

IN THE MATTER OF

SETTLEMENT AGREEMENT

**LR&S Inc. d/b/a Four Sisters
Center and Yadkin Food Mart**

This Settlement Agreement (hereinafter “Agreement”) is entered into by Roy Cooper, Attorney General of the State of North Carolina (hereinafter “Attorney General”), and LR&S Inc. (hereinafter “LR&S”).

I. FACTUAL BACKGROUND

1. LR&S is a corporation formed and existing under the laws of the State of North Carolina.
2. LR&S operates a “Four Sisters Center” retail gasoline outlet located at 513 E. Main Street, Yadkinville, North Carolina, and a “Yadkinville Food Mart” retail gasoline outlet located at 909 N. State Street, Yadkinville, 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, LR&S 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 10, 2008, LR&S received a shipment of regular gasoline with a laid-in cost of \$3.4159 per gallon. On September 12, 2008, LR&S charged \$3.779 per gallon for its regular gasoline until late morning when the company increased its price to \$5.359 per gallon. LR&S's gross margin on regular gasoline on September 12, 2008 until late morning was \$0.3631 per gallon, an 11% mark up. After the price increase to \$5.359, LR&S's gross margin increased to \$1.58 per gallon, a 46% mark up.
7. At some time after 3:00 p.m. on September 12, when LR&S realized it was receiving adverse media coverage for alleged price gouging, LR&S decreased its prices for regular gasoline at its two outlets to \$3.899 per gallon.

MID-GRADE GASOLINE

8. In its last receipt of premium gasoline prior to September 12, 2008, on August 26, 2008, LR&S received a shipment of premium gasoline with a laid-in cost of \$3.5765 per gallon. LR&S's mid-grade is created by blending at the pump its regular and premium gasoline. On September 12, 2008, LR&S's laid-in cost for its mid-grade blend was \$3.498. On September 12, 2008, LR&S charged \$3.919 per gallon for its mid-grade gasoline. By late morning on September 12, LR&S increased its price for mid-grade to \$5.479 per gallon. The gross margin on mid-grade gasoline prior to the price increase was \$0.421 per gallon, a 12% mark up. After the price change to \$5.479, the gross margin was \$1.981 per gallon, a 57% mark up.

9. At some time after 3:00 p.m. on September 12, when LR&S realized it was receiving adverse media coverage for alleged price gouging, LR&S decreased its prices for mid-grade gasoline at its two outlets to approximately \$4.019 per gallon.

PREMIUM GASOLINE

10. On August 26, 2008, LR&S received a shipment of premium gasoline with a laid-in cost of \$3.5765 per gallon. On September 12, 2008, LR&S charged approximately \$3.999 per gallon for its premium gasoline. By late morning on September 12, LR&S increased its price for premium to at least \$5.679 per gallon. LR&S's gross margin on premium gasoline prior to the price increase was \$0.4225 per gallon, a 12% mark up. After the price change to \$5.679, the gross margin was \$2.103 per gallon, a 59% mark up.

11. At some time after 3:00 p.m. on September 12, when LR&S realized it was receiving adverse media coverage for alleged price gouging, LR&S decreased its prices for premium gasoline at its two outlets to approximately \$4.119 per gallon.

12. LR&S represents that it is unable to determine the identities of customers who purchased gasoline at the higher prices on September 12, 2008.

II. SETTLEMENT PROVISIONS

13. LR&S has informed the Attorney General that, due to the nature of its credit and debit card processing system, it is unable to identify the charges made to individual credit and debit card customers.

14. LR&S shall provide a refund 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. The refund shall be for the amount that the margin charged per gallon of product was:

- a. more than \$0.36 per gallon for regular gasoline;
 - b. more than \$0.421 per gallon for mid-grade gasoline; and
 - c. more than \$0.4225 per gallon for premium gasoline.
15. LR&S shall pay to the Attorney General a total of \$7,700.00 to be distributed as follows:
- a. \$2,000.00 to the Low Income Heat Energy assistance Program (LIHEAP) for use in the affected county;
 - b. \$5,000.00 as a civil penalty pursuant to N. C. Gen. Stat. § 75-15.2; and
 - c. \$700.00 for the Department of Justice's attorney's fees and investigative costs.
16. LR&S shall pay this total in installments, as follows:
- a. \$1,500.00 by no later than September 30, 2009;
 - b. \$1,500.00 by no later than October 30, 2009;
 - e. \$1,500.00 by no later than November 30, 2009;
 - h. \$1,500.00 by no later than December 31, 2009; and
 - i. \$1,700.00 by no later than January 29, 2010.

Each of these payments shall be made to the Attorney General via a certified check made payable to the "North Carolina Department of Justice".

17. LR&S 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.
18. By executing this Agreement, in consideration of LR&S's undertakings set forth herein

and subject to paragraph 19 below, the Attorney General agrees not to institute any suit or enforcement proceeding against LR&S with respect to the alleged unreasonably excessive pricing during the relevant time period at the outlets identified in paragraph 2. LR&S, 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 LR&S is shown to be false or incomplete, the Attorney General retains the right to pursue legal action concerning overcharges at LR&S 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 LR&S.

19. Should LR&S fail to comply with any of the provisions of this Agreement, it agrees to pay a stipulated penalty of \$5,000 per violation for each sale of gasoline at the above-noted prices on September 12, 2008.

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 24th day of September, 2009.

LR&S Inc.

By:  By: 
Mohammed Nasrallah
President

ROY COOPER
Attorney General

K. D. Sturgis
Assistant Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602
Tel. 919/716.6011

Notary: Brandi Frey
Brandi Frey
exp: 7-13-2013



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.