



ORDER NUMBER
G-232-22

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

and

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

and

1231805 BC Ltd.
Alleged Contravention of Section 5(1) of FPT Act

BEFORE:

B. A. Magnan, Commissioner

on August 17, 2022

ORDER

WHEREAS:

- A. On May 12, 2022, the British Columbia Utilities Commission (BCUC), as Administrator of the *Fuel Price Transparency Act* (FPT Act), commenced a hearing regarding 1231805 BC Ltd.'s 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 1231805 BC Ltd.'s October 2020 fuel data reporting period and on May 9, 2022, provided a report and evidence on the matter to the BCUC;
- D. On May 11, 2021, 1231805 BC Ltd. registered as a Responsible Person in relation to the FPT Act confirming that 1231805 BC Ltd. identifies itself as a Responsible Person and is required to report fuel data in accordance with the FPT Act. The BCUC contacted 1231805 BC Ltd. fifteen (15) times by 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. By the submission date of BCUC staff's investigation report, 1231805 BC Ltd. had not submitted its October 2020 report via the Portal to the BCUC;

- E. BCUC staff concluded that 1231805 BC Ltd.'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 1231805 BC Ltd. in accordance with section 12 (1) (a) of the FPT Act and the Administrative Penalties (FPT Act) Regulation;
- F. On May 12, 2022, the BCUC sent 1231805 BC Ltd. a notice of intent to impose an administrative penalty via registered mail, with the BCUC staff investigation report dated May 9, 2022 attached, and it is considered to have been served on 1231805 BC Ltd. 14 days after the posting date. Under section 3 of the Administrative Penalties (FPT Act) Regulation, if 1231805 BC Ltd. wished to make representations in respect of the alleged contravention, 1231805 BC Ltd. must have made a request in writing to the BCUC within 30 days after the date the notice of intent is served;
- G. On June 20, 2022, 1231805 BC Ltd. requested a meeting to discuss the hearing process and the requirements for submitting the October 2020 fuel data reporting period;
- H. On July 5, 2022, 1231805 BC Ltd. submitted the October 2020 fuel data via the Portal; and
- I. 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 A of this order, the BCUC orders as follows:

- 1. 1231805 BC Ltd. 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. The fuel data and information contained in the BCUC staff investigation report and notice of intent letter L-16-22 will be held confidential in accordance with BCUC Decision and Order G-14-22 as they contain confidential Protected Information.

DATED at the City of Vancouver, in the Province of British Columbia, this 17th day of August 2022.

BY ORDER

Original signed by:

B. A. Magnan
Commissioner

Attachment

1231805 BC 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 1231805 BC Ltd.'s October 2020 fuel data reporting period and concluded 1231805 BC Ltd.'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 1231805 BC Ltd. 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. The BCUC is the designated Administrator of the FPT Act.

On November 1, 2021, the Lieutenant Governor approved 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. Please see Section 2.0 below for the factors and BCUC staff'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 9, 2022, BCUC staff issued its investigation report into 1231805 BC Ltd.'s October 2020 fuel data reporting period to the BCUC. On May 12, 2022, the BCUC issued its notice of intent letter informing 1231805 BC Ltd. of its rights under section 3 of the Administrative Penalties (FPT Act) Regulation.

If 1231805 BC Ltd. 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 1231805 BC Ltd. The notice of intent, with the BCUC staff investigation report dated May 9, 2022 attached, was sent via registered mail and is considered to have been served on 1231805 BC Ltd. 14 days after the posting date. If 1231805 BC Ltd. wished to make representations in respect of the alleged contravention, 1231805 BC Ltd. 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 1231805 BC Ltd. not respond in writing to the BCUC requesting an opportunity to make representations, the BCUC may determine whether 1231805 BC Ltd. is in contravention of the FPT Act and may impose an administrative penalty on 1231805 BC Ltd.

By way of email on June 20, 2022, 1231805 BC Ltd. requested a meeting with BCUC staff to discuss the hearing process and the requirements for submitting the requested fuel data. On July 5, 2022, BCUC staff met with 1231805 BC Ltd. to explain the hearing process and answer questions. Following the meeting on July 5, 2022, 1231805 BC Ltd. submitted its October 2020 fuel data via the Portal.

2.0 Alleged Contravention Facts and BCUC Staff Assessments

On May 11, 2021, 1231805 BC Ltd. registered as a Responsible Person in relation to the FPT Act confirming that 1231805 BC Ltd. identifies itself as a Responsible Person and is required to report fuel data as per the FPT Act. The BCUC contacted 1231805 BC Ltd. 15) times by 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, 1231805 BC Ltd. had not submitted its October 2020 report via the Portal to the BCUC.

BCUC staff concluded that 1231805 BC Ltd.'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 1231805 BC Ltd. 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
a) the person's history of compliance with the Act, including whether and how often the person has previously 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	1231805 BC Ltd. has no history of non-compliance prior to this apparent contravention.	As there is no history of non-compliance, staff recommend a penalty at the lower range of the scale.
b) any previous administrative penalties imposed on 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	The BCUC has not imposed previous administrative penalties on 1231805 BC Ltd.	As the BCUC has not previously imposed administrative penalties on 1231805 BC Ltd., staff recommend a penalty at the lower range of the scale.
c) whether the contravention or other action was repeated or continuous	• The October 2020 fuel data was originally due on November 16, 2020. 1231805 BC Ltd. was provided multiple reminders to make its report to the BCUC via the Portal. • 1231805 BC Ltd. stated that the reporting information is too cumbersome, and it will not be able to provide the necessary information until November 2021. • 1231805 BC Ltd. submitted its October 2020 fuel data via email, but not via the Portal as required. Staff followed-up and requested the October 2020 fuel data via the Portal.	The alleged contravention is continuous as 1231805 BC Ltd. has yet to submit the 2020 fuel data via the Portal as required.

Penalty Assessment Factors	Facts and Evidence	Staff Analysis
	To date, 1231805 BC Ltd. has not submitted the October 2020 fuel data via the Portal.	
d) whether the contravention or other action was deliberate	- On May 11, 2021, 1231805 BC Ltd. registered as a reporting entity in relation to the FPT Act. - The BCUC has sent several letters to 1231805 BC Ltd. reminding them to submit its October 2020 fuel data. 1231805 BC Ltd. stated that the reporting information is too cumbersome, and it will not be able to provide the necessary information until November 2021. - To date, 1231805 BC Ltd. has not submitted the October 2020 fuel data via the Portal.	1231805 BC Ltd. 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	- On March 3, 2021, 1231805 BC Ltd. called and emailed the BCUC concerning issues submitting the Retail Station Survey; - On April 13, 2021, 1231805 BC Ltd. called and then submitted the Retail Station Survey; - On May 5, 10 and 11, 2021, 1231805 BC Ltd. notified the BCUC of issues with registering with the Portal; - On May 11, 2021, 1231805 BC Ltd. registered with the Portal; - On June 14 and 15, 2021, 1231805 BC Ltd. requested help with uploading submission and submitted fuel data via email;	None provided

Penalty Assessment Factors	Facts and Evidence	Staff Analysis
	On November 25, 2021, 1231805 BC Ltd. called and emailed the BCUC to request clarification regarding the fuel data request;	
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	1231805 BC Ltd.'s ownership structure is dealer controlled.	Staff have no evidence that an administrative penalty may cause undue hardship at this time.
i) any other matter the administrator considers relevant	1231805 BC Ltd. submitted the October 2020 fuel data to the BCUC via email, but not via the Portal as required.	1231805 BC Ltd. has submitted the fuel data; however, not in the format required by the BCUC. It is important that Responsible Person's submit data via the Portal as if everyone submitted their data via email, the administrative burden on the BCUC would be too great. 1231805 BC Ltd. needs to provide its data in the form required by the BCUC, as required under the FPT Act.

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 1231805 BC Ltd. is a Responsible Person and, therefore, must submit prescribed fuel data pursuant to the FPT Regulation.

By letter dated November 23, 2020, 1231805 BC Ltd. 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 1231805 BC Ltd. by various means to, among other things, remind 1231805 BC Ltd. of the potential obligation to report fuel data and to provide support and instructions to register and submit its fuel data. On May 11, 2021, 1231805 BC Ltd. registered as a Responsible Person in relation to the FPT Act and in doing so confirmed that 1231805 BC Ltd. identifies itself as a Responsible Person and is required to report fuel data in accordance with the FPT Act.

In addition, 1231805 BC Ltd. submitted fuel data via email on June 15, 2021 and via the Portal on July 5, 2022 for the October 2020 reporting period. The information within the report indicates that 1231805 BC Ltd. imported fuel during the October 2020 reporting period and is therefore deemed to be an importer of reportable fuel as defined in section 5(1) the FPT Regulation.

After reviewing the evidence, the Panel finds that 1231805 BC Ltd. 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, 1231805 BC Ltd. did not submit the prescribed fuel data by the prescribed date, November 16, 2020. 1231805 BC Ltd. did not submit the prescribed fuel data until July 5, 2022.

Pursuant to section 5(2)(b), the submission must be made in the manner and form required by the BCUC, in this case the Portal. 1231805 BC Ltd. submitted the prescribed fuel data via email on June 15, 2021, 2021. Despite registering for the Portal on May 11, 2021, 1231805 BC Ltd. did not submit the prescribed fuel data via the Portal as required until July 5, 2022.

On balance, the Panel is persuaded that the evidentiary record shows 1231805 BC Ltd. to have registered as a Responsible Person and was therefore required to submit the October 2020 fuel data via the Portal by November 16, 2020 pursuant to the FPT Regulation. After a review of the evidence, the **Panel determines that pursuant to section 12(1)(a) of the FPT Act, 1231805 BC Ltd. 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 1231805 BC Ltd. 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 1231805 BC Ltd. has no previously known obligation to submit data pursuant to the FPT Act, the Panel finds it of no consequence that 1231805 BC Ltd. 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 1231805 BC Ltd., 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 1231805 BC Ltd. 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

The Panel finds the evidence presented by BCUC staff demonstrates that the contravention of section 5(1) of the FPT Act was continuous throughout the period of November 23, 2020 until July 5, 2022 when the prescribed fuel data was submitted via the Portal.

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) Deliberateness of Contravention

Despite BCUC staff contacting 1231805 BC Ltd. fifteen (15) times via letter and email, the Panel considers that 1231805 BC Ltd. expended little effort to correct the contravention over the long period of non-compliance; 1231805 BC Ltd. registered with the Portal, emailed the prescribed fuel data to the BCUC, and only submitted the prescribed fuel data via the Portal following a meeting with BCUC staff. **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 the deliberateness 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 bring 1231805 BC Ltd. 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.**

The Panel finds that 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 the 1231805 BC Ltd. 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, 1231805 BC Ltd. registered for access to the Portal on May 11, 2021 and submitted the prescribed fuel data via email on June 15, 2021, demonstrating an effort to correct the contravention of failing to submit October 2020 fuel data by the deadline established. On July 5, 2022, 1231805 BC Ltd. submitted the fuel data via the Portal for the October 2020 reporting period, further demonstrating an effort to correct the contravention of failing to submit the fuel data in the format required by the BCUC.

In light of this history, the Panel finds that 1231805 BC Ltd.'s efforts to correct the contravention are a mitigating 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 1231805 BC Ltd. 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

The correspondence between 1231805 BC Ltd. and BCUC staff reflects a lack of comprehension on the part of 1231805 BC Ltd. regarding how to properly use the Portal in order to submit the required fuel data. Only after meeting with BCUC staff, did 1231805 BC Ltd. properly submit the October 2020 fuel data via the Portal. The evidence indicates that 1231805 BC Ltd.'s tardiness in submitting the October 2020 fuel data to the BCUC was in part caused by this lack of technical comprehension.

The Panel finds that this is a mitigating factor.

In consideration of an appropriate administrative penalty, the Panel recognizes that 1231805 BC Ltd. does not have a history of non-compliance, the October 2020 fuel data was submitted, albeit late, to the BCUC via email, and the company ultimately submitted its October 2020 fuel data via the Portal on July 5, 2022. The Panel places significant weight on the fact that 1231805 BC Ltd. has now provided the required data in the form and manner required by the BCUC. Further, the Panel considers the following 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) Deliberateness of Contravention: Aggravating;

- (e) Gravity and Magnitude of Contravention: Mitigating;
- (f) Effort to Prevent or Correct Contravention: Mitigating;
- (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 (Lack of Comprehension of how to use the Portal): Mitigating.

Based on the totality of the evidence presented, **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 1231805 BC Ltd. is not required to pay an administrative penalty in respect of its contravention of section 5(1) of the FPT Act.**