

IN THE MATTER of an application by D. P. Murphy Inc. for a Retail Petroleum Outlet License in Borden-Carleton, Prince Edward Island, pursuant to section 20 of the *Petroleum Products Act*, R.S.P.E.I. 1988, c. P-5.1;

**WRITTEN SUBMISSIONS ON BEHALF OF
THE INTERVENER, CERETTI'S GROCERY AND HARDWARE INC.**

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PART I - BACKGROUND

1. The applicant, D. P. Murphy Inc., (“D. P. Murphy” or the “Applicant”) seeks to open a retail petroleum outlet at the intersection of the Trans Canada Highway and Dickie Road, in the community of Borden-Carleton (the “Application”). The Application was filed with the Island Regulatory and Appeals Commission (the “Commission”) on June 27, 2023.
2. Howatt’s Tourist Mart Ltd. (“Howatt’s), who operates a retail petroleum outlet in Borden-Carleton under the Shell brand was granted added party intervener status.
3. Ceretti's Grocery and Hardware Inc. (“Ceretti’s”), who operates a retail petroleum outlet in Borden-Carleton under the Mobil brand was also granted added party intervener status.
4. A public hearing was held before the Commission on May 13, 14 and 15, 2025.
5. The three parties noted above were the only parties who participated in the hearing.
6. D. P. Murphy called two witnesses in support of its Application, namely, Danny Murphy on behalf of the Applicant, and Mr. Chris Robertson, a partner with Deloitte LLP.
7. Ceretti's called two witnesses in its role as an intervener, namely, Chad Ceretti on behalf of Ceretti's, and Mr. Lloyd Compton, a partner with MRSB.
8. Mr. Robertson filed a report as part of the Application (the “Deloitte Report”), and was qualified as an expert witness in the field of commercial market research. Similarly, Mr. Compton filed a report on behalf of Ceretti's (the “MRSB Report”), and was also qualified as an expert witness in the field of accounting including the preparation and analysis of financial statements.
9. Howatt’s participated in the hearing through cross-examination but did not call any witnesses.

PART II - LEGAL CONSIDERATIONS

10. Pursuant to the *Petroleum Products Act*, a license is needed before a retail petroleum outlet can be established in Prince Edward Island. The Commission was given the authority to regulate the issuance of licenses and determine whether a particular license will, or will not, be issued.¹
11. The Application is brought under section 20 of the *Petroleum Products Act*, which states:

“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 applicants record of performance.”
12. Following many decisions issued by the Commission pursuant to section 20 of the *Petroleum Products Act*, guidance has been given to parties in terms of the types of evidence that the Commission requires in assessing an application for a retail petroleum license.
13. The application form, developed by the Commission, for an applicant seeking to have a retail petroleum license issued, specifically states that the Commission may consider, in general terms, 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.²
14. In previous decisions, the Commission has established a framework for the analysis to be conducted when determining whether or not to issue a retail petroleum license to an applicant. In so doing, the Commission has noted that the *Petroleum Products Act* requires that every retailer obtain a license from the Commission for any petroleum outlet. The Commission has also noted that no

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

² List of Exhibits, A1

license confers any perpetual or exclusive right by virtue of section 18 of the *Petroleum Products Act*.³

15. When issuing a license with respect to a retail petroleum outlet, 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 volumes and trends, and the applicants record of performance.⁴
16. Section 20 of the *Petroleum Products Act* permits flexibility, 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 determination of an application by the Commission is to be made in the context of the relevant facts of each particular application.⁵
17. A goal of the *Petroleum Products Act* is to ensure that there is a reasonable network of retail outlets, and as such, public convenience and necessity is assessed from the perspective of the motoring public and not the public in general.⁶
18. The analysis to be conducted is a contextual one, and the presence or absence of any one factor is not necessarily fatal. The whole of the application must be considered against the statutory standards fixed by the legislature, namely, public interest, convenience, and necessity.⁷
19. In this Application, D. P. Murphy is seeking approval from the Commission and as such, bears the legal and evidentiary burden of substantiating its application, though inferences can be drawn from historical data.⁸
20. The Commission has recognized that negative impacts on existing retailers are relevant to its analysis of whether to issue a license for a new retail outlet, though in doing so, it is required to focus on the needs of the motoring public and not on the needs of existing retailers. A decline in sales of an existing retailer does not meet the threshold required to prevent a license from being issued. In order to prevent the approval of a new retail outlet, evidence must demonstrate that services to the motor in public will be diminished following the approval of a new license.⁹

³ Order PC18-003

⁴ Order PC18-003

⁵ Order PC18-003

⁶ Order PC18-003

⁷ Order PC18-003

⁸ Order PC18-003

⁹ Order PC10-01

21. The Commission has stated that it can consider the detrimental effect on the motoring public when the evidence clearly indicates that a new license will result in the closure of an existing outlet, which in turn results in diminished service to the motor in public at large.¹⁰
22. The Commission has also stated that *“the law clearly states that an applicants desire to serve the public is, by itself, insufficient to meet the test of public interest, convenience and necessity”*. It is for the applicant to make an *“affirmative showing”* that convenience and necessity require the service which it is offering to render. *“Mere desire on the part of the applicant to serve, or on the part of certain customers or patrons to be served, is not enough”*.¹¹
23. In cases where an applicant strongly believes that there is a market potential for gasoline sales in a particular area, the Commission cannot equate market potential – the potential of selling some gas – with meeting a need of the motoring public or adding significantly to the convenience of the motoring public.¹²
24. As was noted during the hearing, mere desire to serve is not enough.

¹⁰ Order PC10-01

¹¹ Order P.920211-1

¹² Order P.920211-1

PART III - ISSUE

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

PART IV - EVIDENTIARY ISSUE

26. The Commission accepted four documents filed on behalf of Ceretti's during the cross-examination of Mr. Robertson. Those documents were:
- (a) Exhibit I1 "PEI Population Report Quarterly – Population Report, Fourth Quarter 2024";
 - (b) Exhibit I2 "Visitor Volume and Value Dashboard and Prince Edward Island achieves a record year for tourism";
 - (c) Exhibit I3 "Summary of Monthly Traffic Volumes on the Confederation Bridge for 2022, 2023, 2024"; and
 - (d) Exhibit I4 "Kalibrate Canada, Inc. Site Detail Report – Borden, Prince Edward Island, (Single Sites), Quarterly Data."
27. After ruling on the admissibility of the above noted documents, the Commission directed that the parties could speak to the evidentiary weight that should be given to these documents during oral submissions. Additionally, the parties were advised that further submissions could be made on the weight to be given to these documents during written submissions.
28. Full weight and consideration should be given to each of the documents.
29. The Commission has established Rules of Practice and Procedure (the "Rules"). In considering the weight to be given to these documents, it must be done within the context of the Rules as opposed to an evidentiary standard that would apply in a court of law.
30. Of particular importance, it should be noted that the Commission's Rules state:
- 1.(2) These rules and procedures are founded upon the principles of natural justice and fairness.
 - 3. The commissions rules and procedures are intended to ensure:
 - a. That all parties to a proceeding are afforded a reasonable opportunity to be heard;
 - c. That proceedings before the commission are conducted in a less formal manner than the courts, and as expeditiously as circumstances permit. [Emphasis Added]

2.(1) These rules shall be liberally construed to secure the most just, expeditious, and efficient determination on the merits of every proceeding before the commission. [Emphasis Added]

9. Substance Prevailing Over Form

No proceeding before the commission shall be defeated or affected solely by any technical objection or by any objection based upon defects in form or procedure.

45. All Relevant Evidence Admissible

The commission is not bound by the formal rules of evidence and may receive all evidence it deems relevant, even though such evidence may not be admissible in a court of law.¹³ [Emphasis Added]

31. In considering the weight to be given to Exhibits I1 to and including I4, it needs to be done within the context of the Commission's Rules permit flexibility and promote efficiency so that all relevant information is put before the Commission.
32. In general terms, Exhibits I1 to and including I4 represent publicly available data, from sources that were also relied upon by the Applicant in the Deloitte Report. Additionally, it was noted during the hearing that Exhibits I3 and I4 were obtained by Mr. Chad Howatt, on behalf of Howatt's as an added party Intervener.
33. The Commission accepted these documents without the requirement for Mr. Howatt to speak to them.
34. The Applicant's position is that these documents should have been filed in advance of the hearing. Given the nature of the documents and their intended use during cross-examination of an expert witness, Ceretti's submits that these documents were properly put before the Commission and in accordance with the Commission's Rules.
35. Given that the documentation in question is largely updated numbers for fuel sales, population trends, tourism numbers, and traffic flows, all of which were factors cited in the Applicant's materials, which could have been updated by the Applicant prior to the hearing, they are relevant and should be given full weight by the Commission.
36. The documents and information are not complex in any way, shape or form, and to secure a just and efficient determination on the merits, it was correct to have the documents admitted. Having been filed, full weight should be given to the documents on the basis that they are relevant and provide the Commission with

¹³ Rules of Practice and Procedure – Island Regulatory and Appeals Commission

more up to date information compared to the data that was contained within the Application and the Deloitte Report.

PART V - POSITION OF CERETTI'S

37. In relation to the Application and section 20 of the *Petroleum Products Act*, Ceretti's is of the position that the Application of D. P. Murphy seeking a retail petroleum license should be denied on the basis that D. P. Murphy failed to substantiate its case.
38. Alternatively, and only should the Commission find that the Applicant did substantiate its case, Ceretti's is of the position that the Application should also be denied on the basis that the granting of a new retail petroleum outlet would result in the closure of Ceretti's with a corresponding detrimental effect and loss of services to the motoring public.
39. Should the Commission determine that D. P. Murphy did not substantiate its case, the second part of the analysis pertaining to a detrimental effect would not be needed though the Commission may consider it as part of its decision.

A. The Applicant did not substantiate its case

40. All parties agree that the Applicant is required to substantiate its case and bears the evidentiary burden of doing so.
41. While section 20 of the *Petroleum Products Act* permits flexibility, with no single checklist of factors being determinative of an application, a relatively standard and expected evidentiary basis has formed over time, following many applications to the Commission for applicants seeking to have a retail petroleum license issued.
42. Without limitation, the types of evidence generally put before the Commission in most, if not all, prior applications includes:
 - (a) evidence pertaining to the promotion of competition;
 - (b) trends in gasoline sales for the area in question;
 - (c) population and traffic trends for the area in question;
 - (d) information pertaining to the services presently available to the motoring public in the area in question;
 - (e) information pertaining to the demand for the services being offered from the perspective of the motoring public; and
 - (f) projected sales, by way of volume, for the new applicant.¹⁴

¹⁴ Order PC10-01

43. It is against this evidentiary framework that the Commission needs to analyze the evidence filed by and on behalf of D. P. Murphy in determining this Application.
44. In general terms, this would include the application form, the evidence given by Danny Murphy, the Deloitte Report and the evidence given by Mr. Chris Robertson. From a contextual perspective, this evidence must also be considered given that this would be the fourth retail gas station to be opened in a town with an approximate population of 800 people. Additionally, and despite this being a significant entry and exit point to and from the Province of Prince Edward Island, the daily traffic flows in this area are approximately a quarter of what they are in the Town of Stratford¹⁵ which is now, and only recently, served by three retail petroleum outlets.
45. At a high level, the evidence put forward by the Applicant contains actual data to the end of 2022 for gasoline sales, traffic counts, and population trends, and in some cases, a blend of actual and estimated data for the years of 2023. Further, it can be inferred that a building of approximately 13,000 ft.², built on over 6 acres of land, with eight gasoline pumps and over 135 parking spaces is obviously expecting significant sales of gasoline to make this a viable business. However, no estimation was provided at any point in time as to the volume of gasoline sales that D. P. Murphy expects to reach in its initial years at this location.
46. This is a critical fact that was not put forward to the Commission so that it can assess the Application, along with the impact it may have on existing retailers, nor does it speak to whether there is a need or demand for such services from the motoring public.
47. Again, mere desire to serve is not enough.
48. The written submission put forward on behalf of the Applicant notes in several places that Ceretti's and/or Howatt's could, or should have, filed documentation submitted at the hearing in advance of the hearing. That same argument holds true for the Applicant.
49. In asking the Commission to render a decision on its Application in 2025, more up to date information could, and should, have been filed by the Applicant. However, the Applicant chose not to do so.
50. It is not the desire of the Applicant that needs to be considered in this particular matter, but whether there is a demand for the service proposed to be offered to the motoring public. During the cross-examination of Danny Murphy, he confirmed that the Applicant did not engage a market survey of the motoring

¹⁵ Order PC10-01

public to engage a need or demand for the fourth outlet that the Applicant is proposing to construct.

51. In fact, the only information provided to the Commission as it relates to the motoring public comes from the public outcry, largely from residents of the Town of Borden-Carleton against a license being issued to construct a fourth retail petroleum outlet in the community.¹⁶
52. To that end, the Applicant, both during the hearing, and in its written submissions, has consistently noted that many letters filed with the Commission point to continued support for Ceretti's, and that it should be a positive factor to its business case. However, the Applicant also notes that the population of Borden-Carleton is small, flat, and not growing, and given that fact, has stated that the population of the town should not be used in terms of an analysis as to whether the Application should be granted.
53. That same argument cuts both ways.
54. If the population of Borden-Carleton is not a significant factor to be considered by the Commission in the analysis of the Application, then it cannot be said that this same small population would be enough to provide a continued positive business case for the operation of Ceretti's.
55. D. P. Murphy did file four letters of support in favour of the Application.¹⁷ However, as was noted during the hearing, and during the cross-examination of Danny Murphy, two of these letters are from entities who do not represent the motoring public, do not purchase fuel, and did not speak to the overall demand of the motoring public (SCI and TIAPEI).
56. With respect to the other two letters filed on behalf of SFX Transport, and Cavendish Farms, the operators of large trucking companies, these letters effectively amount to support for their drivers to have a place to stay when the bridge is closed. They do not confirm an overall need for fuel or for the Applicant's premises to exist at times when the bridge is open. As such, they carry minimal if any weight.
57. Additionally, the letter from SFX Transport notes that there are times when its drivers have to return to its base of operations at a cost to SFX Transport. Respectfully, any costs that may be associated with having drivers return to its base for safety reasons is not a relevant factor in terms of the licensing of retail petroleum outlets for the Commission. In short, the bottom line profitability of SFX Transport is not a factor within the mandate of the Commission.

¹⁶ List of Exhibits, CG14, P1 and P2

¹⁷ List of Exhibits, A1, A11 and A13

58. With respect to fuel sales, during cross-examination, Danny Murphy confirmed that D. P. Murphy did not file any information with respect to the sale of petroleum in the Borden-Carleton area past 2022, but did confirm that if there was a decline in sales volumes that it would be a factor that the Commission should consider.
59. Overall, and with the greatest respect to Danny Murphy, his evidence did not relate to the factors that this Commission has stated in prior decisions need to be considered in assessing an application for a new retail petroleum license. Mr. Murphy, in general terms, did not speak at all to the needs of the motoring public, did not speak to trends in population, fuel sales or provide information as it relates to the business case of the Applicant in terms of the amount of fuel that it expects to sell.
60. On the contrary, Mr. Murphy spoke to his experience in operating Tim Hortons franchises, the concepts of “look-ways”, his vision and desire for tourists to have a different experience when crossing the Confederation Bridge and what should be done to welcome visitors with analogies to Disney World and Anne of Green Gables.
61. However, the desire of the Applicant is not what the Commission needs to consider in this matter.
62. Mr. Murphy had some difficulties in determining whether the concept image, and associated square footage included in the Application, was the actual concept plan put before the Town of Borden-Carleton for its approval in principle, which differs significantly from the concept image and total square footage contained in the Deloitte Report.
63. Further, when giving his direct testimony, Mr. Murphy painted a very clear picture of a family coming across the Confederation Bridge to vacation on Prince Edward Island, while towing a camper and needing a place to park. He referred to needing a space with lots of room to navigate for a first time driver towing a trailer, and perhaps, then needing a place to rest, stretch his or her legs, and perhaps walk the dog. Mr. Murphy referred to many of these “welcome centres” in other provinces and throughout the states as a place to stop and rest, often without the need for gas.
64. On cross-examination, and on this very point, Mr. Murphy confirmed that the type of welcome centre he is proposing in Borden-Carleton could exist without gasoline.
65. This is an extremely important factor as it goes directly to the point of the desire of D. P. Murphy as opposed to the needs of the motoring public.
66. During oral closing submissions, counsel for the Applicant noted that the appropriate follow up question on this particular matter should have been

whether this type of welcome centre could exist without gasoline “*and be profitable*”. Had counsel for the Applicant wished to ask that question, they could have done so in redirect, but chose not to.

67. To try to create doubt as to whether the “*welcome centres*” would, or would not be profitable without gas, without filing any information on projected gasoline volume sales in the first place, is something that should not be considered by the Commission in rendering its decision. In short, the testimony of Mr. Murphy confirms that the vision of a welcome centre at the proposed location can be completed without the need for a retail gasoline license.
68. That is the evidence that stands before the Commission.
69. The Deloitte Report makes up the other evidence submitted on behalf of the Applicant in support of D. P. Murphy’s position that a retail petroleum license should be granted.
70. While Mr. Robertson was qualified as an expert in the field of commercial market research, as it relates to this particular Application, he confirmed that he did not come to the island to complete his research, he participated in the hearing remotely, and was not aware that the Town of Borden-Carleton is not situate in Kings County.
71. Additionally, and based on a question from the panel, despite the increase in electrification of automobiles, Mr. Robertson confirmed that the growth in the sales of such vehicles was not contained or mentioned within the Deloitte Report. Mr. Robertson also confirmed that he routinely completes tasks such as market research, market studies, stakeholder surveys, focus groups and interviews, and that none of those were done in this particular matter as it relates to the motoring public.
72. In its written closing submissions, the Applicant notes that the ability for three retail petroleum stations to provide service in the peak season, effectively and efficiently, should be considered. The closing submissions also reference perceived wait times or congested parking lots, and that this would not be convenient from the perspective of the motoring public.
73. During cross-examination, Mr. Robertson confirmed that he had not travelled to the Island, had not conducted any research, or provided any evidence that would suggest that long wait times or perceived congested parking lots actually exist. As such, this mere statement should not be considered by the Commission, as there is no evidence to support it.
74. Mr. Robertson did confirm that based on historical data, gasoline prices are generally lower in New Brunswick and Nova Scotia as compared to Prince Edward Island and that this would be a relevant factor for the Commission to

consider. This comment was contained in the Deloitte Report, and confirmed during cross-examination. Combined with the direct testimony of Mr. Chad Ceretti, this would point to a recent trend or change in the behaviours of the motoring public, whereby individuals may now be choosing to fuel up after crossing the Confederation Bridge or before returning to Prince Edward Island, especially with the opening of a new retail outlet in Port Elgin.

75. Both during direct testimony and cross-examination, Mr. Robertson effectively confirmed that he analyzed several pieces of historical data, including population trends, tourism numbers, traffic trends and fuel sales for Prince Edward Island in order to project sales volumes for fuel in the years 2024, 2025 and 2026. These projections were made for all of Prince Edward Island, and then using a factor of 4.1%, Mr. Robertson projected sales for the Town of Borden-Carleton in these same three years.
76. During his cross-examination, Mr. Robertson did confirm that if there were deficiencies with his underlying assumptions associated with population trends, tourism trends, traffic trends, and/or fuel sales for Prince Edward Island, they could collectively affect the projections stated for the fuel sales in the years 2024, 2025 and 2026 in the Town of Borden-Carleton.
77. As was evident during Mr. Robertson's cross-examination, his underlying projections for population trends, tourism trends, traffic trends, and fuel sales for the Province of Prince Edward Island, and for the Town of Borden-Carleton, were considerably off base for the year 2024, as much of that data is now publicly available.¹⁸
78. When compared to the annual report of this Commission, Mr. Robertson confirmed that the total volume of sales for gasoline, as reported by the Commission for 2023 was actually less than what he had projected for that same year by approximately 18,000,000 Litres.¹⁹ Needless to say, when the total fuel sales for the Province of Prince Edward Island are used to project what the sales will be for the Town of Borden-Carleton, the overestimation would have a direct impact on the projection given for the Town of Borden-Carleton.
79. Using the same factor of 4.1%, this overestimation of 18,000,000 Litres accounts for an overstatement of approximately 750,000 Litres of fuel being sold in Borden-Carleton.
80. During cross-examination, Mr. Robertson was asked to comment on a scenario where he had projections and actual data for his year one analysis, and came to realize that the projections, and the underlying factors were off base. Mr. Robertson was asked how he would advise a client in that specific situation and he confirmed that a complete revisitation of the data would be needed.

¹⁸ List of Exhibits, CG17, I1, I2, I3 and I4

¹⁹ List of Exhibits, CG17

81. Against this backdrop, this is a significant and important statement for the Commission in determining whether the Applicant has substantiated its case.
82. Given that the Applicant's expert has stated that a revisitation of the projections would be needed, the Commission should not utilize the same information to reach a conclusion that a fourth retail petroleum license should be issued.
83. To the contrary, this statement and these findings should result in a conclusion that the Applicant has not met its evidentiary burden to substantiate its case such that the Application should be dismissed.
84. To this end, and to the heart of this Application, the projected volume of sales for the three existing retail outlets in the Town of Borden-Carleton were overstated by Mr. Robertson by approximately 25% for the year 2024 as compared to actual sales.²⁰ This is a significant deviation that should cause pause for the Commission to consider the projected sales for the years 2025 and 2026.
85. Additionally, and as it relates specifically to the test to be met by the Applicant in this matter, the evidentiary record shows flat sales for fuel in the Province of Prince Edward Island with total gasoline sales of 229,315,877 Litres in 2021, 226,909,699 Litres in 2022 and 227,699,864 Litres in 2023.²¹ Combined with a declining trend for petroleum sales in the Town of Borden-Carleton, these two factors support a finding that the Application be dismissed.
86. At the outset, Ceretti's stated that it is of the position that the Applicant has not substantiated its case or met the evidentiary burden required of it in this matter such that the Application should be dismissed. Overall, in considering the evidentiary burden that the Applicant needs to meet in this matter, and in relation to the evidentiary record before the Commission, the Commission must consider that:
- (a) the last full year of actual information for tourism visits to the Province of Prince Edward Island filed on behalf of the Applicant is for the year 2022;
 - (b) the last full year of actual information for annual average daily traffic at the Dickie Road intersection filed on behalf of the Applicant is for the year 2022;
 - (c) the last full year of actual information for Confederation Bridge crossings filed on behalf of the Applicant is for the year 2022;

²⁰ List of Exhibits, I4

²¹ List of Exhibits, CG17

- (d) the last full year of actual gasoline sales volumes for the Province of Prince Edward Island filed on behalf of the Applicant is for the year 2022;
- (e) the last full year of actual gasoline sales volumes for the Town of Borden-Carleton filed on behalf of the Applicant is for the year 2022;
- (f) the forecasted total volume of gasoline sales for the Province of Prince Edward Island, as contained in the Deloitte Report for 2023 exceeds the actual number as reported in the annual IRAC report, by 18,000,000 Litres;
- (g) the forecasted total volume of gasoline sales for the Town of Borden-Carleton, as contained in the Deloitte Report for 2024, exceeds the actual number, as reported by Kalibrate, by twenty-five (25%) percent;
- (h) no information was filed on behalf of the Applicant to establish potential population growth for the Town of Borden-Carleton;
- (i) no information was filed on behalf of the Applicant to establish that any road redesigns or developments were planned that would lead to any different trends in traffic patterns for those travelling through Borden-Carleton or to and from the Confederation Bridge;
- (j) a market study, stakeholder session or focus group was not completed on behalf of the Applicant with respect to gathering opinions of the motoring public as to whether or not a fourth retail petroleum outlet was needed by the motoring public;
- (k) Danny Murphy confirmed that when the Application was filed, Irving was still operating in the Town of Borden-Carleton, such that this would not be a *“reintroduction of the brand”* as it relates to a consideration of the matter of promotion of competition;
- (l) Mr. Chris Robertson confirmed that a complete revisitation of the data in the Deloitte Report would be needed before relying on any of the information for the forecasted years 2025 and 2026; and
- (m) Mr. Danny Murphy stated that a *“welcome centre”* project could proceed without a petroleum license being issued.

87. Critically, despite increases in population and record tourism numbers, and contrary to the projections and forecasts by Mr. Chris Robertson, gasoline sales

for the Province of Prince Edward Island are static²² and gasoline sales for the existing retail outlets in the Town of Borden-Carleton show a collective decline.²³

88. Based upon the summary of the evidence as set out above, Ceretti's states that the Applicant has not substantiated its case such that its Application for a retail petroleum license in the Town of Borden-Carleton should be dismissed.

B. Detrimental Effect – A new outlet will lead to a closure of an existing outlet and lead to a loss of services to the motoring public

89. Ceretti's has been in operation in the community of Borden-Carleton for approximately 90 years. It is currently owned and operated by Mr. Chad Ceretti, as the third generation owner of the business.
90. Ceretti's provides fuel under the Mobil brand, has full generational capabilities during times when electrical services may not be available, offers a full line of grocery products, a line of hardware supplies, provides fresh produce, frozen food, a full offering of general convenience items, while also providing fresh meat and butchering services. Additionally, Ceretti's provides charge accounts for its clients, offers the ability for same day delivery of automobile parts and will deliver groceries and supplies to those who are in need of that service.
91. In 2023, when the current Application was filed, Ceretti's was selling fuel under the Irving brand.
92. During direct testimony, Mr. Ceretti confirmed that approximately 38% of his customers that buy gas also buy some type of in-store product. Mr. Ceretti also confirmed that this information is new and arises from a new system that was recently implemented and was not historically available.
93. Overall, the direct testimony of Mr. Ceretti provided evidence as to the type of service offerings made available at Ceretti's, along with confirmation that Mr. Ceretti, as the business owner and operator of Ceretti's, believes that the town of Borden-Carleton cannot support a fourth retail petroleum outlet and that if the Application is granted that his business will close.
94. Mr. Ceretti's belief that he will be forced to close if this Application is granted is supported by the MRSB Report and testimony of Mr. Lloyd Compton. That report, and accompanying testimony, will be discussed further herein.
95. Overall, Mr. Ceretti was clear and direct in relation to his position as to what will happen to his business if this Application is granted. However, in its capacity as an Intervener, and in order to be able to establish that its business will suffer a

²² List of Exhibits, CG17

²³ List of Exhibits, I4

detrimental effect to the point of closure, with a corresponding loss of services to the motoring public, Ceretti's was required to disclose and file significant financial information that would otherwise not be made public.

96. In this regard, more information was filed about an intervener and its business case than there was of the Applicant.
97. As noted in the opening remarks on behalf of Ceretti's, it is common for existing outlets to appear before the Commission and indicate that they will have a loss of sales. In that regard, the Commission has been clear that it is only when there is evidence before it that the opening of one outlet will lead to the closure of another, which will in turn have a detrimental effect on the motoring public, that such a detrimental effect can be considered.
98. In most if not all cases before the Commission, competitors have complained about the potential loss of sales should an application be successful. This is not one of those cases.
99. In this case, Ceretti's has filed significant financial information detailing its financial position, wages, expenses, revenues and margins, and has filed evidence that a granting of a new license will lead to a closure of an existing outlet.
100. Combined with the fact that this would be the only area in Prince Edward Island to have three retail petroleum stations in such close proximity, and the only area in Prince Edward Island where two retail petroleum outlets would share a property boundary, the circumstances surrounding this Application are unique.
101. As such, believing that such a detrimental impact would occur, Ceretti's had no choice but to proceed and file the otherwise private financial statements and information that it did. That fact should not be taken lightly by the Commission and should distinguish its intervention from prior cases before the Commission.
102. Mr. Ceretti was put through an extensive cross-examination in which the state of his business premises was put under a microscope, his social media posts were examined in detail, and questions as to why information was not filed in a more timely manner were pursued. In short, the majority of this line of questioning was not a relevant factor in so far as it relates to the Applicant trying to substantiate its case in that a license should be granted, nor does it go to the financial analysis contained in the MRSB Report.
103. As was previously noted, on more than one occasion, Mr. Ceretti was questioned as to whether the letters of support from the public established that certain members of the public would continue to support his business, even if this Application was approved. At one point during cross-examination, counsel for the

Applicant made a point to Mr. Ceretti that there were still “150,000 people that the Commission has not heard from”.

104. As noted during closing remarks, this is correct, and to that point, we agree.
105. In acting as an intervener, that is not a burden that falls to Mr. Ceretti. It is a burden that falls to the Applicant for which it has not met.
106. As previously noted, a significant portion of business in the Borden-Carleton area, especially as it relates to convenience items and fuel, comes from drive-through customers travelling to or from off-island. To suggest that the 800 residents of Borden-Carleton (approximate) would continue to support Mr. Ceretti, and be enough to substantiate a business case, is disillusioned.
107. During Mr. Ceretti's cross-examination, he was asked to confirm whether or not he had a financial interest in giving evidence to the Commission and in the outcome of the Application. Obviously, that statement is true, and is no different from that of the Applicant, who also has a financial interest in giving evidence to the Commission and in the outcome of the Application.
108. Additionally, counsel for the Applicant attempted to show that, after having the Irving brand leave Ceretti's, by reaching a deal with a new distributor, and continuing to sell gas under a new brand, this fact should somehow serve as evidence that Ceretti's, and/or Mobil, has continued confidence in the business success of Ceretti's even if the Application is approved.
109. The answer to this, is in effect, a rhetorical question. What else was Ceretti's to do?
110. In 2024, when the change of brand became required, this Application had not been heard, a new license was not granted, there was and is no certainty that a new license would be granted, and there was no certainty that the Applicant would proceed with the project that had been on hold for quite some time. Ceretti's made a business decision to continue under a new brand, rather than close the door on gasoline sales, which as noted, it believes would ultimately lead to a complete closure to its business operations.
111. To suggest that its decision to continue to operate should somehow negate any weight given to Ceretti's position that it will face imminent closure if a new license is issued does not make commercial sense.
112. During the cross-examination of Mr. Murphy, he confirmed that the Applicant did not intend to carry a full line of groceries, fresh produce, frozen foods, hardware, fresh meat and butchering services, the ability to order automobile parts, provide charge accounts or deliver groceries to those who need those services. Additionally, Mr. Murphy confirmed that if Ceretti's did close, and these services

were no longer offered in the Borden-Carleton area, that it would be a loss of services to the motoring public.

113. Based upon the cross-examination of Mr. Murphy, it does appear clear that if there is a closure of Ceretti's, following the opening of a fourth petroleum retail station, there is agreement that there will be a detrimental impact and loss to the motoring public. As such, the question now arises as to whether there is evidence to substantiate the fact that Ceretti's is likely to close should the application be granted.
114. The starting point for a consideration as to whether Ceretti's would likely cease its operations as they currently exist should a license be granted to open a fourth retail petroleum outlet in the Town of Borden-Carleton starts and ends with the MRSB Report and accompanying testimony of Mr. Lloyd Compton.
115. Such an analysis does not start:
 - (a) with a focus on a standard qualification inadvertently left in the MRSB Report as to reliance on the MRSB Report;
 - (b) with a focus on who determined that an analysis should be conducted with a 25% reduction in sales and a secondary analysis with a 33% reduction in sales;
 - (c) with a focus on whether or not business operations can "*weather the storm*" for a period of time while the new retail petroleum license begins operations;
 - (d) with a focus on whether or not Mr. Chad Ceretti is entitled to a wage from business operations;
 - (e) with a focus on whether or not a correlation between gasoline sales and in-store sales should have been provided in some type of supplementary report and filed prior to the hearing;
 - (f) with questions as to whether there are any cost-cutting measures that Ceretti's can achieve in order to allow a fourth retail petroleum license to open immediately adjacent to its existing operations and remain profitable;
 - (g) with questions as to whether or not MRSB should have conducted a break even analysis; and
 - (h) with questions as to whether or not MRSB should have provided an opinion as to what level of sales Ceretti's can experience as a decrease and still remain profitable.

116. The MRSB Report and the testimony of Mr. Lloyd Compton indicate that two scenarios were considered in relation to what would happen to Ceretti's existing operation if it experienced a decline in sales at different levels. As noted by Mr. Compton in his direct testimony and cross-examination, he viewed the analysis of 25% and 33% decreases as being conservative, because factored into both of those scenarios was a continued growth factor for both fuel sales and related in-store sales.
117. Effectively, when the growth is considered and removed, the scenarios are effectively closer to a 19% and 27% analysis for decreased sales.
118. While Mr. Compton was subject to an extensive cross-examination, on a variety of factors, he effectively did not deviate from the conclusion stated in paragraph 8 of the MRSB Report, which indicates that in either scenario if the Application is approved the most likely result is the "*imminent closure*" of Ceretti's.²⁴
119. An Applicant is required to substantiate its case, but as has been stated by the Commission, it is not expected to predict with 100% certainty as to what will happen in the future. However, the position taken by the Applicant is that an intervenor should bear a different burden, and that it needs to show, with absolute certainty, that it will close.
120. This is problematic from a number of perspectives, but most notably, it needs to be considered that D. P. Murphy itself has not indicated how many litres of fuel it expects to sell, leaving the Interveners to guess and speculate as to what a decrease in sales may look like. While it is difficult to predict the future in any event, not having any information from an applicant as to fuel volumes it expects to achieve, it places a competitor in a difficult place to assess what will occur in the future as it relates to a decrease in sales. To then suggest that Ceretti's should file more accurate information or be held to a different standard is not realistic.
121. In its written submissions, the Applicant has noted that Ceretti's cannot "*have their cake and eat it too*", and states that the Applicant is not required to prove with 100% certainty what will occur if a license is granted to it. The Applicant has also noted that the Deloitte Report includes forecasts, and that forecasts cannot be expected to occur with 100% certainty.
122. However, when it comes to the impact on Ceretti's and its business case, the Applicant is taking the position that Ceretti's, and MRSB, must establish with 100% certainty as to what will happen if a new, large competitor opens immediately adjacent to Ceretti's.

²⁴ List of Exhibits, CG6

123. To this extent, the Applicant cannot *"have their cake and eat it too"*.
124. Mr. Compton was clear that assuming market share is equalized, a 25% reduction, as a starting point, is logical. Further, a new station with over 13,000 ft.² of space and eight fuel pumps, which more than double those available at Ceretti's and Howatt's, may take more than its even share of market sales is also a logical assumption.
125. Again, in either scenario, the likely result, as opined by MRSB, is the imminent closure of the business. Further, when the potential growth is backed out of the analysis, scenario two, which is listed as a 33% decrease in sales, is likely closer to the assumptions made in scenario one as it relates to an equalization of market share between four existing retail petroleum outlets. As noted in the MRSB Report, this scenario results in collective three-year losses of approximately \$350,000.00.
126. Mr. Compton was qualified as an expert, provided direct testimony, answered questions clearly, and noted that there were some minor issues of note in the MRSB Report. Mr. Compton also addressed the issue that some information became available after the MRSB Report had been filed and provided evidence as such. This information was candidly disclosed, openly discussed during cross-examination, and despite a rigorous cross-examination, Mr. Compton's conclusions did not change from those as expressed in the MRSB Report.
127. In short, the opening of a fourth petroleum retail outlet on a property immediately adjacent to Ceretti's will most likely result in the imminent closure of Ceretti's.
128. Combined with the fact that the Applicant's principal witness, Danny Murphy, confirmed that there would then be a loss of services to the motoring public, Ceretti's submits that the case for detrimental impact has been clearly established.
129. In the event that the Commission does consider whether or not the opening of a fourth retail petroleum outlet would have a detrimental impact on the motoring public as a result of the closure of existing outlet, then the evidence as filed and provided at the hearing establishes that a detrimental effect will occur such that the Application should be denied.

PART VI - CONCLUSION

130. D. P. Murphy has the burden of substantiating its case in that a fourth retail petroleum license is required by the motoring public.
131. Based on the evidence submitted by and on behalf of D. P. Murphy, it has failed to substantiate its case that there is a need or service required by the motoring public such that a fourth retail petroleum license should not be issued within the Town of Borden-Carleton.
132. The desire of the Applicant to serve the motoring public is not enough to meet the test of public interest, convenience, and necessity, and on that basis, the Application should be denied.
133. In the alternative, should the Commission determine that the Applicant has substantiated its case, a further analysis is required to determine whether or not there would be a detrimental impact on the motoring public should the Application be granted. This involves a consideration of factors relating to whether the opening of a new outlet would result in the closure of an existing outlet with an overall detrimental impact to the public.
134. The evidence submitted by and on behalf of Ceretti's shows that the granting of this Application, and the opening of a new retail gas petroleum outlet, with approximately 13,000 ft.² of retail space and eight gasoline pumps would result in the imminent closure of Ceretti's. This closure would have a corresponding detrimental impact with the loss of a variety of services now available to the motoring public, which would not be duplicated with the opening of the new outlet.
135. As such, should this secondary or alternative argument need to be considered, the evidence establishes that there would be a detrimental impact and loss of services to the motoring public such that the Application should be denied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of June, 2025.



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