



Docket: PMC22-01  
Order: PC23-004

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Island Regulatory & Appeals Commission

**IN THE MATTER** of a review of the petroleum pricing model and the minimum and maximum markup for petroleum products, pursuant to the *Petroleum Products Act*, RSPEI 1988, c. P-5.1;

**AND IN THE MATTER** of a request for intervener status made by Advanced Biofuels Canada, pursuant to the Rules of Practice & Procedure.

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# Order

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**BEFORE THE COMMISSION ON** Wednesday, the 20<sup>th</sup> day of September, 2023.

J. Scott MacKenzie, K.C., Chair  
M. Douglas Clow, Vice-Chair

## **BACKGROUND:**

1. The Prince Edward Island Regulatory and Appeals Commission (the “Commission”) is reviewing the pricing model for petroleum products, including for gasoline, diesel, furnace oil and commercial diesel, sold in Prince Edward Island.
2. The scope of the review includes the appropriate benchmark price used to make weekly price adjustments, the wholesale and retail margins for petroleum products, and incorporating carbon costs associated with the *Clean Fuel Regulations* (“CFR”) into the Commission’s pricing model.
3. The Commission gave public notice of this proceeding through a publication in local newspapers and on the Commission website. In the notice, the Commission invited interested parties to request intervener status, in accordance with the Commission’s Rules of Practice & Procedure. Requests for intervention were to be submitted by July 4, 2023.
4. The Commission received three requests for intervention prior to the July 4, 2023 deadline. These requests for intervention were approved in Commission Order PC23-003.
5. On July 6, 2023, after the deadline for interveners had passed, the Commission received an email sent on behalf of Advanced Biofuels Canada (“ABC”) requesting to intervene “*to the extent that IRAC has under consideration a carbon adjustor mechanism*”. The request to intervene did not provide the information required by the Rules of Practice & Procedure.
6. On July 12, 2023, ABC was advised of the process to apply for intervener status. Although the deadline for intervener status had passed, the Commission allowed ABC until July 19, 2023 to submit a request for intervention that complied with the Commission’s Rules.
7. On July 17, 2023, ABC submitted a formal request for intervention. ABC advised that it is a national trade association incorporated under the Alberta *Societies Act*. Its mandate is to advocate for the increased use and production of advanced biofuels. ABC submits that it can provide the Commission with open-source data and analysis to inform the manner in which fuel suppliers can meet their obligations under the CFR, as well as the associated costs.
8. On August 9, 2023, the Commission asked ABC to provide additional information in support of its request. In particular, ABC was asked to explain how it would be adversely affected by a decision in this proceeding, which will address the pricing model, wholesale and retail margins for petroleum products – but not biofuels.
9. On August 10, 2023, ABC provided additional information to the Commission. ABC submits that the Commission regulates biofuels as the Canadian General Standards Board specifications for petroleum products includes biofuels. As it relates to the CFR, ABC submits that an inaccurate assessment of the costs and opportunities of biofuels may remove any incentive for wholesalers and retailers to use biofuels as a means of CFR compliance.

**DECISION:**

10. This proceeding relates solely to the benchmark price, wholesale and retail margins for petroleum products in Prince Edward Island. Biofuels are not “petroleum products” as defined in the *Petroleum Products Act*. A recent decision of the Federal Court of Appeal<sup>1</sup> in denying an application for intervenor status is instructive. The Commission must consider the usefulness of the intervenor's participation in the issues, the intervenor's genuine interest in the issues raised by the application, and whether the intervention aligns with the interests of allowing the Commission to make an informed decision on the matter before it. Interveners are not given an opportunity to discuss whatever may be of interest to them about a given case. An outsider seeking admission as an Intervenor in an application must take the issues identified by the Commission and cannot transform or add to them and may not introduce new issues. The benefits of the use of biofuels in Prince Edward Island is not in issue and is a consideration that is outside the scope of the proceeding before the Commission.
11. Therefore, having considered the request for intervenor status, together with the additional information provided by ABC, the Commission is not satisfied that ABC has a direct and substantial interest in this particular proceeding and the Commission does not grant ABC Added Party Intervener status.
12. However, the Commission will grant limited intervenor status to ABC as a Friend of the Commission Intervener, subject to the conditions on participation set out herein.
13. In its capacity as Friend of the Commission Intervener, ABC may file written submissions with the Commission on or before October 4, 2023. The written submissions shall be limited to addressing matters at issue in this particular proceeding. ABC shall not be permitted to testify, call witnesses, cross-examine witnesses, or make submissions at the hearing.

**ORDER:**

The Commission orders as follows:

1. The request for Added Party Intervener status made by Advanced Biofuels Canada is denied.
2. Advanced Biofuels Canada shall be granted limited intervenor status as a Friend of the Commission Intervener, subject to the following conditions:
  - a) Advanced Biofuels Canada shall be permitted to file written submissions with the Commission on or before October 4, 2023. The written submissions shall be limited to addressing matters at issue in this particular proceeding; and

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<sup>1</sup> Macciachera (Smoothstreams.tv) v. Bell Media Inc., 2023 FCA 180

- b) Advanced Biofuels Canada shall not be permitted to testify, call witnesses, cross-examine witnesses, or make submissions at the hearing.

**DATED** at Charlottetown, Prince Edward Island, this 20<sup>th</sup> day of September, 2023.

**BY THE COMMISSION:**

(sgd) J. Scott MacKenzie

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J. Scott MacKenzie, K.C., Chair

(sgd) M. Douglas Clow

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M. Douglas Clow, Vice-Chair