The "Interrupter"

The Interrupter is the mechanism available to the Board to respond to sudden significant spikes, up or down, in petroleum product prices.

Gasoline and diesel markets are global in nature and trade internationally 24 hours a day. News and information on economic factors, geo-political concerns or weather systems can have an immediate impact on these markets.

The *Petroleum Products Pricing Act* and *Regulations* permit the Board to "interrupt" the regularly scheduled weekly setting of prices and re-set the price to meet the objectives of just and reasonable prices and security of supply.

When it is necessary for the Board to invoke the "Interrupter", the prices of petroleum products will be changed at a time different than the regularly scheduled price setting. Notice of any such changes will be given to wholesalers and become effective at 12:01 a.m. the next morning.

The above conditions were set based on a public process in 2011. A copy of the full decision is attached for information.

DECISION

NSUARB-GO-11-03
2011 NSUARB 164

NOVA SCOTIA UTILITY AND REVIEW BOARD

RA

IN THE MATTER OF THE PETROLEUM PRODUCTS PRICING ACT AND REGULATIONS

- and -

IN THE MATTER OF A REVIEW respecting certain aspects of the *Petroleum Products Pricing Regulations*, in particular, the operation and effect of the interruption of the weekly benchmark prices for gasoline and diesel oil under s. 16(5) of the *Petroleum Products Pricing Act Regulations* (the "Interrupter")

BEFORE: Peter W. Gurnham, Q.C., Chair
Roland A. Deveau, Q.C., Acting Vice-Chair
Murray E. Doehler, CA, P. Eng., Member

SUBMISSIONS:

WILSON FUEL CO. LIMITED
David Collins

LOBLAWS INC.
Brian Magdee

RETAIL GASOLINE DEALERS ASSOCIATION OF NOVA SCOTIA
Graham Conrad

SUNCOR ENERGY INC.
Ward Elhard

SUBMISSION DEADLINE: **August 5, 2011**

DECISION DATE: **October 3, 2011**

DECISION: **Recommendations made concerning the application and use of the "Interrupter" (see paragraphs 69-71).**

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I INTRODUCTION

[1] Since October 1, 2009, the Nova Scotia Utility and Review Board (the "Board") has regulated the price of gasoline and diesel oil ("regulated petroleum products") under the *Petroleum Products Pricing Act*, S.N.S. 2005, c.11 (the "*Act*") and the *Petroleum Products Pricing Regulations* (the "*Regulations*"). For simplicity, this type of regulation will be referred to as "gasoline pricing regulation" as the context requires.

[2] Among other powers and duties assigned to the Board, the *Regulations* provide:

> **Benchmark Price**
> **16 (1)** Every Friday, at a time the Board considers appropriate, the Board must prescribe a benchmark price for each type of petroleum product.
>
> **(2)** A benchmark price prescribed by the Board is the average of the average of the daily high and low reported product prices for the petroleum product during the period since the last benchmark price adjustment for that petroleum product.
>
> ...
> **(5)** <u>If the Board considers it appropriate, the Board may prescribe a benchmark price at any time.</u>
> ...
>
> **Policies, directives and bulletins of Board**
> **25** The Board may issue general policies, directives, and bulletins consistent with the Act and these regulations about any matter within the Board's jurisdiction under these regulations, including any of the following:
> a) forward averaging corrections,
> b) additional margin that may be required for winter blending of the ultra-low sulphur diesel oil;
> c) <u>circumstances when it is appropriate for the Board to prescribe a benchmark price under subsection 16(5)</u>. [Emphasis added]

[3] Under s. 16(5) and s. 25 (c) of the *Regulations*, the Board has the power to invoke an "Interrupter" when market conditions warrant. The following bulletin issued by the Board describes its current approach:

> The Interrupter is the mechanism available to the Board to respond to sudden and significant spikes, up or down, in petroleum product prices.

> Gasoline and diesel markets are global in nature and trade internationally 24 hours a day. News and information on economic factors, geo-political concerns or weather systems can have an immediate impact on these markets.
>
> The Petroleum Products Pricing Act and Regulations permit the Board to "interrupt" the regularly scheduled weekly setting of prices and re-set the price to meet the objectives of just and reasonable prices and security of supply.
>
> The Board will consider using the "Interrupter" for a petroleum product when the market price for that product fluctuates by a range of +/- 6 to 8 Canadian cents per litre versus the weekly benchmark price set by the Board, and the change is sustained.
>
> When it is necessary for the Board to invoke the "Interrupter", the prices of petroleum products will be changed at a time different than the regularly scheduled price setting. Notice of any such changes will be given to wholesalers and become effective at 12:01 a.m. the next morning.
>
> [Interrupter Bulletin, Board's Website]

[4] The Premier of Nova Scotia, the Honourable Darrell Dexter, Q.C., by letter dated June 7, 2011, requested the Board review the application of the Interrupter on the regulatory scheme established by the *Act* and the *Regulations*. The request arose from the recently observed dramatic swings in prices and the difference between methodologies used in the application of an Interrupter in Nova Scotia and New Brunswick.

[5] On June 20, 2011, the Board issued an Order establishing a written hearing process to consider the request of the Premier, indicating that the Board would "conduct a review and make recommendations to the Minister of Service Nova Scotia and Municipal Relations (the "Minister") respecting the operation and effect of the interruption of the weekly benchmark prices for gasoline and diesel oil under s. 16(5) of the *Regulations*" (the "Order"). The Board invited written submissions from consumers and industry stakeholders to be received by August 5, 2011. A Notice of the review was advertised in The Chronicle Herald on June 21 and June 25, 2011; Cape Breton Post

on June 22 and June 25, 2011; and the Truro Daily News, New Glasgow Daily News and Amherst Daily News on June 22, 2011.

[6] The Board received four written submissions from industry stakeholders.

II JURISDICTION AND PROCEEDING

[7] The purpose of regulating gasoline prices is outlined in the *Regulations*:

> 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.

[8] The Board's website outlines how it goes about setting the gasoline prices according to the process prescribed under the *Regulations*:

> In prescribing petroleum product prices, the Board first must set a "benchmark price" as defined in the Regulations. The following amounts are currently added to the benchmark price to calculate the fixed wholesale price, namely, the established wholesale margin (6.0¢ per litre), the federal excise tax (10.0¢ per litre for gasoline and 4.0¢ per litre for diesel), the provincial motive fuel tax (15.5¢ per litre for gasoline and 15.4¢ per litre for diesel), a transportation allowance (0.3¢ to 2.0¢ per litre depending on which zone applies), a forward averaging correction and, when appropriate, a winter blending allowance for diesel only. A retail margin of 4.0¢ per litre, and HST of 15% on the total, is added to the fixed wholesale price to generate the minimum retail price for each petroleum product. The same process is followed, except a retail margin of 5.5¢ per litre is applied, to establish the maximum retail price for each petroleum product. There is, effectively, no maximum retail price for full-serve gasoline or diesel.

[9] The Board regularly prescribes the prices of regulated petroleum products on a weekly basis effective 12:01 a.m. Friday.

[10] Since the Board was given jurisdiction over petroleum products pricing, there have been infrequent occasions when the Interrupter was invoked. Price volatility

on May 7, 2011, for diesel and on May 18, 2011, for gasoline brought about by significant movements in the commodity markets, required the use of the Interrupter. These are the only occasions the Board has used the Interrupter.

[11] The Premier requested the Board to evaluate the merits of a mandatory numeric trigger for the Interrupter, such as that used in New Brunswick, as opposed to the discretionary method, which is used in Nova Scotia.

[12] The Board Order included the issues to be considered in this proceeding which were based in part on the Premier's letter:

1. The relative merits of a discretionary versus a mandatory numeric trigger;
2. The impact of various methods of interruption on the objectives of petroleum product price regulation;
3. The effect of the adoption of a mandatory numeric interrupter on:
    a) The appropriate size of market change that would trigger a change in regulated prices;
    b) The time frame in which an interrupter be invoked (e.g., would a market price change in a single day trigger the interrupter or would a market change have to be sustained over more than one day to trigger the interrupter);
    c) The benchmark against which the interrupter be calculated (e.g., current prices compared to the previous day's New York Harbor ("NYH") prices, the New York Harbor price as of the last price setting, or the benchmark price for the previous price setting); and
    d) The implications of an interrupter that is triggered only with a downward movement of market prices.
4. The type and level of interrupter used in other regulating jurisdictions.

[13] Written submissions were received by the Board from four industry stakeholders: Loblaws Inc. ("Loblaws"), Wilson Fuel Co. Limited ("Wilsons"), the Retail Gasoline Dealers Association of Nova Scotia ("RGDA"), and Suncor Energy Inc.

("Suncor"), operator of Petro Canada stations. No submissions were received from consumers.

III THE USE OF AN INTERRUPTER IN OTHER JURISDICTIONS

[14] The governments of Nova Scotia (NS) and New Brunswick (NB) introduced gasoline pricing regulation on July 1, 2006. The governments in Newfoundland and Labrador (NL) and Prince Edward Island (PEI), had introduced their regulations prior to July 1, 2006. Each of these jurisdictions has different processes to deal with significant price movements outside the normal price setting.

(a) New Brunswick

[15] Section 6 of the New Brunswick Regulations 2006-41 (the "NB Regs") under the *Petroleum Products Pricing Act* (the "*NB Act*"), outlines how and when the New Brunswick Energy & Utilities Board ("EUB") makes an adjustment to the benchmark price between weekly scheduled price changes. Included in the NB Regs is the magnitude and the timing of such an adjustment.

[16] In summary, the NB Regs specify that a change over one day of six or more Canadian cents per liter ("¢pl") to the underlying commodity spot price upon which prices are set would automatically trigger an "interruption". A new benchmark price would be established by adding the one day change to the existing benchmark price. The NB Regs do not provide any discretion to the EUB.

[17] For example, starting with a benchmark price of 50¢pl, if on Thursday the New York Harbor (NYH) spot price of a product is 55¢pl and then falls to 49¢pl on

Friday, the interruption would be triggered. A new benchmark for that product would be set at 44¢pl (50¢pl – 6¢pl), as the one day change is applied to the benchmark, regardless of the actual spot price relative to the benchmark.

[18] The Board observes that the application of this type of an interruption could be premature, since it could be triggered when the spot price is almost identical to the existing benchmark.

[19] In NB prices could increase even if the current spot price is well below the benchmark price, or decrease if the market price is higher than the benchmark. For example, starting with an illustrative benchmark of 50¢pl, if on the first 3 days of the new pricing period the market falls 4¢pl, 5¢pl and 3¢pl, respectively, to a spot price of 38¢pl (i.e., 12¢pl below the benchmark), no adjustment would be made as there was no single day that a 6¢pl change was recorded. However, if on the fourth day the market increased by 7¢pl to 45¢pl, the EUB must make an upward adjustment of 7¢pl, leading to a new benchmark of 57¢pl (50¢pl + 7¢pl), even though the market price is only 45¢pl.

[20] The Board observes that this type of automatic interruption could cause an unreasonable benchmark price contrary to the prevailing market situation.

[21] Another issue that can arise, given the way the Interrupter is applied in NB, is that it is possible to have one grade of gasoline change but not all others. This can occur since NB may price regular gasoline using the benchmark for E10 (ethanol-blended) for regular, but not for premium, gasoline (traditional). This may lead to premium gasoline being sold at a lower price than regular gasoline, if the price for E10 hits the mandatory interruption threshold while that of traditional gasoline does not.

[22] The NB interrupter method also has the potential to interrupt multiple times in the same week. The Board observes that in commodity markets, if the price of a product has a large drop one day, there may be a significant correction in the opposite direction the following day. If a change is large enough to trigger the Interrupter the first day, then the next day the correction may be large enough to interrupt in the opposite direction, thus leaving the commodity price near the original benchmark. This would not meet the NS objective for the stabilization of prices, as it is likely there was no need to interrupt at all.

(b) Prince Edward Island

[23] Section 27 of the *Petroleum Products Act* (the "*PEI Act*") gives authority to the Prince Edward Island Regulatory & Appeals Commission ("IRAC") to regulate the timing and frequency of price changes. IRAC sets the price of refined petroleum products twice per month, the 1^{st} and 15^{th}, but retains the right under s. 27 of the *PEI Act* to change the price at any time, and as often as deemed necessary.

> 27 The Commission has general supervision of all wholesalers, wholesaler retailers and retailers with respect to the pricing of heating fuel and motor fuel, including the authority to regulate the timing and frequency of price changes and without restricting the generality of the foregoing, the Commission has the power to determine
>
> (a) the price and any change in the price of heating fuel and motor fuel; and
>
> (b) the minimum and maximum markup between the wholesale price to the retailer and the retail price to the consumer of heating fuel and motor fuel.

[24] IRAC does not have a published policy for adjusting (interrupting) the benchmark price between scheduled price settings; however, an interruption is permissible as long as the price change is "just and reasonable" as per s. 2. of the *PEI Act,* which states:

> 2. The purpose of this Act is to regulate the distribution and sale of petroleum products within the Province of Prince Edward Island for use within the province, and the type, location, and operation of facilities and equipment associated therewith, and to ensure at all times a just and reasonable price for heating fuel and motor fuel to consumers and licensees within the province. [Emphasis added]

[25] IRAC has full discretion in dealing with significant price changes between regular price adjustments, with no requirement to disclose how it arrived at such a decision.

(c) Newfoundland and Labrador

[26] Section 14 of the *Petroleum Products Regulations* (the "NL Regs") sets out the authority of the Newfoundland and Labrador Board of Commissioners of Public Utilities ("NL PUB") to change the prices at times other than the regular price setting. Section 14(1) of the NL Regs states:

> Periodic adjustment timing
> 14(1) The board shall adjust the benchmark price for each type of motor fuel and heating fuel on a monthly basis, but where circumstances warrant, the board may adjust prices at other times. [Emphasis added]

[27] As posted on the NL PUB's website, the last time that such an adjustment was made was in 2008, due to Hurricane Ike.

[28] Section 14 of the NL Regs gives the NL PUB the discretion as to when an interruption should occur, much the same as in PEI and Nova Scotia.

[29] The Board observes that similar to IRAC, the NL PUB does not have a published policy regarding when an interruption would take place, or by how much the market would have to change to trigger one.

IV ANALYSIS AND RECOMMENDATIONS

[30] It is noted that the PEI and NL regulatory processes for the use of an Interrupter are fully discretionary by nature and no description of the methodology used is available. However, both are similar to Nova Scotia in that all the boards have the discretion to apply an Interrupter. This is not the case with New Brunswick.

(a) Application of a Discretionary or Mandatory Methodology

(i) Discretionary Methodology used for Forward Averaging

[31] Pursuant to s. 17(1)(d) of the *Regulations*, the Board uses a discretionary forward averaging ("FA") mechanism, which is a margin correction that accounts for the under- or over- earnings by industry caused by the market fluctuation between price settings. This margin correction is intended to ensure that wholesalers receive the regulated margin of 6¢pl over time which helps ensure stability of supply. If over a period of time wholesalers make less than an average margin of 6¢pl, the Board will add a FA adjustment to the weekly price setting. This also applies equally to protect consumers if wholesalers have realized more than the regulated 6¢pl margin.

[32] The Board has posted a public bulletin on its website explaining how and why the FA mechanism is used:

> Once the benchmark price has been set, the Board is able to determine if a balance between the industry and consumers has been achieved in the prior pricing period. A forward average correction may be used in order to balance the two interests.
>
> The basis for determining the frequency and amount of any forward average is the volatility of the commodity market (daily spot price) for refined gasoline or diesel fuel. Among the factors considered is the benchmark price as set by the Board, and the cyclical nature and history of petroleum product markets.
>
> When the current benchmark price is more than the previous benchmark price of prior pricing period(s), an adjustment in favour of industry will be considered. Conversely,

> when the current benchmark price is less than the previous benchmark price of prior pricing period(s), an adjustment in favour of consumers will be considered.
>
> In the event of extreme volatility, or steadily falling or rising commodity market prices, an incremental approach to forward averaging may be used in order to provide security of supply and stable pricing for consumers and/or industry.
>
> [Forward Averaging Bulletin, Board's website]

[33] Each week the Board discloses the amount of the FA correction that has been applied.

[34] IRAC uses a similar mechanism to adjust industry margins. However, in PEI, no disclosure is made about the components of the price adjustment (i.e., the portion that is due to the underlying commodity change in price and the margin adjustment, if any).

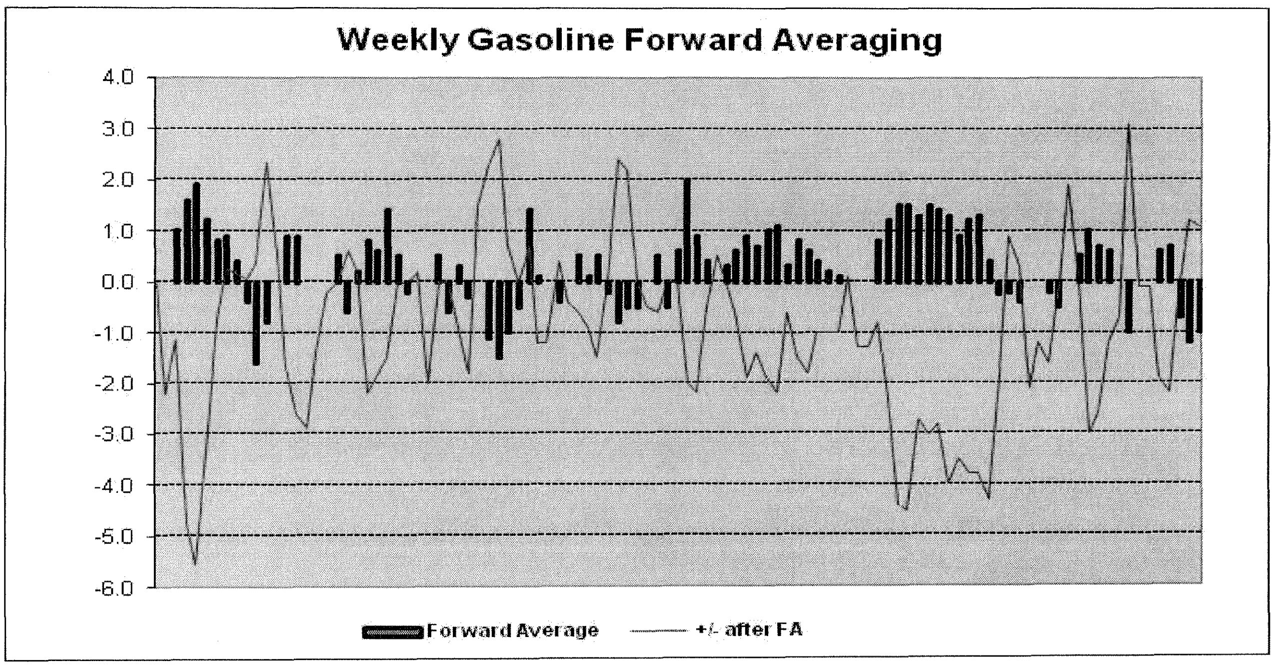
[35] Neither NB nor NF uses any type of margin adjustment to balance the interests of consumers and industry.

[36] The Board notes that without a margin adjustment, industry would be losing margin in rising markets, as the weekly average in such cases will always be lower than the market. This would pose a problem for industry, where actual margins would erode to a level below the regulated margin. The opposite effect can be expected in periods of declining prices. In the latter instance, industry would earn in excess of the regulated margin at the expense of customers.

[37] Over the long term, in jurisdictions that do not use a FA margin correction, the assumption is that the "ups" will cancel out the "downs", and the average margin will gravitate to the regulated margin. While in theory this assumption may appear to have merit, this is operationally difficult. In prolonged rising or falling markets, these inequities will create squeezed or excess margins for industry over that period of time.

A margin correction, such as the FA mechanism in NS, helps keep the margins in check in rising or falling markets in the short term and helps to stabilize the cash flow of wholesalers and retailers.

[38] The following chart shows the amount of forward averaging used each week in Nova Scotia and the cumulative weekly amount of any over - or under - recovery of margin. This covers the period from the time the Board began gasoline pricing regulation in October 2009 up to the September 30, 2011 price setting. As can be seen, the average margins have been kept close to the regulated levels on a weekly basis.



[39] The FA mechanism helps to ensure that the industry maintains its intended margins and consumers do not pay more than the regulated margin. If, for example, the under/over recovery was at zero in one week and the price changed by 5¢pl from benchmark to benchmark, the Board would use the FA mechanism over the next few pricing cycles to ensure that industry realizes its full margin over a short period

of time. Spreading out a price adjustment using the FA mechanism leads to smaller price changes, thereby helping meet the objective of price stability. The Board considers this is a benefit of the FA mechanism and it helps to limit the need to interrupt.

(ii) Contrast of Methodologies for the Interrupter

[40] In its submission, the RGDA favors the alignment of the Interrupter methodology used by New Brunswick and Nova Scotia. The RGDA further suggests that the Nova Scotia methodology should be adopted by New Brunswick.

> It is our position that ideally the Nova Scotia criteria and the New Brunswick methodology would be the same. Having said that, the Nova Scotia model for interruption utilization is the method we recommend. ... harmonizing the system for both provinces would greatly assist in improving public understanding of the price setting mechanisms.
>
> [Exhibit I-5, pp. 1-2]

[41] Submissions from Wilsons, Loblaws, and Suncor all support the increase in transparency that a Mandatory Interrupter methodology would give to the price setting.

[42] The Board agrees that a mandatory process would be more transparent to all industry stakeholders. As highlighted earlier in the review of the NB process, however, it would be inferior to a discretionary process that permits the Board to balance the objectives of the mandate, the application of forward averaging, and observed market conditions.

[43] Since the NB EUB does not have the discretion to make any margin correction, the Interrupter in that Province may need to be more sensitive (it may be triggered by a smaller price change), because if it is not invoked, there is no mechanism

to protect customers or industry to ensure regulated margins are kept whole during periods of significant market fluctuations.

[44] Having a mandatory Interrupter in NS may cause results that are inconsistent with some of the objectives of the *Regulations* (i.e., price stability and security of supply in the rural areas). If a situation arises where the Interrupter is not triggered, but there is a risk of a supply disruption due to a period of prolonged reduced margins, the Board would be powerless to intervene, putting the objective of preserving availability of supply at risk.

[45] As discussed above, a mandatory Interrupter may also cause prices to change more frequently than when using a discretionary model. Having discretion is more apt to meet the objective of price stability for two reasons: a price increase may not be as large as a mandatory one; and, in certain cases a mandatory Interrupter could be applied in both directions, causing up to three interruptions within a week.

[46] Part of the rationale for having an independent regulator adjust petroleum pricing is so that the regulator can bring its judgment to bear in the setting of prices. Two examples with respect to the petroleum pricing mandate are in the weekly determination of whether to forward average and the periodic decision on when to interrupt based on price and market conditions. In the event, as a result of this review, the opportunity to exercise independent judgment is removed by eliminating the discretion the Board has to interrupt, then the pricing decision becomes an administrative decision which does not, it is respectfully suggested, need to be made by an independent regulator, but can appropriately be made by administrative officials with access to daily market information.

[47] The Board recommends that the Interrupter continue to be applied on a discretionary basis.

(b) Change that Invokes Consideration of an Interrupter

[48] The amount of change in the NYH price, as compared to the benchmark, that invokes a consideration of an Interrupter is often referred to as a "trigger amount". Loblaws is in favor of a trigger in the 5¢pl to 6¢pl range:

> ...
> 3. (a) & (b) Loblaw would suggest to the Board for consideration that interruption be triggered on the following criteria:
> • Upon a $0.05/litre market change over one day sustained over the period of two consecutive days (i.e.) market up/down $0.05 or more on Monday and sustained through the end of the following Tuesday. This would trigger a mandatory change effective on the following Wednesday in the same week.
> • Upon a $0.06/1itre market change over two consecutive days (i.e.) market up/down $0.06 or more over two consecutive days and sustained on the third day. This would trigger a mandatory change to the market effective 48 hours following the breach of the $0.06 threshold.
>
> [Exhibit I-3, p 1]

[49] Wilsons differed in the magnitude of the change, suggesting that a change of 3 to 3.5¢pl should be used. In determining this amount, the company compared the NYH spot price and Halifax Rack price differential as a reason to go below six cents.

> • The actual wholesale margin is the difference between the Halifax Reseller Rack price and the wholesale price setting that the Board sets as the Dealer price, The price now used is for Cargo lots in New York Harbour, as opposed to the real option which is product located in the Halifax Harbour. This real wholesale margin is 3 cpl less than the Board's wholesale price assumptions. Price changes that cause real wholesale prices to become negative need to be remedied.
>
> [Exhibit 1-4, p.1]

[50] Neither Suncor nor the RGDA made a recommendation on what a trigger amount should be.

[51] The Board, in its Recommendations for the *Setting of Zones, Fixed Wholesale Prices and Retail Prices* (2006 NSUARB 108), quoted evidence that "...

actual acquisition costs could be anywhere from $0.001 to $0.03/l above... [New York Harbor spot price]...". This would be the "Halifax Reseller Rack price" referred to by Wilsons.

[52] As stated earlier, the Board considers a sustained move of between 6 and 8¢pl from the current benchmark price (i.e., the price used as the basis for the current regulated prices) as an appropriate level to invoke the Interrupter. At this level, which is equal to or exceeds the wholesale margin, the price change is significant enough to warrant an adjustment outside the regular weekly schedule.

[53] The Board will use a trigger of 6¢pl. However, this is not a mandatory adjustment but a trigger for the Board to consider whether circumstances require an interruption.

(c) The Time Frame in which an Interrupter would be Invoked

[54] As stated above, Loblaws suggests an interruption if, over 1 or 2 days, the price change has continued. Wilsons suggests an interruption to be triggered whenever the "real" wholesale margin is eroded.

[55] The Board's current practice is to consider invoking the Interrupter if a change above the trigger amount is sustained over two days. This is consistent with the suggestion from Loblaws. This does not preclude the Board from invoking the Interrupter if the change, in one day, is significantly in excess of the trigger amount.

[56] The Board recommends that the current practice be continued.

(d) The Benchmark against which the Interrupter would be Calculated

[57] Suncor does not suggest any particular benchmark. However, Suncor prefers a transparent interrupter. If the benchmark is logical and known, Suncor would be satisfied with whatever benchmark the Board uses.

[58] Wilsons suggests that the benchmark for an interruption be based on the Halifax Reseller Rack price. Loblaws suggests changes in the NYH price should be compared to the benchmark price used to set the current price.

> ...
> (c) Loblaw recommends that the benchmark against which the interrupter would be calculated should be based on New York Harbour price as of the last price setting.
>
> [Exhibit I-3, p. 1]

[59] The RGDA recommends that the Board retain the current methodology, which compares the NYH price to the current benchmark set by the Board.

[60] The evidence in 2006 NSUARB 108 indicated that the Halifax Reseller Rack price changes did not perfectly mirror, on a daily basis, the NYH prices, but over time correlates.

[61] The Board considers there is no reason to change the benchmark used to calculate the Interrupter and recommends that the current practice be maintained.

(e) Direction of Mandatory Interrupter Trigger

[62] The request from the Premier included an evaluation of a mandatory interrupter trigger only when prices are moving down.

[63] None of the submissions supported this option. In the interest of fairness, the Board recommends that the mechanism must be applied equally in either direction.

[64] The Board recommends that the application of the Interrupter be discretionary and indiscriminate as to direction.

(f) Timing of the Weekly Setting

[65] New Brunswick prescribes its prices effective midnight Thursday, while Nova Scotia adjusts its prices effective Friday.

[66] The Board has reviewed historical data and does not discern a pattern or material difference in the volatility or variability of the various factors (NYH quoted prices and the US$:CAD$ exchange rate) between the last two days (Tuesday and Wednesday) that are used to calculate the weighted average.

[67] The Board notes that the U.S. Energy Information Administration (EIA) petroleum inventory report, a key item that affects gasoline and diesel prices in general, is regularly released every Wednesday. This information can significantly influence the quoted prices of regulated petroleum products. Timely inclusion of any impact from that inventory report into the prescribed price (as is the case in Nova Scotia) can minimize large variations between weekly settings, and may actually reduce the need to invoke an interrupter.

[68] The Board recommends to the Minister that the practice of setting the prescribed prices effective 12:01 a.m. Friday be continued.

V SUMMARY OF RECOMMENDATIONS

[69] The Board concludes, having reviewed the objectives of *Petroleum Products Pricing Regulations*, significant problems may arise if a mandatory interrupter is adopted and if the ability of the Board to act is curtailed.

[70] The Board further notes, even with the significant public interest generated by the two recent unscheduled price changes implemented by the Board, no submissions were received from consumers.

[71] In summary, the Board recommends the following:

a) continuing to apply the Interrupter on a discretionary basis;

b) a trigger of 6¢pl to consider interruption;

c) the trigger amount be generally sustained for two days to consider interruption;

d) using the prescribed benchmark price to calculate the trigger;

e) the application of the Interrupter be discretionary and indiscriminate as to direction; and

f) continue setting the prescribed prices effective 12:01 a.m. Friday.

DATED at Halifax, Nova Scotia, this 3rd day of October, 2011.

Peter W. Gurnham

Roland A. Deveau

Murray E. Doehler