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NEW YORK STATE COMPTROLLER

DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY

NEW YORK STATE THRUWAY AUTHORITY

GAS PRICES AT THRUWAY TRAVEL PLAZAS

Report 2008-S-159

AUDIT OBJECTIVE

The objective of our audit was to determine whether the gas prices at Thruway travel plazas are higher than the prices allowed under the contracts with the concessionaires.

AUDIT RESULTS - SUMMARY

We found that gas prices at the travel plazas are not always in compliance with contractual limits. As a result Thruway customers are sometimes overcharged for gas.

Under concession contracts awarded by the Authority, gas prices at Thruway travel plazas must be consistent with the prices at other fueling stations in the region. To ensure this consistency, the prices at the other stations are to be surveyed at least weekly, and the prices at the travel plazas are to be adjusted in accordance with the survey results. The pricing surveys are to be conducted by the concessionaires and verified by the Authority. Two concessionaires have been awarded contracts for the fueling stations at the Thruway's 27 travel plazas: Sunoco and Lehigh (selling Mobil gas).

We selected a sample of eight stations (five Sunoco and three Lehigh) and reviewed their records for a four-month period (May 1 to August 31, 2008) to determine how much was actually charged each day for each type and grade of fuel. We then compared the station's actual prices on those days to its approved prices for the days based on the pricing surveys for that area.

We found that three of the eight stations exceeded their approved prices, and thus overcharged for their gas, on at least three days and as many as 44 days, during the 123-day period. The amounts overcharged ranged from two cents to 26 cents a gallon. In total motorists were overcharged about $2,870 for 93,177 gallons of fuel. While this is not a significant amount, it is nonetheless an overcharge and is not permitted under the contracts. In addition, even small overcharges can make a difference to families and businesses, especially if they are frequent travelers on the Thruway.

In addition, there were charges of $3,086 to motorists for 62,690 gallons of fuel where the operator could not show that the fuel prices for these charges were implemented on the appropriate day. There was another $1,968 charged for 30,517 gallons where the fuel prices were implemented a day earlier than they should have been.

We also reviewed the prices that were approved for the eight stations during the four-month period. We found that, in some instances, the Authority approved prices that exceeded the limits specified in the contracts, and as a result, customers at these stations were overcharged for gas. We also found that the Authority did not always effectively verify the accuracy of the reported gas prices at the surveyed stations.

We also identified weaknesses in the regional pricing surveys that provide the basis for the approved gas prices. For example, during periods of market volatility, Lehigh was able to adjust the frequency of its pricing surveys to maximize its price increases and minimize its price reductions.

Our report contains 12 recommendations for strengthening the Authority's oversight of gas prices at Thruway travel plazas. In particular, we recommend the Authority amend the concession contracts to include liquidated damages for pricing violations. Currently, the Authority cannot assess any monetary penalties when it detects a pricing violation; it can only instruct the concessionaire to lower the price to the correct amount. As a result, concessionaires face no consequences when they do not comply. Authority officials generally agreed with our recommendations and indicate they have already taken, or will take action to implement them.

This report, dated April 3, 2009, is available on our website at: http://www.osc.state.ny.us. Add or update your mailing list address by contacting us at: (518) 474-3271 or
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BACKGROUND

The New York State Thruway is a 641-mile superhighway system crossing New York State. The 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 New York State Thruway Authority (Authority), a public benefit corporation created in 1950 to construct, maintain and operate the Thruway.

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 to be conducted by the concessionaires. The survey results, along with the concessionaires' proposed prices, are to be 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. Typically, 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.

The off-road stations that are to be surveyed for each travel plaza are specified in the concession contracts. Since some plazas are located in the same general area, the same set of stations is surveyed for these plazas. For example, the same pricing survey is used for three travel plazas located in the western part of the State. A total of 13 different pricing surveys are performed for the 27 travel plazas.

If the Authority finds that a concessionaire is charging higher gas prices than are allowed under the contract, it instructs the concessionaire to lower the prices to allowable amounts. Similarly, if the Authority finds that a concessionaire is not performing the pricing survey in accordance with contract requirements, it instructs the concessionaire to comply with the requirements. While the contracts can be terminated if the concessionaires are persistently noncompliant with contract requirements, there are no provisions in the contracts for liquidated damages to deter noncompliance.

The 27 travel plazas have a total of 29 fueling stations (the Angola and New Baltimore plazas have two fuel stations servicing customers on each side of the Thruway). Two vendors have been awarded 10-year concession contracts with two 5-year renewal options for the stations: Sunoco has a contract to operate 16 stations while Lehigh Gas Corporation (Lehigh) has a contract for the other 13 stations (selling Mobil gas). Lehigh conducts its weekly pricing surveys on Tuesdays or Thursdays, while Sunoco conducts its weekly surveys on Tuesdays. Generally, the prices at the plazas are changed the next day. During periods of fuel market volatility, additional surveys may be conducted at the request of the concessionaires or individual station operators.

Both concessionaires are required by their contracts to pay the Authority rent at each travel plaza. The rent at each plaza is based on the number of gallons of fuel that are delivered to the plaza, with a guaranteed minimum annual rent of $1.7 million in the first year of the contract escalating up to $2.98 million in the contract's twentieth year. Both the contract with Lehigh and the contract with Sunoco began in April 2007.

Lehigh has four different groups along the Thruway for which eight fuel price surveys are conducted: Group 2 (New Baltimore and Malden plazas), Group 3 (Warners, Port Byron, Seneca, and Scottsville plazas), Group 6 (Guilderland, Pattersonville, and Mohawk plazas), and Group 7 (Schuyler, Iroquois, and Indian Castle plazas). Sunoco breaks down the Thruway into five regions for which five price surveys are conducted: Region 1 (Ardsley, Ramapo, and Sloatsburg), Region 2 (Plattekill, Modena, and Ulster), Region 3 (Oneida, Chittenango, and DeWitt), Region 4 (Junius Ponds, Clifton Springs, and Ontario), and Region 5 (Angola, Clarence, and Pembroke). Each plaza within the Sunoco region will have the same pricing as the others in its region.

The Authority is governed by a seven-member Board of Directors. Board members are appointed by the Governor with the advice and consent of the State Senate. Authority staff is headed by an Executive Director, who is appointed by the Board. The Authority's Travelers' Services Unit is responsible for overseeing operations at the travel plazas.

AUDIT FINDINGS AND RECOMMENDATIONS

Gas Prices

To determine whether the gas prices charged by station operators at Thruway travel plazas were in compliance with contractual limits, we selected a sample of eight fueling stations and reviewed the prices that were charged by the stations over the four-month period May 1, 2008 through August 31, 2008. We judgmentally selected three Lehigh stations and five Sunoco stations from different parts of the Thruway.

At each station, we reviewed the daily cash register receipts or operating logs for the four-month period, because they showed how much was actually charged each day for each type and grade of fuel. We found that three of the eight stations exceeded their approved prices, and thus overcharged for their gas, on at least three days and as many as 44 days, during the four-month (123-day) period, as follows:

Station	Number of Days Gas Overcharged	Types or Grades of Fuel Overcharged	Highest Overcharge Per Gallon	Gallons Overcharged	Total Amount Overcharged
Sunoco					
DeWitt	8	8	2 cents	1,624	$ 32.48
Sloatsburg	44	60	26 cents	82,797	2,177.67
Lehigh					
New Baltimore	3	6	10 cents	8,756	660.23
Total	55	74	26 cents	93,177	$ 2,870.38

As a result of these overcharges, customers at two of these stations sometimes paid more for gas than they should have paid, and customers at one of the stations (the Sloatsburg station) often paid more than they should have paid. While the total amounts overcharged were not significant, they were overcharges nonetheless and were not permitted under the contracts. In addition, even small overcharges can make a difference to families and businesses, especially if they are frequent travelers on the Thruway.

Service Area Representatives from the Authority's Travelers' Services Unit periodically visit the travel plazas to review the vendors' operations, and Authority officials told us they sometimes find that the fueling station operators are exceeding their approved prices. When this occurs, the Representatives are supposed to instruct the operator to correct the price, and they are supposed to increase the number of price checks at the station until they believe the situation has been satisfactorily resolved. Authority officials also report the violation to the main office of the concessionaire (Lehigh or Sunoco).

In the absence of contract provisions permitting fines or other penalties for such violations, there is little more the Authority can do to enforce compliance with pricing requirements. However, such actions may not be sufficient. Since station operators are not penalized for the violations, they have little incentive to comply with the requirements. We believe the Authority would be better able to enforce compliance if it could assess liquidated damages for pricing violations. Authority officials advised us they can take action to terminate the contracts if the concessionaires do not comply with the contract terms. However, they have not done so for fuel pricing violations. We recommend the Authority amend the contracts to include damages for addressing repeated or significant violations.

In addition, to improve their ability to detect pricing violations, Service Area Representatives could vary their inspection schedules to make them less predictable. Under the current schedules, station operators may be able to predict when they are going to be inspected. They can thus avoid detection by avoiding pricing violations during those times. The Representatives could also improve their ability to detect pricing violations if they routinely reviewed certain station operator records, such as the daily cash register tapes. Currently, such records are not reviewed.

To further determine whether gas prices at the eight stations were in compliance with contractual limits, we verified the appropriateness of the prices that were approved for these stations during the four-month period. The approved prices were supposed to be based on pricing surveys at certain nearby fueling stations. However, we determined that in some cases the proposed prices for one or more grades of gasoline exceeded the limits imposed by the contract (i.e., the lower of two cents higher than the average price at the surveyed stations or one cent lower than the highest price at these stations).

Recommendations

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.

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

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.

Controls Over Gas Prices

Gas prices at Thruway travel plazas are supposed to be consistent with the prices at other fueling stations in the region. To ensure that this is the case, selected stations in each region are to be surveyed at least weekly, and the prices at the travel plazas are to be adjusted on the basis of these survey results. The Authority has developed a system of controls that is intended to ensure that the pricing surveys are appropriately conducted and the survey results appropriately used in establishing the approved gas prices for each travel plaza. Authority procedures require an audit of one set of survey stations per region per week or at least four audits each week. This information should be reported to the Supervising Service Area Representative.

However, we identified a number of weaknesses in these controls, and as a result of these weaknesses, the prices approved by the Authority for a travel plaza may be higher than the maximum amounts allowed under the contracts with the concessionaires.

According to the concession contracts with Lehigh and Sunoco, the pricing surveys are to be conducted at least weekly (or as often as directed by the Authority). However, during periods of fuel market volatility, additional surveys may be conducted at the request of the station operators or concessionaires.

During the four-month period we reviewed, fuel prices were volatile, as they were generally increasing from the beginning of May through the end of June and generally declining from mid-July through the end of August. During this period, the three Lehigh stations in our sample often requested additional surveys. However, they requested far more additional surveys (26) in May and June, when prices were rising, than they did in July and August (12), when prices were falling. We further note that, during September, when prices were generally falling, the Lehigh stations requested only one additional survey: when gas prices spiked in response to hurricanes in the southern United States.

In contrast, the five Sunoco stations in our sample requested only two additional surveys during the entire period.

It thus appears that the Lehigh stations were trying to take full advantage of market forces when prices were rising, but were not so eager to follow the market and lower their prices when prices were falling. While such actions are allowable under the contract and may be in the best interests of Lehigh, they are not in the best interests of Thruway customers.

Authority officials stated that they directed the Lehigh stations to conduct an average of one additional survey per week in August 2008, when fuel prices were falling, in an effort to make up for the additional surveys that were conducted in May and June, when prices were rising. We acknowledge the Authority's effort, but as was shown in the preceding analysis, it was not sufficient, as far more additional surveys were conducted in May and June. We recommend the Authority ensure better balance in the future.

The off-road stations that are to be surveyed for gas prices are specified in the concession contracts. However, we found that both Lehigh and Sunoco are surveying fewer stations than required, as follows:

- For Lehigh, a total of 43 stations are supposed to be surveyed for gasoline prices and 28 stations are supposed to be surveyed for diesel fuel prices. However, we found that only 38 stations are being surveyed for gasoline prices (five fewer than required) and 25 stations are being surveyed for diesel fuel prices (three fewer than required).

- For Sunoco, a total of 54 stations are supposed to be surveyed for gasoline prices and 32 stations are supposed to be surveyed for diesel fuel prices. However, we found that only 51 stations are being surveyed for gasoline prices (three fewer than required) and 30 stations are being surveyed for diesel fuel prices (two fewer than required).

As a result, the pricing surveys may not be as valid as was intended by the contracts. The shortfalls may be the result of station closures. When a station on the survey list closes, it is supposed to be replaced by another station. However, we found indications such stations may not always be replaced in a timely manner. For example, we identified a station that was closed on September 11, 2007 and had yet to be replaced as of October 28, 2008.

When the stations on the survey list are replaced, the contracts should be formally revised to reflect the replacements. However, we found that the contracts were not being formally revised. We identified seven replacements (four closures, two changes in fuel brands, and one adding diesel), but all seven were informal replacements that were not reflected in the contracts. In addition, the Authority maintains no documentation explaining why some stations were deleted and others added. In the absence of such documentation, there is less assurance the changes are appropriate.

Recommendations

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

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.

   (In response to our draft audit report, Authority officials stated they will continue to monitor concessionaire compliance with contractual survey requirements and to note any price discrepancies. Also, the SARs will continue to conduct random spot checks for pricing at off-road locations. The Authority notes that prices may change between the times and concessionaires complete their survey and when the SARs spot check. The Authority indicates it does not have the resources to verify each price for every survey, but believes that spot checks at off-road survey locations are a helpful tool that will continue to be used. Discrepancies between survey prices and spot checks will be verified and accounted for using all available resources.)

Auditor's Comments: We understand that resources may not permit verification of each price for every survey. However, differences found between the survey prices submitted by the concessionaires and the survey prices noted by SARs must be investigated.

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.

Verification of Survey Results

To help ensure the accuracy of the survey results submitted by Lehigh and Sunoco, the Service Area Representatives are supposed to perform the test-surveys and submit the results to their supervisors, who are supposed to compare the results to the concessionaires' surveys. If there are any discrepancies between the test-surveys and the concessionaires' surveys, the supervisors are supposed to resolve the differences and, if necessary, take corrective action.

During the four-month period covered by our review, a total of 62 test-surveys were performed for the eight travel plazas in our sample. We compared these 62 test-surveys to the appropriate concessionaire surveys, and found that they frequently did not agree with the concessionaire surveys. In fact, in 59 of the surveys, there was at least one price discrepancy, as the price attributed by the test-survey to a particular fuel at a particular station did not agree with the price attributed by the concessionaire's survey to the same fuel at the same station.

However, we found no indication Authority supervisors investigated any of these discrepancies. Moreover in all 59 instances, the supervisors accepted the prices reported by the concessionaires and ignored the prices reported by the Service Area Representatives. If the Authority is going to ignore all such discrepancies and accept what is reported by the concessionaires without follow-up, we question whether the Authority is, in fact, verifying the survey results reported by the concessionaires.

If the survey results are not being verified, there is no assurance the surveyed gas prices are being reported accurately, and thus, no assurance gas prices at the travel plazas are in compliance with contract limits. In our prior audit of travel plaza operations (Report 2001-S-50, issued in June 2003), we noted that these discrepancies were not being resolved and we recommended that the Authority take corrective action. However, our current audit finds that improvements have yet to be made in this area.

We also determined that just 22 of the 62 test-surveys were complete, as each one omitted at least one of the stations that was surveyed by the concessionaires. According to Authority officials, the Service Area Representatives are expected to include all the stations in their test-surveys. However, we found no indication the Representatives were contacted and told to do the surveys correctly.

Pricing Guidelines

When they perform their pricing surveys, the concessionaires are supposed to accurately record the price of the fuel at the surveyed stations. However, we found that the wrong price is often recorded when Sunoco stations are surveyed. These stations sell four blends of gasoline (at 87, 89, 91, and 93 octane), while most other stations sell only three (at 87, 89, and 93 octane). In 29 of the 62 surveys we reviewed, the price of 91 octane gasoline was incorrectly entered as the price of 89 octane gasoline at three or more of the surveyed stations (this usually happened when a Sunoco station was included in a survey for a Lehigh travel plaza). Since 91 octane gasoline usually costs 10 to 12 cents more per gallon than 89 octane gasoline, this error can significantly distort the results of a survey and lead to higher prices at the travel plazas.

We note that the Service Area Representatives Manual (revised December 2007) contains no guidelines on conducting off-road fuel station pricing surveys. As a result, the Representatives are less likely to detect this error when they conduct their test-surveys. We recommend such guidelines be developed. In addition, we recommend the Authority carefully review the price of 89 octane gasoline on all pricing surveys and correct any errors that are identified.

We further note that both concession contracts contain no provisions on the calculation of prices for 91 octane gasoline. A prior contract stated that the price would be determined by deducting at least two cents per gallon from the survey average price for premium gasoline (93 octane). However, the current contracts do not include this provision. In the absence of such a provision, station operators can charge higher prices for 91 octane gasoline.

Furthermore, the fuel concession contracts are silent concerning when fuel prices must be changed. Thruway officials expect, but do not require, that after the completion of the price comparison survey, the operators will change the fuel prices by noon the following day. We also noted that one concessionaire (Sunoco) instructs its station operators to change the prices by noon. We found that because the contract is silent on this issue and the Authority has not established specific policies or procedures, operators are manipulating when they change the fuel prices to maximize their profits. For example, one operator stated he changes the prices early in the day when fuel prices are increasing and later in the day when the prices are decreasing. We found four instances at three different travel plazas where operators changed the price the day the survey was completed. This resulted in customers being charged $1,968 more for 30,517 gallons than if the Authority had specific procedures to change prices the day after the price comparison survey. We also found nine instances at two travel plazas where the operator could not provide evidence that the prices were changed on the day following completion of the survey. The sale of 62,961 gallons of fuel at these stations at the outdated prices cost their customers an additional $3,087.

The current concession contracts also do not address the use of cash or credit pricing for determining the average survey price when the survey includes fuel stations that have established different cash and credit prices. Authority officials told us they allow the operators to use the credit price for survey purposes because most of the gasoline purchases are on credit. Because the credit price is always higher than the cash price (generally by four to five cents per gallon), the contracts' silence on this matter may enable the concessionaires to inflate their prices.

Recommendations

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.

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

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

   (Authority officials replied to our report, they do not have the resources to verify every price for every location in the survey, nor is it feasible or cost-effective for SARs to drive hours at a time, often outside their respective divisions to capture every location in the survey region. They also stated that the SARs have several duties and do not have the time to verify surveys. As a result, they will continue their process.)

   Auditor's Comments: The verification of survey prices would not require any one individual to drive long distances if the work was done by more than one SAR. The stations would be assigned to the SAR which is closet to the station. In addition, the requirement regarding the verification of every station is in the Service Area representatives Manual (Manual). If the Authority has determined that this is no longer a requirement then the Manual should be revised to reflect these changes.

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

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

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.

AUDIT SCOPE AND METHODOLOGY

We audited the Authority's oversight of the gas prices charged at Thruway travel plazas. Our audit covered the period May 1, 2008 through October 1, 2008.

To accomplish our objective, we interviewed Authority and concessionaire officials, and reviewed certain Authority and concessionaire records. We judgmentally selected for review fueling stations at eight travel plazas from different parts of the Thruway, selecting five stations operated by one concessionaire and three stations operated by the other concessionaire. We also reviewed the two fueling station concession contracts and related Authority policies and procedures.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

REPORTING REQUIREMENTS

A draft copy of this report was provided to Authority officials for their review and comment. Their comments were considered in preparing this final report, and are included as Appendix A.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York State Thruway Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Carmen Maldonado, Gerald Tysiak, Joel Biederman, Brandon Ogden, Jeffrey Dormond, Lauren Bizzarro and Dana Newhouse.

APPENDIX A - AUDITEE RESPONSE

John L. Buono
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February 24, 2009

Ms. Carmen Maldonado
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Dear Ms. Maldonado:

New York State Thruway Authority (Authority) staff has reviewed the Office of the State Comptroller's (OSC) draft audit report 2008-S-159 concerning *Gas Prices at Thruway Travel Plazas.*

The Authority prides itself on providing the best possible service to its customers and recognizes the importance of accurate fuel pricing. Accordingly, the Authority has instituted procedures to ensure that the prices charged conform to its contracts with the fuel station operators.

The findings of the draft audit show a total "overcharge" to Authority customers of \$2,870.38 during the audit period that OSC further states in its findings is not a significant amount. While any overcharge concerns the Authority, it must be noted that fuel sales at the audited facilities during the same period totaled \$35,039,932.54, which reflects that the totals sales amount charged to customers was 99.99% accurate.

The Authority will continue to work to improve upon this success rate. As a first step, following a review of preliminary findings by the OSC, the Authority is conducting its own investigation to assess the variances and determine appropriate corrective measures.

The Authority has reviewed OSC's recommendations in the draft audit report and offers the following responses:

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.
The Authority will prepare a schedule of expenses incurred when pricing is inaccurate and advise the Operators that henceforth these charges will be imposed when pricing violations occur. This will be done under the existing agreements, which provide that if the Authority incurs any expense or cost by reason of the failure of the Operator to fulfill a contractual obligation, the Operator is required to pay such sums to the Authority (Authority's Right to Cure (Section 20.01 Sunoco & Lehigh)).

In addition, the Authority will attempt to amend the contracts to include liquidated damages for repeated and significant violations.

Recommendation #2- Schedule inspections of travel plaza fueling stations in a manner that is not easily predictable.
Service Area Representatives (SARs) work on rotating schedules, thereby providing extensive coverage of the traveler services along the road. A review of fuel service facility inspections during the audit period shows stations were inspected at varying times between 7 AM and 11 PM, seven days a week. The Authority's Office of Travelers' Services will continue to provide extensive coverage and continue to monitor SAR fuel service facility inspections to verify that they are being performed on varying days and at varying times.

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 allowed per contract.
While such documentation is not readily available to the SARs during their routine inspections, the Authority will schedule random audits of the fuel prices at select fuel service facilities on an annual basis and will review such documentation as part of such audits.

Recommendation #4- Ensure that all approved gas prices comply with contract pricing restrictions.
The Authority will continue to analyze every survey submitted by the concessionaires for correct calculations. In addition, the Authority has implemented a system of random spot checks by SARs to provide ongoing oversight of the concessionaire fuel survey price submittals.

Recommendation #5- Monitor concessionaire compliance with the survey requirements; note any non-compliance; and instruct the Service Area Representative to validate information on all surveys submitted by the stations.
The Authority will continue to monitor concessionaire compliance with contractual survey requirements, and to note any price discrepancies. Also, the Authority's SARs

will continue to conduct random spot checks of pricing at the off-road survey locations. It must be borne in mind, however, that prices may change at the off-road survey locations, particularly in a volatile market, between the time of the concessionaire survey and the SAR spot check. While the Authority does not have the resources to verify every price for every survey, it believes the spot checks at the off-road survey locations are a helpful monitoring tool, and will continue to use them. Discrepancies between the survey prices and the spot checks will be verified and accounted for using all available resources.

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 surveys during periods of falling fuel prices.
The Authority will direct the fuel operators to conduct a comparable number of surveys in a downward market as in an upward market.

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.
The Authority has implemented this recommendation. All station changes have been documented in letters to the concessionaires, and comply with contract requirements. All future changes will be similarly documented, including reasons for the changes.

Recommendation #8- Resolve any price discrepancies identified by the test-surveys and, if necessary, take corrective action. Document the resolution process.
The Authority will note and correct any fuel price discrepancies found in spot checks and take appropriate action. Discrepancies found and measures taken will be documented and filed with the surveys.

Recommendation #9- Ensure that all test-surveys include all the stations that are surveyed by the concessionaires.
The Authority does not have the resources to verify every price for every location included in a survey, nor is it feasible or cost-effective for the SARs to drive hours at a time, often outside their respective divisions, to capture every location in a survey region. It should be noted that the SARs are responsible for numerous other duties including, but not limited to, performing inspections of the public and kitchen areas of the Travel Plazas, farmers markets, and Tourism Information Centers; conducting customer interviews; investigating complaints; and acting as a liaison with the concessionaires and Authority personnel for plaza construction projects; and other activities. The Authority believes that continued SAR spot checks, scrutiny of concessionaire surveys and periodic Authority audits are the best and most cost effective way to continue to monitor and address any pricing discrepancies.

Recommendation #10- Carefully review the prices of 89 octane gasoline on all pricing surveys and correct any errors that are identified.
The Authority has implemented this recommendation.

Recommendation #11- Add detailed guidelines on price comparison surveys to the Service Area Representatives manual.
The Authority has instructed SARs on price comparison survey procedures via telephone conversations and e-mails. The guidelines will be formalized and included in the SAR manual.

Recommendation #12- Amend the fueling station concession contracts to include:

- **detailed procedures for calculating the price of 91 octane gasoline,**
  The Authority will pursue a formal amendment to its agreement with Sunoco to set the price for 91 octane at 2 cents less than the price for 93 octane.

- **procedures on the use of cash or credit pricing when the surveyed stations have different fuel prices for cash and credit sales, and**
  The current Contracts require the fuel Operators to offer payment options of cash, credit and pay at the pump, but do not require a cash-only dispenser or an alternative "cash-only" price. Therefore, the Authority will continue to allow the Operators to survey credit prices only at off-road locations that offer both a cash and credit price.

- **the time when price changes must be implemented.**
  The intent of the contracts is that survey prices be implemented at consistent times. The Authority will pursue clarification of this through a letter agreement effectuating the intent of the contract that regional pricing be implemented, and that accordingly the time frame for taking surveys and for implementing price changes must be consistent. Time frames will then be set. The Authority will also include set time frames in the contract amendment to be pursued with the operator. Any change to the time would need to be approved by the Authority.

The Authority also notes several errors in the draft audit report. On pages 2 and 3, OSC incorrectly states that the concessionaires are responsible for submitting fuel surveys and proposed prices and the Authority reviews and approves them. The "approved prices" are calculated by the operators which are submitted on, and supported by, their surveys. The Authority checks the calculations of the submitted prices and SARs conduct random spot checks of fuel prices at off-road survey locations to provide reasonable assurance that operators are following the contract provisions in setting fuel prices. In addition on page 3, it is noted that there are nine different pricing surveys for the 27 Travel Plazas when there are 13. At the bottom of page 3, it states that the fuel contracts are for a 20-

* See Comments Below

*** <u>State Comptroller's Comments</u>**

At the time of the audit the Authority was sending emails to concessionaires advising them that price changes could be implemented. Presently, the Authority posts new prices on its website.

The report was revised, as appropriate, to reflect information in the Authority's response.

year period, when the terms are for a ten-year period with two five-year renewal options. Also, Lehigh Gas Corporation operates 13 fuel service facilities while Sunoco, Inc. operates 16. The inverse is stated in the report. On page 4 of the draft report, the guaranteed minimum annual rents are listed incorrectly. The correct figures are $1.7 million in the first year of the contract escalating up to $2.98 million in the contract's twentieth year. Also on page 4, it is stated the Lehigh has four different groups along the Thruway for which fuel price surveys are conducted. Lehigh has four groups along the Thruway for which eight fuel price surveys are conducted. The last sentence of the third paragraph on page 4 should read "Each plaza within the Sunoco region/group will have the same pricing as the others in its group." The Authority believes these errors should be corrected before the audit report is issued.

* See Comment Below

The Authority has sought to address the opportunities for improvement noted in the draft audit report. If you need additional information, please contact Mr. Kevin Allen, Acting Director of Audit and Management Services at (518) 471-5853.

Sincerely,

Michael R. Fleischer
Executive Director

cc: John Buono, NYSTA Chairman
Donald Bell, Director of Maintenance and Operations
John Bryan, CFO
Kevin Allen, Acting Director of Audit and Management Services

*** State Comptroller's Comment**

The report was revised, as appropriate, to reflect information in the Authority's response.