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OFFICE OF THE STATE COMPTROLLER

July 2, 2010

Mr. John Buono
Chairman
New York State Thruway Authority
200 Southern Boulevard
Albany, New York 12201

Re: Report 2010-F-24

Dear Mr. Buono:

Pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law, we have followed up on the actions taken by officials of the New York State Thruway Authority (Authority) to implement the recommendations contained in our audit report, *Gas Prices at Thruway Travel Plazas* (Report 2008-S-159).

Background, Scope and Objective

The New York State Thruway (Thruway) has 27 travel plazas that offer gas, food, and other amenities for travelers. These services are provided by vendors under concession contracts awarded by the Authority. Sunoco and Lehigh Gas Corporation (Lehigh) have contracts to operate the Thruway's fueling stations. The Authority is responsible for overseeing the operations of the concessionaires at the travel plazas, and ensuring that they comply with the terms of their concession contracts.

Under the contracts governing travel plaza fueling stations, the prices charged for gas at a plaza must be limited to the lower of (a) two cents higher than the average price at certain other stations in the general vicinity of the plaza or (b) one cent lower than the highest price at these stations. The prices at these other stations are to be surveyed at least weekly, and the gas prices at the travel plaza are to be adjusted in accordance with the survey results. The pricing surveys are conducted by the concessionaires. The survey results, along with the concessionaires' proposed prices, are submitted to the Authority for its review and approval. Once the prices are approved by the Authority, they can be applied to the various types and grades of fuel sold at each station. Prices are changed within a day of the survey's submittal and approval. To help ensure the accuracy of the survey results, the Authority may conduct its own pricing surveys at the same stations and compare its results to the results submitted by the concessionaires.

Our initial audit report, which was issued on April 3, 2009, examined gas pricing at Thruway travel plazas. We found that gas prices at the travel plazas were not always in compliance with contractual limits. As a result, Thruway customers were sometimes overcharged

for gas. The objective of our follow up was to assess the extent of implementation, as of June 24, 2010, of the 12 recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

Authority officials have made progress in correcting the problems we identified in the initial report. Authority reviews of concessionaire pricing since our original audit, and our current test results, demonstrate that prices charged are generally in compliance with contract requirements. However, additional improvements are still needed to ensure the public is not overcharged for gas while traveling on the Thruway. Of the 12 prior audit recommendations, five were implemented, five were partially implemented, one was not implemented and one is no longer applicable.

Follow-up Observations

Recommendation 1

Amend the fueling station concession contracts to include a schedule of monetary damages for pricing violations, and apply them for repeated or significant violations.

Status - Partially Implemented

Agency Action - The Authority did not amend the contracts to include a schedule of monetary damages for pricing violations. Authority officials stated they will continue to work on obtaining an amendment to the contracts. They added that their current contracts have clauses that allow them to take action for pricing violations - including termination. The Authority notified Sunoco on January 6, 2009 that the station operators would be charged for the costs the Authority incurs to investigate pricing violations. However, a similar notification was not sent to Lehigh. The Authority did take action in the case of one concessionaire with repeated pricing violations which is discussed under Recommendation 3.

Recommendation 2

Schedule inspections of travel plaza fueling stations in a manner that is not easily predictable.

Status - Implemented

Agency Action - The Authority changed its Service Area Representative Manual (Manual) to provide for random inspections. The revised Manual states that Service Area Representatives (SAR) are to vary the days of the week and time of day when they perform inspections at a particular location so as to minimize the possibility of concessionaires becoming aware of a habitual pattern of inspections, and manipulating prices to take advantage of SAR absences. Our review of inspection records showed that the dates and times of the inspections appear to be random and not easily predictable by the operators.

Recommendation 3

During inspections of travel plaza fueling stations, review records showing the actual prices charged for gas on days prior to the inspections and compare these prices to the prices that were allowed per contract.

Status - Implemented

Agency Action - The Authority completed one audit in January 2009 at three Thruway travel plazas (Ardsley, Ramapo, and Sloatsburg). The audit covered June 1, 2008 through September 15, 2008 and found the stations' operator overcharged customers \$1.41 to \$861.91 daily, for a total of \$16,098. The Authority requested Sunoco terminate the dealer due to the seriousness of the pricing violations. Sunoco chose not to take that action, but agreed to compensate the public for the overcharges by offering its customers a "gas holiday" month. During that month prices are to be posted at the absolute average. In July 2009, the Authority records show that the amount undercharged totaled \$14,581. Authority officials advised that the difference of \$1,517 is due to lower volume in July 2009 and there will be no further adjustments. Since April 1, 2009, the Authority has conducted seven reviews (each including between 4 and 19 stations) of gas pricing at Thruway travel plazas. All seven reviews showed that the prices charged were within contractual limits.

Recommendation 4

Ensure that all approved gas prices comply with contract pricing restrictions.

Status - Implemented

Agency Action - The Authority reviews the concessionaire/operator surveys submitted to document the off-road survey prices and the calculated approved price. The Authority then ensures the prices are within the limits set in the concessionaire contracts and follows up on discrepancies. We reviewed all the surveys conducted for three months in 2010 and found that all approved prices were within the contractual limits. We also visited three travel plaza stations (Angola, New Baltimore, and Sloatsburg) and reviewed the records of gas prices charged for one month. We compared the prices charged to the approved prices and found no exceptions. Further, we visited all 27 Thruway travel plazas and compared the prices charged to the approved price for that day and found one operator that was overcharging customers up to two cents per gallon.

Recommendation 5

Monitor concessionaire's compliance with the survey requirements, note any non compliance, and instruct the Service Area Representative (SAR) to validate information on all surveys submitted by the stations.

Status - Partially Implemented

Agency Action - Authority officials told us they do not validate all off-road survey station prices because it is not cost effective, and they do not have enough staff to do so. Instead, it conducts spot checks of off-road survey stations and audits Thruway travel plaza stations. We found the Authority follows up on discrepancies between the concessionaire and Service Area Representatives' prices.

Recommendation 6

Instruct station operators who request additional pricing surveys during periods of rising fuel prices that they have to conduct a comparable number of additional surveys during periods of falling fuel prices.

Status - Partially Implemented

Agency Action - The Authority sent a letter to the gas concessionaires stating pricing surveys are to be done at regular intervals. It does not specify that a comparable number of pricing surveys must be completed when prices are falling as during times of rising prices. During our review period, both concessionaires conducted only their regularly scheduled surveys and have not requested any additional surveys. In addition, Authority officials stated that the concession contracts allow them to control the number of surveys and therefore they can ensure an equal number of surveys are conducted when prices are falling as when they are rising.

Recommendation 7

Replace stations on the survey list in a timely manner, formally revise the concession contracts to reflect the changes, and document the reasons for the changes.

Status - Partially Implemented

Agency Action - The Authority provided us with documentation that shows why off-road survey stations were substituted. However, they did not provide us with evidence that stations are replaced in a timely manner. In addition, we identified one off-road survey station that stopped selling gas on December 23, 2009 and was not replaced until June 8, 2010. Authority officials stated that because of the frequency of changes, they would not formally amend the contract, but would agree with the concessionaire on the change.

Recommendation 8

Resolve any price discrepancies identified by the test-surveys and, if necessary, take corrective action. Document the resolution process.

Status - Implemented

Agency Action - The Authority compares off-road surveys conducted by the concessionaires/operators to the spot checks completed by the SARs and any discrepancies are investigated. Reconciliations are only completed when the difference would affect the approved price. The resolution process is documented on a spreadsheet.

Recommendation 9

Ensure that all test-surveys include all the stations that are surveyed by the concessionaires.

Status - Not Implemented

Agency Action - The Authority maintains that it is not cost effective to verify every price for every off-road survey station. SARs conduct spot checks of gas prices at these off-road locations and compare them to the prices recorded by the concessionaires/operators. Authority officials told us that they are exploring the use of an electronic price monitoring system used by the industry.

Recommendation 10

Carefully review the price of 89 octane gasoline on all pricing surveys and correct any errors that are identified.

Status - No longer applicable

Agency Action - The Authority stopped surveying the price for 91 octane fuel. Therefore, the concessionaires cannot mistakenly use the price for 91 octane to calculate the price for 89 octane fuel.

Recommendation 11

Add detailed guidelines on price comparison surveys to the Service Area Representatives Manual.

Status - Implemented

Agency Action - The Authority distributed a revised copy of the Manual in June 2010. The revised Manual included instructions on where to obtain the Authority approved prices when conducting fuel service station inspections; when new prices must be posted; that prices must be obtained from the electronic display windows on the gas pumps; that prices for all grades of fuel and diesel are to be recorded; that each station is to be inspected at least four times during their 28 day schedule; that the inspection days and times must vary so that operators cannot predict when SARs will conduct inspections; that random spot checks of off-road survey stations are to be done on survey days; and the steps to be taken when price discrepancies are identified.

Recommendation 12

Amend the fueling station concession contracts to include:

- *detailed procedures for calculating the price of 91 octane gasoline,*
- *procedures on the use of cash or credit pricing when the surveyed stations have different fuel prices for cash and credit sales, and*
- *the time when price changes must be implemented.*

Status - Partially Implemented

Agency Action - The Authority has not amended the concession contracts to include detailed procedures for calculating the price of 91 octane gasoline. However, it has adopted a practice of pricing the 91 octane gasoline at two cents below the price of 93 octane gasoline. The Authority believes that since it requires the fuel station operators to accept credit cards, it will continue to allow them to use the credit price from off-road survey stations for determining their approved prices. The Authority has notified the concessionaires in writing that surveys must be completed between 6 AM and noon on Tuesdays and the approved prices must be posted between 6 AM and noon on Wednesday. Further, if the Authority approves requests for additional surveys, the surveys must be completed the day after approval is granted and the approved prices must be posted the day after the survey is completed between 6 AM and noon.

Major contributors to this report were Steve Goss, Mark Ren, Brandon Ogden, Jeffrey Dormond, and Robert Horn.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Authority for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Carmen Maldonado
Audit Director

cc: T. Lukacs, Division of the Budget
M. Hannibal, Thruway Authority
K. Allen, Thruway Authority