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Petroleum Products Pricing Regulations

made under Section 14 of the

Petroleum Products Pricing Act

S.N.S. 2005, c. 11

O.I.C. 2006-290 (June 22, 2006, effective July 1, 2006), N.S. Reg. 97/2006

as amended up to O.I.C. 2006-484 (November 20, 2006), N.S. Reg. 210/2006

Citation

1 These regulations may be cited as the *Petroleum Products Pricing Regulations*.

Application

2 (1) The following types of petroleum products are subject to these regulations:

- (a) gasoline;
- (b) low sulfur diesel oil;
- (c) ultra low sulfur diesel oil.

(2) A petroleum product of a type that is not listed in subsection (1) is exempt from these regulations and from Sections 4 to 7 of the Act.

(3) Despite subsection (1), the following petroleum products are exempt from these regulations and from Sections 4 to 7 of the Act:

- (a) aviation gasoline;
- (b) any petroleum product sold or purchased for use as fuel in a watercraft or an aircraft equipped to float on water;

Clause 2(3)(b) added: O.I.C. 2006-333, N.S. Reg. 115/2006; amended: O.I.C. 2006-484, N.S. Reg. 210/2006.

- (c) gasoline, low sulfur diesel oil and ultra low sulfur diesel oil bought through a commercial bulk volume contract with a consumer for 5000 L or more;

Clause 2(3)(b) relettered (c): O.I.C. 2006-333, N.S. Reg. 115/2006.

- (d) gasoline, low sulfur diesel oil and ultra low sulfur diesel oil sold or purchased at a restricted access outlet as defined in clause 2(p) of the *Motive Fuel and Fuel Oil Approval Regulations* made under the *Environment Act*;

Clause 2(3)(c) relettered (d): O.I.C. 2006-333, N.S. Reg. 115/2006.

- (e) any petroleum product that is exempt from tax under Section 22 of the *Revenue Act Regulations* made under the *Revenue Act*.

Clause 2(3)(d) relettered (e): O.I.C. 2006-333, N.S. Reg. 115/2006.

Subsection 2(3) amended: O.I.C. 2006-484, N.S. Reg. 210/2006.

- (4) Despite clause (3)(b), these regulations apply to a petroleum product sold or purchased for use as fuel in a watercraft or an aircraft equipped to float on water if the petroleum product is sold or purchased from a retailer, wholesaler or wholesaler-retailer who also sells a petroleum product for other purposes.

Subsection 2(4) added: O.I.C. 2006-333, N.S. Reg. 115/2006; replaced: O.I.C. 2006-484, N.S. Reg. 210/2006.

- (5) These regulations do not apply to a retailer or wholesaler-retailer if the only petroleum products they sell or purchase are for use as fuel in a watercraft or an aircraft equipped to float on water.

Subsection 2(5) added: O.I.C. 2006-484, N.S. Reg. 210/2006.

- (6) These regulations apply to a retailer, wholesaler or wholesaler-retailer if they sell or purchase a petroleum product for use as fuel in a watercraft or an aircraft equipped to float on water in addition to selling or purchasing a petroleum product for other purposes.

Subsection 2(6) added: O.I.C. 2006-484, N.S. Reg. 210/2006.

Definitions

3 In these regulations,

- (a) “Act” means the *Petroleum Products Pricing Act*;
- (b) “agent” means an agent as defined in clause 5(a) of the *Revenue Act Regulations* made under the *Revenue Act*;
- (c) “benchmark price” means the price prescribed by the Minister under Section 14;
- (d) “Bloombergs Guide” means the *Bloombergs Oil Buyers Guide* produced by Bloomberg L.P.;
- (e) “Board” means the Nova Scotia Utility and Review Board established under the *Utility and Review Board Act*;
- (f) “Platts Report” means the *Platts Oilgram Price Repor[t]/US Marketscan* produced by Platts, a division of The McGraw-Hill Companies;
- (g) “point of sale” means
 - (i) with respect to the sale of petroleum products by a wholesaler or wholesaler-retailer to a retailer, the location where the delivery of the product to the retailer takes place, and
 - (ii) with respect to the sale of petroleum products by a retailer to a consumer, the location where the product is delivered to the consumer;
- (h) “reported product price” for a type of petroleum product is the daily price reported for that type of product in the Platts Report under the heading “Product Price Assessments, New York Cargo”, or in the Bloomberg Guide if the relevant data is not available from the Platts Report;

Clause 3(i) repealed: O.I.C. 2006-484, N.S. Reg. 210/2006.

- (j) “wholesaler-retailer” means a wholesaler who also sells or keeps a petroleum product for sale directly to consumers.

Regulations prevail over contract

4 These regulations prevail over a contract between a wholesaler or wholesaler-retailer and a retailer with respect to the wholesale price and retail mark-up of a petroleum product.

Contract existing on June 30, 2006

- 5 (1) Despite the Act and these regulations, a retailer who is a party to a contract that was in force on June 30, 2006, may opt out of these regulations with respect to the wholesale price and retail mark-up of a petroleum product if they comply with subsection (2).
- (2) A retailer who decides to opt out of these regulations as permitted by this Section, must notify the Minister no later than October 31, 2006, by providing the Minister with
- (a) a copy of their contract with their wholesaler or wholesaler-retailer; and
 - (b) a statement signed by the retailer indicating that the retailer has decided to opt out, in the form required by the Minister.

Subsection 5(2) amended: O.I.C. 2006-333, N.S. Reg. 115/2006.

- (3) A retailer who decides to not opt out of these regulations as permitted by this Section must notify the Minister no later than October 31, 2006, by providing the Minister with a statement signed by the retailer indicating that the retailer has decided to not opt out, in the form required by the Minister.

Subsection 5(3) amended: O.I.C. 2006-333, N.S. Reg. 115/2006.

- (3A) If a retailer decides to not opt out of these regulations under this Section, any contractual provision respecting compensation, including cross leases, dealer incentive payments, volume associated payments, bonus incentives or any other type of compensation determined by the Minister, is null and void, but nothing in these regulations prevents a retailer and a wholesaler from entering a new agreement respecting compensation other than the retail mark-up.

Subsection 5(3A) added: O.I.C. 2006-333, N.S. Reg. 115/2006.

- (4) A retailer must send a copy of the statement required under clause (2)(b) or subsection (3) to their wholesaler or wholesaler-retailer, and the wholesaler or wholesaler-retailer must sign the copy and return it to the Minister no later than 15 days after the date of receipt.
- (5) If a retailer opts out of these regulations as permitted by this Section, their contract prevails over these regulations with respect to the wholesale price and retail mark-up of a petroleum product.
- (6) A retailer remains responsible, in accordance with the terms of their contract, for repayment of any debt owed to the wholesaler or wholesaler-retailer regardless of whether or not the retailer has opted out of these regulations with respect to the wholesale price and retail mark-up of a petroleum product as permitted by this Section.

Subsection 5(6) amended: O.I.C. 2006-333, N.S. Reg. 115/2006.

Contract made after June 30, 2006 and before November 1, 2006

- 6 (1)** Despite the Act and these regulations, a wholesaler or wholesaler-retailer and a retailer who enter into a contract after June 30, 2006, and before November 1, 2006, may agree to opt out of these regulations with respect to the wholesale price and retail mark-up of a petroleum product if they comply with subsection (2).

Subsection 6(1) amended: O.I.C. 2006-333, N.S. Reg. 115/2006.

- (2)** A wholesaler or wholesaler-retailer and a retailer who agree to opt out of these regulations as permitted by this Section must notify the Minister no later than October 31, 2006, by providing the Minister with
- (a)** a copy of their contract;
 - (b)** a statement indicating that they have decided to opt out, in the form required by the Minister and signed by both the retailer and wholesaler or wholesaler-retailer.

Subsection 6(2) amended: O.I.C. 2006-333, N.S. Reg. 115/2006.

- (3)** If a wholesaler or wholesaler-retailer and a retailer opt out of these regulations as permitted by this Section, their contract prevails over these regulations with respect to the wholesale price and retail mark-up of a petroleum product.

New contract made after October 31, 2006, by parties who opted out

- 7 (1)** A retailer who has opted out of the regulations as permitted by Section 5 or 6 and who enters into a new contract after October 31, 2006, respecting the wholesale price and retail mark-up of a petroleum product may continue to opt out of the regulations if the wholesaler or wholesaler-retailer agrees to opt out and the parties comply with subsections (2) and (3).

Subsection 7(1) amended: O.I.C. 2006-333, N.S. Reg. 115/2006.

- (2)** In order to opt out of the regulations as permitted by this Section, the new contract must come into force immediately on the expiry of the previous contract.
- (3)** A wholesaler or wholesaler-retailer and a retailer who agree to opt out of these regulations as permitted by this Section must notify the Minister no later than 30 days after the expiry date of their previous contract, by providing the Minister with
- (a)** a copy of their new contract; and

- (b) a statement indicating that they have decided to opt out, in the form required by the Minister and signed by both the retailer and wholesaler or wholesaler-retailer.

Prescribed minimum and maximum retail price still apply

- 8 A retailer must comply with Section 12, respecting the price to be charged to a consumer for a petroleum product, regardless of whether the retailer and the wholesaler or wholesaler-retailer have opted out of these regulations with respect to the wholesale price and retail mark-up of a petroleum product as permitted by Section 5, 6 or 7.

Monthly assessment fee

- 9 (1) A wholesaler or wholesaler-retailer who sells a petroleum product in the Province must pay the Minister a monthly assessment fee based upon the sales volume of the petroleum product sold by the person in the Province at a rate determined by the Minister.

Subsection 9(1) amended: O.I.C. 2006-484, N.S. Reg. 210/2006.

- (2) The monthly assessment fee must be paid at the same time as the tax required to be remitted to the Minister under Section 12 of the *Revenue Act Regulations* made under the *Revenue Act* and a wholesaler or wholesaler-retailer must file an addendum to the agent's return as required by the Minister.

Delegation of authority

- 10 Effective immediately after these regulations come into force, and subject to these regulations, all of the following powers under the Act are delegated to the Minister:
 - (a) the power to divide the Province into zones as set out in clause 14(1)(c) of the Act;
 - (b) the power to prescribe the fixed wholesale price as set out in subclause 14(1)(c)(i) of the Act;
 - (c) the power to prescribe a maximum retail price as set out in subclause 14(1)(c)(ii);
 - (d) the power to prescribe minimum and maximum retail mark-ups as set out in subclause 14(1)(c)(iii).

Zones

- 11 (1)** For the purpose of prescribing prices for each zone, the Province is divided into the following zones:
- (a) Zone 1 consists of all of the following:
 - (i) Halifax County,
 - (ii) Hants County,
 - (iii) the southern portion of Colchester County, as divided by a straight line running from Clifton in Colchester County to the intersection of the county lines of Colchester, Pictou, Guysborough and Halifax Counties;
 - (b) Zone 2 consists of all of the following:
 - (i) Kings County,
 - (ii) Lunenburg County,
 - (iii) the eastern portion of Annapolis County, as divided by a straight line running northwest from the top section of the Queens-Lunenburg county line and extending to the Bay of Fundy;
 - (c) Zone 3 consists of all of the following:
 - (i) Queens County,
 - (ii) Shelburne County,
 - (iii) Yarmouth County,
 - (iv) Digby County,
 - (v) the western portion of Annapolis County as divided in clause (b);
 - (d) Zone 4 consists of Cumberland County;
 - (e) Zone 5 consists of all of the following:
 - (i) Guysborough County,
 - (ii) Antigonish County,
 - (iii) Pictou County,

- (iv) the northern portion of Colchester County as divided in clause (a),
 - (v) the Town of Port Hawkesbury in Inverness County,
 - (vi) an area of land bounded by a straight line extending along the prolongation of the eastern boundary of the Town of Port Hawkesbury to the Trans-Canada Highway (Highway 105) and then southwesterly along the Trans-Canada Highway to the Strait of Canso.
- (f) Zone 6 consists of all of the following:
- (i) Cape Breton County,
 - (ii) Victoria County,
 - (iii) Richmond County,
 - (iv) Inverness County, except the Town of Port Hawkesbury and an area of land bounded by a straight line extending along the prolongation of the eastern boundary of the Town of Port Hawkesbury to the Trans-Canada Highway (Highway 105) and then southwesterly along the Trans-Canada Highway to the Strait of Canso.
- (2) When re-dividing the zones established in subsection (1), the Minister may consider any or all of the following factors:
- (a) the retail prices that have been charged to retailers and consumers for petroleum products throughout the Province, over a period of time that the Minister considers appropriate;
 - (b) any factors that could explain the differences, if any, between the retail prices across the Province for the period of time established in clause (a), including any of the following:
 - (i) the distance from a refinery gate to the proposed boundaries for a zone,
 - (ii) the volume of petroleum product sold to retailers during the period,
 - (iii) innovations within the industry;
 - (c) any additional factors the Minister considers relevant, including whether price differences between zones are fair and reasonable.

Must charge prices for zone where point of sale located

- 12** (1) A wholesaler or wholesaler-retailer must charge a retailer the fixed wholesale price for a type of petroleum product for the zone where the point of sale is located.
- (2) A retailer must not charge a consumer a price for a type of petroleum product that is greater than the maximum retail price or less than the minimum retail price for the zone where the point of sale is located.
- (3) Despite subsections (1) and (2), the Minister may, on application by a wholesaler, wholesaler-retailer or retailer, and in order to preserve availability of a petroleum product in rural areas, to preserve the viability of markets in the provincial border areas or for another reason the Minister considers appropriate, set a different fixed wholesale price, a different retail mark-up or different minimum and maximum retail prices that the person may charge for a type of petroleum product at a particular point of sale.

Promotions

- 13** (1) Despite Section 12, a type of coupon, promotion, discount, loyalty program or any other promotional consideration in existence for a petroleum product between May 1, 2005 and June 1, 2006 that has the effect of reducing the price for a petroleum product below the minimum retail price at the time of sale is permitted.
- (2) On and after July 1, 2006, any enhancement of a promotional consideration described in subsection (1) or any new type of coupon, promotion, discount, loyalty program or other type of promotional consideration that would have the effect of reducing the price for a petroleum product at the time of sale is prohibited.

Benchmark price

- 14** (1) On July 1, 2006, the Minister must prescribe an initial benchmark price for each type of petroleum product based on any historical data the Minister considers relevant.
- (2) On July 13, 2006 and on every 2nd Thursday afterwards until November 29, 2006, at a time the Minister considers appropriate, the Minister must prescribe a benchmark price for each type of petroleum product.

Subsection 14(2) amended: O.I.C. 2006-484, N.S. Reg. 210/2006.

- (2A) On December 1, 2006, and on every 2nd Friday afterwards, at a time the Minister considers appropriate, the Minister must prescribe a benchmark price for each type of petroleum product.

Subsection 14(2A) added: O.I.C. 2006-484, N.S. Reg. 210/2006.

- (3) A benchmark price prescribed by the Minister after July 1, 2006, 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.
- (4) In prescribing a benchmark price, the Minister must use daily noon exchange rates published by the Bank of Canada to convert United States currency to Canadian currency.
- (5) A benchmark price prescribed by the Minister must be expressed in Canadian cents per litre to the nearest one-tenth of a cent or in another unit of measurement appropriate to the petroleum product.
- (6) If the Minister considers it appropriate, the Minister may prescribe a benchmark price at any time.

Section 15 repealed: O.I.C. 2006-484, N.S. Reg. 210/2006.

Fixed wholesale price

- 16 (1) For each type of petroleum product, the fixed wholesale price in a zone is the sum of all of the following:
- (a) the current benchmark price as prescribed by the Minister under Section 14;
 - (b) the wholesale margin as calculated by the Minister in accordance with subsection (2B);

Clause 16(1)(b) replaced: O.I.C. 2006-484, N.S. Reg. 210/2006.

- (c) all taxes, excluding the taxes imposed under subsections 165(1) and 165(2) of the *Excise Tax Act* (Canada);
 - (d) if the Minister considers it appropriate, transportation adjustments and forward averaging corrections.
- (2) In clause (1)(d), “forward averaging correction” means the difference between the benchmark price and the actual reported product price for a petroleum product since the last benchmark price adjustment for that petroleum product, and the forward

averaging correction may be adjusted for variations in the volume sold during that period.

Subsection 16(2) amended: O.I.C. 2006-484, N.S. Reg. 210/2006.

(2A) In this Section, “wholesale margin” for a petroleum product means the difference between the benchmark price for that petroleum product and the price at which a wholesaler sells that petroleum product to a retailer, excluding taxes imposed under subsections 165(1) and 165(2) of the *Excise Tax Act* (Canada).

Subsection 16(2A) added: O.I.C. 2006-484, N.S. Reg. 210/2006.

(2B) In calculating the wholesale margin for a type of petroleum product in a zone, the Minister may consider any of the following:

- (a) the wholesale margin for the petroleum product for the Province or for a zone, excluding taxes imposed under subsection 165(1) and 165(2) of the *Excise Tax Act* (Canada), over a period the Minister considers appropriate;
- (b) whether the wholesale margins identified under clause (a) are fair and reasonable, taking into account any of the following:
 - (i) the distance from the refinery gate to a zone,
 - (ii) the volume of petroleum product sold to retailers during the period,
 - (iii) innovations within the industry;
- (c) any additional factors the Minister considers relevant, including the factors set out in subsection 12(3).

Subsection 16(2B) added: O.I.C. 2006-484, N.S. Reg. 210/2006.

(3) The fixed wholesale price must be expressed in Canadian cents per litre to the nearest one-tenth of a cent or another unit of measurement appropriate to the petroleum product.

Maximum and minimum retail mark-up

- 17 (1)** When prescribing the minimum and maximum retail mark-ups for a type of petroleum product in a zone, the Minister may consider any of the following:
- (a) the retail mark-ups within the Province or a zone for the type of petroleum product, excluding taxes imposed under subsections 165(1) and 165(2) of the

Excise Tax Act (Canada), over a period of time the Minister considers appropriate;

- (b) whether the retail mark-ups identified under clause (a) are fair and reasonable, taking into account any of the following:
 - (i) the distance from a refinery gate to the boundaries of the zone,
 - (ii) the volume of petroleum product sold to consumers during the period,
 - (iii) innovations within the industry;
 - (c) whether the petroleum product is sold or purchased at a full-service retail outlet or a self-service retail outlet;
 - (d) any additional factors the Minister considers relevant.
- (2) The minimum and maximum retail mark-ups must be expressed in Canadian cents per litre to the nearest one-tenth of a cent or another unit of measurement appropriate to the petroleum product.

Maximum and minimum retail price

- 18 (1)** For each type of petroleum product, the maximum retail price in a zone is the sum of all of the following:
- (a) the fixed wholesale price;
 - (b) the maximum retail mark-up prescribed by the Minister under Section 17;
 - (c) all taxes.
- (2)** For each type of petroleum product, the minimum retail price in a zone is the sum of all of the following:
- (a) the fixed wholesale price;
 - (b) the minimum retail mark-up prescribed by the Minister under Section 17;
 - (c) all taxes.

Disclosure of price

- 19** Unless authorized by the Minister or under the Act or regulations, a wholesaler, wholesaler-retailer or retailer must not disclose to any person a price set under these regulations before the date on which the price comes into effect.

Notice of prices

- 20** (1) The Minister must ensure that all wholesalers and wholesaler-retailers are informed of the fixed wholesale prices and maximum and minimum retail prices before they are to take effect.
- (2) A wholesaler or wholesaler-retailer must ensure that any retailer to whom it sells a petroleum product is informed of any price change before it takes effect.

Public hearings

- 21** (1) The Board is hereby designated under subsection 14(1)(g) of the Act to conduct public hearings respecting zones, fixed wholesale prices and retail prices set under these regulations.
- (2) The Board has all the powers set out in the *Utility and Review Board Act*, including the power to establish its own processes and procedures for fulfilling its functions and duties under the Act and regulations.
- (3) The Board may order that some or all of its direct and indirect costs of a hearing to be paid by a participant at the hearing.
- (4) If the Board allows applications for funding to intervenors under its processes and procedures, the funding is an expense of the Board recoverable under these regulations.
- (5) The Board may recover all or part of its direct and indirect costs for administering any powers or duties delegated to it under the Act or regulations from the Province, and the Minister must pay the costs of the Board as costs of administering the Act or regulations.

Information provided to Board

- 22** (1) A wholesaler, wholesaler-retailer, retailer or party to a proceeding before the Board must give the Board all information required by it to carry out its duties under the Act and regulations and must give specific answers to all specific questions asked by the Board.
- (2) A wholesaler, wholesaler-retailer or retailer who receives a blank form from the Board with directions to fill in the form must answer each question on the form fully and correctly, and if a question is not fully and correctly answered must give a good and sufficient reason for failing to do so.
- (3) The responses given under subsection (2) must be certified by an authorized representative of the wholesaler, wholesaler-retailer or retailer and returned to the Board at its office no later than the deadline set by the Board.
- (4) If required by the Board, a wholesaler, wholesaler-retailer or retailer must deliver to the Board any documents, books, accounts, papers, records or memoranda, or copies of them, in whatever form the Board directs.

Inspection of records by Board

- 23** (1) The Board, a member of the Board or a person employed by the Board for that purpose, has, on demand, the right to inspect the documents, books, accounts, papers, records and memoranda of a wholesaler, wholesaler-retailer or retailer.
- (2) A person other than a Board member who makes a demand under subsection (1) must produce their authority to make the inspection or examination.

Examination under oath

- 24** The Board or a member of the Board has the power to examine, under oath, an officer, agent or employee of a wholesaler, wholesaler-retailer or retailer in relation to its business and affairs.