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March 8, 2021

**VIA ELECTRONIC DDS**

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83862/523

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

Attention: Patrick Wruck  
Commission Secretary

**RE: Parkland Corporation Request for Advance Ruling on Confidentiality for Fuel Price  
Transparency Act (“FPTA”) Reporting Submissions (“Proceeding”)  
Intervener Written Submission**

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Dear Mr. Wruck:

We act on behalf of Suncor Energy Inc. (“Suncor”) in respect of the above noted British Columbia Utilities Commission (“Commission”) Proceeding. In accordance with the Commission’s Order G-303-20 dated November 30, 2020, enclosed please find Suncor’s Written Submission.

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

Sincerely,



Terri-Lee Oleniuk

Encl.

cc. Chris Hustwick, Director, Downstream Legal Affairs Canada, Suncor Energy

## SUNCOR ENERGY

### INTERVENER SUBMISSION REGARDING BRITISH COLUMBIA UTILITIES COMMISSION – FRAMEWORK FOR THE DETERMINATION OF CONFIDENTIALITY AND TREATMENT OF PROTECTED INFORMATION COLLECTED PURSUANT TO THE *FUEL PRICE TRANSPARENCY ACT* – FRAMEWORK DRAFT NO. 1

#### I. INTRODUCTION

This submission is made in response to the Framework for Determination of Confidentiality and Treatment of Protected Information – Draft No. 1 (“**Framework Draft No. 1**”), issued by the British Columbia Utilities Commission (the “**Commission**”, the “**BCUC**” or the “**Administrator**”) on February 8, 2021<sup>1</sup> in accordance with the timetable established by Order G-303-20<sup>2</sup> and pursuant to the *Fuel Price Transparency Act*<sup>3</sup> (“**FPT Act**”).

Suncor Energy Inc., on behalf of itself and its affiliates (collectively, “**Suncor**”), is an intervener in the public hearing established by the BCUC to consider Framework Draft No. 1 (“**Hearing**”).

Suncor is an integrated Canadian energy company. It supplies refined petroleum products into British Columbia, primarily from its refining operations in Alberta, and operates or supplies 229 Petro-Canada service stations across the province, as well as Petro-Canada Cardlock and Wholesale Marketer locations, third-party marketers and commercial fuel customers. Suncor fully participated in the BCUC’s 2019 *Inquiry into Gasoline and Diesel Prices in British Columbia* and subsequent and ongoing industry engagement by the BC government and the BCUC on the reporting requirements under the FPT Act.

#### II. SUBMISSIONS

In its letter dated February 8, 2021, the Commission invited interveners to make written submissions on Framework Draft No. 1, and to address the following questions in their written submissions:

- 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?***

Suncor has no preference as to whether the Final Framework is implemented as an order to this proceeding or adopted as BCUC rules.

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<sup>1</sup> Exhibit [A-5](#).

<sup>2</sup> BCUC [Order G-303-20](#), Framework for the Determination of Confidentiality and Treatment of Protected Information Collected under the Fuel Price Transparency Act, November 30, 2020.

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

**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?**

Yes, the Fuel Data identified as Protected Information in Framework Draft No. 1 are reasonable and supportable.

As discussed at length in Suncor’s Intervener Submission on Directive #2, dated January 13, 2021 (the “**Directive #2 Submission**”),<sup>4</sup> the Fuel Data identified as Protected Information in Framework Draft No. 1 is confidential, and commercially and competitively sensitive in nature. To reiterate:

- making public Suncor’s pricing, cost, and other sensitive competitive information could cause Suncor significant commercial harm from competitors seeking market share or counterparties in contractual negotiations;
- the potential harm from disclosure of financially and commercially sensitive information is national in scope. Suncor, like other Responsible Persons under the FPT Act, operates its business on a national scale and determines fuel prices in a consistent manner across all jurisdictions. Suncor’s competitors in markets<sup>5</sup> not governed by the FPT Act could take advantage of the information disclosed under the Act to undermine Suncor’s position in those markets. This is both harmful to Suncor and contrary to the aims of the FPT Act, as it would undermine Suncor’s ability to operate competitively in BC and elsewhere;
- there is a heightened risk of commercial harm from this data as compared to data from monopoly utilities that are commonly regulated by the BCUC, as the parties who are providing this information are in direct competition with each other; and,
- the protection of competitively sensitive information is of fundamental importance to ensuring the competitiveness of markets, as recognized by various aspects of competition law generally and various provisions of Canada’s *Competition Act*<sup>6</sup> specifically.

With respect to the final bullet above, Suncor refers the Commission to the Letter of Comment issued by the Competition Bureau of Canada (“**Competition Bureau**”) (“**Competition Bureau Letter**”),<sup>7</sup> and in particular, the Competition Bureau’s concerns regarding the vulnerability of retail gas to coordinated behaviour by market participants, and the anti-competitive impact that could arise as a result of the public release of commercially sensitive information.

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<sup>4</sup> Exhibit [C1-3](#).

<sup>5</sup> Suncor uses the term “market” or “markets” throughout this submission, as it has in previous submissions, for purposes of expediency. This usage does not indicate Suncor’s acceptance that any such market exists or acceptance of any specific market definition, whether from a geographic or product perspective.

<sup>6</sup> RSC 1985, c C-34.

<sup>7</sup> Exhibit [E-8](#).

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

No, for the reasons stated above in response to question 2, there is no Fuel Data marked as Protected Information in Framework Draft No. 1 that should not be.

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

Suncor respectfully submits that the following Fuel Data should also be marked as Protected Information in Framework Draft No. 1:

- a) All Fuel Data that includes personal contact information, including:
- Responsible Person Phone and Email information required to submitted in the Special Direction – Retail Station Survey (Web Form);
  - Representative Name and Position information required to be submitted in the Special Direction – Retail Station Survey (Web Form); and
  - Any personal names or contact information captured in the FPT Act Regulatory Reporting Portal – Metadata.

This information serves no purpose in furthering the goals of the FPT Act, and could result in unintended consequences, including inappropriate public or commercial contact by third parties. In addition, the BCUC collects personal information under the *Freedom of Information and Protection of Privacy Act*<sup>8</sup> and accordingly such personal information can only be used for the purpose for which it is collected, another purpose consented to by the person which the information is about, or limited other purposes.<sup>9</sup> Personal information is collected as Fuel Data in order to provide a point of contact for Responsible Persons. Publication of this personal information does not serve this purpose, and the persons whom the information is about are unlikely to consent to the use of the information for another purpose.

- b) Fuel Data that includes sources of supply, both domestic and import, including:
- Seller Name and Seller Address Fuel Data required to submitted in the BC Monthly Wholesale Purchaser Report;
  - Place of Origin information (Country, Province and State) Fuel Data required to be submitted in the BC Monthly Importer Report; and
  - Seller Name and Seller Address Fuel Data required to be submitted in the BC Monthly Retail Purchases Report.

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<sup>8</sup> RSBC 1996, c 165.

<sup>9</sup> *Freedom of Information and Protection of Privacy Act*, s 32.

Domestic supply relationships and sources of imported products are highly competitive for both suppliers and purchasers. If published, Suncor’s competitors inside and outside of the province could discern Suncor’s sources of product supply and logistical arrangements and take advantage of the disclosure of this information to undermine Suncor’s competitive position in these markets. This is both harmful to Suncor and contrary to the aims of the FPT Act, as it would undermine Suncor’s ability to operate competitively in BC and elsewhere.

Suncor’s suppliers share this concern, and for this reason, the relevant contractual arrangements include confidentiality provisions that restrict the disclosure of contract terms in order to protect both the supplier and the purchaser.

c) Fuel Data containing Internal ID information:

Suncor respectfully requests that its Internal IDs and any other internal designations across all report submissions, web forms and surveys be marked as Protected Information. This information serves no purpose in furthering the goals of the FPT Act, and there is the possibility that knowledge of these internal designations could reveal or assist in the “reverse engineering” of sensitive, protected information submitted to the BCUC or from other data sources outside of the BCUC.

d) Comment text input by Responsible Persons included in the FPT Act Regulatory Reporting Portal - Metadata:

While submission comments from Suncor and other Responsible Persons are likely benign for the most part, there is no way to identify whether such comments relate to Protected or non-Protected Information. As such, comment text should be marked as Protected Information. Not protecting the comment text would undermine the security of otherwise Protected Information.

To the extent that the Commission’s refuses to designate all comment text as Protected Information, then Suncor respectfully submits that the Commission should at a minimum treat all comment text that relates to Fuel Data that is categorized as Protected Information as Protected Information.

e) Fuel Data containing Daily High/Low Retail Pricing, including:

- Daily High Price (\$/L) Fuel Data required to submitted in the BC Monthly Retail Sales Report;
- Daily Low Price (\$/L) Fuel Data required to submitted in the BC Monthly Retail Sales Report;
- Time of Daily High Price (hh:mm) required to submitted in the BC Monthly Retail Sales Report; and
- Time of Daily Low Price (hh:mm) required to submitted in the BC Monthly Retail Sales Report.

The publication of daily high and low pricing Fuel Data, including time of day, is highly sensitive information that could allow Suncor’s competitors to discern Suncor’s pricing strategies and tactics on a regional and a site by site basis, causing Suncor significant commercial harm from competitors seeking market share. This concern is national in scope because Suncor’s pricing tactics extend beyond the province of BC into other regions of the country.

Further, Suncor refers the Commission to the Competition Bureau Letter, and in particular, the Competition Bureau’s comments regarding the vulnerability of retail gas to coordinated behaviour by market participants, and the anti-competitive impact that could arise as a result of the public release of commercially sensitive information (such as daily pricing tactics).<sup>10</sup>

f) Fuel Data indicating whether Purchase Price includes Transportation Costs required to be submitted in the BC Monthly Retail Sales Report:

The publication of this Fuel Data could provide Suncor’s competitors with the ability to discern relative supply costs for customer locations, causing Suncor significant commercial harm from competitors seeking market share.

g) All Fuel Data within the BC Monthly LCFS Credit Report:

Suncor’s concerns with the Monthly LCFS Credit Report are two-fold:

1. BC LCFS trading prices and transaction details are highly sensitive for both the suppliers and purchasers of credits. Publication of a Responsible Party’s credit purchase costs could result in significant commercial harm from competitors seeking market share or counterparties in contractual negotiations. Competitors will have access to credit prices for each obligated party, which will assist them to exploit competitive advantage and ultimately reduce competitiveness. Access to this Fuel Data will also enable non-obligated sellers of BC LCFS credits to exploit the credit market and drive the cost of credits and fuel prices higher.
2. BCUC Data collection focuses exclusively on credit purchases as the sole pathway to compliance and cost of compliance. The purchase of credits is one of multiple pathways to comply with BC LCFS obligations and it is important to note that the need for multiple pathways for compliance is, in part, driven by the illiquidity of the credit market, and the inability of Responsible Parties to rely on the purchase of credits to ensure compliance. Other pathways include the purchase and blending of very costly renewable and bio-fuels into finished products. As such, credit purchase costs do not necessarily reflect the actual compliance costs incurred by Responsible Persons nor are they necessarily reflective of the efforts undertaken by a Responsible Person to comply with BC LCFS regulations.

Further compounding this issue is the requirement to report “transfer of credits for validated credits” in the BC Monthly LCFS Credit Report. Within commercial supply

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<sup>10</sup> Competition Bureau Letter, PDF page 2 of 3.

agreements, it is typically the supplier of fuel and not the wholesale purchaser that bears the direct cost of compliance (compliance costs are not invoiced or broken out of the price paid by the purchaser). As such, while Suncor may bear the cost of BC LCFS obligation as a supplier of fuel in the province, there are no “transfer of credits for validated credits” within the majority of Suncor’s commercial purchase agreements, and therefore, no ability for Suncor to report the vast majority of its compliance efforts and costs within its monthly LCFS reporting to the BCUC.

For these reasons, the publication of LCFS Fuel Data based on the current reporting requirements (*i.e.*, transfer of validated credits for wholesale purchasers) will mislead the public and result in erroneous conclusions. Accordingly, it will not serve the aim of promoting public confidence in the fuel market in BC or assist the public or interested parties in understanding that market.

As indicated on multiple occasions during the course of the BCUC’s 2019 *Inquiry into Gasoline and Diesel Prices in British Columbia*, and during subsequent and ongoing industry engagement by the BC government and the BCUC on the reporting requirements under the FPT Act, the BC Low Carbon Fuels Branch has been tasked by the BC Government with collecting and publishing data regarding BC LCFS credit trading prices for each month/quarter. Given the risks associated with publishing individual credit purchase and transfer data, the BC Low Carbon Fuels Branch publishes aggregated data and does not provide information for specific suppliers or purchasers.

Given the risks, and to ensure consistent reporting on a provincial level, reduced regulatory burden, and increased regulatory efficiency, Suncor respectfully submits that the Commission should eliminate the Monthly LCFS Credit Report and reference the existing reporting from the BC Low Carbon Fuels Branch.<sup>11</sup>

If the Commission rejects Suncor’s proposal, and insists on maintaining the Monthly LCFS Credit Report, then Suncor respectfully requests, for the reasons outlined above, that:

- the BCUC consult with the BC Low Carbon Fuels Branch, to ensure its analysis, conclusions and reporting in this area are accurate, fully representative of the range in costs of LCFS compliance, and protective of highly sensitive, competitive information; and
- all Fuel Data required to be submitted in the BC Monthly LCFS Credit Report be marked as Protected Information.

In addition to the foregoing, Suncor respectfully requests that the Commission reconsider its decision not to keep all Fuel Data confidential by default. According to Section 3.1 of Framework Draft No. 1, this decision was based on the Commission’s review of Fuel Data in light of the key principles guiding the determination of Protected Information: promotion of transparency; promotion of market competitiveness; and reducing regulatory burden. Suncor respectfully submits that, on balance, these principles favor keeping all Fuel Data confidential by default.

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<sup>11</sup> For example, see the [“Monthly Credit Market Report – February 2021”](#).

With respect to the promotion of transparency, there is limited value in publishing the less sensitive Fuel Data (*i.e.*, the Fuel Data that is not currently categorized as Protected Information or which Suncor and other Responsible Persons have not requested be treated as Protected Information). While there are theoretical transparency benefits to making more data available to the public, publishing such data provides little practical transparency in relation to the fuel market in BC. Such data, by itself, does not assist the public in general or interested parties in understanding the factors that impact retail prices at fuel pumps in BC.

Sharing less sensitive Fuel Data also does not contribute to create greater competitiveness in the fuel market. As discussed above, Suncor and other parties, including the Competition Bureau, have consistently highlighted the ways in which making attributable Fuel Data public can negatively impact the competitiveness of the fuel market in BC and nationally.

Finally, splitting the Fuel Data into protected and unprotected categories increases the regulatory burden. Responsible Persons have to file two separate forms – redacted and un-redacted. The Commission has to process two separate forms – redacted and un-redacted. This arguably doubles the administrative burden on both ends of the process; it certainly does not reduce the administrative burden. The limited value of the un-redacted Fuel Data makes this extra regulatory burden particularly difficult to justify.

**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?***

The most regulatory-efficient process is to keep all Fuel Data confidential by default, as explained in greater detail above in response to Question 4.

If the Commission disagrees with Suncor’s submissions and proceeds with splitting the Fuel Data into protected and unprotected categories, then the process outlined in Section 4.0 of Framework Draft No. 1 is an acceptable alternative.

Despite being generally supportive of the proposed process outlined in Section 4.0, Suncor is concerned with the lack of certainty and industry and public confidence in the process. Suncor is particularly concerned by the examples used by the Commission to explain the circumstances in which a Responsible Person may wish to keep confidential any Fuel Data or other information and records submitted to the BCUC pursuant to the FPT Act that has not been determined as Protected Information in Appendix A. First, it is not clear what is meant by “other information and records submitted to the BCUC pursuant to the FPT Act”. “Fuel Data” is specifically and comprehensively defined in the *Fuel Price Transparency Regulation*<sup>12</sup> (“**FPT Regulation**”). As Appendix A to Framework Draft No. 1 captures all currently reportable Fuel Data, it is difficult to conceive of “commercially sensitive material not previously contemplated in Appendix A” other than new reporting requirements. Suncor respectfully requests that the Commission clarify this for Responsible Persons.

Secondly, if new reporting requirements are implemented, such that new Fuel Data is introduced, then Suncor respectfully submits that the process identified in Section 4.0 does not best fit the

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<sup>12</sup> BC Reg 52/2020.

Commission’s key principles as identified in Section 3.1.1 of Framework Draft No. 1. The process in Section 4.0, which requires Responsible Persons to apply for the confidentiality of new Fuel Data, has the effect of presumptively making such new Fuel Data un-protected. Suncor respectfully submits that a more appropriate process, as set out in greater detail below, would be to revise Appendix A in the event of new Fuel Data becoming reportable.

As referred to above, simply publishing more data does not necessarily promote transparency or market competitiveness, and may, in fact, undermine market competitiveness by promoting anti-competitive behaviour, as noted by the Competition Bureau (discussed above), and cause significant harm to an individual Responsible Person.

Requiring individual applications for confidentiality of new Fuel Data does not reduce the regulatory burden on Responsible Persons or the Commission. Given the potential harms of publication of new Fuel Data, many Responsible Persons may seek confidentiality for any new Fuel Data, as they have in the current Hearing. Processing or consolidating individual applications will consume Commission and interested party resources and could result in inconsistent findings.

These same issues are the ones which have informed Suncor’s and other parties’ submissions in the Hearing and presumably informed the Commission’s approach to Framework Draft No. 1. These issues have led the Commission to grant presumptive confidentiality to some of the currently reportable Fuel Data under the analysis described in Section 3.1.2 of Framework Draft No. 1 (resulting in Appendix A). Newly reportable Fuel Data should be subject to the same analysis. Accordingly, Suncor respectfully requests that new reporting requirements under the FPT Act or FPT Regulation should trigger a revision to Appendix A which will “be subject to notice and process” as described in Section 3.1.2.

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

Suncor emphatically rejects the undertaking and declaration process proposed in Section 5.1 for permitting access to Protected Information. Suncor understands that the proposed process is based on the *Rules of Practice and Procedure*<sup>13</sup> and respectfully submits that such a process, designed for individual regulatory hearings, is inappropriate for the consistent, ongoing reporting under the FPT Act, as discussed below. Suncor notes that the unique factors which apply to FPT Act reporting have driven the Commission to develop the process in Framework Draft No. 1 in the first place.

The express purpose of this Hearing is to establish a framework and process for the determination of confidentiality and treatment of Fuel Data identified by Responsible Persons as Protected Information under the FPT Act (*i.e.*, to pre-determine Protected Information). Including a process in the Final Framework that will allow parties to access Protected Information defeats the very purpose of the Hearing and the Framework, erodes the confidence of Responsible Persons in the integrity of the Framework and the security of Protected Information, and dramatically reduces the regulatory and administrative efficiency of the Framework. If there are interested parties who

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<sup>13</sup> BCUC *Rules of Practice and Procedure*, s 24.

contest the pre-determination of Protected Information, then this Hearing is the proper forum to voice those concerns.

The additional administrative and regulatory burden that this process introduces is a significant factor that the Commission must consider. A primary purpose of this Hearing and the development of Framework Draft No. 1 is to reduce regulatory burden. By introducing a process whereby interested parties can apply to access Protected Information, the Commission is essentially creating a new regulatory process to gain access to Fuel Data that has already been the subject of a hearing process. The Commission will have to manage each request and the interested Responsible Persons will have to file an objection for each request. Given the concerns raised through the current Hearing, it is inconceivable that a Responsible Person would not object to a request to gain access to Protected Information.

Balanced against these regulatory burdens, it is unclear why such an access process is necessary at all. The purpose of the current Hearing process is to ensure that a fair and efficient Framework is established. Further process to access Protected Information undermines those goals.

Setting aside concerns with the existence of such a process at all, it is not clear under what circumstances the Commission would grant access to Protected Information and the Commission's discretion in such a determination appears unclear. The fact that interested parties need only describe how access to the Protected Information will further the goals of the FPT Act suggests that the threshold for granting access will be set very low. Section 5.1 does not provide sufficient detail on what factors will guide the BCUC in making a determination on access to protected information.

Suncor respectfully submits that the proposed undertaking and declaration process for permitting access to Protected Information should be removed from the Framework. Should the Commission disagree with Suncor's position, Suncor requests that the Commission provide further clarification regarding the process for determining how and in what circumstances access to the Protected Information would be permitted.

***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?***

Similar to its submission above in response to Question 6, to the extent that the process and considerations set out in Section 5.2 of Framework Draft No. 1 constitute another means by which interested parties can access Protected Information, or a means by which the Commission can decide to publish Protected Information, then Suncor emphatically rejects the inclusion of this process in the Final Framework for same reasons stated above in response to Question 6.

Suncor presumes that the balancing process contemplated by section 9(2) of the FPT Act is the very process that the Commission is applying in this Hearing relative to the development of the Framework. Put another way, the express purpose of this Hearing is to establish a framework and process for the determination of confidentiality and treatment of Fuel Data identified by Responsible Persons as Protected Information under the FPT Act (*i.e.*, to pre-determine Protected Information). Including a process in the Framework that will allow parties to access Protected Information, or that will allow the Commission to publish Protected Information, defeats the very purpose of the Hearing and the Framework, erodes the confidence of Responsible

Persons in the integrity of the Framework and the security of Protected Information, and dramatically reduces the regulatory and administrative efficiency of the Framework.

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

As stated above, Suncor respectfully submits that the current Hearing process is the proper forum for the Commission to conduct the balancing process contemplated by section 9(2) of the FPT Act, and that Fuel Data identified as Protected Information in the resulting framework should not be open to reassessment by the Commission.

***8. Are the (i) aggregation; (ii) anonymization; and (iii) time release methodologies proposed appropriate? Why or why not?***

Suncor supports the Commission's focus on aggregation and anonymization, issues which Suncor highlighted in its Directive #2 Submission. Suncor does have concerns and suggestions on these sections however and has further issues with the Commission's approach to time release methodologies.

**(i) Aggregation**

Suncor generally supports the Commission's approach to aggregation; more specifically, Suncor agrees that the aggregation of Protected Information submitted by no fewer than five Responsible Persons is sufficient in most cases to ensure that the Protected Information of any one Responsible Person cannot be discerned (e.g., by back-calculation).

However, Suncor is concerned that this approach (i.e., no fewer than five Responsible Persons) may not be sufficient in specific reporting regions where market participation by one Responsible Person may be significantly higher than that of other Responsible Persons. In those regions, reporting aggregated data from even five Responsible Persons may be insufficient to ensure that the Protected Information of any one Responsible Person cannot be discerned. Suncor, again, refers the Commission to the Competition Bureau Letter, and in particular, the Competition Bureau's comments regarding the vulnerability of the retail gas market to coordinated behaviour by market participants and effective aggregation: "At levels of the supply chain with very high concentration, effective aggregation may not be possible."<sup>14</sup>

To address this concern, Suncor requests that, prior to publishing aggregate Protected Information, the BCUC consult with the Responsible Persons within each "reporting region" in advance (without disclosure of the Protected Information) to ensure that that aggregation will not result in the indirect disclosure of the Protected Information of any one Responsible Person in that particular region. To reiterate the feedback received from the Competition Bureau, the Commission should be prepared to accept the fact that aggregation may not be possible in certain regions.

**(ii) Anonymization**

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<sup>14</sup> Competition Bureau Letter, PDF page 2 of 3.

Suncor emphatically rejects the Commission’s proposal with respect to the publication of anonymized Protected Information of a Responsible Person that has not also been aggregated. Pricing, cost, and other sensitive competitive information forming part of the Fuel Data, even when anonymized, poses a significant risk to Suncor and other Responsible Persons for significant commercial harm from competitors seeking market share or counterparties in contractual negotiations. This is especially true if this information is reported for a particular region. In this regard, Suncor reiterates its submissions above in response to question 2.

On the same basis, Suncor also rejects the notion that such anonymized Fuel Data does not constitute Protected Information and cannot be provided confidential treatment.

### **(iii) Time Release Methodologies**

Suncor emphatically rejects the Commission’s proposal to publish Protected Information after a period of two years, and remains steadfast in its position, as expressed in its Directive #2 Submission, that the confidential status of Protected Information should not expire. To reiterate, such indefinite protection is warranted by:

- the commercial and competitive sensitivity of the Protected Information;
- the duration and nature of Suncor’s third-party commercial supply arrangements and other contractual relationships underlying such Protected Information; and
- the long-term perspective of Suncor’s wholesale and retail business strategy.

The comments of the Competition Bureau support Suncor’s concerns in this regard. The Competition Bureau Letter states that “longer term or trend data can support anticompetitive conduct” and that such risks are only reduced when data is released “beyond its competitive usefulness.”<sup>15</sup> Suncor respectfully submits that Fuel Data reportable under the FPT Act is competitively useful for much longer than the two years contemplated in Framework Draft No. 1. This is particularly true for Fuel Data which would reveal information about Suncor’s operations upstream of its retail operations. This concern is also supported by the Competition Bureau: “[the] period of [competitive] usefulness will depend on the level of the supply chain. At the retail level, where prices change on an intraday basis, a shorter delay may be required to avoid competitive concerns than further upstream.”<sup>16</sup>

Suncor’s operations upstream of its retail operations involve the execution of long-term commercial agreements (up to 10-year terms that are often renewed or extended) as a buyer, seller, importer or exchanger of fuel with third parties. Given the sensitivity of these agreements and their long-term nature, the release of Protected Information after only two years could expose Suncor and its counterparties in these agreements to significant commercial harm, including from competitors seeking market share. For this very reason, these agreements typically include confidentiality provisions that restrict disclosure in order to protect the immediate and long-term competitiveness of both parties.

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<sup>15</sup> Competition Bureau Letter, PDF page 3 of 3.

<sup>16</sup> Competition Bureau Letter, PDF page 3 of 3.

Suncor also rejects the Commission’s proposal to shorten the confidentiality period for Protected Information where it considers the sensitivity of such Protected Information has diminished. This discretion undermines the certainty of and confidence in Framework Draft No. 1, and also increases the regulatory burden with no clear purpose. This discretion is also inconsistent with the approach to aggregation and anonymization in Framework Draft No. 1. Sections 6.1 and 6.2 do not give the BCUC the authority to alter the criteria used to aggregate and anonymize fuel data. In Section 6.2 for instance, there is no specific discretion for the BCUC to reduce (below five) the threshold number of Responsible Persons required to publish anonymized Fuel Data. Such discretion in the time release of information undermines the certainty of, and industry and public confidence, in the Framework. In addition, it is not clear what factors would guide the BCUC’s exercise of discretion to shorten the confidentiality period.

Finally, as expressed in its Directive #2 Submission:

- Suncor is not aware of a situation where the Commission placed an expiry date on confidential filings and the *Rules of Practice and Procedure* contemplate a permanency to confidentiality, stating that “If accepted by the BCUC as confidential, the documents or the portions thereof will not be made publicly available”<sup>17</sup>; and
- a brief review of regulations and legislation relating to confidentiality and disclosure (e.g., the *Freedom of Information and Protection of Privacy Act*) suggests that confidentiality should be maintained indefinitely or until a party advises that it is no longer confidential.

**a. If not, what alternative methodologies should the BCUC consider and why?**

Suncor reiterates its submission above and from its Directive #2 Submission that Protected Information status should never expire, given the nature of the potential harms from the release of Protected Information and the relevant regulatory and legislative context.

Should the Commission choose to have Protected Information status expire, the absolute minimum length of protection necessary is 15 years. 15 years is appropriate given the commercial and competitive sensitivity of the Protected Information, the duration and nature of Suncor’s third-party commercial supply arrangements and other contractual relationships, and the long-term perspective of Suncor’s wholesale and retail business strategy.

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

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<sup>17</sup> BCUC *Rules of Practice and Procedure*, s 21.01.

**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?**

Suncor expects that all Fuel Data, whether granted advance approval of confidential status pursuant to Order G-275-20 or not, would be subject to the Framework which the Commission develops in this Hearing.

**11. Any other submissions?**

N/A.

**III. CONCLUSION**

In conclusion, Suncor respectfully requests that the Commission consider the above submissions and accordingly revise the Framework Draft No. 1, and reiterates the following key points:

- On balance the key principles outlined by the Commission favor keeping all Fuel Data confidential by default;
- If two categories of Fuel Data, protected and un-protected, are maintained, the categories of Fuel Data discussed in response to question 4 should also be marked as Protected Information in Appendix A;
- If two categories of Fuel Data, protected and un-protected, are maintained, greater clarity is needed around the treatment of new Fuel Data that may become reportable, and such new Fuel Data should be subject to the process established by the Commission to revise Appendix A, which process would include participation by Responsible Persons;
- Processes to grant access to Protected Information to individuals or to publish Protected Information are not appropriate given the purpose of this Hearing is to pre-determine Protected Information in order to promote transparency and competitiveness and reduce regulatory burden;
- The Protected Information status of Fuel Data should not expire due to the long-term competitive usefulness of the Fuel Data. If the Commission decides that it must expire, the Protected Information status of Fuel Data should last for a minimum of 15 years and such term should not be able to be shortened by the Commission; and
- In any process where the Commission retains discretion to alter the Protected Information status of Fuel Data, greater certainty is needed on how such discretion will be exercised.

Suncor appreciates the opportunity to offer comments on the Framework Draft No. 1 and looks forward to continuing to engage in the development of an appropriate confidentiality framework for reporting under the FPT Act.