

## NEW BRUNSWICK ENERGY AND UTILITIES BOARD

**IN THE MATTER** of an application by Irving Oil Marketing G.P. and Irving Oil Commercial G.P. to increase the wholesale margins for motor fuels and furnace oil under sections 1.1 and 12(1) of the *Petroleum Products Pricing Act* and section 9(1) of the General Regulation under that Act;

**AND IN THE MATTER** of a request under section 40 of the *Energy and Utilities Board Act* for an interim order approving an increase in the maximum wholesale margins for motor fuels and furnace oil.

### AFFIDAVIT

I, **DARREN GILLIS**, of the City of Saint John, in the Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President of Irving Oil Marketing G.P. ("IOM") and the President of Irving Oil Commercial G.P. ("IOC") (IOM and IOC are sometimes collectively referred to as "Irving Oil"). I have personal knowledge of the facts stated in this Affidavit unless otherwise indicated and I am authorized to make this Affidavit on behalf of IOM and IOC.
2. IOM wholesales motor fuels to Irving branded independent retailers and third party operated locations, and IOC wholesales petroleum products to the Irving branded furnace oil business and non-Irving branded third party retailers, wholesalers and wholesalers/retailers of petroleum products.
3. By Revised Application dated January 19, 2021 ("Revised Application"), IOM and IOC applied to the New Brunswick Energy and Utilities Board ("Board") to increase the maximum wholesale margin for motor fuels by \$0.0409/litre and to increase the maximum wholesale margin for furnace oil by \$0.0302/litre such that the maximum wholesale margin for motor fuels shall increase from \$0.0651/litre to \$0.106/litre and the maximum wholesale margin for furnace oil shall increase from \$0.055/litre to \$0.0852/litre.

4. As part of its Revised Application, Irving Oil applied for “an interim order under section 40 of the Energy and Utilities Board Act approving an immediate, non-rebatable interim increase of \$0.035/litre in the maximum wholesale margin for motor fuels and an immediate interim increase of \$0.030/litre in the maximum wholesale margin for furnace oil, and such further directions in that regard, as may be necessary or appropriate.” (See paragraph 7(a) of Application).
5. Irving Oil requests that the Board make an interim order and is now seeking approval of the requested \$0.035/litre increase in the maximum wholesale margin for motor fuels and the requested \$0.030/litre increase in the maximum wholesale margin for furnace oil, effective immediately upon the Board approving such request.
6. Evidence in support of Irving Oil’s Revised Application is contained in the Revised Evidence of IOM and IOC which was filed with the Board on January 19, 2021, the content of which I hereby confirm.
7. In a decision dated March 1, 2013 in relation to an Application by IOM and IOC for an increase in the maximum wholesale margins for motor fuels and furnace oil, the Board decided that “since 2011 is the last full year for which actual cost data has been provided, the Board will compare 2005 costs with the actual full-year costs for 2011. This approach will ensure consistency and will provide a benchmark for future reviews.” Irving Oil is not requesting any changes to the approach used by the Board in 2013 to determine the appropriate increases in the maximum wholesale margins. As a result, the evidence submitted by Irving Oil compares 2011 costs to 2019 costs (the last full year for which actual costs data is available).
8. In addition to the increased costs faced by wholesalers since 2011 there are other critical challenges to the petroleum industry that jeopardize the continuity of supply of petroleum products, heightened by the significant impact of COVID-19. The industry is under ongoing pressure and the current situation related to the pandemic has now evolved to the critical stage and an immediate decision is required to ensure reliable supply. Any delays in the approval process (including the permanent increase) could result in challenges maintaining reliable supply to all or some markets.

9. Irving Oil is an integrated refiner, wholesaler and marketer of refined petroleum products. These channels of business form an important part of the petroleum supply chain in Atlantic Canada. Together these integrated assets ensure the reliable supply of petroleum product in our province and provide stability for New Brunswick's economy. Indeed, it is hard to find any part of the economy that does not depend on reliable petroleum supply.
10. Like many businesses, the impact from the pandemic on our sector is material. As an example, marine fuel for cruise ships, jet fuel for air travel and gasoline for general motor transportation have all been materially impacted by the reduced demand related to the pandemic. This volume decline is a global issue impacting all components of the supply chain. We are not insulated from these challenges in Atlantic Canada. The closure of the North Atlantic Refinery, and the subsequent energy supply concerns being felt in Newfoundland and Labrador, is an example of these impacts in our region.
11. Petroleum pricing regulations in New Brunswick were created 15 years ago. They did not contemplate the challenges of the last several years and were not designed to react to a global pandemic. Unregulated markets, however, respond as required to ensure supply at reasonable cost recovery levels. This is not the case in regulated markets. Unlike wholesalers in provinces other than Atlantic Canada and throughout the Atlantic Northeast, our regulated market does not have the flexibility to respond to immediate changes that result from a pandemic environment. Typical decision-making models are not effective in these circumstances. Costs have increased. The pandemic impact is material. To ensure the reliable supply of petroleum product to the region Irving Oil needs the ability to recover costs immediately.
12. The entire petroleum supply chain is under pressure and at risk. Our region is not isolated from these issues. In 2010, there were three refineries operating in Atlantic Canada. With the recent closure of the Come-by-Chance refinery in Newfoundland and Labrador, only the Irving Oil refinery remains. A recent press release from the Government of Newfoundland and Labrador is attached as Exhibit A.
13. In the only other application by a wholesaler to increase maximum wholesale margins under the petroleum products pricing legislation, which was made by Irving Oil, the

application was filed on June 5, 2012 and the Board's decision was rendered on March 1, 2013, essentially a period of nine months. Based on this precedent, Irving Oil believes that a decision on Irving Oil's request for an increase in the maximum wholesale margins may not occur until October, 2021.

14. Delaying the requested maximum wholesale margin increases from January, 2021 to October, 2021 could result in a decrease of as much as [REDACTED] in revenue for IOM and IOC, the basis for which can be found in Exhibit B.
15. I was advised by Michael Gardiner, a consultant retained by the Board, and verily believe that he has recently been unsuccessful in convincing enough wholesalers in New Brunswick to provide information which would allow him to prepare a report to the Board that would form the basis for a Board initiated review of the maximum wholesale margins in New Brunswick. Since learning that the Board would not be initiating a maximum wholesale margin review at this time, Irving Oil has been assembling the information necessary to make its own application.
16. By an Order dated October 27, 2020, the Newfoundland and Labrador Board of Commissioners of Public Utilities approved, on an interim basis, an increase in wholesale markups of 5.0 cpl for gasoline (up to a total wholesale margin of 15.65 cpl) and 4.0 cpl for diesel, furnace oil and stove oil (up to a total wholesale margin of 14.52 cpl), effective October 29, 2020. The Order is attached as Exhibit C.
17. By an Interim Order dated December 30, 2020 (the "NS Interim Order"), the Nova Scotia Utility and Review Board ("NSUARB") approved, on an interim basis, an increase in the wholesale margin for self-service and full-service gasoline and diesel of 2.5 cpl (up to a total wholesale margin of 9.15 cpl), effective January 8, 2021. The Interim Order is attached as Exhibit D.
18. A letter from Service Nova Scotia to the NSUARB dated December 22, 2020 and a letter from the NSUARB to Interested Parties dated January 8, 2021 in relation to the NS Interim Order are attached as Exhibits "E" and "F", respectively.

19. In the unlikely case the permanent increase for motor fuels is lower than the interim increase, Irving Oil cannot effectively and fairly rebate the difference. For the motor fuels volume, Irving Oil does not have the ability to identify the end consumer. There is no practical way to identify and track cash transactions for the purchase of gasoline and diesel. In addition, for credit and debit transactions, due to privacy laws and encryption standards, there is also no means to identify an end consumer. It is Irving Oil's view this is the case for all other wholesale customers that serve the end consumer. We note that for the home furnace oil customer, Irving Oil has the ability to process a credit for a rebate. This however only represents █% of the volume sold.
20. I make this Affidavit in support of a request by Irving Oil for an interim increase in the maximum wholesale margins on motor fuels and furnace oil under section 40 of the Energy and Utilities Board Act.

**SWORN TO BEFORE ME** at the )  
City of Saint John, in the County of )  
Saint John and Province of New Brunswick, )  
this 19<sup>th</sup> day of January, 2021. )  
)  
)  
)  
)  
)  
Sgd. John Laidlaw )  
Commissioner of Oaths )  
Being a Solicitor )

Sgd. Darren Gillis \_\_\_\_\_  
**DARREN GILLIS**

## Exhibit A

# Provincial Government Announces Support for North Atlantic Refinery

*Newfoundland & Labrador Oil & Gas Industries Association | Noia*

1/15/2021

## Executive Council

### Industry, Energy and Technology

The Honourable Andrew Furey, Premier of Newfoundland and Labrador, today announced that the Provincial Government has entered into a funding agreement with the North Atlantic Refining Limited Partnership (NARL LP) to keep the refinery in warm idle mode while the owner continues to search for a buyer or investor.

This agreement will help protect the asset for future restart, help mitigate restart costs and increase employment levels to 200 full-time equivalents on an interim basis – with potential for more with future restart.

The \$16.6 million funding agreement between the Provincial Government and NARL LP will specifically support 75 per cent of eligible labour costs of refinery employees and 50 per cent of eligible non-labour costs in Newfoundland and Labrador associated with the refinery warm idle and restart preparation related activities while the refinery remains offline. The support is in the form of a non-repayable contribution over a seven-month period ending on June 30, 2021 or until the refinery is restarted or resold.

As a result of the agreement, NARL LP will increase employment levels at the refinery to 200 full time equivalent positions as soon as possible but no later than January 31, 2021. NARL LP and its owners will work with the United Steel Workers Local 9316 union under the collective agreement. This staffing level will further support the refinery for future operations. The company will continue its efforts to sustain a reliable fuel supply in the province.

## Quotes

“We will continue to work with all stakeholders to ensure a long-term future for the refinery, which remains an important asset for the province and its people. While this has been a difficult, uncertain time for the workers at the refinery, today is good news for them and their families.”

Honourable Andrew Furey  
Premier of Newfoundland and Labrador

“This agreement will ensure the refinery remains in warm idle mode in suitable condition to support a future sale or restart. Part of this agreement includes a commitment by NARL LP and its owners that it will continue its ongoing buyer/investor search for the refinery.”

Honourable Andrew Parsons  
Minister of Industry, Energy and Technology

Sgd. John Laidlaw  
 Commissioner of Oaths  
 Being a Solicitor

**Exhibit B**

**Impacted Irving Oil Marketing G.P. and Irving Oil Commercial G.P. Volumes**

The below estimated sales volumes and figures over a 9 month period are representative of volumes forecasted to be sold to Irving branded retailers (including Highland Fuels) where IOM and IOC receive value from the increase of maximum wholesale margins on regulated petroleum products including motor fuels and furnace oil.

<b>Wholesale Customers</b>	<b>Product</b>	<b>Budgeted Volumes (2021 9 Months) in litres</b>	<b>Margin Increase cents per litre</b>	<b>Potential Value</b>
Irving Oil Marketing - dealer locations	Motor Fuels	██████████	\$ 0.0350	\$ ██████████
Irving Oil Marketing - 3rd party operated locations	Motor Fuels	██████████	\$ ██████████	\$ ██████████
Irving Oil Commercial - sales to Highland Fuels (Irving Oil's furnace oil delivery business)	Furnace Oil	██████████	\$ 0.0300	\$ ██████████
<b>Total</b>		██████████		\$ ██████████

Sgd. John Laidlaw  
Commissioner of Oaths  
Being a Solicitor

**NEWFOUNDLAND AND LABRADOR  
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

**AN ORDER OF THE BOARD**

**NO. P.P. 52(2020)**

1 **IN THE MATTER OF** the *Petroleum Products*  
2 *Act*, SNL 2001, Chapter P-10.1 and regulations  
3 thereunder; and  
4

5 **IN THE MATTER OF** a request from NARL  
6 Marketing Limited Partnership that the Board  
7 implement increases in allowed wholesale  
8 mark-ups for gasoline, diesel, furnace oil and  
9 stove oil.  
10

11  
12 **WHEREAS** on October 5, 2020 NARL Marketing Limited Partnership (“North Atlantic”) wrote  
13 the Board requesting amendments to the existing pricing structure to expeditiously increase the  
14 wholesale mark-up for gasoline, diesel and furnace oil as an interim step and, after completion of  
15 the Board’s review, further adjust the wholesale prices to reflect the incremental costs of  
16 importing all fuels to the island portion of the Province (the “Application”); and  
17

18 **WHEREAS** the Application advocated that the price increases be implemented for all fuel  
19 suppliers to provide a level playing field, ensuring the viability of terminals and a long term  
20 reliable supply for the Province and that this uniform pricing structure would ensure that multiple  
21 suppliers can operate economically on the island; and  
22

23 **WHEREAS** the Application stated that the North Atlantic Refinery was transitioned into  
24 standby mode on March 30, 2020 and that North Atlantic has been importing refined products  
25 from New York Harbour and Europe for the past six months; and  
26

27 **WHEREAS** the Application stated that the current wholesale mark-ups established by the Board  
28 are based on an operating refinery on the island and that it urgently requests the review of the  
29 wholesale mark-ups for gasoline, diesel and furnace oil to reflect the current circumstances with  
30 no operating refinery and a 100% import market; and  
31

32 **WHEREAS** the Application provided information related to the five main factors which North  
33 Atlantic believes need to be taken into consideration to determine the cost of importing fuel: i)  
34 shipping costs from New York Harbour, ii) inventory financing and hedging costs, iii) the use of  
35 3<sup>rd</sup> party terminals or the Come By Chance terminal, iv) the loss of butane blending, and v)  
36 subsidized pricing in the Newfoundland market due to local production; and



1 **WHEREAS** North Atlantic subsequently clarified that the requested wholesale mark-up increase  
2 was to also apply to stove oil and that the proposed increases are requested to be implemented  
3 for the island only; and  
4

5 **WHEREAS** in response to requests from the Board, North Atlantic provided additional  
6 information to support the Application; and  
7

8 **WHEREAS** on October 19, 2020 and October 22, 2020, in response to requests from the Board,  
9 information was received from Imperial Oil Limited and Irving Oil, also suppliers of petroleum  
10 products on the island, in relation to the impacts of the Application and the standby operation of  
11 the North Atlantic Refinery; and  
12

13 **WHEREAS** based on its review of the information provided the Board is satisfied that there are  
14 incremental costs associated with changes in the method of supply on the island made necessary  
15 by the transition of the North Atlantic Refinery into standby mode and that these costs are not  
16 reflected in the current wholesale mark-ups for gasoline, diesel, furnace oil and stove oil; and  
17

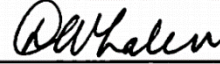
18 **WHEREAS** the Board is satisfied that interim adjustments to the allowed wholesale mark-ups  
19 for gasoline, diesel, furnace oil and stove oil in all zones on the island are required to ensure the  
20 viability of terminals and long term supply and to ensure that multiple suppliers can operate  
21 economically on the island and that the uniform treatment of suppliers is appropriate and  
22 reasonable in the circumstances; and  
23

24 **WHEREAS** the Board is satisfied, based on the cost and supply information provided, that there  
25 should be an interim increase in the wholesale mark-ups for all wholesalers in all zones on the  
26 island of 5.0 cents per litre for gasoline and 4.0 cents per litre for diesel, furnace oil and stove oil,  
27 with corresponding increases in the total allowed mark-ups for these products in these zones.  
28  
29

30 **IT IS THEREFORE ORDERED THAT:**  
31

- 32 1. The wholesale mark-ups in all zones on the island shall increase, on an interim basis, by 5.0  
33 cents per litre for gasoline and by 4.0 cents per litre for diesel, furnace oil, and stove oil, with  
34 corresponding increases in the total allowed mark-ups included in maximum prices, effective  
35 12:01 a.m. October 29, 2020, until further order of the Board.

**DATED** at St. John's, Newfoundland and Labrador, this 27<sup>th</sup> day of October, 2020.



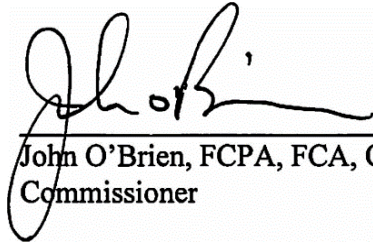
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Darlene Whalen, P. Eng., FEC  
Chair and Chief Executive Officer



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Dwanda Newman, LL.B.  
Vice-Chair



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John O'Brien, FCPA, FCA, CISA  
Commissioner



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Christopher Pike, LL.B., FCIP  
Commissioner



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Cheryl Blundon  
Board Secretary

INTERIM ORDER

Sgd. John Laidlaw  
Commissioner of Oaths  
Being a Solicitor

M09952

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE PETROLEUM PRODUCTS PRICING REGULATIONS**

- and -

**IN THE MATTER OF AN APPLICATION** by the Minister requesting that the Board undertake an investigation under s. 24(2)(c) of the *Petroleum Products Pricing Regulations* about the sufficiency of the current wholesale margin for self-service and full-service gasoline and diesel

**BEFORE:**  Roland A. Deveau, Q.C., Vice Chair

**INTERIM ORDER**

**WHEREAS** the Minister of Service Nova Scotia and Internal Services filed a letter with the Nova Scotia Utility and Review Board dated December 22, 2020, making an application under s. 24(2)(c) of the *Petroleum Products Pricing Regulations* to request that the Board undertake an investigation about the sufficiency of current wholesale margin for self-service and full-service gasoline;

**AND WHEREAS** the Minister advised that industry has recently expressed concerns that the current wholesale margin is not enough to guarantee security of supply in the current challenging COVID-19 global environment;

**AND WHEREAS** in s. 24A(1) of the *Regulations*, an “emergency situation” means a situation that in the Board’s opinion threatens the security of the petroleum supply, including any of the following:

- (a) a disruption to the supply of a petroleum product resulting from an increase in the rack rate charged to wholesalers and wholesaler-retailers that leads wholesalers and wholesaler-retailers to not sell a petroleum product because they are not receiving a sufficient wholesale margin;
- (b) a shortage of supply of a petroleum product to wholesalers and wholesaler-retailers that affects one or more zones;

**AND WHEREAS**, under s. 24A(2) of the *Regulations*, in an emergency situation the Board may make an interim order to temporarily prescribe interim fixed wholesale prices, maximum retail prices or minimum and maximum retail mark-ups until the public hearing or inquiry required by subsection 24(3) can be held;

**AND WHEREAS**, as part of its regulatory oversight, the Board monitors the petroleum product market in the Province, including but not limited to the relationship of the daily New York Harbour spot price (NYH) and regulated prices set by the Board as compared to Halifax wholesale rack prices (Rack);

**AND WHEREAS** the Board has observed that, over an extended period, there has been an increased differential between the NYH and Rack, which has caused an erosion of the wholesaler portion of the wholesale margin under the price setting regime set out in the *Regulations*, and this has been further exacerbated by decreased sales volumes caused by the COVID-19 pandemic;

**AND WHEREAS** the increased differential between the NYH and Rack was confirmed in a report filed on December 8, 2020, by Kent Group Ltd., the Board Counsel's consultant, in Matter M09823;

**AND WHEREAS** the Board is satisfied that an emergency situation may exist in the Province, which could threaten the security of the petroleum supply, including a shortage of supply of a petroleum product to wholesalers and wholesaler-retailers that affects one or more zones, and that an increase in the wholesale margin is warranted on an interim basis pending the completion of a full investigation by the Board;

**IT IS HEREBY ORDERED THAT:**

1. The wholesale margin for self-service and full-service gasoline and diesel are increased, on an interim basis, by 2.50 cents per litre (cpl), up to a total of 9.15 cpl.
2. The increase to the wholesale margins approved in this Interim Order shall be incorporated into the Board's weekly setting of regulated petroleum product prices, effective 12:01 a.m. on Friday, January 8, 2021.
3. This Interim Order shall remain in effect until further Order of the Board.

**DATED** at Halifax, Nova Scotia, this 30<sup>th</sup> day of December, 2020.



Clerk of the Board



**Service Nova Scotia and Internal Services**  
Office of the Minister

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PO Box 216, Halifax, Nova Scotia, Canada B3J 3K5 • Telephone 902 424-3302 Fax 902 424-6266 • novascotia.ca

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December 22, 2020

Peter W. Gurnham, Q.C.  
Chair, Nova Scotia Utility and Review Board  
3<sup>rd</sup> Floor, Summit Place  
1601 Lower Water Street  
Halifax, NS B3J 3P6

Dear Mr. Gurnham,

I am writing to you as the Minister responsible for the administration of the *Petroleum Products Pricing Act* (PPPA).

As you know, the Utility and Review Board is responsible for determining appropriate wholesale and retail margins under the PPPA. Recently, industry has expressed concerns to government about the sufficiency of the current wholesale margin. It has been suggested that the current margin is not enough to guarantee security of supply in the current challenging COVID-19 global environment.

As a result, I am requesting that the NSUARB undertake an investigation into this matter on an expedited basis. I would encourage you to contact all key industry participants in our region. If it is warranted, I would request that you consider making an interim order to increase wholesale margins under s. 24A of the *Petroleum Product Pricing Regulations* (the Regulations) and schedule a public hearing for a future date.

If an interim order is warranted, I feel the severity of a possible supply issue means it should be issued at the earliest opportunity, with a hearing to follow as soon as possible after the wholesale margin review scheduled for January 21, 2021.

If the Board determines that an interim order is not warranted, you are instructed to proceed immediately with an investigation and hearing under s. 24(2)(c) of the Regulations.

Under s. 29 of the Regulations, the Board may require all wholesalers to provide all information required by the Board to carry out its duties. I would encourage you to reach out to key industry participants to acquire all the necessary information.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Arab".

Patricia Arab  
Minister

c. Paul Allen, Executive Director, Nova Scotia Utility and Review Board



## Nova Scotia Utility and Review Board

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January 8, 2021

Via Email Only (and TitanFile for Wholesalers)

**TO: INTERESTED PARTIES (M09823/M09952)**

### **Applications under s. 24(2) of the Petroleum Products Pricing Regulations regarding the Wholesale Margin M09823/M09952**

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The panel assigned in each of the above matters is comprised of Roland A. Deveau, Q.C., Vice Chair, Richard J. Melanson, LL.B., Member, and Stephen T. McGrath, LL.B., Member.

On December 22, 2020, the Board received an application by the Minister under s. 24(2)(c) of the *Petroleum Products Pricing Regulations* to undertake an investigation about the sufficiency of the current wholesale margin and to schedule a public hearing for a future date. The request occurred after industry had recently expressed concerns to the Minister "that the current margin is not enough to guarantee security of supply in the current challenging COVID-19 global environment".

By letter dated December 23, 2020, the Board confirmed it would commence an investigation under s. 24(2)(c) of the *Regulations* (Matter M09952), including the consideration of an Interim Order, if warranted, under s. 24A. The Board also confirmed it would engage all key industry participants respecting this matter. Further, on December 30, 2020, the Board issued an Interim Order increasing the wholesale margin for gasoline and diesel by 2.50 cents per litre, resulting in a total wholesale margin of 9.15 cents per litre (from the current 6.65 cents per litre), effective Friday, January 8, 2021.

The Board notes that the current application by World Fuel Services Canada, ULC (operating as XTR) also involves an investigation to be conducted by the Board under s. 24(2) respecting wholesale margins. A hearing into the XTR matter was scheduled to be held on January 21, 2021. In the circumstances, the Board has determined that the XTR hearing should be adjourned (including the practice session which was to be held Monday, January 11, 2021).

Further, in the interests of efficiency, the Board considers that both the matter involving the Minister's request for a Board investigation (M09952) and the XTR application (M09823) should be consolidated into one proceeding, which will continue as Matter M09952.

As noted above, the Board has committed to engage industry participants in the investigation respecting wholesale margins. This should occur before the hearing is re-scheduled. On this point, the Board notes there was little participation by wholesalers in the current XTR matter, despite all wholesalers having received notice of the hearing and being advised they could participate and present evidence in the proceeding. Moreover, based on its review of XTR's evidence, it is the Board's preliminary view that there is limited evidence to support an increase to the wholesale margin, at least as it relates to that proceeding.

The Board notes that any order it may make adjusting the wholesale margin will be based on evidence presented to it in the consolidated proceeding. If industry (i.e., wholesalers) believes there are circumstances requiring the wholesale margin to be increased the burden of providing the Board with evidence proving the need for, and amount of, any increase in the wholesale margin is on the industry itself. In the absence of such evidence, the Board will be unable to provide any relief to the industry by increasing the wholesale margin. In that event, the Board's Interim Order increasing the wholesale margin will lapse and no long-term margin increase will occur. Thus, if wholesalers seek an increase to the wholesale margin, including to ensure security of supply, the industry participants must provide evidence to establish to the Board, on a balance of probabilities, that an increase by a quantifiable amount is warranted.

The Board understands that the petroleum products wholesale industry is very competitive and some of the evidence required to show the need for a margin increase is commercially sensitive. The Board is also mindful that the industry operates in a complex environment. However, the Board often considers commercially sensitive evidence in several other types of matters it typically conducts. The Board has issued Rules of Procedure to ensure confidential information is protected.

Accordingly, the Board will initiate a process with industry to allow wholesalers to provide information to assist the Board in its review of the wholesale margin, including commercially sensitive evidence. One of the options being considered by the Board is a series of technical sessions conducted by Board Counsel consultants and Board staff with industry, on an individual basis, followed by information requests issued to industry. The Board will provide further details shortly about this industry engagement and the rescheduling of the hearing.

Finally, subject to the comments of any party, the Board directs that any exhibits filed in either of matters M09823 and M09952 will be considered as exhibits in the consolidated proceeding.

If there are any comments or questions about these matters, please do not hesitate to contact the undersigned.

Yours truly,



Bruce Kiley  
Chief Clerk of the Board

c. The Honourable Patricia Arab, Minister of Service Nova Scotia and Internal Services  
S. Bruce Outhouse, Q.C., Board Counsel  
Parties M09823  
Wholesalers Distribution List