



NEW BRUNSWICK
ENERGY & UTILITIES BOARD

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

DECISION

IN THE MATTER OF a Review as a
Consequence of the Repeal of the Cost of
Carbon Adjustor from the *Petroleum
Products Pricing Act*.

(Matter No. PT-005-2025)

May 13 2026

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IN THE MATTER OF a Review as a Consequence of the Repeal of the Cost of Carbon Adjustor from the *Petroleum Products Pricing Act*. (Matter PT-005-2025)

ORAL HEARING: February 24, 2026

NEW BRUNSWICK ENERGY AND UTILITIES BOARD:

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Member	Kenneth B. McCulloch, K.C.
Member	Michael Pickup

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1 Introduction and Summary Conclusion

- [1] Amendments to the *Petroleum Products Pricing Act* (the *Act*) and to the *General Regulation-Petroleum Products Pricing Act* (the *General Regulation*) came into force on December 1, 2025. The amendments eliminated the previously legislated cost of carbon adjustor which had been implemented by amendments to the *Act* and *General Regulation* in 2022 as a mechanism for passing the cost to primary suppliers of compliance with federal *Clean Fuel Regulations* (the *CFR*) through wholesalers and retailers to consumers. As a consequence of the 2025 amendments, Power Plus Technology Inc. applied for a review of the existing benchmark price-setting mechanism for gasoline and diesel fuels.
- [2] Pending the requested review, Power Plus Technology Inc. sought interim relief pursuant to s. 13.2 of the *Act*.
- [3] The application for interim relief was heard on November 24, 2025. At the hearing, Power Plus Technology Inc. requested alternative interim relief through the maximum wholesale/retail margin adjustment mechanism or any other statutory mechanism. On November 28, 2025, the Board issued an interim decision. For reasons given in that decision, the Board found that:
- (a) the evidence demonstrated at first appearance that wholesalers and retailers of motor fuels would be deleteriously impacted by the removal of the cost of carbon adjustor,
 - (b) the market adjustor does not provide a mechanism for filling the void left by the removal of the cost of carbon adjustor,
 - (c) increasing the wholesale margin by an amount equal to the then current value of the cost of carbon adjustor on an interim basis was a reasonable way to preserve continuity of supply of motor fuels to New Brunswickers until further order of the Board.

Accordingly, the Board fixed the wholesale margin for gasoline at 17.41 cents per litre, or cpl, and for diesel at 20.32 cpl until a final decision in the matter was made or until further order of the Board.

- [4] The matter was heard on February 24, 2026.

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- [5] For the following reasons, the Board orders that the cost to primary suppliers of *CFR* compliance will be included in the maximum wholesale margin. The value of that cost component will be adjusted effective on the first regular price setting of each month. Monthly adjustments to the *CFR* compliance cost allowance will be based on the average of daily Canada *CFR* Compliance Costs over the preceding month reported by Argus Media in the *Argus Americas Biofuels* publication.

2 Overview

- [6] The *Act* was passed in 2006 with the objective of providing New Brunswick consumers with petroleum products at the lowest prices possible without jeopardizing the continuity of supply of those products. The *Act* and *General Regulation* established a mechanism for fixing maximum retail prices for petroleum in New Brunswick. Essentially, the Board calculated maximum prices by using the seven-day average of reported commodity prices at the New York Harbour spot market and converting the units to metric and the values to Canadian dollars to determine a benchmark price for each petroleum product. To the benchmark price, maximum wholesale and retail margins, delivery costs, and taxes were added to set the maximum wholesale and retail prices for each product.
- [7] The prescribed price-setting mechanism required the Board to calculate the benchmark prices based on daily product prices for base products listed in Schedules A and A.1 of the *General Regulation* at the New York Harbour spot market, a major trading hub for petroleum products, as reported in the *Platts US MarketScan* and for propane at Sarnia as reported in the *Bloomberg Oil Buyers Guide*.
- [8] In 2022, the *Act* and *General Regulation* were amended to give the Board discretion to calculate the benchmark prices for petroleum products based on any petroleum product price report it considers relevant, including those published by Argus Media, Platts and the Oil Price Information Service company.
- [9] Since 2024, the Board has calculated benchmark prices for motor and heating fuels based on New York Harbour prices for the base products listed in Schedules A and A.1 of the *General Regulation* as reported by Argus. It has calculated benchmark prices for propane based on prices at Sarnia as reported in the OPIS Newsletter.
- [10] The *CFR* carbon intensity (CI) reduction requirements of the *CFR* came into effect on July 1, 2023. They require primary suppliers of petroleum products to gradually lower the lifecycle CI of the liquid fuels they sell or purchase credits from others who can reduce emissions more economically. CI reductions required by the *CFR* increase incrementally until 2030

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with the objective of lowering CI by 15% against a 2016 baseline CI. One way or another, primary suppliers incur the cost of *CFR* compliance either by reducing the CI of the fuels they sell or by buying credits.

- [11] In New Brunswick, *CFR* compliance requirements apply only to motor fuels: gasoline and diesel fuel.
- [12] The Board has no jurisdiction to regulate petroleum prices charged by primary suppliers to wholesalers and retailers. Rack prices, the prices at which fuels are bought and sold in bulk to wholesalers and retailers at a terminal include, to some extent or another, the cost to the primary supplier of *CFR* compliance.
- [13] As noted above, the current mechanism for determining benchmark prices for petroleum products is based on base product prices at New York Harbour. Because the *CFR* only affect Canadian primary suppliers, the New York Harbour prices do not reflect any *CFR* compliance costs.
- [14] To mitigate the effects of *CFR* compliance costs incurred by primary suppliers of liquid petroleum products on wholesalers and retailers the *Act* was amended in December, 2022 to require the Board to set a cost of carbon adjustor and add it to the calculation of maximum wholesale and retail prices for motor fuels.
- [15] From July 2023 until December 1, 2025, the putative cost of *CFR* compliance to primary suppliers of motor fuels was passed through to consumers by adding the cost of carbon adjustor to the Board's calculation of maximum wholesale and retail fuel prices as required by legislation.
- [16] The *Act* was amended, effective December 1, 2025, by *An Act Respecting Petroleum Product Pricing* to remove all references to the cost of carbon adjustor; the *General Regulation* was amended accordingly. The result of the amendments was that, while *CFR* compliance costs continued to be reflected in prices paid by wholesalers and retailers to primary suppliers of motor fuels, there was no longer an explicit statutory provision requiring the cost to be included in wholesale and retail prices and thereby be passed on to consumers.
- [17] In the exercise of its jurisdiction and mandate to set prices, margins, delivery costs or full service charges, the *Act* directs the Board to consider that consumers should benefit from the lowest price possible without jeopardizing the continuity of supply of petroleum products to consumers.

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- [18] The objective of this matter is to determine whether the removal of the cost of carbon adjuster jeopardizes continuity of supply of motor fuels and, if it does, whether the Board has jurisdiction to redress that risk. Finally, if the Board has the necessary jurisdiction, it must determine how to exercise it.

3 Negative Impacts of Elimination of Cost of Carbon Adjustor

- [19] The evidence in this matter clearly establishes that primary suppliers of motor fuels incur real costs associated with *CFR* compliance, those costs are passed on by primary suppliers to wholesalers and retailers in rack prices and, unless there is a means for wholesalers and retailers to pass the costs on to consumers, continuity of supply is likely to be jeopardized.
- [20] Jason Parent, an expert qualified to give evidence in the areas of petroleum markets, economics and petroleum pricing, was retained by the Board to review the current maximum wholesale margin and maximum price-setting mechanism for motor fuels with a focus on accommodating the costs associated with *CFR* compliance. Mr. Parent relied on data provided to him confidentially by three primary suppliers operating in New Brunswick. The information obtained included detailed quantitative data along with commentary on specific strategies, cost assumptions and evolution of costs over the 2023 to 2025 period and incurred costs related to *CFR* compliance over the 2023-2025 period together with volume data necessary to convert the costs into a per-litre measurement.
- [21] Mr. Parent’s analysis of the information obtained from the primary suppliers led him to the conclusion that there are clear and identifiable costs associated with *CFR* compliance. He concluded that those costs are fully embedded in the rack prices paid by wholesalers in New Brunswick, and they more or less, within about a cent per litre, match the cost of carbon adjustors applied by the Board over the 2023-2025 period, depending on the year. Mr. Parent’s findings are illustrated in Figure 15 of his report, Exhibit SEC 1.01 which is reproduced below.

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Figure 15: Annual volume-weighted average CFR compliance costs relative to the annual average CCA component



Source: Signal calculations and NBEUB Data

- [22] Mr. Parent also concluded that unless *CFR* compliance costs could be passed on to consumers of motor fuels they would have to be absorbed in wholesale and retail margins. Compared to the lowest rack-to-retail margins between 2011-2023, effective rack-to-retail margins for gasoline would have been reduced by “over 60%” and for diesel by “over 140%” without the cost of carbon adjustor. Mr. Parent concluded that “both gasoline and diesel margins in this scenario would be considerably lower than in comparator markets and fall within a range that likely challenges the sustainability of continued operations for both wholesalers and retailers.” There was no contradictory evidence, and the conclusion was accepted by the Public Intervener and all other interveners.
- [23] Mr. Parent’s analysis confirmed the efficacy of the mechanism the Board has used for calculating the cost of carbon adjustor adopted by the Board in Matter 549.
- [24] The Board finds that *CFR* compliance costs are real and are included in the rack prices paid by wholesalers and retailers to primary suppliers for motor fuels. Unless that cost can be passed on to consumers, wholesalers and retailers will have to absorb it. The result would be an effective reduction in margins. For 2025, the effective rack-to-retail margin for gasoline would be reduced to about 3 cpl and to negative 3 cpl for diesel fuel. Margins would fall significantly below comparator markets and the sustainability of the chain of supply would be in danger of collapse.

4 Options for Preserving Continuity of Supply

- [25] Mr. Parent suggested three options for mitigating the deleterious effect of the removal of the cost of carbon adjustment: incorporate *CFR* compliance costs into the static wholesale

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margin, establish a variable wholesale margin component or, transition to rack-based benchmarking. Each of the options is summarized below.

4.1 Option 1

- [26] Incorporating *CFR* compliance costs into the static wholesale margins for gasoline and diesel fuel has the attraction of being administratively simple and uses an approach that is already familiar to market participants and the Board. It is the approach adopted by the Board in the November 28, 2025, interim decision. It is a somewhat awkward approach because it treats primary supplier costs as if they were wholesaler costs such as labour, capital and overhead, which they are not. This approach could necessitate frequent periodic interventions to adapt to *CFR* credit market fluctuations, product blending economics and progressively tighter CI limits under the *CFR*.

4.2 Option 2

- [27] Establishing a variable wholesale margin component would involve designing a methodology that would use a variable proxy for *CFR* compliance costs, similar to how the cost of carbon adjustor was calculated. The concept would be that the wholesale margin component attributed to *CFR* compliance costs would be directly added to the existing static wholesale margin in each maximum price setting cycle.
- [28] Power Plus Technology Inc., the Convenience Industry Council of Canada and the Canadian Energy Marketers Association expressed the concern that the approach would add additional complexity to the pricing framework and would make it more challenging for stakeholders to understand how prices are derived by merging wholesale operating costs with primary supplier *CFR* compliance costs.

4.3 Option 3

- [29] The option recommended by Mr. Parent is to move to a form of rack-based benchmark pricing. On the surface, this option looks attractive. It is simple. It avoids converting U.S. to metric measurements, American currency to Canadian currency and calculating a proxy *CFR* compliance component based on the Low Carbon Fuel Standard credit trading market in California which remains the main mature market for trading carbon credits in North America.
- [30] A rack price mechanism has been in effect in Prince Edward Island for some time and the interveners maintained that it seems to work well for wholesalers and retailers there.

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- [31] The Public Intervener and the other interveners favour the rack-based benchmarking option as well. Power Plus Technology Inc., the Convenience Industry Council of Canada and the Canadian Energy Marketers Association correctly point out that *CFR* compliance costs are inherent in the product price so the most coherent place for it to be accounted for is in the benchmark component of cost. They maintain that wholesale transactions in New Brunswick are typically negotiated as discounts or premiums to posted rack rates. Rack prices already incorporate *CFR* compliance costs, blending economics, logistics and regional supply conditions. Adopting rack-based benchmarking would avoid the reliance on proxy adjustments which are fundamental to the existing price setting mechanism, would reflect actual wholesale market conditions in New Brunswick, contribute to transparency and eliminate frequent recalibration of margins.

5 Jurisdiction

- [32] Any consideration of a transition to rack-based benchmarking begs the question as to whether the Board has jurisdiction to do it.
- [33] Subsection 10(1) of the *Act* requires the board to establish the benchmark price for each type of fuel “using the criteria and procedure prescribed by regulation”. Subsection 4(1) of the *General Regulation* mandates how the Board is to determine the benchmark price for each type of petroleum product.
- [34] Benchmarking is derived from reported prices for base products. In the case of gasoline, the base products stipulated in the *General Regulation* are conventional blendstock for oxygenate blending, or CBOB, and ethanol. For diesel, they are ultra-low-sulfur diesel, or USLD, ultra- low -sulfur kerosene and B100, a form of biodiesel.
- [35] For example, the *General Regulation* prescribes the following mechanism for calculating the benchmark price for gasoline. The benchmark price is the weekly reference price for E10 gasoline. The weekly reference price is the “average of daily reference prices for the seven-day period excluding the weekend since the benchmark price was last published”. The *General Regulation* defines the daily reference price as “with respect to E10 gasoline, the sum of the mid-prices or the daily product prices, as the case may be, for each of its base products, multiplied by the relevant percentage set out in Schedule A for each base product”. The term “base product” is defined as meaning “a petroleum product or type of petroleum product set out in Schedule A or A.1 for which a price is indicated by a petroleum product price report selected by the Board”.
- [36] The same mechanism applies for benchmarking diesel prices.

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- [37] Mr. Parent suggests that the Board refer to the OPIS Canadian Rack Report to ascertain daily and weekly reference prices. However, that report does not report rack prices for the base products ethanol, CBOB, ULSD, ULS Kerosene or B100. Consequently, it is not a petroleum product price report that the Board could reasonably consider to be relevant.
- [38] The Board lacks the jurisdiction to transition to a rack-based benchmarking mechanism. Establishing a benchmark price for gasoline or diesel by reference to the OPIS Canadian Rack Report would constitute a marked departure from the commodity pricing mechanism for benchmark prices prescribed by regulation. Only the Lieutenant-Governor in Council has the jurisdiction to change that mechanism. The *Act* contemplates the possibility that a change to the regulated mechanism could become appropriate. Subsection 14 (3) authorizes the Minister of Energy to request that the Board review the suitability of the pricing mechanism and provide recommendations on the matter.
- [39] Without speculating on what recommendations might emerge from any such review; it is likely that the Board would have to weigh concerns such as those flagged by the Public Intervener and Mr. Parent himself in this matter as arising from adopting a primarily supplier-controlled benchmark as opposed to the current commodity price benchmarking mechanism. As the Public Intervener cautions, a transition to rack-based benchmarking would have to be accompanied by a clearly defined and consistently applied oversight mechanism to guard against disproportionate market influence by primary suppliers whose own rack prices would form the backbone of rack-based benchmarking. Consideration would have to be given to whether the Board has, or could be delegated, the oversight and remedial tools necessary to ensure that the objective of providing consumers with the lowest price possible without jeopardizing the continuity of supply of petroleum products are respected. Such jurisdiction would be necessary to counterbalance the increased control and market powers that a small number of primary suppliers would hold under a rack-based benchmarking regime.
- [40] In any event, the Minister has not requested a review so the issue is moot.

6 Preferred Mitigation Course

- [41] All participants recognized that *CFR* compliance costs must be recovered from consumers in some way, either through a transition to rack-based benchmarking or the maximum wholesale margin. As explained above, the Board presently lacks the jurisdiction to move to rack-based benchmarking. This leaves adjustments to the maximum wholesale margins as the only viable mechanism for addressing the continuity of supply concerns.

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- [42] Rack pricing is determined by primary suppliers. The Board has no evidence of how the different primary suppliers in New Brunswick are meeting their *CFR* compliance requirements and at what cost. We know only that they are complying and that there is a cost of compliance that is embedded in rack prices.
- [43] Since the Board’s interim decision on November 28, 2025, *CFR* compliance costs have been accounted for in the wholesale margin. Those costs were based on the California LCFS market prices as of November 28, 2025. Consequently, 7.90 cpl of the 17.41 cpl margin for gasoline is attributable to the putative *CFR* compliance costs; 8.81 cpl of the 20.32 cpl margin for diesel is attributable to putative *CFR* compliance costs.
- [44] Prior to the 2025 amendments to the Act and General Regulation, the Board referred to the California low carbon fuel standard, LFCS, market price as the most relevant proxy for *CFR* compliance costs. At the time the cost of carbon adjustor was introduced in 2023, there was no mature, liquid market for trading CI credits in Canada. In this matter, Angie Brown, an expert qualified to give evidence in the field of the pricing of regulated petroleum products, noted that the adoption of the market price for California LFCS was only seen as a stopgap measure. She testified that even now, the Canadian credit clearance mechanism does not have the volume of activity that would reach a standard for her to be able to conclude that it is truly reflective of real market conditions. She said that in this country most CI credits trade on a contractual basis outside the Canadian credit clearance mechanism. Ms. Brown testified that it is now generally accepted among industry stakeholders that the California-based proxy price for the cost of *CFR* compliance is very high and unsupported. Ms. Brown noted that the stakeholders with whom she had consulted told her that they were making national decisions for *CFR* compliance, not province or region-specific ones. When pressed, she could see no reason why the Canadian *CFR* Compliance Costs reported by Argus Media should not be used as the appropriate proxy for the cost of *CFR* compliance here in New Brunswick.
- [45] The Board is satisfied that the continued use of a California-based proxy for *CFR* compliance costs is no longer appropriate and that the price for Canada *CFR* Compliance Costs reported by Argus Media in its Americas Biofuels publication is a more appropriate and relevant proxy for *CFR* compliance costs here in New Brunswick.
- [46] The transition from the California-based proxy for *CFR* compliance to the Canada *CFR* compliance costs will eliminate the need to adjust for contributions to registered emission-reduction funding programs because while the California price did not contemplate Canadian programs, the Board presumes that the Canada *CFR* compliance costs already reflect those contributions.

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- [47] In his evidence, Mr. Parent noted that over the time covered in his review, *CFR* compliance costs seem to have exhibited much more volatility and inflation than the other costs the Board evaluates in its typical margin review and setting process. He noted that capturing *CFR* compliance cost impacts within the Board’s typical margin review process and static maximum allowable margin setting cycle is likely to lead to an inaccurate measure of future *CFR* compliance costs. This could result in significant periods of over or under compensation between margin reviews and potentially jeopardize security of supply in the case of under compensation.
- [48] To avoid the risk of potentially long periods of under compensation for embedded *CFR* compliance costs and the attendant jeopardy to the continuity of supply, the Board favours the adoption of a variable *CFR* compliance component to the maximum permitted wholesale margins. This is also the option favoured by the Public Intervener if rack-based benchmarking is not presently possible.
- [49] In discussing his Option 2, including *CFR* compliance costs as a variable component of maximum wholesale margins, Mr. Parent suggested that such costs be updated with each price-setting cycle. In the Board’s view, the concerns over the potential for extended periods when the reported *CFR* compliance prices are out of step with the *CFR* compliance cost component, can be mitigated by updating the *CFR* compliance cost component of wholesale margins monthly.

7 Summary Decision

- [50] The Board finds that:
- (a) there are *CFR* compliance costs to primary suppliers of gasoline and diesel fuel and those costs are fully embedded in rack prices paid by wholesalers and retailers of those petroleum products in New Brunswick,
 - (b) *CFR* compliance costs are not embedded in benchmark prices for motor fuels,
 - (c) *CFR* compliance costs have not previously been treated as wholesale or retail operating expenses for purposes of determining wholesale and retail margins,
 - (d) absent a mechanism for passing *CFR* compliance costs through to consumers, wholesalers and retailers will have to absorb them, resulting in a crippling reduction in their effective margins, which threatens the sustainability of the gasoline and diesel supply chain and jeopardizes continuity of supply,

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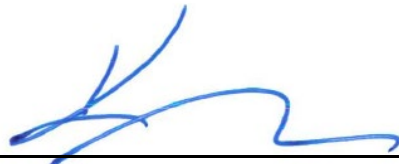
- (e) the only mechanism open to the Board under the current Act and General Regulation is to include a *CFR* compliance cost allowance in the maximum wholesale and retail margins, and
- (f) the exact amount of *CFR* compliance costs to primary suppliers is not ascertained, but the daily Canada *CFR* Compliance Costs reported by Argus Media in the *Argus Americas Biofuels* publication provides a reasonable proxy for such costs.

- [51] The Board therefore orders that the putative cost to primary suppliers of *CFR* compliance will be included in the maximum wholesale margins. The value of that cost component will be adjusted monthly, effective on the first regular price setting of each month. The Board will use the average of daily Canada *CFR* compliance cost over the preceding month reported by Argus Media in the *Argus Americas Biofuels* publication as a proxy for the *CFR* compliance costs that are embedded in the rack prices paid by wholesalers.
- [52] These changes will come into effect as of the Board’s weekly price setting for Friday, May 15, 2026.

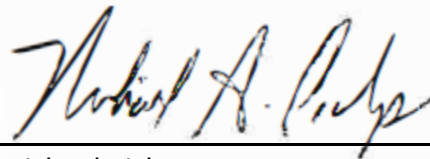
Dated at Saint John, New Brunswick, this 13th day of May, 2026.



Christopher J. Stewart
Chairperson



Kenneth B. McCulloch, K.C.
Member



Michael Pickup
Member