



Docket: PD527
Order: PC25-001

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;

AND IN THE MATTER of a motion by Ceretti's Grocery & Hardware Ltd. for approval to file its expert report, pursuant to Rule 61 of the Commission's *Rules of Practice & Procedure*.

Procedural Order

Compared and Certified a True Copy

Regulatory Services

BEFORE THE COMMISSION ON Thursday, the 30th day of January, 2025.

M. Douglas Clow, CPA, CA, Acting Chair
Kerri A. Carpenter, Commissioner
Terry McKenna, Commissioner

BACKGROUND:

1. This Procedural Order relates to a motion made by the intervener, Ceretti's Grocery & Hardware Ltd. ("Ceretti's"), seeking approval to file its expert report after the timeline set by the Commission had expired. The motion is made in accordance with Rule 61 of the Commission's *Rules of Practice & Procedure* (the "Rules").
2. This motion is made in the broader context of an application by D.P. Murphy Inc. (the "Applicant") for a license to operate a retail petroleum outlet in Borden-Carleton (the "Application"). Ceretti's, who operates a retail petroleum outlet adjacent to the proposed site, applied for and was granted Added Party Intervener status.¹ The hearing of the Application is scheduled to begin on February 25, 2025.
3. To ensure that the Application proceeds in an orderly, timely and fair manner, the Commission established procedural timelines in October 2024. These timelines were established in consultation with the parties, including Ceretti's, and were communicated to the parties by letter dated October 30, 2024.² In accordance with the procedural timelines, Ceretti's was required to submit its pre-hearing written submissions, including expert reports, no later than 4:00 p.m. on December 19, 2024.
4. On December 5, 2024, Ceretti's legal counsel, Ryan MacDonald, requested that the deadline for Ceretti's to file its expert reports be extended from December 19, 2024 to January 24, 2025. Mr. MacDonald advised that the extension was requested due to a recent health issue that would make it difficult for Ceretti's to work with its experts in a meaningful way.
5. The Applicant did not object to an extension in the circumstances, but asked that the extension be until mid-January rather than January 24th. The Applicant also advised that it needed a minimum of two weeks, and preferably three weeks, to file its reply to Ceretti's expert reports and/or pre-hearing submissions.
6. None of the parties requested that the hearing be postponed or adjourned.
7. After considering the parties' positions and the pending hearing dates, the Commission granted Ceretti's a further extension until 4:00 p.m. on January 10, 2025 to file its expert reports.³
8. Ceretti's did not file its expert reports on January 10, 2025 as directed by the Commission.
9. On January 13, 2025, Ceretti's legal counsel, Derek Key, K.C., requested that the deadline for Ceretti's to file its expert reports be further extended to January 20, 2025. The basis

¹ Order PC23-002

² Exhibit C-5

³ Exhibit C-6

for the request was the previously noted health issue which impacted Ceretti's ability to finalize its expert reports.⁴

10. On January 17, 2025, the Applicant, through its legal counsel, consented to one final extension, and agreed that Ceretti's could file its expert reports on January 20, 2025 as requested.
11. Ceretti's did not file its expert reports on January 20, 2025.
12. On January 21, 2025, the Commission, through its legal counsel, wrote to the parties with respect to Ceretti's failure to file its expert reports.⁵ The Commission advised that any further request for an extension by Ceretti's would require either (a) the agreement of the parties, or (b) a motion to the Commission. A motion, if required, was to be served and filed no later than 4:00 p.m. on January 24, 2025. The Commission also advised that all pre-hearing evidence, including Ceretti's expert reports and the Applicant's reply, were to be filed no later than 10 days before the commencement of the hearing.
13. On January 24, 2025, Ceretti's legal counsel filed a Notice of Motion with the Commission.⁶ According to the Notice of Motion, the Applicant had not agreed to the filing of Ceretti's expert report beyond January 20, 2025. As a result, Ceretti's is seeking Commission approval to file its expert report on January 24, 2025, or such other date as directed by the Commission.
14. A copy of the expert report was not provided with the Notice of Motion. The Notice of Motion also did not specify the author, title or date of the expert report that Ceretti's was seeking to file.
15. On January 27, 2025, the Commission directed Ceretti's to provide a copy of the proposed expert report to the Commission and the parties by no later than 4:00 p.m. that same day. The Commission also provided the other parties, being the Applicant and Howatt's Tourist Mart Ltd. ("Howatt's"), the opportunity to respond to Ceretti's motion. In the interest of time, responses were requested by 12:00 p.m. on January 29, 2025.
16. On January 27, 2025, Ceretti's, through its legal counsel, provided the Commission and the parties with the following documents:
 - a. Financial Projection and Analysis Report – Ceretti's Grocery & Hardware Ltd. prepared by MRSB and dated January 8, 2025;
 - b. Acknowledgement of Expert's Duty Form signed by Lloyd Compton (MRSB) and dated January 17, 2025; and
 - c. Curriculum vitae of Lloyd Compton (undated).

⁴ Exhibit CG-4

⁵ Exhibit C-7

⁶ Exhibit CG-5

17. Ceretti's did not explain why the MRSB report, dated January 8, 2025, could not have been filed by the January 10, 2025 deadline set by the Commission, or the January 20, 2025 deadline proposed by Ceretti's and agreed to by the Applicant.
18. On January 29, 2025, the Applicant, through its legal counsel, advised that it is focusing on preparing for the substantive aspects of the hearing. For that reason only, the Applicant is not taking a position on this motion. Although not taking a position on the motion, if the motion is granted, the Applicant has requested three weeks to respond to Ceretti's expert report.
19. Howatt's has not provided any response to this motion.

DECISION:

20. Matters before the Commission – including this Application – have significant implications for the rights of individuals. As a quasi-judicial administrative tribunal, the Commission must always ensure that the process followed in reaching a decision is procedurally fair.
21. The Commission's *Rules* are intended to ensure that all arguments and evidence are disclosed and presented in a timely and efficient manner.⁷ Although proceedings before the Commission are conducted in a less formal manner than the Courts,⁸ this does not mean that parties appearing before the Commission may disregard the Commission's *Rules*, or the procedural timelines set in accordance with those *Rules*.
22. In the absence of an extension, the time limits set by the Commission are final.⁹ If a party fails to comply with a time limit for filing documentary evidence, including an expert report, the Commission may disregard or reject the evidence.¹⁰
23. In this case, the procedural timelines set by the Commission are intended to ensure that the Application proceeds in an orderly, timely and fair manner for all parties. These timelines, which were established in consultation with the parties, took on greater significance once the hearing of the Application was scheduled. As noted, none of the parties have asked that the hearing, scheduled to begin on February 25, 2025, be postponed or adjourned.
24. The expert report which Ceretti's now seeks to file is dated January 8, 2025. As the report is dated two days before the filing deadline set by the Commission, the Commission has questions about why Ceretti's was unable to meet the January 10th filing deadline. The Commission has further questions about why Ceretti's was unable to meet the January 20th filing extension requested by Ceretti's and agreed to by the Applicant.
25. Notwithstanding these questions, the position of the parties impacted by the late filing, most notably the Applicant, is an important factor in the Commission's decision. Neither

⁷ Rule 1.3(b)

⁸ Rule 1.3(c)

⁹ Rule 3

¹⁰ Rules 7.2, 22

the Applicant nor Howatt's has taken a position on this motion. There is no evidence before the Commission that filing Ceretti's expert report will result in prejudice to the other parties, including the Applicant.

26. As the motion is unopposed and there is no evidence of prejudice to the parties opposite, the Commission is prepared to grant Ceretti's motion. The following three documents, provided by Ceretti's legal counsel on January 27, 2025, are accepted for filing as of January 30, 2025:
 - a. Financial Projection and Analysis Report – Ceretti's Grocery & Hardware Ltd. prepared by MRSB and dated January 8, 2025;
 - b. Acknowledgement of Expert's Duty Form signed by Lloyd Compton (MRSB) and dated January 17, 2025; and
 - c. Curriculum vitae of Lloyd Compton (undated).
27. The foregoing documents will form part of the record in the Application.
28. The Applicant will have three weeks from the date of this Order (being until February 20, 2025) to respond to Ceretti's expert report. This is consistent with the time frame previously requested by the Applicant, and accepted by the Commission.
29. The hearing of the Application will commence, as scheduled, on February 25, 2025.

PROCEDURAL ORDER:

The Commission Orders as follows:

1. The following three documents are accepted for filing as of January 30, 2025:
 - a) Financial Projection and Analysis Report – Ceretti's Grocery & Hardware Ltd. prepared by MRSB and dated January 8, 2025;
 - b) Acknowledgement of Expert's Duty Form signed by Lloyd Compton (MRSB) and dated January 17, 2025; and
 - c) Curriculum vitae of Lloyd Compton (undated).
2. The foregoing documents shall form part of the record in the Application.
3. The Applicant shall have three weeks from the date of this Order to reply to the foregoing documents. The Applicant's reply shall be served and filed no later than 4:00 p.m. on February 20, 2025.
4. The hearing of the Application shall commence, as scheduled, on February 25, 2025.

DATED at Charlottetown, Prince Edward Island, this 30th day of January, 2025.

BY THE COMMISSION:

(Sgd) M. Douglas Clow

M. Douglas Clow, Acting Chair

(Sgd) Kerri Carpenter

Kerri A. Carpenter, Commissioner

(Sgd) Terry McKenna

Terry McKenna, Commissioner