



bcuc
British Columbia
Utilities Commission

Marija Tresoglavic
Acting Commission Secretary

Commission.Secretary@bcuc.com
bcuc.com

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

October 30, 2020

Sent via eFile

PARKLAND – ADVANCE RULING ON CONFIDENTIALITY FOR FPTA REPORTING EXHIBIT A-3
--

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 – Advanced Approval of Confidential Status

Dear Ms. Elliott:

Further to your September 16, 2020 filing of the above-noted application, enclosed please find British Columbia Utilities Commission order G-275-20.

Sincerely,

Original Signed By:

Marija Tresoglavic
Acting Commission Secretary

/mp
Enclosure



**ORDER NUMBER
G-275-20**

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 October 30, 2020

ORDER

WHEREAS:

- A. On September 16, 2020, Parkland Corporation (Parkland) filed an application with the British Columbia Utilities Commission (BCUC) for an advance ruling on confidentiality for certain commercial information that Parkland is required to file under *Fuel Price Transparency Act* (FPT Act) and Regulations (Application);
- B. On November 28, 2019, the Government of British Columbia enacted the FPT Act, which requires a responsible person engaged in a reportable activity to submit reportable fuel data to the administrator;
- C. By Order in Council (OIC) No. 123/20 dated March 9, 2020, the Lieutenant Governor in Council (LGIC) designated the BCUC as the administrator of the FPT Act. The BCUC is responsible for collecting fuel data to promote competitiveness and public confidence in the competitiveness of the fuel market in British Columbia;
- D. By OIC No. 474/20 dated August 13, 2020, the LGIC, established the Fuel Price Transparency Regulations (FPT Regulations) under the FPT Act, which require fuel importers, wholesalers, terminal owners/operators, and those who supply fuel to retail dealers, to make periodic submissions of fuel data to the BCUC effective November 1, 2020. The BCUC is responsible for ensuring compliance with these regulations as the administrator of the FPT Act;
- E. By Special Direction dated August 14, 2020 issued pursuant to section 4 of the FPT Act, the BCUC was directed to conduct a retail fuel data collection pilot to inform the Minister of Energy, Mines and Petroleum

Resources of the development of regulations for ongoing fuel data collection targeted at the retail component of the fuel supply chain in British Columbia;

- F. Section 9 of the FPT Act provides that the BCUC may publish fuel 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;
- G. Section 9 of the FPT Act also provides 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;
- H. By Order G-15-19 dated December 17, 2018, the BCUC established its 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;
- I. In the Application, Parkland seeks an order providing, among other things, advanced approval of confidential status for certain information that responsible persons are required to file under the FPT Act and Regulations that they identify as commercially or competitively sensitive;
- J. By Order G-242-20, dated September 24, 2020, the BCUC noted that Parkland’s Application has wider implications to all responsible persons under the FPT Act who may seek similar relief for confidentiality of information they are required to file under the FPT Act. For regulatory efficiency, the Panel established a public hearing to broadly review the matter regarding an advanced ruling on confidentiality and requested participants to make written submissions on their views regarding confidentiality;
- K. Pursuant to the Regulatory Timetable established in Order G-242-20, the BCUC received written intervenor submissions by October 15, 2020, and Parkland filed its reply submission on October 22, 2020;
- L. In the submissions, certain participants seek an interim order from the BCUC providing assurance that fuel data filed with the BCUC by responsible persons as of or after of November 1, 2020, that is identified by the responsible person as protected information, will be kept confidential, if the BCUC has not reached a determination on confidentiality prior to that time.;
- M. The Panel considers that granting confidential status in respect of reportable fuel data filed by a responsible person and identified as protected information is warranted on an interim basis pending a further review process to consider the matters raised by participants in their submissions.

NOW THEREFORE pursuant to section 89 of the *Utilities Commission Act*, and for the reasons set out in Appendix A to this order, the BCUC orders as follows:

1. Advanced approval of confidential status is granted to responsible persons reporting fuel data pursuant to the FPT Act that the responsible person identifies as protected information, until the completion of a hearing process to establish a framework for the determination of confidentiality and treatment of protected information.
2. Fuel data that a responsible person identifies as protected information must be accompanied with reasons as to why the fuel data should remain confidential and be designated protected information by the BCUC.
3. Responsible persons must follow the filing procedure in section 2.0 of the FPT Regulation Reporting Guidelines and section 2.0 of the Retail Data Collection Pilot Reporting Guidelines in respect of any fuel data reporting pursuant to the FPT Act.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of October 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

REASONS FOR DECISION

1.0 INTRODUCTION

By Order G-242-20 dated September 24, 2020, the British Columbia Utilities Commission (BCUC) established a public hearing to review an application (Application) submitted by Parkland Corporation (Parkland) regarding its request for an advanced ruling on confidentiality for certain commercial information that Parkland is required to file under the *Fuel Price Transparency Act* (FPT Act or FPTA) and Regulations. Background regarding the FPT Act including related regulations and special directions is outlined in Order G-242-20 (Exhibit A-2) and in the recitals of this Order G-275-20.

Parkland's Application 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."¹ Parkland seeks an order from the BCUC providing for the following:

- 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;
- 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;
- The BCUC will keep confidential materials confidential within the BCUC and only use them for purposes related to its administration of the FPT Act;
- 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;
- 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
- 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.²

¹ Exhibit B-1, p. 1.

² Exhibit B-1, pp. 4-5.

The Panel by Order G-242-20, considered that Parkland’s Application has wider implications to all responsible persons under the FPT Act who may seek similar relief for confidentiality and, for regulatory efficiency, broadened the public hearing for the Application to address applications for advanced ruling on confidentiality for all responsible persons. The Panel also noted that Part IV of the BCUC’s Rules of Practice and Procedure (Rules) established by Order G-15-19 applies to all requests for confidentiality and confidential documents filed with the BCUC in regard to any and all matters. Participants were requested to file submissions on the following:

- 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.

In the sections below, the Panel provides an overview of the submissions received by the participants in the proceeding, followed by the Panel’s comments and determination.

2.0 SUBMISSIONS RECEIVED

In accordance with the Regulatory Timetable established by Order G-242-20, the BCUC received submissions from eight registered interveners as follows:

- Suncor Energy Inc. (Suncor);
- 7-Eleven Canada, Inc. (7-Eleven);
- Husky Energy (Husky)
- Imperial Oil;
- Tidewater Midstream and Infrastructure Ltd. (Tidewater);
- Shell Canada Limited (Shell);
- Federated Co-operatives Limited (FCL); and
- G & B Fuels Inc. (G & B Fuels).

The BCUC received one interested party registration and three letters of comment from the general public.

Registered interveners expressed general support for Parkland’s Application.³ Fuel companies are concerned that fuel data to be reported in compliance with the FPT Act contains highly sensitive information and the disclosure of such fuel data would result in commercial harm and jeopardize the competitive nature of British Columbia’s fuel industry. In the letters of comment, members of the public raised concerns about high and fluctuating fuel prices across regions in British Columbia, and their desire for greater transparency and accountability from the fuel industry.⁴

³ Exhibit C1-2, Suncor, p. 2; Exhibit C2-2, 7-Eleven, p. 1; Exhibit C3-2, Husky, p. 2; Exhibit C4-2, Imperial Oil, p. 1; Exhibit C5-2, Tidewater, p. 4; Exhibit C6-2, Shell, p. 1; Exhibit C7-2, FCL, p. 4; Exhibit C8-2, G & B Fuels, p. 1.

⁴ Exhibit E-1, E-2 and E-3.

2.1 Submissions regarding the filing of fuel data

All interveners submit that the fuel data responsible persons are required to file with the BCUC pursuant to the FPT Act is highly sensitive and requires protection. For example, Imperial Oil states "...the data is commercially sensitive, all raw data received from a responsible person should be treated as such."⁵ 7-Eleven states "[a]dvanced approval of confidential status [should] be granted to information submitted by responsible persons that they identify as commercially or competitively sensitive in reporting submissions made under the FPTA..."⁶

Imperial Oil argues that the BCUC's administration of the FPT Act differs significantly from the BCUC's standard administrative proceedings and should be handled under its own framework, rather than governed by the standard BCUC Rules.⁷ Intervenors express concerns with the process for requesting confidentiality under the Rules, including provisions requiring: (i) submittal of information prior to a BCUC determination regarding confidentiality; (ii) a separate confidentiality request for each document submitted; (iii) the potential for hearings regarding confidentiality requests; and (iv) the opportunity for others to object to confidentiality requests.⁸ Suncor submits that "[d]elays to reporting caused by addressing individual confidentiality requests would undermine that confidence and result in unnecessary regulatory burden and thus increased costs for parties, costs which may ultimately be passed on to consumers."⁹

2.2 Submissions regarding the disclosure of fuel data

Intervenors note that the disclosure of commercially sensitive information would be harmful to their competitive position, diminishes the competitiveness of the fuel industry in British Columbia, and has the potential to be in contravention to the *Competition Act*.¹⁰ Most intervenors submit that publishing fuel data should be done on an aggregated and anonymized basis, and should preclude back-calculation of fuel data by a third-party.¹¹

Intervenors express an interest in understanding the BCUC's plans for publishing fuel data.¹² Husky submits that in the absence of knowing what and how information will be published, it agrees and supports Parkland's proposal for the BCUC to grant advanced approval of confidential status to information designated as confidential or commercially sensitive information by the responsible person.¹³ Imperial Oil submits that the BCUC should issue an order to address: (i) what categories of information are 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 BCUC may decide to publish certain protected information.¹⁴

⁵ Exhibit C4-2, Imperial Oil, p. 2.

⁶ Exhibit C2-2, 7-Eleven, p. 2.

⁷ Exhibit C4-2, Imperial Oil, pp. 2-4.

⁸ See, e.g., Exhibit C1-2, Suncor, p. 3; Exhibit C2-2, 7-Eleven, p. 2; Exhibit C4-2, Imperial Oil, p. 4; Exhibit C6-2, Shell, p. 2.

⁹ Exhibit C1-2, Suncor, p. 7.

¹⁰ Exhibit C2-2, 7-Eleven, p. 6; Exhibit C5-2, Tidewater, p. 2; Exhibit C4-2, Imperial Oil, p. 5; Exhibit C6-2, Shell, p.4-5; Exhibit C7-2, FCL, p.3; Exhibit C8-2, G & B Fuels, p.2.

¹¹ Exhibit C1-2, Suncor, p. 7; Exhibit C2-2, 7-Eleven, p. 2; Exhibit C4-2, Imperial Oil, p. 1; Exhibit C6-2, Shell, p. 1; Exhibit C7-2, FCL, p. 3; Exhibit C8-2, G & B Fuels, p. 2.

¹² Exhibit C4-2, Imperial Oil, p. 4; Exhibit C5-2, Tidewater, pp. 4-5.

¹³ Exhibit C3-2, Husky, p. 2-3.

¹⁴ Exhibit C4-2, Imperial Oil, p. 4.

2.3 Submissions regarding advanced approval

Shell submits that the industry requires formal assurance that sensitive information will not be made public, before submitting such information.¹⁵ Some interveners request that the BCUC grant an interim order to provide assurance that protected information will be kept confidential, if the BCUC does not render a decision on the proceeding by November 1, 2020.¹⁶ The initial reporting of fuel data would be made under the interim order and when information is available about the publication of fuel data, responsible persons would have the opportunity to make further submissions on what will remain as protected information, and what can be aggregated or anonymized to address confidentiality concerns.¹⁷

3.0 PANEL DETERMINATION

The Panel orders that advanced approval of confidential status is granted to responsible persons reporting fuel data pursuant to the FPT Act that the responsible person identifies as protected information, until the completion of a hearing process to establish a framework for the determination of confidentiality and treatment of protected information.

In granting the advanced approval of confidential status above, the Panel considers the fuel data identified as “protected information” under the FPT Act to have the same meaning as “confidential information” under the Rules. Thus, the same safeguards are in place for protected information as part of the BCUC’s normal practice for the treatment of confidential information. Based on the submissions received, the Panel views there are certain issues raised by interveners that require immediate consideration:

- The administrative burden for responsible persons to submit confidentiality requests and for the BCUC to make such decisions for each fuel data report submission.
- The understanding by the responsible persons that the BCUC will keep protected information confidential during the interim period pending a hearing process and a final decision by the Panel on the proceeding.

With respect to administrative burden, the Panel recognizes that both the responsible person and the administrator share the responsibility for ensuring that requests for confidentiality are properly identified, documented, and reviewed. Participants submit that the reportable fuel data, in its raw form, is protected information and should be kept confidential for commercially and competitively sensitive reasons. Participants also argue that a requirement for separate confidentiality requests in association with each fuel data submission results in an excessive level of administrative burden.

The Panel notes that the administrative burden to identify and explain which items are confidential occurs in the first reporting cycle. The Panel expects that all subsequent submissions by a responsible person would include an identical confidentiality request because the type of fuel data reported in the periodic submissions will remain largely unchanged. Therefore, the Panel expects that the administrative burden will be significantly reduced once the first reporting cycle passes. However, the Panel acknowledges that a more efficient process can be implemented through further review in this hearing process such as pre-determining which type of fuel data will be designated protected information.

¹⁵ Exhibit C6-2, Shell, p. 2.

¹⁶ Exhibit C1-2, Suncor, pp. 5-6; Exhibit C3-2, Husky, p. 4.

¹⁷ Exhibit C3-2, Husky, p. 4.

With respect to keeping protected information confidential during the proceeding and until a final decision is rendered, the Panel emphasizes that the BCUC's Rules of Practice and Procedures continue to apply unless determined otherwise. This means the BCUC will not disclose fuel data that a responsible person identifies as protected information until there is a thorough review through a hearing process and a BCUC decision is made as to the designation of whether such information is protected information under the FPT Act. This is consistent with the BCUC's practice pertaining to all matters whenever a person requests the BCUC hold certain information confidential. In all cases, the person requesting the BCUC to keep certain information confidential must clearly identify that information and provide sufficient reasons for such confidential treatment. In the case of the FPT Act, the onus is on the responsible person to identify and justify what reportable fuel data is protected information. Therefore, during the interim period, **fuel data that a responsible person identifies as protected information must be accompanied with reasons as to why the fuel data should remain confidential and be designated protected information by the BCUC. Responsible persons must follow the filing procedure in section 2.0 of the FPT Regulation Reporting Guidelines and section 2.0 of the Retail Data Collection Pilot Reporting Guidelines in respect of any fuel data reporting pursuant to the FPT Act.**

The Panel acknowledges the participants' concerns that reporting fuel data requires responsible persons to submit commercially sensitive information about their businesses and that the FPT Act is new legislation to the fuel industry. As the administrator, the BCUC is responsible for collecting fuel data to promote competitiveness and public confidence in the competitiveness of the fuel market in British Columbia. In doing so, the BCUC must ensure that responsible persons comply with the reporting requirements under the FPT Act and have the appropriate safeguards in place to keep protected information confidential. The Panel considers the advanced approval of confidential status granted by this interim order is adequate and reasonable to address the immediate concerns raised by the participants, among other proposals received in the submissions. Responsible persons are expected to comply with the fuel data reporting requirements and timelines as specified by legislation.

The Panel notes that the current record lacks information pertaining to the treatment of specific fuel data, or types of fuel data, that a responsible person will identify as protected information. The way in which fuel data may become non-protected information by way of aggregation, anonymization, or other methods remains to be addressed. The Panel finds that an interim order for confidentiality status is warranted as a temporary measure while the proceeding moves forward. This will enable participants to provide comprehensive submissions for the Panel's consideration on all issues.

As next steps in this proceeding, the Panel will initiate an open and transparent process to establish a framework for the determination of confidentiality and treatment of protected information. Such a process will ensure affected parties have an opportunity to provide input into its final framework. The Panel expects that the framework will address matters such as the type of fuel data that will be deemed protected information, methods to make fuel data suitable for publication, and the recourse for the responsible person after a decision regarding confidentiality is made by the BCUC. During the interim period, the BCUC will not publish any fuel data identified by the responsible person as protected information without notice or prior to completion of this hearing.

A regulatory timetable will follow by separate order.