COMMISSION DE RÉGLEMENTATION ET D'APPELS DE L'ÎLE

THE ISLAND REGULATORY AND APPEALS COMMISSION

Prince Edward Island

Île-du-Prince-Édouard

CANADA

Docket PM902

Order PC12-01

IN THE MATTER of the application by the P.E.I. Retail Gasoline Dealers Association for approval of an increase in the allowable retail gasoline and diesel margin.

BEFORE THE COMMISSION

on Thursday, the 29th day of March, 2012.

Maurice Rodgerson, Chair
Allan Rankin, Vice Chair
Michael Campbell, Commissioner

Order

Compared and Certified a True Copy

(Sgd) *Faye Weeks*

Technical and Regulatory Services Division

IN THE MATTER of the application by the P.E.I. Retail Gasoline Dealers Association for approval of an increase in the allowable retail gasoline and diesel margin.

Reasons for Order

1. Introduction

[1] This Order addresses the application filed with the Commission on March 21, 2011 by the P.E.I. Retail Gasoline Dealers Association (the "Applicant") requesting an upward adjustment of 2.0 cents per litre in the minimum and maximum retail dealer mark-up levels for both self-serve and full-serve gasoline and diesel fuel and for subsequent annual reviews of dealer margin levels. The application is filed pursuant to the *Petroleum Products Act*, R.S.P.E.I. 1984, Cap P-5-1 (the "Act"), which under Section 27 (b) authorizes the Commission to establish minimum and maximum dealer margins.

2. Procedure for Review

[2] The application was published by the Commission in *The Guardian* and the *Journal-Pioneer* on February 13, 2012, in the Eastern Graphic on February 15, 2012, in La Voix Acadienne on February 22, 2012 and also publicly noticed on the Commission's website on and after February 9, 2012. Among other things, the Notice of Application (the "Notice") stated, in part, as follows:

> *Any person wishing to comment on the application can do so by writing to the Commission at the address below. In order to be considered, comments must be received by no later than Friday, February 24, 2012 and must include the name and address of the commentator. All public comments received will be posted on the Commission's website.*
>
> *The necessity of a public hearing will be decided by the Commission following its initial review of the filing and the written comments received concerning this application.*

[3] In response to the Notice the Commission received twelve submissions, none of which requested a public hearing.

[4] The Commission proceeded to review the submission and the public comments, and reached a decision on the application.

3. The Application & Interventions

[5] The application involved a request on the part of the P.E.I. Retail Gasoline Dealers Association for an increase of up to 2.0 cents per litre (cpl) in allowed dealer margins for both full-serve and self-serve.

[6] In its submission to the Commission, the Applicant made the following comments in support of its position:

> *Our rationale for this request ….can be summed up by stating that operating input costs for the independent retailers we represent have increased dramatically since 2007 (the date of the last dealer margin adjustment request) and an upward adjustment in retail margin levels is necessary to enable these retailers to continue to serve motorists across the island.*[1]

In its application, the applicant referred to substantial increases in a) labour costs and b) credit card service charge expenses since the Commission last adjusted retail margin levels on January 1 and June 1 of 2008.

[7] Of the twelve written submissions received, eight were in support of the application, while four were opposed.

The eight supportive responses, primarily from existing retailers and/or retailer associations, had a common theme citing threatened dealer viability due to the incurrence of steadily increasing operating costs within the context of a fixed and unchanging dealer margin. Individual operators offered personal cost information related to their direct experience while the Association provided an overview of the costs experienced by retail operators.

Two comments from the general public took exception to the request for an increased margin stating that gasoline prices were already beyond the level of affordability of the average consumer and that retail dealers should adjust their operational expenditures to live within their existing margin levels.

Comments from two existing retailers opposing the request referenced that, while operating expenses have increased, competitive pressures from larger, primarily urban retailers, are forcing pricing at the minimum margin level.

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[1] Applicant's submission.

4. The Factors Considered

[8] The Commission accepts the evidence of the Applicant that general operating costs of retail outlets and, specifically, labour and credit card service charge costs have increased substantially since 2008, when the margin was last reviewed.

Amendments to provincial minimum wage legislation in recent years have resulted in a per unit labour cost increase in excess of 30% since 2007. With the increased per litre price of motor fuels, credit card service charges, which are based on a percentage of pump price, have increased approximately 25% over this same period.

In addition, the Commission notes the evidence that credit cards and debit cards are now the preferred method of payment for the majority of purchases and, accordingly, the cost to the retail operator to support these services has increased significantly. Most retailers pay 2% of the face value of the transaction which represents a cost to them of in excess of 50% of the existing retail margin based on today's prices.

The Commission is mindful of the fact that the nature and complexity of the retail petroleum industry has changed dramatically over the past decade. At one time, a large percentage of the retail outlets operated on PEI were owned and operated by large regional, national and multi-national, fully integrated oil companies. In recent years many of these oil companies have divested themselves of local outlet ownership as they have refocused their attention on extraction, production and refining activities.

This trend of course has been observed on a national and international basis and is not restricted to the PEI market. The impact locally, however, is that the majority of retail outlets now operated on PEI can be characterized as either independent owner/operator outlets or smaller, regionally owned outlet networks. Accordingly, as a result of this fundamental industry restructuring, the requirement for the maintenance of an adequate dealer margin has become increasingly important to the economic survival of retail outlet operations.

Having fully reviewed the submission, the Commission is convinced that an increase in the dealer margin is warranted. The decision then must be of the determination of the amount of increase and of how best that increase can be implemented.

The Commission is not convinced costs have increased to the extent that the requested increase in retail margin of the full amount (2.0 cpl) is warranted.

The comments of two established independent retailers suggests the issue is not of the adequacy of the existing margin range but the tendency for competitive pricing to push the margin to the minimum level. These comments are consistent with the Commission's own monitoring of Island wide pump prices. The Commission is therefore not convinced that an increase in the upper level of the self-serve margin is either warranted, or will address the core issue reflected in the evidence presented.

The Commission is mindful of the desirability of competition between retail outlets. However, the Commission is also mindful of its legislative mandate to ensure at all times a just and reasonable price for heating fuel and motor fuel to consumers and licensees within the province

The maintenance of a viable rural independent dealer network which allows for petroleum product service in all parts of the province is extremely important.

The Commission notes that the urbanization of our Island population and the related shift in traffic patterns over the past decade, in particular, have severely strained outlet volumes and related dealer viability in the rural parts of our province.

The Commission must make its decision within the authority of the Petroleum Products Act and takes particular note of the requirement as outlined in Section 29 (1) that "The price charged by a wholesaler or wholesaler-retailer for each grade of heating fuel and motor fuel shall be a common and universal price to all retailers throughout the province."

The Commission accepts that the cost of providing both self-service and full-service motor fuel dispensing has increased. The rising labour costs have had a proportionately greater impact on full-service operations. Steadily increasing wage rates coupled with shrinking volumes have significantly impacted those operators committed to providing full-serve as a method of petroleum dispensing. Indeed, the situation has deteriorated to the point where many of these operators have requested the Commission's permission to abandon full service as a sales option.

The Commission considers the full-serve option as an important element of service to the motoring public and, as much as reasonable, that option should be provided in all regions of the province. For these reasons the Commission finds that an increase in both minimum and maximum margins for full-service is warranted. These changes will support dealer viability and help maintain the full-service option for consumers.

The Commission has determined that while an increase in overall dealer margin for self-service is warranted it can be achieved without an across the board increase in the maximum retail dealer margin.

The Commission has determined that a more effective means of addressing the issues raised in the submission is achieved by adjusting the range of the permitted margin for self-service dispensing. Therefore, the minimum margin will be adjusted upwards but the maximum margin will remain unchanged. Upon a full review of the evidence the Commission determines this action will support dealer viability and the existence of a vibrant rural dealer network.

The Commission also recognizes the value of more timely reviews of retail dealer margins and, accordingly, will consider another review of the matter within the next 24-36 months.

Approved changes will be introduced, as outlined in the attached Order.

5. Disposition

[9] An Order will therefore issue approving an amendment to the existing gasoline and diesel dealer margin range for self serve and an increase in dealer margins for full serve.

IN THE MATTER of the application by the P.E.I. Retail Gasoline Dealers Association for approval of an increase in the allowable retail gasoline and diesel margin.

Order

UPON reviewing and considering the application and the submissions filed herein;

NOW THEREFORE, for the reasons given in the annexed Reasons for Order;

IT IS ORDERED THAT

1. The minimum and maximum mark-up between the wholesale price to the retailer and the retail price to the consumer of motor fuel shall be amended as follows:

	Existing	Effective April 1, 2012
Self-serve	4.5 - 6.5	5.5 - 6.5
Full-serve	6.5 -9.5	7.5 - 10.5

DATED at Charlottetown, Prince Edward Island, this 29th day of March, 2012.

BY THE COMMISSION:

(Sgd) *Maurice Rodgerson*

Maurice Rodgerson, Chair

(Sgd) *Allan Rankin*

Allan Rankin, Vice-Chair

(Sgd) *Michael Campbell*

Michael Campbell, Commissioner

NOTICE

Section 12 of the ***Island Regulatory and Appeals Commission Act*** reads as follows:

> *12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.*

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written **Request for Review**, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13.(1) and 13(2) of the ***Act*** provide as follows:

> *13.(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.*
>
> *(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.*