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British Columbia Utilities Commission
Suite 410, 900 Howe Street
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Attention: Marija Tresoglavic, Acting Commission Secretary

Dear Ms. Tresoglavic:

Re: Parkland Corporation (“Parkland”) Request for Advance Ruling on Confidentiality for *Fuel Price Transparency Act* Reporting Submissions – Imperial Oil submission in response to British Columbia Utilities Commission (“BCUC”) Order G-242-20, dated September 24, 2020

OVERVIEW

We act for Imperial Oil and make this submission on its behalf in response to Order G-242-20, dated September 24, 2020.

Imperial Oil generally supports Parkland’s views, set out in its September 16, 2020 submission to the BCUC, requesting an advance ruling on confidentiality. In particular, Imperial Oil submits:

- An advance ruling is required for certain commercial, financial and technical information that responsible persons are required to submit under the *Fuel Price Transparency Act* SBC 2019, c 46 (“*FPTA*”) and amended regulations (“*Regulations*”).
- Any BCUC publishing under the *FPTA* can and should be performed by publishing information on an anonymized and aggregated basis, and only to the extent that data of individual market participants are not identifiable, on their face or by calculation.
- Some of the information required to be provided in the reporting submissions is of extreme commercial sensitivity to responsible persons, and would reveal the commercial, financial, and technical information of or about Imperial Oil.

- There would be considerable commercial harm to responsible persons, including Imperial Oil, through BCUC disclosure of its pricing, cost, storage, and other sensitive competitive information.
- The protection of detailed company-specific commercial and competitively sensitive information will support, rather than diminish, public confidence in the work of the BCUC and competitiveness of British Columbia fuel markets.
- The approach to confidentiality outlined in the BCUC Rules of Practice and Procedure (“**Rules**”) are not adequate to address treatment of confidential data submitted under the *FPTA* and *Regulations*.

RESPONSES TO QUESTIONS

(a) Whether the BCUC’s Rules should be modified to recognize the confidentiality of “protected” information filed under the *FPT Act*;

Overview

Imperial Oil submits that the Rules are inadequate to address treatment of confidential data submitted pursuant to the periodic reporting obligations under the *FPTA* and *Regulations*. Both the framework of the Rules and the specific rules themselves do not accommodate the purposes and functions of the *FPTA*, which is to govern regular data reporting by responsible persons. The Rules are framed in the context of administrative proceedings, with associated concepts such as procedural fairness and open access to evidence. This is not appropriate in light of the legislative objectives of the *FPTA*.

Imperial Oil submits that the Rules should not be modified. Rather, treatment of data submitted under the *FPTA* should be governed by a separate BCUC order to suit the *FPTA*’s specific purposes and functions.

The Rules are Inadequate in the Circumstances

The Rules are drafted in a manner that contemplate the treatment of documents in a public hearing, as that term is defined in the *Utilities Commission Act*,¹ with a view to, among other things, procedural fairness for participants. For example:

¹ *Utilities Commission Act*, RSBC 1996, c 473, section 1: “public hearing” means a hearing of which public notice is given, which is open to the public, and at which any person whom the commission determines to have an interest in the matter may be heard;

- The rules apply to all requests for confidentiality and confidential documents “filed with the BCUC” (R.16).
- Documents filed with the BCUC are placed on the “evidentiary record” (R.17.01).
- Participants are required to make a detailed formal request for confidentiality on each filing (R.18).
- Hearings are held in response to requests for confidentiality (R.19).
- Interested parties may object to confidentiality determinations (R.20) and make requests for access to confidential documents (R.24).

These principles are consistent with a quasi-judicial body administering a public hearing; however, the reporting and submission process under the *FPTA* and *Regulations* do not engage, or even contemplate, a public hearing. Moreover, the treatment of protected information, such as raw financial and technical data, should never engage open court principles. The objective in the treatment of confidential information in the circumstances is not procedural fairness; rather, it should be to establish administrative protections to ensure the integrity of the processes established to receive, process and store protected information belonging to responsible persons. Under the *FPTA*, responsible persons are required to make periodic submissions of specific commercial data, much of which is competitive and protected from disclosure among market participants by the *Competition Act* (R.S.C., 1985, c. C-34). The role of the administrator engages specific administrative requirements, such as receiving data from responsible persons, enforcement, and potential publication, all within section 4(2)(b) of the *FPTA*, which provides that the administrator must administer the Act, among other things, so as to promote: (i) the competitiveness of the market for reportable fuels, and (ii) public confidence in the competitiveness of that market. Imperial Oil submits that the BCUC has a critical role in contributing to fuel price transparency for British Columbians, without undermining the very purpose of the *FPTA* by disclosing information that might cause harm to the market participants or the functioning of the market.

Imperial Oil submits that the Rules are inadequate to meet these specific practical considerations for the BCUC as administrator under the *FPTA*. For example:

- Under the *FPTA*, documents are not “filed with the BCUC” (R.16); data is submitted by responsible persons as part of periodic reporting requirements.
- Under the *FPTA*, documents are not to be placed on the “evidentiary record” (R.17.01) with potential access to the public; data is submitted for compliance review, potential publication, and other functions under the *FPTA* and *Regulations*.

As the data is commercially sensitive, all raw data received from a responsible person should be treated as such.

- Rule 18 contemplates formal confidentiality requests for each filing. Responsible persons who must make monthly submissions should not be required to do so as it would be administratively cumbersome for both the administrator and responsible persons. Rather, a blanket order should be issued to deal with (i) what categories of information is protected information, (ii) how such data is to be protected, (iii) how protected information is to be aggregated and anonymized if and when published, and (iv) on what bases the administrator may decide to publish certain protected information.
- There should be no hearings for confidentiality requests (R.19). While there may be a need for administrative proceedings, such as the current one, to ascertain treatment of data that may have broader implications for responsible persons (or otherwise under the *FPTA*), there should be no provision for hearings for each monthly submission by responsible persons.
- Interested parties should be not entitled to object to confidentiality determinations (R.20); the administrator has the power to make those determinations under the *FPTA*, and the Rules should not permit objections, other than by the responsible party whose information is at issue.
- Rule 24 contemplates access to confidential documents. The *FPTA* does not contemplate public access to commercial, financial or technical data, nor is there a need to do so as might be the case in a public hearing. The decision to publish data is that of the administrator, and not for third parties to initiate.

Some of the principles set out in Part IV of the Rules are consistent with how data submitted under the *FPTA* and *Regulations* might be treated, and Part IV may in fact be engaged in certain circumstances (such as the current proceeding). However, Imperial Oil submits that the BCUC must take a different approach in the treatment of the data submitted to the BCUC as part of a responsible person's reporting obligations under the *FPTA* and *Regulations*. This approach should be set out in a separate BCUC order, under a framework consistent with that of the administrator role conferred by the Legislature under the *FPTA*, for setting data requirements, receipt, processing and disclosure of certain data, and enforcement and compliance.

Summary: Imperial Oil submits that there is no need to amend the Rules to address treatment of confidential data received pursuant to responsible persons' reporting requirements under the *FPTA* and *Regulations*. Rather, the BCUC should issue a separate

order to address issues specific to the processes and functions contemplated under the *FPTA* and treatment of confidential data thereunder.

(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;

For the reasons set out in the response to question "a", Imperial Oil submits that a specific order should issue regarding confidentiality and the treatment of protected information under the *FPTA*.

The order should address:

1. Use and storage of protected information by the BCUC, specifically raw commercial, financial and technical data of or about responsible persons.
2. Defining categories of information that will automatically constitute protected information, such that they shall be protected under item #1.
3. The process under subsection 9(2) of the *FPTA* pursuant to which the administrator shall determine whether to publish fuel data or other information or records acquired under the *FPTA*.
4. How protected information and derivative protected information may be published in a manner that protects the commercial, financial and technical interests of responsible persons, and preserves policy objectives under the *Competition Act* and the *FPTA*.

(c) Whether Parkland's proposed terms are feasible under the *FPTA*, the *Administrative Tribunals Act*, the *Freedom of Information and Protection of Privacy Act*, the *Competition Act*, or other applicable legislation; and

Imperial Oil submits that the terms proposed by Parkland are feasible, as demonstrated by the fact that most of these measures were taken during the inquiry. However, as noted above, Imperial Oil submits that data collected pursuant to the *FPTA* is not gathered in the same manner, or for the same purpose, as evidence would be during a public hearing. Accordingly, the data provided by responsible persons may be confidentially stored and used by the BCUC, without the risk of broader disclosure under any legislation, including the *Freedom of Information and Protection of Privacy Act*, in a manner that would undermine the purposes of the *FPTA* and federal *Competition Act*. Indeed, data privacy protections must be afforded to responsible persons in order to give effect to the *FPTA*, and properly meet the fuel price transparency objectives under the *FPTA*. Just as

confidential personal and corporate data can be received and protected by other governmental bodies, so too can the BCUC gather and store such data.

Imperial Oil does not understand this question to require intervenors to undertake a legal analysis of each of the terms proposed by Parkland.

(d) Submissions on any further process to address requests for an advanced ruling on confidentiality of “protected” information.

Imperial Oil submits that the BCUC should invite further submissions from registered intervenors on the subjects set out in its answer to question (b), and intervenors should have an opportunity to comment on the language of the proposed order.

Yours truly,



Thomas Gelbman