DECISION

IN THE MATTER OF a review of Maximum Margins, Delivery Costs and Full Service Charge for Gasoline and Other Petroleum Products conducted under the authority of subsection 14(1) of the *Petroleum Products Pricing Act*, S.N.B. 2006, c. P-8.05.

(Matter No. 444)

November 6, 2019

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

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NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

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Counsel:	Ellen Desmond, Q.C.
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INTERVENERS:

Atlantic Convenience Stores Association:	David Knight
Canadian Independent Petroleum Marketers Association:	Jennifer Stewart Michelle Coates Mather
Clark Oil Co. (2010):	Peter Leighton Clark
Couche-Tard Inc:	Keith King
Enbridge Gas New Brunswick:	Paul Volpé
Highlands Fuel Delivery G.P. dba Irving Energy:	Matthew Manderson
Irving Oil Marketing G.P.:	Jason Kindred
Oil Heat Association of New Brunswick:	Matthew LeRoy
Park Fuels Ltd.:	William (Bill) LeRoy
The Scholten Group:	Chris Scholten Jerry Scholten
Shoreline Fuels & Economy Fuels:	Nadine Hébert
Stewarts Village Mart:	Wayne Stewart
Superior Propane:	Kendall MacPhee
Ultramar:	Mike Doucette
PUBLIC INTERVENER:	Heather Black

A. Introduction

[1] Pursuant to subsection 14(1) of the *Petroleum Products Pricing Act, S.N.B. 2006, c. P-8.05* (Act), the New Brunswick Energy and Utilities Board (Board) initiated a review of maximum wholesale and retail margins, maximum delivery costs and maximum full service charges to ensure that they are justified. This review applies to motor fuels and heating fuels (furnace oil and propane).

[2] The Board had initiated separate retail (Matter 338) and wholesale (Matter 341) reviews in 2017. Following a hearing in relation to the retail sector, the Board adjusted the maximum retail margin and maximum delivery cost for motor fuels, and the maximum retail margin for furnace oil. No data or evidence was received from the wholesale sector. The Board accordingly dismissed the wholesale review in September 2017.

[3] To assist in the current review, the Board engaged the firm of Gardner Pinfold Consultants Inc. (Gardner Pinfold) to review data, conduct separate surveys of the wholesale and retail sectors, and file reports of its findings and recommendations. The purpose of the review was to provide the Board with the basis for determining whether the current values for the margins and charges are justified, and if not, to establish new values that are justified.

[4] In March 2019, Gardner Pinfold filed a report on Retail Motor Fuel and Heating Fuel (Retail Report). Its report on Wholesale Motor/Heating Fuel and Propane (Wholesale Report) was filed in June.

[5] Michael Gardner and Gregor MacAskill appeared as witnesses on behalf of Gardner Pinfold. The Board declared Mr. Gardner and Mr. MacAskill as experts in the field of economics of market structure and competitive behaviour in regulated industries.

[6] The Public Intervener filed the report of Robert D. Knecht of Industrial Economics, Incorporated (Knecht Report). Mr. Knecht was engaged to evaluate the recommendations contained in the Wholesale Report and Retail Report for their consistency with sound regulatory policy and past Board practice.

[7] The Knecht Report did not address any issues with respect to propane, based on Gardner Pinfold's inability to collect relevant costs from that sector. It also contained no evaluation of the

Wholesale Report. The Board declared Mr. Knecht as an expert in the practical application of economics and finance theory to the regulation of the energy industry.

[8] The Atlantic Convenience Stores Association (ACSA) also filed written evidence. ACSA is a not-for-profit organization, which represents the interests of convenience store operators in Atlantic Canada. Mr. David Knight, a senior consultant for ACSA, presented evidence on its behalf.

[9] The public hearing of this matter took place in Fredericton on September 24 and 25.

[10] A significant number of organizations were granted intervener status and participated in the public hearing. The Board appreciates the contributions that these parties made to the Board's understanding of the facts and issues.

B. Legislation

[11] The following provisions of the Act are of particular relevance:

> **1.1** The Board shall, when making a decision under this Act respecting prices, margins, delivery costs or full service charges, consider the fact that consumers should benefit from the lowest price possible without jeopardizing the continuity of supply of petroleum products.
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> **4**(2) For each type of heating fuel and motor fuel, the maximum retail price shall be the sum of
>
> > (a) the benchmark price, as established or adjusted pursuant to sections 10 and 11,
> >
> > (b) the total allowed margin, which is comprised of the maximum margin for a wholesaler and the maximum margin for a retailer,
> >
> > (c) applicable taxation, and
> >
> > (d) fuel charges, if any, payable to Her Majesty in right of Canada.
>
> **4**(4) Notwithstanding that a maximum margin is set for a wholesaler and a retailer, if the wholesaler and the retailer agree in writing, they may apportion the total allowed margin between them in such manner as they see fit.

> **5**(1) The Board has authority to set, and shall set the maximum delivery costs that may be charged by a wholesaler to a retailer for the delivery of a type motor fuel or by a retailer to a consumer for the delivery of a type of heating fuel,
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> (a) within the province, other than the parish of Grand Manan, and
>
> (b) in the parish of Grand Manan.
>
> **5.1**(1) The Board has authority to set, and shall set, the maximum full service charge that may be charged by a retailer for motor fuel sold on a full service basis to a consumer.
>
> **9**(1) Unless a wholesaler has an agreement with a retailer under subsection 4(4), the wholesaler shall not charge a price for heating fuel or motor fuel greater than the maximum price for wholesalers set by the Minister or the Board, as the case may be.
>
> **9**(2) A retailer shall not charge a price for heating fuel or motor fuel greater than the maximum price for retailers set by the Minister or the Board, as the case may be.
>
> **9**(4) A retailer shall not charge a consumer more for delivery costs for motor fuel than the least of the following:
>
> (a) the amount the retailer was charged by the wholesaler;
>
> (b) the actual costs incurred by the retailer for the delivery of the fuel where it is delivered by someone other than a wholesaler;
>
> (c) the maximum amount for delivery costs that may be charged by a wholesaler to a retailer for the delivery of motor fuel set by the Minister or the Board, as the case may be.
>
> **14**(1) The Board may, on its own motion, conduct a review of maximum margins, maximum delivery costs or the maximum full service charge to ensure that they are justified, and may order such margins, costs or charge to be adjusted after the review is completed.

[12] The following provisions of the *General Regulation – Petroleum Products Pricing Act* (NB Reg. 2006-41) (Regulation) are also relevant:

> **9(**1) Where an application has been made to the Board under section 12 of the Act for a change in the maximum margin that may be charged by a wholesaler or retailer, the Board shall consider the following:

(a) whether, since the maximum margin was last set, an adjustment would be justified as a result of a change to

(i) the costs of transporting heating fuel or motor fuel from New York Harbor or, in the case of propane, from Sarnia to the province,

(ii) volume of sales,

(iii) storage costs,

(iv) inventory turnover rates, and

(v) applicable levies and insurance costs; and

(b) any other factors that the Board considers relevant.

11 Where an application has been made to the Board to adjust the maximum delivery costs that may be charged by a wholesaler or retailer under section 13 of the Act, the Board shall consider

(a) fuel costs,

(b) insurance costs,

(c) capital costs,

(d) volume of sales

(e) in the case of an application for delivery costs that are particular to the applicant, the cost effectiveness of the applicant's operation, and

(f) any other factors that the Board considers relevant.

12 Where the Board conducts a review under section 14 of the Act, the Board shall consider the same factors that apply under section 9, in the case of a review of maximum margins, and under section 11, in the case of a review of maximum delivery costs.

[13] The core issue in this matter is whether the current maximum wholesale and retail margins, maximum delivery costs and the maximum full service charge are justified, considering the factors set out in sections 9 and 11 of the Regulation. This, and related issues regarding motor fuels and heating fuels, are addressed below.

C. Motor Fuels

1. Maximum Wholesale Margin

[14] The Board last adjusted the wholesale margin for motor fuels in March 2013, based on 2011 data, with a base year of 2005. In that matter, the maximum wholesale margin was set at 6.51 cents per litre (cpl). As stated above, the Board dismissed the subsequent wholesale review in 2017 (Matter 341).

[15] The Wholesale Report in the current matter sought to use 2011 as the base year, against which to assess any changes in industry costs during the period 2012-2017 that would impact maximum wholesale margins. Gardner Pinfold was to carry out an analysis of those factors set out in sections 9 and 11 of the Regulation, and to provide its conclusions on whether any adjustments would be justified, based on its results. It made initial and follow-up requests to wholesalers to provide data on certain specified costs, including maritime freight, working capital, receivables, and terminal costs. No data was submitted by the wholesalers.

[16] The Wholesale Report concluded that there was no basis upon which to analyze whether current wholesale margins and costs are justified. It recommended that the Board make no changes from the current wholesale margin levels.

[17] No other party submitted evidence on this issue, nor were any arguments advanced to adjust the maximum wholesale margin for motor fuels. In addition, there was no evidence of any other factors under paragraph 9(1)(b) considered by the Board to be relevant.

[18] In considering whether an adjustment to the maximum wholesale margin is justified, subsection 9(1) of the Regulation requires the Board to consider any changes, since the margin was last set, to the factors set out in paragraph 9(1)(a). In the absence of sufficient evidence of changes to those factors, or other factors, an adjustment to the maximum wholesale margin for motor fuels cannot be justified.

[19] The Board has determined that no adjustment to the maximum wholesale margin for motor fuels from the current rate of 6.51 cpl is warranted.

2. Maximum Retail Margin

a) The Retail Report

[20] The motor fuels portion of the Retail Report was based on data for the three years 2015-2017. The base year of 2015 is consistent with the Board's decision in Matter 338, which stated "…the Regulation contemplates consideration of cost increases from the time that they were last measured, and not based on the date of the previous decision." The study period in Matter 338 was 2013-2015.

[21] The purpose of the Retail Report was to provide the Board with the basis for determining whether the current retail maximum margin is justified, based on the factors prescribed in section 9 of the Regulation. The analysis relied on industry data gathered from both (a) a macro analysis of fuel margins in other jurisdictions as a frame of reference, and (b) a micro analysis of:

(i) volume data submitted to the Board under section 19 of the Regulation and as provided by the Department of Finance;

(ii) the retailer survey conducted by Gardner Pinfold; and

(iii) other published input costs, as a cross-check to validate the survey data.

[22] The retailer survey was sent to 425 motor fuel retailers, using the Board's reporting template. The total was comprised of 294 active independent outlets in 2018, and 9 companies controlling 131 corporate outlets. Gardner Pinfold received 115 survey responses that were deemed to be sufficient for inclusion in the analysis (27% of the total surveyed). The survey included, among other items, retail outlet operating costs, including wages, credit card fees and repairs and maintenance.

[23] Although corporately owned stations dominated the responses (70%), Gardner Pinfold considered the overall response as representative of the retail sector. To the extent that corporately owned stations may have a different cost structure than independents, Gardner Pinfold acknowledged that there would be a bias that would cause a deviation, plus or minus, from a true industry average.

[24] An analysis of the survey results indicated a 7.4% increase in operating costs between 2015 and 2017. Eighty percent of the total operating costs reported in the survey were derived from seven of the twenty-six cost categories: wages and benefits (management and other), credit card fees, repairs and maintenance (building and plant), real estate rental, and utilities.

[25] The survey also indicated an increase in sales volumes of 3.2%. Provincial data indicated a weighted sales volume increase of 2.9% over the same period. Gardner Pinfold considered the difference between survey and provincial volumes as insignificant.

[26] Gardner Pinfold adjusted for the survey volume increase, and concluded that the operating costs per litre rose by 4.1%, or 0.27 (cpl) over the study period. Applying this to the current margin of 6.5 cpl, and rounding up, its recommendation was to increase the motor fuel retail margin by 0.3 cpl to 6.8 cpl.

b) Public Intervener Evidence

[27] In his written evidence, Mr. Knecht examined split sample results provided by Gardner Pinfold, which gave breakdowns between rural and urban outlets, independent and corporate outlets, and sales volumes by quartiles. In Mr. Knecht's opinion, these sub-sample results did not provide strong reasons for departing from a reliance on the total results.

[28] The inclusion of non-fuel related costs in the survey, according to the Knecht Report, may also import certain biases to the analysis, to the extent that such costs may have increased at different rates than purely fuel-related costs. Nevertheless, Mr. Knecht acknowledged the difficulty dealers would face in allocating costs between fuel-related and other costs.

[29] Mr. Knecht also was of the opinion that the trends in the number of motor fuel outlets and relative volumes indicate that there is "no obvious evidence of a threat to the continuity of supply at the aggregate level".

[30] Mr. Knecht accordingly agreed with Gardner Pinfold's recommendation of a 0.3 cpl increase in the maximum retail motor fuel margin.

c) Other Interveners

[31] In its evidence, ACSA asserted that the results of the survey conducted by Gardner Pinfold "cannot be considered statistically significant", and its conclusions must therefore be assessed subjectively as to whether they appear to be reasonable.

[32] ACSA submitted however, that the recommended 0.3 cpl adjustment to the maximum retail margin is reasonable. It further submitted that an additional 0.7 cpl adjustment is required, as described below.

[33] The Scholten Group agreed with the recommended 0.3 cpl adjustment, as well as the additional adjustment suggested by ACSA.

d) NYH – Saint John Rack Spread

[34] In its weekly setting of the regulated maximum price for motor fuels, the Board uses the prescribed published benchmark price in New York Harbour (NYH), in accordance with the Act and Regulation. The regulated maximum retail price consists of the benchmark price, the total allowable wholesale and retail margins, and applicable taxes and charges.

[35] Whether the Board should make an adjustment based on the price spread between the NYH benchmark price and the Saint John rack price (SJ Rack) was considered in Matter 338. At that time, the Board deferred the issue to a future review, when wholesale and retail margins are considered in the same proceeding.

[36] The Retail Report indicates that the trend line of the NYH to SJ Rack spread increased from the time of regulation in 2006 to 2017 by 0.7 cpl. The report states that the gains from regulatory adjustments to the maximum retail margin have therefore been effectively reduced by 0.7 cpl. It notes, however, that from the information available, it is impossible to determine how this reduction is distributed between wholesale and retail margins.

ACSA's Submissions

[37] In its evidence, ACSA submitted that the Board should account for the increased NYH to SJ Rack spread. It stated that the motor fuel marketing margin "has been materially eroded due to an increase in the benchmark New York Harbour [to] Saint John rack price spread."

[38] ACSA suggested that an additional 0.7 cpl adjustment to the maximum retail margin is required to “maintain the financial sustainability of the industry”. Accordingly, it submitted that the Board should adjust the maximum retail margin by a total of 1.0 cpl.

[39] In its response to an interrogatory on this point, ACSA referred to the evidence of Mr. Knecht in Matter 338, in which he stated that the impact on retailers of a deteriorating marketing margin (or the increase in spread between NYH and SJ Rack) “is not clear”. ACSA’s interrogatory response acknowledged that this impact, as was pointed out by Mr. Knecht, will only squeeze retail margins “when a retailer has opted not to purchase supplies at the regulated wholesale price”. ACSA submits however that the notion of “opting out” should not detract from the purpose of a regulated retail margin, which is to consider changes in the cost of retailing motor fuel.

[40] ACSA also referred to other factors in its evidence, although not linked to any specific conclusion or recommendation for an additional adjustment to the regulated retail margin for motor fuels. These factors included an 8.2% increase in the New Brunswick minimum wage between 2015 and 2017, an erosion of New Brunswick gasoline station profitability, and a survey bias towards larger volume retail outlets in costs per litre sold.

The Scholten Group’s Submission

[41] The Scholten Group supported ACSA’s argument that an additional 0.7 cpl adjustment to the maximum retail margin is required, based on the increased NYH to SJ Rack spread.

Public Intervener’s Submissions

[42] In final argument, the Public Intervener cited section 1.1 of the Act and subsection 9(1) of the Regulation as “guideposts” for the Board to consider. Ms. Black submitted that the Board should adjust the retail margin by 0.3 cpl, as recommended by Gardner Pinfold, but it should not make an additional adjustment of 0.7 cpl. Three reasons were advanced.

[43] First, a number of retailers enter into pricing arrangements, as permitted under subsection 4(4) of the Act. There is little information about the nature of such arrangements, but the evidence showed that there are often a mix of non-price incentives, such as infrastructure assistance, that provides the best economic benefit for their business.

[44] Secondly, given that the Act contemplates such arrangements without a related adjustment mechanism, the Public Intervener questioned whether it is appropriate for the Board to consider a retail margin adjustment based on the NYH to SJ Rack spread.

[45] Thirdly, there was no evidence of any threat to the continuity of supply that would warrant an additional adjustment. During the 2015-2017 survey period, there was a net loss of three retail outlets. This was compared in Gardner-Pinfold's evidence to a net loss of 30 between 2010 and 2017, and a loss of 140 in the period 2005-2017.

e) Board Analysis – NYH to SJ Rack Spread

[46] The NYH to SJ Rack spread is not a specific consideration under paragraph 9(1)(a) of the Regulation, but paragraph 9(1)(b) requires the Board to consider "any other factors" that it considers relevant.

[47] Subsection 4(4) of the Act permits a wholesaler and retailer to apportion the total allowed wholesale and retail margins by written agreement. Mr. Gardner's evidence states that most independent retailers operate under such an arrangement. In such cases, the regulated wholesale margin is not a factor. Those transactions are normally based upon the supplier's current rack price. In his written evidence, Mr. Gardner stated:

> [The retailer's] actual margin, then, is determined by the difference between the rack-plus price at which they buy fuel and the regulated maximum retail selling price. They gain between weekly adjustments in a declining market as the spread between the maximum selling price and the rack price widens. They lose between weekly adjustments in a rising market as the spread between the rack price and the maximum selling price narrows.

[48] In relation to retailers who have not entered into an apportionment agreement with a wholesaler under subsection 4(4) of the Act, any increase in the spread between NYH and the rack price does not affect the maximum regulated price at which the product is purchased from the wholesaler. In such cases, any increase in the spread affects only the wholesaler, whose rack pricing is constrained by the regulated maximum wholesale margin. As noted above, the Board received no evidence or submissions from wholesalers on this issue.

[49] In addition, the Board has no basis for treating the SJ Rack as a representative rack price under which New Brunswick retail outlets obtain their inventories. The SJ Rack, as set out in the

Gardner Pinfold evidence, is based on the published price for only one supplier, Suncor, at one location, Saint John.

[50] The additional factors cited by ACSA were not linked to any specific margin adjustment recommendation, as stated above. The Board does not consider these as relevant to its consideration under paragraph 9(1)(b) of the Regulation. Firstly, wage increases are already integral to Gardner Pinfold’s 0.3 cpl recommended adjustment in the Retail Report cost analysis.

[51] Secondly, the difference in profitability of New Brunswick outlets compared to other jurisdictions cannot be necessarily attributed to regulated motor fuel margins. Convenience store revenues and costs are significant factors in outlet operations.

[52] Finally, the Retail Report acknowledges a potential bias towards larger volume and corporate outlets, but no party has suggested adjusting for this, if such an adjustment is possible, given the nature of the survey results.

[53] For the foregoing reasons, the Board will not apply an additional adjustment to the maximum retail margin for motor fuels, as proposed by ACSA and supported by The Scholten Group.

f) Board Conclusion – Retail Margin Adjustment

[54] The Public Intervener, ACSA and The Scholten Group supported Gardner Pinfold’s recommendation of a 0.3 cpl increase in the maximum retail margin for motor fuels. No party disagreed with this recommendation.

[55] Gardner Pinfold’s recommendation is based on survey results from 115 retailers representing 27% of the retail community.

[56] Based on the best available evidence, the Board concludes that an upward adjustment of 0.3 cpl in the maximum retail margin for motor fuels is justified, resulting in a maximum margin of 6.8 cpl.

3. Full Service Charge

[57] The Act allows retailers to charge an additional fee for dispensing motor fuels by an attendant. The Retail Report concluded that maintaining the full service charge of 3.0 cpl is reasonable. Roughly 15% of all outlets operate a full-service or split-service operation. Most, however, set

their charge under 3.0 cpl in order to be competitive with self-serve facilities. The report also observed that this is consistent with full service charges in other jurisdictions.

[58] The Public Intervener agreed with this recommendation.

[59] No evidence or submissions were presented to the Board in relation to adjusting the maximum full service charge. The Board finds that the current regulated full service charge of 3.0 cpl is justified.

4. Maximum Delivery Costs

[60] In the motor fuels context, “delivery costs” means the costs of delivering the fuel within the Province from a wholesaler’s site to a retailer outlet.

[61] Gardner Pinfold noted that no evidence was submitted in his review to indicate that the current maximum delivery costs of 3.0 cpl is inadequate. He also noted that diesel prices (a factor in the costs of delivery) were generally lower during the review period. This lead to the recommendation that there be no adjustment to the maximum delivery costs.

[62] In his testimony at the hearing, Mr. Gardner stated that the only consistent information is provided by wholesalers to the Board, and that he saw nothing to suggest that 3.0 cpl was inadequate.

[63] Mr. Knecht suggested an increase in the maximum delivery costs from 3.0 cpl to 3.2 cpl. He based this on a comparison of changes in reported delivery costs between 2015 and 2017. Three of the roughly forty-eight outlets with delivery costs below 3.0 cpl in 2015 indicated 2017 costs in excess of 3.0 cpl.

[64] Many of the 2017 respondents indicated precisely 3.0 cpl as their delivery costs, which may suggest that they reflect actual (regulated) prices and not costs. These were discounted in Mr. Knecht’s analysis.

[65] In final argument, the Public Intervener acknowledged that there is some concern about the reliability or limitations of the delivery costs data in relation to motor fuels, and that this makes it difficult to justify an adjustment. If the Board was satisfied with the reliability of the data however, Ms. Black stated that it could support a modest increase in the maximum delivery costs of 0.2 cpl.

[66] No other party advocated an increase in the maximum delivery costs.

[67] The Board is likewise concerned about the reliability or limitations of the 2017 delivery charge survey data. The Board therefore concludes that an adjustment to the current maximum delivery costs cannot be justified.

D. Heating Fuels

1. Maximum Wholesale Margins – Furnace Oil and Propane

[68] Gardner Pinfold's Wholesale Report stated that a few of the surveyed furnace oil and propane companies indicated that they would not be submitting data in response to the survey, giving no reasons. No company submitted data in response to the survey. In addition, there was no evidence of any other factors under paragraph 9(1)(b) of the Regulation considered by the Board to be relevant.

[69] In the absence of any data, Gardner Pinfold recommended no adjustment to the current wholesale margins for furnace oil and propane. No arguments were advanced in support of an adjustment to the maximum wholesale margins.

[70] In considering whether an adjustment to the maximum wholesale margins are justified for heating fuels, subsection 9(1) of the Regulation requires the Board to consider any changes, since the margin was last set, to the factors set out in paragraph 9(1)(a). In the absence of sufficient evidence of changes to those factors, or other relevant factors, adjustments to the maximum wholesale margins for furnace oil and propane cannot be justified.

[71] The Board has determined that no adjustment to the maximum wholesale margin for furnace oil and propane is warranted.

2. Maximum Retail Margin and Delivery Costs

a) Furnace Oil – Retail Margin

[72] The Retail Report, as originally filed by Gardner Pinfold in March, 2019, indicated that only two furnace oil retailers responded to the survey. This was considered by Mr. Gardner as too low a response to form a sound basis for a recommendation.

[73] An addendum to sections 3.2 and 3.3 of the Retail Report (Addendum) was filed with the Board on September 6, 2019. Mr. Gardner explained that renewed efforts among industry members resulted in four additional responses.

[74] Of the six total respondents (two urban and four rural), five were usable, as one dealer had merged with another company after 2015. In Mr. Gardner's opinion, this provided a more accurate picture of industry cost changes.

[75] The five dealers represented about 20% of the market by volume. The Addendum acknowledged that this is not a representative sample, but noted that all dealers share the challenges of controlling costs in a declining market, with volumes declining disproportionately faster than costs.

[76] According to Department of Finance information as outlined in the Retail Report, furnace oil demand in 2017 was less than one-half of the 2005 demand. Consultations with industry indicated that financial challenges, particularly in rural areas, make this a high-cost, low-margin business.

[77] Gardner Pinfold recommended a 2.5 cpl increase in the maximum retail margin for furnace oil, based on volume-adjusted changes in costs over the study period. While it acknowledged that this would tend to make furnace oil less competitive, there is a risk that the continuity of supply could be disrupted, particularly in areas where delivery costs are highest.

[78] The Public Intervener's pre-filed evidence pre-dates the Addendum. Mr. Knecht's original review of the Retail Report expressed concerns with basing an adjustment based solely on industry volume declines. He concluded, however, that the Board could consider two options: First, make no adjustment (retaining 2015 as the base year in the next margin review). Alternatively, the Board could make a subjective adjustment based on volume declines and other calculated factors. On this basis, a 1.1 cpl adjustment could be made.

[79] In his testimony, Mr. Knecht stated that the Addendum evidence presents the Board with a third option. He acknowledged that the Addendum provides some additional information about the subjective adjustment. In his opinion, both subjective alternatives are "not particularly attractive".

[80] As was the case in Matter 338, the survey results were not representative of the industry. Both experts agreed however, that the continuity of supply is an important consideration for the Board, which tends to weigh in favour of a subjectively derived adjustment to the retail margin.

[81] Paragraph 9(1)(b) of the Regulation requires the Board to consider other factors, in addition to costs and volume changes, that the Board considers relevant. Section 1.1 of the Act directs the Board to consider that regulated prices should not jeopardize the continuity of supply.

[82] A relevant and important consideration, therefore, is the risk to the continuity of supplying a declining market, particularly in rural areas. In the Board's view, the Addendum provides the basis for an adjustment, albeit on a limited survey sample.

[83] Mr. Knecht's option of a 1.1 cpl increase pre-dates the Addendum, but he later acknowledged that the Addendum provided additional information to support a "subjective" adjustment. Such an adjustment is contemplated by paragraph 9(1)(b) of the Regulation.

[84] Based on the above, the Board concludes that a 2.5 cpl increase in the maximum retail margin for furnace oil is justified.

b) Propane – Retail Margin

[85] The Retail Report stated that only one valid survey submission was received from the retail propane sector. Gardner Pinfold was unable to recommend a margin adjustment on that basis.

[86] Based on the lack of sufficient evidence, the Board concludes that there will be no adjustment to the maximum retail margin for propane.

[87] Mr. Volpé, in his final argument for Enbridge Gas New Brunswick, pointed to the fact that the retail and wholesale margins for propane have not been adjusted since their initial settings by government. He suggested that the Board should consider pursuing other methods of collecting industry data upon which an analysis could be based. The Public Intervener also supported this approach. The Board addresses this below, under the heading "Data Collection Improvements".

c) Delivery Costs – Furnace Oil and Propane

[88] In the context of heating fuel, "delivery costs" means the cost of delivering the fuel within the Province from a wholesaler to the customer. The current maximum delivery cost for furnace oil is 5.0 cpl and for propane is 10.0 cpl. These rates were originally set by government.

[89] The Retail Report pointed out that, in relation to furnace oil:

> …with most retail deliveries made directly from the wholesale supply point, the notion of a distinct and measurable delivery cost is meaningless. The cost of delivery forms an integral part of retail operations and forms an integral part of the retail operating costs submitted by retailers during margin reviews. While there may be no harm in maintaining the fiction of a distinction, in the interests of consistency it may make sense to limit the applicability of the delivery cost to the conceptually similar feature of the build-up of the motor fuel maximum total price, namely, the cost associated with fuel delivery by the wholesaler to a retailer's bulk storage facility (where these exist).

[90] Mr. Knecht's review stated: "The heating oil delivery charge is an artificial distinction, and the costs incurred by heating oil dealers for delivery and retail services should be viewed in aggregate."

[91] Neither expert commented specifically on delivery costs for propane. No party proposed an adjustment in the maximum delivery costs for either furnace oil or propane. Given the lack of evidence and the notion, recognized by both experts, that heating fuel delivery costs are integrated with retail margins, the Board concludes that there will be no adjustment to the maximum delivery costs for either furnace oil or propane.

E. Data Collection Improvements

[92] The lack of significant sample responses from motor fuel and furnace oil and propane industries has been an issue in this and previous margin review proceedings. In any effort to improve the process, industry cooperation is critical. Since the last proceeding, the Board now provides template forms for collecting confidential volume, revenue and cost data from motor fuel, furnace oil and propane retailers. Additionally, data is now collected annually, beginning with 2018 data.

[93] The Board will consider further improvements to data collection processes, in consultation with stakeholders.

F. Summary

[94] The following table summarizes the Board's conclusions. The adjustments to the maximum retail margins for motor fuels and furnace oil will be effective as of November 14, 2019.

Margin, Cost or Charge (not including HST)*	**Current**	**Adjustment**	**Revised**
Wholesale:			
Maximum Wholesale Margin – Motor Fuels	6.51	-	6.51
Maximum Wholesale Margin – Furnace Oil	5.5	-	5.5
Maximum Wholesale Margin – Propane	25.0	-	25.0
Retail:			
Maximum Retail Margin – Motor Fuels	6.5	0.3	6.8
Maximum Full Service Charge – Motor Fuels	3.0	-	3.0
Maximum Retail Margin – Furnace Oil	18.5	2.5	21.0
Maximum Retail Margin – Propane	25.0	-	25.0
Delivery Costs:			
Maximum Delivery Costs – Motor Fuels	3.0	-	3.0
Maximum Delivery Costs – Motor Fuels – Grand Manan	5.0	-	5.0
Maximum Delivery Costs – Furnace Oil	5.0	-	5.0
Maximum Delivery Costs – Furnace Oil – Grand Manan	5.0	-	5.0
Maximum Delivery Costs – Propane	10.0	-	10.0
Maximum Delivery Costs – Propane – Grand Manan	10.0	-	10.0

*****cents per litre

Dated at Saint John, New Brunswick, this 6th day of November, 2019.

Raymond Gorman, Q.C.
Chairperson

François Beaulieu
Vice-Chairperson

Patrick Ervin
Member

Michael Costello
Member

Concurring Reasons of Member Herron

[1] I agree with the decisions and the supporting reasons of the other members of the Board, as set out above. I add the following comments:

[2] The Retail Review Report stated that only one valid survey submission was received from the retail propane sector. Gardner Pinfold was unable to recommend a margin adjustment on that basis.

[3] Gardner Pinfold also received only one survey response the last time the Board reviewed this issue in Matter 338, where they also concluded that it did not provide a sufficient basis for a recommendation. The Board concluded in that matter, there being insufficient evidence relating to the maximum retail margin and the delivery cost for propane finding that no adjustments were justified.

[4] Similarly, based on the lack of sufficient evidence in this matter, the Board concludes that there will be no adjustment, upwards or downwards, to the maximum retail margin and the delivery cost for propane.

[5] Mr. Volpé, in his final argument for Enbridge Gas New Brunswick, pointed to the fact that the retail and wholesale margins for propane have not been adjusted since their initial settings by the Minister, with the passage of the Act. He suggested that the Board should consider pursuing other methods of collecting industry data upon which an analysis could be based. The Public Intervener supported this approach.

[6] The Public Intervenor also suggested that the framers of the legislation would not have contemplated that no analysis of propane margins would have yet occurred since the Act was passed in 2006.

[7] I agree with the Public Intervenor.

[8] This is the sixth margin review since the passage of the Act. On each occasion, the Board has received insufficient evidence to consider whether any adjustments to propane margins (for either wholesale or retail), upwards or downwards were warranted. As such, the Board has not obtained sufficient knowledge on the operational workings of the bulk propane industry in New Brunswick to determine if consumers benefit from the lowest price possible.

[9] The lack of sample responses from industry has been an issue in this and previous margin review proceedings. The Board must also pursue other methods of collecting industry data upon which an analysis could be based.

[10] I recommend that the Board begin this process through the commissioning of a report to better understand the operations of the bulk propane industry in New Brunswick. The report may include, but not be limited to, a comparison of pricing from other jurisdictions for bulk propane in regulated and unregulated markets, recommendations on other methods for the collection of industry data, identification of indices that could help the Board in its analysis, and recommendations of formulaic processes to analyze margins in the absence of industry data.

[11] The Board may consider the findings of the report to assist in the analysis of propane margins at the time of the next review.

John Patrick Herron
Member