

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

NO. 21 CV _____

2021 AUG 26 A 8:30

STATE OF NORTH CAROLINA *ex rel.*)

JOSHUA H. STEIN, Attorney General)

WAKE CO., C.S.C.

COMPLAINT

Plaintiff,)

BY _____)

v.)

MANSA TRAVEL CENTER)
CHARLOTTE, LLC, d/b/a QUEEN'S)
MARKET)

Defendant.)

INTRODUCTION

This is an action by plaintiff, State of North Carolina, on relation of Joshua H. Stein, Attorney General (“the State”), against Mansa Travel Center Charlotte, LLC, doing business as “Queen’s Market” (“defendant”), to enforce North Carolina’s laws against price gouging during a state of emergency in connection with the shutdown of the Colonial Pipeline in early May, 2021.

The State alleges that beginning on or about May 12 or 13, 2021, during a state of emergency due to the shutdown of the Colonial Pipeline, defendant increased its retail price for gasoline offered by 19% to \$3.197 for regular, by 278% to \$9.99 per gallon for midgrade, and by 256% to \$9.99 per gallon for premium; and, despite no material increase in its fuel cost, sold gasoline to consumers at those unreasonably excessive prices.

The State therefore alleges that the defendant violated North Carolina’s prohibition on price gouging during a state of emergency, N.C. Gen. Stat. § 75-38. The State seeks permanent injunctive relief against defendant, together with civil penalties, restitution, disgorgement, attorneys’ fees, and other relief.

PARTIES

1. The State of North Carolina, acting on the relation of its Attorney General, Joshua H. Stein, brings this action pursuant to authority granted by Chapters 75 and 114 of the North Carolina General Statutes.

2. On information and belief, defendant is a North Carolina limited liability company with a principal place of business at 4205 Cabarrus Court East, in Greensboro, North Carolina. It operates a Mobil branded convenience store at 1339 W. Sugar Creek Road, in Charlotte, North Carolina under the trade name “Queen’s Market.” On information and belief, Raken Shah is the president, registered agent and member manager of defendant, and is a resident of North Carolina.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction pursuant to N.C. Gen. Stat. §§ 75-1.1 and 75-15 because the acts or practices alleged herein occurred in or affected commerce in North Carolina.

4. The Court has personal jurisdiction over defendant because its acts or practices alleged herein occurred in the State of North Carolina.

5. Venue is proper in Wake County pursuant to the Attorney General’s selection under N.C. Gen. Stat. § 75-14.

FACTUAL ALLEGATIONS

6. On May 10, 2021, North Carolina Governor Roy Cooper, by executive order, declared a state of emergency because of the surprise shutdown of the Colonial Pipeline in response to a ransomware cyberattack on the company. (The Declaration, Executive Order 213, is attached as **State’s Exhibit 1** and incorporated here by reference as if fully set forth.) The State of Emergency was in effect at all times relevant to this Complaint.

7. In the following days, defendant publicly posted price increases on gasoline from its pre-declaration average daily prices of \$3.599 per gallon for mid-grade and \$3.899 for premium on May 9, 2021, to \$9.999 per gallon for both mid-grade and premium by May 13, 2021.

8. By displaying such prices at its gasoline pumps, defendant offered to sell gasoline at those prices. Further, defendant made actual sales of gasoline at these inflated prices.

9. Defendant acknowledges that it posted the prices for, and sold, both mid-grade and premium at \$9.99 per gallon beginning on or before May 13, 2021. Further, at least one consumer, Clarissa Rankin, took a video of a receipt that reflected she paid \$9.99 per gallon for premium on May 12, 2021.

10. These price increases occurred against a backdrop of defendant's at-least-daily price increases for all grades of gasoline beginning on the May 10th date of the Governor's declaration of a state of emergency. Defendant claims not to have records of intra-day price changes, nor of the number of gallons sold at its specific intra-day prices. However, in response to compulsory process issued on May 14, 2021, defendant produced business records showing that its average daily prices at which it sold the three grades of gasoline during the time in issue were (as rounded):

	<u>May 9</u>	<u>May 10</u>	<u>May 11</u>	<u>May 12</u>	<u>May 13</u>	<u>May 14</u>
Reg	2.679	2.77	2.915	3.197	3.19	2.999
Mid	3.599	3.62	3.699	6.14	5.78	3.79
Prem	3.899	3.95	4.01	5.14	7.57	3.97

11. Defendant's average daily selling prices on May 9 were in line with its average daily selling prices during the 60 days preceding the Governor's May 10 declaration of a state of emergency.

12. Defendant's inflated markups beginning on May 10 inherent in the above-noted average daily selling prices at which it offered and sold gasoline were the product of defendant's opportunism, and not the result of increased supplier costs.

13. Reflecting defendant's stable cost structure, the two gasoline shipments defendant received during the relevant time were on May 8, 2021 at \$2.626 per gallon for regular, and \$3.173 per gallon for premium; and on May 12, 2021 at \$2.634 per gallon for regular (as rounded).

14. Defendant's average daily gross profit margins on sales of gasoline widened dramatically as it increased its prices during this declared state of emergency, as follows (as rounded):

	<u>May 9</u>	<u>May 10</u>	<u>May 11</u>	<u>May 12</u>	<u>May 13</u>	<u>May 14</u>
Reg	.053	.144	.289	.563	.556	.365
Mid	.699	.721	.799	2.978	2.876	.886
Prem	.276	.777	.837	1.967	4.397	.797

15. Thus, defendant's average daily gross profit margin for regular jumped more than 1,000 percent, from 5.3 cents a gallon on May 9, to 56.3 cents a gallon on May 12; for mid-grade, more than 400 percent, from 69.9 cents per gallon on May 9, to \$2.98 per gallon on May 12; and for premium, more than 1,600 percent, from 27 cents per gallon to \$4.40 per gallon (all rounded).

16. Discovery in this matter may uncover violations of law in addition to those alleged here.

CLAIMS FOR RELIEF

I. PRICE GOUGING

N.C. GEN. STAT. §§ 75-38 and 75-1.1

17. Paragraphs 1 through 16 are realleged and incorporated here by reference.

18. North Carolina's prohibition on price gouging provides:

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.

19. Defendant's posting of prices for gasoline at inflated levels, including at \$9.999 per gallon for both mid-grade and premium, constituted offers to sell at those prices, and was done with the knowledge and intent to charge an unreasonably excessive price for goods consumed or used as a direct result of an emergency, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1.

20. Each sale of gasoline by defendant at the noted inflated prices was done with the knowledge and intent to charge an unreasonably excessive price for goods consumed or used as a direct result of an emergency, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1.

PRAYER FOR RELIEF

WHEREFORE, THE STATE PRAYS THE COURT for the following relief:

1. That, after hearing on due notice, defendant, together with its agents, employees, representatives, subcontractors, successors and assigns, and any persons acting in concert with them, be permanently enjoined, under N.C. Gen. Stat. § 75-14, from: offering to sell, or charging or receiving payment for, motor fuel with the knowledge and intent that the price is an unreasonably excessive price under the circumstances, in violation of N.C. Gen. Stat. §§ 75-38 and 75-1.1; and

2. That the defendant be ordered to pay civil penalties of \$5,000.00 for each instance of price gouging and unfair trade practices, pursuant to N.C. Gen. Stat. § 75-15.2;

3. That upon final adjudication, defendant be ordered, pursuant to N.C. Gen. Stat. § 75-15.1, to pay restitution to all consumers who suffered injury due to defendants' unlawful acts and practices set forth above;

4. That upon final adjudication, defendant be ordered to disgorge all amounts it or its agents, employees, representatives, subcontractors, successors and assigns have received, or in the future do receive, in connection with the price gouging and deceptive trade practices set forth above, under N.C. Gen. Stat. § 75-14;

5. That defendant be ordered to reimburse the State for attorneys' fees and litigation expenses in this action, pursuant to N.C. Gen. Stat. § 75-16.1;

6. That the costs of this action be taxed to defendant; and

7. That the State be granted such other and further relief as to the Court seems just and appropriate.

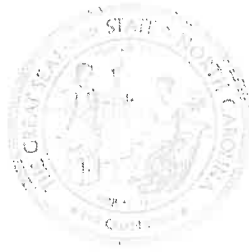
This the 26th day of August, 2021.

JOSHUA H. STEIN
ATTORNEY GENERAL



K. D. Sturgis
Special Deputy Attorney General

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State of North Carolina

ROY COOPER
GOVERNOR

May 10, 2021

EXECUTIVE ORDER NO. 213

**DECLARATION OF A STATE OF EMERGENCY AND
TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO
ENSURE ADEQUATE FUEL SUPPLIES THROUGHOUT THE STATE**

WHEREAS, the Colonial Pipeline system ("Colonial Pipeline"), a primary fuel pipeline for North Carolina and the East Coast of the United States, reported a ransomware cyber-attack on May 7, 2021, which has resulted in a temporary shutdown of that line, and may cause a disruption in the delivery of refined petroleum products including but not limited to fuel oil, diesel, jet fuel and gasoline; and

WHEREAS, the uninterrupted supply of refined petroleum products including but not limited to fuel oil, diesel, jet fuel and gasoline, is essential for the health, safety or economic well-being of persons or property in North Carolina, and any interruption in the delivery of those products threatens the public welfare; and

WHEREAS, N.C. Gen. Stat. § 166A-19.1(4) provides that it is the responsibility of the undersigned, state agencies, and local governments to "provide for cooperation and coordination of activities relating to emergency mitigation preparedness, response, and recovery among agencies and officials of this state and with similar agencies and officials of other states, with local and federal governments, with interstate organizations, and with other private and quasi-official organizations"; and

WHEREAS, N.C. Gen. Stat. §§ 166A-19.10 and 166A-19.20 authorize the undersigned to declare a state of emergency and exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, on May 9, 2021, the Federal Motor Carrier Safety Administration ("FMCSA") issued Regional Emergency Declaration 2021-002 to provide regulatory relief for commercial motor vehicle operations commercial motor vehicle operations while providing direct assistance in supporting emergency relief efforts transporting gasoline, diesel, jet fuel, and other refined petroleum products into the affected states during the emergency from shortages due to the shutdown, partial shutdown, and/or manual operation of the Colonial Pipeline system; and

WHEREAS, the unanticipated shutdown of the Colonial Pipeline due to a ransomware cyber-incident and network issues that affect the supply of refined petroleum products including but not limited to fuel oil, diesel, jet fuel and gasoline constitutes a state of emergency for the State of North Carolina as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19); and

WHEREAS, the emergency area, as defined in N.C. Gen. Stat §§ 166A-19.3(7) and 166A-19.20(b), is the entire State of North Carolina; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(3), the undersigned, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and



WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(4), the undersigned, with the concurrence of the Council of State, may waive a provision of any regulation or ordinance of a state agency which restricts the immediate relief of human suffering; and

WHEREAS, the undersigned has found that residents may suffer losses and further widespread damage within the meaning of N.C. Gen. Stat. §§ 166A-19.3(3) and 166A-19.21(b); and

WHEREAS, 49 C.F.R. § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 C.F.R. Parts 390-399 for up to thirty (30) days if the Governor determines that an emergency condition exists; and

WHEREAS, with the concurrence of the Council of State, the undersigned hereby waives the registration requirements of N.C. Gen. Stat. §§ 20-86.1 and 20-382, the fuel tax requirements of N.C. Gen. Stat. § 105-449.47, and the size and weight requirements of N.C. Gen. Stat. §§ 20-116, 20-118 and 20-119 that would apply to vehicles carrying emergency relief supplies to assist with ensuring adequate fuel supplies within North Carolina or the East Coast of the United States.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED:**

Section 1.

I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists in the State of North Carolina due to the unanticipated shutdown of the Colonial Pipeline due to a cyber incident and potential impacts from that incident.

For purposes of this Executive Order, the emergency area is the entire State of North Carolina (“the Emergency Area”).

Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan (“the Plan”).

Section 3.

I delegate to Erik A. Hooks, the Secretary of the North Carolina Department of Public Safety (“DPS”), or his designee, all power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

Further, Secretary Hooks, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

Section 5.

I further direct Secretary Hooks or his designee to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the state in responding to this emergency.

Section 6.

DPS, in conjunction with the North Carolina Department of Transportation (“DOT”), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381.

Section 7.

DPS, in conjunction with DOT, shall waive certain size and weight restrictions and penalties

arising under N.C. Gen. Stat. §§ 20-116, 20-118, and 20-119, certain registration requirements and penalties arising under N.C. Gen. Stat. §§ 20-86.1 and 20-382, and certain registration and filing requirements and penalties arising under N.C. Gen. Stat. §§ 105-449.45, 105-449.47, and 105-449.49 for vehicles supporting emergency relief efforts by transporting gasoline, diesel, jet fuel, and other refined petroleum products in North Carolina and the affected states during the emergency from shortages due to the shutdown, partial shutdown, and/or manual operation of the Colonial Pipeline system in the Emergency Area.

Section 8.

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer ("GVWR") or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceed twelve (12) feet in width and the total overall vehicle combination's length exceeds seventy-five (75) feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having (A) a yellow banner on the front and rear that is seven (7) feet long and eighteen (18) inches wide and bears the legend "Oversized Load" in ten (10) inch black letters. 1.5 inches wide and (B) red flags measuring eighteen (18) inches square on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding eight (8) feet six (6) inches in width.

Section 9.

Vehicles referenced under Sections 7 and 8 of this Executive Order shall be exempt from the following registration requirements:

- a. The requirement to obtain a temporary trip permit and payment of the associated \$50.00 fee listed in N.C. Gen. Stat. § 105-449.49.
- b. The requirement of filing a quarterly fuel tax return as the exemption in N.C. Gen. Stat. § 105-449.45(b)(1) applies.
- c. The registration requirements under N.C. Gen. Stat. §§ 20-382.1 and 20-382 concerning interstate for-hire authority are waived; however, vehicles shall maintain the required limits of insurance as required.
- d. Non-participants in North Carolina's International Registration Plan and International Fuel Tax Agreement will be permitted to enter North Carolina in accordance with the exemptions identified by this Executive Order.

Section 10.

The size and weight exemption for vehicles will be allowed on all DOT designated routes, except those routes designated as light traffic roads under N.C. Gen. Stat. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C. Gen. Stat. § 136-72.

Section 11.

The waiver of regulations under Title 49 of the Code of Federal Regulations does not apply to the Commercial Drivers' License and Insurance Requirements. This waiver shall be in effect for thirty (30) days or the duration of the emergency, whichever is less.

Section 12.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 6 through 11 of this Executive Order in a manner that does not endanger North Carolina motorists.

Section 13.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are for direct assistance being used for providing direct assistance supporting emergency relief efforts by transporting gasoline, diesel, jet fuel, and other refined petroleum products in North Carolina and the affected states during the emergency to address shortages due to the shutdown, partial shutdown, and/or manual operation of the Colonial Pipeline system.

Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo or provide services not in support of emergency relief efforts related to the shortages of gasoline, diesel, jet fuel, and other refined petroleum products due to the shutdown, partial shutdown, and/or manual operation of the Colonial pipeline system in North Carolina, or when the motor carrier dispatches a driver or commercial motor vehicle to another location to begin operations in commerce. (49 C.F.R. § 390.23(b)).

Upon termination of direct assistance to emergency relief efforts related to the shortages of gasoline, diesel, jet fuel, and other refined petroleum products due to the shutdown, partial shutdown and/or manual operation of the Colonial pipeline system in the North Carolina or the affected states, the motor carrier and driver are subject to the requirements of 49 C.F.R. Parts 390 through 399, except that a driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with Parts 390 through 399. When a driver is moving from emergency relief efforts to normal operations a 10-hour break is required when the total time a driver operates conducting emergency relief efforts, or a combination of emergency relief and normal operation, equals 14 hours.

Section 14.

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale, or purchase of alcoholic beverages as provided in N.C. Gen. Stat. § 166A-19.30(c).

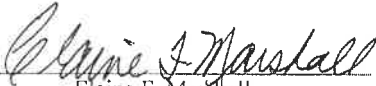
Section 15.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 10th day of May in the year of our Lord two thousand and twenty-one.



Roy Cooper
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

