

10 March 2021

VIA E-FILING

Patrick Wruck
Commission Secretary
BC Utilities Commission
6th Floor 900 Howe Street
Vancouver, BC V6Z 2N3



Reply to: Leigha Worth
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Our File: 7800.911

Dear Mr. Wruck,

**Re: Parkland Corporation - Request for Advance Ruling on Confidentiality for Fuel Price Transparency Act Reporting Submissions
BCOAPO Submissions on Framework Draft No. 1**

We make the following submissions on behalf of our client groups, the British Columbia Old Age Pensioners' Organization, Council of Senior Citizens' Organizations of BC, Disability Alliance BC, Active Support Against Poverty, Together Against Poverty Society, and Tenants Resource and Advisory Centre ("BCOAPO et al."). We do so in compliance with British Columbia Utilities Commission Order G-303-20 (Exhibit A-4), as amended by Order G-68-21 (Exhibit A-6).

For ease of reference, we have structured our submissions on this subject to mirror the issues raised by the Commission in its letter dated February 8, 2021 (Exhibit A-5).

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?

BCOAPO submits that the final Framework for a Determination of Confidentiality and Treatment of Protected Information (Final Framework) should be, at this point, implemented as an order to this proceeding only.

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)

BCOAPO submits that the Fuel Data identified as Protected Information in Framework Draft No. 1 appears to be reasonable and supportable.

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)

BCOAPO has not identified any Fuel Data that is marked as Protected information that stands out as information that should not be categorized as protected.

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)

BCOAPO has not identified any Fuel Data that is not market as Protected Information that should be categorized as protected.

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)

BCOAPO strongly supports the key principles guiding the determination of Protected Information, identified in Section 3.1.1 of Framework Draft No. 1:

- 1) Promotion of transparency;
- 2) Promotion of market competitiveness; and
- 3) Reducing regulatory burden.

BCOAPO also submits that these three principles should apply to all sections of the Framework, and specifically the determination related to confidentiality requests for not-Protected Information (Section 4) and disclosure of Protected Information (Section 5).

In BCOAPO's view although all of three principles are important, the first two are directly established by the *Fuel Price Transparency Act* (FPTA) and should, therefore, be granted greater weight in any evaluation where a balance between them must be struck.

Section 4(2)(b) of the FPTA requires the administrator to promote:

- (i)the competitiveness of the market for reportable fuels, and
- (ii)public confidence in the competitiveness of that market.

Additionally, under section 9(2)(b) of the FPTA, in determining whether to publish the protected information the Commission should balance the competitiveness of the market for reportable fuels, and public confidence in the competitiveness of that market:

- 9 (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.

[Emphases added]

Furthermore, the purpose and scheme of the FPTA specifically promotes transparency. The name of the Act itself emphasizes the importance of transparency: not confidentiality or market participant protection. For example, when a legislator wishes to emphasize the importance of protection of certain information, it indicates this purpose in the name of the Act, such as *Personal Information Protection Act*.

In our written submissions dated January 13, 2021 (Exhibit C11-2), we cited specific excerpts from the second reading of the FPTA which clearly indicate that the intent of the Act was to make fuel price information more transparent and available to public, public agencies and consumers.¹ Considering the particular importance of the promotion of transparency principal, BCOAPO submits that all information that may be published under section 9 of the FPTA, should be published with the default clearly and strongly rooted in the legislation's core principal and purpose: transparency.

BCOAPO et al. acknowledge that the principle of reducing regulatory burden is an important consideration but we note that, unlike two other principles, it does not arise as a result of the intent or provisions of the FPTA. For this reason, and because an over-valuation of this principle could reasonably be expected to defeat the explicit purpose of the legislation itself, in our submission, it cannot be reasonably given the same weight as the two statutory principles. BCOAPO strongly opposes any suggestion that the reducing regulatory burden principle can justify keeping all Fuel Data confidential by default.

With these observations in mind, BCOAPO submits that the process proposed for requesting confidentiality of non-Protected Information, is reasonable, but should be applied in the rarest of cases and only when the applicant is able to satisfy the burden of proof to justify their exceptional request.

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

BCOAPO submits that the undertaking and declaration process proposed for permitting access to Protected Information in section 5.1 of the Framework is reasonable.

When information is filed as Protected Information, the public is not able to review and access it. However, as indicated in the response to a previous question, the legislative intent of the FPTA is to promote transparency, and to allow at least limited access to Protected Information to certain groups. Below is an excerpt from the second reading of the FPTA, where Ravi Kahlon said the following:

...It will be ensured that that [sensitive data] doesn't become public, but it will be available for consumer and watchdog groups so that they can look at the numbers and they can come through with assessments on what they believe might be happening. I think it's a very important step.

...

We need to ensure that this information gets out there so that people don't think that way and that they can see that it's clear, and the information is out and is transparent. Public agencies that are doing advocacy work along these lines have the opportunity to get that data and come to their own findings and come to their own conclusions.²

[Emphasis added]

¹ Pages 2 – 5.

² British Columbia, *Official Report of the Debates of the Legislative Assembly (Hansard)*, 41st Parl, 4th Sess, No. 299 (26 November 2019) at 10791 (R Kahlon).

As outlined in our submission on January 13, 2021, while we can understand the market participants' desire to keep information relating to the cost of fuel off the public record, that does not mean we - as lawyers representing the consumers directly and indirectly affected by fuel prices in British Columbia – or others without a demonstrable commercial interest in the information should not be given reasonable access. It is our position that fairness and transparency, to “relevant stakeholders” like the consumers affected by the price of fuel in British Columbia, requires the ability to proceed as Mr. Kahlon described in the Hansard excerpt above.

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?

BCOAPO submits that the process and considerations proposed for determining whether the public interest in the disclosure of Protected Information outweighs any potential harm to Responsible Persons is reasonable.

As stated in the response to question 5 above, section 9(2)(b) of the FPTA makes allowance for the publication of protected information if the public interest in having access to 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.

BCOAPO supports the provision that parties may make submissions prior to determination under section 9(2)(b) of the FPTA and agrees that the factors for parties' submissions, outlined in Section 5.2, are relevant to any such decision. BCOAPO also agrees that the matters for the Commission's consideration, outlined in Section 5.2, are relevant to the process of balancing the public interest interests against the potential harm.

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?

BCOAPO supports the proposed aggregation; anonymization; and time release methodologies. BCOAPO submits that these methodologies should be established by default. At the same time, BCOAPO does not object that, on an exception basis, an alternative methodology could apply if the party seeking the alternative can present evidence sufficient to justify and persuade the Commissions that an exception is not only preferable, but necessary in each specific case.

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

BCOAPO has not identified any additional areas that should be addressed in this Framework.

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?

BCOAPO submits that the confidential status of fuel data that has been granted advanced approval of confidential status pursuant to Order G-275-20 should be maintained on an interim basis until a final framework for Protected Information is in place.

11. Any other submissions.

BCOAPO does not have any other submissions at this time.

Sincerely,
BC PUBLIC INTEREST ADVOCACY CENTRE

Original on file signed by:

Leigha Worth
Executive Director | General Counsel

Original on file signed by:

Irina Mis
Staff Lawyer