

BRITISH COLUMBIA UTILITIES COMMISSION
IN THE MATTER OF THE UTILITIES COMMISSION ACT
RSBC 1996, CHAPTER 473

and

the *Fuel Price Transparency Act*, SBC 2019, Chapter 46

and

Parkland Corporation
Request for Advance Ruling on Confidentiality
for *Fuel Price Transparency Act* Reporting Submissions

VANCOUVER, B.C.
August 5th, 2021

WORKSHOP

BEFORE:

| | |
|----------------------|--------------------------|
| D.M. Morton, | Chair/Panel Chair |
| W.M. Everett, | Commissioner |
| B.A. Magnan, | Commissioner |

VOLUME 1

APPEARANCES

| | |
|--------------------------------|--|
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| Terri-Lee OLENIUK | Counsel for Suncor Energy Inc. (SUNCOR) |
| Kevin WRIGHT Nicki SALINGER | Counsel for 7-Eleven Canada, Inc. (7-ELEVEN) |
| S. Luke DINELEY Lucas BATCH | Counsel for Husky Energy (HUSKY ENERGY) |
| Scott GORDON | Counsel for Imperial Oil (IMPERIAL) |
| Taryn URQUHART | Counsel for Tidewater Midstream and Infrastructure Ltd. (TIDEWATER) |
| Alexander BAER | Counsel for Shell Canada Limited (SHELL CANADA) |
| Jessica D. BUHLER | Counsel for Federated Co-Operatives Limited (FCL) |
| Leigha WORTH Kristin BARHAM | Counsel for British Columbia Old Age Pensioners' Organization, Council of Senior Citizens' Organizations of B.C., Disability Alliance of B.C., Active Support Against Poverty, and the Tenants Resource and Advisory Centre (BCOAPO) |
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Josh O'Neal

Cory Vincent

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VANCOUVER, B.C.

August 5th, 2021

(PROCEEDINGS COMMENCED AT 8:31 A.M.)

THE CHAIRPERSON: Please be seated.

Good morning and welcome to all. My name is Dave Morton, I'm the Chair and CEO Of the BCUC, and I'm also the Chair of this panel. With me on the panel are Commissioners Bill Everett and Bernie Magnan.

With us is also our staff team, and for the most part they are sitting in the front row here, so I'd like to acknowledge Kris Bienert, Ian Jarvis, Charlene de Boer, King-yi Chan, Josh O'Neal who is attending remotely, and Cory Vincent. Lino Bussoli is our counsel, and Hal Bemister, who just left the room, is our Hearing Officer.

The purpose of today's session is to provide the panel and BCUC staff with the opportunity to ask questions of parties to better understand their concerns about the treatment of protected information, and their position with respect to Framework Draft No. 2. The purpose is not for parties to examine each other, so we haven't built any of that into our agenda today.

Commission letter A-10, which was issued on July the 13th, laid out the following agenda for

1 today's workshop. Introductions and order of
2 appearances; opening statements by parties of up to 15
3 minutes in length, which provide a summary of aspect
4 of Framework Draft 2 that they support, and areas of
5 concern. Questions of clarification may be asked as
6 necessary, however intervenors will not be permitted
7 to cross-examine one another.

8 Before asking any questions, participants
9 should first identify themselves for the transcription
10 record. And then panel and BCUC staff questions to
11 parties regarding their presentations and prior
12 submissions. And then BCUC staff presentation was
13 proposed on the provisions in Framework Draft 2, and
14 then finally a question and answer period following
15 staff's presentation.

16 But upon reviewing the agenda over the last
17 couple of days, we're revising it somewhat, and staff
18 will make their presentation immediately following
19 appearances, and then parties will make their opening
20 statements. And at that time, time of your opening
21 statement, if you have questions of the panel
22 regarding the presentation or anything else, please
23 ask them then. We will not have a formal question and
24 answer period at the end. However, all parties should
25 be prepared to answer any questions from the panel at
26 any time.

1 scheduled. Parties that are not able to attend and/or
2 provide statements at today's session will have the
3 opportunity to do on August 12th.

4 When introducing yourself, please state and
5 spell your last name for the transcribers so that your
6 remarks can be properly attributed. And when you are
7 speaking, please proceed your comments with you name
8 because our transcribers are not familiar with your
9 voices so they will need to know who you are in order
10 properly attribute that on the record.

11 So I think that that's about the end of my
12 comments. I'm going to ask Mr. Bussoli to call for
13 appearances, please.

14 MR. BUSSOLI: Thank you, Mr. Chair. First in the order
15 of appearances is Parkland Corporation.

16 MR. AHMED: Good morning, Mr. Chairman, panel. My name
17 is Tariq Ahmed, last name is spelled A-H-M-E-D. I'm
18 counsel for Parkland Corporation. Participating
19 remotely today is Matt Noel-Bentley, that's N-O-E-L-
20 dash-B-E-N-T-L-E-Y, who's the director regulatory of
21 Parkland.

22 THE CHAIRPERSON: Thank you, Mr. Ahmed.

23 MR. BUSSOLI: Next is Suncor Energy Inc.

24 MS. OLENIUK: Thank you, Mr. Bussoli, and good
25 morning, Mr. Chair. My name is Terri-Lee Oleniuk, O-
26 L-E-N-I-U-K. And I'm joined by Chris Hustwick, H-U-S-

1 T-W-I-C-K, who is the general manager of Suncor's
2 downstream legal affairs team. Also here with us are
3 James McLean, M-C-L-E-A-N, who's the director of
4 national pricing, and Dan Belden, B-E-L-D-E-N, who's
5 the director of North American products. Thank you.

6 THE CHAIRPERSON: Thank you, Ms. Oleniuk, good morning.

7 MR. BUSSOLI: Next is 7-Eleven Canada Inc.

8 MR. WRIGHT: Mr. Chairman, Commissioners. Kevin
9 Wright, I'm counsel to 7-Eleven Canada. I have with
10 me a summer article student, Nicki Salinger. And as
11 per the request that was granted by the panel, the
12 representative of 7-Eleven, Mark Vella, will attend on
13 the next session, next workshop day, on August the
14 12th.

15 THE CHAIRPERSON: Thank you, Mr. Wright.

16 MR. BUSSOLI: Next is Husky Energy.

17 MR. DINELEY: Good morning, Mr. Chairman,
18 Commissioners. Dineley, D-I-N-E-L-E-Y, first name
19 Luke, counsel for Husky Energy Inc. With me is a
20 summer article student Lucas Batch, B-A-T-C-H. As we
21 advised the panel, no representative of Husky is able
22 to attend this workshop but will likely be able to
23 attend the workshop on the 12th.

24 THE CHAIRPERSON: Thank you, Mr. Dineley.

25 MR. BUSSOLI: Next is Imperial Oil.

26 MR. GORDON: Morning, panel. My name's Scott Gordon,

1 I'm the assistant general counsel at Imperial. Last
2 name is Gordon and it's spelled G-O-R-D-O-N. With me
3 today is Tamara McGillivray, who's our lead western
4 Canada fuels division manager. McGillivray is spelled
5 M-C-G-I-L-L-I-V-R-A-Y.

6 **Proceeding Time 8:38 a.m. T3**

7 THE CHAIRPERSON: Thank you, Mr. Gordon.

8 MR. BUSSOLI: Next is Tidewater Midstream and
9 Infrastructure Limited.

10 MS. URQUHART: Good morning Mr. Chairperson and panel,
11 my name is Taryn Urquhart, the last name is spelled U-
12 R-Q-U-H-A-R-T, I am counsel for Tidewater Midstream.
13 And with me today I have Mr. Brent Booth, B-O-O-T-H,
14 he is the Executive Vice President of Marketing and
15 Commercial Business Development at Tidewater. And
16 also with us remotely is Mr. Millard, Matthew Millard,
17 M-I-L-L-A-R-D, he is the General Manager of
18 Tidewater's refinery in Prince George.

19 THE CHAIRPERSON: Thank you, Ms. Urquhart.

20 MR. BUSSOLI: Next is Shell Canada Limited.

21 MR. BAER: Good morning, Commissioners, Mr. Chair. My
22 name is Alex Baer, last name B-A-E-R, and I'm here
23 today as counsel for Shell. There are also three
24 Shell representatives attending remotely today.
25 First, Nisha Nayyar, last name N-A-Y-Y-A-R, who is the
26 Pricing Team Lead at Shell Canada Limited. Second,

1 Sanjay Vadodariya, last name V-A-D-O-D-A-R-I-Y-A, who
2 is Channel Optimization Manager at Shell Canada
3 Limited. And finally, Evan Dickinson, last name D-I-
4 C-K-I-N-S-O-N, who is in-house counsel at Shell.
5 Thank you.

6 THE CHAIRPERSON: Thank you, Mr. Baer.

7 MR. BUSSOLI: Next is Federated Co-operatives Limited.

8 MS. BUHLER: Good morning, it's Jessica Buhler for
9 Federated Co-operatives Limited, counsel for Federated
10 Co-operatives Limited I should say, and we also have
11 Cheryl Vezeau here for FCL. Ms. Vezeau is responsible
12 for Renewable Fuel Supply and Compliance. That is V-
13 E-Z-E-A-U.

14 THE CHAIRPERSON: Thank you, Ms. Buhler.

15 MR. BUSSOLI: Next is British Columbia Old Age
16 Pensioners' Organization, Council of Senior Citizens
17 Organization of B.C., Active Support Against Poverty,
18 Disability Alliance B.C. and Tenant Resource and
19 Advisory Centre.

20 MS. BARHAM: Good morning, my name is Kristin Barham,
21 B-A-R-H-A-M, and I'm counsel for British Columbia Old
22 Age Pensioner's Organization, along with my co-counsel
23 Leigha Worth, W-O-R-T-H. Ms. Worth has been
24 unavoidably detained this morning, but she should be
25 there in person in short order. Thank you.

26 THE CHAIRPERSON: Thanks, Ms. Barham.

1 MR. BUSSOLI: And finally, AFD Petroleum Limited.

2 MR. TRELEAVEN: Good morning everyone. I am Adrian
3 Treleaven, T-R-E-L-E-A-V-E-N, I am the Supply
4 Logistics and Pricing Manager for AFD Petroleum.

5 THE CHAIRPERSON: Thank you, Mr. Treleaven.

6 MR. TRELEAVEN: Thank you.

7 MR. BUSSOLI: Mr. Chair, I believe that concludes the
8 order of appearances. I do have a note indicating
9 that those on Teams are having trouble hearing your
10 mic in particular, so I'm just wondering if the
11 Hearing Officer could turn up that mic, or make some
12 changes?

13 THE CHAIRPERSON: Just to be clear, they can hear it,
14 but just faintly? It is not an on-off thing?

15 MR. BUSSOLI: That's my understanding, yeah.

16 THE CHAIRPERSON: Okay. Is that better? Does that
17 make a difference? Okay, thank you.

18 So, let's begin then with Staff's
19 presentation, please.

20 **PRESENTATION BY BCUC STAFF - MR. BUSSOLI:**

21 MR. BUSSOLI: Thank you, Mr. Chair, I'll be presenting
22 on behalf of staff. So, if the PowerPoint could be
23 put on the screens. I'll just wait a second. Thank
24 you, Mr. Vincent.

25 So, the Staff presentation with respect to
26 the Framework Draft No. 2 is specific to the proposal

1 to share confidential, protected information with the
2 Minister and selected staff in the Ministry in
3 accordance with Section 4 of the Act, and if I could
4 have Mr. Vincent move one slide ahead.

5 **Proceeding Time 8:44 a.m. T4**

6 So, section 4 of the FPT Act states that,
7 "The administrator must report to the Minister as the
8 Minister requires." The Commission's function under
9 the Act is administrative in nature.

10 I understand the Audio has been dropped.

11 (DISCUSSION OFF THE RECORD)

12 MR. BUSSOLI: Not that anybody missed anything
13 significant, I was just starting with the Staff
14 presentation in respect to BCUC's role as the
15 administrator of the *Fuel Price Transparency Act*. And
16 specifically this presentation relates to section 4(1)
17 of the Act -- or section 4 of the Act, which states
18 that, "The administrator must report to the Minister
19 as the Minister requires."

20 The BCUC's function under the *Fuel Price*
21 *Transparency Act* is administrative in nature, acting
22 as the administrator of the Act. So the BCUC collects
23 fuel data on behalf of government and must report that
24 to the Minister as required. For example, to inform
25 the development of regulations for ongoing data
26 collection, targeted at the retail component of the

1 fuel supply chain in British Columbia. And that
2 specifically is a result of a Special Direction.

3 If you could move the slide forward, Mr.
4 Vincent.

5 In particular, section 3.2, in respect of
6 the Framework Draft No. 2, relates to the
7 confidentiality protected information and the sharing
8 of that. And that section states,

9 "In its role as Administrator, the BCUC may
10 provide confidential Protected Information to
11 the Minister and selected staff in their
12 Ministry."

13 Now, parties were invited to provide
14 submissions on this language. And if you can move the
15 slide forward? And so some parties submitted that
16 that proposed language is inconsistent with the *Fuel*
17 *Price Transparency Act*, while other requested further
18 details on the proposal prior to commenting. And some
19 of the questions included: What information would be
20 shared? For what purpose would it be shared? Would
21 executed confidentiality undertakings be required?

22 Go to the next slide, please.

23 And so, just to clarify the proposed
24 process, the BCUC would be able to provide any fuel
25 data, including the confidential protected
26 information, to the Minister and selected staff. The

1 Minister would identify the selected Ministry staff
2 who would receive that fuel data. Those individuals
3 would be able to review the fuel data. Any
4 confidential protected information would be shared on
5 a confidential basis and marked as such. No specific
6 purpose or justification for sharing that fuel data
7 would be required, as long as it is in line with
8 section 4(2)(b) of the Act.

9 And I'm just going to -- I don't think it's
10 on the slide but I'll read that section out.

11 **Proceeding Time 8:48 a.m. T5**

12 So, section 4 is the accountability of the
13 administrator under the *Fuel Price Transparency Act*.
14 4(1), which we referred to before, states that,

15 "The administrator must report to the Minister
16 as the Minister requires."

17 4(2) states that,

18 "The administrator must administer this Act,
19 (a) in accordance with any general or special
20 directions of the Minister..."

21 And I refer to one such example with respect to retail
22 reporting.

23 And then subsection (b),

24 "...subject to paragraphs (a), so as to promote
25 the competitiveness of the market for reportable
26 fuels, and public confidence in the

1 competitiveness of the market."

2 So, as long as it is in line with that,
3 then that would be what the justification for sharing
4 fuel data would be.

5 If we can move to the next slide please?

6 So, today input is requested, as it was
7 previously, but specifically the Commission is
8 interested in receiving submissions from parties
9 regarding that language in section 3.2 of the draft
10 framework. And including in your response, please
11 provide your rationale for supporting or objecting to
12 that proposed language; whether that language proposed
13 is consistent with the Act and if so, why or why not.
14 And the modifications, if any, that you could propose
15 that would be made to section 3.2 in the final
16 framework.

17 Next slide? I believe that's it.

18 So, that concludes Staff's presentation on
19 Section 3.2 of the Framework Draft version number 2.

20 THE CHAIRPERSON: Thank you, Mr. Bussoli, appreciate
21 it.

22 So, we'll move on then to, if any of those
23 parties that are prepared to speak today, the
24 opportunity to do so. And so I will just go through
25 the order of appearances and you'll let me know
26 whether you are or not. Parkland?

1 MR. AHMED: Thank you, Mr. Chair. Parkland's
2 representative is available on the 12th, we've advised
3 the Commission of that in advance.

4 THE CHAIRPERSON: Thank you. Suncor?

5 MR. BUSSOLI: I believe Suncor will be presenting
6 virtually. Yes, there she is.

7 THE CHAIRPERSON: I think we're ready to go here.

8 MS. OLENIUK: Thank you, Mr. Bussoli. We're just
9 getting set up here technologically, if we could have
10 a brief moment and then Mr. McLean will be ready.

11 THE CHAIRPERSON: Yes, please.

12 MS. OLENIUK: He's prepared a presentation that we
13 propose to file following the conclusion of the
14 workshop, and we just wanted to confirm that he can
15 screen share and show that presentation while he
16 answers the question?

17 THE CHAIRPERSON: Do you want us to stand down for a
18 few minutes, or should we just hold on? Let's just
19 hold on for a couple minutes, see how you do.

20 And I think Mr. Bemister, are we going to
21 swear the parties now at this point? Shall we wait
22 until they've got their technology? Okay, yeah.

23 MS. OLENIUK: Thank you for your patience. I think we
24 are ready to have the witnesses sworn in. So, just by
25 way of reminder, it will be Mr. McLean and Mr. Belden.

26 THE CHAIRPERSON: Thank you. Mr. Bemister? Thank you.

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SUNCOR ENERGY INC. PANEL

JAMES McLEAN, Affirmed:

DAN BELDEN, Affirmed:

THE CHAIRPERSON: Thank you, gentlemen. Any time you're ready.

MR. McLEAN: I'm sorry, I'm having difficulty hearing Chair Morton. Have I been given the go ahead?

THE CHAIRPERSON: Yes, please, I'm here, when you're ready, thank you.

PRESENTATION BY SUNCOR ENERGY - MR. McLEAN:

MR. McLEAN: Awesome, thank you. I will be representing Suncor in answering questions 1, 3 and 4, and for expediency I'm just going to move right to those questions and respond to them.

Proceeding Time 8:53 a.m. T6

Specific questions 1 and 4, the responses to the Commission's questions were prepared with the assistance of legal counsel. And so if there are follow up questions relating to our responses, I may not be able to answer them, but Suncor will take them away and respond back after consultation. I hope that's acceptable.

As mentioned by Terri-Lee, I do have a presentation flagged specific to questions for you which asks for examples and when that question comes I will take the opportunity to share my screen.

1 So I'm just going to go in the order of the
2 questions that were asked by the BCUC and take you
3 through those. For questions 1(1) says:

4 "Please discuss the object and purpose of the
5 *Fuel Price Transparency Act* and the import of
6 transparency under the FPT Act."

7 The Honorable B. Ralston, the Ministry of
8 Energy, Mines and Petroleum Resources, when
9 introducing the FPT Act, the first reading, indicated
10 that the intent of the legislation is to improve both
11 public confidence and competitiveness in the fuel
12 market, and that's under Legislative Assembly of
13 British Columbia 4th Session, 41st Parliament on Monday,
14 November 18th, 2019, issue number 290, page 10462 and
15 the PDF is page 8 of 51.

16 These goals, namely public confidence in
17 the competitiveness of the markets for fuels in B.C.,
18 are also highlighted as the aims of the administrator
19 must promote in subsection 4(2)(b) of the FPT Act.

20 So clearly transparency is one of the key
21 objectives of the FPT Act, but transparency for a
22 purpose, namely public confidence and competitiveness
23 in the field market. Transparency which does not
24 serve the intent of the FPT Act -- does not serve the
25 purpose of the FPT Act. Now, some of the information
26 collected under the FPT Act that's not designated as

1 confidential protected information does not clearly
2 serve this purpose, but for example, there seems to be
3 little effect in promoting public confidence and
4 market competitiveness by publishing the internal ID
5 data of responsible persons, or the total gasoline or
6 diesel sales volume by a retail location.

7 In general, the publication of raw
8 individual data does not seem to serve these ends.
9 Confidence in and competitiveness of a fuel market.
10 Properly anonymized and aggregated data best meets the
11 purposes of the FPT Act. And this idea was referenced
12 briefly in response 5 in Suncor's submission on
13 Framework Draft No. 1, page 7 or PDF page 8 of 14.
14 Moreover, publication, particularly of raw data, can
15 run counter to the underlying aims of the FPT Act. As
16 a number of interveners have pointed out, it can
17 undermine the competitiveness of the fuel market in
18 B.C. and therefore undermine public confidence in the
19 fuel market and the goal of lower and more predictable
20 gas prices. So you can see for instance responses to
21 questions 2 to 4 in the Suncor submission on Framework
22 Draft No. 2, pages 3 to 5 or PDF pages 4 to 6 of 12.

23 I'll pause there before I move to the next
24 question.

25 Moving on to question 1(2), the question
26 reads:

1 "Given your response to the above, please
2 discuss whether the three key principles set out
3 in Section 3.1 of Framework Draft No. 2 to guide
4 the BCUC in determining whether Fuel Data will
5 be held confidential are in alignment with the
6 FPT Act."

7 Well, the three key principles are
8 generally in alignment with the FPT Act. However,
9 Suncor knows that the promotion of transparency is not
10 the same thing as promoting public confidence in the
11 competitiveness of the fuel market. A point in the
12 referenced excerpt is that the BCUC appears to be
13 using the principle of transparency to trump or
14 override the provision of section 9 of the FPT Act and
15 the two other principles.

16 **Proceeding Time 8:57 a.m. T7**

17 In addition, Suncor has two outstanding
18 concerns regarding interpreting the principles when in
19 the confidentiality process they could be applied.
20 The first is one of balance and insuring that the
21 principles are interpreted in light of the purpose of
22 the FPT Act. Improving in, confidence in and
23 competitiveness of the market for fuels in B.C. The
24 second issue is insuring the principles are applied at
25 the right stage to determine whether protected
26 information can be published, not whether it is

1 protected information.

2 So, if we use total sales volume data, as
3 an example, retail gasoline and diesel sales volume
4 data reveals commercial information about a
5 responsible person and is therefore considered to be
6 protected information for the purposes of section 9.
7 There's no discretion in the FPT Act for the BCUC to
8 decide whether it is confidential protected
9 information. It is either protected information or it
10 is not protected information.

11 So, assuming that our assessment is correct
12 and that it is protected information, then we must
13 also assume that the BCUC determined that the public
14 interest in the protected information outweigh the
15 potential harm to the responsible persons. But, it's
16 not clear how the Commission, as administrator,
17 arrived at that conclusion and how the balancing
18 exercise was conducted in doing so. Certainly the
19 interveners have explained the potential harm,
20 including to competitiveness. And this idea was
21 referenced briefly in Suncor's submission on Framework
22 Draft 2, response one, page 2 or pdf page 3 of 12.

23 So, to reiterate my earlier statement, it
24 is not generally clear how the publication of raw
25 individual data serves the goal of promoting
26 competitiveness in the market and public confidence in

1 the market. And several interveners have provided
2 clear evidence that it doesn't. I'll pause there.

3 Moving on to question 1(3), the question
4 reads,

5 "If the promotion of transparency is the core
6 purpose of the FPT Act, is the onus under
7 section 9(2) of responsible persons to
8 demonstrate sufficient harm would result from
9 publishing certain protected information such
10 that the confidential treatment is warranted,
11 rather than the reverse? Please discuss."

12 Well, the starting position is that
13 information which contained commercial, financial,
14 labour relations, scientific or other technical
15 information, of or about the responsible person, is
16 protected information and therefore cannot be
17 published unless the BCUC determines that it is in the
18 public interest to do so.

19 So if the starting position is that it
20 should be kept confidential, then the onus should be
21 on the BCUC or other interested parties to demonstrate
22 that the public interest in publishing it outweighs
23 any potential harm to responsible persons.

24 As section 9 is written, information is
25 protected information by the nature of its content as
26 the first step. Then public interest must outweigh

1 the potential harm of disclosing protected
2 information, having regard to the importance of the
3 competitiveness of the market and the public
4 confidence in the competitiveness of the market.
5 These ideas were briefly referenced in Suncor's
6 submission on Framework Draft No. 2, response 1, page
7 2, or pdf page 3 of 12.

8 I'll pause, we're moving on.

9 Question 2, I believe, was directed to
10 other interveners so I will skip that. I will now
11 share a presentation on question 3.

12 **Proceeding Time 9:02 a.m. T8**

13 So, I'll just check and make sure everyone
14 can see the slide in front of them?

15 Okay, so Question 3 talks about the
16 specific harm to responsible persons and/or
17 competitiveness of the market for reportable fuels
18 that would result from the BCUC publishing certain
19 fuel data. I know we are not to reiterate statements
20 or information that is already been submitted, but I
21 did want to just start this section with a quotation
22 from our Exhibit C1-5, our letter dated June 15th,
23 which was our response to BCUC Framework Draft No. 2,
24 and what the statement really says is that volume
25 information is critical to understanding the
26 profitability and competitiveness of an individual

1 retail site. And location specific information, even
2 when annualized, is very commercially sensitive and
3 could allow competitors to identify and take action
4 against potentially vulnerable locations or
5 selectively and aggressively target the acquisition of
6 very valuable dealer relationship. We are very
7 sensitive to this information.

8 The BCUC asks for an example with the
9 support of illustration on how publication of shipment
10 volume and shipment date fuel data would permit a
11 detailed estimate of the throughput at a specific
12 retail location. So, for my example, I have used data
13 fields that are captured in the monthly retail
14 purchaser report.

15 The three data field, the BCUC station ID,
16 the retail station name, and the retail station
17 address identify the unique location. So, I can
18 pinpoint exactly which location the data relates to,
19 and my recollection is, in that that Draft Framework
20 No. 2, this information is not protected.

21 If I then go to other data fields in that
22 report, I can select fuel type, distillate, gasoline,
23 grade of gasoline; shipment date; and shipment volume.
24 If this data is not protected, I can then identify
25 that location's unique throughput, or each product
26 from one delivery date to the next. That would allow

1 me to calculate site throughput, not only on an annual
2 basis, but over very specific periods of time, and I
3 could track throughput changes over time periods with
4 precision.

5 Of note, and this will come up in the next
6 slide. Deliveries through retail stations are costly.
7 And in this business, we have to optimize costs as
8 best we can. And we use carrier partners or trucking
9 companies that are also cost conscious. As a result,
10 we try and be as efficient as possible in making
11 deliveries to locations, rather than making what are
12 called milk runs where there is small drops of fuel.
13 Whenever possible, full truckloads are used. And the
14 frequency of deliveries is adjusted rather than the
15 volume delivered to the site.

16 So, by reviewing this data we can quickly
17 understand what type of truck is being used to deliver
18 to the site, and that type of truck and that delivery
19 volume can tell us the relative competitiveness of
20 delivery.

21 Now, it will vary by location and
22 geography, however, as an example, by determining
23 whether this site is getting full b-Train deliveries
24 of fuel versus a tri-axel delivery, we could determine
25 a one and a half cent a litre cost advantage or
26 disadvantage by location. As one example

1 market? I do have very specific examples for you. I
2 would like to share them today. I don't have interest
3 in sharing them with the general public, but I do have
4 concerns in sharing these because Suncor's competitors
5 are privy to this information. And because we're
6 sharing competitive information, there's a possibility
7 that it may contravene the competition law. So, for
8 that reason, I'd like to take the panel and staff
9 through that in camera.

10 THE CHAIRPERSON: That will be fine. That will be
11 fine. However, I'd like to do that at the end of the
12 day, if that works for your schedule.

13 MR. McLEAN: We can do that, sure.

14 THE CHAIRPERSON: Thank you.

15 MR. McLEAN: Yeah. The BCUC question asked
16 specifically about shipment volume and shipment date,
17 as an example, in a question. But I just would like
18 to reiterate that even annualized volumes are of
19 concern. And, again, in the in camera session I can
20 explain how that information could harm Suncor's
21 commercial business and also may impact the price of
22 fuel for the B.C. motorist.

23 The example too that -- under question 3
24 that the BCUC asks was to support with the example or
25 illustration the harm that would result from the
26 publication of a responsible persons supply

1 relationship or customer list. Again, this is a
2 quotation from our response to the BCUC Framework
3 Draft No. 2. I won't read it out, I think you have it
4 on file. It just talks to the importance of supply
5 relationships. Sources of imported products are
6 highly competitive for both suppliers and purchasers.
7 Logistical arrangements, when known, could be used to
8 take advantage of Suncor and there are competitive
9 positions in markets. And could, in fact, undermine
10 our ability to operate competitively in B.C. or parts
11 of B.C. And, in fact, could be used outside of the
12 province.

13 Again, I'm going to go into in camera for a
14 very specific example, but I thought I'd speak
15 publicly about the importance of customer lists. With
16 respect to Suncor's customers in the province, we've
17 developed our customer list and our supply
18 relationships over a very long period of time. And
19 this has taken considerable effort and expense. We
20 take these relationships so seriously and we want to
21 protect these relationships such that we have
22 processes and systems in place that help protect the
23 confidentiality of our list. And as just one example,
24 our supply contracts and our purchase contracts
25 typically include confidentiality provisions. They
26 not only protect the supplier but also the purchaser.

1 a moment, I would like to touch on the B.C. Low Carbon
2 Fuel Standard LCFS and related data fields. So, under
3 our two submissions to Draft Framework No. 1 and then
4 2, we reiterate that the LCF fuel data contains
5 commercially sensitive information, and disclosure of
6 this information could cause significant commercial
7 harm for competitors seeking market share or
8 counterparties' impacts on their negotiations.

9 Moreover, and I have to stress this, the
10 publication of the data as collected under the FPT
11 Act, does not serve the public interest, in that as
12 currently formulated, it does not present a complete
13 picture of the LCFS compliance cost for Suncor, and we
14 would just say for any other intervenor. And I will
15 take you through this in detail.

16 Some examples of how commercial harm could
17 come from competitors seeking market share or
18 counterparties' impacts on negotiation. If a seller
19 of credit gains access to Suncor's credit purchase
20 price from a recent and prior transaction, this
21 forfeits Suncor's negotiating power with that credit
22 seller. The seller would simply expect Suncor's past
23 price as an absolute minimum. We believe Suncor's
24 costs would rise, and we will have to try and pass
25 these increased costs onto the market in our fuel
26 pricing to recover that incremental expense.

1 Similarly -- well, let me back up. And,
2 you know, a key pathway to complying with the Low
3 Carbon Fuel Standard is the purchase and marketing of
4 biofuels or renewable fuel. And so if a supplier of
5 these fuels gains access to our credit purchase price
6 from prior and recent transactions, Suncor would
7 forfeit its negotiating power, and that seller will be
8 able to use our credit purchase prices to calculate
9 our alternative cost structure. So, once again, our
10 costs for buying biofuels ore renewable fuels would
11 rise, and we would have to try and pass on those
12 increased costs to the B.C. Market, to recover that
13 incremental expense. The cost would be passed on in
14 our fuel pricing.

15 Now, the cost of compliance as you know
16 have risen dramatically over the last five years, and
17 are projected to rise even more significantly through
18 2030. A competitor gaining access to Suncor's credit
19 purchase price in prior or recent transactions, would
20 have an immediate insight into the Suncor's cost of
21 compliance. And because the cost of compliance is
22 becoming such a significant factor in the cost of
23 product supply, the knowledge of the relative
24 competitiveness in this area could allow competitors
25 to take competitive action.

26 As one example, they could raise market

1 prices with a much lower risk of competitive pricing
2 response from Suncor in that we have to try and
3 recapture a higher cost to serve the market. Or, they
4 could price aggressively in the short term, forcing
5 Suncor to exit from a market that we simply can't
6 compete in, which one could argue could lower fuel
7 prices to the consumer in the (inaudible). But, over
8 the long term, it would result in a less competitive,
9 higher priced market.

10 As we stated in Draft Framework No. 2, we
11 request that the BCUC consult with the B.C. Low Carbon
12 Fuels branch, to ensure your analysis, conclusions and
13 reporting in this area are accurate, fully
14 representative of the range of costs of LCFS
15 compliance, and protective of highly sensitive
16 competitive information. And, all fuel data that must
17 be submitted in the B.C. Monthly LCF credit report be
18 marked as confidential protected information.

19 **Proceeding Time 9:16 a.m. T11**

20 As an example, the B.C. Ministry of Energy
21 Mines and Low Carbon Innovation publishes a credit
22 market activity report on a monthly and quarterly
23 basis, which outline the number of credits sold,
24 number of transactions, as well as the minimum average
25 and maximum price. And in doing so, the Ministry does
26 not disclose the names of the parties involved in the

1 transactions for the very reasons that we've noted.

2 I'll pause there and ask if there is any
3 questions? Just give me one moment please.

4 I'll be one to two minutes, I just want to
5 make sure I have our latest response to question 4.

6 THE CHAIRPERSON: Okay.

7 MR. McLEAN: Thank you for your patience. I'm now
8 going to turn my attention to question number 4.

9 Question 4-1 says,

10 "Please discuss whether the declaration and
11 undertaking process contemplated in the
12 Framework Draft No. 2 is consistent with Section
13 9(2) of the FPT Act."

14 Well, the short answer is no. Connected to
15 the statutory submissions made earlier, once it is
16 determined that the public interest does not outweigh
17 the potential harm of public release of the
18 information, that information cannot be published by
19 the BCUC as the FPT Act administrator.

20 I'll give you some other consideration.
21 Similar to the problems with the determination of
22 confidential protected information in the framework
23 discussed above, it is not clear under what
24 circumstances access would be granted. The example of
25 furthering market research of reportable fuels in B.C.
26 that was provided in Draft Framework No. 2, is

1 concerning, in the sense that one would assume that
2 the data would somehow be published by whomever is
3 conducting the research, which would defeat the
4 purpose of the undertaking.

5 We contemplate how administratively
6 burdensome would this be. Suncor has no idea of how
7 many requests to expect. And assuming access is
8 granted, how would we ever know how the data was
9 actually used? How would we know if it was breached?
10 How would we prove that?

11 For details on these comments, please see
12 Suncor's submission to Framework Draft No. 2 response
13 6, pages 8 and 9, or PDF copy 9 to 10 of 12.

14 I'll move to question 4(2).

15 "Are there other conditions and/or safeguards
16 that should be included in the declaration, and
17 undertaking form to provide sufficient
18 protections for confidential protected
19 information?"

20 Well, first I have to start by reiterating
21 that Suncor is opposed to the undertaking process.
22 And we haven't had sufficient time to consider how to
23 make the process more secure and robust. But we would
24 definitely like to participate if the BCUC proceeds
25 with incorporating this process into the framework.

26 Question 4(3) reads,

1 "Please discuss the potential advantages and
2 disadvantages of having responsible persons
3 jointly develop a standardized non-disclosure
4 agreement that, subject to BCUC approval,
5 parties would be required to execute as part of
6 the declaration and undertaking process."

7 Well, once again, Suncor is opposed to the
8 undertaking process as a whole. If it was to be used
9 however, Suncor sees advantages and disadvantages of a
10 jointly developed NDA. The advantages would be an
11 able, responsible persons to have a say to ensure the
12 NDA reflects every responsible persons' unique
13 circumstances. The development process would have to
14 actually give a responsible person a say to ensure
15 that as appropriate control as possible are in place,
16 given the information to remain confidential. This
17 would ultimately make the NDA more effective,
18 promoting competitiveness for the reasons already
19 discussed.

20 **Proceeding Time 9:21 a.m. T12**

21 The disadvantage is that development
22 jointly would be time insensitive and rendering
23 regulatory -- sorry, reducing regulatory efficiency.
24 Ultimately, if a declaration undertaking process is
25 used, Suncor would prefer the NDA be jointly developed
26 by responsible persons, including Suncor.

1 That concludes our responses to the BCUC
2 questions posed. Again, we'll have in camera
3 information for the panel and staff, I guess, at the
4 end of the day. Just a second to see if there's
5 anything else that the panel or the staff would like
6 to ask of Suncor at this time?

7 THE CHAIRPERSON: Thank you. I'll ask staff if they
8 have any questions, please?

9 MS. de BOER: Good morning, thank you, Mr. Chair.
10 Staff would appreciate an opportunity to ask Suncor
11 some questions, starting with myself, Charlene de
12 Boer, D-E B-O-E-R. And I believe my colleague, Ms.
13 Bienert, will be asking some questions as well.

14 **QUESTIONS BY BCUC STAFF - MS. de BOER:**

15 MS. de BOER: So, to begin, I would like to thank
16 Suncor for their presentation and for the helpful
17 information they provided. I did have a couple of
18 follow-up questions to your deck. And the first was
19 with regards to the slide 4, where Suncor made refence
20 to being able to determine the volumes being delivered
21 to a specific location based on the trucks that are
22 visiting that facility. And I'm interested in if you
23 could clarify how a competitor would gain insights
24 into the types of trucks that are visiting a
25 particular retail station? Where a competitor would
26 access that particular information?

1 MR. McLEAN: Right. So if we use an example of a
2 competitor trying to understand Suncor's volume
3 throughput at a retail location, it's not
4 straightforward but visual observation would be the
5 way to do that. Clearly, the site is visible to the
6 public. As the truck arrives, a competitor could
7 determine the size of that truck based on its
8 configuration. And standard practice is the size of
9 the truck does not change. It's a function of the
10 inventory on the site, the size of the tanks on the
11 site. So the truck is sized to the station. The size
12 of the truck does not typically change, it's the
13 frequency of delivery that changes.

14 So, under the assumption that the truck is
15 efficient and full, we could estimate to a high degree
16 of precision how much fuel is brought at the location
17 on delivery. And then we could use the data from the
18 retail purchaser's report to accurately understand the
19 frequency of delivery and come up with a site volume,
20 on an annualized basis or on a more precise basis
21 delivery to delivery.

22 Is that clear and does that answer your
23 question?

24 MS. de BOER: That's helpful, thank you. If visual
25 observation is the method to determine the size of the
26 truck, would that same method also disclose the

1 shipment date, shipment frequencies and the other
2 information that Suncor is concerned with the BCUC
3 potentially publishing?

4 MR. McLEAN: It is true that their visual observation
5 could allow us to also understand the date of the
6 delivery. But I think you have to understand that
7 that's very difficult, time insensitive and expensive.
8 So if we think about trying to, you know, across B.C.
9 understand our competitors' delivery dates and
10 volumes, that's a very difficult undertaking that we
11 would have to coordinate, put resources in, and it
12 would be costly and time insensitive.

13 By the BCUC publishing this data one
14 analyst in B.C. and Canada, anywhere in the world,
15 could be used to analyze sites all across the province
16 and to very quickly, to a high degree of accuracy, and
17 with little cost, be able to account that information.

18 **Proceeding Time 9:25 a.m. T13**

19 So it's not that the information is not
20 available, it's that a disclosure, the public
21 disclosure of this information makes this information
22 immediately available. It's highly accurate because
23 it's reported by the retail purchaser. And, for lack
24 of a better word, it's real-time data, depending on
25 the frequency of the reporting by the BCUC, this
26 information is available to our competitors almost

1 immediately and then they can take action on that
2 information.

3 Is that clear and does that answer your
4 question?

5 MS. de BOER: No, that's helpful, thank you. And would
6 a necessary assumption be that a truck -- if someone
7 was there to visually observe a delivery, that that
8 truck is visiting just a single retail station or
9 would the observations also need to trace that truck
10 in its path throughout the day?

11 MR. McLEAN: It depends. You know -- well, I'll start
12 by saying that I'm not a distribution expert but I
13 have experience in this area. It could be that truck
14 compartments are used for one resale site to the
15 other. But, again, on observation, if I was a
16 competitor of Suncor trying to take advantage of
17 Suncor, I would observe how that truck is being
18 offloaded into those tanks. And I would have a high
19 degree of certainty that each delivery from that point
20 on is consistent. So with simple understanding of
21 truck configuration and how that drop is made, I can
22 quickly understand the volume of product that's put
23 into that retail location. Because, again, the
24 delivery of fuels is expensive. We're all trying to
25 minimize our costs and therefore we're trying to be as
26 efficient as we can, as are the distribution companies

1 that deliver fuel. So that means that basically we're
2 looking at full compartments or full loads of product
3 going into tank.

4 MS. de BOER: Thank you.

5 MR. McLEAN: That answer your question?

6 MS. de BOER: Thank you. If I could turn to slide 8 of
7 your presentation, you made references to supply
8 relationships and the sensitivity of this information,
9 particularly during times of supply disruption. Now,
10 I appreciate that Suncor will be providing an example
11 later today on a confidential basis, but I would
12 appreciate it if you could speak to the ways, if any,
13 that the lag between actual supply decisions, such as
14 under a disruption, then reporting fuel data to the
15 BCUC and then ultimately a potential publication of
16 that date, whether the lag has any impact to the
17 sensitivity of this particular fuel data?

18 MR. McLEAN: I had a little difficulty hearing your
19 question but I think I understand the gist of it. I'm
20 a little bit concerned that my answer will dip into
21 competitively sensitive information. As much as -- I
22 have to be honest, I have no concerns with the general
23 public understanding this. It is the fact that there
24 are other interveners that are competitors of Suncor
25 that will hear my answer that could take advantage of
26 our situation, and/or the fact that under the

1 *Competition Act* I have to make sure that I don't say
2 anything that might put Suncor in violation of that
3 Act. So, for that reason, I would like to answer the
4 question in camera.

5 THE CHAIRPERSON: That's fine.

6 MS. de BOER: Yeah, I'm happy to ask later today. I'd
7 also to thank Suncor for the additional information
8 regarding the LCFS related fuel data. On your final
9 slide Suncor states that the Ministry does not
10 disclose the names of parties involved for the very
11 reasons noted by Suncor. And I'm wondering if you
12 could please clarify whether the Ministry has issued a
13 set of reasons for not including the identity
14 information? And, if so, if you could file a copy of
15 those reasons as part of this proceeding.

16 MR. McLEAN: I'm sorry, I'm having a hard time
17 hearing, but I think what you said was has the
18 Ministry published a statement or rationale as to why
19 they don't disclose the data specific to an obligated
20 party, is that what I heard?

21 MS. de BOER: That's correct. Your slide indicated
22 that it didn't do so for the reasons noted by Suncor.
23 And I'm curious the basis of that statement.

24 MR. McLEAN: I see. Right, okay. I will have to
25 double check. I think our statement is with respect
26 to our discussions with the B.C. Ministry, you know,

1 in consultation with them. I'm not sure if they
2 actually have a statement that says that. So, please
3 allow me to take that away and we'll come back to you
4 on that.

5 **Information Request**

6 **Proceeding Time 9:31 a.m. T14**

7 MS. de BOER: Thank you. I don't think there was a
8 reference to it in your slide deck this morning, but
9 on page 5 of Suncor's submission regarding Framework
10 Draft No. 2, which is marked as Exhibit C1-5, Suncor
11 made reference to the mandatory disclosure regime for
12 natural gas supply contracts that the BCUC has. Are
13 you familiar with that statement?

14 MR. McLEAN: I am familiar with the statement. The
15 expertise lies with our legal counsel. I believe
16 Suncor took exception with the reference to that as an
17 example in that we felt that it was out of context.

18 MS. de BOER: I'd appreciate it if Suncor could discuss
19 the ways that publication of LCFS related fuel data
20 after a commercial agreements have been executed would
21 be similar or different from the BCUC's standard
22 practices for natural gas supply contracts?

23 MR. McLEAN: Can you give me just a moment to confer
24 here, I'm going to go on mute.

25 MS. de BOER: Thank you.

26 MR. McLEAN: Thank you for your patience. I have

1 conferred with our legal counsel, and on advice from
2 the counsel, we'd like the opportunity to respond in
3 writing to your question rather than trying to answer
4 it on the spot here.

5 **Information Request**

6 MS. de BOER: Great, thank you. At this point I did
7 have a few questions relating to Suncor's Exhibit C1-
8 5, and if you wouldn't mind ending sharing your
9 screen, I'll ask our staff over here to pull that up
10 and share that exhibit?

11 MR. McLEAN: Thank you, I didn't realize I was still
12 sharing my screen, thank you.

13 MS. de BOER: Are you able to see that?

14 MR. McLEAN: I do, thank you.

15 MS. de BOER: Great, so on page 3 of Exhibit C1-5,
16 Suncor indicates that publishing fuel data respecting
17 the physical capacities of a responsible person's
18 storage tanks, and I quote,

19 "...presents risk to the industry participants and
20 the physical and net usable capacities of a
21 storage terminal is critical to understanding
22 its efficiency in market competitiveness."

23 Is that correct?

24 MR. McLEAN: Correct.

25 MS. de BOER: With the help of an illustration, could
26 you please explain how the physical and net usable

1 capacity of a storage terminal is critical to
2 understanding its efficiency in market
3 competitiveness?

4 MR. McLEAN: I'd be happy to answer that question.
5 Again, for reasons of competitiveness in the
6 *Competition Act*, I'd like to answer that question in
7 camera.

8 MS. de BOER: Okay, thank you. If you can speak to
9 publicly, how does Suncor go about protecting
10 information regarding the capacity of its storage
11 tanks?

12 MR. McLEAN: Probably best to answer that question in
13 writing. However, with respect to all confidential
14 information within Suncor we have processes and
15 procedures whereby we protect information. If we are
16 sharing with third parties, it would cover it under
17 contractual arrangements with terms and conditions
18 around confidentiality.

19 MS. de BOER: Would you agree that the storage tanks
20 are generally visible to the public or to your
21 competitors?

22 MR. McLEAN: Yes, I believe this gets into a -- I
23 recall seeing at some point a commentary, I am not
24 sure if it was from the BCUC or others, that a tank
25 could be visible from outside the terminal and
26 estimated as to the capacity of things. I would

1 suggest that's similar to the commentary I made
2 earlier about truck deliveries to the retail sites.

3 **Proceeding Time 9:35 a.m. T15**

4 However, specific information about
5 products and tank service and tank capacities gives a
6 much more precise answer with respect to the
7 capacities and efficiencies of a retail terminal.
8 Because the volumes going through a terminal are so
9 high and the cost factors of that terminal are so
10 important in the ultimate cost of deliver of fuels
11 into the market, that is very confidential information
12 that could be used. And it's the precision of the
13 data provided to the BCUC that is the concern for
14 Suncor.

15 MS. de BOER: And, based on your own personal
16 expertise, if you were viewing your tank or a
17 competitor's tank, do you think you'd be able to make
18 a reasonable approximation for the capacity of that
19 infrastructure?

20 MR. McLEAN: I'm not sure I'm fully qualified to answer
21 that question. I could give an approximation, but
22 there -- I believe, personally, that there would be a
23 degree of precision that I would be uncomfortable
24 with. I could potentially give a range, but with
25 respect to the costs of that terminal and try and
26 determine the cost impacts on fuel volumes going

1 through that terminal, I would not have the precision
2 to be confident.

3 MS. de BOER: Thank you. Also on page 3, Suncor states
4 that the location specific information, even on an
5 annualized basis, is commercially sensitive and it
6 could allow competitors to identify and take action
7 against potentially vulnerable locations. Is this one
8 of the areas you were going to provide an illustration
9 in camera for?

10 MR. McLEAN: It is the very first example that I will
11 give in the in camera session.

12 MS. de BOER: Perfect, thank you. On page 4 of this
13 same exhibit, with regard to the daily high/low price
14 information that Suncor provides to the BCUC, Suncor
15 states that,

16 "While retail gasoline prices are publicly --
17 are displayed publicly, the observation,
18 collection, and collation of moment-by-moment
19 pricing changes on a location-by-location basis
20 is very difficult, if not impossible..."

21 And I think this is consistent with the statements you
22 made this morning.

23 You continue that public and subscription
24 bases sources, such as GasBuddy and Oil Price
25 Services, are indicative of price changes that could
26 not be used to reliably track moment-by-moment or

1 site-by-site pricing. And I'm wondering if Suncor
2 could please explain the basis for its submission that
3 public or subscription based data is less reliable
4 than the fuel data submitted to the BCUC.

5 MR. McLEAN: Certainly. I'm going to answer the
6 question from Suncor's experience and Suncor's
7 perspective. Obviously making sure that our fuel
8 pricing is competitive in the market is critical. I
9 think in the fuel pricing inquiry and other forums
10 like this we've talked about the fact that motorists can
11 make a decision based on price, and an immediate
12 decision, and will be swayed by even small differences
13 in price. So, Suncor needs to make sure that our
14 Petro-Canada gas stations are competitive with those
15 stations around us. And we have processes in place
16 and data collection in place to understand moment-by-
17 moment pricing changes to the best of our ability so
18 that our stations remain competitive.

19 Obviously we understand our own pricing for
20 our stations where we set -- you know, there are
21 different relationships with Petro-Canada fuel
22 stations. For those where my team and I set the
23 pricing, we know our own pricing changes moment-by-
24 moment. And so when looking at public or subscription
25 based services like GasBuddy and OPIS or Oil Price
26 Information Service, we are able to look at their

1 reporting of data versus our actual pricing. And what
2 we have found is that it's not to the level of
3 accuracy or timeliness for us to rely on it to make
4 moment-by-moment pricing decisions.

5 To a lesser extent, we can compare it to
6 our observations of competitors' pricing in the market
7 and we see the same thing. So it's for those reasons
8 that, in our opinion, we have made the statement as
9 written in this document.

10 Does that answer your question?

11 MS. de BOER: Could you elaborate further on the
12 timeliness concern you raised and how that would
13 compare with the timeliness of data being reported to
14 be BCUC and the potential time lag for publication?

15 **Proceeding Time 9:40 a.m. T16**

16 MR. McLEAN: Certainly. I mean, you're asking for
17 daily high and low information on pricing. If you are
18 asking that from the entity that is setting pricing,
19 so that information will be extremely accurate and
20 will be specific to the day. Our observations with
21 respect to prices as reported to GasBuddy and Oil
22 Price Information Service, which relies heavily on the
23 information that's collected by GasBuddy, is that it's
24 consumer reported. And so the timeliness of -- and
25 the accuracy of that data is not the same. It may
26 lag. It may be inaccurate. That is what we've seen

1 when we have audited the information from those
2 services.

3 MS. de BOER: Thank you. And in your remarks this
4 morning and on page 6 of Exhibit C1-5, Suncor raised
5 concerns with the potential publication of the
6 internal ID fuel data. In your earlier submissions
7 Suncor stated that the internal ID could assist in
8 reverse engineering of sensitive information, and that
9 it also might expose Suncor to cyberthreats.

10 I'm curious as to whether marking this data
11 as an optional field in the BCUC reporting guidelines
12 would alleviate Suncor's concern with the particular
13 internal ID fuel data?

14 MR. McLEAN: So, if I understand your question, Suncor
15 would have the option of reporting or not reporting
16 the internal ID?

17 MS. de BOER: That's correct.

18 MR. McLEAN: That would alleviate the concern. I have
19 a question for BCUC, if I may?

20 THE CHAIRPERSON: Go ahead. Please go ahead.

21 MR. McLEAN: Using the internal ID as an example, how
22 does the publishing of that particular data field help
23 promote public confidence in the market?

24 MS. de BOER: I think that the public interest and the
25 potential harm resulting from publication of the fuel
26 data is before the panel in this particular

1 proceeding. The Framework is considering that
2 balance, and the panel will be determining what
3 information is confidential protected information in
4 establishing a framework to do so. I don't think I'm
5 in a position today to answer the question of what the
6 public interest might be in the internal ID data.

7 THE CHAIRPERSON: I think we can leave it at that.

8 MS. de BOER: Thank you.

9 I did have one final question for Suncor
10 and then I think I'll hand it over to my colleagues.
11 But just regarding the retail station fuel data,
12 certain parties have submitted that the fuel data
13 collected via the retail pilot and the retail station
14 survey is for a different purpose than the wholesale
15 fuel data collected pursuant to the regulation, and
16 that it should not be published by the BCUC.

17 Does Suncor consider that there is anything
18 in the FPTA that prohibits publication of fuel data
19 collected pursuant to the retail pilot?

20 MR. McLEAN: I have to say there is a strong echo on
21 the microphone being used, so I had a difficult time
22 hearing the question.

23 MS. de BOER: My apologies. Curious as to whether
24 Suncor believes there is anything in the Act that
25 prohibits the publication of fuel data collected
26 pursuant to the retail pilot?

1 MR. McLEAN: I would like to confer with counsel on the
2 answer to that question, and we'll respond in writing
3 to that question.

4 **Information Request**

5 MS. de BOER: Thank you.

6 THE CHAIRPERSON: Thank you, Ms. de Boer.

7 **QUESTIONS BY BCUC STAFF - MS. BIENERT:**

8 MS. BIENERT: Thank you for your very valuable
9 presentation today. I do have a question, but before
10 we proceed to the questions that I do have which are
11 very few, and more high level, we did want to provide
12 a potential rationale for --

13 THE CHAIRPERSON: Excuse me -- perhaps you could
14 introduce yourself?

15 MS. BIENERT: Oh, I'm very sorry, Hi, it is Kristine
16 Bienert, and I'm from the BCUC staff team. Thank you
17 very much.

18 The rationale that we want to provide with
19 regards to a potential benefit that could come from
20 the unique identification number is that in order for
21 certainty in terms of the transaction that has been
22 provided in the reports, a unique identifier would
23 allow a traceability factor, and that may be a
24 potential benefit of having the identification number
25 made available. So, we wanted to put that out there
26 if parties would like to make submissions on that as

1 well, it would be very valuable to us.

2 I did want to just ask a very high level
3 questions today to just confirm our understanding with
4 regards to the Transparency Act, and some of the
5 potential risks that have been disclosed.

6 **Proceeding Time 9:45 a.m. T17**

7 wanted to know from a high level if it is
8 consistent with the understanding of Suncor that aside
9 from the potential harm that could result from the
10 disclosure of information, that the disclosure of
11 disaggregated information could provide greater
12 transparency of pricing, and fuel prices that result
13 from pricing of regarding the build-up of costs. And
14 if that is not the case, if Suncor could clarify why
15 it does not believe that customers could potentially
16 better understand pricing if the disclosure of
17 disaggregated information was made available to them?

18 MR. McLEAN: Again, I'm having a little bit of an echo,
19 but I think I can answer your question.

20 Suncor's concerns with cost information are
21 not with respect to the public understanding our
22 costs, it's with respect to our competitors having
23 access to our costs and to taking advantage of Suncor
24 in the marketplace, and potentially ultimately (audio
25 drops) the price of fuel in British Columbia.

26 So, I think the opportunity here is not to

1 provide very detailed data, it's to report your
2 findings on an aggregated and anonymized basis. And I
3 think that's the opportunity here under this Act, is
4 to take the data, analyze it, come to some
5 conclusions, report it on an anonymized and aggregated
6 basis to protect those that are submitting the data,
7 and providing clarity to the public on what the data
8 is telling you.

9 Does that answer the question?

10 MS. BIENERT: Yes, that's very helpful, thank you. I
11 just have one last question --

12 MR. McLEAN: I just wanted to ask -- sorry, go ahead.

13 MS. BIENERT: -- and I just wanted to clarify if it is
14 in your belief that it is a possibility that should
15 the objectives of the FPTA be achieved through
16 disclosure of information on a disaggregated basis,
17 that there is a possibility that the competitive
18 interests of your company could be at risk or harmed?

19 MR. McLEAN: So, if I understood the question is, if
20 the data is reported on an aggregated and anonymized
21 basis, could Suncor's commercial interests be at risk?
22 Is that the question?

23 MS. BIENERT: The question is, with regards to the
24 disaggregated data. So, if the disaggregated data is
25 disclosed and made available, and the objectives of
26 the FPTA are to do that, if it is possible then that

1 Suncor could in fact find itself and its business
2 interests harmed as a result of that disclosure in
3 accordance with the *Act*?

4 MR. McLEAN: If you could just give me one minute
5 please?

6 I just wanted to make sure I completely
7 understand here, so I think what you're saying is, if
8 Suncor's disaggregated submission of data is publicly
9 disclosed, it could be harmful to Suncor's ability to
10 compete, and commercial business in the B.C. market?
11 That's the question?

12 MS. BIENERT: That is correct.

13 MR. McLEAN: Yes, and our position all along has been
14 yes, it would be harmful to our business.

15 THE CHAIRPERSON: Sorry, Mr. McLean, was that your
16 response, it will be harmful? Was that your response?

17 MR. McLEAN: It will be harmful, yes, yes, affirmative.
18 It will be harmful to Suncor's position in the market.

19 THE CHAIRPERSON: Thank you, sir.

20 MS. BIENERT: Okay, that's your answer then, the
21 complete answer?

22 MR. McLEAN: I do have a follow up question for you
23 with respect to -- I'm sorry just using that as one
24 example, it's not this specific data field, but you
25 mentioned that again the internal ID would be helpful
26 in that it helps the BCUC to understand individual

1 data submissions by interveners such as Suncor.

2 **Proceeding Time 9:50 a.m. T18**

3 I do understand that that internal data
4 field could be useful for you in collating and
5 assessing data. The question I had was, how does the
6 publishing of that data publicly help promote public
7 confidence in the market?

8 MS. BIENERT: So I think that I'm presenting a
9 potential benefit that could be perceived as a
10 benefit, but I can't speak on behalf of the panel, so
11 that would be determined at a later point. But a
12 potential benefit may be that if this aggregated data
13 is disclosed and customers would like to understand if
14 that data field is linked or is a unique data field
15 that can be specifically traced through to its source
16 in the reports, should that information be disclosed,
17 that they'd have confidence that the data in fact was
18 a unique identified data field that could be linked
19 back to the original reporting filed.

20 So in other words, it's a more to provide
21 some sort of traceability of the data to the reports
22 filed to the actual data itself. And I think that
23 staff would be very supportive of alternative
24 approaches to provide that sort of unique traceability
25 that would be similar to a purchase order or an
26 invoice type unique identifier number that would

1 achieve a similar outcome.

2 MR. McLEAN: Thank you.

3 MS. BIENERT: Thank you.

4 That's all of my questions, Mr. Chair.

5 Thank you.

6 THE CHAIRPERSON: Thank you, Ms. Bienert. And thank
7 you Mr. McLean.

8 Mr. Bussoli, you look like you're about to
9 get up?

10 MR. BUSSOLI: Yes, Mr. Chair. Just two matters of
11 housekeeping with respect to Suncor and then BCUC
12 staff. The Suncor slide deck, Ms. Oleniuk, I would
13 like to have that marked as the next exhibit for
14 Suncor. If a copy hasn't already been provided to the
15 Commission secretary, I'd ask that that would be taken
16 care of by the end of the day. But the Exhibit number
17 for the Hearing Officer would be C1-7.

18 THE HEARING OFFICER: Marked C1-7.

19 (SUNCOR'S SLIDE DECK PRESENTATION MARKED EXHIBIT C1-7)

20 MR. BUSSOLI: And then also the presentation from staff
21 this morning, that slide deck will be submitted as
22 well and that should be marked as Staff Exhibit A2-2.

23 THE HEARING OFFICER: Marked A2-2.

24 (BCUC STAFF SLIDE DECK PRESENTATION MARKED EXHIBIT A2-
25 2)

26 MR. BUSSOLI: Thank you.

1 THE CHAIRPERSON: Thank you, Mr. Bussoli.

2 And Suncor, Ms. Oleniuk, unless there's
3 anything further from yourself or your team, I would
4 like to -- thank you. You're on mute. Can you hear
5 me?

6 MR. McLEAN: Yes, I can hear you.

7 THE CHAIRPERSON: Okay.

8 MS. OLENIUK: It is cutting out a bit. I wasn't sure
9 if there was a request in there?

10 THE CHAIRPERSON: Okay. I just wanted -- just saying
11 thank you very much to you and your team, and just
12 confirmation that there's nothing else from your side.
13 And I assume there isn't. So thank you very much, we
14 much appreciate it.

15 I'd like to take a break now, but before we
16 do I'd like to ask anyone else that's attending
17 remotely, if you're experiencing the same issues that
18 Suncor team members were, can you please -- were you
19 having trouble -- are you having trouble hearing me
20 and are you having trouble -- were you having trouble
21 hearing staff when they were asking questions?
22 Somebody's hand is up. Does that mean you were having
23 trouble? Mr. Dickman [*sic*]? And you're on mute too.
24 And you're still on mute.

25 MR. DICKINSON: Good morning panel, Chair, and
26 commissioners. Yes, this is Mr. Dickinson from Shell.

1 And I can confirm that we are also having audio
2 challenges, hearing particularly what the panel is
3 saying, although we have also had some limited
4 challenges with hearing what has been said from the
5 podium. We have not had particular challenges hearing
6 what has been said by other remote participants.

7 THE CHAIRPERSON: Okay, but you're hearing -- are you
8 hearing the echoing from the podium, are you also?

9 MR. DICKINSON: I'm not sure I would categorize it as
10 echoing. I would call it muffling.

11 THE CHAIRPERSON: Okay, we won't do any further
12 debugging here, but thank you very much, I appreciate
13 it. And also my apologies, I didn't ask my fellow
14 panel members if you had any questions of Suncor.

15 COMMISSIONER EVERETT: Thank you, Mr. Chair. I did
16 have one question and that's with respect to the
17 sensitivity you mentioned with respect to shipment
18 volumes and shipment dates to your retail customers.
19 What do you mean by your "retail customers"?

20 MR. McLEAN: Sorry, just to clarify, the shipment
21 volumes and shipment dates of supply to a retail
22 location.

23 COMMISSIONER EVERETT: Oh, I thought you used the term
24 "customer". So are the locations your customers?

25 MR. McLEAN: It depends on the relationship. Location
26 may be owned and operated by Suncor under a franchise

1 agreement or it may be operated by a party that's a
2 contractual partner of Suncor. I'm not sure that I
3 would necessarily call them customers. If I used "the
4 customer" it was -- if I used the word "customer" was
5 an error, my apologies for that.

6 **Proceeding Time 9:55 a.m. T19**

7 COMMISSIONER EVERETT: It may be my mistake. It's
8 maybe just the way I thought I heard it. So, you said
9 it may be a Suncor station or it may be -- what was
10 the other one? I didn't quite hear your answer.

11 MR. McLEAN: There are stations that are owned and
12 then we have a franchisee operating location. As
13 stated in the B.C. fuel pricing inquiries, the
14 industry term for those is "controlled locations".
15 Those are locations where Suncor sets the price. And
16 then we have locations that would be owned by a third
17 party and we would have a contractual relationship
18 with that party, call them a retail marketer, and they
19 would have the rights to use the Petro-Canada brand.
20 They would have to have their station up to a certain
21 standard, a certain look. Obviously they would have
22 to purchase and then resell Petro-Canada branded fuel
23 to our quality standard. And in either case we would
24 be concerned about this information becoming available
25 to our competitors.

26 COMMISSIONER EVERETT: And what are your total number

1 of retail stations in both those categories in B.C.?

2 MR. McLEAN: I don't want to misquote that information.
3 It has been provided to the BCUC and I can re-provide
4 that information again.

5 COMMISSIONER EVERETT: No, that's not necessary.
6 That's not necessary if it's been provided. Thank you
7 very much, I appreciate your time today.

8 MR. McLEAN: Thank you.

9 COMMISSIONER MAGNAN: I don't have any questions at
10 this time.

11 THE CHAIRPERSON: Okay, thanks. All right, once again,
12 thank you very much. I appreciate that, panel, sorry
13 about that.

14 (PANEL STOOD DOWN)

15 So it's five to 10:00 now. If we take 15
16 minutes, we'll come back at ten past 10:00, thanks.

17 **(PROCEEDINGS ADJOURNED AT 9:57 A.M.)**

18 **(PROCEEDINGS RESUMED AT 10:16 A.M.)** **T20/21**

19 THE CHAIRPERSON: Please be seated.
20 Apologies for the tardiness here. Okay.
21 Please proceed.

22 MR. GORDON: Good morning, panel. My name's Scott
23 Gordon. I'm, as I said earlier, assistant general
24 counsel with Imperial Oil and with me is Tamara
25 McGillivray. I'll be making most of the submissions
26 today on behalf of Imperial. So I'll just dive into

1 business is structured. So a lot of the retail
2 reports and other things, as well as significant parts
3 of question 3 in your July 30th communication are just
4 not as relevant to Imperial.

5 And the third is just simply a timing
6 issue. There's a whole team at Imperial drawing on a
7 number of functions that contribute to our reporting
8 obligations and other things. And we haven't had a
9 lot of time since receiving the request for specific
10 examples and other things to put that together. We've
11 done our best to be responsive to the questions and
12 hopefully we've done so. But we don't have a
13 PowerPoint presentation today. I have a few examples
14 we want to touch on but they're not overly detailed.

15 If it would be helpful to the BCUC and to
16 the panel, if there's anything specific to Imperial's
17 submission, we're happy to take that away and provide
18 those specific examples perhaps on the August 12th
19 workshop.

20 THE CHAIRPERSON: Thank you.

21 MR. GORDON: Okay, I want to address question number 1
22 and question number 3. Question number 1 relates to
23 the issue of transparency and the principles in
24 section 3.1 of Framework Draft No. 2. And then
25 question number 3 relates to the publication of non-
26 confidential protect information. And I'm going to

1 address these points together.

2 Imperial did not provide overly detailed
3 written submissions on the question relating to the
4 principles in section 3.1 and the issue of
5 transparency. We have reviewed other submissions that
6 were filed and now are online, most notably Suncor's
7 and Shell's, and agree with those submissions. And,
8 once again, Mr. McLean earlier today took us through a
9 number of points and I think align with Imperial's
10 position on some of these issues in question 1 and
11 question 3.

12 I want to start with section 9 of the FPTA.
13 And the core concept, as we see it, in section 9 is
14 this idea of public interest. It's not transparency
15 and it's not disclosure. Those terms are related but
16 I think they have different meanings and different
17 import.

18 We don't see transparency as a free-
19 standing objective of the FPTA. We think it's
20 intended to accomplish other objectives stated in
21 section 9 and section 4 and elsewhere in the FPTA.
22 Namely, to enhance competitiveness of the industry and
23 public confidence in the industry. And we don't
24 believe that greater disclosure or disclosure for
25 disclosure's sake leads to more transparency or
26 greater competitiveness or greater confidence in the

1 market in all cases.

2 And I'll take you through a couple examples
3 as to why we think that's the case. For example, the
4 internal IDs, and there was discussion around that
5 which was helpful this morning. At first instance I
6 didn't see the value for the public interest in
7 disclosing something like that. B.C. tank ID is
8 another specific line item. And I struggle a little
9 bit the public interest in disclosing that as opposed
10 to providing that to the BCUC for internal purposes.

11 **Proceeding Time 10:21 a.m. T22**

12 I think more substantively though, there
13 are instances when disclosing Company specific
14 information is clearly not in the public interest, and
15 I'll provide one specific example. And so if you take
16 transportation costs per litre in the importer report,
17 now, I recognize that this has been designated as a
18 confidential protected information, but I choose that
19 to kind of illustrate the point around public
20 interest. So, I think there is -- if that information
21 is disclosed, I think there is a number of different
22 impacts.

23 I think if you look at that report and
24 transportation costs per litre, to anyone certainly
25 active in the industry, and probably others, it
26 becomes pretty apparent what your form and mechanism

1 of transportation is based on that cost per litre
2 alone, whether you're talking rail, or rail, or truck.
3 And there are a number of -- limited number of
4 commercial counterparties, or actors in those various
5 bases, whether it's pipe, or rail, or truck transport
6 as well.

7 So I think disclosing something like that
8 has a number of impacts. The first and most obvious
9 one is the confidentiality obligations in the
10 contracts themselves, and the BCUC has spoken to that
11 in the Framework.

12 The second is between commercial
13 negotiations between responsible persons, and if you
14 just take rail as an example, rail service providers.
15 So, if that gets disclosed, you know, that has a
16 significant impact on commercial negotiations between
17 responsible persons and those rail providers.

18 Third, and I think this is when you get
19 into the public interest more than just impacts
20 between commercial counterparties, is competition
21 amongst rail providers who are not responsible persons
22 under the Act. So, if you've got publication of costs
23 per litre and you're able to determine who those
24 counterparties are, which given the limited number of
25 players, I don't think is a difficult task. I think
26 that creates all kinds of competitive concerns and

1 dynamics between service providers.

2 And fourth and finally, there is also a
3 competitive dynamic between importers and wholesalers.
4 So, parties that compete are responsible persons. If
5 other parties have visibility into our transportation
6 costs, I think there is a number of strategic
7 considerations that they can take and do with that
8 information.

9 It's those last two points in particular,
10 the competition between say rail service providers in
11 this example, and competition amongst importers and
12 wholesalers that I think have that public interest
13 dynamic to it. And that artificial level of
14 transparency, which would not be there but for the
15 disclosure, the regulatory disclosure under the FPTA,
16 I think decades of competition law policy in Canada
17 tells us that that is generally not positive for
18 consumers.

19 So, if we just take that and look at
20 Section 9.2, I think disclosure of that type of
21 information is not in the public interest, and I think
22 assuming that disclosure and transparency of
23 information is always in the public interest, it is
24 not a valid assumption, and I think that is the first
25 part of that standard in section 92, where the BCUC as
26 administrator of the Act has to ask themselves, is

1 disclosure of this information in the public interest?
2 And if and only if it is, then you move on to, okay,
3 and is that public interest, does it outweigh any
4 potential harm to responsible persons?

5 So, the example I chose, what was the
6 transportation costs per litre, and that is already
7 confidential protected information. I think those
8 same considerations apply equally to non-confidential
9 protected information. So, not the price, the cost,
10 or the volume data. Now, admittedly this is less
11 commercially sensitive, but there are still concerns
12 with sharing data. And I think that is recognized in
13 the FPTA itself. If you look at the definition of
14 protected information in section 9.1, it recognizes
15 that this is commercially sensitive, this type of
16 information, by the definition alone. And you also
17 see it in Section 9(2)(a) the prohibition against
18 disclosing protected information, you know, unless you
19 satisfy that test in section 9(2)(b). So, I think the
20 FPTA, the provisions recognize that even the non-
21 confidential protected information, I'm going to have
22 to think hard whenever I say that, between the two
23 categories, it is commercially sensitive.

24 I'm going to provide one specific example
25 on a piece of non-confidential protected information,
26 but I want to make a general point first. And it's

1 And obviously there's a spectrum there,
2 it's more sensitive to disclose the really
3 competitively sensitive information, but, once again,
4 if you look at everything on a line-by-line basis, it
5 might be -- you might be able to justify in saying
6 that's fairly innocuous, but the more you provide you
7 do start to paint that picture and it creates -- it
8 takes away that uncertainty even if there's educated
9 guesses around strategies and parties may know
10 something or may not. By making that regulatory fact
11 and disclosing that and publishing it, you take away
12 that uncertainty, which I don't think is a positive
13 thing and in a lot of cases, if not most cases, is not
14 in the public interest.

15 I do want to provide one specific example.
16 So on the wholesale report the seller name and
17 address, that is one piece of information that has not
18 been designated confidential protected information.
19 And I think disclosing something like seller name and
20 seller address has two kind of overarching impacts,
21 and I think, one, engages the public interest and,
22 two, is very company specific.

23 For a responsible person like Imperial that
24 imports significant volumes into B.C., there are
25 reports that we -- that engages reporting obligations
26 under the importer report. If Imperial were to

1 purchase fuel in the jurisdiction, then we would be
2 required to file the wholesaler report, including
3 seller name and address. And I think there's
4 sensitivities and a competitive dynamic that that
5 engages.

6 It's not only disclosing the name of the
7 counterparty that Imperial is choosing to contract
8 with and purchase fuel, it also provides insights and,
9 once again as Mr. McLean said, I think it's much more
10 relevant for our competitors than the general public,
11 but it, you know, provides insights into things like
12 supply relationships, and logistics, and
13 infrastructure, and what type of agreement it was.
14 Was this an exchange agreement? Okay, what does that
15 mean for jurisdictions outside of British Columbia?
16 And all those things, which have very little, if any I
17 would submit, interest to the general public, but do
18 to our competitors or at least potentially do.

19 The second impact in disclosing seller name
20 and seller address – which are really one in the same,
21 if you get the address, you know the name – is more
22 company specific. And I think this is more responsive
23 to the -- most responsive I should say to the question
24 3 that was posed in the BCUC's July 30th document
25 around customer lists and other things. Because, once
26 again, even if Imperial is not purchasing fuel in the

1 jurisdiction, we bring fuel into the jurisdiction as
2 importers, and then that triggers other reporting
3 obligations including seller name and seller address.

4 So essentially at least part of your
5 customer list will be disclosed and I think that's
6 problematic for our company. I think a lot of time
7 and effort and care is built into our sales team and
8 establishing these relationships and securing these
9 contracts. And it is not public knowledge.

10 **Proceeding Time 10:31 a.m. T24**

11 There are confidentiality provisions in our contracts.

12 So there's a lot of value to Imperial built
13 up in these customer lists and these customer
14 relationships. That information is not only protected
15 information under the FPTA, I think it fairly
16 comfortably falls within the definition of the trade
17 secret under FPTA as well.

18 And I note for customer lists in
19 particular, there's a whole body of case law dealing
20 with injunction applications and stolen customer
21 lists. It's frequently an employee, disgruntled
22 employee, who leaves and takes the customer list and
23 there's significant legal battles and case law dealing
24 with that type of thing. And I think a general
25 recognition of the value and worth of these customer
26 lists.

1 And so I think disclosing that through the
2 mechanics of the FPTA, you know, that may not, at
3 least at first instance, engage that public interest
4 component to section 9(2)(b). But I think certainly
5 does on that potential harm to responsible persons.

6 The last point I want to make on question
7 number 1 and question number 3 relates to the LCFS.
8 And I'm going to heed the BCUC's guidance not the
9 repeat what we said, but I did want to flag it. My
10 hope is that we were clear in our July -- sorry, June
11 15th, thank you, in our June 15th submission on this, to
12 really emphasis this. The LCFS compliance costs are,
13 you know, one of many costs to serve. And I think
14 there's been a general recognition in the second draft
15 framework that cost to serve, you know, is commercial
16 sensitive and that type of information has generally
17 been bucketed to that confidential protected
18 information. I think LCFS is the significant outlier
19 and we -- I don't see any meaningful distinction
20 between that and other costs of service. And for the
21 reasons that we outlined in our June 15th
22 correspondence, believe that should be confidential
23 protected information.

24 I want to turn briefly to question 2. And
25 I know this is primarily addressed to Power River and
26 the BCOAPO, but I do want to touch on it briefly.

1 Because I really think this is the -- it's the inverse
2 of what I've tried to talk about and illustrate with
3 respect to the public interest. I think going back to
4 that standard in section 9(2), the first question, "Is
5 there public interest in disclosing this?" And I
6 looked at the first question that was asked, or sub-
7 question that was asked, and it's, "Please discuss the
8 public interest in publishing data collected pursuant
9 to the FPTA." And, to me, that is -- that's precisely
10 the question and standard under section 9(2).

11 And I think we've tried to today speak to
12 some of the concerns that we see from a public
13 interest perspective, as well as from a company
14 perspective, in disclosing this data. I think that is
15 part of it.

16 I think the second part of the question is,
17 what is the value to disclosing company specific
18 information as opposed to being transparent and
19 disclosing aggregated information at a higher level.
20 And I've tried to put myself in the BCUC shoes and the
21 panel shoes and I do struggle with that, the value to
22 public disclosure of a lot of this stuff, where I hope
23 I've illustrated some of the concerns from a public
24 interest and a company specific perspective.

25 Finally, on question 4, Imperial's not had
26 a meeting -- meaningful opportunity to consider

1 the proposed undertaking, and the prohibition against
2 disclosing it directly or indirectly, and for those
3 market research purposes, if you're going to do that
4 market research purposes, presumably you're going to
5 want to share that and publish that as well. So, I do
6 struggle with whether that market research example
7 would be -- would align with the undertaking and the
8 confidentiality process as drafted.

9 I think subject to any further questions
10 from the panel or the BCUC, those were Imperial's
11 submissions.

12 THE CHAIRPERSON: Thank you, Mr. Gordon.

13 Does BCUC Staff have questions?

14 MS. de BOER: Staff does, thank you, Chair.

15 **QUESTIONS BY BCUC STAFF - MS. de BOER:**

16 MS. de BOER: Again, Charlene de Boer, BCUC staff.

17 Good morning, thank you for your remarks. A few
18 questions from me, and then maybe some of my
19 colleagues as follow up as well.

20 With regard to your remarks this morning,
21 Mr. Gordon, you describe painting a picture, and a
22 concern of the more data points available, the clearer
23 that picture becomes. And I'm wondering if you could
24 clarify for me if the concern is the public
25 understanding that picture, or your competitors
26 understanding that picture?

1 MR. GORDON: Sorry, if I wasn't clear enough earlier,
2 it is our competitors' understanding that picture is
3 our concern, not the public generally. Although I
4 think my point about the value of that picture to the
5 public, and that second part of what I believe is the
6 public interest test I think is relevant. But no, the
7 concern would be, it's the insights that competitors
8 and others could glean from the reporting obligations.

9 MS. de BOER: And would regionalizing or anonymizing
10 this fuel data, say per the process included in the
11 Framework Draft, alleviate Imperial's concerns with
12 the picture that its competitors might be able to gain
13 from the fuel data?

14 MR. GORDON: Yeah, I think my remarks were directed at
15 Company specific information, or the disaggregated
16 information. So I think if aggregation is done, and
17 done properly and we've raised concerns about reverse
18 engineering it, I think that specific concern is
19 addressed if disaggregated information is not
20 provided.

21 MS. de BOER: Thank you. And you also spoke about your
22 concerns around customer lists, and providing that
23 information, or disclosing that information. Would
24 Imperial agree that there is a limited number of
25 importers and wholesalers participating in the B.C.
26 market?

1 MR. GORDON: Yeah, I'm not sure I can speak to the
2 number of importers, but I think irrespective of the
3 number of importers, though, those are still Imperial
4 customers, and I think those customer lists are held
5 fairly closely. There is contractual provisions that
6 speak to confidentiality around it, and irrespective
7 of the number of importers, we see a lot of value from
8 a Company level in maintaining confidence in that
9 information.

10 MS. de BOER: Thank you. I'd like to refer to
11 Imperial's prior submission on Framework Draft No. 2,
12 Exhibit C4-5, I'm going to ask my colleague to share
13 that please.

14 On page 2 of Exhibit C4-5, Imperial submits
15 that Company specific LCFS average cost information,
16 if it's made public, that this would directly impact
17 Imperial's negotiating ability, and provide, and I
18 quote, "an artificial level of transparency to the
19 wider market".

20 **Proceeding Time 10:41 a.m. T26**

21 Could you please clarify for me what
22 Imperial means by an artificial level of price
23 transparency?

24 MR. GORDON: I think I mean that it wouldn't be
25 otherwise available. Those are, in a lot of cases,
26 commercial negotiations between parties, there's

1 confidentiality provisions attached to those. It's
2 not generally shared and would not be shared but for
3 an obligation to disclose that in the regulatory
4 context. So that's what we're referring to by
5 "artificial".

6 MS. de BOER: Thank you.

7 MR. GORDON: May be a poor choice of words.

8 MS. de BOER: And could you discuss the timing of
9 Imperial's LCFS related negotiations and how you go
10 about executing those negotiations?

11 MR. GORDON: I personally can't. And I think if that
12 would be of interest to the BCUC, that's something we
13 can take away and perhaps speak to. I suspect that
14 we'll verge into confidential information we would
15 prefer not to be sharing with out competitors. So if
16 there's an opportunity, perhaps at the August 12th
17 workshop, to follow up on that question in camera.

18 MS. de BOER: Just to expand on that before you take
19 away then to clarify my interest. I'd be interested
20 in the timing of Imperial's negotiations relative to
21 the disclosure to the BCUC. So when you need to
22 provide that information is there a lag in time and
23 what that timing might look like.

24 And similar question to what I posed to
25 Suncor this morning, whether Imperial can discuss the
26 similarities or differences between publishing those

1 information on executed LCFS related transactions and
2 are standard practices relating to natural supply
3 contracts, natural gas supply contracts. So it may be
4 easiest for you to address that thought at the same
5 time.

6 MR. GORDON: Yes, thank you.

7 MS. de BOER: On page 3 of Exhibit C4-5, Imperial
8 states that,

9 "Disclosure of company specific information
10 about the types and grades of fuel that a
11 company imports into British Columbia may
12 provide valuable insights into a company's
13 commercial choices and strategies."

14 Imperial provides an example where a
15 company's choice to import fuel X as opposed to fuel
16 grade Y might provide its competitors with insights
17 into supply, wholesale or resale strategies. And I'm
18 wondering if you could elaborate further on how the
19 fuel type data the BCUC is collecting would reveal
20 decision making processes of a responsible person and
21 provide insights into each of the company's supply,
22 wholesale and resale strategies.

23 MR. GORDON: I think that's another question that could
24 potentially engage confidential information. And,
25 with the permission of the panel, I think we will be
26 better positioned to address that at the August 12th

1 workshop in confidence, along with the LCFS
2 information.

3 THE CHAIRPERSON: That would be fine.

4 MS. de BOER: Thank you. On page 5 of this same
5 exhibit Imperial states that it considers the proposed
6 sharing of confidential protected information with the
7 Minister to be problematic. And that it, and I quote,
8 "may not be aligned with the enabling legislation".
9 Could you please clarify which aspects of the proposed
10 language in the Framework Draft No. 2 Imperial
11 considers may not be aligned with the enabling
12 legislation and the basis for your opinion?

13 MR. GORDON: Yeah. I think we had more questions than,
14 kind of, statements when this was drafted. And the
15 presentation this morning was helpful and we're still
16 digesting some of that information. There was the one
17 provision that was cited, and we get that and
18 understand that. It was, you know, as we outlined in
19 our communication, you know, what -- how's this
20 information going to be used, how it's going to be
21 shared, whether there's going to be undertaking
22 process associated with that.

23 So I think given the presentation was just
24 made this morning, we appreciate more time to digest
25 that before providing any further submissions with
26 respect to the B.C. Ministry in sharing information.

Proceeding Time 10:45 a.m. T27

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MS. de BOER: And then a final question from me, in response to Framework Draft No. 2, certain parties submitted that the physical capacity of a responsible person's fuel storage tanks is commercially sensitive information, and that publishing this information could cause harm to the responsible person. Could you please discuss whether Imperial considers the physical capacity of a responsible person's fuel storage tanks to be general industry or public knowledge?

MS. MCGILLIVRAY: Good morning, thank you for the question. I would concur and link back to the earlier intervener's response related to the precision. I felt that word described the concept very well. While we wouldn't consider that individual point terribly competitively sensitive, if someone were to have precise information about the volumes that a particular tank at a particular terminal held with -- combined with all of the other data and information about that particular terminal, the tank size, grades, et cetera, then as the term that Scott used, Mr. Gordon used to describe our strategies and our tactics, the painting the picture? Yes, the tank could be visually seen, and a guess or educated guess could potentially be made, but the precision would not likely be accurate. And so we would suggest that the

1 visuals, which I believe is what you are alluding to,
2 would not be useful overall.

3 Did that answer the question?

4 MS. de BOER: Does Imperial keep the physical
5 capacities of its storage tanks confidential? Is that
6 information you protect as a Company?

7 MR. GORDON: Yes, it is.

8 MS. de BOER: And how do you go about protecting that
9 information?

10 MR. GORDON: Once again, I am a little uncomfortable
11 with treading towards some of the specificity of these
12 questions and other things. We're happy, perhaps
13 happy to discuss that along with the LCFS questions
14 and other things in camera where we can be a bit more
15 free without our competitors listening in.

16 MS. de BOER: And then just a clarifying question, Ms.
17 McGillivray to follow up, was your concern with
18 respect to the volume the tank is physically holding
19 in real time? Or its capacity and its nameplate
20 capacity?

21 MS. MCGILLIVRAY: I think in the paint the picture
22 example, I would suggest both.

23 MS. de BOER: And is one of those pieces of information
24 more sensitive than the other from Imperial's
25 perspective?

26 MR. GORDON: Yeah, I think it probably would be, but

1 MS. URQUHART: Good morning again, Mr. Chairperson,
2 I'll just wait for Imperial Oil to finish clearing up
3 please, let me know when you're ready.

4 THE CHAIRPERSON: How is the audio working out now?

5 MS. URQUHART: It is quite good right now, Mr.
6 Chairperson. I think earlier the problem might have
7 been was that someone was ruffling papers near another
8 mic, and so it became quite muffled, but it sounds
9 good now.

10 THE CHAIRPERSON: Well, we've taken care of that
11 person.

12 Okay, I think Ms. Urquhart, we're all ready
13 to go.

14 MS. URQUHART: Thank you, Mr. Chairperson.

15 THE CHAIRPERSON: So, once you've got your team
16 organized, I'll ask Mr. Bemister to do the
17 affirmations then. Just let us know when you're
18 ready.

19 MS. URQUHART: I believe that Mr. Booth and Mr. Millard
20 are ready.

21 **TIDEWATER MIDSTREAM AND INFRASTRUCTURE PANEL**

22 **BRENT BOOTH, Affirmed;**

23 **MATTHEW MILLARD, Affirmed;**

24 **TIDEWATER MIDSTREAM AND INFRASTRUCTURE PRESENTATION - MS.**

25 **URQUHART:**

26 MS. URQUHART: Great. So, thank you, Mr. Chairperson

1 and panel for the opportunity to appear today and
2 provide some further submissions. Can you hear me
3 okay?

4 THE CHAIRPERSON: We can hear you very well, thank you.

5 **Proceeding Time 10:51 a.m. T28**

6 MS. URQUHART: Great, thank you. So, just by way of a
7 brief reminder since it has been some time since our
8 role call this morning, my name is Taryn Urquhart. I
9 am external counsel for Tidewater. And Mr. Booth and
10 Mr. Millard are both with Tidewater and I wanted to
11 give them a very brief opportunity to just introduce
12 themselves and their role with Tidewater a little bit
13 more fulsomely, so I'll turn it over to them.

14 MR. BOOTH: Thank you very much for the opportunity.
15 My name is Brent Booth and I am the executive vice
16 president of downstream marketing and commercial
17 business development with Tidewater.

18 Matt?

19 MR. MILLARD: Thank you. My name is Matt Millard and
20 I'm the general manager of Tidewater Midstream's
21 refinery in Prince George, British Columbia.

22 MS. URQUHART: So in the interests of time and the sake
23 of expediency this morning I wanted to propose that
24 I'll give Tidewater's opening statement on their
25 behalf and then I'll also address the panel's
26 questions from their July 30th, 2021 letter, but of

1 course Mr. Booth and Mr. Millard are both available
2 for any questions that are arising. I expect that,
3 like with our previous representatives, there might be
4 some answers that will need to be addressed in camera,
5 but we'll let you know if that's the case and we're
6 happy to make any accommodations that are necessarily
7 to provide you with the information that you need.

8 And just as like a very brief opening here,
9 Tidewater has made a number of submissions in these
10 proceedings and we would adopt and rely on all of
11 those proceedings and I don't endeavour to repeat any
12 of them and will do my best not to do so. I also
13 wanted to point out that our friends over at Imperial
14 and Suncor have also made a number of submissions that
15 I was going to make, and so I'll also endeavour not to
16 make and repeat those points, but I just wanted to
17 point that out, that in general I think they've made
18 some excellent points.

19 So instead what we're going to do today on
20 behalf of Tidewater is we're going to try to focus on
21 what specifically matters to Tidewater within the
22 context of what we would describe as very unique
23 circumstances and I'll give some context about what
24 those unique circumstances are and what their position
25 is within the B.C. market. And in order to understand
26 that unique set of circumstances you really have to

1 have a full picture of what their act or role is in
2 the B.C. market and their general business overall.

3 And those points to start with I think you
4 must be told that Tidewater is a Western Canadian
5 based energy company. It has midstream and downstream
6 operations. It's headquartered in Alberta, but it has
7 a significant physical presence in British Columbia,
8 as opposed to an importer or a wholesaler. So
9 wholesaler who may not have physical infrastructure in
10 British Columbia. It focuses in its business on the
11 acquisition and development of oil and gas
12 infrastructure, but it also engages in the refinement
13 of natural gas, natural gas liquids, and crude oil
14 refinery.

15 Again, referring back to that
16 infrastructure investment, it's the owner and operator
17 of the 12,000 barrel a day refinery located in Prince
18 George. That refinery processes crude oil into low
19 sulfur gasoline. It also processes ultra-low sulfur
20 diesel fuel and other refined products such as
21 liquefied petroleum gas and heavy fuel oil.

22 The Prince George refinery most notably is
23 the only refinery that serves Northern British
24 Columbia. It provides approximately 85 percent of the
25 Prince George market and in this sense it really does
26 go to how unique the northern fuel market is in

1 British Columbia. It's not typically supplied by
2 imported fuel like other regions might be such as the
3 Lower Mainland. The area in general does really rely
4 quite heavily on the Prince George refinery's
5 production in order to meet its supply demands.

6 And not only is the Prince George refinery
7 the only refinery that serves the northern British
8 Columbia area, it's also one of only two refineries
9 that are located in British Columbia overall. The
10 other refinery in British Columbia, of course, is
11 Parkland Corporation's refinery and that one is a
12 55,000 barrel a day refinery that's located in
13 Burnaby.

14 By way of comparison, to the extent that
15 one can do so, it's my understanding that the combined
16 market share of those two refineries is approximately
17 30 percent, but Parkland holds just over 24 percent of
18 that market share and Tidewater holds just over 5
19 percent, so there's a size discrepancy between the two
20 refineries as well.

21 **Proceeding Time 10:56 a.m. T29**

22 So, again, Tidewater has provided a lot of
23 this background information in its previous
24 submissions already, but it really does bear repeating
25 the information today, because it's really critical
26 context to Tidewater's perspective and to the focus of

1 its submissions. And in my submission, the most
2 critical point that one should and could, and I hope
3 that you take away from Tidewater's submissions today
4 is that it is a relatively small, uniquely positioned
5 actor in the British Columbia fuel market, and those
6 factors are what make it more vulnerable to
7 competition from other larger actors in the market, if
8 their sensitive, competitive, commercially sensitive
9 data were to be inadvertently disclosed.

10 And a lot of that overlaps with all of the
11 other submissions that you have heard, but there are
12 two particular concerns with the Draft Framework No. 2
13 that we just wanted to touch on within that very
14 unique context, and that is that Tidewater really does
15 want to ensure that its commercially sensitive and
16 competitive information is appropriately designated as
17 protected information, in order to prevent disclosure
18 to its competitors.

19 Going back, I don't want to harp on this
20 too much, but if Tidewater's commercially sensitive
21 and competitive information were to be inadvertently
22 disclosed, there is a real and imminent risk that its
23 competitors could draw insights from that information
24 and use those insights to undercut or undermine
25 Tidewater's pricing, its operations, and reducing its
26 market share in the long run, which of course is not

1 in the public interest, because it reduces competition
2 in the long run, especially in the area of Prince
3 George where, again, their refining production is the
4 backbone of the supply in that area.

5 Of the fuel data which has not been
6 identified as confidential protected information in
7 the Draft Framework No. 2, Tidewater is particularly
8 concerned with two broad categories of data, and these
9 were addressed in our June 15th, 2021 submission, but
10 I'll repeat them here. And those are the general
11 counterparty related fuel data, and the other imported
12 related fuel data. So, the counterparty related data
13 in particular would include your seller names and your
14 addresses, and your other import related fuel data
15 would be import location, fuel -- sorry, import origin
16 I should say, and transaction types, et cetera, et
17 cetera.

18 So, these are so important to Tidewater in
19 the first instance, because they directly or
20 indirectly identify Tidewater's customer lists and
21 suppliers, and you've heard from Mr. Gordon at
22 Imperial Oil about the issues with customer lists and
23 how that is confidential and sensitive information in
24 the normal course. But it is inherently and
25 especially sensitive for Tidewater in this case,
26 because it is a refiner, and not a wholesale or an

1 importer. Again, I would presume and I believe I
2 understand from all those submissions, that most if
3 not all responsible persons have claimed that this is
4 confidential information. But again, especially on
5 the part of Tidewater as a smaller refiner, and only
6 one of two refiners.

7 Because, unlike responsible persons who are
8 wholesalers or retail operators, it's not necessarily
9 general industry knowledge that a refiner would, in
10 the normal course of business, be purchasing product,
11 either within the province, or from out of the
12 province. Similarly, it may not be general industry
13 knowledge that a refiner had imported or purchased
14 from a specific region, or during a specific time.
15 And for this reason, the very fact that Tidewater has
16 or has not purchased or imported refined fuel products
17 at a given time is in itself inherently commercially
18 sensitive information, because it provides or could
19 provide competitors with insights into Tidewater's
20 business operations, its current supply levels, its
21 supply chains. And with that information, a
22 competitor could theoretically or inevitably undercut
23 and drive Tidewater out of the market by seizing
24 opportunities to undercut their business when they are
25 low on supply, for example.

26 So, information about the source of

1 by one responsible person or some responsible persons,
2 is not going to be commercially sensitive to other
3 responsible persons, such as Tidewater.

4 And this is, in my submission, fairly
5 apparent from reading the totality of the written
6 submissions that have been provided by all responsible
7 persons. Through the course of the submissions to
8 date, there have been a number of general conclusions
9 drawn about the B.C. fuel market, and those have
10 informed the Draft Framework in some circumstances.
11 For example, in the Draft Framework No. 2, it doesn't
12 identify the counterparty and import related data as
13 confidential, based on the assumption that it's
14 already general industry knowledge that the B.C. fuel
15 market is largely served by imports and has particular
16 already identified wholesalers. But these assumptions
17 don't necessarily hold, as I suggested already, across
18 all of the regions of the Province, particularly in
19 those that are not predominantly served by imports,
20 such as Northern B.C. It also doesn't hold across all
21 responsible persons. It might be general knowledge
22 that a particular responsible person is an importer or
23 a wholesaler, but it's not necessarily general
24 knowledge that a refiner might be engaging in
25 wholesale purchases, or in importing, for example.

26 Second, when you are considering the

1 confidentiality of certain fuel data and the potential
2 harm to responsible persons if it's disclosed, in our
3 submission it's important to consider that aggregation
4 and anonymization of that fuel data will necessarily
5 and inevitably work differently for some responsible
6 person such as Tidewater, and as the other refiner in
7 the province, most likely Parkland as well. Tidewater
8 is the smaller of only two refiners in B.C., and in
9 the vast majority of cases it may not be possible to
10 effectively anonymize or aggregate its data. We hope
11 that it could be, but special care needs to be taken
12 to make sure that when you've got only one of two
13 types of responsible persons, that all of that is
14 sufficiently taken out.

15 And Tidewater has previously provided
16 submissions on this point, so we'd be happy to provide
17 more information about that at a future time, or we
18 can refer you back to those previous submissions.

19 And just to sum all that up in closing on
20 my opening statement here, it's to say that what
21 Tidewater really wishes to stress at this time to the
22 panel is that because responsible persons like
23 Tidewater are in unique circumstances within the B.C.
24 fuel market, it really must be ensured that there is
25 sufficient flexibility in the Draft Framework, and in
26 the administration of the Act more generally, to

1 ensure that responsible persons' commercially
2 sensitive data, like Tidewater's, is sufficiently
3 safeguarded, so that other responsible persons aren't
4 able to gain insights into those business practices
5 and strategies.

6 And with that, I wanted to just move on
7 quickly to address some of the questions posed by the
8 panel, and I've done them in order, and I don't
9 imagine that I will require too much time, so we can
10 turn over to questions fairly quickly. But, turning
11 to question 1, part 1, regarding the object and
12 purpose of the *Fuel Price Transparency Act*, Tidewater
13 previously provided submissions on the object and
14 purpose of the Act in its view. That was in our
15 January 13th, 2021 submission. Just by brief summary,
16 we had stated there that we viewed the purpose and
17 object and scope as to increase transparency regarding
18 the factors that impact retail prices of fuel in
19 British Columbia, and to provide fuel market data and
20 information to consumers.

21 And two, to promote fuel market
22 competitiveness and the public confidence in the
23 competitiveness of the fuel market in British
24 Columbia, and we will just let those submissions
25 stand, and don't have any further response to that
26 question at this time.

Proceeding Time 11:05 a.m. T31

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2 On question 1 part 2, regarding three
3 principles set out in section 3.1 of the Draft
4 Framework. Tidewater generally does not take issue
5 with the key principles identified in that section.
6 But we do have some concerns with certain aspects of
7 the descriptions to those principles, which we would
8 respectfully submit appear to be somewhat problematic.

9 The first, with respect to the promotion of
10 transparency principle. It was previously noted by
11 Suncor that the wording of the description to this
12 principle appears to suggest that the BCUC must
13 publish protected information wherever possible, and
14 should make the data itself publicly available. But,
15 respectfully, we would also disagree with that
16 interpretation of the Act. The object and purpose of
17 the Act, in our view, again, is to increase
18 transparency regarding the factors that impact retail
19 and also to protect competitive information and
20 promote competitiveness.

21 And so Tidewater -- sorry. So section 9(2)
22 permits the BCUC to publish fuel data where the public
23 interests outweighs harm to responsible persons and is
24 permissive but it doesn't suggest any mandatory
25 language. So any suggestion that they must publish
26 protected information is not consistent with the

1 language of that section. Rather, I think one
2 suggestion that could be made is that under the scope
3 and the structure of that section, publishing fuel
4 data could be considered one means by which the BCUC
5 may accomplish its goals under the Act in increasing
6 transparency in the appropriate circumstances. And
7 those appropriate circumstances could be where it's
8 appropriately aggregated and anonymized, for example.
9 But, again, there's no legislative requirement as we
10 see it that the BCUC must publish fuel data. And, in
11 particular, must publish protected information in
12 order to achieve its objectives.

13 With respect to reducing the regulatory
14 burden, the one thing we would like to note is that
15 the wording of this principle provides that, and I
16 quote, "determinations of confidentiality should be
17 consistent for the fuel data or other information and
18 records collected pursuant to the FPT Act." And
19 Tidewater understands this principle to be saying that
20 whether certain categories of fuel data should be
21 treated as protected information should be same for
22 all responsible persons in order to reduce
23 administrative burdens. And while in general
24 principle that does sound like a good idea,
25 respectfully we would caution that painting each
26 responsible person and their fuel data with the same

1 brush could result in significant harm to some
2 responsible persons. And I have made some submissions
3 on that already.

4 But, again, I think it's apparent from
5 reading the totality of the submissions that have been
6 made by all responsible persons that each of them
7 considers the commercially sensitive and confidential
8 competitive information to be confidential for
9 different reasons and in different circumstances. And
10 some don't always agree on whether something is
11 commercially sensitive.

12 For example, the current issue around the
13 ID numbers. Some parties are obviously concerned
14 about the confidentiality of that information.
15 Tidewater has not had a concern about that in the
16 past. This could be explained by variances,
17 potentially in what people use as their ID numbers.
18 But the fact that we all have disagreements on it
19 would suggest that it might not always be in the best
20 interests of everyone and appropriate to paint all of
21 that with the same brush if there is just simply no
22 brush to paint them with.

23 And so with these variances in mind, and in
24 order to ensure that commercially sensitive and
25 competitive information receives sufficient
26 protection, we would suggest that it's, again,

1 imperative that the draft framework be sufficiently
2 flexible to accommodate the differences between the
3 responsible persons and their vulnerabilities, and
4 particularly smaller parties like Tidewater.

5 And a final point on this is that Tidewater
6 would also submit that the draft framework should be
7 clarified to emphasize the three principles in section
8 3.1 are not hierarchical or in order of relative
9 importance and priority. There is public interest in
10 both transparency and in maintaining a competitive
11 marketplace. And in the current wording of that
12 section makes it seem that they're one, two, three in
13 importance. And I think that perhaps that could be
14 clarified for the parties at some point. And, of
15 course, this is important because, as you've heard
16 many times, the parties are subject to obligations
17 under the *Competition Act* and they need to protect
18 their confidential information, and if they don't then
19 that's a breach of their obligations under that
20 legislation.

21 **Proceeding Time 11:10 a.m. T32**

22 Moving onto question 1 part 3 regarding the
23 onus under section 9(2). At the outset I wanted to
24 respectfully note that this question appears to stem
25 from an assumption that the public interest part of
26 the test set out in section 9(2)(b) of the Act is

1 equal and equivalent to public interest in
2 transparency, but public interest in that section is
3 broader and greater than just public interest in
4 transparency, and Mr. Gordon for Imperial had made
5 that point as well, so I won't belabour it.

6 At its very core this question, in our
7 view, is effectively a question of who bears the onus
8 of proof under section 9(2)(b) of the Act and this is
9 really a question of law which would require
10 submissions on interpretation of legislation in the
11 statute. And generally speaking we would agree with
12 the submissions of Suncor and the other parties that
13 Draft Framework No. 2 does appear to reverse the onus.
14 As it's currently drafted it places the onus on
15 responsible persons to prove that the harm to
16 responsible persons will outweigh the public interest
17 to a sufficient degree in order to prevent the
18 administrator from publishing protected information.
19 But the actual wording of section 9(2) provides that
20 the administrator cannot publish protected information
21 unless the public interest outweighs potential harm.

22 And with the definition of "protected
23 information" in section 9(1) of the Act, the
24 potentially harm is really inherently built in as
25 being acknowledged as existing for anything that is
26 designated as protected information. So if you

1 already have an established, inherent established
2 potential harm in the definition of "protected
3 information", then this onus of having to prove that
4 something is already -- to prove that something is
5 actually harmful when it's already been proved to be
6 harmful, is a reverse onus that I don't think is
7 intended under the Act.

8 But, again, this would require a fairly
9 detailed legal analysis with statutory interpretation,
10 we'd be happy to provide that in a written submission
11 at a later date, but we unfortunately didn't have the
12 time or think that this was the correct forum to talk
13 about that at length. So we would we be happy to do
14 so.

15 And question 3 regarding practical examples
16 or illustrations of specific harm to responsible
17 persons. I touched on this and addressed it in some
18 detail in our opening statement, but just to
19 reiterate, Tidewater at this stage has a very specific
20 concern with the classification or non-classification
21 of counterparty related fuel data and other import
22 related fuel data, so seller name, address, import
23 origin, et cetera. Those submissions on those points,
24 they've already made in quite a bit of detail in their
25 March 8th and June 15th, 2021 submissions, and so I
26 would refer the BCUC to those submissions.

1 But I wanted to make the further point that
2 -- I'm sorry. Yeah, we would like to make some
3 further points and we can provide some further
4 illustrations about exactly why that would be harmful,
5 but unfortunately because Tidewater is, again, in such
6 a unique position, it's exceedingly difficult to
7 provide any specific examples without being in an in
8 camera session with the other responsible persons in a
9 public hearing in attendance. Pretty much any example
10 from recent history could possibly be identified very
11 easily by someone who is in the room. So if you would
12 like some specific examples of that, we'd be happy to
13 provide that in an in camera session or could do so in
14 some other confidential manner that you deem
15 appropriate.

16 That being said, I would note that the
17 specific harm which a refiner such as Tidewater would
18 experience if its counterparty and import related fuel
19 data is not designated as protected information is
20 markedly similar to the harm that the panel has
21 already found would occur if fuel data in Table A-1 of
22 the Draft Framework were not kept confidential.

23 So just for ease of reference, Table A-1 of
24 the draft Framework has volume related data which has
25 already been predesignated as protected confidential
26 information. And on page 2 of the Commissioner's May

1 again, because Tidewater is a refiner who would not
2 necessarily be in general industry knowledge expected
3 to be regularly wholesale purchasing or importing
4 materials and products, it's the fact that they have
5 or have not done those things in a particular time
6 period in a specific region or location that is
7 especially sensitive for them.

8 So even having any data points from them
9 that aren't sufficiently aggregated or anonymized
10 would suggest pretty clearly that they have imported a
11 volume or purchased a volume. And that itself is
12 sensitive. And the same harm that is listed on page 2
13 of that letter, if you just substitute a few words
14 into those points, is exactly the same harm that we
15 submit would happen to Tidewater in those
16 circumstances. But, again, we'd be happy to provide
17 some more specific examples of those in an in camera
18 session, if that would be helpful.

19 And, finally, just very briefly, turning to
20 question 4, parts 1 through 3. I just wanted to make
21 a few very quick points about this and just say that
22 Tidewater is in general agreement with the submissions
23 previously made by Parkland regarding the declaration
24 and undertaking process. Especially its recent
25 submission that is a condition of receiving access to
26 confidential protected information requesting parties

1 should be required to execute a non-disclosure
2 agreement directly with the responsible persons.

3 Tidewater also agrees with and adopts the
4 submission of 7-Eleven that the undertaking should
5 provide an express ability for external counsel to
6 discuss the proposed methods and other non-protected
7 information with their clients, being the responsible
8 persons. And that external counsel should also be
9 expressly permitted to retain independent experts in
10 order to assist them with the review and analysis of
11 that data. Because I certainly won't speak for
12 everyone but can speak for myself, I am not an expert
13 in that information and I would greatly need
14 assistance in order to do that for Tidewater, speaking
15 personally.

16 And, finally, on the very last point there,
17 Tidewater would submit that it would be advantageous
18 for responsible persons to jointly develop an agreed
19 upon non-disclosure agreement, subject to BCUC
20 approval. We don't see any immediate disadvantage to
21 do so. In fact, doing so would reduce regulatory and
22 administrative burdens in the future if it becomes
23 necessary to do so on a regular basis.

24 And those conclude our submissions on those
25 points, subject to any questions arising. Thank you.

26 THE CHAIRPERSON: Thank you, Ms. Urquhart. I think

1 staff have some questions.

2 **QUESTIONS BY BCUC STAFF - MS. de BOER:**

3 MS. de BOER: Good morning, thank you. Again, Charlene
4 de Boer with staff. Appreciate the opening remarks
5 from Tidewater and the additional context. Staff does
6 have some questions we'd like to pose.

7 First of all, in your opening remarks I
8 believe you say that Tidewater supplies approximately
9 85 percent of the northern B.C. market, is that
10 correct?

11 MS. URQUHART: Yes.

12 MS. de BOER: Could you discuss the competitiveness of
13 this market given that context?

14 MS. URQUHART: I believe that might be a question which
15 would touch on confidential information. We could
16 probably discuss that in an in camera session.

17 MS. de BOER: Okay. If possible in this public
18 session, given the market share you described, does
19 Tidewater consider this market to have characteristics
20 of a monopoly market?

21 MS. URQUHART: I believe we will need to have a
22 discussion with counsel and discuss that in an in
23 camera session for this same reason.

24 **Proceeding Time 11:19 a.m. T34**

25 MS. de BOER: Thank you. Mr. Chair, would it be
26 possible to have a session on that later today as

1 well?

2 THE CHAIRPERSON: Yes. Ms. Urquhart, will you be able
3 to join in camera session at the end of the public
4 session?

5 MS. URQUHART: Yes, Mr. Chair.

6 THE CHAIRPERSON: Thank you.

7 MS. de BOER: In your remarks I believe you also
8 indicated that aggregation and anonymization may be a
9 concern for the particular region of B.C. that
10 Tidewater operates in, is that correct?

11 MS. URQUHART: Yes.

12 MS. de BOER: Could you please discuss what Tidewater
13 might consider to be an appropriate aggregation or
14 anonymization for its confidential fuel data?

15 MS. URQUHART: I believe that Mr. Millard or Mr. Booth
16 may be best placed to discuss that, or we may need to
17 take that away and consider it.

18 What do you think?

19 MR. MILLARD: Yeah, I think we'd made a submission in
20 one of our earlier written submissions to the BCUC on
21 just making sure that the geographical area was
22 sufficiently large to provide that appropriate level
23 of anonymization. I think to discuss some details of
24 that we'd like to do that within the in camera
25 session, if possible.

26 MS. de BOER: Okay, thank you. If I could I'd like to

1 refer to -- I want to talk about the previous
2 submissions, Exhibit C5-5. And, again, I'll ask my
3 colleague to share that.

4 On page 1, regarding the seller name and
5 address and supply location fuel data, Tidewater
6 states that, "while it may be general industry
7 knowledge that a particular entity is a wholesaler, it
8 may not be general knowledge that a particular
9 wholesaler located in a specific region is selling
10 product to Tidewater in Prince George, B.C. at a
11 certain time." Tidewater continues that there are
12 costs associated with transporting fuel and
13 information about a fuel's source could, and I quote,
14 "be implicitly provided" -- or, sorry, "implicitly
15 provide information about pricing."

16 I would love if you could walk me through
17 with an illustrative example of how publishing the
18 seller name or supply location would reveal
19 information about pricing, and how this information
20 could be used to Tidewater's detriment.

21 MS. URQUHART: Again, regretfully, unfortunately, that
22 is an answer that we would have to provide in an in
23 camera session.

24 MS. de BOER: In the public forum would it be possible
25 to speak to whether the information on fuel origin of
26 imports would be sensitive to Tidewater still if the

1 volume related information is kept confidential?

2 MS. URQUHART: To answer your question in the first
3 instance, I believe that Mr. Millard and Mr. Booth
4 could provide some illustrative examples of this in an
5 in camera session. But for the purposes of the public
6 session in the first instance our submission is that
7 it's the very fact of an import that is commercially
8 sensitive and confidential. So by secondary
9 implication of that, the volume and any other
10 information about that import or purchase would also
11 be highly commercially sensitive.

12 MS. de BOER: Thank you. And then one final question
13 from me. As you've heard I proposed to some of the
14 other parties participating today, certain responsible
15 persons have submitted that the physical capacity of a
16 responsible persons' fuel storage tanks is
17 commercially sensitive information and that publishing
18 this information could cause harm. Could you please
19 discuss whether Tidewater would consider the physical
20 capacity of a responsible persons' fuel storage tanks
21 to be general, industry or public knowledge?

22 MS. URQUHART: Mr. Millard, I believe that's a good
23 question for you.

24 MR. MILLARD: Yeah. I think I would echo the comments
25 that were made previously by Suncor and Imperial Oil,
26 that generally, you know, the location and number of

1 tanks is not commercially sensitive but the specifics
2 of the actual operating capacity of the services of
3 those tanks would be. So, yeah, I think I would echo
4 the comments that have already been made by Suncor and
5 Imperial Oil on that point and agree with those
6 comments.

7 MS. de BOER: And just to clarify for me, is this
8 information that Tidewater protects?

9 MR. MILLARD: It is, yes.

10 MS. de BOER: Thank you.

11 **QUESTIONS BY BCUC STAFF - MS. BIENERT:**

12 MS. BIENERT: Hi, this is Kristine Bienert from staff
13 from BCUC. I just have one follow-up question.

14 There was a comment made in the
15 presentation that indicated that having disclosure of
16 data would result in a long-term lack or loss of
17 competition in the market to which you serve. I'm
18 curious if in the short and mid-term if it's your
19 believe that disclosure of information could result in
20 a reduction in competition in the markets to which you
21 serve, and if you could explain that a bit?

22 **Proceeding Time 11:24 a.m. T35**

23 MS. URQUHART: I'm sorry, I'm not sure if I fully
24 appreciate the question. Could you possibly repeat it
25 or perhaps rephrase?

26 MS. BIENERT: Right, you discussed earlier that having

1 disclosure of information on a dis-aggregated basis
2 would result in a potential competitive information
3 being spread amongst the potential competitors that
4 could exist in your market, and that as a result of
5 that you may see a reduction in the long term
6 competitiveness in your market to which you have a
7 currently approximately an 85 percent market share?
8 Is that correct?

9 MS. URQUHART: I'm not sure if that's entirely correct.
10 I believe the submission that we had made was that
11 inherently if there is any competitive activity that
12 resulted because of the inadvertent disclosure of non-
13 aggregated or non-anonymized data that that would in
14 the long term cause a decrease in competition in the
15 B.C. marketplace because it would eliminate inevitably
16 some market competitors who go out of business,
17 presumably.

18 MS. BIENERT: So, just to be clear then, the
19 elimination of some market competitors, I guess are
20 you speaking to a change in the mix of the competitive
21 nature of the market to which you are operating then,
22 in that it would be yourself potentially that would be
23 at jeopardy? Or is it potentially other participants
24 in the market to which the competitiveness could
25 result in a reduction in their participation in the
26 market?

1 MS. URQUHART: Well, I think the competitiveness of
2 every party would be in jeopardy if their commercially
3 sensitive and competitive information was released.
4 But as Tidewater is a particularly small actor in the
5 market, I think that size puts them at particular
6 vulnerability to competitive issues in that regard.

7 MS. BIENERT: And just to be clear, that's in relation
8 to the market in which Tidewater currently operates,
9 that's correct?

10 MS. URQUHART: In the market as a whole.

11 MS. BIENERT: In the market as a whole. Okay, thank
12 you, that's very helpful, thank you very much.

13 MS. URQUHART: Thank you.

14 THE CHAIRPERSON: Any further questions?

15 MR. BUSSOLI: Those are Staff questions, Mr. Chair.

16 THE CHAIRPERSON: Thank you, Mr. Bussoli. No
17 questions?

18 Okay, I think the panel has no further
19 questions at this time, so I will thank Ms. Urquhart
20 and her coworkers and her panel, thank you very much,
21 we appreciate your helpful remarks today, and we'll
22 look forward to further later this afternoon.

23 (PANEL STOOD DOWN)

24 THE CHAIRPERSON: Thank you very much. So, we'll move
25 on then to Shell?

26 MR. BUSSOLI: Mr. Chair, Shell is presenting on the

1 12th.

2 THE CHAIRPERSON: Next week, yeah, okay.

3 MR. BUSSOLI: So, it would be Federated Co-Op, which I
4 believe is all in attendance virtually.

5 THE CHAIRPERSON: Okay. So, Ms. Buhler?

6 MS. BUHLER: Good morning. Again, Jessica Buhler,
7 External counsel for FCL. And I introduced Ms. Vezeau
8 this morning. I assume now is an appropriate time to
9 have her affirmed?

10 THE CHAIRPERSON: I believe so.

11 **FEDERATED CO-OPERATIVES LIMITED PANEL**

12 **CHERYL VEZEAU, Affirmed:**

13 **PRESENTATION OF FEDERATED CO-OPERATIVES LIMITED - MS.**

14 **VEZEAU:**

15 MS. BUHLER: Thank you, and Ms. Vezeau will be
16 providing FCL's opening statement and also answering
17 the BCUC's questions that were already submitted, and
18 any further questions from the panel today. Thank
19 you.

20 THE CHAIRPERSON: Thank you.

21 MS. VEZEAU: Hello, as I've been introduced, I'm Cheryl
22 Vezeau, and I'm responsible for renewable fuel supply
23 and compliance at Federated Co-operatives Limited, or
24 I'll be referring to us as FCL going forward.

25 Thank you for the opportunity for us to
26 participate in today's workshop. I look forward to

1 located on Vancouver Island, and 30 commercial
2 cardlock facilities.

3 FCL has been participating in this
4 proceeding as a responsible person under the *Fuel*
5 *Price Transparency Act* and the *Fuel Price Transparency*
6 *Regulations*. We have participated because we are
7 deeply concerned about the publication of our
8 commercial and financial information, which we
9 consider to be highly sensitive information and held
10 in strict confidence. The publication of this
11 information could cause significant and prodigal
12 commercial harm to FCL. It can be used by our
13 competitors to gain knowledge of the nature and extent
14 of our business in British Columbia and across Western
15 Canada.

16 This may include information related to
17 costs, price, volumes, sources of products and
18 commercial relationships. Furthermore, much of the
19 reportable information is subject to commercial and
20 contractual confidentiality obligations with third
21 parties. More broadly, we are concerned that the
22 publication of this information could diminish the
23 competitiveness of the market for reportable fuels in
24 British Columbia.

25 I understand that the BCUC wants to hear
26 new information today and that we are not being asked

1 to repeat or summarize previous submissions. As a
2 result, I only intend to answer question number 3.
3 Question number 3 asks for specific examples of the
4 harm to responsible persons or the competitiveness of
5 the market for reportable fuels that would result from
6 publishing the fuel data not identified as
7 confidential protected information in Framework
8 document No. 2. I understand this is to be a
9 reference to information that is in Table A-3 in
10 Framework Draft No. 2.

11 In our June 15th, 2021 submissions we
12 presented examples of the harm that could result if
13 seller name, seller address, transaction type and
14 internal ID are not treated as confidential protected
15 information.

16 I want to use my time today to explain
17 these examples in a bit more detail to hopefully
18 assist the Commission in understanding the specific
19 harm that could result from disclosure of this
20 information. I think to appreciate the importance of
21 this information being confidential, we need to start
22 with a shared understanding of how supply contracts
23 work in the fuel industry. Essentially companies
24 across Canada enter into supply contracts to meet
25 their changing business needs and address geographical
26 constraints on supply.

1 to refiners and could involve other parties who supply
2 reportable fuels.

3 These types of agreements are typically
4 between two parties. However, there can be additional
5 indirect parties involved. So for ease of
6 demonstration, I will refer to them as a refiner, but
7 as I've just stated that this could involve refiners
8 and/or other types of companies that supply reportable
9 fuel.

10 So, for example, refiner A might exchange
11 reportable fuel with refiner B under one contract.
12 Refiner B subsequently has their own contract to
13 purchase a reportable fuel with refiner C at their
14 facility. In some cases refiner A would be purchasing
15 the reportable fuel from refiner B under their
16 contract with refiner C, regardless if the supply
17 facility is owned by refiner C. Further, refiner A
18 may have their own separate supply contract with
19 refiner C to also purchase reportable fuel at the same
20 facility.

21 Amongst the various contracts, the three
22 parties involved are not privy to the other contracts
23 and the execution of these are done in a manner that
24 respects the commercially sensitive and confidential
25 nature of each separate agreement.

26 Table A-3 identifies seller name and seller

1 address as data that would not be treated as
2 confidential. The BCUC stated that the seller name
3 and seller address would be considered general
4 industry knowledge, and because there are a limited
5 number of fuel wholesalers in the market. This might
6 be true if the seller name and seller address were
7 published in isolation. But serious commercial harm
8 may result if this information were published with,
9 for example, the transaction type. If a competitor
10 has access to seller name, seller address and
11 transaction type, then our commercial counterparties
12 and our competitors would know what sort of supply
13 arrangements we have in place and the nature of those
14 contracts. The resulting significance of harm could
15 vary depending on the extent of other information
16 known by the party accessing the data. However, the
17 general concern is that they could use what that have
18 learned to negotiate better deals for themselves.

19 Further using my example, if refiner A had
20 an agreement with refiner C to purchase refined
21 products at their refinery, and refiner C becomes
22 privy to the fact that refiner A is also purchasing
23 volumes under a separate contact with refiner B, this
24 could impact future negotiations with refiner C. This
25 is partly due to the commonality of refiner C, in that
26 they have two separate contracts with refiner A and

1 refiner B respectively, thus would be aware of the
2 prices agreed upon in each agreement.

3 Further, they might suspect that refiner B
4 is likely charging refiner A a premium on top of their
5 agreed upon price with refiner C. Or that refiner A
6 is benefiting with respect to price from purchasing
7 product through refiner B. This could create a
8 situation where refiner C is going to want to capture
9 that premium in future negotiations, and may look to
10 cut out "the middleman."

11 **Proceeding Time 11:39 a.m. T38**

12 Not only will it impact future negotiations
13 for both refiners A and B, with refiner C, it may also
14 impact the ability to negotiate future supply
15 contracts between refiners A and B.

16 Essentially, the more information that our
17 commercial counterparties and competitors have, the
18 greater we are disadvantaged in negotiating future
19 supply contracts and this could impact our ability to
20 form agreements. This could result in increased
21 transportation and related infrastructure costs, which
22 would in turn impact fuel prices in overall
23 reliability of supply. Revealing this information may
24 also be in breach of the confidentiality obligations
25 that are included in our commercial contracts,
26 exposing us to potential liabilities.

1 As a result, we ask that the BCUC treats
2 seller name, seller address and transaction type as
3 confidential protected information.

4 With respect to internal IDs, as we
5 explained in our previous submissions, this would
6 generally be defaulted to what the industry refers to
7 as bill of lading numbers, which are often unique to
8 the supplier, and/or supply origin. Those of us that
9 are in the industry generally know how to recognize
10 these. As a result, publishing the internal ID is
11 essentially the same as publishing the seller name and
12 seller address, and the same potential harms may
13 occur. The same consequences would follow from the
14 potential publication of internal ID with transaction
15 type, as it would reveal information regarding the
16 nature of supply contracts in place, and who these
17 agreements are with. This could impact existing
18 contractual relationships, future negotiations and our
19 competitive position, just as revealing seller name
20 and seller address would.

21 Further, with the BCUC's suggestion that
22 parties can submit any internal ID that they choose,
23 we struggle to see the utility in providing this
24 information at all. Relying on one internal ID for
25 internal purposes, and then an entirely separate
26 internal ID for reporting purposes, will create

1 administrative work for the responsible persons, and
2 is unclear to us how reporting an essentially
3 fabricated identifier will provide any insight into
4 our fuel transactions.

5 As a result, we also ask that internal ID
6 be treated as confidential protected information.
7 Alternatively in our view, internal ID could simply be
8 removed from the reporting requirements, or as
9 suggested earlier by the BCUC, this could be an
10 optional data field for which FCL would be supportive
11 of.

12 Thank you for the opportunity to present
13 today, and I am happy to answer any further questions.

14 THE CHAIRPERSON: Thank you, Ms. Vizeau.

15 Does Staff have any questions?

16 **QUESTIONS BY BCUC STAFF - MS. de BOER:**

17 MS. de BOER: Thank you, Charlene de Boer, BCUC Staff.
18 Again I appreciate FCL's comments and the opening
19 remarks today, and the opportunity to follow up with a
20 few questions from staff.

21 The first question I had is I appreciated
22 that FCL focused its response this morning on question
23 3 to avoid reiterating information that's already part
24 of the record to this proceeding. But if you would,
25 staff would appreciate FCL's thoughts on the
26 advantages and disadvantages of having responsible

1 persons jointly develop a standardized non-disclosure
2 agreement that subject to BCUC approval would be used
3 as part of the undertaking process? This was one of
4 the questions posed in Part 4 -- or question 4, and in
5 your thoughts on that question would be helpful.

6 **Proceeding Time 11:43 a.m. T39**

7 MS. VEZEAU: So I will say that I am not prepared to
8 provide a response with that, to that question. We
9 would have to take that back and consult internally,
10 especially with our legal counsel, and we can
11 certainly provide a more detailed response in writing
12 at a future date.

13 **Information Request**

14 MS. de BOER: Thank you. Your opening remarks also
15 provided an example of a three-party contract
16 exchanging retail fuel, is that correct?

17 MS. VEZEAU: For clarity, it wouldn't be a three party
18 contract. We are demonstrating that there are
19 multiple contracts that involve the same parties.

20 MS. de BOER: And that these contracts would be held
21 confidential amongst the various parties.

22 MS. VEZEAU: Those involved, absolutely, yes.

23 MS. de BOER: And did I understand that one of the key
24 reasons for that was to keep the price details
25 confidential from the parties of the separate
26 agreements?

1 MS. VEZEAU: It's standard in any contract, you know,
2 especially general terms and conditions, to have
3 confidentiality clauses embedded in them. So we would
4 just be following those standard clauses and those
5 standard processes in each contract we are involved
6 in.

7 MS. de BOER: So if the price fuel data the BCUC is
8 collecting is held confidential, does FCL still have
9 concerns with disclosing the identities of the
10 contract counterparties? Or is the concern lessened
11 if the price information remains confidential?

12 MS. VEZEAU: So, generally, our position is that we
13 don't -- we cannot confirm specifically the harm that
14 could result from any information being released. As
15 we said in our statement, it is really dependent on
16 those obtaining the information what they already know
17 and how valuable that information is.

18 So specific data points in the hands of one
19 party may hold no value paired to that being in the
20 hands of another party. So we're not prepared to
21 provide a, you know, confident, sort of, statement or
22 a 100 percent certain statement with that because it
23 really is dependent on what the parties know already
24 and how that information either completes a picture or
25 not.

26 MS. de BOER: So in a situation where a party is not

1 privy to the price of an agreement that you have with
2 someone else but was privy to the fact that another
3 agreement exists, does FCL have concerns with that
4 situation? That there'd be harm to you as a
5 responsible person or to the competitiveness of the
6 market?

7 MS. VEZEAU: Well, each contract between two parties is
8 supposed to be held in confidence and not privy to
9 anyone else. So when you have, you know, a common
10 party, in our example we said refiner C, if they have
11 their own individual contracts with two other parties,
12 the harm in that being known, you know, is -- again,
13 it can create some competitive nature, you know,
14 issues. It can also impact our ability to negotiate.

15 So it's a matter of if a party knows one
16 piece or another or they become privy to this, or as
17 we were trying to say, if you are refiner C and you
18 are fully privy to both contracts because you're
19 involved in them and you know that there's a contract
20 between the two parties, you might not know those
21 details but the assumptions could be there. And
22 depending on what information is available to refiner
23 C, they might be able to piece together a little bit
24 of a picture and that would bring them more advantage
25 in future negotiations with either party.

26 So, again, we just don't know what other

1 don't know. And it really depends on what each party
2 knows about other parties and what they learn and how
3 they can complete that picture. And the more they can
4 complete that picture the more harmful it could be to
5 future negotiations for competitiveness.

6 **Proceeding Time 11:48 a.m. T40**

7 MS. de BOER: And did I understand your remarks this
8 morning correctly that one of the concerns, or one of
9 the harms that might come out of them painting that
10 picture is cutting out the middleman where FCL might
11 be that middleman in a particular situation?

12 MS. VEZEAU: It depends, right? We're just providing
13 an example. We cannot speak for how parties would
14 react, or how they would use that information to their
15 advantage. We were just sort of generalizing.

16 MS. de BOER: Could you help me understand that in a
17 situation, again, this is a hypothetical, following
18 your example, but in a situation where parties did use
19 that information to again "cut out the middleman" what
20 would the affect be to the competitiveness of the fuel
21 market, or to customers at the pump?

22 MS. VEZEAU: I don't think we can answer that right
23 now. As stated, we aren't as involved in the retail
24 end of the business. So, we don't really have any
25 involvement in that. I would take that question back
26 and then consult with our legal counsel and internal

1 subject matter experts, and we can provide that in
2 writing.

3 MS. de BOER: Just to clarify my interest, I'm
4 interested in understanding what is the harm to
5 responsible persons, or the competitiveness of the
6 market with, "cutting out the middleman" as you
7 described.

8 MS. VEZEAU: It just overall impacts the negotiations
9 or the ability to ensure reliable and cost-effective
10 supply of fuel. So, if we cannot, you know, for
11 instance an example, if we cannot enter into an
12 exchange, right? Because we're trying to supply the
13 B.C. market with fuel, and it's more cost effective to
14 move that fuel from a B.C. supply point, as oppose to
15 moving it all the way from Saskatchewan, it would --
16 if we could not form those types of agreements, we
17 would still have to serve our local retail co-ops in
18 B.C., we would still have to be able to supply them
19 with fuel, so what it would mean is we would no longer
20 be able to do it in a cost-effective manner, and we
21 would have to bring it all the way from Saskatchewan,
22 for instance, into the province.

23 MS. de BOER: Okay, thank you. I think it follows on
24 to your remarks this morning, but I'd love to refer to
25 your prior submission, Exhibit C7-5, and I'll ask my
26 colleague to share them on the screen.

1 MS. VEZEAU: Yeah, so we did highlight that in our
2 statement, we did say that, you know, we ideally don't
3 see the relevance in it being reported, so we would
4 advocate for it to not be reported. But we did hear
5 the suggestion about it being an optional reported
6 data field, and we would be in support of this as
7 well.

8 MS. de BOER: And then from FCL's perspective, are
9 there other data fields that would need to be kept
10 confidential in order for the seller name and seller
11 address to not be commercially sensitive from FCL's
12 perspective?

13 MS. VEZEAU: So, I will make sure for clarity's sakes
14 that we are only looking at some of the reports.
15 Again, because we aren't in the retail space, so we
16 don't do the retail end of the reports. But from an
17 importer/wholesale purchaser reports, and retail
18 supplier reports I believe we have highlighted in
19 previous submissions and reiterated in this statement
20 the fields that we would like to see protected.

21 **Proceeding Time 11:53 a.m. T41**

22 Generally we advocate for all fields to be
23 protected, because as I've said earlier, we don't know
24 how valuable information is to the parties who obtain
25 it and it could have varying levels of value. So it's
26 better to just protect it all because you just don't

1 know otherwise.

2 MS. de BOER: Okay, thank you very much for your time,
3 and the Chair for the opportunity.

4 THE CHAIRPERSON: Thank you. Mr. Bussoli?

5 MR. BUSSOLI: Thank you, Mr. Chair. That concludes
6 staff questions.

7 THE CHAIRPERSON: Thank you.

8 COMMISSIONER EVERETT: Just one --

9 THE CHAIRPERSON: Sure.

10 COMMISSIONER EVERETT: Just referring to your exhibit,
11 I think it's C7-5 which was on the screen, as I read
12 your answers with respect to framework, Draft
13 Framework No. 2 it did not appear to comment on
14 whether the publication of daily high and low prices
15 and the time of the daily high and low prices at
16 retail stations should be confidential. Do I take it
17 -- if I'm correct in what I think appears to be the
18 case -- that you take no position on the publication of
19 that information?

20 MS. VEZEAU: Correct. As we stated in our statement,
21 we are a co-operative association, so we have 160
22 independent local co-operative associations who all
23 manage their own business, and especially at the
24 retail end. So we are more in the manufacturing and
25 distribution end of that supply chain and they are on
26 their own for that. So you would have to reach out to

1 them individually if you wanted specific comments.

2 COMMISSIONER EVERETT: Thank you, that's my question.

3 And thank you for your presentation.

4 THE CHAIRPERSON: I just have one question, please, Ms.

5 Vezeau. You said that the seller name and seller

6 address and transaction type should be held

7 confidential. So I just want to clarify do you mean

8 all of those three together or is it okay to not hold

9 the seller name and address confidential if the

10 transaction type is held confidential or any

11 combination thereof?

12 MS. VEZEAU: Yeah, so what we wanted to try and

13 demonstrate with our examples and, you know, without,

14 you know, exploring every possible scenario, the

15 overarching sort of statement we're trying to

16 demonstrate here is whichever data points are

17 accessible, either individually or the combination of,

18 they can present significant harm dependant on what

19 the party obtaining that information already knows.

20 So that's why we advocate for all of them to be

21 protected because, you know, one piece, sure, maybe

22 it's not valuable, or maybe it is. But as you get

23 more and more data points the clarity becomes more so,

24 ands so it's a matter of just protecting it all

25 because you just don't know.

26 THE CHAIRPERSON: Right. Okay, thank you. Appreciate

1 correct?

2 MS. BUSSOLI: I have it as, yeah, August 12th for in
3 camera with respect to Imperial. Tidewater would be
4 prepared today.

5 THE CHAIRPERSON: And I didn't hear anything from
6 Federated Co-op just now. And perhaps you could
7 clarify that, Ms. Buhler?

8 MS. BUHLER: No, we didn't raise anything that required
9 an in camera session today. Thank you.

10 THE CHAIRPERSON: Okay. So I wonder if I could ask
11 you, please, over the break to consult with those two
12 parties and see who would like to go first and get
13 some estimates of time, so we can move into the
14 confidential sessions this afternoon.

15 **Proceeding Time 11:58 a.m. T42**

16 MR. BUSSOLI: Of course.

17 THE CHAIRPERSON: Thank you. And for everyone else,
18 this brings us to the end of the public portion of
19 today, unless there is anything else, Mr. Bussoli?

20 MR. BUSSOLI: No, that would be it for the public
21 portion of today's sessions.

22 THE CHAIRPERSON: Okay, so I'd like to thank all of you
23 who won't be returning after the break, and I'd like
24 to thank you very much for your participation today,
25 and look forward to seeing you next Thursday.

26 And for those parties that will be back,

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we'll see you at 1 o'clock. Thank you.

(PROCEEDINGS ADJOURNED AT 12:00 P.M.)

I HEREBY CERTIFY THAT THE FORGOING
is a true and accurate transcript
of the proceedings herein, to the
best of my skill and ability.



A.E. Lanigan, Court Reporter

August 5th, 2021