



NEW BRUNSWICK
ENERGY & UTILITIES BOARD

COMMISSION DE L'ÉNERGIE ET DES SERVICES PUBLICS
NOUVEAU-BRUNSWICK

July 5, 2022

Via Email

The Honourable Mike Holland
Minister of Natural Resources and Energy Development
P.O. Box 6000
Fredericton, NB E3B 5H1

Dear Minister Holland,

Subject: Investigation according to section 24 of the *Energy and Utilities Board Act*

The New Brunswick Energy and Utilities Board (Board or NBEUB) acknowledges receipt of the Minister of Natural Resources and Energy Development's letter dated June 9, 2022.

Under subsection 24(1) of the *Energy and Utilities Board Act*, S.N.B. 2006, c. E-9.18 (EUB Act), the Minister of Natural Resources and Energy Development (Minister) directed the Board to make an investigation on the following two directives:

1. How to reduce the volatility of petroleum product pricing caused by the interruptions in the weekly price setting (Directive #1), and
2. How to mitigate the impact on consumers of high petroleum prices (Directive #2).

The Minister requested that the Board report back with any findings and recommendations on the above-noted directives once the investigation was completed.

It is trite law that the powers of a regulatory body, such as the NBEUB, are created by statute. The Board only has jurisdiction to act upon those powers expressly or implicitly delegated through enabling legislation. Actions outside this jurisdiction are of no force or effect. Several acts passed by the legislature of the Province of New Brunswick provide insight into the Board's jurisdiction regarding the requested investigation. Those acts include the EUB Act and the *Petroleum Products Pricing Act*, S.N.B. 2006, c. P-8.05 (PPPA).

The Board met on June 29 and made the following findings:

1. Dealing with Directive #1, it is not clear from the request of the Minister whether the Board is to conduct a review under the PPPA. If such a review is required, this request for an investigation may require a review of the suitability of the pricing mechanism for benchmark prices under subsection 14(3) of the PPPA.

As the PPPA does not define the term “pricing mechanism”, it is not clear from the legislation whether or not this includes adjustments (i.e., interruptions) of benchmark prices as set out in section 6 of the *General Regulation – Petroleum Products Pricing Act*. As it currently stands, the legislation is unclear on this issue and the Board may not have the requisite jurisdiction to investigate this directive.

2. Dealing with Directive #2, the Board's primary role as established under the PPPA relates to setting maximum prices and margins, delivery costs, and full-service charges for petroleum product (i.e., heating fuels and motor fuels). In carrying out these functions, the Board must follow the requirements in the PPPA and its respective regulation.

The Board finds that nothing in either the PPPA or the *General Regulation – Petroleum Products Pricing Act* expressly or implicitly provides the necessary powers to the Board to investigate "how to mitigate the impact on consumers of high petroleum prices." As the Board does not have jurisdiction to investigate this directive, it does not have the requisite jurisdiction to carry out such an investigation under section 24 of the EUB Act.

Given the Board's doubts as to jurisdiction on Directive #1 and its lack of jurisdiction to investigate Directive #2, such investigations could be conducted according to a directive under subsection 23(2) of the EUB Act. If the Government were to require the Board to carry out these investigations through the Lieutenant-Governor in Council, by Order in Council, the Board would be seized with jurisdiction, and have the obligation to carry out such investigations.

The Board notes that the British Columbia Utilities Commission (BCUC) received a similar directive from its Lieutenant-Governor in Council in 2019. The BCUC, under subsection 5(1) of the *Utilities Commission Act*, was directed to conduct an inquiry respecting gasoline and diesel prices in British Columbia. The terms of reference were set out in section 3 of the Order in Council No. 254 (enclosed). As a result, the BCUC had the ability to carry out such an inquiry and prepare a final report describing the results of the inquiry and including its advice.

Should you have any questions, please do not hesitate to contact the Board.

On Behalf of the Board,

A handwritten signature in black ink that reads "Kathleen Mitchell". The signature is written in a cursive, flowing style.

Kathleen Mitchell
Chief Clerk

Enclosure

Cc. Tom MacFarlane, Deputy Minister, Natural Resources and Energy Development
Bill Breckenridge, Assistant Deputy Minister, Natural Resources and Energy Development
Heather Quinn, Director, Energy (Division), Natural Resources and Energy Development

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 254

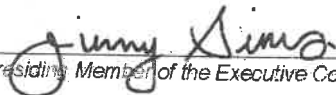
Approved and Ordered

May 21, 2019


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the attached order, British Columbia Utilities Commission Inquiry Respecting Gasoline and Diesel Prices, is made.


Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: Utilities Commission Act, R.S.B.C. 1996, c. 473, s. 5

Other: _____

**BRITISH COLUMBIA UTILITIES COMMISSION INQUIRY RESPECTING
GASOLINE AND DIESEL PRICES**

Definitions

1 In this order:

“Act” means the *Utilities Commission Act*;

“gasoline and diesel” includes the components of gasoline and diesel;

“refining margin” means the difference between the amount a refiner pays for crude oil and other components and the amount the refiner charges its customers for gasoline and diesel;

“retail margin” means the difference between the amount a retailer pays for gasoline and diesel and the amount the retailer charges its customers for gasoline and diesel, excluding taxes.

Referral to commission

2 By this order, the Lieutenant Governor in Council, under section 5 (1) of the Act, requests that the commission advise the Lieutenant Governor in Council respecting gasoline and diesel prices in British Columbia in accordance with the terms of reference set out in section 3 of this order.

Terms of reference

- 3 (1) Subject to subsection (2), the terms of reference, in accordance with which the commission must inquire into the matter referred to it by section 2, are as follows:
- (a) the commission must advise on the factors influencing gasoline and diesel prices since 2015 and the mechanisms the Province could use to moderate price fluctuations and increases;
 - (b) without limiting paragraph (a), the commission must inquire into the following:
 - (i) the differences, if any, in refining margins among British Columbia and other jurisdictions in Canada and the reasons for any differences;
 - (ii) the differences, if any, in retail margins among British Columbia and other jurisdictions in Canada, and among different regions in British Columbia, and the reasons for any differences;
 - (iii) factors that have contributed to the increases in gasoline and diesel prices, both retail and wholesale, including, without limitation,
 - (A) the access of refineries in British Columbia to crude oil supply and other components,
 - (B) the amount of gasoline and diesel stored in British Columbia for sale in British Columbia,
 - (C) usage of refinery and pipeline capacity,
 - (D) wholesale and retail market sizes and demand,
 - (E) methods of distribution of gasoline and diesel to retailers, and
 - (F) seasonal variations in supply and demand;

- (iv) the extent to which gasoline and diesel price changes have been determined by competition and the extent to which those changes have been determined by other factors;
 - (v) measures used in other jurisdictions in Canada and North America to enhance transparency about how gasoline and diesel prices are determined.
- (2) The commission may not inquire into the effects of Provincial enactments or policy on gasoline and diesel prices in British Columbia.
- (3) Further terms of reference for the inquiry are as follows:
- (a) the commission may exercise all of its powers under the Act that the commission considers necessary to conduct the inquiry;
 - (b) the commission must submit to the Minister of Jobs, Trade and Technology a final report describing the results of the inquiry and including its advice no later than August 30, 2019.