



**Docket: PD527**  
**Order: PC25-003**

**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, reconvened pursuant to Rule 32 of the Commission's *Rules of Practice & Procedure*.

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# Procedural Order

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Compared and Certified a True Copy

Regulatory Services

**BEFORE THE COMMISSION** on Monday, February 24<sup>th</sup>, 2025.

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

## **BACKGROUND:**

1. This Procedural Order is issued further to Procedural Order PC25-002.
2. Procedural Order PC25-002 was issued following a preliminary hearing that was held on Friday, February 21, 2025. At the preliminary hearing, the Commission made decisions on several procedural matters in advance of the hearing of this Application. In the interest of time, the Commission delivered its decisions orally at the preliminary hearing. It thereafter provided a written decision with reasons, being Order PC25-002.
3. At the preliminary hearing, the Commission granted a request by the Applicant, D.P. Murphy Inc. (“D.P. Murphy”), to file two letters in support of its Application (collectively referred to as the “Letters of Support”). The Letters of Support were accepted for filing outside the timelines prescribed by the Commission’s *Rules of Practice & Procedure*, and only one business day before the scheduled hearing.
4. To ensure procedural fairness, the interveners, Ceretti’s Grocery & Hardware Ltd. (“Ceretti’s”) and Howatt’s Tourist Mart Ltd. (“Howatt’s”), have been given the opportunity to reply to the Letters of Support.
5. The parties were made aware, before the Commission made its decision, that accepting the Letters of Support only days before the scheduled hearing may reasonably impact hearing dates. The interveners, Howatt’s and Ceretti’s, were asked to advise by the end of day on February 21, 2025, whether they intended to reply to the Letters of Support and, if so, how long they may reasonably need to do so.
6. On the afternoon of February 21, 2025, the representatives for both Howatt’s and Ceretti’s advised that (1) they intended to reply to the Letters of Support, and (2) that they would not be in a position to reply prior to the start of the scheduled hearing.
7. After receiving these responses from the interveners, D.P. Murphy’s legal counsel emailed Commission counsel and the parties advising that D.P. Murphy (1) did not wish to adjourn the scheduled hearing, and (2) was withdrawing its request to submit the Letters of Support. The email from D.P. Murphy’s representative was sent after the close of business on Friday, February 21, 2025.
8. The preliminary hearing was reconvened at 10:00 a.m. on Monday, February 24, 2025, to discuss D.P. Murphy’s request to withdraw the letters from the record, and the impact (if any) on the scheduled hearing dates.
9. At the reconvened preliminary hearing, Ceretti’s legal counsel advised that it was made clear to the parties that, if the Letters of Support were accepted for filing, the hearing may be delayed. If D.P. Murphy did not want to lose the hearing dates, it could have withdrawn its request to submit the Letters of Support before the Commission issued its Procedural Order.

10. Ceretti's also advised that it acted in accordance with the Commission's Order and spent Friday (February 21<sup>st</sup>) and Saturday (February 22<sup>nd</sup>) focused on its reply to the Letters of Support, rather than on hearing preparations. Ceretti's submitted that it would be procedurally unfair to now allow D.P. Murphy to withdraw the Letters of Support and proceed with the hearing on Tuesday (February 25<sup>th</sup>).
11. In response, D.P. Murphy's legal counsel suggested that the hearing could be condensed from three days to two days, with a start date of Wednesday, February 26<sup>th</sup>.
12. D.P. Murphy also noted that procedural fairness works both ways. Although Ceretti's may have lost a day of hearing preparation time, they were made aware of the hearing dates as early as October 2024. Further, D.P. Murphy noted that Ceretti's itself failed to comply with the Commission's timelines on several occasions.
13. D.P. Murphy advised that if the hearing does not proceed as scheduled, it will likely not be seeking to withdraw the Letters of Support.

### **DECISION:**

14. The hearing of this Application will not proceed on Tuesday, February 25, 2025.
15. On Friday, February 21, 2025, the Commission granted D.P. Murphy's request to file the Letters of Support. Before the Commission made its decision, D.P. Murphy's representatives were made aware that if the Letters of Support were accepted for filing, (1) the interveners would be given the opportunity to reply, and (2) the hearing may be re-scheduled as a result.
16. Despite being made aware of this, D.P. Murphy did not withdraw its request to file the Letters of Support.
17. In fact, D.P. Murphy did not seek to withdraw the Letters of Support until after the Commission issued its Order accepting the Letters for filing. In the circumstances, the interveners' decision to focus their efforts on preparing their reply to the Letters of Support was not only reasonable, it was in accordance with the Commission's Procedural Order.
18. It would be unfair to expect the interveners to prepare for a process different from that ordered by the Commission, based solely on an email from D.P. Murphy's legal counsel. Instead, if D.P. Murphy now seeks to withdraw the Letters of Support, it may do so by way of motion to vary the Procedural Order. However, at this time, Procedural Order PC25-002 stands.
19. The proximity of D.P. Murphy's request to file – and then withdraw – the Letters of Support is paramount to the Commission's decision. D.P. Murphy's request to withdraw the Letters was made after the close of business on Friday, February 21<sup>st</sup>. As a result, the request could not effectively be dealt with until Monday, February 24<sup>th</sup> – being just one day before the scheduled hearing.

20. Although the Commission is aware that Ceretti's has itself failed to comply with earlier procedural timelines, D.P. Murphy was granted the time it requested to respond to Ceretti's evidence. Procedural fairness requires that the interveners be given the same opportunity.
21. For all of these reasons, the hearing of this Application will not proceed on Tuesday, February 25, 2025. The Commission will issue a procedural direction with respect to timelines in due course.

**PROCEDURAL ORDER:**

The Commission Orders as follows:

1. The hearing of this Application, which was scheduled to commence at 9:30 a.m. on Tuesday, February 25, 2025, is postponed.
2. The Commission will issue a procedural direction with respect to timelines in due course.

**DATED** at Charlottetown, Prince Edward Island, on the 24<sup>th</sup> day of February, 2025.

**BY THE COMMISSION:**

(sgd) Kerri A. Carpenter

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Kerri A. Carpenter, Acting Chair

(sgd) M. Douglas Clow

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M. Douglas Clow, Acting Vice-Chair

(sgd) Terry McKenna

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Terry McKenna, Commissioner