

STATE OF VERMONT
WASHINGTON COUNTY, SS.

IN RE:)
) WASHINGTON SUPERIOR COURT
))
SUBURBAN PROPANE, L.P.,) DOCKET NO. 203-4034 ✓
Respondent)

APR 16 9 11 AM '03
CLERK OF SUPERIOR COURT
WASHINGTON COUNTY

ASSURANCE OF DISCONTINUANCE

1. This Assurance of Voluntary Discontinuance (“Assurance”) is entered into by the Attorney General of Vermont (referred to as the “State” or “Attorney General”), acting pursuant to the Vermont Consumer Fraud Act, 9 V.S.A. Section 2451 et seq., and Suburban Propane, L.P. (referred to as “Suburban”).

2. Suburban is a company that markets and sells liquid propane to Vermont consumers

STATE’S POSITION

3. The statements contained in this section represent the position of the State. Suburban does not admit the truth of any of the statements contained in this section.

4. Since October 1, 1997, Suburban has charged Vermont consumers a “reg fee,” or similar charge, for each delivery of liquid propane

5. The “reg fee” was \$1.52, or a similar amount, per delivery. The amount of the charge did not vary with the amount of liquid propane purchased.

6. Vermont Consumer Fraud Regulation CF 111, Liquid Petroleum “Propane” Gas, prohibits the collection of a delivery fee. CF 111.12 states:

A gas company shall not require a delivery fee, except when the consumer requests delivery be made outside of normal business hours or outside of a normally scheduled delivery to the consumer’s geographic area. In such case

a reasonable fee may be collected if such delivery is required due to something other than the fault of the gas company.

7. 9 V.S.A. Section 2461b requires the Attorney General to promulgate rules relating to the marketing and sale of liquid propane gas in Vermont.

8. The Attorney General believes that Suburban's practice of charging the "reg fee" violates CF 111.12.

SUBURBAN'S POSITION

9. Suburban's position is that it did not violate any state or federal laws or regulations with respect its "reg fee".

GENERAL PROVISIONS

10. This Assurance does not constitute an admission by Suburban of any fact or violation of any state or federal law, rule or regulation. Suburban enters into this Assurance without admitting any wrongdoing and for settlement purposes only. This Assurance is made without trial or adjudication of any issue of fact or law. This Assurance does not constitute evidence or admission of any issues of fact or law.

11. This Assurance shall be governed by the laws of Vermont.

12. This Assurance does not constitute an approval by the State of any of Suburban's standards, procedures or practices, and neither Suburban nor any of its agents, employees, contractors or representatives shall make any representation to the contrary.

13. Suburban's obligations under this Assurance shall be in addition to those imposed by the law of Vermont, including but not limited to statutes, regulations and court decisions; and nothing herein shall be deemed to excuse compliance with such law.

14. Nothing in this Assurance shall be construed as a waiver of any private rights of any person. Nothing in this Assurance shall permit any person or entity not a signatory hereto to enforce any provision of this Assurance.

15. Nothing in this Assurance shall be construed to authorize or require any action by Suburban in violation of applicable federal, state or other laws. Suburban agrees that this Assurance constitutes a legally enforceable obligation of Suburban in accordance with its terms.

16. This Assurance may be executed in counterparts.

ASSURANCES

17. Suburban shall immediately cease charging consumers a "reg fee," or any similar charge that is assessed per invoice or per delivery of product. Nothing in this Assurance shall prohibit Suburban from charging delivery fees when the consumer requests delivery be made outside of normal business hours, or outside of a normally scheduled delivery to the consumer's geographic area, in accordance with CF 111.12.

18. Suburban shall immediately cease charging consumers separate fees for services that are part of the direct costs of providing liquid propane to the consumer. Such prohibited fees are: (a) the cost of labor associated with the

delivery of liquid propane to consumers; (b) the cost of training labor and obtaining equipment to comply with environmental, transportation, and other regulations associated with delivery of liquid propane; and (c) other costs associated with complying with environmental, transportation, and other regulations associated with delivery of liquid propane to consumers.

19. Suburban shall institute supervisory procedures reasonably designed to achieve compliance with this Assurance. Such supervisory procedures shall include, at a minimum, the designation of personnel to ensure compliance with this Assurance. Suburban shall notify the Attorney General within 10 days of execution of this Assurance of the name and contact information of such supervisory personnel.

20. For a period of five (5) years after the date this Assurance is executed, Suburban shall maintain and upon request make available to the Attorney General for inspection and copying a print or electronic copy capable of being printed of all documents relating to compliance with this Assurance, including:

a. A sample copy of each different print, broadcast, cable, or Internet advertisement, promotion, information collection form, Web page, screen, e-mail messages to consumers, or other document containing any representation regarding Suburban's bills or billing practices that involve a regulatory fee or other unbundled fee in the State of Vermont. Each Web page copy shall be dated and contain the full URL of the Web page where

the material was posted online. Electronic copies shall include all text and graphics files, audio scripts, and other computer files used in presenting the information on the Web. Provided, however, that after creation of any Web page or screen in compliance with this order, Suburban shall not be required to retain a print or electronic copy of any amended Web page or screen to the extent that the amendment does not affect Suburban's compliance obligations under this order.

21. Suburban shall deliver a copy of this Assurance to all current and future managers, employees, agents, representatives, and contractors having any responsibility with respect to the subject matter of this Assurance in the State of Vermont. Suburban shall deliver a copy of this Assurance to such current individuals and entities no later than thirty (30) days after the date as of which this Assurance is executed, and to such future individuals and entities no later than thirty (30) days after such individual or entity assumes such position or responsibility. This obligation shall cease five years from the date hereof.

22. The State and Suburban agree that, in the event of a change in the regulatory environment not presently contemplated by the parties, either party may request in writing a modification to this Assurance. In the event that such a modification is requested, the parties shall meet within 30 days, and shall negotiate in good faith with respect to such requested modification. The meeting described in this Paragraph 22 may occur by telephone. In the event that CF

111.12 is repealed in its entirety, then Suburban shall no longer be bound by the terms of Paragraphs 17, 18, 19, 20 and 21 of this Assurance.

23. Suburban agrees to pay, within thirty (30) business days after the date as of which this Assurance is executed, the sum of \$34,378.76 to the State.

24. In the event that a state or federal law or regulation (a "Law or Regulation"), imposes requirement(s) that are inconsistent with any provision of this Assurance, Suburban may comply with such inconsistent requirement(s) of the Law or Regulation, and such action shall constitute compliance with the counterpart provision(s) of this Assurance. Suburban shall provide written notice to the Attorney General's Office of the inconsistent provision(s) of such Law or Regulation with which Suburban intends to comply and of the counterpart provision(s) of this Assurance which are inconsistent with such Law or Regulation. A requirement of a Law or Regulation shall be deemed to be inconsistent with counterpart provision(s) of this Assurance if Suburban cannot comply with the Law or Regulation without violating counterpart provision(s) of this Assurance.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

Dated: 4/16, 2003


By: 
Julie Brill
Assistant Attorney General

SUBURBAN PROPANE, L.P.

Dated: February 11, 2003

By: Janice G. Meola
Janice G. Meola
General Counsel

APPROVED AS TO FORM:



William B. Miller, Jr., Esq.
Attorney for Suburban Propane, L.P.