



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 fuel and furnace oil.

(Matter No. PT-001-2025)

September 12, 2025

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

ORAL HEARING: June 24-25, 2025

NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

Chairperson	Christopher J. Stewart
Member	Kenneth B. McCulloch, K.C.
Member	John P. Logan

PARTICIPANTS:

Canadian Fuels Association	Carol Montreuil
Clark Oil Co. (2010) Ltd.	Peter Clark
Convenience Industry Council of Canada	David Knight
Irving Oil Limited	Matt Hayes
Liberty Utilities (Gas New Brunswick) LP	Brandy Gellner
Oil Heat Association of New Brunswick	Matthew LeRoy
Park Fuels Ltd.	William (Bill) LeRoy
Scholten Group	Jerry Scholten Chris Scholten

PUBLIC INTERVENER: J.M. Alain Chiasson

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1 Introduction and Summary Conclusion

- [1] The Board regulates the maximum retail margin, maximum delivery costs and the maximum full service charge for motor fuels as well as the maximum retail margin and maximum delivery costs for furnace oil.
- [2] On its own motion, the Board initiated a review of whether the maximum retail margins and delivery costs last set by the Board effective December 23, 2022, should be adjusted.
- [3] For the reasons below, the Board approves:
 - a. a maximum retail margin increase of 2.20 cents per litre for motor fuel,
 - b. a maximum delivery cost increase of 1.00 cent per litre for motor fuel; and
 - c. a maximum retail margin increase of 9.03 cents per litre for furnace oil.

2 Overview

- [4] Section 1.1 of the *Petroleum Products Pricing Act* (the “Act”) requires the Board to ensure that any adjustments to retail margins, costs and charges are justified and that consumers should benefit from the lowest price possible without jeopardizing the continuity of supply of petroleum products.
- [5] To determine whether an adjustment to the maximum retail margin last set is justified, *General Regulation – Petroleum Products Pricing Act* (the “Regulation”) requires the Board to consider the following:
 - a. changes to the costs of transporting heating fuel or motor fuel from New York Harbor or, in the case of propane, from Sarnia to the province,
 - b. changes to volume of sales,
 - c. changes to storage costs,
 - d. changes to inventory turnover rates,
 - e. changes to applicable levies and insurance costs; and
 - f. any other factors that the Board considers relevant.

- [6] To determine whether an adjustment to the maximum delivery cost last set is justified, the *Regulation* required the Board to consider the following:
- a. fuel costs,
 - b. insurance costs,
 - c. capital costs,
 - d. volume of sales, and
 - e. any other factors that the Board considers relevant.
- [7] To assist in its current review, the Board engaged Gardner Pinfold Consultants Inc. to analyze the factors affecting maximum retail margins, delivery costs for motor fuel and furnace oil as well as the full service charge for motor fuel. Gardner Pinfold filed its final report with the Board on May 12, 2025 (the “GP Report”).
- [8] The Public Intervener filed a report prepared by Doane Grant Thornton, which considered maximum retail margins, maximum delivery costs and maximum full service charge for motor fuels and heating fuel (the “DGT Report”).
- [9] Expert witnesses at the hearing were Michael Gardner and Gregor MacAskill of Gardner Pinfold as well as Angie Brown of Doane Grant Thornton. Mr. Gardner and Mr. MacAskill were declared experts in the field of economics, market structure and competitive behaviour in related industries. Ms. Brown was declared an expert in the review of pricing of regulated petroleum products.
- [10] The Convenience Industry Council of Canada (“CICC”) filed written evidence and David Knight, a senior consultant with the CICC, testified on its behalf during the hearing.
- [11] The Scholten Group filed written evidence and Jerry Scholten of the Scholten Group testified on its behalf during the hearing.
- [12] Clark Oil Co. (2010) Ltd., Irving Oil Limited and Oil Heat Association of New Brunswick (“OHANB”) actively participated in the hearing and made final submissions.

3 Issue

[13] Based on the evidence of changes to retailers' costs and volumes, are adjustments to the retail margin, delivery costs and the motor fuel full service charge justified since they were last set by the Board effective December 23, 2022?

4 Methodology continues to be appropriate

[14] In past margin reviews, the Board compared changes to costs and volumes between two representative years to determine whether a change in the retail margin is justified.

[15] These analyses did not consider data received from retailers who had changed business formats since the previous review. In this review, Gardner Pinfold was unable to separate retailer motor fuel operations from other onsite retailer operations (e.g., convenience store) and, accordingly, assumed that any changes to retailer business formats were relatively minor and data was not excluded on that basis. The Public Intervener, CICC and Scholten Group all endorsed that approach.

[16] Gardner Pinfold's analysis relied on the following 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. 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.

[17] Cost information requested from retailers included credit card expenses, repair and maintenance expenses, insurance expenses, utility costs, vehicle and fuel expense as well as employee compensation costs.

[18] Ms. Brown introduced the concept of an indexing mechanism, such as an annual adjustment based on the Consumer Price Index. Indexing involves identifying the costs from a base year that would be multiplied by the index ratio between the base year and target year. Mr. Gardner countered that indexing does not accurately capture categories of costs that retailers incur to run their businesses. For instance, vehicle maintenance for a retail delivery vehicle differs from vehicle maintenance as captured in the Consumer

Price Index. Ms. Brown acknowledged that her references to indexing were for illustrative purposes only.

- [19] The Board concludes that an approach which compares changes to retailers' costs and volumes from when the margin was last set and the most current data continues to be appropriate to determine if a change in the retail margin is justified.

5 Motor Fuel

5.1 Representative data

- [20] The Board must be satisfied that the data in evidence is representative of the costs incurred by New Brunswick motor fuel retailers.

- [21] According to the GP Report, there were 399 retail outlets operating in New Brunswick in 2024. Gardner Pinfold received data sets for 251 retail outlets and concluded that 138 were useable for analysis.

- [22] With approximately 35% of provincial retail outlets and 46% of the provincial volume represented in Gardner Pinfold's analysis, the data collection of operating costs and volumes is consistent with previous reviews. The Board finds that the data from 138 motor fuel retailers regarding operating costs and volumes is sufficiently representative of the New Brunswick marketplace.

5.2 Retail margin increase

- [23] The GP Report concluded that since the Board last fixed the maximum retail margin in Matter 523, based on cost data for 2020, retailer operating costs have increased by 41.3% while the volume of retail sales has increased by 12.2%. This results in a net increase of retailer expenses in cents per litre ("cpl") of 26%. Accordingly, GP recommended that the retail margin be adjusted from the 8.46 cpl fixed in Matter 523 to 10.66 cpl, an increase of 2.20 cpl .

- [24] Both the CICC and the Public Intervener agreed that the recommended increase would be consistent with the objective of assuring the lowest possible consumer price without jeopardizing continuity of supply. There was no evidence to the contrary.

- [25] It is reasonable to conclude that without an increase to the retail margin to reflect the increase in expenses, continuity of supply could be jeopardized. The Board finds that an increase in the retail margin of 2.20 cpl from 8.46 cpl to 10.66 cpl is justified.

6 CEWS adjustment

- [26] The CICC and the Scholten Group maintained that the retail margin of 8.46 cpl fixed by the Board in Matter 523, took into account the effects of the federal government's Canada Emergency Wage Subsidy program ("CEWS") available to retailers to compensate for the effects of downturn in volumes resulting from the COVID-19 pandemic. The CEWS ended in 2021. But for the existence of the CEWS, the margin would have been fixed at 9.44 cpl - 0.98 cpl higher than it was. Had expenses remained static since Matter 523, the 2.20 cpl increase in expenses should result in an increase in the retail margin to 11.64 cpl.
- [27] They said that simply adding the 2.20 cpl increase in expenses to the 8.46 cpl margin fixed in Matter 523 perpetuates the effect of the removal of the CEWS which was not contemplated in Matter 523. They asked the Board to provide for what CICC characterizes as "margin reinstatement".
- [28] The CICC provided two options for margin reinstatement. Depending on the option selected, the result would increase the retail margin to either 11.64 cpl or 11.99 cpl.
- [29] Notwithstanding CICC's contentions, Gardner Pinfold did not recommend reinstatement. Ms. Brown noted that retail margin reviews involve anomalies and cautioned that a simple reversal of the CEWS adjustment would not necessarily reflect the true cost of doing business considering the variety of cost impacts of the pandemic since 2020. The Board agrees.
- [30] The Board is not persuaded that the requested "margin reinstatement" is required to assure a secure supply of petroleum products at the lowest possible price to consumers. Accordingly, the Board will not provide for margin reinstatement.

7 CEWS Termination Compensation

- [31] CICC and the Scholten Group also contended that, in order to account for the revenue available to retailers through CEWS, the margin fixed by the Board in Matter 523 was 0.98 cpl less than it would otherwise have been. The CEWS ended in 2021. Even so, the reduced retail margin limit has remained in place because there has been no margin review until now. They contended that the retail margin set in this matter should be adjusted upward for a sufficient period to make up for the value of the lost opportunity to earn a higher margin.
- [32] The Public Intervener noted the difficulty of monitoring any such form of revenue recovery.

[33] The Board recognizes that the interval between margin reviews has created a less-than-ideal situation. That said, establishing the retail margin is a prospective exercise based on retrospective data. As noted above, the maximum retail margin is fixed with the objective of providing consumers with the benefit of the lowest price possible without jeopardizing the continuity of supply. In our view, it is not consistent with that objective to use the retail margin going forward to compensate for the real or notional loss of potential to earn a margin in the past. Accordingly, the Board will not increase the margin beyond the 10.66 cpl recommended by Gardner Pinfold.

8 Maximum delivery costs

[34] The Board has authority to adjust maximum delivery costs that may be charged by retailers if it determines doing so is justified.

[35] Delivery costs are intended to reflect the actual costs incurred by individual retailers for the delivery of fuel. A retailer is prohibited from charging consumers more than the lesser of retailer's delivery costs and the maximum delivery costs.

[36] In Gardner Pinfold's examination of motor fuel delivery costs submitted by retailers, it found that the current 3.75 cpl appears to address most gasoline deliveries in New Brunswick in 2024. However, Gardner Pinfold also found that some retailers are paying delivery charges above 3.75 cpl and as high as 5.72 cpl, often in rural communities.

[37] The Board has taken the view 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.

[38] To ensure continuity of supply in smaller communities, Gardner Pinfold recommends an increase of 1.00 cpl (26.6%) from 3.75 cpl to 4.75 cpl.

[39] The Public Intervener and CICC concurred with Gardner Pinfold's recommended increase in delivery costs.

[40] The Board finds that the current maximum motor fuel delivery cost is inadequate and concludes that an increase of 1.00 cpl to 4.75 cpl is justified.

8.1 Maximum full service charge

[41] Legislation permits motor fuel stations offering full service to consumers to charge an extra amount for that service.

[42] Gardner Pinfold recommended maintaining a full service charge of 3.00 cpl. The Public Intervener and CICC agreed.

[43] The Board concludes that no adjustment to the current full service charge is justified.

9 Heating Fuel

9.1 Indicative data

[44] The Board must be satisfied that the data is indicative of the New Brunswick heating fuel market.

[45] Data was collected from 13 retailers; however, Gardner Pinfold was of the view that only nine retailers provided usable data. Gardner Pinfold noted that these nine retailers represent about 25 percent of the New Brunswick furnace oil market by volume.

[46] Gardner Pinfold's opinion was that the data supplied by the nine retailers may not be representative of the heating fuel market. Notwithstanding its lack of statistical reliability, the data from the nine retailers suggested that heating fuel volume declined by 42.9% resulting in an increase in cost per litre of 33.2%.

9.2 Retail margin increase

[47] The Board may adjust retail margin for heating fuel if it is satisfied that an adjustment is justified by a change in retailer's costs.

[48] Data available to Gardner Pinfold demonstrates that costs have declined by 24% for the retailers in the data set. However, those same retailers' volumes declined by 42.9%. In PI (GP) IR-7 (Exhibit GP3.08), Gardner Pinfold observed that "*The long-term implications of the market realities are fewer customers, greater distances between customers, higher delivery costs, higher minimum drops, and even greater risk of discontinuance of supply in rural areas.*" Gardner Pinfold's opinion was that if it were pushed to quantify a margin increase for heating fuel it would do so based on review of the available, albeit not statistically reliable, data and suggested an increase of 33%.

[49] The Board must consider whether a failure to increase retail margin will still allow consumers to benefit from the lowest possible price without jeopardizing continuity of supply.

[50] As volumes of sales decline it becomes increasingly expensive to serve customers.

- [51] According to the GP Report at page 11, “a margin increase could be considered in order to avoid limitations on heating fuel suppliers that may otherwise cease deliveries.”
- [52] The Public Intervener, Clark Oil, Irving Oil Limited and OHANB all endorsed an increase in retail margin for heating fuel and acknowledged that the volume decline is an industry threat with long term implications for continuity of supply.
- [53] The Board concludes that a retail margin increase of 9.03 cpl, from 27.21 cpl to 36.24 cpl, or 33.2%, is justified. While the operator data available is not statistically robust, the Board remains concerned about security of supply in light of decreasing volumes.
- [54] Notwithstanding the increase in the heating fuel margin approved in this matter, the Board is concerned that further increases without sufficient and reliable data could create such high customer costs as to manifest itself in a threat to security of supply. Future retail margin adjustments by the Board will not be considered without statistically reliable data. It will be incumbent on retailers to supply the requested operational cost data for the Board to consider whether future margin adjustments are justified. Indirect or anecdotal evidence of higher costs and/or declining volumes will not be sufficient.

9.3 Maximum delivery costs

- [55] The current maximum delivery cost for heating fuel is 5.00 cpl, initially set in 2006.
- [56] No party provided any evidence or made a recommendation concerning an adjustment to maximum delivery costs for heating fuel.
- [57] Without evidence, the Board is unable to conclude that an adjustment to the maximum delivery cost for heating fuel is justified.
- [58] As with the retail margin, future delivery costs adjustments by the Board will not be considered without statistically reliable data.

10 Industry participation

- [59] A review of this nature requires industry participation to provide the Board with necessary data upon which the Board can assess whether an adjustment is warranted. The *Regulation* requires retailers to submit annual cost data reports with respect to their petroleum operations. The Board appreciates the participation of retailers who supply data and urges industry to more fully participate in future reviews.

- [60] For its part, the Board will conduct a review of its forms and processes to facilitate the participation of New Brunswick motor fuel and furnace oil retailers and the efficient and effective reporting of their cost data.
- [61] The Board will hold another margin review in 2026 and will conduct them on a regular basis in the future.

11 Conclusion

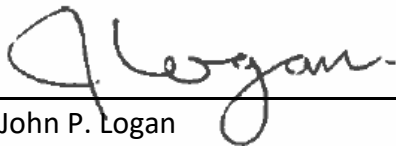
[62] The table below reflects the adjustments made and the new margins effective as of the Board's price setting effective 12:01 a.m. Friday, September 19, 2025.

Retail Margin, Cost, or Charge (not including HST)	Prior to this Decision (cpl)	Adjustment (cpl)	As Adjusted (cpl)
Motor Fuel			
Maximum Retail Margin	8.46	2.20	10.66
Maximum Delivery Costs	3.75	1.00	4.75
Maximum Delivery Costs (Grand Manan)	5.00	0.75	5.75
Full Service Charge – Motor Fuel	3.00	-	3.00
Furnace oil			
Maximum Retail Margin	27.21	9.03	36.24
Maximum Delivery Costs	5.00	-	5.00
Maximum Delivery Costs (Grand Manan)	5.00	-	5.00

Dated at Saint John, New Brunswick, this 12th day of September, 2025.



Christopher J. Stewart
Chairperson



John P. Logan
Member



Kenneth B. McCulloch, K.C.
Member