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**VIA ELECTRONIC DDS**

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83862/523

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

Attention: Ms. Marija Tresoglavic, Acting Commission Secretary

RE: **Parkland Corporation Request for Advance Ruling on Confidentiality for Fuel Price  
Transparency Act (“FPTA”) Reporting Submissions (“Proceeding”)  
Intervener Submission on Directive #2**

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Dear Ms. Tresoglavic:

We act on behalf of Suncor Energy Inc. (“Suncor”) in respect of the above noted British Columbia Utilities Commission (“Commission”) Proceeding. In accordance with the Commission’s Order G-303-20 dated November 30, 2020, enclosed please find Suncor’s Submission.

Should you have any questions or require any additional information, please do not hesitate to contact the undersigned.

Sincerely,



Terri-Lee Oleniuk

Encl.

cc. Chris Hustwick, Director, Downstream Legal Affairs Canada, Suncor Energy

## SUNCOR ENERGY

### INTERVENER SUBMISSION REGARDING BRITISH COLUMBIA UTILITIES COMMISSION – FRAMEWORK FOR THE DETERMINATION OF CONFIDENTIALITY AND TREATMENT OF PROTECTED INFORMATION COLLECTED PURSUANT TO THE *FUEL PRICE TRANSPARENCY ACT*

#### I. INTRODUCTION

This submission is made in accordance with the direction of the British Columbia Utilities Commission (the “**Commission**”, the “**BCUC**” or the “**Administrator**”) in Order G-303-20, dated November 30, 2020.<sup>1</sup>

In Order G-275-20, dated October 30, 2020,<sup>2</sup> the BCUC granted advance approval of confidential status for reportable fuel data filed by a responsible person and identified as protected information on an interim basis pending a further review process. In Order G-303-20, the BCUC amended the previously established<sup>3</sup> regulatory timetable to establish a framework and process for the determination of confidentiality and treatment of fuel data identified by responsible persons as protected information under the *Fuel Price Transparency Act*<sup>4</sup> (“**FPT Act**”) (“**Confidentiality Framework**”).

Suncor Energy Inc., on behalf of itself and its affiliates (collectively, “**Suncor**”), is an intervener in the public hearing established by the BCUC to consider the Confidentiality Framework for information that is required to be filed under the FPT Act and the *Fuel Price Transparency Regulation*<sup>5</sup> (“**FPT Regulation**”).

Suncor is an integrated Canadian energy company. It supplies refined petroleum products into British Columbia, primarily from its refining operations in Alberta, and operates or supplies 229 Petro-Canada service stations across the province, as well as Petro-Canada Cardlock and Wholesale Marketer locations, third-party marketers and commercial fuel customers. Suncor fully participated in the BCUC’s 2019 *Inquiry into Gasoline and Diesel Prices in British Columbia* and subsequent and ongoing industry engagement by the BC government and the BCUC on the reporting requirements under the FPT Act.

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<sup>1</sup> BCUC [Order G-303-20](#), Framework for the Determination of Confidentiality and Treatment of Protected Information Collected under the Fuel Price Transparency Act, November 30, 2020.

<sup>2</sup> BCUC [Order G-275-20](#), Parkland Corporation – Request for Advance Ruling on Confidentiality for Fuel Price Transparency Act Reporting Submissions – Advanced Approval of Confidential Status, October 30, 2020.

<sup>3</sup> Established in BCUC [Order G-242-20](#), Parkland Corporation – Request for Advance Ruling on Confidentiality for Fuel Price Transparency Act Reporting Submissions – Notice to the Public and Regulatory Timetable, September 24, 2020.

<sup>4</sup> S.B.C. 2019, c. 46, s. 3.

<sup>5</sup> B.C. Reg. 52/2020.

## II. RESPONSE TO QUESTIONS POSED BY THE COMMISSION

In Order G-303-20, the Commission requested that registered interveners and Parkland Corporation make submissions on the following questions:

### **Determination of Confidentiality**

***a. What is 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?***

Suncor respectfully submits that the most efficient and effective framework and process is for the Administrator to pre-designate all reportable fuel data that is filed by a responsible person as protected information under the FPT Act. Granting such protected status prior to submission and automatically is appropriate given the nature of reportable fuel data and the purposes of the public reporting scheme under the FPT Act.

First, Suncor notes that most reportable fuel data under the FPT Act is confidential, and commercially and competitively sensitive in nature. This includes purchase price data, cost data, volume data, supplier name data, importer name data, and purchaser name data. In this regard, Suncor reiterates certain of its submissions<sup>6</sup> made in response to Parkland's Application and BCUC Order G-242-20. To summarize those submissions:

- making public Suncor's pricing, cost, and other sensitive competitive information could cause Suncor significant commercial harm from competitors seeking market share or counterparties in contractual negotiations;
- the potential harm from disclosure of financially and commercially sensitive information is national in scope. Suncor, like other responsible persons under the FPT Act, operates its business on a national scale and determines fuel prices in a consistent manner across all jurisdictions. Suncor's competitors in markets not governed by the FPT Act could take advantage of the information disclosed under the Act to undermine Suncor's position in those markets<sup>7</sup>. This is both harmful to Suncor and contrary to the aims of the FPT Act, as it would undermine Suncor's ability to operate competitively in BC and elsewhere;
- there is a heightened risk of commercial harm from this data as compared to data from monopoly utilities that are commonly regulated by the BCUC, as the parties who are providing this information are in direct competition with each other; and,
- the protection of competitively sensitive information is of fundamental importance to ensuring the competitiveness of markets, as recognized by various aspects of

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<sup>6</sup> [Suncor Submission](#), Parkland Corporation's Request for Advance Ruling on Confidentiality for Fuel Price Transparency Act Reporting Submissions, October 15, 2020 ("**Suncor Parkland Request Submission**").

<sup>7</sup> Suncor is using the term "market" or "markets" for purposes of expediency but this usage does not indicate Suncor's acceptance that any such market exists or acceptance of any specific market definition, whether from a geographic or product perspective.

competition law generally and various provisions of Canada's *Competition Act* specifically.

Second, the remainder of the reportable fuel data, which would include fuel type and grade data, currency data, transaction date data, etc., while perhaps not as commercially or competitively sensitive, is not intelligible without reference to data which should be protected. In other words, not designating the less sensitive fuel data as protected information will not assist the objectives of the FPT Act. Rather, it only adds to the administrative burden imposed on the Commission and responsible persons by requiring the separation of protected and non-protected data.

Third, pre-designating reportable fuel data as protected information under the FPT Act does not preclude the Administrator from meeting the objectives of the FPT Act by publishing the data in an anonymized and aggregated manner. This is discussed further in Section c.i., below.

***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?***

Suncor is of the view that, given the commercial and competitive sensitivity of the reportable fuel data being provided, the duration and nature of Suncor's third-party commercial supply arrangements and other contractual relationships, and the long-term perspective of Suncor's wholesale and retail business strategy, the confidential status of the protected information should not expire. Suncor is not aware of a situation where the Commission placed an expiry date on confidential filings and the *Rules of Practice and Procedure* contemplate a permanency to confidentiality, stating that "If accepted by the BCUC as confidential, the documents or the portions thereof will not be made publicly available".<sup>8</sup>

In addition, a brief review of regulations and legislation relating to confidentiality and disclosure (e.g., the *Freedom of Information and Protection of Privacy Act*) suggests that confidentiality should be maintained indefinitely or until a party advises that it is no longer confidential.

**Treatment of Protected Information**

***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?***

***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.***

Suncor respectfully submits that protected information can be published if it is sufficiently anonymized and aggregated such that the raw, individual reportable fuel data that the Administrator receives from responsible persons is not disclosed or otherwise discoverable through such means as back-calculation/reverse-engineering. In other words, so long as the data

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<sup>8</sup> BCUC *Rules of Practice and Procedure*, s 21.01.

derived from protected information is reported in an anonymous and aggregated manner on a provincial level, commercially and competitively sensitive information can remain confidential.

However, Suncor cautions that such publication must be both anonymous and aggregated, as only utilizing one of these approaches could allow for the identification of the reporting entity, sensitive pricing data, or other appropriately protected information.

This risk of identification is particularly acute for Suncor because, from a wholesale perspective, there are a very limited number of suppliers to BC that are of Suncor's size and scale.

For example, comparing monthly US and offshore importation reports (available through Canada Customs reporting requirements) to anonymized but not aggregated FPT Act reporting could be used to match up importation data and identify an anonymized supplier. Similarly, a comparison of publicly available information on planned refinery turnarounds and unplanned outages against monthly FPT Act reporting on interprovincial importation into BC, purchases within BC, and imports into BC from other countries, could allow for a reasonably straightforward identification of an anonymized supplier.

Protected information must also be published on a sufficiently large regional scale to ensure that protected information remains confidential, even on an anonymized and aggregated basis. For example, publication of aggregated transportation costs for more specific markets could identify a commercial transportation cost advantage that one or more suppliers have worked hard to develop or allow those with the commercial advantage to increase pricing to take advantage of marginal competitive costs. Similarly, if aggregated and anonymized purchase prices were reported for specific markets, purchasers with a purchase cost advantage versus the aggregate could identify a commercial advantage that one or more suppliers have worked hard to develop or allow those with the commercial advantage to increase pricing to take advantage of marginal purchase costs.

If parties can utilize methods such as back calculation to attribute reportable data to its source, this would have a negative impact on competition and be contrary to the objectives 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?*

With respect to the BCUC's consideration of public interest considerations or factors, Suncor submits that:

- the disclosure of raw, individual data from responsible persons is not necessary to serve the public interest in disclosure, especially as articulated in the FPT Act. The BCUC, like other provincial and federal regulatory bodies, is frequently able to make determinations on the public interest and to provide the transparency required of a regulator even when dealing with confidential information;

- the disclosure of aggregated and anonymized information should be appropriate in all cases to promote public confidence in the competitiveness of the market for gasoline and diesel in BC;
- aggregated data is used by the Administrator for communication with the public, including on the BCUC's "Gas Prices BC" website to explain information such as average and daily fuel prices and fuel price components;<sup>9</sup>
- company specific or back-calculable data would provide little additional information compared to aggregate data, and pose great potential for material harm, as discussed above; and
- the public interest in the competitiveness of the market for gasoline and diesel in BC is best served by keeping commercially and competitively sensitive information confidential, as discussed in the Suncor Parkland Request Submission.<sup>10</sup>

### III. CONCLUSION

In conclusion, Suncor respectfully requests that the Commission consider the above submissions when drafting the Framework and reiterates the following key points:

- Most of the reportable fuel data provided by responsible persons is confidential, and competitively and commercially sensitive;
- The competitiveness of the market for gasoline and diesel in BC is best served by keeping commercially and competitively sensitive information confidential;
- It is most efficient for all reportable fuel data to be pre-designated as protected information in advance;
- It is not useful to differentiate protected data from non-protected data in the Framework. Doing so does not promote the objectives of the FPT Act and would result in increased administrative burden for the BCUC and responsible persons;
- The purpose of the FPT Act can met by publishing anonymized and aggregated data; and
- The disclosure of anonymized and aggregated data must be done on a sufficiently large geographic level (*i.e.*, on a provincial basis or by major geographic region rather than for more specific markets) to ensure that the protected information remains confidential.

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<sup>9</sup> See for instance BCUC, "BC Fuel Info: Price Factors", website:  
<<https://www.gaspricesbc.ca/PriceFactors>>.

<sup>10</sup> For instance, in sections II C and III B ii, PDF pages 6 and 9 of 9.

Suncor looks forward to continuing to participate in this proceeding and providing submissions on the Draft #1 Confidentiality Framework.