



March 8, 2021

To the BCUC Commission Secretary Patrick Wruck and the panel,

*Re: Exhibit A-5*

My hope is that the FPTA is a useful piece of legislation for journalists and other individuals in BC's communities, who have an interest in fair fuel prices.

## **Question 2. Are the fuel data identified as Protected Information... reasonable and supportable?**

It has not been supported by submissions thus far.

Intervenors in this proceeding representing large fuel companies argue that exposing pricing and volume data will inhibit their competitiveness. But they have not shown how.

For example, in Exhibit B1 we have this statement from Parkland:

"There would be considerable commercial harm to Parkland through BCUC disclosure of its pricing, cost, and other sensitive competitive information: it could, for example, be used by a competitor to gain market share at the company's expense or be unfairly leveraged by a counterparty in contractual negotiations."

Given that this is a central point in keeping so much key information protected, I'm surprised the BCUC was not offered a more compelling, more specific argument for it. Has this happened before in other jurisdictions? Does it happen in more regulated, more transparent industries? How could this be used to gain market share, if all companies are under the same rules? Or is this just a theoretical fear?

I would like to ask for an explanation of this in layman's terms. I am failing to grasp exactly how transparency will undermine fair corporate competitiveness. Currently, the public knows the daily rack rates – how much fuel costs at BC's terminals. We know the price at the pump. We know how much each federal, provincial and regional tax is.

What's missing is the mystery charges – the amount in between rack-plus-taxes, and the price at the pump. Here in Powell River, for example, we currently have a mystery charge (based on this morning's fill-up) of about 35.8 cents per litre. Or, \$28.64 of my money today. Where did it go? That seems like a reasonable question, given that the mystery charge in neighbouring Comox is just 22.4 cents a litre – or in real terms, \$10.72 less than what I paid at the pump this morning. Who in Powell River is making that additional \$10.72, and why? Is it legitimate market forces, or is it the result of a monopoly or collusion?

How much per litre does each service station charge? (this is not made clear by current BCUC reporting; see the answer to Question 8, below).

What about tankage?

Shipping by truck and barge?

What exactly will be lost, and by whom, if these amounts are exposed?

I'm missing what fuel corporations believe will be lost if price data is transparent.

From a consumer and contractor point of view, exposing this data will enhance our ability to participate in the market, because we will be able to make informed choices both at the pump, and politically. Perhaps our fuel companies do not fear data transparency because of some difficult-to-describe competition-upending market force, but rather, they fear data transparency because it will allow consumers and contractors – citizens, and our representatives in government – to make informed choices.

So again, my question is, in layman's terms, why do fuel companies believe that protecting price and volume data is essential to market competitiveness?

In short, until we hear why, protecting this data is not supportable.

### **Question 3: Is there any fuel data that is marked as protected information ... that should not be.**

Yes. Essentially all useful information that might help a journalist, local government, or member of the public assess why gas prices in their region are different from elsewhere – or just why they are the way they are – is 'protected' in this draft framework.

Citizens are interested in price data. A service station's hours, the taxes per litre, and the retail station name – all reportable and not protected under this draft framework are not revelatory new data sets for which the FPTA was required. All of these facts are Google-able.

If the point of the FPTA is fuel price transparency (as the name of the legislation would suggest), this is not it.

Without, for example, the volume-weighted selling price information, people in Powell River will never know whether the reason they pay more for gas than their friends in Courtenay is volume, or something else.

The choice to hide price data is the opposite of enhancing public trust. Keeping price data confidential is a clear message to citizens that fuel corporations have the ear of government, and the public does not.

**"Keeping price data protected is a clear message to citizens that fuel corporations have the ear of government, and the public does not."**

### **Question 6: Is the undertaking and declaration process... reasonable**

The premise for Question 6 is flawed because what is proposed as Protected Information is so far-reaching. If, as 5.2 (a) proposes, parties would have to make submissions as to why pricing information is something "the public would have a strong interest in knowing" it puts the onus on consumers to prove what the Legislature has already decided - that the public has an interest in gas prices. Of course they do. That's why we're having this discussion.

### **Question 7: Are the process and considerations proposed for determining whether the public interest... outweighs and potential harm... reasonable?**

No. This is not a reasonable process, because it is weighted so heavily in favour of fuel corporations and their lawyers. Under this draft process, the onus for determining fair local

pricing lies entirely with journalists and other citizens willing to spend their own time to engage with this process (and perhaps have nothing to show for it at the end), rather than on fuel corporations or the BCUC.

In my view, that is not the intention of the legislation. The legislators specifically empowered inspectors with the power to enter premises, copy records, take samples or photographs and require cooperation of fuel companies; and it empowers them to penalize those who fail to do so. This is clearly meant to empower public access to data, not obscure it. In fact, the explanatory note to the legislation says that “This Bill enables the government to collect and publish information about fuel in British Columbia.”

Making the process for determining the public interest so obfusactory goes against the very intent of the legislation. This legislation was enacted because of public interest in gas prices. So public interest should be the default position supported by the BCUC, and gas companies should have to prove specifically what is at risk if data is public and why it should be protected. This process has that backwards.

Overwhelmingly, those seeking to use this process to glean fuel pricing rationale in communities will be acting on their own, without lawyers. So we must trust that, in deciding these hearings, the BCUC will weigh transparency and the public interest over protecting fuel corporations, which are already well represented by legal teams. Speaking personally, I have no reason to believe that the BCUC has a greater interest in the public interest than in protecting fuel corporations.

The Canada Competition Bureau already offers a similar process for investigating claims of anti-competitive behaviour. Many communities in BC have asked for their fuel pricing to be investigated by this federal agency, including Powell River. It is like shouting into the wind.

So far, after more than a year of citizen and MP calls for an investigation in Powell River, including a petition to the House of Commons, and presenting piles of fuel receipts and other documentation, no investigation from the CCB is forthcoming. Why not? Because, like the proposed FPTA process, the onus is on those asking for an investigation to prove “whether the information indicates there is a reasonable likelihood of wrongdoing.” And ultimately, the decision of whether what’s been provided is enough, and whether to investigate or not lies with a faraway government bureaucracy. There is no recourse.

Furthermore, ask any BC journalist about their experiences filing for information under FOIPPA – another process guaranteeing reasonable transparency as determined by governments. Sometimes, though rarely, an FOI request will work as expected. Other times, FOIPPA requests result in months or years-long back and forths between journalists and bureaucrats, and may come eventually with all pertinent information redacted, or you’ll be charged exorbitant research fees, or it will be denied based on technicalities. If they don’t want to release the information you asked for, it often feels like the bureaucrat will simply out-bureaucrat you.

Sadly, given the Competition Bureau and FOIPPA, the BCUC is hoping to create a useful process to enhance public trust in the context of existing failed public trust around transparency and market competitiveness processes. Placing the onus of proving wrongdoing and initiating investigations on individuals is backwards, especially when we must face down corporate legal teams arguing against transparency to do so.

**Question 7.i: If not, what alternative processes... should the BCUC consider.**

Turn the responsibility around. Place the onus for revealing fairness on the BCUC and fuel companies, rather than on the public.

**“Turn the responsibility around.... In any region where pump prices are more than 20 cents a litre (or another number) over rack-plus-taxes, an automatic BCUC process should proceed.”**

In any region where pump prices are more than 20 cents a litre (or another number) over rack-plus-taxes, an automatic BCUC process should proceed. That process should put the responsibility on fuel suppliers and retailers to show – in a publicly-available and timely report – why there is a discrepancy. Show the 'mystery charges'. How much per litre, for each step in the process? Who are the players? Is this a monopoly situation? Is there collusion? Or is this simply the market?

These are the questions the BC Government set out to answer, when it initiated the search for fuel pricing rationale in BC, and passed the FPTA. The responsibility for answering these questions should not be off-loaded into the hands of individuals, who then must convince a bureaucracy and fight corporate lawyers to get answers. Rather, the responsibilities to ensure corporate fairness and flag outlying pricing should be with the BCUC.

That can be achieved in two ways. First, by making fuel pricing data transparent, rather than protected. And second, by assuming the onus of fairness by automating investigations – initiating an investigation whenever there's an unusual gap in a region between rack-plus taxes and price at the pump – rather than leaving that responsibility to the public.

**“These are all key margins that must be explained separately in Powell River – and elsewhere... to prevent crowds of local fuel consumers to (perhaps incorrectly) show up at their 24-cent-a-litre retail margin gas stations with pitchforks and flaming torches.”**

### Question 8: Aggregation

Section 6.2 would appear to give aggregation too much weight. The “so long as each reporting region contains data from at least five Responsible Persons in that month” phrase again means that consumers in Powell River (and other centres where gas prices are higher than average) will never know the data that is different for them compared to other communities.

Aggregation also allows for significant data error and misrepresentation. For example, in the first Fuel Market Report published on March 5, 2021, Powell River's crude and refining margin is higher than Vancouver's. In fact, in this report, it is identical to Nanaimo's. Which is strange, because our fuel comes from the terminal in Vancouver, not Nanaimo (it is barged from Richmond.) So my guess is that Powell River was incorrectly grouped with Vancouver Island rather than Vancouver, which will throw off all the other numbers as well

(perhaps, then, Powell River has a retail margin of 24 cents a litre, rather than 22).

In addition, Powell River is reported to have a higher retail margin than any other city listed, at 22 cents a litre. According to the definition of retail margin in the Appendix of the report (“Retail (or marketing) margin is the difference between the amount a retailer pays for gas and diesel and the amount the retailer charges its customers for gas and diesel, excluding taxes”) makes it seem as though Powell River gas stations are charging very high margins indeed.

“Retail margin” actually includes trucking, tankage and barging margins, according to a clarifying phone call I had with the BCUC earlier this month. These are all key margins that must be explained separately in Powell River – and elsewhere - for our fuel pricing to make any sense at all. Failing to clearly show that as many as five separate companies are handling our fuel between rack and pump, and taking their own margins, is a disservice to anyone hoping to understand gas pricing. Differentiating fuel suppliers along the chain is critical to prevent crowds of local fuel consumers to (perhaps incorrectly) show up at their 24-cent-a-litre retail margin gas stations with pitchforks and flaming torches.

Again, aggregation seems to fly in the face of the *raison d'être* of the legislation. The devil is in the details. If there is no devil at play, specific numbers, not aggregates, should prove it.

Thank you for considering this input.

Pieta Woolley