

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2013 NOV -4 A 9:50

In Re: AMERIGAS PROPANE L.P.) CIVIL DIVISION
) Docket No. 683-11-1360mcv

ASSURANCE OF DISCONTINUANCE

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and AmeriGas Propane L.P. ("AmeriGas" or "Respondent"), hereby enter into this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459.

Background

AmeriGas Propane L.P.

1. AmeriGas Propane L.P. is a Delaware limited partnership with offices at 460 N. Gulph Road, King of Prussia, Pennsylvania 19406 and its ultimate parent company is UGI Corporation. AmeriGas's operations include the retail marketing, sale and distribution of propane to residential, commercial, industrial and agricultural customers, serving over 2,000,000 retail customers throughout the United States.
2. In January 2012, AmeriGas acquired the propane operations of Heritage Operating, L.P., and Titan Energy Partners, L.P., which operate under the following names in Vermont: Young's Propane, Blue Flame Gas, Merrill Gas, Liberty Propane, Synergy and Keene Gas.
3. As of May 31, 2012, AmeriGas was providing propane services to approximately 10,924 Vermont consumers.

Regulatory Framework

4. Pursuant to 9 V.S.A. § 2461b, the Vermont Attorney General's Office has regulation of and rulemaking authority to promote business practices which are uniformly fair to sellers and to protect consumers concerning propane gas. Vermont Consumer Protection Rule 111 ("CP 111" or "Propane Rule") for liquefied petroleum gas ("propane") was amended in 2009, effective on January 1, 2010 ("2010 CP 111"), and amended again in 2011, effective on January 1, 2012 ("2012 CP 111").
5. A violation of CP 111 constitutes an unfair and deceptive trade act and practice in commerce under Vermont's Consumer Protection Act, 9 V.S.A. § 2453(a). 2010 CP 111.01; 2012 CP 111.01.
6. Violations of the Consumer Protection Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1).

The Vermont Attorney General's Investigation of AmeriGas

7. From January 1, 2010 through December 15, 2012, 166 Vermont consumers complained to the Attorney General's Office, Consumer Assistance Program ("CAP") regarding AmeriGas. Many complained about problems with fees, and problems disconnecting or terminating their propane service with AmeriGas. AmeriGas responded timely to those complaints, most of which have been resolved within the CAP program.
8. On February 10, 2012, the Attorney General's Office issued a Civil Investigative Demand ("CID") to AmeriGas to investigate consumers' complaints.

9. Based on the complaints and CID investigation, the Attorney General's Office has identified two areas of AmeriGas's consumer propane service that appear to violate the Vermont Consumer Protection Act and Propane Rule:
 - a. Charging meter reading fees without prior disclosure; and
 - b. Delays in handling propane service termination: (i) improper delays in removing propane storage tanks; and (ii) improper delays in issuing refund checks for propane gas remaining in the tank.

Meter Read Fee

10. 2010 CP 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 [January 1, 2010], 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...." *See also* 2012 CP 111.03(d) & 111.09(a)(2) (same).
11. 2010 CP 111.19 requires the disclosure of prices and charges. 2012 CP 111.03(d) & 111.09(a)(2) require disclosure of all fees on a Fee Disclosure Form ("FDF").
12. The FDF is a standardized form mandated by CP 111 to provide consumers with advance notice of fees charged by a propane seller, and with the means to compare the fees charged by different sellers. CP 111 provides for an Initial FDF to be used with a potential consumer upon inquiry or when establishing service, and an Existing Customer FDF to provide consumers with at least 60 days notice of new or increased fees. CP 111.03.
13. Between January 1, 2010 and February 23, 2012, AmeriGas collected meter read service fees totaling \$67,311 from approximately 847 Vermont customers without

properly disclosing the fee in a FDF. After disclosing the meter read fee in its FDF, AmeriGas collected an additional \$771.67 from 55 customers.

14. AmeriGas discovered the failure to disclose the meter fees in developing responses to the CID. On February 29, 2012, 715 customers received a credit to his/her/its account for the undisclosed meter read fees, for a total of \$59,144. AmeriGas is in the process of refunding the remaining 132 customers, for a total of \$8,167, as well as the 55 customers totaling \$771.67, and shall send these refunds via credit to existing customers and via check to former customers by November 30, 2013.
15. As of May 1, 2013, AmeriGas discontinued charging any meter read fee, and will update its current FDF by January 15, 2014, to reflect that change.

Tank Removal and Refund Practices

16. 2010 CP 111.18(b) requires a propane gas seller at the 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 from the consumer....” *See also* 9 V.S.A. § 2461b(e)(2)(B) & 2012 CP 111.16(a) (same).
17. 2010 CP 111.18(a) requires gas companies to remove a storage tank within 20 days for an aboveground tank (30 days in the case of an underground tank) or as soon as weather permits when a gas company disconnects or terminates service and the consumer requests the tank removal. *See also* 2012 CP 111.15(a) (same).

18. As of May 25, 2011, 9 V.S.A. § 2461b(e)(4) requires a propane seller to pay a penalty to consumers of \$250 plus \$75/day each day thereafter until the refund and penalty are paid in full, for failure to issue a timely refund. As of July 1, 2013, 9 V.S.A. § 2461b(h)(3) requires a propane seller to pay a penalty to consumers of \$250 plus \$75/day each day thereafter until the tank has been removed and the tank penalty is paid in full, for failure to remove a tank within required timeframes.
19. Since January 1, 2010, CAP has received over 40 complaints regarding delays in AmeriGas's service termination. Consumers specifically complained about: (a) AmeriGas's untimely reimbursement for unused gas after disconnection or termination; and (b) AmeriGas's failure to remove their gas storage tank in a timely manner.
20. Prior to the issuance of the CID, AmeriGas did not systematically keep track of the date or manner that a customer requested termination of service. Subsequent to the issuance of the CID, AmeriGas now keeps a "Vermont Customers Tracking Log" to document the date of a consumer's request for tank removal or service disconnection/termination, and the tank removal and refund process.
21. Prior to October 1, 2011, AmeriGas took up to 15 calendar days to process refund checks once service was disconnected. Since October 1, 2011, refund checks are processed immediately.
22. Based on AmeriGas's own review of its data, AmeriGas confirmed 79 customers experienced delays in removing tanks, and 90 customers experienced delays in issuing refund checks, between January 1, 2010 and June 30, 2013. As noted in ¶ 20, the data provided by AmeriGas did not always track the date(s) of disconnection and

refund processing. Therefore, not all customer data could be reviewed to determine all possible delays and an extrapolation formula was agreed upon to determine restitution and penalties to be paid to consumers.

The State's Allegations

23. The Vermont Attorney General's Office alleges the following violations of the Consumer Protection Act and Rules:

- (a) Imposition of the meter read fee by AmeriGas beginning January 1, 2010, without proper notice violated 2010 CP 111.19 & 111.20(a)(2) and 2012 CP 111.03(d) & 111.09(a)(2);
- (b) Failing to reimburse Vermont consumers for unused gas remaining in the tank following disconnection or termination of service within the required timeframe violated 2010 CP 111.18(b), 9 V.S.A. § 2461b(e)(2)(B), and 2012 CP 111.16(a); and
- (c) Failing to remove storage tanks, without apparent justification, within the required timeframe violated 2010 CP 111.18(a) and 2012 CP 111.15(a).

24. The State of Vermont alleges that the above behavior constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453.

Assurances and Relief

In lieu of instituting an action or proceeding against AmeriGas, the Attorney General and AmeriGas are willing to accept this AOD pursuant to 9 V.S.A. § 2459. Agreeing to the terms of this Assurance of Discontinuance for purpose of settlement does not constitute an

admission by AmeriGas to a violation of any law, rule, or regulation. Accordingly, the parties agree as follows:

Injunctive Relief

25. AmeriGas shall comply with the Vermont Consumer Protection Act, 9 V.S.A. Chapter 63, and CP 111, as they may from time to time be amended.

26. AmeriGas shall continue to record: (a) the dates and manner that a consumer requests termination of service and the specific day, if any, that the consumer requests removal of the tank; (b) the dates that gas tanks were removed or disconnected as defined in CP 111 by AmeriGas; and (c) the dates and amounts of any refund checks or credits that were issued.

27. When terminating service to a consumer using an AmeriGas-owned tank, AmeriGas shall refund the consumer within 20 days of the date when AmeriGas disconnects propane service or is notified by the consumer in writing that AmeriGas's equipment is no longer connected, whichever is earlier:

- a. the amount paid by the consumer for any propane remaining in the storage tank, less any payments due AmeriGas from the consumer; or
- b. refund the amount paid by the consumer for 80 percent of AmeriGas'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. AmeriGas 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 restocking of the tank at the time of reconnection.

28. When AmeriGas disconnects or terminates service to a consumer, it shall, at the consumer's request, remove any storage tank that it owns from the consumer's premises by the latest of the following dates:

- a. 20 days from the disconnection or termination or 30 days in the case of an underground tank;
- b. 20 days from the consumer's request (or 10 days from the specific date, if any, that the consumer requested), or 30 days in the case of an underground tank; AmeriGas may require that the request must be in writing if the tank was disconnected by someone other than AmeriGas;
- c. in the case of a cash consumer, 20 days from the receipt of payment of tank removal fees allowed under CP 111.09; or
- d. as soon as the weather and access to the tank allow.

Refunds to Customers

29. Within 60 days of signing this AOD, AmeriGas shall pay to each consumer who had a delay in their refund checks after May 25, 2011 (identified in ¶ 22 above), \$250 plus \$75/day for each day after the first 21 days after termination until the date that the refund check was issued, for a total of \$126,061.50 paid to 65 consumers. For consumers who experienced a delay in their refund checks before May 25, 2011 (identified in ¶ 22 above), AmeriGas shall pay \$250 to each consumer, for a total of \$6,250 paid to 25 customers.

30. Within 60 days of signing this AOD, AmeriGas shall pay to each consumer who had a delay in their tank removals: \$500 for any delay up to 30 days; \$1,000 for any

delay up to 60 days; \$1,500 for any delay up to 90 days; and \$2,000 for any delay greater than 90 days; for a total of \$58,500 paid to 79 customers (identified in ¶ 22).

31. Excluding the consumers identified in ¶ 22, the parties have agreed that there are 311 AmeriGas customers who had propane service disconnected between June 30, 2011, and February 10, 2012, and may have experienced a delay in refund checks. The parties have agreed on an average payment to each such consumer based on an extrapolation formula from a sampling of the refund delays in AmeriGas's customer data. Within 60 days of signing this AOD, AmeriGas will pay those consumers \$125 each, for a total of \$38,875. Consumers who wish to pursue a claim independently may do so by refusing the payment. However, a consumer who accepts the payment by receiving the check and not returning it within 90 days waives the ability to pursue an individual claim of a delayed refund check.

32. Excluding the consumers identified in ¶ 22, the parties have agreed that there are 506 AmeriGas customers who had propane service disconnected between June 30, 2011, and February 10, 2012, and may have experienced a delay in tank removal. The parties have agreed on an average payment based on an extrapolation formula from a sampling of tank removal delays in AmeriGas's customer data. Within 60 days of signing this AOD, AmeriGas will pay those consumers \$50 each for a total of \$25,300. Consumers who wish to pursue a claim independently may do so by refusing the payment. However, a consumer who accepts the payment by receiving the check and not returning it within 90 days waives the ability to pursue an individual claim of a delayed tank removal.

33. For any customer who receives a payment per the above (§§ 29-32), AmeriGas shall send a letter from the Attorney General (Exhibit A), along with an applicable explanatory letter from AmeriGas (Exhibits B and C) and the consumer's payment, in an envelope provided by the Attorney General's Office.

34. In the event that either a consumer fails to cash or return the payment sent by AmeriGas or AmeriGas is not able to locate consumers to whom any payments are owed under the terms of §§ 29-32 of the AOD after all reasonable efforts to do so have been taken, no later than 180 days after sending the payments, AmeriGas shall mail to the Attorney General's Office:

- a. a single check, payable to "Vermont State Treasurer" in the total dollar amount of all outstanding amounts and all checks that were returned as undeliverable or that went uncashed, to be treated as unclaimed funds, under Vermont's unclaimed property statute, Title 27, Vermont Statutes Annotated, Chapter 14;
- b. a list, in electronic Excel format, of the consumers whose checks were undeliverable or were not cashed (which list shall set out the first and last names of the consumers in distinct fields or columns), and for each such consumer, the last known address and dollar amount due, and
- c. the company's corporate address and federal tax identification number.

35. If any consumer complains to AmeriGas about a delay in tank removals or refund checks between February 10, 2012 to July 1, 2013, AmeriGas shall review the consumer's complaint in good faith within twenty days. In the event the consumer demonstrates that the refund or tank pick-up was untimely, pursuant to Vermont law:

(a) for a refund delay, AmeriGas shall pay the penalty owed per Vermont law; (b) for a tank delay, AmeriGas shall pay a penalty per the terms of this AOD ¶ 30; and (c) if AmeriGas disputes that any penalty is owed, AmeriGas shall send a written explanation to the consumer as to why it believes no penalty is owed, and shall include a statement that the consumer may contact the Consumer Assistance Program at (802) 656-3183 or consumer@uvm.edu, if the consumer disagrees.

36. For any consumer that AmeriGas determines is owed a refund check between January 1, 2010, and May 24, 2011, AmeriGas shall pay the refund amount owed, plus \$250, within 10 days of such determination.

Payment to the State of Vermont

37. Within 60 days of signing this AOD, AmeriGas shall pay to the State of Vermont one hundred thousand dollars (\$100,000.00) in civil penalties and costs. Payment shall be made to the "State of Vermont" and shall be sent to the Vermont Attorney General's Office at the following address: Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

38. Within 30 days of signing this AOD, AmeriGas shall pay to the Vermont Low Income Home Energy Assistance Program ("LIHEAP") one hundred ninety thousand dollars (\$190,000.00). Payment shall be made via the Vermont Department for Children and Families, Economic Services Division, Fuel Assistance, 103 South Main Street, Waterbury, Vermont 05671.

Reporting

39. AmeriGas shall provide a report to the Attorney General's Office, documenting its handling of service termination from July 1, 2013 through June 30, 2014, including the information described in ¶ 26. If there are delays in terminating service (i.e., beyond the allowable timeframes, including weather and access to the tank), AmeriGas shall document the reason(s) for the delay(s).
40. AmeriGas shall provide a report to the Vermont Attorney General's Office of all consumers who requested payment under ¶ 35 and the outcomes taken, or that no consumer has requested payment.
41. AmeriGas shall submit a copy of any written consumer complaint pertaining to any matter covered by this AOD that the company received on and after the date of this AOD, as well as the company's response.
42. AmeriGas shall submit the reports and documents described in ¶¶ 39-41 on or before December 16, 2013, and three additional submissions thereafter on no less than a quarterly basis (beginning on January 1, 2014) for a period of one year for a total of four submissions covering the period ending June 30, 2014. AmeriGas may submit the reports and documents up to 30 days after the close of its quarter.

Other Terms

43. In the event that the State receives a request for disclosure of any of the information described in this AOD, the State shall promptly provide notice to AmeriGas to permit it to take any steps it may deem necessary to prevent disclosure. If the State

is required to disclose any information described in this AOD by a government agency or by court order, it shall promptly notify AmeriGas.

44. Neither AmeriGas nor anyone acting on its behalf shall state or infer that the Vermont Attorney General's Office approves any business practices of AmeriGas.
45. This AOD shall be binding on AmeriGas, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. The undersigned authorized agent of AmeriGas 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, but only to the extent such officers and managers are responsible for operations in the State of Vermont.
46. This AOD resolves all existing claims the State of Vermont may have against AmeriGas stemming from the conduct described in this document, as of July 1, 2013.
47. Nothing in this AOD waives the right of any consumer to pursue claims stemming from the conduct described in this document; excepting, however, any consumer who accepts payment under ¶¶ 29 or 31 shall waive any claim regarding delayed refund checks, and any consumer who accepts payment under ¶¶ 30 or 32 shall waive any claim regarding delayed tank removals.
48. The Superior Court of the State of Vermont, Washington Unit, shall have jurisdiction over this AOD and the parties hereto for the purpose of enabling any of the parties hereto to apply to this Court at any time for orders and directions as may be necessary or appropriate to carry out or construe this AOD, to modify or terminate

any of its provisions, to enforce compliance, and to punish violations of its provisions.

49. Communications related to this AOD shall be given to AmeriGas at:

- (a) Jean Konowalczyk, (Jean.Konowalczyk@amerigas.com) AmeriGas Propane, L.P., 460 North Gulph Road, King of Prussia, PA 19406;
- (b) Robert M. Langer (rlanger@wiggin.com), Wiggin and Dana LLP, One CityPlace, 185 Asylum Street, Hartford, CT 06103; and
- (c) Joshua R. Diamond, (jrd@diamond-robinson.com), Diamond & Robinson, P.C., P.O. Box 1460, Montpelier, VT 05601-1460.

50. Communications and notices related to this AOD shall be given to the Attorney General's Office to the undersigned Assistant Attorney General listed below.

51. AmeriGas shall notify the Attorney General of any change of AmeriGas's business name or address and of any change in contact information in ¶ 49 within 20 business days.


52. In the event that AmeriGas violates any of the terms of this AOD, the Attorney General may pursue any remedies available under 9 V.S.A. Chapter 63, and the Attorney General shall not have waived any of its rights to assert and prove any violations of law by AmeriGas unrelated to the conduct described in this AOD.

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

[SIGNATURES APPEAR ON NEXT PAGE]

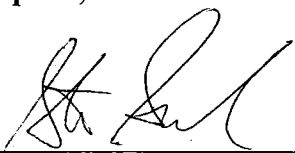
DATED at Montpelier, Vermont this 1st day of ~~October~~ ^{November}, 2013.

**STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL**

By: 
Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-5620
jkolber@atg.state.vt.us

DATED at King of Pussia, PA this 31st day of October, 2013.

**AMERIGAS PROPANE, LP
by its general partner, AmeriGas
Propane, Inc.**

By: 
Steven A. Samuel, Vice President and
General Counsel

APPROVED AS TO FORM:

Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609

For the State of Vermont

Robert M. Langer, Esq.
Wiggin and Dana, LLP
One City Place, 34th Floor
185 Asylum Street
Hartford, CT 06103

Joshua R. Diamond
Diamond & Robinson, P.C.
.15 East State Street
P.O. Box 1460
Montpelier, VT 05601

For AmeriGas Propane, LP

DATED at Montpelier, Vermont this _____ day of October, 2013.

**STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL**

By: _____

Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-5620
jkolber@atg.state.vt.us

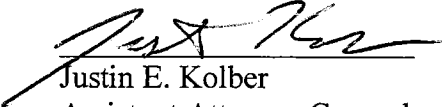
DATED at _____, _____ this _____ day of October, 2013.

**AMERIGAS PROPANE, LP
by its general partner, AmeriGas
Propane, Inc.**

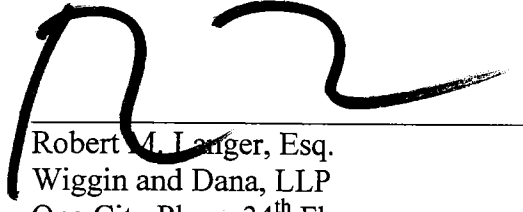
By: _____

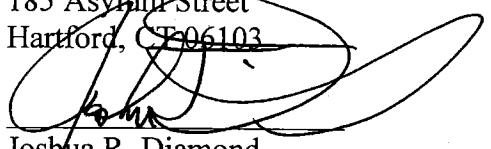
Steven A. Samuel, Vice President and
General Counsel

APPROVED AS TO FORM:


Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609

For the State of Vermont


Robert M. Langer, Esq.
Wiggin and Dana, LLP
One City Place, 34th Floor
185 Asylum Street
Hartford, CT 06103


Joshua R. Diamond
Diamond & Robinson, P.C.
15 East State Street
P.O. Box 1460
Montpelier, VT 05601

For AmeriGas Propane, LP

EXHIBIT A

November 2013

Re: AmeriGas Propane, LP settlement

Dear Vermont consumer:

You have been identified as a current or former customer of AmeriGas Propane, LP (“AmeriGas”) who, between January 1, 2010, and June 30, 2013, terminated propane service from AmeriGas.

As a result of a settlement with the Attorney General’s Office, AmeriGas is providing the enclosed payment and further explanation to address any delays that may have occurred in terminating your propane service. Those delays may have been caused by removing propane storage tanks or issuing refund checks outside the timeframes required by Vermont law.

For more information on the Vermont consumer protection rules or the terms of this settlement, please visit the Attorney General’s Office website at www.atg.state.vt.us or call the Consumer Assistance Program at 800-649-2424 or (802) 656-3183.

Sincerely,

William H. Sorrell
Attorney General

Enc.

EXHIBIT B

Date

Name

Address

Town, VT zip

Re: Settlement Agreement

Dear [Name of Consumer]:

Under the terms of a settlement agreement with the Vermont Attorney General's Office, you have been selected to receive \$ ____ because, subsequent to the disconnection of your propane service, a refund for the unused propane may not have been mailed to you within the time frame in accordance with Vermont law.

This check is in **FULL SATISFACTION** of any claim that you may have against AmeriGas arising from the alleged delay in receiving a refund.

IMPORTANT: If you **ACCEPT** the check, you will **WAIVE** whatever rights, if any, that you may possess to pursue an individual claim against AmeriGas resulting from any delay in issuing a refund, including claims brought pursuant to Vermont Consumer Protection Act, 9 V.S.A. § 2461b.

You may decline to accept the check by returning or mailing it to AmeriGas, first class postage, within 90 days of the date of this letter, to the following address:

AmeriGas Propane
c/o Jean S. Konowalczyk
P.O. Box 965
Valley Forge, PA 19482

Sincerely,

[Insert Name and Title of AmeriGas Official]

Enclosure

EXHIBIT C

Date

Name

Address

Town, VT zip

Re: Settlement Agreement

Dear [Name of Consumer]:

Under the terms of a settlement agreement with the Vermont Attorney General's Office, you have been selected to receive \$_____ because, subsequent to the disconnection of your propane service, your propane tank may not have been removed within the time frame in accordance with Vermont law.

This check is in **FULL SATISFACTION** of any claim that you may have against AmeriGas arising from the alleged delay in removing the tank.

IMPORTANT: If you **ACCEPT** the check, you will **WAIVE** whatever rights, if any, that you may possess to pursue an individual claim against AmeriGas resulting from any delay in removing the tank, including claims brought pursuant to Vermont Consumer Protection Act, 9 V.S.A. § 2461b.

You may decline to accept the check by returning or mailing it to AmeriGas, first class postage, within 90 days of the date of this letter, to the following address:

AmeriGas Propane
c/o Jean S. Konowalczyk
P.O. Box 965
Valley Forge, PA 19482

Sincerely,

[Insert Name and Title of AmeriGas Official]

Enclosure