

IN THE MATTER OF

SETTLEMENT AGREEMENT

Duncan Oil Company d/b/a Big D

This Settlement Agreement (hereinafter "Agreement") is entered into by Roy Cooper, Attorney General of the State of North Carolina (hereinafter "Attorney General"), and Duncan Oil Company d/b/a Big D (hereinafter "Big D").

I. FACTUAL BACKGROUND

1. Big D is a corporation formed and existing under the laws of the State of North Carolina.
2. Big D operates five retail gasoline outlets located in North Carolina. Big D Number 240 is located at 870 W. U.S. Highway 64, Murphy, NC. Big D Number 280 is located at 601 Highway 64 East, Haysville, NC. Big D Number 300 is located at 7985 Highway 141, Marble, NC. Big D Number 400 is located at 4404 Highway 64 East, Murphy, NC. Big D Number 600 is located at 331 Hill Street, Murphy, NC.
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, Big D provided information concerning its costs, pricing and sales volume for the period prior to and following the Declaration.
5. The following prices were charged at Big D Number 240 on September 12 and 13:

regular gasoline purchased for \$4.101 per gallon was sold for \$4.999 per gallon, mid-grade purchased for \$3.990 per gallon was sold for \$5.119 per gallon, and premium purchased for \$3.746 per gallon was sold for \$5.239 per gallon. The mark up on regular was \$0.898 per gallon, a 21.9% mark up. The mark up on mid-grade was \$1.129 per gallon, a 28.3% mark up. The mark up on premium was \$1.493 per gallon, a 39.86% mark up.

6. The following prices were charged at Big D Number 280 on September 12 and 13: regular gasoline purchased for \$3.542 was sold for \$4.999 per gallon and premium purchased for \$3.771 per gallon was sold for \$5.239 per gallon. The mark up on regular was \$1.457 per gallon, a 41.14% mark up. The mark up on premium was \$1.468 per gallon, a 38.93% mark up. No mid-grade gasoline was sold at the station.
7. The following prices were charged at Big D Number 300 on September 12 and 13: regular gasoline purchased for \$3.888 per gallon was sold for \$4.999 per gallon. The mark up on regular was \$1.111 per gallon, a 28.58% mark up. No sales of mid-grade or premium gas were made on September 12 and 13, 2008.
8. The following prices were charged at Big D Number 400 on September 12 and 13: regular gasoline purchased for \$3.542 per gallon was sold for \$4.999 per gallon, mid-grade purchased for \$3.640 per gallon was sold for \$5.119 per gallon, and premium purchased for \$3.933 per gallon was sold for \$5.239 per gallon. The mark up on regular was \$1.457 per gallon, a 41.14% mark up. The mark up on mid-grade was \$1.479 per gallon, a 40.63% mark up. The mark up on premium was \$1.306 per gallon, a 33.21% mark up.

9. The following prices were charged at Big D Number 600 on September 12 and 13: regular gasoline purchased for \$4.312 per gallon was sold for \$4.999 per gallon and premium purchased for \$4.312 per gallon was sold for \$5.239 per gallon. The mark up on regular was \$0.687 per gallon, a 15.93% mark up. The mark up on premium was \$0.927 per gallon, a 21.50% mark up. No mid-grade gasoline was sold at the station.
10. During the months of July and August, 2008, the average mark up on gasoline at the Big D stations was \$0.194 per gallon.
11. The Attorney General contends that the prices charged by Big D at all of its stations after the Declaration constituted unreasonably excessive prices for the time period of September 12 and 13, 2008 (hereinafter referred to as "the relevant time period"). The Attorney General contends that the overcharge per gallon of gasoline sold is the per gallon mark up charged during the relevant time period minus \$0.194 per gallon.
12. During the relevant time period, the Attorney General contends that Big D Number 240 overcharged consumers \$0.704 per gallon on the sale of 1,179 gallons of regular gasoline, an overcharge of \$830.02. During the relevant time period, the Attorney General contends that Big D Number 240 overcharged consumers \$0.935 per gallon on the sale of 70 gallons of mid-grade gasoline, an overcharge of \$65.45. During the relevant time period, the Attorney General contends that Big D Number 240 overcharged consumers \$1.299 per gallon on the sale of 98 gallons of premium gasoline, an overcharge of \$127.30. The total overcharges alleged by the Attorney General at Big D Number 240 during the relevant time period was \$1,022.77.
13. During the relevant time period, the Attorney General contends that Big D Number 280

- overcharged consumers \$1.263 per gallon on the sale of 298 gallons of regular gasoline, an overcharge of \$376.37. During the relevant time period, the Attorney General contends that Big D Number 280 overcharged consumers \$1.274 per gallon on the sale of 1 gallon of premium gasoline, an overcharge of \$1.27. The total overcharges alleged by the Attorney General at Big D Number 280 during the relevant time period was \$377.64.
14. During the relevant time period, the Attorney General contends that Big D Number 300 overcharged consumers \$0.917 per gallon on the sale of 380 gallons of regular gasoline, an overcharge of \$348.46. Big D 300 did not sell any mid-grade or premium gasoline during the relevant time period. Therefore the total overcharges alleged by the Attorney General at Big D Number 300 during the relevant time period was \$348.46.
15. During the relevant time period, the Attorney General contends that Big D Number 400 overcharged consumers \$1.263 per gallon on the sale of 214 gallons of regular gasoline, an overcharge of \$270.28. During the relevant time period, the Attorney General contends that Big D Number 400 overcharged consumers \$1.285 per gallon on the sale of 4 gallons of mid-grade gasoline, an overcharge of \$5.14. During the relevant time period, the Attorney General contends that Big D Number 400 overcharged consumers \$1.112 per gallon on the sale of 15 gallons of premium gasoline, an overcharge of \$16.68. The total overcharges alleged by the Attorney General at Big D Number 400 during the relevant time period was \$292.10.
16. During the relevant time period, the Attorney General contends that Big D Number 600 overcharged consumers \$0.493 per gallon on the sale of 508 gallons of regular gasoline, an overcharge of \$250.44. During the relevant time period, the Attorney General

contends that Big D Number 600 overcharged consumers \$0.733 per gallon on the sale of 39 gallons of premium gasoline, an overcharge of \$28.59. The total overcharges alleged by the Attorney General at Big D Number 600 during the relevant time period was \$279.03.

17. The total overcharges alleged by the Attorney General at all five of the Big D stations during the relevant time periods was \$2,320.
18. Big D denies that it has overcharged, charged unreasonably excessive prices or otherwise violated North Carolina law, and states that it is entering into this Settlement Agreement to avoid costly and time-consuming litigation.

SETTLEMENT PROVISIONS

19. Big D shall make restitution to consumers in the sum of \$2,320 which represents the number of gallons of each grade 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. Big D, within thirty (30) days of the execution of this Agreement, shall identify all credit card customers who purchased gasoline during the relevant time period and credit a refund to their credit cards the appropriate amount of the alleged overcharge per gallon as identified in the paragraphs above, if possible. Big D 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. Big D, within sixty (60) days of the execution of this Agreement, shall provide the

Attorney General with a sworn accounting of all refunds made pursuant to paragraph 19(a). The accounting shall include the name, address and amount of refund for each consumer. Big D, contemporaneously with the accounting, shall pay to the Attorney General the difference between \$2,320 and the amount the accounting shows was distributed to consumers. This payment shall be made to the Attorney General via a 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 counties where the overcharges occurred.

20. Contemporaneously with the signing of this Agreement, Big D shall pay to the Attorney General \$10,000.00 as a civil penalty pursuant to N.C. Gen. Stat. § 75-15.2, and \$232 for the Department of Justice's investigative costs. These payments shall be made to the Attorney General via a check made payable to the "North Carolina Department of Justice."
21. Big D 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.
22. By executing this Agreement, and in consideration of Big D's undertakings set forth herein, the Attorney General agrees not to institute any suit or enforcement proceeding against Big D with respect to alleged unreasonably excessive pricing during the relevant time period at the facilities identified in paragraph 2. Big D, 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 Big D is shown to be false or incomplete, the Attorney General shall retain the right to pursue legal action concerning overcharges at Big D based on new information. The Attorney General further retains the right to pursue legal action concerning overcharges at any other location owned or operated by Big D.

23. Should Big D 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.

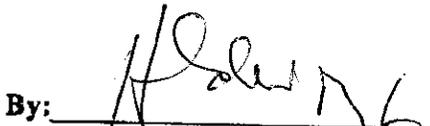
Signed this 20 of Oct., 2008.

Duncan Oil Company

ROY COOPER
Attorney General

By: 
President

By: 
K. D. Sturgis
Assistant Attorney General

By: 
Harold W. Berry, Jr., Esq.
Hatch, Little and Bunn, LLP

By: 
Philip A. Telfer
Special Deputy Attorney General

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.