

Island Regulatory and Appeals Commission
National Bank Tower
501-134 Kent Street
Charlottetown, PE, C1A 7L1
Attention: Allison MacEwen, Director

Dear Mr. MacEwen,

I am writing on behalf of myself and my spouse to register our strong opposition to the Application for a Retail Petroleum Outlet License submitted by D.P. Murphy Inc. on June 26, 2023. We find parts of the application to be misleading and deficient, particularly those relating to consumer demand, the outlook for tourism and the claim of enhanced services. Furthermore, we believe approval of the application would impose serious adverse effects on the existing petroleum outlets in Borden-Carleton, on the local community and on the surrounding area, including Lots 26, 27, 28, 29 and beyond. Overall, we conclude that the applicant has failed to fulfill the requisite parameters of public interest, convenience and necessity.

Our position on the application is influenced by the experience and knowledge of the community, local businesses and the surrounding area that we have accumulated over the past 32 years. We have come to rely heavily on local retail outlets to meet most of our day to day needs. We frequent both Howatt's Shell Tourist Mart and Ceretti's Irving Grocery and Hardware store multiple times a week, where we buy all of the gasoline and oil needed for our vehicle and lawn tractor and propane for our barbecue, about 95 percent of our grocery needs (100 percent in the case of fresh meat), a surprisingly high proportion of hardware items needed for routine home maintenance, and a variety of confectionary and convenience items. We are less reliant on the Esso /Tim Hortons outlet but often stop there to pick up convenience items or the odd coffee on our way to or from the Borden post office or Gateway Village. Having all of these services available locally has proven invaluable to us in saving both time and money.

We submit the following comments to substantiate our position on the application:

1. The status quo represents an ideal situation for both local and transient motorists. The three existing retail petroleum outlets provide ample and convenient access to major brands of fuel and each offers additional products and services that make their operations unique and help them remain competitive. The combination of fuel sales and such additional features is a fundamental necessity in a competitive marketplace, especially in a province where retail prices for petroleum products are controlled by regulation.
2. Approval of the application could have a substantially disruptive effect on the local market. If Irving follows through on their stated intention to shift their supply and support to the Murphy operation, it should not be assumed that Ceretti's would cease operation as a fuel outlet. They would still have the necessary infrastructure in place, i.e. storage tanks and pumps. Considering the importance of gas revenue to their business, they would be keen to negotiate a supply

agreement with another brand, such as Petro-Canada or Ultramar. In that case, the application could not be approved without saturating the supply and putting the survival of some or all of the fuel businesses in jeopardy. It would be highly inappropriate and unjust for IRAC to block Ceretti's options in any way, by regulatory or other means, in order to favour the Murphy application. The only reasonable option would be to reject the Murphy application.

3. As noted in their application, the D.P. Murphy holdings include an impressive array of restaurants and hotels, as well as a large furniture store. If the application were approved, this would be their first foray into the petroleum business. It begs the questions, why now and why here? The business relationship between Irving and the Ceretti family has been longstanding and beneficial to both parties. The relationship initially came as a boon to Irving when the building of the Confederation Bridge resulted in traffic being diverted away from the Irving service station located on Borden Street. In contrast, the current plan to move their brand to Murphy will have a very damaging effect on the Ceretti business, possibly jeopardizing its very survival.
4. Irving has been serving the Borden market for several decades and obviously wants to continue in this market. Irving could achieve that by continuing their contract with Ceretti's. Instead, they are planning to shift their support to Murphy in spite of the serious negative effect it will have on Ceretti's business and Ceretti's customers. If that decision was prompted by a disagreement with Ceretti's, the latter would be at a serious disadvantage – a huge corporation versus a small family-owned and –operated business. While IRAC may claim that the implications of disputes between business entities do not fall within their purview, the Commission must be mindful of, and take into account the likely consequences of their decisions. Furthermore, we would expect IRAC, as a regulatory body, to owe a duty of care to its licensees, which currently include Ceretti's.
5. Howatt's Shell station and Tourist Mart has been owned and operated by three generations of the Howatt family, and members of the fourth generation are often seen behind the counter as well. Their business is designed to meet the needs of the motoring public with a particular focus on tourist and other transient traffic. The associated convenience store is stocked accordingly with a broad array of products ranging from, *inter alia*, food staples to automotive accessories to souvenirs to confectionary items. It should be noted as well that Howatt's Shell is the last gas station before Summerside (21 km) for traffic headed west, before Kinkora (11 km) or Hunter River (35km) to the north and before New Haven to the east (35 km).
6. In its guidance to applicants IRAC states that it "has interpreted this legislation (*Petroleum Products Act*) to mean that **both** public convenience and necessity must be proven as they relate to the motoring public and not the public in general." However, to our knowledge the term "motoring public" has not been formally defined in legislation. In the current context, we would submit that once a person enters a motor vehicle for the purpose of driving or being driven to another place, such as a fuel outlet or a retail store, they should be regarded as part of the

motoring public. While located in the town of Borden-Carleton, both Ceretti's and Howatt's draw customers from a much larger area, including Lots 26, 27, 28, 29 and beyond. The attraction to these premises is based on the need for fuel and the other essential items stocked by one or both of these establishments. This satisfies the (motoring) public interest in multiple ways by, *inter alia*, reducing the need to drive longer distances, reducing the generation of greenhouse gases, providing more convenient access, and supporting small local businesses, a perennial government objective.

7. Similar arguments may apply to the Esso station and associated Tim Hortons outlet because of their proximity to the applicant's property and the similarity of services offered. However, we are less familiar with their ownership and business structure and therefore we are not in a position to offer further comments on the potential effects on their business.
8. With regard to the specific contents of the application we offer the following observations and comments:
 - a. Given that the site development is already underway, the applicant may be intending to build a structure on the site (i.e. the Tim Hortons and "a convenience store plus other retail offerings") whether the application is approved or not. It makes one wonder how important the fuel outlet would be to their overall business interests. The number of standalone Tim Hortons outlets across the country and in PEI indicates that a fuel outlet is not a necessary adjunct.
 - b. The number of parking spaces proposed is many orders of magnitude more than would be required for a petroleum outlet and should be considered superfluous to the application.
 - c. The inclusion of EV charging stations reflects awareness of the growing need for alternatives to petroleum-based fuels and raises a question as to why this awareness did not influence the projection of future levels and trends in traffic, tourism and gas sales.
 - d. The letters of support overplay the importance of expanding the availability of fuel and associated amenities at the proposed location. Neither provides any meaningful evidence to demonstrate that the current levels of service are inadequate or likely to become inadequate in the foreseeable future.
 - i. With regard to traffic across the bridge, the statement in the Strait Crossing letter that "Traffic.....has been on an increasing trend in recent years, interrupted recently by Covid but now recovering stronger than ever" is contradicted by data presented elsewhere in the application (Page 24). The data show that the traffic in 2022 (4724) was lower than the numbers reported for

the three years preceding COVID (4733 in 2017, 4749 in 2018 & 4893 in 2019) – hardly evidence of “recovering stronger than ever”!

- ii. To paraphrase the penultimate paragraph of TAIPEI’s letter, TAIPEI is indicating that the addition of a new gas station and Tim Hortons at the proposed site will improve convenience for people who use them and “create a sense of arrival for those visitors”. Gas stations are ubiquitous around the world and Tim Hortons outlets are commonly seen across Canada and parts of the United States. So how could they possibly be thought of as complimentary to the PEI brand and likely to make people more aware and feel better that they have arrived in Prince Edward Island.
- e. In the section headed, “Traffic, Volume and Trends”, the applicant includes a quotation from Destination Canada’s Fall 2022 Tourism Outlook as evidence that the “current outlook for tourism going forward is positive, which suggests that traffic in the market area will only continue to increase.” However, it should be noted that the quotation and the document cited clearly relate to the whole of Canada and NOT to “the market area” nor to Prince Edward Island specifically.
- f. Predicting future trends of any sort with a reasonable degree of accuracy requires consideration of all factors that could have a significant effect on the results. In projecting future levels and trends in traffic across the bridge, tourism to the province, and retail gas sales volumes, the application completely ignores some important factors that are likely to come into play in the very near future and continue to grow in importance and impact over the coming years. For example, the rising price of gas associated with the imposition of more stringent controls to reduce the production of greenhouse gas emissions is very likely to have an impact on road travel and demand for gas. As the effects grow, people are expected to respond by driving less, using mass transit more and/or switching to vehicles fueled by other energy sources such as electricity. These changes have begun and are expected to accelerate within the current decade, with sales of electric vehicles surpassing the conventional by 2030. We believe such issues should be factored into business plans and regulatory decisions now, and in our view, the absence of these considerations alone would justify deferral of the application.

9. Summary and Conclusions:

- a. The application does not prove the need for “new and expanded services” nor the contention that they would “complement the existing sites”. Rather, the effect would more likely be predatory and draw revenue away from the existing family-owned and -operated sites. We would submit that, on balance, the owners of the existing sites need the revenue a lot more than the D.P. Murphy Group of Companies does.

- b. The larger surface area on the Murphy site is certainly not needed for a fuel outlet and should be considered superfluous to the application.
- c. There is no compelling justification that would make keeping the Irving brand in this market an important consideration. Whether they remain or not is really up to them (the Ceretti option). In any case, if they were to leave this market, there is no evidence that either Irving or the market would suffer irreparable harm.
- d. No evidence is provided to support attributing meaningful value to Murphy entering this market as a fuel outlet.
- e. Demand has not been proven. The case for increases in traffic, population, petroleum volume and tourism contains errors and unfounded assumptions and critical information was omitted from the analysis.
- f. Some of the figures cited as a basis for a positive outlook for tourism are not related to either the local market or PEI. They represent a projection for the whole of Canada. Errors like this detract from the overall credibility of the application.
- g. The letters of support constitute unsubstantiated opinions and provide no meaningful evidence to demonstrate that current levels of service are inadequate or likely to become inadequate in the foreseeable future.

We contend that public interest, convenience and necessity have not been demonstrated and the application should be rejected.

We would welcome the opportunity to respond to any questions or concerns that may arise during the review of our submission.

Respectfully submitted,

The block contains two handwritten signatures in black ink. The signature on the left is 'Mervyn Baker' and the signature on the right is 'Lois Baker'. Both are written in a cursive, flowing style.

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