

**S. Luke Dineley**  
T 604-640-4219  
F 604-622-5008  
ldineley@blg.com

Borden Ladner Gervais LLP  
1200 Waterfront Centre  
200 Burrard St, P.O. Box 48600  
Vancouver, BC, Canada V7X 1T2  
T 604.687.5744  
F 604.687.1415  
blg.com



January 13, 2021

**By Email**

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

**Attention: Ms. Marija Tresoglavic, Acting Commission Secretary**

Dear Sirs:

**Re: Parkland Corporation Request for Advance Ruling on Confidentiality for  
Fuel Price Transparency Act Reporting (the “Application”)  
Submissions of Intervener Husky Energy**

We are counsel for Husky Energy (“Husky”).

Pursuant to Order G-242-20 of the British Columbia Utilities Commission (the “BCUC”), Husky applied for intervener status in the Application on October 6, 2020. Husky was granted intervener status by the BCUC on October 7, 2020. Husky delivered its submissions as an intervener to the BCUC on October 15, 2020.

On October 30, 2020, the BCUC made Order G-275-20 (the “Order”), which granted advanced approval of confidential status to fuel data submitted by a responsible person pursuant to the *Fuel Price Transparency Act* (“FPTA”) that the responsible person has identified as protected information. Pursuant to the Order, the fuel data will be confidential until the completion of a hearing process to establish the framework for the determination of confidentiality and treatment of protected information.

On November 30, 2020, the BCUC amended the Order to establish a framework for the determination of confidentiality and treatment of protected information. The BCUC requested that interveners provide submissions by Wednesday January 13, 2021. Husky’s submissions follow.

**Husky Reporting Requirements and Protected Information**

Husky is a Canadian based integrated energy company. Its Integrated Corridor includes a downstream business that produces a range of products including gasoline, jet fuel, diesel, asphalt, and petrochemical feedstocks. Husky also operates retail gasoline outlets and a commercial fuels

network in British Columbia. Husky participated in the BCUC's industry engagement regarding the data collection process for the wholesale fuel industry.

As set out in its previous submissions, pursuant to the FPTA Husky is required to report a significant amount of data and information to the BCUC. Husky is required to report as follows under the Regulations:

- volumes, purchase prices, sources and transportation costs as an importer of reportable fuel, pursuant to section 5;
- volumes, purchase prices, purchase dates and counterparties as a wholesale purchaser of reportable fuel pursuant to section 6;
- fuel storage terminal and storage tank capacity as a person who stores reportable fuel pursuant to section 7; and
- volumes, shipping dates and costs as a supplier of reportable fuel pursuant to section 8.

In addition, Husky is reporting in relation to retail operations pursuant to the retail fuels sales reporting regime the BCUC is administering, which has been designated the "Retail Pilot".

Husky submitted its first set of monthly reports to the BCUC on November 16, 2020. On December 14, 2020, Husky submitted a second set of reports, as well as the first set of monthly Retail Pilot Reports. Pursuant to the Order, Husky delivered to the BCUC redacted versions of the monthly reports with protected information redacted, along with a FPTA Confidentiality Request Form, which set out the reasons why Husky was designating the redacted information confidential.

It is Husky's position that the confidential, redacted information in the Husky monthly reports to the BCUC (the "Protected Information") is extremely commercially sensitive and, as a result, should not be disclosed. The Protected Information includes commercial, financial, and technical information. The disclosure of the Protected Information to the public would result in substantial commercial harm to Husky. Husky's confidential information would be disclosed to competitors, and to commercial counterparties it engages in contractual negotiations with. This would prejudice Husky's competitive position, and would likely result in material loss.

Further, the protection of commercially sensitive information enhances competition, and enhances the public confidence in the work of the BCUC and the competitiveness of BC fuel markets. As a result, the harm to Husky if the Protected Information is disclosed outweighs any public interest in disclosing the Protected Information.

Husky maintains that the Protected Information should remain confidential, and not be disclosed to the public by the BCUC. In Husky's submission, the current process of the BCUC providing advance approval of confidentiality to information designated as confidential by a responsible person is efficient and effective.

## The BCUC Questions

In its letter dated November 30, 2020, the BCUC requested that interveners make submissions on several questions. Husky's responses to these questions is set out below.

- 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?

As set out above, it is Husky's position that the most efficient and effective method of ensuring confidential information is protected is to designate information identified as confidential by a responsible person as protected information. The Protected Information in Husky's monthly reports demonstrates the categories of information that should be protected. As a responsible person, Husky is in the best position to determine the categories of fuel data that must be protected, and the redactions of the Protected Information in the monthly reports reflects this determination.

As set out in its previous submissions, there is a complete lack of information at this time on how the information provided by Husky to the BCUC will be published. All that is known is that it will be disclosed to the public, and that all available information required by the Regulations must be provided to the BCUC. Given this, it is very difficult at this time for Husky to advise the BCUC which information is not confidential or sensitive, and which information can be aggregated or anonymized to address concerns of confidentiality or sensitivity. The Protected Information in the monthly reports demonstrates what is confidential.

It is Husky's position that any information reported to the BCUC pursuant to the FTPA that is disclosed to the public must, at a bare minimum, be anonymized and aggregated. Anonymization of information or data on its own in any context is not sufficient to protect sensitive information.

Due to the unique nature of the British Columbia market and region, with very few refineries and a limited number of market participants, an attempt to anonymize data and disclose it to the public will not sufficiently protect confidential information. Even with anonymized data, it would be possible to back calculate for specific regions and market participants such as Husky, and determine confidential information. Aggregation is also required to address the issues of back calculation and the resultant damage to market participants.

If the BCUC intends to disclose information to the public by zone or region, it will be very difficult, if not impossible, to effectively protect confidential information by anonymization and aggregation of the data. The limited number of market

participants and facilities, especially in certain regions, renders it impossible to protect confidential information through aggregating and anonymizing fuel data.

Husky submits that any data disclosed by the BCUC should be done on a provincial basis, and the data for all responsible persons in the entire province be aggregated and anonymized.

- ii. Is it possible for the Administrator to pre-determine types of fuel data as protected information?

In Husky's submission, the BCUC can pre determine the fuel data designated by Husky as protected information to be so. The Protected Information in the monthly reports should be pre determined by the BCUC to be confidential.

- 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?

The confidential status of the Protected Information submitted by Husky should remain in place and not expire. This is consistent with how information determined by the BCUC to be confidential in other proceedings is treated.

- 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.

As set out above, if fuel data submitted by responsible persons is reported on an aggregated and anonymized basis on a provincial level, the confidential information submitted by responsible persons may be protected. Simply anonymizing the data, or reporting aggregated and anonymized data on a regional level, will not be sufficient to protect confidential information.

- 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?

Husky is unable to provide submissions in relation to this question. Husky cannot advise the BCUC on its duties as Administrator under the FPTA.

Husky submits that the purposes of the FPTA are achieved through limited disclosure and the protection of confidential information. In terms of public disclosure, the purposes of the FPTA are achieved by informing the public of the volumes of fuel sold, at what price, and in what location. There is no need to disclose

information on the wholesalers or retailers, including the transactions of same, operating in a given region.

iii. Any other submissions.

As set out above, there remains little to no information how the information provided by Husky to the BCUC will be published. As a result, Husky's ability to provide submissions in relation to the BCUC's questions is limited.

Further, in terms of reporting information to the public pursuant to the FPTA and achieving the purposes of the FPTA, Husky notes that there are a significant number of other factors that must be considered in relation to the price of fuel in British Columbia beyond the data being reported by responsible persons. These include taxes at both the provincial and municipal level, rent and other costs associated with retail and card lock locations, transportation costs, and renewable fuel requirements. Husky submits that any reporting to the public by the BCUC must take these important factors into account. In particular, the tax region in which fuel is sold is a key factor, and the largest driver of fuel prices in BC.

Husky requests that the BCUC provide further information on the manner and form in which the fuel data is to be published to the public. In Husky's submission it would be useful and efficient for the BCUC to provide a draft form of any intended publication for review by responsible persons, including Husky, for comments prior to it being finalized and published.

Husky looks forward to continued engagement with the BCUC on these issues.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly,

Borden Lander Gervais

A handwritten signature in blue ink, appearing to read "S. Luke Dineley".

S. Luke Dineley