



NEW BRUNSWICK
ENERGY & UTILITIES BOARD

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

DECISION

IN THE MATTER OF an Application for
Variance of a Decision

(Matter No. PT-004-2025)

May 13, 2026

Matter PT-004-2025 – an Application for Variance of a Decision

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NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

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

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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BOARD STAFF:	Mara Mallory
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1 Introduction and Summary Conclusion

- [1] On September 12, 2025, the Board issued its decision in matter PT-001-2025 (the “Retail Margin Decision”) in which the Board approved increases in the maximum retail margin for motor fuel, the maximum delivery cost for motor fuel and the maximum retail margin for furnace oil. Subsequently, one of the participants in that matter, the Scholten Group, sought a review and variance of a portion of the Retail Margin Decision relating to the Canada Emergency Wage Subsidy Program (or “CEWS”) pursuant to Section 43 of the *Energy and Utilities Board Act*.
- [2] As a result, the Board established a process, which included an opportunity for all the parties to the Matter PT-001-2025 to make written submissions on the point to the Board. In addition to Scholten Group, written submissions were received from the Convenience Industry Council of Canada, the Oil Heat Association of New Brunswick, Clark Oil Co. (2010) Ltd. and the Public Intervener. The Scholten Group filed a further response to the Public Intervener’s submission.
- [3] For the following reasons, the Board dismisses the application for review and variance and the Retail Margin Decision remains unchanged.

2 Overview

- [4] In the Retail Margin Decision, the Board reviewed the Scholten Group’s positions on CEWS at paragraphs 26, 27 and 31:

[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”.

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[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.

- [5] At its centre, the basis for the requested review and variance of the Retail Margin Decision is an assertion that the Board erred in failing to accept the submission of the Scholten Group and other interveners made during the hearing that since the CEWS had ended in 2021, there should be a “margin reinstatement” made. The assertion is that since the 0.98 cpl reduction in the retail margin ordered in Matter 523 was to account for CEWS payments which were not received after 2021, the starting point for the consideration of an increase in margin in the Retail Margin Decision should be an initial increase to the margin by 0.98 cpl as a standalone step and the increased costs since 2020 be considered from that point. Furthermore, they argued that the retail margin going forward should be set at a higher level than the increase on operating costs would otherwise indicate for some period of time to, in essence, make up for the interim period when the CEWS program had ended and the issuance of the Retail Margin Decision.
- [6] In Matter 530, the Board reviewed and reconfirmed the test for granting and considering a review which it had considered in its previous decision in Matter 497. In paragraphs 22 through 25 of that decision the Board stated:

[22] Section 43 of the Act provides the statutory power to review, rescind or vary any Board order.

[23] In Matter 497 considered an application for a variance by the New Brunswick Power Corporation. In its decision, the Board noted that, in making a determination concerning a variance, the Board must consider the criteria set out under Rule 8.1.1 of the Rules of Procedure and owe a duty of fairness to those affected by its decisions.

[24] A review will be granted only if the Board believes that the applicant has raised sufficient grounds. The applicant must allege an error of law or jurisdiction, changed circumstances or new facts that have arisen since the close of the original proceeding, facts that were not placed in evidence in the original proceeding that were then not discoverable by reasonable diligence, or other grounds that the applicant considers sufficient. The Board will then order a review and consider the matter on its merits to determine whether the order or decision should be varied.

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[25] As stated in Matter 371, any application for a review to vary a decision is not intended as an opportunity to present the same argument on the same facts. It is not an opportunity to reargue the case. [emphasis added]

[7] A review of the written submissions filed in support of the review application makes it apparent that the parties are remaking the same argument made during the hearing and as reflected in the Retail Margin Decision (see Mr. Knight’s argument at pp. 21-22 and Mr. Scholten’s argument at pp. 42-43 of the Day 2 transcript). For better or worse, the Board has heard those arguments and ruled on the point in light of them. The parties may *bona fide* believe the Board was incorrect in its decision and have remade their original arguments in an articulate and effective manner, but, in the end, no new legal arguments were made, no new evidence has been submitted and there has been no change in circumstance. The Board finds it did not err in law or otherwise in the Retail Margin Decision.

[8] While she did recommend a jurisdictional survey review for future reviews, the Board notes the conclusion reached by the Public Intervener’s expert, Angie Brown of Doane Grant Thorton, who reviewed the report prepared by Gardner Pinfold in this matter (Exhibit PI 1.01). At page 6 of her report, Ms. Brown stated:

We have completed our review of the report prepared by Gardner Pinfold and find no exceptions to the recommendations presented therein. Additionally, we have examined all Gardner Pinfold's interrogatory responses and are satisfied with the explanations and conclusions provided.

[9] The Board has broad discretion when conducting a review under subsection 14(1) of the *Petroleum Products Pricing Act* and does not accept that it is strictly bound to solely evidence of retailers’ costs. Consideration of the evidence of retailer cost data is a key consideration, but only the first part of the process. When setting margins, the Board must also be mindful of balancing its obligation under section 1.1 of the *Act* to consider the fact that consumers should benefit from the lowest price possible without jeopardizing the continuity of supply of petroleum products.

[10] Margins are established by the Board not only based on a review of average retailer operating cost data and but also an assessment of the risk to supply and the requirement that consumers should receive the lowest possible price. Depending on the circumstances, this could create both upward and downward pressure on margin levels.

[11] An example of this is reflected in Retail Margin Decision where, despite the lack of statistically robust retailer operating cost data, the Board concluded an increase in the

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heating fuel retail margin was warranted in order to address concerns about the security of supply.

3 Temporary Margin Increase to Account for the End of CEWS

- [12] The scheme of the legislation and the approach generally taken by the Board is setting the margin prospectively based on retrospective evidence of actual operating costs and balancing lowest cost to the consumer and the current risk to the security of supply. Inherent in the margins established by the Board from time-to-time is the reality that the various costs actually experienced by individual retailers will inevitably vary, both to the retailers' advantage and disadvantage. While the Board strives to establish retail margins that are fairly representative of retailers' actual operating costs, petroleum retailers are not owed a particular margin level of any amount in the strict sense.
- [13] The argument, urged on the Board both during the hearing and in written submissions made in this review application, that the end of the CEWS program created margin amounts effectively owing to retailers was, and is again, not accepted by the Board. While an identified particular example of a variance in relation to the current established margin, it is simply a variance on one aspect of many which were considered when the margin was established. The Board finds it is not appropriate to choose a particular variance and consider it in a vacuum, let alone accept that doing so can create an amount that consumers are obligated to repay in the future.
- [14] The Board acknowledges that the potential consequences for variances not in retailers' favor is larger when there is a longer time between margin reviews. However, this cannot be resolved by establishing a larger margin in the future as compensation. The Board notes that any retailer was free to apply to the Board for a margin review at any point over the four years between the decision in Matter 523 and the Retail Margin Decision and no retailer came forward with such an application. The Board can only minimize the potential for variances by conducting reviews on a regular basis in the future and, to that end, confirmed in the Retail Margin Decision that it will conduct another retail margin review in 2026.

4 Special Margin Increase to Account for CEWS Reduction

- [15] With respect to the position of the interveners on the proper assessment of the change in retailers cost since the previous setting by the Board in Matter 523 when assessing the percentage change in retailers costs from data year 2020 to data year 2024, Gardner Pinfold did not appear to expressly deal with the 0.98 cpl post-cost assessment reduction in the

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margin to account for CEWS payments made by the Board in 523. However, this may have effectively occurred in any event.

- [16] A review of the Gardner Pinfold report filed in Matter 523 (Exhibit NBEUB 4.02) reflected a conclusion by Gardner Pinfold that retailer operating costs had increased from 7.40 cpl in data year 2019 to 9.79 cpl in data year 2020 - representing a year-over-year increase of 32.4%. In the current matter, the similar analysis by Gardner Pinfold in Exhibit GP 2.01 involved a determination of the increase in retailer operating costs from data year 2020 to data year 2024. Because of the need to find a data set of retailers across the four-year period to determine the percentage increase, Gardner Pinfold did not use the average level of retailers operating costs previously used in Matter 523 of 9.79 cpl for data year 2020 as the lower end for determining the change in average operating costs. Rather, as reflected in Exhibit GP 2.01, they used a different, materially lower average, for 2020 of 8.82 cpl from their new data set (a reduction of 0.97 cpl from the data year 2020 amount used in Matter 523) and compared it to a 11.11 cpl for data year 2024 to arrive at a percentage change between that new set of parameters over the four-year period of 26.0%. It was this percentage change which was reflected in increase of the margin approved in the Retail Margin Decision.
- [17] This consequential change which increased the difference between the 2020 and 2024 cost levels may be what was being referenced by the Public Intervener in his written submission on this review application. He stated:

However, the Public Intervener further cautions that this may not be direct reversal due to the anomalies in the 2020 data.

- [18] This is further reflected in Ms. Brown's testimony at the hearing, particularly as reflected in the portion of the transcript (Day 1, Page 139) quoted by the Scholten Group at page 4 of its written submission in this application:

MR. KNIGHT: Would you agree that continuing to apply the 2020 CES — CEWS-related deduction after the CEWS program period ended is both illogical and potentially unfair?

MS. BROWN: I wouldn't use those terms. I would suggest that continuing to include a decrease of .98 cents would be inappropriate after this - we'll say this is a cost reset, effectively, this hearing is. I — I'm not convinced that it is just a direct reversal. I think that there is a lot of anomalies in the 2020 data and that the Board should have some flexibility in how they address that matter rather than it just being a straight reversal because the current information that's in front of the Board compares 2024 to 2020, and 2020 may not be reflective of the true cost of

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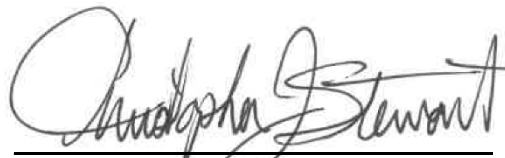
doing business in that year once you consider that there was a variety of different impacts of COVID throughout that period.

- [19] The Board finds that it did not fail to properly consider the previous margin adjustment simply because it did not directly mathematically reinstate it. Neither did the Board fail to examine the evidence before it. Rather, the Board relied upon the evidence of expert witnesses and, as Ms. Brown put it above, reflected in the Retail Margin Decision a “cost reset” after a four-year period considering the entirety of the evidence before it.

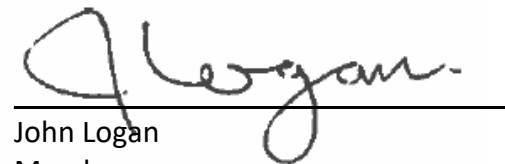
5 Conclusion

- [20] Accordingly, the application for review of the Retail Margin Decision is dismissed.

Dated at Saint John, New Brunswick, this 13th day of May, 2026.



Christopher J. Stewart
Chairperson



John Logan
Member



Kenneth B. McCulloch, K.C.
Member