

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

BILL SCHUETTE, ATTORNEY GENERAL OF
THE STATE OF MICHIGAN, *ex rel*
The People of the STATE OF MICHIGAN,

Petitioner,

v

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

Respondent.

No. 14 - 1070 - CP

HON. JUDGE JAMES S. JAMO

ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE

Bill Schuette
Attorney General

Joseph E. Potchen (P49501)
Darrin Fowler (P53464)
Assistant Attorney General
Michigan Dep't of Attorney General
Corporate Oversight Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-1160
Fax: (517) 335-6755

Date Filed: September 18, 2014

ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE

Bill Schuette, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan and Ferrellgas, L.P. (d/b/a Best Propane) and its general partner, Ferrellgas, Inc. (collectively "Ferrellgas"), hereby execute and agree to be bound by this Assurance of Voluntary Compliance and Discontinuance ("Assurance").

This Assurance concerns the resolution of potentially alleged violations of the Michigan Consumer Protection Act, 1976 PA 331, as amended; MCL 445.901 et seq. (MCPA). Respondent agrees not to contest any terms of this Assurance.

The parties agree that the terms of this Assurance are fair, reasonable, and consistent with the public interest and the doctrines of applicable law. The parties further agree that the entry into this Assurance by Ferrellgas is not an admission with respect to any legal or factual issue dealt with in this Assurance.

THEREFORE, the parties agree as follows:

I. Jurisdiction

1.1 The Department of Attorney General ("the Department") has jurisdiction over the subject matter of this Assurance pursuant to MCL 445.905 and 445.910. Respondent waives all objections and defenses that it may have as to the jurisdiction of the Department over the matters covered by this Assurance.

II. Parties Bound

2.1 This Assurance binds Ferrellgas, whether acting through associates, principals, officers, directors, employees, representatives, successors or assigns, or through any other subsidiary, corporation, assumed name or business entity. Ferrellgas is responsible for compliance with the terms of this Assurance, and must ensure that all employees, agents and representatives comply with the terms of this Assurance.

III. Definitions

3.1 "Assurance" means this Assurance of Voluntary Compliance and Discontinuance.

3.2 "COD" means the Michigan Department of Attorney General, Corporate Oversight Division.

3.3 "Ferrellgas" means Ferrellgas, L.P. (d/b/a Best Propane) and its general partner, Ferrellgas, Inc. (collectively "Ferrellgas") whether doing business under any assumed name, or acting through its principals, employees, or other business entity, and whether doing business at any location in the state of Michigan.

3.4 "Respondent" means Ferrellgas as defined above.

3.5 "Parties" means COD and Ferrellgas, collectively.

3.6 All other terms shall have the meaning specifically defined in the MCPA.

IV. Background and Statement of Purpose

4.1 For citizens throughout Michigan, the winter of 2013-2014 brought prolonged bouts of freezing temperatures unlike any other in living memory. Many industry participants have indicated that a record corn harvest that was wetter and later than normal, an unusually cold and early winter, record propane exports that reduced domestic propane inventories, and a shutdown of the Cochin Pipeline used to transport propane to U.S. storage facilities, all converged to deplete Midwest propane inventories throughout the winter. By late January, many propane retailers indicated they were unable to quickly and easily bring sufficient low-cost propane to the region to meet the demand. As a result, in January and February, 2014, the wholesale price of propane reached unprecedented highs, and many Michigan consumers who rely on propane to heat their homes filed complaints with the Michigan Attorney General, regarding the price they were charged for propane. The Attorney General consequently

initiated an investigation into whether certain propane companies, including Ferrellgas, violated one or more provisions of the MCPA during the relevant timeframe, approximately January/February 2014.

4.2 In furtherance of the investigation, the Attorney General issued multiple subpoenas seeking the production of documents and the testimony of various witnesses, including drivers, customer service representatives, and management-level employees of Ferrellgas. Ferrellgas cooperated with the Attorney General's investigation and produced documents and witnesses for examination. During the course of this investigation, the Parties discovered that certain billing and/or pricing errors occurred that adversely impacted some Ferrellgas residential customers.

4.3 In entering into the Assurance, the mutual objective of the parties is to resolve, without litigation, COD's potential claims under the Michigan Consumer Protection Act for preliminary and permanent injunctive relief, as well as the payment of damages, civil penalties, and reimbursement of the Department's costs and expenses related to the investigation. The entry into this Assurance by Ferrellgas is not an admission of liability with respect to any issue addressed in this Assurance nor is it an admission of any factual allegations or legal conclusions stated or implied herein or in the Attorney General's Ex Parte Petition for Subpoenas dated March 19, 2014, and filed in the Saginaw County Circuit Court (the "Petition").

V. Implementation of Compliance Measures

5.1 To the extent that Respondent has engaged in any unfair, deceptive and unconscionable business and sales practices, Respondent shall immediately cease and desist such practices.

5.2 Ferrellgas has implemented heightened training of Michigan customer-service representatives to ensure that Michigan residential customers who order propane in the future

will not be similarly negatively impacted by the errors referenced in this Assurance. Ferrellgas will continue to implement appropriate training, as necessary, to ensure compliance with the Michigan Consumer Protection Act and this Assurance.

5.3 Upon written request from the Corporate Oversight Division, Respondent will produce additional records for purposes of monitoring compliance with this Assurance within 10 business days of receipt of such request. This obligation remains in effect for two years.

VI. Payments

6.1 A limited number of Michigan residential customers of Ferrellgas received deliveries on January 25, 2014, that were incorrectly priced and billed. Ferrellgas hereby verifies that all customers who were subject to the billing error for propane deliveries on January 25, 2014 have been credited for any erroneous charges posted to their accounts. Ferrellgas hereby verifies that all customer accounts affected by this error have been corrected and has previously provided the COD with documentation substantiating the same.

6.2 Some Ferrellgas Michigan residential customers placed telephone and internet will-call orders for propane from January 12, 2014 through January 22, 2014, but did not receive delivery until January 23, 2014 or later. These are customers who ordered propane immediately before the January 2014 spike in propane prices but whose purchase price was not locked in by the customer service representative who entered their order in accord with Ferrellgas' policy to lock in the price for such customers at the time of the order. Ferrellgas will reimburse all of the customers who received a higher price by issuing an account credit or refund to these customers in the amount of the difference between the price that should have been secured for the customer at the time of the order and the final invoice price (net of credits applied or refunds already made). Additionally, in further recognition of the impact that this error may have had on its customers, especially due to the extreme and unprecedented

conditions of the last winter, Ferrellgas will also credit these customers with an additional amount equal to one-half of the amount described in the preceding sentence.

Each customer receiving a reimbursement under this section will receive a minimum credit or refund of \$10.00.

6.3 Ferrellgas will reimburse customers, as required by paragraph 6.2, no later than October 15, 2014. For all current Ferrellgas customers, the reimbursement will be in the form of an account credit. Any person who is no longer a Ferrellgas customer as of the date of this Assurance shall receive a credit to any remaining balance on his or her Ferrellgas account and to the extent the reimbursement exceeds any remaining balance credited on that customer's account, he or she will receive a check for the remaining amount sent by mail through the United States Postal Service. No later than October 15, 2014, Ferrellgas will provide COD with verified documentation substantiating that the reimbursements required by paragraph 6.2 have been made in accordance with Ferrellgas' standard accounting procedures.

6.4 Both the Attorney General and Ferrellgas recognize that this past winter was very challenging for many propane customers throughout Michigan. Historically low temperatures and other supply challenges resulted in propane prices higher than customers have seen in recent years. Consequently, recognizing the hardships faced by many propane users this past winter, Ferrellgas will issue an account credit or refund to its customers who received deliveries during the period where wholesale prices were highest, and whose final invoice price (net of credits applied or refunds already made) was greater than the amounts specified herein. These customers are further identified as follows:

- Residential Customers receiving deliveries from January 24 through January 30, and whose final invoice price was greater than \$5.699, will be credited the difference between the final invoice price and \$5.699 per gallon.

- Residential Customers receiving deliveries from January 31 through February 6, and whose final invoice price was greater than \$5.199 per gallon, will be credited the difference between the final invoice price and \$5.199 per gallon.
- Residential Customers receiving deliveries from February 7 through February 13, and whose final invoice price was greater than \$4.899 per gallon, will be credited the difference between the final invoice price and \$4.899 per gallon.
- Residential Customers receiving deliveries from February 14 through February 20, and whose final invoice price was greater than \$4.450 per gallon, will be credited the difference between the final invoice price and \$4.450 per gallon.

Additionally, in further recognition of impact of the price of propane on its customers, especially due to the extreme and unprecedented conditions of the last winter, Ferrellgas will also credit these customers with an additional amount equal to one-half of the amount described in this section.

Each customer receiving a reimbursement under this section will receive a minimum credit or refund of \$10.00.

6.5 Ferrellgas will reimburse customers, as required by paragraph 6.4 no later than October 15, 2014. For all current Ferrellgas customers, the reimbursement will be in the form of an account credit. Any person who is no longer a Ferrellgas customer as of the date of this Assurance shall receive a credit to any remaining balance on his or her Ferrellgas account and to the extent the reimbursement exceeds any remaining balance credited on that customer's account, he or she will receive a check for the remaining amount sent by mail through the United States Postal Service. No later than October 15, 2014, Ferrellgas will provide COD with verified documentation substantiating that the credits required by paragraph 6.4 have been provided to the customers in accordance with Ferrellgas' standard accounting procedures.

6.6 A number of Ferrellgas customers filed complaints with the Attorney General regarding billing practices and the costs of propane. Ferrellgas has cooperated with the Attorney General in resolving many of these complaints, even in circumstances where Ferrellgas did not

believe the complaint was well founded. To the extent complaints filed with the Attorney General have not been fully resolved by paragraphs 6.1, 6.2 & 6.4 of this Assurance, Ferrellgas agrees to reimburse those customers identified on the list provided by the Attorney General the amount of \$100.00 each no later than October 15, 2014. This payment will be in addition to any relief these customers may be getting under paragraphs 6.1, 6.2 or 6.4 and in addition to any account credits or refunds Ferrellgas may have provided these customers before entering into this Assurance. For all current Ferrellgas customers, the reimbursement will be in the form of an account credit. Any person who is no longer a Ferrellgas customer as of the date of this Assurance shall receive a credit to any remaining balance on his or her Ferrellgas account and to the extent the reimbursement exceeds any remaining balance credited on that customer's account, he or she will receive a check for the remaining amount sent by mail through the United States Postal Service. No later than October 15, 2014, Ferrellgas will provide COD with verified documentation substantiating that the credits required by this paragraph have been provided to the customers in accordance with Ferrellgas' standard accounting procedures.

6.7 Within three (3) business days after the Effective Date of this Assurance, Respondents shall pay to the State of Michigan, Michigan Department of Attorney General, the sum of \$5,000.00 as reimbursement for the costs of investigation.

6.8 The payment required by paragraph 6.7 shall be made by check payable to the "State of Michigan" and remitted to Joseph Potchen, Division Chief, Corporate Oversight Division, PO Box 30755, Lansing, MI 48909.

VII. Notices

7.1 All notices, deliveries or other communications required or permitted shall be in writing and shall be deemed given when sent by facsimile transmission or first class mail addressed as follows:

If to COD:

Corporate Oversight Division
Department of Attorney General
Attn: Joseph Potchen, Division Chief
P.O. Box 30755
Lansing, MI 48909

If to Respondent:

Ferrellgas, L.P.
Attn: Legal Department
One Liberty Plaza
Liberty, MO 64068

7.2 Respondent shall promptly notify COD, in writing, of any change of address or person to whom notice hereunder is to be sent.

VIII. General Provisions

8.1 This Assurance is binding upon, inures to the benefit of, and applies to the parties and their successors-in-interest. This Assurance does not bind any Division of the Michigan Department of the Attorney General other than COD, or other agencies, boards, commissions or offices of the State of Michigan.

8.2 This Assurance does not affect the rights of any private party to pursue any available remedy or remedies pursuant to applicable law. Further, this Assurance does not create any private right or cause of action to any third party.

8.3 This Assurance does not constitute an approval by the Attorney General of any of Respondent's sales practices and Respondent must not make any representation to the contrary.

8.4 No change or modification of this Assurance is valid unless in writing and signed by all parties.

8.5 Any party to this Assurance may apply to the 30th Judicial Circuit Court, County of Ingham, State of Michigan, which retains jurisdiction, for such further orders as may

be necessary or appropriate for the construction or modification of any of the provisions hereof, or to enforce compliance herewith.

8.6 Unless a temporary restraining order is sought, COD will make reasonable efforts to provide written notice in the event that COD believes Respondent to be in noncompliance with any provision of this Assurance, setting forth the basis for such belief. Notwithstanding the foregoing, such notice shall not be deemed to be a jurisdictional prerequisite to institution of any enforcement action.

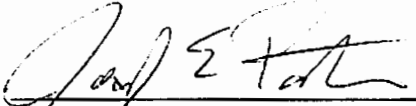
IX. Signatories

9.1 Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Assurance and to legally bind such party to the terms and conditions of this Assurance.

X. Effective Date


10.1 The effective date of this Assurance is the date it is filed with the Ingham County Circuit Court.

**Bill Schuette, Attorney General,
on behalf of the People of the State of Michigan**

Dated: 9/18/14 By: 

Joseph E. Potchen (P49501)
Darrin Fowler (P53464)
Assistant Attorney General
Corporate Oversight Division
P.O. Box 30213
Lansing, MI 48909

Ferrellgas, L.P.

Dated: 9-17-14 By: 

Trent Hampton
Senior Vice President
Legal & Risk
One Liberty Plaza
Liberty, MO 64068