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**NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

AN ORDER OF THE BOARD

NO. P.P. 2(2015)

IN THE MATTER OF the *Petroleum Products Act*,
SNL 2001, Chapter P-10.1 and regulations thereunder; and

IN THE MATTER OF a review by the Board
of the total allowed mark-up for price regulated
petroleum products in the Province of Newfoundland
and Labrador.

Background

In February 2012 the Board initiated a review of the total allowed mark-up for price regulated petroleum products¹ in the Province, pursuant to the provisions of the *Petroleum Products Act* and *Petroleum Products Regulations*. The Board engaged its financial consultants, Grant Thornton, to conduct a study, in consultation with wholesalers and retailers, of changes in costs to supply and distribute price regulated petroleum products in the Province since the last review by the Board completed in 2006. The information collected in this study would be used to determine if changes should be made to the total allowed mark-up and the allowed wholesale mark-up for heating fuels² and motor fuels³ as well as the existing zone differentials and boundaries.

The review was completed in two parts. Part A, a review of the retail component of the total allowed mark-up on heating fuels, concluded in 2013. The Board issued Order No. P.P. 20(2013) on May 15, 2013 which increased the total allowed mark-up as of May 16, 2013 for furnace oil by 1.96 cents per litre (“cpl”), for stove oil by 2.28 cpl, and for propane used as heating fuel by 4.90 cpl. The wholesale mark-up for furnace oil and stove oil was not addressed at the time. Part B, a review of the total allowed mark-up on motor fuels, the wholesale mark-up for furnace and stove oil, and zone differentials for all products, commenced following the conclusion of Part A.

Part B Review Process

In October 2013 wholesalers and retailers of price regulated petroleum products were sent surveys to gather information in relation to the supply of motor and heating fuels in the Province. Information was sought from 393 motor fuel retailers, 16 registered wholesale suppliers,

¹ Price regulated petroleum products include heating fuels and motor fuels as defined in the *Petroleum Products Act*.

² Heating fuels are defined as furnace oil, stove oil or propane of a type used primarily for generating heat.

³ Motor fuels are defined as gasoline, diesel fuel or propane of a type used primarily in internal combustion engines. Motor fuels used for aviation and marine purposes are excluded except where the motor fuel is purchased from a retailer who sells that type of motor fuel for other purposes.

1 including operators of marine terminals and bulk plants, as well as 61 heating fuel suppliers.
2 Responses to the information requests were initially required by November 22, 2013 but, due to
3 low response rates, the deadline for the filing of information was extended to February 7, 2014.
4 The Atlantic Convenience Stores Association and the Canadian Federation of Independent
5 Business also participated in Part B of the review.

6
7 Grant Thornton filed its Part B report with the Board on March 31, 2014. The report
8 recommends the following:

- 9
10 1. An increase in the total allowed mark-up for motor fuels of 3.64 cpl, consisting of:
11 i) a wholesale mark-up increase of 1.16 cpl; and
12 ii) an increase of 2.48 cpl to reflect increases in retailer costs.
13
14 2. An increase in the total allowed mark-up for furnace oil and stove oil of up to 1.07 cpl,
15 consisting of:
16 i) a wholesale mark-up increase of 0.61 cpl; and
17 ii) an increase of 0.46 cpl for furnace oil and 0.19 cpl for stove oil to reflect increases
18 in retailer costs.
19
20 3. Changes to zone differentials for all products.

21
22 The Grant Thornton report was circulated to the participants on June 16, 2014 with comments to
23 be filed by July 14, 2014. The Board received comments/submissions from six participants.

24
25 The Canadian Federation of Independent Business submits that in recent years independent gas
26 retailers have been operating at losses and some owners have opted to shut down operations as a
27 result. The federation states that its members are pleased with the conclusion that the retail
28 component of the total allowed mark-up for motor fuels should be increased by 2.48 cpl. It also
29 suggests that, on a go forward basis, the total allowed mark-up should be adjusted annually with
30 inflation.

31
32 North Atlantic states that it is in agreement with Grant Thornton's recommendations with respect
33 to the total allowed mark-up for motor fuels. It submits that the Grant Thornton findings and
34 recommendations fall in line with the business cost changes experienced since the last review.

35
36 The Atlantic Convenience Stores Association filed a very comprehensive and detailed
37 submission which concludes that Grant Thornton's findings meet the test of reasonableness. The
38 association supports the finding that the retail component of the total allowed mark-up for motor
39 fuels should be increased by 2.48 cpl to reflect changes in industry operating costs. The
40 association also submits that a regular review timeline should be implemented, suggesting every
41 two years. In relation to zone differentials the association states that it has some concerns as to
42 the robustness and reasonableness of the findings which could have material implications for
43 product supply. It explains at page 5:

1 *This concern is based on the limitations of very small datasets, which initially resulted*
2 *in unreliable findings, and which then subsequently forced changes in methodologies.*
3 *The challenge is compounded by the level of precision that is attempted. One gets the*
4 *sense that an adaptive analytical approach was undertaken (i.e., workarounds) to*
5 *derive outcomes that appear to be acceptable.*
6

7 The association also expresses concern in relation to transporters to distant points in the province
8 and the economies of scale, profitability and the continued motivation to distribute.
9

10 Western Petroleum submits that Grant Thornton has made good use of sourcing the key cost
11 indicators through external sources. It argues that an annual review of mark-ups is essential to
12 maintain an adequate supply of petroleum product offerings to consumers, especially in the more
13 rural areas of the Province where volume levels are substantially smaller than on the Avalon
14 Peninsula.
15

16 Bartletts Irving, in Bay Roberts, notes that while the Grant Thornton report assumes that
17 minimum wage is paid, Bartletts Irving cannot get people to work for minimum wage. Credit
18 card fees are also cited as a major concern noting that, while the report quotes a transaction fee
19 of 1.64%, Bartletts Irving's fee is closer to 2.25%.
20

21 CST Canada Co., operating under the Ultramar brand, supports the Grant Thornton report and
22 submits that reviews of the mark-ups should be conducted bi-annually. CST Canada Co. notes
23 that the current mark-ups have not been officially reviewed since 2005 and there have been
24 tremendous changes in the industry since that time, many of which have significantly increased
25 operating costs. It notes a large increase in labour costs. In relation to zone differentials CST
26 Canada Co. states at page 2:
27

28 *Changes to the zone differentials as proposed may threaten the ability of the industry to*
29 *operate in a manner that will ensure robust supply of more remote markets.*
30 *Newfoundland and Labrador is a large province that requires several supply points to*
31 *ensure an adequate supply is maintained.*
32

33 The Board has reviewed the Grant Thornton report as well as the comments received and sets out
34 below its findings with respect to the total allowed mark-up for motor and heating fuels, and with
35 respect to zone boundaries and differentials.
36

37 **Board Findings**

38 Total Allowed Mark-up – Motor Fuels

39 The current total allowed mark-up for gasoline is 14.83 cpl, comprised of an allowed wholesale
40 mark-up of 8.58 cpl and a retail component of 6.25 cpl. The allowed wholesale mark-up was last
41 adjusted in August 2006, when it was increased by 0.08 cpl. The retail component of the mark-
42 up was last adjusted in July 2008, when it was increased by 1.25 cpl.
43
44
45

46 The current total allowed mark-up for diesel is 18.0 cpl, comprised of an allowed wholesale
47 mark-up of 8.00 cpl and a retail component of 10.0 cpl.

1 *Wholesale Mark-Up*

2 Grant Thornton recommends an increase of 1.16 cpl in the allowed wholesale mark-up for price
3 regulated motor fuels to reflect increases in marine terminal costs and tractor trailer freight costs.
4 The recommended increase in relation to marine terminal costs is 0.55 cpl. Grant Thornton
5 determined that these costs have increased by approximately 19%, largely due to increases in
6 wages and capital costs. In relation to tractor trailer transportation costs, Grant Thornton
7 recommends an increase of 0.61 cpl. While there were large fluctuations in the information
8 provided in relation to these costs, Grant Thornton determined that these costs increased on
9 average by 22.7%.

10
11 The Board notes that the comments filed do not raise any issues or concerns in relation to the
12 recommended increase in the allowed wholesale mark-up for motor fuels. The Board is satisfied
13 that costs for the supply of price regulated motor fuels at the wholesale level have increased
14 since the wholesale mark-up was last adjusted. The Board finds that an increase in the allowed
15 wholesale mark-up for motor fuels in the amount of 1.16 cpl is reasonable at this time and should
16 be approved.

17
18 *Retail Component*

19 Grant Thornton recommends an increase of 2.48 cpl in the retail component of the total allowed
20 mark-up for motor fuels to reflect increases in costs since 2006 which were not reflected in the
21 2008 adjustment. Increases in costs associated with credit card transaction fees incurred by
22 retailers comprise 1.12 cpl of this amount. Grant Thornton reports that transaction fees have been
23 cited as a significant factor affecting profitability for motor fuel retailers in Canada. Increases in
24 wages and salaries account for 1.05 cpl of the increase. Grant Thornton comments that the
25 indicated increases for wages and salaries are in line with external sources, noting that the
26 minimum wage in the Province has increased by 48% since December of 2006.

27
28 The Board notes that the comments filed support the recommended increase to the retail
29 component of the total allowed mark-up for motor fuels. Several submissions note rising costs,
30 especially in relation to wages and salaries. The Board is satisfied that costs have increased for
31 retailers of motor fuels in the Province since the last review and that the recommended increase
32 in the retail component of the total allowed mark-up is appropriate at this time to reflect the
33 changes in these costs. The Board finds that an increase in the retail component of the total
34 allowed mark-up for motor fuels of 2.48 cpl is reasonable and should be approved at this time.

35
36 *Total Allowed Mark-Up*

37 The Board will approve an increase in the total allowed mark-up for motor fuels of 3.64 cpl,
38 which includes an increase in the allowed wholesale mark-up of 1.16 cpl and reflects an increase
39 in the retail component of the total allowed mark-up of 2.48 cpl. The total allowed mark-up for
40 gasoline will be set at 18.47 cpl and for diesel at 21.64 cpl.

41
42 Total Allowed Mark-Up – Heating Fuels

43
44 The current total allowed mark-up for furnace oil in most zones is 21.06 cpl, comprised of an
45 allowed wholesale mark-up of 4.50 cpl and a retail component of 16.56 cpl. The total allowed

1 mark-up for stove oil is 25.88 cpl, comprising 7.50 cpl for the allowed wholesale mark-up and
2 18.38 cpl for the retail component.⁴

3
4 There have been two adjustments to the retail component of the total allowed mark-up on
5 furnace oil and stove oil since the last review completed by the Board in 2006. The retail
6 component of the total allowed mark-up for both furnace oil and stove oil was increased by 1.0
7 cpl in January 2010. In May 2013, with the conclusion of Part A of this review, the retail
8 component of the total allowed mark-up for furnace oil was further increased by 1.96 cpl and for
9 stove oil by 2.28 cpl. The allowed wholesale mark-up for furnace oil and stove oil has not been
10 adjusted since February 2003.

11
12 In the case of propane used as a heating fuel the total allowed mark-up is 47.60 cpl. This mark-
13 up is not broken down into wholesale and retail costs and therefore approval of a separate
14 allowed wholesale mark-up is not necessary. This mark-up was also last adjusted in May 2013
15 following the completion of Part A of this review, when it was increased by 4.90 cpl.

16
17 *Wholesale Mark-Up*
18 Grant Thornton recommends an increase of 0.61 cpl to the allowed wholesale mark-up for
19 furnace oil and stove oil to account for increased costs on the wholesale supply side. The
20 recommended increase in the wholesale mark-up for both furnace oil and stove oil is based on
21 increases in marine terminal costs and tractor trailer freight costs. In relation to the marine
22 terminal costs Grant Thornton recommends an increase of 0.36 cpl based on an overall increase
23 in these costs of 19%, similar to the findings in relation to motor fuels. In relation to tractor
24 trailer transportation costs Grant Thornton recommends an increase of 0.25 cpl based on an
25 average increase in these costs of 26%.

26
27 The Board notes that the comments do not raise any particular issues or concerns in relation to
28 Grant Thornton's recommendations for the wholesale mark-up for furnace oil or stove oil. The
29 Board is satisfied based on the Grant Thornton report that the wholesale costs for the supply of
30 furnace oil and stove oil have increased. The Board finds that an increase in the allowed
31 wholesale mark-up for furnace oil and stove oil of 0.61 cpl is reasonable and should be approved
32 at this time.

33
34 *Retail Component*
35 The adjustment in the retail component of the total allowed mark-up for heating fuels in Part A
36 of this review addressed the costs associated with credit card transaction fees. In Part B Grant
37 Thornton reconsidered the approach taken in Part A in relation to transaction fees. Grant
38 Thornton advised that only one heating fuel retailer provided information relative to credit card
39 transaction fees in Part B. On this basis Grant Thornton used information provided in relation to
40 motor fuels as a proxy for the impact of these fees on heating fuel suppliers and determined that
41 the retail component of the mark-up for furnace oil and stove oil should be increased to reflect
42 higher costs associated with transaction fees. Grant Thornton recommends an increase in the

⁴ The breakdown between the wholesale and retail portions of the total allowed mark-up for both furnace and stove oils is slightly different in Zones 4a and 7b to reflect the product supply chain. This is also the case for Zones 11a, 11b and 14 where only stove oil is supplied and sold.

1 retail mark-up for furnace oil of 0.46 cpl and for stove oil of 0.19 cpl to reflect the updated
2 approach in relation to transaction fees.

3
4 The Board is not persuaded that the available information justifies a change in transaction fee
5 costs included in the retail component of the total allowed mark-up for furnace oil and stove oil
6 at this time. The Board notes that the review of the retail component of the total allowed mark-up
7 for heating fuels was addressed in Part A and significant increases in the mark-up were approved
8 at that time. Only one heating fuel supplier provided information in relation to transaction fee
9 costs in Part B and no comments were filed in relation to this issue. The Board finds that there is
10 insufficient information to conclude that it is appropriate to use the motor fuel transaction fee
11 information as a proxy for heating fuel transaction fees. In particular, the Board is not satisfied
12 that the credit card commission rate and usage rate determined in relation to motor fuels are
13 applicable in the heating fuel context. The Board will not make any adjustment to the retail
14 component of the total allowed mark-up for heating fuels at this time but suppliers will have the
15 opportunity to provide detailed information in relation to transaction fee costs for the supply of
16 these fuels in the next review.

17 18 *Total Allowed Mark-Up*

19 The Board will approve an increase in the total allowed mark-up for furnace oil and stove oil of
20 0.61 cpl, which includes an increase in the allowed wholesale mark-up of 0.61 cpl and no
21 increase in the retail component of the total allowed mark-up. The total allowed mark-up for
22 furnace oil will be set at 21.67 cpl and for stove oil at 26.49 cpl. There will be no change to the
23 total allowed mark-up for propane used as heating fuel.

24 25 All Products Zone Boundaries and Differentials

26
27 The zone boundaries and zone differentials have not been changed since the last comprehensive
28 review completed by the Board in 2006.

29
30 Detailed information was sought in this review in relation to the distribution network and storage
31 capacity in the Province with a view to determining if changes to the zone boundaries or
32 differentials are appropriate. While some suppliers provided very comprehensive and detailed
33 responses many suppliers did not provide any information and there was little storage and
34 distribution information provided for many areas of the Province including Labrador. Grant
35 Thornton notes several changes in the distribution network and storage capacity in the Province
36 in the last few years but the impact of these changes is not clear based on the information
37 provided. Further, based on the limited information provided it was difficult to determine if there
38 were other significant changes that may have affected costs.

39
40 Some cost information was provided by some suppliers in relation to storage and distribution in
41 several zones in the province, however, a complete cost profile could not be developed based on
42 the information provided. Without complete cost and distribution network and storage capacity
43 information it was difficult to quantify the changes in the costs of supplying product to zones
44 throughout the Province. In some cases, Grant Thornton extrapolated costs in one zone based on
45 the information available in relation to neighbouring zones. On this basis Grant Thornton
46 recommends changes to zone differentials throughout the Province which would result in

1 significant increases in maximum prices in some zones and significant decreases in some zones.
2 Grant Thornton did not recommend any changes to the zone boundaries.

3
4 The Board notes that some participants raised concerns in relation to the issue of zone
5 boundaries and differentials, two commenting on Zone 8 and Zone 9 and one on Zone 7. In
6 particular the Atlantic Convenience Stores Association and CST Canada Co. expressed concerns
7 in relation to the recommended changes to the differentials and the potential implications for the
8 supply of product in some areas of the Province. The Board acknowledges the challenges to
9 suppliers of providing detailed storage, distribution and costs information for each zone in the
10 Province, and finds that the available information was insufficient to update supply zone
11 diagrams depicting how the products are supplied to each zone from point of production or
12 importation into the Province and the associated costs. Absent this vital information the Board
13 cannot determine if changes should be made to the zone boundaries or differentials. The Board
14 has reviewed the recommendations in the Grant Thornton report with respect to the zone
15 differentials and, based on the available information, finds that it is not appropriate to make any
16 changes to the differentials without comprehensive updated storage, distribution and cost
17 information. The Board will not make any adjustments to the zone boundaries or differentials at
18 this time. The Board notes that a wholesaler or retailer can make an application with supporting
19 documentation, pursuant to s. 8 of the *Petroleum Products Act*, for a change in the price of a
20 product in a zone.

21
22
23 **IT IS THEREFORE ORDERED THAT:**

- 24
25 1. The adjustments to the total allowed mark-up and the allowed wholesale mark-up for
26 motor fuels and heating fuels, as set out in Schedule A to this Order, to be effective as of
27 January 15, 2015, are approved.

DATED at St. John's, Newfoundland and Labrador this 14th day of January 2015.

Andy Wells
Chair & Chief Executive Officer

Darlene Whalen, P.Eng.
Vice-Chair

Dwanda Newman, LL.B.
Commissioner

James Oxford
Commissioner

Bobbi Sheppard
Assistant Board Secretary

**Newfoundland and Labrador
Motor Fuels and Heating Fuels
Total Allowed Mark-up and Allowed Wholesale Mark-up (cents per litre)**

Motor Fuels All Zones			
Gasoline	Current	Adjustment	New
Wholesale Mark-up	8.58	+1.16	9.74
Retail	6.25	+2.48	8.73
Total Allowed Mark-up	14.83	+3.64	18.47
Diesel	Current	Adjustment	New
Wholesale Mark-up	8.00	+1.16	9.16
Retail	10.00	+2.48	12.48
Total Allowed Mark-up	18.00	+3.64	21.64

Heating Fuels (Excluding Zones 4a, 7b, 11, 11a & 14)			
Furnace Oil	Current	Adjustment	New
Wholesale Mark-up	4.50	+0.61	5.11
Retail	16.56	0.00	16.56
Total Allowed Mark-up	21.06	+0.61	21.67
Stove Oil	Current	Adjustment	New
Wholesale Mark-up	7.50	+0.61	8.11
Retail	18.38	0.00	18.38
Total Allowed Mark-up	25.88	+0.61	26.49

Heating Fuels Zones 4a & 7b			
Furnace Oil	Current	Adjustment	New
Wholesale Mark-up	6.50	+0.61	7.11
Retail	14.56	0.00	14.56
Total Allowed Mark-up	21.06	+0.61	21.67
Stove Oil	Current	Adjustment	New
Wholesale Mark-up	11.00	+0.61	11.61
Retail	14.88	0.00	14.88
Total Allowed Mark-up	25.88	+0.61	26.49

Heating Fuels Zones 11, 11a & 14			
Stove Oil	Current	Adjustment	New
Wholesale Mark-up	14.88	+0.61	15.49
Retail	11.00	0.00	11.00
Total Allowed Mark-up	25.88	+0.61	26.49

Propane Heating Fuel All Zones			
Propane	Current	Adjustment	New
Total Allowed Mark-up	47.60	0.00	47.60