CONSUMER PROTECTION COMMITTEE

of the

SUFFOLK COUNTY LEGISLATURE

Minutes

A regular meeting of the Consumer Protection Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on Thursday December 11, 2008.

MEMBERS PRESENT:
Legislator Lynne Nowick - Chairman
Legislator Jack Eddington - Vice-Chair
Legislator Thomas Barraga
Legislator Kate Browning
Legislator DuWayne Gregory

ALSO PRESENT:
George Nolan - Counsel to the Legislature
Legislator Daniel Losquadro
Presiding Officer William Lindsay
Ben Zwirn - Deputy County Executive
Bruce Dragonette - Acting Director of Consumer Affairs
Alicia Howard - Legislative Assistant
Joe Muncey - Budget Review Office
Kevin Rooney - Oil Heat Institute
Debra Alloncius - AME

MINUTES TAKEN BY:
Donna Catalano - Court Stenographer

(*THE MEETING WAS CALLED TO ORDER AT 2:01 P.M.*)

CHAIRPERSON NOWICK:
We'll start with Pledge of Allegiance led by George Nolan, Counsel.

SALUTATION

CHAIRPERSON NOWICK:
I apologize for anybody we held up in this committee, but I think most of us were on one committee and moved over to the next. Okay. We have two cards from the public. Joseph McDonald? Oh, okay. Kevin Rooney is here too, so we have them both sitting here together.

MR. ROONEY:
Okay. Madam Chair, Members of the Committee, despite the lateness of the hour, I don't know, I always feel somewhat safer when I follow a presentation by Police Commissioner Dormer. As you will recall, I came before the Legislature on December 2nd to talk about two pieces of legislation; one of which is Introductory Resolution 2033, which would designate in County Law as a deceptive practice anything other than a written contract.

Following my presentation at the public hearing, there were many questions, and I -- and I answered those questions at the podium for quite some period of time. With the indulgence of the Chair and the members of the committee, I have with me today Mr. Joseph McDonald, who is the Senior Vice-President for Sales and Marketing for Petro Corporation, which is a division of Star Gas.

What I would like to do is have Mr. McDonald go through the policies and procedures which his company -- which I think is illustrative of the way the industry is -- the direction the industry is going, but the policies and procedures which his company follows, both before, during -- before an oral agreement with a customer, during the course of that oral agreement, and then the follow-up that occurs after it so that there is no misunderstanding of the fact that companies such as Petro are actually doing everything that they possibly can to make sure that their customers and heating oil consumers fully understand the terms of the contract and the agreement in which they're engaged. So if you wouldn't mind, Mr. McDonald.

MR. MCDONALD:
Hello. And thank you for your time today. As Kevin said, I just wanted to come and give some examples of how we do business. Again, I can only say that I am speaking on behalf of my company, but there are many other companies in the industry that are starting to do some of the same things that we do.

We have roughly, you know, 80,000 customers on Long Island between the Star Gas family of companies. And about half of the customers that we have choose to be on protected price plan, meaning, you know, they either take what we call a fixed price or a ceiling price, which puts a limit on how high their price can go over the course of a year. The other half of the customers just decide to take a variable price plan, which fluctuates up and down with market conditions. I've been in the business roughly 20 years. And years ago, if the heating oil prices moved one penny or two penny in a day, it was a big day. Now a penny or two is nothing. We have swings of five, ten, 15, even 20 cents per day where the market will move.

CHAIRPERSON NOWICK:
Keep going. You still have three more minutes.

MR. MCDONALD:
Okay. I'll be quick, I didn't know what my time limit was. But basically in an effort to continue to be able to offer the price protection that our consumers are demanding, we have started to use electronic recordings to capture an agreement with our customers. So there's two different ways that you can get one of these agreements with my company. You know, if you are a new account,

you call into our office, we record your confirmation over the phone, and we send you what we call our welcome package, which includes all the terms and conditions of your pricing agreement, our general terms and conditions and sends them a copy of what they agreed to over the phone.

The majority of the customers that we're dealing with on a daily basis are existing long-term customers who for many years would just call our office, say that their pricing plan, which usually runs for one year -- we've had a few other programs, which can run for a longer period of time, but the majority of them are one year -- their price plan has come up, we send them out a letter in advance stating, you know, "Dear Customer, your price plan is up at the end of this month. If you're interested in negotiating a plan for next year, feel free to call our office. If you don't, at the expiration of this month, you'll go into our variable price plan." Some customers decide to stay on variable, other customers call right in because they want to get back on a protected price.

This past year was, you know, unprecedented for our industry. And some of our customers don't realize that we're just the middleman. We don't control the price. We have no control over what the New York Mercantile Exchange does. We're just buying the product from our suppliers and delivering it to our customers. What we do in an effort to be able to give them the price protection that they need is when they call in, we record this as they're -- prior to their expiration of their current plan or afterwards. We record the key terms of the agreement, which is generally the price, obviously, the term of the agreement and what the early termination fee is if they have -- if they take a protected price plan. The early termination fee is just -- we call it a liquidated damages clause, which if the customer breaks their contract early, it helps us recover some of the costs that we have lost, because we have locked in that product with our -- with our suppliers.

We then follow-up that agreement in writing with the customer. So they call in, we explain the plan, we record the plan over the phone. In doing, that we're following, you know, the Federal E-Sign Law and the New York State ESRA Law, which allows electronic recording of agreements.

So what Kevin had asked me to do is come prepared with some of the recordings just so if you are interested, you can hear what we say to the customer, what they agreed to, that the clearly accept the plan. And again, everything that we discuss on the phone, we send to that customer in writing. I just need one second.

Generally, obviously, there was a lot of conversation before this when we walk the customer through the plan. So what I brought was just the confirmation of what we play for the consumer and then what we follow-up in writing with.

(*A RECORDING WAS PLAYED*)

I have multiple of the same thing, but that's pretty much the same.

CHAIRPERSON NOWICK:
Your three minute time is up. Thank you for bringing that, because that was very interesting. We've got a little bit of an insight as to what goes on, and I do appreciate it. Does anybody in the committee have any questions? Legislator Gregory had a question.

LEG. GREGORY:
Hi. Thank you for coming today. Just listening to that recording, she repeated several times that, "during the duration of the contract," that whatever the price was, $3.69 or whatever it was, that it won't exceed that, the ceiling price. She kept saying the "ceiling price." Were there other costs that she didn't speak of? And she did say, "other factors." Were there other costs that affect the price of the contract other than ceiling price of the oil that are not delineated?

MR. MCDONALD:
What are the other costs, is that what your question is?

LEG. GREGORY:
Yeah.

LEG. LOSQUADRO:
Tax?

LEG. GREGORY:
I mean, she did say taxes. And she said, oh, other factors that the consumer may not be aware of that she or he will have to pay for that's not expressly stated.

MR. ROONEY:
I think, Mr. Gregory, when she talked about the ceiling -- you said -- she said, "your ceiling price will not exceed this." However, there are -- and it is a variable price. Okay. But it will not exceed that. That's the difference between a fixed-price contract and a ceiling or capped contract. They're very different. A fixed price is if I say to you today it's 2.99, that's the same price regardless of what happens for the duration of the contract. A ceiling or capped price puts a cap on it, but then it varies.

LEG. GREGORY:
I understand that. But my question --

MR. ROONEY:
But I think she did -- I think the young lady did say that there are variables in the market depending on market conditions, supply and demand issues that can change the price. And your price today would have been 2.649.

LEG. GREGORY:
No. But it doesn't go to that. I understand that. You know, anybody who follows the market, the price is going to go up and down. And the consumer is looking, okay, I'm locking in, this is the ceiling, I'm not going to pay more than, say, three dollars per gallon." I understand that. That's a ceiling. I went to college, I understand what a ceiling is.

My question is are there other factors? Can you, say, implement a surcharge for delivery that maybe you -- at the time of that contract that you didn't implement as a policy, but --

MR. ROONEY:
No.

LEG. GREGORY:
Or anything like that that the consumer may not be aware of that's not delineated? Because she did say other factors. I'm just trying the get a grasp of what are those other factors that could possibly affect the price? Or was she specifically just talking about the heating oil itself and not the contract in general?

MR. MCDONALD:
Exactly. I didn't understand your question. I apologize. Yes. I mean, basically our price will vary. I mean, as simple as we go to the rack, we pick it up at "X" cents per gallon, we add on all of our costs and a fair profit margin, and then that price will just fluctuate up and down based on what our costs is, because of the net product, as Kevin said. We're basically buying insurance, is the easiest way to explain it, that we ensure that that will never go above this level. So all of our costs as a company are just rolled up into that, and then we add our margin, and then that selling price will vary if -- like, last night, the market went up --

LEG. GREGORY:
Let me stop you real quick. So your costs are factored into the ceiling price regardless of what the

industry price is for heating oil.

MR. ROONEY:
Right.

LEG. GREGORY:
That's my basic question. Okay.

MR. MCDONALD:
Yes. So we have no surcharges or anything additional that gets added like that.

MR. ROONEY:
And as Mr. McDonald said, following the recording, they then follow -- they then send a written confirmation to the customer with all the terms of the agreement. But if they're not specifically delineated in that conversation, then there are no other charges.

CHAIRPERSON NOWICK:
Legislator Barraga had a question.

LEG. BARRAGA:
Yes. With reference to the recording, I noticed a couple of things which were a bit surprising. Correct me if I'm wrong, but you -- in the recording, your employee gives two prices; the agreed upon price of 3.06, but I thought she also indicated that currently the price is 2.66.

MR. MCDONALD:
That's correct.

LEG. BARRAGA:
Okay. Because usually I would think it's the reverse. Somebody calls up, it's 3.50 a gallon, I want to get it down to 3.06, that's the reason I'm calling. So this isn't as easy a sell as I thought it was going to be, because the customer has to agree to pay a higher price predicated on the current price of 2.66.

MR. MCDONALD:
No, sir. The ceiling price is the highest they will pay, so. And this example, if we sign that customer -- I actually forgot what it said -- her current delivered price as of today was, 2.649 per gallon --

LEG. BARRAGA:
It never exceeds 3.06.

MR. MCDONALD:
Correct. That's the ceiling. So if the market --

LEG. BARRAGA:
That's what your company is doing. But there are other companies who really don't define a ceiling like that. They have a lock-in price.

MR. MCDONALD:
We have that as well, sir. We have a fixed-price plan where that same day our fixed price may have been, say, three dollars per gallon.

MR. ROONEY:
If I could just add something, Mr. Barraga. A fixed price is relatively simple for both the customer and the company and the retail company, the wholesale company to lock in that number. It's real easy.

A ceiling price, essentially what the retail company has to do is buy something called downside price protection. Essentially what you are doing is you are buying a contract at a set number, but then you're also buying, like, a secondary insurance policy, if you will, that allows you to take possession of product at a lower price if the price should fall below that. Okay? And the cost of downside price protection can sometimes be -- well, when oil was five dollars a gallon, that downside price protection was 50 or 60 cents a gallon, which is why most people didn't take ceiling or cap prices, they took fixed prices.

LEG. BARRAGA:
Okay. Let me ask you a question. How many contract are agreed to predicated on ceiling versus fixed? I mean, you know, for example, with your ceiling, the contract didn't go into effect in that recording until December 31st, even though you were talking to this person on December 8th.

MR. MCDONALD:
Yeah. Normally what happens, again, if this was -- I'm assuming this customer was one of our renewal customers, so they've been with us for years, they've been on a protected price plan for years. They call in advance of the expiration of their plan. So in that example, their current price protection plan wasn't up until the end of December. We send out a notice about four weeks in advance just giving them a head's up, your price plan is coming up, if you want to -- if you want a new price plan for next year, call us.

LEG. BARRAGA:
If it was fixed it was would go into effect immediately.

MR. MCDONALD:
No. If it was fixed, we also -- again, I'm speaking on behalf of our company -- it would go in effect when their current plan expires. If they weren't on a plan, then we would put it in place for them the day we spoke with them. So it all depends on what the --

LEG. BARRAGA:
So you can guarantee that price even though -- fixed price -- even though the current contract that I may have with your company expires in three to four weeks?

MR. MCDONALD:
Yes. Because we have to go out -- like, when we speak to these customers, we have to go out and buy that product.

LEG. BARRAGA:
Because the impression I got from the public hearing on fixed price is that one of the reasons you do the fixed price verbally on the phone is that by the time you send out the contract if you couldn't do that, the price might be higher than what you had agreed to the previous 48 hours on the phone.

MR. MCDONALD:
That's exactly right.

LEG. BARRAGA:
Are you telling me that's not the case?

MR. MCDONALD:
No. That's exactly the case. It's the same with the ceiling.

MR. ROONEY:
Because you can buy today, okay -- this -- I pulled this, I get this very day. You can buy today, for example, on the NYMEX, okay, heating oil. You don't buy current month normally speaking, but you buy the forward month. So the forward month is January 2009 going through January 2010. I can buy today on the NYMEX any quantity of contracts at any of those numbers. And just so that you

know, they run from a $1.40 a gallon -- this is a NYMEX contract price -- $1.40 a gallon for January '09 to $1.72 a gallon for January 2010.

Based on the weighted degree day heating curve, okay, you come up with an average, and that average -- actually, that 12 month strip is a $1.52. So you would actually be buying today forward month contracts for the next year.

LEG. BARRAGA:
I understand. Since we had the public hearing, this bill has been amended.

MR. ROONEY:
Oh, really?

MR. NOLAN:
No.

P.O. LINDSAY:
No.

LEG. BARRAGA:
I think I have a notation here.

P.O. LINDSAY:
If I could just interject.

LEG. BARRAGA:
It says a Local Law amending -- there was no change since the public hearing in terms of any discussions between you and the sponsor?

P.O. LINDSAY:
There's two --

MR. ROONEY:
No, sir.

P.O. LINDSAY:
If I might, Legislator Barraga. There's two bills. This one is a simple bill that if you are committed to a contract, you should be able to see the contract before you sign it.

LEG. BARRAGA:
Yeah, I'm familiar with that. The other one --

P.O. LINDSAY:
The other bill is being amended. That was a website to list the prices of the oil.

LEG. BARRAGA:
Oh, I see. So you are still not in support of this bill.

MR. ROONEY:
No, sir.

LEG. BARRAGA:
Thank you.

MR. ROONEY:
In fact, speaking to the resolution, if I may, Madam Chair? As I said at the public hearing, this is in

our opinion a technological step backwards. It does not help consumers. It may, in fact, hurt them by forcing them to pay a higher price per gallon then they would otherwise pay if their fixed price contract was handled telephonically or electronically.

If a retail heating oil company cannot electronically obligate the customer at the same time as they electronically obligate themselves to their wholesalers, then you have -- then you have a time period in which -- in which the retail company would probably then have to charge a higher price for a fixed price contract to cover themselves against any upward movement in the -- in the Mercantile Exchange or the market between today when I send your contract and six, seven, eight, ten days later when I get that contract back.

And if you can't determine what the price is at the time of the contract, then this all falls apart. I mean, to think that markets would change on an hourly and daily basis -- and as I said, if you're interested, if we took out a contract yesterday afternoon at four o'clock -- sorry 3:59 before the market closed, and I did not lock you in at that price, the overnight -- the overnight change was six point three cents. So that company, if I was your company, I would have lost six point three cents simply by waiting until this morning to do it.

When you're dealing with a market that changes and everything is electronic to think that we now have to rely on the United States Postal Service in order to conduct business is nothing short of absurd.

CHAIRPERSON NOWICK:
Just quickly, Kevin.

MR. ROONEY:
And yes, sir, I am absolutely opposed to this bill.

CHAIRPERSON NOWICK:
Just quickly, I think Legislator Barraga opened a question, and I don't know if you got the answer. What you were saying, that even though somebody's first contract doesn't run out until December 31st, they call you up on December 8th, you do the contract on the telephone, then at that moment, the company, even though you're no t -- it's not effective until the 31st, and at that moment, the company, your company goes to the NYMEX and buys oil at a certain at that moment, even though it's not later -- is that it? You do it that moment on the phone?

MR. MCDONALD:
Yes.

CHAIRPERSON NOWICK:
That's what I wanted to know. I was a little confused with that.

MR. MCDONALD:
Actually, I mean, it's like I hang up with that customer and then we have to, that second, lock in with our supplier. We basically take it from the day, because you can't buy on the NYMEX -- like, the average customer on Long Island is roughly 900 gallons per year. We have to buy in 42,000 gallon increments.

Now, fortunately a company our size, we have enough customers that we can be in the market buying daily. So we do secure that product daily. But we're protecting the product from, in this case, it would be January 1st through the following year. So we're giving that customer the protection they're asking for for the following year.

CHAIRPERSON NOWICK:
Okay. And Legislator Eddington had a quick question, I think.

LEG. EDDINGTON:
Yes. When Legislator Gregory asked a question about a little piece in that statement on your computer, it wasn't answered so that I could understand. So I wanted to just go back over it, that it said, you know, "and other fees," or something, you know, it was the person that was reading it was kind of quick. You know, there's this and that and the other thing and any other whatever, fee, or something that might be part of the -- part of it. And I think Legislator Gregory asked if it could be a surcharge or something. But, in fact, isn't it -- you get price protection insurance, is what I heard you say.

MR. MCDONALD:
Correct.

LEG. EDDINGTON:
Isn't that an additional fee that -- obviously you're not paying for that. It's got to be coming to us.

MR. MCDONALD:
Well, it's in our delivered cost. So just like our delivery costs, it's just like service costs, our accounting, our financing, all of
our --

LEG. EDDINGTON:
Well, and that, I think, is what Legislator Gregory was asking. What are those other added costs? And now, that is one of them then.

MR. MCDONALD:
Yeah.

LEG. EDDINGTON:
We're paying for you to insure yourself so that you don't ever take a risk.

MR. MCDONALD:
Well, no. You're paying for you to insure yourself so you take the risk, quite honestly. If you look -- like again, this past year, if you were on our ceiling -- what we call our ceiling plan -- and again, every company may have a different name for it -- and you signed up last, say, June. As oil went up precipitously over the course of the year, you made a decision as a consumer to protect your annual usage. So we bought the protection to sell to you, and your price never went above here. So even though oil -- our cost, I think the high was $4.03 per gallon, you never paid more than, say, $3 a gallon when you locked in, where other consumers that didn't take one of those protection plans may have paid in excess of $5 a gallon.

LEG. EDDINGTON:
So now, this woman just locked in for the 31st, and you're locking in, so you're making money now, because if it goes down in the next two weeks, you're not going to pass that onto her. You locked it in --

MR. ROONEY:
Let me just clarify something. You cannot -- you cannot buy a contract on the -- on the New York Mercantile Exchange, the NYMEX, in the current month. So -- if they're talking to -- that recording was December 8th, and they were talking about this being effective December 31st. They are -- the company or any company would be buying future month, okay, so the future month is they're buying January '09 through the end of December '09 or into January 1, '10.

LEG. EDDINGTON:
All right. Now I'm getting confused, because it sounded like the reason you objected to Legislator Lindsay's bill is because of a time constraint. And now you're telling me it's the next month. So you do have time to --

MR. MCDONALD:
No. We have to secure that cost today.

MR. ROONEY:
Right.

MR. MCDONALD:
But we're securing it for the future.

MR. ROONEY:
Right.

MR. MCDONALD:
So today we would go to a supplier, and some of them are financial firms, some of them are just wholesalers, and we will secure January through next December. So we secure it, but we do it today. So we're basically locking in protection for the coming year.

MR. ROONEY:
Right. And the January Futures price for today is different than it was January Futures yesterday, and it's going to be different for January Futures tomorrow.

LEG. EDDINGTON:
But if you can send the -- if you can send the person that signed up on the 8th the forms and they can send it back, everything is cool.

MR. ROONEY:
No. No.

MR. MCDONALD:
No.

MR. ROONEY:
Absolutely not, because the price changes. The price from January 8th -- from December 8th to December 11th, buying January, February, March, and all of the months of next year, it changes day to day. So if the price today --

CHAIRPERSON NOWICK:
You know what I think, Kevin?

LEG. EDDINGTON:
I'm hearing different.

MR. ROONEY:
If the price for the January Futures for Thursday, December 11th, okay -- and I'm going to read these off for you -- January is $1.40, February is $1.43, 47, so on and so forth.

LEG. EDDINGTON:
You know what? You're great at speaking, believe me.

MR. ROONEY:
Those numbers --

LEG. EDDINGTON:
You know, what? Could I just have the floor. I want you to respond to me, not you just telling me what you want. And those numbers are not making it clear. I can't see why the delay --

MR. ROONEY:
Okay.

LEG. EDDINGTON:
-- if I pay -- if I sign today --

MR. ROONEY:
Right.

LEG. EDDINGTON:
-- you're not really buying the Futures until January.

MR. ROONEY:
No. You're buying them today.

LEG. EDDINGTON:
Today.

MR. ROONEY:
For January.

LEG. EDDINGTON:
Okay.

MR. ROONEY:
Okay?

LEG. EDDINGTON:
Okay.

MR. ROONEY:
And the key point here --

LEG. EDDINGTON:
Oh, you're buying -- and you're saying whatever the price is January 1st or whatever, that's what I'm going to pay, not the price today.

MR. ROONEY:
No, no. You're going to buy -- okay. You're locking in --

LEG. EDDINGTON:
"You're" is the company I'm talking about.

MR. ROONEY:
You're locking -- you're locking in today on a Futures price for January, February, so on and so forth. Okay? If you -- if you and I did this deal, if I'm you're oil man and you I did this deal yesterday, I would have been able to quote your price based on what the expected price on the NYMEX was for all of those months for next year.

If you called me back today -- if you said, you know what, I'm going to think about it. If you called me back today and said, I thought about it and now I'd like to do that, I would have to say to you with all due respect, Mr. Eddington, yesterday when we talked, I quoted you a price, I did not lock in that, those supplies.

LEG. EDDINGTON:

Right.

MR. ROONEY:
And the overnight, the overnight, it went up another six point three cents.

LEG. EDDINGTON:
I understand that.

MR. ROONEY:
So if I quoted you 2.999 yesterday, today that price is 3.062.

LEG. EDDINGTON:
And did the company call it in at that price for themselves?

MR. ROONEY:
No. If you said to me, I'm going to think about it, they bought nothing.

LEG. EDDINGTON:
No. When I do say -- I say, "Okay, I want the deal," I approve it over the phone, you call it in and lock it in at that price?

MR. ROONEY:
Right. At that point in time, when you said, "Yes, I want to do that deal," that is the day they buy your supplies for the entire year. They're contractually obligated for "X" amount of gallons for the entire coming year, and they do that on that day.

LEG. EDDINGTON:
Okay. So time is an element.

MR. ROONEY:
Absolutely.

LEG. EDDINGTON:
Why can't, after I agree, you e-mail me the contract, and I press, like at Eddie Bauer, "yes" and boom, you know, and it's cool?

MR. MCDONALD:
Again, I can speak on behalf of our company only.

LEG. EDDINGTON:
Right.

MR. MCDONALD:
We have built a system like that. The problem is -- and we would love it, because it is a little bit cleaner, but the consumer doesn't want it. Like, many, many times they call us and they're calling -- again, we've been in business for over 100 years. So some of our customers have been with us 20, 30, 40 years. They know they can call us at any time, get their protected price plan for the following year. They call from their cell phones, they call from their office, they're not in front of a computer. We've tried that. It's -- and quite honestly, a large -- larger than I would have thought portion of our customer base doesn't use the internet, they don't have an e-mail address. It's actually quite surprising.

LEG. EDDINGTON:
Really. I find that very surprising.

MR. ROONEY:
It helps -- it really would help. And more and more companies are going to that. What more and more companies are doing is telling a customer orally over the telephone that you have to call us back when you're sitting in front of a computer so that they can actually do that. Yes, we are moving that way, and we want to do more of that.
Trouble is, I hear from people all the time, eighty-five year old woman in Smithtown, a sixty-eight year old person in -- not in your district, in the other guy -- you know, somebody -- and they don't even have computers, let alone the ability to use them. So that's a problem. That's a problem. It helps.

LEG. EDDINGTON:
Okay. Thank you.

CHAIRPERSON NOWICK:
But the other problem might be when you tell the 88 year old person over the phone, they don't have -- they can't hear either.

LEG. EDDINGTON:
That's true.

CHAIRPERSON NOWICK:
Legislator Lindsay

P.O. LINDSAY:
Yeah, fellows, this is kind of enlightening. So when someone calls you up for a fixed -- not a cap price, a fixed-rate price, you buy 100% of the fuel supply that you estimate that they'll need for the next year that day.

MR. MCDONALD:
That's correct. Again, speaking --

P.O. LINDSAY:
All hundred percent. You don't hedge that at all?

MR. MCDONALD:
We are -- you know, when we met you --

P.O. LINDSAY:
At the price of fuel oil that day.

MR. MCDONALD:
Correct. So we're securing that product for the year. Not the cash price that day, the forward curve for that day.

MR. ROONEY:
Let me clarify what you just said and what he just answered. You said, "at the price of fuel that for that day."

P.O. LINDSAY:
Right.

MR. ROONEY:
Are you referring to the current price, or are you referring to the NYMEX Futures price for each of those months in which they will use oil?

P.O. LINDSAY:

Well, is typically the NYMEX price higher than the price you're paying for fuel oil that day?

MR. ROONEY:
No. It would be lower.

P.O. LINDSAY:
The NYMEX price is lower?

MR. ROONEY:
It is lower for a number of reasons.

P.O. LINDSAY:
Which is lower?

MR. ROONEY:
The NYMEX price.

P.O. LINDSAY:
The NYMEX price. So the Futures price is lower.

MR. ROONEY:
If you take -- it's lower in actual physical real terms.

P.O. LINDSAY:
No. I'm talking dollars and cents, not physical terms, dollars and cents.

MR. ROONEY:
I understand. But simply, it is lower. And I want to qualify what I just said. It is lower because, A, it is simply a paper contract price. It does not include the cost of bringing -- bringing that physical product into a terminal where it may be lifted by a retailer and then -- and then delivered to a customer's home. It does not include the operating costs of running that company.

P.O. LINDSAY:
Well, that's all your mark-up.

MR. MCDONALD:
Right.

P.O. LINDSAY:
I'm not asking you to sell the oil at the wholesale price. You mark those numbers up.

MR. ROONEY:
I understand, but you said, "is it lower than the price today," and I'd like to know what you mean by, "the price today," the retail price, the wholesale price or the NYMEX price.

P.O. LINDSAY:
Well, you are making the case that you have to buy the fuel oil at the price today.

MR. ROONEY:
Right.

P.O. LINDSAY:
All right. And that's all I'm trying to figure out.

MR. ROONEY:

But the price today -- the price today -- today's -- the NYMEX closed yesterday --

P.O. LINDSAY:
Right.

MR. ROONEY:
Yesterday evening at a $1.40.27.

P.O. LINDSAY:
Okay. So what would you mark that up?

MR. ROONEY:
Excuse me, sir. If you -- if you purchased physical product today --

P.O. LINDSAY:
Right.

MR. ROONEY:
Physical product.

P.O. LINDSAY:
Right.

MR. ROONEY:
You wouldn't buy the NYMEX. You would buy from a wholesaler, whatever their price is, add in your operating margin, and then sell it at retail.

P.O. LINDSAY:
What's the wholesale price, higher or lower?

MR. ROONEY:
When you said is the forward price -- is the Futures price always lower, well, I can look at this heating curve and pick out January through -- January '09 through January '10, and there's a 32 cent difference. So the Futures price for January is lower than the Futures price for December of '09 by 32 cents.

P.O. LINDSAY:
So you average it out.

MR. ROONEY:
It gets averaged out on a 12 month strip.

P.O. LINDSAY:
Okay. The average price that you're buying on NYMEX, is that lower or higher than the wholesale price you're buying in fuel oil today?

MR. ROONEY:
It's lower, because it's a paper contract, it's not physical product.

P.O. LINDSAY:
But the paper contract binds you to pay that amount for that product.

MR. ROONEY:
No. It simply binds you to purchase that amount of product at a predetermined price at a physical location at some point in the future.

P.O. LINDSAY:
I think that's what I said, but whatever. Why is -- then why is your fixed rate price so much higher than your delivery price on 200 gallons of oil today?

MR. MCDONALD:
That's --

MR. ROONEY:
First off, the full service heating oil industry, which comprises 85% of all of the -- all of the customers and all of the gallons that are delivered on Long Island, doesn't deliver on a 200 gallon basis. If you want to quote a COD price as opposed to a full-service price, that's a totally different argument.

P.O. LINDSAY:
I'm just trying to figure out by your argument why it's so much more expensive. I hear what you're saying that you have to lock in your supply. I mean, last week, I think it was your company, Petro quoted a price of 2.19 a gallon for a COD price and 2.79 for a fixed rate price.

MR. MCDONALD:
No. We generally -- as a company, Petro doesn't sell COD. We have, as I spoke with you before, we've purchased some companies that may have COD. But to answer your question -- I think I understand your question. Right now, the cash price, if we went to Iraq, we just went and picked up product, that may be, say, $1.40 per gallon. The future, the 12 month strip on the NYMEX, depending on what's happening in the market may be much higher than today's cash price.

For instance, I believe the strip -- don't quote me on this -- was roughly 18 cents higher than the cash price. So for me to go out and lock in product for you if you wanted a fixed price with us, our cost --

P.O. LINDSAY:
That's contradictory to what you just said. You just said that the NYMEX price is lower than what you're paying for product today.
Mr. Rooney just said that.

MR. ROONEY:
It's lower because you're comparing -- you're comparing this to this. You can't compare a piece of paper to a physical product.

P.O. LINDSAY:
But the paper, you're telling us, binds you guys to purchase that much of product.

MR. ROONEY:
When you buy -- when you buy -- when a retailer buys from a wholesaler, okay, either they're going to deal with the NYMEX directly or they're going to deal with the wholesaler who is dealing with the NYMEX. And then there are costs to bring that product into a physical plant, into Holtsville or whatever other terminal, okay? So those are factored in.

I'm using NYMEX prices, because they're published prices. Wholesale prices are not published, nor could they be, because they're all over the waterfront. I'm just using this is as an example. If you take a NYMEX price and say, okay, what is the price to bring that product in -- let's say I'm talking to ExxonMobil, okay? I would say, "I'm looking at the Futures, the 12 month strip, and the 12 month strip is a $1.52, okay? What is it going to cost me to bring that product in "X" number of contracts into Holtsville"? And they'll say, "It's going to 20, 22, 25 cents, whatever." Okay. Fine.

That now tells a dealer, a retail dealer, what the price will be when they go to pick it up at the terminal. They then add onto that their operating margin, which maybe 85, 90, whatever, whatever it is, it is what it is, and then based on that, that's their retail price.

P.O. LINDSAY:
So you're marking up your product 30%?

MR. ROONEY:
I don't know what companies markup their product, because I'm not privy to that.

P.O. LINDSAY:
Okay. Getting back to the bill at hand, I mean, this was just billing issues, which really has nothing to do with the bill at hand. The bill is a simple bill. I just want consumers to be able to read what they're obligated to before they're committed to it. And the tape recording was enlightening, but it doesn't go through all the terms of the contract. And we have some of these contracts, and some of the clauses are filled with a lot of legalese. And I just want people to be able to look at the legalese before they commit to it.

And in spite of what Mr. Rooney says, in our survey, the vast majority of the full service dealers in Suffolk County still use a written contract and still use "snail mail." It's only -- it's only the big guys that are going to this oral contract, and I don't like the trend of it. I would be perfectly happy with the system that Legislator Eddington talked about. If somebody could read the terms of the contract online and agree to it, I wouldn't have any problem with it then. That's all.

CHAIRPERSON NOWICK:
The recording we just heard, is that the full extent of the contract that you go over with the customer? That was the full extent, or does that person in your office start to go over all the other paragraphs that would be in a written?

MR. MCDONALD:
No. When a customer becomes a customer of ours, they're sent, like, our general terms and conditions that point out the liability and the payment terms and all of that. On an annual basis when they call in, they're basically all they're calling for is they want to know what their price is for the next year and what the time period is and what the termination fee is. That's what we record, and then that's what we follow up with in writing, which spells all of that out for them to what they just agreed to on the phone.

CHAIRPERSON NOWICK:
Well, Legislator Browning just brought up a point, which was very -- which I thought was a very good point, and asked Legislative Counsel, if you were on the telephone or if a representative of your company is on the telephone and you go over what you went over and that person says, yes, I agree, blah, blah, blah, hangs up the phone, your written contract, if there are other clauses in that written contract that were not mentioned on the telephone, Legislative Counsel, would you want to tell us what you think if the other clauses would -- they would be held to?

MR. NOLAN:
I think if somebody -- if you end up in court trying to enforce that contract, I think you could probably only enforce what was agreed to on the phone. In terms of the written materials that were sent later, I don't know how you could possibly enforce it without a signature from the other party.

MR. MCDONALD:
Well, the things that we've -- and we have enforced it multiple times.

MR. NOLAN:
Beyond what was on the tape, what is discussed on the phone? You've been able to enforce other written provisions that were not discussed on the phone?

MR. MCDONALD:

No. No. No.

MR. NOLAN:
Okay.

MR. MCDONALD:
I apologize. That's not what I meant. What I meant what they agreed to on the phone, you know, we consider that recording their electronic signature, and that's what we would hold them to. That's really their only reason for the call, is to talk about the price; what is their price going to be, how long is it going to be, and then we disclose what the termination fee would be if they did break the contract. So they're the only things that I agree, that we would be able to enforce, is what we recorded on the call.

MR. ROONEY:
And if it were an existing customer, they would have already received a written contract with the full terms and conditions prior to the conversation, and then get a written confirmation after that. If it is a new customer, they would agree to those terms and conditions over the telephone, and then receive the full terms and conditions of the contract. But the only thing that is enforceable in a court of law are the -- based on that recording, are the issues and the specific provisions discussed on the phone.

CHAIRPERSON NOWICK:
Can somebody say to you when you sent -- you always send a written contract, that you follow up with a written contract?

MR. MCDONALD:
We always follow up written, yes.

CHAIRPERSON NOWICK:
And then is that a more extensive contract than what was on the phone, yes, right?

MR. MCDONALD:
It's not much more. It basically just spells out --

MR. ROONEY:
Are talking about the confirmation?

MR. MCDONALD:
The confirmation letter.

MR. ROONEY:
No. They're talking about the contract.

CHAIRPERSON NOWICK:
When you follow up the telephone conversation with your written contract and it has more paragraphs on it -- is that what you said, it would be more extensive?

MR. MCDONALD:
The confirmation letter that we send out doesn't have much more than what we just discussed on the phone. And I can provide copies of what we personally use to any of you that would like them.

CHAIRPERSON NOWICK:
So it's not like another three pages of clauses?

MR. MCDONALD:
No. No. It's not. It's one page.

CHAIRPERSON NOWICK:
One page.

MR. MCDONALD:
And it basically just says, "Thank you for renewing your pricing agreement. As we discussed, here's what was discussed on the phone, here's your price for the coming year, here's the terms, here's the termination fee."

CHAIRPERSON NOWICK:
Okay.

MR. ROONEY:
That's a renewal, Madam Chair. So if they're an existing customer renewing a contract for a new term, they will have already received prior, in the prior contract, the terms and conditions in the full contract. You have to differentiate between an existing customer and a new customer. If it is a new customer, they would get a written confirmation and a contract, yes?

MR. MCDONALD:
Yes. That's correct.

CHAIRPERSON NOWICK:
I'm just talking to Counsel.

MR. NOLAN:
Just so I understand, and excuse me, you have an existing customer, you have an existing contract, is that what you're saying, that has more extensive terms and conditions than just the price and so forth?

MR. MCDONALD:
Correct.

MR. NOLAN:
And when you renew a customer over the phone, are you saying that the old terms and conditions of the more extensive contract are still applicable?

MR. MCDONALD:
Yes. Yes.

MR. NOLAN:
Okay.

MR. ROONEY:
Absolutely.

MR. NOLAN:
Even though the terms of that old contract may have only been for a year? You don't do a whole new contract?

MR. MCDONALD:
Well, again, I can only speak on behalf of our company. I think sometimes people get -- the word contract is kind of what sets us off. If you signed up as a new account of ours, we would send you -- say you called us today and you didn't take a protected price plan, you just took a variable price plan -- we would just send you our general terms and conditions, which is lengthy. That is like a page and a half, and it talks about, you know, what automatic delivery is, what our liabilities are,

you know, there are a number of things, which I can certainly provide to you. That is just our terms and conditions to be a customer of ours.

You could leave tomorrow and it would be over, because there was no pricing agreement. I think really what we're talking about now is the pricing agreement, the annual pricing agreements that people want for protection. If you just sign on board as a customer of ours and you don't take a protected price plan, there is no recording, there is confirmation letter that goes out annually. You just buy on the open market basically.

CHAIRPERSON NOWICK:
Legislator Gregory.

LEG. GREGORY:
I have a question. To me, it seems common sense. If you call me and I get into a verbal -- I make a verbal agreement at a set price, ceiling, or whatever, I don't see what the harm is in you sending me the written contract. Do you have -- do you have the ability, once we make the verbal agreement, to secure the Futures for my contract, I get the written agreement, verify what we spoke about on the phone, there's no issue, follow through with the contract? Because what I'm hearing what you're saying is nothing will be finalized until I get the written contract, but I've already given you my commitment verbally.

MR. MCDONALD:
No. It's finalized when you record the call.

LEG. GREGORY:
All right. So then what's the harm in following through with a written contract a day, two, three days later if I've already given you my verbal agreement? The only difference is, and Counsel will testify to this, I'm sure, to this that if I point out something that's different in the written contract than I verbally agreed to, then you couldn't hold me to it anyway, but other than that, I would be obligated to it. And if I decide to back out for some reason, then you can get liquidated damages. So I don't see what the harm is.

MR. MCDONALD:
Well, every customer, again, the we do -- that you just heard that we record, we do follow up in writing. So what we just agreed to on the phone and we recorded, we send to you.

LEG. GREGORY:
Right. But what you said -- your whole argument has been, the way I understand it, is we cannot send out the written contracts because the NYMEX prices change from day to day, and you have to wait until you get the written contract back to secure that. And by that time, a day, three, six days later, the price more than likely would have changed, higher or lower, whatever it maybe.

What I'm saying is why don't you secure those -- what you just said was you secure the Futures for my particular contract at the point of the verbal agreement. So where's the fluctuation coming from if we're just sending out the contract and verifying in writing what I already verbally agreed to?

CHAIRPERSON NOWICK:
If they don't sign the contract, then --

LEG. GREGORY:
And because of my verbal agreement, you already secured the Futures for my contract.

MR. ROONEY:
Right. The distinction here is that the sponsor wants the obligation of the contract to be on the company at the time that they receive a written signed contract back from the customer. If you and

I talked today, Mr. Gregory, I can't even begin to talk prices to you if I have to send you a written agreement. I cannot buy any product on your behalf until I get that written agreement back. So all of that recorded conversation goes completely out of the window, it just doesn't happen, because I'm not going to lock in a contract to you -- what it basically I would be doing is sending you a contract and saying I'm going to put in a number, but I'm going to put a clause in there that says this number may change between when I send this contract out and when I get it back. And then when I get it back with your signature, I can then call you up and say, you know the deal we talked about ten days ago, well, this is what it would be today, higher or lower.

LEG. GREGORY:
I don't interpret that way. I interpret it as the written contract is a verification in writing of what we already verbally spoke about and I agree to as a consumer and you as the provider of a service. If there's something different --

MR. ROONEY:
If that is your understanding, Mr. Gregory, then I don't know that I would have a problem with that. I don't know that that is the understanding of the sponsor, however.

LEG. GREGORY:
Well, I'm not going to answer that. I mean, he's here to answer it for himself. But that's the way I interpret the bill.

MR. ROONEY:
If you're saying -- let me make sure I get you right here -- if you are saying that you and I have a phone conversation today and I record it, and I say that we can lock you in starting January 1, running through December 31 of next year at a fixed price of 2.89 a gallon, and you say, yep, I got it, and by the way, here's the time period, January 1 to December 31, and if for some reason you should decide to cancel it, here's the cancellation fee, and you say, yes, I got it, I understand it, fine.

If I then send you a contract that has all of those terms and conditions in it as well as all the other general legal terms and conditions and you then send that back to me with your signature, then it's fine, because I locked you in the day of the phone conversation. The problem is if I locked you in today at 2.89 and then you -- and let's go back to last July, okay, because it makes more sense because that's where a lot of this stuff comes from. If I locked you in on July 14th -- and I talked to a guy yesterday who happens to be a customer of this guy's company who locked in a contract at 5.17 a gallon, okay, that was on January -- sorry -- July 12th.

July 14th, the price started going down. So if you and I had that conversation with this gentleman who lives in Smithtown -- who works in Smithtown, if we locked in at 5.17 on January (sic) 12th, and I send you a contract, okay, I bought your gallons on July 12th, I bought them, I'm contractually obligated, and I send you the contract, on July 14th the price starts coming down, and it comes down and it comes down, and you're looking at this and you're going, wow, it's now August 14th and the price of oil has come down from $149 a barrel to $130 dollars a barrel and --

LEG. GREGORY:
Well, couldn't you put a clause in that says --

MR. ROONEY:
If you don't send -- if you don't send the contract back ever, he's contractually, or if I'm your oil man, I'm contractually obligated for the thousand gallons that you would use. And I've set a price on that day, and I don't have any guarantee that you will ever take possession of them.

LEG. GREGORY:
Well, I don't see that any different as -- any different from anyone --

MR. ROONEY:
How do you do that? How do you run a business with that kind of risk?

LEG. GREGORY:
I don't see it any different as someone who's in a contract that chooses to get out of a contract and they pay liquidated damages. You know? You're talking about quantities of a product that's not being used, whether I didn't use one drop or I didn't use 400 of my 900 gallons that I've contracted for, you still, as a service provider, I would think you would be obligated to some damages.

So if I contract at a price and I get the contract, I mean, you enter a contract in good faith that both parties are going agree to it. And if I don't hold up my bargain, and the terms of that contract are what they -- you said they were and I agreed to them, no harm -- I mean, you know, I can't -- I don't have a legitimate way to get out of that.

MR. ROONEY:
But is the obligation, is the legal obligation, does it occur at the moment that you and I agree on the telephone, or does occur --

LEG. GREGORY:
I would think so.

MR. ROONEY:
Does it occur at the moment when I get your contract back signed by you? Because you may take your sweet time in sending it back figuring, whoa, why should I pay that kind of price when everything I read and see on CNN and, you know, Mad Money and everything else that you watch on TV, the price of oil is coming down?

LEG. GREGORY:
I mean, that's something that maybe could be tweaked with the bill if that -- I mean, my understanding --

MR. ROONEY:
As long as the obligation, the contractual obligation, occurs at the moment of the conversation, not upon receipt of a signed contract back, then I don't have a problem. I don't think anyone has a problem saying, you make a verbal agreement on the telephone, we will send you all the terms and conditions of that contract --

LEG. GREGORY:
Right. But you have to make sure that you --

MR. ROONEY:
Along with the confirmation.

LEG. GREGORY:
-- but you have to make sure that you lay out all the terms. You know, you tell me ceiling price and all this other stuff, I get the contract, oh, you know, for every five miles or two miles, there's a 50 cent charge or something crazy, whatever -- you know, whatever you get that I didn't agree to, I'm saying, no way, that's not what I agreed to, I can opt out of that. But if it's line by line everything that I agreed to, I'm contracted to abide by that agreement, I would think.

MR. ROONEY:
If all of the -- if all of the monetary -- if all of the clauses that would have any kind of monetary impact on a customer in those terms, in those general terms and conditions, if they were laid out in that telephone conversation, would you have a concern with that?

CHAIRPERSON NOWICK:

Legislator --

MR. ROONEY:
If all of the terms and conditions, monetary terms and conditions, now I'm talking about, you know, contractual abrogation fees --

LEG. GREGORY:
No. But he just said earlier -- I forget your name -- he said we have a page or a page and a half contract or a confirmation letter, it's not a long process.

CHAIRPERSON NOWICK:
Legislator Gregory, we have another -- we have another meeting coming up, we're running very late. And I think you can go back and forth a million times with this, but I don't think either one of you is going to be happy with the answer from what I'm seeing. But Legislator Barraga did have one question.

LEG. BARRAGA:
Just very quickly. You know, I take a look at this piece of legislation, and I can understand where Mr. Lindsay is coming from, because if we take a look at what happened in July and August and early September, people panicked, they absolutely panicked. If that panic didn't take place, I don't think you'd be sitting here.

MR. ROONEY:
No.

LEG. BARRAGA:
Because you'd be operating just the way you always have been; you call, you lock in a contract, if they want to lock in to begin with. If you don't have the panic, maybe you don't even bother doing that. You just continue to, you know, ship the oil and I'll pay the price whatever it is.

But, you know, I think this comes about because with oil -- heating oil going at 4.50 or 4.75, and if you lock in a price at $4 and all of a sudden you wake up and it's $3.50, you're calling your oil guy back. And all of a sudden, he turns around and says to you, "Well, we can let you out of the contract, but there's a liquidation fee of three or four or $500." "I didn't know that, you didn't tell me that." "Well, it's in the contract." "Well, I don't remember seeing that." And that's a natural inclination for people to want to do that. They don't want to hear that you locked in your price, that the liquidation fee is there to cover part of your loss.

Right now, the way the market is now, it's settled down, it's pretty much settled down. So if you take an oral contract on the phone the way you have been and you send me a contract, a written contract, in a couple of days, believe me, after a couple of days, there's not going to be much of a difference in price. But in July and August, in July and August, that seventy-two hours might have resulted in a 25 or 30 cent per gallon increase in price. Under this bill, I'd be stuck with that. I'd have to have a signed contract, because the oral agreement at the lower price would no longer apply, and that's the problem I have with it, because tomorrow, next week, the market could change again.

Heating oil and gasoline go through the roof. And they'll be back on the phone trying to lock in anything they can get on an oral agreement. They don't want to hear that, you know, maybe in a couple of days it's going to be higher. I want it right now. That's the way people are. You've talked about contracts and how people, you know, don't have computers. People want contracts, a certain population -- just like they go to the bank; if it's not in the passbook, it's not in the bank. And there are a lot of people like that.

But, you know, this -- this particular piece of legislation, I can see how it has developed, because I'm sure -- and I got phone calls like this from people saying, you know, "How do I get out of this contract? Can you help me out?" There's not a lot you can tell them other than, "Call your oil company and maybe they might want to work out something, but they can only go so far." And the best I'd be able to do for constituents is to get them down in one or two instance to the actual price that the company paid for the oil. And they weren't really making any operating profit or margin. That's usually for a very customer. But that's the problem with the bill. You know.

I think that right now, if -- the way things are, this bill probably isn't needed. You know. But in a panic, people want to lock in those oral agreements, they don't want to wait for the contract, they don't want to have to pay a lot more because 48 or 72 hours went by.

MR. ROONEY:
And that, Madam Chair, with all due respect, is why this proposal should not move forward.

MR. NOLAN:
Okay, we're good.

LEG. BARRAGA:
Vote.

CHAIRPERSON NOWICK:
Okay. We have two tabled resolutions. I guess I should ask the Consumer Affairs Department if they want to say anything? Bruce? Oh, he's not here? Okay. Tabled Resolution.

1750-2008. Adopting a Local Law to increase and improve gasoline price notification to consumers (LOSQUADRO).

This has to be tabled for a Public Hearing. I'll make a motion, seconded by Legislator Browning. All in favor? Opposed? This is **TABLED (VOTE: 5-0-0-0).**

Okay. **2033. Adopting a Local Law amending the Suffolk County Code to prevent deceptive practices in the home heating oil it industry (PRESIDING OFFICER).**

You guys, what do you want to do?

LEG. EDDINGTON:
I'll make a motion to approve.

CHAIRPERSON NOWICK:
I have a motion to approve by Legislator Eddington.

LEG. GREGORY:
Second.

CHAIRPERSON NOWICK:
Seconded by Legislator Gregory. All in favor? Opposed?

LEG. BARRAGA:
Opposed.

CHAIRPERSON NOWICK:
2033 has been **APPROVED (VOTE: 4-1-0-0 - Opposed: Legis. Barraga).**

LEG. BARRAGA:
What was the vote?

CHAIRPERSON NOWICK:
4-1.

LEG. BARRAGA:
I didn't win?

CHAIRPERSON NOWICK:
You were never going to win. Would anybody else like to address the committee? Okay. I'll make a motion to adjourn.

LEG. EDDINGTON:
Second.

CHAIRPERSON NOWICK:
All in favor? Opposed? Seconded by Legislator Eddington. All in favor? Opposed? Adjourned.

(*THE MEETING WAS ADJOURNED AT 2:01 P.M.*)

{ } DENOTES BEING SPELLED PHONETICALLY