

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 12th, 2021

WORKSHOP

BEFORE:

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

VOLUME 2

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Adrian TRELEAVEN	For AFD Petroleum Ltd. (AFD)
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INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE
------------	--------------------	-------------

VOLUME 1, August 5th, 2021

C1-7	SUNCOR'S SLIDE DECK PRESENTATION	53
------	--	----

A2-2	BCUC STAFF SLIDE DECK PRESENTATION	53
------	--	----

VOLUME 2, August 12th, 2021

NO EXHIBITS MARKED

INDEX

PAGE

VOLUME 1, August 5th, 2021

PRESENTATION BY BCUC STAFF - MR. BUSSOLI 8

SUNCOR ENERGY INC. PANEL

JAMES McLEAN, Affirmed:

DAN BELDEN, Affirmed:

Presentation 14
Questions by BC Staff -
 Ms. de Boer 33
 Ms. Bienert 48

IMPERIAL OIL PANEL:

SCOTT ROBERT GORDON, Affirmed:

TAMARA MARGARET MARIA KUSHNER MCGILLIVRAY, Affirmed:

Presentation 58
Questions by BC Staff -
 Ms. de Boer 72

TIDEWATER MIDSTREAM AND INFRASTRUCTURE PANEL

BRENT BOOTH, Affirmed;

MATTHEW MILLARD, Affirmed;

Presentation 81
Questions by BC Staff -
 Ms. de Boer 103
 Ms. Bienert 107

FEDERATED CO-OPERATIVES LIMITED PANEL

CHERYL VEZEAU, Affirmed:

Presentation 110
Questions by BC Staff -
 Ms. de Boer 119
 Ms. Bienert 107

VOLUME 2, August 12th, 2021

INDEX

PAGE

PARKLAND CORPORATION PANEL

PAUL GRAY, Affirmed:
MATT NOEL-BENTLEY, Affirmed:

Presentation 134
Questions by BC Staff -
 Ms. de Boer 149
 Commission Panel 161

7-ELEVEN PANEL

MARK VELLA, Affirmed:

Opening Statement/Presentation - Mr. Wright .. 164
Questions by BC Staff -
 Ms. de Boer 180
 Mr. Bussoli 192
 Commission Panel 193

HUSKY ENERGY (CENOVUS) PANEL

SEAN TWINNEY, Affirmed:

Opening Statement/Presentation - Mr. Dineley . 196
Questions by BC Staff -
 Ms. de Boer 210

SHELL CANADA LIMITED PANEL

EVAN DICKINSON, Affirmed:
SIGOURNEY COURTRIGHT, Affirmed:
SANJAY VADODARIYA, Affirmed:
NISHA NAYYAR, Affirmed:

Presentation 220
Questions by BC Staff -
 Ms. de Boer 241
 Commission Panel 264

PRESENTATION BY BCOAPO - MS. WORTH 266
Questions by BC Staff -
 Ms. de Boer 290

QATHET LIVING MAGAZINE PANEL

PIETA WOOLLEY, Affirmed:

Presentation 300
Questions by BC Staff -

INDEX

	<u>PAGE</u>
Ms. de Boer	308

INFORMATION REQUESTS

VOLUME 2 - AUGUST 12th, 2021

For BCUC Staff:

Pages: 149, 190-191, 211, 247, 309

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VANCOUVER, B.C.

August 12th, 2021

(PROCEEDINGS RESUMED AT 8:30 A.M.)

THE CHAIRPERSON: Please be seated.

Good morning everyone, welcome to the second day of our hearing. My name is Dave Morton, I'm the panel chair, and with me are my fellow Commissioners, Bernie Magnan and Bill Everett.

I will keep my remarks very brief, we'll treat this as a continuation of last week. So, we won't go through appearances again. Although we do have one additional party attending today, and I'll get to that in just a moment.

And we are scheduled to go from 8:30 until 4:00. I think compared to last week, we probably have a fuller agenda or fuller list of parties that are speaking today. So I will again ask you to please keep your -- focus your remarks on things that you want to say that haven't been said before. I'm really reluctant to go past 4 o'clock. I acknowledge that we've got people from Alberta, which is 5 o'clock for them, and I realize all of us may have commitments. So if it looks like we are not going to get through things today, we'll pause a little before 4:00, and we'll have a discussion about how we will deal with that, deal with any remaining submissions or testimony

1 retail sites that are owned or leased by Parkland and
2 operated and managed by either Parkland or by
3 independent retailers on its behalf.

4 **Proceeding Time 8:35 a.m. T3**

5 Parkland owns the fuel inventory and determines the
6 retail selling price at the pump.

7 The dealer business model includes sites
8 owned or leased by an independent dealer or Parkland
9 and are operated and managed by independent dealer.
10 Parkland secures a wholesale fuel supply contract with
11 the dealer and supplies fuel to the dealer based on
12 independently published rack prices. The dealer
13 typically owns the fuel inventory and determines the
14 retail price at the pump.

15 We also conduct a commercial fuel business
16 which provides fuel to businesses within the province
17 and we are a major supplier of aviation fuel to the
18 Vancouver airport.

19 With respect to my role with Parkland, as I
20 said, I am the director of refinery supply. I am
21 based in Burnaby at the refinery and am responsible
22 for the refinery's crude supply, refinery optimization
23 and the disposition of the refinery's production onto
24 the market. Given the nature of my responsibilities,
25 I'll do my best to answer any questions the panel and
26 commission staff may have. However, if questions are

1 too far outside of my expertise or Matt's, we may need
2 to respond at a later date.

3 Parkland has filed submissions on Framework
4 Draft No. 2 and I am cognizant of the Commission's
5 request that we avoid repeating information filed
6 already. A number of interveners have also already
7 addressed matters in some detail. Accordingly, I
8 intend to make a few high level comments before
9 turning to questions posed by the Commission in
10 Exhibit A-12.

11 We believe that the BCUC reporting can and
12 should be performed by publishing information on an
13 anonymized and aggregated basis and only to the extent
14 that data of individual market participants is not
15 identifiable. We believe that the Framework Draft No.
16 2 is generally a good approach to the issue, but that
17 some further changes that take into account the
18 significance of participants' confidential data are
19 needed to ensure that the objectives of the FPT Act
20 are met while providing appropriate protections to
21 this important industry.

22 The BCUC asked participants to indicate
23 areas of Framework Draft No. 2 that they support and
24 areas of concern, so I will turn to that now.
25 Parkland appreciates the BCUC's efforts to consider,
26 and in many cases reflect comments provided by

1 Parkland and other parties. I believe our issues have
2 been addressed in our submissions, but I will
3 highlight some of them in my comments.

4 **Proceeding Time 8:37 a.m. T4**

5 We are generally in agreement with the
6 BCUC's approach to volume and price related fuel data,
7 recognizing that this is an extremely sensitive
8 information that should be protected. There are some
9 items that the BCUC has proposed to be published that
10 we submit should continue to be granted confidential
11 treatment.

12 The first is the 2019 total gasoline and
13 diesel sales volumes reported in response to retail
14 stations surveyed. This fuel data should be treated
15 as confidential protected information. The BCUC
16 indicated that the fuel data is available for purchase
17 from the Kent Group, but this data is provided on a
18 voluntary basis. Retailers are not required to do so,
19 and may stop providing information based on potential
20 commercial harm or other considerations.

21 Valuable retailers -- vulnerable retailers
22 such as those with low volumes may choose not to
23 participate at all in the provision of information to
24 private sources. Making the sales volumes of all
25 retailers in the province available, even on an annual
26 basis through BCUC reporting would expose year-over-

1 year changes in volumes, could expose vulnerable
2 competitors and would weaken competition.

3 The second is shipment volume. In the
4 monthly retail supplier report we disagree with the
5 statement in Framework Draft No. 2 that is information
6 reveals only that a shipment of fuel was delivered to
7 an unidentified station somewhere in the province. I
8 will address this in more detail in my response to
9 question 3.

10 There is some information that Parkland has
11 not objected to publishing. However, we recognize
12 this fuel data could reasonably be highly confidential
13 for other participants. This is reflective of the
14 breadth of the industry and the variety in the
15 industry. Different competitors consider different
16 information to be sensitive to varying degrees and we
17 believe this is appropriate and to be expected in a
18 competitive environment.

19 As a general principle, it is important for
20 the BCUC to recognize that the impact of disclosure
21 could differ among participants, and BCUC should not
22 default to disclose just because one participant does
23 not object. Rather, the reverse should be true. In
24 the interest of fairness, information should be kept
25 confidential for all participants if its disclosure
26 could harm any participant.

1 Causing participants to generate a masked
2 ID simply so that the masked ID can be disclosed to
3 the public does not seem to further any objective of
4 transparency. It would merely create administrative
5 burden on the participants while adding no value.

6 Counterparty information should also be
7 kept confidential. I will address this more deeply --
8 this in more detail in my response to question 3.

9 Turning to the BCUC's questions, at the
10 onset I want to note that my responses to questions 1
11 and 4 address legal questions and my responses were
12 prepared with the assistance of legal counsel. So if
13 there is follow-up, we may need to answer at a later
14 time after consultation.

15 Question number 1 asked for the discussion
16 of the object and purpose of the *Fuel Transparency Act*
17 and the import of transparency under the FPT Act.
18 Parkland agrees with the submission made by Suncor
19 that the purpose of the Act is to promote the
20 competitiveness of the market for reportable fuels and
21 public confidence in the competitiveness of the
22 market. The purposes are set out in section 4(2)(b)
23 of the FTP Act. The importance of the competitiveness
24 of the market for reportable fuels and public
25 confidence in the competitiveness of that market are
26 also highlighted in section 9(2)(b) of the FTP Act,

1 where they are listed as considerations in relation to
2 the disclosure of protected information. Public
3 transparency of fuel data is not an objective or
4 purpose of the FPT Act, and as other parties have
5 noted, the provision is permissive and not mandatory.

6 At a less philosophical level though, the
7 core of the FPT Act is to allow the administrator to
8 collect data from responsible parties and not
9 necessarily to publish it. Section 9(2) of the FTP
10 Act makes clear that care needs to be taken before
11 protected information is published. As Parkland and
12 other parties have described, competitiveness of the
13 market and public confidence in the competitiveness of
14 the market may be harmed by the publication of data
15 that is not sufficiently anonymized and aggregated.
16 And, again, as others have pointed out, I note that
17 our concern is not that the public itself would have
18 access to this sensitive data, it's that our
19 competitors would have access to it, which would cause
20 harm in various ways.

21 Question 1 asked whether the three key
22 principles set out in section 3.1 of Framework Draft
23 No. 2 guide the BCUC in determining whether fuel data
24 will be held confidential in alignment with the FPT
25 Act. The three key principles are generally in
26 alignment with the FPT Act. However, Parkland agrees

1 with the submissions that have been made by other
2 responsible persons, such as Suncor and Tidewater,
3 that the promotion of transparency is not the same
4 thing as promoting public confidence in the
5 competitiveness of the fuel market, and the principles
6 of transparency should not trump the provisions of
7 section 9 of the FPT Act.

8 I would note as well, that regardless of
9 what is made public, considerable transparency is
10 already provided under the FPT Act, vis-à-vis the data
11 that is provided to the BCUC as administrator. It is
12 open to the BCUC to take the data, analyze it, come to
13 conclusions and report on it.

14 Question 1 asked if promotion of
15 transparency is a core purpose of the FPT Act, is the
16 onus under section 9(2) on responsible persons to
17 demonstrate sufficient harm would result from
18 publishing certain protected information such as the
19 confidential treatment is warranted rather than the
20 reverse?

21 **Proceeding Time 8:46 a.m. T6**

22 Parkland agrees with Suncor and Tidewater's
23 submission that the starting position under section
24 9(2) of the FPT Act is that certain information should
25 be kept confidential and the onus should be on the
26 BCUC or other interested parties to demonstrate that

1 the public interest in publishing it outweighs any
2 potentially harm to responsible persons.

3 I believe question 2 was directed to other
4 parties, so I will skip that and turn to question
5 number 3.

6 Question 3 asks for examples or
7 illustrations of specific harm to responsible persons
8 or competitiveness of the market for reportable fuels
9 that would result from publishing the fuel data not
10 identified as confidential protected information in
11 Framework Draft No. 2. With respect to shipment
12 volumes, I can tell you from personal experience that
13 industry participants are generally aware of stations
14 and locations supplied by their competitors in the
15 province. Knowing that a shipment of a certain size
16 was made by a competitor on a certain day in concert
17 with other knowledge they have about activities such
18 as truck traffic, pipeline shipments, and their more
19 detailed knowledge of their own shipments and station
20 sales can be used to make very detailed estimates as
21 to the destination of given shipments. This is even
22 more likely for information about smaller participants
23 in the province, but it also applies to larger
24 participants such as Parkland. As I also already
25 noted, volumetric data could expose vulnerable
26 competitors and would weaken competition.

1 With respect to counterparty information,
2 seller's name, seller's address, supply location and
3 ownership structure, all contain third party identity
4 information. Disclosing any of these data points
5 would allow other parties to ascertain which suppliers
6 are used to supply which locations, including whether
7 imported or local. This would allow competitors to
8 target certain dealers or sell lower volumes of
9 product and who might therefore be in a financially
10 weaker position and could be put out of business by
11 temporarily lowering prices, thus lessening
12 competition in the long run, and may also allow
13 competitors to target certain suppliers.

14 Parkland typically has a contractual
15 requirement to keep this information confidential.
16 Although the BCUC disclosing this information may not
17 cause a breach of the contract itself, this would have
18 a chilling effect both in British Columbia and across
19 Canada. Supply agreements are rarely specific to one
20 province. As we noted earlier, if suppliers know that
21 information about their activities is going to be
22 published in B.C., they will be less likely to enter
23 into favourable agreements in British Columbia and
24 across the country, which will effect Parkland's
25 ability to negotiate beneficial arrangements
26 throughout its business.

1 orbit. These agreements allow for an exchange of
2 product between Western Canadian refiners and Parkland
3 Burnaby refinery. This saves Parkland from shipping
4 barrels by truck to Alberta, and Alberta refineries
5 the cost of shipping their barrels to B.C., thus
6 eliminating the cost of transportation for both
7 parties.

8 These agreements are negotiated regularly,
9 often every few years to maintain competitive
10 economics. If prices, term, volumes, or parties
11 associated with these contracts were disclosed at any
12 time during the term of the contract, or after
13 termination, it would severely undermine Parkland's
14 ability to re-negotiate these agreements and extract
15 the greatest value for its products. This is because
16 competitors may avoid offering significant discounts
17 or other favourable terms to certain parties, because
18 they would be obligated to offer the same terms to all
19 parties with whom they negotiate. Keeping such terms
20 confidential allows aggressive negotiations to occur.
21 For this reason, publicizing them would harm our
22 business.

23 Parkland recognizes that the BCUC may
24 report to the public and this may increase public
25 confidence in the competitiveness of the market, of
26 that market, which we think is a good thing. However,

1 as we have articulated in prior submissions to the
2 BCUC, we believe that any BCUC reporting can and
3 should be performed by publishing information on an
4 anonymized and aggregated basis, and only to the
5 extent that the data of individual market participants
6 are not identifiable.

7 I would only like to clarify that our
8 concern is not that the public itself could have
9 access to the data under discussion. Rather, we are
10 conscious that there is no way to avoid our
11 competitors, suppliers and other industry participants
12 having access to public data, and this would impact
13 our own operations negatively, in addition to
14 impacting the competitiveness of the environment.

15 It is in the public's interest that this
16 confidential information not be published because a
17 strong competitive environment is the best way to
18 ensure competitive pricing and a well-supplied market.

19 Question 4 addresses the declaration and
20 undertaking process. It asks whether the declaration
21 and undertaking process contemplated in Framework
22 Draft No. 2 is consistent with Section 9(2) of the FPT
23 Act. Parkland agrees with Suncor's submission that
24 the short answer to this is no. Section 9(2)
25 addresses publication, which presumably would be made
26 available to the public at large. However, as stated

1 in our submissions, Parkland is not opposed to the
2 provision of confidential protected information to a
3 requesting party provided that sufficient measures are
4 in place.

5 Parkland has stated that as a condition of
6 receiving access to confidential protected
7 information, the requesting party should also be
8 required to execute a non-disclosure agreement
9 directly with participants, rather than only with the
10 BCUC. We are prepared to work with other responsible
11 persons to jointly develop a standardized non-
12 disclosure agreement. We see efficiency as a
13 potential advantage to having responsible persons
14 develop such a document.

15 Proceeding in such a matter would also
16 presumably allow for concerns of responsible persons
17 to be better taken into account. We don't see any
18 notable disadvantage to proceeding in such a manner.
19 It may take longer and more resources, but this
20 significantly outweighs by what we think would be a
21 better document at the end of the day.

22 **Proceeding Time 8:54 a.m. T8**

23 We appreciate the BCUC's openness to the
24 concerns of Parkland and other industry participants
25 along with the public. We believe that Framework
26 Draft No. 2 is generally an appropriate approach to

1 the issue but that some further changes that take into
2 account the significance of participants' confidential
3 data are needed to ensure that the transparency
4 objectives of the FPTA are met while providing
5 appropriate protections to this important industry.

6 I'm glad to take any questions now, to the
7 extent that I'm able.

8 THE CHAIRPERSON: Thank you, Mr. Gray, appreciate that.

9 Please, Ms. de Boer?

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

11 MS. de BOER: Good morning, thank you. Staff does have
12 a few questions. Charlene de Boer, BCUC staff.

13 Appreciate the opening remarks and the
14 additional information you provided. To start off our
15 questions, you mentioned that reporting volumes to
16 Kent is voluntary, is that correct?

17 MR. GRAY: Yes.

18 MS. de BOER: At a high level, could you speak to what
19 percent of Parkland's stations reported to Kent in
20 2019?

21 MR. GRAY: Off the top of my head, I can't, no. But we
22 could provide that.

23 **Information Request**

24 MS. de BOER: That would be great, thank you.

25 You also spoke to the shipment volume in
26 your remarks this morning and that particular fuel

1 data. And I believe you said that knowing that a
2 shipment of a certain size was made by competitors on
3 a certain day, in concert with other knowledge that
4 they might have about your activities such as truck
5 traffic or pipeline shipments, could be used to make
6 very detailed estimates about the destinations of a
7 given shipment. Is that a fair summary?

8 MR. GRAY: Yes.

9 MS. de BOER: Could you please walk me through how the
10 shipment volume field could be used to make detailed
11 estimates about the destination of a shipment?

12 MR. GRAY: That specific piece of information on its
13 own doesn't provide that. But in concert with the
14 greater information that may be disclosed and the
15 information that is generally known by knowledgeable
16 people in the industry, you can use that data to, I
17 think and Suncor used the word, "paint a picture".
18 And the more information you have and the more
19 detailed that information is and that it's provided on
20 a consistent basis.

21 So when it's reported, everybody's
22 reporting it in the same manner. So you're not
23 aggregating from different sources where you may be
24 comparing apples to oranges. They are all on the same
25 basis. When you take that and then you add that it's
26 either published monthly, quarterly, annually, you can

1 see trends. You can -- and it's not just for one
2 participant, it's for all terminals. And so you can
3 gain a great deal of information, not necessarily from
4 one specific line item but it's the aggregation of all
5 that information and in its totally the fact that it
6 is actually published that allows you to compare, you
7 know, one period over the next period, leads to trends
8 and allows you to develop understandings, maybe
9 develop different strategies to either -- maybe
10 something that's in the best interest of your business
11 but many not in another's business.

12 MS. de BOER: Okay. But to focus on, you know,
13 connecting the dots of having a shipment volume and
14 any other information around it, what would you need
15 to be able then take that information and figure out
16 what the destination of that shipment is, which I
17 believe was what Parkland was saying in its
18 submission?

19 MR. GRAY: So, if you know that -- if the ID, for
20 instance, is there, and I recognize that that
21 particular ID is unique to one particular supplier.
22 Now I know who the supplier is, I know the volume that
23 has been loaded on to that truck.

24 **Proceeding Time 8:58 a.m. T9**

25 I now know the size of that truck and I also, you
26 know, depending on which terminal it's lifting at, the

1 frequency of those lifts all start to paint, again,
2 that picture. And knowing, you know, which terminals
3 supply which orbits, you know which stations are in
4 those orbits, you can start to narrow in on exactly,
5 you know, where the destinations of those particular
6 shipments are.

7 But it is -- it's not that one particular
8 line item, it is the context within everything else
9 that's been provided and additional, you know,
10 information that industry experts would have at their
11 -- as their basic knowledge of the industry.

12 MS. de BOER: Thank you, that's very helpful. And you
13 mentioned truck traffic or insights into shipments,
14 you know, whether it's railcars or pipeline shipments.
15 How would a competitor gain access to information on
16 Parkland's truck traffic or pipeline shipments?

17 MR. GRAY: So, it depends, you know, we ship a number
18 of items by pipe, so we move crude via the Trans
19 Mountain Pipeline, so there's a certain level of
20 transparency and reporting in terms of volumes that
21 are available through reporting through the CER. We
22 also ship jet fuel to the airport and there, again, is
23 reporting information, there is daily scheduling
24 information that is available to us because we're
25 shipping our own products, and so that provides some
26 transparency into the utilization of the line. We

1 know who the other participants are on the line. And
2 when you subtract your own volumes, just, again, you
3 can gather general information and start to understand
4 what others are doing.

5 And the more the information that is out
6 there and, again, within a single database that is
7 provided on exactly the same basis, whether it's
8 annually or monthly, again, just provides that much
9 more information to be able to understand with even
10 more precision than we do today.

11 MS. de BOER: Thank you. You also mentioned the
12 potential for publishing counterparty related fuel
13 data and that if this was to happen Parkland had a
14 concern about a chilling effect of the B.C. market
15 sent across Canada, is that correct?

16 MR. GRAY: Yes.

17 MS. de BOER: Can you clarify for me what is meant by
18 "chilling effect" and what the results would be on a
19 responsible person or the competitiveness of the
20 market for reportable fuels?

21 MR. GRAY: I think the concern -- because these
22 agreements are being negotiated, whether it's annually
23 or semiannually, and you have multiple parties, and
24 responsible parties know that information is going to
25 be published, they will have -- maybe be reticent to
26 participate and negotiate an agreement with a party

1 that is located in British Columbia versus, you know,
2 one that has business in Western Canada.

3 MS. de BOER: And if those parties are reticent to
4 participant with Parkland or another responsible
5 person in B.C., in a competitive market over the long-
6 term would you expect a new participant to come in and
7 take that kind of party's place, to fill that void?

8 MR. GRAY: This is an incredibly capital intense
9 business. Generally if you look at the trends over
10 the years there is general rationalization of the
11 business and you don't see new participants.

12 MS. de BOER: Thank you.

13 MR. GRAY: In general. But there are -- not -- it
14 doesn't exclusively mean there aren't any new
15 participants, but, you know, you're not seeing large
16 new networks. You're seeing one company, you know,
17 may be aggregated with another one through M&A
18 activity, et cetera, but less of more participants
19 coming into the market as a general trend.

20 MS. de BOER: So a trend towards consolidation rather
21 than new entrants or new increased competition?

22 MR. GRAY: In general in the industry if I look at
23 North America, that would be my conclusion. I think
24 Matt maybe has something to add here.

25 MR. NOEL-BENTLEY: Yeah, thank you. I was just going
26 to add that the question of -- sorry, I've actually

1 lost the train of thought as to what I was going to
2 add there. Oh, I'm sorry.

3 Any new participant who may have been
4 encouraged to enter the market in the situation you
5 described is going to be subject to the same effect,
6 right? And so, while there may well be new, you know,
7 suppliers with whom we could -- or other parties with
8 whom we could negotiate, they're also going to be
9 subject to that same chilling effect. They all know
10 they're doing business either in British Columbia or
11 with a counterparty such as Parkland that does
12 business in British Columbia. So it just has that
13 same effect.

14 MS. de BOER: Thank you. And apologies for focusing my
15 attention to Mr. Gray. I didn't mean to cut you off.
16 If I am failing to recognize that you're looking to
17 speak, just jump in and have me pause.

18 **Proceeding Time 9:04 a.m. T10/11**

19 MR. NOEL-BENTLEY: No problem.

20 MS. de BOER: And then at a high level, I believe
21 Parkland opens its remarks to describing some of the
22 market share, and that you have a significant market
23 share in the wholesale -- or a significant component
24 of the wholesale market here in B.C. Is that fair?

25 MR. GRAY: I don't know if I would bring it down to the
26 wholesale level --

1 MR. NOEL-BENTLEY: You know, I may even respond to that
2 --
3 MR. GRAY: -- sorry Matt, go ahead.
4 MR. NOEL-BENTLEY: Yeah, I was just going to say, I
5 think even the concept of what significant is, you
6 know, I'm not sure we'd want to put a stake in the
7 ground here. We are a major player in the market, and
8 you know, our percentages of the market have been
9 submitted in previous inquiries. I think that's --
10 I'm not sure we'd want to land on a definition of
11 significant.
12 MS. de BOER: No, I think that's a far better phrasing.
13 Given you being a major player in the market, and I
14 believe you suggested that all of the fuel data should
15 be aggregated or anonymized in order to be published.
16 And I'm just wondering if Parkland believes it would
17 be possible to adequately aggregate or anonymize any
18 of the wholesale data to a sufficient extent to make
19 it publishable in light of that major player status?
20 MR. GRAY: I think (inaudible).
21 MR. NOEL-BENTLEY: I would say it would -- sorry, go
22 ahead Paul, I apologize.
23 MR. GRAY: I think that really gets to the heart of the
24 matter of really trying to ensure that care is taken
25 in aggregating in a way that not only does it protect
26 Parkland, but it protects all of the participants, and

1 so what might be acceptable to Parkland may not be
2 acceptable to another party.

3 MS. de BOER: And would Parkland consider the process
4 proposed in Framework No. 2, or Draft Framework No. 2,
5 to kind of vet the proposed aggregation or
6 anonymizations prior to publication to be sufficient
7 to protect that interest you've described?

8 MR. GRAY: Yes, I believe it is.

9 MS. de BOER: I did have a couple questions referring
10 to your prior submission as well, specifically looking
11 at Exhibit B-5, pages 3 and 4. And this is with
12 respect to the physical capacity of storage tanks.
13 Parkland states that it does not consider storage
14 capacity contained in the annual storage report to
15 constitute protected information, but that it
16 considers this fuel data could reasonably be highly
17 confidential for other responsible persons. Is that
18 correct?

19 MR. GRAY: Yes.

20 MS. de BOER: Could you please explain why Parkland
21 doesn't consider this fuel data to be protected
22 information?

23 MR. GRAY: So, I would say we consider it to be
24 sensitive information, maybe not confidential. I
25 think, you know, in all of our businesses, all of the
26 information has a hierarchy of confidentiality to it,

1 and this just storage information and tank volumes
2 fall to a slightly lower level.

3 MS. de BOER: Would you consider, by you I mean
4 Parkland, would Parkland consider the information on
5 the physical capacities of storage tanks to be general
6 industry knowledge?

7 MR. GRAY: Not necessarily the specific volume, but
8 general volumes I would say yes, as general
9 information, general industry knowledge.

10 MS. de BOER: And could you elaborate on why Parkland
11 considers that it might be confidential information
12 for other entities, as it stated in its submission?

13 MR. GRAY: I guess that would be speculation.

14 MS. de BOER: Could you clarify for me why Parkland
15 considers it could reasonably be highly confidential
16 for other responsible persons?

17 MR. NOEL-BENTLEY: I'll try to speak to that. I mean
18 at a simple level because we'd seen submissions from
19 other participants who have said so, and we respect
20 their viewpoint on that. We also note that because,
21 as Mr. Gray said, we do treat this information as
22 sensitive to us. We don't expect our competitors to
23 know the details about our tank capacities and other
24 information like that. We have, through this process,
25 tried to find the best balance we can to not objecting
26 to publication any more than absolutely necessary,

1 because we're trying to be, you know, as cooperative
2 as we can, and we recognize the desire for
3 transparency. And so this was our attempt at a
4 balance. That says look, it's sensitive, but if it
5 utterly has to be published, you know, we don't think
6 that is disastrous to us.

7 But that is Parkland's assessment for our
8 own, you know, specific situation, and other
9 participants are in other situations. And so it was
10 just an attempt to recognize that look, others may
11 simply assess this differently than we did.

12 **Proceeding Time 9:09 a.m. T12**

13 MS. de BOER: Okay, thank you. And then just a final
14 question from me on the retail side. Certain
15 responsible persons have submitted that the daily high
16 and low retail price of fuel data and the times
17 thereof should be kept confidential or designated as
18 confidential protected information. And I'm wondering
19 if Parkland has a position on the confidentiality of
20 this fuel data?

21 MR. GRAY: Maybe I'll let you respond to that one.

22 MR. NOEL-BENTLEY: Sure, yeah. I think we've also --
23 you know, I would put it in a similar category as the
24 tank capacity, in that we've recognized that, you
25 know, this is information that is potentially
26 available in some form. You know, people can observe

1 stations, things like that. And so we in attempting
2 to strike that balance I think haven't objected to it.

3 You know, other parties have made the case
4 though that the certainty and the ability to analyze
5 trends that would come from this information being
6 published with, you know, a great deal of precision
7 which would come from publishing the information
8 submitted under the FPTA, would be -- you know, would
9 provide a level of -- you know, an ability to make
10 strategic pricing decisions and things like that, that
11 is not currently available. And, again, we agree with
12 that. You know, that that information absolutely
13 would be of potential harm to participants because it
14 may well reveal pricing tendencies and things like
15 that that are now one can only estimate.

16 MS. de BOER: And so just to clarify, in balance
17 between the publicly available information and the
18 difference between that and what the BCUC is
19 collecting, Parkland did not feel that this particular
20 data needed to be held confidential, rather it could
21 be available for publication, is that correct?

22 MR. NOEL-BENTLEY: Yes, from our perspective that was
23 our position. But, you know, as Mr. Gray said, we
24 certainly support other participants' differing
25 viewpoints and we certainly think it should be all one
26 or all the other way.

1 MS. de BOER: Much appreciated, thank you for your
2 time.

3 THE CHAIRPERSON: Thank you.

4 COMMISSIONER EVERETT: Mr. Gray, at one point you said
5 the BCUC will collect the data and can analyze and
6 come to conclusions on it. Can you elaborate what you
7 meant by that?

8 MR. GRAY: I see two potential options. All the data
9 is collected and all the data is made public. The
10 other path is the data is collected under
11 confidentiality and it's available to the BCUC staff
12 to make any analytical -- do any analytical work that
13 they want to to understand the competitiveness of the
14 market and if there are -- you know, might highlight
15 particular concerns, that that would then be reported
16 to the public or to the B.C. government.

17 COMMISSIONER EVERETT: Thank you.

18 THE CHAIRPERSON: Thanks. Mr. Gray, just to clarify
19 that last comment then, you are of the view that for
20 the purpose of this very limited discussion we should
21 treat government as the same way we would treat the
22 public and we would not share the underlying data with
23 government but we would share the same conclusions
24 with government that we share with the public. Is
25 that what I understood you to say?

26 MR. GRAY: So Parkland is comfortable and has

1 confidence that the BCUC could share the information
2 with the government and that that data and information
3 would be kept confidential even though it was being
4 shared with the government.

5 **Proceeding Time 9:14 a.m. T13**

6 THE CHAIRPERSON: So you would have no objection to us
7 sharing the underlying data with government, or at
8 least with certain portions of government?

9 MR. GRAY: That is correct.

10 THE CHAIRPERSON: Thank you.

11 MR. GRAY: Matt, you can correct me if I -- but I think
12 that's our position we discussed.

13 MR. NOEL-BENTLEY: No, I think we agree. I think we
14 believe that that's what the legislation appears to
15 require, although that's a, you know, perhaps legal
16 interpretation that we're not prepared to make here.
17 But we're -- we expect the government to recognize the
18 need for confidentiality in the same way as we're
19 talking about it right now.

20 THE CHAIRPERSON: Great, thank you. And just one more
21 question, just so that I can understand. When you use
22 the term "sensitive information" as opposed to
23 "confidential information", is the difference that
24 sensitive information is information that is already
25 not confidential, in other words it's probably in the
26 public domain at least to some limited extent, and you

1 organized.

2 **7-ELEVEN PANEL**

3 **MARK VELLA, Affirmed:**

4 **OPENING STATEMENT/PRESENTATION BY 7-ELEVEN - MR. WRIGHT:**

5 MR. WRIGHT: Mr. Chairman, panelist, good morning. As
6 you know, my name is Kevin Wright. I appear today as
7 external counsel for 7-Eleven Canada. And I have with
8 me in person Mr. Mark, M-A-R-K, Vella, V-E-L-L-A, who
9 is the national fuels manager of 7-Eleven Canada. I
10 will provide an opening statement and address
11 questions 1 and 4 of the written workshop questions
12 posed by the panel on July 30th, as those questions are
13 essentially legal in nature. And Mr. Vella will
14 address question 3. We will both be available to
15 assist the Commission and staff in answering
16 questions. And depending on the nature of the
17 questions and the information provided, we may seek
18 leave of the panel to answer certain information in
19 camera, as certain other interveners have done.

20 Just as an overview, and this will be well
21 known to the Commission, 7-Eleven is a retailer of
22 fuel in British Columbia and elsewhere. And unlike a
23 number of the other commercial interveners in this
24 proceeding, 7-Eleven does not refine fuel or sell
25 fuels on a wholesale basis to others in the province.
26 7-Eleven is also different in that it operates its

1 fuel stations under different brands. So, for
2 example, some of the 7-Eleven stations are operated
3 under the Esso brand, under a confidential licence
4 with Imperial Oil. Some are under Petro-Canada brand,
5 under confidential licence from Suncor, the owner of
6 Petro-Canada. And then some are under 7-Eleven's own
7 brand.

8 **Proceeding Time 9:19 a.m. T14**

9 And as one may appreciate, 7-Eleven must
10 tread carefully when managing the information
11 exchanged and generated in the course of these
12 relationships, and Mr. Vella will discuss that a
13 little bit more when he comes to present.

14 So, the first set of questions from the
15 panel is directed to the purposes of the legislation
16 and the significance of transparency, and the balance
17 to be struck when deciding whether to exercise a
18 discretion under section 9(2) to publish protected
19 information.

20 The legislation is new, and it follows on
21 the heel of the 2019 Fuel Price Inquiry. That was
22 largely a voluntary process. Industry players were
23 invited to participate and intervene, and provide
24 certain information. And the headline finding that
25 came from the Commission, and this is the one that the
26 politicians have referenced when introducing the

1 legislation and debating the legislation, was that
2 with respect to wholesale supply there is an
3 additional 13 cents per litre that could not be
4 explained or justified by the costs required to
5 transport, and prepared, refueled -- refined product
6 for sale in B.C.

7 So in short, the Commission came away
8 unable to explain entirely the wholesale pricing,
9 relying upon voluntary submissions by voluntary
10 participants. So, one of the apparent goals of the
11 legislation and its achievements is now to compel
12 production, not from volunteers, but from all
13 responsible persons present in the Province.

14 Now, the information to be provided is not
15 set out in the legislation itself, but rather it's
16 come under regulation provided under Part 3 of the
17 Act. And thus far, the only regulations that have
18 been issued are for the wholesale refiners/importer
19 side of the industry. Any regulations for retailers
20 like 7-Eleven await further study by the Commission,
21 and as you're aware, there is an ongoing year-long
22 pilot study that's being taken place for advisement to
23 the Minister.

24 So it's important to note that as a
25 retailer we go through this application process, the
26 confidentiality application process, not knowing

1 precisely what the regulations will come to require,
2 and depending on what comes in the regulations, there
3 may be further consultation that's required.

4 Now, what was at issue in the inquiry and
5 now with the legislation, are questions about prices
6 and costs in fuel markets in the province. And my
7 submission is that the debate is not about individual
8 market participants. Now, of course in order to get
9 the information you need to study the market as a
10 whole or in aggregate, one needs to accept the data
11 individually from individual responsible persons. But
12 the interest, the public interest lies in markets as a
13 whole.

14 This is apparent when one looks at the
15 principles that govern and direct the Commission as
16 administrator of the legislation. Section 4 requires
17 the administrator to administer the Act so as to
18 promote the competitiveness of the market for
19 reportable fuels, and public confidence in the
20 competitiveness of the market.

21 Words like "market" were, I submit, chosen
22 carefully and deliberately to signal a concern about
23 the whole, or the aggregate as opposed to individual
24 participants.

25 Now, question 1 of the July 30 workshop
26 questions asks about the purposes and the interplay

1 between transparency and protected information. One
2 should resist the urge to think that the legislation
3 is about transparency for its own sake, or that every
4 bit of data collected from individual organizations
5 would presumptively be disclosed to the public.
6 Instead, the gist of the publication question is how
7 will disclosure of particular information assist in
8 determining or revealing fuel costs and information
9 relevant to pricing and competitiveness of the market.

10 So, this is the structure of the
11 legislation. Information is collected from
12 responsible persons under regulation, under section 5,
13 and much of that information will be protected. This
14 is not a question of discretion, but rather
15 definition. And then the definition under section
16 9(1) provides that it can include confidential things
17 like trade secrets, but it also includes things like
18 commercial, financial and technical information
19 whether or not it's confidential.

20 Now, section 9(2) provides the Commission
21 with a discretion to publish. There is no requirement
22 that the Commission publish anything, and certainly no
23 requirement the Commission publish everything.
24 Section 9(2)(b) confers a discretion on the Commission
25 to publish protected information, but if and only if
26 the Commission is satisfied, first, that there is a

1 harm that might be caused to responsible persons. And
2 this is something that others in the workshop have
3 touched upon. So they've asked rhetorical questions,
4 I won't pose any rhetorical questions, other than to
5 note that some have said, well, look at the question
6 of the internal ID. And the question is, apart from
7 whether there's harm caused by disclosure and there's
8 been a lot of discussion on that, there's the question
9 of what is the benefit, what's the public interest in
10 that bit of information being released. And that's
11 something the Commission would have to be satisfied
12 with, that there's a public interest in that before it
13 even gets to question of harm to the responsible
14 persons.

15 And the same thing, and just taking one of
16 the examples out of the July 30 workshop questions,
17 was the question about the identity of the name of
18 suppliers or customers. And the question, I'd say, is
19 this, is what is the benefit or the public interest in
20 the identity for a particular responsible person or
21 particular transaction in disclosure of the identity
22 of the supplier? And I submit that it's no answer to
23 say that if we hold the information about the terms or
24 the costs confidential, that there's no residual issue
25 with respect to the identity of the supplier. But
26 rather you still have to identify whether there is

1 benefit to that supplier's identity being published.

2 Now, certain interveners have pointed to
3 word "transparency" in the title of the legislation
4 and they use that as a reason to support fairly wide
5 access to protected information. And I say with
6 respect, it is the substantive terms of the
7 legislation that empower the administrator and govern
8 at the discretion. But in any event, I note that the
9 full expression and the title of the Act is the Fuel
10 Price Transparency, and that much of the protected
11 information or the information that's being collected
12 under the regulations has nothing to do with price or
13 costs, and its disclosure will, in all likelihood, not
14 enhance transparency of fuel prices or costs.

15 So, I now turn to question number 4, I'm
16 skipping a little bit out of order, and then I'll turn
17 it over to Mr. Vella for number 3.

18 So, the panel will know from our written
19 submissions that 7-Eleven takes the position that the
20 Commission lacks the authority to provide selective
21 confidential access to collected information to
22 persons other than the Minister. Alternatively, if
23 the Commission has the authority, it ought not to
24 exercise it. And, finally, in the further
25 alternative, if the Commission concludes that it has
26 authority and will exercise it, we've provided written

1 direct you to, and I won't read it, the March 15, 2021
2 submissions of Tidewater, that's Exhibit C5-4, page 8,
3 where it quotes from a dictionary definitions of
4 publish, including "make generally known, declare or
5 report openly, announce, disseminate" and "to make
6 something generally accessible or available."

7 So, in other words, giving data to a single
8 person, subject to a confidentiality undertaking, is
9 not to publish and is not supported by section 9(2).
10 The legislature contemplated that the Commission may
11 issue reports available to -- to be made available to
12 the general public with a collected information. And
13 there was a question about that in the last panel.
14 Provided of course that the conditions on section 9(2)
15 are otherwise satisfied.

16 The Commission would require, in my
17 submission, much more direct and express authority to
18 do what is proposed under section 6.0 of the Draft
19 Framework No. 2, and that the legislature did not see
20 fit to grant it.

21 We should not lose sight of the fact that
22 the only situations where the Commission might be in a
23 position to consider providing selective access are
24 those where the potential harm from general disclosure
25 of the information is so great that the conditions for
26 9(2) would otherwise not be met.

1 So in other words, if you have certain
2 information, and in exercising the Commission's
3 discretion under 9(2), you look and you say there is
4 public interest in this information being made
5 available to the public, and that interest outweighs
6 the harm, or any potential harm to responsible
7 persons, if that information were published, there
8 would be no need to give selective access to any
9 individual that already had. So, what we're talking
10 about here is the really sensitive stuff where we're
11 already determine that the harm outweighs any
12 potential benefit.

13 And so my second point is if I'm wrong in
14 that the Commission does have the authority, is that
15 it ought not to exercise it. And there is a number of
16 reasons in support of that.

17 First, the mere dissemination or providing
18 of the information to one individual is not in itself
19 going to increase public confidence and
20 competitiveness. The second is that, well, perhaps
21 the idea is that the individual might be expected to
22 issue a study or a report that might be of public
23 benefit. However, merely providing the information to
24 that individual will no assure that that report is
25 generated, or that it is helpful.

26 And I suppose, coming to the next point, it

1 sort of begs the question of well, how is it that the
2 report will be generated in a way to satisfy concerns
3 about disclosure of sensitive protected information.
4 As we noted in our submission of June 15th, according
5 to the proposed undertaking, the recipient would
6 confirm not to divulge directly or indirectly or in
7 any manner, information disclosed under the conditions
8 of this undertaking, except to a person granted access
9 to such information or to staff at the BCUC.

10 So, we are really back to the type of --
11 the very problem that we're dealing with, grappling
12 with through this extended consultation process, and
13 these workshops, which is once information which is
14 protected is collected, how can it be made available
15 to the public? And the Commission itself has -- we've
16 seen this not -- you might have seen, you know,
17 obvious or easy at first, and then even on the
18 question of aggregation, which would be one way to
19 manage individual sensitive information, as I
20 understand the current draft the Commission's
21 proposed, is that rather than trying to determine up
22 front what the rules are for sufficient aggregation,
23 when it comes time to publish then there will be a
24 further consultation, and that actually makes a lot of
25 sense.

26 My point is that, that's a very careful

1 process that has been gone through under the auspices
2 of the Commission, and that's a lot to ask for an
3 individual who comes along and asks for information
4 where there is no public process for them and the
5 responsible persons to be engaged.

6 And then finally, there is a question about
7 whether an undertaking, however well crafted, is
8 sufficient to protect responsible persons from --
9 competition from serious potential harm, arising from
10 public release of protected information.

11 **Proceeding Time 9:33 a.m. T17**

12 And the question is this, what if an undertaking is
13 broken? You know, first of all there's probably going
14 to be no likely effective remedy, because once the
15 genie is out of the bottle, once the information has
16 been disseminated, you can't pull it back. And even
17 if damages were available and quantified, it may be
18 that the recipient who broke the undertaking is unable
19 to pay. We're considering information across an
20 entire industry and that could be a very significant
21 price tag in terms of damages.

22 At the time of the 2019 inquiry one of the
23 things I recall was that the Commission encouraged
24 interveners to participate and provide sensitive
25 information drawing on the experience that the
26 Commission has in handling very sensitive information,

1 of course, other regulated industries that it's
2 responsible for, but that's a very different situation
3 from a responsible person -- sorry, for an individual
4 who accesses information under the process that being
5 contemplated. In other words, it's highly risky. It
6 may be fine, but if they break the undertaking,
7 whether involuntarily, perhaps their system is hacked,
8 the information is hacked, or someone goes rogue and
9 they say, "We're going to disclose information
10 anyways," once it's done, the damage will probably be
11 irreparable.

12 So, my respectful submission is that while
13 it may be appropriate for the Commission to take
14 collective data and issue reports, and it will of
15 course be open to the public with the published
16 information that's been appropriately disaggregated to
17 prepare their own commentary, that there ought not to
18 be an undertaking process to provide selective access.

19 So that's my submissions on questions 1 and
20 4, and I'll turn it over to Mr. Vella to deal with
21 question 3.

22 THE CHAIRPERSON: Thank you, Mr. Wright.

23 MR. VELLA: Thank you. Good morning, Mr. Chairman and
24 the panel members. Once again, for the record, my
25 name is Mark Vella. My current title is the national
26 fuel manager for 7-Eleven Canada. I work and I reside

1 in the province of British Columbia.

2 I am responding to question 3 from the
3 Commission and will speak to the specific harm to
4 responsible persons and/or the competitiveness of the
5 market of reportable fuels that would result from BCUC
6 publishing certain fuel data. Out of respect for the
7 panel, I'll try not to repeat too many of the
8 arguments that have already been presented.

9 Let me start by explaining our existing
10 operation in the Province of British Columbia. 7-
11 Eleven is a retailer of fuel only. We do not produce
12 or wholesale fuel in British Columbia. We currently
13 have 209 convenience stores in British Columbia and we
14 support 130 of those stores with a fuel offering. The
15 fuel offerings cover multiple brands, including our
16 own 7-Eleven brand. All sites that we run in British
17 Columbia are corporate sites. We have a variety of
18 fuel purchase agreements and buy fuel from multiple
19 suppliers. We also use multiple pickup points that
20 can vary based on individual site economics and can
21 change rapidly with rapid fluctuations.

22 As we deal with several partners, we place
23 a high importance internally on the confidentiality of
24 our data in total and also by site. Currently, we do
25 not share data with the multiple brands that we
26 partner with. The data on retail gasoline and diesel

1 sales volumes, along with sources, frequency and
2 volumes of supply, is critical in understanding the
3 competitiveness of each individual site.

4 Location information on a frequent or even
5 an annualized basis is commercially sensitive. If
6 readily available to competitors, or even our existing
7 supply partners, it would allow them to identify sales
8 trends on a site or on a macro level, as well as
9 understand the locations of strong or more vulnerable
10 sites. This could allow competitors to build by-site
11 strategies that could erode competitiveness. It could
12 also impact our ability to renegotiate our existing
13 supply contracts, which in turn could lead to higher
14 prices for 7-Eleven and then ultimately for our
15 customers.

16 We operate in a business where data is a
17 valuable commodity. Some even say it's more valuable
18 than oil. By-site information would be of interest to
19 sophisticated competitors. It would give competitors
20 the ability to mine the data to gain several insights
21 into our operations that could affect future
22 negotiations on fuel supply or other business
23 decisions.

24 **Proceeding Time 9:37 a.m. T18**

25 The data would also have extremely high
26 value when making long-term strategic investment

1 decisions for future sites in the province, or
2 possible acquisition opportunities, or other
3 investment opportunities.

4 Our relations currently with our suppliers
5 are typically covered by an express confidentiality
6 term. All of our suppliers will have access to our
7 responses. 7-Eleven will, of course, comply with
8 regulations that require us to divulge to the
9 Commission the supplier identity and other
10 confidential supply terms, but there is actual, or
11 potential competitive harm if the Commission were to
12 publish that information without aggregating the
13 information or anonymizing the information. For
14 example, competitors would be able to know when and
15 under what conditions 7-Eleven may source fuel to a
16 site from one supplier or another. I would be more
17 than happy to elaborate on a few more examples, more
18 precise examples in an in camera session.

19 Thank you.

20 THE CHAIRPERSON: Thank you.

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

22 MS. de BOER: Good morning, Charlene de Boer, BCUC
23 Staff. Again, thank you for your remarks and for the
24 opportunity to ask some follow up questions.

25 A couple of my questions will stem from
26 your remarks this morning. I'm obviously happy for

1 anyone from 7-Eleven to respond, as you see
2 appropriate.

3 If I heard your remarks this morning
4 correctly, I think 7-Eleven expressed the view that
5 the public interest lies at the wholesale level of
6 B.C. market information, is that correct?

7 MR. WRIGHT: Not -- if I said that, that's not quite
8 precise. It's the whole level, in other words, the
9 aggregate versus -- or the market level as opposed to
10 the individual. But I wasn't seeking to stay it was
11 only in the wholesale market as opposed to a retail
12 market.

13 MS. de BOER: So you mean whole scale? Maybe I
14 misheard rather than wholesale?

15 MR. WRIGHT: Perhaps, yeah.

16 MS. de BOER: If local communities have a unique
17 characteristics and concerns around fuel data, fuel
18 prices or other information that is being provided
19 under the *Fuel Price Transparency Act*, how would
20 disclosing purely B.C. market-wide level information
21 meet these needs or that interest?

22 MR. WRIGHT: I don't think I used the term "B.C. Market-
23 wide." I'm a competition lawyer, and I appreciate
24 that there may be, and probably for the case of retail
25 or local markets, so I was speaking to the market
26 level.

1 So, suppose you had a local community and
2 there were four market participants. My point would
3 be that you might look at that local community as a
4 separate market, but that you wouldn't be looking at
5 the individual market participants in terms of
6 studying what they're doing as opposed to what the
7 market as whole, being a local market is doing.

8 MS. de BOER: Thank you, I appreciate the
9 clarification.

10 And if I also understood your remarks this
11 morning correctly, 7-Eleven does not consider that the
12 Act, the FPT Act, provides the BCUC with the ability
13 to share fuel data on an individual basis which would
14 allow selective access to that data, is that correct?

15 MR. WRIGHT: The submission about -- my submission
16 essentially was this, that the legislation confers a
17 discretion. That in exercising that discretion, the
18 Commission should have in mind the aggregate, and that
19 will be meeting the purposes of the legislation which
20 are directed to a market level question.

21 MS. de BOER: If that's the case, does 7-Eleven have
22 concerns with the proposal in Framework Draft No. 2,
23 to be able to share proposed aggregate or anonymize
24 data with external counsel for the responsible
25 persons? Would that also be prohibited under the
26 Act?

1 MR. WRIGHT: We are not opposing that, no.

2 MS. de BOER: Can you help me understand the
3 distinction between why the Act would permit the BCUC
4 to share the data with external counsel but not other
5 selected individuals?

6 MR. WRIGHT: Well, and I believe the reason for
7 providing -- sorry, I'll start again, make sure I'm in
8 front of the microphone.

9 The reason for, if I understand it,
10 providing information to external counsel is for a
11 very specific purpose. It's consistent with the goals
12 of the administration of the Act. And then providing
13 information to the counsel who are obviously members
14 of the Law Society and subject to high duties in how
15 they treat information, that was an appropriate
16 balance to be struck on that case for that particular
17 purpose.

18 **Proceeding Time 9:42 a.m. T19**

19 MS. de BOER: Thank you.

20 I do have a few questions referring to 7-
21 Eleven's prior submission as well, so I'm going to
22 refer to Exhibit C2-5, beginning on page 2-3, and I'll
23 ask my colleague to share those on the screen.

24 MR. WRIGHT: Just to confirm, are these questions
25 directed -- are legal questions for me or questions --
26 if it's for Mr. Vella, he should have the benefit of

1 being able to see.

2 MS. de BOER: Yeah. And so I believe it should on the
3 monitor in front of him to see as well.

4 THE CHAIRPERSON: Can you see, Mr. Vella? And you
5 should also, Mr. Wright, have it on the screen in
6 front of you.

7 MR. WRIGHT: Yes, thank you.

8 MS. de BOER: Wonderful. Okay, so looking at pages 2
9 to 3 of Exhibit C2-5, regarding counterparty
10 information, such as supplier name, address and supply
11 location, 7-Eleven states that,

12 "Competing wholesalers and competing retailers
13 have an interest in monitoring where supply is
14 sourced and whether it is consistently sourced."

15 7-Eleven continues that,

16 "In the view of such scrutiny, contracting
17 parties often choose to keep private their
18 decisions to engage with one another in the
19 terms."

20 Could you please walk me through 7-Eleven's
21 view of why competitors have an interest in monitoring
22 supply sources and the consistency of these sources?

23 MR. VELLA: I'd prefer to answer that in camera, if
24 possible.

25 MS. de BOER: Okay. If you could speak to it on the
26 public record, I'd be interested in understanding what

1 the specific harm to 7-Eleven would be if this
2 counterparty information is published.

3 MR. VELLA: What I would say in response to that is
4 that the more data points that we give to a competitor
5 to build into any algorithm they may be building, the
6 more accurate they could come up with an estimated
7 cost of our product. And if you can estimate what
8 your competitors are feeling in margin, you can build
9 strategies that could actually inflate the price and
10 inflict it to the market. If we happen to be paying
11 higher than our typical cost at that point in time or
12 it could put the competitor in a position where they
13 could, you know, target us while we're paying higher
14 than normal costs for that period of time.

15 MS. de BOER: And when you say "target us", would it be
16 -- is that -- could you explain what you mean by
17 "target us" in that situation?

18 MR. VELLA: Attempt to take our market share.

19 MS. de BOER: And how might they do so?

20 MR. VELLA: By being predatory in their pricing.

21 MS. de BOER: Thank you. On page 4, regarding retail
22 related fuel data, 7-Eleven states that,

23 "The point is not so much whether particular
24 information provided under the retail pilot or
25 retail survey is by itself confidential, but
26 rather that such information was collected

1 pursuant to a regulation to the FPTA as
2 information that government designated to be
3 collected and published for the purposes of the
4 FPTA. Instead, as noted, this information was
5 collected solely for a different purpose to
6 inform the government whether to collect
7 information from retailers under the FPTA and
8 what information should be collected from them."

9 And I believe you spoke a bit to this in
10 your opening remarks as well. Would it be correct to
11 paraphrase 7-Eleven's position as being that the
12 framework does not need to address what retail data is
13 confidential protected information because none of the
14 fuel data collected through the retail pilot or retail
15 survey can be published?

16 MR. WRIGHT: I guess there's two ways to answer that.
17 First of all, the regulation with respect to under
18 section -- sorry, Part 3 of the Act, with respect to
19 retail data to be provided, we don't yet have that
20 regulation. It's anticipated we'll have a regulation
21 in 2022 following the report of this commission after
22 the pilot.

23 So, that all said, it wouldn't make a lot
24 of sense to go through this process and then have to
25 go through a whole other process about retail. We'd
26 rather hit the ground running if and when the

1 regulation release.

2 So, we've proceeded in this on the basis
3 that where the Commission in the Draft Framework has
4 identified the treatment of retail data, that it's as
5 if there was a regulation in effect that it would
6 apply. So, we're participating, and you'll note from
7 our position much -- many cases we're not disagreeing
8 with the division in the framework with respect to
9 publication, and a lot of that information will be
10 published.

11 The position that you've summarized from
12 the written submission with respect to the retail
13 pilot is simply this, it's a matter of purpose that
14 when you look at the structure of the legislation, the
15 legislature said essentially this: we're going to use
16 regulation under Part 3 to collect the data. However,
17 the Minister, as overseeing the administrator, has the
18 ability to issue directions. And my respectful
19 submission is that information collected pursuant to
20 the directions of the Minister for those different
21 purposes. That is to figure out what the regulation
22 should contain. That it wasn't contemplated that that
23 was -- that the Commission should exercise its
24 discretion to publish that information. That's the
25 gist of our submission.

26

Proceeding Time 9:47 a.m. T20

1 MS. de BOER: Thank you. So, through the process of
2 the framework has 7-Eleven identified the specific
3 fields that it feels from the retail data that could
4 be made available for publication at this time? Or is
5 it a wholesale -- terrible pun. Or would you consider
6 all of the retail pilot fuel data to constitute
7 confidential protected information?

8 MR. WRIGHT: We've sought that. And I say that because,
9 you know, if you look at the data a lot of it isn't
10 the nature of what we would say is confidential, as a
11 lot of it's public in nature. But given the way that
12 it came to the Commission, under the direction of the
13 Minister for a different purpose, purpose of advising
14 government as to what the regulation should contain,
15 my submission is that it wasn't information that was
16 intended to go on to the public record.

17 That said, we're not -- you know, when we
18 -- to reiterate what I said a few moments again, when
19 we look at the divisions that were proposed with
20 respect to retail information we -- and if you recall
21 from the various schedules in the Draft Framework No.
22 2, there was some information that was identified as
23 being protected and confidential. In other words, it
24 wouldn't be released other than perhaps in an
25 aggregated or anonymized way. And there was other
26 information that would be. And we've stated our

1 position with respect to that and I don't think we
2 took much issue with the specifics of those. Other
3 than perhaps things like supplier identity, which
4 questions have been posed already.

5 MS. de BOER: Great, thank you so much. On page 5, 7-
6 Eleven makes reference to the BCUC's commitment
7 outside of this proceeding not to post publicly a list
8 of stations selected for the retail pilot. And I
9 believe 7-Eleven expresses concerns that this
10 information might be published if it isn't identified
11 as confidential protected information in the
12 framework. Is that correct?

13 MR. WRIGHT: Right. And I think you have the quote up
14 on the page. So, at the time of the retail pilot,
15 specific assurances were given that the process of
16 selecting various of the stations in the province, I
17 won't say it be done randomly, it might have done it
18 very purposefully, but it wasn't comprehensive. And
19 the view was that it would be done on an anonymized
20 basis so people wouldn't know who was participating.

21 I think it's fair to say that there are
22 certain stations of 7-Eleven that are in the retail
23 pilot, but that the identity of those stations hasn't
24 been made public. Of course, if you go through the
25 list of the information in the schedules, with respect
26 to retail, and you applied to the information provided

1 under the retail pilot, you would have information
2 such as addresses and locations that would in effect
3 tell the public who it was that was in the retail
4 pilot.

5 So our point was to be consistent with what
6 was anticipated in the retail pilot, is that as a
7 further argument about how the data from the retail
8 pilot should be considered there's another reason why
9 it shouldn't be published.

10 MS. de BOER: Does 7-Eleven consider information
11 relating to the identities of the selected retail
12 stations to meet the definition of protected
13 information?

14 MR. WRIGHT: That's a good question. I have to
15 probably get back to you on it, if I could. I mean,
16 the reason is is that it probably is because the
17 definition of protected information is fairly broad.
18 And it need not be even confidential to be protected
19 information. Protected information can include trade
20 secrets but it also includes commercial information,
21 which is supposedly broad enough. Frankly, I hadn't
22 through about it before this moment because I was
23 having regard to what a regulation might contain as
24 opposed to directions of the Minister.

25 MS. de BOER: I'll ask my follow up and then if you're
26 interested in responding in writing to the first

1 question, I'm happy to, but I'll ask my follow up
2 first and see. It might go together. But if it's not
3 protected information, if the identities are not
4 protected information, would it be reasonable for the
5 framework to identify this information, the identity
6 revealing information, as not confidential protected
7 information but instead to rely on the BCUC's
8 commitment not to disclose the identities that 7-
9 Eleven has quoted us as committing to elsewhere?

10 MR. WRIGHT: That does sound reasonable to me, but
11 since the first predicate of that was hypothetical
12 based on how we might answer that question, I'll
13 answer both in writing later, if I may.

14 **Information Request**

15 **Proceeding Time 9:52 a.m. T21**

16 MS. de BOER: Perfect, thank you very much. And I
17 guess maybe I'll throw a third one into that bundle,
18 which might help in clarifying the whole response, but
19 if that was the case, I'd be interested in
20 understanding if 7-Eleven thinks there is any further
21 measures that should be taken to ensure the protection
22 of this data. So, is there anything else that would
23 need to be committed to to protect that? So, if you
24 could provide an answer to all of it once --

25 MR. WRIGHT: Yes, I'll do that in writing, thank you.

26 MS. de BOER: Okay, I think that's it for me, but staff

1 does have a couple more questions from others. Thank
2 you for your time.

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

4 **QUESTIONS BY BCUC STAFF - MR. BUSSOLI:**

5 MR. BUSSOLI: Thank you. Mr. Wright, I just wanted to
6 clarify one of your answers to an earlier statement,
7 and forgive me if I've misquoted you, but I think you
8 said something to the effect that the BCUC should not
9 provide protected information to individuals who sign
10 confidential undertakings for a couple of reasons.
11 And the first of those reasons was that the Act only
12 allows for publishing of data under section 9(2).

13 Now, the question that I have, and forgive
14 me if I didn't understand your response, but is
15 providing the selected information to a person who has
16 signed a confidential undertaking, or a non-disclosure
17 agreement, is that considered publishing data?

18 MR. WRIGHT: My submission would be no, because it's
19 not being made public. And the corollary is that
20 there is no authority otherwise to do that.

21 MR. BUSSOLI: Thank you, Mr. Wright, those are all my
22 questions.

23 THE CHAIRPERSON: Thank you, Mr. Bussoli. And no more
24 staff questions, correct?

25 MR. BUSSOLI: That's correct.

26 THE CHAIRPERSON: Thank you.

1 COMMISSIONER MAGNAN: I do have one.

2 THE CHAIRPERSON: Go ahead.

3 COMMISSIONER MAGNAN: Mr. Wright, just a clarification
4 if you may. You talked about providing information to
5 the Minister. Do you need -- in your definition of
6 Minister, do you mean the Minister himself, or
7 Minister and his designates?

8 MR. WRIGHT: And his staff, and I believe there was an
9 outline provided at the beginning of the workshop
10 about the contemplated process of briefing the
11 Minister and staff and ensuring that confidential
12 information be treated appropriately. And like
13 Parkland, we're comfortable that we can have
14 confidence in that process. So, we don't object.

15 COMMISSIONER MAGNAN: Thank you very much.

16 THE CHAIRPERSON: Okay? Questions?

17 COMMISSIONER EVERETT: A question for counsel, do you
18 agree that if the BCUC was to find that some
19 information fuel data produced is not protected
20 information, then you don't need to go to section 9(2)
21 at all? It can be published?

22 MR. WRIGHT: It's still a question of discretion. In
23 other words, there is a legality. If you look at, I
24 think it is 9(2)(b) which deals with the balancing,
25 but 9(2)(a) and I don't have it in front of me,
26 essentially says that you can -- the Commission can

1 publish data if it's not protected information. And
2 (b) says if it is protected information there is this
3 balancing process. So, I think you are dealing with
4 the 9(2)(a) situation, which is what if the
5 information is not protected, and my submission there
6 would be you won't have to balance the interest of
7 responsible persons in the sense you would if it was
8 protected information, but you still have to be
9 satisfied that it's in the interest of the public
10 having regard to section 4 of the Act, to make the
11 information available.

12 COMMISSIONER EVERETT: Thank you, that is helpful

13 THE CHAIRPERSON: Okay, thank you. Thank you,
14 gentlemen, I don't have any further questions, but I
15 am going to ask staff if, will you be requiring a
16 follow up in camera session? I think there was a
17 couple of questions that there was suggestions that
18 there could be in camera answers, but I'm not sure if
19 you were satisfied with the answers that were put on
20 the public record?

21 MR. BUSSOLI: Yes, Mr. Chair, staff does have at least
22 one question for the in camera session.

23 THE CHAIRPERSON: Okay, great, thank you. So, we will
24 ask you to come back hopefully by the end of the day
25 for an in camera session, but thank you very much
26 gentlemen.

1 MR. WRIGHT: Thanks, Mr. Chair.

2 (PANEL STOOD DOWN)

3 THE CHAIRPERSON: Okay, that brings us to 5 to 10:00,
4 why don't we take a break before we continue with
5 Husky Energy next. So we'll come back at 10:10, thank
6 you.

7 **(PROCEEDINGS ADJOURNED AT 9:55 A.M.)**

8 **(PROCEEDINGS RESUMED AT 10:10 A.M.)** **T22/23**

9 THE CHAIRPERSON: Please be seated.

10 Welcome back. Mr. Dineley, you ready to
11 go?

12 MR. DINELEY: Yes, Mr. Chairman.

13 THE CHAIRPERSON: Please, go ahead.

14 MR. DINELEY: Mr. Chairman and panelists, Luke Dineley,
15 counsel for Husky Energy in these proceedings. I
16 should note at the outset that, as I imagine the panel
17 is aware, Husky has recently undergone a merger and is
18 now Cenovus Energy. Just so -- we've been putting our
19 submissions in as Husky Energy to be consistent with
20 the process in this matter, but the current name of
21 that responsible person is Cenovus Energy.

22 THE CHAIRPERSON: Thank you.

23 MR. DINELEY: And Cenovus and Husky's representative is
24 appearing remotely today, Mr. Sean Twinney, who is the
25 director business services planning and performance at
26 Cenovus.

1 prepare for these workshops and to have, perhaps, all
2 of the people necessary to appear. That being said,
3 Husky is here and is appearing to answer the panel's
4 questions to the best of its ability, but it may need
5 to take some things back and respond in writing at a
6 later date, given those limitations.

7 Related to that, when the workshops were
8 announced the parties were informed they would be
9 given the questions that would be asked in advance.
10 In fact, we were given four questions on July 30th and
11 the BCUC specifically requested that the interveners
12 not repeat any previous submissions. What the
13 responsible persons were not informed of was that the
14 representatives of the responsible persons that appear
15 at this workshop would be subject to questioning from
16 staff on previous submissions that they were
17 explicitly advised not to repeat. There was no notice
18 -- there's been no notice of those questions provided
19 and we note that the nature of that questioning has
20 been pointed and rather adversarial. This is just one
21 more concern for Husky in the manner in which this
22 process is being managed.

23 Accordingly, Husky's representative or
24 counsel, we will not be answering any questions from
25 staff today referring to previous submissions. We
26 will be answering the questions provided in advance.

1 position to determine what information could harm
2 their commercial interests.

3 With that, I would turn it over to Mr.
4 Twinney to address question number 3 from the
5 questions provided on July 30th by the BCUC.

6 THE CHAIRPERSON: Thank you, sir.

7 MR. TWINNEY: Thank you, Luke. Thanks for having me
8 today. So, as Luke has mentioned, I'm here to address
9 question 3 on behalf of Husky, in particular provide
10 practical examples or illustrations of the specific
11 harm to responsible persons or the competitiveness of
12 the market that would result from publishing of fuel
13 data not identified as confidential protected
14 information.

15 First example I will provide, reiterate
16 some of what you've already heard this morning, which
17 is by leveraging both shipment volumes and shipment
18 dates to a particular retail location, or even
19 geographical area, one can reasonably calculate total
20 sales volumes for a responsible person or site, over a
21 specific timer period. Not only could this
22 information be used to assess and monitor a
23 competitor's position in the market place, it could,
24 for example, also be used to gauge the effectiveness
25 of one's own marketing plans and programs.

26 For example, after employing certain

1 tactics at one's retail site or sweep of sites, the
2 effects of these tactics on competitor locations could
3 be monitored using the sales data that was arrived at
4 using the information that was deemed not protected.
5 One could then adjust these tactics based on the
6 feedback obtained from the sales calculations.

7 Second example I'm willing to submit to is
8 around customer-supplier relationships, and the
9 sharing of that information. Having a view into a
10 competitor's supply relationships, for example their
11 source of supply, would allow a party with knowledge
12 of the market to draw conclusions, both about a
13 competitor's availability of supply and also their
14 associated cost of supply. Having this knowledge
15 would then allow a party to potentially tailor their
16 own marketing and sales efforts to potentially take
17 advantage of this information.

18 Equally, sharing of supplier or customer
19 relationships could undermine both supplier and
20 customer equally, jeopardizing their respective
21 success. For example, fuel suppliers could target
22 customers not previously known to them, while
23 customers looking to secure fuel could have reduced
24 leverage through the exposing of their current supply
25 arrangements.

26 Thank you.

1 THE CHAIRPERSON: Thank you, sir.

2 MR. DINELEY: I will now address questions 1 and 4 from
3 the July 30th questions. Question 1 deals with the
4 principles set out in section 3.1.1 of Draft Framework
5 No. 2 and the alignment of those principles with the
6 *Fuel Price Transparency Act* and its purposes.

7 **Proceeding Time 10:19 a.m. T25**

8 I will try not to repeat a lot of what my
9 -- the other responsible people have covered today. I
10 will say that Husky agrees generally with the
11 submissions of Suncor, Imperial, Parkland and 7-Eleven
12 on this question, and there will be some consistency.

13 As other interveners have noted, there
14 isn't a section in the *Fuel Price Transparency Act*
15 that sets out the purpose of the Act. That isn't
16 specifically set out. And in the Act transparency, as
17 a purpose in itself, is not mentioned in the Act.
18 There is no section that provides that.

19 In my submission, section 4 of the Act,
20 which sets out the role of the administrator, in this
21 case the BCUC, is useful in determining the goals of
22 the Act. And section 4 provides that the administer
23 [sic] must administer the Act so as to promote the
24 competitiveness of the market for reportable fuels and
25 public confidence in the competitiveness of that
26 market.

1 So that is what the Act provides the BCUC
2 must do, promote competitiveness, promote public
3 confidence. There's no mention in the Act that there
4 should be a goal in itself of promoting transparency
5 or that transparency is a guiding principle of the
6 Act. In our submission, to the extent that
7 transparency is something that the Act wishes to
8 promote, it's not an end in itself. Transparency is
9 only necessary or appropriate in relation to promoting
10 the competitiveness of the market and the public
11 confidence in that market. And in Suncor's
12 submissions I note they cited the Hansard of the third
13 reading of this Act before the legislature, and the
14 remarks in that third reading were consistent with
15 this idea that the Act is there to promote
16 competitiveness and confidence in the market.

17 Now, publication of fuel data that may be
18 required under the Act is addressed entirely in
19 section 9 of the Act. It's the only place it's
20 discussed. And it's, in our submission, that's the
21 entire regime established in relation to -- in
22 relation to publication is entirely within section 9.
23 And as other interveners have noted, section 9 is
24 discretionary. It provides that the administer [*sic*]
25 may publish fuel data. There's nothing mandatory,
26 there's no publication required. Nothing in the Act

1 requires that anything ever be published, only that
2 there may be something published. So there's nothing
3 in the Act suggesting that publication is a goal in
4 itself.

5 Section 9 goes on to set limitations on
6 when data can be published. And it sets out that the
7 administer [sic] can only publish fuel data, the only
8 time they can do it is if protected information will
9 not be disclosed. Or, in the alternative, if the
10 public interest outweighs the potential harm to
11 responsible persons in disclosing that data, then fuel
12 data that may be protected information can be
13 disclosed. And in determining that balance between
14 public interest and potential harm, the administrator
15 must have regard to those core principles of
16 competitiveness and confidence in the market.

17 So, turning to the principles themselves in
18 section 3.1.1 of the Draft Framework No. 2, principle
19 1 relates to the promotion of transparency. And it
20 provides that the BCUC should make data that's
21 collected publicly available, it should. In our
22 submission, this isn't consistent with the Act as
23 we've just seen. Publication in the Act is
24 discretionary, there's no promotion of it. And fuel
25 data that is protected information is for that very --
26 just based on that, is not subject to publication.

1 responsible person and that's what should be balanced
2 against the public interest. The Act in section 9, it
3 is only potential harm, which in our submission is a
4 very different standard than significant harm.
5 Significant harm implies that the responsible person
6 has to prove actual harm and prove that it's
7 significant, while the Act only requires that harm be
8 potential in the disclosure of this information. In
9 our submission that creates somewhat of a higher
10 standard and tips the balance of that public interest
11 versus harm, a balancing act towards disclosure, which
12 is not consistent with the Act.

13 So overall it's Husky's submission that the
14 -- as I've said, I've outlined the core purposes of
15 the Act being promoting competitiveness of the market
16 and maintaining the public confidence in that market.
17 The Act contemplates that the disclosure of protected
18 information -- the Act sets this out, the disclosure
19 of protected information does not serve those
20 interests, that's why it is de facto protected under
21 the Act. And in our submission in particular that
22 would be the competitiveness of the market. As we've
23 outlined in our submissions, disclosing this
24 information could have a severe impact on the
25 competitiveness of the market.

26 Under the Act protected information should

1 only be disclosed in special circumstances and the
2 starting position is that it not be disclosed. And
3 this is in answer to the final sub-question of
4 question 3. In our submission there's no reverse onus
5 here, it's not up to the responsible person to prove
6 that its harm outweighs the public interest. The BCUC
7 as the administrator has to establish that the public
8 interest in the disclosure of protected information
9 outweighs the potential harm and there needs to be a
10 consideration, as outlined in the submissions of 7-
11 Eleven, there needs to be a consideration of what the
12 benefit is to the public of this publication. And
13 it's that process that the BCUC must do, that
14 balancing act, and then in our submission the
15 responsible person should be given an opportunity to
16 respond.

17 And just in relation to the public interest
18 and the benefit that needs to be present before this
19 information can be disclosed, and that then has to be
20 balanced against the harm, is in Husky's submission
21 there -- the purposes of the Act aren't furthered by
22 mass disclosure of raw fuel data. It's not going to
23 promote anything the Act is designed to achieve.
24 Largely that data will be non-intelligible to the
25 public in that form and it can be extremely damaging
26 to responsible persons as people in the market and

1 will only in fact harm the competitiveness of the
2 market.

3 Turning to Question 4 in relation to the
4 contemplated process in the Framework whereby
5 protected information could be disclosed at a later
6 date to unidentified third parties on request. The
7 short answer, in agreement with the other interveners,
8 is that it's Husky's position that that section of the
9 Framework is not consistent with the Act. And Husky
10 is opposed to the declaration and undertaking process
11 in the -- outlined in the Framework, and in particular
12 they're opposed to the idea of the BCUC approving the
13 disclosure of protected information at some later date
14 to some unknown third party.

15 And the reason we say it's inconsistent
16 with the Act is, as I've outlined, the determination
17 of whether something is protected information has to
18 happen upfront. Whether -- pardon me, if it's going
19 to be published, it has to happen upfront, it happens
20 at the beginning. If it's protected information, it
21 is not subject to disclosure unless the public
22 interest outweighs the potential harm.

23 So presumably in sort of a hypothetical
24 situation where this undertaking process could arise,
25 the information in question would have already
26 determined -- been determined by the BCUC to be

1 responsible person have? How can they know what this
2 third party is actually doing with the information?
3 How can they know whether the undertaking was
4 breached? If they think the undertaking was breached,
5 how can they prove that? How can they enforce
6 damages, or some sort of administrative remedy? In
7 our submission, it's just it opens a door or a can of
8 worms that is just not contemplated in the Act and
9 could lead to quite an undesirable outcomes.

10 Finally, if the determination of the BCUC
11 is that this process will proceed, but the best way to
12 address it is for responsible persons to collectively
13 develop some sort of non-disclosure agreement, Husky
14 will participate in that process, and if this process
15 is proceeding, it is Husky's submission, as Parkland
16 submitted, that the non-disclosure agreement should be
17 directly with the responsible person. At least then
18 they would have some recourse or some ability to take
19 steps should the information be disclosed outside of
20 what the BCUC has authorized.

21 And those are my submissions, and we are
22 happy to take questions on what we've presented today.

23 THE CHAIRPERSON: Thank you, gentlemen.

24 Staff, I will ask staff to please restrict
25 their questions to what we've heard today, and if you
26 do have questions on previously filed questions,

1 please provide those in writing to Husky.

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

3 MS. de BOER: Thank you, Staff does appreciate the
4 opportunity to ask a few questions and follow-up to
5 the remarks from this morning. Charlene de Boer, BCUC
6 staff.

7 With regards to Husky's final submissions
8 in its remarks about the Act not permitting, or that
9 the Act does not include the discretion to revisit a
10 determination that protected information will not be
11 published, I'm curious on what basis Husky makes that
12 statement that there is no such discretion allowed?

13 MR. DINELEY: Well, what I was referring to was the
14 process outlined in Section 9. And section 9 provides
15 the administrator may publish information in certain
16 circumstances. They're not to publish it if it's
17 protected information, unless that balance I've
18 discussed is met. In my submission, the way the
19 framework is set up, that analysis would have already
20 been done and determined by the time this application
21 arises later.

22 So, how then is it being revisited and
23 where is the authority for that under the Act? And we
24 submit that there isn't. The publication has been
25 done or not done, the confidential and protected
26 nature of the information has been addressed, and

1 MR. DINELEY: On a strict reading, it's probably
2 inconsistent, but similar to the submissions of 7-
3 Eleven, we would not object to that as it was
4 proceeding. If it's in furtherance of protecting
5 protected information, then I think that's probably a
6 reasonable course of action.

7 MS. de BOER: Thank you. I also heard some remarks
8 this morning with regards to the wholesaler name,
9 address and supply location and the potential harm
10 that publishing that information could cause to Husky.
11 And I believe you used the words that it could
12 undermine Husky's competitive position in certain
13 markets. Is that correct?

14 MR. TWINNEY: I'm not sure I said that exactly, but
15 I'll -- you know, continue with your question.

16 MS. de BOER: Is it a fair paraphrase if not a precise
17 quote?

18 MR. TWINNEY: No, I don't think I said that it would
19 specifically harm Husky's position, no.

20 MS. de BOER: Okay. In that case, I think I will save
21 my questions for in writing. I appreciate the
22 opportunity.

23 THE CHAIRPERSON: Thank you, Ms. de Boer. No other
24 questions from Staff?

25 MR. BUSSOLI: No other questions, Mr. Chair.

26 THE CHAIRPERSON: Thank you. Bill?

1 COMMISSIONER EVERETT: Yes, Mr. Dineley, I just want to
2 -- I'm going to mention what I think you argued and
3 just ask for some clarification. If I've got it
4 wrong, I apologize. But, you said the Act's starting
5 position is data should not be disclosed, or words to
6 that effect, according to my note. And then it's up
7 to the BCUC to establish whether the public interest
8 outweighs the potential harm, and then you say the
9 responsible person should have an opportunity to
10 respond. And it is that last point I'm addressing my
11 question to.

12 If the BCUC comes to a decision that the
13 public interest outweighs any potential harm,
14 therefore leading to publication, are you saying
15 before that decision becomes final there needs to be
16 yet another step in the process whereby the particular
17 responsible persons affected by the determination have
18 an opportunity to respond?

19 MR. DINELEY: Well, to clarify, it's not all
20 information that is *de facto* not subject to
21 publication, it's protected information.

22 COMMISSIONER EVERETT: Yes.

23 MR. DINELEY: And Husky, throughout this process, has
24 requested that the BCUC provide some sort of clarify
25 on what they plan to do with this data. We're talking
26 about what's protected, we're talking about what's not

1 protected. But the responsible people -- or persons,
2 pardon me, have no idea what the final product is
3 going to look like. So, it's all well and good to
4 say, well this is confidential and this is not, but we
5 have no idea what the form it's going to take before,
6 when it actually goes out to the public. We don't
7 know what that document or spreadsheet or whatever it
8 may be, we don't know what that's going to look like.

9 So, in my submission, the process requires
10 that the BCUC consider that very balancing exercise
11 that you outlined. The public interest versus the
12 potential harm. And in that process, the BCUC has to
13 identify what the benefit is to disclosing this and
14 why it outweighs the potential harm to a responsible
15 person. And in our submission, that hasn't happened
16 yet. In this proceedings that hasn't happened yet.

17 **Proceeding Time 10:38 a.m. T29**

18 And I would suggest that when the BCUC
19 knows what it's -- when the BCUC knows what it's going
20 to put out to the public, the responsible person
21 should have some opportunity to respond to that
22 document. And I think that would be a useful exercise
23 and we've requested that opportunity in our previous
24 submissions.

25 COMMISSIONER EVERETT: Thank you. That clarifies the
26 point I was trying to clarify. Thank you.

1 THE CHAIRPERSON: Thank you. Just a couple of -- well,
2 one question and just a comment. So my question first
3 is, as you may be aware, our rules of procedure do
4 generally allow for reconsideration of our decisions
5 and there's actually a route to the appeal court also.

6 So I'm just curious, if we -- if the BCUC
7 was to make a determination that information wasn't
8 protected and you were -- you disagreed with that and
9 you felt it should be and you felt we hadn't properly
10 done -- applied the public interest test or missed
11 something out in our deliberations, are you saying you
12 don't feel you should have a right of reconsideration
13 to that decision?

14 MR. DINELEY: No, I would say the responsible person
15 should have a right of reconsideration.

16 THE CHAIRPERSON: But that would be inconsistent with
17 what you've said, with what I understood you to have
18 said earlier, that that would be inconsistent with the
19 Act. The Act says once we've made a decision, then
20 the decision is made.

21 MR. DINELEY: No, I think that's a bit of a
22 misstatement of what I said. A right of appeal I
23 would suggest is separate from a request by a third
24 party at a different date, they're completely separate
25 things. A right of appeal of a decision of the BCUC
26 is one thing that's provided for in one avenue. What

1 the Framework contemplates is down the road someone
2 comes to the BCUC and says, "Hey, I know you decided
3 this was protected, but I want to look at it and
4 here's why." That's not an appeal. So, and I would
5 submit those are different avenues and separate
6 authorities for those two proceedings.

7 THE CHAIRPERSON: But if that was framed in the
8 language of a reconsideration and the party said that,
9 "I know you made a determination, you know, three
10 months ago that it was protected, but we don't feel
11 that you properly assessed the public interest
12 considerations," are you still saying we shouldn't
13 reopen that and reconsider that decision?

14 MR. DINELEY: I think that would have to be determined
15 on the basis of that actual request and whether that
16 person has standing to appeal a decision of the BCUC.
17 I don't have that in front of me, I'm not able to
18 comment on that today.

19 THE CHAIRPERSON: Okay. I understand.

20 MR. DINELEY: But that aspect of the appellate route is
21 different than a member of the public just generally
22 requesting disclosure after it's determined to be
23 protected.

24 THE CHAIRPERSON: Okay, fair enough. Thank you. And
25 the comment I wanted to make was you framed the --
26 your request that the -- or your comment that the BCUC

1 has not identified how it intends to publish any
2 protected information if in fact it intended to do
3 that, you know, what kind of a spreadsheet or a table
4 or so on. I would also like to point out that that
5 wouldn't be the only circumstance in which there would
6 be a potential for a need -- possibly need to publish
7 protected information.

8 When we craft a report and do our analysis
9 and make a report on, you know, whatever we've
10 analyzed, whether it's the retail market or the
11 wholesale market or whatever it may be, when we make
12 our findings we need to cite enough evidence in order
13 to support those findings. And so that's a way where
14 protected information, it may be necessary to rely --
15 well, it would be necessary to rely on it, but it may
16 be necessary to publish that protected information,
17 otherwise the report would be redacted.

18 And we have heard parties earlier say that
19 it's not the information itself that people care -- or
20 should care about or maybe do care about, it's the
21 BCUC's analysis and their conclusions and their
22 findings. But in order for our findings to be
23 credible, they do need to be based on -- be seen to be
24 based on evidence.

25 **Proceeding Time 10:43 a.m. T30**

26 And so it's not -- I just want to point

1 out, that the issue is not necessarily that we just
2 want to publish all this information on the website.
3 We may need -- there may be context in which we may
4 feel it would be beneficial or in the public interest
5 to publish that information. And I'm not trying to be
6 argumentative certainly, I just wanted to share that
7 thought with you.

8 MR. DINELEY: No, Mr. Chairman, I thank you for those
9 comments, and those are very helpful. That's the
10 exact type of information Husky is looking for.

11 THE CHAIRPERSON: Yeah.

12 MR. DINELEY: That sort of, here is what we're
13 contemplating doing, here is where your information
14 may show up. Those are very helpful remarks, and
15 that's, I would submit, what we have been asking for
16 in our submissions. That sort of context is going to
17 allow the parties to really assess whether this is
18 going to be harmful.

19 THE CHAIRPERSON: Fair enough, thank you. Thank you
20 very much gentlemen for sharing your thoughts with us
21 today.

22 MR. DINELEY: Thank you, Mr. Chairman, thank you Panel.

23 (PANEL ASIDE)

24 THE CHAIRPERSON: Okay, next is Mr. Baer from Shell?
25 I'll give you a couple of minutes to come and get
26 organized.

1 MR. BAER: Good morning, Mr. Chair.

2 THE CHAIRPERSON: Good morning.

3 MR. BAER: Commissioners. As mentioned last week, my
4 name is Alex Baer, and I'm external counsel for Shell
5 Canada. There are also four Shell representatives who
6 are appearing remotely today. I already introduced
7 three of them last week at the August 5th workshop.
8 Just to repeat, they are Nisha Nayyar, who is the
9 pricing team lead at Shell Canada Limited. Sanjay
10 Vadodariya, who is Channel Optimization Manager at
11 Shell Canada Limited. And Evan Dickinson who is in-
12 house counsel at Shell Canada Limited. Also attending
13 remotely today is Sigourney Courtright, last name
14 spelled C-O-U-R-T-R-I-G-H-T, who is Pricing Manager
15 Retail Canada at Shell Canada Limited.

16 And with that, I will turn things over to
17 the Shell representatives. I understand Mr. Dickinson
18 will be providing Shell's prepared remarks, and I
19 expect they'll need to be affirmed first. Thanks very
20 much.

21 THE CHAIRPERSON: Thank you, sir. Please go ahead.

22 **SHELL CANADA LIMITED PANEL**

23 **EVAN DICKINSON, Affirmed:**

24 **SIGOURNEY COURTRIGHT, Affirmed:**

25 **SANJAY VADODARIYA, Affirmed:**

26 **NISHA NAYYAR, Affirmed:**

1 THE CHAIRPERSON: Do you need the spelling of people's
2 last names? Or do you have it?

3 THE COURT REPORTER: I have a list here, but I can read
4 the screen.

5 THE CHAIRPERSON: Okay, thank you. Sorry about that,
6 pleas go ahead.

7 **PRESENTATION BY SHELL CANADA - MR. DICKINSON:**

8 MR. DICKINSON: Good morning Mr. Chairperson Morton,
9 and Commissioners, can you hear me clearly?

10 THE CHAIRPERSON: We can, thank you very much.

11 MR. DICKINSON: Thank you. As mentioned, my name is
12 Evan Dickinson, and I am internal regulatory counsel
13 at Shell Canada Limited. I'll be delivering Shell's
14 prepared remarks today.

15 Shell would like to take this time to thank
16 the Commission for providing us with the opportunity
17 to participate in this workshop regarding the second
18 Draft Framework for advanced confidentiality for
19 reporting data under the *Fuel Transparency Act*. And
20 for granting Shell's representative the opportunity to
21 appear virtually in recognition of the restrictions
22 that remain in place for Shell employees under our
23 global travel policy in light of the ongoing global
24 COVID-19 pandemic.

25 While we certainly appreciate the
26 accommodation, we can also unequivocally state that we

1 look forward to a time when we will be able to travel
2 to attend to important matters such as this in person
3 once again.

4 You've already been introduced to my
5 colleagues, Sigourney Courtright, Sanjay Vadodariya
6 and Nisha Nayyar, each of whom have been extensively
7 involved in this mandate on Shell's behalf to date.

8 Ms. Nayyar and Mr. Vadodariya are senior
9 members of the team that is responsible for setting
10 Shell's wholesale prices in British Columbia and other
11 regions in Canada.

12 **Proceeding Time 10:49 a.m. T31**

13 And Ms. Courtright is similarly a senior
14 member of the team responsible for setting the prices
15 at corporately owned Shell retail sites across Canada,
16 including in British Columbia. Ms. Courtright, Ms.
17 Nayyar, and Mr. Vadodariya are appearing today as
18 Shell's technical and subject matter experts and
19 following my prepared remarks will be available to
20 answer any further questions that the Commission may
21 have.

22 As the Commission is aware, Shell has been
23 actively involved in relation to this matter for well
24 over two years since May 2019, when the B.C.
25 government directed the BCUC to conduct an inquiry to
26 explore the factors that may be influencing gas and

1 diesel prices in British Columbia. In the context of
2 both the initial gas and diesel price inquiry, the
3 development of the *Fuel Price Transparency Act*, the
4 *Fuel Price Transparency Regulations*, and now the
5 present Draft Confidentiality Framework, Shell has
6 actively participated in all stages to these
7 proceedings. Shell thanks the Commission for taking
8 the time to properly consider the potential
9 implications that the public release of commercially
10 sensitive confidential information may have on the
11 market and market participants, and for listening to
12 Shell's principled concerns with the Confidentiality
13 Framework as it is proposed in Draft No. 2.

14 At the outset, Shell acknowledges the
15 BCUC's mandate and jurisdiction under the *Fuel Price*
16 *Transparency Act* and its authority to collect the fuel
17 data contemplated in the *Fuel Price Transparency*
18 *Regulations*. Shell also recognizes the guiding
19 principles that the BCUC has set out in section 3.1.1
20 of the Framework Draft No. 2, namely the promotion of
21 transparency, the promotion of market competitiveness,
22 and reducing regulatory burden. These are appropriate
23 guiding principles for assessing the Framework for a
24 determination of confidentiality and treatment of
25 protected information under the Act. However, it's
26 Shell's further position that it is important to

1 appropriately interpret and balance these three
2 objectives in light of the underlying drivers of the
3 regulatory scheme as set out in the Act, and that when
4 appropriately interpreted and balanced, the three
5 objectives can each be met without the need to
6 publicly disclose market participants' commercially
7 sensitive protected information in a way that
8 potentially undermines the market competitiveness
9 objective.

10 As noted by the BCUC in its cover letter
11 enclosing Draft Framework No. 2, the fundamental
12 purpose of the fuel data collection pursuant to the
13 Act is, "To promote market competitiveness and public
14 confidence in the comparativeness of the market." In
15 the Premier's letter to you, Mr. Chairperson, dated
16 May 7th, 2019, it was the Premier's concern regarding
17 the perceived non-competitiveness of prices in the
18 B.C. gasoline and diesel retail market that was the
19 very genesis of the gas and diesel price inquiry,
20 which in turn led to the development of the Act and
21 brought us here today.

22 Based on this and the language of the Act
23 itself, Shell strongly believes that the promotion of
24 market competitiveness must be recognized to be the
25 primary objective of the legislation. This
26 foundational legislative objective should therefore

1 inform the objectives of the Draft Confidentially
2 Framework. The promotion of transparency and the
3 reduction of regulatory burden must be implemented in
4 a manner that supports market competitiveness. The
5 transparency objective of the Draft Confidentially
6 Framework should not be defined or pursued to the
7 potential detriment of market competitiveness.

8 Put another way, in Shell's view the
9 transparency that the BCUC should pursue through the
10 Draft Framework is precisely the promotion of public
11 confidence in the competitiveness of the B.C. fuel
12 market. The BCUC would be working against this
13 objective if the market were rendered less competitive
14 by the public disclosure of commercially sensitive
15 market participant fuel data.

16 Now, this requirement to prioritize market
17 competitiveness and public confidence in that
18 competitiveness is reflected in the language of the
19 *Fuel Transparency Act* itself, and you've heard
20 reference to section 4.2 and section 9.2 from most of
21 the parties, and so I won't belabour the point, except
22 to say that section 4.2 creates an obligation that the
23 BCUC must administer the Act to promote
24 competitiveness and public confidence, and Section 9.2
25 -- or sub (2), provides that when considering whether
26 to publish fuel data, the Commission must have regard

1 to the impact of that publication as it may have an
2 impact on competitiveness of the market, and
3 confidence in that competitiveness.

4 **Proceeding Time 10:54 a.m. T32**

5 Shell's primary concern with the Draft
6 Framework No. 2 is that it appears to prioritize the
7 maximization of fuel data publication, which is not
8 required by the Act, over the promotion of market
9 competitiveness, which is required by the Act. And to
10 equate the promotion of transparency with the public
11 disclosure of as much fuel data as is possible. The
12 *Fuel Price Transparency Act* is, as you've heard from
13 others, permissive. It does not require that the
14 Commission publish as much fuel data as is collected
15 as possible.

16 As I'll further discuss in our responses to
17 the questions the Commission posed, Shell believes
18 that the transparency objective of the BCUC can and
19 should be better served through informed data analysis
20 and public reporting by the BCUC of its analysis and
21 interpretation of the fuel data, rather than by simply
22 seeking to publicly disclose as much raw data as
23 possible, at the risk of disclosing competitively
24 sensitive fuel data.

25 In alignment with Shell's primary concern,
26 Shell also wishes to reiterate, without repeating, our

1 other concerns as I set out in our March 8th and June
2 15th submission, particularly as they relate to the
3 necessity of aggregating and anonymizing fuel data
4 that is protected information, and the need to limit
5 the circumstances to which the proposed declaration
6 and undertaking process to obtain access to protected
7 information applies.

8 To the extent that the BCUC wishes to
9 release or publish fuel data that is or contains
10 protected information, Shell believes that it is
11 imperative that the data first be aggregated and
12 anonymized to ensure that the published data does not
13 allow for the identification or back calculation of a
14 specific responsible person's protected information.
15 Shell believes that this is critical in order to
16 ensure that the publication of fuel data does not
17 inadvertently undermine the market competitiveness
18 objective.

19 Shell also wishes to reiterate without
20 repeating our concern regarding specific categories of
21 fuel data that have not been identified as protected
22 information under the proposed Draft Framework No. 2,
23 we've set these out in our June 15th submission and
24 provided our specific reasons for those concerns
25 therein, and so I won't address each of them here.
26 Suffice it to note that the fuel data categories that

1 are of concern to Shell align very closely with those
2 that you have heard of concern to other market
3 participants.

4 So, to conclude my opening remarks, I wish
5 to reiterate Shell's strongly held belief that the
6 wholesale and retail gasoline markets in British
7 Columbia are highly competitive markets. Shell
8 further believes that the price of gasoline in British
9 Columbia, both wholesale and retail, is reflective of
10 the cost of providing such products in British
11 Columbia, in accordance with the *Greenhouse Gas*
12 *Reduction Renewable And Low Carbon Fuels Requirement*
13 *Act* and the *Renewable And Low Carbon Fuels Requirement*
14 *Regulation* which are collectively known as B.C.'s low
15 carbon fuel standard.

16 I also wish to emphasize that the
17 information for which Shell seeks confidential
18 treatment from the BCUC is information that Shell
19 regards and otherwise treats as highly confidential
20 and commercially sensitive. Absent legislative
21 compulsion to do so under the Act, Shell did not
22 previously, and we would not otherwise, openly share
23 this information with any external third party market
24 participant due to competitive concerns.

25 Shell does not oppose the legislative
26 objectives of the *Fuel Price Transparency Act*, however

1 we strongly believe that there is a way to achieve the
2 goals of the legislation without resorting to public
3 disclosure of detailed, granular, commercially
4 sensitive raw data of market participants, including
5 Shell, where the public disclosure may adversely
6 impact the competitiveness of the B.C. gasoline
7 market.

8 So, that concludes my opening statement. I
9 am now going to turn to respond to questions 1 and 4
10 from the BCUC's July 30th letter, following which I
11 will address question 3.

12 **Proceeding Time 10:59 a.m. T33**

13 At the outset, I'd like to note that we are
14 now a long way down the batting order, and a number of
15 parties have already spoken to a number of points that
16 Shell would otherwise have made. In these responses
17 to the BCUC's questions I have tried to edit on the
18 fly to avoid repeating what others have said, where
19 possible. And similarly, will try and avoid repeating
20 what our previously filed written submissions say.

21 With that introduction, I'll now turn to
22 BCUC question 1, part 1. The BCUC asked about the
23 object and purpose of the *Fuel Price Transparency Act*
24 and the import of transparency under the Act. As
25 stated, in Shell's view the BCUC must look to the
26 language of the *Fuel Prince Transparency Act* itself

1 when considering the object and purpose of the Act,
2 and in particular, when determining the importance of
3 transparency. Specifically, the BCUC must consider
4 paragraph 4(2)(b) of the Act, which states that it
5 must administer this Act so as to promote, (i), the
6 competitiveness of the market for reportable fuels
7 and, (ii), public confidence in the competitiveness of
8 the market.

9 Similarly, the BCUC must look at section
10 9(2) of the Act, which deals with the publication of
11 fuel data, and says that the BCUC may publish fuel
12 data or other information or records acquired under
13 the Act if the BCUC is satisfied that protected
14 information will not be disclosed or the public
15 interest in the protected information that will be
16 disclosed outweighs the potential harm to responsible
17 persons, having regard without limitation to the
18 importance of the competitiveness of the market and
19 public confidence in the competitiveness of the
20 market.

21 As has been noted by other parties, the
22 word "transparency" does not appear in either of these
23 places. Although Shell agrees that transparency is
24 important under the Act, the nature of the
25 transparency the Act is directed towards must be
26 interpreted through the lens of paragraph 4(2)(b) and

1 subjections 9(2) of the Act. In this context, it's
2 clear that the transparency that BCUC should be
3 striving towards is precisely public confidence in the
4 competitiveness of the market referenced in these two
5 sections of the Act.

6 This is in contrast to the language of
7 Framework Draft No. 2, where at section 3 sub 1 sub 1
8 the BCUC described the promotion of transparency as
9 meaning "where possible fuel data or other information
10 and records collected pursuant to the Act should be
11 publicly available". Shell disagrees with this
12 interpretation of the transparency the BCUC should be
13 seeking to achieve under the Act.

14 First, it's not necessary to publish raw
15 non-aggregated and non-anonymized data in order to
16 provide the public with confidence in the
17 competitiveness of the fuel market in British
18 Columbia. The BCUC as the regulator can collect data
19 under the Act and provide the necessary analysis and
20 reporting to provide the public with this confidence.
21 If the BCUC reports its results, along with the
22 associated data in an appropriately aggregated and
23 anonymized form, then the BCUC can achieve both the
24 objective of furthering transparency under the Act and
25 preventing harm to both individual responsible persons
26 and to the competitiveness of the fuel market in

1 in that competitiveness.

2 This preceding discussion also responds to
3 the second part of question number 1. There, the BCUC
4 asked whether the three key principles set out in
5 section 3.1 of the Framework Draft No. 2 to guide the
6 BCUC in determining whether fuel data will be held
7 confidential are in alignment with the Act.

8 As I stated previously, in Shell's view,
9 the three principles are broadly aligned with the Act,
10 subject to the comments that I've just made about how
11 the BCUC should interpret the meaning of "promotion of
12 transparency." To be clear, Shell disagrees with
13 publication for publications sake. Publication, when
14 it occurs, should be with a view to protecting the
15 competitiveness of the market for reportable fuels in
16 the province, as well as promoting public confidence
17 in said competitiveness. We do not believe the extent
18 of publication currently contemplated by Framework
19 Draft No. 2 furthers those goals.

20 With respect to the third and final part of
21 question 1, regarding whether the onus is on
22 responsible persons to demonstrate that confidential
23 treatment is warranted for protective information,
24 Shell shares and adopts the submissions of Suncor at
25 the August 5th workshop, and others preceding us today.
26 Namely that the starting point under section 9 of the

1 Act is that protected information should be kept
2 confidential. Then, the onus should be on the BCUC or
3 other interested parties to demonstrate that the
4 public interest in publishing outweighs any potential
5 harm to responsible persons or the competitiveness of
6 the market.

7 Moving on now to question 4 part 1, jumping
8 around a little bit. The BCUC asks whether the
9 declaration and undertaking process contemplated in
10 Draft Framework No. 2 is consistent with section 9(2)
11 of the Act. In Shell's view, the BCUC has the
12 jurisdiction under the Act to establish declaration
13 and undertaking process like that which is
14 contemplated in Framework No. 2. But any such process
15 needs to be administered in accordance with paragraph
16 4(2)(b) and subsection 9(2) of the Act.

17 You might be sensing a theme in my
18 submissions here.

19 Shell sets out its views on how the
20 declaration and undertaking process should be
21 administered at Page 9 of our June 15th submission, and
22 I will not repeat everything we wrote there. However,
23 we wish to reiterate that the use of this undertaking
24 process should be constrained, since the current
25 proceeding will have already identified the
26 appropriate balance between disclosure of information

1 and the protection of protected information.

2 Also, in general, only data that has been
3 previously published by the BCUC, including through
4 aggregation and anonymization, should be provided to
5 third parties for the purposes of market research. In
6 Shell's view, it is not necessary for third parties
7 conducting further market research as contemplated in
8 Draft No. 2, to have access to raw, non-anonymized,
9 non-aggregated, protected information. As we set out
10 in our June 15th submission, this aligns with the
11 general approach employed by others such as Statistics
12 Canada when providing data to researchers.

13 Shell's concern here is simple,
14 irrespective of the safeguards put in place, whether
15 it be by way of declaration and undertaking, or
16 commercial type NDA, any disclosure of protected
17 information to independent third parties by the BCUC
18 introduces the risk of intentional or inadvertent
19 disclosure of commercially sensitive protected
20 information to the public. And, in particular, to our
21 competitors. This has an attendant risk of creating
22 competitive harm for the responsible person that
23 provided the protected information, and undermining
24 market competitiveness.

25 We acknowledge that there may be limited
26 circumstances where the disclosure of confidential

1 fuel data may be necessary as discussed with Husky
2 just now, for instance, to facilitate the review of
3 aggregated confidential protected information prior to
4 publication, as is discussed in section 5.2.2 of the
5 Framework. However, such confidential information
6 should not be provided for market research purposes
7 for the reasons that I have discussed.

8 I turn next to question 4, parts 2 and 3,
9 regarding the development of a standardized NDA and
10 whether there are other conditions or safeguards that
11 should be included in the declaration and undertaking
12 form to provide sufficient protections for
13 confidential, protected information.

14 **Proceeding Time 11:09 a.m. T35**

15 Shell agrees with Parkland and Suncor that
16 it would be an improvement to the disclosure process
17 set out in the current framework draft if the parties
18 requesting access to confidential fuel data was also
19 required to execute a non-disclosure agreement
20 directly with the responsible person whose
21 confidential data was being disclosed. We further
22 agree that such an NDA should be developed with the
23 input from responsible persons themselves.

24 However, neither a declaration in an
25 undertaking form nor an NDA provide absolute certainty
26 that confidential protected information will not be

1 inadvertently or intentionally disclosed in a harmful
2 manner, nor are they able to fully compensate a
3 responsible person for the harm potentially caused by
4 the disclosure, nor will they be able to undo the
5 competitive harm to the marketplace that could result.
6 A bell cannot be unrung, so to speak. And once data
7 has been disclosed to the public, and by virtue of
8 that to competitors, it is generally difficult or
9 impossible to control its spread.

10 I'd now like to close with some brief
11 comments in response to question 3. And I've left
12 this question till last so that if any questions arise
13 or require further clarification, I can easily yield
14 the virtual podium to Ms. Courtright, Ms. Nayyar, or
15 Mr. Vadodariya to provide more insight or detail, or
16 to correct me in the event that I mess this up too
17 much.

18 In question 3 the BCUC requested that
19 market participants provide practical examples or
20 illustrations of the specific harm that would result
21 from publishing fuel data not identified as
22 commercially confidential protected information in
23 Framework Draft No. 2. The Commission quoted excerpts
24 from Shell and 7-Eleven's prior submissions and asked
25 market participants to provide clear explanations of
26 the specific harms related to the publication of

1 shipment volume and shipment date fuel data, as well
2 as publication of a responsible persons' supply
3 relationships or customer lists.

4 Representatives for Suncor, Imperial and
5 FCL all provided such further explanations of these
6 potential specific harms during the workshop last week
7 and did so in such a clear and eloquent manner, or at
8 least in a far more clear and eloquent manner than I
9 could hope to achieve, that upon reflection and review
10 of the transcript there's little that Shell can add by
11 way of illustration, except to say that we agree with
12 and support the explanations that have been previously
13 been provided by our counterparts.

14 I also note that beyond those specific
15 examples addressed by other last week, Shell has also
16 provided various additional examples regarding the
17 potential harm of disclosure of other non-protected
18 fuel data information categories in our March 8th and
19 June 15th submissions that we'd be happy to discuss
20 further.

21 As a result, I'll instead make a broad
22 comment that relates to all of the fuel data the BCUC
23 has requested market participants provide. The BCUC
24 had asked market participants to provide data for
25 approximately 80 fuel data fields, which constitutes
26 thousands of data points her month. Assumedly on the

1 basis that each of those data points holds worth or is
2 in some way insightful or discloses something about
3 the operation of the fuel market in British Columbia
4 to the BCUC. The very fact that the BCUC has asked
5 for any given class of fuel data is indicative that
6 the BCUC believes it is valuable data for the purpose
7 of understanding the market or the costs and actions
8 of market participants. The fact the BCUC requires
9 market participants to disclose data also suggests
10 that the BCUC believes it is easier or potentially
11 more accurate to collect the fuel data from the market
12 participant directly rather than through observation
13 or some other means.

14 Here Shell submits that the colloquialism
15 "what's good for the goose is good for the gander"
16 applies. Namely, what's true for the BCUC is also
17 true for all of Shell's competitors in the market. As
18 you've heard from multiple parties, each discrete
19 piece of data by itself may not be particularly
20 illuminating or insightful to one of our competitors.
21 But, like puzzle pieces, the more fuel data you have
22 and the better the resolution of that data, the more
23 you can put together. And the clearer the picture
24 becomes in relation to the operation and strategies of
25 each competing market participant that is responsible
26 for submitting data.

1 Further, as you've heard from Tidewater,
2 the specific impacts of the release of specific
3 categories of data may have different value to and
4 different impacts upon different or particular market
5 participants. However, as you've heard from multiple
6 parties, we similarly have great concerns that the
7 publication of detailed granular commercially
8 sensitive raw data of market participants, including
9 Shell, will negatively impact both market
10 participants' commercial interests and the
11 competitiveness of the market, contrary to the
12 foundational objectives of the *Fuel Price Transparency*
13 *Act*.

14 For this reason we urge the utmost caution
15 as the BCUC considers whether to publicly release any
16 raw fuel data collected pursuant to the Act because
17 public release inherently includes disclosure to our
18 competitors and the broad public disclosure of market
19 participants' raw fuel data is not, in our submission,
20 in the public interest of promoting competitiveness of
21 the market.

22 With that I conclude Shell's prepared
23 remarks and responses. Thank you very much,
24 Commissioners. And we'd be happy at this stage to try
25 and answer any questions that the BCUC has.

26 THE CHAIRPERSON: Thank you, Mr. Dickinson.

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

2 MS. de BOER: Thank you. And thank you again for your
3 remarks this morning and for the opportunity to ask
4 some questions from staff. Charlene de Boer.

5 At the top of your remarks I believe Shell
6 highlighted promotion of market competitiveness as
7 being the objective identified in the Framework that
8 it felt should be of the foremost. Is that a fair
9 characterization?

10 MR. DICKINSON: I think that is absolutely a fair
11 characterization.

12 MS. de BOER: An Shell submits that it's not necessary
13 to publish non-aggregate or anonymized fuel data to
14 promote public confidence in the competitiveness of
15 the market, but rather the BCUC's analysis would be
16 sufficient to achieve that objective, is that correct?

17 MR. DICKINSON: Yes. Again, I think that's broadly
18 correct. We believe that the BCUC as a market
19 regulator in British Columbia with authority and
20 jurisdiction in publishing analytical reports should
21 be able to satisfy the interests of public confidence
22 in the competitiveness of the market without the need
23 to disclose all of the underlying raw data.

24 MS. de BOER: By not publishing or disclosing data upon
25 which the BCUC relied in its analysis, could public
26 confidence in the competitiveness of the market or the

1 BCUC's analysis thereof be undermined?
2 MR. DICKINSON: We don't believe that is the case.
3 Again, the BCUC as a regulator with the confidence of
4 the public, and frankly as has been discussed with
5 other parties, the B.C. government in reliance upon
6 research and analysis done by the regulator, we
7 believe has the authority that should be sufficient to
8 provide public confidence to the public. We note
9 that, as has been indicated by other parties, the
10 authoritative word of the BCUC and the government
11 should be powerful, whereas, you know, vast amounts of
12 raw data that are difficult to interpret without
13 significant analysis, at least for the public, as
14 contrasted to, perhaps, our competitors who have
15 entire teams of people who could scour that data and
16 use it for their competitive purposes.

17 **Proceeding Time 112:19 a.m. T37**

18 You know, we think that the objective to
19 the public can be met without the need to risk the
20 undermining of competitiveness by disclosure of data.
21 MS. de BOER: Generally speaking, would you, on behalf
22 of Shell consider that when someone has the
23 opportunity to test or look at the data themselves,
24 their confidence in it is greater than if it's coming
25 from an external party?
26 MR. DICKINSON: I think I can say personally speaking,

1 I agree with that statement. I think that may be true
2 for others in British Columbia. What I would say
3 though is that's only half of the equation and so
4 confidence in the market, again, can only exist if you
5 are not simultaneously undermining the competitiveness
6 of the market by releasing information that has the
7 risk or potential to do so. So I think, again when
8 you look at the objectives of the Act as set out in
9 9.2 and Section 4 of the Act, you know, the
10 foundational objective is competitiveness and public
11 confidence in that competitiveness. So anything that
12 you do with the goal of public confidence has to be
13 viewed from the lens of not hurting the underlying
14 competitiveness which is fundamental to have public
15 confidence in that competitiveness. So as a
16 balancing.

17 MS. de BOER: And at a high level, could you help me
18 understand how, if the BCUC were to disclose the
19 detailed underlying data, and all competitors had
20 access to that same information, how that would give
21 any competitor a particular advantage over the other?
22 How would that underline the competitiveness in the
23 market if all competitors have access to the same
24 information?

25 MR. DICKINSON: So I think we'll take a moment here in
26 the room to determine who is best positioned to answer

1 that question. Thanks.

2 Thank you, Commission and Commission staff.

3 Ms. Nayyar is going to answer that question on behalf
4 of Shell.

5 MS. NAYYAR: Hi there. Can you hear me okay?

6 MS. DE BOER: I can, thank you.

7 MS. NAYYAR: Okay, thank you. So your question, just
8 to reiterate, was if all competitors had the same
9 information that was disclosed to BCUC, how that would
10 impact market competitiveness. Is that correct?

11 MS. DE BOER: Yeah, I think there's been a couple
12 quotes or phrases quoted today and in your opening,
13 you were saying, you know, sometimes you hit a phrase
14 "perfect information is perfect competition" and I'm
15 curious if all competitors, you know, Shell and all of
16 its competitors have access to that same detailed data
17 that you're saying we shouldn't have to disclose to
18 accomplish the purposes of the Act, how that
19 undermines the competitiveness of the market.

20 MS. NAYYAR: Well, so at the moment we don't know what
21 information our competitors have, so we can't speak to
22 say all of the other market participants and what
23 information on each market participant, but that
24 coupled with the data that's being released would then
25 undermine the competitiveness of the market, because
26 if everybody has the same amount of data, then there's

1 no competition.

2 So, for example, if everybody know the
3 volumes, the prices, the shipment dates, all of that
4 information is known, then the entire marketplace
5 would be known in British Columbia.

6 **Proceeding Time 11:23 a.m. T38**

7 And if everybody knows how the market
8 works, then the price -- like the participants would
9 start to use that information, and that could drive a
10 different market behavior, which would lead to less
11 competition. Because fundamentally, you know, the
12 idea of competitiveness is that different participants
13 are using individual, independent decisions to provide
14 those products and services to its customers.

15 So, if all of that confidential data is
16 released, it would cause harm because it would disrupt
17 the competition by enabling competitors to target or
18 undermine, or exploit vulnerable positions of other
19 market participants.

20 MS. de BOER: Thank you for your response.

21 I did have a couple more questions about
22 your prior submissions, and I'd like my colleague to
23 pull up Exhibit C6-5 please?

24 On page 2, Shell submits that the 2019
25 total gasoline and diesel sales volumes should be
26 confidential protected information, in part because

1 the data available from private sources, such as Kent
2 Group, is not as comprehensive or accurate as that
3 provided to the BCUC. Is that correct?

4 MS. COURTRIGHT: Yes, that's correct.

5 MS. de BOER: Could you please walk me through the
6 difference between the Kent data and the fuel data
7 that is provided to the BCUC? And why the fuel data
8 submitted to the BCUC is so much more sensitive than
9 Kent's?

10 MS. COURTRIGHT: So, to address that, I think some
11 others that have come before had done a good job
12 addressing that, but to add specifically from the
13 Shell perspective, there is voluntarily disclosed
14 information to third parties, such as Kent, being this
15 particular example. But not all responsible persons
16 may be participating in voluntary disclosure to the
17 same extent. Whereas the data collected as part of
18 the BCUC retail pilot has been all inclusive with
19 regards to the station survey.

20 So, every responsible person has been
21 required at a very granular site by site level to
22 provide that, which is very, very different than what
23 is currently available on third party sources. Other
24 third party sources such as we've referred to in this
25 particular submission, specifying that it may not be
26 fully comprehensive and hence may not be fully

1 accurate. Whereas within the context of the retail
2 station survey requirements, each responsible party
3 has been required to provide granular by-site
4 information, and that's not currently, holistically
5 available in the current public forum.

6 MS. de BOER: And could you speak to what proportion of
7 Shell's stations provide information to Kent?

8 MS. COURTRIGHT: Not off hand.

9 MS. de BOER: Is this something that Shell would be
10 able to provide in writing after the fact?

11 MS. COURTRIGHT: Is the question tied specifically to
12 what percentage of Shell sites are voluntarily
13 submitting? Is that the question? Or am I missing
14 something?

15 MS. de BOER: That is the question, I am interested in
16 understanding whether it's a large proportion of
17 Shell's stations that are voluntarily complying, or
18 what magnitude of stations are opting out of the
19 voluntary submission of data to get a sense of the
20 distinction that you've raised today, that it's not
21 required.

22 So, if you could take an undertaking to
23 provide that information, it would be appreciated.

24 **Information Request**

25 (AUDIO TECHNICAL DIFFICULTIES WITH WITNESS MIC)

26 MS. de BOER: I think we've got a bit of an issue with

1 your mic there, Mr. Dickinson?

2 THE CHAIRPERSON: No, we can't hear you, I think your
3 mic is off.

4 MS. de BOER: Unfortunately we've lost you completely
5 now. Before it was a little bit tinny, if I can use
6 that word, but now we've lost you.

7 THE CHAIRPERSON: Your mic is turned off.

8 MR. DICKINSON: So, I have it unmuted, and I am now
9 using the computer mic, can you hear me?

10 MS. de BOER: Yes, thank you.

11 THE CHAIRPERSON: Yes.

12 Mr. DICKINSON: So, I chimed in there, I heard the word
13 undertaking, and as counsel that obviously made my
14 ears perk up, but also, I need to note that Shell
15 stations is a bit of a challenge for us, given the way
16 that we are structured. We have as you've heard in
17 the prior proceeding, both corporately owned sites and
18 dealer sites, and we would have to go away and look
19 into the extent to which we have in fact got insight
20 into non-corporately owned sites, and how they report.

21 **Proceeding Time 11:29 a.m. T39**

22 So, you know, I don't think we can give you
23 an undertaking to provide that information. I think
24 we're certainly happy to go away and see what
25 information we can come up with.

26 MS. de BOER: Yes, on a best effort basis. If it's

1 just the corporate sites, I think that would be
2 helpful to staff. If there's additional you can
3 provide, that's also useful. Again, trying to
4 understand the picture of what proportion of stations
5 are voluntarily participating in supplying data to
6 Kent versus those that are opting out. So
7 appreciated.

8 MR. DICKINSON: Understood, yeah. We will go away and
9 do that.

10 MS. de BOER: And then I'd also be interested in what
11 Shell subscribes to receive volume information from
12 Kent for B.C. markets. Is this something that you
13 participate in as a company?

14 MS. COURTRIGHT: Yes, we participate in Kent data.

15 MS. de BOER: What's the time lag between these reports
16 and, you know, real life happenings in terms of the
17 fuel data?

18 MS. COURTRIGHT: It does vary by report, but ultimately
19 subscribers would choose for what data and what
20 frequency. So I can't speak to the full extent that
21 Kent ultimately markets it on behalf of the full
22 marketing offer.

23 MS. de BOER: And did I understand Shell's position
24 being that the data submitted to the BCUC is more
25 reliable or more precise than the data that's provided
26 to Kent?

1 MS. COURTRIGHT: Yes, that's correct. Certainly
2 speaking to the data that has been requested to be
3 submitted to the BCUC it's on a per site basis. We've
4 submitted it for all of our corporately owned sites on
5 a granular detailed basis.

6 MS. de BOER: Can you speak to the differences between
7 the methodologies used for the Kent's data or the
8 granularity of that data and why there's such a
9 material difference between what the BCUC is receiving
10 from fuel companies and what Kent is gathering?

11 MR. DICKINSON: Just give us one second to discuss
12 something briefly here in the room

13 MS. de BOER: Thank you.

14 MS. COURTRIGHT: So to address your questions with
15 regards to the differences in granularity, ultimately
16 Kent does go and do their own site reads. So there is
17 some voluntary data that's certainly from the
18 corporate perspective we provide, but then ultimately
19 Kent does go independently and do site reads.

20 So with regards to contrasting at relative
21 to what we provided, as far as the retail station
22 survey, we provided our corporate data tied to the
23 specific granular by-site byproduct level volumes on
24 the annualized basis as requested by the BCUC, whereas
25 with regards to the Kent data that's collected, they
26 have various means. They are obviously an independent

1 does independently. They would be best informed to
2 speak to what they actually do and conduct. So I'm
3 not in a position to articulate what Kent goes out and
4 does independently.

5 MS. de BOER: Thank you. Still on page 2 of Shell's
6 prior submission, and continuing on to page 3, Shell
7 states that it "disagrees that the fuel data relating
8 to the physical capacity of a responsible person's
9 storage tanks is discernable by observing the storage
10 tank themselves to the degree of precision that is
11 provided by responsible persons under the Act." Shell
12 continues that, "if a responsible person has less
13 storage capacity in a particular region of the
14 province, that responsible person may be less able to
15 supply fuel in that particular region -- sorry, in
16 that region, so the responsible person's competitors
17 may target the responsible person's costumers in that
18 region causing the responsible person competitive
19 harm."

20 Would Shell consider the approximate amount
21 of fuel storage capacity a responsible person has in a
22 particular region of the province to be general
23 industry knowledge?

24 MS. NAYYAR: Hi there. No, that would not be general
25 industry knowledge. It's observable to the public but
26 to actually know the knowledge of the physical

1 capacity of a storage tank would not be general
2 knowledge.

3 MS. de BOER: So, if you or another Shell
4 representative were to view a fuel storage tank of one
5 of your competitors or, frankly, your own, how close
6 an estimate do you think you could make to the actual
7 physical volume of that tank based on that
8 observation?

9 MS. NAYYAR: Personally speaking, I don't think I
10 could do a very good assessment of what that physical
11 capacity is. I do know that storage tanks have heels
12 and they have usable volume. So, you really would not
13 be able to discern what the physical capacity is by
14 observing it.

15 MS. de BOER: And is precision necessary for a
16 competitor to understand the relative amount of
17 storage capacity a responsible person has in certain
18 regions of a province in order to target that
19 competitor in the way Shell has described?

20 MS. NAYYAR: I believe that any ballpark figure of that
21 analysis of the storage tank is enough to target and
22 understand the supply chain and the supply advantages
23 and disadvantages of that market, which would then
24 lead to less competition and cause competitive harm to
25 the marketplace.

26 MS. de BOER: So even without having to estimate the

1 actual capacity of the storage tank, just simply the
2 number of storage tanks in a certain portion of the
3 province or the existence of storage facilities in
4 that portion would be enough to give your competitors
5 insights into the relative storage capacities?

6 MS. NAYYAR: Can I just have a moment please?

7 MS. de BOER: Thank you.

8 MS. NAYYAR: Hi there. Yeah, so, you know, our
9 competitors, we don't know what sort of information
10 they have. So, they may know of how many tanks we
11 have on our sites but they don't know how those sites
12 are being -- or how those tanks are being used,
13 whether in their maintenance, what the service of
14 those tanks are for. So that is competitively
15 sensitive information.

16 **Proceeding Time 11:38 a.m. T41**

17 MS. de BOER: Okay, thank you. Also on page 3 of
18 Exhibit 6- -- or C6-5, regarding the shipment volume
19 fuel data, Shell submits that this information
20 combined with the transaction type fuel data could be
21 damaging to a responsible person's negotiating
22 position, is that correct?

23 MS. COURTRIGHT: Yes, that's correct.

24 MS. de BOER: Could you walk me through this concern in
25 greater detail?

26 MS. COURTRIGHT: So I think ultimately what has been

1 confirmed is that any volume information is extremely
2 commercially sensitive and with regards to pairing of
3 data, especially how it's been submitted to the BCUC,
4 we're providing a tremendous amount of granularity.
5 And especially in pairing shipment volume with
6 shipment date and the current internal ID, not only
7 does it disclose within the context of the transaction
8 type the potential to undercover a responsible
9 person's percentage weighting from internal
10 transactions versus third party transactions, that in
11 and of itself can be extremely damaging and harmful
12 when trying to negotiate with third parties.

13 Also cognizant that third parties have a
14 subset of information available themselves that other
15 responsible persons may not, and that data or
16 information in and of itself paired as well can put
17 negotiations in a very precarious position, can
18 undermine the ability to negotiate. And also the
19 visibility and transparency on a very specific gradual
20 level with shipment date can show on a by-site basis
21 tied in with the internal ID perspective on a retail
22 site basis ultimately disclosing the amount of volume
23 that's being received at that site. With data
24 analytics understanding the specific day-by-day
25 transactions, that can ultimately be disclosing to
26 other responsible persons the throughput at a site,

1 which we've already spoken to the harm and others have
2 certainly identified the harm that can come of that.

3 Ultimately responsible persons can then
4 target individual retail sites which has the potential
5 to cause significant harm and ultimately reduce
6 competitiveness. So it's not only on a retail site
7 basis, but even on a more high level negotiation
8 standpoint, even from the wholesale perspective is
9 that shipment volume data is being provided very
10 granularly.

11 MS. de BOER: Maybe a hypothetical illustration would
12 help me with the risks to negotiations that would come
13 from disclosing the transaction type combed with
14 shipment volume. So say by publishing the fuel data
15 that BCUC receives, your third party entities were
16 able to just see that 70 percent of the shipment
17 volume for Shell is through internal transactions and
18 30 percent is made up by third party, what damage does
19 that knowledge do to -- what harm does that knowledge
20 do to the negotiation? Or if there's other figures
21 that would be a better illustration, please, please
22 supplement those in, but just to try and help me
23 understand the actual harm that would result in the
24 negotiations.

25 MS. COURTRIGHT: So with the hypothetical that you
26 provide, if for example a counterparty realizes that

1 of fuel per shipment, for retail supply.

2 Could you please explain to me what Shell
3 considers to be "relatively little variability?"

4 MS. COURTRIGHT: So, what's implied by that is the
5 ability to ultimately have a very granular approach or
6 understanding of the volume information. And I think
7 what I would add to that is not only the shipment
8 date, but the fact that the current draft framework
9 doesn't provide confidentiality to shipment volume, as
10 well as internal ID. Those data points paired
11 together don't even require any guessing, because if
12 the internal IDs match, and if the shipment volume is
13 already disclosed, ultimately that links it back to
14 what the purchase volume would also be, because the
15 internal IDs are identical.

16 MS. de BOER: I think it would be helpful to staff to
17 understand either today or again in separate
18 undertaking form, the basis for Shell's submission
19 that there is relatively little variability of the
20 volume of fuel per shipment for retail supply, what
21 the foundation is for that particular submission.

22 MR. DICKINSON: I'm just going to canvas the room here
23 for a second to see whether that is something that we
24 can actually answer today, or whether that is
25 something we have to take away, give me one moment.

26 MS. de BOER: Thank you.

1 MS. COURTRIGHT: I think I can address that actually in
2 this forum quite simply. Ultimately, even in last
3 week's workshop, Suncor did a very detailed
4 explanation of the fact that from a transportation
5 perspective, especially on the trucking front, there
6 is a very limited scope and scale of types of trucks
7 that visit retail sites. On that basis alone, and on
8 the basis of that, and the optimization, certainly we
9 continue to strive to buy for customers and to
10 optimize and provide value, and in doing so we are
11 constantly optimizing our trucking to reduce the end
12 cost to the consumer. And in doing so, that's the
13 distinct fact why it is extremely predictable, and
14 ultimately from an industry perspective in knowing the
15 visibility to those types of trucks, it's extremely
16 transparent in the volume associated with those
17 trucks.

18 So, I think that that helps probably
19 confirm exactly why there are those concerns, because
20 there is that limited variability, and consistent
21 optimization to support the end customer.

22 MS. de BOER: And am I recalling Suncor's testimony
23 correctly in that you had to observe the truck
24 deliveries in order for that information to be
25 disclosed? Was that your understanding as well?

26 MS. COURTRIGHT: My understanding is in observing you

1 can fully pinpoint, but there is a limited scope of
2 types of trucks to begin with. So, even without
3 physically observing there's primarily two different
4 types of truck which offers two different types of
5 loads.

6 **Proceeding Time 11:47 a.m. T43**

7 You can further pinpoint that, of course,
8 through visual observation but there's a lot of market
9 intelligence already available where there is a high
10 level of certainty around loads even prior to
11 physically visually pinpointing.

12 MS. de BOER: And when you say that market
13 intelligence --

14 MR. DICKINSON: And just to chime in a little bit on
15 that point, as you've heard in my opening statement,
16 information that is useful to the BCUC is information
17 that is useful to our competitors, and one of the
18 reasons information may be useful is because it's a
19 lot cheaper to get it if it's just handed to you.

20 So yes, while some of the information that
21 we may be discussing today is stuff that could be
22 visually observable at a site, and you could go and
23 you could park someone there to observe the site and
24 see when the truck turns up and what size it is, and
25 how many times it turns up per week, et cetera.
26 That's effort and cost intensive. If -- rather what I

1 can do is I can put someone there once to find out
2 that information and then the BCUC gives me the
3 schedule, the frequency by the disclosure of data, you
4 know, while yes, that data is already publicly
5 observable, it's much easier for one of our
6 competitors to just combine what they know through
7 observation with what they get, give that to an
8 analyst and have very high degree of confidence at
9 that point in way that would be cost prohibitive to
10 obtain otherwise.

11 MS. de BOER: Thank you. In its prior submission Shell
12 made a statement that in markets where the price does
13 not change on a given day, publishing the daily high
14 and daily low would allow the volume weighted selling
15 price to be determined, which is currently proposed to
16 be confidential protected information. Do you recall
17 that submission?

18 MS. COURTRIGHT: Yes, I recall that submission.

19 MS. de BOER: If that's the case, would it make sense
20 for the volume weighted selling price not to be
21 protected information if the daily high, daily low
22 price is ultimately determined to be publishable?

23 MS. COURTRIGHT: No, there's extreme concern on all
24 those data fields and hence, articulating the fact
25 that the discernable volume weighed selling price
26 could be confirmed if the high and low price match, is

1 just further articulating the fact that those fields
2 are, in and of themselves, commercially sensitive and
3 should be kept confidential.

4 MS. de BOER: Okay, and then one final question from
5 me. On page 6 of Exhibit C6-5 Shell submits that all
6 retail pilot information should be designated
7 confidential to ensure the identity of the selected
8 retail stations is protected. Is that correct?

9 MS. COURTRIGHT: That's correct.

10 MS. de BOER: Does Shell consider there to be anything
11 in the FPT Act that prohibits publication of field
12 data collected pursuant to the retail pilot or survey?

13 MR. DICKINSON: No, I don't think we think that there's
14 anything in the FPT Act that actively prohibits it.
15 We also, as was expressed -- we would echo the
16 sentiments expressed by Husky in that regard. The
17 additional sort of nuance that I would spin on that
18 ball that I would provide is that there's an inherent
19 unfairness in publishing the pilot, retail pilot
20 information and that inherent fairness is as follows.
21 Only some sites had to participate. So if you publish
22 that information and sites are identifiable because
23 it's not aggregated or anonymized, then there's a
24 subset of competitors who have the information but
25 weren't obligated to disclose information, who gain at
26 the cost of those parties who were participant in the

1 retail pilot, but had to hand over their own
2 information to do so, too.

3 **Proceeding Time 11:52 a.m. T44**

4 So you're creating inherent market
5 unfairness, which I would say is, though not
6 explicitly set out in the Act, contrary to the intent
7 and purpose of the Act.

8 MS. de BOER: If the identities of those selected
9 retailers are not disclosed, is the fairness aspect
10 addressed?

11 MR. DICKINSON: I think to say to a broad extent and
12 then I think my colleague's going to chime in on this,
13 is to the extent that that data is appropriately
14 anonymized and aggregated in a manner that is
15 reasonable and prevents the back calculation of data
16 or the identification of parties that provided it, you
17 know, a lot of those concerns would be reduced. But
18 I'll hand over to Sigourney because I think she had
19 something further to add on that.

20 MS. COURTRIGHT: Certainly in agreement with Mr.
21 Dickinson. But I think the challenge there, as Mr.
22 Dickinson highlighted earlier, is that it's only a
23 subset participating and therefore aggregation and
24 anonymization of a subset is likely not sufficient
25 because of various specific regional or scope
26 concerns, even on a statistics basis, with

1 anonymization and aggregation of only a small subset,
2 it's likely not providing sufficient non-disclosure.

3 MS. de BOER: Thank you, I thank you for your time.

4 THE CHAIRPERSON: Thank you. Any further questions
5 from staff?

6 MR. BUSSOLI: No, Mr. Chair. That concludes staff
7 questions.

8 THE CHAIRPERSON: Thank you. I just have a question
9 for Mr. Dickinson, please. I believe I heard you say,
10 when you were responding to question number 4, that
11 you did -- it is your view that the BCUC has
12 jurisdiction to go through the undertaking and non-
13 disclosure agreement process and, as a result,
14 selectively allow disclosure of protected information
15 to certain parties. Did I hear you correctly that you
16 agree we do have the jurisdiction to do that?

17 MR. DICKINSON: Yes, I think, correct. We don't
18 dispute the BCUC's jurisdiction in that regard. We
19 think that it's a question of how you utilize your
20 discretion.

21 THE CHAIRPERSON: I understand. I just wanted to try
22 and understand why you do think we have the
23 jurisdiction. We have heard from other parties that
24 have relied on 9(2), which uses the word "publish",
25 and the only -- and I'm at risk of misparaphrasing
26 other parties here, but I think what they said is that

1 the only place that the Act allows us to disclose this
2 information is 9(2) and the wording used in there is
3 "publish", and publish is not a selective publication
4 process. And, you know, at risk of paraphrasing
5 incorrectly, I think that's what other parties have
6 said.

7 So do you disagree with that or do you --
8 is it your view that publishing includes selective
9 disclosure? Or is it some other part of the Act
10 you're relying on when you say we have the
11 jurisdiction?

12 MR. DICKINSON: I think it's probably appropriate to
13 say that we did not conduct a detailed legal analysis
14 of the implication of the word "publish" as others
15 have done. So, perhaps I'll leave it at that.

16 THE CHAIRPERSON: Fair enough, thank you. Thank you
17 very much.

18 Okay, so just one question of staff, will
19 you be requiring Shell to come back for an in camera
20 session?

21 MR. BUSSOLI: No, Mr. Chair. Staff has no questions in
22 confidence for Shell.

23 THE CHAIRPERSON: Thank you. And does Shell have any
24 further submissions that they would want to make an in
25 camera session?

26 MR. DICKINSON: No, we have attempted to tailor our

1 over the course of this process, this workshop
2 process, modified their position somewhat or explained
3 them in ways that were not anticipated based on the
4 written submissions.

5 But I can start by saying that I've had a
6 song that's popped into my head every time I've sat
7 down to work on this process and unfortunately it's
8 from Sesame Street. It's, "One of These Things is Not
9 Like the Other." I'm not going to subject you all to
10 a rendition of my internal soundtrack, but I think
11 it's pretty clear why I've got that song on repeat.

12 I'm not here on behalf of the types of
13 parties that many of the other people here are. I'm
14 not here on behalf of a gasoline or diesel retailer.
15 So the interests that I'm speaking to are not those of
16 Suncor, Husky, 7-Eleven, Petro-Can, Paz, Imperial, or
17 any of the others that have weighed in here or in
18 writing. That isn't who I am and that's not what I
19 do.

20 As is always the case before this panel and
21 others from the B.C. Utilities Commission, I'm here on
22 behalf of consumers. And in this case the same
23 consumers that the Commission determined had been
24 paying a province wide average of 10 CPL above an
25 explainable price for their transportation fuels. And
26 it was that 2019 BCUC inquiry finding that British

1 Columbians paid \$490 million annually of unaccounted
2 for fuel costs, that's a useful starting point in our
3 determinations of the public interest or our
4 discussions to -- the public interest and the other
5 issues that are before you in this matter. So let's
6 keep that in mind when measuring the public interest
7 in the outcome of this regulatory process. And I
8 would ask that the panel and others in this room take
9 a moment to think on that and that this Commission
10 proceed with that in mind in its deliberations on how
11 to proceed on a number of key fronts on the
12 administration of its duties under the *Fuel Price*
13 *Transparency Act*.

14 And actually I think I might stop there for
15 a moment. Four hundred and ninety million dollars.
16 Because I work in utility regulation, I have for a
17 number of years, when I read the Utilities
18 Commission's report and I saw \$490 million, I was
19 obviously outraged and less than impressed, but it
20 wasn't the same as when I put down my lawyer hat and I
21 picked up the consumer hat so that I could distill
22 what I had read into something that I could explain to
23 family and friends. Then it became a lot more
24 apparent, a lot more personal, and a lot more of an
25 interest to me on more than an academic level.

26 And that is the -- that's the direction the

1 consumers are coming from. Not an academic one, not
2 an economic one in sort of the economy of our province
3 or anything like that, they're looking at what happens
4 when they go to the pump. Like right now, people are
5 paying, you know, between \$1.70 and \$1.73 a litre.
6 That is something that consumers have great interest
7 in.

8 **Proceeding Time 1:05 p.m. T47**

9 So I and my co-counsel, Ms. Barham, are
10 here in person and online, to ensure the maintenance
11 of a meaningful and defensible level of transparency
12 and public accountability in how this Commission and
13 the market participants interpret and operate within
14 the FPTA, because there could be no reasonable
15 expectation of public confidence in the administration
16 of an Act called the *Fuel Price Transparency Act*,
17 where the transparency is lacking.

18 And I realize that I'm certainly not in a
19 position to dictate to the Commission how it should
20 proceed, but I think it is important to have a voice
21 here to speak to those interests, and to impart to the
22 Commission the importance with which that is held by
23 the consumers that you serve in your capacity as
24 Commissioners.

25 So, we have in this workshop series heard
26 participants in this market arguing that all of their

1 reportable fuel data is highly sensitive, and
2 commercially competitive information, both at a
3 granular and at an aggregate level. Mind you, not
4 everybody has done that, but I note that both AFD and
5 Tidewater, potentially others have done so. And I'm
6 quite frankly at a loss. It isn't often that I'm
7 speechless, but assertion of the need to keep
8 confidential all information, even that provide on an
9 anonymized and aggregate level, utterly defeats the
10 purpose of the Act, in my submission.

11 Now, I could go on at length talking about
12 the interests in public interest, and the way in which
13 we have to balance that with the needs of the market,
14 and the public interest in maintaining that market as
15 it currently stands. But in the interest of
16 regulatory efficiency, I thought it was useful to kind
17 of provide just one example of the positions that
18 parties have taken here, that I submit are so strongly
19 informed by a Chicken Little approach to corporate
20 operations, the interpretation of what constitutes
21 commercially sensitive information and
22 confidentiality, that it does very little, I would
23 submit, to inspire public confidence in the market.

24 So, instead what I'll do is I'll go on to
25 address the Commission's specific questions. And the
26 first was to discuss the object and purpose of the

1 *Fuel Price Transparency Act*, and the import of
2 transparency under the Act. And as you may recall in
3 my previous submissions in this process, as well as in
4 my opening this morning -- or this afternoon, I've
5 made numerous references to excerpts from Hansard
6 clearly demonstrating, I would say, the legislative
7 intent behind this statute, and I submit that we have
8 very clearly answered, in our view, on both the object
9 and purpose of the *Fuel Price Transparency Act*. It's
10 not the Gasoline and Diesel Retail Participants
11 Protection Act. And rather than reading into the
12 record excerpts from those submissions, however much I
13 am itching to do so, I am just going to simply refer
14 this panel back to those submissions with one small
15 addition.

16 In Exhibit C10-4, one of our submissions on
17 the record, I pointed to the name of the Act itself,
18 as a clear signal of the object and purpose of this
19 legislation, the *Fuel Price Transparency Act*, and I
20 would refer this panel to section 9 of the
21 *Interpretation Act*, the one that sets out the first
22 and most elementary tools that I was taught to use
23 when engaging in this kind of legislative analysis.

24 The section reads,

25 "The title and preamble of an enactment or part
26 of it, and are intended to assist in explaining

1 its meaning and object."

2 Now, I have to admit it's odd to be
3 standing here obliged to assert before this panel the
4 importance of transparency and processes dealing with
5 fuel prices, when it's covered by a statute with
6 transparency in its name. And we have on the record
7 of this proceeding already pointed out numerous
8 examples of statements by the legislators themselves,
9 speaking to the nature and purpose of this Act, as
10 well as the importance of transparency. But I fully
11 understand why the panel asked this question and felt
12 that it needed to be asked, because this room is full
13 of people who have argued against the publication,
14 whether that be publication publicly, or publication
15 even through the disclosure through provision of that
16 two specific interested parties who have executed a
17 Commission approved confidentiality agreement, of any
18 level of data, or of a large degree of the data that
19 they might seek on a number of bases.

20 And one such argument, the one Suncor
21 reference in its submission and that was referenced in
22 the Commission's question 1, is based on an
23 interpretation of "may", that goes beyond the purpose
24 that, I would submit, for which it was intended.

25 I note that the word "may" is specifically
26 defined in section 29 of the *Interpretation Act* as

1 follows,

2 "May is to be construed as permissive and
3 empowering."

4 **Proceeding Time 1:11 p.m. T48**

5 Now, we've heard many of the parties here
6 speak to its permissiveness. And parsing that to fit
7 the agenda of limiting that disclosure, whether it be
8 in public or to parties through a confidentiality
9 agreement. But we've not heard anybody speak to
10 empowering. The word "empowering" I think is not
11 necessarily key, but it's informative to the way that
12 we should go forward. It's not something that says
13 that you can if you feel that it absolutely has to be
14 done. It is that you have the discretion to do so
15 when you feel that it is appropriate. You have that
16 power.

17 And the thing is that this is a panel that
18 engages in public hearings, public regulation of
19 utilities, and now public regulation of the *Fuel Price*
20 *Transparency Act*. And if the government had wished
21 for the *Fuel Price Transparency Act* to be overseen in
22 a star-chamber, you know, illuminati type of scheme, I
23 sincerely doubt that it would have asked a commission
24 engaged in this kind of activity on the regular, and
25 that is sophisticated enough to look at an applicant
26 and determine whether they have the right purpose in

1 mind to access commercially sensitive information, and
2 whether they are likely to break those, the conditions
3 of that agreement. Then they would have done so, but
4 instead this government decided to come to you and to
5 give you that power.

6 But Suncor and the others are offering an
7 interpretation that varies slightly but very
8 significantly from the one that I presented. The
9 focus in the aspect of that definition which is
10 permissive. It's something that you should -- you do
11 have the power to do but you should not, or that you
12 don't have the power to do, or that you should but
13 only in the most extraordinary of circumstances.
14 Where it is my submission that this panel and this
15 commission has come into this from a long history of
16 operations where public disclosure is the default, and
17 that is the context in which this also needs to be
18 interpreted. This Act was brought into law and it has
19 given you the power to do this, rather than another
20 tribunal they could have created or another one that
21 operates without this presumption of public
22 disclosure.

23 And I'm not saying that we are here before
24 you today arguing for the publication of granular and
25 very specific information, we're not that -- we're not
26 going to do that. We recognize the potential impacts,

1 the chaos that could be created for the market
2 participants in a field where we don't have government
3 regulation of pricing.

4 But, instead, we are here saying that if
5 parties are coming to this Commission where public
6 disclosure is the default, and that confidentiality is
7 something that needs to be asserted and proven, the
8 need for it needs to be proven, then that is the way
9 that we should be going forward because that's the
10 context in which this Act has been created and
11 enacted.

12 Now, a lot has been bade of section 9. And
13 in response to the submissions made by Suncor and
14 others in this process, we simply refer to the panel
15 to the name of the Act itself again.

16 I'll move on to my next response, which is,
17 given our response to the above, the first part of the
18 first question, please discuss whether the three key
19 principles set out in section 3.1 of the Framework
20 Draft No. 2 to guide the BCUC in determining whether
21 fuel data will be held confidential are in alignment
22 with the *Fuel Price Transparency Act*. And in our
23 submission, yes they are.

24 **Proceeding Time 1:16 p.m. T49**

25 They are completely in alignment with our
26 interpretation of the *Fuel Price Transparency Act*, one

1 that is informed not only by the text of the Act
2 itself, but also the other tools that we have of legal
3 interpretation. The Hansard excerpts that signal the
4 government's intention in bringing forward this
5 legislation, and then in enacting it. The name of the
6 Act itself, as well as other aspects, including the
7 content of the Act itself.

8 And in our submission, the principles
9 should be prioritized in the order that are listed in
10 the Commission Draft 2. But we do note that our
11 position on transparency is that it means public
12 disclosure being the preference, where possible. And
13 the promotion of public competitiveness is not about
14 necessarily the protection of market players, so much
15 as it is protecting the public from additional
16 exposure to unexplained, and I would submit,
17 potentially unjustified gas and diesel costs.

18 Now, with respect, we have to disagree with
19 the assertion that Suncor and others have made, that
20 transparency is not the same as promoting public
21 confidence in the competitiveness of the fuel market.
22 And while we accept that Suncor and others may very
23 well believe that, we would challenge them to produce
24 tangible evidence that British Columbians do not view
25 transparency as a means to ensure we have fair and
26 competitive fuel markets. And then to provide that

1 evidence to this panel, but I note that none of them
2 have done so.

3 This is a regulatory, quasi-judicial
4 tribunal who is empowered to hear that evidence, and
5 you are doing so in a context where the government has
6 said very clearly in those Hansard excerpts, that
7 transparency meaning access to this material, by
8 consumer advocates, by market watchdogs, by people who
9 can justify their need or their interest in seeing
10 that granular data, is the purpose. That is something
11 that they expressly -- I think it was the Honourable
12 Ravi Kahlon who said those specific things in his
13 Hansard excerpt. It is something that is, I think, so
14 intertwined into the way that we need to approach
15 this, that taking it out changes the nature and
16 operation of the Act so much that it essentially
17 negates the true purpose of what it was brought
18 forward to achieve.

19 Now, like I've said, you are a regulatory,
20 quasi-judicial tribunal whose function it is to make
21 decisions that would otherwise be made by the
22 executive branch of government, Cabinet or one of its
23 Ministers, and the government creates administrative
24 tribunals for a number of reasons. Sometimes it's to
25 pass the buck so that you have to make decisions that
26 would be politically hot potatoes. Other times it is

1 a delegation of the responsibility for capacity
2 reasons, so that subject matter experts can put their
3 minds to very technical issues, and make informed
4 decisions that people who are engaged in the business
5 of government don't necessarily have the expertise or
6 resources to make.

7 And there is a number of other reasons that
8 the government can create administrative tribunals,
9 but there are a number of important aspects to
10 administrative tribunal's operations; independence and
11 neutrality. The government assigns the responsibility
12 for making these decisions so that they can say, you
13 know, that's not us, that was them. But it's also so
14 that you can make those determinations of competing
15 rights and social interests as an independent and
16 neutral body, so that those decisions will remain
17 consistent to the public interest no matter what the
18 government in power might think and do, so that you
19 can be insulated from those political pressures.

20 **Proceeding Time 1:20 p.m. T50**

21 Then, like I said, there's the expertise
22 issue and that's the rationale meaning that you can
23 have Commission staff, you can have your own expertise
24 as well, and quite often people in your position are
25 chosen for those specific reasons because you have an
26 expertise that is often lacking at a systemic level in

1 government.

2 And then also public access. Public access
3 to government departments tends to be difficult,
4 particularly since COVID began, it's extraordinarily
5 difficult. But it also tends to be fairly informal.
6 People can write their Premier or their Minister or
7 other parties within the government, but do they have
8 any reassurance that those concerns are going to be
9 heard, acted upon, considered? No, they don't. So,
10 decisions that attract public controversy may require
11 the more structured public participation process of
12 administrative tribunals in order to ensure the fair
13 and equal treatment of all affected and interest
14 parties.

15 And you may recognize the wording of that
16 because that is actually in the participants guide to
17 the B.C. Utilities Commission. So that's a document
18 that we have on your website and that's where I got
19 the wording for that and the idea for the reference to
20 public access. Obviously, it's a fundamental idea
21 when you're coming here as an intervener or, in this
22 particular case, as an interested party. But I think
23 it's important of those don't participate before you
24 on a regular basis to know that that is something that
25 is very firmly ingrained in how the administrative
26 tribunals, particularly the B.C. Utilities Commission,

1 has operated.

2 So, the next question is, "If promotion of
3 transparency is a core purpose of the *Fuel Price*
4 *Transparency Act* is the onus under section 9(2) on the
5 responsible persons to demonstrate sufficient harm
6 would result from publishing certain protected
7 information such that confidential treatment is
8 warranted, rather than the reverse?"

9 Now, respectfully, we have to disagree with
10 the parties who've argued that Commission and other
11 interested parties should bear that onus to
12 demonstrate that the public interest in publishing,
13 and by "publishing", when I'm using that word in this
14 context, I mean in providing it to interested parties
15 who have executed a properly formulated commission
16 confidentiality agreement and who have no history of
17 flouting the law or competing commercial interest.
18 That is not, in my mind, publication. Okay?
19 Publication is public publication. For me, I think
20 that expanding the definition of "publication" to the
21 dissemination of that materials, to -- of those
22 materials to interested parties like myself, like many
23 have in their submissions, they've enfolded that kind
24 of disclosure in the word "publication", is dangerous.
25 Having an interested party bear the onus of
26 demonstrating the public interest in publishing -- in,

1 aspersions on anybody here. You know, I have the
2 utmost respect for Commission staff, but there's no
3 way to assure these parties 100 percent that
4 somebody's not going to go rogue or they're not going
5 to have somebody hack their computer or hold their
6 information for ransom. But the Commission in its
7 operations normally deals with these kinds of issues,
8 maybe not as expressly as have been put on the record
9 here, but when somebody comes to you and says, "I want
10 access to, you know, this commercially sensitive
11 information," the Commission has to engage in a
12 process where you consider the risks as well as the
13 benefit. And you have to -- you know, part of that is
14 what is this person's or this organization's interest,
15 what are the risks of them doing something that would
16 contravene the confidentiality agreement, and then
17 what are the potential benefits of us providing this.

18 And although I'm sure that these kinds of
19 concerns don't necessarily come up in every
20 circumstance when the Commission in engaging in these
21 kinds of determinations, I'm sure that there have been
22 over the decades some instances where parties trying
23 to protect their commercially sensitive information
24 have said, "I'm not sure that this person is not going
25 to disseminate this information," or whatever, but the
26 thing is is that you are the tribunal that is

1 empowered to make those determinations and you have
2 the expertise and the experience to do so. And I
3 would suggest that formulating the way that you go
4 forward based on the worst case scenario and something
5 that I don't know of happening within my over a decade
6 of practice is not the way to go forward, and that
7 that should be a determination that this Commission
8 makes on a case-by-case basis. And that too should be
9 how the Commission approaches any requests for
10 confidentiality.

11 And just to finish up with that, I think
12 that placing a burden on consumer advocates and market
13 watchdogs or other interested parties, whatever those
14 might be, in the context of the wording of the Act
15 itself, as well as the context of the Hansard excerpts
16 that I have already put on the record, goes beyond
17 something that is contemplated by the Act and I think
18 that taking it beyond -- taking the burden and placing
19 it on them would be something that would be contrary
20 to the Act, or at least is not contemplated by it.

21 So there were further questions that were
22 just for the PRLM representative and for myself, and
23 now Ms. Barham. And the first was, "Please discuss
24 the public interest in publishing the fuel data
25 collected pursuant to the *Fuel Price Transparency*
26 *Act.*" And like I've said, we have no intention of

1 standing here in front of you and arguing that there
2 should be the publication of all information no matter
3 what the granularity, no matter what the specificity
4 of it, on your website or, you know, in any other
5 means. However, there is a significant public
6 interest in avoiding the continuation of what the
7 Commission found to be "situation normal" in 2019.

8 We do not want to see a situation where the
9 conditions that led to the call for the inquiry, as
10 well as the results of the inquiry in 2019 continue in
11 B.C.'s diesel and gasoline markets. The result of
12 that inquiry was that there was a finding that there
13 was a lack of competition in our market and that there
14 were substantial markups on gasoline, costing British
15 Columbians an estimated \$490 million per year, and
16 that's almost a billion dollars.

17 **Proceeding Time 1:29 p.m. T52**

18 So, those are, in a nutshell, the reasons
19 why there is a public interest in ensuring the way in
20 which this Commission proceeds in the administration
21 of its duties under this Act is not contrary to the
22 purpose of the Act itself, and appearing to be that
23 one or now two voices, saying that there is public
24 appetite for the Commission going forward with that in
25 mind.

26 You know, I'm not so naive as to think that

1 this or any other scheme could result in when there is
2 disclosure of granular, specific information it
3 resulting in anything other than utter chaos. We've
4 heard today, and last week, about the lengths to which
5 these parties have either engaged in efforts to gain
6 an upper hand on each other, or expect that their
7 competitors have done. They've clearly contemplated
8 ways in which they might gain information that would
9 give them a competitive edge. The contemplation of
10 somebody hiring people to sit outside and watch
11 trucks, and measure where they go, is not something
12 that one comes up with on the fly. It is something
13 that they have identified either as a practice, or as
14 a risk to their businesses.

15 And public dissemination of that specific
16 information I think would be against the public
17 interest, if it was just across the board, because it
18 would be provided to these competitors. I mean,
19 ideally I would love to see a situation where we have
20 all that information on the record. But the thing is,
21 is that we don't have a scheme here in British
22 Columbia that regulates the prices to the degree that
23 we would need in order to have that be a risk free
24 proposition.

25 Instead, I'm here to, like I've said
26 before, advocate on behalf of consumers and other

1 parties with legitimate, non-competitive interests in
2 the access to this data. to assess whether there is
3 pricing, safety, competition or other public interest
4 issues, to have access, in a manner that is consistent
5 with how the Commission provides commercially
6 sensitive information to intervenors in its regulatory
7 proceedings under the *Utilities Commission Act*. And,
8 to ensure that the degree of aggregation and
9 anonymization is the minimum necessary in order to
10 balance the competing interests of public confidence
11 and transparency, and market competition, which does
12 include as part of it, protection of the market
13 participants.

14 So, the next question is the granularity,
15 and I think I've already spoken to that, so I'll leave
16 that one.

17 And again, because we have this question
18 about what parties mean by "publication" I will speak
19 very briefly to the third part of that question, which
20 is "Please discuss whether there is an object -- or
21 whether the object and scheme of the *Fuel Price*
22 *Transparency Act* is achieved if granular fuel data is
23 not published." Obviously you have my answer on that.

24 But, because we have parties that have
25 interpreted publication to include disclosure to
26 parties like myself, the consumer advocates, under the

1 But I think that it's really important to not just
2 take those assertions on their face and to put them in
3 the context of reality and what those risks actually
4 are, as well as in the context of balancing them with
5 the purpose of the Act itself.

6 There was a question about conditions and
7 safeguards that should be included in the declaration
8 and undertaking form to provide sufficient protections
9 for confidential protected information. My answer to
10 that is no. I think that the confidentiality
11 agreement that the Commission came forward with in the
12 Framework Draft No. 2 was more than sufficient to the
13 needs of the market participants as well as the Act.

14 And, you know, the concerns about the
15 inability to sue and recover adequately are present in
16 any regulatory process, because when I'm before the
17 Utilities Commission speaking to a CPCN, a certificate
18 of public convenience and necessity, there can be
19 millions and millions of dollars, tens of millions,
20 hundreds of millions of dollars. If I were to break
21 confidentiality, that is not something that I have in
22 my back pocket. So, you know, if I were to cost
23 ratepayers tens of millions of dollars or hundreds of
24 millions of dollars, you know, I or any other
25 intervener, no matter how well heeled they might be,
26 they're not going to have that kind of money. And

1 that's a risk that anybody who is subject to
2 regulation is potentially exposed to. And that's the
3 way it is.

4 So, I'm sorry, but I have very little
5 sympathy for the assertions of the market participants
6 in this. I understand where they're coming from but I
7 don't think that what they're urging this Commission
8 to adopt and to incorporate into its analysis is
9 reasonable.

10 Now, the last part of that question is the
11 potential advantage and disadvantage to having
12 responsible persons jointly develop a standardized
13 non-disclosure agreement that, subject to BCUC
14 approval, parties would be required to execute as part
15 of the declaration and undertaking process.

16 My position is that I fail to see the need
17 for this. I think that perhaps that could be
18 something that could be done jointly. Not only just
19 with the market participants but the Commission as
20 well as any interested parties. Because I think,
21 again, that's a situation where having the voices of
22 those who might potentially be affected by the outcome
23 would be important to have at the table. I wouldn't
24 be adverse to a properly formulated confidentiality
25 agreement being substituted for what the Commission
26 has. But I think that not only the responsible

1 persons, but the Commission itself, as well as any
2 interested parties, should be at that table
3 participating and perhaps providing input, reigning in
4 some sort of alarmist concerns or draconian type of
5 provisions that the market participants may feel that
6 their drive to protect their commercial interests are
7 necessary, but that are not in fact something that is
8 needed.

9 **Proceeding Time 1:39 p.m. T54**

10 And subject to any questions, those are my
11 submissions.

12 THE CHAIRPERSON: Thank you, MS. Worth. Does staff
13 have any questions?

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

15 MS. de BOER: Thank you very much and appreciate the
16 remarks and the opportunity to ask some follow-up
17 questions from staff.

18 Just to start off at a fairly high level to
19 try and see if I'm understanding BCOAPO's position,
20 was it your submission that the BCUC publishing the
21 raw granular fuel data is not -- the benefit of that
22 does not outweigh the risk to -- the public interest
23 in that does not outweigh the risk to responsible
24 persons, but rather the public interest is in the BCUC
25 providing third party groups such as BCOAPO or other
26 public interest entities with access to the data under

1 a confidentiality agreement?

2 MS. WORTH: Well, my comments in that regard were
3 formulated with the position of the parties that have
4 gone before me in mind, which was that all -- you
5 know, most if not all of that granular data is
6 commercially sensitive. Right? So I don't have the
7 expertise to parse out what amongst that -- you know,
8 what parts of that granular data may be commercially
9 sensitive. So my comments in that regard were I guess
10 more accurately characterized as those parts of the
11 granular data that the Commission determines are
12 commercially sensitive should be protected. Because
13 there is a public interest in having these market
14 participants continue, and continue to be competitive.
15 We don't want to end up with a monopoly in our gas or
16 diesel providers absent some sort of government scheme
17 that would ensure that that would be done in a public
18 interest. So that was the context. I hope that's of
19 some assistance.

20 MS. de BOER: Oh, that's helpful, thank you. And for
21 the other data, which the panel may consider the
22 sensitivity of to not outweigh the public interest in
23 it, can you speak to the public interest in that data?
24 What the value of providing that information might be?

25 MS. WORTH: I'm not sure I understand which part of the
26 data you're talking to? I'm sorry.

1 MS. de BOER: No, no, it was a poorly phrased
2 question. Trying to understand, you're saying today a
3 number of parties have commented on the sensitivity of
4 fuel data and that it's before the panel to determine
5 what data is confidential and the public interest in
6 publishing that does not outweigh that risk to the
7 responsible persons, and I'm interested from the
8 consumers' perspective, which you're representing
9 today, what the consumers' interest in that data is?
10 What the public -- what the weighing might be? What
11 the interest in transparency is or what the -- the
12 counterbalance to the commercial sensitivity is?
13 Maybe you had thoughts on that?

14 MS. WORTH: Okay. Well, I mean obviously people in
15 British Columbia have been seeing significant
16 increases in their costs. I mean this is actually the
17 case across Canada. We've been seeing increases in
18 our core costs that have far outstripped the average
19 sort of raise, a person who is actually subject to a
20 raise for a cost of living increase, might see. So
21 people have been losing their buying power, even
22 though they may be holding steady or seeing small
23 increases in their income. So there's a dollars and
24 cents kind of question and it fits into the larger
25 question of energy poverty.

26 So as we go along and electricity becomes

1 more expensive because the utility of Heritage assets
2 is decreasing, they may require replacement, they may
3 require upgrades, and those are all very expensive.
4 We may require new resources like Site C or other
5 things like that, and those are expensive as well.

6 So all of these things, including the
7 transportation fuels, which are a form of energy,
8 contribute to energy poverty. And we're seeing an
9 increase in the percentage of people's salaries or
10 incomes that are being spent on transportation.

11 **Proceeding Time 1:44 p.m. T55**

12 And then also the cost of gas and diesel,
13 used to transport goods, used to provide services like
14 transportation or other things are increasing as well.
15 So, those are indirect costs, and that is an indirect
16 way in which the outcome of this proceeding, and the
17 way in which the market continues to operate going
18 forward, are in the public interest. Because people
19 have a very real need to prioritize how they're
20 spending their dollars, and have confidence that the
21 way in which they are being required to do so is
22 necessary. And when we have a Commission finding that
23 \$490 million a year is unexplained in the costs of
24 what they've paid, and then that begs the question
25 where did that go? Why did we pay it? But then also,
26 what effect did it have in our indirect costs? In

1 increasing those indirect costs. Because not all of
2 that 490 million was paid by you and me at the pump in
3 our capacity as individuals. It was also paid by
4 transportation companies, by airlines, by bus
5 providers, by other corporate or public interests that
6 then have to collect that money from the public. They
7 have nowhere else to get it. And how has that
8 affected the public? Right? So it's a wide swathe of
9 concerns that the consumer has, and interests in what
10 was going on in this particular field.

11 MS. de BOER: So, does BCOAPO consider that the BCUC
12 publishing fuel market analysis would be sufficient to
13 provide the public confidence in the competitiveness
14 of the market?

15 MS. WORTH: I think that it's not a lack of belief in
16 the Commission's ability to analyze and to present a
17 non-biased analysis. I think it's more sort of --
18 it's the importance of seeing things followed through
19 in a spirit and in the manner that they were intended
20 to. This particular statute was enacted very clearly
21 in response to concerns that people here in British
22 Columbia had brought to their government
23 representatives about the cost of gas and diesel here
24 in the province. And the representatives, the
25 Honourable Mr. Rolston, Mr. Kahlon, and I can't
26 remember the names of other people who spoke to this

1 either in the media or in the readings and debates,
2 they all clearly signaled that it was their intention
3 that the public would have no only the regulator to
4 look at these things if it appeared to consumers that
5 there was a problem. But also, individuals or
6 organizations, watchdogs, other bodies that could also
7 take a look and provide them with some measure of
8 comfort, or alert them to issues.

9 MS. de BOER: And would you consider the undertaking
10 process proposed in Framework Draft No. 2 to be
11 sufficient to permit that review that you've
12 described?

13 MS. WORTH: Absolutely. There are any number of ways
14 that you can report on the outcome of an examination
15 of confidential evidence that does not disclose the
16 specifics of that evidence whatsoever.

17 MS. de BOER: I think we've heard from a number of
18 parties that some would view the proposal for the
19 undertaking process to be inconsistent with the Act,
20 and I'm interested in understanding the BCOAPO's view
21 of whether that proposal in the Framework is
22 consistent with the provisions allowed?

23 MS. WORTH: Well, as I said earlier in my submissions,
24 my position is, is that the purpose of this Act and
25 its operation should be for formulated in the manner
26 that is actually in the Commission's document, and I

1 believe it is section 3.1. And to me, they need to be
2 prioritized in that same order, which is, you know,
3 the public transparency, market protection, and then,
4 goodness, I can't remember the other one was, my
5 apologies There were three considerations, and my
6 position was that they should be prioritized
7 accordingly in the same manner that they are listed in
8 the Commission's document.

9 So, for me, that kind of answers the
10 question.

11 MS. de BOER: Could you elaborate on why you think it
12 would be appropriate to prioritize those three
13 principles, the third may have been regulatory burden?

14 MS. WORTH: Yes.

15 MS. de BOER: Why you think it is appropriate to
16 prioritize them as in the sequence they were listed in
17 the Draft Framework?

18 MS. WORTH: Well, I think that the third one is
19 certainly the easiest to speak to, which is, if you
20 compromise the process in order to provide
21 transparency, like let's say if the Commission were to
22 say okay, we want to keep the costs of this low, so
23 we're just going to publish everything and we're not
24 going to engage in a full debate on whether this
25 particular information is commercially sensitive, you
26 are potentially compromising the interests of the

1 market participants and the market itself, to the
2 detriment of the public interest as well as their
3 corporate ones.

4 **Proceeding Time 1:49 p.m. T56**

5 So that's certainly -- you know, that's
6 certainly one way you can look at that. But, also,
7 there's the opposite end of that, which would be
8 arbitrarily saying, you know, we're going to proceed
9 in this particular very restrictive manner and then
10 compromising the public interest in order to benefit
11 the corporate.

12 So, for me though, my interpretation of the
13 *Fuel Price Transparency Act* is such based on the tools
14 that I was taught in school, which is, look at the
15 name of the Act, look at the wording of the Act, look
16 at the context in which it was formulated, it was
17 debated, it was proposed. Look at all of those and
18 then go forward with that interpretation. And we are
19 in a somewhat unique circumstance. Normally we have
20 lots of case law to also look to for additional
21 guidance on interpretation, but this is a situation
22 where we don't have that. So we are really, you know,
23 in the trenches right now and we're engaging that
24 particular thing without that additional guidance.

25 And so those, I would submit, at the best
26 tools that we have. And it clearly says in the title

1 "transparency". It clearly says in the way in which
2 it was conceived and the way it was brought forward,
3 the way that it was debated, and then enacted, that
4 transparency is key to public confidence.

5 I mean, if you were sit there and say, "I'm
6 going to have this very important document at this
7 particular site, and it's there for you all to
8 review." And then you were to put it behind a mirror
9 instead of a glass, you're not going to have public
10 confidence in what's going -- like, what that document
11 says. You may go out and say, "This is what it says,"
12 but is the public going to be confident? No, because
13 there's no transparency, right? When you have
14 something where people are told it's going to be
15 available to you, there's going to be transparency,
16 it's inconsistent, utterly inconsistent I would say,
17 to expect them to have then confidence in that
18 particular document, enactment, process, whatever it
19 is, when that transparency is utterly lacking.

20 MS. de BOER: And then just one final question from me.
21 I'd be interested, it would be helpful for staff to
22 understand which sections of Framework Draft No. 2
23 BCOAPO supports and any areas of concern that you've
24 identified in the current draft of the framework.

25 MS. WORTH: We support the framework as it stands. But
26 there was one section, and you'll have to forgive me,

1 I don't have it on hand, but it was where it basically
2 spoke to those who could access the document. And it
3 was the wording of that particular section. And I
4 just -- I would have hoped for a more clear wording
5 indicating that the parties that the Honorable Mr.
6 Kahlon had contemplated and that was obviously in the
7 minds of those who had formulated the legislation,
8 would have access to the granular data, would be --
9 like, I was hoping for clearer wording indicating that
10 those people would have access, provided they could
11 satisfy the Commission that they would abide by the
12 conditions of the confidentiality agreement.

13 But I have -- I am comfortable that it is
14 arguable whether, you know, the consumer advocates
15 would have access, or, you know, watchdogs or things
16 like that. You know, for market analysis, I think it
17 was the way it was worded. Because that is an
18 analysis, it's a for market analysis, that's what you
19 do as a consumer advocate, you look at the market or
20 you look at the situation and you say, "Is this good
21 or is this bad? Is this working well or is it not
22 working well?" So that is a market analysis.

23 So, you know, if I were to make that
24 application, if I had consumers come to me and say,
25 "Something's rotten in Denmark," in regards the prices
26 of gas in, you know, Fort St. John, I would come to

1 the Commission and say, "I have to engage in this type
2 of market analysis to determine whether there is
3 something that maybe we need to have a look at.

4 **Proceeding Time 1:54 p.m. T57**

5 MS. de BOER: Thank you. Thank you, Panel for the
6 opportunity to ask the questions.

7 THE CHAIRPERSON: Thank you. Anything else?

8 MR. BUSSOLI: Those are all staff questions, Mr. Chair,
9 thanks.

10 THE CHAIRPERSON: Thank you. Any questions? I have no
11 questions either, thank you very much.

12 MS. WORTH: You've heard quite enough from me today I
13 think, thank you.

14 THE CHAIRPERSON: Thank you very much, much
15 appreciated.

16 Qathet Living Magazine? Ms. Woolley?

17 MS. WOOLLEY: Hi, I'm Pieta Woolley, and I'm speaking
18 from Qathet Living Magazine. Thank you so much
19 everyone to have me here this afternoon.

20 As you know -- should I just launch in?

21 THE CHAIRPERSON: Yes, just please go ahead.

22 Okay, great. As you all know, I am not a
23 lawyer, and I am not an expert on fuel, I edit Qathet
24 Living --

25 MR. BUSSOLI: Sorry, Mr. Chair, I think the Court
26 Reporter is going to swear in Ms. Woolley?

1 THE CHAIRPERSON: My apologies. We are going to ask
2 you to make an affirmation, and it will just take a
3 moment.

4 **QATHET LIVING MAGAZINE PANEL**

5 **PIETA WOOLLEY, Affirmed:**

6 THE CHAIRPERSON: Thank you, please continue.

7 **PRESENTATION BY MS. WOOLLEY:**

8 MS. WOOLLEY: Thank you. I edit Qathet Living
9 Magazine. The magazine serves the 20,000 people who
10 live in this isolated, ferry dependent community. The
11 reason I'm involved in this process is because in 2019
12 the price of fuel here was significantly more than in
13 similar communities, and the price was static between
14 all seven local gas stations, including a Shell, a
15 Chevron, and a 7-Eleven, for more than six months.

16 So, in 2019 and 2020 I wrote a series of
17 articles trying to understand why. I was not able to
18 learn most facts about pricing rationale. However,
19 the media exposure had an immediate effect. Prices
20 suddenly dropped and varied. That's the power of
21 public scrutiny.

22 Suspicious gas pricing in B.C. isn't some
23 theoretical idea that might happen. It is happening
24 right now. Everyone at this panel today has heard
25 from citizens in letters of comment, and in media
26 about bizarre, unexplained pricing. The BCUC entered

1 this process, I understand, to make sense of
2 unexplained gas pricing province-wide, due to
3 corporate secrecy. Since 2019, prices here and
4 elsewhere have mushroomed. I have no power as a
5 journalist to get further answers. I have no legal
6 tools in my toolkit to compel private fuel companies
7 to answer my specific questions. Instead, I'm paying
8 about \$1.68 a litre for gas. Why?

9 I'm dismayed at this point that many of the
10 details in this proceeding are beyond my current
11 capacity to fully evaluate. I wish the media voice
12 today came from someone more academic or higher up the
13 food chain. But here we are.

14 I can tell you that the system the BCUC is
15 piloting at GasPricesBC.ca, which is data reported to
16 government, and then aggregated, is not particularly
17 helpful at the local level.

18 First, because it obfuscates unique local
19 situations and responsibilities, and secondly, because
20 government aggregated data does not enhance the public
21 trust. That's why we have independent media, and the
22 principle of transparency, which in my view should
23 extend to all essential commodities, especially one
24 that has risen in costs 250 percent in two decades.

25 Which data are going to be critical to
26 figuring out gas pricing in my own community? Or

1 other emerging issues in the fuel chain? I won't
2 know, frankly, until I write that article, and the
3 data that I need is either available, or not. So, I'm
4 asking the BCUC to weigh in favour of transparency
5 when at all possible. All reporters in B.C. are
6 depending on the BCUC to work on behalf of the public
7 interest. It is not good enough to just collect
8 provincial level data.

9 **Proceeding Time 1:58 p.m. T58**

10 I don't live provincially. Gas isn't
11 priced provincially, it's priced locally. Competition
12 and a lack of competition happens locally. I can tell
13 you that there's little evidence on the ground that
14 our fuel retailers here are competing with each other,
15 but I'm no expert. Surely I'm missing something.

16 So, I'd like to speak to questions 1 and 2.
17 The purpose of the act and publishing fuel data in the
18 public interest. In places like Powell River where
19 consumer choice is limited – sorry, give me just a
20 second – and aspects of the fuel supply -- oh, sorry.
21 In places like Powell River where consumer choice is
22 limited and aspects of fuel supply chain are
23 monopolies, we depend on government to ensure
24 fairness. Where gas prices are significantly higher
25 than in neighbouring or comparable communities,
26 citizens are angry because they feel powerless.

1 Citizens are distrustful of fuel companies because
2 they will not explain their pricing. And consumers
3 are fearful because the price of gasoline, as the
4 former speaker pointed out, which we all depend on, is
5 reaching per litre prices that are significantly
6 cutting into other parts of our budgets.

7 In a province with not just poverty but, in
8 my estimation, at least 75 percent of B.C. households
9 living with zero discretionary dollars – and I'd be
10 pleased to hand over income statistics – extremely
11 high household consumer debt loads, plus a crisis in
12 both real estate costs and rental costs, an extra 30
13 or 60 to 100 dollars per month per car after tax puts
14 enormous stress on working families, singles and
15 seniors.

16 If your family income is over \$100,000, you
17 probably can't fully appreciate this. Most B.C.
18 families live with incomes well below that amount.
19 Most people can't just go out and buy an electric car,
20 as much as they'd like to. They're stuck with
21 gasoline.

22 As a journalist who serves this community,
23 my interest is in explaining gas pricing to my
24 readers. My hope is that the FPTA will help me do
25 that. But looking at what's being protected, the
26 aggregation that's being proposed, and the players

1 that will be excluded from reporting, I'm not
2 convinced this will be useful for me and other
3 reporters that serve small centres in B.C.

4 In my very conservative estimation, just
5 based on the historic difference in gas prices between
6 here and Courtenay, at least \$4 million a year is
7 leaving my small community for someone's pockets in
8 explained inflated gas prices, and likely much more
9 than that. To put that in context, that's half of our
10 region's total budget for police, fire and ambulance.
11 It's more than the local mill pays in taxes. In a
12 community like ours, \$4 million is a very, very
13 significant amount of money.

14 Given the level of public anger and
15 distrust about gasoline prices, I'm mystified why fuel
16 companies have not been more proactive in explaining
17 their pricing. Not just the big players but the
18 independent gas stations, trucking, barging companies,
19 storage companies and others. The only reason I can
20 think of for their lack of proactive information
21 sharing is fuel companies are not worried about public
22 anger or distrust or fear, that they also perceive
23 that the public is powerless to demand fairness or
24 alternatives. Perhaps they're right.

25 The Competition Bureau has refused to
26 investigate pricing in this community and elsewhere in

1 B.C. So, media, like me, and citizens are watching
2 this BCU process carefully. Does our government have
3 the power to demand corporate transparency on behalf
4 of small centres like this one or not?

5 As a journalist, I'm always interested in
6 alternative systems. There seems to be a mythology
7 that private market competitiveness is the only option
8 for the provision of fuel. It's not. In Iqaluit
9 yesterday, for example, a litre of regular unleaded
10 was \$1.17. Here on the Sunshine Coast in Powell
11 River, it's \$1.68, a difference of 51 cents a litre or
12 about \$40 when I fill up my car, representing at least
13 \$120 a month.

14 All things being equal, Iqaluit's gas
15 should be far more expensive than ours. Transporting
16 it across the Hudson Strait, delivering it in extreme
17 conditions, paying the workers enough to buy \$20 milk
18 at the northern store, you'd think Iqaluit would be
19 the most expensive gas in Canada consistently, but
20 it's not. In fact, since the start of this BCUC
21 proceeding I believe it's been cheaper there than here
22 every single day.

23 Why? The reason is because Nunavut's fuel
24 is important and sold by the territorial petroleum
25 products division, part of the government of Nunavut.
26 Therefore, every part of the fuel chain from

1 transportation to sales is transparent and the
2 essential commodity, gasoline, is delivered fairly and
3 with citizen trust.

4 I know the pricing is not really
5 comparable. The PPD is not required to make a profit
6 and fuel taxes in Nunavut are different than they are
7 in B.C. But as fuel prices continue to escalate, the
8 public will likely become more interested in
9 alternatives to our current private market system that
10 has resulted in \$1.68 a litre here in Powell River.
11 Especially outside the Lower Mainland where public
12 transit isn't a reasonable option, we depend on
13 gasoline like we depend on water or electricity. It's
14 essential. But unlike the markets for water and
15 electricity, which are heavily regulated, the market
16 for gasoline self regulates based on competition.

17 Instead, we have the promise of the *Fuel*
18 *Price Transparency Act*. Instead of regulation we have
19 the promise of transparency. Transparency is the
20 democratic principle that allows media to check our
21 governments. As corporations have become increasingly
22 powerful in citizens' lives, transparency legislation
23 has not kept up.

24 Here in Powell River that means our seven
25 individual gas stations are not legally compelled to
26 tell me what they pay their employees, how much they

1 add to the price of gas after the rack rate,
2 transportation and storage and taxes, or what their
3 profit margin is. I can't expect to know how much our
4 barging company charges to ship gas or the trucking
5 companies, or even which terminal our gas comes from.

6 **Proceeding Time 2:05 p.m. T59**

7 Why did all seven gas stations charge the
8 amount for six months in 2019 while gas varied wildly
9 elsewhere? I tried to find out. I made some headway.
10 Ultimately though I failed. For the past 20 years
11 I've worked as a journalist in Vancouver, which is
12 also my hometown, in the Northwest Territories, and
13 here in Powell River.

14 As a journalist, transparency is what lets
15 me prove to my readers that they in fact live in a
16 democracy. When something is wrong, I can research it
17 and show them why, whether that's crummy bus service,
18 broken roads, a hospital without dialysis machines, or
19 a stream of overdose deaths. But freakishly high gas
20 prices, static gas prices, I'm powerless. Which
21 specific data do I need? I don't know. I won't know
22 until I go looking for it and I hope it's there when I
23 need it.

24 Thank you.

25 THE CHAIRPERSON: Thank you, Ms. Woolley.

26 **QUESTIONS FROM BCUC STAFF - MS. de BOER:**

1 MS. de BOER: Good afternoon. Thank you very much for
2 you remarks and for the opportunity to ask some
3 follow-up questions. I did have a couple of areas I
4 was hoping that you might elaborate for us on. The
5 first being transparency and that principle, I
6 understood you spoke to the importance of that.

7 Does Qathet Living Magazine have a view on
8 whether the principles outlined in Framework Draft No.
9 2, of which include transparency, protection of market
10 competitiveness, and regulatory burden, and whether
11 there's a priority amongst those or whether those are
12 the appropriate principles to be guiding the panel's
13 determination of confidentiality around fuel data?

14 MS. WOOLLEY: It's a great question and I guess I have
15 two unsatisfying answers for you. One of them is I
16 don't know. As I said, I'm struggling with some
17 capacity right now for being able to be as involved in
18 this process as I'd like to be, so my level of detail
19 is admittedly shoddy. So if you would like to send
20 that to me as a written question, I'd be happy to send
21 it back to you as a written question.

22 **Information Request**

23 MS. de BOER: I would appreciate that.

24 MS. WOOLLEY: Okay, that would be great, thank you.
25 I'll just leave it at that.

26 MS. de BOER: The second area I was interested in is

1 you pointed out the role of media in providing
2 transparency and providing public confidence or
3 supporting public confidence. And I'm interested in
4 whether or not you view is there a difference between
5 publishing data to everyone or whether publishing data
6 to a smaller group of folks, you know, such as media
7 who could then take that data and do analysis with it,
8 provides a different level of comfort or support to
9 public confidence and whether you see there being a
10 value in a distinction there?

11 MS. WOOLLEY: Sure. I think -- I mean I could talk
12 about this forever, but what it stems from is really
13 the rise in the number of people who are individual
14 citizens who are very interested and quite capable of
15 doing their own research on political issues. And I
16 mean, not speaking for myself here of course, but as
17 many of the newspapers and other media sources in
18 small towns especially have been starved and how their
19 capacity for doing independent research has
20 diminished, the role of the citizen journalist has
21 risen, both just people looking into things themselves
22 and keeping that knowledge to themselves, but also
23 publishing it online even through blogs, or Facebook,
24 or community groups, or whatever, and I think it would
25 be a mistake to look to only traditional media to
26 release information to. Given the context of who is

1 gas prices, I would urge you to consider providing
2 raw, as raw as possible data, as non-processed as
3 possible. Does that make sense?

4 MS. de BOER: That's helpful, thank you.

5 When you say as unprocessed as possible,
6 could you elaborate on what level or what granularity
7 of data you think is the minimum that would support
8 public confidence in the competitiveness of the
9 market?

10 MS. WOOLLEY: It is a really great question, and again,
11 its where I wish that you had somebody further up the
12 food chain, or like a media association who could
13 speak to this. I can really only speak to it in the
14 very small parameters of my work here at Qathet
15 Living, and that is -- I'm going to try and give you
16 an example.

17 I would love to be able to have a one-stop
18 shop where I could find out who the players are here
19 in town, and be able to look at, as an example, like
20 just in terms of retail stations, like how many cents
21 on the dollar, or how many cents per litre of fuel are
22 over and above -- what's their take essentially. I
23 would love that level of detail, because -- for so
24 many reasons, but consumers -- like we do have a
25 choice. We have seven gas stations, right? People
26 can go to one of the four independent gas stations, or

1 one of the three corporate gas stations. And people
2 have lots of different reasons for choosing which gas
3 station they go to. But at the end of the day, the
4 information that we have is so limited for people to
5 be able to make consumer choices.

6 That's me and the data I'd love. I don't
7 know about other reporters and what would satisfy
8 them. I imagine if you're working in Burnaby or
9 Prince George that you'd have a very different answer.

10 MS. de BOER: Thank you, I really appreciate that
11 context, and additional detail. I'm curious whether
12 or not you think the public confidence can be
13 supported through aggregated or anonymized data,
14 whether it's presented regionally, locally, or
15 provincially, and why or why not?

16 MS. WOOLLEY: Yeah, it's a great question. So, here is
17 where it gets crazy, right? And I'm sure that you
18 will all appreciate this, it's like, there is the
19 public that's not paying attention, right? There is
20 the public who are like, this is what the -- like at
21 GasPricesBC.ca, this is in Vancouver about how much
22 our gas stations are taking, that seems reasonable,
23 that according to Kent group, that's the average.
24 Okay, I can relax. And then there is people who are
25 really paying attention, who resent every single extra
26 penny that they are spending on gas because they feel

1 we will start with -- we we'll start with Imperial
2 Oil. And I think we've made arrangements, Mr.
3 Bussoli, for 7-Eleven to have a room for that portion
4 of the meeting?

5 MR. BUSSOLI: Yes, Mr. Chair, we will clear the room
6 from the public and then have the other party, 7-
7 Eleven, wait in a separate room without the ability to
8 listen in on the in camera session with Imperial Oil.

9 THE CHAIRPERSON: Okay. So, let's come back at 2:30
10 and we'll continue then with Imperial Oil. Thanks.

11 **(PROCEEDINGS ADJOURNED AT 2:16 P.M.)**

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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.B. Lanigan, Court Reporter

August 12th, 2021