

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

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) CIVIL DIVISION  
) Docket No. 146-3-14 Wncw

FILED

In Re: Bourne's of Morrisville, Inc.

**ASSURANCE OF DISCONTINUANCE**

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Bourne's of Morrisville, Inc. ("Bourne's" or "Respondent"), hereby enter into this Assurance of Discontinuance ("AOD") pursuant to 9 V.S.A. § 2459.

**Background**

***Bourne's of Morrisville, Inc.***

1. Bourne's of Morrisville, Inc. is a corporation with offices at 72 Lower Main Street, Morrisville, Vermont 05661.
2. Bourne's operations include retail marketing, sale, and distribution of propane to residential, commercial, and industrial customers in Vermont. As of February 2014, Bourne's provided propane service to approximately 7,000 customers.

***Regulatory Framework***

3. 9 V.S.A. § 2453(a) prohibits "[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce."
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 liquefied petroleum gas ("propane"). Since 1986, Vermont Consumer Protection Rule 111 ("CP 111" or "Propane Rule") has

governed the business practices of propane service providers in Vermont and is enforced by the Office of the Attorney General. The Rule was amended in 2009, effective on January 1, 2010, and amended again in 2011, effective on January 1, 2012 (reference to “CP 111” or the “Propane Rule” refers to the most recent version as amended).

5. Some of the relevant provisions of CP 111 to promote fair business practices and protect consumers include: requiring the clear disclosure of the price of propane and terms of service. CP 111.03 & 111.09.
6. 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). CP 111.01.
7. 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). Each day that a violation continues is a separate violation.

***Bourne’s Propane Practices***

8. On January 7, 2014, a Vermont consumer complained to the Attorney General’s Consumer Assistance Protection (“CAP”) regarding Bourne’s. The consumer complained about being billed a higher price per-gallon on delivery after being charged a lower “pre-authorized” price using Bourne’s online system for ordering propane.
9. In responding to that complaint, Bourne’s described its propane practices for consumers who order propane via Bourne’s online system, including those summarized in ¶¶ 10-14.
10. Beginning on June 1, 2009, Bourne’s allowed will-call consumers to create an account and order propane through a “web portal”. A “will-call consumer” is a customer who must affirmatively request propane for each delivery (as opposed to a customer that

receives propane according to automatic scheduled deliveries, typically based on usage and a negotiated propane purchase agreement).

11. Will-call consumers periodically receive e-mail reminders to place a propane fuel order using the web portal. The web portal displays a price-per-gallon for that day and allows consumers to enter the quantity of fuel they wish to purchase.
12. When ordering propane via the web portal, will-call consumers who pay with a credit or debit card are charged a “pre-authorized” amount, which constitutes the quantity of propane ordered at that day’s price-per-gallon listed on the web portal. After completing the web portal transaction, a consumer receives a “Fuel Order Confirmation and Receipt.” The receipt states, among others, that: “The charge price for this delivery is \$X.XX per gallon. This is the price that will appear on your ticket.”
13. However, upon delivery of the propane, consumers are billed for the propane based on the price-per-gallon on the day of delivery. This means that the will-call consumers who “pre-purchased” propane using the web portal were actually billed for a different amount than the “pre-authorized” amount stated on their Fuel Order Confirmation and Receipt. Sometimes the amount was lower; other times the amount was higher. But at no time was there a clear disclosure (either on the “Fuel Order Confirmation and Receipt” or otherwise) that the price-per-gallon would change.
14. Bourne’s has identified 91 will-call consumers who since June 1, 2009, were charged a “pre-authorized” price, but later billed for a higher amount, without advanced disclosure of the change.

15. In response to the Attorney General's investigation of the above, Bourne's provided prompt and compliant responses, and immediately changed its practice to charge will-call consumers only the price that was "pre-authorized" in the web portal.
16. Bourne's admits the truth of the facts described in ¶¶ 1-2; 8-15.

***The State's Allegations***

17. The Vermont Attorney General's Office alleges that charging consumers a "pre-authorized" price in the web portal and then charging a higher price for propane on delivery, without advanced disclosure, violates the Vermont Consumer Protection Act and Propane Rule.
18. 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 litigation, the Attorney General and Bourne's are willing to accept this AOD pursuant to 9 V.S.A. § 2459 as a just resolution of this matter. Agreeing to the terms of this Assurance of Discontinuance for purpose of settlement does not constitute an admission by Bourne's to a violation of any law, rule, or regulation. Accordingly, the parties agree as follows:

19. Bourne's 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.
20. Bourne's shall immediately charge all will-call consumers who pre-pay for propane via Bourne's web portal (or any online or telephone order) the "pre-authorized" price. For consumers who do not pre-pay, Bourne's shall clearly disclose the fact that the price

displayed on the web portal is “subject to change,” and that “the price the customer will be billed will be based on the price-per-gallon on the actual day of delivery.”

21. Bourne’s shall immediately revise the terms and disclosures displayed in its web portal as necessary to comply with the preceding paragraph, and Bourne’s shall submit its proposed disclosures to the Attorney General’s Office for approval.
22. Bourne’s shall update any additional terms of service as necessary, within 30 days of this AOD to comply with the terms of this AOD.
23. Bourne’s shall immediately pay all 91 consumers identified in ¶ 14 the difference between the delivery and the “pre-authorized” price, totaling \$1,009.90 as restitution. At Bourne’s election, the payments may be made by a credit to the consumer’s account for future propane, by check, or by reducing any outstanding balance.

#### **Other Terms**

24. Neither Bourne’s nor anyone acting on its behalf shall state or infer that the Vermont Attorney General’s Office approves any practices of Bourne’s.
25. This AOD shall be binding on Bourne’s, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. The undersigned authorized agent of Bourne’s 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.
26. This AOD resolves all existing claims the State of Vermont may have against Bourne’s stemming from the conduct described in this document, as of February 14, 2014.

27. 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.
28. Communications related to this AOD shall be given to Bourne's at:
- a. Eileen Lampman (Eileen@Bournes.net) 72 Lower Main Street, Morrisville, Vermont 05661.
  - b. James Mahoney, Esq. (jmahoney@polowlaw.com), 125 Main Street, P.O. Box 130, Hyde Park, Vermont 05655.
29. Communications and notices related to this AOD shall be given to the Attorney General's Office to the undersigned Assistant Attorney General.
30. Bourne's shall notify the Attorney General of any change of Bourne's business name or address and of any change in contact information in ¶ 28 within 20 business days.

**Violations and Stipulated Penalties**

31. In the event that Bourne's 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 Bourne's unrelated to the conduct described in this AOD.
32. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Bourne's to be in violation of this AOD, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be \$5,000. For purposes of this paragraph 32, the term "each act" shall mean: charging a

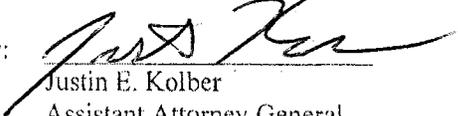
higher price-per-gallon than an advertised or stated price, without disclosing that the price-per-gallon billed will change.

DATED at Montpelier, Vermont this 7<sup>th</sup> day of March, 2014.

**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

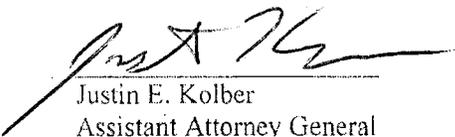
DATED at Morrisville, VT this 4<sup>th</sup> day of March, 2014.

**Bourne's of Morrisville, Inc.**

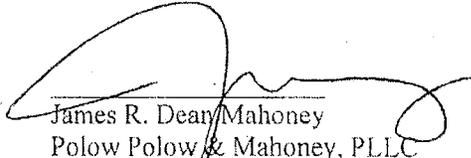
By:

  
Its Authorized Agent  
Michael Bourne  
Name and Title of Authorized Agent

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

  
James R. Deary Mahoney  
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125 Main Street  
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For Bourne's of Morrisville, Inc.