

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Docket No. Wncv

In re: INERGY PROPANE, LLC,
d/b/a PYROFAX ENERGY.

ASSURANCE OF DISCONTINUANCE

Background

Inergy Propane LLC

1. Inergy Propane, LLC (“Inergy”) is a Missouri corporation with offices at 2 Brush Creek Blvd., Suite 200, Kansas City, Missouri 64112, that is wholly owned by the limited partnership Inergy, L.P. Inergy’s operations include the retail marketing, sale and distribution of propane to residential, commercial, industrial and agricultural customers, serving approximately 700,000 retail customers from over 350 customer service centers throughout the United States.
2. In December 2004, Inergy purchased Star Gas, a propane company doing business in Vermont under the trade name Ultramar.¹ Since on or about April 10, 2008, when it registered with the Vermont Secretary of State, the branches acquired by Inergy in its purchase of Star Gas now conduct business in Vermont as Pyrofax Energy (“Pyrofax”).

¹ In transactions independent of its purchase of Star Gas, Inergy has acquired the following propane companies that conduct business in Vermont: Stevens Energy, Deerfield Valley Energy, Newton’s Energy, and FG White Energy. Inergy is also authorized to conduct business in Vermont as Inergy Sales & Service and Stellar Propane Services.

Minimum Usage Fee

3. In the fall of 2010, Pyrofax was providing propane services to approximately 25,674 Vermont consumers.
4. On September 23, 2010 Pyrofax sent a “Disclosure of Charges” to all of its Vermont consumers. *See* Attachment A (Disclosure of Charges).
5. In late 2010, Pyrofax advised at least 3,950 Vermont consumers that the consumer would be charged a “minimum usage fee” at the rate of \$2.50 per gallon for the difference, in gallons, between one full tank of fuel (based on storage capacity) and the amount of fuel the consumer purchased during the previous twelve months. *Id.* The minimum usage fee was based on fuel purchased by Vermont consumers for the period of time from December 1, 2009 through November 30, 2010. *Id.* During this time period, some of the above referenced consumers were unaware of the minimum usage requirement prior to the September 23, 2010, notice.
6. Pyrofax mailed the invoice for the minimum usage fee charge to Vermont consumers in two mailing groups with the first consumers being mailed the assessment/invoice the week of December 13, 2010, the second group the week of December 20, 2010.
7. Between December 2010 and February 2011, the Consumer Assistance Program (“CAP”) of the Attorney General’s Office received more than 60 consumer complaints regarding the minimum usage fee.
8. In response to public concern about the minimum usage fee, Inergy independently credited or refunded the minimum usage fee charges assessed to its consumers by the end of January, 2011.

Refund Practices

9. Since January 1, 2010, 23 Vermont consumers made complaints to the Vermont Attorney General's Office regarding Pyrofax's refund practices after the consumer disconnected or terminated services with Pyrofax. Consumers specifically complained about: (a) Pyrofax's failure to return their security deposit with interest within 14 days of disconnection or termination of service; (b) Pyrofax's untimely reimbursement for unused gas after disconnection or termination; and (c) Pyrofax's failure to remove their gas storage tank in a timely manner.

Regulatory Framework

10. Pursuant to 9 V.S.A. § 2461b, the Vermont Attorney General's Office has regulation of and rule making authority to promote business practices which are uniformly fair to sellers and protect consumers concerning propane gas. Vermont Consumer Fraud Rule 111 ("CF 111") for liquefied petroleum "propane" gas was amended in 2009 and became effective on January 1, 2010.
11. CF 111.20(a)(2) prohibits the billing or collection of "any charge that is not clearly and conspicuously set forth in a written contract in existence as of the effective date of [CF 111], or in the absence of such a contract, any charge that has not been disclosed clearly and conspicuously in writing to the consumer at least 60 days prior to the charge...."
12. CF 111.19 requires the disclosure of prices and charges.

13. CF 111.12(d) requires gas companies to “refund a consumer’s security deposit with accrued interest less accrued charges within 14 days of disconnection or termination of service.”
14. CF 111.18(b) requires gas companies at time of disconnection or termination to, “reimburse to the consumer, within 20 days of the disconnection or termination, the retail price paid for any gas remaining in the tank, or, if the amount of gas remaining in the tank cannot be determined with certainty, reimburse to the consumer 80 percent of the company’s best reasonable estimate of said amount less any amounts due to the consumer....”
15. CF 111.18(a) requires gas companies to remove a storage tank within 20 days for an above ground tank (30 days in the case of an underground tank) or as soon as weather permits.
16. A violation of CF 111 constitutes an unfair and deceptive trade act and practice in commerce under Vermont’s Consumer Fraud Act, 9 V.S.A. § 2453(a).
17. Violations of the Consumer Fraud Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1). Each day that a violation continues is a separate violation.

The State’s Allegations

18. The Vermont Attorney General’s Office alleges the following violations of the Consumer Fraud Rules:

- (a) that the assessment of the minimum usage fee by Pyrofax in December 2010 without proper notice violated CF 111.19 and CF 111.20(a)(2);

- (b) that Pyrofax's failure to refund security deposits following disconnection or termination of service within the timeframes specified violated CF 111.12(d);
- (c) that Pyrofax's failure to reimburse Vermont consumers for unused gas remaining in the tank following disconnection or termination of service within the timeframes specified violated CF 111.18(b); and
- (d) that Pyrofax's failure to remove storage tanks within the timeframes specified violated CF 111.18(a).

19. Agreeing to the terms of this Assurance of Discontinuance for the purpose of settlement does not constitute an admission by Pyrofax to a violation of any law, rule, or regulation.

Assurances and Relief

The Attorney General and Inergy d/b/a Pyrofax are willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459, and the parties agree as follows:

Injunctive Relief

- 20. Inergy shall comply with all applicable federal and Vermont laws and regulations, including but not limited to the Vermont Consumer Fraud Act, 9 V.S.A., ch. 63, and CF 111, as it may, from time to time be amended.
- 21. Inergy shall cease the assessment or collection of any and all minimum usage fees from Vermont consumers. "Minimum usage fees" ("MUF") shall include any fees relating to the purchase of a minimum number of gallons of propane per year, including fees for propane not actually delivered to a consumer, irrespective of whether the fee is called a "minimum usage fee." Notwithstanding, nothing herein

shall prohibit the requirement that a consumer purchase a minimum number of gallons as part of a guaranteed price plan.

22. Within 20 days of the date when it disconnects or terminates service to a consumer, or when it is notified by the consumer in writing, in conformity with CF 111.16, that service is disconnected, whichever is earlier, Inergy shall refund to the consumer:

- (a) the amount paid by the consumer for any propane remaining in the storage tank, less any payments due Inergy from the consumer; or
- (b) refund the amount paid by the consumer for 80 percent of Inergy's best reasonable estimate of the quantity of propane remaining in the tank, less any payments due from the consumer, if the quantity of propane remaining in the storage tank cannot be determined with certainty. Inergy shall refund the remainder of the amount due as soon as the quantity of propane left in the tank can be determined with certainty, but no later than 14 days after the removal of the tank or 20 days after the termination or disconnection of service, whichever is later.

23. Inergy shall promptly remove propane storage tanks within 20 days of a consumer's request following disconnection by Inergy or upon receipt from the consumer in writing that the tank has been disconnected. For an underground tank the removal time period will be 30 days. If weather or placement conditions do not allow for tank removal in the stated time period, tank removal will occur as soon as weather and access to the tank allow, whichever is later.

24. Inergy shall refund all consumer security deposits with accrued interest, and less accrued charges, within 14 days of disconnection as defined in CF 111.

Refunds to Customers

25. Inergy has previously refunded or credited the MUF to its consumers. However, to the extent that any remaining customers exist with such a charge, within 30 days of signing this Assurance of Discontinuance, Inergy shall refund to all of its minimum usage fee assessed Vermont customers, all unrefunded fees paid by each customer as a result of the imposition of the “minimum usage fee” by Inergy in 2010-2011.
26. Inergy has previously provided significant discounts to those consumers who purchased propane as a result of the notice of the minimum usage fee. To the extent not previously provided, Inergy shall credit those consumers 20% of the amount the consumer paid for the fuel which they were not otherwise required to purchase as a result of the MUF.
27. Inergy has identified 302 Vermont consumers who, between January 1, 2010 and May 25, 2011: (a) were disconnected from services by Inergy; and (b) did not receive refunds for unused propane fuel more than 20 days after the disconnection of services, i.e. did not receive timely refunds.
28. Inergy shall pay liquidated damages in the amount of two hundred fifty dollars (\$250.00) to each of the 302 identified Vermont consumers who did not receive a timely refund for unused propane fuel, as described in paragraph 27.
29. Payment of these liquidated damages provided by paragraph 27 shall occur as follows:
 - (a) within 30 days of signing this Assurance of Discontinuance, Inergy shall forward to the Office of the Attorney General individual checks for \$250.00 made out to each of the 302 identified Vermont consumers. Inergy shall also

provide the mailing address for each of those consumers, and any insert (e.g. form letter) it would like to be included in the mailing; and

(b) within 10 days of receipt from Inergy, the Office of the Attorney General will mail each of the 302 Vermont consumers the check, along with the insert from Inergy and a letter from the Office of the Attorney General.

30. Inergy agrees to consider in good faith claims presented by any Vermont consumer, not among the 302 identified Vermont consumers referenced in paragraph 28, who disconnected or terminated services with Inergy between January 1, 2010 and May 25, 2011, and who believes that he or she did not receive a timely refund by Inergy for unused propane fuel. In the event such a consumer demonstrates that the refund was untimely, Inergy will negotiate a liquidated damages payment in a manner consistent with the terms of this settlement. Inergy shall provide the Attorney General with a list of any consumers who requested payments under this paragraph, and the outcome of the negotiations, including payment amount, if any.

Compliance Officer

31. Within thirty (30) days of signing this Assurance of Discontinuance, Inergy shall hire or designate a “Compliance Officer.”

(a) Inergy shall provide that the Compliance Officer has the following authority and is adequately empowered to assume the following duties and responsibilities:

(i) resolve Vermont consumer complaints, requests, and inquiries on a case-by-case basis, including determining whether refunds or

account credits are appropriate, and whether a particular refund was timely for amounts up to \$2,500.00;²

- (ii) be a direct liaison to the Vermont Attorney General's Office and the Vermont Consumer Assistance Program ("CAP") with respect to any consumer complaints, requests, or inquiries, and any other matters arising from this Assurance of Discontinuance and its implementation;
- (iii) monitor the resolution of consumer complaints, requests, and inquiries delivered to Inergy by the Vermont Attorney General's Office or CAP and by any other Vermont consumers; and
- (iv) Respond, as appropriate, to any requests or inquiries from the Vermont Attorney General's Office regarding alleged violations of this Assurance of Discontinuance or applicable state and/or federal laws and regulations by Inergy;

(b) Inergy shall provide a designated, direct-dial phone line where the Compliance Officer can be reached by the Attorney General's Office.

(c) Inergy shall provide the Vermont Attorney General's Office with the name, address, telephone number and e-mail address of the person who has been named Compliance Officer within three days of his/her appointment.

32. Inergy shall include contact information for the Compliance Officer on all billing statements and fee disclosures to Vermont consumers. The contact information shall

² For any refund, penalty, or credit that exceeds \$2,500, the Compliance Officer may require prior approval from his superiors including the Western New England Division President.

include the designated e-mail address where a consumer can reach the Compliance Officer.

Payment to the State of Vermont

33. Within 60 days of signing this Assurance of Discontinuance, Inergy shall pay to the State of Vermont one hundred forty thousand dollars (\$140,000.00) in civil penalties and costs. Payment of the one hundred forty thousand dollars (\$140,000.00) shall be made to the “State of Vermont” and shall be sent to the Vermont Attorney General’s Office at the following address: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.
34. Within 30 days of signing this Assurance of Discontinuance, Inergy shall pay to the Vermont Low Income Home Energy Assistance Program (“LIHEAP”) one hundred thousand dollars (\$100,000.00). Payment of the one hundred thousand dollars (\$100,000.00) shall be made via the Vermont Department for Children and Families, Economic Services Division, Fuel Assistance Program, 103 South Main Street, Waterbury, Vermont 05671. Notice of the payment shall be provided to the Attorney General at the address listed in paragraph 33.

Final Resolution

35. Neither Inergy nor anyone acting on its behalf shall state or infer that the Vermont Attorney General’s Office approves any business practices by Inergy.
36. This Assurance of Discontinuance shall be binding on Inergy, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. The undersigned authorized agent of Inergy shall promptly take reasonable steps to ensure that copies of this document are provided to all

officers, directors, owners and managers of the company, and all of its affiliate companies doing business in Vermont.

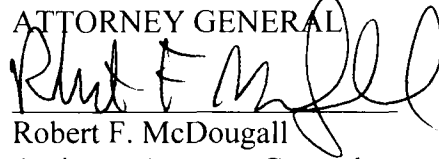
37. This Assurance of Discontinuance resolves all existing claims the State of Vermont may have against Inergy stemming from the conduct described in this document.

DATED at Montpelier, Vermont this 18th day of January, 2012.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:



Robert F. McDougall
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

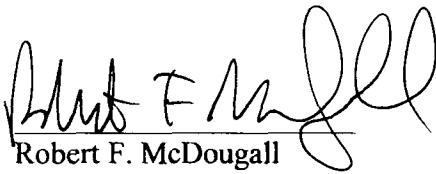
DATED at ESSEX JUNCTION, VERMONT this 12TH day of January, 2012.

INERGY PROPANE, LLC

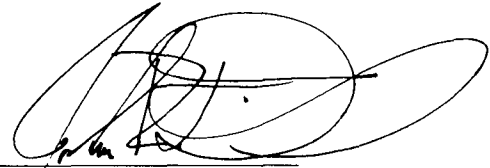
By: 
Its Authorized Agent

DAVID J. WELLER Division President
Name and Title of Authorized Agent

APPROVED AS TO FORM:



Robert F. McDougall
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, VT 05609
For the State of Vermont



Joshua R. Diamond, Esq.
Diamond & Robinson, P.C.
15 East State Street
P.O. Box 1460
Montpelier, VT 05601-1460
For Inergy Propane, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609



1-888-PYROFAX



PROPANE DEALER'S DISCLOSURE OF CHARGES

CHARGE	AMOUNT*	VALID UNTIL*
Security Deposit	1/6 of Estimated Annual Expense	1 Year
Permit/Inspection Charge	\$53.00	Variable
Equipment Installation Charge	\$80.00	Variable
Service Diagnostic Fee - During Business Hours	\$70.00	Variable
Service Diagnostic Fee - Emergency Hours	\$105.00	Variable
Leak/Pressure Test - Technician	\$75.00	Variable
Leak/Pressure Test - Driver	\$50.00	Variable
After-Hours Delivery Charge	\$175.00	Variable
Meter Read Fee	\$2.00	Sept. 30, 2011
Equipment Lease Fee / Month (based on tank size)	\$2.50- \$13.00/mo	Sept. 30, 2011
Special Trip Charge - Business Hours	\$100.00	Variable
Minimum Annual Purchase Requirement (tank capacity)	1 tank/year	Sept. 30, 2011
Late Payment Fee	1.5%/Month (18% Annual)	Sept. 30, 2011
Equipment Reconnection Charge	\$55.00	Variable
Early Service Termination Fee	\$100.00	Sept. 30, 2011
Pump Out/Restocking Charge	\$0.30/gallon \$50.00 minimum	Variable
Equipment Removal Charge - Above Ground Tank	\$75/hr	Variable
Equipment Removal Charge - Underground Tank * Does not include excavation cost.	\$75/hr	Variable
Collection Reporting Fee	\$25.00	Sept. 30, 2011
Non-Sufficient Funds Fee	\$35.00	Sept. 30, 2011
Fuel Surcharge	\$2.50/delivery	Variable

Unless otherwise stated in writing above, the amount of all charges for which an amount is listed will remain in effect for 365 days from the date of this Disclosure. You will be required to sign a written agreement and/or complete a credit check that is satisfactory to the Company. This Disclosure is in addition to the terms and conditions of any Agreement between the Company and you. Advice on purchasing LP gas is available on the Vermont Attorney General's website at www.atg.state.vt.us.
 *If the word variable appears, it means that the amount of the charge may increase or decrease at any time. If no amount or date is stated, the charge or lack of charge will remain in effect for one year from the date of this Disclosure (or three years for changes relating to termination of service).