Line<sup>23</sup>, which VAFFC acknowledges “may explain the need for KMJF to incur costs in this category, but does not provide any justification for the amount of the increase in costs”.<sup>24</sup>
- With respect to VAFFC IR 22.1 (d), while the Panel agrees with VAFFC that KMJF has not provided a list of contracts and details for the “Outside Services” that exceed \$10,000 for the years 2009-2018, the Panel is of the view that details of contracts over the historical 2009-2018 period may not be relevant if the forecast 2019 costs are based on existing contracts. KMJF has provided a detailed list of the outside services expenses for 2019 and filed the contracts on a confidential basis for review.<sup>25</sup> The Panel directs PKMJF to provide the details provided in Confidential Exhibit<sup>26</sup> to VAFFC, if not already provided.
- With respect to VAFFC IR 22.1 (h), the Panel agrees with VAFFC that KMJF has not provided detailed documents and explanation supporting the “Field Major Maintenance” for each of the 2009-2018 period. The Panel directs PKMJF to file this information. If PKMJF is unable to file this information, it must provide sufficient explanation as to why this information is not in its possession or cannot be obtained.
- With respect to VAFFC IR 23.1 (b), the Panel agrees with VAFFC that KMJF has not provided a breakdown of the Labour expenses for the years 2009-2018. The Panel directs PKMJF to file this information. If PKMJF is unable to file this information, it must provide sufficient explanation as to why this information is not in its possession or cannot be obtained.
- With respect to VAFFC IR 23.1 (c), the Panel agrees with VAFFC that KMJF has not explained the differences between Outside Services captured in Schedule 16 and Schedule 17 of the Application. The Panel directs PKMJF to explain the difference between the Outside Services captured in Schedule 16 and Schedule 17 of the Application.

Based on the above findings, **the Panel directs PKMJF to respond to the following IRs related to direct field expenses and A&G cost information as set out in Table 1 below:**

Table 1		
IR No.	IR	Direction
22.1	Please provide specific details, including supporting documents, on the following Direct Field Expenses for each year dating back to 2007, as well as the test period:  (a) Forecast number of employees with associated titles and financial compensation (including detailed	PKMJF must provide access to Confidential information filed with respect to (d), if not already provided, and provide a full and better response to (h) including a

<sup>22</sup> Exhibit B-25, p. 3.

<sup>23</sup> Exhibit C2-14, Appendix A, p. 4.

<sup>24</sup> Ibid.

<sup>25</sup> Confidential Exhibit B-27-2

<sup>26</sup> Ibid.

Table 1		
IR No.	IR	Direction
	<p>information about salaries, benefits, bonuses, and other incentives).</p> <p>(b) Actual number of employees with associated titles and financial compensation (including detailed information about salaries, benefits, bonuses, and other incentives).</p> <p>(c) The costs of materials and supplies, and a justification for the 400 % increase.</p> <p>(d) A list of all outside services procured by KMJF in relation to the pipeline. For any outside services that exceed \$10,000, please include a list of contracts and contract values.</p> <p>(e) A list of all vehicle expenses, including repair, fuel and operating costs. Please provide details for any expenses that exceed \$10,000.</p> <p>(f) Details of rental agreements for each parcel of land/commercial building and item being rented for rentals that exceed \$10,000.</p> <p>(g) Details related to “other” expenses that exceed \$10,000 and justification for those expenses that exceed \$10,000.</p> <p>(h) Details related to field major maintenance and supporting documents explaining what work was required and why it was required.</p> <p>(i) Details related to tank major maintenance and supporting documents explaining what work was required and why it was required.</p>	<p>schedule for all Field Major Maintenance costs for each year from 2009. PKMJF must provide an explanation in any instances where information cannot be provided.</p>
23.1	<p>Please provide specific details, including supporting documents, on the following A&amp;G Costs for each year dating back to 2007:</p> <p>(a) A list of Employee Benefits that exceed \$10,000. Please explain which Employee Benefits are captured in Schedule 16 compared to Schedule 17.</p> <p>(b) A breakdown of the Labor expenses associated with each subgroup: Operations, Product Logistics, EHS, Operator Qualification Training, Tax, Insurance, IT, Accounting, Payroll, Human Resources. Please provide a list of any expenses in each subgroup that exceed \$10,000.</p> <p>(c) A list of Outside Services that exceed \$10,000. Please include a list of contracts and contract values for amounts in excess of \$10,000. Please also</p>	<p>PKMJF must provide a full and better response to (b) including a breakdown and schedule for all Labour Expenses for each year from 2009. PKMJF must clearly explain the difference between “Outside Services” (c), included in Schedule 16 and Schedule 17 of the Application. PKMJF must provide an explanation in any instances where information cannot be provided.</p>

Table 1		
IR No.	IR	Direction
	<p>explain which Outside Services are captured in Schedule 16 compared to Schedule 17.</p> <p>(d) A list of Rent expenses that exceed \$10,000. Please include a list of contracts and contract values for amounts in excess of \$10,000. Please also explain which Rent expenses are captured in Schedule 16 compared to Schedule 17.</p>	