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**Attention: Patrick Wruck, Commission Secretary**

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Our reference 1000372952

Dear Mr. Wruck:

**Parkland Corporation Request for Advance Ruling on Confidentiality for *Fuel Price Transparency Act* Reporting Submissions – Submissions on Framework Draft No. 2 (the “Draft Framework”)**

We are legal counsel to Shell Canada Limited, acting on behalf of its general partnerships, Shell Canada Products and Shell Trading Canada (collectively, “**Shell**”) in this matter and write further to BCUC Order G-159-21<sup>1</sup> to provide submissions on its behalf with respect to the topics raised by the Commission in its letter enclosing the Draft Framework dated May 25, 2021.<sup>2</sup>

Shell appreciates many of the changes that the BCUC has made to the Draft Framework following parties’ submissions on Framework Draft No. 1, and considers that the updated Draft Framework addresses a number of the concerns expressed in Shell’s submission dated March 8, 2021 (the “**March 8 Submission**”).<sup>3</sup>

However, in Shell’s submission, the Draft Framework still does not reflect the fact that publishing some data that does not fall within the definition of “Protected Information” risks harming Shell and its competitors. Shell continues to submit that the Commission should only publish information that furthers the purposes of the *Fuel Price Transparency Act*,<sup>4</sup> including the Commission’s obligation under paragraph 4(2)(b) the *Act* to administer the *Act* so as to promote the competitiveness of the market for reportable fuels, and public confidence in the competitiveness of that market. Shell provides its views on how these principles apply to specific categories of Fuel Data in its submissions below.

Further, Shell continues to hold the view that the present proceeding has thoroughly canvassed which categories of Fuel Data constitute Protected Information, and how that Protected Information should be treated. The BCUC has also identified the reduction of regulatory burden as one of its key principles in the Draft Framework.<sup>5</sup> Shell

<sup>1</sup> Exhibit A-8.

<sup>2</sup> Exhibit A-9, pdf p. 9.

<sup>3</sup> Exhibit C6-4.

<sup>4</sup> SBC 2019, c. 46 (the “**Act**”).

<sup>5</sup> Exhibit A-9, Section 3.1.1.1, pdf p. 15.

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accordingly reiterates its view that after the conclusion of the present proceeding the Commission will have already determined in advance, for the vast majority of cases, the circumstances in which “the public interest in the protected information that will be disclosed outweighs any potential harm to responsible persons” (and vice versa), and established mechanisms to allow for publication of Fuel Data, in the form and manner that is appropriate in light of the *Act*. The BCUC should accordingly limit the circumstances under which this balance can be reconsidered in a one-off manner.<sup>6</sup> Similarly, Shell submits that a review of the confidentiality framework established by the current proceeding after only two years is not in keeping with the principle of reducing regulatory burden.<sup>7</sup>

With these general principles in mind, Shell addresses each of the specific topics raised by the Commission in its May 25, 2021 letter in turn, 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.**

The BCUC should only publish information that furthers the purposes of the *Act*, including the Commission’s obligation under paragraph 4(2)(b) the *Act* to administer the *Act* so as to promote the competitiveness of the market for reportable fuels, and public confidence in the competitiveness of that market. Instead, however, the Draft Framework’s approach to the categories of Fuel Data that should be treated as confidential information continues to presume that all Fuel Data that does not constitute Protected Information should be publishable. Shell reiterates that this approach is not consistent with the purpose of the *Act*.

**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, and of the shipment volume, and shipment date Fuel Data fields.**

Shell submits that Fuel Data relating to (i) 2019 total gasoline and diesel sales volumes, (ii) the physical capacity of a Responsible Person’s storage tanks, and (iii) shipment volume and shipment date should be treated as confidential Protected Information, for the following reasons:

- i. **2019 Total Gasoline and Diesel Sales Volumes:** The BCUC acknowledges in Appendix A to the Draft Framework that Fuel Data relating to volume is generally to be treated as confidential Protected Information.<sup>8</sup> Although the Fuel Data in this field may be aggregated on a yearly basis, Shell submits that the aggregation and anonymization process set out in Section 5.2.2 of the Draft Framework should apply prior to the publication of any volume data on an annual basis because, among other reasons, this will allow the BCUC to determine whether this is an appropriate aggregation/anonymization method in the future. Further, although private sources such as the Kent Group may publish similar data, it is not as comprehensive or accurate as the volume information that is reported by Responsible Persons pursuant to the *Act*.
- ii. **Physical Capacity of a Responsible Person’s Storage Tanks:** Shell disagrees that the Fuel Data relating to the physical Capacity of a Responsible Person’s storage tanks is discernable by observing the storage tanks themselves, to the degree of precision that is provided by Responsible Persons under the *Act*. Further, not all Responsible Persons have published this information.

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<sup>6</sup> As in Section 5.1 of the Draft Framework.

<sup>7</sup> Per Section 5.2.3 of the Draft Framework.

<sup>8</sup> Exhibit A-9, pdf p. 21.

The publication of information regarding storage tank capacity would provide competitors of a Responsible Person with insight into the Responsible Person's supply chain logistics. For instance, if a Responsible Person has less storage capacity in a particular region of the province, that Responsible Person may be less able to supply fuel in that region, so the Responsible Person's competitors may target the Responsible Person's customers in that region, causing the Responsible Person competitive harm.

- iii. **Shipment Volume and Shipment Date:** With respect to the Shipment Volume field in the Retail Supplier Report, Shell notes that competitors could use the data disclosed in this field to determine precisely how much fuel a Responsible Person is selling in British Columbia in a given month, broken down by transaction. Among other things, this information, in conjunction with the "Transaction Type" field, would allow competitors to understand how much of a Responsible Person's fuel sales are intra-company transfers as opposed to third-party transactions. This could impact the Responsible Person's ability to negotiate with third parties (e.g. if the percentage of a Responsible Person's fuel sales that are intra-company transfers becomes public, then third parties could use this as leverage in negotiations).

Further, Shell notes that this information could be used in conjunction with the Shipment Date fields in the Retail Supplier Report and Retail Purchases Report and the Internal ID field in each report (see the response to topic 6 below) to determine, with precision, the shipment amounts and frequency of delivery to specific retail sites for some, and perhaps all, Responsible Persons engaged in intra-company transfers. Using this information, the competitors of such a Responsible Person could target a particular retail site with weaker sales, for example.

Finally, Shell disagrees with the BCUC that "any estimates of the volume of fuel shipped to a specific retail location made on the basis of the shipment date Fuel Data would be speculative and subject to significant uncertainty",<sup>9</sup> since fuel industry participants are aware that there is relatively little variability of the volume of fuel per shipment for retail supply.<sup>10</sup> In practice, publishing details regarding the shipment dates for specific retail locations would allow competitors of a Responsible Person to determine the volumes shipped to specific locations at specific times to a high degree of accuracy.

**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.**

Shell continues to submit that the Fuel Data fields for the daily high/low price and the time of the daily high/low price should be treated as confidential, for the reasons set out in Shell's March 8 Submission.<sup>11</sup>

There is currently no publicly available source containing information relating to these Fuel Data fields with the level of precision provided by Responsible Persons to the BCUC. Although fuel prices are posted publicly at retail stations, and there are third party sources of such information available (such as Gas Buddy), these sources represent a "snapshot" of prices in time. Gas Buddy, for example, is based on data submitted by the public regarding a given station at a particular time, and accordingly is not comprehensive and may not always be accurate.

The Fuel Data regarding daily high/low price and the time of the daily high/low price submitted to the BCUC under the *Act* provides insight into a Responsible Person's retail pricing strategy, broken down by retail station, price and time of day. Competitors could use this information to, for instance, identify a Responsible Person's pricing strategy regarding the timing of price changes and price points at a particular retail site, or within a

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<sup>9</sup> Exhibit A-9, pdf p. 3.

<sup>10</sup> See Exhibit C6-3, pdf p. 18.

<sup>11</sup> Exhibit C6-4, pdf pp. 16-18.

region, and could accordingly modify their own pricing strategy. Further, as Shell noted in its March 8 Submission,<sup>12</sup> if the Time of Daily Low Price is equal to the Time of Daily High Price for a particular retail site on a given day, this would disclose the fact that the relevant retail site did not change its price on a given day, providing further granular detail regarding the pricing strategy for the retail site. This would also disclose the Volume-Weighted Selling Price at that site for the day, which the BCUC has indicated is to be treated confidentially in the Draft Framework.<sup>13</sup>

**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.**

Shell continues to submit that the Fuel Data field relating to the “Average Price per LCFS Credit” should be treated as confidential Protected Information, for the reasons set out in its March 8 Submission.<sup>14</sup>

The release of this information would provide a Responsible Person’s competitors with access to the average monthly prices paid by the Responsible Person for LCFS credits, which could negatively impact that Responsible Person’s negotiation of the purchase price of additional credits. For example, if it becomes publicly known that a Responsible Person has been willing to pay a certain average amount for LCFS credits to comply with its LCFS obligations, then sellers of LCFS credits may not be willing to accept a lower price, thus increasing the cost of LCFS credits and, consequently, fuel prices. Additionally, the price that a Responsible Person is willing to pay for LCFS credits may provide competitors with insight into commercially sensitive information regarding the role that LCFS credits play in that Responsible Person’s LCFS compliance strategy (e.g. a Responsible Person willing to pay more for LCFS credits may be more reliant on the purchase of credits for compliance purposes).

Shell notes further that the purchase of LCFS credits is only one of multiple pathways to comply with BC LCFS obligations. Therefore, LCFS credit purchases alone do not reflect the actual compliance costs that are incurred by a Responsible Person to ensure compliance with its LCFS requirements.

Finally, Shell notes that the BC Government (through the Ministry of Energy, Mines and Low Carbon Innovation) already publishes statistical information regarding LCFS credit transfer activity in the province on a monthly and quarterly basis, which includes aggregated and anonymized information about the total number of transfers, the total credits transferred, and the average price per LCFS credit, without identifying the average price per LCFS credit paid by specific Responsible Persons.<sup>15</sup> In light of the harm described above that would result from the publication of the Average Price per LCFS Credit paid by specific Responsible Persons, Shell submits that the BCUC should similarly protect the commercially sensitive information of Responsible Persons by treating this data field as confidential Protected Information.

**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.**

Shell is not opposed to the publication of these Fuel Data fields.

**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.**

With respect to the Internal ID field, Shell notes that it did not seek confidential treatment for this field in Shell’s March 8 Submission, on the basis that the Shipment Volume field in the Retail Supplier Report should be treated as confidential. However, if the Shipment Volume field in the Retail Supplier Report is not treated as confidential (contrary to Shell’s submission), then the Internal ID field may allow competitors of a Responsible Person to

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<sup>12</sup> Exhibit C6-4, pdf pp. 16-18.

<sup>13</sup> Exhibit A-9, pdf p. 22.

<sup>14</sup> Exhibit C6-4, pdf p. 11.

<sup>15</sup> For example, see the May 2021 Monthly Credit Market Report, available online [here](#), and the April 2021 Quarterly Low Carbon Fuel Credit Market Report, available online [here](#).

determine which shipment volumes from the Retail Supplier Report correspond to shipment volumes received at specific retail locations under the Retail Purchases Report, as the internal ID for some Responsible Persons may indicate a correlation between shipments indicated in the two reports.

Further, if the BCUC is of the view that a Responsible Person may “submit any unique identifier they choose” for the internal ID,<sup>16</sup> Shell submits that there is no public benefit to publishing this information in any case (since for some Responsible Persons this data may be essentially meaningless). As a result, there would be a harm to Responsible Persons, to the extent that the confidential information of some Responsible Persons may be disclosed, with no corresponding public benefit from the publication of the Internal ID field. Shell accordingly submits that this field should be treated as confidential information, if the BCUC determines that the Shipment Volume field in the Retail Supplier Report is not to be treated as confidential.

With respect to the “Other (Comments)” field associated with the Retail Station Survey, Shell notes that it included commercially sensitive and confidential contextual information in this field as interpretive comments for its Retail Station Survey filing, on the understanding that this information would be treated confidentially.

With respect to the comments field associated with the “FPT Act Regulatory Reporting Portal – Metadata”, Shell reiterates the view from its March 8 Submission that this data field is not compulsory, and is intended to provide Responsible Persons an opportunity to provide additional insight or interpretive context that may be useful to the BCUC. Accordingly, failing to grant confidential status to this data field may simply result in Responsible Persons choosing not to provide this helpful context, rather than being subjected to the additional administrative process of Section 4.0 of the Draft Framework, and the associated risk of commercially sensitive information being disclosed.<sup>17</sup> Granting confidential status to this field would also avoid the additional regulatory burden that would be associated with requiring an application under Section 4.0 for every comment in which a Responsible Person wishes to disclose confidential information, in accordance with one of the key principles set out in the Draft Framework.<sup>18</sup>

Shell accordingly submits that each of these comments fields should be treated as confidential.

**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.**

Shell continues to submit that the seller name and address, and supply location Fuel Data fields should be treated as confidential Protected Information, for the reasons set out in Shell’s March 8 Submission.<sup>19</sup>

Contrary to the suggestion in the BCUC’s May 25, 2021 letter, precise information regarding which wholesalers supply Reportable Fuel to which purchasers in the province is not “general industry knowledge”.<sup>20</sup> Indeed, Shell notes that publishing the seller name and address Fuel Data fields for a given Responsible Person would amount to the publication of that Responsible Person’s customer list. Such information is not currently public.

Similarly, the publication of the supply location from the Retail Purchases Report would provide information regarding which Responsible Persons are doing business with others, since industry participants frequently know which Responsible Persons are associated with particular supply locations.

Competitors of a Responsible Person could use the information disclosed by these Fuel Data fields (the customer list of the Responsible Person, along with the dates on which the Responsible Person transacts with

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<sup>16</sup> Exhibit A-9, pdf p. 5.

<sup>17</sup> Exhibit C6-4, pdf p. 18.

<sup>18</sup> Exhibit A-9, Section 3.1.1, pdf p. 15.

<sup>19</sup> Exhibit C6-4, pdf pp. 10 and 14-15.

<sup>20</sup> Exhibit A-9, pdf p. 5.

those customers) to target myriad elements of a Responsible Person's business operations, causing that Responsible Person 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.**

Shell is not opposed to the publication of these Fuel Data fields.

- 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.**

Shell does not consider the Fuel Data fields related to currency, whether the purchase price includes transportation costs, and date of sale to be Protected Information.

However, Shell repeats the views from its March 8 Submission that the BCUC should treat all information that it receives (and has already received to date) pursuant to the Retail Pilot submissions as confidential on a permanent basis, and should accordingly not disclose it to the public. As Shell has noted, the publication by the BCUC of information submitted by those retailers who are participating in the Retail Pilot would put those retailers at a disadvantage and create an unfair and uneven competitive field during the Retail Pilot period. The harm caused by publication would therefore far outweigh any potential benefit to the public.<sup>21</sup>

The BCUC acknowledges that it has "previously committed, as part of the Retail Pilot, to hold any information that would reveal the identity of the retail stations selected for the Retail Pilot confidential".<sup>22</sup> Shell submits that the BCUC therefore should designate all of the information submitted by retailers pursuant to the Retail Pilot as confidential, and that any publication should be subject to the aggregation and anonymization procedures provided for in the BCUC's final confidentiality framework, to ensure that the identity of the relevant retail stations is protected.

- 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.**

Shell agrees that the Ownership Structure field in the Retail Station Survey may be treated as non-confidential Fuel Data, in light of the factors referenced by the BCUC in its May 25, 2021 letter.<sup>23</sup> However, Shell submits that if the BCUC wishes to collect and publish data on ownership structure on an ongoing basis, as opposed to the one-time data collection associated with the Retail Station Survey, then this should be subject to notice and process as a revision to Appendix A, further to Section 3.1.2 of the Draft Framework, as different considerations may apply in those circumstances.<sup>24</sup>

Further, although Shell acknowledges the BCUC's reference to its "treatment of personal details with appropriate protections",<sup>25</sup> Shell submits that the Draft Framework should be revised to clearly indicate that such protections will be applied with respect to the personal information of the employees and agents of Responsible Persons in the case at hand, including to the extent such personal information may be included in the metadata collected by

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<sup>21</sup> Exhibit C6-4, pdf p. 8.

<sup>22</sup> Exhibit A-9, pdf p. 6.

<sup>23</sup> Exhibit A-9, pdf pp. 6-7: "The Panel also notes that information regarding the ownership structure of particular retail stations is available for purchase from private companies or through a land title search".

<sup>24</sup> Exhibit A-9, pdf pp. 15-16.

<sup>25</sup> Exhibit A-9, pdf p. 7.

the Commission.<sup>26</sup> The framework to be established by the present proceeding is intended to “provide clarity on the process the BCUC will follow for disclosing Fuel Data”,<sup>27</sup> and to the extent that personal information is included in specific data fields Shell submits that the BCUC should provide clarity to Responsible Persons that these fields will be treated with appropriate protections.

**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.**

As Shell indicated in its March 8 Submissions, “by holding the present proceeding to determine which categories of Fuel Data constitute Protected Information, and how that Protected Information should be treated, the BCUC will have already conducted the balancing test contemplated by paragraph 9(2)(b) of the *Act*”.<sup>28</sup> Accordingly, “except in the most exceptional circumstances (examples of which are difficult to provide in advance), there should be a very strong presumption that Protected Information will not be released other than in accordance with the generally applicable rules and mechanisms established by the final framework ultimately issued by the Commission”.<sup>29</sup>

Subject to the foregoing, Shell continues to consider the “Public Interest” process set out in Section 5.1 of the Draft Framework to be reasonable.

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

Shell supports the process set out in the Draft Framework to allow a review of any proposed publication of aggregated and/or anonymized information,<sup>30</sup> subject to the following comments:

- i. Responsible Persons’ external counsel should be provided 60 days (rather than 30 days) to provide written submissions and evidence to the BCUC regarding any proposal. External counsel will require time to properly review and evaluate a proposal, seek instructions from the applicable Responsible Person, and prepare submissions and evidence. Sufficient time must be provided to do so, particularly since the Draft Framework provides that a BCUC determination on an aggregation/anonymization process will establish a precedent for publication of future data using the same process.
- ii. Shell appreciates that the BCUC intends for Protected Information to be shared with external counsel of Responsible Persons only, to ensure that confidential Protected Information is not shared with Responsible Persons. However, Shell submits that external counsel must still be able to seek instructions from their respective Responsible Person clients regarding the proposed aggregation/anonymization method. Further, external counsel would generally require the technical expertise of their Responsible Person client in order to assess the proposed aggregation/anonymization method, since Responsible Persons generally have knowledge regarding the BC fuel market and the sensitivity of Fuel Data that external counsel would not possess.

Shell accordingly requests that the Draft Framework be revised to indicate that external counsel may still discuss the proposed aggregation/anonymization method with their respective Responsible Person clients and seek instructions on the same, subject to the requirements of the Declaration and

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<sup>26</sup> Exhibit C6-4, pdf p. 7. The following data fields from the Retail Station Survey may include such personal information, for example: “Responsible Person Name”, “Responsible Person Phone”, “Responsible Person Email”, “Representative Name” and “Representative Position”.

<sup>27</sup> Exhibit A-9, pdf p. 13.

<sup>28</sup> Exhibit C6-4, pdf p. 4.

<sup>29</sup> Exhibit C6-4, pdf p. 5.

<sup>30</sup> Exhibit A-9, section 5.2.2, pdf pp. 17-18.

Undertaking form executed by the external counsel (including the requirement that no confidential information of other Responsible Persons is disclosed by the external counsel to their client).

- iii. In general, Shell supports the provision in the Draft Framework that the BCUC will not repeat the review process for an aggregation/anonymization process “if a final determination has been made previously for that specific aggregation or anonymization method and only the vintage of the Fuel Data included has changed”,<sup>31</sup> as this is efficient and reduces the regulatory burden associated with the application of the framework.

However, in some circumstances, the fuel market in British Columbia may evolve such that an aggregation or anonymization process is no longer sufficient to protect Responsible Persons’ confidential information. For example, one Responsible Person may obtain a greater market share in a particular region of the province, such that aggregating Fuel Data from that region no longer protects the confidential information of the Responsible Person (even if it did in the past).

Shell therefore requests that the Draft Framework be revised to provide that the BCUC will keep a public record of the aggregation and anonymization methods that have been accepted by the BCUC, and to allow a Responsible Person to apply to the BCUC for a determination that a previously-accepted aggregation/anonymization method is no longer sufficient to protect the confidential information of Responsible Persons, in light of changes to the BC fuel market.

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

Shell appreciates the BCUC’s decision to remove from the Draft Framework the language in Framework Draft No. 1 that deemed protected information to no longer be subject to confidential treatment after a period of two years.<sup>32</sup>

As noted in Shell’s March 8 Submission, most if not all of Shell’s contracts prohibit the disclosure of confidential information even after any length of time has elapsed. Further, Shell has many contracts with terms that last much longer than two years (often the contract term is ten years or more, and in some cases they may be essentially evergreen), and the majority of Shell’s contracts are renegotiated or renewed on an ongoing basis, such that the release of any of Shell’s confidential information would pose a significant risk of prejudicing these and other commercial negotiations.<sup>33</sup> As a result of the long-term sensitivity of Shell’s confidential data (which Shell expects applies equally to the confidential data of other Responsible Persons), Shell submits that information designated as confidential in the present proceeding will continue to be confidential after two years.

In light of the foregoing and in the interests of reducing regulatory burden – one of the key principles the BCUC has identified for determining whether Fuel Data will be kept confidential<sup>34</sup> – Shell submits that a further review of the confidentiality of Fuel Data after two years is unnecessary, since the commercial sensitivity of Responsible Persons’ confidential information that Shell expects will be addressed by the final framework will not diminish in this time frame. The current proceeding has involved multiple rounds of submissions by Parkland and over a dozen interveners and interested parties, over a period of almost nine months to date. Establishing another process to review the outcome of this proceeding after only two years have elapsed would place an unnecessary burden on Responsible Persons and other participants.

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<sup>31</sup> Exhibit A-9, pdf p. 18.

<sup>32</sup> Exhibit A-5, section 6.4, pdf p. 11.

<sup>33</sup> Exhibit C6-4, pdf p. 6.

<sup>34</sup> Exhibit A-9, section 3.1.1, pdf p. 15.

**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.**

In general, Shell considers the proposed undertaking and declaration process to be reasonable. However, Shell submits that a Responsible Person should be provided 60 days (rather than 30 days) to object to a request for access to confidential information. Sufficient time is required to evaluate any request for access and prepare submissions and/or evidence in response.

Shell also repeats its view that the present proceeding will have already identified the appropriate balance between the disclosure of information and the protection of Protected Information, and that “there should be a very strong presumption that Protected Information will not be released other than in accordance with the generally applicable rules and mechanisms established by the final framework ultimately issued by the Commission”.<sup>35</sup>

In particular, with respect to the possibility that a request for access may be made to “further market research on Reportable Fuels in BC”,<sup>36</sup> Shell submits that only non-confidential information or information that has been aggregated or anonymized in accordance with the final confidentiality framework should be available for the purposes of market research. Shell notes that Dr. Antweiler’s letter of comment, addressing the use of confidential data for academic research, states that in most instances Statistics Canada employs “data reduction” and “data modification” before providing researchers with access to data, which includes among other things “sampling, aggregation (or broadening of categories), removing certain variables from some or all respondents, and suppressing some respondents if the “cell size” of the data would identify the respondent”.<sup>37</sup>

The aggregation and anonymization process proposed in the Draft Framework is intended to ensure that the “the identity of the Responsible Person associated is not likely to be directly or indirectly disclosed”,<sup>38</sup> similarly to the “data reduction” and “data modification” processes identified by Dr. Antweiler. Accordingly, only information that has been previously published by the BCUC (including through the use of the aggregation and anonymization process described in the Draft Framework) should be available for research purposes.

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

Shell appreciates the BCUC’s inclusion of an automatic stay on the release of confidential information during the course of a reconsideration.<sup>39</sup> As Shell noted in its March 8 Submission, the only guaranteed way to ensure the confidentiality of Protected Information is to not release it to third parties.<sup>40</sup> Accordingly, a stay on the release or publication of information that is subject to a reconsideration is necessary to ensure that the reconsideration does not become moot due to the release of the relevant information.

**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 Fuel Protected Information Data with the Minister and selected staff in their Ministry in light of the BCUC’s responsibilities as Administrator.**

Shell considers the language in Section 3.2 of the Draft Framework allowing the BCUC to share confidential Protected Information with the Minister and selected staff in their Ministry to be reasonable, subject to the following comments.

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<sup>35</sup> Exhibit C6-4, pdf pp. 4-5.

<sup>36</sup> Exhibit A-9, pdf pp. 8 and 19.

<sup>37</sup> Exhibit E-5.

<sup>38</sup> Exhibit A-9, section 5.2.2, pdf p. 17.

<sup>39</sup> Exhibit A-9, section 7.0, pdf pp. 19-20.

<sup>40</sup> Exhibit C6-4, pdf p. 4.

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To ensure the protection of Responsible Persons' confidential information, any confidential information that is shared with Ministry staff should be subject to protections similar to the confidentiality protections ordered by the BCUC in the Gasoline and Diesel Prices Inquiry.<sup>41</sup> In particular, Shell requests that the following conditions be placed on Ministry staff's access to the confidential information of Responsible Persons:

- i. Ministry staff will keep any confidential information of Responsible Persons confidential within the Ministry;
- ii. Access to any confidential information of Responsible Persons shall be strictly limited to the Minister and Ministry Staff who have a need to access such information. To the extent that external consultants, such as information technology professionals, may have access to the confidential information of Responsible Persons, they will be bound by confidentiality undertakings;
- iii. No copies, hard copy or electronic, shall be made of the confidential information of Responsible Persons, and it shall not be transmitted electronically, except that the Ministry may retain one copy of any such confidential information, with a clear label indicating its confidentiality; and
- iv. Should (i) any of the confidential information of Responsible Persons be the subject of a request for disclosure under the *Freedom of Information and Protection of Privacy Act*, or (ii) proceedings be commenced in the Supreme Court of British Columbia in respect of the confidential information of Responsible Persons, then the Ministry shall, forthwith, provide specific notice to the affected Responsible Persons.

Please contact the writer if you have any questions.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'M. Keen'.

For: Matthew D. Keen  
Partner

MDK/roe

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<sup>41</sup> BCUC Gasoline and Diesel Prices Inquiry, Project No. 1599007, Exhibit A-14, BCUC Order G-165-19.