

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30736
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

February 12, 2021

VIA U.S. MAIL AND ELECTRONIC SERVICE

Ferrellgas, LP
c/o Jordan Burns
One Liberty Plaza
Liberty, MO 64068

Ferrellgas, LP
c/o The Corporation Company
40600 Ann Arbor Rd., E., Ste. 201
Plymouth, MI 48170

Re: *Notice of Intended Action*
AG No. 2021-0311649-A

Dear Mr. Jordan Burns:

This letter serves as a notice of intended action in accordance with MCL 445.905(2), and to give you an opportunity to immediately cease and desist from engaging in the unlawful business practices described below.

As background, this Office is responsible for enforcement of the Michigan Consumer Protection Act, MCL 445.901 *et seq.* In just the past two and a half weeks, this Office has received complaints from six of your customers who were either out of propane, or nearly so. These consumers have described to us difficulties in contacting your representatives by telephone, protracted delivery periods following the placement of orders, and an inability to get an expedited fill to resolve situations where their homes were without heat in January or February of this year.

During our conversations and email correspondence, Ferrellgas, LP has denied any systemic issue. You have pointed to a combination of the cold weather and customers waiting too long to place orders. While the latter issue was certainly true of at least one complainant, it is not true of all.

With respect to one of the consumers about whom we communicated, you stated: "She is a will-call pay-in-advance customer that called in on 1/28 at 15% in her tank. She was placed in our regular delivery window which is 10 business days (window runs through February 11). She was routed for delivery on February 5, but the driver hit his Hours of Service for the day before he could make her stop. She spoke to Ferrellgas on February 6 and the call was disconnected, but she was routed for delivery today [February 8, 2021]."

The ten-business-day requirement you have expressed is simply not consistent with what Michigan consumers are told through your website. At the FAQ tab, Ferrellgas LP's website tells consumers to call no less than five business days before the date propane is needed:

2/9/2021

Frequently Asked Propane Questions & Answers | Ferrellgas

When should I schedule my Will Call delivery?

If you are a Will Call customer, you should schedule a delivery no less than five business days prior to the date you anticipate needing propane, or when your tank reaches 30 percent. This gives us plenty of time to schedule your next delivery.

But then, in the customer agreement included on the website, they are told to call no less than seven business days before the date propane is needed:

a. Will Call. If you have chosen Will Call, we will not deliver Propane until you call and request delivery. You should call not less than seven (7) business days prior to the date you anticipate needing Propane. If you call with less than seven (7) business days notice, we may not be able to meet your schedule. We may also impose additional delivery charges (as set forth on the Current Charges List), and you may incur additional costs associated with retesting your System. We suggest that you call us when your Tank reaches thirty percent (30%) capacity.

The customer agreement also tells consumers expedited deliveries are available with payment of special fees. We could find no reference to the ten-business-day requirement referenced in your recent communications with this Office. And with respect to at least some of the consumers about whom we have communicated, it is clear Ferrellgas, LP is not meeting the delivery timing advertised on its website or told to consumers at the time the order is placed.

Some of the consumers who complained to our Office spent multiple days in homes without heat and without appropriate attention from Ferrellgas, LP. This is unacceptable, and it is dangerous. While we appreciate greatly that you scrambled to get deliveries to these customers the same day upon which we shared recent complaints with you, this Office is deeply concerned about what has caused these situations and ensuring future consumers are not impacted by it.

While Ferrellgas, LP denies a systemic issue, the facts suggest otherwise. In 2020, our Office received a total of just two complaints against Ferrellgas, LP—just a third of the number we have seen in less than three weeks. The Better Business Bureau (BBB) has shared with us two more similar complaints it has received this winter, and we await a more complete BBB report. And we observed the situation

being described by the consumers complaining to us was also the subject of a recent news story out of Grand Rapids.¹

The circumstances described above give us probable cause to believe the following provisions of the MCPA are being violated:

(q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within a reasonable time, if the merchant knows or has reason to know it will not be so provided.

(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.

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

In addition, we observe that Ferrellgas LP's customer agreement appears to reserve unto the company discretion to not reimburse consumers who return propane upon service termination. See Customer Agreement, ¶ V.5. The denial of such reimbursements would be an unfair trade practice under MCL 445.903(1)(u). We have not received any complaints from consumers alleging Ferrellgas, LP has failed to provide such reimbursements. But we raise this issue now since the above circumstances necessitate attention.

This Office has already gathered evidence supporting the concerns described above, and will continue doing so in the days ahead. Such evidence may be used either in support of a petition for investigative subpoenas under MCL 445.907, or a lawsuit commenced under MCL 445.905 and MCL 445.910. Ferrellgas, LP now has the opportunity to provide this Office with assurances in accord with MCL 445.905. I am available to meet with you by phone conference to further discuss the expectations in this regard. Be advised that changing your website to require that orders be placed at least ten business days or more in order to conform to what is happening on the ground this winter will not be acceptable. Modifying your marketing to match new limitations to the service you are capable of providing

¹ Burney, Whitney, *Delays in propane deliveries leave residents without heat*, WoodTV, (updated: Jan 27, 2021, 6:28 pm) available at <https://www.woodtv.com/news/southwest-michigan/delays-in-propane-deliveries-leave-residents-without-heat/>

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would be cold comfort to consumers who are left without heat in reliance upon your representations to date.

I look forward to an opportunity to discuss with you further.

Sincerely,

A handwritten signature in blue ink that reads "Darrin F. Fowler". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Darrin F. Fowler
Assistant Attorney General
Corporate Oversight Division
(517) 335-7632

FowlerD1@michigan.gov

DFP/cms