

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 10<sup>TH</sup> JUDICIAL CIRCUIT  
SAGINAW COUNTY

BILL SCHUETTE, ATTORNEY GENERAL  
OF THE STATE OF MICHIGAN ,

Petitioner,

No.

v

HON.

FERRELLGAS, INC., AND FERRELLGAS LP  
D/B/A FERRELLGAS OPERATING, LIMITED  
PARTNERSHIP, AND D/B/A BEST  
PROPANE,

Respondent.

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**EX PARTE PETITION FOR SUBPOENAS**

**Introduction**

For citizens throughout Michigan, winter brought prolonged bouts of freezing temperatures unlike any other in living memory. Consumers using propane thus experienced higher costs this winter through increased usage. The demand on the propane industry to maintain a consistent supply has been the subject of local and national media attention.

But concerns about supply and related media attention create an opportunity for abuse. A retail business may seek to improve its economic position by charging higher costs to consumers, who may be primed to accept the increased charges based on what they hear on the news.

This generalized concern, which exists with respect to the market for any consumer good, takes on special significance in the propane industry. Many propane consumers lease their tank from a residential supplier, which begins an ongoing relationship with that supplier. Generally speaking, one propane retailer will not fill a tank leased to a customer by another retailer. Thus, when propane market prices began to rise in January, many Michigan consumers faced the choice of paying whatever their supplier dictated, or not heating their homes. In other words, they had no choice at all.

Michigan residents are protected from unfair trade practices by the Consumer Protection Act, MCL 445.901 *et seq.* This Act vests the Attorney General with special powers to investigate alleged violations. Such is the purpose of the following Petition.

## **Legal Authority**

### **Authority of the Attorney General**

1. The Michigan Attorney General is authorized to file an *ex parte* petition with the Circuit Court requesting issuance of an investigative subpoena pursuant to Section 7 of the ACT, MCL 445.907, which provides in pertinent part:

(1) Upon the *ex parte* application of the attorney general to the circuit court in the county where the defendant is established or conducts business or, if the defendant is not established in this state, in Ingham county, the circuit court, if it finds probable cause to believe a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful under this act, may, after *ex parte* hearing, issue a subpoena compelling a person to appear before the attorney general and answer under oath questions relating to an alleged violation of this act....The subpoena may compel a person to produce the books, records, papers, documents, or things relating to a violation of this act....

2. The Attorney General is informed and has probable cause to believe that Respondents have engaged in methods, acts, or practices in the conduct of trade or commerce which are defined as unlawful under MCL 445.903, as set forth below.

### **Factual Background**

3. Respondent, Ferrellgas Operating, L.P. is a Delaware limited partnership authorized to do business in Michigan as Ferrellgas Operating, Limited Partnership. Respondent, Ferrellgas, Inc., is a Delaware corporation authorized to conduct business in the State of Michigan. In addition to its Ferrellgas brand, Ferrellgas Operating, L.P. does business in Michigan under the assumed name of Best Propane, as evidenced by the attached Certificate of Assumed Name. (Michigan LARA's Corporation Division documents - Exhibit A). Within this Petition, Respondents shall be collectively referred to as "Ferrellgas."

4. On the homepage of its website, Ferrellgas identifies itself as "[t]he nation's premiere propane provider." Under the "Investors Information" tab of that website, Ferrellgas says that it serves approximately a million customers spread

across all fifty States. Further, the site boasts that "unwavering dedication to Customer Service and safety have made Ferrellgas the industry leader." Per the current market value on its 79,187,419 shares as stated on its website, Ferrellgas has a market capitalization of nearly \$2 Billion. (Website excerpts - Exhibit B).

5. According to its website, Ferrellgas has more than twenty offices in Michigan. Upon information and belief, Consistent with MCL 445.907(1), this Court has venue over this Petition because Ferrellgas conducts business in this County. Ferrellgas maintains an office located at 1950 S River Rd, Saginaw, MI 48609. Further, Ferrellgas delivers propane to residential customers throughout Saginaw County, including some of those customers referenced in this Petition.

6. Some information about the propane wholesale market is instructive as background. The wholesale price of propane in Michigan and other Midwestern States is traditionally tracked through the market in Conway, Kansas. In January of this year, this market began fluctuating more than in past years, which included some unusual price jumps. The movement of this market from April 2013 through February 15, 2014, can be observed through the document attached as Exhibit C, which was supplied to the Attorney General's Office by a propane wholesaler.

At its peak, the daily market price of propane reached a closing price of \$4.3250 per gallon. This, however, simply represents the wholesale market price. Determining the actual amount any given propane company has paid for propane, is a more sophisticated question. Much like their residential customers, companies like Ferrellgas can lock in a price for specified quantities with their wholesale

suppliers. Hence, determining any given company's overhead on a particular shipment of propane is impossible simply by referencing the Conway market pricing. But, the clear movements in the Conway market price in January and early February 2014 give at least partial insight on the general rise in retail propane prices, and the media attention given this subject.

7. The Michigan Attorney General receives complaints from consumers through letters, emails, and an online consumer complaint form. In 2014, the Attorney General has received 65 complaints by consumers alleging misconduct by Ferrellgas (also d/b/a/ "Best Propane"). By contrast, as of the date of this Petition, no other single retailer has more than 24 complaints against it.

After receiving consumer complaints, the Attorney General forwards the complaint to the entity being complained against. A response is requested within ten days.

8. The Attorney General has probable cause to believe Ferrellgas has violated the Consumer Protection Act in three different ways: (A) charging prices grossly in excess of what has been charged by other propane retailers (i.e. gouging); (B) making oral representations that the product will be supplied at one price, but charging another; and (C) leading customers to believe they had locked in a set rate when propane prices were low, but then failing to deliver on that pricing. Each category of concern will be elaborated upon below using a small sample of consumer complaints and Ferrellgas responses as examples.

9. The Attorney General seeks subpoenas to gain more information from Ferrellgas about these matters because the information known at this point creates concern that Ferrellgas has engaged in the following unfair trade practices as defined in MCL 445.903:

(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by consumer.

(y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.

(z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.

(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

#### **A. Price Gouging**

10. With respect to price gouging, Michigan's Consumer Protection Act puts the focus on the retail price being charged by Ferrellgas as compared to the retail price being offered by other residential suppliers to Michigan residents. Thus, the inquiry under the Act avoids the complexities of trying to untangle Ferrellgas' true overhead with reference to the Conway market price.

11. The Michigan Department of Licensing and Regulatory Affairs maintains on its website a tool consumers may use to track the average price offered by propane retailers in Michigan on a weekly basis. This online tool is found at: <http://www.dleg.state.mi.us/mpsc/reports/shopp/index.htm>.

According to this website, the weekly, average propane costs in Michigan for this year are as follows:

12/30/13	\$2.49
1/6/14	\$2.54
1/13/14	\$2.57
1/20/14	\$2.73
1/27/14	\$3.61
2/3/14	\$3.76
2/10/14	\$3.62
2/17/14	\$3.52
2/24/14	\$3.34
3/3/14	\$3.20

Although the highest weekly average propane cost this year has never exceeded \$3.76 per gallon, this Office has received numerous complaints from consumers charged amounts grossly in excess of this amount.

12. The Attorney General received complaints from multiple consumers that Ferrellgas charged them more than \$8.00 per gallon for propane for deliveries in late January. Among these complainants is Jim W. of Howell. In his complaint to this office, Jim explained he was billed \$8.04 per gallon for a January 25th delivery, but then succeeded through proactive efforts to lower this billing:

A truck arrived on the 25th to fill the tanks. I was charged a rate of 8.0446/gallon for that fill-up and was advised by the driver that if I hadn't 'locked in' the price when I called the order in, I would have been subject to that day's rate of \$8.21 a gallon. UP approximately 302% within 5 weeks"" The cost of this fill was \$4492.57. Additionally the smaller tank was 'tagged' as having run out (empty) and would require re-starting the furnaces inside. (and I'm on the STAY-FULL program??) As this was a Sat, I waited to contact their local office on 27 Jan to discuss the pricing. I then checked other competitors in the area (AmeriGas & Parker Propane) and believe I was told \$4.99 and 3.19 respectively for new customers. I was told the increase was due to the shortage and nothing could be done about it. I asked to have a

manager call me about this and a 'Becky' from the E. Lansing office called and I asked why the price had gone up so much, why they had not taken any action to notify customers of this increase and the direction prices were headed and was told that was too manpower intensive & expensive to do that. After a bit of discussion she indicated the 8.0449 was a mistake and that she'd take action to adjust the bill. She stated she'd change the price per gallon to \$3.99, yielding a difference of \$4.04+/- a gallon. This would reduce the cost of these fills by over \$1700. I waited till the monthly statements came out (31 Jan) to confirm that they HAD adjusted the pricing before submitting this complaint. The 31 Jan statement reflects the corrective actions but interestingly enough shows 'no payment due' on my account. Lastly, they have not yet repaired the gauge on that 250 gallon tank so I'm uncertain what amount is actually in that tank at any given time. I'm submitting this partially to give you information, but also to serve as a documentable case showing how without aggressive action on the part of the consumer, Ferrell would have charged the \$8.+ per gallon. I wonder how many other customers may not have challenged that price.

In its response to Jim's complaint, Ferrellgas stated that Jim's propane was "priced incorrectly" and then went on to explain that "Ferrellgas has corrected those customers' accounts that were incorrectly charged \$8 per gallon for a late January 2014 fuel delivery." (Jim W. Complaint and Response Exhibit D).

No explanation for the incorrect billing is offered, nor does this Office have any way knowing how many similarly-situated customers there are, or whether their accounts have truly been corrected (or to what price), as Ferrellgas suggests.

Meanwhile, Mr. William B. of Fowlerville was billed \$8.21 per gallon for a January 25th delivery totaling \$2,520.00. Ferrellgas responded to his complaint by readjusting his billing to \$5.89 per gallon—\$1.90 per gallon higher than the adjusted price given Jim W. and well above the State-wide average per the LARA website. (See Exhibit E -- William B.'s Complaint and Ferrellgas response).

13. Though Ferrellgas seems willing to agree that \$8 per gallon or more was too high, it has been inconsistent in responding to other consumer complaints that are still far above the average market prices in Michigan.

For example, Darwin B. of Saranac was billed \$7.309 per gallon. The Attorney General forwarded Darwin's complaint to Ferrellgas for a response within ten days on February 4, 2014. (Exhibit F – Darwin B Complaint and Attorney General letter to Ferrellgas). To date, no response has been received.

14. James and Paula D. of Freeland received a delivery at \$6.17 per gallon. Ferrellgas responded to this consumer complaint by defending its pricing decision. (Response to James and Paula D.'s Complaint - Exhibit G). But Ferrellgas subsequently adjusted their price down to \$3.69 per gallon (James and Paula D.'s Revised Bill - Exhibit H).

Another consumer, McKelin A., wrote to this Office stating:

I am writing to ask for help as I believe I am a victim of price gouging. I had propane delivered to my property at [street address omitted] in Bronson, MI. 49028 on 1-24-14. I was shocked to see charges in the amount of 2564.73 for 370 Gallons! This represents a price per gallon charge of 6.60! I called around this morning to other local providers and the highest price being charged was 4.49 at Sheet's propane, Suburban propane is currently charging 2.59 a gallon! These charges will make my monthly budget unaffordable. I called Ferrell gas this morning and according to them these charges are legitimate and they will not remove any fuel from the tank and adjust the delivery to a minimum fill to lessen the expense. I simply cannot afford to pay this much for propane and I need to find some solution to this problem a.s.a.p. I am appealing to the Attorney General's office for any assistance I might be offered. Thank you.

Ferrellgas adjusted McKelin's bill to a price of \$4.02 per gallon (McKelins Complaint and rev Bill - Exhibit I)).

Todd R. of Essexville was charged \$5.59 per gallon for a total bill of \$3,926.40. To date, Todd has not received a price adjustment like that given to Paula D. or McKelin A. (Exhibit J – Todd R Complaint and Bill). Similarly, on January 25th, Tracy S. of Galesburg had her tank filled at \$5.95 per gallon, delivered by Ferrellgas acting under its d/b/a Best Propane. Ferrellgas responded to this complaint stating it would not adjust this price, which is well above the State-wide average per the LARA website. (Exhibit K - Tracy S Complaint and Ferrellgas Response).

15. Diana R. of Lapeer called Ferrellgas on January 24th requesting a fill and says price was not discussed in that conversation. The delivery was made on January 27<sup>th</sup> at \$5.69 per gallon, for a total bill of \$1907.62. In her complaint to the Attorney General, Diana compared her cost-per-gallon to that obtained by a co-worker from a competitor. In its response, Ferrellgas refused to engage in the comparison suggested both by Diana and MCL 445.903(1)(z), and again referenced the Conway wholesale market price. Ferrellgas attempted to justify this response by stating: "We do not know any details about Ms. Raymond's coworker's propane purchase, but propane companies do not share price information for legal and other reasons." (Exhibit L – Diana R's Complaint and Bill and Ferrellgas Response).

16. While Ferrellgas may be alluding to a practice guarding against concerns about price-fixing, there is no special veil of secrecy distinguishing retail propane prices from any other consumer good. Consumers like Diana R. and Jim W. (see ¶ 10, *infra*) had no difficulty in obtaining per-gallon price information

offered by competitors. Indeed, Parker's Propane maintains its price information on its website for anyone to access at <http://www.parkerspropane.com/pricing>. (Exhibit M). A review of this site shows Parker's Propane price this calendar year peaked at just below \$3.90 per gallon--a figure very much in line with the State-wide average published on the LARA website.<sup>1</sup> Of course, consumers leasing tanks from Ferrellgas may have been able to see the better pricing offered by competitors, but they were generally unable to take advantage of such pricing.

17. Like Jim W., the Attorney General is left wondering about the outcome for less proactive consumers. The Consumer Protection Act provides assurances to all Michigan consumers, not just those filing complaints. And inquiries into the nature of what has occurred here are appropriate because the Act guards against unfair trade practices, and provides no exception for Ferrellgas to the extent that scrutiny from its customers, the media and this Office might have subsequently caused it to retreat from its original bill.

#### **B. Billing Different than Phone Price**

18. Jeffrey G. placed a telephone order on January 23<sup>rd</sup> and, according to his complaint, believed his price was locked in on the day he called at \$3.89 per gallon. But when the propane was delivered by Ferrellgas on January 25<sup>th</sup>, he was charged \$6.16. In its response, Ferrellgas asserted that its representative would not have quoted a price to Jeffrey by telephone because of the market fluctuations

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<sup>1</sup> This is purely an example and should in no way be construed as an endorsement for Parker's Propane. The State-wide average reflects the fact that numerous propane retailers throughout the State continued to supply their customers with propane at prices significantly less than Ferrellgas.

at that time; however, Ferrellgas also conceded there seemed to have been a "miscommunication" and agreed to lower Jeffrey's price to \$4.02 per gallon.

(Response to Jeffrey G.'s Complaint - Exhibit N).

19. Much like Jeffrey G., John B. of Millington stated in his complaint to the Attorney General that he also locked in a price by placing a phone order—his order being placed on January 22<sup>nd</sup> (the day before Jeffrey G. called). According to John B., he paid for 200 gallons of propane by debit card while placing that phone order. (John B. Complaint – Exhibit O). But, when the propane was delivered on January 25<sup>th</sup>, Ferrellgas filled his tank with 200 gallons of propane and billed him for an additional \$547.00, being the difference between the debit card payment and the price on the delivery date. Unlike with its treatment of Jeffrey G., Ferrellgas responded to John B.'s complaint by standing by its billed price of \$5.61 per gallon—a figure that is much higher than the State-wide average for that week.

(Response to John B. Complaint – Exhibit P).

20. The experiences of John B. and Jeffrey G. are much like the experience of a consumer featured in a WNEM TV5/Saginaw News story about Ferrellgas. See <http://www.wnem.com/story/24560800/local-man-says-propane-company-burned-him>. In response to this story, Ferrellgas' spokesperson Scott Brockelmeyer responded by explaining as follows:

Scott Brockelmeyer: I am a representative of Ferrellgas, and I'm based at the company's corporate headquarters in Overland Park, Kansas. I am also the one who did not return the reporter's call yesterday afternoon. Please know we are not dodging media calls or avoiding answering questions about the current state of propane supply and pricing. That's the reason for my response on the WNEM Facebook

page today. The cause of the recent propane price spikes has been well documented by local and national media. A detailed explanation of the current situation can be found on Ferrellgas' website. Our site also includes a link to a more detailed explanation provided by the National Propane Gas Association. With regards to the allegations aired in last night's story, due to the extreme volatility in the price of propane, Ferrellgas has been informing Customers that the price we will charge for propane will be based on the market price on the day of delivery. This is a scenario that can work both ways for consumers, who will benefit as prices come down by paying a price per gallon that may be lower on the day of delivery than it was the day they contacted our office. We are taking the time to explain this to all Customers when they contact our office for delivery, and we appreciate the opportunity to clarify this matter here. Please note this does not affect the many Customers in the area who have entered into a price-protection agreement with us during the winter season. Ferrellgas continues to honor our agreements with these Customers. (Exhibit Q-1).

21. Although Ferrellgas saw fit to make this statement about its change in processing telephone orders on the Facebook page of a local television station in response to criticisms in a news story, it did not make any effort to include similar notice to all of its customers on its own Facebook page. (Ferrellgas Facebook page for November 4, 2013 – March 19, 2014 - Exhibit Q-2).

22. The absence of a clear public statement about the policy change also raises questions about when it began and ended (if it has ended). David K. of Chesaning placed a telephone order on January 20th, and was given a price of \$2.99 per gallon. But when the delivery was made four days later, he was charged \$3.70 per gallon. Ferrellgas responded by alluding to the fact that delivery was made at a time when the market price was hitting historic highs. (Response to David K.'s Complaint – Exhibit R). But even the Conway market pricing shown in Exhibit C makes doubtful these historic highs could have been foreseeable on January 20th when David K. placed his order.

23. Ferrellgas claims their representatives were advising consumers making telephone orders during late January that they were not locking in a price on the date of the call. The complaints of multiple consumers contradict this assertion about such oral representations. Moreover, when Ferrellgas accepted credit and debit card payments at a fixed price during such phone calls, the consumer's assertion appears facially valid. And, it is easy to see how a consumer could be confused when Ferrellgas' suddenly changed its policy with respect to such orders. In these circumstance, a subpoena compelling Ferrellgas to show what instructions it had communicated to its telephone representatives, and when, is appropriate. Moreover, the Attorney General seeks telephonic recordings of all consumer calls during this critical period, and the opportunity to depose two of these telephone representatives.

### **C. Locking Problems**

24. Nicholas S. of Midland complained to this Office because he was charged \$5.69 per gallon for a January 25th delivery totaling \$1,810.54. In his complaint, Nicholas explained he had locked his price with Ferrellgas through a telephone conversation last fall. In response, Ferrellgas denied that locking agreements could be accomplished orally:

Nicholas also alleges that he entered into a verbal agreement last September so that he would not have to worry about price increases.

Our company does not allow consumers to lock in the price of propane for the winter season using oral agreements, and has never entered into such an oral agreement with Nicholas. (Exhibit S – Ferrellgas Response to Nicholas S. Complaint).

This denial must be compared with the template text appearing on the locking contract supplied by Ms. Janet B. (f/k/a Janet M.) of Hartland (Exhibit T).

To activate your agreement, call Ferrellgas toll free at 1-866-617-8819 or visit [www.ferrellgas.com/FerrellSecure](http://www.ferrellgas.com/FerrellSecure). Simply key in your Agreement Number and the Verification Number listed to the right, and select your preferred option. Or, if you prefer, simply sign and mail the return slip below.

25. Ms. Janet B. was originally charged \$8.04 per gallon for a January 25<sup>th</sup> delivery totaling \$2,452.45. But unlike the treatment given to Nicholas S., Ferrellgas subsequently honored the locking price for Janet B. and adjusted her bill (Exhibit U).

26. Ferrellgas' differing treatment with these two consumers, combined with its response regarding Nicholas that is questionable in light of the apparent standard language on the locking contract creates probable cause to further investigate the method of locking and any anomalies occurring in this process. Consumers who believed they had locked prices were likely to have approached tank fills differently in late January had they known Ferrellgas was not honoring what the consumer believed to be an understanding over pricing.

## **Conclusion and Relief Sought**

27. The consumers complaints and responses described in this Petition are just a sampling of those received by this Office. And, without discovery, the Attorney General has no way of knowing how many similarly-situated consumers there may be in the State of Michigan. Further, investigation into the pricing and order processing practices of Ferrellgas is needed to determine to what extent, if any, the Michigan Consumer Protection Act has been violated. The facts to this point present probable cause to believe there are such violations, but the investigative process will also give Ferrellgas an opportunity to explain itself.

28. Included with this Petition is a proposed Order for Civil Investigative Subpoenas and three related Subpoenas. The Attorney General seeks to depose individuals at each step of the consumer relations process in order to ensure that a complete and fair understanding of Ferrellgas' pricing and consumer relations practices are obtained. This includes the depositions of specified drivers (2), telephone customer service representatives (2), on-site office managers (3), and the corporate representative(s) of Ferrellgas' choosing. The Attorney General also seeks the audio recordings of telephone orders placed by Michigan customers from January 20, 2014, through February 4, 2014, as well as documents related to the issues described above and more fully elaborated within the subpoena itself. Any hardship that may exist for Ferrellgas in complying with this subpoena pales in comparison to that experienced by its customers in recent months.

Accordingly, the Attorney General respectfully requests entry of the enclosed Order for Civil Investigative Subpoena and an authorization of the Subpoena by this Honorable Court.

Respectfully submitted,

Bill Schuette  
Attorney General

A handwritten signature in black ink, appearing to read "Darrin F. Fowler", written in a cursive style.

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