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By Electronic Filing

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

Attention: Patrick Wruck, Commission Secretary

Dear Sirs/Mesdames:

Re: British Columbia Utilities Commission – An Inquiry into Gasoline and Diesel Prices in British Columbia – Project No. 1599007

We are the solicitors for Parkland Fuel Corporation (“Parkland”).

We write for two purposes:

1. to address how to accommodate the BCUC’s desire to obtain Parkland’s commercially sensitive information, while protecting Parkland from economic harm that would result from disclosure to competitors; and
2. to re-emphasize the importance of providing Parkland with a meaningful opportunity to respond to materials placed on the record.

Accommodating the BCUC’s Desire for Confidential Business Information

As the BCUC is aware, Parkland was *requested* by the BCUC, not ordered, to participate in this Inquiry and to complete the BCUC’s Questionnaire.¹ Parkland has, from the outset, participated willingly in order to assist the BCUC in preparing an informed final report. Parkland has filed approximately 250 pages of evidence, including company evidence, the completed Questionnaire, and an independent expert report on the BC gasoline and diesel market.² All of this work was completed within the constraints imposed by an extraordinarily aggressive timetable, and at considerable expense. Parkland also volunteered early in the process to make its representatives available to answer any questions that the BCUC might have.

¹ The initial communication from the BCUC stated, for instance: “The BCUC has identified a list of parties that will be requested to participate as interveners and provide evidence in accordance with the terms of reference of the Inquiry. Invited participants are requested to complete the questionnaire attached as Appendix C to Order G-112-19 and, in accordance with the regulatory timetable, submit it to the BCUC by Thursday, June 27, 2019.” [Emphasis added.]

² https://www.bcuc.com/Documents/Proceedings/2019/DOC_54405_C5-2-Parkland-Evidence.pdf

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Parkland is willing to share its refining and retail margins³ with the BCUC under appropriate conditions. (The margins were the only information excluded from the Questionnaire responses, and Parkland did provide proxy information that could be used.) Parkland remains concerned about its competitors obtaining that information.

The obstacle to Parkland filing refining and retail margin information with the BCUC to date has been a procedural one: the BCUC's procedures contemplate the company providing the information, whereupon the BCUC will *consider* whether to accept the company's request to keep the information confidential. In other words, those procedures provide no assurance that the BCUC will decide to keep the information confidential. This may be workable in the context of a monopoly utility with rates set by the same regulator, but it is insufficient for an inquiry directed at a competitive market.

Parkland's concern with the BCUC confidentiality process would be mitigated if the BCUC were to issue an order *in advance* to the effect that information relating to margins and other related commercially sensitive business information:

1. will be kept confidential by the BCUC and available to the BCUC alone; and
2. will not be disclosed, or capable of being discerned (e.g., by back-calculation), in the BCUC's final report or other published materials.

Parkland submits that it is reasonable for the BCUC to make this order now based on the self-evident harm that would result to Parkland and others from disclosing margin information in a competitive marketplace.

Parkland has begun the process of assembling this information in anticipation of potentially receiving confirmation about the terms described above. However, it will take some time to provide this information given system limitations and the challenges articulated in response to Questions 23 and 29. Parkland will also provide context around those numbers, as necessary to ensure they are understood. Parkland anticipates being unable to complete the necessary work before the oral phase.

Procedural Fairness

In our letter of June 27, 2019, we expressed Parkland's concern about the fairness of the Inquiry process. Specifically, we stated:

The compressed timelines associated with this Inquiry, combined with the volume of materials that BCUC staff has continued to file up until two days ago (well after the date contemplated in the published timetable), have represented a significant challenge to fair and meaningful participation by interveners. Parkland will be relying on the oral phase as an opportunity to have its representative(s) and Dr. Kahwaty explain and highlight aspects of their evidence and elaborate regarding their views on materials filed by the BCUC.

In addition, the BCUC's consultant has yet to file its Phase 2 report (it is due only a week before the oral phase), and there is no time built in to the schedule for parties to respond to it. The

³ The refining and retailing margins appear to have been misconstrued by many non-participants as profit margins. As the BCUC is aware, these margins are shown before any costs have been deducted. Profits are also dependent on volumes.

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BCUC has yet to confirm how the oral phase will unfold (i.e., whether presentations are permitted, how witnesses will appear, whether there is cross-examination and by whom, etc.).

This Inquiry has the potential to impact Parkland's business in a fundamental way. Yet, the timelines involved in this Inquiry have made effective participation challenging, as has the limited opportunities to respond to materials filed by the BCUC and others, and continued uncertainty regarding the process. We reiterate to the BCUC the importance of Parkland representatives and/or Dr. Kahwaty having, at a minimum, the opportunity at the oral phase to provide a complete response to information that has been put on the record by the BCUC and others.

We respectfully look forward to the BCUC's response.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[Original signed by]

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Personal Law Corporation

MG/TA

