



bcuc
British Columbia
Utilities Commission

Marija Tresoglavic
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September 24, 2020

Sent via email/eFile

PARKLAND – ADVANCE RULING ON CONFIDENTIALITY FOR FPTA REPORTING EXHIBIT A-2
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Ms. Christy J. Elliott
VP, Senior General Counsel & Corporate Secretary
Parkland Corporation
christy.elliott@parkland.ca

Re: Parkland Corporation – Request for Advance Ruling on Confidentiality for Fuel Price Transparency Act Reporting Submissions – Notice to the Public and Regulatory Timetable

Dear Ms. Elliott:

Further to your September 16, 2020 filing of the above-noted application, enclosed please find British Columbia Utilities Commission Order G-242-20 establishing a regulatory timetable and providing a notice to the public.

Sincerely,

Original signed by:

Marija Tresoglavic
Acting Commission Secretary

/ae

cc: Matthew Ghikas
Personal Law Corporation
mghikas@fasken.com



September 24, 2020

Sent via efile

To: Affected Parties, *Fuel Price Transparency Act* Responsible Persons, and Stakeholders

Re: British Columbia Utilities Commission – Parkland Corporation Request for Advance Ruling on Confidentiality for *Fuel Price Transparency Act* Reporting Submissions

In November 2019, the Government of British Columbia enacted the [Fuel Price Transparency Act](#) (FPT Act). The FPT Act requires companies in the fuel (gasoline and diesel) industry in BC to report information and data on their activities. The British Columbia Utilities Commission (BCUC), as the administrator of the FPT Act, is responsible for collecting data to promote market competitiveness, and public confidence in the competitiveness of the market. More information about the FPT Act and the BCUC's role as the administrator can be found at [GasPricesBC.ca](#).

On September 16, 2020, the BCUC received an application from Parkland Corporation (Parkland) for an advance ruling on confidentiality for certain commercial information that Parkland is required to file pursuant to the amended regulations under the FPT Act (FPT Regulations), as established by [Order in Council No. 474/20](#) dated August 13, 2020 (Application).

Section 9 of the FPT Act provides that the BCUC may publish fuel pricing data, or other information or records, it acquires under the FPT Act, if it is satisfied that protected information¹ will not be disclosed, or that the public interest outweighs any potential harm of releasing protected information. In determining whether to disclose protected information, the BCUC will have regard, in part, to the importance of the competitiveness of the market for reportable fuels and public confidence in the competitiveness of the market.

In reviewing the Application, the BCUC considers that Parkland's request has wider implications to all responsible persons required to file reports under the FPT Act who may seek similar relief for confidentiality in respect of protected information, and therefore for regulatory efficiency, is broadening the scope of the proceeding. The BCUC hereby initiates a public hearing for the review of an advanced ruling on such confidentiality for responsible persons under the FPT Act.

Pursuant to the attached order, parties who wish to participate in the proceeding may submit a letter of comment, register as an interested party, or request intervener status. Interveners are expected to participate for the duration of the proceeding, including attendance at hearings and submission of evidence or information requests as applicable. **[Requests to Intervene](#) must be submitted to the BCUC by Thursday, October 8, 2020.**

The BCUC [Rules of Practice and Procedure](#) (Rules) apply to the confidential treatment of all commercially sensitive information filed with the BCUC, most often in respect of matters related to energy supply contracts, financial arrangements, and system reliability and safety, among others. **The Panel requests registered interveners to make intervener submissions by Thursday, October 15, 2020** on the following:

¹ Section 9 of the FPT Act states that 'protected information' means information that would reveal trade secrets of a responsible person, or commercial, financial, labour relations, scientific or technical information of or about a responsible person.

- a. Whether the BCUC's Rules should be modified to recognize the confidentiality of "protected" information filed under the FPT Act;
- b. Whether additional BCUC terms or directives are necessary beyond the BCUC's Rules and section 9 of the FPT Act regarding applications for confidentiality of or the treatment of "protected" information;
- c. Whether Parkland's proposed terms are feasible under the FPT Act, the *Administrative Tribunals Act*, the *Freedom of Information and Protection of Privacy Act*, the *Competition Act*, or other applicable legislation; and
- d. Submissions on any further process to address requests for an advanced ruling on confidentiality of "protected" information.

Parties who do not wish to intervene may submit written letters of comment on Parkland's Application to Commission.Secretary@bcuc.com by Thursday, October 15, 2020. Letters of comment are intended to provide any member of the public an opportunity to contribute views, opinions, and impact or potential impact, with respect to a matter before the BCUC.

All responsible persons reporting under the FPT Act are reminded that they must comply with the reporting requirements and timelines as specified by legislation. The BCUC will consider the Rules and section 9 of the FPT Act before publishing fuel data, or other information or records, acquired under FPT Act.

Sincerely,

Original signed by:

Marija Tresoglavic
Acting Commission Secretary

LC/ae
Enclosure



ORDER NUMBER
G-242-20

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

the *Fuel Price Transparency Act*, SBC 2019, Chapter 46

Parkland Corporation
Request for Advance Ruling on Confidentiality
for *Fuel Price Transparency Act* Reporting Submissions

BEFORE:

D. M. Morton, Panel Chair
W. M. Everett, QC, Commissioner
E. B. Lockhart, Commissioner
B. A. Magnan, Commissioner

on September 24, 2020

ORDER

WHEREAS:

- A. On November 28, 2019, the Government of British Columbia enacted the *Fuel Price Transparency Act* (FPT Act). The FPT Act requires a responsible person engaged in a reportable activity to submit reportable fuel data to the administrator;
- B. By Order in Council (OIC) No. 123/20 dated March 9, 2020, the Lieutenant Governor in Council (LGIC) designated the British Columbia Utilities Commission (BCUC) as the administrator of the FPT Act. The BCUC is responsible for collecting data to promote competitiveness and public confidence in the competitiveness of the fuel market in British Columbia;
- C. By OIC No. 474/20 dated August 13, 2020, the LGIC, established the Fuel Price Transparency Regulations (FPT Regulations) under the FPT Act, which requires fuel importers, wholesalers, terminal owners/operators, and those who supply fuel to retail dealers, to make periodic submissions to the BCUC effective November 1, 2020. The BCUC is responsible for ensuring compliance with these regulations as the administrator of the FPT Act;
- D. Section 9 of the FPT Act provides that the BCUC may publish fuel pricing data, or other information or records acquired under the FPT Act, if it is satisfied that protected information will not be disclosed, or that the public interest in the disclosure of the protected information outweighs any potential harm to responsible persons of releasing the protected information;

- E. Section 9 of the FPT Act states that ‘protected information’ means information that would reveal trade secrets of a responsible person, or commercial, financial, labour relations, scientific or technical information of or about a responsible person;
- F. By Order G-15-19 dated December 17, 2018, the BCUC established the Rules of Practice and Procedure (Rules). Part IV of the Rules applies to all requests for confidentiality and confidential documents filed with the BCUC in regard to any and all matters;
- G. On September 16, 2020, Parkland Corporation (Parkland) filed an application for an advance ruling on confidentiality for certain commercial information that Parkland is required to file under FPT Act and Regulations (Application);
- H. In its Application, Parkland states that “the requested confidential treatment is appropriate to mitigate significant harm to Parkland and to align with competition law principles that restrict competitors from exchanging information of this nature,” and seeks the following BCUC orders:
- i. Advanced approval of confidential status be granted to information submitted by responsible persons that they identify as commercially or competitively sensitive in reporting submissions made under the FPT Act (Confidential Filings). Responsible persons must ensure that Confidential Filings, or any portions thereof, are clearly marked confidential;
 - ii. For the purpose of the order, confidential materials shall include (i) all Confidential Filings, and (ii) any document created by the BCUC (including its staff and legal counsel) that contains data from Confidential Filings in a manner that allows such data to be discerned;
 - iii. The BCUC will keep confidential materials confidential within the BCUC and only use them for purposes related to its administration of the FPT Act;
 - iv. Access to the confidential materials shall be strictly limited to the BCUC (including its staff and legal counsel) who have a need to access such information for purposes related to the administration of the FPT Act. To the extent that external consultants, such as information technology professionals, may have access to confidential materials, they are bound by confidentiality undertakings to the BCUC;
 - v. The BCUC will also ensure the information contained in the Confidential Filings cannot be discerned (e.g., by back-calculation) in the BCUC’s public reporting, other published material or reports to government; and
 - vi. Should (i) any of the confidential materials be the subject of a request for disclosure under the *Freedom of Information and Protection of Privacy Act*, or (ii) proceedings be commenced in the Supreme Court of British Columbia in respect of the confidential materials, the BCUC shall, forthwith, provide specific notice to the affected party and general notice of a request of a proceeding, as the case may be, to all parties that filed Confidential Filings;
- I. In its Application, Parkland indicates that it expects that other industry responsible persons under the FPT Act may share their views regarding confidentiality, and Parkland supports including such other responsible persons in a single proceeding to address these issues;
- J. In the BCUC Inquiry into Gasoline and Diesel Prices in British Columbia (Inquiry), the BCUC issued Orders G-148-19, G-162-19, and G-165-19 to provide advanced approval of confidential status to all documents that interveners identified as commercially or competitively sensitive information, among other matters, in order to obtain the information in the time required by that Inquiry;

- K. By Special Direction dated August 13, 2020 issued under section 4 of the FPT Act, the BCUC was directed to conduct a retail data collection pilot to inform the Minister of the development of regulations for ongoing data collection targeted at the retail component of the fuel supply chain in British Columbia;
- L. The Panel considers that Parkland's request has wider implications to all responsible persons under the FPT Act who may seek similar relief for confidentiality. For regulatory efficiency, the Panel views that establishing a public hearing is warranted for a broader review to address applications for an advanced ruling on confidentiality.

NOW THEREFORE the BCUC orders as follows:

1. A hearing process is established for the review of an advanced ruling on confidentiality for certain reportable fuel data that a responsible person must file under the FPT Act, in accordance with the regulatory timetable as set out in Appendix A to this order.
2. Registered interveners are requested to make intervener submissions on the following, in accordance with the regulatory timetable as set out in Appendix A to this order:
 - a. Whether the BCUC's Rules should be modified to recognize the confidentiality of "protected" information filed under the FPT Act;
 - b. Whether additional BCUC terms or directives are necessary beyond the BCUC's Rules and section 9 of the FPT Act regarding applications for confidentiality of or the treatment of "protected" information;
 - c. Whether Parkland's proposed terms are feasible under the FPT Act, the *Administrative Tribunals Act*, the *Freedom of Information and Protection of Privacy Act*, the *Competition Act*, or other applicable legislation; and
 - d. Submissions on any further process to address requests for an advanced ruling on confidentiality of "protected" information.
3. In accordance with the [BCUC's Rules](#) attached as Appendix A to Order G-15-19, parties who wish to participate in the proceeding may submit a letter of comment, register as an interested party, or request intervener status. Parties requesting intervener status must register with the BCUC by completing a [Request to Intervene Form](#) available on the BCUC's website by the date established in the regulatory timetable attached as Appendix A to this order. Parties requesting intervener status are to specifically state the nature of their interest in the Application and to generally identify the issues they intend to pursue and the extent of their anticipated involvement in the proceeding.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of September 2020.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Parkland Corporation
Request for Advance Ruling on Confidentiality
for *Fuel Price Transparency Act* Reporting Submissions

REGULATORY TIMETABLE

Action	Date (2020)
Intervener registration	Thursday, October 8
Intervener written submissions on directive #2 of Order G-242-20	Thursday, October 15
Public written letter of comment on Parkland's Application	Thursday, October 15
Parkland written reply submission	Thursday, October 22
Further process	To be determined