

Respondents enter into this Assurance of Voluntary Compliance, without any admission that Respondents have violated the law, without admitting any fault, liability, or wrongdoing whatsoever, and without waiving any legal rights, arguments, or claims, and for the purpose of resolution of the matters investigated. DACS and OAG, by and through their undersigned counsel, do accept in termination of the matters investigated this Assurance of Voluntary

Compliance, which shall remain in effect so long as the aforementioned statutes are valid and enforceable in their current form.

II.

Section 501.160, Florida Statutes, commonly known as Florida's Price Gouging Law, makes it unlawful to sell or offer to sell essential commodities, including petroleum products, at unconscionable prices during a declared state of emergency. In setting forth what constitutes prima facie proof of an unconscionable price increase, the statute excludes increases attributable to additional costs incurred in connection with the sale of the commodity, or national or international market trends.

Respondents contend that they have not violated the price gouging statute because during the declared state of emergency their term contract and spot sales prices tracked the Gulf Coast Platts index, which they contend reflects national or international market trends. DACS and OAG contend that the Gulf Coast Platts index is a regional index that reflects regional, not national or international trends. DACS and OAG contend that during the declared state of emergency for Hurricane Ike, the Gulf Coast Platts index pricing went up as much as \$1.60 per gallon in a 24 hour period and, for several days in September 2008, did not comport with national or international market trends.

In order to resolve these differences and with no admission of liability by Respondents,

IT IS AGREED by all parties hereto that Respondents and their representatives, agents, employees, successors, or any other person who acts under, by and through, or on behalf of Respondents, directly or indirectly, or through any corporation or other device, shall hereby comply with the following mandates as they relate to Respondents' sales of motor fuels in Florida:

1. Respondents acknowledge that they understand that selling or offering to sell essential commodities, including motor fuels, at unconscionable prices during a declared state of emergency constitutes a violation of Chapter 501, Florida Statutes, commonly known as Florida's Price Gouging Law, and the Florida Deceptive and Unfair Trade Practices Act.

2. Respondents are on notice and shall comply with the provisions of Chapter 501, Florida Statutes, specifically Sections 501.160 and 501.164, Florida Statutes, and Sections 501.201 through 501.213, Florida Statutes.

3. Because Section 501.160 allows increases attributable to "national or international market trends" or "additional costs incurred in connection with the . . . sale of the commodity," the statute would allow Respondents to tie increases in motor fuels prices to additional costs incurred in connection with the sale of the commodity, or national or international market trends during the declared state of emergency.

4. During a declared state of emergency in which Sections 501.160 and 501.164, Florida Statutes, are applicable, Respondents agree not to sell motor fuels at a price which would exceed the greater of a price which:

- i. is unconscionably above national or international market trends; or
- ii. is unconscionably above an amount that includes Respondents' additional costs incurred in connection with the sale of the commodity; or
- iii. represents a gross disparity between the price of motor fuels sold or offered for sale and the average price at which the motor fuels were sold or offered for sale in the usual course of business during the thirty (30) days immediately prior to a declaration of a state of emergency; or
- iv. grossly exceeds the average price at which the same or similar motor fuels were readily obtainable in the trade area during the thirty (30) days immediately prior to a declaration of a state of emergency.

Respondents agree that during or after a declared state of emergency they will provide DACS and OAG within ten days, any information they may request regarding national or international market trends, including information regarding any index Respondents may have tied their prices to during the declared state of emergency.

5. Future violations of this Assurance of Voluntary Compliance by Respondents are prima facie evidence of a violation of Chapter 501, Part II, Florida Statutes, and will subject the Respondents to civil penalties, investigative costs, attorney's fees, and other sanctions provided by law.

6. Respondents shall not affect any change either in their form of doing business, or their organizational identity as a method of avoiding the terms and conditions set forth in this Assurance of Voluntary Compliance.

7. Respondents shall be responsible for advising employees about the consequences of price gouging during a declared state of emergency.

IT IS FURTHER AGREED by the parties that Respondents shall forthwith pay to DACS and OAG, the aggregate sum of \$2,275,000 to be applied as follows:

- \$650,000 in unjust enrichment pursuant to § 501.207;
- \$125,000 in civil penalties pursuant to § 501.164;
- \$1,000,000 in attorney's fees and investigative costs pursuant to § 501.207; and
- a \$500,000 contribution to DACS and OAG to further consumer protection activities pursuant to § 501.207.

IT IS FURTHER AGREED by the parties that this Assurance of Voluntary Compliance shall become effective when reviewed and signed by the Florida Commissioner of Agriculture, or his designee, and the Attorney General, or his designee. The receipt or deposit by the State of Florida of any monies pursuant to this Assurance of Voluntary Compliance does not constitute acceptance by the State of Florida. Any monies received will be returned to Respondents if this Assurance of Voluntary Compliance is not accepted.

III. SIGNATORIES

IN WITNESS WHEREOF, MORGAN STANLEY CAPITAL GROUP INC. and TRANSMONTAIGNE PRODUCT SERVICES INC., as Respondents, have caused this Assurance of Voluntary Compliance to be executed by their designated representatives and warrant and represent that such signatories are authorized by Respondents to enter into the agreement on behalf of the Respondents. By their signatures they are hereby affirming that they are acting within their capacity and within their authority as authorized representatives of Respondents and that by their signatures they are binding Respondents.

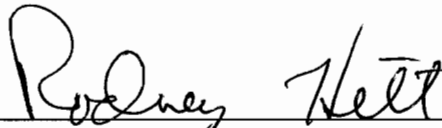
MORGAN STANLEY CAPITAL GROUP INC.,



President or other authorized representative with
the authority to bind Respondent

Date: _____

TRANSMONTAIGNE PRODUCT SERVICES
INC.

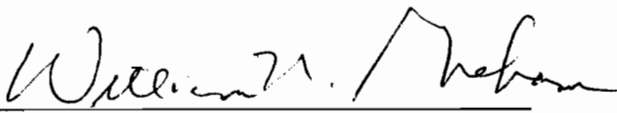


President or other authorized representative with
the authority to bind Respondent

Date: July 9, 2009

Accepted this 13th day of July, 2009 by:

CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE

By: 

William N. Graham, Senior Attorney
Office of the General Counsel
Department of Agriculture and Consumer Services

Accepted this 13 day of July, 2009 by:

BILL McCOLLUM
ATTORNEY GENERAL

By: Robert A. Hannah

Robert A. Hannah
Deputy Attorney General
Office of the Attorney General
Department of Legal Affairs