



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

Docket: **PD527**
Order: **PC26-001**

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*, RSPEI 1988, c. P-5.1.

Order

DATED this 14th day of January, 2026.

FOR THE COMMISSION:

Kerri A. Carpenter, Vice-Chair
Gordon MacFarlane, Commissioner
Terry McKenna, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk
Island Regulatory and Appeals Commission

DECISION

1. For the reasons that follow, we approve the application of D.P. Murphy Inc. ("D.P. Murphy" or the "Applicant") for a retail petroleum outlet license pursuant to section 20 of the *Petroleum Products Act*.¹ In accordance with section 13 of the *Petroleum Products Act*, the license is subject to a number of conditions that are, in the circumstances, required.

OVERVIEW

2. On June 27, 2023, D.P. Murphy submitted an application to the Commission seeking a license to operate a new retail petroleum outlet in Borden-Carleton, Prince Edward Island (the "Application"). The property being proposed for the outlet is located at the corner of the Trans-Canada Highway ("TCH") and Dickie Road. The proposed outlet would be located directly adjacent to an existing outlet.
3. The proposed site is identified as Provincial Parcel Number 686582 and consists of approximately six acres of land. D.P. Murphy submits that the proposed site would provide much needed space to handle traffic and larger vehicles, such as transport trucks, commercial vehicles, travel trailers and tourist buses.
4. The proposed site would consist of an Irving branded gas station with four pump islands, the ability for eight vehicles to fuel at one time, multiple gasoline grades and diesel, and pay-at-the-pump capability. The outlet would be open 24 hours a day. In addition to the gas station, the site would also include:
 - a) A full-scale Tim Hortons restaurant;
 - b) A convenience store plus other retail offerings;
 - c) EV charging stations;
 - d) 121 proposed parking spaces and 15 designated tractor trailer parking spaces; and
 - e) Two access points off the Dickie Road, with another right turn entry proposed off the TCH.
5. In its Application, D.P. Murphy acknowledges that there are already three existing retail gasoline outlets in Borden-Carleton, and that Borden-Carleton itself has a relatively small population. In support of its Application, D.P. Murphy emphasizes the proximity to the Confederation Bridge and the number of motorists that pass through Borden-Carleton while travelling to and from Prince Edward Island.

¹ RSPEI 1988, c. P-5.1

6. After receiving the Application, a Notice of Application was published on the Commission website and in local newspapers. In the Notice, interested members of the public were invited to submit written comments to the Commission or apply for intervener status.
7. On July 12, 2023, Chad and Nicholas Howatt made a written request for Added Party Intervener status.² Chad and Nicholas Howatt are the co-owners of Howatt's Tourist Mart ("Howatt's"), an existing retail petroleum outlet in Borden-Carleton operating under the Shell brand. They object to the Application on the basis that the proposed outlet, if approved, would harm their existing outlet.
8. On July 19, 2023, Chad Ceretti ("Ceretti") submitted a request for Added Party Intervener status in his capacity as the president of Ceretti's Grocery & Hardware Ltd. ("Ceretti's").³ Ceretti's is an existing gasoline retailer in Borden-Carleton. When the Application was filed, Ceretti's was operating under the Irving brand. It has since re-branded to Mobil Fuels.
9. D.P. Murphy's proposed outlet is adjacent to Ceretti's. In his request for intervention, Ceretti emphasizes the other services that he offers to the community of Borden-Carleton, including a hardware store, grocery store and butcher shop. He states that if there is any material decrease in retail gasoline sales, then his entire operation will close.
10. The Commission granted Added Party Intervener status to both Howatt's and Ceretti's.⁴
11. In addition to the two requests for intervener status, the Commission also received approximately 400 comments from members of the public.⁵ Many of these comments were from residents of Borden-Carleton and surrounding areas who wrote in opposition of the Application and/or in support of the existing retailers, Howatt's and Ceretti's.
12. As part of the public consultation process, a member of the public also filed a petition listing the names of people who purportedly opposed the Application.⁶ This petition included a typed list of names and postal codes, but was not signed by any of the individuals listed.
13. When the Application was filed in June 2023, it did not include a copy of the building permit or approval-in-principle from the Town of Borden-Carleton, an express requirement for every application for a retail petroleum outlet license. As a result, the Application was held in abeyance pending receipt of the permit or approval-in-principle.⁷
14. In November 2023, the Town of Borden-Carleton provided approval-in-principle for the proposed development.⁸ The approval-in-principle is subject to a number of conditions, including that:

² Exhibits H-1 and H-2

³ Exhibit CG-1

⁴ Order PC23-002

⁵ Exhibit P-1

⁶ Exhibit P-2

⁷ Order PC23-005

⁸ Exhibit A-2

- a) The Commission approves D.P. Murphy's petroleum retail outlet license;
- b) The Town commissions a traffic study and a noise study, both with acceptable results;
- c) D.P. Murphy receives approval for ingress and egress as proposed in their application to the Town; and
- d) The Town is satisfied with respect to whether "*the proposed development would be detrimental to the convenience, health or safety of residents in the vicinity or the general public*", as per Development Bylaw 2.17(10).⁹

15. In June 2024, D.P. Murphy filed a Market Overview & Analysis Report prepared by Deloitte (the "Deloitte Report").¹⁰ A copy of the Deloitte Report was provided to the parties and made publicly available on the Commission website.

16. In January 2025, following a number of requests for extension,¹¹ Ceretti's filed a Financial Projection and Analysis Report prepared by MRSB (the "MRSB Report").¹² At the request of Ceretti's, the MRSB Report has been filed on a confidential basis and is not publicly available on the Commission website.¹³

17. A public hearing was scheduled to begin on February 25, 2025. The hearing was postponed following a late request by D.P. Murphy to file additional letters in support of its Application.¹⁴ Although the letters of support were accepted for filing, the hearing was postponed to allow Howatt's and Ceretti's the opportunity to respond to this new evidence.¹⁵

18. The public hearing proceeded over three days in May 2025. The hearing began on May 13th, continued on May 14th, and concluded on May 15th, 2025. The hearing was open to the public and was live-streamed on the Commission website.

19. At the hearing, Danny Murphy, the president of D.P. Murphy, and Chris Robertson, CPA, ("Robertson") a partner at Deloitte, testified on behalf of D.P. Murphy. Chad Ceretti, president of Ceretti's, and Lloyd Compton ("Compton"), CPA, CA, CBV, CITP, a partner at MRSB, testified on behalf of Ceretti's.

20. On the consent of the parties, the Commission accepted both Robertson and Compton as experts qualified to speak to the opinions contained in their respective reports.

21. Although given the opportunity, Howatt's did not file any evidence in advance of the hearing and did not give testimony or call any witnesses at the hearing.

⁹ Exhibit A-2

¹⁰ Exhibit A-3

¹¹ Exhibits CG-2, CG-4 and CG-5, Order PC25-001

¹² Exhibit CG-6

¹³ Exhibit CG-9, Order PC25-002

¹⁴ Exhibits A-10 and A-12, Orders PC25-002 and PC25-003

¹⁵ Orders PC25-002 and PC25-003

22. At the conclusion of the hearing, the Commission requested closing written submissions from each of the parties. All written submissions were received by June 16, 2025 and made publicly available on the Commission website.¹⁶

STATUTORY FRAMEWORK

23. Under the *Petroleum Products Act*, the authority to supervise the licensing of retail petroleum outlets in Prince Edward Island is granted to the Commission.¹⁷ The *Petroleum Products Act* requires that every retailer obtain a license from the Commission for any petroleum outlet.¹⁸

24. In order to decide whether to approve an application for a retail petroleum outlet, the Commission is required to consider the public interest, convenience and necessity.¹⁹ 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.

25. In Order PC10-01, the Commission identified the following factors as being relevant to the assessment of public interest, convenience and necessity:

- a. the promotion of competition;
- b. traffic volumes and trends in the general area of the proposed outlet;
- c. population size and trends in the general area of the proposed outlet;
- d. trends in gasoline sales, especially, but not exclusively, among outlets in the general vicinity of the proposed outlet; and
- e. services presently available to the motoring public in the general area of the proposed location.

26. These factors are also included in the Commission's prescribed application form for a new retail petroleum license.

¹⁶ Exhibits A-17, H-7, CG-18 and A-18

¹⁷ *Act*, section 9(1)(b)

¹⁸ *Act*, section 11

¹⁹ *Act*, section 20

27. In addition to these factors, the Commission routinely considers the accessibility and safety of the proposed location for the motoring public.
28. Notwithstanding the foregoing, the Commission has emphasized that section 20 of the *Petroleum Products Act* is a flexible provision and the particular circumstances of each application must be considered. There is no single checklist of factors that must be satisfied by the Applicant. The objective of the *Petroleum Products Act* is to ensure that there is a reasonable network of retail petroleum outlets. Public interest, convenience and necessity are therefore measured under the *Act* from the perspective of the motoring public and not the public in general.²⁰
29. In summary, the exercise before the Commission is a contextual one. The presence or absence of any one factor is not necessarily fatal to an application. The whole of the Application, including all of its supporting information, must be considered against the statutory standard prescribed 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 *Act*.²¹

ISSUE

30. The issue to be determined is whether the public interest, convenience and necessity would be satisfied by approving or denying a retail petroleum outlet for D.P. Murphy at the proposed location in Borden-Carleton.

ANALYSIS

Burden of Proof

31. The Commission has previously held that an applicant seeking approval under section 20 of the *Petroleum Products Act* bears the legal and evidentiary burden of substantiating its application.²² In this case, that burden rests with D.P. Murphy.
32. However, in the regulatory context, care must be taken not to import a strict judicial understanding of the burden of proof into this type of assessment. Although an applicant must substantiate its application, an applicant cannot be expected to assume the burden of proving exactly what will happen in the future.²³
33. The Commission has held that in an application under section 20, inferences can be drawn from historical data.²⁴ In fact, the Commission has previously held that “certain

²⁰ Order PC22-01 at para. 11

²¹ Order PC22-01 at para. 13

²² Order PC18-003 at para. 24; Order PC22-01 at para. 15

²³ Order PC22-01 at para. 15; Order PC18-003 at para. 24

²⁴ Order PC18-003 at para. 24

assumptions based on historical data must obviously form part of the decision-making process in the case of non-established situations".²⁵

34. While the Commission has recognized that interveners are under no legal burden to prove anything, evidence may nonetheless be expected from interveners who wish to rebut historical data or the inferences that may be drawn from that data. Ordinarily, evidence that is both reliable and specific to the local market will be required to rebut these types of inferences. That evidence may be in the form of data to the contrary, evidence from within the industry or local market, or an expert.²⁶

Evidentiary Issue

35. At the hearing, an evidentiary issue arose as to the admissibility and weight to be given to documents introduced by Ceretti's for the purpose of cross-examining D.P. Murphy's expert witness, Chris Robertson.
36. As part of its cross-examination, Ceretti's sought to introduce the following documents:
 - a) Exhibit I-1 titled "PEI Population Report Quarterly – Population Report, Fourth Quarter 2024";
 - b) Exhibit I-2 titled "Visitor Volume & Value Dashboard and Prince Edward Island achieves a record year for tourism";
 - c) Exhibit I-3 titled "Summary of Monthly Traffic Volumes on the Confederation Bridge for 2022, 2023, 2024";
 - d) Exhibit I-4 titled "Kalibrate Canada, Inc. Site Detail Report – Borden, Prince Edward Island (Single Sites), Quarterly Data"; and
 - e) Exhibit CG-17 titled "Prince Edward Island Regulatory & Appeals Commission 2023-2024 Annual Report".
37. After Ceretti's had closed its case, D.P. Murphy advised that it was objecting to the admissibility of Exhibits I-1, I-2, I-3 and I-4 as Ceretti's had not authenticated the documents. D.P. Murphy did not object to the admissibility of Exhibit CG-17, being the Commission's 2023-2024 Annual Report.
38. The Commission is not bound by the formal rules of evidence. Instead, the Commission may receive all evidence it deems relevant, even though such evidence may not be admissible in a court of law.²⁷ As Exhibits I-1 to I-4 are relevant, they were accepted for filing, subject to weight. The parties were given the opportunity to make oral and written submissions with respect to the weight (if any) to be given to Exhibits I-1, I-2, I-3 and I-4.

²⁵ Order PC18-003 at para. 24, citing with approval Order P.990707

²⁶ Order PC18-003 at para. 25

²⁷ *Rules of Practice & Procedure*, Rule 45

39. In sum, while D.P. Murphy argues that the exhibits should be given little to no weight,²⁸ Ceretti's argues that the exhibits should be given full weight and consideration.²⁹
40. Having reviewed the exhibits and the submissions of the parties, we find that Exhibits I-1 and I-2 and the first page of Exhibit I-4 are, in fact, more recent data from the same sources relied on by D.P. Murphy's own expert, including data from the provincial Department of Finance, Tourism PEI, and Kalibrate Canada, Inc. ("Kalibrate"). We accept that the data contained in these exhibits is relevant and reliable.
41. We do not accept D.P. Murphy's submissions that Ceretti's was required to "*prove the authenticity of the data cited in the Exhibits*".³⁰ As stated, the data found in Exhibits I-1, I-2 and I-4 is simply more recent data from the same sources relied on by D.P. Murphy's own expert. Notably, although D.P. Murphy's expert relied on the same sources of data, it did not prove the truth or accuracy of the data obtained from public sources. In fact, D.P. Murphy did not provide the Commission with any of the supporting documents listed in Appendix I – Summary of Sources & Bibliography attached to the Deloitte Report.
42. Further, both D.P. Murphy and Ceretti's have relied on publicly available data obtained from governmental sources, including the Department of Finance and Tourism PEI. The Commission has previously held that data obtained from governmental sources is relevant, credible, independent and inherently reliable.³¹
43. Although we have found that Exhibits I-1 and I-2 and the first page of Exhibit I-4 are relevant and reliable, we afford no weight to Exhibit I-3 or to the second page of Exhibit I-4.
44. Exhibit I-3 purports to be a summary of the monthly traffic volumes on the Confederation Bridge for 2022, 2023 and 2024. Unlike Exhibits I-1, I-2 and I-4, Exhibit I-3 does not identify the author or the origin of this data.
45. Similarly, attached to the Kalibrate data at Exhibit I-4 is a table of numbers entitled "Sum of Total Volume as Reported by Kalibrate". Although the attachment appears to be calculations derived from the Kalibrate data (found at page 1 of Exhibit I-4), there is no information about the author or the origin of the table found on page 2 to Exhibit I-4.
46. As the origin and author of the data in Exhibit I-3 and the second page of Exhibit I-4 cannot be verified, we place no weight on it.

²⁸ Exhibit A-17

²⁹ Exhibit CG-18

³⁰ Exhibit A-17 at page 5, paragraph 22(i)

³¹ Order PC18-003 at para. 22; Order PC22-01 at para. 17

PUBLIC INTEREST, CONVENIENCE and NECESSITY

Record of Performance

47. The Commission is required to consider an applicant's record of performance when issuing a license for a retail petroleum outlet.³² Although D.P. Murphy is new to the retail petroleum industry, it has a demonstrated record of success in the food service and hospitality industries.³³ D.P. Murphy's record of performance has not been disputed by the interveners.
48. The Commission has previously granted a retail petroleum outlet license to an applicant that was new to the retail petroleum market.³⁴ In doing so, the Commission found that the applicant would be a responsible licensee and that its lack of industry experience should not "*hinder [its] entrance into the industry*".³⁵ The same is true in the present case.
49. Although this will be D.P. Murphy's first retail petroleum outlet, it will be supported by an experienced fuel supplier, Irving Oil. We are satisfied that D.P. Murphy's record of performance, coupled with Irving's expertise in the petroleum industry, will serve the public interest.

Population Size and Trends

50. As stated previously, the Commission has found in past cases that population size and trends in the general area are relevant considerations under section 20 of the Act.
51. The population of Borden-Carleton is relatively static. According to the Deloitte Report, Borden-Carleton's population has increased from 750 in 2011 to 788 in 2021 – an increase of 38 people over ten years.³⁶ This is a very small local population which is presently served by three outlets. Neither the population in the general area, nor trends in the population in the general area weigh in favour of this Application.
52. However, Deloitte submits that due to its proximity to the Confederation Bridge, Borden-Carleton serves as a critical entryway for PEI residents travelling to and from the Island. As retail outlets in Borden-Carleton serve a broader population, it is appropriate to consider the provincial population trends for the entire Province.³⁷
53. According to Deloitte, PEI's population grew at a compound annual growth rate ("CAGR") of 1.3 percent from 2011 to 2021. Relying on data from Statistics Canada, the Department of Finance, Tourism PEI, and the Conference Board of Canada, Deloitte forecast that PEI's population would continue to grow at a CAGR of 2.1 percent from 2021 to 2031.³⁸

³² Act, section 20

³³ Exhibit A-1 at page 16

³⁴ Order No. P.980730

³⁵ Order No. P.980730

³⁶ Exhibit A-3 at section 5.1

³⁷ Exhibit A-3 at section 5.1

³⁸ Exhibit A-3 at section 5.1

54. Deloitte's forecast was based on actual data to 2021. On cross-examination, Ceretti's submitted the PEI Population Quarterly Report for the Fourth Quarter of 2024.³⁹ The PEI Population Quarterly Report filed by Ceretti's states that PEI's year-over-year population growth reached an all-time high of 4.0 percent in the third quarter of 2023, and had slowed in each of the last five quarters. As of January 1, 2025, PEI's population was estimated to be 179,280, representing a 1.7 percent annual growth rate.
55. The evidence presented by Ceretti's on cross-examination appears to suggest that PEI's population growth rate was higher than forecast by Deloitte in 2023, but lower than forecast by Deloitte in 2024. Ceretti's did not present any evidence as to the impact that the actual population growth rates may have on Deloitte's forecast annual growth rate of 2.1 percent.
56. As Borden-Carleton's proximity to the Confederation Bridge makes it a critical entryway to and from the Island, we accept that it is appropriate to consider the broader population trends for the entire Province, rather than looking solely at the population of Borden-Carleton. Although PEI's population may be growing at a rate other than that forecast by Deloitte, the evidence before us demonstrates that PEI's population is, in fact, growing.
57. The Commission must determine whether the trends in provincial population growth is relevant to the test under Section 20 of the Act. In other words, is this information helpful to determine the interest, convenience and necessity of the motoring public and/or does it signal increasing demand for petroleum sales in Borden-Carleton? Neither the Applicant nor its expert have provided information to substantiate how a provincial growth rate in the range of 2 percent, or 3,000 people, per year will materially increase demand for petroleum sales in Borden-Carleton. There is not, for example, evidence before the Commission to establish the frequency of travel by Islanders to the Borden-Carleton area (whether doing so in the process of travelling off Island or otherwise). We are not compelled to agree that this level of provincial population growth in and of itself supports the Application. We note, however, that if provincial population growth is impacting demand for fuel sales in Borden-Carleton, this should be borne out in other relevant factors such as trends in traffic.
58. We conclude that neither the local nor provincial population factors support this Application.

Traffic Volumes and Trends

59. In applications before the Commission, applicants often submit evidence of daily and annual traffic passing by a proposed location. In this case, Deloitte submitted such information in its report. Additionally, the Commission has received evidence related to traffic crossing numbers and trends for the Confederation Bridge as well as PEI tourism numbers and trends. As will be explained in this section, we accept that all of this information is relevant to the test under section 20 of the *Act* in this particular case.
60. According to the Deloitte Report, the total annual average daily traffic ("AADT") passing the proposed location is expected to have been between 4,724 and 4,774 in 2022,

³⁹ Exhibit I-1

representing between 1,739,043 and 1,742,328 vehicle passings on an annual basis.⁴⁰ Based on information obtained from the Department of Transportation and Infrastructure, Deloitte determined that traffic volumes in the area of the proposed location have increased at a CAGR of 1.5 percent from 2012 to 2022.⁴¹

61. Deloitte describes two-way crossings over the Confederation Bridge as being “*a key driver of traffic volume*”.⁴² Relying on data obtained from the PEI Department of Finance, Deloitte determined that annual traffic rates on the Confederation Bridge grew at a CAGR of 2.7 percent from 2012 to 2019, followed by a 41.9 percent year-over-year decrease in 2020 due to the COVID-19 pandemic. By 2022, traffic on the Confederation Bridge increased by 59.1 percent, returning to near pre-pandemic levels.⁴³
62. Robertson relied on actual traffic counts and Confederation Bridge crossings up to 2022, being the most recent data available at the time the Deloitte Report was prepared.
63. On cross-examination, Ceretti’s presented Robertson with a document purporting to be a summary of the monthly traffic volumes on the Confederation Bridge for 2022, 2023 and 2024.⁴⁴ For the reasons set out earlier, we give no weight to this particular document. However, the Tourism PEI media release filed by Ceretti’s states that traffic on the Confederation Bridge reached a record high in 2024, increasing 5 percent over 2023 and 11 percent over 2019.⁴⁵
64. Due to its proximity to the Confederation Bridge, Deloitte also considered tourism trends and Confederation Bridge traffic. According to Deloitte, an increase in tourism and Confederation Bridge traffic may correspond to an increase demand for petroleum products in Borden-Carleton.⁴⁶
65. Although tourism trends and Confederation Bridge traffic are not factors that are considered in every application for a retail petroleum outlet license, section 20 of the *Petroleum Products Act* is flexible and the particular circumstances of each application must be considered.⁴⁷ Specific to Borden-Carleton, the Commission has previously considered tourism trends and Confederation Bridge traffic in determining whether to issue a new retail petroleum outlet license.⁴⁸
66. Relying on data from Tourism PEI and the Conference Board of Canada, Deloitte forecast that visitor volumes to PEI would increase at a CAGR of 4.9 percent from 2022 to 2026.⁴⁹ This represented 1,422,652 “higher applicability” travelers and 1,679,196 total travelers by 2026. Deloitte defined “higher applicability” travelers as being travelers from eastern

⁴⁰ Exhibit A-3 at section 5.3

⁴¹ Exhibit A-3 at section 5.3

⁴² Exhibit A-3 at section 5.3

⁴³ Exhibit A-3 at section 5.3

⁴⁴ Exhibit I-3

⁴⁵ Exhibit I-2

⁴⁶ Exhibit A-3 at sections 5.2, 5.3

⁴⁷ Order PC22-01 at para. 11

⁴⁸ Order No. P.980730

⁴⁹ Exhibit A-3 at section 5.2

Canadian provinces, New England, overseas and motor coaches who are more likely to travel to PEI via the Confederation Bridge.⁵⁰ Robertson confirmed in oral testimony that he assumed, in using this tourism data, that all travellers to PEI from eastern Canadian provinces arrive to PEI via the Confederation Bridge. It is concerning that he did not adjust his numbers to account for arrivals by other means such as ferry service (Wood Islands or Souris). However, we note that overall, PEI's tourism numbers are increasing. Therefore, it naturally follows that tourism arrivals and departures via the Confederation Bridge are increasing.

67. On cross-examination, Ceretti's submitted a Visitor Volume & Value Dashboard for 2023 and a Tourism PEI press release dated February 5, 2025 and entitled "*Prince Edward Island achieves a record year for tourism*".⁵¹ At the time the Deloitte Report was prepared, Robertson had access to the actual tourism numbers up to 2022, and a preliminary estimate for 2023. The information submitted by Ceretti's included actual tourism numbers for 2023 and 2024.
68. Based on the information filed by Ceretti's, the actual tourism numbers for both 2023 and 2024 were higher than forecast by Deloitte. We are satisfied that increasing tourism numbers will generate an increase in traffic on the Confederation Bridge and, therefore, the Borden-Carleton area given that the proposed outlet would be located in a position where virtually all travellers to and from the Confederation Bridge would pass by.
69. In summary, given that the Commission has found in the past that increasing traffic in the location of the proposed outlet is favourable to an application, we find that the evidence before us demonstrates that traffic volumes are increasing and this evidence supports allowing the proposed outlet.

Trends in Petroleum Sales

70. In the Deloitte Report, Robertson discusses gasoline prices in PEI compared to other Atlantic Canadian provinces, stating that "price premiums" may cause visitors to gas up before entering the Island.⁵² Robertson states that consideration should be given to the recent addition of the Port Elgin Shell and, on cross-examination, stated that off-Island consumption is a relevant factor that should be considered.
71. However, off-Island consumption is relevant only in so far as it impacts consumption of petroleum products on-Island, in this case, specifically in Borden-Carleton. As Deloitte has not made any clear correlation between the price of petroleum products, off-Island consumption, and petroleum sales in Borden-Carleton, we do not consider gasoline prices outside of PEI to be relevant to the public interest, convenience and necessity in the context of this Application.

⁵⁰ Exhibit A-3 at section 5.2

⁵¹ Exhibit I-2

⁵² Exhibit A-3 at section 5.4.1

72. Trends in gasoline sales, especially (but not exclusively) among existing outlets in Borden-Carleton, are relevant to the Commission's assessment of the public interest, convenience and necessity of the motoring public.

73. According to Deloitte, retail volume in litres (Province-wide) increased steadily from 2014 to 2019 and had nearly recovered to pre-pandemic levels in 2022.⁵³ Overall retail volume (Province-wide) grew at a CAGR of 1.1 percent from 2012 to 2022.

74. Specific to Borden-Carleton, volumes for 2019 reached 10,663,901 litres. Following COVID-19 related decreases in 2020 and 2021, volumes recovered 20.7 percent year-over-year in 2022 reaching 8,535,995 litres, and a further 7.8 percent in 2023 reaching 9,205,853 litres. Robertson cites Kalibrate as the source of this data.⁵⁴

75. Robertson noted that the highest sales volumes in Borden-Carleton are typically in the third quarter (July to September), coinciding with peak tourist season on the Island. Although Robertson questioned the ability of existing petroleum retailers to serve peak season demand, there is no evidence before the Commission to support long wait times or a corresponding negative effect on tourism spending in Borden-Carleton, as suggested by Robertson.⁵⁵

76. Deloitte forecast that overall gasoline volume is expected to increase at a four-year CAGR of 4.9 percent, reaching 275,746,904 litres (Province-wide) by 2026. Robertson did not explain how he arrived at a CAGR of 4.9 percent, or why the forecast CAGR was higher than the historical CAGR of 1.1 percent.

77. Relying on the data and forecasts contained in the Deloitte Report, Robertson then forecast the retail gasoline volumes in Borden-Carleton for 2024, 2025 and 2026.⁵⁶ According to Robertson, retail gasoline volumes in Borden-Carleton could be expected to increase at a four-year total growth rate of 21.2 percent, reaching 11,433,223 litres by 2026:

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

78. Robertson's forecast sales volumes for Borden-Carleton are based, in part, on the forecast sales volumes Province-wide. Although Robertson forecast provincial gasoline sales to reach 245,872,000 litres in 2023, according to the Commission's 2023-2024 Annual Report – which was put to Robertson on cross-examination – only 227,699,864 litres of

⁵³ Exhibit A-3 at section 5.4.2

⁵⁴ Exhibit A-3 at section 5.4.2

⁵⁵ Exhibit A-3 at section 6.0

⁵⁶ Exhibit A-3 at section 7.0

gasoline were sold in 2023.⁵⁷ This is 18 million litres less than the sales volume forecast by Deloitte.

79. On cross-examination, Ceretti's also presented Robertson with the actual sales volumes for Borden-Carleton for 2024, as obtained from Kalibrate.⁵⁸ According to the Kalibrate data, the total volume of gasoline and diesel sold in Borden-Carleton decreased from 9,205,853 litres in 2023, to 8,526,491 litres in 2024.
80. In the Deloitte Report, Robertson forecast the 2024 sales volume in Borden-Carleton to be 10,683,000 litres. However, according to the Kalibrate data introduced by Ceretti's, the actual sales volume for the region was approximately two million litres less than forecast (8,526,491 litres).
81. As Robertson was presented with the actual sales volumes on cross-examination, he did not have an opportunity to consider the data or its impact on his forecast.
82. Although Ceretti's filed the 2024 sales volumes for Borden-Carleton, they provided no explanation of the use or inferences that ought to be drawn from the data. Although the Kalibrate data confirms that the 2024 sales volumes forecast by Robertson were higher than actual sales, we do not infer from the data that gasoline and diesel sales in Borden-Carleton are, on the whole, trending downward.
83. The Kalibrate data shows that between 2023 and 2024, gasoline and diesel sales for two of the three existing retailers in Borden-Carleton remained relatively stable, with one retailer seeing a slight increase in sales volumes in 2024, and another seeing a slight decrease in sales volumes. Only one of the existing retailers (namely, Ceretti's) saw a significant decline in sales volumes in 2024.
84. The timing of this decline appears to coincide with the timing of Ceretti's re-branding from Irving to Mobil Fuels. Notwithstanding this decline, in its financial analysis, Ceretti's own expert, MRSB, assumed that Ceretti's gasoline sales would increase by 6.99 percent annually, based on the average increase in sales between the 2021 and 2024 fiscal years.⁵⁹
85. Robertson explained that forecasts are very rarely 100 percent accurate. He also explained that it is possible for first year actuals to be lower than forecast, but for the forecast trend to continue along the same pattern. Having received new data in the course of his cross-examination, Robertson did not have the opportunity to consider the potential impact on his forecasts.
86. We reiterate that although D.P. Murphy, as the Applicant, must substantiate its Application, it cannot be expected to assume the burden of proving exactly what will happen in the future.⁶⁰ Further, the *Petroleum Products Act* does not require an applicant

⁵⁷ Exhibit CG-17

⁵⁸ Exhibit I-4

⁵⁹ Exhibit CG-6 at page 1

⁶⁰ Order PC22-01 at para. 15; Order PC18-003 at para. 24

to wait until existing retailers are operating at (or exceeding) their capacity before it can apply to enter the market.⁶¹

87. The evidence before us demonstrates that gasoline and diesel sales in Borden-Carleton increased year-over-year in 2022 and 2023. In 2024, gasoline and diesel sales volumes for two of the three existing retailers in Borden-Carleton remained relatively stable. Although one of the existing retailers experienced a significant decline in sales in 2024, there is evidence before the Commission to suggest that the decline was due to factors other than decreased demand from the motoring public.
88. Having considered all of the evidence before it, including the historical sales volumes specific to Borden-Carleton, we are satisfied that there is continuing demand for gasoline and diesel from the motoring public.

Promotion of Competition and Services Presently Available

89. The Commission has previously held that an application under the *Petroleum Products Act* cannot be defeated solely because an applicant will offer services similar to those already available to the motoring public.⁶² 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. Each retailer is operating the same type of business in the same regulated market. Each application must therefore be assessed in its entirety and on its own merits.⁶³
90. In the present case, the proposed outlet will include a convenience store, a full-scale Tim Hortons restaurant, two retail store offerings, EV charging stations, and will be open 24 hours a day. Although many of these services are already offered by existing petroleum retailers, the proposed development will also be fully wheelchair accessible, include large commercial washrooms, and offer Wi-Fi service.
91. The size of the proposed development (approximately six acres) will also allow for 121 parking spaces and 15 designated tractor trailer parking spaces.
92. In his oral evidence, Mr. Murphy described the development as being similar to a “welcome centre”. He admitted, both in his direct evidence and on cross-examination, that a welcome centre could exist without selling gasoline. As a result, Howatt’s and Ceretti’s submit that D.P. Murphy does not need a retail petroleum outlet license for its proposed development to proceed.⁶⁴
93. However, we are not tasked with determining whether D.P. Murphy’s proposed development could proceed or would be financially viable without a retail petroleum outlet license. That is not the test prescribed by section 20 of the *Petroleum Products Act*. As D.P. Murphy has submitted an application seeking a license for a retail petroleum outlet,

⁶¹ Order PC19-002 at para. 29

⁶² Order PC18-003 at para. 52

⁶³ Order PC18-003 at para. 52

⁶⁴ Exhibit H-7; Exhibit CG-18 at pages 12-13, paragraphs 63-67

the sole issue before us is whether the proposed outlet is in the public interest, convenience and necessity of the motoring public.

94. In support of its Application, D.P. Murphy filed letters of support from Strait Crossing Bridge Limited,⁶⁵ the Tourism Association of Prince Edward Island,⁶⁶ Cavendish Farms,⁶⁷ and SFX Transport.⁶⁸
95. Both Cavendish Farms and SFX Transport support the proposed development as it will provide a safe space and access to facilities for commercial trucks when the Confederation Bridge is closed to high-sided vehicles, particularly in the winter months.⁶⁹
96. Although Ceretti's submits that there is already a designated rest area for use by commercial drivers,⁷⁰ the evidence suggests that the area is not adjacent to existing facilities and may require drivers to cross the road (including during weather events) to access facilities, such as washrooms.
97. The proposed development will also re-introduce the Irving brand to Borden-Carleton. When the Application was filed, Ceretti's was operating a retail petroleum outlet under the Irving badge. However, Ceretti's re-branded to Mobil Fuels in 2024. As a result, the Irving brand is not currently available in Borden-Carleton. The re-introduction of the Irving brand will increase choice for the motoring public.
98. Based on the evidence before us, we are satisfied that the proposed outlet will offer enhanced services and increased choice for the motoring public and will foster competition in the local area.

Accessibility and Safety of the Proposed Location

99. As part of its submissions, Ceretti's filed letters from two transport companies (JTML Transport and Noye and Noye Limited) stating that they did not have safety concerns when entering or exiting Ceretti's.⁷¹
100. However, the accessibility and safety of existing retail petroleum outlets is not in issue in this particular Application. By virtue of having already obtained a retail petroleum license, a determination has already been made regarding the accessibility and safety of existing retail outlets, including Ceretti's. Instead, the matter before the Commission in this Application is the accessibility and safety of D.P. Murphy's proposed retail outlet.
101. We are satisfied that the proposed outlet will be safe and accessible for the motoring public. As the proposed outlet is located at the corner of a controlled intersection (TCH and Dickie Road), it will allow for motorists coming from the Confederation Bridge to turn

⁶⁵ Exhibit A-1 at page 14

⁶⁶ Exhibit A-1 at page 15

⁶⁷ Exhibit A-11

⁶⁸ Exhibit A-13

⁶⁹ Exhibits A-11, A-13

⁷⁰ Exhibit CG-12

⁷¹ Exhibits CG-15, CG-16

left at a controlled intersection. The proposed site also includes two access points off the Dickie Road, with another right turn entry proposed off the TCH.

102. The Applicant did not file a traffic study as part of its Application. However, the approval-in-principle from the Town of Borden-Carleton states that the Town (rather than the Applicant) will commission a traffic study as part of its development permit process.⁷²

Totality of the Record

103. We have reviewed the Application filed by D.P. Murphy, considered the written submissions and oral testimony presented on behalf of all parties, and examined all of the evidence in support of and in opposition to the Application.
104. After considering the record as a whole, we find that the evidence in favour of the proposed outlet outweighs the evidence that does not support the Application. While we have found that there may be a detrimental competitive effect on other operators in the general area and that population data does not in and of itself support the Application, the majority of the evidence before us supports allowing the proposed outlet. In particular, the evidence related to traffic volumes and trends, petroleum sales, promotion of competition, services to be offered and those presently available, and the Applicant's record of performance support our conclusion that D.P. Murphy has substantiated its Application and demonstrated that the granting of a license with conditions satisfies the public interest, convenience and necessity test set forth in section 20 of the *Petroleum Products Act*.

Competitive Effect on Existing Outlets

105. The interveners, Howatt's and Ceretti's, submit that the proposed outlet is not necessary, and that the addition of a fourth outlet in Borden-Carleton could negatively impact their existing retail petroleum outlets.
106. When faced with an application for a new retail petroleum license, existing retailers routinely object due to the impact of increased competition on existing outlets.⁷³ 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.⁷⁴ To deny an application due to competitive effects on existing retailers, the Commission requires clear evidence that a new license will result in the closure of an existing outlet, and evidence that the closure will result in diminished service to the motoring public at large:

While concerned with 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

⁷² Exhibit A-2

⁷³ For example, Order PC18-003 and Order PC22-01

⁷⁴ Order PC18-003 at para. 47; Order PC22-01 at para. 36

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.**⁷⁵

107. We reiterate, as the Commission has in previous decisions, that competition is actually intended to be fostered by the *Petroleum Products Act*.⁷⁶ This interpretation is supported by section 18 of the *Petroleum Products Act*, which expressly states that a license does not confer any perpetual or exclusive right:

18. Effect of license

No license shall confer any perpetual or exclusive right.

108. In other words, the *Petroleum Products Act* does not require an applicant to wait until other existing retailers are operating at (or exceeding) their capacity before it can apply to enter the market. Instead, an applicant must demonstrate that a new outlet is in the public interest and serves the convenience and needs of the motoring public.⁷⁷

109. In the present Application, Howatt's did not lead any evidence as to the potential impact of the proposed outlet on its existing operation. Notably, Howatt's has not stated that it would be required to close in the event that D.P. Murphy's Application is approved.

110. Ceretti's has stated that if D.P. Murphy's Application is approved, Ceretti's will close. In support of its position, Ceretti's relies on the testimony of its president, Chad Ceretti, the MRSB Report, and the testimony of Lloyd Compton.

111. Due to the proximity of the proposed outlet to Ceretti's existing outlet, it is reasonable to assume that D.P. Murphy's proposed outlet may have some competitive effect on Ceretti's. However, for the reasons that follow, Ceretti's has not presented evidence that clearly indicates that the new license will result in the closure of Ceretti's.

112. In support of its position, Ceretti's filed a Financial Projection and Analysis Report prepared by its accounting firm, MRSB.⁷⁸ Although the MRSB Report has been filed on a confidential basis, at the hearing, Compton gave oral evidence relating to the contents and findings contained in the MRSB Report.

113. Compton concludes that if D.P. Murphy's Application is approved, Ceretti's operating profits will deteriorate "*most likely resulting in the imminent closure of the businesses*".⁷⁹

⁷⁵ Order PC22-01 at para. 36, citing with approval Order PC10-01 at para. 66 [emphasis added]

⁷⁶ Order PC18-003 at para. 49; Order PC22-01 at para. 38

⁷⁷ Order PC18-003 at para. 49

⁷⁸ Exhibit CG-6

⁷⁹ Exhibit CG-6 at page 3

MRSB relied on two scenarios to highlight the impact that an additional retail petroleum outlet may have on Ceretti's:

Scenario 1 assumes a 25 percent reduction in Ceretti's total sales (both retail store and gasoline) from forecast 2025, assuming the new retail outlet will absorb at least 25 percent of the current market share.

Scenario 2 assumes a 33 percent reduction in Ceretti's total sales (both retail store and gasoline) from forecast 2025, assuming the new retail outlet will absorb a higher percentage of the current market share from Ceretti's given its proximity and location on the same side of the TCH.

114. There is no cogent evidence before us to prove the reasonableness of either of the assumptions relied on by MRSB, particularly its assumption that the proposed petroleum outlet will materially reduce the sale of all retail products sold by Ceretti's. At the hearing, Ceretti and Compton provided competing evidence as to who and how the assumptions were developed.
115. We have particular concern with MRSB's assumption that the proposed new outlet will result in a 25 percent or 33 percent reduction in Ceretti's total sales. Ceretti's "total sales" include not only the sale of petroleum products – it also includes the sale of all other retail products sold by Ceretti's, including (but not limited to) hardware, groceries, meat, pharmacy items, school supplies, car parts and special orders.
116. The evidence before us is that Ceretti's is the sole hardware store, grocery store and butcher shop within a 24 kilometre radius.⁸⁰ If D.P. Murphy's Application is approved, that will not change. Mr. Murphy has clearly stated that the Applicant does not intend to sell hardware, groceries or meat, and will not be competing with Ceretti's in that regard.
117. At the hearing, Ceretti and Compton testified that customers who buy gas and pay in store will make a retail purchase (i.e. a bottle of water, etc.) 38 percent of the time. However, Ceretti's has not provided any evidence to support the alleged correlation between petroleum sales and retail store sales. According to Ceretti, he was only recently able to track this data with a new back office system. He acknowledged that he had not provided this new data to the Commission, nor is it disclosed in the MRSB Report.
118. The MRSB Report itself raises questions about Ceretti's stated correlation between petroleum sales and retail store sales. We note, for example, that although Ceretti's gasoline sales decreased by 23.6 percent in 2024, according to the MRSB Report, there was no corresponding decrease in Ceretti's retail store sales. Similarly, although Ceretti's gasoline sales increased by 38.1 percent in 2022, its retail store sales increased by only 1 percent.⁸¹
119. The MRSB Report also demonstrates that Ceretti's retail store sales generate significantly higher margins – and revenue – as compared to gasoline sales. It is notable that although

⁸⁰ Exhibit CG-1

⁸¹ Exhibit CG-6 at page 10 of Scenario 1 and 2

Ceretti's year-over-year gasoline sales decreased by 23.6 percent in 2024, Ceretti's overall operations remained profitable. This too raises questions about the correlation between Ceretti's retail store sales and gasoline sales, as well as the reasonableness of MRSB's underlying assumptions.

120. Compton concluded that the introduction of the new retail petroleum outlet would likely result in the imminent closure of Ceretti's. For example, under Scenario 1 (which assumes a 25 percent reduction in Ceretti's total sales), Compton forecast that Ceretti's would suffer a loss of income in year 1, a modest loss in year 2 (consistent with Ceretti's actual performance in 2022 and 2023), and return to profitability in year 3. Compton did not consider any cost-saving measures that may allow Ceretti's to remain profitable in years 1 or 2.
121. In his oral testimony, Compton acknowledged that while some of Ceretti's costs were fixed, others were discretionary and within the control of management. For example, Compton acknowledged that Ceretti was paid a substantial bonus in 2023 and 2024. These discretionary bonuses were included in the forecast wage expense used by Compton in Scenario 1 and Scenario 2.
122. Additionally, the MRSB Report does not take into consideration Ceretti's established customer base. Ceretti's is a long-standing business in Borden-Carleton. As part of the public consultation process, the Commission received comments from approximately 400 members of the public.⁸² Many of the public comments are from local residents, many of whom wrote to express their continued loyalty to Ceretti's and Howatt's.⁸³ In addition to the many comments, the Commission also received two petitions – one submitted by a member of the public, and one submitted by Ceretti's.⁸⁴
123. The Commission was faced with strong opposition from existing retailers as part of the last application for a retail petroleum license in Borden-Carleton. In granting the new license, the Commission found that the existing petroleum outlets in Borden-Carleton *"have been in business for many years and have obviously already established a firm customer base among the area residents"*.⁸⁵ Based on the evidence before us in this Application, Ceretti's likewise has a firm customer base and the support of local residents.
124. Although we accept that D.P. Murphy's proposed outlet may have some competitive effect on Ceretti's and possibly other outlets in the Borden-Carleton area, the evidence before us does not clearly indicate that Ceretti's or any other outlet will close if the new license is issued.

Conclusion

125. In conclusion, we find that the Applicant, D.P. Murphy, has substantiated its case. We are also satisfied that the proposed outlet will serve the interests, needs and convenience of

⁸² Exhibit P-1

⁸³ Exhibit P-1

⁸⁴ Exhibit P-2, Exhibit CG-14

⁸⁵ Order No. P.980730

the motoring public. As the Town of Borden-Carleton serves as an entryway to the Province, increased traffic flows (both locally and on the Confederation Bridge) and tourism, are reasonably expected to increase demand for petroleum products in the area. The motoring public will therefore benefit from the addition of a modern, 24-hour retail outlet that offers safe and accessible parking space, particularly for large and commercial vehicles, and that re-introduces the Irving brand to the area.

126. Although the negative impacts on existing retailers are relevant to the Commission's analysis, section 20 of the *Petroleum Products Act* focuses on the needs of the motoring public and not the needs of existing retailers.⁸⁶
127. As the public interest, convenience and necessity are measured from the perspective of the motoring public, to deny an application due to competitive effects on existing retailers, the Commission requires clear evidence that a new license will result in the closure of an existing outlet, and evidence that the closure will result in diminished service to the motoring public at large. Although we accept that D.P. Murphy's proposed outlet may have some competitive effect on Ceretti's, the evidence before the Commission does not clearly indicate that Ceretti's will close if the new license is issued.

ORDER

128. It is hereby ordered that the Application is approved as filed and a license for the proposed retail petroleum outlet to be located at the intersection of the Trans-Canada Highway and Dickie Road in Borden-Carleton, Prince Edward Island, operating in the name of D.P. Murphy Inc. as an Irving retail outlet, with four pump islands consisting of a total of eight fuel nozzles to provide gasoline and diesel fuel, is hereby approved subject to the following conditions:
 - a) the retail petroleum outlet shall operate on a 24 hour per day basis; and
 - b) the retail petroleum outlet shall include not less than 121 parking spaces and a minimum of 15 designated tractor trailer parking spaces.
129. This approval is further conditional on receipt of the following within twelve (12) months from the date of this Order:
 - a) the licensing fee;
 - b) a copy of the development permit and development agreement, if any, from the Town of Borden-Carleton approving the retail petroleum outlet at this location;
 - c) a copy of the approval for the installation of petroleum storage facilities at this location;

⁸⁶ Order PC18-003 at para. 47; Order PC22-01 at para. 36

- d) a copy of the petroleum supply agreement for the retail petroleum outlet at this location; and
- e) proof of ownership of the lands at this location by D.P. Murphy.

130. If D.P. Murphy is unable to fulfil the preceding conditions within twelve (12) months from the date of this Order, reasonable notice shall be provided by D.P. Murphy to the Commission before the expiry date. Submissions will be required from D.P. Murphy in order for any extension to be considered by the Commission. Any extension of time is in the sole discretion of the Commission.

131. In the event the above conditions are not satisfied by D.P. Murphy within twelve (12) months from the date of this Order, and no extension of time has been granted by the Commission, this Order shall be rescinded and any development of a retail petroleum outlet on this site will have to be subject to a new application which will be considered anew by the Commission.

DATED at Charlottetown, Prince Edward Island, this 14th day of January, 2026.

FOR THE COMMISSION:

[sgd. Kerri Carpenter]
Kerri Carpenter, Vice Chair

[sgd. Gordon MacFarlane]
Gordon MacFarlane, Commissioner

[sgd. Terry McKenna]
Terry McKenna, Commissioner

NOTICE

Section 12 of the ***Island Regulatory and Appeals Commission Act*** reads as follows:

12. The Commission may, in its absolute discretion, review, rescinding or vary any order or decision made by it, or rehear any application before deciding it.

Sections 13(1) and 13(2) of the ***Island Regulatory and Appeals Commission Act*** provide as follows:

13(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.

NOTE: In accordance with IRAC's *Records Retention and Disposition Schedule*, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.