



ORDER NUMBER
G-164-24

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

and

British Columbia Utilities Commission
Fuel Price Transparency Act Confidentiality Framework 2 Year Review

BEFORE:

E. B. Lockhart, Panel Chair
E. A. Brown, Commissioner

on June 18, 2024

ORDER

WHEREAS:

- A. On November 28, 2019, the Government of British Columbia enacted the *Fuel Price Transparency Act* (FPT Act);
- B. By Order in Council (OIC) No. 123/20 dated March 9, 2020, the Lieutenant Governor in Council (LGIC) designated the BCUC as the Administrator of the FPT Act;
- C. By OIC No. 474/20 dated August 13, 2020, the LGIC established the *Fuel Price Transparency Regulation* under the FPT Act, which requires fuel importers, wholesalers, terminal owners/operators, and those who supply fuel to retail dealers, to make periodic submissions to the BCUC effective November 1, 2020;
- D. 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 did not, at that 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);
- E. In the Confidentiality Framework, amongst other things, the BCUC set out guiding key principles in determining whether Fuel Data would be held confidential and stated that the BCUC would conduct a review after two years of the finalization of the Confidentiality Framework to determine whether there had been a change to the public interest in the confidential Protected Information under 9(2)(b) if the FPT Act such that confidential treatment was no longer warranted;
- F. By Order G-138-24, dated May 16, 2024, the BCUC established a regulatory timetable, including an invitation for comments regarding the draft revised Confidentiality Framework attached to Order G-138-24 (Draft Confidentiality Framework);

- G. The following parties provided Letters of Comment on the Draft Confidentiality Framework: Federated Co-operatives Limited, Imperial, and Cenovus Energy Inc.;
- H. The Panel has reviewed the parties' submissions with respect to the Draft Confidentiality Framework and finds that the following approvals are warranted.

NOW THEREFORE the BCUC orders as follows:

1. The revised Confidentiality Framework attached as Appendix A to this Order (Revised Framework) is adopted by the BCUC effective immediately.
2. Unless otherwise ordered by the BCUC, all Fuel Data submitted by Responsible Persons to date and going forward will be treated in accordance with the Revised Framework.

DATED at the City of Vancouver, in the Province of British Columbia, this 18th day of June 2024.

BY ORDER

Original signed by:

E. B. Lockhart
Commissioner

Attachment

British Columbia Utilities Commission

Fuel Price Transparency Act

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

June 18, 2024

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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. 474/20,¹ 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,² 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). On March 31, 2022, the BCUC issued its Final Report summarizing the results of the Retail Pilot and providing recommendations to the Minister of Energy, Mines and Low Carbon Innovation.

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. The BCUC has, in performing its duties as Administrator, requested additional Fuel Data on an ad hoc basis from Responsible Persons to promote the competitiveness of the fuel market and public confidence in the competitiveness of the market.

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,

¹ https://www.bclaws.gov.bc.ca/civix/document/id/oic/oic_cur/0474_2020

² 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

- (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.

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 determining whether Fuel Data will be held confidential, the BCUC is 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 Confidentiality of Protected Information

The BCUC finds that the key principles as set out in section 3.1.1 are best advanced when the BCUC analyzes all Fuel Data and produces aggregated and anonymized reports (as further discussed in section 4.0) highlighting specific aspects of the BC fuel industry. This approach of publishing analysis, rather than raw fuel data, better promotes the transparency and market competitiveness of the BC fuel market, while reducing the overall regulatory burden. Therefore, all Fuel Data submitted by Responsible Persons is considered to be confidential Protected Information. For additional clarity, specific requests by Responsible Persons for confidentiality of any Fuel Data 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.

3.1.3 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 Tools for Permitting Publication of Confidential Protected Information

4.1 Aggregation and Anonymization

As the Administrator, the BCUC is responsible for collecting and publishing Fuel Data, or other information or records, 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 5.0, 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 as 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 as 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.

4.2 Public Interest Hearing

In accordance with the process and principles described in section 3 above, the BCUC has determined all Fuel Data is confidential Protected Information. The BCUC may publish the confidential Protected Information 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 held as confidential Protected Information 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.

4.3 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.

5.0 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 4.1, 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 A 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.

6.0 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 – 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): _____