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September 10, 2021

VIA ELECTRONIC DDS

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

Attention: Patrick Wruck
Commission Secretary

**RE: Parkland Corporation Request for Advance Ruling on Confidentiality for Fuel Price
Transparency Act (“FPT Act”) Reporting Submissions (“Proceeding”)
Workshop No. 1, August 5, 2021, Information Requests**

Dear Mr. Wruck:

We act on behalf of Suncor Energy Inc. (“Suncor”) in respect of the above noted British Columbia Utilities Commission (“Commission” or “BCUC”) Proceeding. During Workshop No. 1 hosted by the Commission on August 5, 2021, the Commission asked for additional submissions from Suncor on several issues. Suncor’s submissions on those issues are as follows:

1. Framework Draft No. 2, Section 3.2

Commission counsel discussed the following language in Framework Draft No. 2,¹ Section 3.2:

In its role as Administrator, the BCUC may provide confidential Protected Information to the Minister and selected staff in their Ministry.²

Commission counsel provided further clarity around the proposed information sharing process with the Ministry:

And so, just to clarify the proposed process, the BCUC would be able to provide any fuel data, including the confidential protected information, to the Minister and selected staff. The Minister would identify the selected Ministry staff who would receive that fuel data. Those individuals would be able to review the fuel data. Any confidential protected information would be shared on a

¹ Exhibit [A-9](#).

² Transcript Volume 1, p 10, lines 9-12, PDF 15 of 136 [[LINK](#)].

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confidential basis and marked as such. No specific purpose or justification for sharing that fuel data would be required, as long as it is in line with section 4(2)(b) of the Act.³

Commission counsel provided an example of the retail pilot as a situation where such disclosure to the Ministry was required due to general or special direction under section 4(2) of the FPT Act.⁴ Commission counsel then asked for further submissions regarding the Ministerial disclosure language in Section 3.2 including each party's "rationale for supporting or objecting to that proposed language; whether that language proposed is consistent with the Act and if so, why or why not. And the modifications, if any, that you could propose that would be made to section 3.2 in the final framework."⁵

Suncor maintains its original position in its Submission on Framework Draft No. 2 ("Suncor Framework 2 Submission"),⁶ that sharing "confidential Protected Information outside of the Commission is inappropriate and not permitted under the FPT Act".⁷ Suncor notes that the protections for protected information in Section 9 of the FPT Act do not make any exception for publication of information to the Minister or Ministry. However, Suncor submits that if the Commission views the Ministerial disclosure language in Section 3.2 of Framework Draft No. 2 as necessary based on the instruction it has received from the Minister or may receive, that the language should be modified as follows:

In its role as Administrator, the BCUC may provide confidential Protected Information to the Minister and selected staff in their Ministry, **solely as directed or required by the Minister. The BCUC will clearly indicate the confidentiality of any confidential Protected Information provided to the Minister or Ministry staff and will preserve the confidentiality of such information to the extent possible in the BCUC's role as Administrator.**

Barring the complete removal of the Ministerial disclosure language, Suncor submits that this language best fulfills the intent of Section 4 of the FPT Act. This language would preserve the ability of the Commission to respond to the direction of the Minister but would strictly limit the BCUC's authority to disclose confidential information to solely those situations where disclosure is necessary to comply with Subsections 4(1) or 4(2)(a) of the FPT Act. This limitation is appropriate when considering the purposes of the FPT Act, namely, to promote the competitiveness of the market for reportable fuels and public confidence in that market, as outlined in Subsection 4(2)(b) and discussed more fully by Suncor during Workshop No. 1.⁸ Consistent with the language suggested above, Subsection 4(2)(a) of the FPT Act allows only a limited exception to these purposes in the case of direction from the Minister. Suncor submits that these purposes of the FPT Act are best served by keeping confidential Protected Information tightly controlled and ensuring its confidentiality, as Suncor has discussed extensively in this Proceeding,⁹ and as accomplished by the suggested language.

³ Transcript Volume 1, p 10, line 23 – p 11, line 8, PDF 15-16 of 136.

⁴ Transcript Volume 1, p 11, lines 21-22, PDF 16 of 136.

⁵ Transcript Volume 1, p 12, lines 11-16, PDF 17 of 136.

⁶ Exhibit [C1-5](#).

⁷ Suncor Framework 2 Submission, Item 16, p 11, PDF 12 of 12.

⁸ Transcript Volume 1, p 15, line 7 – p 16, line 22, PDF 20-21 of 136.

⁹ See also Suncor Framework 2 Submission, Item 16, p 11, PDF 12 of 12.

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Suncor's proposed language would also provide codification around the process the BCUC has already indicated will be the case, that information will be shared on a confidential basis and marked as confidential.¹⁰ These measures are appropriate to ensure that confidential Protected Information, which the BCUC has determined through this Proceeding should not generally be disclosed, remains confidential.

2. Non-Disclosure of Low Carbon Fuel Standard Transactions

Commission staff requested the basis for Suncor's belief that the Ministry of Energy, Mines and Low Carbon Innovation does not publish the names of parties involved in Low Carbon Fuel Standard (LCFS) transactions in order to prevent commercial harm to submitting parties, as discussed by Suncor in its submissions. Commission staff specifically asked whether the Ministry of Energy, Mines and Low Carbon Innovation had issued a set of reasons for not including such identity information in its regular reporting and if so if Suncor could file a copy of those reasons.¹¹

Suncor is not aware of the Ministry of Energy, Mines and Low Carbon Innovation issuing any specific reasons for its publishing decisions in its regular reporting. The basis for Suncor's belief that identity information is not published in order to protect against commercial harm is that Section 22 of the *Greenhouse Gas Reduction (Renewable and Low Carbon Fuel Requirements) Act* ("LCFS Act")¹² specifically limits the disclosure of Protected Information, which is defined identically as in the FPT Act:

22 (1) In this section:

"protected information" means information that would reveal

- (a) trade secrets of a third party, or
- (b) commercial, financial, labour relations, scientific or technical information of or about a third party;

"third party" has the same meaning as in the Freedom of Information and Protection of Privacy Act;

"trade secret" has the same meaning as in the Freedom of Information and Protection of Privacy Act.

(2) Subject to this section, a person who has access to protected information that is in the custody or under the control of the government through

- (a) reports required to be provided by a fuel supplier under this Act,
- (b) the exercise of powers under section 29 [regulations in relation to inspections] in relation to a fuel supplier, or
- (c) an information-sharing agreement under section 23 that provides that the information is to be kept confidential

must not disclose the protected information to any other person.

(3) The prohibition in subsection (2) does not apply to disclosure of the following information:

- (a) information that is publicly available;
- (b) in relation to Part 2,
 - (i) percentages of gasoline class fuel or diesel class fuel supplied by a Part 2 fuel supplier in a compliance period that are renewable fuel, and

¹⁰ Transcript Volume 1, p 11, lines 3-5, PDF 16 of 136.

¹¹ Transcript Volume 1, p 38, lines 6-23, PDF 43 of 136.

¹² SBC 2008, c 16.

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- (ii) any notional transfers under section 5 [transfers between Part 2 fuel suppliers];
 - (c) in relation to Part 3,
 - (i) the determination of credits or debits in relation to all Part 3 fuels supplied in a compliance period by a Part 3 fuel supplier, and
 - (ii) transfers of credits and debits and their application under section 8 [transferring credits and debits];
 - (d) information that is required or authorized to be made public under this Act.
- (4) The prohibition in subsection (2) does not apply to disclosure in the following circumstances:
- (a) if required under Part 2 [Freedom of Information] of the Freedom of Information and Protection of Privacy Act;
 - (b) in the course of administering or enforcing this Act or a prescribed enactment;
 - (c) for the purpose of court proceedings;
 - (d) in accordance with an information-sharing agreement under section 23;
 - (e) with the consent of the person, group of persons or organization that is the third party in relation to the protected information.

As can be seen from Section 22, disclosure of Protected Information is only allowed in limited circumstances, such as if the information is information that is required or authorized to be made public under the LCFS Act or if disclosure is made in the course of administering or enforcing the LCFS Act. The *Renewable and Low Carbon Fuel Requirements Regulation* (“LCFS Regulation”)¹³ under the LCFS Act only authorizes disclosure of statistical information, in Section 11.11(5).

- 11.11 (5) The director may disclose statistical information about transfers of debits and validated credits, including, without limitation, information respecting
- (a) the numbers of debits or validated credits traded, and
 - (b) the average price per debit or validated credit traded.

Accordingly, Suncor believes that the fact that identity information is not disclosed suggests that the Ministry of Energy, Mines and Low Carbon Innovation views it as Protected Information it is not authorized to disclose pursuant to the LCFS Act, and whose disclosure would not be in the course of administering or enforcing the LCFS Act. Suncor submits that one of the primary purposes of preserving the confidentiality of such Protected Information, consistent with for instance the BCUC’s own approach to confidentiality,¹⁴ is to prevent significant harm or prejudice to a person’s competitive or negotiating position or undue material financial loss or gain.

Accordingly, Suncor submits that the BCUC’s approach to the treatment of this data should be consistent with the Ministry of Energy, Mines and Low Carbon Innovation’s existing approach; that is, the LCFS-related information should not be disclosed.

¹³ BC Reg 394/2008.

¹⁴ BCUC Order [G-15-19](#), BCUC Rules of Practice and Procedure, Rules 20.01(a)(i) and (ii), p 12, PDF 16 of 21. 31535231.4

3. Comparison to Natural Gas Supply Contracts

Commission staff asked Suncor to “discuss the ways that publication of LCFS related fuel data after ... commercial agreements have been executed would be similar or different from the BCUC’s standard practices for natural gas supply contracts”¹⁵

Suncor would like to reiterate and clarify its earlier submission that the differences between Section 71 of the *Utilities Commission Act* (“UCA”)¹⁶ and Section 9 of the FPT Act make any comparison between the BCUC’s practice regarding natural gas supply contracts and the proposed Framework of limited utility. Subsection 71(5) of the UCA *requires* disclosure of natural gas supply contracts unless the Commission determines that such disclosure is not in the public interest:

An energy supply contract or other information filed with the commission under this section **must be made available** to the public unless the commission considers that disclosure is not in the public interest. [*emphasis added*]

This provision puts the onus on the applicant to demonstrate that disclosure is not in the public interest, consistent with the BCUC’s rules on natural gas supply contracts, that an applicant who wishes to keep the contract confidential “shall provide written justification as to why it is in the public interest that the filed contracts be kept confidential.”¹⁷

In contrast, Subsection 9(2) of the FPT Act is discretionary rather than mandatory and requires the public interest to outweigh potential harm to the responsible person, creating a different responsibility for the BCUC and a different onus on responsible persons than on natural gas energy supply contract applicants. This issue of onus under the FPT was discussed in greater detail by Suncor in Workshop No. 1.¹⁸

In this context, the fact that natural gas energy supply contract information is often made public following contract execution should not inform the BCUC’s approach to LCFS contract information reported under the FPT Act, given the substantial commercial and competitive harm that could result, as Suncor has discussed throughout this Proceeding.¹⁹

4. Publication of Retail Pilot Fuel Data

Commission staff asked “whether Suncor believes there is anything in the Act that prohibits the publication of fuel data collected pursuant to the retail pilot.”²⁰

Suncor believes that information collected under the retail pilot, being data requested by the BCUC, in its authority as Administrator, under Section 6 of the FPT Act, is information “acquired under” the FPT

¹⁵ Transcript Volume 1, p 39, lines 18-22, PDF 44 of 136.

¹⁶ RSBC 1996, c 473.

¹⁷ Order [G-130-06](#), Rules for Natural Gas Energy Supply Contracts, Rule 6.0, p 2, PDF 4 of 5.

¹⁸ Transcript Volume 1, p 19, line 12 – p 20, line 7, PDF 24-25 of 136.

¹⁹ See for instance Suncor Framework 2 Submission, Item 4, pp 5-6, PDF 6-7 of 12.

²⁰ Transcript Volume 1, p 47, lines 23-26, PDF 52 of 136.

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Act, as described in Section 9(2) of the Act and is therefore protected equally to all other reportable data acquired under the FPT Act. Accordingly, all the comments Suncor has made throughout this Proceeding on the importance of protecting Protected Information reported under the FPT Act apply equally to retail pilot data. Such data should only be published if the BCUC determines that the public interest in the data outweighs the potential harm to responsible persons, pursuant to Subsection 9(2) of the FPT Act. Suncor notes that the Special Direction establishing the retail pilot (“Retail Pilot Special Direction”)²¹ does not require the BCUC to disclose any of the data it receives under the pilot, but instead requires the BCUC to prepare a report “summarizing the results of the pilot and making recommendations”.²²

Should you have any questions or require any additional information, please do not hesitate to contact the undersigned.

Sincerely,



Terri-Lee Oleniuk

cc. Chris Hustwick, General Manager, Downstream Legal Affairs Canada, Suncor Energy

²¹ https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-gas-oil/responsible-oil-gas-development/special_direction_to_bcuc_retail111787_v3_mbrsig08132020.pdf

²² Retail Pilot Special Direction, PDF 2 of 2.
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