



October 15, 2020

British Columbia Utilities Commission

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

Attention: Marija Tresoglavic, Acting Commission Secretary

Dear Madam:

**Re: Parkland Corporation – Request for Advance Ruling on Confidentiality for Fuel Price Transparency Act Reporting Submissions
British Columbia Utilities Commission Order G-242-20
Federated Co-operatives Limited – Intervenor Submissions**

This is further to the British Columbia Utilities Commission (“**BCUC**”) Order G-242-20 (the “**Order**”) respecting Parkland Corporation’s (“**Parkland**”) Request for an Advance Ruling on Confidentiality for the *Fuel Price Transparency Act*¹ (the “**FPT Act**”) Reporting Submissions (the “**Proceedings**”).

Background

On October 8, 2020, the BCUC granted Federated Co-operatives Limited’s (“**FCL**”) application to intervene in the Proceedings.

FCL is a wholesaling, manufacturing, marketing and administrative co-operative owned by more than 160 independent local co-operative associations – 18 of which are located in British Columbia. These local co-operative associations own and operate agro centres, food stores, gas bars/convenience stores and home centres. In British Columbia, there are 64 local co-operative retail gas bars and 30 local co-operative commercial cardlock facilities.

Effective November 1, 2020, FCL will be subject to the reporting requirements in the FPT Act and the *Fuel Price Transparency Regulation*² (the “**FPT Regulation**”).

In the Order, the BCUC requested intervenors provide submissions on the following four issues:

¹ SBC 2019, c 46.

² BC Reg 52/2020.

- 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 advance ruling on the confidentiality of "protected" information.

FCL will address each issue in turn.

Discussion

a. Modification of BCUC's Rules to recognize the confidentiality of "protected" information

In FCL's submission, no modification of the BCUC's *Rules of Practice and Procedure*³ (the "**Rules**") is required to recognize the confidentiality of "protected information", as defined in the FPT Act.

Under section 9 of the FPT Act, "trade secrets" and "commercial, financial, labour relations, scientific or technical information" are protected from publication as "protected information", unless the public interest in the disclosure of the information outweighs the potential harm to the "responsible person".

In FCL's submission, the BCUC has the power to issue the confidentiality order pursuant to its power to administer the FPT Act and further to its specific direction to not publish "protected information" unless the public interest outweighs the potential harm to the "responsible person". Furthermore, the BCUC has the duty to administer the FPT Act in a manner that promotes "(i) the competitiveness of the market for reportable fuels, and (ii) the public confidence in the competitiveness of that market". The competitiveness of the market for reportable fuels would be significantly diminished if competitors had access to the type of information that is required to be reported under the FPT Act and FPT Regulation.

Pursuant to the FPT Act and FPT Regulation, FCL will be required to report:

- volume of fuel imported, purchase price, province or country of origin, and transportation costs as an importer of reportable fuel;⁴

³ Order G-15-19.

⁴ FPT Regulation, s 5.

- volume of fuel purchased, purchase price, purchase dates, and information regarding the seller as a wholesale purchaser of reportable fuel;⁵
- fuel storage terminal and storage tank capacity, including net usable capacity as a person who stores reportable fuel;⁶ and
- volume of fuel supplied, shipment dates, and amounts paid for the shipment of fuel as the supplier of reportable fuel.⁷

FCL submits that the information it is required to report under the FPT Regulation is commercial and financial information and so cannot be published, pursuant to section 9(2) of the FPT Act, unless the public interest outweighs the potential harm to FCL.

There is no public interest that would be served by diminishing the competitiveness of the fuel industry in British Columbia. In FCL's submission, the public interest will only outweigh the potential harm to "responsible persons" in instances where the data is presented in a completely anonymous and aggregated fashion. In this respect, any form of data released must be incapable of being used to back-calculate protected information.

In response to Parkland's Application, FCL submits that the BCUC should issue an order setting out that all information submitted to it pursuant to sections 5, 6, 7 and 8 of the FPT Regulation and the Reporting Guidelines⁸ is: 1) "protected information" under the FPT Act to the extent indicated by the responsible person, subject to any further determination by the BCUC; and 2) the public interest in the disclosure of such specified information *does not* outweigh the potential harm to the "responsible person", subject to any further determination by the BCUC.

No modification to the BCUC Rules is necessarily required to recognize the confidentiality of the "protected information" with respect to publication as the legislature has already directed that the BCUC cannot publish the "protected information" unless the public interest outweighs the potential harm to the "responsible person" and the order requested would address the "public interest" issue. The confidentiality provisions of the Reporting Guidelines would require amendment to be consistent with any order or ruling issued.

FCL submits further procedural steps would be appropriate with respect to the adoption of process-related amendments to the BCUC Rules to facilitate the protection of filed information under the FPT Regulation and Reporting Guidelines, as noted above, and in relation to requests for production of the "protected information" pursuant to a third party application to the BCUC under the *Freedom of Information and Protection of Privacy Act* ("FOIPPA"). The information required to be filed under the FPT Regulation requires

⁵ FPT Regulation, s 6.

⁶ FPT Regulation, s 7.

⁷ FPT Regulation, s 8.

⁸ (5 October 2020), online: BCUC: <<https://www.bcuc.com/Documents/FPTA/2020-10-05-Wholesale-Reporting-Instructions.pdf>>.

protection from FOIPPA requests for the same public policy reasons set out in Parkland's Application.

b. Necessity of additional BCUC terms or directives regarding application for confidentiality of or the treatment of "protected" information

The Reporting Guidelines prepared further to the FPT Regulation provide that submissions will be made public "unless the information contains protected information as outlined in Section 9 of the FPT Act or the BCUC has accepted the information as confidential pursuant to the BCUC Rules".⁹ In this respect, the Reporting Guidelines would require amendment to coincide with the terms of the requested order.

c. Feasibility of Parkland's proposed terms

FCL supports Parkland's proposed terms. The proposed terms recognize the commercially sensitive nature of the information to be reported and respect competition law principles. Furthermore, they accord with section 9 of the FPT Act.

The BCUC should issue the requested ruling or order as outlined above and incorporate Parkland's proposed terms and conditions into the order.

d. Further process

In FCL's submission, no further process steps are required to address requests for an advanced ruling on the confidentiality of "protected information" other than the requested order or ruling of the BCUC set out above and Parkland's proposed terms.

FCL submits that there would be no benefit to requiring each "responsible person" to apply to the BCUC to have its "protected information" treated confidentially, particularly if it were contemplated that such a process would be required on a monthly basis.

The Proceeding represents the most efficient manner in which to affirm the confidentiality of "protected information" and that the public interest in the disclosure of such specified information *does not* outweigh the potential harm to the "responsible person". The BCUC's ruling in the Proceeding should apply to all "responsible persons". Separate proceedings for each individual "responsible person", whether on a one-time basis or a monthly basis, would be an inefficient use of the parties' and the BCUC's limited time and resources.

Further processes should be initiated after the granting of the requested order or ruling to address any required amendments to the BCUC Rules or Reporting Guidelines, as indicated above.

⁹ Reporting Guidelines, p 3.

Conclusion

The information required to be reported under the FPT Act is commercial and financial information. It satisfies the definition of “protected information” and so it cannot be published under the FPT Act, unless the public interest in the disclosure of the information outweighs the potential harm to the “responsible person”.

FCL submits that the BCUC should issue an order or ruling that all information submitted to it pursuant to sections 5, 6, 7 and 8 of the FPT Regulation and the Reporting Guidelines is: 1) “protected information” under the FPT Act to the extent indicated by the responsible person, subject to any further determination by the BCUC; and 2) the public interest in the disclosure of such specified information *does not* outweigh the potential harm to the “responsible person”, subject to any further determination by the BCUC. The order would further set out Parkland’s proposed terms and conditions.

In a further process, the Reporting Guidelines should be amended to be made consistent with the order issued. The BCUC Rules could also be amended to facilitate the protection of filed information under the FPT Regulation and Reporting Guidelines, and in relation to requests for production of the “protected information” pursuant to a third party application to the BCUC under FOIPPA.

Sincerely,



Derek Morphy
Senior Corporate Counsel

c: Rangi Jeerakathil
MLT Aikins