

Federated Co-operatives Limited

P.O. Box 1050
401 – 22nd Street East
Saskatoon SK
S7K 3M9 Canada

T 306-244-3311
F 306-244-3403
inquiries@fcl.crs
www.fcl.crs

**PARKLAND – ADVANCE RULING ON CONFIDENTIALITY
FOR FPTA REPORTING EXHIBIT C7-4**



March 8, 2021

British Columbia Utilities Commission

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

Attention: Patrick Wruck, Commission Secretary

Dear Sir:

Re: British Columbia Utilities Commission – Framework for the Determination of Confidentiality and Treatment of Protected Information collected pursuant to the Fuel Price Transparency Act – Issuance of Framework Draft No. 1 - Letter of Written Comments

This is further to the British Columbia Utilities Commission (“**BCUC**”) regulatory timetable established by Order G-303-20 dated November 30, 2020 respecting Parkland Corporation’s Request for an Advance Ruling on Confidentiality for the *Fuel Price Transparency Act* (the “**FPT Act**”) Reporting Submissions (the “**Proceedings**”) and the Framework for Determination of Confidentiality and Treatment of Protected Information Draft No. 1 (Framework Draft No. 1) issued by the BCUC on February 8, 2021.

Background

Federated Co-operatives Limited (“**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.

On October 8, 2020, the BCUC granted FCL’s application to intervene in the Proceedings.

Effective November 1, 2020, FCL became subject to the reporting requirements in the FPT Act and the *Fuel Price Transparency Regulation* (the “**FPT Regulation**”).

On February 8, 2021, the BCUC requested that interveners address a series of questions in their submissions regarding Framework Draft No. 1, including what fuel data is protected information and how such information will be treated.

The questions and FCL’s responses are included in the Appendix.

If you would like to discuss further or require more information, please contact Tanya Hornung, Government Relations Manager at Tanya.Hornung@fcl.crs or at 306-719-4025.

Sincerely,

Darren Hudema

Director, Supply and Distribution,

Energy Business Unit

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Appendix

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?

FCL defers to the BCUC as to the method used to formalize the implementation of the Final Framework, provided that an equivalent level of protections and safeguards for protected information are achieved.

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 is reasonable and supportable for the reasons provided in our prior submission dated January 13, 2021, including without limitation as follows:

- The information we are required to report under the FPT Regulation is commercial and financial information, and thus, protected information.
- 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 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.

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. FCL submits 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.

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)

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 Guidelines is "protected information" under the FPT Act to the extent indicated by the responsible person.

This is important for the protection of FCL's interests, as detailed above and in prior submissions, and also because the information may include third party information that FCL is holding under contractual obligations of confidentiality. For example, and without limitation, releasing the Seller Name and Address would mean revealing third parties with which FCL has supply contracts in place, contrary to obligations of confidentiality between the parties and potentially harming commercial interests.

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Other fields of non-protected data, namely Internal ID and Type of Transaction, are also of concern and we request be excluded on monthly reports and available upon request by the BCUC (and protected if submitted). The removal of these items would further the anonymization of data and protection of information that 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 sources of products, and commercial relationships. Competitors can use such information to FCL's detriment. For example, and without limitation, (i) the Internal ID reported represents the external Bill of Lading ("BOL") number. Each responsible person, who creates BOLs at their respective facilities, employs a company specific nomenclature to derive the number identifier on the BOL. The distinctness of such can provide competitors with insight as to the origin of the fuel supplied into the province of British Columbia.

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)

It is efficient to make a pre-determination as to what is considered to be Protected Information, provided that the data in this category is sufficiently broad. As noted in our submission, there is additional data that FCL considers to be Protected Information.

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

- 1) In *Section 5.1 Undertaking and Declaration Regarding Confidentiality of Protected Information*, it states: "A Responsible Person may object to a request for access to Protected Information by filing an objection setting out its reasons within 14 days of being notified by the BCUC.

FCL submits that 14 days to respond to a request for access to Protected Information is insufficient. We recommend that a minimum of 60 days should be allowed to respond. In addition to the time that FCL requires to respond, we may also be required to notify contractual counterparties (if the data being requested is subject to contractual confidentiality obligations).

- 2) In *Section 5.1 Undertaking and Declaration Regarding Confidentiality of Protected Information*, it states: "The BCUC would render a final determination on access and impose any additional conditions or safeguards as it considers appropriate."

FCL is concerned that there does not appear to be the ability to appeal the BCUC's final determination on access.

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)i. If not, what alternative process and/or considerations should the BCUC consider and why?

In *Section 5.2: Public Interest*, it states: "The BCUC will balance the public interest in publishing Protected Information against the potential harm to a Responsible Person that can be reasonably anticipated. The BCUC will have regard to matters that it considers relevant, including whether disclosure could reasonably be expected to result in any of the following: (a) Undue material financial loss or gain to a Responsible Person; (b) significant harm or prejudice to that Responsible Person's competitive or negotiating position; or (c) harm to individual or public safety or to the environment."

FCL submits that these factors set a very high threshold for Responsible Persons to meet. Other factors, also contained in Rule 20.01 of the BCUC's Rules of Practice and Procedure, are important, including whether the Responsible Person has consistently treated the information as confidential and whether there are legal obligations (such as to contractual counterparties) to maintain confidentiality.

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

FCL supports aggregation and anonymization to maintain confidentiality.

In *Section 6.4: Passage of Time*, BCUC states that it “...recognizes the potential for a reduction in the sensitivity of Protected Information over time due to the dynamic nature of the fuel market. The BCUC considers that after a period of two years from the date of submission the sensitivity of Protected Information will have diminished such that confidential treatment is no longer warranted.”

FCL submits that the two year timeframe is insufficient. We request that the Protected Information be designated as confidential for an indefinite amount of time.

Commercial practices may remain substantially the same for many years and so the sensitivity of the information will not be diminished. In addition, contracts with third parties often extend beyond two years, and the confidentiality obligations in those agreements extends even further (often indefinitely).

Any pre-set timeframe for cessation of confidential treatment will be problematic.

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

n/a

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?

The Fuel Data should be categorized according to the Framework once finalized. For non-protected information, BCUC should follow the process in outlined in the framework (at 4.0 Requests for Confidential Treatment of Non-Protected Information). BCUC should also consider prior submissions on the issue of confidential data or accept supplementary submissions.

11. Any other submissions.

n/a