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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: Framework for the Determination of Confidentiality and Treatment of Protected Information
Issuance of Framework Draft No. 1
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 by Parkland Corporation for an advance ruling on confidentiality and 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. Husky delivered its submissions as an intervener to the BCUC on January 13, 2021.

On February 8, 2021, the BCUC issued Draft No. 1 of the Framework for Determination of Confidentiality and Treatment of Protected Information (“Framework Draft No. 1”). The BCUC invited written submissions on Framework Draft No. 1 by March 8, 2021. Husky’s submissions follow.

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Protected Information and Framework Draft No. 1

Husky is a Canadian based integrated energy company. Its downstream business 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.

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 has submitted monthly reports to the BCUC since November 2020, and both wholesale reports and Retail Pilot Reports since December 2020. 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.

As set out in previous submissions, it is Husky’s position that the confidential, redacted information in the Husky monthly reports to the BCUC is extremely commercially sensitive and, as a result, should not be disclosed. The confidential information includes commercial, financial, and technical information. The disclosure of such information to the public would result in substantial commercial harm to Husky. Husky maintains that the redacted information in the Husky monthly reports should remain confidential, and not be disclosed to the public by the BCUC.

The Framework Draft No. 1 designates certain fuel data collected by the BCUC from Husky and other companies as protected information (the “Protected Information”), and the Protected Information is granted confidential status. However, the Framework Draft No. 1 also allows for the release of Protected Information to third parties on request, and provides for the BCUC to publish Protected Information at its own discretion. Further, the confidentiality granted to the Protected Information expires after two years, and the BCUC appears to be preparing to publish the Protected Information, albeit in an aggregated and anonymized fashion. Husky has significant concerns related to these aspects of Framework Draft No. 1, and whether Draft Framework No. 1 is adequate to protect the extremely commercially sensitive information that Husky is obligated to provide pursuant to the FPTA.

In addition, despite requests, the BCUC has not provided any detail on how it intends to publish information collected under the FPTA. Without further information on the manner and format in which the BCUC intends to disclose the information collected pursuant to the FPTA to the public, it is very difficult for 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.

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.

As set out in previous submissions, 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 redacted reports submitted by Husky set out what should be protected, and as a responsible person, Husky is in the best position to determine the categories of fuel data that must be protected.

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.

1. Should the final Framework for Determination of Confidentiality and Treatment of Protected Information (Final Framework) be implemented as an order to this proceeding or adopted as BCUC rules?

Husky submits that if and when a final Framework for Determination of Confidentiality and Treatment of Protected Information is put in place, it should be implemented as an order to this proceeding.

2. Are the Fuel Data identified as Protected Information in Framework Draft No. 1 reasonable and supportable? If so, please explain why and provide any supporting evidence you may have to justify protecting these items. If not, why not? (Appendix A)

Yes, the fuel data identified as Protected Information in Framework Draft No. 1 are reasonable and supportable. It is Husky's submission that additional fuel data reported by responsible persons should be designated as protected information.

3. Is there any Fuel Data that is marked as Protected Information in Framework Draft No. 1 that should not be? If so, why? (Appendix A)

No.

4. Is there any Fuel Data that is not marked as Protected Information in Framework Draft No. 1 that should be? If so, why? (Appendix A)

Yes, it is Husky's submission that additional categories of fuel data should be marked as Protected Information. The additional categories that should be marked as Protected

Information are: fuel origin, import date, supplier information, customer information, fuel location, transport cost, fuel identification numbers, fuel grades, and fuel grade descriptions.

This fuel data is currently designated by Husky as information that should be protected in its monthly reports. As set out above, and in other submissions, this information is very commercially sensitive, and the disclosure of it would result in substantial commercial harm to Husky.

5. Is the process proposed for requesting confidentiality over non-Protected Information, on an exception basis, the most regulatory-efficient process? If not, what alternative process would you recommend and why? (Section 4)

Generally, Husky does not object to the use of the provisions in the BCUC's Rules of Practice and Procedure for confidentiality requests. Husky notes that the Rules of Practice and Procedure set out that a request for confidentiality be made at the time of filing, and suggests that this be altered to allow for a determination of the confidentiality of fuel data before it is filed.

6. Is the undertaking and declaration process proposed for permitting access to Protected Information reasonable? Why or why not? (Section 5.1)

Husky is unable to fully respond to this question due to a lack of information.

The Framework Draft No. 1 sets out that the BCUC may allow access to Protected Information to parties that request it. If a third party is allowed access to Protected Information, the BCUC proposes that the third party be required to sign and file a declaration and undertaking. At this time, Husky is unaware of what third parties could be granted access to Protected Information by the BCUC, and for what reasons. The BCUC has provided no examples or details on when it foresees it would release Protected Information to a third party. Husky emphasizes the extremely sensitive nature of the fuel data included in the Protected Information, and submits that it should never be disclosed to third parties on request. Further, Husky is concerned that the declaration and undertaking proposed will be taken as a rubber stamp allowing disclosure of Protected Information to whoever executes the declaration and undertaking, which must be avoided. Finally, no information is provided on how the declaration and undertaking will be enforced, and what penalties or consequences will be available should it not be adhered to.

Husky would be pleased to make further submissions should more information be provided.

7. Are the process and considerations proposed for determining whether the public interest in the disclosure of Protected Information outweighs any potential harm to Responsible Persons reasonable? Why or why not? (Section 5.2)
 - a. If not, what alternative process and/or considerations should the BCUC consider and why?

Husky is unable to a full answer to this question. Husky cannot advise the BCUC on its duties as Administrator under the FTPA, and there is a lack of information.

The Framework Draft No. 1 provides that the BCUC may disclose the Protected Information if the public interest in the Protected Information disclosed outweighs the harm to responsible persons such as Husky. It appears such disclosure would be done on the BCUC's own initiative. In Husky's submission, it is unclear why the BCUC may need to unilaterally disclose Protected Information at a later date, after determining the Protected Information was confidential in this process, where considerations of the public interest have been addressed. No context for this is provided in Draft Framework No. 1, and it is completely unknown when such unilateral disclosure could occur. Further, the lack of any information on how the BCUC will publish any data collected under the FTPA impedes Husky's ability to comment.

Husky agrees with Draft Framework No. 1 that as a responsible person it be allowed to participate in any process whereby Protected Information is proposed to be disclosed, and that a hearing be held before any disclosure.

Husky would be pleased to make further submissions should more information be provided.

8. Are the (i) aggregation; (ii) anonymization; and (iii) time release methodologies proposed appropriate? Why or why not? (Section 6.0)
 - a. If not, what alternative methodologies should the BCUC consider and why?

Aggregation and Anonymization

As set out in previous submissions, 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 only anonymizing data 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. It is not entirely clear from a review of Draft Framework No. 1 whether the BCUC intends to publish anonymized data without aggregation, but if that is the case this is not appropriate and is insufficient to protect the interests of Husky.

The Draft Framework No.1 sets out that the aggregation of Protected Information submitted by five responsible persons or more, whether that data is anonymized or not, is sufficient to ensure that the Protected Information of any one of the responsible persons cannot be discerned. Husky disagrees with this position and submits that publishing the aggregated Protected Information of 5 responsible persons is not appropriate. Husky submits that if the data is not anonymized as well as aggregated, the nature of the British Columbia market and region will allow back calculation and the disclosure of sensitive, confidential information. The limited number of market participants and facilities, especially in certain regions, renders it impossible to protect confidential information through aggregating fuel data on a regional basis, including aggregating the data of five participants.

Even if the fuel data is anonymized and aggregated, the publishing of this information on a regional basis will not effectively protect the Protected Information, and would result in the disclosure of Husky's sensitive data. This is the case if 5 responsible persons' fuel data is aggregated. A third party with knowledge of the industry would be able to determine confidential business information, and harm Husky's commercial interests.

As set out in previous submissions, Husky maintains that 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.

Time Release

The Draft Framework No. 1 proposes that after two years from the date of the submission of Protected Information, it will no longer be treated as confidential. Following two years, the Protected Information may be published without any protections.

Husky submits that the proposed two year limit on the protection of confidential information is grossly inadequate to protect Husky's commercially sensitive information, and the disclosure of the Protected Information after a two year period would result in significant harm to Husky's business interests. As part of its business in British Columbia, Husky enters supply contracts under which it supplies fuel in certain volumes at certain prices. These contracts have terms that far exceed 2 years, and are often "evergreen" contracts, meaning that they continually renew and have no set term. As set out above, the British Columbia market is very unique and has limited participants, particularly in certain regions. If the Protected Information is no longer protected after the expiry of two years, a competitor of Husky with market knowledge could use the now disclosed Protected Information to determine Husky's contract terms and details, underbid Husky, and acquire Husky's customers who would be under the same contracts as when the Protected Information was submitted. This is an almost certain result should the Protected Information be disclosed after two years.

Husky repeats its submission that the confidential status of the Protected Information submitted by Husky should remain in place and not expire. At a minimum, the confidential status of the Protected Information should remain in place for a minimum of 25 years.

9. Are there any additional areas that should be addressed in Framework Draft No. 1? If so, please explain.

Besides what is set out in these submissions, Husky has no submissions on this question.

10. How should the BCUC treat Fuel Data that has been granted advanced approval of confidential status pursuant to Order G-275-20 dated October 30, 2020, following implementation of the Final Framework?

Husky submits that the Fuel Data that has been granted advanced approval of confidential status pursuant to Order G-275-20 should be continued to be treated as confidential following the implementation of the Final Framework. The fuel data that has already been

granted confidential status, and been designated by Husky as such in the monthly reports. It should remain confidential indefinitely.

11. Any other submissions.

As set out above, in 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 and comment 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 Ladner Gervais LLP



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