



ORDER NUMBER
P-10-19

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 November 15, 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 Order P-1-18, the BCUC also established a public written submission process and a regulatory timetable to explore stakeholders' submissions or other potential issues;
- D. 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;
- E. By April 24, 2019, the Vancouver Airport Fuel Facilities Corporation (VAFFC) and Parkland Fuel Corporation (Parkland) registered as interveners in the proceeding;
- F. 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 rate approved by Order P-1-18, with the interim toll remaining in effect until the earlier of December 31, 2019, the date upon which parties reach a mutual agreement or the date of a further order from the BCUC;
- G. By Order P-7-19 dated August 6, 2019, the BCUC further amended the regulatory timetable as established by Order P-5-19;

- H. On September 10, 2019, VAFFC filed an application seeking further and better information request (IR) responses from KMJF (IR Application);
- I. By Orders P-8-19 and P-9-19, the BCUC amended the regulatory timetable to accommodate the IR Application;
- J. On October 1, 2019, KMJF filed its written reply to the IR Application;
- K. On October 7, 2019, VAFFC filed its reply to KMJF's written reply; and
- L. The BCUC has reviewed the IR Application and submissions and makes the following determinations.

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

1. KMJF is directed to provide further and better answers to the information requests attached as Appendix B to this order by Monday, November 25, 2019. Specifically, KMJF must provide answers that are responsive to the items outlined in Tables 1 and 2 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 19th day of November 2019.

BY ORDER

Original signed by:

B. A. Magnan
Commissioner

Attachments

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

REGULATORY TIMETABLE

Action	Date (2019)	
	With Intervener Evidence	Without Intervener Evidence
KMJF supplementary responses to VAFFC information request (IR)	Tuesday, November 26	Tuesday, November 26
BCUC IR No. 3 to KMJF	Thursday, December 12	Thursday, December 12
Intervener IR No. 2 to KMJF	Thursday, December 12	Thursday, December 12
Action	Date (2020)	
KMJF responses to BCUC IR No. 3 and Intervener IR No. 2	Tuesday, January 7	Tuesday, January 7
Intervener Evidence (if any)	Thursday, January 16	-
IRs on Intervener Evidence	Thursday, January 30	-
Intervener Response to IRs on Intervener Evidence	Thursday, February 6	-
KMJF Rebuttal Evidence	Thursday, February 20	-
IRs on Rebuttal Evidence	Thursday, March 5	-
KMJF response to IR on Rebuttal Evidence	Thursday, March 12	-
KMJF Final Submissions	Thursday, March 19	Thursday, January 23
Intervener Final Submissions	Thursday, March 26	Thursday, January 30
KMJF Reply Submissions	Thursday, April 2	Thursday, February 6

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

REASONS FOR DECISION

Table of Contents

	Page no.
1.0 Background	2
2.0 VAFFC request for further and better information request responses	2
3.0 KMJF's Letter and Reply Submission	4
4.0 VAFFC Reply	5
5.0 BCUC Determination	5

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.

On September 3, 2019, Vancouver Airport Fuel Facilities Corporation (VAFFC) filed a letter with the BCUC providing VAFFC's proposed procedural steps and schedule, which included, among other things, VAFFC's notification to file an application to the BCUC to compel KMJF to provide appropriate responses to BCUC and intervener IRs which VAFFC deemed unresponsive and/or deficient.¹

By letter dated September 10, 2019, VAFFC filed with the BCUC an application 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.

2.0 VAFFC request for further and better information request responses

In the IR Application, VAFFC submits that KMJF's IR responses are deficient and the content VAFFC seeks is material to their participation in the proceeding. Further, VAFFC states that procedural fairness and the Rules require proper and complete IR responses so that parties can prepare intervener evidence and make full submissions.² VAFFC requests the BCUC to direct KMJF to provide further and better responses to 26 VAFFC IRs and 3 BCUC IRs, attached as tables in Appendices A and B to the IR Application.

VAFFC submits that KMJF's tariff filing claims to be a cost-of-service (COS) application based on well understood principles, but neither KMJF's filing nor their IR responses provide the level of detail necessary to assess the accuracy and reasonableness of KMJF's cost claim. VAFFC states that KMJF is "exercising an unusual amount of control over the information presented," has "evaded many requests" and that information asymmetry in any rates application is a concern and issue for economic regulators.³

In addition, VAFFC submits that KMJF's filing raises legal and regulatory issues related to establishing COS tolls for a liquid products pipeline, collection of abandonment funds and accelerated depreciation which would

¹ Exhibit C2-4, p. 2.

² Exhibit C2-5, p. 2.

³ Ibid.

significantly increase shipper costs on the pipeline if the relief sought by KMJF is granted. VAFFC seeks a clear picture of the basis for KMJF's requests to maintain procedural fairness and for a complete evidentiary record.⁴

VAFFC submits that the IR responses provided in Appendices A and B to the IR Application fall well short of the standard required by the BCUC⁵ and that Rule 14.01 requires parties to provide full and adequate response to each question and that the party must provide specific reasons to justify portions of the response that are withheld or not responded to.⁶ VAFFC submits that these IR responses fall into two areas of deficiency: incomplete responses and refused responses and requests BCUC adjudication to compel responses as appropriate.⁷

Incomplete IR Responses

VAFFC states that in many instances, KMJF evaded fully answering IRs by providing partial responses, for example, withholding rationale and process of decision-making for capital additions that occurred since 2008. VAFFC submits that whether KMJF's internal decision-making and its assumptions related to the economic life of its system are consistent with the content of the Application should affect the weight the BCUC affords the Application.⁸ VAFFC submits that it is entitled to test whether capital additions were reasonable before the BCUC accepts their costs for ratemaking purposes and it should not rely on KMJF's assertion alone. VAFFC further submits that KMJF often referred to a different IR response that did not fully address the requested information and where referring to other IR responses did not fully respond to the original request. VAFFC claims this does not meet the standards required in Rule 14.04.⁹

Refused Responses

VAFFC states that in many cases, KMJF refused to fully respond to IRs, stating that the requested material was not relevant. VAFFC further states that at the discovery stage, relevance should be broadly construed and reasonable lines of inquiry should be permitted unless clearly irrelevant. VAFFC also provides examples of IR responses where KMJF refused to respond to an IR and states doing so would require it to undertake legal interpretation, which KMJF considers inappropriate for the IR process. VAFFC states that KMJF asserts "potentially contradictory ratemaking principles" and seeks a clear understanding of the "benefits and burdens that KMJF considers to accompany common carrier regulation" under the UCA. Without KMJF's response, VAFFC submits that their ability to develop responsive evidence would be prejudiced.¹⁰

VAFFC submits KMJF refused to answer certain IRs on the basis that relevant information, such as instructions, data, working papers, drafts and counsel correspondence associated with the COS study was subject to solicitor and client privilege. VAFFC states that the BC Supreme Court Civil Rules waive privilege over all material when an expert report is tendered and is common for all of this information to be disclosed as it is highly probative to assessing the conclusions of an expert report.¹¹

⁴ Exhibit C2-5, p. 2.

⁵ *Ibid*, p. 3.

⁶ British Columbia Utilities Commission, Order G-15-19 dated December 17, 2018, Rules of Practice and Procedure, Section 14.01, p. 9.

⁷ Exhibit C2-5, pp. 2–5.

⁸ *Ibid*, p. 3.

⁹ *Ibid*, pp. 3–4.

¹⁰ Exhibit C2-5, pp. 4–5.

¹¹ *Ibid*, p. 4.

3.0 KMJF's Letter and Reply Submission

On September 13, 2019, KMJF filed a letter with the BCUC (Receipt Letter) acknowledging VAFFC's intention to file an application for further and fuller IR responses.

In the Receipt Letter, KMJF confirms that it "expended great effort, devoted significant resources, and endeavored to be fully responsive to IRs from the BCUC and all interveners", provided over 500 pages of responses including attachments and in no way withheld information. KMJF submits it produced all requested information that was available, subject to settlement privilege regarding shipper communications.¹²

On September 25, 2019, pursuant to Order P-9-19, KMJF filed its reply submission (Response). In its Response, KMJF states that it has identified instances where a supplementary response is warranted and provides updated tables in Appendix A and Appendix B with specific responses to IRs identified as being deficient by VAFFC. However, KMJF claims the vast majority of VAFFC's assertions for fuller responses are unfounded.¹³

VAFFC Seeks Additional Information and Evidence

In its Response, KMJF submits that IRs are not intended to facilitate "fishing expeditions" nor is KMJF obligated to provide new evidence for interveners.¹⁴ Further, the Rules do not provide for VAFFC's request which seeks to compel responses from KMJF to new requests and questions not included in VAFFC's original request. KMJF submits it is unfair to provide a further and better response to questions that were not posed in the first place and in these instances, the BCUC should deny VAFFC's request.

KMJF states that it considers it has produced all relevant cost data requested by VAFFC, and in addition to producing its own evidence, VAFFC can retain independent experts to produce evidence on behalf of VAFFC and incur associated costs itself. In addition, KMJF submits that VAFFC is a sophisticated party fully capable of performing calculations and analyses based on the same data KMJF relies upon and that this data has been provided to VAFFC.¹⁵ KMJF submits that all VAFFC requests to produce new evidence should be denied and as per its Receipt Letter, KMJF supports a process that allows for interveners to file evidence in this proceeding, pursuant to Rule 13.01.¹⁶

Credibility

KMJF states that VAFFC's request for further or better IR responses implies KMJF has been less than forthright in providing information and responses and this is an unnecessary and unfounded attempt at attacking KMJF's credibility. Further, KMJF submits it has worked diligently, devoted significant resources and endeavoured to be fully responsive to IRs and there is no evidentiary basis that KMJF is not endeavouring to do its best to answer all the IRs.

"Fishing Expeditions" and Legal Argument

KMJF submits it sought to be as responsive as possible to IRs, even where the relevance of VAFFC's IRs were questionable.¹⁷ KMJF submits that while IRs may facilitate a better understanding of issues relevant to the proceeding, the purpose of IRs are for the clarification of evidence filed by a party. Further, requests for KMJF to

¹² Exhibit B-16, p. 2.

¹³ Exhibit B-17, p. 1.

¹⁴ Ibid, p. 3.

¹⁵ Ibid, p. 2.

¹⁶ Exhibit B-16, p. 1.

¹⁷ Exhibit B-17, p. 3.

provide its understanding of terms and principles and how they apply to KMJF should be within VAFFC's knowledge or can reasonably be addressed once it has further information about VAFFC's project.

KMJF submits IRs are not the appropriate forum for the development of legal argument and how the applicable law and principles apply to the evidence on record. These types of submissions should be filed during the argument stage of the proceeding, once the evidentiary record is closed.¹⁸ KMJF submits that instances where the original VAFFC IR asked for legal argument and where VAFFC did not provide its own understanding of a term or principle, constitute a "fishing expedition" and VAFFC's request for additional responses should be denied.

Evidence and Relief Requested

In its Response, KMJF submits that pursuant to Rule 13.01, it supports a process that allows for intervenor evidence. While an extensive record has already been developed, there is no evidence on the record about shipper's positions, either through submissions or responses to IRs. Therefore, KMJF submits that obtaining and assessing shipper's evidence would be the logical next steps to determine all issues in dispute.¹⁹

4.0 VAFFC Reply

On October 7, 2019, pursuant to Order P-9-19, VAFFC filed its reply submission (Reply). This included updated appendices whereby VAFFC identified a number of IRs that, subsequent to KMJF's submission, no longer required a further response and IRs which VAFFC requested the BCUC to direct KMJF to provide full IR responses.

VAFFC submits that the disputed IR responses include KMJF withholding information concerning: historical cost data; accelerated depreciation and throughput; the expert report prepared by Erik Wetmore of Turner Wetmore Collins, LLC; legal and regulatory principles; and, details of new capital expenditures. Without this information, VAFFC submits that their ability to meaningfully participate in this proceeding through evidence will be prejudiced.²⁰

5.0 BCUC Determination

The Panel is satisfied with the responses to BCUC IRs identified in Appendix B of VAFFC's Reply and no further response is required from KMJF. In assessing the reasonableness of outstanding IRs identified in Appendix A of VAFFC's Reply, the Panel groups the IRs into the following categories:

1. Requests for financial/revenue requirement information;
2. Requests for details on communication/consultation; and
3. Requests for other information.

Requests for Financial/Revenue Requirement Information

The Panel acknowledges KMJF's responses to a number of historical financial related questions whereby KMJF explains that it has "expended significant effort to obtain historical costs information" but it "has not been able

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Exhibit C2-7.

to obtain actual historical operating expenses prior to 2009.”²¹ However, the Panel agrees with VAFFC that a reasonableness review is a fundamental part of ratemaking²² and notes and that historical cost information as well as justification for certain expenditures is highly relevant and necessary to assess whether costs have been prudently incurred; if forecast costs are reasonable; and how costs, including those associated with accelerated depreciation of assets, should be appropriately recovered from shippers.

In some of its IRs, VAFFC requests further information, assumptions and rationale for incurred historical costs. The Panel accepts that to respond further to these IRs, there is a direct impact on the workload for KMJF. However, while KMJF does provide a yearly breakdown of these costs in response to BCUC IR 4.3, given the relative magnitude of some historical costs, this additional workload must be balanced against the value in assessing the reasonableness of KMJF’s historic costs and whether they were prudently incurred. In addition, the Panel acknowledges that information beyond a certain time frame may no longer be relevant for setting future rates or assessing the reasonableness of cost estimates.

The Panel, therefore, makes the following findings on VAFFC IRs 4.11, 5.3, 9.8, 22.1, 22.2, 23.1 and 29.12:

- With respect to VAFFC IRs 4.11, 22.1 and 23.1, the Panel finds that KMJF must provide a detailed response related to capital additions, Direct Field Expenses and A&G Allocation from 2009.
- With respect to VAFFC IRs 5.3 and 9.8, the Panel finds that KMJF must provide further information regarding certain scenarios, depreciation expense forecast based on BCUC approved depreciation rates, and a schedule based on a five-year pipeline economic life as it is relevant to assess the financial impact of KMJF’s proposed Application.
- With respect to VAFFC IR 22.2 and itemized Direct Field Expenses, the Panel finds that given the relatively low threshold proposed by VAFFC to warrant further explanation, in combination with the relative magnitude of Direct Field Expenses, further explanation of any Direct Field Expenses above a two percent year-over-year increase from KMJF is not required.
- With respect to VAFFC IR 29.12, the Panel is not persuaded that assumptions made in the 2007 Application’s abandonment study are relevant to KMJF’s 2019 abandonment estimates, provided by Environmental Liability Management Inc. (ELM) (2019 Report) and a further response from KMJF is not required. The Panel notes that the 2019 Report is based on site specific assessments completed in Summer 2019 and cost estimates are based on the National Energy Board’s base case assumptions range or ELM’s ground up estimates. Further, while 2007 cost estimates and assumptions may not be reflective of those in 2019, any comparison of underlying cost assumptions can be made by comparing the 2007 Application’s abandonment study and the 2019 report.

Based on the above findings, **the Panel directs KMJF to respond to the following IRs related to financial/revenue requirement information as set out in the table below:**

²¹ Exhibit B-17, Appendix A, VAFFC IRs 22.1-23, pp. 25–28.

²² Exhibit C2-7, Appendix A, VAFFC IR 4.11, p. 10.

Table 1		
IR No.	IR	Direction
4.11	Please outline the rationale and process for decision-making for all capital additions that have occurred since the 2008 proceeding, given KMJF's assertion that the pipeline is to be abandoned imminently.	KMJF must provide a detailed schedule for all capital expenditures from 2009, with an explanation for any expenditures that exceed a threshold of \$50,000.
5.3	Please provide a calculation of depreciation expense for forecast 2019 based on the last BCUC-approved depreciation rates.	KMJF must provide a full and better response to this IR, pursuant to Section 14.04 of the Rules.
9.8	Please provide a schedule that sets out annual revenue requirements if the current pipeline operations were extended to five years, as opposed to the three currently forecast in KMJF's application. In this schedule, please identify or otherwise explain in detail how the proposed depreciation expense and abandonment cost collection, along with any other material changes to KMJF's application that would result, would be affected by such an amendment.	KMJF must provide a full and better response to this IR, pursuant to Section 14.04 of the Rules.
22.1	<p>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:</p> <ul style="list-style-type: none"> (a) Forecast number of employees with associated titles and financial compensation (including detailed information about salaries, benefits, bonuses, and other incentives). (b) Actual number of employees with associated titles and financial compensation (including detailed information about salaries, benefits, bonuses, and other incentives). (c) The costs of materials and supplies, and a justification for the 400 % increase. (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. (e) A list of all vehicle expenses, including: repair, fuel and operating costs. Please provide details for any expenses that exceed \$10,000. (f) Details of rental agreements for each parcel of land/commercial building and item being rented for rentals that exceed \$10,000. (g) Details related to "other" expenses that exceed \$10,000 and justification for those expenses that 	KMJF must provide a full and better response to each of the components or 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.

Table 1		
IR No.	IR	Direction
	<p>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>	
22.2	Where itemized Direct Field Expenses have increased above 2 percent year over year during the period dating back to 2007, please provide an explanation for the increase.	No further response required from KMJF
23.1	<p>Please provide specific details, including supporting documents, on the following A&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 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>	<p>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.</p>
29.12	Regarding Reference (iii) above, please discuss which assumptions were made in the 2007 Application's abandonment study that were not made or were changed for the 2019 abandonment study. In your response, please address how and why each of those assumptions was changed for the 2019 abandonment study, including all support for each change.	No further response required from KMJF.

Requests for details on communication/consultation

In some of its IRs, VAFFC requests copies of communication between KMJF and the Parkland Fuel Corporation (Parkland) Refinery or Shell Canada Limited (Shell) Rail Facility in relation to the supply of jet fuel for throughput on the existing Jet Fuel System, plans between parties to address alternative transportations options for jet fuel, and consultation and communication with any affected parties, including landowners, municipalities and regulators related to the proposed abandonment of the pipeline.

The Panel notes that KMJF provides yearly historic actual throughput volumes on the jet fuel line from 2009 to 2018 and KMJF states there is no reason to expect Parkland or Shell volumes to decrease below their 2018 volumes.²³ KMJF forecast the economic life of the Jet Fuel System to be three years from January 1, 2019, based on the expectation that the Vancouver Airport Fuel Delivery (VAFD) project will commence operations by late 2021.²⁴

The Panel notes while there is degree of uncertainty in forecasting future throughput, KMJF's assumptions to apply 2018 actual volumes over the next three years is not unreasonable. Further, the volumes of jet fuel placed on the Jet Fuel System are business decisions made by Parkland and Shell, not KMJF, and any communications, including those that discuss the critical nature of the Jet Fuel System and alternative transportation plans, are confidential between KMJF and its shippers. Given the effects on the Jet Fuel System tolls when the VAFD project begins operation,²⁵ and assuming shippers are rational economic agents, KMJF's response provides sufficient information regarding (i) the basis for KMJF's throughput forecast; and (ii) the degree to which shippers may continue to use the KMJF line even after the VAFD begins operations.²⁶

The Panel acknowledges that KMJF provided some "additional working papers and source data"²⁷ requested by VAFFC in IR 13.1 related to KMJF's independent expert, Mr. Wetmore. However, the Panel agrees with VAFFC's submission that the response provided by KMJF related to the expert report implies some working papers had already been produced and these materials from Mr. Wetmore's file are not included in the Application.²⁸ The Panel acknowledges that KMJF is not asserting privilege over the working papers.²⁹ However, while the Panel notes KMJF's position that it considers the retainer letter and instructions to be subject to privilege, the Panel agrees with VAFFC's submission that parties who file an expert report are deemed to waive privilege over these materials.³⁰

In VAFFC IR 18.3 and 29.7, VAFFC requests details of consultation and correspondence carried out by KMJF with groups potentially affected by the proposed pipeline abandonment and specific removal requests. The Panel notes that KMJF confirms it "produced all requested information that was available, subject to limited claims of settlement privilege regarding shipper communications" and provided supplementary emails "identified between ELM and the cities of Richmond and Burnaby" were filed in its October 1 submission.³¹

The Panel agrees with VAFFC's Reply that while KMJF has provided some email correspondence, the supplementary emails do not appear complete. In addition, the Panel notes the IR specifically requests "details on the consultation carried out by KMJF with persons and groups potentially affected"³² and while KMJF

²³ Exhibit B-13, Vancouver Airport Fuel Facilities Corporation (VAFFC) IR 6.1, p. 33.

²⁴ *Ibid.*, VAFFC IR 3.2, p. 17.

²⁵ Exhibit B-11, IR 2.2, p. 8.

²⁶ Exhibit C2-7, IR 6.2, Appendix A, pp. 12-13.

²⁷ Exhibit B-18, Appendix 13.1- 13.10.

²⁸ *Ibid.*, p. 20.

²⁹ Exhibit B-17, p. 19.

³⁰ Exhibit B-18, pp. 19-22.

³¹ *Ibid.*, Appendix A 18.3 & 29.7(c).

³² Exhibit C2-7, IR 18.3, Appendix A, pp. 25-26.

provides correspondence between ELM to the City of Richmond and the City of Burnaby, it provides no correspondence between itself and any groups, ELM and landowners or regulators, nor does KMJF explicitly state that no such correspondence exists.

The Panel, therefore, makes the following findings on VAFFC IRs 6.2, 8.6, 13.1, 18.3 and 29.7:

- With respect to VAFFC IRs 6.2 and 8.6, the Panel is satisfied with KMJF’s response and no further or better responses are required by KMJF.
- With respect to VAFFC IRs 13.1, 18.3 and 29.7, KMJF must provide full and better responses to these IRs.

Based on the above findings, **the Panel directs KMJF to respond to the following IRs related to communication/consultation information as set out in the table below:**

Table 2		
IR No.	IR	Direction
6.2	Please provide copies of any communications with suppliers of jet fuel to the Jet Fuel System, including the Parkland Refinery and the Shell Rail Facility, regarding future supply of jet fuel for throughput on the Jet Fuel System.	No further response required from KMJF.
8.6	Please describe any discussions between KMJF and the Parkland Refinery owners regarding the critical nature of the KMJF pipeline to the refinery, including any alternative plans between the parties to address jet fuel that is produced at the refineries but remains “bottled up” without transportation options.	No further response required from KMJF.
13.1 (b) – (d)	<p>Please provide full copies of the following documents:</p> <p>(b) Any written instructions or direction given to Mr. Wetmore (to the extent such directions or instruction was given or supplemented by verbal communications, please describe those verbal communications);</p> <p>(c) Materials Mr. Wetmore was provided with to review; and</p> <p>(d) Mr. Wetmore’s working papers.</p>	<p>KMJF must file a full and better response to this IR. 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.</p> <p>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.</p>
18.3	Please provide details on the consultation carried out by KMJF with persons and groups potentially affected by the proposed abandonment of the pipeline. In your response, please provide copies of all relevant correspondence sent or received by KMJF.	KMJF must file all email communications between ELM and the cities of Richmond and Burnaby as well as all other relevant correspondence, confirming, or

Table 2		
IR No.	IR	Direction
		explaining otherwise, that all relevant correspondence has been provided.
29.7 29.7 (c)	Regarding Sub-reference (e) above: Please provide copies of any correspondence between KMJF and landowners, municipalities or regulators regarding specific removal requests.	KMJF must file all email correspondence related to specific removal requests.

Requests for Other Information

In the remainder of the IRs, VAFFC seeks a response from KMJF on economic terms, due diligence activities and accounting standards. The Panel notes that in IR VAFFC 1.7, VAFFC seeks a response to a well-known economics concept which should be within the knowledge of a sophisticated party like VAFFC and one which itself states is an “economics concept underlying the regulation of both utilities and common carriers.”³³ The Panel also notes that while VAFFC has not provided a definition for the term “natural monopoly,” KMJF states that it has been the only jet fuel pipeline serving YVR and that tolls based on a cost of service is reasonable for BCUC regulation of KMJF as a “monopoly provider.”³⁴ Therefore, the Panel agrees with KMJF that IRs are not the appropriate forum for the development of legal arguments³⁵ and should instead be addressed during the argument stage of the proceeding.

In relation to VAFFC’s request for description of due diligence activities, similar to VAFFC IR 6.2 and 8.6, the Panel acknowledges that KMJF provides a reasonable assumption of constant throughput over the next three years and provides a forecast of the impact on tolls and the forecast cost of transportation alternatives. KMJF confirms it engaged in discussions with Parkland and that these communications are confidential.³⁶ Further, the Panel agrees with KMJF that VAFFC requests a response to an IR which is more appropriately directed to the relevant shipper.³⁷

With respect to VAFFC’s request for specific accounting standards applicable to KMJF, the Panel notes that KMJF confirms it uses GAAP accounting standards and refers to specific FASB Accounting Standards Codification (ASC) related to an asset’s economic life and its depreciation. The Panel is not persuaded that KMJF “cherry picks” from the ASC,³⁸ rather, that KMJF provides an example and not an exhaustive list of specific ASC’s applicable.

Therefore, the Panel finds that KMJF’s responses with respect to VAFFC IRs 1.7, 8.4 and 12.1 are sufficient and no further or better responses are required.

³³ Exhibit C2-7, Appendix A, VAFFC IR 1.7, pp. 7–8.

³⁴ Exhibit B-17, Appendix A, VAFFC IR 1.7, p. 10.

³⁵ Ibid., p.3

³⁶ Ibid., Appendix A, VAFFC 8.4, p. 15.

³⁷ Ibid., p. 3.

³⁸ Exhibit C2-7, VAFFC IR 12.1, p. 18.

Table 3		
IR No.	IR	Direction
1.7	Does KMJF believe the circumstances of the Jet Fuel System support the pipeline as a “natural monopoly,” as that term is used in the standard economic literature on utilities? In your response, please confirm that there are no competing supply services that could currently replace the volumes KMJF supplies to VAFFC. If not confirmed, please fully explain why not.	No further response required from KMJF.
8.4	Please provide a description of all due diligence activities undertaken by KMJF in respect of the ability of the Parkland Refinery to reduce or eliminate production of jet fuel, or to secure viable alternative markets.	No further response required from KMJF.
12.1	Please confirm the accounting standard applied by KMJF and cite the specific provisions that address the estimates of each asset’s remaining economic life. Please include copies of all relevant underlying documents.	No further response required from KMJF.