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October 8, 2019

FILE NUMBER: 036250-00150

British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

Dear Commission Secretary:

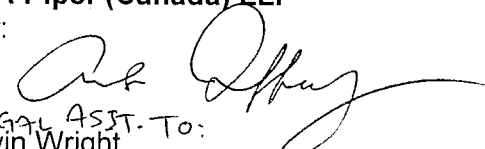
**Re: BCUC Inquiry into Gasoline and Diesel Prices in British Columbia**

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We are counsel to the intervener, 7-Eleven Canada, Inc. ("7-Eleven").

Further to BCUC Order G-261-19, please find enclosed the (final) Supplemental Submissions of 7-Eleven.

Sincerely,  
**DLA Piper (Canada) LLP**  
Per:

FOR:   
LEGAL ASST. TO:  
Kevin Wright  
\*Law Corporation

JKW:aqj  
Attachment

CAN: 31379424.1

BRITISH COLUMBIA UTILITIES COMMISSION  
IN THE MATTER OF THE *UTILITIES* COMMISSION ACT  
R.S.B.C. 1996, CHAPTER 473

and

An Inquiry into Gasoline and Diesel Prices in British Columbia – Project No. 1599007

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**SUPPLEMENTAL SUBMISSIONS OF 7-ELEVEN CANADA, INC.**

OCTOBER 8, 2019

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Counsel for the 7-Eleven Canada, Inc.

## OVERVIEW

1. Following delivery of the Final Report of the Commission, interested parties were provided an opportunity to provide additional evidence. 7-Eleven Canada, Inc. (“**7-Eleven**”), an intervener, elected not to provide additional evidence. However, on September 24, 2019, Advanced Biofuels submitted a letter to the Commission (Exhibit C6-10). 7-Eleven wishes to address briefly aspects of that letter which touch on the relationship between suppliers and retailers, such as 7-Eleven, who operate stations that re-sell fuels under brands owned by such suppliers. 7-Eleven wishes to make clear that its decision not to provide additional submissions or evidence on other subjects should not be construed as agreement or acquiescence to the other portions of the letter of Advanced Biofuels, other new evidence and submissions of other parties, letters of comment or the Final Report itself.
2. Advanced Biofuels argues that where local concentration of branded retail stations is high, Oil Companies should be required to reduce the number of stations with whom they have branded supply agreements. It suggests that Oil Companies be required to not renew the terms of its supply agreements for a specified number of branded retailers “sufficient to bring concentration levels down” (page 12).
3. It is not clear if Advanced Biofuels recommends the termination of any existing supply relationships with branded retailers. Yet it seemingly does recommend that changes be imposed on existing relationships (page 10), more specifically that:
  - A. exclusivity of supply in agreements between an Oil Company and a branded retailer should be prohibited; and
  - B. wholesale fuel prices charged by an Oil Company to retailers should be allowed to vary based on volume, but not vary based on brand.
4. The premise for these recommendations appears not to be concerns with competition in the retail sector, as such, but, rather, concerns with respect to wholesalers. Advanced Biofuels seeks to “Incent competition at the wholesale level

by addressing anti-competitive restrictive terms in retailer supply agreements.”  
(page 3)

5. Advanced Biofuels contends that (page 4):

Intervenors described stations that do not have the pump price set by the Oil Company as ‘independent’ when in fact stations that operate under a refiner brand have very little control over the price they offer consumers.

6. It suggests that it is misleading to say that retailers are solely responsible for establishing retail prices because Oil Companies retain control over sales volumes and set the price of fuel supplied to those stations.
7. 7-Eleven strongly disagrees with any suggestion that pricing in the retail market is not competitive or that the ability of wholesalers to allow retailers to operate under brands owned by the wholesalers somehow compromises competition amongst retailers or adversely affects the retail price of fuels.
8. While the recommendations of Advanced Biofuels summarized above are ostensibly directed at “Oil Companies,” they are prejudicial to independent retailer companies like 7-Eleven. If adopted, Advanced Biofuels’ recommendations would have a negative impact on consumers and the provision of retail fuels.
9. To summarize the evidence of 7-Eleven provided during the Inquiry, 7-Eleven operates 124 stations in British Columbia. The overwhelming majority of those stations are operated under brands (ESSO, PETRO CANADA) that 7-Eleven does not own but which it has licences to use as part of comprehensive arrangements reached with the owners of such brands (respectively, Imperial Oil and Suncor). In 2016, 7-Eleven acquired many ESSO station sites in British Columbia and elsewhere in Canada from Imperial Oil, which had decided to divest its retail holdings in Canada.
10. In order to maintain at law the validity of a licenced trademark, the owner must retain control over the quality of the services and wares supplied in connection with the trademark. Otherwise, the trademark would not continue to serve to distinguish

the source of supply. Additionally, if the retailer had discretion to switch the type of fuel brand sold at the whim of the wholesale price, there would be consumer confusion since the retailer would be unable to change the site's fuel image based on the most recent brand of wholesale fuel purchased. Further, besides the supply of fuels themselves, there are programs and other services provided by the supplier associated with the operation of branded stations. Consumers benefit from such programs and from the confidence of the consistent quality of service and fuels when they decide to purchase fuel at a particular station. Accordingly, there is a necessary link between the use of a mark like ESSO and the supplier of the fuels.

11. These arrangements and their advantages apply in other parts of Canada. They are not unique to British Columbia. The recommendation of Advanced Biofuels to prohibit exclusive supply to branded resellers is not only unheard of, but because of trademark laws and other considerations, it would effectively operate so as to prevent **any** branded reseller stations in British Columbia.
12. There are advantages for retailers to be able to operate in connection with particular brands. And while a retailer is always free to determine at the end of a contract to sever its relationships with a supplier (and therefore not operate in connection with the supplier's brand), it must weigh the benefits and costs of such a decision. The costs would be significant and would include the costs of removing a brand and finding and operating a new brand (which may not be as attractive to consumers). A retailer would be in a worse position if it did not have the choice because a regulation prevented it from operating under an established brand owned by a wholesaler. Ultimately, one would expect the significant costs of rebranding across the industry to be reflected in retail prices.
13. To be clear, the control that a brand owner has over the fuel and branding of a station does not extend to having control over the retail resale price of the fuel. Where 7-Eleven acquires fuel as an independent reseller, the supply arrangements place no constraints on the prices at which 7-Eleven chooses to

resell the fuels.<sup>1</sup> Any suggestion to the contrary by Advanced Biofuels is without foundation.

14. While one expects that wholesale price and other costs (like land costs) will impact the retail prices, the particular wholesale price at a given time does not dictate the corresponding retail resale price. A retailer can choose how much margin to seek having regard to competitive conditions. As the evidence shows, sometimes the retailer resells fuels at less than the wholesale cost.
15. Furthermore, the influence that wholesale prices have on retail prices would not change if the retailer did not operate under brands. Wholesale prices would have an impact on a retailer regardless of the brand under which it operates.
16. The complaint of Advanced Biofuels seems not to be entirely with branded stations, as such, but, rather, with long-term exclusive supply arrangements. There are advantages for retailers like 7-Eleven throughout Canada to enter into such arrangements, including security of supply and incentives for its commitment, potential volume discounts or other considerations. With respect, Advanced Biofuels has not demonstrated any basis why such arrangements are inefficient or should be disallowed uniquely in British Columbia. Retailers (and, ultimately, consumers) would be worse off if they were prevented from negotiating such arrangements.

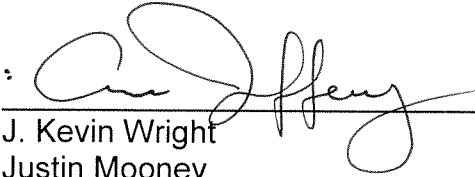
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<sup>1</sup> In a limited number of cases, 7-Eleven operates Petro Canada stations as a commission marketer for the owner of the fuels, which is responsible for settling the retail prices.

*SUPPLEMENTAL SUBMISSIONS OF 7-ELEVEN CANADA, INC.*

17. In summary, there are no advantages but only considerable costs and disadvantages associated with the particular recommendations of Advanced Biofuels set out above. Such recommendations should not be pursued.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8<sup>TH</sup> DAY OF OCTOBER, 2019

For:   
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