



Docket: PD527
Order: PC25-002

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 certain procedural matters arising from a preliminary hearing, held pursuant to Rule 32 of the Commission's *Rules of Practice & Procedure*.

Procedural Order

Compared and Certified a True Copy

Regulatory Services

BEFORE THE COMMISSION as of Friday, February 21st, 2025.

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

INTRODUCTION:

1. This Procedural Order relates to certain matters discussed at a preliminary hearing held on February 21, 2025. The preliminary hearing was held at the direction of the Prince Edward Island Regulatory and Appeals Commission (the “Commission”) to address procedural matters in advance of the hearing, which is scheduled to begin on February 25, 2025.
2. In accordance with the Commission’s *Rules of Practice & Procedure* (“Rules”) and its usual practice, the preliminary hearing was not broadcast or open to the public. However, the preliminary hearing was recorded and the recording forms part of the public record.
3. Although a number of administrative and logistical matters were discussed at the preliminary hearing, the Commission also made determinations with respect to several procedural matters raised by the parties. These matters, which will be addressed in this Procedural Order, are as follows:
 - a. A request for confidentiality made by the intervener, Ceretti’s Grocery & Hardware Ltd. (“Ceretti’s”);
 - b. A request to file letters of support made by the Applicant, D.P. Murphy Inc. (the “Applicant” or “D.P. Murphy”); and
 - c. A request for further public consultation made by the intervener, Howatt’s Tourist Mart Ltd. (“Howatt’s”).
4. Each of these procedural issues will be addressed in turn.

CERETTI’S REQUEST FOR CONFIDENTIALITY:

5. In its response to this Application, Ceretti’s has filed a Financial Projection and Analysis Report prepared by MRSB (the “MRSB Report”).¹ The MRSB Report was provided to the Commission and the parties on January 27, 2025, and accepted for filing as of January 30, 2025.²
6. The MRSB Report is intended to estimate the financial impact to Ceretti’s if there is a fourth retail petroleum outlet in Borden-Carleton. In preparing the report, MRSB relied on (among other things) Ceretti’s historical financial statements and its internally prepared income statement and balance sheet as of October 31, 2024.
7. The first four pages of the MRSB Report detail the scope of review, facts and assumptions, and a summary of MRSB’s financial projection and analysis. Appendix A to the MRSB Report is one page and details Ceretti’s revenue, expenses and income from 2021 to 2024. Appendix B and C detail the forecast financial impact to Ceretti’s based on the two

¹ Exhibit CG-6

² Order PC25-001

different scenarios considered by MRSB. Appendices B and C include Ceretti's projected balance sheets, revenue, expenses, retained earnings, and cash flow from 2024 to 2028.

8. The MRSB Report expressly states that it is "*not intended for general circulation or publication*".³
9. By letter dated February 13, 2025, Ceretti's requested that the MRSB Report not form part of the public record, and that it not be placed on the Commission website for public consumption.⁴ Ceretti's submits that the MRSB Report contains sensitive financial, commercial and personal matters, and that public disclosure would be prejudicial. Ceretti's did not object to the MRSB Report being provided to the Commission and the parties.
10. D.P. Murphy initially objected to Ceretti's request for confidentiality.⁵ The objection was based, in part, on concerns about the use that could be made of a confidential document in the course of a public hearing.
11. Ceretti's has since clarified that its request for confidentiality relates solely to the publication of the MRSB Report on the Commission website. Ceretti's does not object to the use of the MRSB Report in the course of the public hearing. Ceretti's also does not object to the inclusion of information contained in the MRSB Report in the Commission's written decision, if the Commission deems it appropriate to do so.
12. Despite its initial objection, at the preliminary hearing, D.P. Murphy consented to Ceretti's request for confidentiality with respect to the MRSB Report.

DECISION:

13. For the reasons that follow, the Commission approves Ceretti's request for confidentiality as it relates to the MRSB Report.
14. The Commission has reviewed the MRSB Report in detail and agrees that the Report contains sensitive financial and commercial information. In comparable circumstances, the Commission has allowed information of this nature to be filed on a confidential basis.⁶
15. The limited nature of Ceretti's request for confidentiality is an important factor in the Commission's decision. The request relates solely to publishing the MRSB Report on the Commission website. The Report may be used by the parties and the Commission in the course of the public hearing without limitation. The MRSB Report may also be referred to in the Commission's written decision.
16. Another important consideration is the fact that the author of the MRSB Report will testify at the public hearing. Therefore, although the Report itself will not be published to the

³ Exhibit CG-6 at page 4, paragraph 11

⁴ Exhibit CG-9

⁵ Exhibit A-9

⁶ See, for example, Docket PD914. See also Commission Order UE23-01.

Commission website, the contents of the MRSB Report will be made available to the public through the public hearing process.

D.P. MURPHY'S REQUEST TO FILE LETTERS OF SUPPORT:

17. On February 19, 2025, D.P. Murphy sought approval to file three letters in support of its Application:
 - a. A letter from Robert K. Irving, President of Cavendish Farms, dated February 18, 2025;
 - b. A letter from Andrew W. Keith, President & CEO of SFX Transport, undated; and
 - c. A third letter, the author of which was not disclosed.
18. D.P. Murphy requested until 4:00 p.m. on Friday, February 21, 2025, to file these letters.
19. The Commission's *Rules* require that, unless otherwise directed by the Commission, all documents must be served and filed no later than five (5) days prior to the commencement of the hearing.⁷ As the *Rules* define a "day" to mean a full business day,⁸ the three letters of support were submitted outside the time prescribed by the *Rules*.
20. At the preliminary hearing, D.P. Murphy advised that it was now seeking to submit only two letters of support, being the letters from Mr. Irving and Mr. Keith. These letters were provided to the Commission and the parties on February 19th and February 20th respectively. A third letter of support will not be forthcoming.
21. D.P. Murphy also clarified that its request was limited to having the letters of support form part of the record. D.P. Murphy did not intend to call either Mr. Irving or Mr. Keith to testify at the hearing.
22. Ceretti's objected to the late filing of the letters of support. Ceretti's noted that the letters raised new issues not previously raised by D.P. Murphy in its Application. If the letters were accepted for filing, Ceretti's would need to consider what (if any) reply it would make to the letters of support. If Ceretti's chose to reply to the letters, it may not have a reasonable opportunity to do so in advance of the hearing.
23. Howatt's also objected to the late filing of the letters for the reasons set out by Ceretti's.

DECISION:

24. For the reasons that follow, the two letters of support submitted by D.P. Murphy are accepted for filing and will form part of the record in this Application. To ensure procedural

⁷ Rules 21(3) and 23(3)

⁸ Rule 4(k)

fairness for all parties, the interveners, Howatt's and Ceretti's, will have the opportunity to reply to these letters.

25. D.P. Murphy, as Applicant, bears the burden of proof with respect to its Application. The Applicant has determined that the letters of support are relevant to its case. As a result, the refusal to accept the letters into evidence could be prejudicial to D.P. Murphy.
26. It is important to note that the issue in this case is one of timing. The interveners have not suggested that the letters of support are inadmissible or irrelevant. Instead, the interveners have objected to the timing of the filing of the letters days before the scheduled hearing.
27. As noted by D.P. Murphy, this is not the first time that a party to this proceeding has missed a filing deadline; it is the first time that D.P. Murphy has missed a filing deadline. This is true. However, the timing of these letters directly impacts the interveners' ability to respond to this new evidence in a meaningful way.
28. The Commission must consider the interests of all three parties to this proceeding and ensure that the hearing proceeds in a manner that is procedurally fair for all involved. Therefore, although the two letters of support will be accepted for filing and form part of the record, the interveners (Howatt's and Ceretti's) will have the opportunity to reply to these letters.
29. If the interveners choose to reply, they must have the opportunity to do so in a meaningful way. As the letters of support were accepted for filing on Friday, February 21st, the interveners may not be in a position to reply before the commencement of the hearing on Tuesday, February 25th. If that is the case, the Commission is prepared to consider alternate hearing dates. Possible hearing dates were canvassed with the parties off the record at the conclusion of the preliminary hearing.
30. In the interest of time, the Commission requests that the interveners, Howatt's and Ceretti's, advise by the end of day on Friday, February 21st, whether they intend to reply to the letters of support and, if so, how long they may reasonably need to do so.

HOWATT'S REQUEST FOR FURTHER PUBLIC CONSULTATION:

31. In response to D.P. Murphy's request to file additional letters of support, Howatt's asked that individuals who object to the Application be given additional time to submit comments.
32. The Commission considers this to be a request for further public consultation.

DECISION:

33. For the reasons that follow, the Commission is not prepared to allow for further public consultation at this time.
34. Howatt's request for further public consultation was made in response to D.P. Murphy's request to file additional letters of support. As explained at the preliminary hearing, the public consultation process, and the ability of a party to file evidence in support of its case,

are two different things. Although the public consultation process with respect to this Application concluded in July 2023, the ability of the parties to file evidence did not.

35. The Commission is satisfied that there was the opportunity for meaningful public consultation in this case, such that further public consultation is not required. The Notice of Application invited people to submit their comments to the Commission by email or letter. The Notice of Application was posted to the Commission's website and Twitter account on June 27, 2023, published in The Guardian newspaper on July 1, 2023 and July 15, 2023, and was advertised online from July 10-15, 2023.
36. By the time the public consultation process closed, the Commission received approximately 400 comments from members of the public. These comments were circulated to the parties, posted to the Commission website, and form part of the record in this Application.⁹
37. Although the Commission is satisfied that further public consultation is not required, as explained at the preliminary hearing, both interveners will have the opportunity to reply to the letters of support filed by D.P. Murphy. This right to reply includes (but is not limited to) the opportunity for the interveners to file their own letters of support or objection.

PROCEDURAL ORDER:

The Commission Orders as follows:

1. The Financial Projection and Analysis Report prepared by MRSB and dated January 8, 2025, being Exhibit CG-6 (the "MRSB Report"), shall not be published on the Commission website.
2. Notwithstanding the foregoing, the MRSB Report may be used by the parties and the Commission in the course of the public hearing without limitation. The MRSB Report may also be referred to in the Commission's written decision.
3. The following two letters submitted by D.P. Murphy are accepted for filing as of February 21, 2025, and shall form part of the record in this Application:
 - a) Letter from Robert K. Irving, President of Cavendish Farms, dated February 18, 2025; and
 - b) Letter from Andrew W. Keith, President & CEO of SFX Transport, undated.
4. The interveners, Howatt's and Ceretti's, shall have the opportunity to reply to the foregoing letters. Howatt's and Ceretti's shall advise by the end of day on February 21, 2025, whether they intend to reply to the said letters and, if so, how long they may reasonably need to do so. The Commission will thereafter issue a procedural direction with respect to timelines.

⁹ Exhibit P-1

5. There shall be no further public consultation process with respect to this Application.

DATED at Charlottetown, Prince Edward Island, as of the 21st day of February, 2025.

BY THE COMMISSION:

(sgd) Kerri A. Carpenter

Kerri A. Carpenter, Acting Chair

(sgd) M. Douglas Clow

M. Douglas Clow, Acting Vice-Chair

(sgd) Terry McKenna

Terry McKenna, Commissioner