NEW BRUNSWICK
ENERGY & UTILITIES BOARD

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

DECISION

IN THE MATTER OF a review of maximum retail margins, maximum delivery costs, and maximum full service charge for motor fuels and furnace oil.

(Matter No. 523)

January 26, 2023

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NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

Members:	Heather Black
	John Patrick Herron
	Christopher Stewart (Panel Chair)
	Stephanie Wilson
Board Counsel:	Véronique Otis
Counsel for Board staff:	Gerald Lawson, K.C.
Chief Clerk:	Kathleen Mitchell

INTERVENERS:

Canadian Energy Marketers Association / Convenience Industry Council of Canada:	David Knight
Clark Oil Co. (2010) Ltd.:	Peter Clark

Liberty Utilities (Gas New Brunswick) LP:	David Lavigne
Oil Heat Association of New Brunswick:	Matthew LeRoy
Park Fuels Ltd.:	William LeRoy
The Scholten Group:	Jerry Scholten
ACTING PUBLIC INTERVENER:	Richard Williams, K.C.

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 the maximum retail margins, maximum delivery costs, and the maximum full service charge. This review will determine whether motor fuels and furnace oil margins, costs, and charges are justified for 2022. A previous review (Matter 485) was held for 2021.

[2] To assist in the current review, Gardner Pinfold Consultants Inc. (Gardner Pinfold) was engaged by the Board to analyze the factors affecting motor fuels and heating fuel's maximum retail margins, maximum delivery costs, and the full service charge. Gardner Pinfold was directed to produce a report on whether current values for the retail margins and charge are justified and provide the Board with its recommendations.

[3] In April 2022, Gardner Pinfold filed a report on retail motor fuel and furnace oil. A review of propane margins was not included in Gardner Pinfold's review, and as such, the Board's review of the heating fuel margin was limited to furnace oil.

[4] Before the public forums and hearing, an error was identified in Gardner Pinfold's cost table that led to Gardner Pinfold revising the report, which was subsequently filed on October 8 (GP Report).

[5] The Board held two public forums, which any member of the public could attend and comment on any aspect of the review. Both public forums were held on October 11. Additionally, members of the public were invited to provide comments to the Board by letter of comment no later than October 7. No comments were received from the public through letters of comment or at the public forums.

[6] A public hearing was held in Fredericton on October 12 and 13.

[7] Mr. Michael Gardner, President of Gardner Pinfold, and Mr. Gregor MacAskill, a Partner of Gardner Pinfold, appeared as witnesses at the hearing and were declared experts in the field of economics of market structure and competitive behaviour in regulated industries.

[8] Liberty Utilities (Gas New Brunswick) LP, the Oil Heat Association of New Brunswick, and Park Fuels Ltd. were granted intervener status. Only the Canadian Energy Marketers Association, Clark

Oil Co. (2010) Ltd., the Convenience Industry Council of Canada, the Scholten Group, and the Acting Public Intervener actively participated in the proceeding.

[9] The Acting Public Intervener, Mr. Richard Williams, filed a report of Mr. Robert Knecht, an independent consultant specializing in the preparation of analyses and expert evidence in regulatory economics (Knecht Report). Mr. Knecht was engaged to evaluate the recommendations in the GP Report for their consistency with sound regulatory policy and past Board practice. At the hearing, he was declared an expert in the practical application of economics and finance theory in the regulation of the energy industry.

[10] The Canadian Energy Marketers Association and the Convenience Industry Council of Canada (Associations), two non-profit industry associations representing the interests of motor fuel retailers in New Brunswick, jointly filed written evidence of Mr. David Knight. Mr. Knight, a senior consultant with the Convenience Industry Council of Canada, testified at the hearing on behalf of the Associations.

[11] The Scholten Group filed written evidence of Mr. Jerry Scholten. Mr. Scholten testified on its behalf during the hearing.

[12] Mr. Peter Clark, President of Clark Oil Co. (2010) Ltd., did not file evidence but presented final argument at the hearing.

[13] The Board issued a Partial Decision dated December 15, 2022 (Partial Decision). In its decision, the Board made several findings concerning the current maximum retail margins, delivery costs, and full service charge for motor fuels and furnace oil. The Partial Decision also reflected the adjustments made in this matter and the resulting values as set out in paragraph 8 that were effective as of December 23, 2022.

[14] A review of this nature requires industry participation to provide the Board with evidence and submissions to assist in making an informed decision. The Board appreciates the contributions of the retailers who supplied data to the Board or Gardner Pinfold.

B. Legislative Framework

[15] The following provisions of the Act are relevant to this proceeding:

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.

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,

(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.

[16] The following provisions of the *General Regulation – Petroleum Products Pricing Act*, N.B. Regulation 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.

C. Issues

[17] As stated earlier, the Board is conducting a review of the current maximum retail margins, maximum delivery costs, and full service charge to ensure they are justified.

D. Analysis

[18] In its analysis, the Board will first review the data, the methodology, and the other factors to determine if the current maximum retail margins for motor fuels are justified. The Board will also review the maximum delivery costs and maximum full service charge for motor fuels and adjust such cost and charge if justified.

[19] The Board will then analyze the maximum retail margin and maximum delivery cost for furnace oil to determine if the margin and cost require any adjustment.

1. Motor Fuels

a. Maximum Retail Margin

(1) Data

[20] Gardner Pinfold reviewed and analyzed the retail margin, delivery costs, and full service charge for motor fuels, comparing industry data for 2019 and 2020. Cost changes were calculated against 2019 as the base year. Industry data collected by the Board was used to conduct the review.

[21] Gardner Pinfold's analysis relied on three primary sources of data:

1. Volume data provided by retailers and by the New Brunswick Department of Finance and Treasury Board and Statistics Canada;

2. Retailer operating expenses provided by retailers; and

3. Input costs for 2019-2020, including minimum wage, average wage, fuel prices, and utility rates, to be used as a guide to confirm (or otherwise) the reliability and consistency of the cost data.

No changes had been made to how the Board solicited information or collected data from the retailers relative to previous matters.

[22] The GP Report observed that the data set included a broad range of stations by geography, format, and share of total volume; however, it did not reflect industry characteristics in terms of average size (outlet volume). The data's average outlet size by volume was 3.5 million litres, or 32 percent greater than the provincial average of 2.6 million litres. Corporately owned stations made up 61 percent of the data sets.

[23] The report stated that the review period of 2020 reflected the impacts of the pandemic through increased costs of operating retail outlets and the sharp decline in sales volumes. Due to a lack of data, Gardner Pinfold observed it could not capture offsets to the costs arising from federal and provincial support programs.

[24] Mr. Gardner testified that the data set, relative to previous reviews, was the best representation of provincial retailers. The GP Report noted that the sample size of 188 retail outlets represented 45 percent of the total number of retail outlets in the province and about 58 percent of the provincial volume. In its report, Gardner Pinfold concluded that the sample was reasonably representative.

[25] The number of retail outlets operating in New Brunswick declined from 423 in 2019 to 417 in 2020. Gardner Pinfold was provided data sets for 222 retail outlets, of which 188 data sets were useable for the analysis. To be considered useable for the review period, a retailer needed to submit data for both 2019 and 2020.

[26] The annual operating costs for 188 motor fuel outlets reporting from 2019 to 2020 were described in Table 1 of the report. It indicated an increase in operating costs by 16.4 percent, with a 12.1 percent decline in volumes, for a net effect of an increase in cost per litre of 32.4 percent.

[27] The GP Report also presented a second table (Table 2), which excluded those retailers whose wages and benefits costs increased more than 33 percent during the review period, indicating greater discretionary spending. Gardner Pinfold determined that these retailers appear to have experienced a change in the format during the review period, such as offering new services or extending their hours of operation.

[28] On cross-examination, Mr. MacAskill testified that in previous reviews, Gardner Pinfold used 25 percent as a threshold to signal a retail outlet may have had a format change during the review period due to pandemic impacts on wages and benefits in 2020; Gardner Pinfold considered 33 percent to be more appropriate.

[29] Table 2 showed a 13.8 percent increase in annual operating costs, with an 11.7 percent decline in sales volumes, resulting in a net increase of 28.8 percent cost per litre for the retailers.

[30] The Knecht Report observed that the sample size was considerably larger than that used in previous years. Mr. Knight also agreed that the number of data sets collected from retailers was larger than in previous review periods. Mr. Scholten stated that the response from retailers for the data in this proceeding was about 90 percent better than in previous years, and there was no evidence to suggest that the results in the GP Report were inaccurate.

[31] With approximately 45 percent of provincial retail outlets and 58 percent of the provincial volume represented in the review's data sets, the Board recognizes the review has benefited from a significant increase in motor fuel retailer responses relative to previous reviews. As data collection for operating costs and volume data was consistent with previous reviews, the Board finds that the data from 188 motor fuel retailers for operating costs and volume is reasonably representative.

[32] The Board also finds that the annual operating cost increase on a cost per litre basis, as noted in the GP Report Tables 1 and 2, is representative of changes in operating costs for provincial retailers. Of the five operating cost categories reported by retailers, the Wages and Benefits

category, which made up the majority of the total operating costs, saw the most significant increase between 2019 and 2020.

[33] The Board concludes that the impact of the support programs should be accounted for in determining whether a margin adjustment is justified. Accordingly, potential offsets will be discussed later in this decision.

(2) Methodology

[34] In previous reviews, the Board has chosen a methodological approach that compares changes to costs and volumes to understand whether a change in the retail margin is justified. The Board has preferred data adjusted to remove retailers that appeared to have had format changes within the review period consistent with the GP Report Table 2.

[35] The GP Report, however, concluded that the uncertainties of the cost data related to government support programs make it difficult to use the data compiled in Tables 1 and 2. Gardner Pinfold concluded that, without reliable government program support data, there was no quantitative basis for making an adjustment.

[36] Gardner Pinfold recommended that rather than using cost data analysis, judgment should be used to determine whether a change to the current margin is justified due to the uncertainty of the cost impacts from government programs. Mr. Gardner agreed in cross-examination; however, that, should the Board use Tables 1 and 2 for its determination, the retailer cost data presented in the tables would need to be offset at least partially to account for government support programs.

[37] Gardner Pinfold acknowledged the difficulty in discerning outlets with format changes during this review period due to the uncertainty related to the changes in costs from the pandemic. As a result, Mr. Gardner testified he would consider Table 1 more appropriate if previous Board methodologies were used.

[38] Mr. Knecht disagreed with Gardner Pinfold's recommended approach to using its judgment. Mr. Knecht submitted that key economic factors should be used as the basis for determining whether a change in the margin is justified.

[39] In final argument, Mr. Scholten supported a consistent application of the past Board methodology.

[40] As for Mr. Knight, he argued the importance of maintaining methodological consistency with previous retail margin reviews and submitted that the Board should retain its analytical approach. Mr. Knight disagreed with Gardner Pinfold's recommendation to depart from the Board's past approach to reconcile cost increases between 2019 and 2020. He further argued that differences should have been expected based on the extraordinary circumstances of the pandemic. In final argument, Mr. Knight submitted that Mr. Knecht's approach of using indices to normalize the data was inconsistent with past Board approaches.

[41] Although Gardner Pinfold and Mr. Knecht suggested alternative approaches to using retailer data due to the lack of quantitative information to offset support from government programs, the Board agrees with the Associations and the Scholten Group that, where possible, the Board should be consistent with past reviews by using retailer data.

(3) Other Factors to Consider

i. Government Support Programs

[42] The Associations provided written evidence that described and quantified government support programs that would have been available to its members. The Associations concluded that the only government support program that would have had a material impact on retail motor fuel operating costs was the Canada Emergency Wage Subsidy (CEWS).

[43] In response to an interrogatory from the Scholten Group, Gardner Pinfold indicated, "[…] Ideally, the dollar value of support programs would be quantified, and costs adjusted to place the latter on the same footing as pre-covid expenses."

[44] On cross-examination, the Associations submitted that the impact on the industry from CEWS was estimated to be $9.7 million in subsidies on the provincial volume of 986.1 million litres or an impact of 0.98 cents per litre (cpl).

[45] Mr. Knight noted that it could not be assumed that all retailers reporting operating cost data to the Board excluded the impact of these subsidies in their reported costs. Mr. Knight submitted that the estimated impact of 0.98 cpl would be the upper-end maximum of the impact. He suggested that

it was reasonable for the Board to deduct the maximum estimate of 0.98 cpl attributable to the CEWS from the upward adjustment of the motor fuel retail margin.

[46] Using Table 1 from the GP Report that showed a 32.4 percent increase in cost per litre, Mr. Knight submitted that applying that increase to the retail margin would equate to a 2.37 cpl increase. Mr. Knight recommended deducting the 0.98 cpl attributed to the CEWS benefits from the 2.37 cpl increase to arrive at the Associations' recommended net minimum increase to the motor fuel retail margin of 1.39 cpl.

[47] Mr. Scholten testified that, as government support provided to retailers may or may not have been included by retailers when they submitted data on their wages and benefits, these payments should not be used as an offset in determining a change in the margin.

[48] The Board acknowledges that the data collected from retailers did not specifically exclude information regarding pandemic support programs or their impact on retailers' operating costs. However, the Board accepts the Associations' quantification of the value of the government support programs' impacts on retailers' wages and benefits costs as reasonable.

ii. Continuity of Supply

[49] The Knecht Report indicated that a threat to the continuity of supply would include the net closure of a significant number of motor fuel retail outlets in specific geographic areas. Although the number of motor fuel retailers has declined over the past decade, Mr. Knecht observed that the decline had not threatened supply security.

[50] In final argument, the Associations expressed concerns regarding the smaller independent retailers, including their financial viability. Mr. Knight suggested that the Board consider developing a plan to understand better the issues of continuity of supply for the smaller independent retailers.

[51] The Scholten Group reminded the Board of an interrogatory response from Gardner Pinfold to the Acting Public Intervener confirming that, although there was a total decline of five retail outlets between 2019 and 2020, the number of independents declined by 28, or 10 percent. Mr. Scholten referenced Mr. Knecht's testimony suggesting that an adjustment may be necessary to address continuity of supply issues, citing unprecedented rising costs.

[52] The loss of independent retailers is of particular concern for the continuity of supply in rural areas. The Board will consider these concerns as an important factor in its review of whether the margin is justified.

iii. Total Allowable Margin

[53] Mr. Scholten testified that many retailers and wholesalers enter supply contracts that apportion the total allowed margin between them instead of basing the wholesale price on the maximum retail margin. He argued that the Board should consider the total allowed margin, which includes retail and wholesale margins. He pointed to evidence filed by the Scholten Group indicating that New Brunswick's total allowed margin lags behind neighbouring jurisdictions by at least four cents.

[54] Retail and wholesale margin reviews are the only statutory mechanisms by which the Board can adjust the total allowed margin. The Board is concerned about the impact that the current maximum wholesale margin has on retailers, but this issue can only be addressed as part of a future wholesale margin review or a combined wholesale and retail margin review.

(4) Board Conclusion

[55] Gardner Pinfold submitted that an increase in the retail margin to recover the margin on volume lost during the pandemic is justified based on its review and expert judgment rather than on the cost data analysis due to uncertainty of the cost impacts from government programs. Specifically, Gardner Pinfold recommended increasing the motor fuel retail margin by 1.00 cpl or an increase of 13.4 percent in cost per litre.

[56] Mr. Knecht stated that although he agreed with Gardner Pinfold's final recommendation to increase the margin, he disagreed with Gardner Pinfold's approach to arrive at that conclusion due to the uncertainty associated with government support programs and how their effect should be considered.

[57] In his report, Mr. Knecht provided changes in average key economic factors for the review period. These factors included the NB Consumer Prices, NB Minimum Wage, and NB Weekly Earnings

with 13.3 percent, 10.9 percent, and 13.7 percent change, respectively. Mr. Knecht used key economic factors as the basis for his recommendation of an increase of 1.00 cpl to the retail margin.

[58] The Associations submitted that applying the 32.4 percent increase, found in Table 1, would equate to a 2.37 cpl increase to the retail margin. Mr. Knight recommended deducting the 0.98 cpl attributed to the CEWS benefits from the 2.37 cpl increase to arrive at the Associations' recommended net minimum increase to the motor fuel retail margin of 1.39 cpl.

[59] Mr. Scholten supported an increase of 2.37 cpl to the motor fuel retail margin, as well as a one-time upward adjustment in the amount of 1.00 cpl to recover the margin lost during the review period, for a total proposed adjustment of 3.37 cpl. He noted that, in a past proceeding, Mr. Knecht recommended that: "[…] if the Board is to [err], it should [err] on setting higher margins and relying on competitive market forces to mitigate the problem."

[60] In final argument, Mr. Williams submitted that neither expert approached the review as "[…] a pure mathematical exercise because the data is imperfect." He argued that even though the data was imperfect, there was no question that an increase in the retail margin was required. Mr. Williams stated that the Board increase the retail margin based on the independent expert recommendations of Gardner Pinfold and Mr. Knecht of 1.00 cpl.

[61] Although the Associations and the Scholten Group argued that Table 1 results representing the 188 retailers should be used, the Board has not been persuaded that it should depart from the past methodology of using cost and volume data that excludes retailers that may have experienced a change in format (Table 2).

[62] Thus, the Board will use the data from Table 2 in its analysis. Using the data set from Table 2 results in a 28.8 percent increase to the pre-hearing maximum retail margin of 7.33 cpl, or an increase of 2.11 cpl. The Board finds that the Associations' estimated offset of 0.98 cpl is the best available evidence to measure the impact of the government support programs during the pandemic.

[63] Accordingly, the Board concludes that an upward adjustment of 1.13 cpl in the maximum retail margin is justified, resulting in a maximum motor fuel retail margin of 8.46 cpl.

b. Maximum Delivery Costs

[64] The Act defines delivery costs as the costs of delivering fuel within the Province of New Brunswick from a site used by a wholesaler to an outlet operated by a retailer. Pursuant to subsection 9(4) of the Act, retailers may recover only the actual amount charged by wholesalers to deliver motor fuels to their outlet up to the maximum amount set by the Board.

[65] Gardner Pinfold submitted in its report that the actual costs of motor fuel delivery exceeded the maximum for approximately two percent of the retailers in 2020. The consultants noted there was uncertainty related to outlets in smaller communities that did not report costs. In its view, this shortfall may contribute to the continuity of supply concerns, particularly considering recent economic changes.

[66] Gardner Pinfold concluded that increasing the maximum motor fuel delivery cost is justified. An increase to 3.75 cpl was recommended to the maximum delivery charge to ensure the continuity of supply to the smaller communities.

[67] Mr. Knecht and the Associations supported the above recommendation.

[68] The Board views that the shortfall in delivery costs experienced by retailers in smaller communities is a relevant factor in its determination of whether an adjustment is justified.

[69] The Board agrees with the recommendation that the current maximum delivery cost is inadequate. The Board concludes that an increase of 0.25 cpl is justified and establishes a new maximum of 3.75 cpl for maximum delivery costs.

c. Maximum Full Service Charge

[70] Gardner Pinfold recommended maintaining the full service charge of 3.00 cpl, supported by Mr. Knecht and the Associations.

[71] No evidence or submissions were presented to the Board concerning adjusting the maximum full service charge. The Board concludes that no adjustment is warranted to the current full service charge, and it will remain at 3.00 cpl.

2. Furnace Oil

a. Maximum Retail Margin

(1) Data

[72] In its review of the adequacy of the maximum retail margin for furnace oil retailers, Gardner Pinfold evaluated data from ten retailers, three urban and seven rural. It noted that this represents about 25 percent of the New Brunswick furnace oil market by volume.

[73] While the complete data set included 15 retailers, Gardner Pinfold determined that the data from only ten of the retailers were usable due to incomplete data, either in the base year, 2019, or in 2020. Gardner Pinfold deemed these results unreliable due to insufficient and unrepresentative survey responses.

[74] In an interrogatory response, Gardner Pinfold provided provincial data from the Department of Finance and Treasury Board, which indicated a continued decline in furnace oil volumes of approximately 27 percent from 2019 to 2021.

[75] Mr. Knecht agreed that the cost information did not provide a reliable basis for adjusting maximum retail margins for furnace oil. Still, he disagreed that no change should apply to the retail margin in this proceeding.

[76] While the data presented in this proceeding is imperfect, the Board finds that the volume data from the Department of Finance and Treasury Board is reliable and representative of the volume decline faced by furnace oil retailers.

(2) Factors to Consider

[77] The Board also heard evidence that furnace oil retailers operated differently from motor fuel retailers. Mr. Gardner testified that furnace oil retailers are fewer and cover larger territories. He

stated that they are "[…] under constant financial pressure and, as a consequence, are doing their level best to reduce their costs wherever possible to maintain their viability."

[78] The Board notes that the retailer data in the GP Report indicated that retailers were struggling to control costs due to declining furnace oil volumes.

[79] Gardner Pinfold submitted that retailers should continue to have the option of maintaining the current margins to avoid supply interruptions or loss of supply in areas of the province where delivery costs are highest. Accordingly, it recommended that the retail margin should remain unchanged.

[80] In his report, Mr. Knecht agreed with Gardner Pinfold that the cost information did not provide a reliable basis for adjusting maximum retail margins for furnace oil. Still, he disagreed that no change should apply to the retail margin in this proceeding.

[81] Mr. Knecht stated that Gardner Pinfold's recommendation was "problematic." In his view, it did not reflect labour and other inflationary cost increases faced by retailers.

[82] Mr. Knecht noted that the furnace oil retailer count appeared to show a substantial decline during 2020. He stated that 12 out of 32 retailers exited the market, five of which were reported as acquired by other retailers. He further noted that this industry consolidation reflected the industry's overall decline but could also signal that the security of supply was threatened.

[83] Mr. Knecht recommended an increase be applied to the maximum furnace oil margin and maximum delivery costs. He suggested that the increase be the same percentage as his recommendation related to motor fuel retail margin, namely 13.6 percent, which reflected inflationary effects. Thus, the furnace oil retail margin would increase from 23.56 to 26.76 cpl (up 3.20 cents), and the delivery costs would increase from 5.00 to 5.68 cpl (up 0.68 cents).

[84] In final argument, Mr. Williams supported Mr. Knecht's recommendation to increase the maximum retail margin for furnace oil retailers. Mr. Williams submitted that although Gardner Pinfold determined that it did not have enough reliable information to recommend an increase, Mr.

Knecht relied on other factors to determine that there was evidence of increased pressures on furnace oil retailers.

[85] Mr. Williams argued that the continuity of supply was a concern for this industry. He submitted that due to the limited number of operators, which decreased in 2020, the continuity of supply as it related to furnace oil seemed more of a problem than gasoline.

[86] Mr. Clark, in his closing argument, supported Mr. Knecht's recommendation.

(3) Board Conclusion

[87] The Board is satisfied that the current maximum retail margin for furnace oil retailers should be adjusted.

[88] Although Gardner Pinfold deemed the sample not representative, the evidence was sufficient for the Board to conclude that furnace oil retailers continue to struggle to control costs in the face of declining volumes.

[89] The Board considers that a margin increase is justified as furnace oil retailers face increased cost pressures that may jeopardize the continuity of supply. Accordingly, the Board will consider Gardner Pinfold's evidence on annual operating costs for furnace oil retailers for 2019 and 2020, illustrated in Table 6 of the GP Report, and adjust the data to take the provincial data on volumes into account. This results in an increase to the maximum retail margin for furnace oil retailers of 3.65 cpl.

[90] While this result is slightly lower, it is generally consistent with Mr. Knecht's recommended increase of 3.88 cpl.

[91] Although the Associations advocated for an offset to account for pandemic government support programs as it related to the maximum retail margins for motor fuels, the Board finds that this adjustment is not appropriate in the case of furnace oil. No evidence was presented in this proceeding relating to the pandemic's business impacts on furnace oil retailers or that these retailers received such grants.

[92] Accordingly, the Board will increase the maximum retail margin for furnace oil by 3.65 cpl to 27.21 cpl.

b. Maximum Delivery Costs

[93] The Act defines "delivery costs" for heating fuel (furnace oil and propane) as "the costs of delivering the fuel within the Province of New Brunswick from a site used by a wholesaler to the consumer."

[94] The current maximum delivery costs for furnace oil is 5.00 cpl, initially set in 2006.

[95] In his report, Mr. Knecht recommended increasing the maximum delivery costs for furnace oil by 0.68 cpl. In formulating this recommendation, Mr. Knecht relied on broad economic indicators rather than cost data.

[96] Gardner Pinfold did not provide any recommendations on this issue.

[97] The Board is not satisfied that sufficient evidence was presented in this proceeding to allow it to determine that the maximum delivery cost is inadequate. Accordingly, there will be no adjustment to the maximum delivery costs for furnace oil.

E. Conclusion

[98] As reflected in the Partial Decision, the table below reflects the adjustments that were effective as of December 23, 2022.

Margin, Cost, or Charge (not including HST) *	Prior to Hearing	Adjustment	As Adjusted
Retail Margins:			
Maximum Retail Margin – Motor Fuels	7.33	1.13	8.46
Maximum Retail Margin – Furnace Oil	23.56	3.65	27.21
Delivery Costs:			
Maximum Delivery Costs – Motor Fuels	3.50	0.25	3.75
Maximum Delivery Costs – Motor Fuels (Grand Manan)	5.00	-	5.00
Maximum Delivery Costs – Furnace Oil	5.00	-	5.00
Maximum Delivery Costs – Furnace Oil (Grand Manan)	5.00	-	5.00
Full Service Charge:			
Full Service Charge – Motor Fuels	3.00	-	3.00

*cents per litre

Dated at Saint John, New Brunswick, this 26th day of January, 2023.

Heather Black
Member

John Patrick Herron
Member

Christopher Stewart
Member (Panel Chair)

Stephanie Wilson
Member