

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 25TH JUDICIAL CIRCUIT
MARQUETTE COUNTY

BILL SCHUETTE, ATTORNEY GENERAL
OF THE STATE OF MICHIGAN,

Petitioner,

No.

v

HON.

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

Respondent.

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EX PARTE PETITION FOR SUBPOENAS

Introduction

Even as the temperatures begin to rise, many Michigan families fear that lingering propane bills will have a chilling effect on their budgets for many months to come.

This winter, high demand on the propane industry to maintain a consistent supply was 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 a competing 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 AmeriGas Partners, L.P. is a publically-traded limited partnership primarily doing business through its subsidiary, AmeriGas Propane, L.P. This subsidiary, AmeriGas Propane, L.P., is authorized to transact business in Michigan under the name AmeriGas Propane, a Delaware Limited Partnership. In addition to its AmeriGas brand, Respondent does business in Michigan under the assumed names of Holton's LP Gas and Rural Gas & Appliance. Within this Petition, Respondents shall be collectively referred to as "AmeriGas." (LARA documents and SEC Form 10-K¹ – Exhibit A).

4. On the homepage of its website, AmeriGas identifies itself as "the nation's largest propane company," claiming it serves "over 2 million . . . customers from over 2,500 distribution locations in all 50 states." Under the "About Us" tab,

¹ The entire Form 10-K is available online at <http://www.sec.gov/Archives/edgar/data/932628/000093262813000017/apu201310k.htm>

AmeriGas boasts that it uses “the size of [its] organization to [its customers] advantage every day, retaining [its] focus on friendliness and personal attention found only in a ‘corner store.’”

According to the most recent available financial data, AmeriGas has approximately 92.86 million shares outstanding and a market capitalization of over \$4 Billion (Website materials and SEC Form 10-Q² – Exhibit B).

5. Based on an internet search, it appears AmeriGas does business at more than fifty locations throughout Michigan. Upon information and belief, this Court has venue over this Petition pursuant to MCL 445.907(1) because AmeriGas conducts business in Marquette County. Specifically, AmeriGas maintains an office located at 250 US Highway 41 E in Negaumee. AmeriGas also delivers propane to residents throughout Marquette County, including some of the consumers identified 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.

² The entire Form 10-Q is available online at http://investors.amerigas.com/investor-relations/sec-filings/sec_filing_details/default.aspx?FilingId=9759158

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 AmeriGas 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 44 complaints by consumers alleging misconduct by AmeriGas, Holton's LP, and Rural Gas.

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 AmeriGas 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 AmeriGas responses as examples.

9. The Attorney General seeks subpoenas to gain more information from AmeriGas about these matters because the information known at this point creates concern that AmeriGas 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 AmeriGas 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 AmeriGas' 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:

10/28/13	\$2.08
11/4/13	\$2.10
11/11/13	\$2.11
11/18/13	\$2.16
11/25/13	\$2.17
12/2/13	\$2.21
12/9/13	\$2.25
12/16/13	\$2.34
12/23/13	\$2.43
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

This Office has received numerous complaints from consumers charged amounts grossly in excess of these weekly averages.

12. Based on media reports in January, propane users throughout the country knew they could expect higher costs in having their tanks filled than they were used to. And, they are willing to pay a fair price. But AmeriGas' billing to Michael W of Edwardsburg that totaled \$3,190.23, was so high that it prompted him to call other propane companies in his area to make sure he was not being taken advantage of. As Mr. W explained to the Attorney General:

We had our propane tank filled on 1-28-2014. we got the bill dated 1-30-2104. They charged us \$6.909 a gallon. When we called other local propane companies and asked their price for propane as of 1-30-2014 the prices were as follows: Go Go Gas was \$4.19 Franger Gas was \$4.29 When we spoke with Amerigas they said that was the correct price and we would just have to pay it. We have no problem paying a fair price and we expected to pay a higher rate, just not \$2.70 over what the other companies are charging. Could you please look into this? [Michael W complaint – Exhibit D-1].

The per-gallon price described here was nearly twice the State-wide average for that week, and appears to be grossly in excess of the price Mr. W learned his neighbors were receiving from AmeriGas competitors.

13. AmeriGas responded to this complaint by admitting it had charged Michael W \$6.91 per gallon for the delivery. But, AmeriGas added that "having investigated the allegations" it lowered Michael's price to \$6 per gallon. AmeriGas then concluded its response by stating that it "reasonably believes this matter has been resolved." (Exhibit D-2).

The Attorney General does not share AmeriGas' sentiment. Lowering an inexplicably high propane bill to one a cost that is still grossly in excess of the statewide average does not mean that this customer was not gouged. It only means the extent to which he was gouged has been reduced. Further, the validation of Michael W's original complaint price begs the question about how many other AmeriGas customers were charged a comparable price.

Similarly, Karen P of Skandia was billed \$5.45 per gallon for a delivery she received on January 27th. Because of the high price she was quoted when calling to place the order, Ms. P asked for a delivery of only 100 gallons, but AmeriGas "refused to deliver less than 200 gallons." (Karen P complaint - Exhibit E). Another

Marquette County resident, Faye W, experienced AmeriGas high propane pricing combined with its refusal to deliver less than 200 gallons. (Faye W complaint - Exhibit F). Hence, AmeriGas was magnifying the impact of its excessively high prices on consumers by requiring them to buy large quantities at the peril of losing the ability to heat their homes during one of the coldest periods in Michigan history.

14. In its response regarding Michael W's complaint, and in many others provided to the Attorney General, AmeriGas justified its pricing with reference to the surge in the wholesale market pricing. This is apparently a reference to the well-publicized spike in the Conway market prices occurring in late January. As seen in Exhibit C, that market hit its peak on January 24th with a high of \$4.32 per gallon. But then prices fell very quickly, dropping to \$2.49 by February 1st, and then to \$1.74 by February 5th. Even to the extent AmeriGas might look to the surge in Conway prices to justify late-January billings such as to Michael W, it is apparent from complaints to the Attorney General that AmeriGas did not adjust its prices downward in tandem with the Conway market's normalization.

15. On February 4th, the Conway market closed at \$1.86 per gallon. But, the next day, AmeriGas delivered 365.6 gallons of propane to Marion D of Marquette at a cost of \$5.75 per gallon. With taxes and fees, this meant Marion now owed AmeriGas \$2,203.80. As Marion explained in her complaint to the Attorney General, this was a cost that "far exceeds the amount we have budgeted." (Marion D complaint and invoice - Exhibit G). This cost also grossly exceeds the

State-wide average, and defies the downward trend in the Conway market in the preceding days

16. On the same day Marion D received her delivery, AmeriGas filled Marvin K's tank in Levering. Although Marvin's tank was filled for nearly \$1.00 less per gallon than Marion's, the \$4.82 per gallon he paid was also well in excess of the State-wide average, and bears no meaningful relationship to the Conway market trend. (Marvin K complaint and invoice – Exhibit H).

Further, Connie R of Hastings also received AmeriGas propane on February 5th. And while Connie R was charged \$1.31 per gallon less than AmeriGas charged Marion D that same day, even Connie R recognized the \$4.44 per gallon price was inexplicable in light of pricing by other local companies:

On February 4th, when they STILL hadn't delivered my propane, I questioned my facebook group regarding their propane companies and the price they had paid recently for propane. I saved photos of that online conversation with numerous people. I do not personally know any of the people in the conversation that I had concerning propane. This is the synopsis: The week prior to us getting propane from Amerigas at \$4.44/gallon, these are the prices that other people paid: Crystal Flash: \$1.89 Alto Gas: (on 2/4) \$2.99 Diamond: \$2.04 Kent Oil: \$1.99 DJ Hydraulics Co-op \$1.69 Amerigas: **our company - on 2/4 (the day before we got our gas) quoted a customer \$5.10" Since the highest price (other than Amerigas) was Alto Gas, I decided to call them the day we got our fill for \$4.44 and ask what their price was for customers that weren't locked in. Their price was \$2.69" It is ridiculous that small companies like Alto Gas and Kent Oil can charge \$1.75 less and \$2.45 less PER GALLON than a nation wide company like Amerigas" Alto and Kent's prices in January (when every company's price was up somewhat) were STILL nearly \$1.00 less per gallon than I had paid for my DECEMBER fill' So, the "incident date" on this report is actually 2 dates: our fill in December, and our fill on Feb. 5th. It has to be price gouging... or there wouldn't be THAT big of a discrepancy' I can understand even up to a 25-40 cent price difference, but a difference of \$3.10 on 2/4 is not acceptable" Especially when we

are comparing apples and apples' If I expected Amerigas to be the same price as the co-op (which is a locked in price set at the beginning of the season), it would be unreasonable. But, both Alto and Amerigas' prices were both the "not locked in" rate. Sadly, it isn't like it is with gasoline: if I don't like the gas price at our local BP, I have a few other stations to choose from THAT SAME DAY. With the propane companies, the company owns the tank you have...and no other company will put propane in it'. [Connie R complaint – Exhibit I].

* * *

The Attorney General believes Connie R asks a legitimate question AmeriGas should be compelled to answer in light of the prices charged this winter to its customers.

17. Unfortunately, it was those who can least afford propane that suffered the most this past winter. The Michigan Department of Human Services has a program that assists economically disadvantaged residents with home heating assistance. This program limits the amount of assistance to \$850 per year for propane. (See Affidavit of Vicki Reid - Exhibit J). As explained by one of their eligibility specialists, Vicki Reid, the Human Services office for Wexford-Missaukee has observed Holton's LP in Lake City billing higher prices than its competitors all winter long, and it is the subject of discussion among her and her colleagues. Through attachment 1 of her affidavit, Ms. Reid gives an example dating back to November 2013. (Exhibit J-1).

According to the LARA website, the highest weekly average price from October 28th through November 25th was \$2.17. But a sampling of documents from the Wexford-Missaukee office shows that clients of the Department of Human

Services were routinely paying prices 50% higher or more during this period.

(Sample billings - Exhibit K).

18. Another way to gouge a consumer is to add on extra fees. In her affidavit, Ms. Reid explains this practice has been a particular concern with the Holton's LP in Lake City. Ms. Reid gives an example of Lora H, a consumer whose invoice includes a \$100 leak test authorized for payment by the Department of Human Services. A leak test is routinely required when a customer's propane tank has run empty. Although the leak test was paid for by the DHS, the client reported to DHS that it was actually not performed during the November 15th delivery because the tank was not empty. This concern was forwarded to AmeriGas, and it responded by explaining the billing was done because it was thought at the time of the November 14th authorization that it would be necessary. (AmeriGas Letter - Exhibit L). This, however, does not explain why the test was billed on the November 22nd invoice--which was generated a week after the actual delivery and at a time when it was obviously known not to have been performed. And, more troubling, is that the issue was not remedied until March of this year and only because the Attorney General sought a response from AmeriGas.

Gouging can also occur when a company charges a grossly excessive amount for a necessary service. Such appears to be the case with the billing for another DHS client whose leak check was billed at \$200--twice the amount charged for the leak check billed in the preceding example. (See Amy B invoice-Exhibit M).

19. The Attorney General was receiving complaints from non-DHS clients about the high prices AmeriGas was charging its customers even before the propane shortage became the subject of media attention in January.

Thomas C of Jonesville filed a complaint with the Attorney General explaining that AmeriGas filled his propane tank on December 12, 2013, and "sent me a bill for \$3.85 a gal[lon]. This is about \$1.50 over the state ave[rage]. The local prices range from \$1.98 to \$2.09." AmeriGas responded to Mr. C's complaint claiming ignorance about what other propane companies charge, but stating it was lowering his bill to \$3.00 per gallon. (Thomas C complaint and AmeriGas Response, Exhibit N). So, even in lowering Mr. C's bill, AmeriGas stayed well above the State-wide average that week of \$2.36, and even more out-of-step with the local prices Mr. C said were available. More importantly for purposes of an Attorney General investigation, the fact Thomas C was charged an amount more than 50% higher than the Statewide average creates probable cause that other consumers in his area were gouged, and did not have their bills adjusted for the simple reason they did not submit a complaint to the Attorney General's Office. And since the Consumer Protection Act protects all Michigan citizens, not just those filing complaints, this Court should authorize further inquiry.

20. Similarly, Sara C of DeWitt was charged \$3.91 per gallon for a propane order she placed on December 17, 2013. Since the highest weekly State-wide average cost of propane in December was \$2.47 per gallon, it appears Ms. C and other AmeriGas customers were charged costs grossly exceeding those charged to

customers of other propane providers. And unlike Mr. C, Sara C and her two children did not receive any abatement of their home heating costs in response to the complaint. (Sara C complaint and AmeriGas response – Exhibit O).

But, the most egregious example of early gouging by AmeriGas comes through a complaint from David M of Howell. David was billed \$4.99 per gallon for a delivery made on December 16, 2014. Even putting aside that he was quoted a price that was less than half this when placing his order, the invoice price was more than twice the State-wide average at that time; and, it is even grossly excessive when viewed in light of AmeriGas' own \$3.91 per gallon price to Sara C for its delivery to her the very next day. In his complaint, David M explains that the local AmeriGas manager initially expressed surprise at the charge and promised follow-up that then never came. And, rather than responding to David's further attempts to get resolution, AmeriGas referred the matter to a collection agency to make sure it got paid without having to deal with its customer directly. (David M complaint, invoice, and collection notice - Exhibit P).

21. Under Michigan's Consumer Protection Act, residents have a right to understand the transactions in which they are engaging, which is a safeguard against being gouged. The interplay between these concepts is brought into specific focus with regard to a complaint filed by Shirley F of Laingsburg. Ms. F and her husband are retirees who buy propane from Rural Gas, which she explains was bought out by AmeriGas last year. (Shirley F Affidavit, complaint and invoices –

Exhibit Q-1). Shirley has two propane tanks on her property, one for the home and another for the pole barn. (Exhibit Q, ¶ 1-2).

On January 24, 2014, AmeriGas filled both tanks for Shirley and her husband. The pole barn tank was filled at a cost just under \$4.32 per gallon. This price was troubling to Ms. F because it was 88¢ per gallon higher than the price for filling that same tank the prior month. But even more troubling is the fact that the price for filling the pole barn tank that day was \$1.05 per gallon more than the price she and her husband were charged to fill the home's tank on the exact same day. Facing billings totaling \$2,137.24 for the January 24th fills, Ms. F called AmeriGas in an effort to understand why there was such a difference in fill costs for the two tanks during the same visit. As she explains in her own words, the telephone representative could not provide a coherent explanation:

I contacted their office to explain the situation - I was placed on hold. While on hold, I heard their message which went something like this. If you are calling because you are unable to get propane from your current provider we have sufficient supplies and will be able to help you. This is not word for word, but I got the impression that they had a good supply of propane. When I spoke with the Customer Service Rep, she said that the reason was probably because they were delivered on different days. My response was that they were delivered the same day - they filled up one tank and backed up and filled up the other. Then she said it might be because they were ordered on different days. I told her that we did not place the orders; we just received deliveries when they decided to bring them out. Next she said that there is a shortage of propane which did not make sense to me as their "on-hold" message indicated they were soliciting new customers. She also said that prices were already coming down. I was still not happy and she asked me if I wanted to speak with a manager. I said no, but I want you to know that I am going to report this to the Attorney General's office. She said I could not do that and was about to give me the web site where I could find this information. I said no thanks and hung up. [Exhibit Q-1, ¶ 5].

22. Despite the discouragement from the AmeriGas representative, Shirley F did file a complaint with the Attorney General's Office. Consistent with ordinary practice, the Attorney General then forwarded the complaint to AmeriGas seeking a written response within ten days. (AG request to AmeriGas regarding Shirley F complaint - Exhibit Q-2). This request was sent on February 20, 2014. AmeriGas, however, has never responded.

The billings related to Shirley F underscore why subpoenas compelling AmeriGas to explain its pricing practices this winter are necessary. If AmeriGas was charging a fair price to Shirley of \$3.27 per gallon to fill the tank at her home, then it raises a concern that Shirley F was gouged when AmeriGas backed up its truck and filled her pole barn tank at a price that was more than 30% higher. And if Ms. F is experiencing this dichotomy on her own property, it suggests such a dichotomy exists among AmeriGas customers.

B. Failure to honor telephone quotes on price.

23. Some AmeriGas customers order propane over the telephone. On January 3, 2014, Jeanne H of Grayling placed a call to get a tank filled at a home she owns and rents to her son. According to the complaint Jeanne filed with the Attorney General, she was quoted a price of \$2.09 per gallon. But, when the bill finally arrived for the 396 gallons that were delivered, it was at a price of \$3.50 per gallon. Troubled by the difference between the quoted and billed prices, Jeanne pursued the issue with a manager and was given an opportunity to listen to a

recording of her telephone order--but with the portion of the conversation regarding price missing:

When the bill came they had charged me \$3.50 9 a gal. so I called & asked them what was going on, & what happened to the 2.09 9 I was told in the begin with & they told me they told me 3.84 9 & that they gave me a deal, so I told them they were nuts & that was ludicrous, because if that was the case I would have had my renter put it in his name as a new customer. At the end of this conversation the service Rep said her manager would pull the phone record & call me the next day to let me hear it. I never heard from him, so the day the bill was due (Feb. 10th) I finally went to their Gaylord office to talk to the manager & he said he would have to request the recording from the main office & would call me in 2 days. We also talked about the shortage on propane & he said they didn't have a shortage, so I asked him what new customer price was then & he said it was 3.25 9! His 2 days stretched into another week & when I listened to the recording & of course the whole part after the new customer price was cut out & 3.84 9 was never mentioned! [Jeanne H complaint - Exhibit R].

The Attorney General has not yet received a response to Ms. H's complaint from AmeriGas.

And in a complaint noticeably similar to Jeanne H's in terms of the timing and pricing, Benjamin D of Manton received a delivery from AmeriGas on January 13th at \$3.71 per gallon, but says he had been quoted \$2.39 per gallon during a phone call a week or so earlier. AmeriGas acknowledged the phone call in its response, but said their written records about that call did not reflect that a price was quoted. (Benjamin D complaint, delivery ticket and AmeriGas response - Exhibit S).

The same issue is implicated by Karen P's complaint, as discussed in paragraph 13 above. Ms. P explained that she called AmeriGas of Negaunee on January 27th and was quoted a price of \$5.35 per gallon. The delivery was

completed two hours later, but Ms. P was billed \$5.45 per gallon. Although the financial impact on Karen P is obviously much more modest than that upon Jeanne H, the legal principle is the same. And David M from Howell recalls being quoted a price of \$2.24 per gallon when he placed his telephone order on the December 16th delivery for which he was charged the grossly excessive price of \$4.99 per gallon. David M was not given a chance to listen to the recording of his phone call, and the AmeriGas manager has ignored efforts by David to get an explanation. (David M complaint - Exhibit P).

24. The allegation these consumers make are much like an earlier complaint received from Jeffrey V of Kent City. After the Attorney General forwarded Jeffrey's complaint to AmeriGas, the company responded saying Mr. V was receiving "credits in the amount of \$158.04 and \$118.33 have been applied to his account to honor the \$2.59 price per gallon quote he received." (Jeffrey V complaint and AmeriGas response - Exhibit T).

While AmeriGas' candor in responding to Jeffrey V's complaint is appreciated, a consumer should not have to seek the Attorney General's intervention in order to secure a price he or she was quoted in placing an order.

25. Other AmeriGas' correspondence have been ambiguous as to whether the company is setting pricing for will-call customers placing a telephone order. In responding to Sara C's complaint as discussed above, AmeriGas said that, when she "called to place an order on December 17, 2013 she was charged \$3.91 per gallon."

Noticeably absent from this statement is a statement that Ms. C was told this during her telephone order.

By contrast, Douglas D of Roscommon explained in his complaint to the Attorney General that he called on January 17, 2014, to place a propane order and was never told of a price increase. In its response, AmeriGas did not even mention the telephone order. Instead, AmeriGas said that, when Mr. D's propane is delivered, "he is charged our current market price. The market price for Mr. D's delivery on January 25, 2014 was \$4.499 per gallon." (Douglas D complaint and AmeriGas response - Exhibit U).

26. These complaints and responses create probable cause to believe AmeriGas is not consistently honoring telephone quotes given to its customers. The Attorney General thus seeks to further investigate AmeriGas' handling of telephonic orders. This will include seeking the recordings of the telephone orders of Sara C, Jeffrey V, Douglas D, David M, Karen P and Jeanne H as described in this section, as well as a random sampling of recordings and documentation as more fully set forth in the subpoenas accompanying this Petition.

C. Failure to honor locking contract.

27. Thomas and Julie B of Traverse City locked in a price of \$1.999 per gallon for their winter 2013-2014 purchases from AmeriGas. They filed a complaint with the Attorney General because AmeriGas was not honoring that price in two consecutive billings. (See Thomas and Julie B complaint, locking contract and invoices - Exhibit V-1).

After forwarding this complaint to AmeriGas, the Attorney General received a response stating that Thomas and Julie were receiving account credits to remedy the over-billing. The response also assured the Attorney General that these customers "will continue to receive a concession price of \$1.90 for deliveries made prior to May 31, 2014." (AmeriGas response to Thomas and Julie B complaint - Exhibit V-2). AmeriGas offered no explanation for why Thomas and Julie were not given their locked contract price in these billings.

Despite this assurance, Thomas and Julie received two subsequent propane deliveries billed at more than \$3 per gallon. Thomas and Julie made two visits together to their local AmeriGas office to address the situation, and Julie made a third visit on her own. The AmeriGas representative there told them that billing issues were the result of some type of computer "glitch," and that it was affecting other customers as well. (Affidavit of Julie B - Exhibit V-3).

28. Approximately twenty miles from Thomas and Julie B's Traverse City home is a small town called Fife Lake. There is a Holton's LP office in Fife Lake that provides propane to Corey C, a town resident. In her complaint to the Attorney General, Corey explained that she had locked in a rate for this season of \$1.79 per gallon. But then, she received a delivery on December 19, 2013, at \$3.57 per gallon - twice her locked in rate. According to her complaint, Corey's efforts to talk to someone at the Holton LP office about the billing were ignored. (Corey C complaint and supporting documents - Exhibit W-1). The Attorney General can relate to Corey in that its letter seeking a response to the complaint was also ignored. (AG

letter - Exhibit W-2). Thus, Corey C has paid the full invoice despite it being well above her locked price, and has not received relief.

29. And this same issue arises with respect to a different AmeriGas locking program called AmeriGuard. In an extensively-detailed and well-documented complaint, Gail S of Riverdale explains this locking program, that fixes a per-gallon rate and a monthly payment amount to assist customers in planning their heating budget. (Gail S complaint and supporting documentation - Exhibit X) At page 23 of the supporting documentation, it can be seen that Gail paid \$99 to be included in this program. At page 28 of the documentation, it is explained that Gail S would receive a fixed propane price of \$2.199 per gallon from July 1, 2013 through June 30, 2014. It would be a great program except for the fact Gail S was never billed at the rate she paid to lock in. Instead, through this winter, she has received two deliveries billed at \$2.74 per gallon. Then, later in the winter, AmeriGas stopped providing information about the delivery price, and advised Gail her monthly payment –that started at \$156 – will now be \$538. And it appears from her complaint that Gail has been extremely vigorous in trying to get an explanation of what has occurred from personnel at all levels of AmeriGas, but to no avail. Fortunately, the Legislature has vested the Attorney General with power to get these answers under subpoena through the Consumer Protection Act.

30. Attorney General Schuette believes that Michigan consumers who have secured locked propane prices should not have to work as hard as Thomas and Julie B did in order to ensure the benefit of those arrangements. Indeed, the news

about the propane shortage this winter may have confused some AmeriGas customers about the ongoing validity of their agreements. There may be senior citizens living throughout Michigan who simply lacked the health or means to make a trip--much less three to their local AmeriGas office in order to secure the benefit of their bargains. And, hard-working residents throughout the State may simply have been too busy paying bills and moving snow in recent months to wage a campaign like Thomas and Julie. And, as shown by the experiences of Corey C and Gail S, there may be many Michigan residents who are still trying to get answers from AmeriGas.

31. Through the subpoenas the Attorney General requests to have authorized under this Petition, the Attorney General seeks documentation identifying all AmeriGas and Holton's LP customers in Grand Traverse County who are on locking agreements similar to Tom and Julie B and Corey C, and the prices per gallon those consumers have been billed this winter. The Attorney General also seeks to depose the AmeriGas representative who told Thomas and Julie about the computer glitch, since this individual may be able to shed light on what has occurred. While residents outside Grand Traverse County may have been affected by whatever "glitch," has occurred, the information obtained through this investigation will assist the Attorney General in understanding the nature of the problem--if any--and to explore relief for affected consumers throughout Michigan.

Further, with respect to Gratiot County resident Gail S's complaint, the Attorney General seeks relevant records and the deposition of the AmeriGas local office manager identified in her complaint.

Conclusion and Relief Sought

32. 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 AmeriGas 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 AmeriGas an opportunity to explain itself.

33. 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 AmeriGas' pricing and consumer relations practices are obtained. This includes the depositions of specified telephone customer service representatives (2), on-site office managers (3), and the corporate representative(s) of AmeriGas' choosing. The Attorney General also seeks the audio recordings of telephone orders placed by the individuals included in Section B of this petition as well as a random sampling of calls from Michigan customers as specified in the subpoenas. Finally, the Attorney General seeks documents related

to the issues described above and more fully elaborated within the subpoena itself. Any hardship that may exist for AmeriGas 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 Subpoenas as an authorization to issue the Subpoenas by this Honorable Court.

Respectfully submitted,

Bill Schuette
Attorney General

A handwritten signature in black ink, appearing to read "D. Fowler", with a long horizontal flourish extending to the right.

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