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June 15, 2021

By Email

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

Attention: Patrick Wruck, Commission Secretary

Dear Sirs:

**Re: Framework for the Determination of Confidentiality and Treatment of Protected Information
Issuance of Framework Draft No. 2
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.

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 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 submitted submissions on March 10, 2021.

On May 25, 2021, the BCUC issued Draft No. 2 of the Framework for Determination of Confidentiality and Treatment of Protected Information (“Framework Draft No. 2”) and invited submissions from interested parties by June 15, 2021. Husky’s submissions follow.

Protected Information and Framework Draft No. 2

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 a “responsible person” and is required to report a significant amount of data and information to the BCUC as an importer, wholesale purchaser, and supplier of reportable fuel. 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, including 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, including Husky’s response to Framework Draft No. 1, 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.

In its response to Framework Draft No. 1, Husky identified significant concerns with the adequacy of Framework Draft No. 1 to protect the extremely commercially sensitive information that Husky is obligated to provide pursuant to the FPTA. These concerns included the following:

- Additional categories of fuel data should be designated as protected information (“Protected Information”) and granted confidential status, including fuel origin, import date, supplier information, customer information, fuel location, transport cost, fuel identification, and low carbon fuel standard (“LCFS”) data;
- Framework Draft No. 1 provisions providing for the release of Protected Information to third parties, which would result in significant commercial harm to Husky;
- Framework Draft No. 1 provisions providing for the disclosure of Protected Information by the BCUC on its own unilateral initiative on an unidentified future date; and
- The proposed publication of Protected Information pursuant to Framework Draft No. 1 on an aggregated and not anonymized basis and/or an anonymized and non-aggregated basis is not sufficient to ensure that the Protected Information of Husky cannot be discerned, and would result in the disclosure of Husky’s sensitive data.

On a general level, Framework Draft No. 2 does not address or alleviate the concerns of Husky, and in fact some of the proposed changes exacerbate the issues with Framework Draft No. 1, or

create additional concerns. It is Husky's position that Framework Draft No. 2 is not adequate to protect the extremely commercially sensitive information that Husky is obligated to provide pursuant to the FPTA.

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.

There also remains a lack of clarity, despite numerous requests, on how the BCUC 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 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 repeats its request that the BCUC provide further information on the manner and form in which the fuel data is to be published to the public

The BCUC Questions

In its letter dated May 25, 2021, the BCUC requested that interveners make submissions on several questions. Husky's responses to these questions is set out below.

1. The BCUC requests that parties provide submissions explaining their rationale for supporting or objecting to the proposed clarification of the scope and purpose of the Framework in Framework Draft No. 2

Husky does not have any submissions on this issue.

2. The BCUC requests that parties provide submissions to explain their rationale for supporting or objecting to the proposed revisions to Table A1 in their submissions on Framework Draft No. 2, including submissions clarifying the specific harm and/or public interest associated with the publication of the physical capacity of fuel storage tanks, the shipment volume, and shipment date Fuel Data fields

Husky is not obligated under the FPTA or the Regulations to submit a storage report, so has no comment on the related revision.

It is Husky's position that the Shipment Volume category in the Monthly Retail Supplier Report should be Protected Information and be kept confidential. As set out in previous submissions, the British Columbia market is very unique and has limited participants, particularly in certain regions. It is also highly competitive. Competitors with knowledge of the industry and the market would be able to use information disclosed by the BCUC, including shipment volume, to harm Husky's commercial interests. In Husky's submission, it is extremely important to consider the use someone with knowledge of the industry would make of the information, not an average member of the public. In its May 25, 2021 letter, the BCUC speculates, with little rationale, that the public interest in publishing shipment volume outweighs potential harm to responsible person. Husky strongly disagrees with this,

and notes that Framework Draft No. 2 proposes to disclose not only shipment volume in the Monthly Retail Supplier Report, but also the supplier of reportable fuel, internal id, and shipment date. All of this information, when taken together, could be used by a competitor of Husky to harm Husky's commercial interests, for example by using the combined information to identify particular stations and targeting low volume competitors.

3. The BCUC requests that parties provide submissions to explain their rationale for supporting or objecting to the proposed revisions to Table A2 in their submissions on Framework Draft No. 2, including submissions clarifying the specific harm and/or public interest associated with the publication of daily high/low price and the time of the daily high/low price Fuel Data fields.)

Husky does not have any submissions on this issue.

4. The BCUC requests that parties provide submissions clarifying the specific harm and/or public interest associated with the publication of the LCFS-related Fuel Data fields.

It is Husky's submission that all fuel data within the BC Monthly LCFS Credit Report should be Protected Information and kept confidential.

The LCFS trading prices and transaction details in BC are highly sensitive for both the purchasers of credits and the supplier of credits. The publication of a responsible person's credit purchase costs could result in significant commercial harm due to competitors, who may be counterparties in contractual negotiations. A competitor with access to the credit prices of responsible persons could exploit this advantage and harm the responsible person.

In addition, the reporting requirements of the FTPA and the regulations in relation to LCFS focus only on the purchase of credits by a responsible person. In fact, there are multiple ways to ensure compliance with BC LCFA obligations, and the purchase of credits is only one of them. Credit purchase costs, which is all a responsible person is required to report, do not necessarily reflect the actual compliance costs incurred by responsible persons, or the efforts made by a responsible person. As a result, the publication of LCFS Fuel Data based on the current reporting is likely to provide a very incomplete picture, and will likely mislead the public.

Finally, the LCFS information is a component of Husky's wholesale and retail business plans. If not kept confidential, this would be visible to all competitors and/or potential new wholesale/retail marketers and could be utilized to gain a competitive advantage over Husky.

5. The BCUC requests that parties provide submissions clarifying the specific harm and/or public interest associated with the publication of the fuel type and fuel grade fuel data fields.

Husky does not have any submissions on this issue.

6. The BCUC requests that parties provide submissions clarifying the specific harm and/or public interest associated with the publication of the internal ID and comment Fuel Data fields.

Husky submits that the internal ID fuel data field should confidential Protected Information. This field is Husky's internal identifier of the information being provided, and applies to both confidential and non confidential data fields. There is the possibility that someone with knowledge of these internal designations could allow or assist in the back calculation of protected, sensitive information submitted to the BCUC by Husky.

There is no requirement or rationale for the disclosure of such information. This information serves no purpose in furthering the goals of the FTPA. There is no public interest in disclosing it, and there is the potential for harm to responsible persons. Even if that potential for harm is remote, it still outweighs the total lack of public interest.

7. The BCUC requests that parties provide submissions clarifying the specific harm and/or public interest associated with the publication of the seller name and address, and supply location Fuel Data fields

Husky submits that the Seller Name and Seller Address fuel data categories in the BC Monthly Wholesale Purchaser Report should be Protected Information and kept confidential.

In its May 25, 2021 letter, the BCUC speculates that the wholesaler name and address, and the supply location of fuel purchases "may be general industry knowledge." This statement is unsupported, and contrary to the assertions of the Responsible Persons, who are actual industry participants in their submissions in this hearing.

Domestic supply relationships are highly competitive. If the above noted information is published, Husky's competitors could determine Husky's sources of supply and logistical arrangements and use this information to undermine Husky's competitive position in certain markets, causing Husky significant commercial harm.

8. The BCUC requests that parties provide submissions clarifying the specific harm and/or public interest associated with the publication of the origin of fuel imports and the transaction type Fuel Data field.

Husky does not have any submissions on this issue.

9. The BCUC requests that parties provide submissions clarifying the specific harm and/or public interest associated with the publication of the currency, whether the purchase price includes transportation costs, and date of sale Fuel Data fields.

Husky submits that the Transportation Costs fuel data field in the BC Monthly Retail Purchases Report be Protected Information and be kept confidential.

The disclosure of the transportation costs associated with specific shipments purchased by Husky for specific retail locations would result in significant commercial harm to Husky. A competitor with industry knowledge in the limited BC market would be able to use this

information to undermine Husky's competitive position, causing commercial harm to Husky. This information when combined with other requested fuel data fields would make Husky's business plan visible to all competitors and/or potential new wholesale/retail marketers.

10. The BCUC requests that parties provide submissions to explain their rationale for supporting or objecting to the proposed treatment of the Fuel Data not identified as confidential Protected Information in their submissions on Framework Draft No. 2.

Husky does not have any submissions on this issue.

11. The BCUC requests that parties, provide submissions regarding the process and circumstances where the BCUC in its role as Administrator seeks to reconsider the confidential status granted to certain Protected Information

In its submission in relation to Framework Draft No. 1, Husky submitted that it was unclear why, on its own initiative, 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. Husky requested additional context, and information on the purpose of such a process and how the BCUC intends to publish data collected under the FPTA.

Framework Draft No. 2 does not provide the requested additional information or clarity on this process. As a result Husky is limited in its ability to comment, in particular in relation to the circumstances as the BCUC has requested.

Husky submits that the current proceedings have involved participation by responsible persons and other interested parties, and a fulsome consideration of the issues of confidentiality, and balancing the public interest against the potential harm to participants. Husky is concerned that the provisions of Framework Draft No. 2 allow for, and seem to anticipate, this process being repeated at any such time the BCUC determines. This is an unnecessary regulatory and financial burden on responsible persons, and results in a lack of certainty and ability to plan accordingly. It is Husky's submission that the current proceeding should be where the issues relating to Protected Information and confidentiality are considered, and should not be repeated unless there is a real and significant justification.

In terms of the process in the Framework Draft No. 2, Husky notes that Section 5.1 provides that there will be "a process in which the responsible person may participate". However, no details of this process are provided, such as timing, notice requirements, hearing options, or the participation of parties who are not responsible persons. It is Husky's submission that if the BCUC intends to have unilateral reviews of the confidentiality of Protected Information on its own initiative, the procedural details should be clearly provided for in any final Framework.

12. The BCUC requests that parties provide submissions on the proposed revisions to the aggregation and anonymization process

In its submission in relation to Framework Draft No. 1, Husky set out 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. In addition, Framework Draft 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 disagreed with this position and submitted that publishing the aggregated Protected Information of 5 responsible persons is not appropriate, and a third party with knowledge of the industry would be able to determine confidential business information, and harm Husky's commercial interests. It was Husky's position 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.

None of Husky's concerns are addressed in Framework Draft No. 2 and Husky repeats its submissions. If data is non anonymized as well as aggregated on a provincial level, 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, or by not anonymizing it as well.

Framework Draft No. 2 provides only that the BCUC may publish non anonymized data, and non aggregate anonymized data where the BCUC has determined the identity of the responsible person is not likely to be disclosed or confidential information is not likely to be disclosed. It is Husky's submission that it is not possible to publish data that is not aggregated and anonymized at a provincial level without resulting in the disclosure of confidential information and the identity of the responsible person.

Framework Draft No. 2 does provide a process for comment by the responsible person and/or its counsel. While Husky submits that there should be a robust procedure for the comment and objections by Responsible Persons, there will be no real difference in Husky's position at a later date. Publishing data that is not aggregated and anonymized at a provincial level will result in disclosure of Husky's confidential information, and result in significant financial harm to Husky.

13. The BCUC requests that parties provide submissions on the proposal to review the status of confidential Protected Information in two years time.

In Framework Draft No. 1, the BCUC proposed that the Protected Information it will no longer be treated as confidential after two years from the date of the submission and could be published without any protections. In its submissions, Husky emphasized that the proposed two year limit on the protection of confidential information was 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. Husky submitted that that the confidential status of the Protected Information

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

In Framework Draft No. 2, the proposed two year limit on Protected Information being confidential appears to have been eliminated. Instead, Framework Draft No. 2 provides that two years from the finalization of the framework, the BCUC will conduct a review of the fuel data collected to determine whether confidential treatment is still warranted.

It remains Husky's position that the confidential status of the Protected Information should remain in place indefinitely. To the extent that Framework Draft No. 2 has removed the automatic lifting of confidential status after the expiry of two years, Husky supports that change. However, under Framework Draft No. 2, Protected Information could still be disclosed without any protections after two years if the BCUC determines that the public interest outweighs any potential harm. Husky reiterates that if the Protected Information is disclosed after a two year period, it 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. Therefore, Husky will be strenuously opposing any disclosure of the Protected Information at the BCUC review which will occur two years after the finalization of the Framework. That will not change with the passage of time. It is Husky's submission that the confidential nature of the Protected Information should remain in place indefinitely, and this should be set out in the final Framework.

Further, it is not clear how the proposed review by the BCUC of the status of the Protected Information after two years will be coordinated with the additional unilateral BCUC reconsideration of the confidential status granted to certain Protected Information as contemplated in Section 5.1 of Framework Draft No. 2. Husky remains concerned in relation to the significant regulatory burden this imposes, as well as the legal costs involved.

14. The BCUC requests that parties review the proposed declaration and undertaking form and provide comments, including any suggested modifications in their submissions on Framework Draft No. 2

Husky repeats its submission that Protected Information should never be disclosed to third parties on request due to the extremely sensitive nature of the fuel data Husky is obligated to report. Husky remains unaware of what third parties could be granted access to Protected Information by the BCUC, and for what reasons. While the BCUC has provided two examples of when such disclosure may be warranted, Framework Draft No. 2 does not strictly limit the potential disclosure to those circumstances, and it appears that anyone can make a request to the BCUC for the disclosure of Protected Information. As set out above,

Husky's position is that third parties should never be granted access to Protected Information, and that any final Framework must contain strict limitations on who may make a request for access and when access would be granted.

In respect of the proposed declaration and undertaking form, Husky repeats that 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.

15. The BCUC requests parties provide submissions on the proposed changes in Framework Draft No. 2.

Husky supports that an automatic stay be put in place on the release of confidential Protected Information during the course of a reconsideration, subject to its submissions above.

16. The BCUC requests that parties provide submissions explaining their rationale for supporting or objecting to the proposed language in Framework Draft No. 2 respecting the BCUC's ability to share confidential Protected Information with the Minister and selected staff in their Ministry in light of the BCUC's responsibilities as Administrator

Framework Draft No. 2 provides only that: "In its role as Administrator, BCUC may provide confidential Protected Information to the Minister and selected staff in their Ministry." No context or further details are provided.

In Husky's submission, Framework Draft No. 2 does not provide sufficient clarity as to when Protected Information may be provided to the Ministry, what type of information would be provided, and for what purpose. These details should be provided and further submissions permitted if necessary.

In addition, the use that the Protected Information would be put to by the Ministry or Ministry staff is unknown, as is how the confidentiality of the Protected Information would be protected once it is in the Ministry's hands. For example, would Ministry staff be required to execute the Declaration and Undertaking, would the BCUC be informed of how the Protected Information was being used by Ministry staff, and could the Protected Information be disclosed to third parties (through an FOI or otherwise). Husky has serious concerns in relation to each of the above issues, and submits that any final Framework must address them.

In closing, 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. In addition, Husky requests that the BCUC 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

A handwritten signature in blue ink, appearing to read "S. Luke Dineley".

S. Luke Dineley