Graham Walker
T (604) 640-4045
F (604) 622-5852
gwalker@blg.com

Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard St, P.O. Box 48600
Vancouver, BC, Canada V7X 1T2
T 604.687.5744
F 604.687.1415
blg.com

BLG
Borden Ladner Gervais

File No. 548278/000344

August 1, 2019

Delivered by Email (commission.secretary@bcuc.com)

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 external legal counsel for the intervener Husky Energy ("Husky").

Further to our letter dated July 26, 2019, please find enclosed responses by Husky to the additional questions from the Panel to the Interveners. Please note that these responses do not contain confidential information and Husky does not take issue with the responses being disclosed to the public. Husky will provide responses to questions that involve confidential information under separate cover.

Thank you for your attention to this matter.

Yours truly,

Borden Ladner Gervais LLP

For: Graham Walker

GW:mec

cc: Husky Energy

BCUC – Husky Responses to Further Panel Questions

1 Potential issues with retail market accessing alternative wholesale contract structures

The Jaccard 1996 Final Report recommended government policies that would involve "mechanisms to help independent retailers access alternative wholesale gasoline suppliers by having owners of various terminal (rail, water and pipeline) and storage facilities post prices for the use of such facilities by independents."[1]

Super Save in its 1996 submission noted its "crude related contract" that covered the period from 1990 to 1996. Super Save explains: "... the wholesale price chargeable to Super Save Gas was determined by adding to the cost of crude oil a fee for the processing, pipelining and terminalling of that crude oil which was refined on behalf of Super Save Gas by the major oil company."[2]

Super Save noted that no major oil company was willing to negotiate a similar contract when the crude related contracts expired at the end of 1994 and in May 1996.[3]

Advanced Biofuel also states that 75 percent of retail sites in BC operate under a supply agreement from one of the following brands: Petro-Canada, Esso, Mobil, Shell, Co-op, Husky or Chevron.[4]

In day two of the Oral Workshop on July 18, 2019, Advanced Biofuels noted that supply agreements have a plus or minus the rack price.[5]

Questions to Parkland, Shell, Imperial, Suncor, Husky, 7-Eleven and Super Save:

1. ***Please provide your views regarding a "crude related contract" that has been suggested in the question.***
2. ***Would the option to access existing terminals in BC by independents change the retail market in BC? How could this function?***
3. ***What is the degree of flexibility for retailers and marketers to switch from one supplier to another? For example, are there contracts that limit or make the purchaser captive for a specific period? Are there any penalties imposed for early cancellation of these contracts?***
4. ***Are there any other features in the wholesale supply contracts, for example, cash incentives, price protections or other discounts?***
5. ***In the Oral Workshop sessions, it seems that a discount to the rack price is common in supply contracts. Do premiums to the rack price exist?***

HUSKY RESPONSE:

1. As Husky was not a party to the "crude related contract" referred to by the Super Save Group, we cannot speak to its terms and conditions. Nor do we have any view to share on the merits of such a contract. As stated in Husky's previous submissions, refiners make significant long-term capital investments to build and maintain refineries and the return on these investments are impacted by many factors other than crude price.

2. The only terminal that Husky operates in British Columbia is located at the Prince George Refinery. Due to safety concerns, we could not allow a third party to utilize the terminal operated by Husky. Husky is not, however, aware of any barriers to independent parties building additional terminals at their own cost and risk.

3. **Please see separate confidential submission.**

4. **Please see separate confidential submission.**

5. In its previous oral testimony before the Commission, Husky outlined that most supply agreements are generally marked to rack price. For supply agreements with marketers and other customers, the relationship with the rack price is generally volume based. In other words, the greater the volume, the greater the difference to rack price. For sales to wholesalers, as well as from wholesalers to branded dealers, other considerations will also be taken into account such as creditworthiness of the purchaser. In some contracts the price to a wholesaler or a branded dealer may be greater than the rack price.

2 Refined Petroleum Product Supply and Demand Balance

The National Energy Board states:

> Most refineries, including those in Canada, do not operate at 100% capacity. This is mostly due to planned/unplanned maintenance and outages. In 2017, Canadian refineries operated at 84% of their capacity.[6]

Questions to Parkland, Shell, Imperial, Suncor and Husky:

1. ***Please provide your refinery capacity and its actual production volume for 2013–2018.***
2. ***If your refinery did not operate at full capacity for any or all of those years, please advise why.***

HUSKY RESPONSE:

1. The nameplate capacity of Husky's Prince George Refinery is 12,000 bpd. **Please see separate confidential submission for additional information.**

2. Given the nature of refinery operations, it is nearly impossible for a refinery to operate at full capacity for an entire year. Utilization can be impacted by planned maintenance that requires certain units to be down, unplanned events that require slow down or cessation of operations, or unplanned third-party events that impact refinery operations. **Please see separate confidential submission for additional information.**

4 Differences between Canadian vs. US gasoline quality specifications

In day two of the Oral Workshop (July 18, 2019), Suncor notes two different factors to consider when importing refined product from the United States. The quality issue speaks to the Canadian specification for gasoline, established by the Canadian General Standards Board which covers both federal and provincial regulations. In the US, gasoline specifications are based on the ASTM D4814 specification. While the specs are very close, there are some differences around corrosion inhibition, how octane is measured, and the US may permit additives in gasoline that are not yet registered for use in Canada.14

Suncor stated that BC imports from PADD 2 and 5, and an increase from last year in PADD 3, but the pool of gasoline that can be imported to meet Canadian specs is limited. Suncor indicated that their options to manipulate the gasoline upon arrival are very limited. Third parties mix the gasoline at the source and do the mixing at cost.[15]

Questions to Parkland, Shell, Imperial, Suncor, Husky, 7-Eleven and Super Save:

1. ***How much refined product volume does your company import from the US on an annual basis, and from which PADD region? Does this change over time? Have you purchased product specially manufactured for the BC market or do you purchase refined product and make the changes required to meet BC specifications? Are there any minimum orders?***
2. ***How do you ensure that imported gasoline meets all Canadian specifications? Please explain the process taken in detail. (Question to all of the above, except Suncor)***
3. ***Has the cost and availability of refined products significantly changed since 2015?***

Question to Husky:

13. ***Since Husky has a refinery in BC, to what extent would Husky have to treat the light crude from the US before or after it enters their Prince George refinery?***

HUSKY RESPONSE:

1. In addition to its own production, Husky purchases refined product on a 'delivered' basis and as such, Husky does not have full visibility to the origin of the product. When purchasing refined products, Husky requires that the provider ensure that it meets the specifications of the jurisdiction in which it is delivered, including BC. There is no minimum order.

2. Husky only enters into supply contracts that specify CGSB specifications must be met by the supplier. The supplier must provide a Certificate of Analysis upon demand to prove that the applicable CGSB specifications have been met.

3. As stated in previous submissions, the cost and availability of refined products in any single market can be impacted by events near and far form that market. Husky has been able to source refined products for the BC market when required and the cost of such products has varied as can be seen in the historical rack price records.

13. The Prince George Refinery does not source crude from the US. The Prince George Refinery was designed to process sources of nearby crude, specifically crudes from North Eastern BC and Western Alberta near the BC border. As noted in our previous submission, the refinery is connected to Pembina's Western Pipeline which transports crude from Taylor, BC to the refinery gate.

7 Price Competition

A price war article at the retail level in Ontario was presented in evidence which appear to suggest that the retail business is competitive.[21]

A letter of comment in Exhibit E-34 notes concerns regarding gas station price fluctuations.

Questions to Parkland, Shell, Imperial, Suncor, Husky, 7-Eleven and Super Save:

1. Is there evidence that price wars exist on a retail level in BC? How often do these price wars occur, and for how long? Has there been any significant events since 2015?
2. Is there evidence that price wars exist on a wholesale/refinery level in BC (i.e. rack rate or wholesale price)? How often do these price wars occur, and for how long? Has there been any significant events since 2015?

HUSKY RESPONSE:

1. The term "price war" has not been defined in these proceedings. The article referred to in question 7, "Station Owner Feels He May Be Casualty of Gas War" from the Niagara Falls Review on February 19, 2016, refers generally to a "gas price war" and a "gas war" in the St. Catharines, Ontario region. These terms are similarly not defined in the article. As a result, Husky is unable to respond to the question of whether there is evidence that "price wars" exist at a retail level in BC.

   As Husky previously informed the Commission, retail pricing of gasoline and diesel is done in a competitive environment, with prices posted on street level signs by retailers to advise the public of current pricing. In this highly competitive environment, prices can move rapidly. Husky engages in competitive market practices and has responded to numerous downward trends in retail pricing in the GVRD in the last several years. Further, Husky has no insight into wholesale prices paid by its competitors or what those competitors charge their retail dealers.

2. As Husky has previously informed the Commission, Husky does not post a rack price in BC, or anywhere in Canada. Husky uses other available posted racks as a basis for pricing. The difference between rack price and the price to a wholesaler or a branded dealer is measured in 1/100th of a cent per litre and may be greater or less than the rack price. This is set out in a bilaterally negotiated supply agreements. Further, as set out in Husky's response to 7.1, the term "price war" is not defined. As a result, Husky is not able to comment on this question. As stated above, Husky has no insight into wholesale prices paid by its competitors or what those competitors charge their retail dealers.