

IN THE MATTER of an application by D. P. Murphy Inc. for Retail Petroleum Outlet License in Borden-Carleton, Prince Edward Island, pursuant to section 20 of the *Petroleum Products Act*.

**WRITTEN SUBMISSIONS ON BEHALF OF
THE APPLICANT, D. P. MURPHY INC.**

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PART I - OVERVIEW

1. On June 27, 2023, D.P. Murphy Inc. ("D.P. Murphy") made an application to the Island Regulatory and Appeals Commission (the "Commission") for a license to operate a new retail petroleum outlet at the intersection of the TransCanada Highway and Dickie Road, in Borden-Carleton. The property being proposed for the outlet is located at the corner of a controlled intersection, at a critical entry point to Prince Edward Island, just before the Confederation Bridge.
2. The proposed outlet will have four fuel pumps which supply both gasoline and diesel, include a convenience store, a full-scale Tim Hortons restaurant with a double lane drive through, and be open 24 hours a day. The property will be owned and operated by D.P. Murphy under the Irving Oil brand.
3. The 6.03-acre development being proposed for the property also includes a large parking lot containing 122 parking spaces and 15 tractor trailer parking spaces. The development's site plans are designed to ensure large commercial vehicles have the appropriate turning radius to maneuver and park.
4. The proposed development will also host six EV charging stations, contain two retail store offerings, be fully wheelchair accessible, include large commercial washrooms, and offer Wi-Fi service.
5. On June 27, 2023, the Commission published public notice of the application and advised that anyone wishing to comment on the application could email or write the Commission by July 28, 2023. The Commission received a number of comments from members of the public.
6. Two parties applied for and were granted added party intervenor status with respect to this application. Howatt's Tourist Mart Ltd. ("Howatt's") operates a retail petroleum outlet on the TransCanada Highway in Borden-Carleton under the Shell brand. Their outlet is located approximately three kilometres from the proposed location. Ceretti's Grocery and Hardware Ltd. ("Ceretti's") operates a retail petroleum outlet, grocery and hardware store on the TransCanada Highway in Borden-Carleton, on the property next to the D.P. Murphy's proposed outlet. Ceretti's operates under the Mobil brand. Howatt's and Ceretti's oppose approval of the application by D.P. Murphy.
7. A third retail petroleum outlet operates in Borden-Carleton - the Esso Couche-Tard 2342 ("Esso"), which operates at the intersection of Borden Avenue and Abegweit Blvd. The Esso did not apply for intervenor status in this application.
8. On October 30, 2024, the Commission ordered a public hearing in relation to the application. A public hearing was held on May 13, 14, and 15, 2025. All parties participated in the hearing.

PART II - STATUTORY MANDATE

9. The Legislature has vested the Commission with the authority to supervise the licensing of retail petroleum outlets in Prince Edward Island.¹ The *Petroleum Products Act* requires that every retailer obtain a license from the Commission.² However, no license confers any perpetual or exclusive right by virtue of section 18 of the *Petroleum Products Act*.³
10. The Commission is required to consider whether the public interest, convenience and necessity favour the approval of D.P. Murphy's application.⁴ More specifically, section 20 of the *Petroleum Products Act* requires the Commission to consider the demand for the proposed service, the location of the outlet, traffic flows and the applicant's record of performance:

20. Criteria to be considered

*When issuing a license with respect to the operation of an outlet operated by a retailer, the Commission shall consider the public interest, convenience and necessity by applying such criteria as the Commission may from time to time consider advisable including but not restricted to the demand for the proposed service, the location of the outlet, traffic flows and the applicant's record of performance.*⁵

11. Additional relevant factors are set out in the application form. The form states that the Commission may consider the following:
 - (a) the services presently available to the motoring public in the area;
 - (b) trends in gasoline sales;
 - (c) population and traffic trends in the area;
 - (d) the demand for service; and
 - (e) whether the application would promote competition.
12. In its prior decisions, the Commission has emphasized that section 20 of the *Petroleum Products Act* is a flexible provision and the particular circumstances surrounding each application must be considered. There is no single checklist of factors that must be satisfied in every application. The objective of the *Petroleum Products Act* is to ensure that there is a reasonable network of retail outlets.⁶ Public convenience and necessity are

¹ *Petroleum Products Act*, R.S.P.E.I. 1988, c. P-5.1, s. 9.

² *Ibid.*, s. 11.

³ *Ibid.*, s. 18.

⁴ *Ibid.*, s. 20.

⁵ *Ibid.*

⁶ Order PC10-01, at para. 54.

therefore measured under the *Petroleum Products Act* from the perspective of the motoring public and not the public in general.⁷

13. The exercise is a contextual one. The presence or absence of any one factor is not necessarily fatal. The whole of D.P. Murphy's application, including all of its supporting information, must be considered against the statutory standard described by the Legislature in section 20 of the *Petroleum Products Act*. That standard has been developed over time by the Commission as the regulator charged with administering the *Petroleum Products Act*.

PART III - ISSUE

14. The only issue is whether public interest, convenience and necessity would be satisfied by approving a retail petroleum license for D.P. Murphy at the proposed location in Borden-Carleton.

PART IV - SUBMISSIONS

Burden of Proof

15. In Order PC18-003, the Commission held that an applicant seeking approval under section 20 of the *Petroleum Products Act* bears the legal and evidentiary burden of substantiating its application. In this case, that burden rests with D.P. Murphy. However, in the regulatory context, care must be taken not to import a strict judicial understanding of burden of proof into this type of assessment. D.P. Murphy must substantiate its application; however, D.P. Murphy cannot be expected to assume the burden of proving exactly what will happen in the future.
16. The interveners are under no legal burden to prove anything; however, clear evidence is nonetheless required from them should the interveners wish to establish that a new license will result in the closure of an existing outlet, which in turn will result in diminished service to the motoring public at large. Evidence that is both reliable and specific to the local market is required. The interveners cannot merely speculate or assume their projected losses in sales resulting from the approval of a new license to defeat D.P. Murphy's application.

Expert Report by Chris Robertson, CPA

17. In support of its application, D.P. Murphy submitted a market overview and analysis report prepared by Chris Robertson, Partner and National Leader of the Commercial Diligence & Market Insights⁸ practice at Deloitte LLP (the "Deloitte Report").⁹ The Deloitte Report provided data and information related to the factors outlined above in relation to public interest, convenience and necessity.
18. The Commission declared Mr. Robertson an expert in the field of commercial market research, including commercial market research in the energy sector and the consumer

⁷ *Ibid.* at para. 55.

⁸ List of Exhibits, A4, Pages 78-82.

⁹ List of Exhibits, A3, Pages 57-76.

sector. The Commission authorized Mr. Robertson to provide opinion evidence in the field of commercial market research, including in relation to:

- (a) conducting primary and secondary commercial market research in the energy sector and the consumer sector;
 - (b) advising on commercial implications related to investments and acquisitions in the energy sector and the consumer sector;
 - (c) advising on performance and commercial growth options in the energy sector and the consumer sector;
 - (d) assessing market performance, size, growth, outlook, and trends in the energy sector and the consumer sector;
 - (e) assessing options for entry into new markets in the energy sector and the consumer sector; and
 - (f) assessing competitive dynamics in the energy sector and the consumer sector.
19. Mr. Robertson was the only expert witness at the hearing qualified to provide opinion evidence in the area of commercial market research. He described the methodology used in the preparation of the Deloitte Report as well as the conclusions arising from his analysis. At a high level, Mr. Robertson looked at the historical volumes of petroleum sold in PEI and tracked those volumes against other data that would, in his expert opinion, have resulted in corresponding positive trends in gasoline sales in the Borden-Carleton area. The data that Mr. Robertson identified as having a direct correlation with gasoline sales was PEI's population, tourism numbers, two-way traffic on the Confederation Bridge, and traffic passing the location of the proposed outlet. Mr. Robertson was able to draw correlations between gasoline sales and the historical data examined, which allowed him to leverage statistics on projected growth in tourism for the purpose of forecasting future demand for gasoline in Borden-Carleton.
20. In Mr. Robertson's expert opinion:
- (a) D.P. Murphy's proposed retail petroleum outlet would promote competition by adding a modernized gas and convenience offering to Borden-Carleton, benefiting the residents of the region, PEI as a whole, as well as tourists, by providing in demand services and offerings either no longer being offered (Irving Oil rewards programs) or in limited supply in the region (EV chargers and tractor trailer parking); and
 - (b) projected growth in traffic on the stretch of road passing the proposed location, projected growth in population, and projected growth in tourism, demonstrate that there is a demand for a new retail petroleum outlet in Borden-Carleton.

Evidentiary Question

21. An evidentiary question arose during the hearing of the application relating to the admissibility of four documents Ceretti's sought to file during the cross-examination of Mr. Robertson. D.P. Murphy objected to the admissibility of these four documents, being:
- (a) Exhibit I1 titled: "PEI Population Report Quarterly – Population Report, Fourth Quarter 2024";
 - (b) Exhibit I2 titled: "Visitor Volume & Value Dashboard and Prince Edward Island achieves a record year for tourism";
 - (c) Exhibit I3 titled: "Summary of Monthly Traffic Volumes on the Confederation Bridge for 2022, 2023, 2024"; and
 - (d) Exhibit I4 titled: "Kalibrate Canada, Inc. Site Detail Report – Borden, Prince Edward Island (Single Sites), Quarterly Data".
22. The nature of D.P. Murphy's objection related primarily to the failure of Ceretti's to lead any evidence regarding the origin of the documents and the authenticity and accuracy of the data contained therein. Specifically, D.P. Murphy noted:
- (i) No witness had spoke to the truth or accuracy of the contents of the Exhibits or had proved the authenticity of the data cited in the Exhibits – and to the extent Ceretti's wished to "surprise" Mr. Robertson with supposed new data – Ceretti's had an obligation to prove the authenticity of the "new" data.
 - (ii) With respect to Exhibits I1, I2, I3, and I4, D.P. Murphy and the Commission were not presented with information about who printed these documents or when they were printed. Further, when the website purportedly "sourcing" Exhibits I1 and I2 was entered, it did not retrieve the same document shown in Exhibits I1 and I2.
 - (iii) Exhibit I3 contained no website to source the information in the document at all, and further, the document contained a disclaimer which included the following statement: *"The department does not guarantee the accuracy of this information nor does it accept any responsibility for its use by any party making the request for that of any third-party."*
 - (iv) The website purportedly "sourcing" Exhibit I1 contained a disclaimer which included the statement: *"These are preliminary data that will be revised over the coming year"* and the website listed eight other sources of information for data.
 - (v) Exhibit I2 appeared to be two items, the first a screenshot and the second another document from a different website or different link which was dated February 5, 2025.
 - (vi) Exhibit I4 appeared to be two documents, and the Commission was not presented with information about who authored the second document.

23. D.P. Murphy's objection also raised concerns about the unfairness of permitting Ceretti's to challenge the forecasts and data of the Deloitte Report during cross-examination of Mr. Robertson in a manner which did not provide Mr. Robertson – and by extension, D.P. Murphy – with an appropriate opportunity to respond.
24. At the time the Exhibits were sought to be filed, D.P. Murphy and the Commission were not presented with any information about why the Exhibits could not be filed in accordance with Rule 21(3) of the Commission's Rules of Practice & Procedure and the prior timelines established by the Commission.
25. Rule 21.3. states that unless provided for in the Rules or otherwise directed by the Commission, all documents must be submitted to the Commission no later than five (5) days prior to the commencement of a hearing.
26. Rule 47(1) reiterates that documents are expected to be filed in accordance with Rule 21(3). Rule 47(1) further states that if a party wishes to file a document during a hearing, then the party may only do so with the approval of the Panel Chair. If another party objects to the filing, then the Panel shall determine whether the document may be filed.
27. The Commission has previously enforced Rule 21. 3 on this application by postponing the dates this application was initially scheduled to be heard (on February 25, 26, and 27, 2025) so that the interveners would have time to respond to two letters of support D.P. Murphy filed with the Commission in the five (5) day window leading up to the original hearing dates.
28. D.P. Murphy was not afforded the appropriate opportunity to respond to the Exhibits Ceretti's entered during the cross-examination of Mr. Robertson. In response to the concerns D.P. Murphy raised about Ceretti's failure to file the Exhibits in accordance with Rule 21(3), Ceretti's indicated that the data in the Exhibits were for the purpose of challenging the credibility of the Deloitte Report and expert witness, Mr. Robertson. However, no challenge to Mr. Robertson's credibility was made – the true nature of that which was presented to Mr. Robertson in the Exhibits was a challenge to the forecasts projected by Mr. Robertson in the Deloitte Report.
29. It is important to distinguish between information that undermines the credibility of an expert witness and information that challenges the expert witness's opinion. While a party is not required to disclose information in advance of a hearing that can successfully undermine the credibility of a witness, it is unfair to challenge an expert witness's opinion without providing that witness with an appropriate opportunity to respond. Cross-examination on new data does not provide an appropriate opportunity to respond.
30. Further, Howatt's and Ceretti's were invited to file submissions, documents, or material from an expert (or otherwise) for the purpose of challenging the data and information in the Deloitte Report in advance of the hearing.¹⁰ Neither of the interveners exercised this

¹⁰ List of Exhibits, C5, Correspondence to parties re hearing and procedural timeline (October 30, 2024), Pages 182-183; C6, Correspondence to parties re amendments to procedural timelines (December 16, 2024), Pages 185-186; Correspondence to parties re hearing and procedural timelines (January 21, 2025), C7, pages 188-189.

opportunity. Had the Interveners complied and filed the data in the Exhibits in advance of the hearing, D.P. Murphy could have exercised its opportunity to file a reply.

Submissions as to Weight

31. While the Commission ultimately choose to accept the Exhibits into evidence, the parties were invited to make submissions regarding the weight to be afforded to the Exhibits. Given the decision of the intervenor not to disclose them in advance, to call no evidence whatsoever regarding their origin or contents, and the inability of Applicant or the Commission to confirm their contents during the hearing, the Exhibits attract little weight.
32. Although Ceretti's failed to prove the documents and the authenticity and accuracy of the data contained therein, D.P. Murphy recognizes that (with the exception of Exhibit I4), it is possible data contained in the Exhibits may come from publicly available sources. With respect to Exhibit I4, at least the first page of that document is purported to be Kalibrate Canada, Inc. data, D.P. Murphy recognizes this is a source that was also used by Mr. Robertson. Therefore, in addition to the addressing the weight to be accorded to the Exhibits – as documents – D.P. Murphy submits it is appropriate to also consider the weight to be allocated to Mr. Robertson's answers in response to cross-examination questions about the Exhibits.
33. In short, little to no weight should be allocated to Mr. Robertson's answers in response to cross-examination questions about the Exhibits.
34. Presenting Mr. Robertson with new data on cross examination for the purpose of challenging his forecast and opinion is not a challenge to Mr. Robertson's credibility – it is trial by ambush. The Commission and D.P. Murphy were not provided with any submissions, documents or material from an expert in advance of the hearing to indicate that Ceretti's would be challenging Mr. Robertson's forecast in this manner. Had Ceretti's done so, D.P. Murphy could have exercised its opportunity to respond.
35. Presenting snapshots of data in piecemeal to Mr. Robertson during cross-examination and asking how same would affect his forecast amounts to asking for commercial market research expertise on the fly. Mr. Robertson stated on re-direct that new data in the Exhibits would need to be reviewed in a holistic assessment to determine whether that new data may impact the forecast in the Deloitte Report.
36. Rule 1(2) states that the Commission's Rules and procedures are founded upon the principles of natural justice and fairness. Natural justice and procedural fairness are foundational principles guiding all administrative hearings. These principles would be undermined if the Commissions allocates weight to Mr. Robertson's answers in response to cross-examination questions about the Exhibits.

Public Interest, Convenience, and Necessity

37. D.P. Murphy has substantiated its application and demonstrated that the granting of a retail petroleum license would satisfy the public interest, convenience and necessity considerations set forth in section 20 of the *Petroleum Products Act*.

Record of Performance

38. D.P. Murphy has a demonstrable record of excellence in hospitality services. D.P. Murphy owns and operates restaurants and hotels in the Maritimes. The application describes D.P. Murphy's operating experience and current portfolio. D.P. Murphy has received numerous franchisor awards over the years for quality, cleanliness and customer service in restaurants and hotels.
39. Danny Murphy, D.P. Murphy's owner and president, provided *viva voce* evidence at the hearing where he expanded on D.P. Murphy's track record of success and strong record of regulatory compliance, including in employment standards, public health and environmental standards. D.P. Murphy also has a track record of compliance with the *Income Tax Act* and municipal bylaws in the municipalities where it operates.
40. Although the proposed retail petroleum outlet would be the first that D.P. Murphy has owned and operated, the Commission has previously approved retail petroleum outlet applications for an applicant who had had no record of performance in the petroleum products industry. In PC10-01, the Commission considered two applications by Karbrennal's Company Inc and Stratford Petroleum Inc. for licenses to operate retail gasoline outlets on Jubilee Drive in Stratford. One of the principals for Stratford Petroleum Inc. had no record of performance in the petroleum products industry. Nevertheless, the Commission found that Stratford Petroleum Inc. was capable and well able to set up and operate a new retail petroleum outlet.¹¹
41. D.P. Murphy's credentials are impressive on their own, and D.P. Murphy will also be benefiting from the expertise provided by an experienced fuel supplier, Irving Oil. D.P. Murphy's extensive operating experience, track record of success, and strong record of regulatory compliance support the inference that D.P. Murphy would excel managing the operations of a retail petroleum outlet at the proposed location.
42. The public interest is advanced by petroleum retailers with demonstrable records of performance and regulatory compliance.

Trends in Traffic and Population

Population

43. The Deloitte Report reviewed historical population data from the 2011, 2016 and 2021 Statistics Canada Census and gathered forecast population growth information from Finance PEI, Statistics Canada, and the Conference Board of Canada.¹² A historical and forecast population was summarized in a table which forecast PEI's population growth through to 2031. Estimates of population for each year throughout the forecast period were obtained by taking the average of the population growth forecasts from Finance PEI, Statistics Canada, and the Conference Board of Canada.

¹¹ PC10-01, para 60. <https://irac.pe.ca/wp-content/uploads/PC10-01.htm>

¹² List of Exhibits, A3, see, in particular, pages 60-61.

44. Mr. Robertson acknowledged that population growth is a factor to consider when estimating future demand for gasoline because historically an increase of population growth has corresponded with an increase in demand for petroleum.
45. While Mr. Robertson recognized that the population of Borden-Carleton has not demonstrated strong population growth, the location of D.P. Murphy's proposed development, at a critical entryway to PEI, lends to the inference that service stations in Borden-Carleton serve a broader population than the Town and its surrounding communities. Because residents of PEI leaving and returning to PEI via the Confederation Bridge will drive by the proposed location, a trend of increasing population on PEI is a relevant factor in considering demand at the proposed location.
46. Exhibit I1 was presented to Mr. Robertson during his cross examination. This Exhibit I1 "PEI Population Report Quarterly – Population Report, Fourth Quarter 2024" indicates that PEI's population was estimated to be 179,280 as of January 1, 2025. This population is lower than the population forecasted by Mr. Robertson in the Deloitte Report. This simply means that the average of PEI's 2025 population growth estimates prepared by Finance PEI, Statistics Canada, and the Conference Board of Canada was higher than PEI's actual population growth in 2025. On re-direct, Mr. Robertson acknowledged that in his extensive experience in commercial market research, it is very rare that his forecasts will be 100% correct. Mr. Robertson also indicated that he has had forecasting situations where the first-year actuals have not met his projected forecast, but in subsequent years the actual numbers have still demonstrated the overall trend. In other words, a trend of not meeting a forecast for one year does not preclude the overall forecast from being accurate.

Tourism

47. The Deloitte Report also looked at trends in the number of tourists historically visiting PEI.¹³ Mr. Robertson described the analysis at this section of the report. He indicated he had segmented tourists to PEI by various categories, to establish "Higher Applicability Travellers", being those he determined most likely to travel to PEI via the Confederation Bridge, rather than by air or sea travel.
48. Those Higher Applicability Travellers were identified as visitors from Ontario, Quebec, New Brunswick, Nova Scotia, Newfoundland, New England, as well as those visitors travelling to PEI by motorcoach. Mr. Robertson observed that the historical trends in the number of Higher Applicability Travellers were increasing along with total travellers to PEI.
49. The data in the Deloitte Report indicates that visitors to PEI saw steady growth from 2012 to 2019. 1,632,537 travellers visited PEI during 2019. Visitors to PEI decreased sharply during the years of the Covid19 pandemic in 2020 and 2021, but by 2022 visitors to PEI were reapproaching pre-pandemic levels. In 2022, 1,335,119 travellers visited PEI. Mr. Robertson obtained a preliminary estimate of total visitors to PEI for 2023 from Tourism PEI. The preliminary estimate of total visitors to PEI in 2023 was 1,497,269.
50. Mr. Robertson used Tourism PEI's 2023 tourist estimate multiplied by the Conference Board of Canada's annual visitor growth rates for 2024 through 2026 – to forecast total

¹³ List of Exhibits, A3, see, in particular, pages 61-62.

tourism numbers on PEI to 2026. Mr. Robertson forecast that 1,679,196 tourists could be traveling to PEI by 2026, and 1,422,652 of those visitors were most likely to travel to PEI via the Confederation Bridge.

51. As DP Murphy's proposed development would be built at this critical entryway to PEI, and many tourists arrive on and leave PEI via the Confederation Bridge, Mr. Robertson indicated an expected increase in tourism corresponds with an increasing demand for gasoline in Borden-Carleton – and all of PEI.
52. The data presented to Mr. Robertson in Exhibit I2 "Visitor Volume & Value Dashboard and Prince Edward Island achieves a record year for tourism" indicates that tourism numbers were higher than even Tourism PEI had estimated during 2023. Tourism PEI had provided a preliminary estimate of 1,497,269 visitors to PEI during 2023 – whereas the actual visitors to PEI during 2023 was 1,615,481. This demonstrates what Mr. Robertson indicated on re-direct – it is very rare that forecasts will turn out to be 100% correct. In the case of tourism to PEI, tourism numbers in 2023 exceeded even that which Tourism PEI had forecast and provided as an estimate to Mr. Robertson.

Traffic

53. In addition to visitors attending PEI via the Confederation Bridge, Mr. Robertson noted that traffic passing the proposed location is a factor relevant to demand for gasoline in Borden-Carleton. In the Deloitte Report, average annual daily traffic for the section of the TransCanada Highway directly on the PEI side of the Confederation Bridge passing by Dickie Road was obtained from the PEI Department of Transportation and Infrastructure.
54. Mr. Robertson observed that the annual average daily traffic passing the proposed location increased steadily from 2012 through to 2019. An average of 4,057 motorists passed the proposed location each day during 2012 – whereas an average of 4,893 motorists passed the proposed location each day during 2019.¹⁴
55. The average number of motorists passing the proposed location each day decreased during the years of the Covid19 pandemic in 2020 and 2021, but by 2022 average daily traffic passing the proposed location were close to returning to pre-pandemic levels. An average of 4,724 motorists passed the proposed location each day during 2022. The Deloitte Report indicates that where traffic turning left on to Dickie Road from the Route 1 and Dickie Road intersection is accounted for in traffic passing the proposed location, the total annual average daily traffic passing the proposed location was expected to have been near 4,770 in 2022. This represents between 1,739,043 and 1,742,328 vehicles passing the proposed location for the year 2022.

¹⁴ List of Exhibits, A3, see, in particular, pages 63-64.

Confederation Bridge Traffic

56. The Deloitte Report also contains data on historical numbers of two-way crossings over the Confederation Bridge.¹⁵ This data followed a similar pattern to traffic on the area of the TransCanada Highway passing the Dickie Road. Annual traffic on the Confederation Bridge demonstrated a pattern of steady growth between 2012 and 2019.
57. During 2012, 1,485,000 motorists crossed the Confederation Bridge. By 2019, the number of motorists crossing the Confederation Bridge had increased to 1,786,000. The number of motorists crossing the Confederation Bridge decreased during the years of the Covid19 pandemic in 2020 and 2021, but by 2022, the number of motorists crossing the Confederation Bridge had near rebounded to 2019 numbers – with 1,724,000 motorists crossing the Confederation Bridge during 2022.
58. Mr. Robertson also noted that summer Confederation Bridge crossings during July and August of each year consistently represented the highest seasonal Confederation Bridge crossings. Summer Confederation Bridge crossings accounted for near 30% of total annual Confederation Bridge crossings, coinciding with peak tourist season on PEI.
59. The data set out in Exhibit I3 – “Summary of Monthly Traffic Volumes on the Confederation Bridge for 2022, 2023, 2024”, indicates that the number of Confederation Bridge Crossings continue to increase. In 2023, 1,920,047 motorists crossed the Confederation Bridge – amounting to an annual average daily traffic of 5,260 motorists. In 2024, 1,998,709 motorists crossed the Confederation Bridge – amounting to an annual average daily traffic of 5,461 motorists. This is objective data that is related to the area in the immediate vicinity of the proposed location. It demonstrates that annual average daily traffic crossing the Confederation Bridge is increasing.

Trends in Gasoline Sales

60. The Deloitte Report assess gasoline prices on PEI and notes that generally gasoline prices are higher on PEI as compared to the other Maritime Provinces.¹⁶ Mr. Robertson indicated that this is a factor relevant to gasoline demand because the potential for price premiums to cause visitors to gas up before entering PEI should be considered, especially given a recent addition of the Port Elgin Shell station in New Brunswick.
61. The Deloitte Report also assesses gasoline sales on PEI and in Borden-Carleton.¹⁷ The Deloitte Report uses the following methodology for purposes of determining the historical average percentage of PEI’s total gasoline sales Borden-Carleton represents:
 - (a) Total retail gasoline sales volumes for all of PEI for the years 2012 through to 2022 as well as the number of retail outlet licenses on PEI issued to Garages, Stations, and Merchants were obtained.
 - (b) The total gasoline sales for all of PEI was calculated by multiplying the average gasoline volume sold per retail outlet by the number of retail outlets on PEI (note

¹⁵ List of Exhibits, A3, see, in particular, page 64.

¹⁶ List of Exhibits, A3, see, in particular, page 65.

¹⁷ List of Exhibits, A3, see, in particular, pages 66-67.

that Propane Only and Marine Licenses are excluded from the number of retail outlet licenses used to calculate total gasoline sales for all of PEI).

- (c) Annual retail gasoline volumes sold in Borden-Carleton from 2018 to 2022 were obtained from Kalibrate Canada, Inc. and evaluated as a percentage of the total gasoline volumes sold on PEI between 2018 and 2022.
62. Mr. Robertson observed that the volume of litres of gasoline sold on PEI increased steadily from 2014 through to 2019. In 2014, PEI sold 195,250,507 litres of gasoline. In 2019, PEI sold 228,878,056 litres of gasoline. Following a decline of overall litres of gasoline sold on PEI during the Covid19 pandemic – litres of gasoline sold on PEI near rebounded by 2022, with PEI selling a total of 227,566,420 litres of gasoline that year.
63. Mr. Robertson noted that across 2018-2023, Borden-Carleton represented between 3.2% and 4.7% of total PEI retail gasoline volumes. Excluding 2020 and 2021 as exceptional years due to the Covid19 pandemic, Mr. Robertson calculated the region of Borden-Carleton as representing a five-year historical average of 4.1% of total PEI volumes since 2018.¹⁸
64. The Deloitte Report also addresses the factor of “peak season demand”.¹⁹ The Confederation Bridge crossing data and quarterly Kalibrate Canada, Inc. retail gasoline sales for the Borden-Carleton region indicate that approximately 30%-35% of total annual traffic passes through Borden-Carleton in the months of July and August each year. By using available annual traffic numbers and applying the July and August Confederation Bridge crossings as a percentage of total annual crossings over 62 days (July and August), the Deloitte Report concludes that a peak annual average daily traffic of 8,228 motorists was possible over July and August of 2022. This is over 1.7 times the total annual average daily traffic for 2022.
65. When Exhibit I3’s more recent 2023 and 2024 data regarding annual average daily traffic increasing on the Confederation Bridge is considered, Mr. Murphy’s *viva voce* evidence that average annual daily traffic at the intersection of the TransCanada Highway and the Dickie Road peaked at 9,300 during the Summer of 2024²⁰ align with Mr. Robertson’s estimation that 8,228 motorists per day was possible during July and August 2022.
66. The Deloitte Report indicates that the ability for three retail petroleum stations to service this volume of business in the peak season effectively and efficiently should be considered. If there are perceived wait times or congested parking lots, motorists may choose to fuel their motor vehicles before they come on to PEI, or they may choose to refuel at their ultimate destination on PEI (if that is not Borden-Carleton). This is not convenient from the perspective of the motoring public.

¹⁸ List of Exhibits, A3, see, in particular, page 69.

¹⁹ List of Exhibits, A3, see, in particular, pages 67-68.

²⁰ For reference to the Traffic Operations website, see:

<https://peigov.maps.arcgis.com/apps/webappviewer/index.html?id=a0d9286ab4b246b7a6bdb4a86a184125>

67. Mr. Robertson spoke to the fuel demand forecast he prepared in the Deloitte Report.²¹ Mr. Robertson examined the correlation between average annual daily traffic, Confederation Bridge crossings, and visitor data. After determining that there was a strong directional correlation between this data and sales of gasoline, Mr. Robertson leveraged this correction by using the Conference Board of Canada's annual expected visitor growth for the purpose of estimating demand for gasoline in PEI for the years 2024 through to 2026.
68. By applying the region of Borden-Carleton's five-year historical average percentage of PEI gasoline volumes (4.1%) – Mr. Robertson forecasted the total gasoline sales for the region of Borden-Carleton as follows:

Borden-Carleton Forecast Retail Gasoline Volume

(000's liters)	2024F*	2025F*	2026F*
PEI Volume	257,428	268,497	275,747
Five year historical average % PEI volume (COVID-19 exclusive)	4.1%	4.1%	4.1%
Borden-Carleton volume	10,683	11,142	11,443

Source: IRAC; PEI Department of Finance; PEI Department of Transportation & Infrastructure; Tourism PEI; Statistics Canada; Deloitte Analysis; The Conference Board of Canada, Prince Edward Island Travel Markets Outlook to 2027, 05/09/2024

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69. If the forecasted 11,443,000 litres of gasoline sales in the region of Borden-Carleton is split among four retail petroleum outlets, Mr. Robertson concluded that this would result in approximately 2,800,000 litres sold per outlet, assuming an evenly distributed market share.
70. On cross-examination, Mr. Robertson was presented with the Commission's 2023-2024 annual report – Exhibit CG-17, which indicates that total gasoline volume sold on PEI during 2023 were lower than PEI sales volumes estimated by Mr. Robertson in the Deloitte Report. The total PEI sales volumes for 2023 set out in the Deloitte Report (245,872,000 litres) were based on partial actual data obtained by Mr. Robertson and a partial estimate. The actual gasoline sales volumes for PEI in 2023 was 227,699,870 litres.²³
71. This discrepancy can be addressed, again, by Mr. Robertson's acknowledgement that in his extensive experience in commercial market research, it is very rare that his forecasts will be 100% correct. Mr. Robertson also indicated that he has had forecasting situations where the first-year actuals have not met his projected forecast, but in subsequent years the actual numbers have still demonstrated the overall trend forecasted. Actual numbers not meeting the first-year projected forecast does not preclude the overall forecast from being accurate.
72. The Commission has not yet released its 2024-2025 annual report with its data on total gasoline sales in litres for PEI during 2024, therefore it is not yet possible to determine how total PEI gasoline sales volumes in litres sold track in accordance with Mr.

²¹ List of Exhibits, A3, pages 68-70.

²² List of Exhibits, A3, page 70.

²³ As calculated in accordance with Mr. Robertson's method of multiplying the number of retail petroleum licenses (issued to Garages, Stations, and Merchants) by the average gasoline volume sold per outlet (2,678,822 litres).

Robertson's forecast. However, no cogent evidence was presented to the Commission that would lead to a reasonable inference that gasoline sales volumes on PEI will not follow the general increasing trend (excepting the exceptional years of 2020 and 2021) demonstrated by the historical data in the Commission's annual reports.

73. This historical data from the years 1998 through to 2021 was complied in D.P. Murphy's June 27, 2023 application.²⁴ The only year where PEI sold more litres of gas than in 2023 was in 2019. Further, the number of retail petroleum outlets on PEI operating as Garages, Stations, and Merchants have been steadily decreasing – which has corresponded with a steady increase in the average volume of gasoline sold per site. The complied information set out in D.P. Murphy's June 27, 2023 application, and a table showing the updated numbers based on data in the Commission's annual reports that has become available since D.P. Murphy filed its application is as follows:

Year	# of Sites (Garages, Stations, Merchants)	Retail Gas Volume (in Liters)	Avg Volume Per Site
2023	85	227,699,870	2,678,822
2022	85	227,566,420	2,677,252

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Year	# of Sites	Retail Gas Volume (in Liters)	Avg Volume Per Site
2021	87	218,415,327	2,510,521
2020	88	209,037,488	2,375,426
2019	88	228,878,056	2,600,887
2018	88	223,597,000	2,540,875
2017	86	216,569,586	2,518,251
2016	87	208,295,487	2,394,201
2015	88	203,093,000	2,307,875
2014	88	195,250,507	2,218,755
2013	93	197,597,007	2,124,699

²⁴ List of Exhibits, A1, pages 47-48.

²⁵ Table showing the updated data based on the Commission's annual reports that has become available since D.P. Murphy filed its application. See, for reference, the Commission's 2022-2023 Annual Report [https://irac.pe.ca/wp-content/uploads/IRAC.AnnualReport.2022-23.Final_.pdf], and the Commission's 2023-2024 Annual Report [Exhibit CG-17]

2012	94	203,423,421	2,164,079
2011	93	201,385,568	2,165,436
2010	93	201,067,450	2,162,015
2009	96	196,896,709	2,051,007
2008	99	188,932,978	1,908,414
2007	103	192,890,821	1,872,726
2006	107	189,418,271	1,770,264
2005	108	197,224,392	1,826,152
2004	112	200,831,674	1,793,140
2003	114	202,788,877	1,778,850
2002	115	203,048,718	1,765,641
2001	124	193,792,185	1,562,840
2000	135	196,103,662	1,452,620
1999	137	196,411,799	1,433,663
1998	140	185,286,424	1,323,474

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74. These numbers demonstrate a steep downward trend in the number of retail petroleum sites on PEI. In the last two years of available data (2022–2023) the number of retail petroleum sites (Garages, Stations, Merchants) were the lowest of all the years of the Commission’s available data, at 85 sites. The general trend of increasing average volume of gasoline litres sold per site is also of note, especially when the average volume per site is considered against actual volumes per site in more urban areas of PEI, such as Stratford.
75. For example, in PC22-01 where the Commission considered an application by Mel’s Enterprises for a retail petroleum outlet license in Stratford, the Commission noted that “[i]n 2020, the two existing retail petroleum outlets in Stratford which were operated by Wilsons and Crane, each has an average volume of sales per outlet that is 2-3 times the average volume of sales for a retail petroleum outlet in Prince Edward Island.”²⁷ Outlets with an average volume of sales per outlet 2-3 times the average volume of sales for a retail petroleum outlet in PEI during 2020 would amount to Wilsons and Crane’s 2020 volumes being approximately 4,700,000 to 7,200,000 litres. By way of relative measure, the average volume of litres sold per site in 2020 was 2,375,426. It is therefore reasonable for the Commission to infer that there are a number of sites (likely in more urban areas of PEI) that are pulling the average volumes of sales significantly upward. Accordingly, it is also reasonable for the Commission to infer that many sites are operating at well below the average volume of litres sold per site in PEI. This lends perspective to the amount of gasoline volumes necessary to be sold by any given outlet in order for the outlet to remain viable.
76. The Commission has not been provided with any cogent evidence that would displace the logical inference from the historical data. The trend demonstrated in the data above is a decreasing number of retail outlets, an increase in litres sold, and a trend of increasing volumes of gasoline sold per retail outlet. Further, there is also a basis for the Commission to reasonably infer that certain stations in more urban areas of PEI are operating on sales

²⁶ The compiled information set out in D.P. Murphy’s June 27, 2023 application. List of Exhibits, A1, pages 47-48.

²⁷ PC22-01, para 20 - <https://irac.pe.ca/wp-content/uploads/Order-PC22-01.pdf>

volumes well above the average volume of gasoline sales per outlet on all of PEI. As the objective of the *Petroleum Products Act* is to ensure that there is a reasonable network of retail outlets on PEI, this can be inferred as an indicator that areas like Borden-Carleton, which serves a much larger segment of the motoring public than the Town itself by virtue of its location at a critical entry and exit to PEI, could reasonably absorb customers travelling off Island from urban areas.

77. Mr. Robertson was also presented with Exhibit I4 on cross-examination. This was Kalibrate Canada, Inc.'s Site Detail Report for Borden, PEI. The document appended to this data purported to show a "Sum of Total Volume as Reported by Kalibrate Broden [sic] – Three Locations Gas and Diesel Sales" for the years 2022, 2023, and 2024, allocated by Quarter. The total gasoline and diesel sales for the region of Borden-Carleton set out in this purported data was 8,518,785, whereas Mr. Robertson had projected total sales of gasoline for all of Borden-Carleton in 2024 to be 10,683.
78. As noted above, the Commission has not yet released its 2024-2025 annual report with its data on total gasoline sales in litres for PEI during 2024. Therefore, to the extent that total gasoline sales of 8,518,785 for the region of Borden-Carleton during 2024 is accurate – we are not yet able to determine whether Borden-Carleton's overall 2024 sales of gasoline are tracking with the percentage (4.1%) of PEI's total gasoline sales that Borden-Carleton historically represents. However, if the 8,518,785 sales in Borden-Carleton does in fact represent 4.1% of PEI's total gasoline sales – that means that overall litres sold in PEI during 2024 would have had to drop to 207,775,244 litres (roughly a 20 million litre decrease).
79. Mr. Robertson was presented with small discrepancies in the underlying trends forecast in the Deloitte Report on cross-examination (i.e. Exhibit I1 demonstrating PEI's population had increased but was about 4,000 less persons than Mr. Robertson's had forecast in terms of population for 2025 – and Exhibit I2 demonstrating that the volume of visitors to PEI during 2023 exceeded the total PEI visitors Mr. Robertson forecast by over 115,000 visitors). However, no cogent evidence was presented to the Commission that would lead to a reasonable inference that gasoline sales volumes on PEI can be expected to be 20 million litres below 2023 volumes. Thus, once actual volumes of gasoline sales on PEI are released by the Commission, to the extent that Borden-Carleton's overall sales are falling below the regions historical 4.1% of PEI's total gasoline sales and no explanation is advanced to rationalize the drop off, the reasonable inference is that the current retail outlets in the region are failing to meet the demands of the current motoring public and, as a result, the motoring public is choosing to buy fuel elsewhere.

Promotion of Competition and Services Presently Available

80. The introduction of a retail petroleum outlet under the Irving brand will increase choice for the motoring public and foster marketplace competition in the local area.
81. D.P. Murphy will reintroduce a new brand – Irving – to Borden-Carleton. No Irving outlet is located within the area that is reasonably expected to be served by the proposed location. With Esso and Mobil operating the same brand on the supply side, this leaves only two brands in Borden-Carleton and therefore there is currently limited choices of brand for the motoring public.

82. D.P. Murphy's application and Mr. Murphy's *viva voce* evidence also highlight numerous ways the proposed outlet will provide new services and programs that will enhance consumer choice help meet the demands of the motoring public in Borden-Carleton and beyond. Mr. Murphy described plans for a clean, modern, welcome centre that includes a retail petroleum offering that would reintroduce to Borden-Carleton the trusted and recognizable Irving brand and their full flight of program offerings.
83. The proposed development will include a convenience store, a full-scale Tim Hortons restaurant with a double lane drive through and be open 24 hours a day. It will host six EV charging stations, contain two retail store offerings, be fully wheelchair accessible, include large commercial washrooms, and offer Wi-Fi service.
84. The size of the proposed development – 6.03 acres – gives D.P. Murphy the space to ensure that the parking lot is suitably sized to accommodate the turning radius required for tractor trailers, RVs, travellers and residents to maneuver and park. Mr. Murphy spoke to having CBCL, a civil engineering firm, conduct plans that specifically calculate and account for turning radius of these large vehicles, then ensuring that Larry Sutherland, an architectural and civil designer, provided site plans that accommodate the turning radius.
85. With 122 parking spaces and 15 designated tractor trailer parking spaces, D.P. Murphy intends to address the lack of parking available for tractor trailers in Borden-Carleton.
86. Exhibit CG-12 "Printout of Confederation Bridge FAQs" indicates that a commercial "rest area" is located at the corner of Industrial Drive and Dickie Road on the PEI side of the Confederation Bridge.²⁸ The FAQ encourages drivers to utilize the rest area during wind events; however, Mr. Murphy notes that this is across the road from the closest place where a commercial driver can get inside and get a cup of coffee or something to eat – at the Esso. It is not attractive in wind events or in the Winter weather for commercial drivers to walk far to access a washroom and get something to eat.
87. It is not only Mr. Murphy who has noted the lack of parking for commercial tractor trailer drivers in the area. The following businesses provided letters of support for D.P. Murphy's proposed development:
 - (a) SFX Transport provided a letter of support on February 19, 2025.²⁹ This letter of support, signed by the President and CEO of SFX Transport, provides a valuable perspective from an Island based long-haul carrier. The most significant aspect of Mr. Keith's support relates to the fact that D.P. Murphy's proposed development prioritizes large transportation vehicles in its design. Mr. Keith notes that the Confederation Bridge is often closed to high-sided vehicles in the winter months, and that when bridge closures are known in advance, and when drivers are on the New Brunswick side of the Confederation Bridge, they use the Big Stop in Aulac. However, Mr. Keith notes that there are no similar options on the PEI side of the Confederation Bridge. Mr. Keith notes that oftentimes that means redirecting the drivers back to SFX Transport's terminal in Charlottetown – absorbing the

²⁸ List of Exhibits, CG-12, pages 169.3-169.4.

²⁹ List of Exhibits, A13, Page 94.5.

associated costs as a result, or the drivers must sit and wait with a lack of convenient facilities such as washrooms, food, etc.

- (b) Cavendish Farms also provided a letter in support dated February 18, 2025.³⁰ Cavendish Farms is one of the largest private sector employers and exporters on Prince Edward Island. It emphasized that the parking for large transportation vehicles available at the proposed location would be appreciated by drivers when the Confederation Bridge is closed to high-sided vehicles, and that D.P. Murphy's proposed development will become a safe space where drivers can rest in times of need.
88. These letters of support demonstrate that there is a gap in the services needed by the motoring public in Borden-Carleton. D.P. Murphy's proposed development would serve the interests and needs of a significant and important segment of the motoring public on PEI – commercial tractor trailer drivers.
89. Further letters in support of D.P. Murphy's proposed development also indicate a recognized need in Borden-Carleton:
- (a) The Tourism Industry of PEI set out that Borden-Carleton is an important tourism touchpoint, and that PEI needs to be delivering its best products and services in the area. D.P. Murphy is committed to achieving that goal of enhancing the convenience of the many tourists and PEI motorists who live in and travel through the area.³¹
 - (b) The President of Strait Crossing Bridge Limited indicates witnessing first-hand over the years the vital importance of the area for PEI motorists and tourists and recognizing the increasing trend of traffic on the Confederation Bridge in recent years – noting the importance of providing the best service and convenience possible for many motorists, which also helps support PEI's vital tourism industry.³²
90. Certain services are presently available in Borden-Carleton. During the hearing it was noted that the Esso contains a Tim Horton's kiosk and EV chargers. Convenience store offerings are also found onsite at each of the existing retail outlets in Borden-Carleton. Of course, Ceretti's offers more services than gas and retail, including grocery and hardware offerings, as well as freshly cut meat.
91. Mr. Murphy indicated that the proposed development has no intention of offering groceries, hardware or fresh meat. D.P. Murphy will not be competing with those offerings provided by Ceretti's. It was suggested in the hearing that the services intended for the proposed development, particularly the EV chargers and Tim Horton's, was more accurately described as a duplication of services because these services are already offered at the Esso. First, EV chargers and the Tim Hortons are only one aspect of the services that the proposed development is designed to offer; but secondly, the Commission has previously noted that an application under the *Petroleum Products Act* cannot be defeated solely because an applicant will offer services similar to those already

³⁰ List of Exhibits, A11, Page 94.2.

³¹ List of Exhibits, A1, Page 36.

³² List of Exhibits, A1, Page 35.

available to the motoring public. While the addition of new or different services will generally be in the interest of the motoring public, it does not follow that the provision of the same or similar services will generally not be in the interest of the motoring public.³³ Motorists are provided with increased choice.

92. Mr. Robertson opined that the addition of the proposed development would promote competition in Borden-Carleton. It is good policy to encourage consistent investment in the quality of services available to the motoring public. Encourage investment in services and the quality of those services is an even more significant factor the fact that the proposed location is in Borden-Carleton, at a critical entryway to PEI. Unless travellers are arriving on PEI by ferry or plane, every traveller to PEI will pass the location of D.P. Murphy's proposed development.
93. The public interest is benefited by competition because competition encourages investment and capital improvements, resulting in increased services and convenience to customers. No competition doesn't encourage investment in business. The motoring public benefits from retailers consistently yearning to provide excellent services and amenities. This is what D.P. Murphy is seeking to do with its proposed development in Borden-Carleton.

Accessibility and Safety of the Proposed Location

94. The proposed outlet will be safe and accessible for the motoring public. Mr. Murphy spoke of specifically being attracted to the proposed location because of its location immediately adjacent to the controlled intersection of the TransCanada Highway and the Dickie Road. This ensures that motorists will not be required to make an uncontrolled left hand turn off the TransCanada Highway in order to access the proposed location.
95. The size of the proposed parking lot allows for a comfortable and maneuverable site that is safe for motorists of all sizes, including RVs, coaches, trucks, tractor trailers, and hauled campers. This is a benefit to the motoring public. D.P. Murphy will be working with the Town of Borden-Carleton and the Province to ensure appropriate ingress and egress approvals are obtained for the proposed location.

Totality of the Record

96. The record establishes that D.P. Murphy has substantiated its application and demonstrated that the granting of a license would satisfy the public interest, convenience and necessity considerations set forth in section 20 of the *Petroleum Products Act*.

Public Comments & Petition

97. The Commission received a number of comments from members of the public on D.P. Murphy's application, and petitions opposing the application were also filed. This is not the first time that the Commission has received a petition on an application. In the Fortune Travelstop Inc. application, PC19-002, the applicant submitted a petition in support of their application. In the Commission's Order they stated "*The Commission accepts this information, but attributes little weight to it, as addresses for the individual signees have*

³³ PC18-003, para 52.

not been provided. The Commission prefers that if any type of community support or petition or survey is to be provided, it be collected by an independent third party using acceptable surveying standards."³⁴

98. The petitions submitted opposing D.P. Murphy's application were not collected by an independent third party using acceptable surveying standards. As a result, the Commission should attribute little weight to the petitions.

PART VI - ISSUES RAISED BY THE INTERVENERS

99. The Interveners have objected to approval of the application for two main reasons:

- (a) first, Howatt's and Ceretti's allege that an additional outlet is not necessary and will only bring negative consequences for existing retailers, and with respect to Ceretti's, Ceretti's has submitted that the approval of D.P. Murphy's application would result in the closure of Ceretti's;
- (b) second, Howatt's has questioned the site plans submitted by D.P. Murphy and the size of the proposed development, indicating a concern as to the scope of the development.

100. These objections are not compelling for the following reasons:

Competitive Effects on Existing Outlets

Howatt's

101. Howatt's did not provide *viva voce* evidence at the hearing. In its request to be approved for added party Intervener status, Howatt's submitted that "another retail gasoline outlet in the area would harm our business and the other existing retail gasoline outlets and [sic] the community. A Fourth retail outlet will be surly [sic] the demise of another retail gasoline outlet and very possible two retail Gasoline Outlets."³⁵ In public comments, Howatt's submitted that "[i]f this [sic] the D.P. Murphy Inc. application is approved, it will most definitely be the end of one of the three gas stations currently operating in the area."³⁶ Howatt's did not present any clear evidence that would suggest that the approval of D.P. Murphy's application would result in its closure.
102. Additionally, this is not the first time the Commission has been faced with Howatt's intervening and advancing an argument that financial hardship would result from the approval of another retail petroleum outlet in Borden-Carleton. In 1998, Howatt's Tourist Mart Ltd. testified about the prospect of serious financial harm flowing from the approval of the (then) third station – when Esso's license was approved. At that time, the Commission noted:

... All existing outlets have been in business for many years and have obviously already established a firm customer base among

³⁴ PC19-002, para 19 - <https://irac.pe.ca/wp-content/uploads/PC19-002.htm>

³⁵ List of Exhibits, H2, page 98.

³⁶ List of Exhibits, P1, pages 214-215.

the area residents. If, however, this application was approved and one of the existing outlets closed for one reason or another, it would seem unlikely that consumers would be seriously detrimentally affected. This is not to say that the Commission is not concerned about the impact on existing outlets-it is-but our statutory mandate relates primarily of the motoring public. It is only when the evidence clearly indicates that a new license will result in the closure of an existing outlet which in turn diminishes service to the motoring public that this detrimental effect takes a greater significance. In this case, the evidence given relating to any anticipated detrimental effect to existing outlets was insufficient to warrant declining the application on that basis alone.³⁷

103. The Commission clearly notes the firm customer base established by the (then) existing outlets in Borden-Carleton, namely, Howatt's and Ceretti's. The same considerations should be applied in this application, many of the public comments filed opposing this application reference a strong loyalty to Howatt's and/or Ceretti's. This is strong evidence of the firm customer base the Interveners hold among the area residents and the surrounding community. It lends to the inference that these customers will continue to support Howatt's and Ceretti's should the proposed development be approved.
104. Further, Howatt's lack of proximity to the proposed development should be considered. Howatt's operates approximately three kilometres down the TransCanada Highway from the proposed development and potentially serves another market such as the South Shore via different traffic flows.

Ceretti's

105. Ceretti's argues that an additional outlet is not necessary, and that the presence of an additional outlet would require it to close their operation. This position was not borne out in the evidence.
106. Chad Ceretti has owned and operated Ceretti's for about 10 years and the business has been family owned and operated before that. Mr. Ceretti spoke to his feelings of uncertainty after the June 2023 application was filed. While he testified the application caused him to "put things on hold", he did not identify any specific site plans or improvements that did not proceed after the application was filed.
107. In the face of the pending application, Ceretti's switched to the Mobil brand, which Mr. Ceretti acknowledged is a part of the Esso brand via ExxonMobil. Mr. Ceretti confirmed that Irving's departure from their business relationship was in accordance with the lease between the parties.
108. During the switch to Mobil, significant exterior site improvements occurred at Ceretti's including a new canopy, pumps (with tap), and a concrete pad. Naturally, Ceretti's experienced a decline in sales for 4-5 days during heavy construction. During this portion of his evidence, Mr. Ceretti then testified that 50% of "non-pay at the pump" fuel sales lead

³⁷ July 30, 1998, Order No. P. 980730, page 6.

to another purchase in the store. Neither the Applicant nor the Commission were provided with any information regarding the source of data for such a statement.

109. Mr. Ceretti testified at length regarding Ceretti's product offerings and their differentiation in the marketplace compared to the two local competitors - Howatt's and the Esso. Ceretti's has approximately 16,000-20,000 skews on hand including a deli, full line of produce, dairy, frozen foods, and everything from zip ties to tarps. Ceretti's delivers to the local area for the elderly and can order auto parts and clothing. Mr. Ceretti indicated that with the exception of convenience store item offerings, the closest location where such offerings could be located is Summerside, about a 25-minute drive away.
110. Mr. Ceretti testified that Borden's gas sales were stagnant at best and otherwise declining. He stated that Borden is not a destination for travelers and that Ceretti's was "definitely" seeing a decline.
111. Mr. Ceretti provided evidence as to the public reaction he received after D.P. Murphy's application was filed. Mr. Ceretti said he received a tremendous amount of feedback questioning why a fourth outlet was needed, indicating that they would continue to support Ceretti's, and providing well wishes to him. On direct examination, Mr. Ceretti noted the online petition opposing the application in the record [pg. 632] and a second petition to this effect [pg. 169.1] that he had placed in the store.
112. Mr. Ceretti testified that other than one email he provided to the Commission objecting to D.P. Murphy's application, he was not involved with the composition of the other emails filed with the Commission.

Cross Examination

113. During cross-examination, Mr. Ceretti testified that he determined Assumptions 1 and 2 for the MRSB Report. He confirmed that he is the sole shareholder, officer, and director of Ceretti's and that he provided direction to MRSB as "management" per the MRSB Report, including the Assumptions. Mr. Ceretti stated during cross-examination that Ceretti's did not have an expert report to speak to the accuracy of Assumptions 1 and 2. He stated that he personally came up with two assumptions and provided them to MRSB. This evidence was directly contradicted by Mr. Compton.
114. Mr. Ceretti's evidence was consistent with Mr. Compton in that both acknowledged the introduction of a fourth retailer *could* result in losses of less than a blanket 25% on all sales. This would change the proposed financial projections.
115. Mr. Ceretti confirmed that he had a financial interest in giving evidence to the Commission and in the outcome of the application. Mr. Ceretti also confirmed Ceretti's had data from software that tracks the number of gas purchases that lead to in-store purchases. He confirmed this data was not presented to the Commission.
116. Mr. Ceretti acknowledged that there is no one else competing with Ceretti's in Borden-Carleton or the surrounding areas in offering groceries, produce, hardware, fresh cut meat, and delivery. D.P. Murphy will not be offering these products – thus, the two other outlets (Howatt and Shell) stand in direct competition with the Applicant, not Ceretti's.

117. Ceretti's also offers charge accounts and they are a negligible part of "bad debt" given the loyalty of his customers who pay these accounts. Bad debt, for example, was \$225 in 2024.³⁸
118. Mr. Ceretti was, at times, evasive regarding questions that were not favourable to him and demonstrated a willingness to withhold information when it was expedient.
119. For example, Mr. Ceretti did not recall any details of the arrangements with Irving or what lead to their decision to terminate their lease. Mr. Ceretti could not say whether Ceretti's was profitable or viable as of the time of the hearing, despite knowing that that was a key issue raised by the Intervenor in the application.
120. Mr. Ceretti purported not to know the financial details of expensive exterior renovations to the Ceretti's site in 2024 that remodelled the exterior of the premises where Mobil was funding the investment as the two parties planned for the future. This was not an investment contemplating imminent closure. One can reasonably surmise that Mobil, with their industry knowledge, were confident Ceretti's was not about to close their doors or stop selling gasoline as this would be counterintuitive to the significant investment to the site.
121. Mr. Ceretti was reluctant to acknowledge that despite an outpouring of public support for his business and express statements of loyalty, that these customers would continue with Ceretti's in the future (for example, pgs. 242 and 243 of the Exhibit Book). He did eventually acknowledge that he expected continued support from Borden-Carleton and the surrounding community would continue to support him after the application.
122. Mr. Ceretti had, in fact, been publicly encouraging people to object to D.P. Murphy's application since at least July 2023. He also created an online petition with 1307 electronic signatures that he did not advise the Commission about in his direct evidence. Worryingly, he did not advise the Commission at the time of filing or upon questions on direct examination that many names on the petition at pgs. 169.6 – 169.63 [Exhibit CG14] were not personally signed by them. During cross-examination, Mr. Ceretti acknowledged social media postings with persons regarding this petition and that Mr. Ceretti endorsed the petition in their place. On February 10, 2025, he had more than 50 such communications on social media.
123. During cross-examination, Mr. Ceretti also acknowledged disparaging and untrue social media postings regarding the application. This included such postings regarding the Applicant corporation and the principal of the corporation, Mr. Murphy. On re-direct, counsel implied that Mr. Ceretti's feelings of uncertainty and anxiety over the application were justification for this conduct.
124. Mr. Ceretti was confronted with prior statements to the Commission that referred to the anticipated closure of Ceretti's as of 2023. At that time, Mr. Ceretti authored a letter dated July 19, 2023 [page 102] which indicates "It is anticipated that any material decrease in our supply of retail gasoline will make it impossible to continue to provide these additional services which are supported by gasoline sales". During cross-examination, Mr. Ceretti

³⁸ List of Exhibits, CG-6, MRSB Report, page 126.

was reluctant to acknowledge that a 25% volume decline was a material decrease, only wishing to say it was “a lot”.

125. No doubt, this was because Mr. Ceretti was confronted with the MRSB Report (page 157) identifying a 23.6% decline in gasoline sales in 2024. Mr. Ceretti noted it was possible that business was not profitable given this decline and he deferred to his financial team. He confirmed that MRSB was not asked to opine on what a material decrease is. Mr. Ceretti accepted the 23.6% decline occurred without any competition from D.P. Murphy as a fourth retailer.
126. Mr. Ceretti acknowledged bridge traffic is increasing and that absent the change to Mobil, he is not aware of what else is impacting his declining gas sales. He confirmed Ceretti's was experiencing a 20% volume decline between 2016-2022 [pg. 199] while confirming that neither MRSB nor the Commission were given actual litres/volume information – only sales/dollar figures for gasoline sales.
127. Mr. Ceretti acknowledged the inside of Ceretti's is quite dated, not wheelchair assessable, and that there is a single bathroom inside that is not wheelchair accessible. The bathroom has holes in the wall, and he indicated only that it is “part of the charm”. Ceretti's also does not have EV chargers and does not have a large parking lot with dedicated parking for tractor trailers, RVs, or buses.
128. Mr. Ceretti was questioned further regarding Ceretti's letter dated July 19, 2023 [page 102]. This letter states, in part, that “if we continue to try and provide the low margin services of hardware supply, groceries and butcher shop, then the entire operation will close.” Mr. Ceretti agreed that he signed this letter. He also agreed that the MRSB Report contradicted this information indicating that Ceretti's was receiving a 1% margin on gas sales versus a 20% on store sales in 2024. Mr. Ceretti's evidence in response was not helpful in explaining this conflict in the evidence – eventually stating that gas sales were “loss leaders” but were not the lowest margins in the store. This was not consistent with the evidence of Mr. Compton.
129. Mr. Ceretti acknowledged that in 2022 and 2023, Ceretti's reported negative net income.³⁹ He did not disclose in direct examination or in cross-examination that he personally withdrew an additional \$100,000 from the company in 2022. This information came to light during the cross-examination of Mr. Compton, thus impacting the reported wages for the 2022 year and increasing the overall average wages relied on by MRSB in their future projections.⁴⁰
130. Mr. Ceretti acknowledged that in Assumption 1, Ceretti's returned to profitability by year 3 and experience reported loss in year 2 consistent with prior years of actual performance.
131. And finally, Mr. Ceretti acknowledged that there is no expert report before the Commission to contest the Report of Deloitte and the opinion of Mr. Robertson. He confirmed that he had no awareness of Exhibits I1-I4 or any information or assurance about their content or accuracy.

³⁹ List of Exhibits, CG-6, MRSB Report, page 126.

⁴⁰ List of Exhibits, CG-6, MRSB Report, page 142.

Expert Report by Lloyd Compton, CPA, CA, CBV, CITP

132. Ceretti's filed a financial projection and analysis report prepared by Lloyd Compton, Partner at MRSB (the "MRSB Report") to try and argue that a business closure was imminent. The MRSB Report presents an analysis of the potential financial impact on Ceretti's if D.P. Murphy's application is approved and a fourth retail petroleum outlet opens in Borden-Carleton.
133. The Commission declared Mr. Compton an expert in the field of accounting including the preparation, provision, and analysis of financial projections and financial statements.
134. The MRSB Report evaluated the potential financial impact on Ceretti's using two different assumption scenarios as the basis for their projections. Assumption 1 was a global 25% loss of all sales and Assumption 2 was a global 33% loss of all sales.
135. The MRSB Report is explicit that it is a compilation report.⁴¹ During cross-examination, Mr. Compton agreed that in a compilation report, the accountant "does not provide any assurance about whether material changes to the financial statements are needed in order for the financial statements to be in conformity with accounting standards".
136. The MRSB Report explicitly states that Assumptions 1 and 2 were provided by the management of Ceretti's for the purposes of preparing a compilation:

*A compilation is limited to presenting, in the form of a financial projection, information provided by management and does not include evaluating the support for the assumptions including the hypotheses or other information underlying the projection.*⁴²

137. The MRSB Report also explicitly states the authors do not express any form of assurance on the financial projections or the Assumptions.

*Accordingly, we do not express an opinion or any other form of assurance on the financial projection or assumptions including the hypotheses. Further, since this financial projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypotheses occur, and the variations may be material. We have no responsibility to update this communication for events and circumstances occurring after the date of this.*⁴³

138. Consistent with the MRSB Report, the evidence of Chad Ceretti was clear on both direct and cross-examination that he provided Assumptions 1 and 2 to MRSB for them to prepare financial projections. He confirmed they were not prepared by an expert.
139. However, during both his direct and cross-examination, Mr. Compton contradicted Chad Ceretti on this vital piece of both Mr. Ceretti's evidence and the MRSB Report itself – namely the origin of the Assumptions 1 and 2. Mr. Compton's evidence was directly

⁴¹ List of Exhibits, CG-6, MRSB Report, pages 130 and 147.

⁴² List of Exhibits, CG-6, MRSB Report, pages 130 and 147.

⁴³ List of Exhibits, CG-6, MRSB Report, pages 130 and 147.

contrary to the express statements he wrote in the MRSB Report.⁴⁴ When confronted with this discrepancy, Mr. Compton could not explain in any meaningful way why the Commission should disregard these express statements – rather, he implied that because he viewed this as “standard language” for a report of this nature, that this was a sufficient explanation for the glaring evidentiary contradiction.

140. This vital piece of the evidentiary record should not be overlooked. Up until the last witness of the hearing, D.P. Murphy, and presumably the Commission, were naturally relying on the evidence of Chad Ceretti and the MRSB Report (filed in evidence in January, 2025) as to the origin of Assumptions and the express absence of assurances. Given this, naturally, this was a key part of the decision for D.P. Murphy not to call an independent financial expert witness to respond to the MRSB Report or speak to the reasonableness of the Assumptions. Instead, the evidence of Mr. Compton directly contradicted Chad Ceretti himself and Mr. Compton’s own report. Given this, the weight to be assigned to the MRSB Report and the opinion is minimized.
141. The rationale for minimization goes further. It was apparent during the examination of Mr. Compton that he was aware of an error in the gross margin in gas sales in 2024 in the MRSB Report and this information was not provided to the Applicant until his evidence at the hearing. This is in addition to the \$100,000 payment to Chad Ceretti in 2022 that was not disclosed in the financial projections and the further revelation that Ceretti’s apparently has software that assists in determining sales data at the pump and in store and that MRSB has reviewed this data. These factors reduce the weight to be provided to the opinion.
142. As to the financial projections themselves, foremost, Mr. Compton acknowledged that a 25% loss scenario (Assumption 1) is the expected loss from adding a 4th retailer (ie. splitting the pie one extra way). Therefore, this assumption is more reasonable than a 33% loss scenario (Assumption 2). Mr. Compton is not an expert in market analysis in any event.
143. In considering Assumption 1, the MRSB Report did not meaningfully account for two (2) seismic changes to Ceretti’s in 2024. First, there was the switch from Irving to Mobil as a brand model. Second, Ceretti’s lost almost 25% of their gasoline sales (23.6% to be exact) before seeing the possible introduction of a 4th retailer. This new reality was not otherwise considered by MRSB. Rather, they merely factored in the 2024 sales in an “average” to produce a projected future growth of 6.99% - thus underrepresenting the dramatic decrease in 2024 data and otherwise making no comment whatsoever on the impact of the 2024 changes.⁴⁵ In other words, the forecasting was not “cautious”.
144. The Facts and Assumptions in the MRSB Report, together with Mr. Compton’s evidence, note the deficiency in this forecasting as it assumed “*no major operation changes will occur over the projection period*”, despite major operational changes having occurred in 2024. This major operational shift was not adequately accounted for in trying to determine future projections.

⁴⁴ List of Exhibits, CG-6, MRSB Report, pages 124, 130, and 147.

⁴⁵ List of Exhibits, CG-6, MRSB Report, page 121.

145. Mr. Compton was careful not to refer to 2024 as a “trend” given it only occurred in a single year. However, no evidence was presented to suggest that Ceretti’s would spontaneously rebound from the dramatic loss of 23.6% of their gasoline sales. For that matter, there was no evidence that further loss would not be expected. To the extent that the Commission relies on updated Kalibrate data (Exhibit I-4), this data identifies the ongoing decline of Ceretti’s gasoline sale under their new brand and new model and in the absence of competition from the Applicant.
146. It was clear that MRSB did not consider other potential source(s) of declining fuel sales at Ceretti’s in 2024 as having occurred prior to experiencing competition from D.P. Murphy. This included the apparent 20% sales decline between 2016-2022.
147. Similarly, MRSB did not consider data suggesting the prospect of increased sales. MRSB did not consider data suggesting increased bridge traffic and therefore an increase in potential customers available to Ceretti’s. Importantly, MRSB did not consider any information in their future forecasting regarding the outpouring of public expressions of support for Ceretti’s including the online petitions (624 and 1307 people, respectively) and the more than 400 written letters of support in the evidentiary record, many of which expressly stated the authors would continue to support Ceretti’s.
148. MRSB did not consider gas volume on PEI or in Borden. They have no comparison data for competitors, generally, or competitors in the local market in their report. They have no information on the financial viability of competitors in the area.
149. This is particularly relevant given the MRSB Report noted significant differences in gross margin on gas sales vs store sales. In the MRSB Report, the gross margin on gas sales in 2024 was 1% and the gross margin on store sales was 20%.⁴⁶ This is in contrast to the evidence of Chad Ceretti on these points.⁴⁷ In his oral evidence, Mr. Compton corrected that the gross margin on gas sales was slightly higher (2.2%) in 2024, though still remarkably less than store sales. This was not disclosed to the Applicant before the hearing.
150. Mr. Compton acknowledged MRSB is now aware of some further information regarding the correlation between gas sale and store sales. This was not disclosed in advance of the hearing. Notwithstanding this, neither the MRSB Report nor Mr. Compton considered that prospective changes to sale could be impacted unevenly. Specifically, the projections do not account for any uneven distribution in reductions of sales between gas sales and stores sale – i.e. Assumptions 1 and 2 are a blanket 25% and 33% projection, notwithstanding the clear market differentiation in offering groceries, hardware, and meat etc. at Ceretti’s versus area competitors. Mr. Compton acknowledged that he did not factor in this market differentiation in the analysis.
151. Mr. Compton agreed that a change in the Assumptions could significantly change the MRSB Report and his opinion. He agreed that if there is only a 20% decrease in global sales (and not 25%), that would have a significant impact on the financial projections. He also agreed that given the gross margin differences on products, if the store sales only decreased by 20% (and not 25%), this would have a significant impact on the financial

⁴⁶ List of Exhibits, CG-6, MRSB Report, page 121.

⁴⁷ List of Exhibits, CG1, page 102.

projections. Again, Mr. Compton acknowledged that he did not factor in Ceretti's market differentiation or expressions of public support in their analysis.

152. Mr. Compton's evidence was that MRSB had "new" data showing 38% of store sales came from the pumps is of limited value. This evidence was not substantiated as to when it came into existence, when it was considered, and how it impacted projections. The information was also not disclosed in advance of the hearing and did not form part of the MRSB Report as required by the Rules of Practice.
153. Regardless, Mr. Compton's evidence regarding the apparent 38% correlation does not logically explain historical sales. More importantly, Mr. Compton's evidence that there is data confirming a 38% correlation in sales is clearly inconsistent with the financial statements for 2024. Ceretti's experienced a 23.6% decline in gas sales in 2024 yet experienced a 0% change in store sales.⁴⁸ The data from 2022 provides further evidence that the alleged correlation is not accurate. In 2022, Ceretti's reported a 38.1% increase in fuel sales while reporting a 1% increase in store sales.⁴⁹
154. In addition to the foregoing, Mr. Compton failed to support his repeated assertion that the blanket assumptions were conservative in light of the "new" data with relevant information that would be necessary to weigh such an assertion including, namely, the average transaction amounts, number of transactions, and applicable margins within each set of transactions. This information would be necessary to speculate on the reasonableness of the overall loss scenarios, including their blanket approach, as they pertain to bottom line profitability.
155. Accordingly, Mr. Compton's evidence regarding the 38% correlation between gas sales and fuel sales should not be relied upon as it is objectively incorrect.
156. While the MRSB Report purported to provide an opinion on future financial viability, MRSB did not consider any cost cutting measures Ceretti's could employ to address projected year 1 loss before returning to profit in Year 3 – frankly no one on the Intervenor side provided any evidence regarding the ability of the business to "weather" year 1 or the absence of financing or cost cutting. MRSB stated you pay yourself last, when needed, until you have \$100,000 to pay yourself. In this regard, there was no consideration given by MRSB to the inflation of wage expenses as a result of this payment. Thus, the "extra" \$100,000 would, in effect, inflate annual wages and this inflated average was incorporated into and relied on by MRSB in their future projections.⁵⁰
157. MRSB were engaged only by Ceretti's. Mr. Compton acknowledged that the MRSB Report specifically acknowledge this in various places in the report. Further, MRSB only accessed financial information for Ceretti's and did not view or have access to any financial of the other Borden area gas stations. Despite this, the MRSB Report stated a broad opinion in their conclusion regarding impacts on other existing retailers.⁵¹ In cross-examination, Mr. Compton acknowledged that the written opinion is, in fact, broader than

⁴⁸ MRSB Report, pg. 140.

⁴⁹ MRSB Report, pg. 140.

⁵⁰ MRSB Report, pg. 142.

⁵¹ MRSB Report, pg. 123.

their stated retainer and that MRSB did not review information capable of making this broad statement.

158. And finally, Mr. Compton acknowledged that MRSB was not asked to opine on what percentage decrease in sales that Ceretti's can tolerate and remain profitable – i.e. what percentage below a proposed 25% decrease (Assumption 1) can Ceretti's experience and remain in business.
159. Helpfully, Mr. Compton noted in re-direct examination that such calculations are “not complicated” to do while acknowledging their absence from the evidentiary record. He noted that a “break even analysis” is a point in time exercise and that the results of that would not be that different than “what we show here”. Given Ceretti's returns to modest loss in year 2 (consistent with 2023) and then a return to profit in year 3, this statement is not surprising.
160. Mr. Compton agreed that a business exists to make money. Ceretti's has, apparently, been profitable over the years and profitable enough to recently fund a \$100,000 payment to Chad Ceretti in 2022. Against this profitability background, MRSB projects the business to return to profitability by year 3. The projections do not account for increasing vehicular traffic over the Confederation Bridge. And specifically, the projections do not consider the evidentiary records that speaks to the product differentiation of Ceretti's in the marketplace and the outpouring of community and other support who intend to remain customers of the Intervenor, including Ceretti's. The projections do not also account for the injection of “thousands and thousands” of dollars worth of site investment improvements funded by Mobil in 2024.
161. In other words, the prospect of “imminent closure” is not made out in the evidence. The Commission is left without a factual foundation for the Assumptions (let alone who actually made them) and is left with the express recognition from Mr. Compton that changes to the assumptions can significantly change their projections. The Commission is being asked to apply a “blanket” loss projection despite evidence in 2024 that the gas sales and store sales did not decline in correlation to one another as suggested by Ceretti's and MRSB.
162. This is not the first time that the Commission has heard a complaint about the effects of added local competition. While the Commission has recognized that negative impacts on existing retailers are relevant to its analysis, the Commission has also concluded that section 20 of the *Petroleum Products Act* focuses on the needs of the motoring public and not the needs of existing retailers. In order to deny approval of a new retail outlet, the evidence must demonstrate that service to the motoring public will be diminished by the closure of an existing outlet:

*While concerned about the viability of each and every existing retail outlet, the Commission's statutory mandate relates primarily to the motoring public at large and as such their interest, convenience and necessity. As per previous Commission Order P.920211-2 (February, 1992 Irving Oil Limited), **the Commission is of the opinion that it is only when the evidence clearly indicates that a new license will result in the closure of an existing outlet, which in turn will result in diminished service to the motoring public at large, that this detrimental effect takes a greater significance.** In this case the evidence given relating to any*

*anticipated detrimental effect to existing outlets was insufficient to warrant declining the applications on that basis alone.*⁵²

163. Given this, for the Commission to even consider Ceretti's position in this regard as a factor, Ceretti's must present clear evidence that indicates a new license will result in their closure, and that, as a result, there will be a diminished service to the motoring public at large.
164. With respect, Ceretti's cannot "have their cake and eat it too". Ceretti's identifies the breadth of the public opposition to a fourth outlet in support of their position. At the same time, both Chad Ceretti and MRSB do not account, in any way whatsoever, for the expressions of public loyalty to Ceretti's and the maintenance of their high margin store sales in 2024 against the backdrop of a massive decline (23.6%) in gas sales.
165. Lastly, the Commission must note that competition is actually intended to be fostered by the *Petroleum Products Act*. Section 18 of the *Petroleum Products Act* is clear that no license confers any perpetual or exclusive right upon a retailer.

Concerns Related to the Scope of the Proposed Development

166. Howatt's asked Mr. Murphy about the site plan that had been submitted to the Town of Borden-Carleton and referenced the fact that the site plan located at Appendix II of the Deloitte Report shows slight variation from the Preliminary Discussion Site plan submitted in the June 27, 2023 application.
167. While questions related to the proposed development of a retail petroleum outlet may be relevant to the consideration of an application, they are relevant in this context only when they touch on public interest, convenience and necessity under the *Petroleum Products Act*. General concerns related to scope of the development and sound land use planning are matters assigned to municipal councils under the *Planning Act*⁵³ and properly considered by the planning departments in the municipalities where outlets are being proposed. In this case, there is nothing in the evidentiary record to indicate Borden-Carleton has any concerns with the proposed development at the proposed location.
168. D.P. Murphy, in response to the Commission's August 28, 2023 request⁵⁴ and the Commission's Procedural Order, sought and obtained Approval in Principle from the Town of Borden-Carleton for the proposed development. Nothing further was requested from, nor would it be within the purview of the Commission, to request further information from D.P. Murphy unless such information touches on public interest, convenience and necessity under the *Petroleum Products Act*.
169. The concern expressed by Howatt's about the conceptual nature of the development being proposed by D.P. Murphy is, in essence, matters to be addressed by the Town of Borden-Carleton through its permitting processes. The authority of the Commission to supervise petroleum licensing, as vested by the Legislature under the *Petroleum Products Act*, must

⁵² Order PC10-01 at para. 66.

⁵³ *Planning Act*, R.S.P.E.I. 1988, c. P-8.

⁵⁴ List of Exhibits, C-1, page 171-172.

be interpreted and exercised in a manner that respects the concurrent authority vested in the Town of Borden-Carleton under the *Planning Act* to address its own land use planning.

PART VII - CONCLUSION

170. D.P. Murphy has substantiated its application. The proposed outlet will serve the interests, needs, and convenience of the motoring public. It would promote competition by adding a modernized gas and convenience offering to Borden-Carleton, and general trends of increasing traffic, tourism, and gasoline sales on PEI demonstrate a demand for a new outlet. D.P. Murphy's extensive operating experience, track record of success, and strong record of regulatory compliance support the inference that D.P. Murphy would excel managing the operations of a retail petroleum outlet at the proposed location.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of May, 2025.



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