

IN THE MATTER OF

SETTLEMENT AGREEMENT

**SH & H Enterprises, LLC d/b/a
Old Fort Citgo**

This Settlement Agreement (hereinafter "Agreement") is entered into by Roy Cooper, Attorney General of the State of North Carolina (hereinafter "Attorney General"), and SH & H Enterprises, LLC d/b/a Old Fort Citgo (hereinafter "Old Fort Citgo").

I. FACTUAL BACKGROUND

1. Old Fort Citgo is a limited liability corporation formed and existing under the laws of the State of North Carolina.
2. Old Fort Citgo operates a retail gasoline outlet located at 356 Catawba Avenue in Old Fort, North Carolina
3. On September 12, 2008, Governor Michael F. Easley declared the existence of an "abnormal market disruption" pursuant to G.S. 75-38 (hereinafter the "Declaration"). Such a Declaration is intended to prevent sellers of goods and services from charging "unreasonably excessive" prices for those goods or services under the conditions outlined in the statute.
4. The Attorney General received numerous allegations of unreasonably excessive pricing following the Declaration and undertook an investigation. At the request of the Attorney General, Old Fort Citgo provided information concerning its costs, pricing and sales volume for the period prior to and following the Declaration.
5. In the retail gasoline industry, "laid-in cost" means the rack (or terminal) price charged to the retail outlet. The laid-in cost includes the wholesale price of the gasoline, all taxes and fees, and the cost of freight or delivery.

REGULAR GASOLINE

6. On September 9, 2008, Old Fort Citgo received a shipment of regular gasoline with a laid-in cost of \$3.8844 per gallon. On September 10 and 11, 2008, Old Fort Citgo charged \$3.999 and \$3.989 per gallon, respectively, for its regular gasoline. The gross margin on regular gasoline on September 10, 2008 was \$0.1146 per gallon, a 2.9503% mark up. The margin on regular gasoline on September 11, 2008 was \$0.1145 per gallon, a 2.9477% mark up.
7. On September 12, 2008 the regular gasoline purchased for \$3.8844 per gallon was sold for \$4.5815 per gallon. The margin on regular on September 12, 2008 was \$0.6971 per gallon, a 17.95% mark up. One thousand ninety-nine gallons of regular gasoline were sold after noon on September 12, 2008.
8. On September 13, 2008 the regular gasoline purchased for \$3.8844 per gallon was sold for \$4.9989 per gallon. The margin on regular on September 13, 2008 was \$1.1145 per gallon, a 28.69% mark up. Two hundred twenty-seven gallons of regular gasoline were sold on September 13, 2008.

MID-GRADE GASOLINE

9. The mid-grade gasoline sold at Old Fort Citgo is a blend of regular and premium gasoline. The blended laid-in cost for the mid-grade gasoline from September 10 through September 13, 2008 was \$3.8727 per gallon. On September 9, 2008 the mid-grade gasoline purchased for \$3.8727 per gallon was sold for \$4.1989 per gallon. The margin on mid-grade gasoline on September 9, 2008 was \$0.1786 per gallon, a 4.61% mark up. On September 10, 2008 the mid-grade gasoline purchased for \$3.8727 per gallon was

- sold for \$4.1989 per gallon. The margin on mid-grade gasoline on September 10, 2008 was \$0.3262 per gallon, a 8.42% mark up. On September 11, 2008 the mid-grade gasoline purchased for \$3.8727 per gallon was sold for \$4.1990 per gallon. The margin on mid-grade gasoline on September 11, 2008 was \$0.3263 per gallon, a 8.43% mark up.
10. On September 12, 2008 the mid-grade gasoline purchased for \$3.8727 per gallon was sold for \$4.8648 per gallon. The margin on mid-grade gasoline on September 12, 2008 was \$0.9921 per gallon, a 25.62% mark up. Two hundred eighty-eight gallons of mid-grade gasoline were sold on September 12, 2008. On September 13, 2008 the mid-grade gasoline purchased for \$3.8727 per gallon was sold for \$5.1988 per gallon. The margin on mid-grade gasoline on September 12, 2008 was \$1.3261 per gallon, a 34.24% mark up. Seventy-two gallons of mid-grade gasoline were sold on September 13, 2008.

PREMIUM GASOLINE

11. On September 1, 2008, Old Fort Citgo received a shipment of premium gasoline with a laid-in cost of \$3.8511 per gallon. From September 1 through 8, 2008, Old Fort Citgo's margin on the premium gasoline it received on September 1, 2008 never exceeded \$0.15 per gallon. On September 9, 2008, Old Fort Citgo charged \$4.3312 per gallon for its premium gasoline, a 12.47% mark up. On September 10 and 11, 2008, Old Fort Citgo charged \$4.399 per gallon for its premium gasoline. This represented a margin of \$0.5479 per gallon, a 14.23% mark up.
12. On September 12, 2008 the premium gasoline purchased for \$3.8511 per gallon was sold for \$5.0529 per gallon. The margin on premium gasoline on September 12, 2008 was \$1.2018 per gallon, a 31.21% mark up. Two hundred fifty-six gallons of premium

gasoline was sold on September 12, 2008. On September 13, 2008 the premium gasoline purchased for \$3.8511 per gallon was sold for \$5.3990 per gallon. The margin on premium gasoline on September 13, 2008 was \$1.5479 per gallon, a 40.19% mark up. Three hundred twenty-three gallons of premium gasoline were sold on September 13, 2008.

ON-ROAD DIESEL

13. On September 1, 2008, Old Fort Citgo received a shipment of on-road diesel fuel with a laid-in cost of \$3.9531 per gallon. From September 1 through 8, 2008, Old Fort Citgo's margin on the off-road diesel fuel it received on September 1, 2008 never exceeded \$0.30 per gallon. On September 9, 2008, Old Fort Citgo charged \$4.3553 per gallon for its on-road diesel fuel. This represented a margin of \$0.4022 per gallon, a 10.17% mark up. On September 10, 2008, Old Fort Citgo charged \$4.4990 per gallon for its on-road diesel fuel. This represented a margin of \$0.5459 per gallon, a 13.81% mark up. On September 11, 2008, Old Fort Citgo charged \$4.4991 per gallon for its on-road diesel fuel. This represented a margin of \$0.5460 per gallon, a 13.81% mark up.
14. On September 12, 2008 the on-road diesel fuel purchased for \$3.9531 per gallon was sold for \$4.8585 per gallon. The margin for on-road diesel fuel on September 12, 2008 was \$0.9054 per gallon, a 22.9035% mark up. Two hundred seventeen gallons of on-road diesel fuel were sold on September 12, 2008. During the period September 13 through September 17, 2008 the on-road diesel fuel purchased for \$3.9531 per gallon was sold for an average price of \$4.9990 per gallon. The average margin for on-road diesel fuel from

September 13 through 17, 2008 was \$1.0459 per gallon, a 26.46% mark up. Nine hundred fourteen gallons of on-road diesel fuel were sold on September 13, 2008.

OFF-ROAD DIESEL

15. On August 11, 2008, Old Fort Citgo received a shipment of off-road diesel fuel with a laid-in cost of \$3.80 per gallon. Until September 9, 2008, Old Fort Citgo's margin on the off-road diesel fuel it received on August 11, 2008 never exceeded \$0.10 per gallon. On September 9, 2008, Old Fort Citgo charged \$4.1766 per gallon for its off-road diesel fuel. This represented a margin of \$0.3766 per gallon, a 9.91% mark up. On September 10, 2008, Old Fort Citgo charged \$4.3992 per gallon for its off-road diesel fuel. This represented a margin of \$0.5992 per gallon, a 15.77% mark up. On September 11, 2008, Old Fort Citgo charged \$4.3994 per gallon for its off-road diesel fuel. This represented a margin of \$0.5994 per gallon, a 15.77% mark up.
16. On September 12, 2008 the off-road diesel fuel purchased for \$3.9531 per gallon was sold for \$4.7318 per gallon. The margin on off-road diesel fuel on September 12, 2008 was \$0.9318 per gallon, a 24.52% mark up. Forty gallons of off-road diesel fuel was sold on September 12, 2008. From September 13, 2008 through September 18, 2008 the off-road diesel fuel purchased for \$3.80 per gallon was sold for an average of \$4.8991 per gallon. The average margin on off-road diesel fuel from September 13 through September 18, 2008 was \$1.0991 per gallon, a 28.92% mark up. One hundred thirteen gallons of off-road diesel fuel were sold from September 13 through September 18, 2008.

17. The Attorney General contends that the prices charged for all gasoline by Old Fort Citgo after the Declaration constituted unreasonably excessive prices for the time period of:
- (A) September 12 and 13, 2008 for regular, premium and mid-grade gasoline;
 - (B) September 12 through 17, 1008 for on-road diesel fuel; and
 - (C) September 12 through 18 for off-road diesel fuel.

These periods of time for each type of product are hereinafter referred to as "the relevant time period."

18. The Attorney General contends that the Old Fort Citgo overcharged consumers during the relevant time period to the extent that the margin charged per gallon of product was:
- (A) more than \$0.12 per gallon for regular gasoline;
 - (B) more than \$0.18 per gallon for mid-grade gasoline;
 - (C) more than \$0.15 per gallon for premium gasoline;
 - (D) more than \$0.30 per gallon for on-road diesel fuel; and
 - (E) more than \$0.10 per gallon for off-road diesel fuel .

19. During the relevant time period, the Attorney General contends that Old Fort Citgo overcharged consumers:
- (A) \$859.98 for regular gasoline;
 - (B) \$316.24 for mid-grade gasoline;
 - (C) \$720.95 for premium gasoline;
 - (D) \$813.44 for on-road diesel fuel; and
 - (E) \$146.06 for off-road diesel fuel.

The total overcharges alleged by the Attorney General for the relevant time periods for all types of petroleum products sold are \$2,856.67.

II. SETTLEMENT PROVISIONS

20. Old Fort Citgo shall make restitution to consumers in the sum of \$2,856.67, which represents the number of gallons of each type of petroleum product sold during relevant time period times the amount per gallon that the Attorney General contends was the unreasonably excessive overcharge for each grade. Said restitution will be distributed in the following manner:
- a. Within thirty (30) days of the execution of this Agreement, Old Fort Citgo shall identify all credit and debit card customers who purchased gasoline during the relevant time period and credit a refund to their credit or debit cards for the appropriate amount of the overcharge. The per gallon overcharge to consumers is the amount per gallon paid by the consumer minus the allowed margin for each petroleum product as listed in paragraph 18. Old Fort Citgo shall refund the same amounts per gallon to every consumer who presents, within thirty (30) days of the execution of this Agreement, a cash receipt or other proof of purchase demonstrating a purchase within the relevant time frame.
 - b. Within sixty (60) days of the execution of this Agreement, Old Fort Citgo shall provide the Attorney General with a sworn accounting of all refunds made pursuant to paragraph 20(a). The accounting shall include the name, address and amount of refund for each consumer. Contemporaneously with the accounting, Old Fort Citgo shall pay to the Attorney General the difference between \$2,856.67

and the amount the accounting shows was distributed to consumers. This payment shall be made to the Attorney General via a certified check made payable to the "North Carolina Department of Justice." The Attorney General shall provide this amount to the Low Income Heat and Energy Assistance Program (LIHEAP) to be used for energy assistance in the county where the overcharges occurred.

21. Contemporaneously with the signing of this Agreement, Old Fort Citgo shall pay to the Attorney General \$5,000.00 as a civil penalty pursuant to N.C. Gen. Stat. § 75-15.2, and \$285.67 for the Department of Justice's investigative costs. These payments shall be made to the Attorney General via a certified check made payable to the "North Carolina Department of Justice."
22. Old Fort Citgo acknowledges that it is fully aware of the terms of N.C. Gen. Stat. § 75-38, a copy of which is attached hereto as "Attachment A," and agrees to abide by the statute in all future business transactions.
23. By executing this Agreement, and in consideration of Old Fort Citgo's undertakings set forth herein, the Attorney General agrees not to institute any suit or enforcement proceeding against Old Fort Citgo with respect to alleged unreasonably excessive pricing during the relevant time period at the facility identified in paragraph 2. Old Fort Citgo, however, acknowledges that this Agreement is based upon information that it has provided to the Attorney General. If any of the information provided to the Attorney General by Old Fort Citgo is shown to be false or incomplete, the Attorney General shall retain the right to pursue legal action concerning overcharges at Old Fort Citgo based on

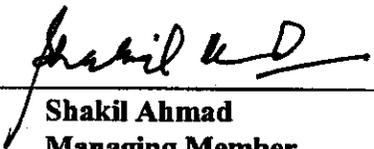
additional information. The Attorney General further retains the right to pursue legal action concerning overcharges at any other location owned or operated by Old Fort Citgo.

24. Should Old Fort Citgo fail to comply with any of the provisions of this Agreement, it agrees to pay a stipulated penalty of \$5,000 per violation.

THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS MATTER, HEREBY CONSENT TO THE FORM AND CONTENTS OF THE FOREGOING SETTLEMENT AGREEMENT.

Signed this 31st of Feb., 2008.

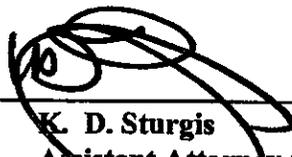
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Attachment A

§ 75-38. Prohibit excessive pricing during states of disaster, states of emergency, or abnormal market disruptions

(a) Upon a triggering event, it is prohibited and shall be a violation of G.S. 75-1.1 for any person to sell or rent or offer to sell or rent any goods or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances. This prohibition shall apply to all parties in the chain of distribution, including, but not limited to, a manufacturer, supplier, wholesaler, distributor, or retail seller of goods or services. This prohibition shall apply in the area where the state of disaster or emergency has been declared or the abnormal market disruption has been found.

In determining whether a price is unreasonably excessive, it shall be considered whether:

(1) The price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the triggering event.

(2) The price charged by the seller exceeds the seller's average price in the preceding 60 days before the triggering event. If the seller did not sell or rent or offer to sell or rent the goods or service in question prior to the time of the triggering event, the price at which the goods or service was generally available in the trade area shall be used as a factor in determining if the seller is charging an unreasonably excessive price.

(3) The price charged by the seller is attributable to fluctuations in applicable commodity markets; fluctuations in applicable regional, national, or international market trends; or to reasonable expenses and charges for attendant business risk incurred in procuring or selling the goods or services.

(b) In the event the Attorney General investigates a complaint for a violation of this section and determines that the seller has not violated the provisions of this section and if the seller so requests, the Attorney General shall promptly issue a signed statement indicating that the Attorney General has not found a violation of this section.

(c) For the purposes of this section, the end of a triggering event is the earlier of 45 days after the triggering event occurs or the expiration or termination of the triggering event unless the prohibition is specifically extended by the Governor.

(d) A "triggering event" means the declaration of a state of emergency pursuant to G.S. 166A-8 or Article 36A of Chapter 14 of the General Statutes, the proclamation of a state of disaster pursuant to G.S. 166A-6, or a finding of abnormal market disruption pursuant to G.S. 75-38(e).

(e) An "abnormal market disruption" means a significant disruption, whether actual or imminent, to the production, distribution, or sale of goods and services in North Carolina, which are consumed or used as a direct result of an emergency or used to preserve, protect, or sustain life, health, safety, or economic well-being of a person or his or her property. A significant disruption may result from a natural disaster, weather, acts of nature, strike, power or energy failures or shortages, civil disorder, war, terrorist attack, national or local emergency, or other extraordinary adverse circumstances. A significant market disruption can be found only if a declaration of a state of emergency, state of disaster, or similar declaration is made by the President of the United States or an issuance of Code Red/Severe Risk of Attack in the Homeland Security Advisory System is made by the Department of Homeland Security, whether or not such declaration or issuance applies to North Carolina.

(f) The existence of an abnormal market disruption shall be found and declared by the Governor pursuant to the definition in subsection (e) of this section. The duration of an abnormal market disruption shall be 45 days from the triggering event, but may be renewed by the Governor if the Governor finds and declares the disruption continues to affect the economic well-being of North Carolinians beyond the initial 45-day period.