

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**AND IN THE MATTER OF** the proposed acquisition by Parkland Industries Ltd., a wholly-owned subsidiary of Parkland Fuel Corporation, of substantially all of the assets of Pioneer Petroleum Holding Limited Partnership, Pioneer Energy LP, Pioneer Petroleum Transport Inc., Pioneer Energy Inc., Pioneer Fuels Inc., Pioneer Petroleum Holding Inc., Pioneer Energy Management Inc., 668086 N.B. Limited, 3269344 Nova Scotia Limited and 1796745 Ontario Ltd.;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for one or more orders pursuant to section 92 of the *Competition Act*;

**B E T W E E N:**

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| COMPETITION TRIBUNAL<br>TRIBUNAL DE LA CONCURRENCE<br><br><b>FILED / PRODUIT</b><br><br>November 23, 2015<br>CT-2015-003<br><br>Jos LaRose for / pour<br>REGISTRAR / REGISTRAIRE |      |
| OTTAWA, ONT  | # 78 |

**COMMISSIONER OF COMPETITION**

**Applicant**

- and -

**PARKLAND INDUSTRIES LTD., PARKLAND FUEL CORPORATION, PIONEER PETROLEUMS HOLDING LIMITED PARTNERSHIP, PIONEER ENERGY LP, PIONEER PETROLEUMS TRANSPORT INC., PIONEER ENERGY INC., PIONEER FUELS INC., PIONEER PETROLEUMS HOLDING INC., PIONEER ENERGY MANAGEMENT INC., 668086 N.B. LIMITED, 3269344 NOVA SCOTIA LIMITED AND 1796745 ONTARIO LTD.**

**Respondents**

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**NOTICE OF MOTION**

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**TAKE NOTICE** that the Commissioner of Competition (the “**Commissioner**”) will make motion to the Competition Tribunal on December 10 or 11, 2015.

**THE MOTION IS FOR:**

- (a) an order requiring Parkland (defined below) to produce further and better Schedules “1” and “2” to its Affidavit of Documents;
- (b) an order requiring Parkland to produce a further and better Schedule “3” to its Affidavit of Documents;
- (c) costs; and
- (d) such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

**THE GROUNDS FOR THIS MOTION ARE:****Overview**

- (a) This motion addresses the significant deficiencies in Parkland’s Affidavit of Documents and the productions attached thereto. These deficiencies must be addressed promptly so that the examinations for discovery in this proceeding can proceed expeditiously and efficiently.

**Procedural History**

- (b) The Commissioner commenced an application pursuant to section 92 of the *Competition Act* (the “Act”) against Parkland Industries Ltd., a wholly-owned subsidiary of Parkland Fuel Corporation (collectively hereinafter referred to as “**Parkland**”) and Pioneer Petroleum Holding Limited Partnership, Pioneer Energy LP, Pioneer Petroleum Transport Inc., Pioneer Energy Inc., Pioneer Fuels Inc., Pioneer Petroleum Holding Inc., Pioneer Energy Management Inc., 668086 N.B. Limited, 3269344 Nova Scotia Limited and 1796745 Ontario Ltd.) (collectively hereinafter referred to as “**Pioneer**”);
- (c) Parkland and Pioneer defended the application;
- (d) On June 25, 2015, Parkland acquired certain assets from Pioneer, and obtained possession

or control of documents relating to the assets which are the subject of the Commissioner's application;

- (e) The proceeding as against Pioneer is in the process of being discontinued;
- (f) Pursuant to the current Scheduling Order in this proceeding, the parties have exchanged Affidavits of Documents and productions attached thereto;
- (g) Examinations for discovery are scheduled to take place in December 2015 and January 2016;
- (h) Parkland has served an Affidavit of Documents that is inadequate or contains significant deficiencies that must to be addressed before the examinations for discovery begin. Some of the deficiencies include missing documents and missing SIR (defined below) records;

### **Missing Documents**

- (i) Parkland has produced 35,776 documents. A review of these documents discloses that there are a number of other relevant documents that have not been produced by Parkland;
- (j) The documents produced by Parkland make reference to other documents that have not been produced or listed in Schedule "3" of the Affidavit of Documents. By way of example:

**Document BJ35560-00001:** The document states that "restoration pricing is communicated via telephone call or text message" from "RBM to Retail Site." No text messages or records of telephone conversations related to pricing have been produced for any of the 14 geographic markets identified in the Commissioner's Notice of Application (the "**Relevant Markets**");

- (k) The missing documents, of which there are many, either exist or do not exist. If they exist, Parkland has an obligation to reference them in Schedule "1" of their Affidavit of Documents and produce copies thereof for inspection. If they do not exist, they must be

identified in Schedule “3” of the Affidavit of Documents. Either way, Parkland has produced a deficient Affidavit of Documents;

### **Missing SIR Records and Data**

- (l) Parkland and Pioneer produced in their respective SIR responses certain reports that appear to be assembled from underlying data related to sales transactions and to gas stations’ facilities and product/service offerings. Further, Pioneer produced certain documents that demonstrate the existence of a database called a “Station Information Portal” containing, *inter alia*, fuel pricing strategies for its gas stations in the Relevant Markets;
- (m) Parkland failed to produce the portions of the databases that contain the aforementioned underlying data and fuel pricing strategies in its Schedule “1”. Having regard to Parkland and Pioneer’s SIR responses, that data is in the possession, power or control of Parkland and is relevant to this proceeding;
- (n) Parkland has an obligation to produce the relevant portions of the databases that contain the aforementioned data and fuel strategies in Schedule “1” of its Affidavit of Documents or (if less burdensome to Parkland) to provide the Commissioner with the entire databases containing the aforementioned data and fuel strategies;

### **Parkland has Committed to Remediating Further Deficiencies**

- (o) In its Affidavit of Documents, Parkland provided a Schedule “1” that does not match the documents it produced. Further, Parkland did not include all of the metadata for the documents that it produced to the Commissioner. Counsel for the Commissioner sent a letter to counsel for Parkland on November 18, 2015 requesting that these deficiencies be remedied, in addition to the missing documents and missing SIR records and data described above.
- (p) Counsel for Parkland replied to the Commissioner by letter dated November 20, 2015 and

agreed to provide a revised Schedule “1” and the complete metadata for the documents that it produced to the Commissioner in its Schedule “1”.

- (q) The Commissioner reserves his right to seek additional relief should the revised Schedule “1” or the balance of the metadata be deficient and/or untimely.
- (r) Parkland has an obligation to produce an Affidavit of Documents that is free of errors;
- (s) The *Federal Courts Rules*, section 223;
- (t) The *Competition Tribunal Act*, subsection 9(2);
- (u) The *Competition Tribunal Rules*, sections 34, 60, 63, 64 and 65; and
- (v) Such further and other grounds as counsel may advise and the Tribunal may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) The affidavit of Alexander N. Mc Nabb, affirmed November 23, 2015; and
- (b) Such further and other material as counsel may advise and the Tribunal may permit.

*[Remainder of page intentionally left blank]*

**DATED AT GATINEAU, QUEBEC, this 23<sup>rd</sup> day of November, 2015.**

SIGNED BY:



Counsel to the Commissioner of Competition

**DEPARTMENT OF JUSTICE CANADA**

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