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

Attention: Marija Tresoglavic, Acting Commission Secretary  
Re: **British Columbia Utilities Commission – Framework for the Determination of Confidentiality and Treatment of Protected Information collected pursuant to the Fuel Price Transparency Act; Order G-303-20**

Dear Ms. Tresoglavic,

In accordance with the Commission's Order G-303-20 dated November 30, 2020, enclosed please find AFD Petroleum Ltd.'s submissions with respect to developing a framework for the determination of confidentiality and treatment of protected information collected pursuant to the *Fuel Price Transparency Act*.

We also take this opportunity to request that the Commission amend AFD's Intervenor Information to add Charles Bois and Bruce Geiger of Miller Thomson LLP, as AFD's solicitors in this matter (contact details below):

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

Kind regards,

A handwritten signature in black ink, appearing to read 'MG', is positioned above the typed name of the sender.

Matthew Gibbons  
Pricing & Analytics Specialist

cc Miller Thomson LLC

## AFD PETROLEUM LTD.

### INTERVENOR SUBMISSION REGARDING FRAMEWORK FOR THE DETERMINATION OF CONFIDENTIALITY AND TREATMENT OF PROTECTED INFORMATION COLLECTED PURSUANT TO THE *FUEL PRICE TRANSPARENCY ACT*

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

#### INTRODUCTION

On September 16, 2020, Parkland Corporation ("**Parkland**") filed an application with the Commission for an advance ruling on confidentiality for certain information that Parkland is required to file under the *Fuel Price Transparency Act*<sup>2</sup> (the "**FPT Act**") and the *Fuel Price Transparency Regulation*<sup>3</sup> (the "**Regulation**") (the "**Parkland Application**").

In response to the Parkland application, on October 15, 2020, each of Suncor Energy Inc. ("**Suncor**"), Husky Energy ("**Husky**"), Imperial Oil Ltd. ("**Imperial**"), Shell Canada Ltd. ("**Shell Canada**"), Federated Co-Operatives Limited ("**FCL**"), 7-Eleven Canada Inc. ("**7-Eleven**"), Tidewater Midstream and Infrastructure Ltd. ("**Tidewater**") and G&B Fuels, Incorporated ("**G&B Fuels**") (collectively, the "**Intervenors**") filed submissions in respect of the Parkland Application.<sup>4</sup>

On November 30, 2020, the Commission issued Order G-303-20 extending the hearing process for the Application, inviting applications for additional persons to seek intervenor status and file interested party comments on the framework for determining confidentiality and treatment of protected information collected pursuant to the FPT Act.

On January 6, 2021, AFD sought and was granted intervenor status in respect of the Parkland Application.

#### BACKGROUND

AFD is a Canadian based, privately held, independent fuel marketer in Western Canada. Firstly, AFD is neither a refiner nor a retail dealer<sup>5</sup> in BC. AFD operates a number of commercial cardlocks in BC, as well as fuel storage locations in BC providing wholesale bulk fuel to industrial and commercial customers. In addition, AFD offers fuel transport services and fuel storage and dispensing solutions to commercial and industrial customers. AFD is an importer of and wholesale supplier of gasoline and diesel fuel to the retail and commercial markets. Effective November 1, 2020, AFD, became a "responsible person"<sup>6</sup> under the

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<sup>1</sup> BCUC Order G-103-20 ([https://www.bcuc.com/Documents/Proceedings/2020/DOC\\_59963\\_A-4-G-303-20-RegTimetable.pdf](https://www.bcuc.com/Documents/Proceedings/2020/DOC_59963_A-4-G-303-20-RegTimetable.pdf)) Parkland Corporation Request for Advance Ruling on Confidentiality for Fuel Price Transparency Act Submission on Framework for the Determination of Confidentiality and Treatment of Protected Information Collected Pursuant to the Act

<sup>2</sup> S.B.C 2019, c. 46, s. 3

<sup>3</sup> B.C. Reg 52/2020

<sup>4</sup> Exhibits C1-2, C2-2, C3-2, C4-2, C5-2, C6-2, C7-2, and C8-2, at <https://www.bcuc.com/ApplicationView.aspx?ApplicationId=801>

<sup>5</sup> *supra*, n.3, Section 1: a retail dealer means a person who, within BC sells reportable fuel to a retail purchaser, unless the fuel is sold at a cardlock, bulk storage terminal or terminal rack or delivered to the retail purchasers in connection with an emergency roadside service.

<sup>6</sup> *supra* n.2, Section 1: A responsible person mean a person engaged in a reportable activity. A reportable activity means processing, refining, storing, transporting marketing or supplying reportable fuel and a

FTP Act and is required to provide the Commission with fuel data reports in its capacity as an “importer, wholesaler, supplier and, as person who stores reportable fuel”.<sup>7</sup>

In relative terms, AFD does not hold a significant market share in BC when compared to the major refiners and fuel marketers in the industry. As such, AFD does not apply a material influence over retail market pricing.

AFD is not a producer nor a refiner of gasoline or diesel fuel and must purchase its fuel volumes from refiners and wholesale fuel sellers. AFD markets and sells its fuel products through cardlock facilities, storage locations and by delivering to industrial and commercial purchasers.

Accordingly, AFD is required to submit fuel data to the BCUC on the Importer Return (pursuant to section 5 of the Regulation), Wholesale Purchaser Report (pursuant to section 6 of the Regulation), and the Retail Supplier Report (pursuant to section 8 of the Regulation).

### **SUBMISSIONS ON FRAMEWORK FOR DETERMINING CONFIDENTIALITY OF FUEL DATA REPORTS**

Generally, AFD agrees with and supports Parkland’s submissions, as set out in the Parkland Application, regarding the need for confidential treatment of the sensitive fuel data to be provided to the Commission. AFD also agrees with and supports the submissions of the Intervenors, as they pertain specifically to the Commission receiving and treating as confidential information, the fuel data reports submitted to the Commission in accordance with the Regulation.

AFD offers the following submissions in respect of the data to be reported to the Commission under the FPT Act and Regulation.

It is AFD’s respectful submission that the reporting requirements in the Regulation require parties to disclose competitive and confidential information, at a transactional level. In accordance with Sections 5 – 8 of the Regulation, AFD and the Intervenors will be required to submit data detailing actual volumes of gasoline and diesel purchased and sold; volumes of refined fuel; the sources of fuel, including whether any of the fuel was imported and from where; actual purchase and sale prices and transportation costs (collectively, “**Reportable Fuel Data**”). AFD confirms that such information is traditionally considered commercially sensitive and highly confidential within its industry, the disclosure of which would cause harm and financial injury or loss.

AFD considers its Reportable Fuel Data to be highly sensitive and commercially competitive information, both at a granular and at an aggregated level. AFD submits that the disclosure of all or any of AFD’s Reportable Fuel Data could provide AFD’s suppliers and customers information regarding AFD’s transactional pricing that could improve their negotiating positions against AFD, and cause significant financial harm and prejudice to AFD.

AFD submits that disclosure of AFD’s Reportable Fuel Data would also adversely impact AFD’s ability to negotiate competitively priced fuel purchase and sales and transportation agreements with its suppliers and customers. As a result, AFD’s ability to compete in the BC market would be diminished, which would cause AFD to suffer material financial loss.

Furthermore, AFD submits that disclosure of the Reportable Fuel Data could adversely impact the competitive market in BC. AFD understands that the purpose of the FTP Act and Regulation is to provide detailed information regarding and greater understanding gasoline and diesel prices in British Columbia.

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prescribed activity in relation to reportable fuel. Reportable fuel means, gasoline, diesel fuel and a prescribed fuel or substance.

<sup>7</sup> *supra*, n.3, Sections 5, 6, 7 and 8.

However, disclosure of AFD's (and other participants') Reportable Fuel Data at a transactional level has the realistic potential of reducing market participation for small and medium sized entities within the BC market, and thereby reducing competition generally. Large-scale refiners and marketers, which already hold the largest market share in BC and which wield the majority of influence over the market, would step in to fill the gap left behind by those small and medium-sized entities who are unable to serve the BC market. This would result in a less competitive market that would adversely affect consumers.

## **RULES OF PRACTICE AND PROCEDURE**

The Commission's Rules of Practice and Procedure (the "Rules") currently provide a mechanism whereby parties can request that the Commission receive and treat as confidential, all or part of any documents submitted in a proceeding before the Commission<sup>8</sup>. However, AFD submits that the Rules are not adequately suited for application towards confidential treatment of the Reportable Fuel Data. AFD's specific concerns with the Rule are:

1. Absent a general and permanent direction to or from the Commission that the Reportable Fuel Data received by the Commission will be considered and treated as protected and confidential information and not be disclosed, the Rules appear to require that a parties filing such information must request confidential treatment for some or all of the Reportable Fuel Data, and potentially have to participate in a hearing to ascertain whether the information should be protected and considered confidential.

Section 20.01 of the Rules<sup>9</sup> requires that when determining whether the documents submitted require a confidentiality direction, the Commission will have regard to:

- (a) whether the disclosure of the information could reasonably be expected to result in:
  - (i) undue material financial loss or gain to a person;
  - (ii) significant harm or prejudice to that person's competitive or negotiating position;  
or
  - (iii) harm to individual or public safety or to the environment;
- (b) whether the information is personal, financial, commercial, scientific, labour relations or technical information that is confidential and consistently treated as confidential by the person;
- (c) whether the person's interest in confidentiality outweighs the public interest in the disclosure of the information or documents in the hearing;
- (d) whether the person submitting the document has any legal obligation to maintain confidentiality; and
- (e) whether it is practicable to hold the hearing in a manner that is open to the public.

AFD is concerned that the Rules do not assure that the Reportable Fuel Data will be considered confidential. AFD requests the formal assurance that sensitive information will not be made public, and the opportunity to address any finding that information does not require confidential treatment, before submitting such information.

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<sup>8</sup> Part IV – Confidential Documents, BCUC Rules of Practice and Procedure.

[https://www.bcuc.com/Documents/Participant-Info/G-15-19\\_BCUC\\_Rules\\_of\\_Practice\\_and\\_Procedure.pdf](https://www.bcuc.com/Documents/Participant-Info/G-15-19_BCUC_Rules_of_Practice_and_Procedure.pdf)

<sup>9</sup> *supra*, n.8, Section 20.01.

AFD agrees with the Parkland and Shell submissions in regards to ensuring that the disclosure and publication of information under the FPT Act and Regulations are managed so as to be consistent with and support the underlying objectives of the *Competition Act*<sup>10</sup> (being to promote the competitiveness of BC fuel markets). As enhancing the competitiveness of BC fuel markets was the core objective of the FPT Act, at a minimum the administration of the FPT Act and Regulations should not serve to have an adverse effect upon competition within BC.

## DETERMINATION OF CONFIDENTIALITY

It is AFD's position that the Reportable Fuel Data reported pursuant to the Regulation should be treated at all times, as protected and confidential information in accordance with the Commission's Rules and Section 9 of the FPT Act. Section 9 of the FPT Act discusses the publication of the Reportable Fuel Data and expressly provides that such information be protected and considered confidential, and reads as follows:

### Publication

9 (1) In this section:

"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;

"trade secret" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*.

(2) The administrator may publish fuel data, or other information or records, acquired under this 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, having regard, without limitation, to the importance of
  - (i) the competitiveness of the market for reportable fuels, and
  - (ii) public confidence in the competitiveness of that market.

As a privately held corporation, AFD considers all Reportable Fuel Data relating to volumes, product mix, origin, destination, and price to be strictly confidential and commercially sensitive protected information. AFD maintains this information as commercially sensitive proprietary information and considers this information part of its trade secrets.

Specifically, AFD considers the below protected information confidential and the disclosure of which will cause AFD significant harm and financial loss:

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<sup>10</sup> *Competition Act* R.S.C., 1985, c. C-34., for example Section 76.1 dealing with actions to maintain prices and Section 78.1 dealing with a party's use and abuse of a dominant position.

**A. Volumes (as required for the Importer, Wholesale Purchase, and Retail Supplier Reports)**

**Volume data** is key competitive information that is not freely shared with competitors, customers, or suppliers/vendors unless under strict confidentiality. More specifically, import volumes directly affect AFD's corporate supply strategy, purchase price negotiations, and sales strategy.

Volume data is a key determinant in supply negotiations, and the formation of purchase and sale pricing and is critical to AFD's ability to compete and operate within the BC market.

**B. Purchase Price per Litre and/or Amounts Paid/Payable by Purchaser per Litre (as required for the Importer, Wholesale Purchase, and Retail Supplier Reports)**

As an independent marketer, AFD negotiates **purchase price** agreements with various suppliers and its customers, and this information is highly confidential. AFD imposes strict confidentiality obligations on its customers with respect to treating as confidential, all fuel pricing information and prohibits disclosure of such information for any reason.

Schedule 1 to the Freedom of Information and *Protection of Privacy Act* ("FOIP") defines "trade secret" as follows<sup>11</sup>:

"**trade secret**" means information, including a formula, pattern, compilation, program, device, product, method, technique or process, that

- (a) is used, or may be used, in business or for any commercial advantage,
- (b) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use,
- (c) is the subject of reasonable efforts to prevent it from becoming generally known, and
- (d) the disclosure of which would result in harm or improper benefit.

AFD submits that its Reportable Fuel Data, and in particular its volume data, purchase and sales prices and transportation costs, satisfy all criteria of in the FPT Act and the FOIP as "trade secrets" as the Reportable Fuel Data is:

- (a) used to develop and form competitive advantage,
- (b) derive economic value from not being generally known to the public,
- (c) the subject of reasonable efforts by AFD to prevent it from becoming generally known, and
- (d) data, which if disclosed would result in harm to AFD or result in an improper benefit to AFD's suppliers and customers.

**C. Transportation Cost per Litre (as required for the Importer Report)**

AFD's position is that publication of its **transportation costs per liter** would raise similar concerns as those regarding disclosure and publication of its purchase and sales pricing. As both a supplier and hauler of fuel, AFD places the same level of confidentiality on transportation costs and considers this data commercially sensitive and confidential. As a typical sale price of delivered fuel is derived from the sum of product cost, transport cost, and margin, any publication of transportation costs could be used to aid AFD's competitors in deriving AFD's costing and price structures.

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<sup>11</sup> *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, Schedule 1, [https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96165\\_07#Schedule1](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96165_07#Schedule1)

**D. Province and/or State of Origin (as required for the Importer Report)**

As an independent wholesaler of fuel, **province or state of origin of supply** is a key part of AFD's strategy derived from importing from various markets outside of BC. As with other Reportable Fuel Data, AFD goes to great lengths to keep this information private, as it is the basis of certain competitive advantages and forms an integral part of AFD's supply negotiations.

**E. Other Information: Internal ID**

Although seemingly innocuous to some viewers, the Internal ID data provided to the Commission may contain specific invoice and Bill of Lading ("BOL") information that may lead to sensitive information being disclosed to unintended viewers, such as competitors, vendors, and customers. Specifically, most vendors have unique identifiers that form part of their invoice or BOL numbering system. Disclosing this data has the potential to the inadvertent exposure of commercially sensitive information that would only be shared by the two parties engaged in a sales transaction.

In closing, AFD submits that all Reportable Fuel Data, and in particular fuel pricing, volume, and transportation costs, constitute protected information and considered confidential and non-disclosable on a permanent basis.

**RESPONSE TO COMMISSION'S QUESTIONS REGARDING DETERMINATION OF CONFIDENTIALITY**

In response to the Commission's specific questions regarding making a determination of confidentiality, AFD submits the following:

**(a)(i) What are some efficient ways to group or categorize specific fuel data and at what levels of detail for making such a determination?**

By using sufficiently aggregated data and averages, the negative impacts of competitive information disclosure could be mitigated to some extent. Limiting publication of transactional data would provide assurances for the reporting party that they could operate more competitively within BC.

In that regard, we note the following:

**(i) Importer Report**

The Commission Rules should be amended such that the Commission must first group and aggregate the Reportable Fuel Data into appropriate categories. Once the data is grouped and aggregated, the Commission could be compiled into and reported in respect of specific geographic regions of import and distribution within BC. Further, AFD submits that aggregate data could be compiled to determine an average purchase price by product for each geographic region. Similar averages could be applied to the transportation costs associated with importing this fuel.

AFD submits the aggregated data could then be further refined and aggregated by time to provide data suitable for tracking and reporting increases and decreases of averages over any specific time period.

**(ii) Retail Supplier Report**

AFD suggests that the most logical basis for grouping fuel data would be by product type. Average price paid/payable could then be calculated by product on an aggregate level.

**(iii) Wholesale Purchaser Report**

AFD suggests that the most logical basis for grouping fuel data is by product type. Average purchase price could then be calculated by product on an aggregate level. This data could be further refined by categorized by geographic region purchased.

**(a)(ii) Is it possible for the Administrator to pre-determine types of fuel data as protected information?**

AFD recommends that, at a minimum, fuel data relating to purchase and sale price, volumes and province/state of origin and transportation costs be permanently pre-determined as protected information. As AFD and other Interveners have noted, disclosure of such sensitive information has the potential to directly and adversely affect marketplace competition and cause harm to market participants.

As noted in other sections of this submission, aggregation of data would serve to anonymize certain data and may limit the specific harm to each reporting entity.

**(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?**

AFD knows of no circumstance for where the expiry of confidential status would be warranted. AFD's commercially sensitive data is held as such in perpetuity, and AFD does not freely disclose current, future or past data on volumes, prices, import patterns or any other sensitive fuel data. Fuel data pertaining to years past would still be considered to have the potential to have significant harm to AFD and other market participants, were it to be publicly disclosed and available to competitors, customers, and vendors.

For instance, if information regarding prior years were made publicly available, other market participants could apply generalized trends and make estimates as to a reporting entities current day volumes and pricing figures.

**(c)(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.**

Although AFD maintains that no Reportable Fuel Data should be publicized, it also accepts that industry participants may be reasonably assured of some level of protection from undue harm with the proper application of aggregation and anonymity towards submitted data.

Suggestions for ways that the Commission might aggregate and anonymize have been outlined in previous sections but, to summarize, AFD would suggest that data be anonymized and grouped and aggregated by geographic region, time period and fuel type in order to protect individual market participant's specific fuel data. All methods must avoid any flawed anonymizing/aggregating algorithm that allows persons to backwards calculate/identify the submitting reporter.

**(c)(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?**

AFD recommends that the Commission continue to engage with industry to develop a well thought out framework for data collection and presentation in order to both serve the public and protect sensitive information from being needlessly disclosed. Fuel pricing structures have various layers of complexity and it is important that data, either at the granular or aggregated levels, not be arbitrarily disclosed to the public without context.

For example, publishing refinery wholesale purchase pricing without context may lead to readers to make incorrect and entirely misleading assumption on the purchase prices paid by and between all participants. Further, secondary data and considerations such as overhead, transport costs, volume restrictions, supply contract constraints and other factors which may also impact refiner and other prices could lead to viewers of publicized information not understanding the true make up of retail fuel prices.

As with Suncor, AFD competes with competitors in markets not governed by the FPT Act, and such parties would take advantage of the information disclosed under the FPT Act against AFD's interests in those markets. That indirect harm is contrary to the aims of the FPT Act, and would adversely impact AFD's operations in BC and elsewhere.

Lastly, we agree with the Suncor submission noting that the BCUC (as regulator) does not require the disclosure of individual data in order to adequately discharge its obligations in regards to the public interest, nor in regards to reporting its findings to either the public or the Government of British Columbia. Any potential harm to the competitiveness of the BC markets should be weighed heavily in the BCUC's determination of these processes.

In closing, AFD appreciates the opportunity to participate in these proceedings, and we look forward to the continued dialogue between the Commission and industry as a framework is further developed.

The foregoing submissions are respectfully submitted by AFD Petroleum Ltd. this 13<sup>th</sup> day of January 2021.