

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 2ND JUDICIAL CIRCUIT
BERRIEN COUNTY

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

Plaintiff,

No. 14 - 0248 - CP

HON. JOHN E. DEWANE

v

AMERIGAS PARTNERS, L.P., AND
AMERIGAS PROPANE, L.P., D/B/A
HOLTON'S LP AND RURAL GAS &
APPLIANCE,

Defendants.

SETTLEMENT AGREEMENT

Bill Schuette, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan ("Attorney General") and AmeriGas Propane, L.P. and its general partner, AmeriGas Propane, Inc. (collectively "AmeriGas"), for valuable consideration, hereby execute and agree to be bound by this Settlement Agreement ("Agreement").

This Agreement is entered into for the purpose of resolving all matters, arising from or related to the facts alleged in *Schuette v AmeriGas*, Berrien County Circuit Court No. 14-0248-CP, including, but not limited to, alleged violations of the Michigan Consumer Protection Act, 1976 PA 331, as amended; MCL 445.901 et seq. (MCPA).

The parties agree that the terms of this Agreement are fair, reasonable, and consistent with the public interest and the doctrines of applicable law. The

parties further agree that the entry into this Agreement by AmeriGas is not an admission with respect to any legal or factual issue dealt with in this Agreement or the above lawsuit.

THEREFORE, the parties agree as follows:

I. Jurisdiction

1.1 The Attorney General has jurisdiction over the subject matter of this Agreement pursuant to MCL 445.905 and 445.910. AmeriGas waives all objections and defenses that it may have as to the jurisdiction of the Attorney General in this matter.

II. Parties Bound

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

III. Definitions

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

3.2 "AmeriGas" means AmeriGas Propane, L.P. and its general partner, AmeriGas Propane, Inc. (collectively "AmeriGas") 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.

3.3 "Parties" means the Attorney General and AmeriGas, collectively.

3.4 “Lawsuit” means *Schuette v AmeriGas*, Berrien County Circuit Court No. 14-0248-CP, filed September 18, 2014.

3.5 “2013-2014 heating season” means October 1, 2013 through March 31, 2014.

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, collectively depleted 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 AmeriGas, violated one or more provisions of the MCPA during the 2013-2014 heating season

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 customer relations representatives and management-level employees of AmeriGas. AmeriGas cooperated with the Attorney General's investigation and produced documents and witnesses for examination. During the course of this investigation, the Attorney General discovered what appeared to be billing and/or pricing errors that adversely impacted some AmeriGas residential customers.

4.3 In entering into the Agreement, the mutual objective of the parties is to resolve the Attorney General's claims brought in the Lawsuit 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 Agreement by AmeriGas is not an admission of liability with respect to any issue addressed in this Agreement nor is it an admission of any factual allegations or legal conclusions stated or implied in the Lawsuit or in the Attorney General's Ex Parte Petition for Subpoenas dated May 19, 2014, and filed in the Marquette County Circuit Court (the "Petition").

V. Implementation of Compliance Measures

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

5.2 AmeriGas 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 alleged errors referenced in this Agreement or the Lawsuit. AmeriGas will

continue to implement appropriate training, as necessary, to ensure compliance with the Michigan Consumer Protection Act and this Agreement.

5.3 AmeriGas shall ensure that Michigan residential customers receiving propane deliveries from its locations in other states are charged per gallon rates comparable to rates charged to similarly situated Michigan residential customers receiving deliveries from its Michigan locations.

5.4 Upon written request from the COD, AmeriGas will produce additional records for purposes of monitoring compliance with this Agreement within 10 business days of receipt of such request. This obligation remains in effect for two years.

VI. Payments

6.1 AmeriGas offers its customers the option to enroll in a Guaranteed Price Protection ("GPP") program to lock in a price per gallon each year. This past winter, the Department received some complaints from AmeriGas customers that they did not receive the locked-in price per gallon as outlined in their GPP contract. AmeriGas conducted an investigation and found that a limited number of customer accounts were billed incorrectly. To date, some of these customer accounts have been corrected, and some have not been. For those customers whose accounts were not corrected prior to the filing of the Lawsuit, AmeriGas will reimburse those customers the amount incorrectly billed; and due to the extreme and unprecedented conditions of the last winter, AmeriGas will also credit those customers with an additional amount equal to one-half of the amount of the resolved incorrect billing.

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

6.2 Some AmeriGas Michigan residential customers placed telephone will-call orders for propane which was delivered between January 14, 2014 and January 28, 2014. Despite being quoted a price per gallon on the phone, certain customers were charged a price per gallon on the date of delivery as opposed to the date of order. During this time period, the industry experienced a significant spike in the cost of propane. Subsequently, some customers received prices higher than what was quoted on the phone.

In order to rectify this issue, AmeriGas has modified its process so that a customer's price is locked-in at the time of order as opposed to the date of delivery. With regard to every customer placing an order during this time period who was charged a higher price upon delivery than would have applied had the customer been billed the price applicable on the date of the order, AmeriGas will reimburse those customers by issuing an account credit or refund in the amount of the difference between the market price at the time of the order and the final invoice price (net of credits applied or refunds already made.) Additionally, due to the extreme and unprecedented conditions of the last winter, AmeriGas 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 paragraph will receive a minimum credit or refund of \$10.00.

6.3 AmeriGas will reimburse customers, as required by paragraph 6.1 and 6.2, no later than November 1, 2014. For all current AmeriGas customers, the reimbursement will be in the form of an account credit. Any person who is no longer an AmeriGas customer as of the date of this Agreement shall receive a credit to any remaining balance on his or her AmeriGas account and to the extent the reimbursement exceeds any remaining outstanding balance owed 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 November 1, 2014, AmeriGas will provide COD with verified documentation substantiating that the credits/reimbursements required by paragraphs 6.1 and 6.2 have been completed.

6.4 Both the Attorney General and AmeriGas 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, AmeriGas will issue an account credit or refund to all its Michigan residential customers who received deliveries during January and February 2014, and whose final invoice price was greater than the amounts specified herein. This account credit or refund will be made in addition to any credits already applied or refunds already made by AmeriGas. These customers are further identified as follows:

- Residential Customers receiving deliveries from January 1 through January 5, and whose final invoice price was greater than \$ 3.12, will be credited the difference between the final invoice price and \$ 3.12 per gallon.

- Residential Customers receiving deliveries from January 6 through January 12, and whose final invoice price was greater than \$3.23, will be credited the difference between the final invoice price and \$3.23 per gallon.
- Residential Customers receiving deliveries from January 13 through January 19, and whose final invoice price was greater than \$3.10, will be credited the difference between the final invoice price and \$3.10 per gallon.
- Residential Customers receiving deliveries from January 20 through January 26, and whose final invoice price was greater than \$3.45, will be credited the difference between the final invoice price and \$3.45 per gallon.
- Residential Customers receiving deliveries from January 27 through February 2, and whose final invoice price was greater than \$5.70 per gallon, will be credited the difference between the final invoice price and \$5.70 per gallon.
- Residential Customers receiving deliveries from February 3 through February 5, and whose final invoice price was greater than \$5.20 per gallon, will be credited the difference between the final invoice price and \$5.20 per gallon.
- Residential Customers receiving deliveries from February 6 through February 9, and whose final invoice price was greater than \$4.75 per gallon, will be credited the difference between the final invoice price and \$4.75 per gallon.
- Residential Customers receiving deliveries from February 10 through February 16, and whose final invoice price was greater than \$4.90 per gallon, will be credited the difference between the final invoice price and \$4.90 per gallon.
- Residential Customers receiving deliveries from February 17 through February 23, and whose final invoice price was greater than \$4.54 per gallon, will be credited the difference between the final invoice price and \$4.54 per gallon.
- Residential Customers receiving deliveries from February 24 through February 28, and whose final invoice price was greater than \$4.50 per gallon, will be credited the difference between the final invoice price and \$4.50 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, AmeriGas will also credit these customers with an additional amount equal to one-half of the amount described in this paragraph.

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

6.5 AmeriGas will reimburse customers, as required by paragraph 6.4 no later than November 1, 2014. For all current AmeriGas customers, the reimbursement will be in the form of an account credit. Any person who is no longer a AmeriGas customer as of the date of this Agreement shall receive a credit to any remaining balance on his or her AmeriGas account and to the extent the reimbursement exceeds any remaining outstanding balance owed 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 November 1, 2014, AmeriGas will provide COD with verified documentation substantiating that the credits/reimbursements required by paragraph 6.4 have been completed.

6.6 To the extent any consumer is entitled to a reimbursement under more than one of the above paragraphs 6.1, 6.2, or 6.4, that customer shall be compensated under each paragraph.

6.7 To further aid Michigan consumers, AmeriGas will offer a fixed-price contract that extends to May 31, 2015 to all current residential customers not currently enrolled in one of AmeriGas' Guaranteed Price Protection programs. The customers offered the fixed-price contract will have 30 days from the date of mailing

of the offer to accept the fixed-price contract. AmeriGas will waive the lock in fee for this fixed-price contract. Additionally, AmeriGas will offer this locked-in offer at a price at discount off its lowest current yearly residential lock in program for customers served by that store location from the date of this Agreement until the 30 days for acceptance expires.

6.8 This Agreement will not affect other fixed-price contracts AmeriGas has entered into with its customers.

6.9 A limited number of customers filed complaints against AmeriGas with the Attorney General during and after the 2013-2014 heating season. AmeriGas has cooperated with the Attorney General in resolving many of these complaints, even in circumstances where AmeriGas did not believe the complaint was well founded. AmeriGas agrees to compensate up to 100 of these complainants, as identified by the Corporate Oversight Division, with \$100.00 each no later than November 1, 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 AmeriGas may have provided these customers before entering into this Agreement. For all current AmeriGas customers, the reimbursement will be in the form of an account credit. Any person who is no longer a AmeriGas customer as of the date of this Assurance shall receive a credit to any remaining balance on his or her AmeriGas account and to the extent the reimbursement exceeds any remaining outstanding balance owed 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 November 1, 2014, AmeriGas will provide

COD with verified documentation substantiating that the credits required by this paragraph have been provided to the customers.

6.10 Within three (3) business days after the Effective Date of this Agreement, AmeriGas shall pay to the State of Michigan, Michigan Department of Attorney General, the sum of \$10,000.00 as reimbursement for the costs of investigation and filing the complaint.

6.11 The payment required by paragraph 6.10 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. Release and Dismissal

7.1 In consideration of the foregoing, subject to the limitations in paragraph 7.2, the Attorney General forever releases and absolutely and forever discharges AmeriGas of and from any and all claims or causes of action in law or in equity based directly or indirectly on the Attorney General's consumer protection investigation related to propane pricing in the 2013-2014 heating season, including the alleged acts, failures to act, omissions, misrepresentations, facts, events, transactions, statements, occurrences or other subject matter which either were or could have been set forth, alleged, embraced, complained of or otherwise referred to in the Lawsuit or the Petition.

This release does not release any claims against any entity other than AmeriGas.

7.2 Notwithstanding the foregoing, the following claims are not released:

- A. Securities and securitization claims based on the offer, sale, or purchase of securities, or other conduct in connection with investors or purchasers in or of securities;
- B. Claims based on AmeriGas' obligations created by this Agreement;
- C. Tax claims;
- D. Criminal enforcement of state criminal laws;
- E. Claims asserted or that may be asserted by third parties, including individual consumers.

7.3 Within three (3) business days after the Effective Date of this Agreement, the Attorney General will voluntarily dismiss with prejudice the Complaint against AmeriGas.

VIII. Notices

8.1 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 AmeriGas:

AmeriGas Propane, L.P.
Attn: General Counsel
460 N. Gulph Road
King of Prussia, PA 19460

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

IX. General Provisions

9.1 This Agreement is binding upon, inures to the benefit of, and applies to the parties and their successors-in-interest. This Agreement does not bind other agencies, boards, commissions or offices of the State of Michigan or any Divisions of the Attorney General's office that may represent such entities.

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

9.3 This Agreement does not constitute an approval by the Attorney General of any of AmeriGas' sales practices and AmeriGas must not make any representation to the contrary.

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

9.5 Any party to this Agreement may apply to the 2nd Judicial Circuit Court, County of Berrien, 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.

9.6 Unless a temporary restraining order is sought, COD will make reasonable efforts to provide written notice in the event that COD believes AmeriGas to be in noncompliance with any provision of this Agreement, 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.

X. Signatories

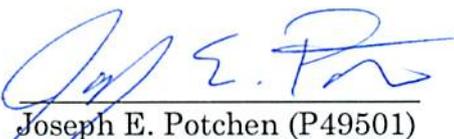
10.1 Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Agreement and to legally bind such party to the terms and conditions of this Agreement.

XI. Effective Date

11.1 This Agreement is effective on the date it is signed by both parties.

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

Dated: 10/16/14

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

**AmeriGas Propane, L.P.
By: AmeriGas Propane, Inc. its general
partner**

Dated: 10-15-14

By: 
Steve Samuel
Vice President and General Counsel
AmeriGas Propane, L.P.
460 N. Gulph Road
King of Prussia, PA 19406