



July 30, 2021

Sent via email/eFile

PARKLAND – ADVANCE RULING ON CONFIDENTIALITY FOR FPTA REPORTING	EXHIBIT A-12
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To: Affected Parties, Fuel Price Transparency Act Responsible Persons, Stakeholders and Members of the Public

Re: **British Columbia Utilities Commission – Framework for the Determination of Confidentiality and Treatment of Protected Information collected pursuant to the *Fuel Price Transparency Act* – Project No. 1599130 – Workshop Questions**

On November 30, 2020, by Order G-303-20, the British Columbia Utilities Commission (BCUC) established a process for developing a framework (Framework) for the determination of confidentiality and treatment of Protected Information submitted pursuant to the *Fuel Price Transparency Act* (FPT Act).

On July 13, 2021, by Order G-214-21, the BCUC established a further regulatory timetable for the proceeding that included two oral workshops to be held on **Thursday, August 5, 2021 and Thursday, August 12, 2021, from 8:30 a.m., to 4:30 p.m., Pacific Time.**

The letter accompanying Order G-214-21 (Exhibit A-10) provided information about the structure and format of the workshops, which will include, among other things, an opportunity for parties to make opening statements and a question and answer period. Further, the following issues were identified for exploration in the workshops:

- The public interest in publishing Fuel Data;
- The specific potential harm to Responsible Persons having regard to the competitiveness of the market for reportable fuels that would result from the BCUC publishing certain Fuel Data;
- The proposed declaration and undertaking process for confidential Protected Information; and
- The proposal in Framework Draft No. 2 to permit the BCUC to share confidential Protected Information with the Minister and selected staff in the Ministry.

The BCUC indicated that more detailed questions would be distributed in advance of the workshops. These questions, which are attached as Appendix A, will form the foundation for the question and answer period at the workshops.¹

Parties are requested to address the relevant questions listed in Appendix A following their opening statements (for a combined total of no greater than 30 minutes). Parties are strongly encouraged to provide illustrative

¹ A brief presentation by BCUC staff will provide further context regarding the proposal in Framework Draft No. 2 to permit the BCUC to share confidential Protected Information with the Minister and selected staff in the Ministry, and will inform the question and answer period on this issue.

examples in their responses. Parties should also be prepared to respond to further Panel and/or BCUC staff questions regarding the Framework including, but not limited to, follow-up questions to those in Appendix A.

The Panel has reviewed the evidence and submissions to date. In the interest of regulatory efficiency, the Parties should not reiterate information already filed unless required to provide context. The workshops will provide an opportunity for parties to address anything new that has arisen since their prior submissions and, in particular, to answer the questions in Appendix A and address the Panel's or BCUC staff's questions. Where no new information is available, parties should state that they have no further response.

Sincerely,

Original signed by:

D. M. Morton
Commissioner

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Enclosure

#	High Level Key Issues Summary	Questions for Parties Please limit responses to new information only. Where no new information is available, parties are expected to state they have no further response.
The public interest in publishing Fuel Data		
1	<p>Section 3.1 of Framework Draft No. 2 sets out three key principles that will guide the British Columbia Utilities Commission (BCUC) in determining whether Fuel Data will be held confidential: (1) promotion of transparency; (2) promotion of market competitiveness; and (3) reducing regulatory burden. Section 3.1.2 establishes the process the BCUC will use to determine what Fuel Data is confidential Protected Information. Section 4.0 of Framework Draft No. 2 states that the BCUC may publish any Fuel Data not determined to be confidential Protected Information.</p> <p>Certain parties submit that the principles and process proposed in Sections 3.1.1 and 3.1.2 of Framework Draft No. 2 are inconsistent with the FPT Act. For example, Suncor Energy Inc. (Suncor) states:</p> <p>“... the process for determining which groups of Fuel Data constitute confidential Protected Information described in Section 3.1.2 of Framework Draft No. 2 is still inconsistent with the process laid out in Section 9(2) of the FPT Act. The starting point under Section 9(2) of the FPT Act is that the Administrator cannot publish Protected Information unless the public interest outweighs potential harm. The process described in Section 3.1.2 of Framework Draft No. 2 appears to be the opposite: that the Administrator must publish Protected Information unless the potential harm to Responsible Persons outweighs the public interest. This issue is at least in part attributable to the principles described in Section 3.1.1 of Framework Draft No. 2, which do not adhere strictly to the test set out in Section 9(2) of the FPT Act. For example, the “promotion of transparency”, which appears to be the overriding principle for the Commission, is not part of the test under Section 9(2) of the FPT Act. Section 9(2) states that the Administrator “may” publish Protected Information if it meets the public interest vs. harm test. It does not say “must”. In fact, as some interveners have already pointed out in their response to Framework Draft No. 1, there is nothing in the FPT Act that requires the Commission to publish any Fuel Data, regardless of whether it is Protected Information.”²</p>	<p>Questions for all parties:</p> <ul style="list-style-type: none"> • Please discuss the object and purpose of the <i>Fuel Price Transparency Act</i> (FPT Act) and the import of transparency under the FPT Act. • Given your response to the above, please discuss whether the three key principles set out in Section 3.1 of Framework Draft No. 2 to guide the BCUC in determining whether Fuel Data will be held confidential are in alignment with the FPT Act. • If promotion of transparency is a core purpose of the FPT Act is the onus under section 9(2) on Responsible Persons to demonstrate sufficient harm would result from publishing certain Protected Information such that confidential treatment is warranted, rather than the reverse? Please discuss.

² Exhibit C1-5, p. 2.

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	<p>Other parties submit that the principles are consistent with the FPT Act. For example, British Columbia Old Age Pensioners' Organization et al. (BCOAPO) states:</p> <p>“In BCOAPO’s view although all of three principles are important, the first two are directly established by the <i>Fuel Price Transparency Act</i> (FPTA) and should, therefore, be granted greater weight in any evaluation where a balance between them must be struck... 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. 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 principle and purpose: transparency”³ (footnote omitted)</p> <p>Similarly, Powell River Living Magazine (PRLM) states:</p> <p>“This legislation was enacted because of public interest in gas prices. So public interest should be the default position supported by the BCUC, and gas companies should have to prove specifically what is at risk if data is public and why it should be protected.”⁴</p>	
2	<p>In its initial submission, PRLM states that releasing “complete, specific fuel data is in the public interest”.⁵</p>	<p>Questions for PRLM and BCOAPO:</p> <ul style="list-style-type: none"> • Please discuss the public interest in publishing the Fuel Data collected pursuant to the FPT Act.

³ Exhibit C10-4, pp. 2–3.

⁴ Exhibit C9-3, p. 3.

⁵ Exhibit C9-2, pp. 1–3.

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	Similarly, in response to Framework Draft No. 1, BCOAPO urged the BCUC to “...adopt the least level of aggregation or anonymization that achieves the goal of making it suitable for public disclosure. To go beyond that unnecessarily would frustrate the purpose of the FPTA, in our submission.” ⁶	<ul style="list-style-type: none"> • Please discuss the granularity of Fuel Data the public has an interest in accessing and why. • Please discuss whether the object and scheme of the FPT Act is achieved if granular Fuel Data is not published.
The specific harm to Responsible Persons and/or the competitiveness of the market for reportable fuels that would result from the BCUC publishing certain Fuel Data		
3	<p>In concert with the release of Framework Draft No. 2, the BCUC sought submissions on the specific harm to Responsible Persons and/or the competitiveness of the market for reportable fuels that would result from publication of certain Fuel Data.</p> <p>In submissions, parties raise several concerns with the Fuel Data identified as not confidential Protected Information. For example, regarding the Shipment Volume & Shipment Date Fuel Data Shell Canada Limited states:</p> <p>“...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 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. ...fuel industry participants are aware that there is relatively little variability of the volume of fuel per shipment for retail supply. 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.”⁷</p>	<p>Questions for all parties:</p> <ul style="list-style-type: none"> • Please provide practical examples or illustrations of the specific harm to Responsible Persons or the competitiveness of the market for Reportable Fuels that would result from publishing the Fuel Data not identified as confidential Protected Information in Framework Draft No. 2. <p>Example 1: with the support of an example or illustration, please explain how publication of the shipment volume and shipment date Fuel Data would permit a detailed estimate of the throughput volume at a specific retail location. Include a detailed discussion of any supplementary information required to make such a determination, the source(s) of this information, and its timeliness. Clearly explain</p>

⁶ Exhibit C10-2, p. 12.

⁷ Exhibit C6-5, p. 3

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	<p>Regarding the Seller Name, Seller Address and Supply Location Fuel Data, 7-Eleven Canada Inc. (7-Eleven) submits:</p> <p>“Competing wholesalers and competing retailers have an interest in monitoring where supply is sourced and whether it is consistently sourced. In view of such scrutiny, contracting parties often choose to keep private their decision to engage with one another and the terms. If there are few options, then competitors may be better able to guess but even such guesswork is eliminated if there is mandatory, public disclosure.”⁸</p>	<p>the specific harm that would result if such an estimate could be made.</p> <p>Example 2: with the support of an example or illustration, please explain the harm that would result from publication of a Responsible Person’s supply relationships or customer list.</p>
The proposed declaration and undertaking process for confidential Protected Information		
4	<p>Section 6.0 of Framework Draft No. 2 outlined a process for granting access to confidential Protected Information subject to BCUC approval and execution of a declaration and undertaking form. Any confidential Protected Information disclosed pursuant to this process would remain confidential.</p> <p>Certain parties submit that the FPT Act does not confer on the BCUC the jurisdiction to grant selective access to protected information. Specifically, 7-Eleven states:</p> <p>“The FPTA does not confer on the Commission the jurisdiction to grant selective access to protected information. Section 9(2) only allows the Commission, as administrator, the option to “publish” protected information - i.e. making the information generally available to the public.”⁹</p>	<p>Questions for all parties:</p> <ul style="list-style-type: none"> • Please discuss whether the declaration and undertaking process contemplated in Framework Draft No. 2 is consistent with section 9(2) of the FPT Act. • Are there other conditions and/or safeguards that should be included in the declaration and undertaking form to provide sufficient protections for confidential Protected Information? • Please discuss the potential advantages and disadvantages of having Responsible Persons jointly develop a standardized non-disclosure agreement that, subject to BCUC approval, parties would be required to execute as part of the declaration and undertaking process.

⁸ Exhibit C2-5, pp. 2–3

⁹ Exhibit C2-5, pp. 8–10

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	Other parties submit that the proposed undertaking and declaration process is reasonable, but request certain modifications. ¹⁰ For instance, Parkland Corporation 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.”	

¹⁰ Exhibit C6-5, p. 9; Exhibit B-5, p. 10