



ORDER NUMBER
G-275-22

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

and

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

and

Gateway Service Station FSJ Ltd.
Alleged Contravention of Section 5(1) of FPT Act

BEFORE:

B. A. Magnan, Commissioner

on October 4, 2022

ORDER

WHEREAS:

- A. On May 31, 2022, the British Columbia Utilities Commission (BCUC), as Administrator of the *Fuel Price Transparency Act* (FPT Act), commenced a hearing regarding Gateway Service Station FSJ Ltd.'s (Gateway Esso) alleged contravention of section 5 (1) of the FPT Act;
- B. In August 2020, the BC government announced the Fuel Price Transparency Regulation outlined in Order in Council (OIC) No. 474/20, under the FPT Act. This regulation requires fuel importers, wholesalers, terminal owners/operators, and those who supply fuel to retail dealers to report information and data on their activities in the gasoline and diesel fuel market in the province. These entities are considered Responsible Persons within the FPT Act and are required to make regular reports to the BCUC via the Fuel Price Transparency Regulatory Reporting Portal (Portal) in accordance with Fuel Price Transparency Regulation's reporting guidelines;
- C. BCUC staff conducted an investigation into Gateway Esso's October 2020 fuel data reporting period and on May 26, 2022, provided a report and evidence on the matter to the BCUC;
- D. On June 16, 2021, Gateway Esso registered as a Responsible Person in relation to the FPT Act and on July 31, 2021 Gateway Esso submitted its July 2021 fuel data, confirming that Gateway Esso identifies itself as a Responsible Person and is required to report fuel data in accordance with the FPT Act. The BCUC contacted Gateway Esso thirteen (13) times by way of letter, email and phone-call regarding the requirement to submit fuel data for the October 2020 period, which was originally due by November 16, 2020 via the Portal. By the submission date of BCUC staff's investigation report, Gateway Esso had not submitted its October 2020 report via the Portal to the BCUC;

- E. BCUC staff concluded that Gateway Esso's alleged contravention is a failure to submit October 2020 fuel data by the deadline established and in the format required by the BCUC. Staff recommended the BCUC impose an administrative penalty in the amount of \$1,000 on Gateway Esso in accordance with section 12 (1) (a) of the FPT Act and the Administrative Penalties (FPT Act) Regulation;
- F. On May 31, 2022, the BCUC sent Gateway Esso a notice of intent to impose an administrative penalty via registered mail, with the BCUC staff investigation report dated May 26, 2022 attached, and it is considered to have been served on Gateway Esso 14 days after the posting date. Under section 3 of the Administrative Penalties (FPT Act) Regulation, if Gateway Esso wished to make representations in respect of the alleged contravention, Gateway Esso must have made a request in writing to the BCUC within 30 days after the date the notice of intent is served;
- G. The BCUC considers a determination on the alleged contravention of section 5 (1) of the FPT Act is warranted.

NOW THEREFORE pursuant to section 12 (1) (a) of the FPT Act, and for the reasons set out in Appendix B of this order, the BCUC orders as follows:

- 1. Gateway Esso has contravened section 5 (1) of the FPT Act by failing to submit October 2020 fuel data by the prescribed date and in the form and manner required by the BCUC.
- 2. Gateway Esso is directed to make full payment to the Minister of Finance of the penalty amount stipulated in the Notice of Penalty attached as Appendix A to this order within 30 days of the issuance of this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 4th day of October 2022.

BY ORDER

Original signed by:

B. A. Magnan
Commissioner

Attachment

NOTICE OF PENALTY

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

and

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

and

Gateway Service Station FSJ Ltd.
Alleged Contravention of Section 5(1) of FPT Act

Pursuant to section 12 (1) (a) of the *Fuel Price Transparency Act* (FPT Act) and the *Utilities Commission Act* (UCA), and in accordance with the Reasons for Decision attached as Appendix B to this order, the British Columbia Utilities Commission (BCUC) hereby notifies Gateway Service Station FSJ Ltd. (Gateway Esso) that:

The following administrative penalty has been levied against Gateway Esso for its contravention of section 5 (1) of the FPT Act:

- Failure to submit October 2020 fuel data by the prescribed date and in the form and manner required by the BCUC - \$1,000

Gateway Esso is ordered to make full payment of the penalty amount stipulated in this Notice of Penalty to the Minister of Finance within 30 days of issuance date.

Gateway Esso may appeal this Notice of Penalty under section 101 of the UCA or apply for a reconsideration in writing under section 99 of the UCA addressed to:

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Gateway Service Station FSJ Ltd.
Alleged Contravention of Section 5(1) of FPT Act

REASONS FOR DECISION

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1.0 Introduction

1.1 Background

In August 2020, the BC government announced the Fuel Price Transparency Regulation (FPT Regulation) outlined in Order in Council (OIC) No. 474/20, under the *Fuel Price Transparency Act* (FPT Act). This regulation requires fuel importers, wholesalers, terminal owners/operators, and those who supply fuel to retail dealers to report information and data on their activities in the gasoline and diesel fuel market in the province. These entities are considered Responsible Persons within the FPT Act and are required to make regular reports to the British Columbia Utilities Commission (BCUC) via the Fuel Price Transparency Regulatory Portal (Portal) in accordance with the FPT Regulation's reporting guidelines.

As the Administrator of the FPT Act, the BCUC is responsible for ensuring compliance with the regulations established under it. BCUC staff conducted an investigation into Gateway Service Station FSJ Ltd.'s (Gateway Esso) October 2020 fuel data reporting period and concluded Gateway Esso's alleged contravention is a failure to submit October 2020 fuel data by the deadline established and in the format required by the BCUC. Staff recommend the BCUC impose an administrative penalty in the amount of \$1,000 on Gateway Esso in accordance with section 12 (1) (a) of the FPT Act and the Administrative Penalties (FPT Act) Regulation.

1.2 Legislative Authority

Under section 5 (1) of the FPT Act, a Responsible Person is required to submit fuel data to the Administrator for each reporting period by the prescribed date and in the form required by the Administrator. As per section 12 (1) (a) of the FPT Act, if a Responsible Person does not submit prescribed fuel data by the date and in the form required by the Administrator as required under section 5 (1), the Administrator may impose administrative penalties. By OIC No. 123/20 dated March 9, 2020, the Lieutenant Governor in Council (LGIC) designated the British Columbia Utilities Commission (BCUC) as the Administrator of the FPT Act.

On November 1, 2021, the LGIC ordered OIC No. 596, which established the Administrative Penalties (FPT Act) Regulation. Pursuant to the Administrative Penalties (FPT Act) Regulation, a contravention of the FPT Act includes the following:

- a. a contravention of a provision listed in section 12 (1) (a) to (f) of the FPT Act;
- b. the provision of false or misleading information or records in a submission under the Act or to an inspector conducting an inspection under the FPT Act; or
- c. the making of a false statement in periodic submissions, requested submissions, or supplementary submissions of the FPT Act.

Section 4 of the Administrative Penalties (FPT Act) Regulation lists the factors the Administrator must consider in determining the administrative penalty amount. Section 4.0 below sets out the factors and the Panel's analysis. Section 5 of Administrative Penalties (FPT Act) Regulation establishes that the maximum amount of an administrative penalty that may be imposed under section 12 (1) of the FPT Act for each contravention or other action is \$100,000.

1.3 Regulatory Process

On May 26, 2022, BCUC staff issued its investigation report into Gateway Esso's October 2020 fuel data reporting period to the BCUC. On May 31, 2022, the BCUC issued its notice of intent to impose an administrative penalty informing Gateway Esso of its rights under section 3 of the Administrative Penalties (FPT Act) Regulation.

If Gateway Esso makes a request in accordance with section 3 of Administrative Penalties (FPT Act) Regulation, the BCUC must conduct a hearing before imposing an administrative penalty on Gateway Esso. The notice of intent to impose an administrative penalty, with the BCUC staff investigation report dated May 26, 2022 attached, was sent via registered mail to Gateway Esso and is considered to have been served on Gateway Esso 14 days after the posting date. If Gateway Esso wished to make representations in respect of the alleged contravention, Gateway Esso must have made a request in writing to the BCUC within 30 days of the date by which the notice of intent is considered to be served, in accordance with section 3 of Administrative Penalties (FPT Act) Regulation. Should Gateway Esso not respond in writing to the BCUC requesting an opportunity to make representations, the BCUC may determine whether Gateway Esso is in contravention of the FPT Act and may impose an administrative penalty on Gateway Esso.

2.0 Alleged Contravention Facts and BCUC Staff Assessments

On June 16, 2021, Gateway Esso registered as a Responsible Person in relation to the FPT Act confirming that Gateway Esso identifies itself as a Responsible Person and is required to report fuel data as per the FPT Act. On July 30, 2021, Gateway Esso submitted its July 2021 fuel data via the Portal.

By the date of the BCUC staff investigation report, May 26, 2022, the BCUC contacted Gateway Esso thirteen (13) times by way of letter or email regarding the requirement to submit fuel data for the October 2020 period, which was originally due by November 16, 2020 via the Portal. The record of correspondence was attached to the BCUC investigation report as Attachment 2. By the date of the BCUC staff investigation report, Gateway Esso had not submitted its October 2020 report via the Portal to the BCUC.

BCUC staff concluded that Gateway Esso's alleged contravention is a failure to submit October 2020 fuel data by the deadline established and in the format required by the BCUC. Staff recommended the BCUC impose an administrative penalty in the amount of \$1,000 on Gateway Esso in accordance with section 12 (1) (a) of the FPT Act and the Administrative Penalties (FPT Act) Regulation. The factors which BCUC staff used to assess the alleged contravention and determine its recommended penalty are set out in the table below:

Penalty Assessment Factors	Facts and Evidence	Staff Analysis
<p>a) the person's history of compliance with the Act, including whether and how often the person has previously</p> <ul style="list-style-type: none"> i) contravened any of sections 5 to 8 of the Act; ii) provided false or misleading information or records in a submission under the Act or to an inspector conducting an inspection under the Act; iii) made a false statement under section 5 (3) (b) <i>[periodic submissions]</i>, 6 (3) (b) <i>[requested submissions]</i> or 7 (3) (b) <i>[supplementary submissions]</i> of the Act 	<p>Gateway Esso has no history of non-compliance prior to this apparent contravention.</p>	<p>As there is no history of non-compliance, staff recommend a penalty at the lower range of the scale.</p>
<p>b) any previous administrative penalties imposed on</p> <ul style="list-style-type: none"> i) the person; ii) if the person is an individual, a corporation of which the individual is or was an employee, officer, director or agent; iii) if the person is a corporation, an employee, officer, director or agent of the corporation 	<p>The BCUC has not imposed previous administrative penalties on Gateway Esso</p>	<p>As the BCUC has not previously imposed administrative penalties on Gateway Esso, staff recommend a penalty at the lower range of the scale.</p>
<p>c) whether the contravention or other action was repeated or continuous</p>	<p>The October 2020 fuel data was originally due on November 16, 2020. Gateway Esso was provided multiple reminders to submit the October 2020 fuel data to the BCUC via the Portal.</p> <ul style="list-style-type: none"> • Gateway Esso requested BCUC staff assistance with Portal Registration on May 7, 2021, and for submitting data on July 30, 2021. • On July 30, Gateway Esso provided the July 2021 fuel data via the Portal. • To date, Gateway Esso has not submitted the October 2020 fuel data via the Portal. 	<p>The alleged contravention is continuous as Gateway Esso has yet to submit the 2020 fuel data via the Portal as required.</p>

Penalty Assessment Factors	Facts and Evidence	Staff Analysis
d) whether the contravention or other action was deliberate	<p>On June 16, 2021, Gateway Esso registered as a Responsible Person in relation to the FPT Act.</p> <ul style="list-style-type: none"> • The BCUC has sent several letters to Gateway Esso requesting that they submit the October 2020 fuel data. • Gateway Esso requested assistance with Portal Registration on May 7, 2021, and again for preparing the reports on July 30, 2021 • To date, Gateway Esso has not submitted the October 2020 fuel data via the Portal. 	Gateway Esso registered as a reporting entity and is aware of the requirement to submit the October 2020 fuel data via the Portal; staff therefore consider the alleged contravention to be deliberate.
e) the gravity and magnitude of the contravention or other action	As per section 5 (1) of FPT Act, eligible Responsible Persons are required to submit prescribed fuel data to the BCUC for each reporting period.	The BCUC has not received any complaints or inquiries about the missing fuel data, leading staff to conclude the gravity or magnitude of the alleged contravention is limited. Given the limited gravity and magnitude of the alleged contravention, staff recommend a penalty at the lower range of the scale.
f) the person's efforts to prevent or correct the contravention or other action	<ul style="list-style-type: none"> • On May 7, 2021 Gateway Esso emailed the BCUC requesting assistance with Registering; • On June 16, 2021 Gateway Esso registered in Portal • On July 30, 2021 Gateway Esso emailed the BCUC requesting assistance with Submissions; 	None provided
g) In the case of an audit under section 10 <i>[audits]</i> of the Act or an inspection under section 11 (7) or (8) <i>[inspections]</i> of the Act, the degree and quality of the person's cooperation	Not applicable	Not applicable
h) whether any undue hardship that might arise from the amount of the penalty	Staff is unaware of the ownership structure for Gateway Esso.	Staff have no evidence that an administrative penalty may cause undue hardship at this time.
i) any other matter the administrator considers relevant	Gateway Esso submitted the July 2021 fuel data via the Portal.	Gateway Esso is aware of the reporting requirement and has previously submitted other fuel data via the Portal, but not the October 2020 fuel data as required.

3.0 Panel Determination on Contravention

Before determining whether a contravention of 5(1) of the FPT Act has occurred, the Panel first considers whether Gateway Esso is a Responsible Person and, therefore, must submit prescribed fuel data pursuant to the FPT Regulation.

By letter dated November 23, 2020, Gateway Esso was informed that a review of its operations indicated that it may be a Responsible Person and required to report under the FPT Act and FPT Regulation. After this point, the BCUC corresponded with Gateway Esso by various means to, among other things, remind Gateway Esso of the potential obligation to report fuel data and to provide support and instructions to register and submit its fuel data. On June 16, 2021, Gateway Esso registered as a Responsible Person in relation to the FPT Act and on July 30, 2021 submitted its July 2021 fuel data via the Portal. Both actions confirmed that Gateway Esso identifies itself as a Responsible Person and is required to report fuel data in accordance with the FPT Act.

After reviewing the evidence, the Panel finds that Gateway Esso is a Responsible Person and is required to report under the FPT Act and FPT Regulation for the October 2020 reporting period.

Section 5(1) of the FPT Act states that a person who is a Responsible Person in all or part of a reporting period must submit the prescribed fuel data for the reporting period to the BCUC. Pursuant to section 5(2)(a) the submissions must be made by the prescribed date for the reporting period. In this case, Gateway Esso did not submit the prescribed fuel data by the prescribed date, November 16, 2020. Gateway Esso has not submitted the prescribed fuel data by date of this Order.

After a review of the evidence, the Panel determines that pursuant to section 12(1)(a) of the FPT Act, Gateway Esso has contravened section 5 (1) of the FPT Act by failing to submit October 2020 fuel data by the deadline established.

4.0 Panel Determination on Penalty Amount

Pursuant to section 12(1) of the FPT Act, the BCUC may impose an administrative penalty if it is satisfied on a balance of probabilities that the person has contravened the FPT Act. As discussed above, the Panel has found that Gateway Esso contravened the FPT Act. However, before imposing an administrative penalty on a person, the Panel must consider sections 4(a) through (i) of the Administrative Penalties (FPT Act) Regulation.

(a) Previous History of Compliance

As this proceeding is regarding the first reporting period following the enactment of the FPT Regulation and Gateway Esso has no previously known obligation to submit data pursuant to the FPT Act, the Panel finds it of no consequence that Gateway Esso has no history of compliance with the FPT Act.

In light of this history and the proceeding being the first case involving the determination of penalties for the FPT Act contraventions by Gateway Esso, the Panel finds the history of compliance neither an aggravating nor mitigating factor.

(b) Previous Administrative Penalties

As this proceeding is the first BCUC proceeding involving the determination of penalties for the contravention of section 5(1) of the FPT Act, the Panel finds it of no consequence that Gateway Esso has never been subject to an administrative penalty in respect of a contravention of section 5(1).

Therefore, the Panel finds the absence of previous administrative penalties neither an aggravating nor mitigating factor.

(c) Repeated or Continuous Contravention

Since the Panel found that Gateway Esso did not submit the prescribed fuel data by the prescribed date, November 16, 2020 and that Gateway Esso has not submitted the prescribed fuel data by date of this Order, the Panel finds the evidence demonstrates that the contravention of section 5(1) of the FPT Act was continuous throughout the period of November 23, 2020 until the date of this order.

Accordingly, the Panel finds that the contravention is not a repeated contravention but is a continuous contravention. The Panel notes that the Administrative Penalties (FPT Act) Regulation requires the BCUC to consider whether a contravention is repeated or continuous. In this instance, the Panel finds that contravention was not a repeated contravention but that it was a continuous contravention. Given the disjunctive wording of the statute (repeated or continuous) the Panel views that it is not required to find that the contravention is both repeated and continuous in order to consider this an aggravating factor. **Rather, the Panel considers that either a repeated or continuous contravention in and of itself to be sufficient as an aggravating factor. Accordingly, the Panel finds the continuous nature of the contravention to be an aggravating factor.**

(d) Whether the Contravention was deliberate

Despite BCUC staff contacting Gateway Esso 13 times via letter, email and phone, the Panel considers that Gateway Esso expended little effort to correct the contravention over the long period of non-compliance; Gateway Esso registered with the Portal, submitted the July 2021 fuel data via the Portal, and to date has not submitted the October 2020 fuel data. **In light of this, the Panel finds that the repeated refusal to submit the prescribed fuel data via the Portal was deliberate.**

Therefore, the Panel finds that the deliberate nature of the contravention is an aggravating factor in the circumstances.

(e) Gravity and Magnitude of Contravention

While BCUC staff spent considerable time and effort to attempt to bring Gateway Esso into compliance with the FPT Act, the non-compliance did not cause inquiries or complaints, and therefore **the Panel finds that the contravention was of limited impact and the absence of any evidence of direct harm flowing from this contravention of first instance is a mitigating factor.**

(f) Effort to Prevent or Correct Contravention

The evidence indicates Gateway Esso corresponded with the BCUC on several occasions to discuss how to register for the Portal and how to submit its data to the BCUC. As previously discussed, Gateway Esso registered for access to the Portal on June 16, 2021 and had requested and received assistance with submission from BCUC staff via phone-calls, demonstrating recognition of failing to submit the prescribed fuel data to the BCUC. However, minimal effort was made to correct the contravention of failing to submit the October 2020 fuel data.

In light of this history, the Panel finds Gateway Esso's lack of effort to correct the contravention is an aggravating factor.

(g) In the case of an audit under section 10 [audits] of the Act or an inspection under section 11 (7) or (8) [inspections] of the Act, Degree and Quality of Cooperation

As Gateway Esso was not subject to an audit nor inspection, section 4(g) is not applicable.

(h) Undue Hardship that might Arise from the Amount of the Penalty

There is no evidence that the BCUC staff recommended \$1,000 penalty would cause undue hardship.

The Panel finds the absence of any evidence of undue hardship to be neither aggravating nor mitigating.

(i) Any Other Relevant Matters

Gateway Esso submitted the July 2021 fuel data successfully via the Portal and therefore demonstrated awareness of the reporting requirement and knowledge of how to use the Portal.

The Panel finds that this is an aggravating factor.

Summary of Findings Relating to Factors

The Panel summarizes its findings regarding factors as detailed in sections 4(a) through (i) of the Administrative Penalties (FPT Act) Regulation:

- (a) Previous History of Compliance: Neither aggravating nor mitigating;
- (b) Previous Administrative Penalties: Neither aggravating nor mitigating;
- (c) Repeated or Continuous Contravention: Aggravating;
- (d) Whether the Contravention was deliberate: Aggravating;
- (e) Gravity and Magnitude of Contravention: Mitigating;
- (f) Effort to Prevent or Correct Contravention: Aggravating;
- (g) In the case of an audit under section 10 [audits] of the Act or an inspection under section 11 (7) or (8) [inspections] of the Act, Degree and Quality of Cooperation: Not applicable;
- (h) Undue Hardship that might Arise from the Amount of the Penalty: Neither aggravating nor mitigating;
and
- (i) Any Other Relevant Matters (demonstrated knowledge of how to use the Portal): Aggravating.

Penalty Consideration for Contravention

In consideration of an appropriate administrative penalty, the Panel recognizes that while Gateway Esso does not have a history of non-compliance, the October 2020 fuel data was not submitted via the Portal by the date of this order. The Panel has discretion to determine the appropriate penalty amount, but that discretion must be exercised in a reasonable manner, having due regard to the nature and seriousness of the contravention as detailed in sections 4(a) through (i) of the Administrative Penalties (FPT Act) Regulation. The contravention was deliberate and continuous, and the Panel places considerable weight on the fact that Gateway Esso made little effort to correct the contravention despite repeated efforts by BCUC staff to explain and assist in the submission process.

After weighing the risks and severity of the contravention, and considering that no apparent harm has arisen due to the contravention, the Panel finds that a penalty in the lower end of the \$0–\$100,000 range that may be imposed under section 12(1) of the FPT Act for each contravention is justified.

The Panel determines, in accordance with section 12 (1) (a) of the FPT Act and sections 4(a) through (i) of the Administrative Penalties (FPT Act) Regulation, that Gateway Esso is required to pay, by way of electronic funds transfer or cheque within 30 days of issuance of this order to the Minister of Finance, \$1,000 in administrative penalty in respect of Gateway Esso’s contravention of section 5(1) of the FPT Act.