

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER P-7-08**

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

and

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

BEFORE: L.F. Kelsey, Chair August 19, 2008
P.E. Vivian, Commissioner

O R D E R

WHEREAS:

- A. Commission Order P-3-08 and the Reasons for Decision did not approve the Trans Mountain (Jet Fuel) Inc. ("TMJ, the "Company") application for the approval of tolls and accelerated depreciation (the "Original Application"). The Commission approved the establishment of a non-rate base deferral account for rate hearing cost (the "Rate Case Deferral Account") 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 P-3-08; and
- B. On March 14, 2008, TMJ submitted its 2008 Tariff Filing in accordance with Order P-3-08; and
- C. On April 2, 2008, TMJ informed the Commission that the billing of \$7,689.81 for Commission Costs related to the Original Application was not included in the forecast for hearing cost. TMJ requested the Commission Costs be included in the allowed hearing costs; and
- D. Order P-5-08 reduced the rate hearing costs allowed for the recovery in the 2008 tolls to \$147,689.81; and
- E. TMJ, in a letter dated May 27, 2008, requested that the Commission reconsider its decision to exclude the amount of \$67,090.16 of regulatory rate case costs from the Rate Case Deferral Account (the "Reconsideration Application"). TMJ also requested that the Commission dispense with the two step reconsideration process on proceed directly to a consideration of the merits of the Reconsideration Application; and

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- F. In Letter L-29-08, the Commission acceded to TMJ's request to proceed directly to a consideration of the Reconsideration Application. Intervenors were given an opportunity to comment on the Reconsideration Application and, on July 7, 2008, Chevron Canada Ltd. ("Chevron") and the Vancouver Airport Fuel Facilities Corporation ("VAFFC") filed letters opposing the Reconsideration Application. TMJ filed a reply to the Chevron and VAFFC submissions on July 8, 2008; and
- G. The Commission has reviewed the Reconsideration Application and submissions and is not persuaded that the original cost award was in error; therefore the Reconsideration Application should be denied.

NOW THEREFORE the TMJ Reconsideration Application for the Commission to reconsider its decision to exclude the amount of \$67,090.16 of regulatory rate case costs from the Rate Case Deferral Account is denied. The Commission's Reasons for Decision are attached as Appendix A to this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 19th day of August 2008.

BY ORDER

Original signed by

P.E. Vivian
Commissioner

Attachment

TRANS MOUNTAIN (JET FUEL) INC. ("TMJ", the "Company")
RECONSIDERATION OF AN APPLICATION FOR APPROVAL OF TOLLS AND ACCELERATED DEPRECIATION

RECONSIDERATION REASONS FOR DECISION

1.0 APPLICATION FOR RECONSIDERATION

In a letter dated May 27, 2008, TMJ requested that the Commission reconsider its decision to exclude the amount of \$67,090.19 of regulatory rate case costs ("RCC") regarding the Commission's disposition of the original Application for Approval of Tolls and Accelerated Depreciation (the "Original Application"). The Original Application was denied by the Commission. The Reasons for Decision (the "Decision") were attached to Commission Order P-3-08. In that Order, TMJ was directed to file the costs that were to be included in the Rate Case Deferral Account ("RCDA") established by the Decision.

On March 14, 2008, TMJ responded to the direction by filing its 2008 Tariff Filing (the "Filing"). Additionally, on April 2, 2008, TMJ requested inclusion of the \$7,689.81 for Commission Costs related to the Original Application (the "Costs"), in the RCDA that was to be established. In Order P-5-08, the Commission awarded TMJ an amount of \$147,689.81 in costs to be included in the RDCA (the "Cost Order"). The Cost Order by the Commission disallowed claimed costs of \$67,090.19 (the "Reduced Costs"), which related to consultant studies that the Commission found to be of little assistance in reaching its decision on the Original Application. The two consultant firms were BMB Fuel Consulting Services Inc. ("BMB") and Gannett Fleming Inc. ("GF").

In essence, the TMJ Application for Reconsideration (the "Reconsideration Application") asserts that the Commission erred in excluding the Reduced Costs and that the full amount applied for, ought to be included in the costs to be recovered in the RCDA. Also, TMJ asked that the Commission dispense with the normal two stage reconsideration process as set out in the Commission's document, "Understanding Utility Regulation, A Participants' Guide to the BC Utilities Commission" (see pages 36-38). TMJ requested that the Commission move immediately to a reconsideration of the merits of the Reconsideration Application.

In Letter L-29-08 (June 23, 2008), the Commission acceded to the request of TMJ and agreed to proceed directly to a reconsideration on the merits of the arguments presented by the Company in the May 27, 2008 Application. Intervenor's were given an opportunity to comment on the Reconsideration Application and letters opposing the Reconsideration Application were filed by Chevron Canada Ltd. ("Chevron") (July 7, 2008) and the Vancouver Airport Fuel Facilities Corporation ("VAFFC") (July 7, 2008). TMJ filed a reply to these submissions on July 8, 2008.

2.0 POSITIONS OF THE PARTIES

2.1 The Applicant “TMJ”

In the Reconsideration Application, TMJ sets out its understanding of the reasons supporting the Commission’s decision to disallow consultant costs. Among the items listed was the assumption by TMJ that the barging option to the Fraser River was the preferred option of the VAFFC and that TMJ had directed BMB to proceed on the basis of this assumption. Also listed, was the fact that TMJ did not ask GF to form a view on the economic life of the pipeline.

TMJ restates its rationale for the Original Application and argues that there were good grounds to believe that the pipeline would be rendered uneconomic if the VAFFC proceeded to develop a fueling option that would have the effect of by-passing the pipeline.

TMJ states that it “comes down to one question – was it unreasonable for TMJ to assume that there is some risk of premature obsolescence of it pipeline or not?”

TMJ puts forward the view that the Commission’s decision to disallow partial cost recovery will, in the future, place restraints upon any applicant that wishes to present expert evidence. The Company believes that in light of the Commission’s decision, TMJ would be at substantial risk in commissioning further expert evidence using a least-cost approach, and that the logical conclusion is to not pursue legitimate issues. In the end, the Company considers the effect of the Cost Order is to deny TMJ a fair return.

TMJ notes that the National Energy Board (“NEB”) is engaged in a four-part process that will examine the public policy implications of the pre-collection of abandonment costs by pipeline companies and that the issue is worthy of public policy debate.

2.2 Vancouver Airport Fuel Facilities Corporation

VAFFC opposes the Reconsideration Application. It argues that TMJ has not been specific in pointing out how the Commission’s Cost Order is “not supported by the facts and represents an error” but rather presents a “general discussion of its rationale for the original application for recovery of accelerated depreciation”.

VAFFC is of the view that the Commission had “considered several factors, including: the overall hearing costs; the circumstances of TMJ’s application; the value of the expert reports by BMB Fuel and Gannett Fleming; the restricted terms of reference given to the consultants; and TMJ’s lack of interaction with shippers preceding the application”.

It disputes TMJ’s interpretation of the facts and states that TMJ’s position is not supported by the record before the Commission.

VAFFC is of the opinion that in the circumstances, the cost award to TMJ was generous.

2.3 Chevron Canada Ltd.

Chevron reviewed the normal grounds used by the Commission to grant a reconsideration and was of the view that TMJ had not satisfied any of the required listed prerequisites for a reconsideration save for one. The sole possible ground for a reconsideration was that the Commission had erred in fact. Chevron accepted TMJ's summary of the Commission's determination in respect of the Original Application.

Chevron argued that the expert studies by BMB and GF "begged the central issue in the case which was the determination of the economic life of the pipeline. ... To succeed in demonstrating an error of fact, The Applicant must demonstrate palpable error by the Commission. They have fallen far short of that yardstick."

Chevron disagreed with TMJ that there had been any adequate or meaningful discussions with Chevron in respect of Chevron's plans and that this absence of communication gave rise to a complex and expensive hearing process.

2.4 TMJ's Reply

TMJ asserts that the Reconsideration Application is based not only on a perception of error of fact but in response to what TMJ states is a "new principle" – a belief that the Commission "appears to have concluded that expert advice is unhelpful and lacks independence if it is based on assumptions provided by the applicant". TMJ states that this is a new principle and is incorrect in law and represents a departure from past practice.

TMJ argues that the evidence presented by their consultants was relevant to the issues being adjudicated and was within the professional competence of the two experts. TMJ states that hindsight should not govern the Commission's cost determinations and to deny recovery; but rather it should apply the appropriate weight to the expert evidence given in reaching a decision.

3.0 COMMISSION DETERMINATION

First, the Commission does not take the position that the original Application was frivolous. The Applicant was uncertain as to the ultimate economic viability of the pipeline and was justified in examining the possible outcomes and options. Thus TMJ was not "unreasonable" in assuming that there was some risk of premature obsolescence of its pipeline. However, it is the responsibility of the Applicant to present the Commission with a comprehensive analysis of the options, the timing and certainty of their possible realization and the best estimates of the costs for each option considered possible.

The Original Application was deficient in addressing these issues and in particular, the terms of reference given to TMJ's consultants did not address the central question before the Commission. The Commission agrees with Chevron that the central issue before the Commission was the determination of the economic life of the pipeline. The consultant evidence presented did not address this central issue with any degree of comprehensiveness or full-costing of the various options.

The issue in this Reconsideration Application is not (as TMJ asserted) whether it was “unreasonable for TMJ to assume that there is some risk of premature obsolescence of its pipeline or not?”. Rather the issue in this reconsideration is whether or not the expenditures by TMJ on expert evidence were prudent and contributed to a resolution of the central matter requiring adjudication.

It was not a matter of the consultants not doing enough work but rather that their terms of reference and the assumptions directed to them by the Applicant, precluded any comprehensive analysis of the central issue before the Commission.

Further, the Commission is of the view that the issue of pre-collection of abandonment costs by pipeline companies is worthy of debate and where it has been shown that there is some certainty in the eventual abandonment or failure of the economic operation of a pipeline, then an application for accelerated depreciation might well succeed.

In the fullness of time, if TMJ is persuaded that the fuel supply options for the Vancouver airport have sufficiently matured and that shippers on the pipeline have made even tentative decisions to abandon service on the pipeline, then a further application to the Commission would be justified.

The Commission rejects TMJ’s view that there is any “new principle” being established or that the cost award decision reflects any new practice before the Commission. While cost awards by their nature are decided after the fact and in that sense are determined with hindsight, the Commission will examine the prudence of costs incurred by an applicant to present a case and will examine the usefulness of any expert evidence presented to address the issues before the Commission. The Commission wishes to provide applicants with the option of seeking all necessary expert advice to support any requested relief but at the same time, the Commission will not require ratepayers or shippers to pay for expert evidence that did not contribute in any meaningful way to a determination of the issues before the Commission.

The Commission is not persuaded that the original cost award was in error and in result the Application for Reconsideration is denied.