

STATE OF VERMONT  
WASHINGTON COUNTY, SS.

FILED

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IN RE SUBURBAN  
PROPANE, L.P.

)  
)

Washington Superior Court  
Docket No. 667011-05 Wncv

WASHINGTON COUNTY

ASSURANCE OF DISCONTINUANCE

WHEREAS Suburban Propane, L.P. ("Suburban") is a Delaware limited partnership with offices at One Suburban Plaza, 240 Route 10 West, P.O. Box 206, Whippany, New Jersey 07981-0206;

WHEREAS, doing business as Suburban Energy Services, Suburban sells heating oil through its indirect wholly-owned subsidiary, Suburban Heating Oil Partners, LLC ("SHOP"), and liquid propane gas directly to Vermont consumers;

WHEREAS up until December 2003, Suburban sold liquid propane gas in Vermont but no Suburban entity sold heating oil in Vermont;

WHEREAS in December 2003, Suburban acquired substantially all of the assets and operations of Agway Energy Products, LLC, and affiliated companies (hereinafter "Agway");

WHEREAS prior to the Agway acquisition, Suburban offered its customers a "pre-buy" program for liquid propane gas, under which consumers could pay a certain amount of money in advance of the heating season in exchange for a guaranteed per-gallon price for purchases up to the chosen number of dollars, the terms and conditions of which were set forth in an annual contract between Suburban and each pre-buy customer;

WHEREAS Agway also offered a pre-buy program for heating oil, but without a written contract;

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WHEREAS after the Agway acquisition, in 2003-2004 and 2004-2005, Suburban continued offering and administering Agway's pre-buy program for heating oil through SHOP;

WHEREAS like the Agway pre-buy program, but unlike its own propane pre-buy program, the Suburban pre-buy program for heating oil was not in writing and did not expressly define the period of time during which the pre-buy price would apply, except that the Suburban office in Rutland did send its customers a letter in July 2004 offering the pre-buy program for heating oil, which letter stated that the pre-buy price would apply to the "selected [number of gallons] used *in the year*" (emphasis added);

WHEREAS certain Vermont participants in the Suburban pre-buy program for heating oil reasonably understood that they would continue to have access to the pre-buy price for 12 months, as long as they did not use up the pre-buy advance payment they had made before the heating season;

WHEREAS in fact Suburban terminated its pre-buy heating oil program for the years 2003-2004 and 2004-2005 as of April 30, 2004, and April 30, 2005, respectively, regardless of whether consumers had money left in their pre-buy account;

WHEREAS this meant that if all of a consumer's pre-buy funds had not been spent by April 30, 2004, or April 30, 2005, the per-gallon price would revert to the prevailing market price;

WHEREAS the prevailing market price for heating oil in April 2004 was lower than the pre-buy price, but in April 2005 was substantially higher;

WHEREAS in 2004-2005 there were 2,002 Suburban customers who participated in the pre-buy program for heating oil;

WHEREAS those consumers did not receive as many gallons of heating oil at the pre-buy price as they would have if the program had continued for one year and were collectively entitled to a credit of \$31,205.06 at the time Suburban terminated the program on April 30, 2005;

WHEREAS the Attorney General's Office has received complaints from consumers about Suburban's early termination of its pre-buy program for heating oil, claiming that the practice was unfair and inconsistent with their reasonable understanding of the program;

WHEREAS the Vermont Attorney General alleges that Suburban's handling of its pre-buy heating oil program in 2004-2005 violated the Vermont Consumer Fraud Act, 9 V.S.A. § 2453(a), by failing to disclose a material term of the program—namely, the April 30, 2005 program deadline—and by causing substantial injury to consumers in denying some of them the right to use all of their pre-buy dollars within a reasonable period of time;

AND WHEREAS the Attorney General is willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459:

THEREFORE the parties agree as follows:

1. *Injunctive relief.* In the course of doing business in or into the State of Vermont, Suburban 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 a pre-buy program to its customers, disclose clearly and conspicuously in writing to its customers all of the terms and conditions of the program, including, but not limited to, any limitations on when the pre-buy rate will be available to consumers; and

c. Not take any actions with respect to delivery schedules, decisions about individual deliveries, or otherwise (such as withholding of deliveries until after the pre-buy deadline), that would prejudice customers' ability to take full advantage of pre-buy rates that they are otherwise entitled to, *except that* Suburban may apply fair policies and practices that do not specifically disfavor pre-buy program participants.

2. *Consumer relief.*

a. Suburban shall promptly extend, retroactively, through June 30, 2005, the terms of its pre-buy program for heating oil to 2004-2005 pre-buy customers, effectively making the program for 2004-2005 a 12-month offering. Any credits to which pre-buy customers were entitled as of April 30, 2005, shall be reinstated and applied at the pre-buy fixed price to all heating oil purchases (i.e., deliveries) made through June 30, 2005. To the extent that such customers were charged for deliveries made between May 1 and June 30, 2005, at a rate above their pre-buy fixed rate, Suburban shall provide a credit for the amount of such overcharge. Additionally, if any such customers were still entitled to a credit as of July 1, 2005, such credit shall, at the customer's election, be applied to any subsequent heating oil purchases at prevailing market prices or be refunded to the customer in cash.

b. If a consumer participated in the 2004-2005 heating oil pre-buy program but is no longer a customer of Suburban, Suburban shall, within 20 (twenty) days of signing this Assurance of Discontinuance, send the consumer a check by first-class mail equal to the total amount of the credits, if any, to which the consumer would have been entitled under the previous paragraph if he or she were still a customer of the company.

c. In either case, Suburban shall send an explanatory letter by first-class mail in the form attached as Exhibit 1 to all consumers in Vermont who participated in Suburban's heating oil pre-buy program in 2004-2005 and had funds left in their pre-buy account as of April 30, 2005.

d. In the event that Suburban is unable to make a payment required by subparagraph (b) of this paragraph to an eligible consumer within 60 (sixty) days of signing this Assurance of Discontinuance—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, in care of the Vermont Attorney General's Office, to be treated by the State as unclaimed property. Suburban shall also provide to the Attorney General's Office a list of the consumers to whom payments could not be made.

e. No later than 60 (sixty) days after signing this Assurance of Discontinuance, Suburban shall provide to the Vermont Attorney General's Office the names and addresses of the consumers to whom letters were sent, and the date and amount of all credits and payments made under this Assurance of Discontinuance.

3. *Civil penalties, fees and costs.* Within 20 (twenty) days of signing this Assurance of Discontinuance, Suburban shall pay to the State of Vermont, in care of the Vermont Attorney General's Office, the sum of \$25,000.00 (twenty-five thousand dollars) in civil penalties, plus \$5,000.00 (five thousand dollars) in costs.

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

Date: 10/24/05

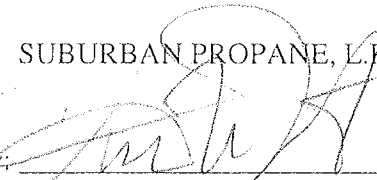
STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

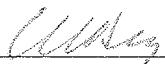
by:   
Elliot Burg  
Assistant Attorney General

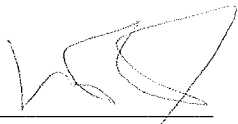
Date: 11/3/05

SUBURBAN PROPANE, L.P.

by:   
Dennis W. Trautman  
Chief Operating Officer and Authorized Agent

APPROVED AS TO FORM:

  
Elliot Burg  
Assistant Attorney General  
Office of Attorney General  
109 State Street  
Montpelier, VT 05609  
For the State of Vermont

  
William B. Miller, Jr.  
Langrock Sperry & Wool, LLP  
P.O. Drawer 351  
Middlebury, VT 05753  
For Suburban Propane, L.P.

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Exhibit 1 (Letter to Consumers)

Dear [Name of Consumer]:

You are a current or past customer of Suburban Energy Services and were a participant in the 2004-2005 heating oil pre-buy program. We have received consumer complaints about our terminating that program on April 30, leaving some of our customers with pre-buy dollars usable only at the market (not pre-buy) price.

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 pre-buy program for heating oil to all of our 2004-2005 pre-buy customers through June 30, 2005, effectively making the program for 2004-2005 a 12-month offering. Any credits to which you were entitled as of April 30, 2005, will be reinstated and applied at the pre-buy fixed price to all heating oil purchases (i.e., deliveries) made through June 30, 2005. To the extent that you were charged for deliveries made during the May 1 through June 30 period at a rate above your pre-buy fixed rate, we will provide a credit for the amount of the overcharge. Additionally, if you are still entitled to a credit as of July 1, 2005, that credit will, at your option, be applied to any later heating oil purchases at prevailing market prices or be refunded to you in cash.

If you are no longer a Suburban customer, we are enclosing a check in the amount of the credits described above.

If you have any questions concerning the status of your pre-buy account, the amount of any credit to which you may be entitled or how to utilize that credit, please call [your local Suburban 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,

Suburban Energy Services

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