



ORDER NUMBER
G-351-22

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

and

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

British Columbia Utilities Commission
Review of Requests for Confidentiality
for *Fuel Price Transparency Act* Fuel Data Submissions

BEFORE:

E. B. Lockhart, Panel Chair
B. A. Magnan, Commissioner
A. Pape-Salmon, Commissioner

on December 5, 2022

ORDER

WHEREAS:

- A. On March 11, 2022, the British Columbia Utilities Commission (BCUC) issued requests for fuel data (Fuel Data) and information to 1) wholesale marketers who supply British Columbia's retail fuel market and 2) select retail stations located in each of Powell River, Revelstoke, Squamish, Metro Vancouver, and nearby cities. On March 25, 2022, the BCUC issued an additional Fuel Data request to a sample of retail stations from all regions across the province for their fuel sales and margins for February and March 2021 and February and March 2022 (altogether, the Fuel Data Requests);
- B. Section 6 of the *Fuel Price Transparency Act* (FPT Act), provides, in part, that Responsible Persons must provide Fuel Data or any records referred to in section 8 (1) of the FPT Act, if requested by the BCUC as administrator of the FPT Act;
- C. By Decision and Order G-14-22 dated January 20, 2022, the BCUC found 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, and established the Framework for the Determination of Confidentiality and Treatment of Protected Information collected pursuant to the FPT Act (Confidentiality Framework);
- D. Section 4 of the Confidentiality Framework establishes that for any Fuel Data or other information or records submitted for the FPT Act that are not already designated as "confidential Protected Information" for which a Responsible Person is requesting confidential treatment, the process set out in Part IV of the BCUC's Rules of Practice and Procedure (Rules) shall apply;

- E. By June 29, 2022, twenty (20) Responsible Persons had filed requests for confidential Protected Information status to be granted to the Fuel Data and information submitted pursuant to the Fuel Data Requests (Confidentiality Requests);
- F. The BCUC noted that the Confidentiality Requests received had wider implications to all Responsible Persons who may seek similar relief for confidentiality of information they are required to file pursuant to the Fuel Data Requests. For regulatory efficiency, the BCUC, by Order G-183-22 dated July 5, 2022, established a public hearing to broadly review the matter regarding a ruling on confidential Protected Information status and requested Responsible Persons to make written submissions on their views regarding confidentiality;
- G. By Orders G-205-22, G-245-22, and G-263-22, the regulatory timetable was amended to extend the deadline for written submissions and reply submissions;
- H. Suncor Energy Products Partnership, Imperial Oil Limited, Cenovus Energy Inc., Parkland Corporation, Shell Canada Limited, Federated Co-operatives Limited, 7-Eleven Canada Inc., Tidewater Midstream and Infrastructure Inc. and the Competition Bureau of Canada all filed written submissions on the proposed categories. All Responsible Persons agreed on the Fuel Data proposed to be confidential Protected Information and all disagreed on Annual Income Statement, EBITDA, Revenue, Operating Costs, Gross Cost, Gross Sales and Gross Margins being not confidential Protected Information; and
- I. The BCUC has reviewed the submissions and considers that certain determinations are warranted.

NOW THEREFORE the BCUC orders as follows:

- 1. For the reasons stated in the Decision issued concurrently with this order, the confidential Protected Information status of Fuel Data submitted pursuant to the Fuel Data Requests is adopted by the BCUC in accordance with the table contained in section 4.0 of the Decision, effective immediately.
- 2. The BCUC will consider the status of the Fuel Data collected pursuant to the Fuel Data Requests and designated as confidential Protected Information in accordance with section 4.0 of the Decision in its two-year review, as detailed in section 5.3 of the Confidentiality Framework attached to Decision and Order G-14-22.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of December 2022.

BY ORDER

Original signed by:

E. B. Lockhart
Commissioner

Attachment

British Columbia Utilities Commission

**Review of Requests for Confidentiality
for *Fuel Price Transparency Act* Fuel Data Submissions**

Decision

December 5, 2022

Before:
E. B. Lockhart, Panel Chair
B. A. Magnan, Commissioner
A. Pape-Salmon, 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 Data¹ to promote market competitiveness and public confidence in the competitiveness of the transportation fuel market.

Pursuant to section 6 of the FPT Act, on March 11, 2022, the BCUC requested profit margins of refining and marketing/distribution functions, fuel sales, volumes, and transportation costs from wholesale fuel marketers, refiners, and a subset of retail dealers who own select retail fuel stations in British Columbia. Further, on March 25, 2022, the BCUC requested fuel sales and margins from selected retail stations across the province for February and March of 2021 and 2022 (altogether, the Fuel Data Requests).

Although BCUC Decision and Order G-14-22 established the Framework for the Determination of Confidentiality and Treatment of Protected Information collected pursuant to the FPT Act for ongoing monthly reporting, the Fuel Data submitted pursuant to the Fuel Data Requests were not contemplated at the time it was issued. Therefore, after the BCUC received a number of confidentiality request forms submitted by the selected Responsible Persons, the BCUC endeavored to be regulatorily efficient by establishing a public hearing process to uniformly designate certain categories of Fuel Data submitted by Responsible Persons as either confidential or not confidential Protected Information.

The Decision sets out the reasons supporting the designation of categories of Fuel Data and information submitted in response to the Fuel Data Requests dated March 11 and 25, 2022, according to the following table:

Panel Determinations for Grouping Data/Information in Confidentiality Requests	
Confidential Protected Information	NOT Confidential Protected Information
All Retail Fuel Data	Reporting Period
All Refiner Fuel Data	Currency
Internal ID	Name of Responsible Person
Monthly Volume of Fuel Purchased	Terminal Address
Monthly Volume of Fuel Imported	Transaction Date
Monthly/Daily Volume of Fuel Sold	Fuel Type/Grade Supplied to Retailer(s)
Volume Sold at Terminal	
Monthly Gross Margin	
Monthly Transportation Costs	
Purchase Price of Fuel	
Selling Price of Fuel	
Rebates/Adjustments	
Gross Margins	
Gross Sales	
Gross Costs	
Operating Costs	
Annual Income Statement	
EBITDA	
Revenue	
Comments	
Shipment Date	
Counterparty Information	

¹ *Fuel Price Transparency Act*, definition of “Fuel Data”.

The Panel considers that changes to the BC fuel market and the passage of time may have similar effects on the confidential status of Protected Information submitted pursuant to the Fuel Data Requests as they may have to submissions contemplated in the Confidential Framework. Therefore, the BCUC will consider the confidential status of the Fuel Data collected pursuant to the Fuel Data Requests covered in this decision in its two-year review in 2024, as detailed in section 5.3 of the Confidentiality Framework, to determine whether there has been a change to the public interest in the confidential Protected Information. The BCUC may aggregate, anonymize, or make other alterations to confidential Protected Information to permit publication of Fuel Data the BCUC collected pursuant to the Fuel Data Requests in the future. If it does, the Panel reminds Responsible Persons that the BCUC will continue to follow the process detailed in section 5.1 of the Confidentiality Framework.

1.0 Introduction

1.1 Background

On March 11, 2022, the British Columbia Utilities Commission (BCUC) announced it was continuing its fuel pricing investigations with a focus on gathering further data from wholesale fuel marketers, refiners and a subset of retail dealers who own select retail fuel stations in British Columbia (BC). This investigation included the collection of data related to profit margins of refining and marketing/distribution functions, reportable fuel sales, volumes, and transport costs for the past three years, from fuel wholesalers and refiners who supply retail stations in BC. In addition, select retail stations located in Metro Vancouver, Powell River, Revelstoke, and Squamish and stations near these cities (for comparison purposes) were required to submit further data related to reportable fuel sales operations, gross margins, and transport costs. These cities were selected as they were observed as having the highest retail fuel prices and retail margins during [Exploration Project #1](#).²

On March 25, 2022, in an effort to confirm the fuel industry is not profiting from recent international events and unfairly increasing the price of fuel for consumers, the BCUC selected a sample of retail stations from all regions across the province and required them to submit monthly statements for their fuel sales and margins for February and March 2021 and February and March 2022. This is in addition to the data collected via the March 11, 2022, announcement.

A number of the Responsible Persons have submitted Confidentiality Request Forms for the Fuel Data³ and information submitted pursuant to the Fuel Data requests issued on March 11 and 25, 2022 (Fuel Data Requests). The Responsible Persons broadly contended in their Confidentiality Request Forms that public interest in the publication of raw data does not, at this time, outweigh any potential harm to Responsible Persons and would harm their ability to conduct business.

1.2 Legislative Authority

In November 2019, the government of British Columbia (BC) enacted the *Fuel Price Transparency Act* (FPT Act).⁴

The FPT Act requires Responsible Persons engaged in Reportable Activity⁵ 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” (Fuel Data) on their Reportable Activities to the Administrator of the FPT Act. In March 2020, the BCUC was designated the Administrator of the FPT Act.⁶ As the Administrator, the BCUC is responsible for

² From June 1, 2020 to December 31, 2020, the BCUC collected information about gas and diesel prices in Kamloops, Kelowna, West Kelowna, Port Alberni, Powell River, Revelstoke, Squamish, and Vernon.

³ The *Fuel Price Transparency Act* defines Fuel Data as (a) information in relation to a reportable activity, and (b) any other information in relation to reportable fuel.

⁴ *Fuel Price Transparency Act*, dated November 28, 2019.

⁵ The *Fuel Price Transparency Act* defines Reportable Activity as (a) processing, refining, storing, transporting, marketing or supplying reportable fuel, and (b) a prescribed activity in relation to reportable fuel.

⁶ Section 2 of the *Fuel Price Transparency Regulation* BC Reg. 52/2020.

collecting Fuel Data to promote market competitiveness and public confidence in the competitiveness of the fuel market.⁷

By Order in Council No. 474/20, the Lieutenant Governor enacted 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. Further, Section 6 of the FPT Act allows the BCUC, as the Administrator, to request any Fuel Data in relation to a Reportable Activity from Responsible Persons be submitted by the date specified and in the manner and form required. The submission must be accompanied by the prescribed information about the person and a statement, signed by the person or a director or officer of the person, that the submission is accurate and complete.⁸

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.

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

- a) Trade Secrets⁹ of a Responsible Person, or
- b) commercial, financial, labour relations, scientific or technical information of or about a Responsible Person.

On January 20, 2022, the BCUC issued Decision and Order G-14-22 establishing the Framework for the Determination of Confidentiality and Treatment of Protected Information collected pursuant to the FPT Act (Confidentiality Framework). Having undertaken the balancing test set out in section 9(2)(b) of the FPT Act, the BCUC found 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 Fuel 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” (CPI) throughout the Decision and in the

⁷ 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.

⁸ *Fuel Price Transparency Act*, Part 3, Section 6.

⁹ 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.

Framework. CPI cannot be published in its raw (i.e., unaggregated and non-anonymized) form. All other Fuel Data the BCUC collects is not CPI and may be published in its raw form. Decision and Order G-14-22 also set out the reasons supporting the BCUC's determinations as to the content of the Framework, which includes, among other things:

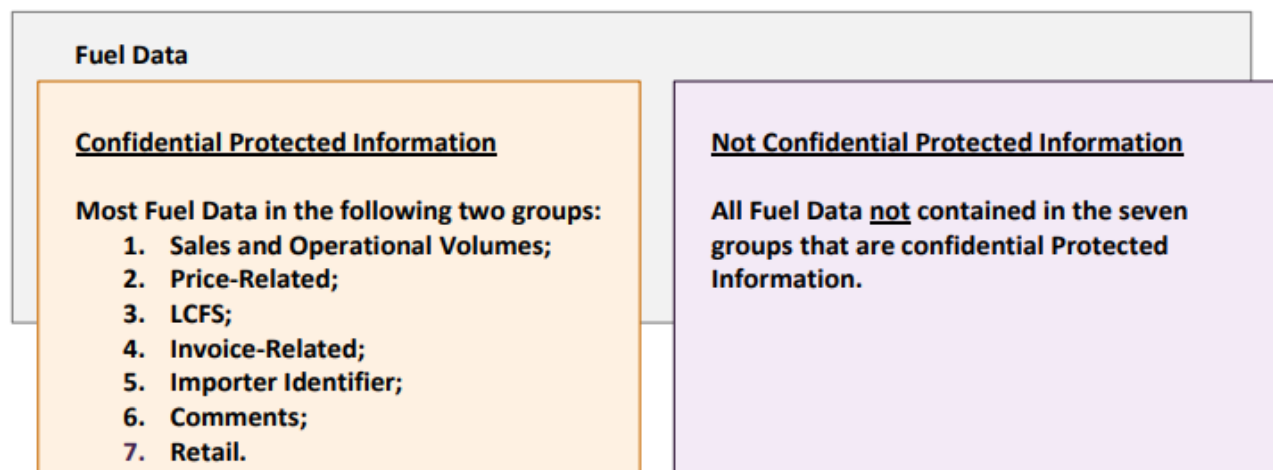
- the principles that guide the BCUC's determination of confidentiality (promotion of transparency, promotion of market competitiveness, and reducing regulatory burden);
- the process for requesting confidential treatment of Fuel Data which has not already been determined to be CPI;
- the tools for publishing Fuel Data that has been identified as CPI:
 - 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 CPI;
 - the publication following a two-year review by the BCUC as to whether there has been a change to the public interest in the CPI, such that confidential treatment is no longer warranted (section 5.3 process of the Framework); and
- that would govern any disclosure of CPI by the BCUC on a confidential basis.

1.3 Regulatory Process

By Order G-183-22 dated July 5, 2022, the BCUC established a public hearing to review the confidentiality requests in accordance with the Confidentiality Framework. The Confidentiality Framework outlines a process to determine CPI status for certain Fuel Data Responsible Persons submit to the BCUC pursuant to the FPT Act.

Attachment A to the Confidentiality Framework provides Figure A1 and lists the seven groups of Fuel Data the BCUC identified as CPI as well as the Fuel Data that do not constitute CPI.

Figure A1 – Grouping of Fuel Data



Section 4.0 of the Confidentiality Framework provides that “[s]hould 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 CPI 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 BCUC recognized that the confidentiality requests received from a number of Responsible Persons have wider implications to all Responsible Persons who are required to file Fuel Data pursuant to the Fuel Data Requests. In order to address these requests efficiently, the BCUC proposed to uniformly designate categories of Fuel Data as CPI, broadly aligned with the logic of Figure A1 in the Confidentiality Framework. The BCUC proposed to designate the categories of Fuel Data and information submitted in response to the Fuel Data Requests dated March 11 and 25, 2022, according to the following table (Proposal):

Fuel Data Requests dated March 11 and 25, 2022	
BCUC Proposal for Confidential Protected Information Status	
Confidential Protected Information	NOT Confidential Protected Information
All Retail Fuel Data	Reporting Period
All Refiner Fuel Data	Currency
Internal ID	Name of Wholesale Purchaser
Monthly Volume of Fuel Purchased	Transaction Date
Monthly Volume of Fuel Imported	Name of Owner/Operator of Terminal & Address
Monthly/Daily Volume of Fuel Sold	Supplier of Retail Fuel
Volume Sold at Terminal	Fuel Type/Grade Supplied to Retailer(s)
Monthly Gross Margin	Annual Income Statement
Monthly Transportation Costs	EBITDA - earnings before interest, taxes, depreciation, amortization
Purchase Price of Fuel	Revenue
Selling Price of Fuel	Operating Costs
Rebates/Adjustments	Gross Cost
Comments	Gross Sales
	Gross Margins

Further, the BCUC proposed to consider the confidential status of the Fuel Data collected pursuant to the Fuel Data Requests in its two-year review, as detailed in section 5.3 of the Confidentiality Framework, to determine whether there has been a change to the public interest in the CPI.¹⁰

The BCUC invited Responsible Persons and other interested parties to file written submissions and evidence regarding the BCUC’s Proposal by Friday, July 29, 2022, and amended the regulatory timetable to provide an extension for submissions to August 30, 2022, for all but one Responsible Person that received an extension to October 3, 2022.

As detailed in section 1.1 above, some of the Fuel Data Requests were issued to a subset of BC’s retail dealers who own select retail fuel stations. The Panel considered publication of any information revealing the identity of

¹⁰ [Order G-14-22 and Accompanying Decision](#) dated January 20, 2022, p. 27.

these retail dealers to be unfair and a possible deterrent to participation. Based on the information currently available, the Panel found that the public interest in the disclosure of the identity of a retail dealer who participates in this hearing does not outweigh any potential harm to such entity. Submissions from retail dealers to whom the Fuel Data Requests had been issued were anonymized to protect the identity of the retail station.

As of October 3, 2022, the following parties had submitted written submissions in the proceeding:

- Suncor Energy Products Partnership (Suncor);
- Imperial Oil Limited (Imperial);
- Cenovus Energy Inc. (Cenovus);
- Parkland Corporation (Parkland);
- Shell Canada Limited (Shell);
- Federated Co-operatives Limited (FCL);
- 7-Eleven Canada Inc. (7-Eleven);
- Tidewater Midstream and Infrastructure Ltd. (Tidewater); and
- Competition Bureau of Canada (Competition Bureau).

After these submissions, parties had the opportunity to submit reply submissions; however, no party submitted reply submissions.

2.0 Confidential Protected Information

As described in section 1.1 above, the Fuel Data Requests were issued to Responsible Persons participating in the BC wholesale, refining, and retail fuel markets. These requests were issued not as part of the ongoing monthly reporting pursuant to the FPT Regulation, but as unique requests for Fuel Data under Section 6 of the FPT Act. The Confidentiality Framework established the logic for designating collected Protected Information as either confidential or not and included Tables A1–A8 in Attachment A detailing the designation for each particular piece of Fuel Data collected in each standard monthly reporting form. However, the Confidentiality Framework could not capture one-time Fuel Data Requests which had not yet been conceptualized. Therefore, Tables A1–A8 attached to the Confidentiality Framework do not apply to the Fuel Data Requests issued in March 2022. Instead, as explained in section 2.0 above, the Confidentiality Framework established a process for which Fuel Data not already identified as CPI could be reviewed by the BCUC and determined to be confidential or not. The Panel initiated the current hearing in accordance with the existing Confidentiality Framework process with the aim to be as regulatorily efficient as possible in doing so.

The Panel considered a unilateral decision to declare all Fuel Data confidential or not confidential would be inconsistent with the BCUC’s responsibilities under the FPT Act and with the principles of transparency and promotion of market competitiveness. In establishing the Confidentiality Framework, the BCUC undertook the balancing test set out in section 9(2)(b) of the FPT Act for the various types of Fuel Data the BCUC collects and determined that the public interest in the publication of this Fuel Data in its raw form “does not outweigh any

potential harm to Responsible Persons.” Thus, in the current hearing, the Panel has endeavored to align its determinations on the confidential status of Protected Information collected pursuant to the Fuel Data Requests with the process outlined in the Confidentiality Framework. References to the categories of sales and operational volumes, price-related, low carbon fuel standard, invoice-related, importer identifier, comment, and retail Fuel Data have the same meaning in this Decision as they do in Decision and Order G-14-22 which established the Confidentiality Framework. The Panel’s determinations with respect to wholesale, refining, and retail Fuel Data are detailed in the sections below.

2.1 Proposed Confidential Protected Information

Positions of the Parties

The eight (8) Responsible Persons who filed written submissions on the proposed categories were in general agreement regarding the categories of Fuel Data to be designated as CPI in the Proposal. In summary, Responsible Persons supported this designation in respect to these categories as they fall within the broad categories of Fuel Data already designated as CPI in the Confidentiality Framework; in particular, under the broad categories of sales and operational volumes; price-related; invoice-related; comment and retail Fuel Data.

Further, Responsible Persons agreed with the BCUC’s Proposal to designate all Fuel Data submitted by retailers and refiners as CPI. In the case of retailers, the BCUC collected Fuel Data from a select number of retail dealers, whereas it collected wholesale Fuel Data from all wholesalers. In the case of refiners, the BCUC requested margins and other financial Fuel Data for refining operations. In contrast to the relatively large number of wholesalers and retailers in the province, only two refiners operate in BC: Tidewater’s refinery in Prince George and Parkland’s refinery in Burnaby. Responsible Persons argued that publishing raw Fuel Data for the subset of retail stations and the two refineries could reveal sensitive information associated with particular retail locations or refiners, possibly resulting in competitors taking unfair advantage of market conditions and reducing the competitiveness of BC’s fuel market.

Parkland submitted that while it did not consider every category of Fuel Data the BCUC proposed to be CPI, “due to the differing operations of Responsible Persons, it may be the case that some types of Fuel Data could be Protected Information for one Responsible Person, but not another” and that “information that is kept confidential for one Responsible Person should be kept confidential for all.”¹¹

Panel Determinations

The Panel appreciates the participation of Responsible Persons who provided written submissions in this hearing, which was held with the express purpose of efficiently addressing Responsible Persons’ confidentiality requests for Fuel Data filed pursuant to the Fuel Data Requests. We recognize the broad support expressed for the Proposal in respect of the categories of Fuel Data to be designated as CPI.

In our view, the 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. The Panel also views publication of invoice-related Fuel Data as having the

¹¹ Exhibit C5-1, p. 19.

potential to reveal a Responsible Person's customer list and details to knowledgeable industry insiders, which poses a substantial risk to the competitiveness of Responsible Persons and the fuel market in BC. Further, the publication of the comments a Responsible Person submits in association with Fuel Data represents a risk to Responsible Persons without a commensurate benefit and may discourage Responsible Persons from providing explanatory or contextual information, which may otherwise be helpful, along with their submissions.¹² The Panel finds the public interest in the disclosure of internal ID, monthly volume of fuel purchased, monthly volume of fuel imported, monthly/daily volume of fuel sold, volume sold at terminal, monthly gross margin, monthly transportation costs, purchase price of fuel, selling price of fuel, rebates/adjustments, and comments Fuel Data categories does not outweigh any potential harm to Responsible Persons and that these categories are broadly aligned with the rationale of the Confidentiality Framework. **Therefore, the Panel determines internal ID, monthly volume of fuel purchased, monthly volume of fuel imported, monthly/daily volume of fuel sold, volume sold at terminal, monthly gross margin, monthly transportation costs, purchase price of fuel, selling price of fuel, rebates/adjustments, and comments Fuel Data categories are CPI.**

In our view, publishing any Fuel Data submitted by retail dealers, (retail Fuel Data) in its raw, unaggregated, non-anonymized form has the potential to create an uneven competitive playing field amongst market participants and could introduce distortions into the fuel market as retail Fuel Data submissions were requested from a subset of non-randomly selected retail stations in BC. The Panel considers publication of the raw retail Fuel Data from the selected set of retailers to be unfair. On a similar note, the refiner market in BC is composed of two Responsible Persons, and therefore publishing any Fuel Data submitted by refiners (refiner Fuel Data) in its raw, unaggregated, non-anonymized form would greatly facilitate back-calculation of financial and other Protected Information. This could be traced back to its source and could leave these market participants open to potential predatory actions by their competitors. Based on the information currently available, **the Panel finds that the public interest in the disclosure of retail and refiner Fuel Data does not outweigh any potential harm to Responsible Persons and determines these Fuel Data are designated as CPI.**

2.2 Proposed Not Confidential Protected Information

The Proposal listed fourteen categories of non-CPI. The consensus among Responsible Persons was that three should remain not CPI and seven of these categories should be CPI, which we discuss below in section 3.2.1. Of the remaining four disputed categories, however, there were more nuanced views, which we address below in section 3.2.2.

2.3 Sales and Operational Volumes and Price-Related Fuel Data

Position of the Parties

All eight Responsible Persons disagreed with categorizing the following Fuel Data as not CPI: annual income statement, EBITDA, revenue, gross margins, gross sales, gross costs, and operating costs. Responsible Persons described these seven categories of Fuel Data as financial fuel information relating to sales and operational volumes and price-related Fuel Data.

¹² Decision and Order G-14-22 dated January 20, 2022, pp. 17–20.

Responsible Persons provided two reasons for their disagreement with the BCUC Proposal. First, Responsible Persons pointed to inconsistency in the categorization of information; gross margin is designated as CPI while monthly gross margins is designated as not CPI. Responsible Persons argued that annualized raw Fuel Data are just as commercially sensitive as the monthly raw Fuel Data. Similarly, monthly/daily volume of fuel sold, volume sold at terminal, selling price of fuel and rebates/adjustments are all designated as confidential, but gross sales is designated as not confidential. Responsible Persons submitted that the Proposal treats some price-related Fuel Data as confidential while treating other price-related categories of Fuel Data as not confidential.

Second, Responsible Persons argued that the seven categories of Fuel Data are all inextricably intertwined with price and volume-related Fuel Data that the Confidentiality Framework broadly designates as CPI. Responsible Persons argued that the BCUC should align its proposal with the established Confidentiality Framework because operating costs, gross costs, gross sales and gross margins data, in particular, give competitors valuable information that enables anticompetitive behaviour such as predatory price undercutting.

Panel Determinations

The Panel has reviewed the Proposal in light of the compelling submissions made by Responsible Persons and the logic articulated in BCUC Decision and Order G-14-22 that established the Confidentiality Framework.¹³ Responsible Persons submitted that the following categories of Fuel Data should be designated as CPI: annual income statement, EBITDA, revenue, gross margins, gross sales, gross costs, and operating costs. In respect to these categories of Fuel Data filed pursuant to the Fuel Data Requests, the Panel recognizes that many Responsible Persons, even those that are publicly traded and must publicly disclose certain financial information, created unique data files for BC operations in order to comply with the BCUC's requests. As such, publishing these raw Fuel Data would release fuel market information that would not otherwise be publicly available, increasing the risks of anti-competitive behaviour in local markets where a competitor perceives an inherent advantage or an opportunity to undercut with predatory actions the Responsible Person whose raw Fuel Data have been published.

The Panel is persuaded by Responsible Persons' concerns that publication of financial Fuel Data on an unaggregated and non-anonymized basis has the potential to create an uneven competitive playing field amongst market participants. Further, the Confidentiality Framework has established that the publication of raw sales and operational volumes and price-related Fuel Data,¹⁴ groupings of Fuel data which have been constituted as CPI in the Confidentiality Framework previously 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. The Panel is persuaded by Responsible Persons that these seven categories of Fuel Data are similar to sales and operational volumes and price-related Fuel Data. **The Panel determines that annual income statement, EBITDA, revenue, gross margins, gross sales, gross costs, and operating costs Fuel Data are similar in nature to sales and operational volumes and price-related Fuel Data, and therefore determines that annual income statement, EBITDA, revenue, gross margins, gross sales, gross costs, and operating costs Fuel Data are CPI.**

¹³ Decision and Order G-14-22 dated January 20, 2022, p. 18.

¹⁴ Decision and Order G-14-22 dated January 20, 2022, Attachment A, Figure A1, p. 2

2.4 Responsible Person Identity and Counterparty Information

The Proposal included four categories of Fuel Data that would be designated as not CPI, namely supplier of retail fuel, name of wholesale purchaser, name of owner/operator of terminal and address, and transaction date. Unlike the seven categories discussed in the previous section, however, Responsible Persons were not unanimous in their positions whether these categories should be confidential. In this section we review the Responsible Persons' submissions in favour of categorizing these data as CPI. The overall concern is that disclosure of these Fuel Data would reveal details about the counterparties to transactions resulting in industry competitors targeting their customers and aggressively cutting prices in regions with limited market participation – ultimately resulting in lower market competition. As we discuss below, however, the Fuel Data Requests were not intended to gather counterparty information. We have learned, as a result of submissions, that it was more convenient for some Responsible Persons to provide more granular Fuel Data when responding to the Fuel Data Requests.

Position of the Parties

Supplier of Retail Fuel

Parkland, Tidewater and Shell requested the supplier of retail Fuel Data field to be made CPI because this is analogous to invoice-related Fuel Data that a competitor would be able to use against a Responsible Person to steal their retail customers.¹⁵ Responsible Persons submit that this CPI term means disclosure of parties to whom they supply fuel. 7-Eleven also made the same argument from the other side of the transaction relationship in that it would be competitively significant for competitors to know where and from whom a retailer is sourcing its fuel.

Name of Wholesale Purchaser

Tidewater and Shell both requested the name of wholesale purchaser Fuel Data to be CPI because disclosure of this would provide competitors with details about who the Responsible Persons are transacting with and is the same as disclosure of their customer and supplier list and details.¹⁶

Name of Owner/Operator of Terminal & Address

Parkland and Tidewater both requested the name of owner/operator of terminal and address Fuel Data field be made CPI.¹⁷ Larger and/or extra provincial competitors may target the terminal owner's/operator's suppliers or smaller dealers and lower their own prices in order to put the terminal owner/operator out of business (decreasing overall competition and ultimately harming end user consumers).

Transaction Date

Suncor requests the transaction date Fuel Data field to be CPI if it is collected as a form of commercial information. Suncor would like further clarity from the BCUC on what is meant by the term "transaction."¹⁸

Tidewater states that while it did not provide such granular level Fuel Data, such information could reveal the fact that a Responsible Person is transacting, which is commercially and competitively sensitive, particularly in

¹⁵ Exhibit C5-1, p. 15; Exhibit C9-2, p. 5; Exhibit C6-1, p. 5.

¹⁶ Exhibit C9-2, p. 5; Exhibit C6-1, p. 5.

¹⁷ Exhibit C5-1, pg. 15; Exhibit C9-2, p. 5.

¹⁸ Exhibit C1-2, p. 4.

regions with limited market participation and for smaller market participants like themselves.¹⁹ The Panel notes that the Fuel Data Requests did not request any specific transaction dates, but only monthly and annual Fuel Data. Some Responsible Persons provided more granular Fuel Data in their submissions, including individual transactions and the dates on which those occurred.

Panel Determinations

The Panel acknowledges the concerns voiced by Responsible Persons. The Panel notes the Fuel Data Requests did not request that Fuel Data be submitted in a particular form, allowing Responsible Persons the flexibility to submit Fuel Data in the manner which best worked with their particular accounting systems. As a result, some Responsible Persons provided the requested monthly or annualized Fuel Data; others included granular transaction data to support the reported top-line number. From this non-standardized submission format flowed the four above-mentioned Fuel Data categories in respect of which some Responsible Persons expressed their confusion over what information would be contained in these categories and concern over the possibility of counterparty information being released. To clarify, the Panel does not intend for any counterparty information to be revealed due to some Responsible Persons providing more granular Fuel Data in their submissions.

Thus, although Responsible Persons have voiced concerns about these four categories, in fact, the concern relates to the counterparty information provided that was not an essential part of the Fuel Data Request.

The Fuel Data categories of supplier of retail fuel, name of wholesale purchaser, and name of terminal owner/operator and address are simply the identity of the reporting Responsible Person for the applicable reportable activity in the wholesale fuel market. The Proposal attempted to convey this through use of language consistent with the ongoing monthly reporting forms addressed by the Confidentiality Framework. The BCUC determined in the Confidentiality Framework that disclosure of the reporting Responsible Person's identity, excluding retail dealers' identity, not to be CPI. For the reasons concerning the risks of back-calculation when dealing with a small sample size provided in section 3.1 above, the identity of retail dealers and refiners will remain CPI. **In alignment with the Confidentiality Framework, the Panel determines the names of Responsible Persons in the wholesale fuel market who supply retail fuel, purchase wholesale fuel, own and operate terminals, as well as the terminal address, to be not CPI.**

The Panel agrees with Responsible Persons' submissions that publication of counterparty Fuel Data is akin to the publication of a Responsible Person's customer list and details of their commercial relationships, which poses a substantial risk to the competitiveness of the fuel market in BC. Invoice-related Fuel Data is one of the groups of Fuel Data listed in Figure A1 – Grouping of Fuel Data of the Confidentiality Framework, and the Panel does not intend to deviate from this. **The Panel finds that counterparty information provided in response to the Fuel Data Requests is invoice-related Fuel Data and determines it is CPI.**

In the case of transaction date, only the date on which the transaction took place by the Responsible Person would be not CPI. No counter-party or other information would be disclosed in designating this category of Fuel Data as not CPI. In the Confidentiality Framework, transaction date is not CPI, and as explained above, the Panel does not intend to deviate from this. **Accordingly, the Panel finds that transaction date is not CPI.**

¹⁹ Exhibit C9-2, p. 5.

3.0 Overall Determination

The Panel designates the categories of Fuel Data and information submitted in response to the Fuel Data Requests dated March 11 and 25, 2022, according to the following table:

Panel Determinations for Grouping Data/Information in Confidentiality Requests	
Confidential Protected Information	NOT Confidential Protected Information
All Retail Fuel Data	Reporting Period
All Refiner Fuel Data	Currency
Internal ID	Name of Responsible Person
Monthly Volume of Fuel Purchased	Terminal Address
Monthly Volume of Fuel Imported	Transaction Date
Monthly/Daily Volume of Fuel Sold	Fuel Type/Grade Supplied to Retailer(s)
Volume Sold at Terminal	
Monthly Gross Margin	
Monthly Transportation Costs	
Purchase Price of Fuel	
Selling Price of Fuel	
Rebates/Adjustments	
Gross Margins	
Gross Sales	
Gross Costs	
Operating Costs	
Annual Income Statement	
EBITDA	
Revenue	
Comments	
Shipment Date	
Counterparty Information	

The Panel considers that changes to the BC fuel market and the passage of time may have similar effects on the confidential status of Protected Information submitted pursuant to the Fuel Data Requests as they may have to submissions contemplated in the Confidential Framework. **Therefore, the BCUC will consider the confidential status of the Fuel Data collected pursuant to the Fuel Data Requests covered in this decision in its two-year review in 2024, as detailed in section 5.3 of the Confidentiality Framework, to determine whether there has been a change to the public interest in the CPI.**

As the Administrator, the BCUC is responsible for collecting and publishing Fuel Data regarding a Reportable Activity in BC in order to promote competitiveness and public confidence in the competitiveness of the fuel market. The BCUC may aggregate, anonymize, or make other alterations to CPI to permit publication of Fuel Data the BCUC collected pursuant to the Fuel Data Requests in the future. If it does, the Panel reminds Responsible Persons that the BCUC will continue to follow the process detailed in section 5.1 of the Confidentiality Framework.