

NOVA SCOTIA ENERGY BOARD

IN THE MATTER OF THE PETROLEUM PRODUCTS PRICING ACT

- and -

IN THE MATTER OF AN APPLICATION by **STEVE R. MURPHY'S AUTO SERVICES LTD. and WSK INVESTMENTS LIMITED** requesting that the Board undertake an investigation under s. 24(2)(a) of the *Petroleum Products Pricing Regulations* about the sufficiency of the current wholesale margin for self-service and full-service gasoline and diesel

BEFORE:

Stephen T. McGrath, K.C., Chair
Roland A. Deveau, K.C., Vice Chair
Richard J. Melanson, LL.B., Member

PARTICIPANTS:

STEVE R. MURPHY'S AUTO SERVICES LTD. and WSK INVESTMENTS LIMITED

Stephen R. Murphy
Wayne Pace

CONSUMER ADVOCATE

David J. Roberts, Counsel
Micheal Murphy, Counsel

CANADIAN FUELS ASSOCIATION

Carol Montreuil
Helen Bennett

CANADIAN ENERGY MARKETERS ASSOCIATION

David Knight

CONVENIENCE INDUSTRY COUNCIL OF CANADA

David Knight

IMPERIAL OIL LIMITED

Tommy Gelbman, Counsel
Adam Grotsky, Counsel

IRVING OIL LIMITED

James MacDuff, Counsel

SERVICE NOVA SCOTIA

Mark V. Rieksts, Counsel
Pernille Jakobsen Esaiw
Connor Dobrota

THE SCHOLTEN GROUP

Jerry Scholten
Chris Scholten

BOARD COUNSEL: William L. Mahody, K.C.

HEARING DATE: August 6, 2025

**CLOSING
SUBMISSIONS:** August 27, 2025

DECISION DATE: November 25, 2025

DECISION:

1. The Board finds that the wholesale margin shall remain unchanged.
2. The Board approves a revised methodology for calculating the clean fuel adjustor by selecting the lesser of the maximum CFR credit price (adjusted annually for inflation and carbon intensity reductions) and the Argus Atlantic CFR compliance cost. This change takes effect January 9, 2026.
3. The clean fuel adjustor will be reviewed after December 31, 2026, unless otherwise ordered by the Board.

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1.0 SUMMARY

[1] Steve R. Murphy's Auto Services Ltd. and WSK Investments Limited applied to the Nova Scotia Utility and Review Board (NSUARB) under s. 24(2)(a) of the *Petroleum Products Pricing Regulations*, NS Reg 286/2009 (*Pricing Regulations*), requesting that the NSUARB investigate whether the current wholesale margin for self-service and full-service gasoline and diesel is just and reasonable. They submitted that relief was needed to “address the impact on the wholesale margin of NS rack-based pricing not declining in-step with the reduction in the Clean Fuel Regulations (CFR) Adjustor ... and the impact on the wholesale margin of NS rack-based pricing for both gasoline and diesel of the trend over time of margin deterioration as reflected in Rack to Retail”. The applicants sought an increase in the wholesale margin of 4.58 cents per litre (cpl) for gasoline and 4.99 cpl for diesel, retroactive to June 28, 2024.

[2] On April 1, 2025, on proclamation of the *Energy and Regulatory Boards Act*, SNS 2024, c 2, Sch A, the Nova Scotia Energy Board succeeded the NSUARB in all matters relating to the *Petroleum Products Pricing Act*, SNS 2005, c 11, and the *Pricing Regulations*.

[3] Under the *Pricing Regulations*, the Board sets weekly gasoline and diesel prices based on an average of the daily New York Harbor spot price (NYH). However, most wholesalers obtain their petroleum products from suppliers based on pricing relative to Halifax wholesale rack prices (Rack). The applicants claimed that they observed an increased differential between the NYH and Rack over several months in 2024, which eroded the wholesale margin under the regulations’ price-setting regime, negatively impacting wholesalers or retailers, depending on their supply contracts.

[4] The applicants also asked for an interim order under s. 24A of the *Pricing Regulations* increasing the wholesale margin immediately. Pending a full review of the application, the NSUARB issued an Interim Order on December 23, 2024, increasing the wholesale margin for self-service and full-service gasoline and diesel by 3.0 cpl, up to a total of 13.84 cpl for gasoline and 14.84 cpl for diesel. The interim relief was incorporated into the weekly setting of gasoline and diesel prices, effective January 3, 2025.

[5] Board Counsel engaged Jason Parent, of Signal Energy Consulting, to prepare a report in this matter. While he did not recommend a change in the wholesale margins, his report confirmed that there was a net change in the adjusted acquisition cost to the regulated benchmark price differential by about 1.8 cpl, when compared to Rack. He concluded this was likely due to a disconnect between the cost of compliance with the federal *Clean Fuel Regulations*, SOR 2022-140 (CFR) (and its impact on Rack prices) and the current method for calculating the clean fuel adjustor. He recommended adjusting how the clean fuel adjustor is calculated to select the lesser of the maximum price for credits transferred through the Canadian credit clearance mechanism under the CFR (CFR credit price) and the Argus Atlantic CFR compliance cost.

[6] The Convenience Industry Council of Canada and the Canadian Energy Marketers Association (Associations) also filed written evidence in this proceeding. The Associations supported a change in the method for calculating the clean fuel adjustor. They also supported the applicants' request asking the Board for a temporary increase in the regulated wholesale margins for gasoline and diesel to provide relief to wholesalers for the "margin erosion" in 2024 linked to the understated clean fuel adjustor. The

Consumer Advocate opposed a temporary increase to the wholesale margins, which effectively would result in retroactive relief to wholesalers.

[7] The Board denies an increase to the wholesale margins (including a temporary increase to recover past losses) but concludes that the methodology for calculating the clean fuel adjustor should be changed. The Board finds that:

- the methodology for calculating the clean fuel adjustor will be amended by selecting the lesser of the maximum CFR credit price under the Canadian credit clearance mechanism (adjusted annually for inflation and carbon intensity reductions) and the Argus Atlantic CFR compliance cost;
- the revised methodology for determining the clean fuel adjustor will become effective with the Board's weekly price-setting of regulated petroleum product prices on January 9, 2026. The interim wholesale margin increase will end when the revised clean fuel adjustor takes effect; and
- the clean fuel adjustor amounts will be reviewed by the Board after December 31, 2026, unless otherwise ordered by the Board.

2.0 BACKGROUND

[8] In 2005, the Province of Nova Scotia enacted the *Petroleum Products Pricing Act*, permitting regulation, with certain exceptions, of the price of gasoline and diesel oil (regulated petroleum products). The Minister of Service Nova Scotia and Municipal Relations administered the regulatory regime until the *Pricing Regulations* were amended to transfer this authority to the Board, effective October 1, 2009.

[9] The *Pricing Regulations* outline the purpose of regulating gasoline prices:

- 2 The purpose of these regulations is to ensure just and reasonable prices for specified petroleum products, taking into consideration all of the following objectives:
 - (a) preserving availability of specified petroleum products in rural areas;
 - (b) stabilizing prices of specified petroleum products;

- (c) minimizing the variances in prices of specified petroleum products across the Province.

[10] The Board sets the price of gasoline and diesel on a weekly basis, or more often, if an interruption to the regular weekly price setting is necessary. Certain components of the price, such as retail mark-ups and wholesale margins, are set by the Board in periodic reviews and remain the same until the next review. There is no set period for reviewing these components. They are reviewed, when necessary, in a public hearing. In the past, it has been years between such updates.

[11] The wholesale margin was last reviewed by the NSUARB in a decision reported at 2023 NSUARB 154 (M10853). That proceeding also addressed the CFR that became effective July 1, 2023. Just before the June 2023 wholesale margin hearing, the Nova Scotia Governor-in-Council amended the *Pricing Regulations*, introducing a clean fuel adjustor to allow the recovery of CFR compliance costs. Among other findings in its decision, the NSUARB increased the wholesale margin for both gasoline and diesel by 1.19 cpl for self-service and full-service, resulting in total wholesale margins of 10.84 cpl for gasoline and 11.84 cpl for diesel, effective July 7, 2023. The decision also introduced a clean fuel adjustor in its weekly price-setting of petroleum products, as explained later in this decision.

3.0 CURRENT APPLICATION

[12] On November 20, 2024, Steve R. Murphy's Auto Services Ltd. and WSK Investments Limited applied to the NSUARB, asking it to investigate whether the current wholesale margins for gasoline and diesel is just and reasonable, including a request for

an interim order under s. 24A of the *Pricing Regulations*, which would increase the wholesale margin retroactive to June 28, 2024.

[13] The applicants submitted that the relief was needed to “address the impact on the wholesale margin of NS rack-based pricing not declining in-step with the reduction in the Clean Fuel Regulations (CFR) Adjustor... and the impact on the wholesale margin of NS rack-based pricing for both gasoline and diesel of the trend over time of margin deterioration as reflected in Rack to Retail”. The Government of Canada implemented clean fuel standards under the CFR, which imposed the first compliance period for reducing the carbon intensity of gasoline and diesel starting July 1, 2023. The NSUARB issued an Order implementing the first clean fuel adjustor, effective July 7, 2023, as part of Matter M10853 noted above. The NSUARB last revised and set the clean fuel adjustor amount in its Decision, 2024 NSUARB 111.

[14] Upon receipt of this application, the NSUARB considered the applicants’ request for an interim order increasing the wholesale margin. Under s. 24A(2) of the *Pricing 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 a public hearing or inquiry can be held, as required by subsection 24(3). Section 24A(1) of the *Pricing Regulations* defines an “emergency situation” as a situation, that in the Board’s opinion, threatens the security of the petroleum supply, including:

- 24A** (1) (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.

[15] As part of its regulatory oversight, the Board monitors the petroleum product market in the province, including any correlation between the daily New York Harbor spot price (NYH) and regulated prices set by the Board as compared to Halifax wholesale rack prices (Rack). The Board has no jurisdiction allowing it to regulate Rack prices or establish the wholesale margin based directly on Rack pricing. The NSUARB observed that, in the latter part of 2024, the differential between the NYH and Rack increased over several months. This eroded the secondary wholesalers' portion of the wholesale margin under the price-setting regime in the *Pricing Regulations*. The NSUARB concluded that this could threaten the security of supply of petroleum products, including creating a shortage of supply to wholesalers and wholesaler-retailers that could affect one or more zones, including the retailers in such zones. The NSUARB was satisfied that an increase in the wholesale margin was warranted on an interim basis pending the completion of a full investigation. On December 23, 2024, the NSUARB issued an Interim Order (2024 NSUARB 215) increasing the wholesale margin for gasoline and diesel by 3.0 cpl, to be incorporated into the weekly setting of regulated petroleum product prices, effective on January 3, 2025.

[16] Also on December 23, 2024, the NSUARB issued a Notice of Public Hearing and a Hearing Order initiating the current proceeding under s. 24(1) of the *Pricing Regulations* to investigate whether the wholesale margin previously set by the NSUARB continued to be just and reasonable. Given the issues raised by the application, this matter included a review of the clean fuel adjustor.

[17] Board Counsel engaged Jason Parent, of Signal Energy Consulting (Signal), to prepare a report in this matter. While Mr. Parent did not recommend a change

in the wholesale margins, his report confirmed that there was a net change in the adjusted acquisition cost to the benchmark price differential, which increased by 1.81 cpl for gasoline and by 1.85 cpl for diesel, when the regulated prices for these products were compared to Rack. He concluded this was likely due to a disconnect between the costs of CFR compliance (and its impact on Rack prices) and the current method for calculating the clean fuel adjustor. He recommended adjusting how the clean fuel adjustor is calculated by selecting the lesser of the maximum CFR credit price under the Canadian credit clearance mechanism and the Argus Atlantic CFR compliance cost.

[18] The Convenience Industry Council of Canada and the Canadian Energy Marketers Association, in evidence filed in this proceeding, supported a change in the method for calculating the clean fuel adjustor. They also asked the Board for a temporary increase in the regulated wholesale margins for gasoline and diesel to provide relief to wholesalers for the “margin erosion” in 2024 linked to understated clean fuel adjustor calculations. Mr. Parent and the Associations also responded to information requests about their written evidence.

[19] Several industry associations, wholesalers and retailers, including the applicants, the Consumer Advocate and Service Nova Scotia, participated in this proceeding and provided written submissions on the issues. The Board’s hearing was held on August 6, 2025, with some parties appearing before the Board in person and some appearing virtually. The applicants, Stephen Murphy and Wayne Pace, testified at the hearing, as well as Mr. Parent and David Knight (the latter testifying for the Associations). Written submissions were completed on August 27, 2025.

4.0 ANALYSIS AND FINDINGS

4.1 Wholesale Margin Adjustment

[20] Except for ethanol, the *Pricing Regulations* say the benchmark price for regulated petroleum products is the New York Harbor commodity price as reported by specified reporting services. While the impetus for this proceeding was concerns raised by industry about the widening differential between the NYH price and Rack, the Board also undertook a full review of the wholesale margin. Section 24(1)(b) of the *Pricing Regulations* allows the Board to investigate, on its own motion, whether the fixed wholesale price for regulated petroleum products is just and reasonable.

[21] One of the key components of the fixed wholesale price is the wholesale margin, which is calculated in accordance with s. 17(4) of the *Pricing Regulations*. The wholesale margin was initially set based on historical data about this margin, as contemplated by s. 17(4)(a) of the *Pricing Regulations*. Later reviews focused on whether there had been an increase in wholesalers' operating costs that impacted on the previously established margin. The last wholesale margin review in 2023 also looked at acquisition costs (see M10853).

[22] On the same date as the Hearing Order, the NSUARB wrote to the regulated wholesalers requesting they supply data to Signal like that collected in 2023, as well as information about costs related to complying with the CFR. The wholesalers were asked to provide the following information from 2022 to 2024 inclusive:

1. Sales volumes by year and separated by product type (gasoline, diesel, etc.).
2. Acquisition costs (or rack discount) by product type (regular gasoline and diesel fuel) by year.
3. Posted wholesale rack price (related to the sale of product to wholesale customers) by product type and by year (if applicable).

4. Detailed costs related to the wholesaling of fuel resulting from Federal Clean Fuel Regulations and/or other carbon pricing.
5. Any/all other costs related to fuel wholesaling, by year (broken down into components that would allow the consultant to categorize costs as storage, capital costs, or operating & maintenance, by product type, if possible).

[Board Letter, February 5, 2025, p. 2]

[23] The petroleum products industry is sophisticated and competitive. Operating costs and acquisition costs are commercially sensitive information. The Board followed a process for data collection like the one used in prior reviews to safeguard the confidentiality of this information. The data was transmitted to a secure Board repository. Participants were not able to see the raw data collected for use by Signal. Consolidated data was presented to the Board by the consultant in a manner that avoided revealing the acquisition costs and operating costs of individual wholesalers.

[24] Signal prepared a report for Board Counsel that was filed in this proceeding. Mr. Parent was accepted by the Board as an expert qualified to give opinion evidence about petroleum markets, economics and products pricing.

4.2 Operating and Acquisition Costs

[25] While acquisition costs are a type of operating cost, they are addressed in a conceptually different manner because the NYH and a portion of the wholesale margin are used as a proxy for this expense. The process established in the 2021 and 2023 wholesale margin reviews was designed to alleviate concerns about disclosure of sensitive commercial information and obtain data on acquisition costs that had not previously been supplied. Acquisition costs are discussed separately from operating costs in this decision.

[26] Signal assessed the data provided by wholesalers and made findings about the wholesale margin based on operating costs and acquisition costs relative to the

benchmark price. The operating costs factors were assessed based on how the costs of wholesaling fuel have changed since 2022. Signal analysed acquisition costs to determine how the costs to purchase regulated fuels have changed relative to the Board's regulated benchmark price since 2022.

4.2.1 Operating Costs

[27] Signal received data from 10 wholesale market participants whose combined volume of gasoline and diesel sales represented most of the transactions in the province. Signal concluded the data provided a strong representative sample of the Nova Scotia market.

[28] Six of the ten wholesalers provided operating cost data for at least part of the 2022 to 2024 evaluation period. Signal analysed the data based on the assumption that the 2023 NSUARB 154 decision on the wholesale margins (based on 2022 data) was "correct" and "fair" so that Signal focused its analysis on what had changed since then.

[29] Several wholesalers provided detailed commentary about the data. Like in previous proceedings, the operating cost data was not segregated between diesel and gasoline. Data was adjusted to exclude costs associated with non-regulated activities.

[30] Signal checked the quality of the data and did not find significant issues, concluding that the submitted data was suitable for analysis. Data was removed only if found to be clearly outside the scope of supporting wholesaling of fuel. Costs were audited to ensure they were treated consistently over the evaluation period. Cost categories were consolidated into a single cost figure for each year and Signal applied volume weighted adjustments. Overall, Signal considered that the data presented reasonable results.

[31] Signal noted that although the costs levels varied among the wholesalers in any given year, the movement of each company's per litre costs was consistent over the evaluation period. Signal calculated the median average operating cost change from 2022 to 2024 and a volume-weighted average change in the per litre costs from 2022 to 2024. The volume-weighted change represents the aggregate change in cost for all companies. The median operating cost change was 0.0007 cpl, and the volume-weighted average operating cost change was -0.0123 cpl. Based on these results, Signal concluded that total operating costs were relatively stable over the evaluation period and did not recommend a change to the wholesale margin based on a change in operating costs.

4.2.2 Acquisition Costs

[32] Nine wholesalers provided useful acquisition costs data and/or rack discount data. Seven of the nine provided data for the entire evaluation period. Three provided data that only gave their discount/premium to Rack and the rest submitted actual acquisition costs per litre or total acquisition costs and the corresponding volume for the evaluation period to calculate per litre acquisition costs.

[33] In keeping with the analysis of operating costs, Signal vetted and normalized the acquisition cost data. One wholesaler's data was excluded as it was missing information. All other data was used in the analysis. There was consistency among companies with an expected range due to their relative size (i.e., based on sales volume). Signal reported that there was also consistency between reported rack discounts, amongst those who provided the information. Only one minor outlier was found for diesel. Signal regarded the results as reasonable.

[34] Signal calculated a volume-weighted average change in adjusted differentials between acquisition costs and benchmark prices between 2022 and 2024, resulting in changes of 1.81 cpl for gasoline and 1.85 cpl for diesel. The adjusted differential represents Rack prices after deducting the Board's CFR adjustor amounts. Signal concluded that the data showed that there was a disparity between the acquisition costs and the Board's current method for determining the clean fuel adjustor. This misalignment between acquisition costs and benchmark led to a reduced margin for wholesalers. Signal stated that the nature of any recommended pricing change required "a better understanding of what influenced the observed disconnect between acquisition costs and benchmark prices".

[35] Signal identified that when the Government of Canada introduced the CFR in 2023, the NSUARB implemented a clean fuel adjustor to address the costs incurred by producers and importers and the flowthrough of those costs into the price of fuels in Nova Scotia. The clean fuel adjustor used by the NSUARB was based on the maximum CFR credit price for transfers through the compliance-credit clearing system. The CFR adjustor rates were changed as the CFR began to require more credits to meet compliance.

[36] After engaging a consultant to provide additional reports and recommendations and seeking comments from interested parties, in June 2024, the NSUARB changed the metric used for the CFR adjustor to the lower of the maximum CFR credit price (based on 2024 carbon intensity limits and inflation as of April 2024) and the Argus Canadian CFR Compliance Cost (2024 NSUARB 111). However, based on industry feedback and the wholesale data provided, Signal explained that after June 2024 there was a growing misalignment between Rack prices and the regulated benchmarks.

Signal said despite the sound rationale presented to the NSUARB for the recommendation to use the Argus Canada CFR figure, this approach may not be aligned with the incurred CFR costs for primary suppliers in the province and how those costs have been passed along into wholesale pricing at the Rack. This misalignment was likely a significant contributor to the gap between acquisition costs and benchmark prices, which reduced the available margin for wholesalers.

[37] Signal stated:

Still, the prescribed remedy to the observed issue should be tailored to address the underlying problem(s), where possible, instead of simply applying a rear facing measurement of the observed disconnect in prices on a go-forward basis.

[Exhibit S-3, p. 24]

Signal analysed other available CFR metrics and found others that were more consistent with the acquisition costs incurred in the market after the NSUARB changed its price formula in June 2024. Signal identified that the maximum CFR credit price approach and the Argus Atlantic CFR Compliance Costs are more accurate metrics.

[38] Signal proposed that the Board address the change in the volume-weighted difference between acquisition costs and benchmark prices by changing the calculation for the clean fuel adjustor to use the maximum CFR credit price under the Canadian credit clearance mechanism or the Argus Atlantic CFR compliance cost, whichever is lower. Signal considered that businesses will look for the lowest-cost compliance option available. Thus, Mr. Parent recommended that the Board should set the adjustor based on the lower of the two recommended measures.

[39] The Consumer Advocate, Canadian Fuels Association and the Associations endorsed Signal's recommendation to address the "disconnect between acquisition costs

and benchmark prices” by amending the clean fuel adjustor rather than changing the wholesale margin. The Consumer Advocate submitted:

The Consumer Advocate submits the evidence assembled by Signal Energy and the testimony at the hearing strongly support Signal’s recommendation to change the basis of calculating the Clean Fuel Adjustor amount in place of the interim increase of 3 cents per litre that had been applied to the wholesale margins for gasoline and diesel.

The evidence gathered by Signal Energy on the gap between acquisition costs and benchmark prices is the only evidence on the matter that is before the Board. Signal’s conclusion about the role the CFA amount played in causing that gap was unchallenged, as was Signal’s determination that the average increase in the gap between 2022 and 2024 was 1.81 cents per litre for gasoline and 1.85 cents per litre for diesel.

Both the Consumer Advocate and the Industry Associations that appeared before the Board agreed that a change in the methodology for computing the CFA amount was preferable to repeated applications for increases in the wholesale margins to offset the pressure on the margins caused by underestimating the CFA amount.

[Consumer Advocate, Closing Submissions, pp. 3-4]

[40] Likewise, the Associations agreed that the solution to the present issue of increased acquisition costs should be addressed through amendments to the formula used to calculate the clean fuel adjustor:

- a. The Associations concur with Signal that loss of margin opportunity as evidenced by the acquisition cost–benchmark differential is due to the clean fuel adjustor component of regulated pricing being understated.
- b. The Associations concur with Signal that resolution of the situation should be done by revising the clean fuel adjustor calculation and terminating the interim 3.0 cpl wholesale margin increase when the revised clean fuel adjustor calculation takes effect.

Clean Fuel Regulations compliance cost recovery is intended by the federal government to be a pass-through cost to the end motorist. It is dynamic and a component of product cost, much the same as the benchmark price itself. As such, accounting for CFR compliance cost recovery should be done through the weekly regulated cost calculation, not gross margin as reflected by either the wholesale or retail margin.

[Associations Closing Submissions, pp. 3-4]

[41] The Canadian Fuels Association agreed that the solution was to adjust the clean fuel adjustor formula:

Additionally, Signal’s review identifies an increase in the adjusted acquisition cost to benchmark price differential of +1.81 cents per litre for gasoline and +1.85 cents per litre for diesel. This shift is likely due to a misalignment between the costs of CFR compliance,

which affect rack prices, and the Board's current methodology for calculating the clean fuel adjustor. Canadian Fuels supports Signal's proposal to revise the clean fuel adjustor calculation to select the Argus Atlantic CFR compliance cost.

[Canadian Fuels Association, Closing Submissions, p. 1]

4.2.3 Findings

[42] The Board is satisfied that Signal's recommendations are based on an appropriate analysis of the submitted wholesaler data, and that the data itself is representative of the Nova Scotia market.

[43] The Board accepts Signal's evidence that there has not been a material change in operating costs since the NSUARB's 2023 review of the wholesale margin. Further, in the circumstances, while there appear to have been market pressures on the wholesale margin caused by increasing acquisition costs, the Board finds that an increase in the wholesale margin is not the appropriate way to address the "disconnect" between acquisition costs and benchmark prices. The "disconnect" was not substantively caused by a wholesale margin that is too low. Instead, the reduction in the available margin for wholesalers has been caused by a misalignment between changes in Rack and regulated prices that has not been wholly reflected in the clean fuel adjustor formula. That issue will be addressed by amending the clean fuel adjustor discussed later in this decision.

[44] Thus, the Board finds that a permanent change in the wholesale margin going forward is not warranted. The request for a temporary increase in the wholesale margin for past losses is discussed in the following section.

4.3 Request for temporary increase in wholesale margin for past losses

[45] The applicants and the Associations consider that extra relief is warranted to compensate for the erosion in margin caused by the current CFR calculation used in the pricing formula. The Associations requested that the Board temporarily increase the

margin by 1.81 cpl for gasoline and 1.85 cpl for diesel over and above any other margin adjustment. The Associations also asked the Board to maintain the temporary 3.0 cpl increase until equivalent sales volumes to those achieved between July 1, 2024, and December 31, 2024, have been reached.

[46] The Consumer Advocate submitted that the Board should not allow a retroactive component to the wholesale margin, observing that no evidence had been filed to support a retroactive increase or the amount of such an adjustment. Further, the Consumer Advocate considered that the Board cannot be certain that a retroactive increase to compensate for margin losses between June and December 2024 would be passed down to the wholesalers. He cited Mr. Pace's testimony in the hearing that not all of the 3.0 cpl adjustment to the margin set by the NSUARB in January 2025 had reached the secondary wholesalers, and Mr. Knight's testimony agreeing that the full retroactive margin increases would not fully flow to retailers.

4.3.1 Findings

[47] The Board denies the request to approve a temporary increase to the wholesale margins to recover past losses that may have occurred between June and December 2024. As noted by the Consumer Advocate, no evidence was filed to show what the amount of a temporary increase would be. Further, the Board observes that the NSUARB issued its Order in this matter granting an interim increase of 3.0 cpl to the wholesale margin, which has been in effect since January 3, 2025. This was issued to prevent any further potential losses for wholesalers. Finally, and more importantly, it is a fundamental principle of ratemaking that rates that effectively apply retrospectively to recover past losses should be avoided, except in exceptional circumstances.

4.4 Clean Fuel Regulations (Clean Fuel Adjustor) - Background

[48] The *Canadian Environmental Protection Act, 1999*, SC 1999, c 33, allows the Government of Canada to prescribe certain standards for fuels and to prohibit importing or selling fuels that do not meet the prescribed requirements (ss. 139 and 140). The federal government prescribed the CFR based on this authority. A regulatory impact analysis statement for the CFR, quoted in the NSUARB's 2023 decision, describes them as follows:

The Clean Fuel Regulations (the Regulations) will require gasoline and diesel primary suppliers (i.e. producers and importers) to reduce the carbon intensity (CI) of the gasoline and diesel they produce in, and import into, Canada from 2016 CI levels by 3.5 grams of carbon dioxide equivalent per megajoule (gCO₂e/MJ) in 2023, increasing to 14 gCO₂e/MJ in 2030. The Regulations will also establish a credit market whereby the annual CI reduction requirement could be met via three main categories of credit-creating actions: (1) actions that reduce the CI of the fossil fuel throughout its lifecycle, (2) supplying low-carbon fuels, and (3) supplying fuel and energy in advanced vehicle technologies. Parties that are not fossil fuel primary suppliers would be able to participate in the credit market as voluntary credit creators by completing certain actions (e.g. low-carbon fuel producers and importers). In addition, the Regulations repeal the *Renewable Fuels Regulations* (RFR) but retain the minimum volumetric requirements (at least 5% low CI fuel content in gasoline and 2% low CI fuel content in diesel fuel and light fuel oil) currently set out in the RFR.

[NSUARB Decision, M10853, para. 95]

[49] The CFR came into force on June 21, 2022. Since then, it has been possible to register and start creating credits for the credit market set up under the CFR. However, the annual requirement to reduce the carbon intensity of gasoline and diesel produced or imported into Canada did not come into force until July 1, 2023. The first compliance period ended on December 31, 2023, and annual compliance periods continued to apply after that.

[50] Suppliers must use compliance credits that they create or buy under a compliance-credit transfer system to satisfy their carbon intensity reduction requirement. If a primary supplier is not able to satisfy their reduction requirements after the compliance period, a market-clearing mechanism under the regulations may facilitate credit

acquisition. The CFR set a maximum price for credits transferred through the credit clearance mechanism of \$300, adjusted for inflation from the 2022 base year. A compliance fund mechanism is also available to satisfy up to 10% of a supplier's annual reduction requirements. The price under this mechanism is set at \$350 (in 2022 dollars adjusted for inflation). A primary supplier can also carry forward up to 10% of its reduction requirement into a future compliance period, with a maximum deferral of five years. An annual interest rate of 5% applies to any deferred amount.

[51] By design, the CFR will increase supplier costs and, ultimately, prices paid by consumers. The objective is to drive up costs for products such as traditional gasoline and diesel and provide revenue to low-carbon energy suppliers to make low-carbon fuels and energy sources a more economic choice for consumers, as noted in the regulatory impact analysis statement quoted in the NSUARB's 2023 decision:

The Regulations will increase production costs for primary suppliers, which will increase prices for households and industrial users. Credit creation will also generate revenue for low-carbon energy suppliers, which will make low-carbon fuels such as renewable diesel and energy sources such as electricity relatively less expensive. This will lead to decreased end-use demand for fossil fuels and increased end-use demand for lower-carbon fuels and energy sources, thereby reducing national GHG emissions.

[NSUARB Decision, M10853, para. 98]

[52] The Province amended the *Pricing Regulations* effective June 2, 2023. The changes to the regulations deemed the fixed wholesale price for each petroleum product under s. 17(1) to include a clean fuel adjustor amount, on and after a date set by the Board, based on a "just and reasonable" methodology "in light of the application of the *Clean Fuel Regulations* (Canada) or any other regulatory instrument made under the *Canadian Environmental Protection Act, 1999* (Canada) and the *Environmental Violations Administrative Monetary Penalties Act* (Canada)" (s. 17A).

[53] In its decision in Matter M10853, the NSUARB implemented a clean fuel adjustor amount, effective 12:01 a.m. on Friday, July 7, 2023, the first regular weekly price-setting after the compliance requirements under the CFRs came into effect. The clean fuel adjustor amounts were based on the maximum CFR credit price of \$300 for transfers through the compliance-credit clearing mechanism, under the CFR, adjusted for inflation. The formula adopted by the NSUARB, and now the Board, to calculate the maximum CFR credit price is described at para. 166 of its decision in Matter M10853 (2023 NSUARB 154).

[54] By Order dated December 20, 2023, the NSUARB amended the clean fuel adjustor to account for changes to the CFR requiring a further carbon-intensity limit reduction of 1.5 CO₂e per megajoule of energy and inflation.

[55] The NSUARB reviewed and amended the clean fuel adjustor amount effective June 28, 2024 (2024 NSUARB 111). In that proceeding, the NSUARB engaged consultant R Cube Economic Consulting Inc. to review the matter and recommend if a full review should be conducted or if changes to the interim CFR Adjustor should be made. The consultant recommended that the interim adjustor be updated to use Argus Media Inc. data for the Canadian cost of compliance with the regulations. Shortly thereafter, Argus changed its CFR Compliance Cost methodology to report cost using a traditional survey assessment methodology. The consultant stated that this did not change his recommendation. The NSUARB accepted his recommendation but also implemented a maximum cost of compliance (effectively a cap on the clean fuel adjustor amount). The maximum cost was based on the maximum CFR credit price of \$300 adjusted for inflation. The Order stated:

1. The clean fuel adjustor amount applied to gasoline will be based on the average of the daily Canada CFR compliance cost – gasoline, since its previous price setting, and the adjustor applied to diesel will be based on the average of the daily Canada CFR compliance cost – diesel, since its previous price setting.
2. The maximum amount of the adjustor for both gasoline and diesel will be capped based on the Board's current methodology for the adjustor (\$300/tonne credit price, adjusted for inflation). Adjusting these amounts for the most up-to-date inflation data to May 31, 2024, the maximum amounts will be 5.46 cents per litre for gasoline and 6.09 cents per litre for diesel.

[2024 NSUARB 111]

4.5 CFR Adjustor and Impact on Wholesale Margins

[56] As noted earlier in this decision, Signal reviewed the impact that the NSUARB-approved changes made to the clean fuel adjustor (also referred to as the CFR adjustor) in June 2024 had on wholesale margins and the impact on the spread between the NYH spot price and Rack.

[57] Because the amount represented by the CFR adjustor should presumably be included in the unregulated Rack price, it affects the acquisition costs to wholesalers that purchase their fuel on a Rack basis. If the amount of the adjustor is lower than the amount embedded in Rack pricing, it would decrease the available margins for wholesalers by increasing the acquisition cost of fuel relative to the price they can sell it for.

[58] Signal provided a background on the CFR and the clean fuel adjustors approved by the NSUARB:

In June 2022, the Government of Canada introduced the new Clean Fuel Standards (CFR) under the Canadian Environmental Protection Act, 1999. The new CFR was designed to replace the current Renewable Fuel Regulations (RFR) in Nova Scotia on July 1, 2023. The CFR requires primary suppliers (producers and importers) of liquid fossil fuel to reduce the carbon intensity of the liquid fossil fuels they produce and import into Canada by 2.4 gCO₂e/MJ in 2022 (from 2016 levels) to 12 gCO₂e/MJ in 2030.

Producers and importers of gasoline and diesel in Nova Scotia can comply with the regulation by blending conventional motor fuels (gasoline or diesel) with lower-carbon intensity renewable fuels, investing in producing lower-carbon intensity fuels or buying credits on a secondary market. Each pathway to compliance creates a cost for the producer

or importer that gets incorporated into the wholesale price charged by primary suppliers selling into the market.

...To address the CFR issue, the Board established a "clean fuel adjustor" meant to address the costs incurred by producers and importers and acknowledge the passing along of those costs into fuel prices in Nova Scotia. The Board first applied the clean fuel adjustor for regulated gasoline and diesel oil beginning on July 7, 2023. At that time, the adjustor was based on the maximum credit price for transfers through the compliance-credit clearing system (adjusted for inflation), and the initial charges were 3.74 cents per litre for gasoline and 4.17 cents per litre for diesel. The rates for the clean fuel adjustor were set based on evidence provided at a public hearing on wholesale margins (Matter M10853).

The adjustor rates were changed when the CFR increased its stringency in 2024. Then, the Board revised its calculation of the clean fuel adjustor (effective June 28, 2024) to reflect Argus' reported Canadian CFR Compliance Cost, and that methodology remains in place. We will further examine the role of CFR costs later in this report

[Exhibit S-3, pp. 9-10]

[59] The current clean fuel adjustor is calculated using the lesser of Argus' reported Canadian CFR compliance cost and the maximum CFR credit price. The clean fuel adjustor was capped at the carbon intensity targets for 2024 and adjusted for inflation as of April 2024 at 5.46 cpl for gasoline and 6.09 cpl for diesel. As of January 1, 2025, the carbon intensity reductions have increased (i.e., become more onerous). Thus, the current maximum CFR credit price in the Board's formula does not account for the increased carbon intensity reductions and recent inflation amounts.

[60] During Signal's consultation process with wholesale participants, a common concern was that the costs associated with CFR compliance were contributing to the "disconnect" between Rack and regulated benchmark prices set by the Board, and the insufficient accounting for these costs in the regulated price-setting formula.

[61] Only three participants provided information on CFR compliance costs. Of these, the range of costs was broad due to the diversity of compliance strategies, the inventory of credits, and accounting practices for those costs. The higher end of the range of reported CFR compliance costs materially exceeded the amount provided by the clean

fuel adjustor and was more aligned with other available CFR cost metrics, specifically the maximum CFR credit price or the Atlantic CFR compliance cost, as reported by Argus, at least at the time the Signal report was prepared.

[62] Signal noted that it explored alternatives for calculating the CFR adjustor to determine if the increase in acquisition costs was related to the June 2024 changes to the CFR adjustor. The report included figures showing available margin until midway through 2024, when both gasoline and diesel showed a decrease in the margin available to downstream wholesalers. This reduction coincided with the timing of the NSUARB's change in the way the CFR adjustor was calculated since June 2024

[63] Signal's report only included the information up to December 31, 2024. At that time, the reported Argus Canadian CFR compliance cost was well below the maximum CFR credit price or the Argus Atlantic CFR compliance cost. Signal noted that the change in acquisition costs for gasoline was about 1.81 cpl more than what the NSUARB provided for in its CFR adjustor, while it was 1.85 cpl more for diesel. If this shortfall were passed down the supply chain, it would reduce the amount of available wholesale margin, which could ultimately threaten the supply of fuel if left unaddressed.

[64] Signal noted that this change in 2024 and its impact on margins, although based on sound rationale at the time by the then Board Counsel consultant, did not appear to align with CFR compliance costs incurred in the local market by primary suppliers. This shortfall ultimately found its way into Rack pricing. Rack is generally reflected in the price secondary wholesalers pay to purchase fuel to supply their retailers.

[65] To address this issue, Signal examined the potential impact on available margins of a modified approach to calculate the clean fuel adjustor. Signal adopted a

formula using the lesser of the maximum CFR credit price through the credit clearance mechanism and the Argus Atlantic CFR compliance cost. Signal used the same volume weighted averages used to calculate the shortfall but applied the modified approach to the CFR adjustor. This method would have led to an increase in available margins of 1.61 cpl on gasoline and 1.79 cpl on diesel fuel, relative to the Canadian CFR compliance cost used by the Board after June 2024. These amounts account for almost all the decrease in available margins of 1.81 cpl and 1.85 cpl noted above.

[66] Due to the timing of the change in NYH to Rack and the erosion of available margins, Signal suggested that available wholesale margins could be returned to pre-June 2024 levels if this modified approach to setting the CFR adjustor is adopted.

[67] Signal outlined its recommendation to the Board as follows:

Based on our analysis of the evidence submitted by wholesalers, the net change in the adjusted acquisition cost to benchmark price differential increased for gasoline (1.81 cents per litre) and diesel (1.85 cents per litre). Our review also showed evidence that this shift was likely in response to a disconnect between the costs of CFR compliance (and its impact on rack prices) and the Board's current method for calculating its clean fuel adjustor. Our recommendation to the Board is to address the change in volume-weighted difference between acquisition costs and benchmark prices by adjusting how the clean fuel adjustor is calculated to select the lesser of the maximum credit price and the Argus Atlantic CFR compliance cost.

These recommendations should be considered in lieu of the interim increases implemented by the Board as part of this matter. If implemented by the Board, these recommendations are intended to replace the current interim wholesale margin increase of 3.0 cents per litre for gasoline and diesel [Emphasis added]

[Exhibit S-3, p. 31]

[68] The Associations agreed with Signal's recommendation to use the lesser of the maximum CFR credit price and the Argus Atlantic CFR compliance cost. The Canadian Fuels Association supported Signal's proposal to revise the adjustor to select the Argus Atlantic CFR compliance costs. It clarified that it did not regard the inclusion of "the lesser of" as necessary, but if the Board were to use "the lesser of", the maximum

CFR credit price should be updated annually after January 1st to reflect the current year's maximum CFR credit price adjusted for inflation. Irving and the Scholten Group made the same submission. The Canadian Fuels Association, Irving and the Scholten Group submitted that the Board could proceed solely with the Argus Atlantic CFR compliance cost.

[69] The Consumer Advocate supported replacing the interim 3.0 cpl adjustment to the wholesale margin with Signal's proposed formula setting the adjustor using the lesser of the maximum CFR credit price and the Argus Atlantic CFR compliance costs. The Consumer Advocate stated this approach reflects the market in which the main suppliers naturally seek out the lowest-cost means to meet their regulatory obligations, which reduces the risk that consumers will bear excessive prices.

[70] Imperial Oil was the only party to rebuff Signal's recommendation, claiming that its recommendation to adopt the Argus Atlantic CFR compliance cost was erroneously based on the assumption that the Argus Atlantic methodology reflected the formula adopted in 2024 by the New Brunswick Energy and Utilities Board (NBEUB). Imperial Oil stated that in 2024 the NBEUB revised the CFR compliance formula it uses in its price-setting by lowering the carbon intensity assumption for renewable diesel and adding an assumption that up to 10% of CFR compliance would be achieved through contributions to a compliance fund in periods in which the proxy credit price is greater than the cost of contributing to the fund. Imperial Oil asserted that Mr. Parent was wrong when he testified that the Argus Atlantic methodology included the compliance fund assumption. Imperial Oil stated that the NBEUB's prior 2023 formula used in its price-setting for calculating its adjustor did not contain the assumption about the compliance

fund contribution. Imperial Oil stated that the Argus Atlantic methodology is based on the NBEUB 2023 formula, not its 2024 formula.

4.5.1 Findings

[71] Except for Imperial Oil, no party opposed Signal's recommendation to change the calculation for the clean fuel adjustor to the lesser of the maximum credit price and the Argus Atlantic CFR compliance cost, although the Canadian Fuels Association, Irving and the Scholten Group suggested that the clean fuel adjustor could be based solely on the Argus Atlantic CFR compliance cost. Otherwise, they suggested that Signal's recommendation should be revised to adjust the maximum CFR credit price for inflation annually.

[72] The Board agrees with the Consumer Advocate that it is reasonable to expect suppliers in Nova Scotia to pursue the most cost-effective means of regulatory compliance. Consequently, this will reduce the risk that consumers will incur excessive fuel prices.

[73] The Board accepts Signal's evidence that the Board's current methodology to calculate the clean fuel adjustor does not reflect the full CFR compliance costs which are incorporated in Rack prices. Signal was also able to confirm that its recommended methodology (i.e., a formula using the lesser of the maximum CFR credit prices and the Argus Atlantic CFR compliance cost) was generally consistent with the 1.8 cpl margin difference between Rack and benchmark prices (i.e., 1.61 cpl on gasoline and 1.79 cpl on diesel fuel). For its analysis, Signal used the same volume weighted averages that were used to calculate the observed 1.8 cpl shortfall in margins since June 2024.

[74] The Board does not accept Imperial Oil's submission to reject Signal's recommendation in favour of adopting the NBEUB 2024 formula. First, the Board notes that the discussion about the NBEUB 2024 formula only arose in this matter in Imperial Oil's closing submissions. The 2024 model was not presented in evidence, although Mr. Parent was cross-examined about components of the 2024 model during the hearing. Further, the Board observes that Mr. Knight testified at the hearing that the New Brunswick government plans to eliminate the CFA adjustor in that province, which the Board understands will occur by the end of November 2025. However, Mr. Knight stated that the costs of CFR compliance will remain, notwithstanding this upcoming change.

[75] The Board finds that Signal's recommendation is an appropriate way to address the observed difference between Rack and benchmark prices. Addressing this issue will ensure the security of supply of petroleum products for customers in the province. The change in the volume-weighted difference between acquisition costs and benchmark prices should be addressed by adjusting the methodology used to calculate the clean fuel adjustor by selecting the lesser of the Argus Atlantic CFR compliance cost and the maximum CFR credit price under the Canadian credit clearance mechanism, subject to adjusting the latter for inflation and carbon intensity reductions on an annual basis as soon as those numbers are available after January 1st. The Board accepts Signal's recommendation to use the lower of these two amounts. As noted earlier, it is reasonable to expect suppliers to pursue the most cost-effective means of regulatory compliance with the CFR.

[76] Using the revised methodology is a transparent way to address any difference between Rack and benchmark prices due to CFR compliance costs. It

recognizes that compliance with the federal CFR carries a related cost that should be applied in the regulated pricing formula. The same result could be addressed by changing the wholesale margins, but this would not be as efficient as Rack prices are constantly changing due to the NYH market prices and can be volatile. Any regulatory process to address these changes would delay relief for this regulated industry. The revised methodology for determining the clean fuel adjustor amounts will become effective with the Board's weekly price-setting of regulated petroleum product prices on January 9, 2026.

[77] As noted earlier in this decision, after reviewing Signal's report the parties acknowledged that the "disconnect" between acquisition costs and benchmark prices should be addressed by adjusting the clean fuel adjustor rather than increasing the wholesale margins. Signal stated its recommendation should be considered in lieu of the interim increases implemented by the Board and its revised formula was intended to replace the current interim wholesale margin increase of 3.0 cpl for gasoline and diesel. The Board agrees. The interim increases will end on January 9, 2026, when the revised clean fuel adjustor formula is applied in the Board's weekly price-setting.

4.6 Clean Fuel Adjustor Review

[78] The Board finds that the clean fuel adjustor should continue to be reviewed on a regular basis. The Board heard evidence at the hearing that the CFR compliance market is still evolving and needs to be closely monitored. The compliance methods and related costs were still being reviewed by industry. Further, the carbon intensity targets become more stringent each year on January 1st and inflation must be considered. The Board finds that the next review will occur after December 31, 2026, unless otherwise

ordered by the Board. Before then, however, the clean fuel adjustor amounts shall be adjusted annually for inflation and carbon intensity and industry can apply to have the methodology reviewed if they consider that circumstances have changed.

5.0 SUMMARY OF FINDINGS

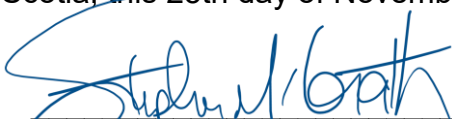
[79] Based upon its review of the evidence, submissions, and the objectives of the *Petroleum Products Pricing Act*, the Board denies an increase to the wholesale margins (including a temporary increase to recover past losses) but concludes that the methodology for calculating the clean fuel adjustor should be changed.

[80] The Board finds that:

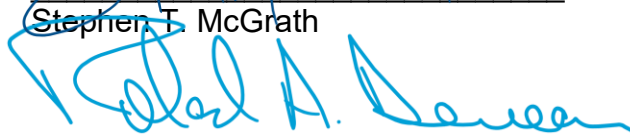
- the methodology for calculating the clean fuel adjustor will be amended by selecting the lesser of the maximum CFR credit price under the Canadian credit clearance mechanism (adjusted annually for inflation and carbon intensity reductions) and the Argus Atlantic CFR compliance cost;
- the revised methodology for determining the clean fuel adjustor will become effective with the Board's weekly price-setting of regulated petroleum product prices on January 9, 2026. The interim wholesale margin increase will end when the revised clean fuel adjustor takes effect; and
- the clean fuel adjustor amounts will be reviewed by the Board after December 31, 2026, unless otherwise ordered by the Board.

[81] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 25th day of November 2025.



Stephen T. McGrath



Roland A. Deveau



Richard J. Melanson