

July 10, 2019

**Sent by eFile**

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

**Attention: Patrick Wruck, Commission Secretary**

Norton Rose Fulbright Canada LLP  
1800 - 510 West Georgia Street  
Vancouver, BC V6B 0M3 CANADA

F: +1 604.641.4949  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

**Matthew D. Keen**  
+1 604.641.4913  
[matthew.keen@nortonrosefulbright.com](mailto:matthew.keen@nortonrosefulbright.com)

Assistant  
+1 604.641.4527  
[rosalind.endo@nortonrosefulbright.com](mailto:rosalind.endo@nortonrosefulbright.com)

Dear Sir:

**Re: British Columbia Utilities Commission (BCUC)  
Inquiry into Gasoline and Diesel Prices in British Columbia ~ Project No. 1599007  
Commission Order G-148-19**

We are legal counsel to Shell Canada Limited (Shell) in this matter and write on its behalf in response to Order G-148-19 and the upcoming oral workshop.

**1. Treatment of Confidential Data**

Shell confirms that it will provide the data ordered by the BCUC in Order G-148-19. Order G-148-19 and recent information about the oral workshop structure have addressed significant portions of Shell's confidentiality concerns.<sup>1</sup> Shell repeats that the data it declined to provide following the BCUC's initial request is commercially sensitive. Of note, the National Energy Board (NEB) adopted the following procedures to deal with substantially the same concerns:<sup>2</sup>

- Only one set of hard copy financial information, in a red folder, and marked confidential, was provided.
- No copies were permitted.
- Access was to counsel only, plus outside experts to the extent counsel required their advice or expert opinion.
- Oral hearing proceedings dealing with confidential content were conducted *in camera*, with pink paper hard copy transcripts.
- Before oral *in camera* sessions IDs were checked by security.
- The hearing room was swept for listening devices each day.

That proceeding dealt with pipeline access. As here, the refining margin information of refineries in BC and neighbouring markets was at issue. Shell requests that the BCUC adopt the same internal practices that the NEB did to protect the same type of information. The NEB Procedural Order is attached.

---

<sup>1</sup> See ex. A-6 and C10-2.

<sup>2</sup> NEB Order PO-001-MH-002, attached. BCUC Staff have filed the Reasons for Decision from that proceeding as Ex. A2-13 on the record of this proceeding.

July 10, 2019

Shell will accordingly provide a hard copy version of the data in question and requests that the BCUC and its consultants take the further step of avoiding making or transmitting copies of it and keep it in a red folder (and the same for other parties' comparable refining and marketing information), and that BCUC consultants execute standard BCUC confidentiality undertakings.

## **2. Timing of Confidential Data**

Shell is assembling the ordered information and will provide as much of it as possible on July 15, with any outstanding items following as soon as it is ready. At this stage Shell cautions that it may not be able to fully meet the BCUC's timeline because the data available is not stored in the format requested, and substantial work is required to extract and present the information in a manner that is responsive to the BCUC's request and the Inquiry's scope.

## **3. Videoconference Oral Workshop Attendance**

Shell currently intends to make Isabelle Frizzle (Pricing Manager, Canada Channel Optimization), Sigourney Courtright (Retail Pricing Manager, Canada) and Nicholas Boutilier (Scotford Refinery Economist) available to respond to questions that the Panel may have. Ms. Frizzle and Ms. Courtright are located in Calgary and Mr. Boutilier is located in Fort Saskatchewan.

Shell has reviewed the oral workshop information letter posted yesterday afternoon.<sup>3</sup> Shell is scheduled to respond to Inquiry Panel questions on the afternoon of Wednesday, July 17, with questions dealing with confidential material held for the end of the afternoon in a later session and in a separate, private room. For each session Shell requests to appear by videoconference, or teleconference. It would be helpful if these sessions were close in time to each other, but is not necessary.

At this time Shell does not anticipate asking questions of either Navius or the Deetken Group, and expects its opening remarks, if any, will be very brief.

Please contact the writer if you have any questions.

Yours very truly,



Matthew D. Keen

Encl.

- c. Dan Kolenick, Managing Counsel, Global Litigation - Canada  
Shell Canada Limited

---

<sup>3</sup> Ex. A-6.



File OF-Tolls-Group1-T260-2012-05 01  
29 October 2012

Ms. Miriam Kresivo  
General Counsel  
Chevron Canada Limited  
1500 – 1050 West Pender Street  
Vancouver, BC V6E 3T4  
Facsimile 604-668-5320

Mr. Chris W. Sanderson, Q.C.  
Lawson Lundell LLP  
1600 Cathedral Place  
925 West Georgia Street  
Vancouver, BC V6C 3L2  
Facsimile 604-669-1620

Mr. Keith Bergner  
Lawson Lundell LLP  
1600 Cathedral Place  
925 West Georgia Street  
Vancouver, BC V6C 3L2  
Facsimile 604-669-1620

Dear Ms. Kresivo, Mr. Sanderson and Mr. Bergner:

**Hearing Order AO-001-MH-002-2012 dated 21 August 2012  
Chevron Canada Limited (Chevron)  
Application for a Priority Destination Designation (PDD) dated 19 June 2012  
Chevron Notice of Motion dated 16 October 2012 to treat certain Information  
Request responses as confidential pursuant to section 16.1 of the *National Energy  
Board Act (Act)*  
Ruling No. 2**

The National Energy Board (Board) has received the filing of Chevron with responses to Information Requests (IRs) and its Notice of Motion and supporting affidavits requesting that certain attachments be treated as confidential pursuant to section 16.1 of the Act (Motion). The Motion also requested that the Board grant an Order setting out the procedure for dealing with confidential information with terms analogous to those granted in the MH-2-2005 proceeding regarding a previous Chevron Application for Priority Destination Designation. In that proceeding, the Board prescribed terms under which limited access to confidential information would be provided to qualifying individuals in Order PO-1-MH-2-2005.

The Board established a written process to hear the Motion. On 18 October 2012 the Board requested comments from parties in respect of Chevron's Motion. The Board received responses from Phillips 66 Canada ULC (P66) and Shell Canada Trading (Shell), Imperial Oil Limited (Imperial), BP Canada Energy Group ULC (BP Canada), Trans Mountain Pipeline ULC (Trans Mountain), Tesoro Canada Supply & Distribution Ltd. (Tesoro) and the Government of Alberta (Alberta). Chevron provided reply submissions on 24 October 2012. The Board has carefully considered the submissions.

**Notice of Motion and Reply**

*Confidentiality pursuant to section 16.1 of the Act*

Chevron requested confidentiality for attachments to its IR Responses to NEB IR 1.2(a), BP Canada IR 1.3(a), Imperial IR 7(a), and P66/Shell IR 1.8(a) pursuant to section 16.1 of the Act.

.../2

Chevron submitted that the disclosure of the information could reasonably be expected to result in a material loss to Chevron and prejudice its competitive position. It also asserted that the information is financial, commercial or technical information that is confidential and has been consistently treated as confidential by Chevron and that the interests of Chevron in confidentiality outweigh any public interest in disclosure.

In its reply comments, Chevron submitted that the release of the information to its competitors could impact Chevron's ability to secure future competitive crude oil supply. Chevron is concerned that the greater particularization contained in the current filing compared to 2005 would enable competitors to simulate refinery operations and economics in a manner that is highly prejudicial to Chevron.

In order to provide a greater level of public information, Chevron prepared and enclosed with its reply comments, versions of Attachments Imperial IR 7(a) and BP Canada IR 1.3(a) that show the headings (without numbers) and indicated that these filings will provide (publicly) greater insight into the nature of the information contained in the confidential Attachments. Chevron also prepared a "rolled up" version of Attachments NEB IR 1.2(a), which provides some of the information contained in the original Attachments NEB IR 1.2(a) in an aggregated form. It contains the headings that were included in the original.

#### *Procedure for dealing with Confidential Information*

In the covering letter to the Motion, Chevron indicated that the motion sought relief analogous to relief that the Board previously granted to Chevron in connection with its Application for Priority Destination designation in 2005. Chevron requested that the Board make the order sought so that it could provide the confidential information to counsel for any other party that requires it and is prepared to sign the Undertaking.

In its reply comments Chevron clarified that it is prepared to grant access to independent experts retained by intervenors, if a Board Order is granted on terms analogous to those granted in 2005. With regards to the submissions of BP Canada and Imperial on the issue of access by company personnel, Chevron submitted that BP Canada and Imperial are Chevron's competitors. The issue of access by company personnel was expressly considered and rejected by the Board in its 2005 Order as the risk of inadvertent disclosure was too high. Chevron submitted that BP Canada and Imperial have not provided any information to distinguish the current circumstances from those in 2005 and that the 2005 Order remains apt in the current circumstances.

Chevron also submitted that it is not opposed to access being provided to the individuals named by Trans Mountain in the current proceedings on the basis that Trans Mountain (a) is not a competitor to Chevron; (b) routinely has access to information about Chevron of the sort and type of some of the confidential information; and (c) has established practices in place to keep such information confidential (and not accessible to Chevron's competitors).

## **Comments from Other Parties**

### *Confidentiality pursuant to section 16.1 of the Act*

P66/Shell noted that in the MH-2-2005 proceeding, Chevron provided much of the information that is requested in the NEB IR 1.2(a) and (c) (the same information sought by P66/Shell) on a non-confidential basis. P66/Shell submitted that Chevron should be required to satisfy the Board that there is now a principled reason for requesting confidential treatment of this information. P66/Shell argued that any subsequent process relating to the information that is in fact produced would be required to also be subject to confidentiality constraints. P66/Shell questioned whether confidentiality is justified given its impact on the efficiency and complexity of further process.

Imperial noted that much of the confidential information that was filed by Chevron in the 2005 proceeding related to the financial position of the Burnaby refinery, a matter which Chevron now asserts to be irrelevant. Imperial views the claimed confidential information in the present proceeding as much more limited in scope – consisting primarily of historic information about sources of feedstock, refinery investments, and rail and truck costs.

BP Canada does not object to the Board issuing an Order allowing Chevron to file the certain information in confidence and submits that the confidential information described in paragraph 2 of the Notice of Motion appears to include information of both a technical and financial nature.

### *Procedure for dealing with Confidential Information*

P66/Shell's position on who should have access to the confidential information is that it should mirror the scope of dissemination reflected in the 2005 Order. Tesoro took a similar view.

BP Canada's position is that it should be made available to non-legal representatives of BP Canada on the same terms and conditions as confidential information is made available to legal counsel and to consultants.

Imperial's position is that it should be made available not only to legal counsel and consultants, but also to the company employee that is instructing counsel and consultants.

Trans Mountain requested that its external counsel of record in this proceeding and those internal to Trans Mountain instructing external counsel be provided with access to the information that the Board determines is entitled to confidential treatment.

Alberta submitted that legal counsel and several individuals employed with the Alberta Department of Energy require access to the information that may be determined to be confidential in this proceeding.

## Board Decision

### *Confidentiality pursuant to section 16.1 of the Act*

The Board is of the view that the attachments to NEB IR 1.2(a), BP Canada IR 1.3(a), Imperial IR 7(a) and P66/Shell IR 1.8(a) (the Confidential Information) should be treated confidentially, pursuant to section 16.1 of the Act.

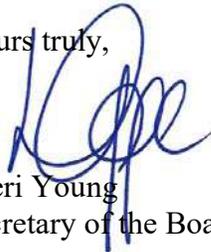
The Board finds that disclosure of the Confidential Information could reasonably be expected to result in a material loss to Chevron or gain to others, or could reasonably be expected to prejudice Chevron's competitive position. In addition, the Board finds that the Confidential Information is financial, commercial or technical information that was confidentially supplied to the Board and has been consistently treated as confidential by Chevron. Disclosure of it to its competitors could impact Chevron's ability to secure future competitive crude oil supply.

The Board notes Chevron's submission of revised versions of Attachments Imperial IR 7(a) and BP Canada 1.3(a) and Attachments NEB IR 1.2(a) in order to provide the public with greater insight into the nature of the information contained in the confidential Attachments. The Board considers that Chevron's interest in confidentiality of the Confidential Information specific to its business operations outweighs the public interest in disclosure.

### *Procedure for dealing with Confidential Information*

The parties disagree as to who should have access to the information. The Board is not persuaded that access to the Confidential Information should be provided to the internal business people of the corporate intervenors, except in the case of Trans Mountain. The Board has decided that except for the access that Chevron consents to for the individuals named in Trans Mountain's response to the Motion, the scope of the 2005 Order is appropriate in all respects and adopts the directions and procedures set out in Ruling Number 5 in the MH-2-2005 proceeding. Order PO-001-MH-002-2012 gives effect to this Ruling and is attached as Attachment 1 hereto. Attachment 2 sets out the directions and procedures (based on Ruling Number 5 in the MH-2-2005 proceeding) and forms part of this Ruling.

Yours truly,

  
for  
Sheri Young  
Secretary of the Board

c.c. All Parties to Hearing Order MH-002-2012

**Attachment 1** – Order PO-001-MH-002-2012 including Appendix A, Undertaking of Confidentiality; and Appendix B, Statutory Declaration;

**Attachment 2** – Procedure for dealing with Confidential Information



**ORDER PO-001-MH-002-2012**

**IN THE MATTER OF** the *National Energy Board Act* (the Act) and the regulations made thereunder; and

**IN THE MATTER OF** an application for priority destination designation by Chevron Canada Limited (Chevron) under file OF-Tolls-Group1-T260-2012-05 01 (the PDD Application); and

**IN THE MATTER OF** Hearing Order MH-002-2012; and

**IN THE MATTER OF** an application by Chevron for an order pursuant to section 16.1 of the Act for the filing in confidence of certain information in Information Requests (IR) National Energy Board (NEB/Board) IR 1.2(a), BP Canada Energy Group ULC (BP Canada) IR 1.3(a), Imperial Oil Limited (Imperial) IR 7(a) and Phillips 66 Canada ULC and Shell Canada Trading (P66/Shell) IR 1.8(a).

**BEFORE** the Board on 29 October 2012.

**WHEREAS** Chevron applied for an order pursuant to section 16.1 of the Act for the filing in confidence of certain information requested in NEB IR 1.2(a), BP Canada IR 1.3(a), Imperial IR 7(a) and P66/Shell IR 1.8(a) (the Confidential Information);

**AND WHEREAS** the Board determined that the disclosure of the Confidential Information could reasonably be expected to result in a material loss to Chevron or gain to others, or could reasonably be expected to prejudice Chevron's competitive position;

**AND WHEREAS** the Board determined that the Confidential Information is financial, commercial or technical information that was confidentially supplied to the Board and has been consistently treated as confidential by Chevron;

**AND WHEREAS** the Board considered that Chevron's interest in confidentiality outweighs the public interest in disclosure of the Confidential Information in the MH-002-2012 proceeding;

**AND WHEREAS** the Board has determined that the Confidential Information is entitled to confidential treatment pursuant to section 16.1 of the Act;

**AND WHEREAS** the Board considered the comments of the parties with respect to the scope of this Order;

.../2

**IT IS HEREBY ORDERED THAT:**

1. The Confidential Information filed by Chevron is entitled to the protection set out herein. Unless the Board otherwise directs, or as otherwise required by law, all persons who have access to the Confidential Information pursuant to this Order shall comply with the process for dealing with the Confidential Information, as set out in Clauses 2 to 15 below.
2. Except as authorized in this Order, access to the Confidential Information shall not be given to any person, including corporate or individual intervenors or experts.
3. Any person permitted access to the Confidential Information pursuant to clauses 4 to 6, inclusive, or other persons authorized by order of the Board, shall execute an undertaking to comply with the terms of this Order, in the form attached as Appendix A to this Order (the Undertaking), and provide an original thereof to each of the Board and Chevron.
4. Legal counsel of record for each intervenor in the MH-002-2012 proceeding, both external and in-house, shall have access to the Confidential Information.
5. Legal counsel who have been provided access to Confidential Information pursuant to this Order shall be entitled to permit partners, associate lawyers and support staff of external legal counsel to review the Confidential Information to the extent that viewing the Confidential Information, or portions thereof, is, in the opinion of legal counsel, necessary in order for those persons to provide assistance to legal counsel with respect to the Confidential Information, and which assistance is normally consistent with the duties of those persons.
6. Independent expert consultants, not employed by, or under permanent contract to, either an intervenor or an affiliate of an intervenor to this proceeding, may have access to the Confidential Information, if, in the opinion of legal counsel, access to the Confidential Information is necessary in order for that expert consultant to provide assistance to legal counsel, or to provide expert testimony in connection with the Confidential Information.
7. Chevron shall provide one copy of the Confidential Information, contained in a red-coloured cover and stamped "Confidential", to legal counsel and any other person permitted to view the Confidential Information pursuant to clauses 4 to 6 inclusive, or by order of the Board, forthwith following filing with the Board and delivery to legal counsel for Chevron, of an originally executed Undertaking by that legal counsel or person.

.../3

8. No additional copies shall be made of the Confidential Information, by any means, by any persons other than Chevron or Chevron's legal counsel, unless leave is granted by the Board. If additional copies of the Confidential Information are required, persons requiring those copies shall contact Chevron for same. Additional copies shall be provided in a red-coloured cover and stamped "Confidential".
9. Confidential Information incorporated into written or oral argument, or used for the purpose of evidence or notes for cross-examination for this proceeding or any appeal, review or rehearing therefrom shall not constitute additional copies for the purposes of clause 8.
10. The Confidential Information shall be held in confidence, and used only for the purpose of this proceeding on Chevron's PDD Application and any appeal, review or rehearing from the Board's decision in this proceeding. No disclosure is to be made of the Confidential Information to any persons who have not executed and delivered an Undertaking, unless required by law, in which case, the person being required to disclose shall forthwith notify Chevron and the Board in writing of such requirement.
11. All reasonable, necessary and appropriate efforts to protect the Confidential Information from disclosure will be used. Confidential Information, and any material that contains reference to, or portions of the Confidential Information, shall be segregated and clearly labeled as "Confidential" and, where possible, transmitted in hard copy only.
12. All persons who have executed and delivered an Undertaking are entitled to be present at those portions of the MH-002-2012 proceeding where the Confidential Information is referenced.
13. With the exception of one copy to be maintained by the Board in confidence for its records, all written copies of the Confidential Information, and any portions of the evidence, transcripts, notes, working papers, calculations, analysis or other materials based on or using the Confidential Information (Related Materials), shall either be returned to Chevron or destroyed on or prior to the later of
  - a) 40 days from the Board's decision on Chevron's PDD Application; or
  - b) 40 days from the conclusion of either
    - i) any appeal proceedings undertaken pursuant to section 22 of the Act with respect to Chevron's PDD Application, and any subsequent appeal proceedings therefrom; or
    - ii) any review or rehearing proceedings undertaken pursuant to section 21 of the Act with respect to Chevron's PDD Application, and any subsequent appeal proceedings therefrom;

(the Return or Destroy Date).

14. All electronic versions of the Confidential Information and the Related Materials shall be expunged from all electronic apparatus and data storage media on or prior to the Return or Destroy Date set out in clause 13 above.
15. Within seven days from the Return or Destroy Date set out in clause 13, all persons who have executed an Undertaking shall provide Chevron and the Board with an originally executed statutory declaration, in the form attached as Appendix B to this Order, confirming compliance with the terms of this Order, and, in particular, that the Confidential Information and any Related Materials have been returned or destroyed in accordance with clauses 13 and 14.
16. Unless an application is made to the Board prior to 31 December 2022 for an extension of this Order, this Order shall expire on 31 December 2022.

NATIONAL ENERGY BOARD

  
for  
Sheri Young  
Secretary of the Board

**UNDERTAKING OF CONFIDENTIALITY**

**TO:** The National Energy Board

**AND TO:** Chevron Canada Limited (Chevron)

**WHEREAS** the Board set down for hearing, in proceeding MH-002-2012, an application by Chevron for Priority Destination Designation (the PDD Application);

**AND WHEREAS** Chevron applied for an order pursuant to section 16.1 of the *National Energy Board Act* for the filing in confidence of certain information requested in information requests;

**AND WHEREAS** the Board determined that the Confidential Information was entitled to confidential treatment pursuant to section 16.1 of the Act;

**AND WHEREAS** the Board issued Order PO-001-MH-002-2012, dated 29 October 2012, setting out the terms and conditions of access to the Confidential Information;

**AND WHEREAS** \_\_\_\_\_ (the Recipient) is one of the persons referenced in Order PO-001-MH-002-2012 who has been granted access to the Confidential Information, or is a person who has otherwise been granted access to the Confidential Information by order of the Board, conditional upon the Recipient executing this Undertaking and providing an original hereof to each of the Board and Chevron;

**NOW THEREFORE**, in consideration of receiving access to the Confidential Information, the Recipient hereby agrees and undertakes as follows:

1. I agree that the capitalized terms used herein that are not otherwise defined shall have the meaning ascribed thereto in Order PO-001-MH-002-2012.
2. I agree to observe the terms and conditions for access to the Confidential Information set out in Order PO-001-MH-002-2012 and herein.
3. I will not make any additional copies of the Confidential Information, by any means, unless leave is granted by the Board to do so.

4. I will hold the Confidential Information in confidence, and use it only for the purpose of this proceeding on the PDD Application and any appeal, review or rehearing from the Board's decision in this proceeding. I will disclose the Confidential Information only to those persons who are authorized by the Board to receive access to the Confidential Information and who have executed an Undertaking, unless otherwise required by law, in which case, I will promptly give written notice to the Board and Chevron that such disclosure has been required.
5. I will use all reasonable, necessary and appropriate efforts to protect the Confidential Information from disclosure. Confidential Information shall be segregated and clearly labeled as confidential and, where possible, transmitted in hard copy only.
6. Unless otherwise directed by the Board, I will either return to Chevron or destroy all written copies of the Confidential Information, and any evidence, transcripts, notes, working papers, calculations, analysis or other materials based on or using the Confidential Information (Related Materials), on or prior to the later of
  - a) 40 days from the Board's decision in this proceeding; or
  - b) 40 days from the conclusion of either
    - i) any appeal proceedings undertaken pursuant to section 22 of the Act with respect to Chevron's PDD Application, and any subsequent appeal proceedings therefrom; or
    - ii) any review or rehearing proceedings undertaken pursuant to section 21 of the Act with respect to Chevron's PDD Application, and any subsequent appeal proceedings therefrom;

(the Return or Destroy Date).
7. I will expunge all electronic versions of the Confidential Information and the Related Materials from all electronic apparatus and data storage media on or prior to the Return or Destroy Date set out in clause 6 above.
8. Within seven days from the Return or Destroy Date set out in clause 6, I will provide Chevron and the Board with a with a statutory declaration, in the form attached as Appendix B to Board Order PO-001-MH-002-2012, confirming compliance with the terms and conditions of Order PO-001-MH-002-2012, and this Undertaking and, in particular, that the Confidential Information and any Related Materials have been returned or destroyed in accordance with clauses 13 and 14 of the Order and clauses 6 and 7 of this Undertaking.
9. If Order PO-001-MH-002-2012 is subsequently varied or amended, I agree that the terms of the varied or amended Order shall prevail over the terms in this Undertaking.

10. I acknowledge and agree that any breach of the terms of this Undertaking or Order PO-001-MH-002-2012 will cause material and irreparable harm and damage to Chevron. I agree that Chevron shall be entitled to injunctive relief to prevent breaches of this Undertaking or Order PO-001-MH-002-2012, and to specifically enforce the terms and provisions thereof, in addition to any other remedy to which Chevron may be entitled at law.
11. I agree that no failure or delay by the Board or by Chevron in exercising any right or privilege in respect to a breach of this Undertaking or Order PO-001-MH-002-2012 shall operate as a waiver thereof.
12. I acknowledge that any breach of Order PO-001-MH-002-2012 may be the subject of contempt proceedings in the Federal Court of Canada.

MADE AT \_\_\_\_\_, in the province of \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Recipient's Signature

\_\_\_\_\_  
Witness's Signature

\_\_\_\_\_  
Recipient's Printed Name

\_\_\_\_\_  
Witness's Printed Name

**STATUTORY DECLARATION**

**CANADA**

**IN THE MATTER OF** the *National Energy Board Act* and the regulations made thereunder; and

**PROVINCE OF**

\_\_\_\_\_

**IN THE MATTER OF** an application for priority destination designation, by Chevron Canada Limited (Chevron), under File OF-Tolls-Group1-T260-2012-05 01 and Hearing Order MH-002-2012 (the PDD Application); and

**IN THE MATTER OF** the information filed by Chevron, pursuant to section 16.1 of the *National Energy Board Act* and determined by the Board to be Confidential Information.

I, \_\_\_\_\_, of the City of \_\_\_\_\_, in the province of \_\_\_\_\_, do solemnly declare as follows:

1. That the capitalized terms used herein that are not otherwise defined shall have the meaning ascribed thereto in National Energy Board Order PO-001-MH-002-2012, dated 29 October 2012, and my Undertaking to the Board and Chevron, dated \_\_\_\_\_.
2. That I have fully complied with my Undertaking and Order PO-001-MH-002-2012.
3. That I have made no use of the Confidential Information or of the Related Materials except as permitted by my Undertaking or Order PO-001-MH-002-2012.
4. That I have not disclosed the Confidential Information in any manner except as permitted by my Undertaking or Order PO-001-MH-002-2012.
5. That I have either returned to Chevron or destroyed all written copies of the Confidential Information and any Related Materials in my possession or under my control.



**Hearing Order MH-002-2012 Chevron Canada Limited (Chevron)  
Application for a Priority Destination Designation (the PDD Application)**

**Procedure for dealing with Confidential Information**

*Who should have access to the Confidential Information*

The Board is of the view that both external and in-house legal counsel should be allowed access to the Confidential Information, conditional upon each counsel signing a confidentiality undertaking, in the form attached as Appendix A to Order PO-001-MH-002-2012 (the Undertaking), and delivering an original thereof to both counsel for Chevron and the Board. Legal counsel are subject to strict professional obligations with respect to confidentiality and the Board is of the view that these professional obligations are not lessened for in-house legal counsel. In addition, external counsel may require that in-house counsel access the Confidential Information in order for the external counsel to receive adequate instruction from the client. However, the Board would remind in-house legal counsel that, if they choose to view the Confidential Information, there may be situations in which in-house counsel may be required to excuse themselves from internal discussions of the company for which they are employed, if they are of the view that they are unable to clearly segregate the Confidential Information in their mind from the topic of discussions of the company.

The Board is also of the view that external legal counsel may provide access to the partners, associate lawyers and support staff of that legal counsel to the extent that viewing the Confidential Information, or portions thereof, is, in the opinion of legal counsel, necessary in order for those persons to provide assistance to legal counsel with respect to the Confidential Information, and which assistance is normally consistent with the duties of those persons. Access to the Confidential Information is contingent upon those persons executing and delivering an original Undertaking to each of Chevron and the Board.

In addition, the Board finds that external consultants, unaffiliated with a corporate party or its affiliates and retained by legal counsel, may have access to the Confidential Information if legal counsel is of the opinion that expert advice from that consultant is required for the purpose of interpreting the Confidential Information, preparing evidence with respect to the Confidential Information, or assisting legal counsel with respect to the testing of the Confidential Information in this proceeding. Access to the Confidential Information is contingent upon those persons executing and delivering an original Undertaking to each of Chevron and the Board.

In order for the Board and Chevron to determine which consultants are entitled access to the Confidential Information, and which are to execute the Undertaking, legal counsel for the intervenors shall send a letter to the Board and Chevron indicating that they have determined that they need an expert consultant and providing the name of the expert consultant.

Unless otherwise ordered by the Board, no other persons are entitled to receive the Confidential Information. This restriction includes the internal business people of the corporate intervenors, as the risk of inadvertent disclosure is too high. The Board is of the view that this restriction should not impede any intervenor's participation in this proceeding to any significant extent, given that the nature of the Confidential Information has been made public and the Confidential Information itself forms only a small portion of the total evidence produced thus far in the proceeding.

*Process for Handling the Confidential Information*

On receipt of an executed Undertaking, Chevron shall provide one copy of the Confidential Information to the person who executed the Undertaking. The Confidential Information shall not be copied by any person having access to it other than Chevron. If additional copies are required, that person will contact Chevron for same. All copies of the Confidential Information will be marked "Confidential" and delivered under a red-coloured cover. The Board suggests that Chevron number the copies to enable easier tracking of the Confidential Information.

The Confidential Information shall be held in confidence, and used only for the purpose of this proceeding on Chevron's PDD Application and any appeal, review or rehearing from any decision the Board may make in this proceeding.

All reasonable, necessary and appropriate efforts to protect the Confidential Information from disclosure shall be used. Confidential Information, and any material that contains reference to, or portions of the Confidential Information, shall be segregated and clearly labeled as "Confidential" and, where possible, transmitted in hard copy only.

*During and after the oral portion of the Hearing*

The Board is of the view that everyone who has executed and delivered an Undertaking is entitled to be present at those portions of the MH-002-2012 proceeding where the Confidential Information is referenced. All other persons will be asked to leave the hearing until that *in camera* portion has concluded. During the oral portion of the hearing, a separate transcript will be taken, and the hearing will not be broadcast over the Board's Livelink system during the *in camera* portions of the hearing in which the Confidential Information is discussed.

At this point in the proceeding, it is premature to issue directions for dealing with the Confidential Information in final argument; however, the Board will issue further procedural directions on this aspect at a later time. The Board is of the view that some flexibility and accommodation in the presentation of their cases and in the Board's normal procedures will be required in order to maintain the confidentiality of the Confidential Information.

With the exception of one copy to be maintained by the Board in confidence for its records, all written copies of the Confidential Information, and any portions of the evidence, transcripts, notes, working papers, calculations, analysis or other materials based on or using the Confidential Information (Related Materials), shall either be returned to Chevron or destroyed 40 days after the later of the Board's decision on the PDD Application or the conclusion of any appeal, rehearing or review proceedings thereon (the Return or Destroy Date). All electronic versions of the Confidential Information and the Related Materials are to be expunged from all electronic apparatus and data storage media at the same time.

Within seven days from the Return or Destroy Date above, all persons who have executed an Undertaking shall provide Chevron and the Board with a statutory declaration, in the form attached as Appendix B to Order PO-001-MH-002-2012, confirming compliance with the terms of the Order, and, in particular, that the Confidential Information and any Related Materials have been returned or destroyed in accordance with the Order.

#### *Expiry of Order*

Given that the Order restricts the otherwise public access to the Board's proceedings and information that the Board considers in its decision, the Board is of the view that the Order should not remain in force indefinitely, unless there is sufficient reason for it to do so. At this point in time, the Board is not satisfied that sufficient reason has been shown. However, given the commercial sensitivity of the Confidential Information, the Board is of the view that it is entitled to a fairly lengthy protection period. Accordingly, the Board has determined that the Order shall remain in force for 10 years. If, prior to or nearing the end of the 10 years, any party is of the view that the term of the Order should be extended, they are free to apply to the Board to do so at that time, providing a justification why the Confidential Information continues to require protection.

#### *Other Procedural Matters*

Any further terms and conditions for the distribution, process in the hearing and return and disposal of the Confidential Information not mentioned in this Ruling are set out in Order PO-001-MH-002-2012.