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By Electronic Filing

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

Attention: Patrick Wruck, Commission Secretary

Dear Sirs/Mesdames:

**Re: Framework for the Determination of Confidentiality and Treatment of Protected
Information Collected under the *Fuel Price Transparency Act***

We enclose for filing pursuant to the established regulatory timetable in the above-noted proceeding Parkland Corporation's submissions on Framework Draft No. 2.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[Original signed by]

Tariq Ahmed

TVA/vde
Enclosure



BEFORE THE BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF THE *UTILITIES COMMISSION ACT*, R.S.B.C. 1996, CHAPTER 473

and

THE *FUEL PRICE TRANSPARENCY ACT*, S.B.C. 2019, CHAPTER 46

and

**FRAMEWORK FOR THE DETERMINATION OF CONFIDENTIALITY AND
TREATMENT OF PROTECTED INFORMATION COLLECTED
UNDER THE *FUEL PRICE TRANSPARENCY ACT***

**SUBMISSION OF PARKLAND CORPORATION REGARDING
FRAMEWORK DRAFT No. 2**

JUNE 15, 2021

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PART ONE: INTRODUCTION

1. British Columbia Utilities Commission (“BCUC”) Order G-159-21 requested submissions from Parkland Corporation (“Parkland”) and other parties on Framework Draft No. 2.

2. As described in Parkland’s previous submissions in this proceeding, confidentiality and the treatment of Protected Information are of great importance to Parkland. Significant harm could occur to Parkland and the broader competitive market, and by consequence to consumers, if confidential fuel data were made public. In the BCUC’s role as the administrator under the *Fuel Price Transparency Act* (the “FPT Act”), it must strike an appropriate balance between publication of fuel data and protecting responsible persons and the market from harm.

3. Parkland appreciates the BCUC’s efforts to consider, and in some cases reflect, comments provided by Parkland and other parties. Some of Parkland’s concerns have been resolved by Framework Draft No. 2. There are, however, areas where additional changes as described in this submission are appropriate to meet the BCUC’s mandate.

PART TWO: RESPONSES TO THE BCUC'S QUESTIONS

4. Parkland addresses below the questions posed by the BCUC in Exhibit A-9.

A ITEM #1: PROPOSED CLARIFICATION OF THE SCOPE AND PURPOSE OF THE FRAMEWORK

5. The BCUC requested 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.

6. Parkland generally supports the proposed clarification of the scope and purpose of the Framework in Framework Draft No. 2, as it appears to represent an attempt to balance the objectives of the FPT Act while providing protections to industry participants in order to avoid disclosing competitively sensitive information.

7. Framework Draft No. 2 appears to have taken into consideration Parkland's submissions on the definition of Protected Information under the FPT Act. Parkland submits that, as an additional refinement, it would be appropriate for section 3.3 to note that there will be notice and an opportunity for responsible persons to make submissions before changes are made to the Fuel Price Transparency Regulation Reporting Guidelines. Notice and an opportunity to be heard would be necessary in that context, and it would be beneficial for that to be spelled out in the Framework to ensure a common understanding in this regard.

B ITEM #2: VOLUME-RELATED FUEL DATA IN TABLE A1

8. The BCUC requested 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, and of the Shipment Volume, and Shipment Date fuel data fields.

9. Parkland supports the inclusion of the volumetric fuel data that continues to be proposed for inclusion in Table A1. As described in Parkland's prior submission, disclosure of

volumetric data such as that contained in Table A1 would provide competitors, suppliers, and customers with detailed information about the operations of each company.¹ External parties should not know the volume of business conducted at individual retail stations, the volume of product imported into the province, or the volume of product produced on a detailed level. This information is closely guarded confidential information, and for good reason. Competitors could use this information, for example, to target dealers who sell lower volumes of product and who might therefore be in financially weaker positions and could be put out of business by temporarily lower pricing. This type of activity is detrimental to competition in the long-term, making protection of the information consistent with purpose the FPT Act.

10. With respect to the items proposed for removal from Table A1 in the latest framework draft:

- (a) ***The 2019 total gasoline and diesel sales volumes (litres) reported in response to the Special Direction – Retail Station Survey:*** This fuel data should be treated as confidential Protected Information. The BCUC indicated that the fuel data is available for purchase from private sources (namely the Kent Group).² Data provided to a private source occurs on a voluntary basis; retailers are not required to do so, and may choose not to provide information based on potential commercial harm or other considerations. Vulnerable retailers, such as those with low volumes, may choose not to participate in the provision of information to private sources. Making the sales volumes of all retailers in the province available, even on an annual basis, through BCUC reporting would expose their vulnerability and weaken competition.

- (b) ***Storage tank capacity in Annual Storage Report:*** As described in Parkland’s prior submission,³ Parkland does not consider storage capacity contained in the Annual Storage Report to constitute Protected Information in its circumstances.

¹ Exhibit B-4, para. 15.

² Exhibit A-9, p. 3.

³ Exhibit B-4, para. 21.

However, this fuel data could reasonably be highly confidential for other responsible persons. As a general principle, it is important for the Framework to recognize that the impact of disclosure could differ among responsible persons, and the BCUC should not default to disclosure just because one responsible person does not object. Rather, the reverse should be true: information should be kept confidential for all responsible persons if its disclosure would harm certain responsible persons.

- (c) ***Shipment volume:*** This is also the case for the “Shipment Volume (L15)” fuel data field in the Monthly Retail Supplier Report. Parkland considers the “Shipment Volume (L15)” fuel data field in the Monthly Retail Supplier Report to constitute Protected Information that should be kept confidential. Parkland disagrees with the statement in Framework Draft No. 2 that this information reveals only that a shipment of fuel was delivered to an unidentified station somewhere in the province. Knowledgeable industry participants are generally aware of the stations and locations supplied by their competitors in the province. Knowing that a shipment of a certain size was made by competitors on a certain day, in concert with other knowledge they may have about activities such as truck traffic, pipeline shipments, and their own more detailed knowledge of their own shipments and station sales, can be used to make very detailed estimates as to the destinations of given shipments. This is even more likely for information about smaller participants in the province, but it also applies to larger participants such as Parkland.

C ITEM #3: PRICE-RELATED FUEL DATA IN TABLE A2

11. The BCUC requested 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 Daily High/Low Price fuel data fields.

12. Parkland supports the BCUC's approach of including the price-related fuel data in Table A2. As described in Parkland's prior submission, disclosing pricing data would provide external parties with substantial information about the operations of the company.⁴ Purchase discounts (both discounts given to Parkland when it purchases product, and discounts Parkland gives when it sells product) are highly negotiated throughout the industry. Such negotiations are necessarily conducted with imperfect information about discounts that are offered to other parties. If this information were to be made public, it would threaten parties' abilities to negotiate unique deals. Eventually, discounts would likely be lower across the board. In addition, exchanging competitively sensitive information such as prices and costs can harm the competitiveness of the marketplace by facilitating coordination between firms.

13. Parkland supports the proposed inclusion of "Taxes per Litre (\$/L)" fuel data field from the Monthly Retail Sales Report in Table A2, as this takes into consideration Parkland's submissions on the ability to use this data to back-calculate confidential price data.⁵

D ITEMS #4 AND 5: LOW CARBON FUEL STANDARD CREDIT FUEL DATA, AND FUEL TYPE AND FUEL GRADE FUEL DATA FIELDS

14. Parkland has no submissions with respect to the treatment in Framework Draft No. 2 of BC Low Carbon Fuel Standard credit-related fuel data fields, and the Fuel Type and Fuel Grade fuel data fields.

E ITEM #6: INTERNAL ID AND COMMENT FUEL DATA FIELDS

15. The BCUC requested 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.

16. As described in Parkland's prior submission on Framework Draft No. 1, Parkland submits that Internal ID should be kept confidential.⁶ The Internal ID used by Parkland relates

⁴ Exhibit B-4, paras. 17 and 18.

⁵ Exhibit B-4, paras. 22 and 24.

⁶ Exhibit B-4, paras. 22, 23 and 25.

back to invoice or bill of lading numbers and can be used to discern seller identity. The BCUC noted in Exhibit A-9 that the “provision of counterparty or commercially sensitive information is not required since Responsible Persons may submit any unique identifier they choose”.⁷

17. The implication of this suggestion is that responsible persons should be able to create an Internal ID specifically for the purpose of reporting to the BCUC. Although this is true, it would be administratively inefficient for Parkland to generate a further “Internal” ID to mask its true Internal ID. This would make it more difficult to validate reported data, since reported information would have to be cross-referenced against the true Internal ID in order to verify, and it would make it more difficult to respond to BCUC questions, if provided, about specific reports or data points. Further, there is no public benefit to making this data public, since making it public would necessitate the use of a masked ID, which masked ID would by definition be of no meaning. Causing participants to generate a masked ID simply so that the masked ID can be disclosed to the public does not seem to further any objectives of transparency. It would merely create administrative burden on the participants.

F ITEM #7: OTHER COUNTERPARTY-RELATED FUEL DATA

18. The BCUC requested that parties provide submissions clarifying the specific harm and/or public interest associated with the publication of the Seller Name, Seller Address, and Supply Location fuel data fields.

19. Seller Name (contained in the Monthly Wholesale Purchaser Report), Seller Address (contained in the Monthly Wholesale Purchaser Report), Supply Location (contained in the Monthly Retail Purchases Report), and Ownership Structure (contained in the Retail Station Survey) all contain third-party identity information. Disclosing any of these data points would allow other parties to know precisely which suppliers are used to supply which locations (including whether imported or local). This would allow competitors to target certain dealers who sell lower volumes of product and who might therefore be in financially weaker positions

⁷ Exhibit A-9, p. 5.

and could be put out of business by temporarily lower pricing (thus lessening competition in the long term). It may also allow competitors to target certain suppliers.

20. The BCUC states that “while certain counterparty agreements may include confidentiality provisions ... these provisions exclude disclosures required by law, as is the case with the FPT Act”.⁸ The inclusion of confidentiality obligations in counterparty agreements is evidence that market participants recognize the economic harm and potential to undermine the market that would result from disclosure. Exemptions for disclosures required by law are included in contracts to prevent parties from being at risk of breaching a contract in order to comply with the law; they are not an endorsement of a regulator’s decision to compel disclosure. In other words, that the parties may have indicated an understanding that they will abide by the law does not justify the creation of a legal requirement in and of itself.

21. Further, disclosing this information would have a chilling effect, both in British Columbia and across Canada. The fuel industry is country-wide, and supply agreements are rarely specific to one province. If suppliers know that information about their activities is going to be published in British Columbia, they will be less likely to enter into favourable agreements in British Columbia and across the country, which will affect Parkland’s ability to negotiate beneficial arrangements throughout its business.

22. With respect to Ownership Structure specifically, the sources cited by the BCUC (private companies or through a land title search)⁹ may not provide this specific information or the same degree of currency. For example, a land title search would provide the name of the owner of the land, not the ownership structure of the retail station.

23. As described in Parkland’s prior submission, a full list of participants in the British Columbia market, identifying suppliers within and outside the province, without connecting such participants to specific purchasers, specific regions, or specific stations, could be published so the

⁸ Exhibit A-9, p. 5.

⁹ Exhibit A-9, p. 7.

public is aware of the various companies that are active in the province.¹⁰ Such an approach, or another approach under the proposed aggregation process could be used to balance the confidentiality of counterparty information with any public interest in disclosure.

G ITEMS #8, 9 AND 10: OTHER IMPORT-RELATED FUEL DATA, RETAIL FUEL DATA COLLECTION PILOT, AND RETAIL STATION SURVEY

24. Parkland has no submissions with respect to the treatment in Framework Draft No. 2 of other import-related fuel data, such as fuel data respecting the origin of fuel imports type and Fuel Grade fuel data fields, fuel data provided as part of the retail fuel data collection pilot, and the treatment of other fuel data provided as part of the Retail Station Survey (other than with respect to Ownership Structure as provided in Parkland's submissions regarding Item #7).

H ITEM #11: RECONSIDERATION OF CONFIDENTIAL STATUS

25. The BCUC requested 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.

26. Parkland generally supports the revisions that have been made in Framework Draft No. 2 with respect to the process and circumstances where the BCUC seeks to reconsider the confidential status granted to certain Protected Information. Parkland submits that it would be appropriate to add potential harm to third parties as a consideration (in addition to potential harm to responsible persons).

I ITEM #12: AGGREGATION AND ANONYMIZATION

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

¹⁰ Exhibit B-4, para. 41(c).

28. Parkland generally supports the revisions that have been made in Framework Draft No. 2 with respect to aggregation and anonymization. Parkland submits that the next version should incorporate the following additional refinements:

- (a) The revisions in Framework Draft No. 2 have introduced an error into section 5.2.1, such that the sentence no longer makes sense as written. It should read “...the BCUC is cognizant of the importance of maintaining an appropriate balance between transparency and the protection [not “publication”] of confidential Protected Information in the execution of its mandate”;
- (b) The provision of the proposed anonymized or aggregated data to external counsel should only be to the external counsel of the responsible persons who provided the Protected Information proposed for publication (not the external counsel of all responsible persons who have executed a declaration and undertaking);
- (c) The provision of the proposed anonymized or aggregated data to external counsel should also include a description of the nature of the anonymization and/or aggregation that occurred. For example, the provision of an aggregated piece of data on its own, such as a numerical figure, does not provide sufficient information to determine whether the proposed aggregation is sufficient. Legal counsel, who are not technical experts, need sufficient information to be able to make informed recommendations to their clients. Otherwise, the protections intended by the process are undermined, if not eliminated; and
- (d) Even if the BCUC determines that publication of anonymized or non-anonymized aggregate confidential Protected Information is not likely to result in direct or indirect disclosure, the Framework should note that such a determination could be revisited in the future in light of changed circumstances or just cause. For example, the sufficiency of aggregation to protect confidential Protected Information could change in light of developments in the market such as changes in market share or participants. Another example would be if it becomes clear

that the information can be used, or is being used, to the detriment of responsible persons or the market in unforeseen ways.

J ITEM #13: PERIODIC REVIEW OF STATUS OF CONFIDENTIAL PROTECTED INFORMATION

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

30. Parkland submits the proposed review, subject to notice and process, of the status of confidential Protected Information two years after the finalization of the Framework, represents a reasonable approach.

K ITEM #14: DECLARATION AND UNDERTAKING PROCESS

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

32. Parkland generally supports the revisions that have been made in Framework Draft No. 2 with respect to the declaration and undertaking process. However, Parkland submits that as a condition of receiving access to confidential Protected Information, the requesting party should also be required to execute a non-disclosure agreement directly with the responsible person(s) on terms specified by the BCUC, rather than only with the BCUC.

33. The BCUC recently took this approach in the context of security sensitive information filed by FortisBC Energy Inc.¹¹ The BCUC recognized that its standard-form undertaking was an undertaking made to the BCUC, not to the party that had provided the information. The existence of a non-disclosure agreement gives the responsible person the ability to take action on its own to stop the disclosure, such as applying to court for an injunction.

¹¹ *FortisBC Energy Inc. Application for a Certificate of Public Convenience and Necessity for the Tilbury Liquefied Natural Gas Storage Expansion Project*, BCUC Order No. G-147-21 (May 12, 2021), online: https://www.bcuc.com/Documents/Proceedings/2021/DOC_62583_A-8-G-147-21-Reasons.pdf; and *FortisBC Energy Inc. Application for a Certificate of Public Convenience and Necessity for the Tilbury Liquefied Natural Gas Storage Expansion Project*, BCUC Order No. G-161-21 (May 17, 2021), online: https://www.bcuc.com/Documents/Proceedings/2021/DOC_62827_A-9-G-161-21-with-Reasons.pdf.

The form of non-disclosure agreement approved for use by FortisBC Energy Inc. closely tracks the BCUC's undertaking form, with a typical non-disclosure agreement provision intended to facilitate obtaining an interlocutory injunction by preventing the breaching party from arguing that an injunction is unnecessary because any harm could be addressed by damages.

L ITEM #15: OTHER MODIFICATIONS

34. The BCUC requested that parties provide submissions on other modifications in Framework Draft No. 2 including with respect to an automatic stay on the release of confidential Protected Information during the course of a reconsideration.

35. Parkland supports the proposed automatic stay on the release of confidential Protected Information during the course of a reconsideration. This appears to have taken into consideration Parkland's prior submissions, and recognizes that once disclosure occurs the proverbial genie cannot be returned to the bottle.

M ITEM #16: SHARING OF INFORMATION WITH THE MINISTRY

36. The BCUC requested 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.

37. Parkland does not object to the proposed language regarding the BCUC's ability to share confidential Protected Information with the Minister and selected staff in their Ministry. This appears to be a reference the section 4(1) of the FPT Act which provides that "The administrator must report to the minister as the minister requires".

PART THREE: CONCLUSION

38. Parkland submits that, while Framework Draft No. 2 contains a number of improvements upon the initial draft, further changes that take into account the significance of responsible persons' confidential fuel data are needed to ensure that the BCUC delivers on its statutory mandate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: June 15, 2021 *[original signed by Matthew Ghikas]*
Matthew Ghikas
Counsel for Parkland Corporation

Dated: June 15, 2021 *[original signed by Tariq Ahmed]*
Tariq Ahmed
Counsel for Parkland Corporation