VT SUPERIOR COURT
WASHINGTON CIVIL

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2017 DEC - 7 A 11: 32

In Re: Osterman Propane, LLC	)	CIVIL DIVISION
	)	Docket No. 715-12-16 WNCV

ASSURANCE OF DISCONTINUANCE

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

Background

Osterman Propane

1. Osterman Propane, LLC is a corporation with its principal place of business at 1 Memorial Square, PO Box 29, Whitinsville, MA 01588.
2. Osterman's operations include retail marketing, sale, and distribution of propane to residential, commercial, and industrial customers in Vermont. Since 2015, Osterman has provided propane service to approximately 2,500 customers in Vermont.

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")

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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. As part of the 2012 amendments, the definition of "consumer" was changed to include propane users with storage tanks of up to 2,000 gallons. CP 111.02(c).

6. CP 111.03 & 111.09(a)(2) require disclosure of all fees on a Fee Disclosure Form ("FDF"), including the amount and duration of all fees. 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. *See* CP 111.03.

7. 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. 9 V.S.A. § 2461(c)(1).

8. 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).

Osterman's Propane Practices

9. The Vermont Attorney General's Consumer Assistance Program received a consumer complaint about Osterman's propane practices. In investigating this complaint, Osterman responded promptly and acknowledged its practices as follows. The

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investigation included, but was not limited to, fee disclosures, meter reading, and tank pick-ups associated with commercial accounts.

10. Since 2012, Osterman has collected $15,778.51 in fees from 89 consumers without proper prior disclosure of these fees in an FDF. These 89 consumers were commercial accounts who were not considered a "consumer" under the pre-2012 definition of consumer in CP 111.02.

11. In response to the Attorney General's investigation of the above, Osterman acknowledged that it misinterpreted the definition of "consumer" changed in 2012 so that commercial accounts with up to 2,000-gallon tanks were subject to the fee disclosure requirements of CP 111. As a result of the Attorney General's investigation, Osterman promptly updated its FDF, its contracts, and its practices, to comply with CP 111.

12. Osterman admits the truth of the facts described in ¶¶ 1-2; 9-11.

The State's Allegations

13. The Vermont Attorney General's Office alleges that charging consumers fees without disclosure on an FDF violated the Vermont Consumer Protection Act and Propane Rule.

14. 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 Osterman are willing to accept this AOD pursuant to 9 V.S.A. § 2459 as a just resolution of this matter. Accordingly, the parties agree as follows:

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15. Osterman 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.

16. Osterman shall immediately provide Initial or Existing Customer FDFs to all potential or existing customers before collecting any fees as required by CP 111.03 & 111.09.

17. Within 30 days of entry of this AOD, Osterman shall refund all 89 consumers identified in ¶ 10 the fees that were improperly collected, totaling $15,778.51 in restitution. Osterman shall mail a check to all former customers along with any explanatory letter it wishes to send in an envelope provided by the Attorney General's Office. For current customers, Osterman, at its election, may mail a check or offer a credit to their account or a reduction of any outstanding balance; Osterman shall provide a check for those customers which request it within 10 days of the request.

18. Within 10 days of signing this AOD, Osterman shall pay to the State of Vermont $7,500. 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.

Other Terms

19. Acceptance of this AOD by the Vermont Attorney General's Office shall not be deemed approval by the Attorney General of any practices or procedures of Respondent not required by this AOD, and Respondent shall make no representation to the contrary.

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20. This AOD shall be binding on Osterman, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. The undersigned authorized agent of Osterman 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.

21. This AOD resolves all existing claims the State of Vermont may have against Osterman stemming from the conduct described in this document as of the date signed below.

22. 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.

23. Communications related to this AOD shall be given to Osterman at:

    a. Joshua R. Diamond (jrd@dimaond-robinson.com), Diamond & Robinson, P.C. P.O. Box 1460, Montpelier, Vermont 05601.

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

25. Any consumer who accepts payment under paragraph # 17 shall waive any claim regarding undisclosed fees against Osterman that occurred through the date of the execution of this AOD.

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26. In the event that Osterman 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 Osterman unrelated to the conduct described in this AOD.

SIGNATURES APPEAR ON NEXT PAGE

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DATED at Montpelier, Vermont this 7th day of December 2016.

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 Whitinsville, Massachusetts this 1st day of December, 2016.

Osterman Propane, LLC

By: _____
Its Authorized Agent

Vincent Osterman / Managing Member
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

_____
Joshua R. Diamond, Esq.
Diamond & Robinson, P.C.
P.O. Box 1460
Montpelier, VT 05601

For Osterman Propane, LLC

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