



November 30, 2020

Sent via efile

**PARKLAND – ADVANCE RULING ON CONFIDENTIALITY
FOR FPTA REPORTING EXHIBIT A-4**

To: Affected Parties, *Fuel Price Transparency Act* Responsible Persons, Stakeholders and Members of the Public

Re: British Columbia Utilities Commission – Framework for the Determination of Confidentiality and Treatment of Protected Information collected pursuant to the *Fuel Price Transparency Act*

Background

In November 2019, the Government of British Columbia enacted the [Fuel Price Transparency Act](#) (FPT Act). The FPT Act requires responsible persons¹ in the fuel (gasoline and diesel) industry to report information and data on their activities in British Columbia. 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 fuel market in British Columbia. 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 advanced ruling on confidentiality for certain commercial information that Parkland is required to file pursuant to the regulations under the FPT Act (FPT Regulations), as established by [Order in Council No. 474/20](#) dated August 13, 2020.

Section 9 of the FPT Act provides the definition of “protected information”² and the matters that the BCUC must consider when it publishes fuel data, or other information or records, acquired under the FPT Act. On October 30, 2020, the BCUC issued [Order G-275-20](#) granting advanced approval of confidential status to fuel data submitted by a responsible person pursuant to the FPT Act that the responsible person has identified as protected information, until the completion of a hearing process to establish the framework for the determination of confidentiality and treatment of protected information.

In Order G-275-20, the Panel also noted that in granting the advanced approval of confidentiality status, it considers that fuel data identified as protected information under the FPT Act to have the same meaning as confidential information under the [BCUC's Rules of Practice and Procedure](#) (Rules). The same safeguards are in place for protected information as part of the BCUC's normal practice for the treatment of confidential information.

Further to Order G-275-20, the BCUC is hereby amending the regulatory timetable to establish a framework for the determination of confidentiality and treatment of protected information in an open and transparent

¹ The term “responsible person” refers to a person in British Columbia, such as a company, that engages in reportable activities including processing, refining, transporting, marketing or supplying gasoline or diesel fuel.

² Under [section 9 of the FPT Act](#), “protected information” means information that would reveal: (a) trade secrets of a responsible person, or (b) commercial, financial, labour relations, scientific or technical information of or about a responsible person. The term “[trade secret](#)” is defined in the [Freedom of Information and Protection of Privacy Act](#).

process. The BCUC believes development of the framework and process is likely to impact both the fuel industry, who will be responsible for reporting fuel data to the BCUC pursuant to the FPT Act, and members of the public who may be interested in accessing or understanding the fuel data the BCUC receives.

Invitation for affected parties to participate

Given the development of the framework and process is likely to impact both the fuel industry and members of the public, the Panel wishes to ensure members of the public are provided an opportunity to participate in its development. Therefore, the Panel is allowing an additional round of requests for intervener status by affected parties including members of the public to participate in the public proceeding. This step facilitates a balance in the development of the framework process to address the needs of the fuel industry and the public interest to achieve the objectives of the FPT Act.

Pursuant to the attached order, parties who wish to participate in the proceeding may 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 and arguments as applicable. **Requests to Intervene must be submitted to the BCUC by Wednesday, January 6, 2021.** Existing interveners in the proceeding do not need to resubmit their intervener requests. Parties requesting intervener status are to specifically state the nature of their interest in the proceeding and to generally identify the issues they intend to pursue and the extent of their involvement in the proceeding.

Parties who do not wish to intervene may submit written letters of comment or register as an interested party to be notified of the proceeding's status. Parties may submit written letters of comment by completing a [Letter of Comment Form](#) available on the BCUC's website or by email to Commission.Secretary@bcuc.com. 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.

Request for submissions and comments

The current fuel data reporting requirements and reporting forms are provided on GasPricesBC.ca under "[FPT Regulations](#)" and "[Retail Pilot](#)." The FPT Act provides that other fuel data reporting requirements may be required in the future. **The Panel requests registered interveners and Parkland to make submissions by Wednesday, January 13, 2021 on the following:**

Determination of Confidentiality

- a. The most efficient and effective framework and process for the Administrator to determine whether fuel data submitted by responsible persons which they claim is protected information does constitute protected information under the FPT Act. Submissions in this regard should include consideration of:
 - i. What are some efficient ways to group or categorize specific fuel data and at what levels of detail for making such determination?
 - ii. Is it possible for the Administrator to pre-determine types of fuel data as protected information?
 - a. If so, identify the type of fuel data and why it should be pre-designated as protected information.
 - b. If not, what other process(es) could be implemented to ensure consistency and reduce the administrative burden of protected information determinations?
 - iii. Any other submissions.

- b. Are there circumstances where the confidential status of protected information would expire after a certain time period? If so, what would be the review process for the Administrator to make such a determination? If not, why?

Treatment of Protected Information

Section 9(2) of the FPT Act provides that the Administrator may publish fuel data, or other information or records, it acquires under the FPT Act, if the Administrator is satisfied that (a) protected information will not be disclosed; or (b) “the public interest in the protected information that will be disclosed outweighs any potential harm to responsible persons.” In determining whether to disclose protected information, the Administrator will have regard, without limitation, to the importance of the competitiveness of the market for reportable fuels and public confidence in the competitiveness of the market.

- c. If the fuel data is determined to be protected information by the Administrator, whether such fuel data is suitable for public disclosure under section 9(2) of the FPT Act while meeting the objectives of the FPT Act? Submissions should include:
 - i. Ways to aggregate or anonymize protected information such that the fuel data is no longer protected information and can be published pursuant to section 9(2)(a) of the FPT Act.
 - ii. What public interest considerations or factors should the Administrator consider when determining whether “the public interest in the protected information that will be disclosed outweighs any potential harm to responsible persons” pursuant to section 9(2)(b) of the FPT Act?
 - iii. Any other submissions.

Regulatory timetable

As noted above, **registered interveners and Parkland are requested to make submissions as outlined above by Wednesday, January 13, 2021. Letters of comment regarding matters that the BCUC should consider in the draft framework and process, such as the submissions sought as outlined above, should also be submitted by Wednesday, January 13, 2021. The BCUC will then consider the submissions received and provide a first draft of the framework for parties to comment on. **The BCUC expects that Framework Draft No. 1 will be made available by Monday, February 8, 2021. Parties are requested to provide their comments and submissions on Framework Draft No. 1 by Monday, March 8, 2021.****

Participant Assistance/Cost Award

Participant Assistance/Cost Award (PACA) funding may be made available to persons participating as a registered intervener in this proceeding. As with all BCUC proceedings, participant funding is not guaranteed upon acceptance as an intervener. The merits of each request for participant funding will be assessed at the conclusion of the proceeding in accordance with the [PACA Guidelines](#) attached to Order G-97-17. For this proceeding, participant funding will not be provided to responsible persons pursuant to the FPT Act.

Sincerely,

Original signed by:

Marija Tresoglavic
Acting Commission Secretary

Enclosure



ORDER NUMBER
G-303-20

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

and

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

and

Framework for the Determination of Confidentiality and Treatment of Protected Information
Collected under the *Fuel Price Transparency Act*

BEFORE:

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

on November 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 the *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. As the Administrator of the FPT Act, the BCUC is responsible for ensuring compliance with these regulations;
- 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 protected information will not be disclosed, or the public interest in the disclosure of the protected information outweighs any potential harm to responsible persons of releasing the protected information having regard, without limitation, to the importance of the competitiveness of the market for reportable fuels, and the public confidence in the competitiveness of that market;
- G. Section 9 of the FPT Act also provides “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. The term “trade secret” is defined in the *Freedom of Information and Protection of Privacy Act*;
- 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;
- I. In the Application, Parkland seeks an order providing for, 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. In Order G-242-20, dated September 24, 2020, the BCUC noted 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 by Order G-242-20, the BCUC received written intervener submissions by October 15, 2020, and Parkland filed its reply submission on October 22, 2020;
- L. In the submissions, certain participants sought an interim order from the BCUC providing assurance fuel data filed with the BCUC by responsible persons as of or after November 1, 2020, that is identified by the responsible persons as protected information, will be kept confidential, if the BCUC has not reached a determination on confidentiality prior to that time;
- M. By Order G-275-20, dated October 30, 2020, the BCUC provided advanced approval of confidential status to fuel data submitted by responsible persons pursuant to the FPT Act that the responsible persons identify as protected information, until the completion of a separate process to establish a framework and process for the determination of confidentiality and treatment of protected information;
- N. In Order G-275-20, the Panel also noted that in granting the advanced approval of confidentiality status, it considers fuel data identified as protected information under the FPT Act to have the same meaning as confidential information under the BCUC’s Rules. The same safeguards are in place for protected information as part of the BCUC’s normal practice for the treatment of confidential information; and
- O. The Panel considers amending the regulatory timetable to establish further process is warranted to develop a framework and process for the determination of confidentiality and treatment of protected information.

NOW THEREFORE the BCUC orders as follows:

1. The regulatory timetable attached as Appendix A to Order G-242-20 is amended as set out in Appendix A to this order, to establish the framework and process for the determination of confidentiality and treatment of fuel data submitted to the Administrator by responsible persons over which they have claimed such fuel data is protected information under the FPT Act.
2. Interveners and Parkland are requested to make submissions on the framework and process for the determination of the confidentiality and treatment of such fuel data to support the fuel price transparency objective to promote fuel market competitiveness, and public confidence in the competitiveness of the fuel market in British Columbia, including submissions on the following, in accordance with the regulatory timetable as set out in Appendix A to this order:

Determination of Confidentiality

- a. The most efficient and effective framework and process for the Administrator to determine whether fuel data submitted by responsible persons which they claim is protected information does constitute protected information under the FPT Act. Submissions in this regard should include consideration of:
 - i. What are some efficient ways to group or categorize specific fuel data and at what levels of detail for making such determination?
 - ii. Is it possible for the Administrator to pre-determine types of fuel data as protected information?
 - a. If so, identify the type of fuel data and why it should be pre-designated as protected information.
 - b. If not, what other process(es) could be implemented to ensure consistency and reduce the administrative burden of protected information determinations?
 - iii. Any other submissions.
- b. Are there circumstances where the confidential status of protected information would expire after a certain time period? If so, what would be the review process for the Administrator to make such a determination? If not, why?

Treatment of Protected Information

Section 9(2) of the FPT Act provides that the Administrator may publish fuel data, or other information or records, it acquires under the FPT Act, if the Administrator is satisfied that (a) protected information will not be disclosed; or (b) “the public interest in the protected information that will be disclosed outweighs any potential harm to responsible persons.” In determining whether to disclose protected information, the Administrator will have regard, without limitation, to the importance of the competitiveness of the market for reportable fuels and public confidence in the competitiveness of the market.

- c. If the fuel data is determined to be protected information by the Administrator, whether such fuel data is suitable for public disclosure under section 9(2) of the FPT Act while meeting the objectives of the FPT Act? Submissions should include:
 - i. Ways to aggregate or anonymize protected information such that the fuel data is no longer protected information and can be published pursuant to section 9(2)(a) of the FPT Act.

- ii. What public interest considerations or factors should the Administrator consider when determining whether “the public interest in the protected information that will be disclosed outweighs any potential harm to responsible persons” pursuant to section 9(2)(b) of the FPT Act?
 - iii. Any other submissions.
3. In accordance with the [BCUC’s Rules](#) attached as Appendix A to Order G-15-19, parties who have not already done so and 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 proceeding 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 30th day of November 2020.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Framework for the Determination of Confidentiality and Treatment of Protected Information
Collected under the *Fuel Price Transparency Act*

REGULATORY TIMETABLE

Action	Date (2021)
Requests to intervene	Wednesday, January 6
Intervener and Parkland written submissions on Directive #2 of Order G-303-20	Wednesday, January 13
Written letters of comment on matters that the BCUC should consider in the draft framework	Wednesday, January 13
Framework Draft No. 1 available for comments	Monday, February 8
Intervener and Parkland written submissions and letters of comments on Framework Draft No. 1	Monday, March 8
Further process	To be determined