

S. Luke Dineley
T 604-640-4219
F 604-622-5008
ldineley@blg.com

Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard St, P.O. Box 48600
Vancouver, BC, Canada V7X 1T2
T 604.687.5744
F 604.687.1415
blg.com



August 31, 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
August 12, 2021 Workshop Written Questions to Husky Energy
Responses of Intervener Husky Energy**

We are counsel for Husky Energy (“Husky”). As the British Columbia Utilities Commission (the “BCUC”) has been informed, Husky recently completed a merger and is now Cenovus Energy. However, for the purposes of these responses and this proceeding before the BCUC, Husky will continue to refer to itself as Husky.

On August 5 and 12, Husky participated in the workshops held by the BCUC. At the August 12, 2021 Workshop, Husky gave submissions and requested that any questions from the BCUC or BCUC staff related to Husky’s previously submitted written submissions be provided in writing. On August 20, 2021, Husky received written questions from the BCUC. Husky’s responses are set out below.

Responses to Written Questions

1.1 Please discuss the liquidity of the LCFS credit market in British Columbia and the negotiating power counterparties have in this market.

The LCFS credit market in BC is not a natural market. The Regulation sets increasingly stringent carbon intensity reduction targets each year. Carbon intensity is calculated on an annual (fiscal year) basis using a volume weighted average that must be reported to the BC Low Carbon Fuels Branch by March 31st of the following year. To meet the required carbon intensity, companies subject to the Regulation, such as Husky, have to balance carbon debits and credits. If debits are greater than credits, a company would need to purchase credits to be compliant with the Part 3 annual carbon intensity reduction targets of the Regulation. If credits were greater than debits then a company would be in a position to trade (sell) credits to other parties that require credits to meet the Regulation requirements. Market participants

124141123:v1

such as Husky must forecast the possible need for credits ahead of time as there are a limited and finite amount of credits in the market. The process comes to a head at the end of the fourth quarter of a company's fiscal year when a company must balance its credits and debits to meet the requirements of the Regulation, and submit compliance reports before March 31. The final credits available in the market are sold at a significant premium. If a company is in a position where it must purchase the last credits available in the market, it will pay a much higher price than if it purchased credits earlier in the year.

The Monthly LCFS Credit Report required to be submitted to the BCUC sets out the number of credit purchases and the price per credit. This is provided on a monthly basis, in real time. If the data in this report is not kept confidential, it will negatively influence the natural market competitiveness and trading process. For example, if a third party knew in advance that Husky was in a position where it needed to purchase credits, the third party could hold out, decline to sell Husky any credits earlier in the year, and charge an additional premium for credits in the fourth quarter. Further, the price Husky may have paid for credits earlier in the year would be known to that third party, which could exploit this to its own advantage.

- 1.2 Please discuss in what ways publication of LCFS-related Fuel Data after commercial contracts have been executed would be (i) similar to and (ii) different from the BCUC's standard practices respective to natural gas supply contracts entered into by public utilities.

Husky is not a public utility and does not enter into natural gas supply contracts that are regulated by the BCUC. Accordingly, Husky is not in a position to comment on the BCUC's standard practices or the similarities or differences between those and the publication of LCFS-related Fuel Data. Husky repeats its submissions that the publication of the data in the Monthly LCFS Credit Report will be harmful to Husky and negatively impact the credit market.

Husky also notes that, as set out above, it is already required to supply significant amounts of information related to BC LCFS requirements to the BC Low Carbon Fuel Branch. The BC Low Carbon Fuel Branch publishes bulletins on carbon credits bought and sold, as well as the credit-debit reconciliation process. These bulletins are published on a quarterly basis after the reconciliation process has been completed. Husky suggests that the BCUC communicate with the BC Low Carbon Fuel Branch in relation to what data is made available to the public and when. It is Husky's submission that the data published by the BC Low Carbon Fuel Branch is more than sufficient to meet the objectives of the Act.

- 2.1 Please confirm that Husky does not object to the publication of the daily high/low price and the time of the daily high/low price Fuel Data Fields.

Husky is not currently redacting as protected information the daily high/low price and the time of the daily high/low price Fuel Data Fields in the Monthly Retail Sales Report submitted to the BCUC.

- 3.1 Please explain how Husky's competitors could use information on the wholesaler name and address, and the supply location of fuel purchases to cause "significant commercial harm" to Husky.

As Husky and other interveners have outlined previously, the more information a market participant or competitor has about the operations of Husky, the more potential exists for harm to Husky's commercial interests and to the competitiveness of the market overall. The accumulation of data points that would result from the publication of protected information by the BCUC would allow a competitor of Husky to assess Husky's business plan and cost structure, and take predatory actions to acquire market share at the expense of Husky.

If the wholesaler name and address, and the supply location of fuel purchases is not kept confidential, a competitor of Husky with knowledge of the market will know Husky's supply location and will be able to infer Husky's cost of supply. A competitor could then engage in predatory practices, causing a loss of business and revenue to Husky. For example, a large portion of Husky's supply is sourced from Edmonton. When there is an interruption to that supply or an additional need for fuel, Husky is required to purchase product on the international market. This is a more expensive source of fuel. If Husky's competitors are aware that Husky is using a more expensive source of supply, a competitor could undercut Husky and acquire its business.

Further, the release of protected information could also undermine the competitiveness of the market. If the wholesaler name and address, and the supply location of fuel purchases is published, a competitor would be aware of Husky's cost base. As a result, a competitor would be able, in negotiations in the market, to reduce its price or offer only to just below Husky's cost base. This would undercut Husky, but may not be the lowest level a competitor would normally reduce its price to if Husky's costs were unknown. Where Husky was required to use a more expensive source of supply, a competitor could enter the market only just below that more expensive source, and not at a more competitive level. This would result in a higher price for consumers.

- 3.2 It is the view of some economists that perfect information is a feature of perfect competition. Please discuss in what ways, if any, the competitiveness of the market for Reportable Fuels would benefit from having more information about market participants rather than less, in light of this concept.

Husky is not in a position to offer submissions on unsourced economic theory. Husky has repeatedly set out in its submissions that if the fuel data it designates as protected information is published by the BCUC, this will cause commercial harm to Husky, and will negatively impact the competitiveness of the BC fuel market.

- 4.1 Please confirm, or explain otherwise, that the commercial harm Husky describes in the preamble above related to publishing actual transportation costs (i.e. the Transportation Costs per Litre (\$/L) Fuel Data field located in the Special Direction – BC Monthly Retail Purchases Report), rather than the Yes/No response submitted in the Purchase Price includes Transportation Costs Fuel Data field.

This is confirmed.

Husky looks forward to continued engagement with the BCUC on these issues.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly,

Borden Ladner Gervais LLP



S. Luke Dineley