

IN THE MATTER OF

SETTLEMENT AGREEMENT

Shell To Go, Inc.

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

I. FACTUAL BACKGROUND

1. Shell To Go is a corporation formed and existing under the laws of the State of North Carolina.
2. Shell To Go operates a Shell brand retail gasoline outlet located at 1766 Mount Hope Church Road, McLeansville, 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, Shell To Go 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 11, 2008, Shell To Go received a shipment of regular gasoline with a laid-in cost of \$3.606 per gallon. On September 11, 2008, Shell To Go charged \$3.659 per gallon for its regular gasoline until some time around 5:30 P.M. when the price was increased to \$3.759 per gallon. The gross margin on regular gasoline on September 11, 2008 until 5:30 P.M. was \$0.053 per gallon, a 1.47% mark up. After 5:30 P.M., the gross margin was \$0.153 per gallon, a 4.24% mark up.
7. Throughout the day on September 12, 2008, the price of regular gasoline charged at Shell To Go changed. Consumer receipts and end-of-day reports from the company show:
 - a. By 9:30 A.M., Shell To Go had raised its price to \$3.999 per gallon for its regular gasoline, a gross margin of \$0.393 per gallon and a 10.9% mark up. Shell To Go sold 3,352.893 gallons at this price on September 12, 2008.
 - b. By 2:10 P.M., Shell To Go had raised its price to \$4.999 per gallon for its regular gasoline, a gross margin of \$1.393 per gallon and a 38.63% mark up. Shell To Go sold 625.975 gallons at this price.
 - c. By 4:00 P.M., Shell To Go had lowered its price to \$4.099 per gallon for its regular gasoline, a gross margin of \$0.493 per gallon and a 13.67% mark up. Shell To Go sold 37.813 gallons at this price on September 12, 2008.
 - d. By 5:10 P.M., Shell To Go had lowered its price to \$3.999 per gallon for its regular gasoline. The sale of gasoline at this price is included in the

total in paragraph a. above.

8. On September 13 and 14, 2008 no regular gasoline was sold.

MID-GRADE GASOLINE

9. On September 3, 2008, Shell To Go received a shipment of mid-grade gasoline with a laid-in cost of \$3.7288 per gallon. From September 3, 2008 and until about 5:30 P.M. on September 12, 2008, Shell To Go charged \$3.859 per gallon for its mid-grade gasoline. By 5:30 P.M., the price was increased to \$3.959 per gallon. The gross margin on mid-grade gasoline on September 11, 2008 until 5:30 P.M. was \$0.1302 per gallon, a 3.49% mark up. After 5:30 P.M., the gross margin was \$0.2302 per gallon, a 6.17% mark up.
10. Throughout the day on September 12, 2008, the price of mid-grade gasoline charged at Shell To Go changed. Consumer receipts and end-of-day reports from the company show:
 - a. During the morning of September 12, 2008, Shell To Go's price remained at \$3.959 per gallon for its mid-grade gasoline. Shell To Go sold 7.577 gallons at this price on September 12, 2008.
 - b. By 12:40 P.M., Shell To Go had raised its price to \$4.199 per gallon for its mid-grade gasoline, a gross margin of \$0.4702 per gallon and a 12.61% mark up. Shell To Go sold 23.344 gallons at this price on September 12, 2008.
 - c. By 2:50 P.M., Shell To Go had raised its price to \$5.099 per gallon for its mid-grade gasoline, a gross margin of \$1.3702 per gallon and a 36.75%

mark up. Shell To Go sold 102.891 gallons at this price on September 12, 2008.

- d. By 7:06 P.M., Shell To Go lowered its price to \$4.099 per gallon for its mid-grade gasoline, a gross margin of \$0.3702 per gallon and a 9.93% mark up. Shell To Go sold 365.391 gallons at this price on September 12, 2008.
- e. During some unknown time frame on September 12, 2008, Shell To Go charged \$4.259 per gallon for its mid-grade gasoline, a gross margin of \$0.5302 per gallon and a 14.22% mark up. Shell To Go sold 15.295 gallons at this price on September 12, 2008.

11. End-of-day reports for September 13, 2008, show that Shell To Go:

- a. Sold 163.838 gallons of mid-grade gasoline for \$4.099 per gallon, a gross margin of \$0.3702 per gallon and a 9.93% mark up.
- b. Sold 692.201 gallons of mid-grade gasoline for \$4.899 per gallon, a gross margin of \$1.1702 per gallon and a 31.38% mark up.
- c. Sold 84.154 gallons of mid-grade gasoline for \$4.799 per gallon, a gross margin of \$1.0702 per gallon and a 28.7% mark up.

12. End-of-day reports for September 14, 2008, show that Shell To Go sold 214.506 gallons of mid-grade gasoline for \$4.799 per gallon, a gross margin of \$1.0702 per gallon and a 28.7% mark up.

13. End-of-day reports for September 15, 2008, show that Shell To Go:

- a. Sold 127.434 gallons of mid-grade gasoline for \$4.799 per gallon, a gross margin of \$1.0702 per gallon and a 28.7% mark up.
 - b. Sold 52.209 gallons of mid-grade gasoline for \$3.999 per gallon, a gross margin of \$0.2702 per gallon and a 7.25% mark up.
 - c. Sold 243.14 gallons of mid-grade gasoline for \$4.059 per gallon, a gross margin of \$0.3302 per gallon and a 8.86% mark up.
14. End-of-day reports for September 16 and 17, 2008, show that Shell To Go sold 72.295 and 62.785 gallons of mid-grade gasoline, respectively, for \$4.0590 per gallon.

PREMIUM GASOLINE

15. On September 3, 2008, Shell To Go received a shipment of premium gasoline with a laid-in cost of \$3.9098 per gallon. From September 3, 2008 and until 5:30 P.M. on September 11, 2008, Shell To Go charged \$3.969 per gallon for its premium gasoline. At about 5:30 P.M. on September 11 the price was increased to \$4.099 per gallon. The gross margin on premium gasoline on September 11, 2008 until 5:30 P.M. was \$0.0592 per gallon, a 1.51% mark up. After 5:30 P.M., the gross margin was \$0.1892 per gallon, a 4.84% mark up.
16. End-of-day reports for September 12, 2008, show that Shell To Go:
- a. Sold 2.44 gallons of premium gasoline for \$4.099 per gallon.
 - b. Sold 17.329 gallons of premium gasoline for \$4.299 per gallon, a gross margin of \$ 0.3892 per gallon and a 9.95% mark up.
 - c. Sold 190.461 gallons of premium gasoline for \$4.199 per gallon, a gross margin of \$0.2892 per gallon and a 7.4% mark up.

- d. Sold 13.581 gallons of premium gasoline for \$4.359 per gallon, a gross margin of \$0.4492 per gallon and a 11.49% mark up.
 - e. Sold 26.275 gallons of premium gasoline for \$5.199 per gallon, a gross margin of \$1.2892 per gallon and a 32.97% mark up.
17. End-of-day reports for September 13, 2008, show that Shell To Go:
- a. Sold 35.828 gallons of premium gasoline for \$4.199 per gallon, a gross margin of \$0.2892 per gallon and a 7.4% mark up.
 - b. Sold 172.483 gallons of premium gasoline for \$4.999 per gallon, a gross margin of \$1.0892 per gallon and a 27.86% mark up.
18. End-of-day reports for September 14, 2008, show that Shell To Go sold 60.343 gallons of premium gasoline for \$4.899 per gallon, a gross margin of \$0.9892 per gallon and a 25.3% mark up.
19. End-of-day reports for September 15, 16 and 17, 2008, show that Shell To Go sold 207.42 gallons of premium gasoline for \$4.159 per gallon, a gross margin of \$0.2492 per gallon and a 6.37% mark up.

20. The Attorney General contends that Shell To Go overcharged consumers on and after September 12, 2008 to the extent that the margin charged per gallon of product was:
- (A) more than \$0.1530 per gallon for regular gasoline;
 - (B) more than \$0.1302 per gallon for mid-grade gasoline; and
 - (C) more than \$0.1892 per gallon for premium gasoline.

21. Although some of the sales on September 12, 2008 occurred prior to the effect of the Declaration, Shell To Go has informed the Attorney General that it cannot determine which sales were made prior to the effect of the Declaration. Shell To Go, therefore, will include in its refunds all sales that occurred on September 12, 2008 that are above the margins set out in paragraph 20.
22. Shell To Go 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 without a receipt presented by the customer.
23. The Attorney General contends that Shell To Go overcharged consumers:
 - (A) \$967.78 for regular gasoline;
 - (B) \$1,472.63 for mid-grade gasoline; and
 - (C) \$274.48 for premium gasoline.

The total overcharges alleged by the Attorney General for the relevant time periods for all types of petroleum products sold are \$2,714.89.

II. SETTLEMENT PROVISIONS

24. Shell To Go shall make restitution to consumers in the sum of \$2,714.89, which represents the number of gallons of each type of petroleum product sold during relevant time periods stated above, 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. By no later than December 31, 2008, Shell To Go shall use its best efforts to 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 20. Shell To Go 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. By no later than January 31, 2009, Shell To Go shall provide the Attorney General with a sworn accounting of all refunds made pursuant to paragraph 24(a). The accounting shall include a copy of the data provided by Shell To Go's merchant bank showing the amount of the refunds. If, during the thirty (30) day period provided for in paragraph 24(a), Shell To Go is not able to 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, Shell To Go will provide, in addition to an accounting for all refunds based on receipts, an affidavit setting forth what efforts were made to identify consumers who made credit and debit transactions and explaining why Shell To Go's system prevents such identification. Contemporaneously with the accounting, Shell To Go shall pay to the Attorney General the difference between \$2,714.89 and the amount that 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.

25. Shell To Go shall pay to the Attorney General \$5,000.00 as a civil penalty pursuant to N.C. Gen. Stat. § 75-15.2, and \$271.49 for the Department of Justice's investigative costs, in installments, as follows:
 - a. 1,317.87 by no later than February 27, 2009,
 - b. 1,317.87 by no later than February 27, 2009,
 - c. 1,317.87 by no later than February 27, 2009, and
 - d. 1,317.87 by no later than February 27, 2009.

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

26. Shell To Go 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.
27. By executing this Agreement, and in consideration of Shell To Go's undertakings set forth herein, the Attorney General agrees not to institute any suit or enforcement proceeding against Shell To Go with respect to alleged unreasonably excessive pricing during the relevant time period at the facility identified in paragraph 2. Shell To Go, 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 Shell To Go is shown to be false or incomplete, the Attorney General retains the right to pursue legal action concerning overcharges at Shell To Go 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 Shell To Go.

28. Should Shell To Go 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 24 of November, 2008.

Shell To Go, Inc.

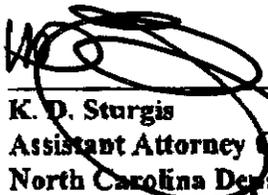
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Attachment A

§ 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.