



January 13, 2021

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 Orders G-242-20 and G-303-20
Federated Co-operatives Limited – Intervenor Submissions**

This is further to the British Columbia Utilities Commission (“**BCUC**”) Order G-242-20 respecting Parkland Corporation’s Request for an Advance Ruling on Confidentiality for the *Fuel Price Transparency Act*¹ (the “**FPT Act**”) Reporting Submissions (the “**Proceedings**”) and Order G-303-20 requesting comments on the framework and process for the determination of confidentiality and treatment of protected information.

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 became subject to the reporting requirements in the FPT Act and the *Fuel Price Transparency Regulation*² (the “**FPT Regulation**”).

In Order G-303-20, the BCUC requested that intervenors provide submissions on two main issues:

¹ SBC 2019, c 46.

² BC Reg 52/2020.

- **Determination of Confidentiality** – 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 constitutes protected information under the FPT Act, and whether there are any circumstances where the confidential status of protected information would expire after a certain time period and, if so, the process to make such a determination; and
- **Treatment of Confidentiality** – if the fuel data is determined to be protected information by the Administrator, whether such fuel data is suitable for disclosure under section 9(2) of the FPT Act while meeting the objectives of the FPT Act.

FCL will address each issue in turn.

Discussion

Determination of Confidentiality

- 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.*

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”.

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

- volume of fuel imported, purchase price, province or country of origin, and transportation costs as an importer of reportable fuel;³
- volume of fuel purchased, purchase price, purchase dates, and information regarding the seller as a wholesale purchaser of reportable fuel;⁴
- fuel storage terminal and storage tank capacity, including net usable capacity as a person who stores reportable fuel;⁵ and
- volume of fuel supplied, shipment dates, and amounts paid for the shipment of fuel as the supplier of reportable fuel.⁶

³ FPT Regulation, s 5.

⁴ FPT Regulation, s 6.

⁵ FPT Regulation, s 7.

⁶ FPT Regulation, s 8.

FCL submits that the information it is required to report under the FPT Regulation is commercial and financial information, and thus protected 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.

Protected information is considered by FCL to be highly sensitive commercial information that it holds in confidence, and its disclosure could cause significant commercial harm to FCL. The information can be used by competitors to gain knowledge of the nature and extent of FCL's business in the province of British Columbia and elsewhere, including information pertaining to costs, prices, volumes, sources of products, and commercial relationships. Disclosure would be highly prejudicial to FCL.

The information may also be subject to contractual confidentiality obligations between FCL and third parties.

The nature of the information is the same each time that reports are submitted. It is most efficient for all parties for a pre-determination to be made that the information is protected information.

The BCUC has the power to issue a 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.

FCL submits that the BCUC should declare that all information submitted to it pursuant to sections 5, 6, 7 and 8 of the FPT Regulation and the Reporting Guidelines⁷ is "protected information" under the FPT Act to the extent indicated by the responsible person.

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?

Information submitted by FCL may include FCL's confidential information and also confidential information that is subject to confidentiality obligations owed to third parties.

FCL's contractual obligations of confidentiality to third parties may be made under long term agreements and such obligations generally continue without limitation as to time. It would be inappropriate for the confidential status of such protected information to expire.

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

With respect to FCL's own information which constitutes protected information, such protected information is commercially sensitive and will retain that sensitivity for an indeterminate period of time. Information that appears to be historical may reflect current or future business practices. While it is possible that some information may at some point no longer be considered as commercially sensitive, it is not possible to predict that in advance or to link it to a particular period of time. In such a case, it's unlikely that there would be any public interest in disclosing the information, as it would no longer be relevant or representative of the market.

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?*

Disclosure of protected information, which is considered by FCL to be highly sensitive commercial information, could cause significant commercial harm to FCL. The information can be used by competitors to ascertain the nature and extent of FCL's business in the province of British Columbia and elsewhere, including information pertaining to costs, prices, volumes, sources of products, and commercial relationships. Competitors can use such information to take business from FCL or to get an inappropriate advantage in contractual negotiations.

Protected information may also include third party information that FCL is holding under contractual obligations of confidentiality, the disclosure of which would harm the interests of such third parties.

Disclosure of protected information may also have unintended anti-competitive effects. Competition law principles generally prohibit the exchange of such information amongst competitors for this reason.

There is no public interest that would be served by diminishing the competitiveness of the fuel industry in British Columbia. The public interest will only outweigh the potential harm to "responsible persons" if 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. This is particularly important where there are relatively few market participants and publication could inadvertently result in a greater level of disclosure than intended.

Third party providers (such as Kent Group and OPIS (Oil Price Information Service)) and agencies currently publish certain fuel data in an anonymous, aggregated form and may be a useful reference for how to publish information in a way that is meaningful and consistent with confidentiality protections.

FCL considers protected information to be commercially sensitive information that should be held in strict confidence. Disclosure of such information would cause harm to FCL and/or third parties and may have anti-competitive effects that are contrary to the public interest.

Conclusion

The information to be reported under the FPT Act is commercial and financial information that satisfies the definition of “protected information.” In the interests of efficiency for all parties, 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 “protected information” under the FPT Act to the extent indicated by the responsible person.

The information submitted may retain its confidential commercial nature for an indefinite period of time.

Publication of protected information would be prejudicial to FCL and to third parties it has contractual relations with. Such publication may have unintended anti-competitive effects that would be contrary to the public interest. The public interest may outweigh the potential harm to responsible persons only where the data is presented in a completely anonymous, aggregated fashion that cannot be back-calculated.

Thank you for the opportunity to provide these comments.

Sincerely,



Darren Hudema

Director, Supply and Distribution