

FILED

STATE OF VERMONT 2006 MAR 22 P 3:08  
WASHINGTON COUNTY, SS.

IN RE:	)	
	)	WASHINGTON SUPERIOR COURT
AMERIGAS PROPANE, L.P.	)	
	)	DOCKET NO. <u>176-3-06 Wncv</u>

**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 AmeriGas Propane, L.P. (referred to as "AmeriGas").

2. AmeriGas is a company that markets and sells liquefied petroleum gas, also known as propane ("propane"), to Vermont consumers.

3. AmeriGas offered its customers an opportunity to enter into an agreement to purchase propane at a specified rate for the 2005-2006 heating season, which rates were to remain locked in until June 12, 2006.

4. On June 16, 2005, AmeriGas and Ruth Clark, d/b/a the Ruth Clark Buyer Group, entered into a contract that required AmeriGas to supply propane to members of the Ruth Clark Buyer Group at the following rates:

- 0-200 gallons: \$1.609/gallon
- 200-400 gallons: \$1.499/gallon
- 400+ gallons: \$1.399/gallon

5. The June 16, 2005 contract between AmeriGas and Ruth Clark specified that members of the Ruth Clark Buyer Group could sign up for a program at the rates set forth in Paragraph 4 up to and including December 1, 2005.

6. On about September 1, 2005, AmeriGas notified the Ruth Clark Buyer

Group that it was closing the window for eligibility for participation because it had expended the 135,000 gallons that it had set aside for the Ruth Clark Buyer Group, although it had never informed the Buyer Group of the gallonage limitation.

7. As a result, despite the June 16, 2005 contract's specification that members of Ruth Clark Buyer Group could sign up for the rates set forth in Paragraph 4 by December 1, 2005, only customers who had registered with the Ruth Clark Buyer Group and submitted a contract to AmeriGas on or before August 31, 2005 were guaranteed propane for the 2005-2006 heating season at the rates set forth in paragraph 4 above.

8. A total of 64 customers were participants in the Ruth Clark Buyer Group who had received the solicitation from the Buyer Group offering the rates set forth in paragraph 4 above and who reasonably believed they had until December 1, 2005 to sign up with AmeriGas for said rates, but who were denied entry prior to December 1, 2005 and, as a result, have entered into a contract with either AmeriGas or another propane company at a higher rate, or who were unable to enter into a contract with any propane company and will pay an amount greater than they would have paid under the solicitation. In addition, there are additional consumers, whose number the parties do not yet know, who were participants in the Ruth Clark Buyer Group who had received from the Buyer Group the solicitation offering the rates set forth in paragraph 4 above and who reasonably believed they had until December 1, 2005 to sign up with AmeriGas for said rates, but who were denied entry prior to December 1, 2005 and, as a result, have entered into a contract with either AmeriGas or another propane company at a higher rate, or who were unable to enter into a contract with any propane company and will pay an amount greater than they would have paid under the solicitation.

9. The Vermont Attorney General alleges that AmeriGas violated the Vermont Consumer Fraud Act, 9 V.S.A. 2453(a) by failing to honor its contract with the Ruth Clark Buyer

Group for the purchase of propane during the 2005-2006 heating season, and by unilaterally modifying the date by which consumers could sign up for the program.

10. The Vermont Attorney General is willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. §2459.

11. *Injunctive relief.* In the course of doing business in or into the State of Vermont, AmeriGas shall:

- a. Comply with all federal and state laws, including, but not limited to, the Vermont Consumer fraud Act, 9 V.S.A. ch. 63, and regulations enacted thereunder;
- b. If and to the extent that it elects in any year to offer its customers an opportunity to enter into an agreement to purchase liquid propane gas at a specified rate for that year's heating season, clearly and conspicuously disclose in writing to its customers all of the terms and conditions of the program, including, but not limited to, any limitations on the period of time during which the program rate(s) will be available to consumers;
- c. Not modify the terms of any program to lock-in rates for the heating season except by mutual written agreement of the parties; and,
- d. Not take any actions with respect to delivery schedules, decisions about individual deliveries, or otherwise that would prejudice customers' ability to take full advantage of the program rates that they are otherwise entitled to, *except* that AmeriGas may apply fair policies and practices that do not specifically disfavor program participants.

12. *Consumer relief.*

- a. AmeriGas shall promptly extend through June 12, 2006 the terms of its program to purchase propane to AmeriGas customers listed in Exhibit

- A, said consumers being participants in the Ruth Clark Buyer Group who had received the solicitation offering the rates set forth in paragraph 4 above but who are paying AmeriGas a higher price for the 2005-2006 heating season.
- b. AmeriGas shall provide a credit for amounts already paid by AmeriGas customers listed in Exhibit A who paid a higher rate from September 1, 2005 to the present.
- c. AmeriGas shall, no later than August 1, 2006, provide restitution to participants in the Ruth Clark Buyer Group listed in Exhibit B, said consumers being participants in the Ruth Clark Buyer Group who had received the solicitation offering the rates set forth in paragraph 4 above and who reasonably believed they had until December 1, 2005 to sign up with AmeriGas for said rates, but who were denied entry prior to December 1, 2005 and, as a result, have entered into a contract with another propane company at a higher rate. AmeriGas shall pay to each said consumer the difference between (1) and (2) as follows: (1) the amount the consumer has paid for propane to date plus the amount the consumer shall pay for propane through June 12, 2006, and (2) the amount the consumer would have paid pursuant to the rates set forth in paragraph 4 above.
- d. AmeriGas shall, no later than August 1, 2006, provide restitution to participants in the Ruth Clark Buyer Group listed in Exhibit C, said consumers being participants in the Ruth Clark Buyer Group who had received the solicitation offering the rates set forth in paragraph 4 above and who reasonably believed they had until December 1, 2005 to sign up with AmeriGas for said rates but who were denied entry prior to that date, and who did not enter into a contract with any propane company to provide

propane at a fixed price. AmeriGas shall pay to each said consumer the difference, if any, between the amount the consumer in fact pays for propane for the 2005-2006 heating season and the amount the consumer would have paid pursuant to the rates set forth in paragraph 4 above;

- e. AmeriGas shall also provide restitution to all consumers identified in paragraphs 12(c) and (d) who incurred any costs associated with a removal of one propane tank for another company's tank;
- f. AmeriGas shall send an explanatory letter by first-class mail in the form attached as Exhibit D1 to all consumers identified in Exhibit A, and Exhibit D2 to all consumers identified in Exhibit B and C.
- g. Based upon the master list of consumers provided to the Vermont Attorney General's Office by the Ruth Clark Buyer Group, AmeriGas will conduct a survey of those on the list who have not been enrolled in a fixed price program to date and who have not responded to prior surveys conducted by the Vermont Attorney General's Office. Said consumers to be surveyed are listed on Exhibit E. Said survey shall be in the form of Exhibit F. The Vermont Attorney General's Office and AmeriGas shall confer on the results of the survey, and follow up calls placed by the Vermont Attorney General's Office, to determine the eligibility of these additional consumers. The Vermont Attorney General's Office shall make the final determination regarding the eligibility of these additional consumers for restitution under this Assurance of Discontinuance. AmeriGas shall provide to all eligible consumers identified through the process set forth in this Paragraph 12(g) restitution as set forth in Paragraphs 12 (a) through (e). AmeriGas shall provide said restitution within 30 days of the date the Attorney General deems the process set forth in this Paragraph 12(g) to be concluded.

h. In the event that AmeriGas is unable to make a payment required by Paragraphs 12 (a) through (e) or Paragraph 12(g) to an eligible consumer as required – for example, because the consumer has moved and left no forwarding address – the company shall promptly make said payment instead to the State of Vermont, care of the Vermont Attorney General’s Office, to be treated by the State as unclaimed property. AmeriGas shall also provide to the Attorney General’s Office a list of the consumers to whom payment could not be made;

13. *Civil penalties, fees and costs.* Within 20 (twenty) days of signing this Assurance of Discontinuance, AmeriGas shall pay to the State of Vermont, in care of the Vermont Attorney General’s Office, the sum of \$25,000 (twenty-five thousand dollars) in civil penalties, plus \$5,000 (five thousand dollars) in costs.

14. *Binding effect.* This Assurance of Discontinuance shall be binding on AmeriGas, its owners, affiliates, officers and directors, and successors and assigns.

Date: 3/22/06

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By: Julie Brill  
Julie Brill  
Assistant Attorney General

Date: 3/1/06

AMERIGAS PROPANE, L.P.

By: Jean S. Konowalczyk  
Jean S. Konowalczyk, Esq.  
Its Attorney

## EXHIBIT A

Doyle, Michael  
Duncan, Jennifer  
Goodwin, Walter  
Gray, Malcolm  
Haggett, Lisa  
Hansen-Schmidt, Annette  
Hulbert, A. Scott  
Jungkunst, Peter  
Ladd, Jeff  
LaFlower, Wendy  
Lutes, Kurt & Kristina  
Masonic Lodge Summit  
Mobbs, Dan  
Morrison, William  
Morse, Stanley  
Murphy, John  
Owen, Darrell  
Persons, Kimberley  
Phetress, Asia  
Royea, Suellen  
Shangraw, Steve  
Taylor, John  
White, Tom

## EXHIBIT B

Chickering, Robert  
Greika, Brenda  
Hepp, Michael  
Jessup, Kimberly  
Larsen, Patrick  
McGoff, Margaret  
Nelken, Miranda  
Nelson, Michael  
Nudd, James  
Sedon, Dan  
Volpe, Jared  
Weed, Jenn

## EXHIBIT C

Barnes, John  
Bell, Lawrence  
Berkey, Robert  
Brassard, Trini  
Cleaves, Robert  
Conneman, Thomas  
Davidson, Robert & Sally  
Davis, Betsy  
Diamond, Rickey Gard  
Fernandez, Stephen  
Fleming, Grant  
Folson, Roy  
Garbacik, Mrs. Sheridan  
Gilbert, Michael  
Hicks, Joseph  
Howes, Marion  
King, Alton  
LaCross, Edward  
Lambert, Gordon  
Mase, Guido  
Nunn, Carlyle  
Parton, Carl  
Pearce, Fred & Renee  
Smith, Ronald  
Solomon, Alan  
Southworth, Michael  
Stone, James  
Vorce, Kade  
West, Richard

**Exhibit D1 (Letter to Consumers currently with AmeriGas)**

Dear [Name of Consumer]:

You are a current or past customer of the Ruth Clark Buyer Group and had received a solicitation from the Buyer Group offering certain rates for propane gas to be purchased through AmeriGas for this winter. You had reasonably believed that you had until December 1, 2005 to sign up with AmeriGas for the offered rates rates, but you were denied entry prior to December 1, 2005 and, as a result, have entered into a contract with AmeriGas a higher rate than you would have paid under the solicitation.

To remedy this situation, we have entered into a settlement with the Vermont Attorney General's Office. Under the settlement, we will extend, retroactively, the terms of our offered program for the Ruth Clark Buyer Group for propane gas purchased through June 12, 2006. AmeriGas shall provide you with a credit for amounts you already paid this heating season that were in excess of the offered rates for the Ruth Clark Buyer Group, and shall charge you the Buyer Group rate purchased through the remainder of the heating season.

If you have any questions concerning the status of your account, the amount of any credit to which you may be entitled or how to utilize that credit, please call [your local AmeriGas distributor at (802\_\_\_\_\_)].

If you have other questions about the terms of this letter, you may contact the Vermont Attorney General's Consumer Assistance Program in Burlington at 1-800-649-2424.

Sincerely,

AmeriGas

**Exhibit D2 (Letter to Consumers no longer with AmeriGas)**

Dear [Name of Consumer]:

You are a current or past customer of the Ruth Clark Buyer Group and had received a solicitation from the Buyer Group offering certain rates for propane gas to be purchased through AmeriGas for this winter. You had reasonably believed you had until December 1, 2005 to sign up with AmeriGas for the offered rates, but you were denied entry prior to December 1, 2005 and, as a result, have entered into a contract with another propane company at a higher rate or did not enter into a contract with any propane company to provide propane at a fixed price.

To remedy this situation, we have entered into a settlement with the Vermont Attorney General's Office. Under the settlement, we are enclosing a check for the difference between the amount you have paid for propane to date plus the amount you will pay for propane through June 12, 2006, and the amount you would have paid under the solicited rates on the AmeriGas program.

[For customers who did not enter into a contract with any propane company to provide propane at a fixed price, this paragraph should read:

To remedy this situation, we have entered into a settlement with the Vermont Attorney General's Office. Under the settlement, we are enclosing a check for the difference between the amount you have paid for propane through June 12, 2006, and the amount you would have paid under the solicited rates on the AmeriGas program.]

In addition, we will reimburse you for any costs you may have incurred for removal of your previous propane tank for another company's tank. Please contact us at [insert appropriate number for person responsible for assessing the amounts of restitution owed] to tell us the costs you incurred for switching your tanks.

If you have any questions concerning the amount of any refund to which you are entitled, please call [your local AmeriGas distributor at (802\_\_\_\_\_)].

Also, if you have any questions about the terms of this letter, you may contact the Vermont Attorney General's Consumer Assistance Program in Burlington at 1-800-649-2424.

Sincerely,

AmeriGas

## EXHIBIT E

Ackerman, Rick  
Alexander, Susan &  
Cedric  
Archer, Dick  
Archer, Tim  
Armstrong, Gene  
Bancroft, Monk  
Benoit, Shane  
Bergeron, Patrick  
Betts, Emily  
Bilodeau, Michael  
Bjornlund, Georgiana  
Blake, Shane  
Bodo, Carey  
Bolger, Lindsey  
Bothfield, Richard  
Bradt, Jack  
Brett, Wilson  
Brown, Kara  
Bucci, Tony  
Byrd, Yvonne  
Checked House Motel  
Christ Covenant Church  
Clark, Mary  
Coleman, Jerry  
Colvin, Graig  
Comette, Gary  
Connor, Jeffrey  
Coward, Richard  
Cross, John  
Danforth, Gloria  
Davidian, Joseph  
Dison, Marvin  
Douglass, Elaine  
Dowen, Bradford  
Dower, Jeff  
Edson, Phil  
Emerson, Sandra  
Fiorino, John  
Fish, Sarah  
Fowler, Michael  
Freeman, Karen  
Gallucci, Nancy  
Gibson, Keith  
Golon, Christina  
Gray, Beverly  
Gregoire, Barrett  
Gregoire, Scott

Haas, Gary  
Hall, Tawnya  
Hansen, Milo  
Haskins, Kristin  
Hatch, Scott  
Haubrich, Jeffrey  
Hayward, Tucker  
Hebert, Greg  
Henry, Snapper  
Hitzig, Robert  
Hobson, Ted  
Hults, Linda  
Hutchinson, Anne  
Johnson, Kirt  
Kilgroe, Jeff  
Kirkpatrick, Kerry  
Knapp, Ray  
Kraus, David  
Lacroix, Norman  
Lafayette, Rolland  
Lafoe, Daniel  
Lamelle, Michelle  
Langlois, Jr., John  
LaPerle, Maurice  
Laroe, Jessica  
Love, David  
Lozier, Eric  
Lyford, Nelson  
Mangan, Aaron  
Mangan, David  
Manning, Gene  
Martin, Erica  
Martin, Leanne  
McDermott, Kevin  
Mears, George  
Merchant, Michael  
Molander, Robert  
Montgomery, Craig  
Moore, Suzanne  
Motorworks, Lutz  
Mulligan, Damon  
Mulligan, David  
Mulvaney, Joellen  
Myers, Michael  
Nolan, Ellen  
Norten, Stephen  
Oakes, Maria Trombley  
Osterman, Gerald

Palot, Timmy  
Partlow, Terri  
Peachtree, Derrick  
Peebles, David  
Petit, Elizabeth  
Pettit, Thea  
Phillips, Robert  
Picard, James  
Picard, Terry  
Potter, Shawn  
Reid, David  
Rooney, Charles  
Ruel, Ryan  
Sawyer, William  
Schlosser, Bobby  
Schrum, Chris  
Seivwright, James  
Sherman, Jody  
Skinas, David  
Smith, David  
Snyder, Stewart  
Spatz, Peter  
Splain, Henretta  
Stanak, Edward  
Stefani, Andrea  
Stephenson, Irvin  
Thompson, Lee  
Thumm, Fred  
Touchette, Maria  
Turner, Andrew  
Turner, Win  
Weston, Karen  
Wheeler, Ernie  
Wilmer, Greg  
Wilson, Heath  
Wood, Jackie  
Wright, Alice  
Zschaler, Ronald

**Exhibit F (Letter and Survey to Consumers whose status must be determined)**

[insert date]

[insert consumer name/address]

Dear [insert name]:

The Vermont Attorney General's Office has investigated the refusal of AmeriGas Propane LP to accept, after August 31, 2005, consumers who signed up for AmeriGas's program allowing consumers to lock in rates for the 2005-2006 heating season through the Ruth Clark Buyer Group.

The Attorney General's Office attempted to mail questionnaires to all consumers who we understand had received information from the Ruth Clark Buyer Group regarding the purchase of propane from AmeriGas for the 2005-2006 heating season, but were later advised that the deadline to lock in rates had been changed and, as a result, may be paying higher rates for propane.

AmeriGas and the Attorney General's Office have negotiated a resolution that will benefit consumers who suffered monetary harm as a result of the decision to change the date by which customers could sign up for the program to provide propane to members of the buyer's group at the advertised rates. There is no record of your having completed the enclosed questionnaire. It is imperative that you complete and return the enclosed questionnaire no later than \_\_\_\_\_, 2006. Please include as detailed a response as you believe may be necessary.

If you have any questions or would like to discuss this further, please contact Chris Rouleau, investigator with the Vermont Attorney General's Office, at 802-828-1059 with any questions regarding this matter.

Thank you.

Sincerely,

Julie Brill  
Assistant Attorney General

Enclosure

TO: [insert name/address]

Your Daytime Phone: \_\_\_\_\_

Please return to:

**Chris Rouleau  
Attorney General's Office  
109 State Street  
Montpelier VT 05609**

1. Did you receive notice from the Ruth Clark Buyer Group that prices for propane with AmeriGas had been locked in until June 12, 2006, and setting forth the following rates for propane for the 2005-2006 heating season?

0 – 200 gallons/year:	\$1.609/gallon
200 – 400 gallons/year:	\$1.499/gallon
400+ gallons:	\$1.399/gallon

**Response:** Yes \_\_\_\_ No \_\_\_\_

2. If your answer to the preceding question is yes, are you currently enrolled with AmeriGas for the 2005-2006 heating season? If your answer to this question is "no", please go to question 5.

**Response:** Yes \_\_\_\_ No \_\_\_\_

3. If you are currently enrolled with AmeriGas for the 2005-2006 heating season, is the price you are paying consistent with the prices outlined in Question #1 above?

**Response:** Yes \_\_\_\_ No \_\_\_\_

4. If your answer to the preceding question is no, please state what price you are currently paying AmeriGas for the 2005-2006 heating season:

**Response:** \$ \_\_\_\_\_/gallon

5. If you are not currently enrolled with AmeriGas for the 2005-2006 heating season, have you entered into any other program with another company for this heating season? If your answer to this question is "no", please go to question 7.

**Response:** Yes \_\_\_\_ No \_\_\_\_

6. If your answer to the preceding question is yes, please state what price you are currently paying for the 2005-2006 heating season:

**Response:** \$ \_\_\_\_\_/gallon

7. If you are not enrolled in a program with either AmeriGas or another company for the 2005-2006 heating season, please describe the method by which you are purchasing propane this year.

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Please attach/include any additional comments that you may have as necessary. Thank you for your assistance.