



## **REPORT**

**IN THE MATTER** of an investigation pursuant to section 21 of the *Petroleum Products Pricing Act*, S.N.B. 2006, c. P-8.05

July 7, 2015

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

## **Background**

- [1] The New Brunswick Energy and Utilities Board (NBEUB or Board) is an independent quasi-judicial tribunal charged with regulating wholesalers and retailers of petroleum products. The NBEUB sets maximum weekly prices for petroleum products, which is specifically identified in the *Petroleum Products Pricing Act*, S.N.B. 2006, c. P-8.05 (PPPA) as heating fuel and motor fuel.
- [2] The PPPA, which came into force in 2006, is the governing legislation and provides direction to the NBEUB on the weekly setting of prices. It is important to note that the PPPA does not require the NBEUB to set a minimum price for each petroleum product. It only requires the NBEUB to set a maximum price each week for the petroleum products.
- [3] In early March 2015 the NBEUB was made aware that some customers of Irving Oil Limited or its affiliates (hereafter collectively referred to as Irving Oil) may have been charged more than the maximum price set by the NBEUB for heating fuel.
- [4] The NBEUB commenced an investigation to examine the issue of pricing pursuant to subsection 21(1) of the PPPA, which provides:

### **Investigation by Board**

**21(1)** The Board may, on its own motion or upon a complaint, conduct an investigation to determine whether a price being charged by a wholesaler or retailer for a type of petroleum product exceeds the maximum price set under this Act or whether the delivery costs or the full service charge being charged by a wholesaler or retailer, as the case may be, exceeds the maximum delivery costs or the maximum full service charge set under this Act.

- [5] Notice of this investigation was posted on the NBEUB website on March 13.

## **Information provided by Irving Oil**

- [6] At the commencement of this investigation, the Board contacted Irving Oil, seeking relevant data. Irving Oil confirmed on March 24 that a number of customers had been charged more than the maximum price for heating fuel at the time that such heating fuel was delivered. This was determined by Irving Oil to be as a result of clerical miscoding and administrative errors.
- [7] Irving Oil indicated that they had reviewed their records since the PPPA had come into force in order to determine the scope of the error. Irving Oil had determined which customers had paid more than the maximum price and the amounts that should be reimbursed.
- [8] In addition, Irving Oil confirmed that they had retained the accounting firm Deloitte for the purpose of conducting an independent review. Deloitte had been asked to review and comment on the methodology used by Irving Oil to identify customers who had been inadvertently overcharged and to validate the amounts proposed for reimbursement. Irving Oil requested Deloitte to confirm whether their findings were accurate.

## **The Logan Report**

- [9] After careful consideration and a review of the initial information provided by Irving Oil, the NBEUB engaged Mr. Andrew Logan, CPA, CA of the accounting firm Teed Saunders Doyle & Co. to assist with the investigation. Mr. Logan was specifically directed as follows:
- To meet with representatives of both Irving Oil and Deloitte to discuss the methodology used in identifying customers who were overcharged and in determining the amounts that were overcharged;
  - To review information and documents, as may be required, related to Irving Oil's internal review; and

- To review information and documents, as may be required, related to Deloitte's work product.

[10] In addition, Mr. Logan was advised as follows:

Please note that the Board's primary focus is on any charges that were in excess of the maximum retail price.

The Board will require a written report confirming whether the methodology used by Irving Oil and reviewed by Deloitte was appropriate and reasonable in the circumstances. Ultimately, the Board is seeking assurance that affected customers and the excess charges have been accurately identified, given the methodology used to review the customer accounts.

[11] Mr. Logan began his work in April 2015 and met with representatives from Deloitte to review the methodology in question. The review of documentation and information was ongoing for several weeks.

[12] On May 8 Irving Oil advised the NBEUB that they had decided to change their reimbursement approach. Irving Oil stated the following:

At that time, Irving Energy planned to reimburse home heating customers for any net losses incurred as the result of errors in their accounts. [...] the plan at that time was to compensate customers based on the difference between the actual price paid by customers, and the price that they would have paid had the errors not occurred, net of any amounts to the credit of those customers which arose as the result of the accounting errors.

[13] This change in methodology caused a delay in the investigation and required Mr. Logan to conduct a re-examination of the information from Irving Oil and Deloitte. Further meetings were required, which in turn required Mr. Logan's additional time and attention.

[14] On June 22 the NBEUB received Mr. Logan's report (Logan Report), which is attached as Appendix A. There are several critical findings in the Logan Report. For example, according to the documentation reviewed by Mr. Logan, three causes for the pricing errors were identified as follows:

1. Incorrect Pricing Mechanism – the customers pricing structure was incorrect for their type of account (i.e. – wrong jurisdiction, wrong product specified, discount amount incorrect)
2. Incorrect Customer Classification – commercial versus residential
3. Clerical and Administrative Errors – data entry errors, delivery trucks with improper pricing uploads, and adjustment errors on propane cylinder returns/replacements

### **Complaints from customers**

[15] Between March and April 2015, the NBEUB received nine inquiries about this matter. Some customers had identified a possible billing error and others were interested in the investigatory process. The NBEUB did receive three official complaints with supporting documentation for consideration.

[16] This documentation in relation to these complaints was provided to Mr. Logan and he was specifically directed to confirm if these specific customers had been identified by Irving Oil as customers who were overcharged. As indicated in the Logan Report, these customers were identified and details are including in the Logan Report.

### **The NBEUB's jurisdiction**

[17] It is important to understand the scope of the NBEUB's authority in this matter. The NBEUB is a creature of statute and is obligated to act within its jurisdiction as set out in legislation.

[18] Subsection 21(2) of the PPPA provides direction to the NBEUB, when it is determined that a wholesaler or a retailer has charged more than the regulated maximum price. This subsection provides as follows:

**21(2)** When the Board, as a result of an investigation believes that a wholesaler or retailer has charged or is charging a price for a type of petroleum product that exceeds the maximum price set under this Act, or is charging in excess of the maximum delivery costs or the maximum full service charge set under this Act, **the Board shall order the wholesaler or retailer to sell or offer for sale the type of petroleum product at a price not to exceed the price set by the Board or not to charge delivery costs or a maximum full service charge in excess of that set under this Act.** [Emphasis added]

[19] Given this legislative authority, the purpose of this investigation is focused on whether an overcharging has occurred. If there is evidence of overcharging, the NBEUB must be confident that all affected customers have been identified. The NBEUB needs to be satisfied that the methodology used to identify customers is appropriate and provides assurance to the NBEUB that the full scope of the error has been determined.

[20] The Logan Report concludes that:

[...] Overall it would appear that the appropriate reliance can be placed on their work to support the calculations as prepared by IOL.

Based on the above, we conclude that the 3,450 customers identified by IOL as having incorrect pricing applied at the time of purchase, and the total pricing error amount of \$139,630.42 is appropriate and reasonable in the circumstances.

[21] While the PPPA does not give the Board the authority to order reimbursement to customers, it is noted that Irving Oil committed to reimburse the customers who were overcharged and advised the Board:

While we believe our original reimbursement approach to be fair and equitable, we have decided to proceed on a different basis -- reimbursing affected home heating customers for all amounts that they paid in excess of the NBEUB Retail Maximum Price, plus interest and a \$20 coupon.

## **Conclusion**

- [22] The NBEUB has carefully considered the information provided by Irving Oil, the complaints received and the Logan Report. The NBEUB finds that Irving Oil has, in several instances, charged more for heating fuel than the maximum price set by the NBEUB. Clearly this violation is unacceptable and unfair to consumers.
- [23] Irving Oil has consistently stated that the error was the result of clerical miscoding and administrative errors. The Logan Report supports this submission. As a result, the Board accepts that this overcharging was the result of unintentional error. The Board also accepts that Irving Oil has made a commitment to improve its quality control process and Irving Oil's assurance that this situation does not reoccur.
- [24] The Board expects Irving Oil to comply, in all respects, with the PPPA and to sell heating fuels at a price at or below the maximum price set by the Board on a weekly basis. Pursuant to subsection 21(2) of the PPPA, Irving Oil is ordered to sell or offer for sale heating fuel at a price not to exceed the maximum price set by the Board.

**DATED** at the City of Saint John, New Brunswick, this 7<sup>th</sup> day of July, 2015.

**BY THE BOARD**



Kathleen Mitchell  
Chief Clerk

## Appendix A

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June 19, 2015

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**TEED  
SAUNDERS  
DOYLE & CO.**

**Chartered Accountants**

Independent member of DFK International

### **New Brunswick Energy and Utilities Board**

P.O. Box 5001  
15 Market Square, Suite 1400  
Saint John, N.B., E2L 4Y9

Attention: Mr. Raymond Gorman, Q.C., Chairman

Dear Mr. Gorman,

### **Re: Irving Oil Petroleum Products Pricing Investigation**

Pursuant to your letter of April 9, 2015, whereby you have engaged our firm to conduct an investigation under Section 21 of the Petroleum Products Pricing Act, we provide the following report for your consideration.

Specifically, we have been asked by the Energy and Utilities Board (EUB) to perform the following tasks:

1. Meet with representatives from Irving Oil Limited and Deloitte to discuss the methodologies used to identify the affected customers and in determining the amount of overcharge;
2. Review documentation and other information related to Irving Oil Limited's internal review; and
3. Review documentation and other information related to Deloitte's independent review of Irving Oil Limited's determination of the reimbursable amounts.

Based on these procedures, we are to provide a written report confirming whether the methodology used by Irving Oil Limited (IOL) and reviewed by Deloitte was appropriate and reasonable in the circumstances, and to provide the Board a level of assurance that the affected customers and the excess charges have been accurately identified.

Additionally, the Board has received formal inquires from several consumers requesting their specific accounts be reviewed for possible over-charging. We have been asked to confirm whether these specific customers are included in the affected population identified by IOL.



## **Background**

On March 9, 2015, the EUB commenced an investigation with respect to Irving Oil Limited having possibly charged customers more than the maximum price set by the Board for heating fuel. IOL confirmed that an internal review had been conducted and that a number of customers were mistakenly billed amounts in excess of what they would have paid had they been billed at the regulated cap. IOL also confirmed that they had engaged the audit firm of Deloitte's to conduct an independent review of the methodology used to identify customers who had been inadvertently overcharged and to validate the internal findings.

## **Applicable Review Standards and Process Overview**

The Board identified the level of assurance required as "appropriate and reasonable in the circumstances". Based on this mandate, we have applied the general review standards found in the CPA Canada Standards and Guidance Collection, specifically those standards found in Section 8100.15, (iii):

*"The public accountant should perform a review with the limited objective of assessing whether the information being reported on is plausible in the circumstances within the framework of appropriate criteria. Such a review should consist of:*

- a) inquiry, analytical procedures and discussion;*
- b) additional or more extensive procedures when the public accountant's knowledge of the business carried on by the enterprise and the results of the inquiry, and the analytical procedures and discussion cause him or her to doubt the plausibility of such information."*

The focus of the review, therefore, would be on assessing the plausibility of the information using the following criteria:

- a) Completion -- ensuring all affected customers were captured.
- b) Data Accuracy -- ensuring the correct transaction data was compiled for each affected customer (i.e. - date of purchase, quantity, price charged, EUB price in effect, total over charge).
- c) Mechanical Accuracy -- ensuring the underlying computations were accurate.
- d) Appropriate Scope -- ensuring the independent review by Deloitte was sufficient in scope to provide assurance to the reliability of the data produced.

The work began with a review of the relevant legislation, including the Petroleum Products Pricing Act, and the associated Regulation. A meeting was arranged with IOL and Deloitte representatives on April 17, 2015 to review the processes established and executed by IOL, and to discuss the review procedures performed by Deloitte. A copy of the presentation was provided and subjected to further review. Following this meeting, IOL revised their methodology of reimbursing the affected

customers. A second meeting was then held on May 12, 2015, to review the changes, and address Deloitte's work on the new methodology. Included in the documentation provided was a listing of those customers affected, the calculated over charge, and the proposed settlement amount. To assist in the review, a random sample of 20 customers was chosen from this list, and the complete details of the overcharge calculation were requested, including:

- date of transactions;
- purchase quantities;
- actual price applied;
- EUB price in effect;
- product type;
- calculated variance;
- HST rate in effect;
- total overcharge with taxes;
- interest calculation; and
- total overcharge including taxes and interest.

The 20 extracted customers were then subject to a detailed review assessing the following:

1. Transaction dates – ensure within range of review period and review number of affected transactions; review frequency of deliveries within the context of the time of year.
2. Quantities – review amounts delivered as compared to average for customer.
3. Pricing – review level of variance between actual charge and EUB charge; verify EUB price contained in the calculation agrees to EUB published price for the applicable date.
4. Variance - ensure mechanical accuracy of variance.
5. Tax rates – ensure the appropriate HST rate was applied to the transaction (part of the period under review had an HST rate of 14%; on January 1, 2008 the rate decreased to 13%).
6. Variance with tax – ensure mechanical accuracy.
7. Interest – ensure mechanical accuracy (rate, amount of variance, date of transaction)
8. Total variance – ensure mechanical accuracy, and that the total variance agrees to the master listing.

## Results of Procedures

### Meetings with IOL and Deloitte representatives

The initial meeting was held April 17, 2015 at the Deloitte offices in Saint John. In attendance was the director of Irving Energy, the partner from Deloitte responsible for their engagement, and a manager from Deloitte that participated in the review. To facilitate the meeting, a hardcopy of the meeting presentation was circulated and formed the basis of the discussion. The report contained the following sections: Deloitte review scope; Irving Oil decision matrix; Deloitte review process; Summary results of the IOL analysis; IOL/EUB pricing analysis – transition, reimbursement amount for IOL posted home heating price; Summary reimbursement table; and, Categorization of error types.

As previously indicated, after the April 17<sup>th</sup> meeting, IOL decided to change the reimbursement calculation for affected customers. Initially, they had calculated the reimbursable amount on a net basis – that is, they also included those transactions where IOL charged less than the EUB maximum price against the over charges. Upon further review and customer input, it was decided to ignore the “under billings” and they were removed from the calculation.

The second meeting was held on May 12<sup>th</sup> at the Deloitte offices, with the same parties in attendance. The report prepared for this meeting was similar in content, but included a revised IOL decision matrix to account for the removal of the netting of under billed transactions. Details of the new settlement process were also included in the booklet. IOL decided to apply a rounding condition to the actual results, calculated as follows:

1. Accounts with cumulative errors less than \$10 will be rounded to \$10.
2. Accounts over \$10 will be rounded up to the nearest whole dollar amount.

IOL also gave each affected customer a \$20 gift card towards their next purchase. The report included a complete anonymous listing of all 3,450 affected customers including the amount of over billing (pricing error, plus sales tax, plus interest), the amount with the rounding conventions applied, the gift card amount, and the total payout to the customer.

At variance times during the course of identifying affected customers, IOL reported varying information to the EUB. Below is a table that summarizes these figures, including the reason for the change in numbers:

<b>Date Reported to EUB</b>	<b>Customers Affected</b>	<b>Gross Dollar Value</b>	<b>Reason for change</b>
Mar 24/15	1,152	\$57,044	Initial population calculated

Date Reported to EUB	Customers Affected	Gross Dollar Value	Reason for change
Apr 7/15	819	\$50,688	Pricing errors noted on EUB website on 4 different occasions; population updated for these errors
Apr 17/15	769	\$50,669	Additional refinement to search parameters (more customers excluded)
May 12/15	3,450	\$139,630	IOL removes "netting" from calculation and only includes over billings to affected customers

Review of IOL information, identification process, and calculations

During the meetings, a detailed discussion was held concerning the database used to ultimately determine the affected customers. Of chief concern was the completeness of the initial population to ensure that any potential affected customers were in fact identified and included in the end results. The IOL decision matrix began with all deliveries for propane and heating oil customers from July 6, 2006, through to March 19, 2015. The first decision point in the matrix was to determine if the customer had at least one delivery over the period where the invoice price exceeded the maximum EUB posted price. If none were detected, the customer was removed from the database. The remaining customers identified with at least one over charge were then classified between Home Heating and Commercial. Commercial customers purchase under contract and are not considered by IOL to be covered by the Petroleum Product Pricing Act. A secondary analysis was conducted on the excluded commercial accounts identified to ensure that none were misclassified. If an account was identified as misclassified, then it was added back to the affected customer pool. Misclassification can occur when customers change from a business to a residential consumer at a particular location (i.e. – apartment building converting to a principal residence; home business is wound up).

This analysis produced 3,450 affected customers with a total over charge of \$139,630.42. Based on data provided in the report, 70.7% of the customers had an aggregate over charge of less than \$20, 16.7% were between \$20 and \$50, and 12.6% exceeded \$50.

Twenty affected accounts were selected for a more detailed review. The sample included a range of over charge amounts from \$3.54 to \$2,187.58, from 1 affected transaction to 130 affected transactions, and 1 propane customer and 19 furnace oil customers. The following observations were made:

- All transaction dates in the sample were within the appropriate range;
- A review of delivery quantities for consistency to customer average showed no unreasonable anomalies;

- The EUB stated maximum prices were agreed to the EUB website in a sample of transactions;
- The mechanical accuracy of the pricing variances, sales tax calculations, interest calculations, and total variances, on a sample of transactions, was successfully verified in all cases;
- The appropriate HST rate was applied to the transactions (i.e. – 14% prior to Jan 1 2008; 13% after Dec 31, 2007);

One of the customers selected in the above sample had only one transaction with an error of \$2,187.58 that originated in 2007 on a delivery of 187 liters of product. It seemed unusual that an error of this magnitude on one delivery had not already been rectified by IOL. Upon further review, it was determined that this customer was included on the list incorrectly and that they had been reimbursed in error. The IOL price used in the calculation was produced by a software program with an issue related to customers who participated in Irving Energy's Capped Price Program. According to IOL, this pricing program was only utilized by a very small number of customers, and the affected list was again reviewed to ensure no other similar situations existed. None were found and they concluded that it was an isolated incident.

One final analysis was performed on the affected population by plotting the customers over a map of New Brunswick. This review was intended to identify any unexpected concentration of errors, or errors in unusual geographic locations. Due to limits of the plotting software, only 2000 customers could be plotted at once. Each of the resulting maps were reviewed and showed expected high concentrations of affected customers in the municipal regions of the province, with lower concentrations in rural areas. This high level review did not reveal any unexpected results.

### Sources of errors

According to the documentation reviewed, IOL identified three causes for the pricing errors:

1. Incorrect Pricing Mechanism – the customers pricing structure was incorrect for their type of account (i.e. – wrong jurisdiction, wrong product specified, discount amount incorrect).
2. Incorrect Customer Classification – commercial versus residential
3. Clerical and Administrative Errors – data entry errors, delivery trucks with improper pricing uploads, and adjustment errors on propane cylinder returns/replacements

The vast majority of errors were a result of clerical and administrative errors. A review of several specific examples of the error types indicated that they were plausible and the likely cause of the over charging.

According to IOL, new rectification procedures have been added to their processes to reduce the likelihood of these errors occurring in the future. An anomaly analysis using a set of criteria

established from these error types is run against the customer database on a weekly basis with account corrections performed immediately. They have also established new procedures for propane tank returns and replacements, and issued new guidelines for delivery drivers regarding pricing upload frequency.

#### Review of Deloitte scope and review process

Deloitte was contracted by IOL to perform an independent review of the processes and methodology employed for identifying home heating fuel customers with potential pricing discrepancies. The scope of their review focused on the following areas:

- A review of the variance analysis prepared by IOL on pricing of home heating fuel customers versus the EUB price for identified affected customers and the reimbursable amount;
- A review of the supporting reports and data utilized by IOL and included in their analysis and documentation.

To achieve their mandate, Deloitte developed and conducted the following procedures:

1. The process and methodology undertaken by IOL to identify the population of potentially affected home heating fuel customers was reviewed and mapped.
2. From this review, a decision matrix depicting IOL's approach in assessing the data was established.
3. Once a thorough understanding of the population, process and data was ascertained, the following specific review procedures were applied using standard sampling techniques:
  - a. Delivery data control test – a sample of delivery records issued to home heating fuel customers with the data range and included in the affected population were traced to original delivery slips. The date, quantity and original price charged were matched to the source document.
  - b. Pricing control test – a sample of EUB prices used in IOL's pricing analysis and reimbursement calculations were agreed to EUB reported prices.
  - c. Completeness test – a sample of four random months were chosen over the reporting period and reconciliations were performed to agree the total in province deliveries for the affected products to the amounts contained in the original population analyzed. The purpose of this test was to ensure that all deliveries were included, and add assurance that the original population was complete.
  - d. Mechanical accuracy control test – a sample of all calculations in the formulation of the reimbursable amount were subject to testing (re-performance).
4. The causation errors identified by IOL were reviewed and documented. The rectification procedures proposed by IOL were also reviewed and assessed in preventing similar errors from occurring in the future.

According to Deloitte, all procedures were completed satisfactorily. Typical sample size was 25 items chosen at random, and if an error occurred, or the evidence was not acceptable, a further 25 items were selected.

## Conclusion

Our mandate was to provide the Board a level of assurance that the affected customers and the excess charges were accurately identified. In fulfilling this mandate we reviewed the evidence with the following criteria/assertions in mind – completeness, data accuracy, mechanical accuracy and appropriate scope.

### Completeness

The initial population of customers used by IOL appears to be complete. The starting point was based on product deliveries for Propane and Heating Oil, which ensures that all customers (commercial and residential, and those who may be misclassified) would be included in this population at the start of the process. Deloitte reviewed this approach, and also performed a global product delivery reconciliation against the data finding no significant errors.

### Data Accuracy

Deloitte conducted several procedures on data integrity tracing details to source documents (i.e. – delivery slips). We performed some limited reviews of the data (HST rates, reasonable of quantities, date range review, and EUB price verification) and found no issues. IOL has also indicated that the detailed calculations are available on request by each affected customer for their review. The results of these procedures would indicate that the data is reasonable in the circumstances.

### Mechanical Accuracy

All calculations in the formulation of the reimbursable amounts were subject to a sampling of testing to ensure mechanical accuracy. Deloitte found no issues nor did we in our review.

### Appropriate Scope

Deloitte's independent review was conducted in accordance with CPA Canada's professional standards for such engagements. In discussion with Deloitte representatives, no evidence arose that would indicate they did not adhere to the standards, or that their independence was compromised during their engagement. They were responsive to our questions, and portrayed a detailed knowledge of the processes and information as presented. Overall it would appear that the appropriate reliance can be placed on their work to support the calculations as prepared by IOL

**Based on the above, we conclude that the 3,450 customers identified by IOL as having incorrect pricing applied at the time of purchase, and the total pricing error amount of \$139,630.42 is appropriate and reasonable in the circumstances.**



### Specific Customer Inquiries

We were also asked to follow up on several customer inquiries filed with the Board. Specifically, we were to address a list of nine customers and determine if they were included in the review to ensure that they were correctly billed, or were included in the affected population and eligible for a refund. The list was provided to IOL for scrutiny, and the following comments were noted:

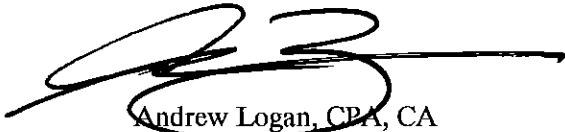
- Three of the customers had no excess billings and therefore no reimbursable amount owing.
- Two of the customers had over billings instances and were included in the affected population and reimbursed accordingly.
- Four of the customers were determined to be commercial accounts and therefore according to IOL's interpretation of the legislation, exempt from the provisions of the Act.

IOL confirmed that these specific customers were subject to a second analysis to ensure they had received the proper treatment.

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If you require any further information on our work, or have questions pertaining to this report, please do not hesitate to contact us.

Yours truly,



Andrew Logan, CPA, CA  
Partner