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British Columbia Utilities Commission

Framework for the Determination of Confidentiality and Treatment of Protected Information collected pursuant to the *Fuel Price Transparency Act*

Decision and Order G-14-22

January 20, 2022

Before:

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

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Executive Summary

As Administrator of the *Fuel Price Transparency Act* (FPT Act), the British Columbia Utilities Commission (BCUC) is responsible for collecting Fuel Data to promote market competitiveness and public confidence in the competitiveness of the transportation fuel market.

Section 9 of the FPT Act addresses publication of the Fuel Data the BCUC collects. In accordance with section 9(2), the Administrator may publish Fuel Data, or other information or records, acquired pursuant to the FPT Act if it is satisfied that:

- (a) Protected Information will not be disclosed, or
- (b) the public interest in the Protected Information that will be disclosed outweighs any potential harm to Responsible Persons, having regard, without limitation, to the importance of:
 - (i) the competitiveness of the market for Reportable Fuels, and
 - (ii) public confidence in the competitiveness of that market.

Through an open and transparent hearing process, the Panel (1) established a framework for the determination of confidentiality and treatment of Protected Information (Framework), which is attached as Appendix A to this Decision, and (2) considered the public interest and potential harm to Responsible Persons associated with the publication of certain Fuel Data.

Having undertaken the balancing test set out in section 9(2)(b) of the FPT Act, the Panel finds that the public interest in the publication of raw (i.e., unaggregated and non-anonymized) sales and operational volumes, price-related, low carbon fuel standard, invoice-related, importer identifier, comment, and retail data does not, at this time, outweigh any potential harm to Responsible Persons. This wholesale and retail Fuel Data is referred to as “confidential Protected Information” throughout the Decision and in the Framework. Confidential Protected Information cannot be published in its raw (i.e., unaggregated and non-anonymized) form. All other Fuel Data the BCUC collects is not confidential Protected Information and may be published in its raw form.

The Decision also sets out the reasons supporting the Panel’s decision as to the content of the Framework, which includes, among other things:

- the principles that guide the BCUC’s determination of confidentiality (promotion of transparency, promotion of market competitiveness, and reducing regulatory burden);
- the tools for publishing Fuel Data that has been identified as confidential Protected Information:
 - publication on an aggregate and/or anonymized basis following a comment process involving Responsible Persons’ legal counsel;

- publication following a hearing wherein the BCUC reconsiders the public interest and potential harm associated with publication of certain Fuel Data identified as confidential Protected Information;
 - publication following a two-year review by the BCUC as to whether there has been a change to the public interest in the confidential Protected Information, such that confidential treatment is no longer warranted (section 5.3 of the Framework); and
- the process that would govern any disclosure of confidential Protected Information by the BCUC on a confidential basis.

The Framework applies to all Responsible Persons required to submit Fuel Data to the BCUC pursuant to the FPT Act and, to ensure consistent treatment, applies equally to Fuel Data submitted in advance of and subsequent to issuance of this Decision.

1.0 Background

1.1 The Fuel Price Transparency Act and the Role of the BCUC

In November 2019, the government of British Columbia (BC) established the *Fuel Price Transparency Act* (FPT Act).¹ Capitalized terms not otherwise defined in this Decision have the same meanings as in the FPT Act.

The FPT Act requires Responsible Persons engaged in Reportable Activity in the gasoline and diesel fuel industry in BC to submit “(a) information in relation to a reportable activity, and (b) any other information in relation to reportable fuel”² (Fuel Data) on their Reportable Activities to the Administrator of the FPT Act. In March 2020, the British Columbia Utilities Commission (BCUC) was designated the Administrator of the FPT Act.³ As the Administrator, the BCUC is responsible for collecting Fuel Data to promote market competitiveness and public confidence in the competitiveness of the fuel market.⁴

By Order in Council No. 474/20, the Lieutenant Governor established the Fuel Price Transparency Regulation (FPT Regulation). The FPT Regulation requires fuel importers, wholesalers, terminal owners/operators, and those who supply retail dealers to submit regular reports to the BCUC as of November 2020.

On August 14, 2020, the Government of BC issued a Special Direction to the BCUC requiring retail dealers of reportable fuels to submit Fuel Data to the BCUC as part of a retail Fuel Data collection pilot (Retail Pilot).⁵

Section 9 of the FPT Act provides for publication of the Fuel Data submitted by Responsible Persons to the BCUC. In accordance with section 9(2), the Administrator (i.e., the BCUC) may publish Fuel Data, or other information or records, acquired under the FPT Act if it is satisfied that:

- (a) Protected Information will not be disclosed, or
- (b) the public interest in the Protected Information that will be disclosed outweighs any potential harm to Responsible Persons, having regard, without limitation, to the importance of:
 - (i) the competitiveness of the market for Reportable Fuels, and
 - (ii) public confidence in the competitiveness of that market.

¹ *Fuel Price Transparency Act*, dated November 28, 2019.

² *Fuel Price Transparency Act*, definition of “Fuel Data”.

³ Order in Council No. 123, dated March 9, 2020.

⁴ Pursuant to section 6 of the FPT Act, Responsible Persons are required to submit any Fuel Data and/or records required by the BCUC in its capacity as Administrator.

⁵ Special Direction to the British Columbia Utilities Commission issued under section 4 of the *Fuel Price Transparency Act*, dated August 14, 2020.

Protected Information is defined in section 9 of the FPT Act as information that would reveal:

- (a) Trade Secrets⁶ of a Responsible Person, or
- (b) commercial, financial, labour relations, scientific or technical information of or about a Responsible Person.

1.2 Advance Approval of Confidential Status to Fuel Data Submitted to the BCUC Pursuant to the FPT Act

On September 16, 2020, the BCUC received an application from Parkland Corporation (Parkland) for an advance ruling on the confidentiality of certain commercial information that Parkland is required to file with the BCUC pursuant to the FPT Regulation. In its application, Parkland submitted that “the requested confidential treatment is appropriate to mitigate significant harm to Parkland and to align with competition law principles that restrict competitors from exchanging information of this nature.”⁷

By Order G-275-20 dated October 30, 2020, the BCUC determined that granting confidential status in respect of reportable Fuel Data filed by a Responsible Person was warranted on an interim basis pending a further review process. Specifically, Directive 1 of Order G-275-20 (Directive 1) stated:

1. Advanced approval of confidential status is granted to responsible persons reporting fuel data pursuant to the FPT Act that the responsible person identifies as protected information, until the completion of a hearing process to establish a framework for the determination of confidentiality and treatment of protected information.

The regulatory process the BCUC undertook to establish the framework described in Directive 1 (Framework) is discussed in Section 2.0, below.

The reasons supporting the Panel’s decision as to the content of the Framework and the specific Fuel Data that will be held confidential pursuant thereto are discussed in Sections 3.0 to 7.0, below.

Through the Framework proceeding, the Panel has performed the balancing test set out in section 9(2)(b) of the FPT Act to determine what Protected Information can and cannot be published. Fuel Data for which the Panel determines that the public interest in publishing does not outweigh the potential harm to Responsible Persons is referred to as “confidential Protected Information” throughout this Decision and in the Framework. The BCUC cannot publish confidential Protected Information in its raw (i.e., unaggregated and non-anonymized) form. All other Fuel Data is not confidential Protected Information and may be published in its raw form.

⁶ Trade Secret is defined in Schedule 1 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) and means information, including a formula, pattern, compilation, program, device, product, method, technique or process, that: (a) is used, or may be used, in business or for any commercial advantage, (b) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use, (c) is the subject of reasonable efforts to prevent it from becoming generally known, and (d) the disclosure of which would result in harm or improper benefit.

⁷ Exhibit B-1, p. 1

2.0 Framework Proceeding Regulatory Process

By Order G-303-20 dated November 30, 2020, the BCUC established a process for developing the Framework and an initial regulatory timetable. The regulatory timetable was subsequently further amended by Orders G-303-20, G-68-21, G-159-21, G-214-21, G-260-21, and G-282-21, respectively.

As of January 6, 2021, the following parties had registered as interveners in the proceeding:⁸

- Suncor Energy Inc. (Suncor);
- Husky Energy (Husky);
- Tidewater Midstream and Infrastructure Ltd. (Tidewater);
- Federated Co-operatives Limited (FCL);
- Qathet Living Magazine, formerly Powell River Living Magazine (Qathet);
- AFD Petroleum Ltd. (AFD);
- 7-Eleven Canada, Inc. (7-Eleven);
- Imperial Oil (Imperial);
- Shell Canada Limited (Shell);
- G & B Fuels Inc. (G & B);
- British Columbia Old Age Pensioners' Organization et al. (BCOAPO).

In accordance with the regulatory timetable, the BCUC issued Framework Draft No. 1 on February 8, 2021. BCUC staff hosted informational workshops on February 18, 2021 and February 22, 2021, to present Framework Draft No. 1 to the parties and to answer clarifying questions.⁹ Parties were invited to provide written submissions on the draft framework by March 10, 2021.

The BCUC received 10 written submissions from parties in the proceeding and one letter of comment on Framework Draft No. 1. After review of these submissions, the BCUC issued a revised draft Framework (Framework Draft No. 2) on May 25, 2021.

Eight parties filed written submissions on Framework Draft No. 2 by June 15, 2021. The BCUC held oral workshops on August 5, 2021 and August 12, 2021, to provide parties with an opportunity to further explain their positions on Framework Draft No. 2 and for the Panel and BCUC staff to ask questions.

Parties filed their Final and Reply Arguments by September 30, 2021 and October 15, 2021, respectively.

3.0 Purpose and Intent of the FPT Act with Respect to the Publication of Fuel Data

3.1 Positions of the Parties

As an initial matter in the development of the Framework, parties to the proceeding had divergent views on the purpose and intent of the FPT Act and the resulting responsibilities the BCUC, as Administrator, has with respect to the publication of Fuel Data.

⁸ Parkland, who had filed the initial confidentiality request application, remained the applicant in the Framework proceeding.

⁹ Intervenors, interested parties and those who submitted letters of comment regarding Framework Draft No. 1 were invited to attend the workshops. Exhibit A-5, p. 2.

Qathet submits the purpose of the FPT Act is to provide transparency to the public with respect to BC's fuel market.¹⁰ Qathet states that "where consumer choice is limited and aspects of fuel supply chain are monopolies, we depend on government to ensure fairness."¹¹ Qathet continues that, unlike the markets for electricity and water, the fuel market self-regulates based on competition and "[i]nstead, we have the promise of the *Fuel Price Transparency Act*. Instead of regulation we have the promise of transparency. Transparency is the democratic principle that allows media to check our governments."¹²

BCOAPO concurs that transparency is a core intention of the FPT Act.¹³ BCOAPO argues that the BCUC has been empowered under the FPT Act to publish Fuel Data and that "publication must be the default, subject to the reasonable limits and case-by-case consideration that inform the BCUC's other proceedings..."¹⁴ BCOAPO submits that (1) selection of the BCUC as the Administrator and (2) the context of the Act (i.e., the name of the Act, which includes the word "transparency", and the legislative debate surrounding its introduction) support this interpretation.¹⁵

Notwithstanding the above, BCOAPO acknowledges that, absent regulation, public dissemination of granular Fuel Data would harm the competitiveness of the fuel market and would not be in the public interest.¹⁶ BCOAPO considers that transparency, in the context of the FPT Act, means "access to [granular, specific Fuel Data] by consumer advocates, by market watchdogs, by people who can justify their need or their interest in seeing that granular data..."¹⁷

Parkland and Suncor argue that the object and purpose of the FPT Act are best articulated in section 4(2)(b) of the Act (i.e., to promote (a) the competitiveness of the market for reportable fuels, and (b) public confidence in the competitiveness of that market).¹⁸ These, and other, Responsible Persons argue the publication provisions in section 9 of the FPT Act are permissive, rather than mandatory in nature, and caution the BCUC against heavy reliance on the name of the Act including the word "transparency" or statements made by legislators to support a legislative interpretation.¹⁹

Suncor and Imperial argue that because the default position in the FPT Act is that Protected Information is confidential (i.e., Protected Information cannot be published unless the circumstances in section 9(2)(b) apply),

¹⁰ Exhibit C9-2.

¹¹ Transcript Volume 2, p. 303.

¹² Transcript Volume 2, p. 307.

¹³ Exhibit C10-4, pp. 2–3.

¹⁴ BCOAPO Final Argument, p. 2.

¹⁵ BCOAPO Final Argument, p. 2; Transcript Volume 2, pp. 271, 273–275.

¹⁶ Transcript Volume 2, pp. 285–286.

¹⁷ Transcript Volume 2, pp. 276–277.

¹⁸ Parkland Final Argument, p. 7; Suncor Final Argument, p. 8.

¹⁹ Parkland Final Argument, pp. 7–8; Suncor Final Argument, pp. 2–3; Imperial Final Argument, p. 2; Shell Final Argument, pp. 6–7; Husky Final Argument, p. 2.

the onus should be on the BCUC or other interested parties to demonstrate that the public interest in publication outweighs any potential harm to Responsible Persons, not the reverse.²⁰

Shell argues that the BCUC's role as Administrator should be to leverage its competencies as a trusted regulator and to:

...collect Fuel Data under the FPT Act, and provide the necessary analysis and reporting to provide the public with confidence in the competitiveness of the British Columbia fuel market. If the BCUC reports its results, along with the associated Fuel Data in an appropriately aggregated and anonymized form (where such Fuel Data would be interpretatively helpful), then the BCUC can achieve both objectives of furthering transparency under the Act, and preventing harm both to individual Responsible Persons, and to the competitiveness of the fuel market in British Columbia more generally.²¹

Shell's position is mirrored by the other Responsible Persons participating in this proceeding. Responsible Persons, generally, argue that the purpose and intent of the FPT Act are best met by the BCUC analyzing the Fuel Data it collects; issuing public reports on the fuel market; and making recommendations to government, without the BCUC making granular Fuel Data public.²²

3.2 Panel Discussion

The purpose and intent of the FPT Act are important considerations in establishing the approach and key principles guiding the BCUC's determination of confidentiality in the Framework.

The Panel considers the name of the FPT Act and the statements made by legislators surrounding its introduction to be important context for understanding the BCUC's duties under section 4(2)(b), wherein the BCUC is charged with promoting the competitiveness of the market for reportable fuels and public confidence in the competitiveness of that market. The Panel agrees with Qathet and BCOAPO that transparency is an important component to achieve public confidence and concludes that transparency is an appropriate principle for the Framework.

Nevertheless, while transparency is an important principle, it must be balanced with any need to maintain the confidentiality of information that is necessary to the functioning of a competitive market. Therefore, the Panel finds that the principle of transparency should be considered in the Framework only to the extent that it does not undermine the competitiveness of the BC fuel market.

The Panel notes that, consistent with section 9 of the FPT Act, the BCUC may publish Protected Information only when it determines that the public interest in that Protected Information outweighs any potential harm to Responsible Persons, while having regard to the importance of market competitiveness and public confidence in the competitiveness of that market. As such, the Panel concludes that the principle of transparency must be

²⁰ Suncor Final Argument, p. 2; Imperial Final Argument, p. 2.

²¹ Shell Final Argument, pp. 2, 6–7.

²² Parkland Final Argument, p. 8; Suncor Final Argument, pp. 8, 13; 7-Eleven Final Argument, p. 2; Imperial Final Argument, p. 3; Tidewater Final Argument, p. 5; Transcript Volume 1, p. 94; FCL Final Argument, p. 12.

balanced with a principle promoting market competitiveness, which would place reasonable restrictions on access to Fuel Data when disclosure of that information could be potentially harmful.

The Panel views these to be complementary, rather than competing, principles. In instances where the Panel is not satisfied that the public interest in publishing Protected Information outweighs the potential harm from such disclosure, transparency can be effectively achieved through the BCUC's analysis of Fuel Data and the publication of reports presenting aggregate and/or anonymized information (processes that are discussed further in Section 5.1, below). The Panel concludes that by keeping these principles at the fore, the BCUC can best serve the competitiveness of the fuel market in BC and public confidence in the competitiveness of that market.

4.0 Confidential Protected Information

4.1 Positions of the Parties

As outlined above, the BCUC collects wholesale-related Fuel Data pursuant to the FPT Regulation and retail-related Fuel Data pursuant to the Retail Pilot Special Direction.

Suncor submits that all Fuel Data, wholesale and retail, should be treated as confidential Protected Information given the potential harm to Responsible Persons that would result from publication of certain data, "the limited utility of less sensitive Fuel Data," and "the administrative burden associated with differentiating between different types of Fuel Data."^{23, 24}

Conversely, Qathet submits that releasing complete, specific, Fuel Data is in the public interest because fuel prices matter to most British Columbians; transparency would build public trust in the fairness of the fuel market; and publication of this information would allow media to do its job.²⁵ Qathet states that:

From a consumer and contractor point of view, exposing this [Fuel] data will enhance our ability to participate in the market, because we will be able to make informed choices both at the pump, and politically. Perhaps our fuel companies do not fear data transparency because of some difficult-to-describe competition-upending market force, but rather, they fear data transparency because it will allow consumers and contractors – citizens, and our representatives in government – to make informed choices.²⁶

²³ Suncor Final Argument, pp. 3–4.

²⁴ While G & B did not provide submission as part of the Framework proceeding, the Panel notes that in response to Parkland's original application G & B stated that "(i) publication of such detailed commercially sensitive data will be damaging to G & B's competitiveness within the industry for all the same reasons it affects larger entities within the market. (ii) publication of detailed information provides no benefit to the public over and above a more generalized summation of the data that could be presented. (iii) protecting sensitive information is fundamental to strong market competition, which, as the administrator of the FPTA, is the role of the BCUC." See Exhibit C8-2.

²⁵ Exhibit C9-2, pp. 1–3.

²⁶ Exhibit C9-3; p. 2.

Qathet further submits that “when it’s something that’s [as] important as gas prices, I [Qathet] would urge you [BCUC] to consider providing raw, as raw as possible data, as non-processed as possible.”²⁷

Other parties to the proceeding focus their submissions on specific Fuel Data, or categories of Fuel Data, that they argue should be determined to be confidential Protected Information in the Framework. The various party positions as to which wholesale and retail Fuel Data ought to be held confidential are summarized in Sections 4.1.1 and 4.1.2, respectively, below.

4.1.1 Wholesale Fuel Data

4.1.1.1 Sales and Operational Volumes and Price-Related Fuel Data

Parkland, Suncor, Husky, Imperial, Tidewater, Shell, FCL, and AFD argue that sales and operational volumes and price-related Fuel Data²⁸ should be determined to be confidential Protected Information in the Framework, as the public interest in this Fuel Data does not outweigh the potential harm to Responsible Persons.²⁹

These Responsible Persons argue that publication of sales and operational volumes Fuel Data would provide competitors, suppliers, and customers with detailed information about the operations of a Responsible Person, including details on the volume of product imported into BC; the volume of wholesale fuel purchases; the flexibility, responsiveness, and operational limits of individual fuel storage terminals; and the volume of shipments supplied to individual retail stations.³⁰ They also argue that this commercially sensitive information is both regional and national in scope and could negatively affect Responsible Persons’ ability to operate competitively in BC by providing competitors valuable insights into their commercial strategies. Parkland, Suncor, and Tidewater further argue that publication of sales and operational volumes Fuel Data would permit competitors to identify and target lower-volume market participants and to drive them out of business, through predatory pricing or acquisitions, to the detriment of the competitive market.³¹

Parkland, Suncor, Husky, Imperial, Tidewater, Shell, FCL, and AFD argue that price-related Fuel Data contains competitively sensitive information about pricing, discounts, and costs that, if made public, could have a negative impact on commercial negotiations and facilitate coordination between firms, undermining the competitiveness of the market (i.e., facilitating predatory pricing or collusion).³²

²⁷ Transcript Volume 2, pp. 311–312.

²⁸ Sales and Operational Volumes Fuel Data comprises the volumes submitted in the BC Monthly Importer Report, BC Monthly Wholesale Purchaser Report, BC Monthly Retail Supplier Report, and the operational volume submitted in the BC Annual Storage Report. Price-related Fuel Data comprises the purchase price per litre submitted in the BC Monthly Importer Report, BC Monthly Wholesale Purchaser Report, and BC Monthly Retail Supplier Report, and the transportation costs per litre submitted in the BC Monthly Importer Report.

²⁹ Parkland Final Argument, pp. 3–4; Suncor Final Argument, p. 7; Husky Final Argument, pp. 2–3; Imperial Final Argument, p. 3; Tidewater Final Argument, p. 3; Shell Final Argument, p. 5; FCL Final Argument, p. 1; Exhibit C7-4, p. 2; Exhibit C11-2, p. 6.

³⁰ Exhibit B-5, pp. 2–4; Exhibit C1-4, p. 2; Exhibit C3-5, pp. 3–4; Exhibit C4-4, pp. 2–3; Exhibit C5-4, pp. 1–4; Exhibit C6-4, pp. 2–3; Exhibit C7-4, p. 2; Exhibit C11-2, p. 6.

³¹ Exhibit B-5, pp. 2–4; Exhibit C1-5, pp. 3–4; Exhibit C5-4, p. 2.

³² Parkland Final Argument, pp. 3–4; Suncor Final Argument, p. 4; Husky Final Argument, p. 1; Imperial Final Argument, p. 3;

BCOAPO concurs with the above Responsible Persons, arguing that treating sales and operational volumes and price-related Fuel Data as confidential Protected Information is reasonable and supportable.³³

Qathet, however, in its submission on Framework Draft No. 1, does not agree. Qathet states that a determination that sales and operational volumes and price-related Fuel Data would be held confidential has not been justified, as Responsible Persons have not provided sufficient evidence as to “how exposing pricing and volume data will inhibit their competitiveness.”³⁴

4.1.1.2 Storage Tank Physical Capacity Fuel Data

Suncor and Shell argue that Fuel Data respecting the physical capacity of fuel storage tanks³⁵ in BC should be determined to be confidential Protected Information in the Framework, as the public interest in this Fuel Data does not outweigh the potential harm to Responsible Persons.³⁶

Suncor submits that this Fuel Data would be of no interest to the public, but publishing it presents a risk to Responsible Persons, as the physical and net usable capacity of a storage terminal is critical to understanding its efficiency and the Responsible Person’s market competitiveness. Suncor submits that this location-specific information is not readily discernible through visual assessment and publication of the Fuel Data the BCUC collects “could allow competitors to identify and take action against potentially vulnerable locations and an individual marketer’s cost to supply local markets.”³⁷

Shell submits that the physical capacity of a fuel storage tank cannot be discerned by observation to the degree of precision that is submitted to the BCUC and indicates that publication of tank capacity information would provide competitors with potentially harmful insights into a Responsible Person’s regional supply chain logistics.³⁸

Imperial states that it does not consider Fuel Data respecting the physical capacity of storage tanks to be “terrible competitively sensitive” and that tank capacity and size can be visually interpreted based on publicly available information.³⁹ Nevertheless, Imperial agrees with Shell that publication of this Fuel Data by the BCUC would elevate an “educated guess” to “regulatory fact.”⁴⁰

Tidewater Final Argument, p. 3; Shell Final Argument, p. 5; FCL Final Argument, p. 1; Exhibit B-4, pp. 4–5; Exhibit C1-4, p. 2; Exhibit C3-4, p. 3; Exhibit C4-4, pp. 2–3; Exhibit C5-4, pp. 1–4; Exhibit C6-4, pp. 2–3; Exhibit C7-4, p. 2; Exhibit C3-3, pp. 4–5; Exhibit C11-2, p. 6.

³³ Exhibit C10-4, p. 1.

³⁴ Exhibit C9-3, p. 1.

³⁵ Physical capacity of fuel storage tanks comprises the Physical Maximum Capacity, Tank Heel Volume, and Net Useable Capacity Fuel Data.

³⁶ Suncor Final Argument, pp. 8-9; Shell Final Argument, p. 5.

³⁷ Exhibit C1-5, pp. 3–4.

³⁸ Exhibit C6-5, pp. 2–3.

³⁹ Transcript Volume 1, p. 78; Imperial Corrections to Workshop No. 2 Redacted Transcript Volume 2A, August 12, 2021, pp. 17–19.

⁴⁰ Imperial Corrections to Workshop No. 2 Redacted Transcript Volume 2A, August 12, 2021, pp. 17–19.

Parkland and Tidewater indicate that they do not consider the sensitivity of the storage tank physical capacity Fuel Data they submit to the BCUC to rise to a level warranting confidential treatment under the Framework.⁴¹ Parkland notes that it considers the general volumes of fuel storage tanks in the province to be general industry knowledge and states that, in recognition of a desire for transparency, Parkland has sought to limit its objections to publication throughout this proceeding to no more than “absolutely necessary.”⁴²

4.1.1.3 Low Carbon Fuel Standard (LCFS) Fuel Data

Suncor, Husky, and Imperial submit that LCFS-related Fuel Data⁴³ should be determined to be confidential Protected Information in the Framework, as it contains commercially sensitive cost data, the disclosure of which could result in significant commercial harm to Responsible Persons that is not outweighed by the public interest in this data.⁴⁴ These Responsible Persons argue that publication of the average monthly prices paid historically for LCFS credits could harm commercial negotiations for the purchase of future credits, driving up the cost of compliance and, ultimately, the price of fuel for consumers.⁴⁵

Shell agrees with Suncor, Husky, and Imperial that the “Average Price per LCF Credit” Fuel Data, specifically, should be confidential Protected Information, as publication of this Fuel Data could harm commercial negotiations.⁴⁶

Suncor, Husky, and Shell further submit that compliance with LCFS obligations is not achieved solely through the purchase of credits and argue that publication of this Fuel Data could provide the public with an inaccurate understanding of the compliance costs incurred by Responsible Persons.⁴⁷ Suncor argues that publication of this “incomplete picture” would not be in the public interest.⁴⁸

4.1.1.4 Invoice-Related Fuel Data

Seller Name and Address

Parkland, Suncor, Husky, Imperial, Tidewater, Shell, and FCL argue that seller name and seller address Fuel Data in the Wholesale Purchaser Report should be determined to be confidential Protected Information in the Framework, as the public interest in this Fuel Data does not outweigh the potential harm to Responsible Persons.⁴⁹

⁴¹ Exhibit B-5, pp. 3–4; Tidewater Final Argument, p. 4.

⁴² Transcript Volume 2, pp. 158–159.

⁴³ LCFS Fuel Data comprises all the Fuel Data submitted in the BC Monthly LCFS Credit Report.

⁴⁴ Exhibit C1-5, pp. 5–6; Exhibit C3-5, p. 4; Exhibit C4-5, p. 2.

⁴⁵ Exhibit C1-5, pp. 5–6; Exhibit C3-5, p. 4; Exhibit C4-5, p. 2.

⁴⁶ Exhibit C6-5, p. 4.

⁴⁷ Exhibit C1-5, pp. 5–6; Exhibit C3-5, p. 4; Exhibit C6-5, p. 4.

⁴⁸ Exhibit C1-5, p. 5.

⁴⁹ Parkland Final Argument, p. 3; Suncor Final Argument, pp. 3–9; Husky Final Argument, pp. 2–3; Imperial Final Argument, pp. 3–4; Tidewater Final Argument, pp. 3–4; Shell Final Argument, p. 12; FCL Final Argument, pp. 3–8; Exhibit C6-4, Schedule 1, p. 1.

These Responsible Persons argue that publication of the seller's name or address would identify commercial counterparties, and provide insights into business operations, supply relationships, and logistics in BC, including whether the purchased fuel is imported or sourced locally.⁵⁰ Tidewater, for example, argues that this information could be used by a larger, or extra-provincial, competitor to take strategic steps that could harm Tidewater, reduce competition, and ultimately harm consumers.⁵¹

Imperial argues that there is little public interest in the seller's name or address information, but that publication could result in significant harm to Responsible Persons. Imperial states that:

This data almost certainly has little, if any, relevance to the general public, but it can signal several things to other market actors, including: strategy around importing product vs. third party purchases; infrastructure choices; supply and logistics in other jurisdictions (exchange agreements); etc.⁵²

Internal ID

Parkland, FCL, Suncor, Husky, and 7-Eleven argue that the internal ID Fuel Data should be determined to be confidential Protected Information in the Framework, as the public interest in this Fuel Data does not outweigh the potential harm to Responsible Persons.⁵³

Parkland, FCL, Suncor, Husky state that the internal ID relates directly to invoice or bill of lading numbers, which is sensitive information that can assist in determining a seller's identity.⁵⁴ Suncor also compares the internal ID to a credit card number and expresses concern that publishing this information could expose Responsible Persons to phishing and other fraudulent attacks.⁵⁵

7-Eleven submits that the identification number a party uses, and other internal notes, are inherently private and, generally, are not made publicly available.⁵⁶

Tidewater and Shell do not consider the internal ID Fuel Data they submit, in isolation, to constitute confidential Protected Information. However, both parties acknowledge that this may not be the case for other Responsible Persons.⁵⁷

⁵⁰ Imperial Final Argument, p. 4; Tidewater Final Argument, pp. 3–4; FCL Final Argument, pp. 3–8; Exhibit C6-4, Schedule 1, p. 1.

⁵¹ Tidewater Final Argument, pp. 3–4.

⁵² Imperial Final Argument, p. 4.

⁵³ Parkland Final Argument, p. 3; FCL Final Argument, pp. 3–8; Exhibit B-5, pp. 5–6; Exhibit C1-5, p. 6; Exhibit C3-5, p. 5; Exhibit C1-5, p. 6.

⁵⁴ Parkland Final Argument, p. 3; FCL Final Argument, pp. 3–8; Exhibit B-5, pp. 5–6; Exhibit C1-5, p. 6; Exhibit C3-5, p. 5.

⁵⁵ Exhibit C1-5, p. 6.

⁵⁶ Exhibit C2-5, pp. 1–2.

⁵⁷ Tidewater Final Argument, p. 4; Exhibit C6-5, pp. 4–5.

Finally, Parkland, Suncor, Husky, 7-Eleven, Shell, and Imperial argue that there is little public interest in publication of the internal ID as it does not provide greater transparency nor have any meaning to the public, especially if a generic FPT Act-specific number is generated.⁵⁸

Fuel Origin

Suncor, Tidewater, and Husky submit that Fuel Data related to the origin of imports⁵⁹ should be determined to be confidential Protected Information in the Framework, as the public interest in this Fuel Data does not outweigh the potential harm to Responsible Persons.⁶⁰

Suncor submits that its competitiveness in BC is highly dependent on its ability to establish and maintain reliable and cost-effective sources of supply from within Canada, the United States, or internationally.⁶¹ Suncor argues that its ability to be competitive could be harmed if Fuel Data respecting the origin of its imports were made publicly available. For instance, Suncor states that during times of supply disruptions publication of fuel origin Fuel Data could alert competitors to supply advantages and disadvantages, which they could in turn exploit to the detriment of Suncor and, ultimately to retail customers, as this behaviour would increase retail fuel prices.⁶²

Tidewater submits that fuel origin Fuel Data is highly commercially and competitively sensitive information that may reveal details about the nature of Tidewater's transactions, such as whether or not Tidewater is importing product and, if importing, from where and when.⁶³ Tidewater states that, as a refiner, publication of the origin of any imported fuel would also disclose confidential information about any percentage of Tidewater's fuel that is sourced from different locations.⁶⁴

Husky states that its fuel origin Fuel Data should be treated as confidential Protected Information, as this information is very commercially sensitive, and the disclosure of it would result in substantial commercial harm to Husky.⁶⁵

Conversely, Shell indicates that is not opposed to publication of the fuel origin Fuel Data.⁶⁶

Fuel Type and Fuel Grade

Imperial submits that fuel type and fuel grade Fuel Data from the Importer and Wholesale Purchaser Reports should be determined to be confidential Protected Information in the Framework, as the public interest in this

⁵⁸ Exhibit B-5, pp. 5–6; Exhibit C1-5, p. 6; Exhibit C3-5, p. 5; Exhibit C2-5, pp. 1–2; Imperial Final Argument, p. 3.

⁵⁹ Fuel origin wholesale Fuel Data comprises the Country, Province, and State of Origin Fuel Data fields in the BC Monthly Importer Report.

⁶⁰ Suncor Final Argument, p. 8; Tidewater Final Argument, pp. 3–4.

⁶¹ Exhibit C1-5, pp. 7–8.

⁶² Exhibit C1-5, p. 7.

⁶³ Tidewater Final Argument, p. 3.

⁶⁴ Tidewater Final Argument, pp. 3–4.

⁶⁵ Exhibit C3-4, pp. 3–4.

⁶⁶ Exhibit C6-5, p. 6.

Fuel Data does not outweigh the potential harm to Responsible Persons.⁶⁷ Imperial argues that company-specific information relating to fuel type and fuel grade is not publicly available and publishing this information may provide insights into a Responsible Person's commercial choices and strategies. For example, Imperial argues that disclosing a Responsible Person's decision to import fuel X rather than Y may provide competitors with insights into its supply, wholesale, or retail sales strategies.⁶⁸

Conversely, Shell indicates that it is not opposed to publication of the fuel type and fuel grade Fuel Data.⁶⁹

Shipment Date

Suncor, Shell, and Husky submit that the shipment date Fuel Data in the Retail Supplier Report should be determined to be confidential Protected Information in the Framework, as the public interest in this Fuel Data does not outweigh the potential harm to Responsible Persons.⁷⁰

Suncor and Shell argue that the shipment date Fuel Data can be used to discern a retail site's throughput volume.⁷¹ Shell argues that because trucking of fuel to retail stations is "extremely predictable", publishing shipment dates for specific retail locations would allow competitors to determine the volumes shipped to specific locations at specific times to a high degree of accuracy.⁷² Shell continues that shipment date information, in conjunction with the shipment volume and internal ID Fuel Data the BCUC collects could be used to determine, with precision, the shipment amounts and frequency of delivery to specific retail sites.⁷³ Suncor and Shell argue that this information should remain confidential in order to protect market competitiveness on a site-by-site basis, as competitors could use this information to target a particular retail site with weaker sales.⁷⁴

Husky shares Shell's concern with the potential for information on shipment dates to be used in conjunction with other Fuel Data to the detriment of Responsible Persons. Husky argues that the shipment date, in combination with other Fuel Data, such as the shipment volume, supplier of reportable fuel, and internal ID, could be used by a competitor to identify particular stations and target low-volume competitors.⁷⁵

Transaction Type

FCL submits that the transaction type Fuel Data should be determined to be confidential Protected Information in the Framework, as the public interest in this Fuel Data does not outweigh the potential harm to Responsible Persons.⁷⁶ FCL argues that publication of the transaction type would reveal confidential information about FCL's

⁶⁷ Exhibit C4-5, p. 3.

⁶⁸ Exhibit C4-5, p. 3.

⁶⁹ Exhibit C6-5, p. 4.

⁷⁰ Suncor Final Argument, pp. 8–9; Shell Final Argument, p. 5; Exhibit C6-4, Schedule 1, p. 3; Exhibit C3-5, pp. 3–4.

⁷¹ Exhibit C1-5, pp. 3–4; Exhibit C6-5, pp. 2–3.

⁷² Exhibit C6-5, pp. 2–3; Transcript Volume 2, p. 259.

⁷³ Exhibit C6-5, p. 3.

⁷⁴ Exhibit C1-5, pp. 3–4; Exhibit C6-5, pp. 2–3.

⁷⁵ Exhibit C3-5, pp. 3–4.

⁷⁶ FCL Final Argument, pp. 3–8.

commercial interests, including its supply arrangements and the counterparties to those arrangements.⁷⁷ FCL submits that access to this information by its competitors would harm FCL's ability to enter into future supply arrangements.⁷⁸

4.1.1.5 Importer Identifier Fuel Data

Tidewater submits that the importer Fuel Data field in the Importer Report should be determined to be confidential Protected Information in the Framework, as the public interest in this Fuel Data does not outweigh the potential harm to Responsible Persons.⁷⁹ Specifically, Tidewater states that publication of this Fuel Data may reveal details about whether or not Tidewater, as a refiner within a limited geographical area, is importing fuel and has sufficient capacity to serve the market during a particular period.⁸⁰ Tidewater submits that publication of this information would reveal the fact that Responsible Persons are transacting, which is itself commercially and competitively sensitive information, particularly in regions with limited market participation.⁸¹ Tidewater argues that “the fact that fuel is sourced and when it may be sourced is itself proprietary information.”⁸²

4.1.1.6 Comments Fuel Data

Shell, 7-Eleven, and Suncor argue that information in the comments field submitted in association with wholesale Fuel Data should be determined to be confidential Protected Information in the Framework, as the public interest in this Fuel Data does not outweigh the potential harm to Responsible Persons.⁸³

Shell submits that the comments field associated with the “FPT Act Regulatory Reporting Portal – Metadata” is not a compulsory data field, but rather is intended to provide Responsible Persons with an opportunity to submit additional context or insight that may be useful to the BCUC.⁸⁴ Shell submits that if the BCUC fails to grant confidential status to this data field, Responsible Persons may elect not to provide this helpful context to avoid additional administrative burden and the risk of commercially sensitive information being disclosed.⁸⁵

7-Eleven submits the FPT Act is directed at the transparency of fuel prices and that is not served by public disclosure of the comments included in a Responsible Person's submissions to the BCUC.⁸⁶ Suncor takes a similar position and submits that it is unable to discern what the public interest would be in this Fuel Data and that it serves no purpose in furthering the goals of the FPT Act.⁸⁷

⁷⁷ FCL Final Argument, pp. 3–8.

⁷⁸ FCL Final Argument, pp. 3–8.

⁷⁹ Exhibit C5-4, pp. 4–6.

⁸⁰ Tidewater Final Argument, pp. 3–4.

⁸¹ Tidewater Final Argument, pp. 3–4; Exhibit C5-4, pp. 4–6.

⁸² Tidewater Final Argument, pp. 3–4; Exhibit C5-4, pp. 4–6.

⁸³ Exhibit C6-5, pp. 4–5; Exhibit C2-5, pp. 1–2; Exhibit C1-5, p. 6.

⁸⁴ Exhibit C6-5, p. 5.

⁸⁵ Exhibit C6-5, pp. 4–5.

⁸⁶ Exhibit C2-5, p. 2.

⁸⁷ Exhibit C1-5, p. 6.

Finally, Shell and 7-Eleven submit that a case-by-case process for granting confidential status to specific comments would not be appropriate, as such an approach would create unnecessary regulatory burden and would increase the cost of compliance.⁸⁸

4.1.1.7 Other Fuel Data

Responsible Persons took no position on, or did not object to, the potential for designating the other miscellaneous wholesale Fuel Data⁸⁹ the BCUC collects as not confidential Protected Information in the Framework. For instance, Shell states that it “does not consider Fuel Data fields relating to currency... to be Protected Information.”⁹⁰

4.1.2 Retail Fuel Data

Unlike wholesale Fuel Data, which has been collected pursuant to the FPT Regulation, from November 1, 2020 to November 30, 2021, the BCUC collected retail Fuel Data from a subset of Responsible Persons pursuant to a Special Direction requiring the BCUC to undertake the Retail Pilot.

7-Eleven and Shell argue that all Fuel Data collected as part of the Retail Pilot should be treated as confidential Protected Information under the Framework given the unique purposes of this data collection effort and its application to a select few market participants.⁹¹ 7-Eleven submits that:

The nature of the Retail Pilot itself, which was designed not to collect information for the purposes of publication in furtherance of policies of the FPTA, but rather so that the Commission would provide advice to the Minister (or his staff) with respect to policy on what information should be prescribed to be collected in the future under regulation under the FPTA.⁹²

7-Eleven further submits that:

Information collected under the Retail Pilot should not be published under section 9(2) of the FPTA. It should be deemed protected information. The stated purpose of such collection is not to somehow promote competition (by publishing a sample of information from 50 stations over a one year period), but to inform the government's decision on how to structure the regulations under section 5 that will apply to retail stations. It is then, and only then, after the government has considered what fields of data

⁸⁸ Exhibit C6-5, p. 5; Exhibit C2-5, p. 2.

⁸⁹ Miscellaneous wholesale Fuel Data comprises the Currency Fuel Data fields in the BC Monthly Importer Report, BC Monthly Wholesale Report, and BC Monthly Retail Supplier Report; Fuel Type and Fuel Grade Fuel Data fields in the BC Annual Storage Report (Tank) and BC Monthly Retail Supplier Report; the Reporting Period Fuel Data field in the BC Monthly Importer Report; the Name of Wholesale Purchaser and Transaction Date Fuel Data fields in the BC Monthly Wholesale Report; the BCUC Terminal ID, Terminal Name, Owner/Operator, Address, BCUC Tank ID, and Tank Name Fuel Data fields in the BC Annual Storage Report (Terminal & Tank); the Supplier of Reportable Fuel field in the BC Monthly Retail Supplier Report; and the Title, Report Type, Month, Year, Report Category, Submission ID, Original Submission ID, Submission Type, Company, Archived File URL, Submission Time, Report Status, Item Type, and Path Fuel Data fields in the FPT Act Regulatory Reporting Portal – Metadata.

⁹⁰ Exhibit C1-5, p. 8; Exhibit C6-5, p. 6.

⁹¹ Exhibit C2-4, pp. 5-6; Shell Final Argument, p. 13.

⁹² Exhibit C2-7, p. 2.

should be collected, in what manner and from whom, that the Commission would be in a proper position to exercise a discretion about publication. There are unintended consequences if the Retail Pilot information is disclosed. ...Such publication would be unfair, unnecessary and could well introduce market distortion.⁹³

Shell submits that:

The BCUC should treat all information that it receives (and has already received to date) pursuant to the Retail Pilot submissions as confidential on a permanent basis. Publishing Fuel Data from the Retail Pilot would be inherently unfair, since not all gasoline and diesel stations and dealers are participating in the Pilot. The publication of such information would cause direct harm to participating stations and dealers, which would far outweigh any potential benefit to the public.”⁹⁴

With regards to specific retail Fuel Data, Parkland, Suncor, Husky, and Shell submit that volume- and price-related Fuel Data⁹⁵ collected pursuant to the Retail Pilot should be determined to be confidential Protected Information in the Framework, on the same basis as that argued for the wholesale Fuel Data of this nature, as discussed in Section 4.1.1.1, above.⁹⁶

With respect to the 2019 total gasoline and diesel sales volumes Fuel Data, Parkland and Suncor note that while similar data is made available by some retailers to Kalibrate Canada Inc., formerly Kent Group Ltd. (Kalibrate), this is done on a voluntary basis and retailers may choose not to do so based on potential commercial harm or to protect their competitiveness in the BC market.⁹⁷ Parkland reports that in 2019, approximately 98 percent of its company-controlled sites in BC provided information to Kalibrate, but less than half of its dealer-controlled sites did so.⁹⁸ Parkland submits that it has no role in determining whether or not dealer-controlled sites report data to Kalibrate.⁹⁹ Shell argues that the data published by Kalibrate is “not as comprehensive or accurate” as the volume information submitted to the BCUC by Responsible Persons, and reports that Shell does not know what particular data is, or is not, provided to Kalibrate by its corporately-owned and non-corporately owned retail sites.¹⁰⁰

Suncor and Shell submit the daily high and daily low price and time of the daily high/low price Fuel Data fields in the Retail Sales Report should be determined to be confidential Protected Information in the Framework, as the

⁹³ Exhibit C2-4, pp. 5–6.

⁹⁴ Shell Final Argument, p. 13.

⁹⁵ Volume-related Fuel Data comprises the Shipment Volume submitted in the BC Monthly Retail Purchases Report, the Daily Volume Sold in the BC Monthly Retail Sales Report, and the 2019 Total Gasoline/Diesel Sales Volume in the Retail Station Survey. Price-related Fuel Data comprises the Purchase Price per Litre and Transportation Costs per Litre in the BC Monthly Retail Purchases Report and the Volume-Weighted Selling Price and Taxes per Litre in the BC Monthly Retail Sales Report.

⁹⁶ Parkland Final Argument, pp. 3–4; Suncor Final Argument, p. 7; Husky Final Argument, pp. 2–3; Shell Final Argument, p. 5.

⁹⁷ Parkland Final Argument, p. 3; Suncor Final Argument, pp. 8–9; Exhibit C1-5, pp. 3–4.

⁹⁸ Exhibit B-8.

⁹⁹ Exhibit B-8.

¹⁰⁰ Exhibit C6-5, p. 2; Exhibit C6-8, p. 2.

public interest in this information does not outweigh the potential harm to Responsible Persons.¹⁰¹ They argue that this Fuel Data is highly sensitive information that could allow competitors to discern pricing strategies and tactics on a regional and a site-by-site basis, causing significant commercial harm from competitors seeking market share.¹⁰² They further argue that third-party sources of retail pricing information are not comparable to the Fuel Data submitted to the BCUC as they represent a “snapshot” in time only, and are not comprehensive, reliable, or accurate.¹⁰³

Conversely, Parkland submits that these Fuel Data fields do not necessarily need to be held confidential and could be available for publication given that the information is potentially available in some form.¹⁰⁴

Shell and 7-Eleven submit that the retail station name and address Fuel Data fields should be determined to be confidential Protected Information, as the public interest in this Fuel Data does not outweigh the potential harm to Responsible Persons.¹⁰⁵ Shell argues that publication of this Fuel Data would reveal the identity of the retail stations selected for the Retail Pilot and could put those retailers at a disadvantage compared to sites not selected for the pilot, creating an unfair and uneven competitive environment during the Retail Pilot period.¹⁰⁶

Parkland and Shell submit that the supply location Fuel Data field in the Retail Purchases Report should be determined to be confidential Protected Information in the Framework, as the public interest in this Fuel Data does not outweigh the potential harm to Responsible Persons.¹⁰⁷ They argue that publication of this Fuel Data would provide visibility into product management logistics, pricing strategies, and the identity of suppliers for a specific location, which in turn could be used by competitors to target certain suppliers and cause competitive harm.¹⁰⁸

Parkland submits the ownership structure Fuel Data (i.e., whether a retail station is corporately-controlled, dealer-controlled, or independently-controlled) should be determined to be confidential Protected Information in the Framework, as the public interest in this information does not outweigh the potential harm to Responsible Persons.¹⁰⁹ Parkland argues that the information contains third-party identity information and disclosing this data would allow other parties to know precisely which suppliers are used to supply which locations. This would allow competitors to target certain dealers, who sell lower volumes of product and may therefore be in financially weaker positions, being put out of business by temporarily lower pricing.¹¹⁰

¹⁰¹ Suncor Final Argument, pp. 8-9; Exhibit C1-5, pp. 4-5; Exhibit C6-5, pp. 3-4.

¹⁰² Suncor Final Argument, pp. 8-9; Exhibit C1-5, pp. 4-5; Exhibit C6-5, pp. 3-4.

¹⁰³ Suncor Final Argument, pp. 8-9; Exhibit C1-5, pp. 4-5; Exhibit C6-5, pp. 3-4.

¹⁰⁴ Exhibit C3-7, p. 6; Transcript Volume 2, pp. 159 line 22 to pp. 160 line 2, 16-23.

¹⁰⁵ Exhibit C6-5, p. 6; Exhibit C2-5, pp. 4-5.

¹⁰⁶ Exhibit C6-5, p. 6.

¹⁰⁷ Exhibit B-5, pp. 6-7; Exhibit C6-5, pp. 5-6; Exhibit C6-4, Schedule 1 p. 6.

¹⁰⁸ Exhibit B-5, pp. 6-7; Exhibit C6-5, pp. 5-6; Exhibit C6-4, Schedule 1 p. 6.

¹⁰⁹ Parkland Final Argument, p. 3; Exhibit B-5, pp. 6-7.

¹¹⁰ Parkland Final Argument, p. 3; Exhibit B-5, pp. 6-7.

While Shell and Suncor do not object to publication of this information by the BCUC, as information on ownership structure can be obtained through private sources and a land title search, Parkland argues that these avenues may not provide the specific information the BCUC collects or the “same degree of currency.”¹¹¹

Consistent with its submissions on comments submitted in association with wholesale Fuel Data, Shell argues that the “Other (Comments)” field associated with the Retail Station Survey should be held confidential. Shell argues that such comments could include commercially sensitive and confidential contextual information that should be treated confidentially.¹¹²

Suncor and Shell submit that personal details of the individuals who completed the Retail Station Survey on behalf of Responsible Persons should be appropriately protected in the Framework.^{113,114} 7-Eleven concurs, arguing that disclosing personal details of representatives is not appropriate and does not advance the policy goals of the FPT Act.¹¹⁵

Finally, Parkland, Suncor, Husky, and Shell repeat the arguments discussed in Section 4.1.1.4, above, for the internal ID, fuel type, fuel grade, shipment date, seller name, and seller address Fuel Data fields and submit that, like the wholesale data, this retail Fuel Data should be determined to be confidential Protected Information in the Framework.

4.2 Panel Discussion and Determinations

As described in Section 4.1, above, Suncor argues that all Fuel Data should be held confidential, as the limited utility of less sensitive Fuel Data does not warrant the effort necessary to distinguish between Fuel Data that can and cannot be published in accordance with section 9(2)(b) of the FPT Act. Qathet holds the opposite view and advocates for the release of complete, specific, Fuel Data.

The Panel is not persuaded that either of these extremes is an appropriate approach for adoption in the Framework. The Panel considers a unilateral decision to declare all Fuel Data confidential, or non-confidential, to be inconsistent with the BCUC’s responsibilities under the FPT Act and with the principles of transparency and promotion of market competitiveness outlined in Section 3.2, above. Thus, it is necessary for the Panel to undertake the balancing test set out in section 9(2)(b) of the FPT Act for the various types of Fuel Data the BCUC collects. The Panel’s determinations with respect to wholesale and retail Fuel Data are detailed below, in Sections 4.2.1 and 4.2.2, respectively.

4.2.1 Wholesale Fuel Data

Responsible Persons are required to submit wholesale Fuel Data to the BCUC pursuant to the FPT Regulation. The Panel recognizes the highly commercially sensitive nature of much of this Fuel Data and, for the reasons set out below, **finds that the public interest in the publication of raw (i.e., unaggregated and non-anonymized)**

¹¹¹ Exhibit B-5, p. 7; Exhibit C6-5, p. 6; Exhibit C1-5; p. 8; Exhibit A-9, pp. 6–7.

¹¹² Exhibit C6-5, p. 5.

¹¹³ Personal details of representatives Fuel Data comprises the Responsible Person Phone and Email, Representative Name and Position in the Retail Station Survey and the Responsible Person Name & Address.

¹¹⁴ Exhibit C1-5, p. 8; Shell Final Argument, p. 13; Exhibit C6-5; pp. 6–7.

¹¹⁵ Exhibit C2-5, pp. 5–6.

sales and operational volumes, price-related, LCFS, invoice-related, importer identifier, and comment Fuel Data does not outweigh any potential harm to Responsible Persons and this Fuel Data is designated as confidential Protected Information in the Framework.

Publication of raw sales and operational volumes and price-related Fuel Data by the BCUC would provide competitors, inside and outside of BC, with detailed and highly specific information about the internal operations of a Responsible Person. Competitors could use the insights gained from this information to undermine the competitiveness of BC's fuel market, for instance by timing price increases coincident with periods when a Responsible Person is short on fuel supplies from specific regions or by undercutting the prices of a lower-volume competitor to drive competition out of the market. Further, publishing information on the operating characteristics of individual fuel storage terminals would provide competitors with insights into the flexibility, responsiveness, and operational limits of a Responsible Person's storage facilities, which could harm commercial negotiations. Disclosing information on the specific prices associated with a Responsible Person's operations is likely to have a similar effect.

The Panel considers the publication of aggregate and/or anonymized sales and operational volumes and price-related Fuel Data to be an effective tool for providing the public with insights into the volumes and costs associated with BC's fuel market.¹¹⁶ The Panel is not persuaded that the incremental value to the public of publishing raw sales and operational volumes and price-related Fuel Data warrants the risk to Responsible Persons and the potential market disruptions discussed above.

The Panel understands that the purchase of LCFS credits to be one possible mechanism for Responsible Persons to comply with their LCFS obligations. Publication of company-specific information on the total number of credits purchased, the number of credit transfers, and/or the average price paid for credits, would provide competitors, and others, with detailed insights into a Responsible Person's compliance strategy. Publication of this information has the potential to impact commercial negotiations for the purchase of future credits, driving up the cost of compliance and in turn the cost BC consumers pay for fuel. Because aggregation and/or anonymization can be used to provide insights into the scale and cost of LCFS credit purchases at lower risk, the Panel is not persuaded that there is significant incremental value to the public in publishing raw LCFS Fuel Data.

Invoice-related Fuel Data includes highly specific details about who Responsible Persons are transacting with, on what days, and in what manner. The Panel views publication of invoice-related Fuel Data as akin to the publication of a Responsible Person's customer list and details, which poses a substantial risk to the competitiveness of Responsible Persons and the fuel market in BC. Further, the Panel is not persuaded that there is material value to the public in disclosing such information on an unaggregated or non-anonymized basis. For instance, publication of aggregate and/or anonymized information on the origin of fuel imports can provide the public with insights into supply chain dynamics in the province, without providing competitors with insights into whether and how a particular Responsible Person is transacting. Further, publication of the internal ID a Responsible Person uses in its operations is likely to have little to no meaning to the public but could clearly identify specific commercial arrangements to competitors and expose Responsible Persons to phishing or other malicious attacks.

¹¹⁶ See Section 5.1, below, for information on the aggregation and/anonymization provisions included in the Framework.

The BCUC collects information on fuel imports through its Monthly Importer Report. The Panel does not consider there to be a significant public interest in the disclosure of the name of Responsible Persons submitting this report but recognizes the potential harm publication of this information could cause to Responsible Persons. For BC's refineries, in particular, publication of their potential status as an importer in a certain month could disclose highly sensitive information about their production capacity and performance. This in turn would expose BC's refineries to potential predatory actions by their competitors, to the detriment of the fuel market in BC.

Finally, the Panel is persuaded that publication of the comments a Responsible Person submits in association with Fuel Data represents a risk to Responsible Persons without a commensurate benefit. Comments Fuel Data may contain references to Fuel Data designated as confidential Protected Information in the Framework or to other commercially sensitive information. Failure to protect this information may discourage Responsible Persons from providing explanatory or contextual information along with their submissions, frustrating the BCUC's Fuel Data collection efforts. Further, publication of comment text in isolation is unlikely to provide understandable or useful information.

With regards to the physical capacity of fuel storage tanks in BC, the Panel is not persuaded by the arguments of Suncor and Shell that the public interest in this information does not outweigh any potential harm to Responsible Persons. The record in this proceeding demonstrates that the physical capacity of a fuel storage tanks is general industry knowledge and/or can be approximated by a knowledgeable individual based on publicly available information.

While Responsible Persons opposed to publication of storage tank physical capacity Fuel Data focused on the difference in precision between estimates Responsible Persons could make today and the Fuel Data submitted to the BCUC, the Panel is not persuaded that publication of this Fuel Data on an unaggregated and non-anonymized basis poses a material risk of harm to Responsible Persons. The Panel views order of magnitude estimates of a Responsible Person's physical storage capacity to provide industry participants with a sufficient understanding of the role a Responsible Person's storage terminals play in its supply chain logistics. Absent information on how a Responsible Person is operating this infrastructure, such as the volume of fuel actually stored in the tank, little new material information would be provided to market actors. The Panel also notes the province's two refineries (Parkland Burnaby Refinery and Tidewater Prince George Refinery) do not consider the sensitivity of the storage tank physical capacity Fuel Data they submit to the BCUC to rise to a level warranting confidential treatment under the Framework.

In this instance, the Panel considers the potential harm to Responsible Persons to be outweighed by the general public interest in transparency around the Fuel Data the BCUC collects and the public interest in understanding supply chain constraints (or lack thereof) faced by the province. **Therefore, the Panel finds that the public interest in the disclosure of storage tank physical capacity Fuel Data outweighs any potential harm to Responsible Persons and this Fuel Data is not designated as confidential Protected Information in the Framework.**

Finally, no parties objected to the publication of the remaining miscellaneous wholesale Fuel Data the BCUC collects and as such **the Panel finds that the public interest in transparency around the miscellaneous**

wholesale Fuel Data the BCUC collects outweighs any potential harm to Responsible Persons and this Fuel Data is not designated as confidential Protected Information in the Framework.

4.2.2 Retail Fuel Data

By the Special Direction dated August 15, 2020, the BCUC was directed to undertake a time-limited data collection effort involving a select subset of BC's retail stations. The purpose of this effort is to inform the development of regulations for ongoing data collection targeted at the retail component of the fuel supply chain in BC. The Panel considers the Retail Pilot's scope and purpose to significantly and meaningfully differ from the BCUC's ongoing collection of wholesale Fuel Data pursuant to the FPT Regulation.

The Panel is persuaded by 7-Eleven and Shell's concerns that publication of any Fuel Data collected as part of the Retail Pilot on an unaggregated and non-anonymized basis has the potential to create an uneven competitive playing field amongst market participants and could introduce distortions into the fuel market. Retail Fuel Data submissions to date have been made by only a select number of retail stations and the data is being collected for the purpose of providing a report to government to help inform on further use of such Fuel Data. The Panel considers publication of the raw retail Fuel Data from a select set of retailers to be unfair and premature. Further, the BCUC's report to government will provide insights into the value and public interest in retail Fuel Data that is not available to the Panel at this time. **Based on the information currently available, the Panel finds that the public interest in the disclosure of Retail Fuel Data does not outweigh any potential harm to Responsible Persons and this Fuel Data is designated as confidential Protected Information in the Framework.**

5.0 Tools for Permitting Publication of Fuel Data Designated as Confidential Protected Information

Section 5.0 of the Framework (attached as Appendix A to this Decision and Order), sets out three possible avenues for publishing Fuel Data that have been identified as confidential Protected Information:

1. publication on an aggregate and/or anonymized basis following a comment process involving Responsible Person's legal counsel (section 5.1);
2. publication following a hearing wherein the BCUC reconsiders the public interest and potential harm associated with publication of certain Fuel Data identified as confidential Protected Information in Attachment A of the Framework (section 5.2); and
3. publication following a two-year review by the BCUC as to whether there has been a change to the public interest in the confidential Protected Information listed in Attachment A of the Framework, such that confidential treatment is no longer warranted (section 5.3).

Party submissions on each of these three avenues, and the reasons for the Panel's decision to include each in the Framework, are discussed in Sections 5.1 to 5.3, below.

5.1 Aggregation and Anonymization

5.1.1 Positions of the Parties

Qathet submits that publication of aggregate Fuel Data would not fulfill the intention of the FPT Act.¹¹⁷ Qathet states that “aggregate data is not useful data” because fuel prices vary across BC, and publication of the Fuel Data the BCUC collects on an aggregate basis would obscure the local pricing differences media is hoping to understand through the FPT Act.¹¹⁸

Parkland and Suncor disagree. They argue that the objectives of the FPT Act can be achieved by publishing anonymized and aggregate data, rather than raw Fuel Data.^{119,120} Parkland, Suncor, BCOAPO, and other parties to this proceeding support including a process in the Framework that would allow the BCUC to publish confidential Protected Information on an aggregate/anonymized basis where the BCUC has determined that publication would not reveal the confidential Protected Information of any Responsible Person.¹²¹

With regards to the specifics of the aggregation/anonymization methodology, BCOAPO submits that raw data must be aggregated and anonymized to the minimum necessary to balance the competing interests of public confidence, transparency, and market competition.¹²²

Parkland, Suncor, and FCL argue that publication of Fuel Data by the BCUC should be undertaken only on an anonymized and aggregated basis, and only to the extent that the data of individual market participants are not identifiable and back-calculation of competitive and commercially sensitive information is not possible.¹²³

Husky argues that any information that is disclosed to the public should be anonymized and aggregated on a province-wide basis.¹²⁴ Husky argues that, due to the unique nature of the market in BC, with very few refineries and a limited number of market participants, anonymizing the data alone, or presenting sub-provincial aggregations would not sufficiently protect its confidential Protected Information.¹²⁵

Tidewater argues that confidential Protected Information must be aggregated on a province-wide basis or on a province-wide basis excluding the Vancouver region and Vancouver Island region.¹²⁶ Tidewater submits that any attempts to aggregate information on a more limited geographic basis would disclose Tidewater’s confidential Protected Information, either directly or indirectly, through back-calculation as they are the only refinery

¹¹⁷ Exhibit C9-2, p. 4.

¹¹⁸ Exhibit C9-2, pp. 3–4.

¹¹⁹ 7-Eleven also agreed that, in principle, “aggregation and anonymization of sensitive data such as pricing and volume data compelled by regulation may support the legislative goals.” Exhibit C2-5, p. 6.

¹²⁰ Parkland Final Argument, p. 3; Suncor Final Argument, pp. 9–10.

¹²¹ Exhibit B-5, pp. 9–10; Exhibit C1-5, p. 9; Exhibit C4-5, pp. 4–5; Tidewater Final Argument, p. 5; Exhibit C6-5, pp. 7–8; Exhibit C10-4, p. 4; Transcript Volume 2, pp. 285–286.

¹²² Transcript Volume 2, pp. 285–286.

¹²³ Parkland Final Argument, p. 3; Suncor Final Argument, pp. 9–10; FCL Final Argument, p. 1.

¹²⁴ Exhibit C3-5, p. 7; Husky Final Argument, p. 3.

¹²⁵ Exhibit C3-5, p. 7; Husky Final Argument, p. 3.

¹²⁶ Tidewater Final Argument, p. 5.

located in Northern BC.¹²⁷ Tidewater also recommends that the BCUC adopt for use in the Framework guidelines consistent with the “safe harbour guidelines” established by the US antitrust agencies when competitively sensitive information is shared among competitors.¹²⁸

Parkland, Suncor, 7-Eleven, Imperial, and Shell express their support for inclusion of a comment process in the Framework whereby the BCUC would provide the counsel of affected Responsible Persons with an opportunity review and provide written submissions and evidence on the sufficiency of a proposed aggregation/anonymization.¹²⁹

Regarding the specifics of the comment process, Parkland, 7-Eleven, Shell, Imperial, and Suncor submit that certain refinements should be made to a final Framework, as follows:

- provision of the proposed anonymized or aggregated data should be restricted to the external counsel of the Responsible Persons who provided the Protected Information and not to all Responsible Persons;¹³⁰
- provision of the proposed anonymized or aggregated data should be to internal and external counsel, as not all Responsible Persons have external counsel;¹³¹
- the BCUC should provide a description of the anonymization and/or aggregation methodology used to counsel as well as to all interested parties;¹³²
- counsel should be permitted to retain independent experts and to share the data with them to support their review and submissions;¹³³
- the comment period should be 60 days, rather than 30;¹³⁴
- when only a single Responsible Person’s Fuel Data is proposed for release on an anonymized basis, the BCUC should be permitted to share the Fuel Data proposed for publication directly with the impacted Responsible Person, rather than just counsel;¹³⁵
- the BCUC should keep a public record of the aggregation and anonymization methods that have been accepted, and Responsible Persons should be permitted to apply to the BCUC for a determination that a previously accepted aggregation/anonymization method is no longer sufficient to protect the confidential information of Responsible Persons, in light of any changes to the BC fuel market;¹³⁶

Further, Suncor expressed concerns regarding the potential for regulatory burden to result from the comment process and requested additional guidance as to the anticipated frequency of publication requests.¹³⁷

¹²⁷ Tidewater Final Argument, pp. 5–6.

¹²⁸ Tidewater Final Argument, p. 5.

¹²⁹ Exhibit B-5, p. 9; Exhibit C1-5, p. 9; Exhibit C2-5, p. 6; Exhibit C4-5, p. 4; Exhibit C6-5, p. 7.

¹³⁰ Exhibit B-5, p. 9.

¹³¹ Exhibit C4-5, pp. 4–5.

¹³² Exhibit C2-5, p. 7.

¹³³ Exhibit C2-5, p. 7.

¹³⁴ Exhibit C6-5, p.7.

¹³⁵ Exhibit C4-5, pp. 4–5.

¹³⁶ Exhibit C6-5, p. 8; Exhibit B-5, p. 9.

¹³⁷ Exhibit C1-5, p. 9.

5.1.2 Panel Discussion

In Sections 4.2.1 and 4.2.2, above, the Panel determined that the public interest in publishing certain Fuel Data does not outweigh the potential harm to Responsible Persons and, therefore, certain Fuel Data would be held confidential by the BCUC under the Framework.

The Panel is not persuaded by Qathet's position that aggregate data is not useful data and that publication of such information would not fulfill the purpose of the FPT Act. Rather, the Panel considers the publication of aggregated and/or anonymized Fuel Data to be an effective means of promoting fuel market competitiveness and public confidence in the competitiveness of BC's fuel market in circumstances where the raw Fuel Data the BCUC collects is confidential. Reports containing sufficiently aggregated and/or anonymized information can provide the public with insights into the operation and costs of BC's fuel market. For instance, aggregate and anonymized Fuel Data could be used to disclose trends in fuel costs or to reveal the volume of imported fuel British Columbians rely on, while significantly reducing any potential harm to Responsible Persons that would otherwise occur if raw unaggregated and/or non-anonymized Fuel Data were to be published.

Although the Panel agrees with Responsible Persons that the characteristics of the BC fuel market may, at times, require Fuel Data to be anonymized and aggregated at a provincial level, the Panel is not persuaded that the Framework should preclude flexibility in this respect. In order to permit aggregation and/or anonymization methods to be tailored to the specific Fuel Data proposed for publication, the Panel will not prescribe fixed aggregation and anonymization methods or "safe harbor guidelines" in the Framework. Rather, the Panel elects to maintain the aggregation and anonymization comment process proposed in Framework Draft No. 2 that parties generally supported, subject to certain modifications, detailed below.

The Panel sees merit in 7-Eleven's submission that proposed aggregation and anonymization methodologies should be shared with all interested parties and not be restricted to external counsel for Responsible Persons. The Panel considers that sharing any proposed aggregation and/or anonymization method with interested parties and the general public would increase the efficacy of the comment process and would provide greater transparency.

The Panel also sees merit in Shell's submission that parties should be afforded up to 60 days under the Framework to provide written submissions on any proposed Fuel Data aggregation and/or anonymization methods. This would provide interested parties and external counsel with sufficient time to review the information, which may be quite technical in nature, and to provide submissions, which may contain proposed adjustments to the methodology.

The Panel is also persuaded by Shell, that, once accepted, aggregation and/or anonymization methods should be made publicly available. The Panel considers such an approach to be consistent with the principle of transparency and views publication of approved methods to be a means for supporting broader understanding of the BCUC's approach to analyzing and reporting Fuel Data.

In addition, the Panel sees merit in allowing interested parties to apply for a reconsideration of a previously accepted aggregation and/or anonymization method, on the basis of material changes in the BC fuel market. As discussed in Sections 5.2.2 and 5.3.2, below, the Panel recognizes the potential for circumstances in the fuel

market to evolve and believes it is reasonable and appropriate for the Framework to include mechanisms that will allow the BCUC the flexibility to respond to such changes.

Finally, the Panel finds merit in Imperial's submission that when only a single Responsible Person's confidential Protected Information is proposed for publication on an anonymized basis, the BCUC can share the anonymized Fuel Data directly with the impacted Responsible Person, as this approach would reduce regulatory burden. The Panel has included language to this effect in the Framework.

The Panel acknowledges Suncor's concerns around the potential for increased regulatory burden for Responsible Persons in association with the aggregation and/or anonymization methodology comment process. However, as publishing efforts have not yet been undertaken by the BCUC, the Panel consider it premature to provide guidance on the anticipated frequency of review requests at this time. The Panel considers the process in the Framework that allows for previously approved aggregation/anonymization methodologies to be used on an ongoing basis without necessitating a further comment period to limit the potential for excessive regulatory burden.

5.2 Public Interest Process

5.2.1 Positions of the Parties

Husky and Suncor object to inclusion of a provision in the Framework that would allow a future BCUC panel to reconsider, in a hearing, the confidential status granted to certain Protected Information.¹³⁸ These Responsible Persons argue that such a provision would erode confidence in the Framework and could result in unnecessary regulatory burden.¹³⁹ Husky submits that "the current proceeding should be where the issues relating to Protected Information and confidentiality are considered, and should not be repeated unless there is a real and significant justification."¹⁴⁰ Suncor submits that the circumstances that would justify such a hearing were "entirely unclear" in Framework Drafts No. 1 and No. 2.¹⁴¹

Shell submits that inclusion of a public interest reconsideration process in the Framework is reasonable.¹⁴² Nevertheless, it views the present proceeding as the primary place where the confidentiality of Protected Information ought to be determined. Shell states that:

"...by holding the present proceeding to determine which categories of Fuel Data constitute Protected Information, and how that Protected Information should be treated, the BCUC will have already conducted the balancing test contemplated by paragraph 9(2)(b) of the Act". Accordingly, "except in the most exceptional circumstances (examples of which are difficult to provide in advance), there should be a very strong presumption that Protected Information will not be released other than in accordance with the generally applicable rules and

¹³⁸ Exhibit C3-5, p. 6; Exhibit C1-4, pp. 8–9.

¹³⁹ Exhibit C1-4, pp. 8–9; Exhibit C3-5, p. 6.

¹⁴⁰ Exhibit C3-5, p. 6.

¹⁴¹ Exhibit C1-5, p. 8.

¹⁴² Exhibit C6-5, p. 7.

mechanisms established by the final framework ultimately issued by the Commission”.¹⁴³
(original citations omitted)

With respect to the specific wording of the provision, Imperial submits that any reference to the potential for wrongdoing is inappropriate given the BCUC’s role as Administrator, while Parkland submits that it would be appropriate to include potential harm to third parties as an additional consideration.¹⁴⁴

5.2.2 Panel Discussion

Beginning with Parkland’s initial request for an advance ruling on the confidentiality of certain Fuel Data, and continuing throughout this Framework proceeding, Responsible Persons have sought assurance from the BCUC that certain Fuel Data they are required to submit will not be published. The Panel considers that an advanced determination of confidentiality in the Framework is warranted, as this is an administratively efficient way for the BCUC to undertake the review and balancing test contemplated in section 9(2)(b) of the FPT Act for the categories of Fuel Data that Responsible Persons must submit on an ongoing, monthly, basis.

Through issuance of the Framework, the Panel has determined that the BCUC will hold certain Protected Information confidential as, based on the information currently available to the Panel, the public interest in publishing that Protected Information does not outweigh any potential harm to Responsible Persons. Nevertheless, the Panel is cognizant that the public interest is not necessarily static in nature and that the potential for the harm associated with the publication of certain Fuel Data may evolve over time (as discussed further in Section 5.3.2, below). As such, the Panel is not persuaded by Husky and Suncor’s positions that the Framework should not include a reconsideration process. Rather, the Panel considers it important to include tools in the Framework that allow for certain, reasonable amounts of flexibility. The hearing process provided for in section 5.2 of the Framework is one such tool.

However, the Panel is persuaded by Shell’s submission that it is difficult to provide, in advance, specific examples of when the hearing process provided for in section 5.2 of the Framework would be warranted. The Panel is also reluctant to bind future BCUC panels in this regard. As such, the Framework provides that hearings held pursuant to section 5.2 may be initiated by application to the BCUC or on the BCUC’s own motion, but the Framework does not prescribe specific circumstances that must apply to warrant such a proceeding. To limit the potential for unnecessary regulatory burden, the Panel has included a requirement that any application for a hearing pursuant to section 5.2 of the Framework be subject to BCUC review and acceptance. The Panel considers such review to be an effective approach for eliminating spurious requests.

The Panel also finds, as submitted by Imperial, that it is not appropriate, nor in this Panel’s opinion useful, to include illustrative examples of the types of submissions parties might make in a proceeding held pursuant to section 5.2 of the Framework. Accordingly, no such language has been included in the Framework.

Finally, while the Panel appreciates Parkland’s suggestion that potential harm to third parties may be an appropriate consideration in the BCUC’s balancing test, the Panel notes that harm to third parties is not

¹⁴³ Exhibit C6-5, p. 7.

¹⁴⁴ Exhibit C4-4, p. 5; Exhibit C4-5, p. 4; Exhibit B-5, p. 8.

identified as a specific factor for consideration in the section 9(2)(b) of the FPT Act. As such, the Panel has not expressly included this consideration in section 5.2 of the Framework.

5.3 Passage of Time

5.3.1 Positions of the Parties

While Suncor, Imperial, Husky, FCL, and Shell, generally, submit that the two-year review in the Framework is not required, nor efficient, as the confidentiality of Protected Information is unlikely to change after two years,¹⁴⁵ Parkland submits that the proposed review after two years, subject to notice and process, represents a reasonable approach.¹⁴⁶

Imperial argues that its position on the broad release of company-specific commercially sensitive information is unlikely to change in two years and, in the interest of reducing regulatory burden, recommends that the timeline for a BCUC review of the confidentiality of Fuel Data either be eliminated or extended further by five years (i.e., to seven years) after the finalization of the Framework.¹⁴⁷ Despite its objections to the review process, Suncor states that it intends to participate in any future BCUC review of this information.¹⁴⁸

Husky argues that the BCUC has no discretion under the FPT Act to revisit and reconsider whether the public interest outweighs potential harm in relation to certain protected information.¹⁴⁹ Husky argues that if confidential Protected Information is disclosed after a two-year period, it would result in significant harm to their business as it typically enters into contracts that far exceed two years and are often “evergreen” contracts, which continually renew and have no set term.¹⁵⁰ Husky states that it will be strenuously opposing any disclosure of confidential Protected Information after two years and confidentiality of Protected Information should remain in place indefinitely.¹⁵¹

FCL argues that the confidentiality and sensitivity of confidential Protected Information will not be diminished and that third-party contracts often extend beyond two years and therefore, the confidentiality of Protected Information should apply indefinitely, and no periodic review is required.¹⁵² Shell similarly argues that most of its contracts are evergreen or ten years or more and therefore submits that information designated as confidential now will continue to be confidential after two years and a further review is unnecessary.¹⁵³

¹⁴⁵ Exhibit C1-5, p. 9; Imperial Final Argument, p. 1; Husky Final Argument, p. 3; FCL Final Argument, pp. 8–9; Exhibit C6-5, p. 8.

¹⁴⁶ Exhibit B-5, p. 10.

¹⁴⁷ Imperial Final Argument, p. 1.

¹⁴⁸ Exhibit C1-5, p. 9.

¹⁴⁹ Husky Final Argument, p. 3.

¹⁵⁰ Exhibit C3-5, p. 8.

¹⁵¹ Exhibit C3-5, p. 8.

¹⁵² FCL Final Argument, pp. 8–9.

¹⁵³ Exhibit C6-5, p. 8.

5.3.2 Panel Discussion

The Panel notes that Responsible Persons do not consider a review of the confidentiality of Protected Information after two years to be necessary and that certain Responsible Parties argue the BCUC lacks the authority to do so. The Panel does not share this view. Nothing in the FPT Act suggests that the balancing test outlined in section 9(2)(b) of the Act must be undertaken once, and only once.

Responsible Persons have argued that any aggregation/anonymization methods accepted by the BCUC pursuant to the Framework ought to be reconsidered in light of any changes to the BC fuel market, and the Panel believes that the confidentiality of Protected Information ought to also be reviewed should the circumstances of the market change. Further, the Panel sees value in reassessing the confidentiality of Fuel Data in accordance with section 9(2)(b) of the FPT Act once the BCUC has gained experience publishing Fuel Data reports. The BCUC's publication efforts, as well as the public's response to such reports, may provide important information on the public interest in Fuel Data that is not available to the Panel at this time. By providing a specific timeline for review in the Framework, the Panel provides greater transparency and predictability to Responsible Persons and the public around the Framework process.

With regards to the specific timeline for review, the Panel is not persuaded that a seven-year period is appropriate. Feedback on the BCUC's Fuel Data reports will be available well in advance of this time, and the Panel considers a two-year period to represent an appropriate balance between regulatory efficiency and flexibility.

6.0 Potential for Disclosing Confidential Protected Information on a Confidential Basis

6.1 Proposed Declaration and Undertaking Process

6.1.1 Positions of the Parties

The declaration and undertaking process contemplated in Framework Draft No. 2 would, following BCUC approval, allow parties to access confidential Protected Information, subject to a requestor signing and filing a declaration and undertaking form. All approvals will be subject to terms and conditions specified by the BCUC.

7-Eleven argues that Responsible Persons' external counsel are regulated professionals who routinely deal with and protect confidential information. In comparison, 7-Eleven submits that there is no limit to the potential individuals who may seek and obtain access to confidential Protected Information and their intended use with such information.¹⁵⁴ 7-Eleven also argues that the Framework does not include any provisions for a Responsible Person or other interested party to sue to recover damages caused by intentional, negligent, or other disclosure of confidential Protected Information as the recipient signs the declaration and undertaking form with the BCUC and not directly to the Responsible Person.¹⁵⁵

Shell argues that only non-confidential information or information that has been aggregated or anonymized in accordance with the Framework should be made available for the purposes of market research or provided to

¹⁵⁴ Exhibit C2-5, p. 8.

¹⁵⁵ Exhibit C2-5, p. 9.

consumer advocates as any disclosure of a Responsible Person's confidential Protected Information by the BCUC introduces the risk of intentional or inadvertent disclosure of this information to competitors. Shell argues that neither a declaration and undertaking form nor a non-disclosure agreement would provide sufficient protection as any inadvertent disclosure cannot be undone by a non-disclosure agreement.¹⁵⁶ Shell also argues that Responsible Persons should be provided with 60 days to object to a request for access to confidential information in order to provide them with sufficient time to evaluate a request and to prepare submissions and/or evidence.^{157, 158}

Husky argues that confidential Protected Information should never be disclosed to third parties and the Final Framework must contain strict limitations on who may make a request for access and when access would be granted.¹⁵⁹ Similarly, Suncor and Imperial argue that once Fuel Data has been designated as confidential Protected Information, access to this information should not be granted to third parties and the public under any circumstances.¹⁶⁰ For example, Suncor argues that the declaration and undertaking process proposed in the draft Framework is inconsistent with the FPT Act and that there is no limitation to the use of the confidential Protected Information once disclosed.¹⁶¹

Parkland submits that it is not opposed to the provision of confidential Protected Information to a requesting party provided sufficient measures are in place, "notwithstanding that a basis for such a process is not found in section 9(2) of the FPT Act".¹⁶² Parkland further submits that a party requesting confidential Protected Information should be required to execute a nondisclosure agreement directly with the affected Responsible Person(s), rather than only with the BCUC. Parkland indicates its willingness to work with other Responsible Persons to jointly develop a standardized non-disclosure agreement.¹⁶³

FCL similarly argues that parties making requests to access confidential Protected Information should be required to execute a non-disclosure agreement with the affected Responsible Person(s) and expresses its willingness to participate in the development of a standardized non-disclosure agreement. FCL cautions that the development of such an agreement should be done on a consensus-based manner, rather than a simple majority, to ensure the concerns of all Responsible Persons are addressed.¹⁶⁴

BCOAPo argues that Responsible Persons have broadly interpreted publication of confidential Protected Information under section 9(2) of the FPT Act to include disclosure to consumer advocates through an undertaking process. BCOAPo further submits that failure to facilitate access to confidential Protected Information to parties that sign a confidentiality agreement would irrevocably damage the objectives of the FPT Act and would be contrary to the purpose and intent of the Act.¹⁶⁵

¹⁵⁶ Shell Final Argument, pp. 8–9.

¹⁵⁷ FCL shares this view, noting that it may be required to notify third parties of a request. FCL Final Argument, p. 12.

¹⁵⁸ Exhibit C6-5, p. 9.

¹⁵⁹ Exhibit C3-5, pp. 8–9; Husky Final Argument, p. 3.

¹⁶⁰ Suncor Final Argument, pp. 10–11; Exhibit C1-5, pp. 9–10; Imperial Final Argument, p. 4.

¹⁶¹ Exhibit C1-5, pp. 9–10.

¹⁶² Parkland Final Argument, p. 9.

¹⁶³ Parkland Final Argument, pp. 9–10.

¹⁶⁴ FCL Final Argument, p. 11.

¹⁶⁵ Transcript Volume 2, pp. 286–287.

6.1.2 Panel Discussion

7-Eleven argues that the BCUC lacks the authority under the FPT Act to include a provision in the Framework that would allow confidential Protected Information to be shared, on a confidential basis, with others subject to a declaration and undertaking process. The Panel is not persuaded by 7-Eleven's interpretation of the FPT Act and does not view the language of the Act as imposing a prohibition in this respect. While the FPT Act outlines the process by which the BCUC may publish Protected Information, disclosing confidential Protected Information to a party, on a confidential basis, subject to a declaration and undertaking process is not publishing confidential Protected Information as contemplated under section 9(2)(b) of the FPT Act. The confidential Protected Information will remain confidential. Instead, the circle of those granted access to the confidential Protected Information is made larger by this process but it does not itself make the information non-confidential. The Panel considers the proposed declaration and undertaking process to fall within its powers as Administrator and to be an important tool for inclusion in the Framework. Through the declaration and undertaking process counsel for Responsible Persons will be able to review proposed aggregations and/or anonymizations of confidential Protected Information by Responsible Persons prior to publication (as discussed in Section 5.1.2, above). The Panel considers this to be a valuable tool to support the BCUC in executing its function as Administrator to promote the competitiveness of the market for reportable fuels and public confidence in the competitiveness of that market.

The Panel disagrees with the notion that the declaration and undertaking process is appropriate to use for one group, legal counsel of Responsible Persons, and one group only. The Panel considers that the process contemplated in the Framework applies equally to all third parties making a request and notes that the BCUC will only grant access to parties if, after a comment process, the BCUC determines that the public interest in granting access outweighs the potential harm to Responsible Persons and/or the competitiveness of the fuel market.

The Panel finds merit in Parkland and FCL's proposal that parties requesting access to confidential Protected Information be required to execute a BCUC-approved non-disclosure agreement with the affected Responsible Person(s), as this would enable Responsible Persons to take legal action on their own to prevent the disclosure of confidential Protected Information, such as applying to court for an injunction. The Panel encourages Responsible Persons to develop a standardized non-disclosure agreement and submit it to the BCUC for approval.

The Panel acknowledges Imperial's submission that it would be helpful to understand the types of activities and circumstances that the BCUC anticipates may result in disclosure of confidential Protected Information, subject to an undertaking and declaration.¹⁶⁶ However, as the BCUC has yet to receive a request for access or any objections thereto, the Panel considers it premature to include any specific examples in the Framework beyond facilitation of the aggregation and anonymization comment process discussed above.

The Panel is not persuaded by Shell and FCL's argument that Responsible Persons ought, by default, to be provided 60 days to object to a request for access to confidential Protected Information. The complexity of access requests has the potential to vary greatly, and the Panel considers it appropriate to maintain flexibility in the Framework for the BCUC to establish an objection period suited to the circumstances of a particular request.

¹⁶⁶ Exhibit C4-4, p. 4.

Accordingly, the Framework includes a requirement for the BCUC to specify a deadline for filing objections in the notification the BCUC provides to Responsible Persons regarding any access requests.

6.2 Sharing Fuel Data with the Minister

6.2.1 Positions of the Parties

7-Eleven, Shell, Parkland, and Suncor are not opposed to inclusion in the Framework of a provision allowing the BCUC to provide confidential Protected Information to the Minister and selected staff in the Ministry in light of the BCUC's responsibilities as Administrator.^{167, 168}

Suncor and Parkland argue that, to ensure consistency with the FPT Act, the Framework must limit any such information sharing to situations where disclosure is necessary to comply with sections 4(1) or 4(2)(a) of the FPT Act, and the BCUC must clearly indicate the confidentiality of any confidential Protected Information and preserve that confidentiality to the extent possible.¹⁶⁹

6.2.2 Panel Discussion

The Panel has considered Suncor and Parkland's argument that disclosure of confidential Protected Information to the Minister should be restricted to solely those situations where disclosure is necessary to comply with subsections 4(1) or 4(2)(a) of the FPT Act. The Panel finds the interpretation of the FPT Act to be reasonable and has included language in the Framework mirroring the wording in the FPT Act in this regard. The Panel has also included language in the Framework requiring that confidential Protected Information that is shared with the Minister be clearly labelled as confidential.

7.0 Overall Determination Regarding Confidentiality of Fuel Data Collected Pursuant to the FPT Act

For the reasons outlined above, issuance of the final Framework attached as Appendix A to Decision and Order G-14-22, which sets out the process pursuant to which the BCUC determines what Fuel Data collected pursuant to the FPT Act constitutes confidential Protected Information is warranted.

The Framework applies to all Responsible Persons required to submit Fuel Data to the BCUC pursuant to the FPT Act and, in order to ensure consistent treatment, shall apply equally to Fuel Data submitted in advance of and subsequent to issuance of Order G-14-22. **As such, directive 1 of Order G-275-20, which provided advanced approval of confidential status to Fuel Data submitted pursuant to the FPT Act pending establishment of the final Framework, is hereby rescinded effective immediately.**

¹⁶⁷ Exhibit C2-5, p. 10; Exhibit C6-5, pp. 9–10; Exhibit B5, p. 11; Parkland Final Argument, p. 11; Exhibit C1-9, p. 2; Suncor Final Argument, p. 12.

¹⁶⁸ As further details on language proposed in Framework Draft No. 2 for sharing confidential Fuel Data with the Minister were provided at the August 5, 2021 workshop, the Panel focuses here on party positions provided in Final and Reply Argument.

¹⁶⁹ Exhibit C1-9, p. 2; Suncor Final Argument, p. 12; Parkland Final Argument, p. 11.

DATED at the City of Vancouver, in the Province of British Columbia, this 20th day of January 2022.

Original signed by:

D. M. Morton
Panel Chair / Commissioner

Original signed by:

W. M. Everett, QC
Commissioner

Original signed by:

B. A. Magnan
Commissioner



**ORDER NUMBER
G-14-22**

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

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

and

Framework for the Determination of Confidentiality and Treatment of Protected Information
Collected under the *Fuel Price Transparency Act*

BEFORE:

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

on January 20, 2022

ORDER

WHEREAS:

- A. On September 16, 2020, Parkland Corporation (Parkland) filed an application with the British Columbia Utilities Commission (BCUC) for an advance ruling on confidentiality for certain commercial information that Parkland is required to file under the *Fuel Price Transparency Act* (FPT Act) and Regulation;
- B. By Order G-275-20, dated October 30, 2020, the BCUC provided advance approval of confidential status to fuel data submitted by Responsible Persons pursuant to the FPT Act, that the Responsible Persons identify as Protected Information, until the completion of a hearing process to establish a framework for the determination of confidentiality and treatment of Protected Information (Framework);
- C. By Orders G-303-20, G-68-21, G-159-21, and G-214-21 the BCUC established and further amended the regulatory timetable for development of the Framework;
- D. On February 8, 2021 and May 25, 2021, the BCUC issued Framework Drafts No. 1 and No. 2, respectively, and requested submissions from parties regarding the drafts;
- E. On August 5, 2021 and August 12, 2021, the BCUC held two oral workshops to provide parties with an opportunity to further explain their positions with respect to Framework Draft No. 2 and for the Panel and BCUC staff to ask questions regarding the submissions received from the parties;
- F. By Order G-260-21, dated September 3, 2021, the BCUC further amended the regulatory timetable to invite Argument and Reply Argument from all parties; and

- G. The Panel has reviewed the parties' submissions with respect to the Framework received to date and finds that the adoption of the Framework for Determination of Confidentiality and Treatment of Protected Information is warranted.

NOW THEREFORE the BCUC orders as follows:

1. Directive 1 established by Order G-275-20, is rescinded.
2. For the reasons stated in the Decision issued concurrently with this order, the Framework attached as Appendix A to the Decision is adopted by the BCUC (Framework), effective immediately.
3. Unless otherwise ordered by the BCUC, all Fuel Data submitted by Responsible Persons to date pursuant to the FPT Act will be treated in accordance with the Framework.

DATED at the City of Vancouver, in the Province of British Columbia, this 20th day of January 2022.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

British Columbia Utilities Commission

Fuel Price Transparency Act

**Framework for Determination of Confidentiality and
Treatment of Protected Information**

January 20, 2022

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1.0 General

This Framework (Framework) sets out the process pursuant to which the British Columbia Utilities Commission (BCUC) will determine the confidentiality and treatment of Protected Information provided to the BCUC in accordance with its role as the Administrator of the *Fuel Price Transparency Act* (FPT Act).

This Framework is intended to efficiently address confidentiality requests respecting Fuel Data collected pursuant to the FPT Act and to provide clarity on the process the BCUC will follow for disclosing Fuel Data in order to meet the objectives of the FPT Act.

This Framework may, subject to notice and process, be revised or updated from time to time in order to adjust for evolving circumstances and/or changes to the FPT Act including any regulations, directions, or requests.

Notwithstanding the procedures provided for in this Framework, the BCUC may do whatever is appropriate and permitted by law to enable it to effectively and completely perform its duties as Administrator. The BCUC may waive or modify one or more of the provisions of the Framework in circumstances it considers appropriate, with due process and appropriate notice provided to parties.

Capitalized terms not otherwise defined have the same meaning as in the FPT Act.

1.1 Application of the Framework

This Framework applies to all Responsible Persons required to submit Fuel Data to the BCUC pursuant to the FPT Act or Regulations and any persons interested in accessing such information.

1.2 Role of the BCUC

By Order in Council (OIC) No. 123/20, and pursuant to section 3 of the FPT Act, the BCUC is designated the Administrator of the FPT Act. As the Administrator, the BCUC is responsible for collecting Fuel Data to promote market competitiveness and public confidence in the competitiveness of the market, and for publishing Fuel Data pursuant to section 9(2) of the FPT Act. The BCUC does not regulate fuel prices in British Columbia (BC).

1.3 BCUC Accountability under the FPT Act

Section 3 of the FPT Act provides that the Lieutenant Governor in Council may, by regulation, restrict or impose conditions on the exercise of powers, or the performance of duties, by the Administrator. Further, under section 4 of the FPT Act, the Administrator must report to the Minister as the Minister requires and must administer the FPT Act in accordance with any general or special directions of the Minister.

Application of this Framework is subject to the FPT Act, as well as the BCUC's compliance with all other applicable legislation, including privacy laws applicable to public bodies. Should there be any inconsistency between the Framework and the FPT Act, the legislation governs.

1.4 Determination of Confidentiality and Treatment of Protected Information Framework

In accordance with section 11 of the *Administrative Tribunals Act*, the BCUC adopts this Framework for determining the confidentiality and treatment of Protected Information provided to the BCUC in accordance with its role as the Administrator of the FPT Act.

2.0 Background

2.1 Fuel Price Transparency Act

On November 28, 2019, the Government of BC enacted the FPT Act. The FPT Act requires Responsible Persons engaged in a Reportable Activity to report on Fuel Data. The BCUC has been designated the Administrator of the FPT Act.

By OIC No. 474/20,¹⁷⁰ the Lieutenant Governor in Council established the Fuel Price Transparency Regulation (FPT Regulation). The FPT Regulation requires fuel importers, wholesalers, terminal owners/operators, and those who supply retail dealers to submit regular reports to the BCUC starting in November 2020.

On August 14, 2020, the Government of BC issued a Special Direction to the BCUC,¹⁷¹ as the Administrator of the FPT Act, requiring retail dealers of Reportable Fuels to submit Fuel Data to the BCUC as part of a retail Fuel Data collection pilot (Retail Pilot). The Retail Pilot will be used to inform the development of regulations for fuel retailers by the Government of BC.

Pursuant to section 6 of the FPT Act, Responsible Persons are required to submit any Fuel Data and/or records required by the BCUC in its capacity as Administrator.

2.1.1 Protected Information

Section 9 of the FPT Act defines “protected information” as information that would reveal:

- (a) Trade Secrets of a Responsible Person, or
- (b) commercial, financial, labour relations, scientific or technical information of or about a Responsible Person.

Trade Secret is defined in Schedule 1 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA) and means information, including a formula, pattern, compilation, program, device, product, method, technique or process, that:

- (a) is used, or may be used, in business or for any commercial advantage,
- (b) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use,

¹⁷⁰ https://www.bclaws.gov.bc.ca/civix/document/id/oic/oic_cur/0474_2020

¹⁷¹ https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-gas-oil/responsible-oil-gas-development/special_direction_to_bcuc_retail111787_v3_mbrsig08132020.pdf

(c) is the subject of reasonable efforts to prevent it from becoming generally known, and

(d) the disclosure of which would result in harm or improper benefit.

Under section 9(2) of the FPT Act, the Administrator may publish Fuel Data, or other information or records, acquired pursuant to the FPT Act if it is satisfied that:

(a) Protected Information will not be disclosed, or

(b) the public interest in the Protected Information that will be disclosed outweighs any potential harm to Responsible Persons, having regard, without limitation, to the importance of:

(i) the competitiveness of the market for Reportable Fuels, and

(ii) public confidence in the competitiveness of that market.

3.0 Confidential Protected Information

In its role as Administrator, the BCUC collects a wide range of Fuel Data from Responsible Persons. Subject to the following, and to other related statutory provisions and exceptions or exclusions by law, including the FPT Act, the FOIPPA, the UCA, and the *Administrative Tribunals Act*, Fuel Data or other information and records filed by Responsible Persons pursuant to the FPT Act may be made publicly available.

For greater certainty, nothing in this Framework is intended to limit the operation of any statutory provision that protects the confidentiality of Fuel Data or other information and records filed by Responsible Persons pursuant to the FPT Act.

3.1 Identification of Confidential Protected Information

3.1.1 Principles

In developing this Framework, the BCUC considered whether all Fuel Data should, by default, be kept confidential. However, in the BCUC's view, it is important to set out the key principles that will guide what Protected Information remains confidential.

In determining whether Fuel Data will be held confidential, the BCUC shall be guided by the following key principles:

- Promotion of transparency – transparency is an important component to achieve public confidence in the competitiveness of BC's fuel market and, where appropriate, Fuel Data or other information and records collected pursuant to the FPT Act should be made available to the public.
- Promotion of market competitiveness – balancing the restriction of disclosure of Fuel Data or other information and records collected pursuant to the FPT Act or regulations when such disclosure could be reasonably expected to (i) undermine the competitiveness of the BC fuel industry or the public confidence in that market's competitiveness, or (ii) cause significant harm to a Responsible Person against the public interest in such disclosure.

- Reducing regulatory burden – the BCUC’s process should be administratively efficient to limit the administrative burden placed on Responsible Persons and others. Determinations of confidentiality should be consistent for the Fuel Data or other information and records collected pursuant to the FPT Act.

3.1.2 Grouping Fuel Data Collected Pursuant to the FPT Act and FPT Regulation

The BCUC will organize the Fuel Data collected pursuant to the FPT Act into groups based on the nature of such data (e.g., detailed price information). The BCUC will then review the groups in light of the key principles described in section 3.1.1 above and will determine which groups of Fuel Data constitute confidential Protected Information.

The BCUC will maintain a list, attached as Attachment A, documenting: (i) the universe of Fuel Data the BCUC collects pursuant to the FPT Act and FPT Regulation; (ii) the groupings of Fuel Data; and (iii) which groups constitute confidential Protected Information.

The BCUC may revise Attachment A from time to time, including, for example, if Fuel Data of a different nature is collected. Any proposed revisions to Attachment A will be subject to notice and process.

3.1.3 Confidentiality of Protected Information

All Fuel Data identified as confidential Protected Information in Attachment A shall be accorded confidential treatment by the BCUC. For additional clarity, specific requests by Responsible Persons for confidentiality over the groups of Fuel Data designated as confidential Protected Information in Attachment A (and the individual categories of Fuel Data contained therein) are not required.

In its role as Administrator, the BCUC may provide confidential Protected Information to the Minister and selected staff in the Ministry, solely as directed or required by the Minister. The BCUC will clearly indicate the confidentiality of any confidential Protected Information provided to the Minister or Ministry staff.

3.1.4 Protocols for Submission of Confidential Protected Information

Please refer to the BCUC’s FPT Regulation Reporting Guidelines, available on the BCUC webpage, for the protocols for submitting confidential Protected Information.

4.0 Requests for Confidential Treatment of Fuel Data that is not Confidential Protected Information

The BCUC may publish any Fuel Data not determined to be confidential Protected Information.

Should a Responsible Person request the BCUC to maintain confidentiality of any Fuel Data or other information and records submitted to the BCUC pursuant to the FPT Act that have not already been identified as confidential Protected Information in Attachment A, the BCUC’s process for confidentiality for such requests as set out in Part IV of the BCUC’s [Rules of Practice and Procedure](#) shall apply.

The process set out in Part IV of the BCUC's Rules of Practice and Procedure is appropriate in certain limited circumstances, such as when new reporting requirements have been implemented but revisions to the list of Protected Information provided in Attachment A have yet to be determined.

Any Fuel Data that a Responsible Person requests confidentiality over pursuant to section 4.0 of this Framework will be kept confidential on an interim basis until the BCUC renders a final determination.

5.0 Tools for Permitting Publication of Confidential Protected Information

5.1 Aggregation and Anonymization

As the Administrator, the BCUC is responsible for collecting and publishing Fuel Data regarding a Reportable Activity in BC in an effort to promote competitiveness and public confidence in the competitiveness of the fuel market. To achieve this objective and to provide transparency into Fuel Data regarding a Reportable Activity in BC, the BCUC may aggregate, anonymize, or make other alterations to confidential Protected Information to permit publication of Fuel Data the BCUC collects pursuant to the FPT Act and FPT Regulation. The BCUC is cognizant of the importance of maintaining an appropriate balance between transparency and protection of confidential Protected Information in the execution of its mandate.

The BCUC may publish aggregate confidential Protected Information, on an anonymized or non-anonymized basis, in instances where the BCUC has determined that such publication is not likely to reveal the confidential Protected Information of any Responsible Person.

Further, the BCUC may publish non-aggregated, anonymized, confidential Protected Information on a standalone basis in instances where the BCUC has determined that the identity of the Responsible Person associated is not likely to be directly or indirectly disclosed and therefore the public interest in transparency outweighs the potential harm to the Responsible Person and/or the competitiveness of the market.

Prior to publication of anonymized or non-anonymized aggregated confidential Protected Information the BCUC will:

1. Provide a description of the proposed aggregation methodology to all interested parties;
2. Provide a copy of any anonymized or non-anonymized aggregated confidential Protected Information proposed for publication (Proposal) to legal counsel of all Responsible Persons who have executed a Declaration and Undertaking form and any BCUC-approved Non-Disclosure Agreement (NDA) in accordance with section 6.0, below;
3. Allow the Responsible Persons' legal counsel up to 60 days to review the Proposal and to provide written submissions and evidence to the BCUC regarding:
 - a. whether publication of any aggregate information included in the Proposal is likely to result in the direct or indirect disclosure of the confidential Protected Information of any one Responsible Person, and if so why;
 - b. adjustments to any aggregate information included in the Proposal that would make direct or indirect disclosure of the confidential Protected Information of any one Responsible Person unlikely; and

- c. any other submissions regarding the Proposal.
4. Determine whether the publication of any anonymized or non-anonymized aggregate confidential Protected Information included in the Proposal is not likely to result in the direct or indirect disclosure of the confidential Protected Information of any one Responsible Person.

The BCUC may, at its discretion, allow additional submissions and evidence on a Proposal prior to making a final determination.

Prior to publication of non-aggregated anonymized confidential Protected Information, the BCUC will:

1. Provide a copy of any non-aggregated anonymized confidential Protected Information proposed for publication to the affected Responsible Person;
2. Allow the Responsible Person up to 60 days to review the non-aggregated anonymized confidential Protected Information proposed for publication and to provide written submissions and evidence to the BCUC regarding:
 - a. whether publication of the non-aggregated anonymized information proposed for publication is likely to result in the direct or indirect disclosure of the identity of the Responsible Person associated, and if so why;
 - b. adjustments to the non-aggregated anonymized information proposed for publication that would make direct or indirect disclosure of the identity of the Responsible Person associated unlikely; and
 - c. any other submissions regarding the non-aggregate anonymized information proposed for publication.
3. Determine whether publication of any non-aggregate anonymized confidential Protected Information proposed for publication is not likely to result in the direct or indirect disclosure of the identity of the Responsible Person associated.

If the BCUC determines that publication of any anonymized or non-anonymized aggregate confidential Protected Information is not likely to result in the direct or indirect disclosure of the confidential Protected Information of any one Responsible Person, the aggregation will no longer be treated confidential as the public interest in disclosing this information outweighs the potential harm to Responsible Persons and the competitiveness of the market.

Similarly, if the BCUC determines that publication of any non-aggregated anonymized confidential Protected Information is not likely to result in the direct or indirect disclosure of the identity of the Responsible Person associated, the anonymized Fuel Data will no longer be treated confidential as the public interest in disclosing this information outweighs the potential harm to Responsible Persons and the competitiveness of the market.

The BCUC will not repeat the above process for any aggregated or anonymized confidential Protected Information proposed for publication if a final determination has been made previously for that specific aggregation or anonymization method and only the vintage of the Fuel Data included has changed. For example, if, after following the process outlined above, the BCUC has determined that publication of the average purchase price per litre of all gasoline imports into BC in January 2021 is not likely to result in the direct or

indirect disclosure of the confidential Protected Information of any one Responsible Person and the direct or indirect disclosure of the identity of the Responsible Person associated, a separate BCUC determination is not necessary to allow publication of the average purchase price per litre of all gasoline imports into BC in February 2021. The BCUC will retain a public record of accepted aggregation and/or anonymization methods.

Parties may apply for reconsideration of a previously accepted aggregation and/or anonymization method. Parties requesting a reconsideration must submit a request electronically to the BCUC that sets out the reason(s) for the reconsideration.

5.2 Public Interest Hearing

In accordance with the process and principles described in section 3 above, the BCUC has identified certain Fuel Data as confidential Protected Information, as listed in Attachment A. The BCUC may publish the confidential Protected Information listed in Attachment A pursuant to section 9(2)(b) of the FPT Act if the BCUC is satisfied that the public interest in the confidential Protected Information that will be disclosed outweighs any potential harm to Responsible Persons, having regard, without limitation, to the importance of (i) the competitiveness of the market for Reportable Fuels, and (ii) public confidence in the competitiveness of that market.

Upon receipt of an application, subject to the BCUC's review and acceptance, or on the BCUC's own motion, the BCUC will hold a hearing, in which the Responsible Person may participate, to determine whether Fuel Data identified as confidential Protected Information in Attachment A may be published pursuant to section 9(2)(b) of the FPT Act. The BCUC will provide notice of such a hearing to the affected parties.

The BCUC in making any determination will:

- (a) balance the public interest in publishing confidential Protected Information against the potential harm to Responsible Persons, the competitiveness of the market for Reportable Fuels and public confidence in the competitive of that market, and
- (b) consider other applicable legislation.

5.3 Two-Year Review

The BCUC recognizes the potential for changes to the public interest in confidential Protected Information over time due to the dynamic nature of the fuel market. Two years after the finalization of this Framework, the BCUC will conduct a review of the Fuel Data collected to determine whether there has been a change to the public interest in the confidential Protected Information under 9(2)(b) of the FPT Act such that confidential treatment is no longer warranted (i.e., to determine whether the potential harm to Responsible Persons or the competitiveness of the market no longer outweighs the public interest in publishing that information). The BCUC's review will be subject to notice and process.

6.0 Declaration and Undertaking Regarding Confidentiality of Protected Information

Access to confidential Protected Information may be granted by the BCUC, subject to the process outlined below, when the BCUC has determined or is considering whether the public interest in granting access outweighs the potential harm to Responsible Persons and/or the competitiveness of the fuel market.

For instance, the BCUC may grant access to confidential Protected Information in order to facilitate a review of aggregate confidential Protected Information prior to publication, as discussed in section 5.1, above.

Anyone requesting access to confidential Protected Information must submit a request electronically to the BCUC that sets out the reason(s) for the request and the period of time for which access is required, including a statement describing why access to confidential Protected Information is required and how allowing the request is in accordance with the provisions of the FPT Act. The BCUC shall notify Responsible Person(s) of any access requests received respecting the Responsible Person's confidential Protected Information. A Responsible Person, or other affected party, may object to a request for access to confidential Protected Information by filing a timely objection setting out the reasons for the objection. A deadline for filing objections will be included in the BCUC's notification to Responsible Persons.

The BCUC will render the final determination as to whether access to the confidential Protected Information will be approved and any terms and conditions of such approval.

If a request for access to confidential Protected Information is approved, the BCUC will notify the requestor, copying affected Responsible Person(s). Such approval will include a description of the confidential Protected Information to be disclosed and the deadline after which the requestor must return the confidential Protected Information to the BCUC or destroy the confidential Protected Information.

The requestor must also sign and file (1) an NDA with the affected Responsible Person(s), if the BCUC has approved such an NDA for use in that circumstance; and (2) a declaration and undertaking form, attached as Attachment B hereto, in respect of the use of the confidential Protected Information, before receiving access to the confidential Protected Information from the BCUC.

The declaration and undertaking form is a binding commitment by the requestor: (i) to use the confidential Protected Information disclosed exclusively for purposes described in the access request; (ii) to hold the confidential Protected Information in confidence; (iii) not to reproduce the confidential Protected Information disclosed; (iv) not to disclose the information contained in the confidential Protected Information and (v) to return the confidential Protected Information to the BCUC or destroy the confidential Protected Information within fourteen (14) days of the deadline established in the BCUC's grant of access to such confidential Protected Information or of an order of the BCUC.

The BCUC may impose any other terms, conditions or safeguards as it considers appropriate in the circumstances. In accordance with Part 8.1 of the UCA, if a requestor fails to comply with the conditions of the declaration and undertaking form and/or the BCUC's approval, the BCUC may impose Administrative Penalties.

7.0 Reconsideration of a BCUC Decision

For the purposes of this Framework, any reference to a decision means a decision related to the determination of confidential Protected Information, the grant of access to confidential Protected Information, or the publication of confidential Protected Information.

Any decision related to the determination of confidential Protected Information, the grant of access to confidential Protected Information, or the publication of confidential Protected Information under this

Framework may be reconsidered pursuant to section 99 of the UCA and Part V of the BCUC's Rules of Practice and Procedure.

During a reconsideration process, there will be an automatic stay on the granting of access to or publication of confidential Protected information.

Attachment A – Identification of Confidential and Not Confidential Protected Information

A1. Background

The British Columbia Utilities Commission (BCUC) reporting forms allow Responsible Persons to submit required Fuel Data to the BCUC pursuant to the *Fuel Price Transparency Act* (FPT Act). The BCUC has the following reporting forms available:

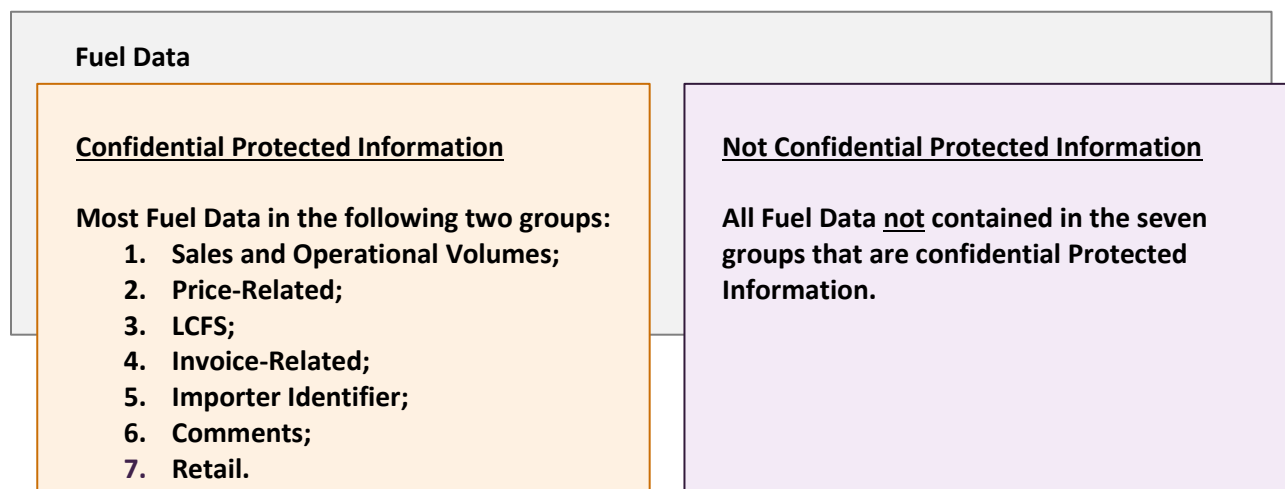
1. FPT Regulation – British Columbia Monthly Importer Report;
2. FPT Regulation – British Columbia Monthly Wholesale Purchaser Report;
3. FPT Regulation – British Columbia Monthly Low Carbon Fuel Standards (LCFS) Credit Report;
4. FPT Regulation – British Columbia Annual Storage Report;
5. FPT Regulation – British Columbia Monthly Retail Supplier Report;
6. Special Direction – British Columbia Monthly Retail Purchases Report;
7. Special Direction – British Columbia Monthly Retail Sales Report; and
8. Special Direction – Retail Station Survey.

In addition, when a Responsible Person submits a BCUC reporting form through the BCUC FPT Act Regulatory Reporting Portal (Portal), data is generated in association with the submission (i.e., metadata). Metadata, such as the submission timestamp, is also considered in this Framework.

A2. Grouping of Fuel Data

The BCUC has grouped together the individual data fields contained in the above BCUC reporting forms and all metadata based on the nature of the Fuel Data collected. In accordance with the process and principles described in section 3, above, the BCUC has identified seven groups of Fuel Data as confidential Protected Information. These groups are: (1) Sales and Operational Volumes; (2) Price-Related; (3) LCFS; (4) Invoice-Related; (5) Importer Identifier; (6) Comments; and (7) Retail, as shown in Figure A1 below. The specific reporting fields included in these groups are presented in Tables A1 to A7, below. All other Fuel Data collected by the BCUC pursuant to the FPT Act is presented in Table A8, below, and does not constitute confidential Protected Information.

Figure A1 – Grouping of Fuel Data



A3. Data Fields Contained in BCUC Groups

The data fields contained in each of the groups discussed in **section A2** are presented in **Tables A1–A8**.

Table A1 – Sales and Operational Volumes Fuel Data Treated as Confidential Protected Information

BCUC Reporting Form	Fuel Data Field	Confidential Protected Information
FPT Regulation – BC Monthly Importer Report	Volume (L15)	Yes
FPT Regulation – BC Monthly Wholesale Purchaser Report	Volume (L15)	Yes
FPT Regulation – BC Annual Storage Report (Terminal)	Transloading Capacity (Litres/Hour)	Yes
FPT Regulation – BC Annual Storage Report (Terminal)	Terminal Loading Capacity (Litres/Hour)	Yes
FPT Regulation – BC Annual Storage Report (Terminal)	Terminal Unloading Capacity (Litres/Hour)	Yes
FPT Regulation – BC Annual Storage Report (Tank)	Blending Capacity (Litres/Hour)	Yes
FPT Regulation – BC Monthly Retail Supplier Report	Shipment Volume (L15)	Yes

Table A2 – Price-Related Fuel Data Treated as Confidential Protected Information

BCUC Reporting Form	Fuel Data Field	Confidential Protected Information
FPT Regulation – BC Monthly Importer Report	Purchase Price per Litre (i.e., \$/L15)	Yes
FPT Regulation – BC Monthly Importer Report	Transportation Costs per Litre (i.e., \$/L15)	Yes
FPT Regulation – BC Monthly Wholesale Purchaser Report	Purchased Price per Litre (i.e., \$/L15)	Yes
FPT Regulation – BC Monthly Retail Supplier Report	Amounts Paid/Payable by Purchaser per Litre (\$/L)	Yes

Table A3 – LCFS Fuel Data Treated as Confidential Protected Information

BCUC Reporting Form	Fuel Data Field	Confidential Protected Information
FPT Regulation – BC Monthly LCFS Credit Report	Total Number of Transfers	Yes
FPT Regulation – BC Monthly LCFS Credit Report	Total Credits	Yes
FPT Regulation – BC Monthly LCFS Credit Report	Average Price per LCFS Credit	Yes

Table A4 – Invoice-Related Fuel Data Treated as Confidential Protected Information

BCUC Reporting Form	Fuel Data Field	Confidential Protected Information
FPT Regulation – BC Monthly Importer Report	Internal ID	Yes
FPT Regulation – BC Monthly Importer Report	Fuel Type	Yes
FPT Regulation – BC Monthly Importer Report	Fuel Grade	Yes
FPT Regulation – BC Monthly Importer Report	Transaction Type	Yes
FPT Regulation – BC Monthly Importer Report	Country of Origin	Yes
FPT Regulation – BC Monthly Importer Report	Province of Origin	Yes
FPT Regulation – BC Monthly Importer Report	State of Origin	Yes
FPT Regulation – BC Monthly Wholesale Purchaser Report	Internal ID	Yes
FPT Regulation – BC Monthly Wholesale Purchaser Report	Fuel Type	Yes
FPT Regulation – BC Monthly Wholesale Purchaser Report	Fuel Grade	Yes
FPT Regulation – BC Monthly Wholesale Purchaser Report	Transaction Type	Yes
FPT Regulation – BC Monthly Wholesale Purchaser Report	Seller Name	Yes
FPT Regulation – BC Monthly Wholesale Purchaser Report	Seller Address	Yes
FPT Regulation – BC Monthly Retail Supplier Report	Internal ID	Yes
FPT Regulation – BC Monthly Retail Supplier Report	Shipment Date (mm/dd/yyyy)	Yes
FPT Regulation – BC Monthly Retail Supplier Report	Transaction Type	Yes

Table A5 – Importer Identifier Fuel Data Treated as Confidential Protected Information

BCUC Reporting Form	Fuel Data Field	Confidential Protected Information
FPT Regulation – BC Monthly Importer Report	Name of Importer	Yes

Table A6 – Comments Fuel Data Treated as Confidential Protected Information

BCUC Reporting Form	Fuel Data Field	Confidential Protected Information
FPT Act Regulatory Reporting Portal - Metadata	Comments – comment text input by Responsible Person	Yes

Table A7 – Retail Fuel Data Treated as Confidential Protected Information

BCUC Reporting Form	Fuel Data Field	Confidential Protected Information
Special Direction – BC Monthly Retail Purchases Report	BCUC Retail Station ID	Yes
Special Direction – BC Monthly Retail Purchases Report	Retail Station Name	Yes
Special Direction – BC Monthly Retail Purchases Report	Retail Station Address	Yes
Special Direction – BC Monthly Retail Purchases Report	Internal ID	Yes
Special Direction – BC Monthly Retail Purchases Report	Fuel Type	Yes
Special Direction – BC Monthly Retail Purchases Report	Fuel Grade	Yes
Special Direction – BC Monthly Retail Purchases Report	Shipment Date	Yes
Special Direction – BC Monthly Retail Purchases Report	Shipment Volume (L15)	Yes
Special Direction – BC Monthly Retail Purchases Report	Purchase Price per Litre (\$/L)	Yes
Special Direction – BC Monthly Retail Purchases Report	Currency (for Purchase Price)	Yes
Special Direction – BC Monthly Retail Purchases Report	Transaction Type	Yes
Special Direction – BC Monthly Retail Purchases Report	Transportation Costs per Litre (\$/L)	Yes
Special Direction – BC Monthly Retail Purchases Report	Purchase Price includes Transportation Costs	Yes
Special Direction – BC Monthly Retail Purchases Report	Currency (for Transportation Costs)	Yes
Special Direction – BC Monthly Retail Purchases Report	Seller Name	Yes
Special Direction – BC Monthly Retail Purchases Report	Seller Address	Yes
Special Direction – BC Monthly Retail Purchases Report	Supply Location	Yes
Special Direction – BC Monthly Retail Sales Report	BCUC Retail Station ID	Yes
Special Direction – BC Monthly Retail Sales Report	Fuel Type	Yes
Special Direction – BC Monthly Retail Sales Report	Fuel Grade	Yes
Special Direction – BC Monthly Retail Sales Report	Retail Station Name	Yes
Special Direction – BC Monthly Retail Sales Report	Retail Station Address	Yes
Special Direction – BC Monthly Retail Sales Report	Date of Sale	Yes
Special Direction – BC Monthly Retail Sales Report	Daily Volume Sold (L15)	Yes
Special Direction – BC Monthly Retail Sales Report	Volume-Weighted Selling Price (\$/L)	Yes
Special Direction – BC Monthly Retail Sales Report	Taxes per Litre (\$/L)	Yes
Special Direction – BC Monthly Retail Sales Report	Daily High Price (\$/L)	Yes
Special Direction – BC Monthly Retail Sales Report	Daily Low Price (\$/L)	Yes
Special Direction – BC Monthly Retail Sales Report	Time of Daily High Price (hh:mm)	Yes
Special Direction – BC Monthly Retail Sales Report	Time of Daily Low Price (hh:mm)	Yes
Special Direction – Retail Station Survey (Web Form)	Responsible Person Name	Yes
Special Direction – Retail Station Survey (Web Form)	Responsible Person Address	Yes
Special Direction – Retail Station Survey (Web Form)	Responsible Person Phone	Yes
Special Direction – Retail Station Survey (Web Form)	Responsible Person Email	Yes
Special Direction – Retail Station Survey (Web Form)	Representative Name	Yes
Special Direction – Retail Station Survey (Web Form)	Representative Position	Yes
Special Direction – Retail Station Survey	Retail Station Internal ID / Name	Yes
Special Direction – Retail Station Survey	Retail Station Address 1	Yes
Special Direction – Retail Station Survey	Retail Station Address 2	Yes
Special Direction – Retail Station Survey	Retail Station City	Yes
Special Direction – Retail Station Survey	Retail Station Province	Yes
Special Direction – Retail Station Survey	Retail Station Postal Code	Yes

Special Direction – Retail Station Survey	Brand of Fuel	Yes
Special Direction – Retail Station Survey	Ownership Structure	Yes
Special Direction – Retail Station Survey	Pump Service	Yes
Special Direction – Retail Station Survey	Regular Gasoline (Grade)	Yes
Special Direction – Retail Station Survey	Midgrade Gasoline (Grade)	Yes
Special Direction – Retail Station Survey	Premium Gasoline (Grade)	Yes
Special Direction – Retail Station Survey	Diesel	Yes
Special Direction – Retail Station Survey	Premium Diesel	Yes
Special Direction – Retail Station Survey	2019 Total Gasoline Sales Volume (Litres)	Yes
Special Direction – Retail Station Survey	2019 Total Diesel Sales Volume (Litres)	Yes
Special Direction – Retail Station Survey	Open 24 Hours	Yes
Special Direction – Retail Station Survey	Loyalty Program	Yes
Special Direction – Retail Station Survey	Convenience Store	Yes
Special Direction – Retail Station Survey	Restaurant / Quick-Service Restaurant	Yes
Special Direction – Retail Station Survey	Supermarket / General Store	Yes
Special Direction – Retail Station Survey	Automotive Repair Service Bay	Yes
Special Direction – Retail Station Survey	Car Wash	Yes
Special Direction – Retail Station Survey	Electric Vehicle Charging Station	Yes
Special Direction – Retail Station Survey	Other (Comments)	Yes

Table A8 – All Fuel Data not Treated as Confidential Protected Information

BCUC Reporting Form	Fuel Data Field	Not Confidential Protected Information
FPT Regulation – BC Monthly Importer Report	Currency (for Import Purchase)	No
FPT Regulation – BC Monthly Importer Report	Reporting Period (mm/yyyy)	No
FPT Regulation – BC Monthly Importer Report	Currency (for Transportation Costs)	No
FPT Regulation – BC Monthly Wholesale Purchaser Report	Name of Wholesale Purchaser	No
FPT Regulation – BC Monthly Wholesale Purchaser Report	Currency	No
FPT Regulation – BC Monthly Wholesale Purchaser Report	Transaction Date (mm/dd/yyyy)	No
FPT Regulation – BC Annual Storage Report (Terminal)	BCUC Terminal ID	No
FPT Regulation – BC Annual Storage Report (Terminal)	Terminal Name	No
FPT Regulation – BC Annual Storage Report (Terminal)	Name of Owner/Operator	No
FPT Regulation – BC Annual Storage Report (Terminal)	Terminal Address	No
FPT Regulation – BC Annual Storage Report (Tank)	BCUC Terminal ID	No
FPT Regulation – BC Annual Storage Report (Tank)	Terminal Name	No
FPT Regulation – BC Annual Storage Report (Tank)	BCUC Tank ID	No
FPT Regulation – BC Annual Storage Report (Tank)	Tank Name	No
FPT Regulation – BC Annual Storage Report (Tank)	Fuel Type	No
FPT Regulation – BC Annual Storage Report (Tank)	Fuel Grade	No
FPT Regulation – BC Annual Storage Report (Tank)	Physical Maximum Capacity (Litres)	No
FPT Regulation – BC Annual Storage Report (Tank)	Tank Heel Volume (Litres)	No
FPT Regulation – BC Annual Storage Report (Tank)	Net Useable Capacity (Litres)	No
FPT Regulation – BC Monthly Retail Supplier Report	Fuel Type	No
FPT Regulation – BC Monthly Retail Supplier Report	Fuel Grade	No
FPT Regulation – BC Monthly Retail Supplier Report	Supplier of Reportable Fuel	No
FPT Regulation – BC Monthly Retail Supplier Report	Currency	No
FPT Act Regulatory Reporting Portal - Metadata	Title – file description selected by Responsible Person	No

FPT Act Regulatory Reporting Portal - Metadata	Report Type – reporting form type selected by Responsible Person	No
FPT Act Regulatory Reporting Portal - Metadata	Month – reporting period selected by Responsible Person	No
FPT Act Regulatory Reporting Portal - Metadata	Year – reporting period year selected by Responsible Person	No
FPT Act Regulatory Reporting Portal - Metadata	Report Category – redacted, unredacted, confidentiality request etc., selected by Responsible Person	No
FPT Act Regulatory Reporting Portal - Metadata	Submission ID – unique numeric submission ID generated by Portal	No
FPT Act Regulatory Reporting Portal - Metadata	Original Submission ID – unique numeric submission ID generated by Portal	No
FPT Act Regulatory Reporting Portal - Metadata	Submission Type – new submission, resubmission etc., generated by Portal	No
FPT Act Regulatory Reporting Portal - Metadata	Company – name of Responsible Person generated by Portal	No
FPT Act Regulatory Reporting Portal - Metadata	Archived File URL – internal file path generated by Portal	No
FPT Act Regulatory Reporting Portal - Metadata	Submission Time – submission timestamp generated by Portal	No
FPT Act Regulatory Reporting Portal - Metadata	Report Status – internal tracking for accepted, under review etc., generated by Portal	No
FPT Act Regulatory Reporting Portal - Metadata	Item Type – internal data organization to create an item list of submissions, generated by Portal	No
FPT Act Regulatory Reporting Portal - Metadata	Path – internal file path generated by Portal	No

Attachment B – FPT Act Confidentiality Declaration and Undertaking Form

FPT Act Confidentiality Declaration and Undertaking Form

In accordance with the British Columbia Utilities Commission (BCUC) Framework for the Determination of Confidentiality and Treatment of Protected Information, please provide a completed form to the Commission Secretary at commission.secretary@bcuc.com.

Undertaking

I, _____, in my role as _____ request access to certain confidential Protected Information collected by the BCUC pursuant to the *Fuel Price Transparency Act* (FPT Act) and the Fuel Price Transparency Regulation. A description of the confidential Protected Information I am requesting access to, the reason(s) for my request, including why access to confidential Protected Information is required, and how allowing my request is in accordance with the provisions of the FPT Act are outlined below.

Description of requested confidential Protected Information:	
Reason(s) for the request and why access to confidential Protected Information is required:	
How my request is in accordance with the provisions of the FPT Act:	

I request that I be granted access to the above confidential Protected Information between _____, 20__ and _____, 20__.

I understand that the execution of this undertaking is a condition of an Order of the BCUC, and the BCUC may enforce this Undertaking pursuant to the provisions of the *Administrative Tribunal Act* and the *Utilities Commission Act* (UCA). I understand that any breaches of this Undertaking may constitute a contravention under the UCA and may be subject to Administrative Penalties pursuant to Part 8.1 of the UCA.

I hereby undertake:

- (a) to use the information disclosed under the conditions of this Undertaking exclusively for the purposes described in the access request, above;
- (b) not to divulge, directly, indirectly or in any manner, information disclosed under the conditions of this Undertaking except to a person granted access to such information or to staff of the BCUC;
- (c) not to reproduce, in any manner, information disclosed under the conditions of this Undertaking except for purposes of my request above;
- (d) to keep confidential and to protect the information disclosed under the conditions of this Undertaking;
- (e) to return to the BCUC all documents and materials containing information disclosed under the conditions of this Undertaking, including notes and memoranda based on such information, or to destroy such documents and materials within fourteen (14) days of the deadline established in the BCUC's approval of my access request;
- (f) to abide by any further conditions imposed by the BCUC in its approval of my access request; and
- (g) to report promptly to the BCUC any violation of this Undertaking.

Signed at _____ this _____.

Signature: _____

Name (please print): _____

Representing (if applicable): _____

British Columbia Utilities Commission
 Framework for the Determination of Confidentiality
 and Treatment of Protected Information collected
 pursuant to the *Fuel Price Transparency Act*

Glossary of Terms

7-Eleven	7-Eleven Canada, Inc.
AFD	AFD Petroleum Ltd.
BC	British Columbia
BCOAPO	British Columbia Old Age Pensioners' Organization et al.
BCUC	British Columbia Utilities Commission
Directive 1	Directive 1 of Order G-275-20
FCL	Federated Co-operatives Limited
FPT Act	<i>Fuel Price Transparency Act</i>
FPT Regulation	The Lieutenant Governor established the Fuel Price Transparency Regulation by Order in Council No. 474/20, requiring fuel importers, wholesalers, terminal owners/operators, and those who supply retail dealers to submit regular reports to the BCUC as of November 2020.
Framework	A framework for the determination of confidentiality and treatment of Protected Information submitted as Fuel Data to the BCUC pursuant to the FPT Act
Framework Draft No. 1	Draft Framework issued on February 8, 2021
Framework Draft No. 2	Revised draft Framework issued on May 25, 2021
Fuel Data	(a) information in relation to a reportable activity, and (b) any other information in relation to reportable fuel
G & B	G & B Fuels Inc.
Husky	Husky Energy
Imperial	Imperial Oil
Kalibrate	Kalibrate Canada Inc., formerly Kent Group Ltd.
LCFS	Low Carbon Fuel Standard

NDA	Non-Disclosure Agreement
OIC	Order in Council
Parkland	Parkland Corporation
Portal	BCUC FPT Act Regulatory Reporting Portal
Proposal	A copy of any anonymized or non-anonymized aggregated confidential Protected Information proposed for publication in accordance with section 5.1 of the Framework
Qathet	Qathet Living Magazine, formerly Powell River Living Magazine
Retail Pilot	On August 14, 2020, the Government of BC issued a Special Direction to the BCUC requiring retail dealers of reportable fuels to submit Fuel Data to the BCUC as part of a retail Fuel Data collection pilot.
Shell	Shell Canada Limited
Suncor	Suncor Energy Inc.
Tidewater	Tidewater Midstream and Infrastructure Ltd.
UCA	<i>Utilities Commission Act</i>

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

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

and

Framework for the Determination of Confidentiality and Treatment of Protected Information
Collected under the *Fuel Price Transparency Act*

EXHIBIT LIST

Exhibit No.	Description
<i>COMMISSION DOCUMENTS</i>	
A-1	1. Letter dated September 18, 2020 – Appointing the Panel for the review of the Parkland Corporation Request for Advance Ruling on Confidentiality for <i>Fuel Price Transparency Act</i> Reporting Submissions
A-2	Letter dated September 24, 2020 – BCUC Order G-242-20 establishing a Regulatory Timetable and notice to the public
A-3	Letter dated October 30, 2020 – BCUC Order G-275-20 granting advanced approval of confidential status
A-4	Letter dated November 30, 2020 – BCUC Order G-303-20 establishing an amended regulatory timetable
A-5	Letter dated February 8, 2021 – BCUC establishing proceeding Framework Draft No. 1
A-6	Letter dated March 9, 2021 – BCUC Order G-68-21 establishing an amended regulatory timetable
A-7	Letter dated April 21, 2021 – BCUC Panel Amendment
A-8	Letter dated May 25, 2021 – BCUC Order G-159-21 establishing a further regulatory timetable
A-9	Letter dated May 25, 2021 – BCUC issuing Framework Draft No. 2
A-10	Letter dated June 13, 2021 – BCUC Order G-214-21 further amending the regulatory timetable and establishing oral workshops

- A-11 Letter dated July 27, 2021 – BCUC response to workshop remote attendance requests
- A-12 Letter dated July 30, 2021 – BCUC submitting Workshop Questions
- A-13 Letter dated August 3, 2021 – BCUC response to workshop attendance requests
- A-14 Letter dated August 4, 2021 – BCUC response to workshop requests
- A-15 Letter dated August 11, 2021 – BCUC response to PRLM workshop remote attendance request
- A-16 Letter dated August 20, 2021 – BCUC August 12, 2021 written workshop questions to Husky Energy
- A-17 Letter dated September 3, 2021 – BCUC Order G-260-21 establishing a further regulatory timetable
- A-18 Letter dated September 27, 2021 – BCUC Order G-282-21 amending the regulatory timetable

COMMISSION STAFF DOCUMENTS

- A2-1 Letter dated February 18, 2021 – BCUC Staff Submission of Framework Draft No. 1 Information Workshop Presentation
- A2-2 Letter dated August 5, 2021 – BCUC Staff Submission of August 5, 2021 Framework Draft No. 2 Workshop PowerPoint Presentation

APPLICANT DOCUMENTS

- B-1 2. **PARKLAND CORPORATION (PARKLAND)** - Request for Advance Ruling on Confidentiality for *Fuel Price Transparency Act (FPTA)* Reporting Submissions dated September 16, 2020
- B-2 3.
Letter dated October 22, 2020 – Parkland response to Intervener submissions on confidentiality
- B-3 Letter dated January 13, 2021 – Parkland Submitting response on Directive No. 2 of Order G-303-20
- B-4 Letter dated March 8, 2021 – Parkland Submission on BCUC Framework Draft No. 1
- B-5 Letter dated June 15, 2021 – Parkland Submission on BCUC Framework Draft No. 2
- B-6 Letter dated July 21, 2021 – Parkland Submitting request for remote participation in both workshops
- B-7 Letter dated July 29, 2021 – Parkland Submitting request to provide workshop opening statement on August 12th, 2021
- B-8 Letter dated August 30, 2021 – Parkland Submitting response to Workshop Undertaking No. 1

INTERVENER DOCUMENTS

- C1-1 **SUNCOR ENERGY INC. (SUNCOR)** – Letter dated September 25, 2020 Request for Intervener Status by T. Oleniuk, Blake, Cassels & Graydon LLP
- C1-2 Letter dated October 15, 2020 – Suncor Submitting response on Confidentiality
- C1-3 Letter dated January 13, 2021 – Suncor Submitting response on Directive No. 2 of Order G-303-20
- C1-4 Letter dated March 8, 2021 – Suncor Submission on BCUC Framework Draft No. 1
- C1-5 Letter dated June 15, 2021 – Suncor Submission on BCUC Framework Draft No. 2

- C1-6 Letter dated July 23, 2021 – Suncor Submitting request for remote participation in both workshops
- C1-7 Letter dated August 5, 2021 – Suncor submitting PowerPoint presentation presented at Workshop No. 1 on August 5, 2021
- C1-8 **CONFIDENTIAL** – Letter dated August 5, 2021 - Suncor submitting Confidential PowerPoint presentation presented at the in-camera portion of Workshop No. 1 on August 5, 2021
- C1-9 Letter dated September 10, 2021 – Suncor submitting responses to additional requests made in Workshop No. 1
- C2-1 **7-ELEVEN CANADA, INC. (7-ELEVEN)** – Letter dated September 28, 2020 Request for Intervener Status by K. Wright, DLA Piper (Canada) LLP
- C2-2 Letter dated October 15, 2020 – 7-Eleven Submitting response on Confidentiality
- C2-3 Letter dated January 13, 2021 – 7-Eleven Submitting response on [Directive No. 2 of Order G-303-20](#)
- C2-4 Letter dated March 8, 2021 – 7-Eleven Submission on BCUC Framework Draft No. 1
- C2-5 Letter dated June 15, 2021 – 7-Eleven Submission on BCUC Framework Draft No. 2
- C2-6 Letter dated July 28, 2021 – 7-Eleven submission regarding participation in both workshops and request for schedule
- C2-7 Letter dated September 15, 2021 – 7-Eleven submitting responses to questions presented at the workshop
- C3-1 **HUSKY ENERGY (HUSKY ENERGY)** – Letter dated October 6, 2020 Request for Intervener Status by Graham Walker, Borden Ladner Gervais LLP
- C3-2 Letter dated October 15, 2020 – Husky Submitting response on Confidentiality
- C3-3 Letter dated January 13, 2021 – Husky Submitting response on [Directive No. 2 of Order G-303-20](#)
- C3-4 Letter dated March 8, 2021 – Husky Submission on BCUC Framework Draft No. 1
- C3-5 Letter dated June 15, 2021 – Husky Submission on BCUC Framework Draft No. 2
- C3-6 Letter dated July 21, 2021 – Husky Submitting will not attend Workshops and request for postponement
- C3-7 Letter dated August 31, 2021 – Husky responses to Workshop Questions
- C4-1 **IMPERIAL OIL (IMPERIAL)** – Letter dated October 7, 2020 Request for Intervener Status by Osler, Hoskin & Harcourt LLP

- C4-2 Letter dated October 15, 2020 – Imperial Submitting response on Confidentiality
- C4-3 Letter dated January 12, 2021 – Imperial Submitting response on Directive No. 2 of Order G-303-20
- C4-4 Letter dated March 8, 2021 – Imperial Submission on BCUC Framework Draft No. 1
- C4-5 Letter dated June 15, 2021 – Imperial Submission on BCUC Framework Draft No. 2
- C4-6 Letter dated July 30, 2021 – Imperial Submitting confirmation of attendance for workshops and request flexibility for the August 12, 2021 workshop
- C5-1 **TIDEWATER MIDSTREAM AND INFRASTRUCTURE LTD. (TIDEWATER)** – Letter dated October 7, 2020 Request for Intervener Status by David Barva
- C5-2 Letter dated October 15, 2020 – Tidewater Submitting response on Confidentiality
- C5-3 Letter dated January 13, 2021 – Tidewater Submitting response on Directive No. 2 of Order G-303-20
- C5-4 Letter dated March 8, 2021 – Tidewater Submission on BCUC Framework Draft No. 1
- C5-5 Letter dated June 15, 2021 – Tidewater Submission on BCUC Framework Draft No. 2
- C5-6 Letter dated July 21, 2021 – Tidewater Submitting request for remote participation in both workshops
- C5-7 Letter dated August 3, 2021 – Tidewater Submitting request to provide workshop opening statement on August 5th, 2021
- C5-8 Letter dated September 24, 2021 – Tidewater submitting public response to question presented confidentially at the workshop
- C6-1 **SHELL CANADA LIMITED (SHELL CANADA)** – Letter dated October 7, 2020 Request for Intervener Status by Matthew D. Keen
- C6-2 Letter dated October 15, 2020 – Shell Canada Submitting response on Confidentiality
- C6-3 Letter dated January 13, 2021 – Shell Canada Submitting response on Directive No. 2 of Order G-303-20
- C6-4 Letter dated March 8, 2021 – Shell Submission on BCUC Framework Draft No. 1
- C6-5 Letter dated June 15, 2021 – Shell Submission on BCUC Framework Draft No. 2

- C6-6 Letter dated July 21, 2021 – Shell Submitting request for remote participation in both workshops
- C6-7 Letter dated July 27, 2021 – Shell Submitting request for amendment to workshop schedule
- C6-8 Letter dated August 26, 2021 – Shell Submitting response to Workshop Undertaking No. 1
- C7-1 **FEDERATED CO-OPERATIVES LIMITED (FCL)** – Letter dated October 8, 2020 Request for Intervener Status by Derek Morphy
- C7-2 Letter dated October 15, 2020 – FCL Submitting response on Confidentiality
- C7-3 Letter dated January 13, 2021 – FCL Submitting response on [Directive No. 2 of Order G-303-20](#)
- C7-4 Letter dated March 8, 2021 – FCL Submitting Comments on BCUC Framework Draft No. 1
- C7-5 Letter dated June 14, 2021 – FCL Submitting Comments on BCUC Framework Draft No. 1
- C7-6 Letter dated July 15, 2021 – FCL Submitting request for remote participation in both workshops
- C7-7 Letter dated September 10, 2021 – FCL Submitting responses to undertakings from Workshop No. 1
- C8-1 **G & B FUELS INC. (G & B FUELS)** – Letter dated October 8, 2020 Request for Intervener Status by Lisa Keffer
- C8-2 Letter dated October 15, 2020 – G & B Fuels Submitting response on Confidentiality
- C9-1 **POWELL RIVER LIVING MAGAZINE (PRLM)** – Letter dated January 4, 2021 Request for Intervener Status by Pieta Woolley
- C9-2 Letter dated January 13, 2021 – PRLM Submitting response on Directive No. 2 of Order G-303-20
- C9-3 Letter dated March 8, 2021 – PRLM Submission on BCUC Framework Draft No. 1
- C9-4 Letter dated August 11, 2021 – PRLM Submitting will participate remotely in the Workshop
- C10-1 **BRITISH COLUMBIA OLD AGE PENSIONERS' ORGANIZATION, COUNCIL OF SENIOR CITIZENS' ORGANIZATIONS OF BC, ACTIVE SUPPORT AGAINST POVERTY, DISABILITY ALLIANCE BC, AND TENANT RESOURCE & ADVISORY CENTRE (BCOAPO ET AL)** - Letter dated January 6, 2021 - Request for Intervener Status by Leigha Worth and Irina Mis

- C10-2 Letter dated January 13, 2021 – BCOAPO Submitting response on Directive No. 2 of Order G-303-20
- C10-3 Letter dated March 8, 2021 – BCOAPO Extension Request to file Submission on BCUC Framework Draft No. 1
- C10-4 Letter dated March 10, 2021 – BCOAPO Submission on BCUC Framework Draft No. 1
- C10-5 Letter dated July 30, 2021 – BCOAPO Submitting request for remote participation in both workshops
- C11-1 **AFD PETROLEUM LTD. (AFD)** – Letter dated January 6, 2021 Request for Intervener Status by Matthew Gibbons
- C11-2 Letter dated January 13, 2021 – AFD Submitting response on Directive No. 2 of Order G-303-20

INTERESTED PARTY DOCUMENTS

- D-1 **HOLSTINE, G. (HOLSTINE)** – Submission dated October 7, 2020 Request for Interested Party Status
- D-2 **FRANCIS, ANGELA** - Interested Party registration dated December 15, 2020
- D-2-1 Francis – Letter of Comment dated December 15, 2020
- D-3 **HORVATH, GAIL** - Interested Party registration dated December 22, 2020
- D-3-1 Horvath – Letter of Comment dated December 11, 2020
- D-4 **FRENCH, JOHN** - Interested Party registration dated December 22, 2020
- D-5 **CANADIAN INDEPENDENT PETROLEUM ASSOCIATION (CIPA)** - Interested Party registration dated March 2, 2021 by Michelle Coates Mather

LETTERS OF COMMENT

- E-1 Ramus, S. – Letter of Comment dated September 30, 2020
- E-2 McVeigh, A. – Letter of Comment dated October 7, 2020
- E-3 Carter, D. – Letter of Comment dated October 13, 2020

- E-3-1 Carter, D. – Additional Letter of Comment dated January 10, 2021
- E-4 REMOVED now Exhibit D-3-1
- E-5 Antweiler, W. – Letter of Comment dated January 7, 2021
- E-6 Canadian Independent Petroleum Marketers Association (CIPMA) – Letter of Comment dated January 12, 2021
- E-7 Wong, A. – Letter of Comment dated January 13, 2021
- E-8 Competition Bureau – Letter of Comment dated January 13, 2021
- E-8-1 Competition Bureau – Additional Letter of Comment dated March 8, 2021
- E-9 Rea, M. – Letter of Comment dated February 25, 2021
- E-9-1 Rea, M. – Letter of Comment dated June 24, 2021
- E-10 Anderson, K – Letter of Comment dated August 3, 2021