

Imperial Oil
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September 25, 2020

SENT VIA E-MAIL ATTACHMENT

British Columbia Utilities Commission
Attention: Patrick Wruck, Commission Secretary
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Re: Reporting Requirements of the Fuel Price Transparency Regulation – Industry Engagement and Consultation - Written comments submitted to the BCUC on Draft Reporting Guidelines

On behalf of Imperial Oil (“**Imperial**”), please find below written comments as requested related to the reporting requirements and draft guidelines (“**Draft Guidelines**”) issued in regard to the Fuel Price Transparency Act (“**FPTA**”) and associated regulations (“**Regulations**”).

Imperial thanks the British Columbia Utilities Commission (“**BCUC**”) for the opportunity to provide written comments regarding the Draft Guidelines. As stated in previous public submissions, Imperial believes it can play an important role in helping inform the BCUC and ultimately assisting British Columbians understand the complexities involved in providing finished petroleum products to consumers.

Please find below our specific comments.

I. Confidentiality & Competition Act Concerns

Imperial remains concerned about public dissemination of commercially sensitive and competitive data required to be disclosed under the Regulation, including: (i) commercially sensitive information about Imperial, whether disclosed by Imperial or by other responsible persons; and (ii) information disclosed by Imperial that may reveal commercially sensitive information of other responsible persons.

The administrator has advised that all submissions will be made public unless it is satisfied that (i) the information contains protected information as outlined in Section 9 of the FPTA, or (ii) the administrator has accepted the information as confidential pursuant to the BCUC Rules of Practice and Procedure. Three important issues arise from this approach.

- **Presumption of Protection**: As drafted, there is a presumption of disclosure under the FPTA and Regulations, notwithstanding problematic legal and commercial impacts associated with broad dissemination of information. Any rules and practices around disclosure must be informed by the federal Competition Act and the adverse effects that broad disclosure of competitive information may have on the gasoline and diesel markets in British Columbia. Treatment of data should be governed with regard to preserving market competitiveness, and not automatic disclosure of data, which risks undermining the objectives of the FPTA. Transparency objectives can be met without risking disclosure that would adversely impact markets. Submissions should not be automatically made public. Rather, data must be anonymized and presented on an aggregated basis such that individual market participants may not be identified. Maintaining

confidentiality over sensitive information is in line with the objective of maintaining public confidence in fuel market competitiveness. Competition is possible only when commercially sensitive information is adequately protected, a well-established principle in competition law.

- **Determinations in Advance**: The Draft Guidelines and other information shared contemplate a responsible person making a request for confidentiality at the time of each submission. Rather than requiring monthly requests for confidentiality determinations, responsible persons should be permitted to seek blanket confidentiality determinations. The information provided by a responsible person will largely be the same each month, and the nature of the sensitivity will be constant. Accordingly, a single application should be made in advance of the first reporting period, and that determination should apply for each subsequent reporting period. This approach would reduce the monthly workload for each responsible person, and the overall resources dedicated by the administrator to this function. If the nature of the information changes, then it will be incumbent on responsible persons to seek to vary the confidentiality order associated with its monthly reporting.
- **Prompt Notice of Potential Disclosure**: In the event that the administrator makes a determination under section 9 of the FTPA to disclose confidential information belonging to a responsible person, or if any confidential materials are the subject of a request for disclosure under the Freedom of Information and Protection of Privacy Act, the administrator should immediately provide specific notice to the affected responsible persons so that they may assess whether to seek the appropriate recourse. Given the sensitivity of the information and the importance of a competitive market, responsible persons must have the ability to assess the risks and whether to seek recourse to prevent such disclosure. Given the short time frame of thirty days between the beginning of the reporting obligations and the next reporting period, these issues should be resolved in a timely manner before the reporting obligation commences.

II. Cost Information Not Complete

The Regulations request details and costs relating to transportation of imported fuel (s. 5 of the Regulations). Other sections of the FTPA and Regulations require that information be provided based on different fuel grades. Practically, it will be difficult to isolate costs to specific fuel grades as sometime costs are incurred to move multiple products together and as such costs are not attributed by grade. This is one instance, of many, where the reporting obligations do not align with operational and logistical realities. These types of complexities are not always reflected in the information requested in the FTPA and Regulations will almost inevitably lead to subjective reporting that will make meaningful comparisons across entities and product lines difficult.

More substantively, transportation costs are only part of (and often a small part of) the myriad of costs required to bring refined product to market. There are several other costs of service that are notably absent from the Regulations, including but not limited to, Low Carbon Fuel Standard (LCFS) compliance cost, terminalling, discounts and overheads. A stated purpose of the FTPA is to “encourage the competitiveness of the market in British Columbia and give the public confidence that the market is working fairly” (<https://www.gaspricesbc.ca/FAQ>). By not accurately accounting for the full cost to serve and bring refined product to market it is difficult to understand how the objectives of the FTPA can be met.

III. Request for Transfer Price information

The Regulations (section 5 and 6) require that importers of reportable fuel and wholesale purchasers of reportable fuel provide the “purchase price” of the reportable fuel imported. The FTPA does not speak to specific reporting items. The Draft Guidelines, released on September 11, 2020, were intended to provide instructions to responsible persons who are required to submit reportable fuel data under the FTPA and Regulations.

Surprisingly, the Draft Guidelines contained a new request, not present in the FTPA and Regulations, for importers or reportable fuel and wholesale purchasers of reportable to provide transfer price information.

Transfer price and external purchase price are two different concepts and mechanisms that cannot be used interchangeably. While transfer pricing is an established accounting practice, the valuations/inputs used in its formulation and application are non-standard, subjective and unique to each organization and can be applied with varying degrees of rigor and up-keep. The significant amount of ambiguity and uncertainty surrounding transfer prices makes introducing it into a regulatory disclosure obligation problematic. Among other issues, subjective and different applications will make it difficult, if not impossible, to create a consistent and uniform reporting basis and will add little, if any, value to understanding market dynamics. Furthermore, depending on how the concept of transfer price is interpreted and understood, it could raise jurisdictional issues that fall outside the scope of the FPTA and Regulations.

IV. Timing and Administration

Imperial would like to highlight once again the difficulty in executing reporting requirements in the unusually short timing provided. The FPTA was introduced in 2019. However, the Regulation was only posted on August 11, 2020 following a very tight consultation period. There was no opportunity to provide input on a draft regulation.

The effective date of the Regulation is November 1, 2020. It was assumed that the first “reporting period” under the FTPA and Regulations would be for the month of November 2020. However, the Draft Guidelines, released on September 11, 2020, clarified that the first “reporting period” would begin on October 1, 2020 --- notwithstanding that the Guidelines will not be finalized until early October after the first reporting period begins.

The October reporting period commencement date does not provide adequate time to ensure integrity of data collection, organization and submission. Imperial believes the most reasonable approach is to set November as the first reporting month. This will allow some additional time to address and clarify the above issues.

V. Conclusion

Despite the concerns noted above, Imperial firmly believes that collaboration with government, or representative agencies, is always in the best interests of all involved and we look forward to addressing these concerns productively.

Sincerely,



Brian Scammell
Revenue Manager
Imperial Oil