

**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 5<sup>th</sup>, 2021**

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**WORKSHOP**

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**BEFORE:**

<b>D.M. Morton,</b>	<b>Chair/Panel Chair</b>
<b>W.M. Everett,</b>	<b>Commissioner</b>
<b>B.A. Magnan,</b>	<b>Commissioner</b>

**VOLUME 1**

## APPEARANCES

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Tariq AHMED	Counsel for Parkland Corporation (PARKLAND)
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)
Adrian TRELEAVAN	For AFD Petroleum Ltd. (AFD)

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#### PARKLAND STAFF:

Matt Noel-Bentley

#### SUNCOR STAFF:

Chris Hustwick

James McLean

Dan Belden

#### IMPERIAL STAFF:

Tamara McGillivray

#### TIDEWATER STAFF:

Brent Booth

Matthew Millard

#### SHELL STAFF:

Nisha Nayyar

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Evan Dickinson

#### FCL STAFF:

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#### BCUC Staff:

Kris Bienert

Ian Jarvis

Charlene de Boer

King-yi Chan

Josh O'Neal

Cory Vincent

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**VANCOUVER, B.C.**  
**August 5<sup>th</sup>, 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 13<sup>th</sup>, 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                   And I also remind parties too that when  
2                   you're making your opening statements, please don't  
3                   repeat previous submissions that you have already made  
4                   in writing, and please limit your comments to anything  
5                   new that has arisen, or any further clarifications you  
6                   want to add. I just would like to remind all of us of  
7                   the time that we've got allotted here. And while I  
8                   don't want to rush anyone, I don't see the need to  
9                   reintroduce material that is already on the record.

10   **Proceeding Time 8:34 a.m. T2**

11                   Also, with regard to any confidential  
12                   information, if you have any confidential information  
13                   that you wish the panel to hear, then what I will ask  
14                   is that you hold on to it and we will hold a  
15                   confidential session or sessions at the end of the  
16                   public hearing today. And just let me know if you  
17                   will need that time.

18                   And, on that note, the workshop is being  
19                   transcribed and it forms part of the evidentiary  
20                   record of this proceeding. And I believe it's also  
21                   being streamed live. Correct, it's being streamed  
22                   live. So, again, be cautious about any confidential  
23                   information that you have.

24                   Witnesses will be sworn or affirmed by the  
25                   Hearing Officer prior to providing evidence, also.

26                   As you know, you have two days of workshop



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 12<sup>th</sup>.

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 12<sup>th</sup>.

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 12<sup>th</sup>.

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 12<sup>th</sup>, 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 4<sup>th</sup> Session, 41<sup>st</sup> Parliament on Monday,  
14 November 18<sup>th</sup>, 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 15<sup>th</sup>,  
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 it.

2 THE CHAIRPERSON: Well, we'll just let Mr. Bemister  
3 swear you in or affirm you.

4 **IMPERIAL OIL PANEL:**

5 **SCOTT ROBERT GORDON, Affirmed:**

6 **TAMARA MARGARET MARIA KUSHNER MCGILLIVRAY, Affirmed:**

7 THE CHAIRPERSON: Okay, thank you. Please continue,  
8 Mr. Gordon.

9 **PRESENTATION BY IMPERIL OIL - MR. GORDON:**

10 MR. GORDON: Thank you, Chair. We want to thank the  
11 BCUC and the panel for the opportunity to participate  
12 in the workshop today. Imperial has provided fairly  
13 extensive commentary on the first draft framework and  
14 then the second draft framework. We will heed the  
15 BCUC's instruction in the most recent letter not to  
16 repeat or reiterate the points we've already made.  
17 Instead, we'll focus on the four questions in your  
18 July 30<sup>th</sup> communication.

19 I also hope to be fairly brief today for a  
20 few reasons. The first is Mr. McLean touched on a lot  
21 of the points that we had intended to make, so I don't  
22 intend to repeat at length, in any event, similar  
23 submissions, but I will kind of highlight a few points  
24 and hopefully add some value that way.

25 The second reason is, is Imperial does not  
26 -- is not active in the retail space the way our

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 30<sup>th</sup> 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 12<sup>th</sup>  
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 30<sup>th</sup> 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                  15<sup>th</sup>, thank you, in our June 15<sup>th</sup> 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 15<sup>th</sup>  
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 12<sup>th</sup>  
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 12<sup>th</sup>

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 30<sup>th</sup>, 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 15<sup>th</sup>, 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 13<sup>th</sup>, 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**

1  
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 8<sup>th</sup> and June 15<sup>th</sup>, 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 25<sup>th</sup>, 2021 covering letter to the Draft Framework, in  
2 the last paragraph on that page the Commissioner  
3 states that the evidence and submissions to date  
4 suggest that it may be appropriate for the BCUC to  
5 hold the majority of the volume related fuel data  
6 listed in Table A-1 confidential. And then goes on to  
7 provide three examples.

8 **Proceeding Time 11:15 a.m. T33**

9 The harm that the evidence suggests exists.  
10 And those three examples, just by way of a very quick  
11 paraphrase of them, are that disclosing the volume of  
12 fuel imported by a responsible persons on a monthly  
13 basis would provide competitors with insights  
14 necessary to time price increases coincident with  
15 periods when a responsible person is short of fuel  
16 supplies from specific regions. That disclosing the  
17 volume of wholesale fuel purchases would allow  
18 competitors to target lower-volume competitors. And  
19 that disclosing information on the operating  
20 characteristics of individual terminals would provide  
21 competitors with insights into the flexibility,  
22 responsiveness and operational limits of a responsible  
23 person's storage facilities.

24 So, unlike with wholesales and retailers  
25 where the issue is the volume of what is being  
26 imported or purchased that's particularly sensitive,

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 12<sup>th</sup>.

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 our discussion regarding the proposed Framework going  
2 forward today and in future sessions.

3 I intend to provide FCL's answers to the  
4 questions BCUC circulated last week, but first I would  
5 like to start with a brief introduction to FCL.

6 FCL is a wholesaling, manufacturing,  
7 marketing and administrative co-operative owned by  
8 more than 160 independent local co-operative  
9 associations, 18 of which are located in British  
10 Columbia.

11 **Proceeding Time 11:29 a.m. T36**

12 FCL exists to serve its member retail co-  
13 ops across Western Canada. FCL subsidiary  
14 manufactures refined products at the Co-op Refinery  
15 Complex located in Regina, Saskatchewan. Those  
16 refined products are then sold by the retail Co-ops to  
17 their customers for a variety of purposes. FCL is a  
18 manufacturer and a wholesaler, but we do not take part  
19 in the sale of gasoline or diesel at a retail level.

20 Each of the local Co-operative associations  
21 or retail Co-ops are independent, autonomous  
22 businesses that are owned by their individual members.  
23 These retail Co-ops own and operate agrocentres, food  
24 centres, stores, gas bars, convenience stores and home  
25 centres. In British Columbia the retail Co-ops own  
26 and operate 64 retail gas bars, about 40 of which are

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 15<sup>th</sup>, 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 12<sup>th</sup> 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 5<sup>th</sup>, 2021