

IN THE CIRCUIT COURT OF THE 6<sup>th</sup>  
JUDICIAL CIRCUIT IN AND FOR  
PINELLAS COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: 05-7822-CI-11

ALFRED L. WILLIAMS, II, on behalf of  
himself and all others similarly situated,

CLASS REPRESENTATION

Plaintiff,

vs.

HERITAGE OPERATING, L.P.  
d/b/a HERITAGE PROPANE, a Delaware  
Limited Partnership, as successor  
in interest to PEOPLES GAS COMPANY,

Defendant.

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**PLAINTIFF'S SECOND AMENDED CLASS ACTION COMPLAINT**

Plaintiff, ALFRED L. WILLIAMS, II, on behalf of himself and all others similarly situated, by and through his undersigned counsel, brings this action pursuant to Florida Rule of Civil Procedure 1.220(b)(1)(B), 1.220(b)(2), and 1.220(b)(3) against the Defendant, HERITAGE OPERATING, L.P. d/b/a HERITAGE PROPANE, a Delaware Limited Partnership (hereinafter "HERITAGE OPERATING"), as successor in interest to PEOPLES GAS COMPANY (hereinafter "PEOPLES GAS"), and all facts being extant and material alleges as follows:

1. This is an action for damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00).
2. Plaintiff is a resident of Pinellas County, Florida, and is, in all respects, sui juris.
3. Defendant, HERITAGE OPERATING is a Delaware Limited Partnership

registered and authorized to transact business in the State of Florida.

4. The Defendant HERITAGE OPERATING supplies LP gas, also known as propane gas, to customers throughout the State of Florida.

5. On or about April 29, 1996, the Plaintiff contracted with PEOPLES GAS to install LP gas plumbing, an underground LP gas tank and related equipment, and an LP gas water heater at his home located at 2295 West Bay Isle Drive, S.E., Saint Petersburg, Florida. (A copy of the General Sales Agreement is attached is hereto as Exhibit "A").

6. Both the front side and the backside of the aforesaid contract indicate that the LP gas tank installed on Plaintiff's premises was owned by PEOPLES GAS, however, the contract does not provide for any rental fee for such tank, whatsoever. Such contract remains in effect through the present time, and the Plaintiff has fully complied with each and every obligation imposed upon him by such contract.

7. Under the aforesaid contract, Plaintiff agreed to purchase from PEOPLES GAS all of Plaintiff's requirements for LP gas used in connection with the LP gas tank and related equipment provided by PEOPLES GAS.

8. Based upon the discovery propounded thus far in this matter, every Peoples Gas customer had the same "General Sales Agreement" as the named Plaintiff.

9. Since 1996, there have been several mergers/purchases/transfers in interest/ownership changes from PEOPLES GAS to HERITAGE OPERATING.

10. In April 1996, PEOPLES GAS was a subsidiary of Lykes Energy, Inc., a privately held holding company.

11. On or about June 16, 1997, PEOPLES GAS became a subsidiary of TECO Energy, Inc. when Lykes Energy, Inc. merged with and into TECO Energy, Inc. in a stock-for-stock transaction.

12. On or about August 1, 2000, PEOPLES GAS was dissolved as a corporation by TECO and all of the assets, liabilities and operations of PEOPLES GAS were contributed by TECO to a newly formed, wholly-owned entity, Peoples Gas Company, LLC.

13. Subsequently, TECO contributed 100% of the equity interests in Peoples Gas Company, LLC to U.S. Propane, L.P.

14. On or about August 10, 2000, U.S. Propane, L.P. transferred 100% of the equity interests in Peoples Gas Company, LLC to HERITAGE OPERATING.

15. Effective June 30, 2003, Peoples Gas Company, LLC was merged with and into HERITAGE OPERATING pursuant to a Certificate of Ownership and Merger, wherein HERITAGE OPERATING expressly agreed to assume all of the liabilities and obligations of Peoples Gas Company, LLC.

16. On July 1, 2003, Peoples Gas Company, LLC surrendered its authority to transact business in the state of Florida and at some time subsequent to this date, the former propane operations of Peoples Gas Company, LLC began to do business in the State of Florida under the trade name Heritage Propane. Heritage Propane is registered as a fictitious name with the Florida Department of State, Division of Corporations and such name is owned by HERITAGE OPERATING.

17. In January 2005, over four years after Peoples Gas Company, LLC was acquired by HERITAGE OPERATING, HERITAGE OPERATING d/b/a Heritage

Propane, began charging Plaintiff, ALFRED L. WILLIAMS, II a "Tank Rental" fee of \$5.00 per month, billed quarterly. The first Tank Rental fee of \$15.00, for the months of January through March 2005 appeared on Mr. Williams' March 31, 2005 statement from Heritage Propane. (A copy of the statement is attached is hereto as Exhibit "B").

18. The only explanation given for the newly imposed fee appeared in a caption at the bottom of this statement, which stated: "JAN 1 2005 TANK RENT MIN PRICE IS GOING UP TO \$60 YEAR". By using the terms "TANK RENT MIN PRICE", the caption seems to imply that some customers, perhaps those with larger LP gas tanks, may be charged a Tank Rental fee that is higher than the minimum \$60 annually.

19. All conditions precedent to bringing this action have occurred, been performed or excused.

#### **CLASS REPRESENTATION ALLEGATIONS**

20. Pursuant to F.R.C.P. 1.220(b)(1)(B), 1.220(b)(2) and 1.220(b)(3), Plaintiff brings this claim on behalf of a Class of all Florida customers who contracted with PEOPLES GAS to supply LP gas for properties and homes within the State of Florida, who, are being charged a "Tank Rental" fee by Defendant HERITAGE OPERATING, which is not provided for/delineated in their PEOPLES GAS "General Sales Agreement" contracts.

21. This Class consists of all Floridians who entered into such "General Sales Agreement" contracts with PEOPLES GAS to supply LP gas, which are silent as to any "Tank Rental Fee" who are being charged such a fee by the Defendant HERITAGE OPERATING.

22. Plaintiff alleges, on information and belief, that the number of Class

members is so numerous that joinder of all of them is impractical. Plaintiff's beliefs are based in part on a U.S. Securities and Exchange Commission Form 10-K filed with the SEC on November 29, 2000 by Heritage Propane Partners, L.P., which indicated that PEOPLES GAS had more than 70,000 customers in Florida. (A copy of such Form 10-K is attached is hereto as Exhibit "C").

23. The members of this Class will be easily ascertained from the records of the Defendant.

24. The Class Representative's claim raises questions of law and fact that are common to the claims of each member of the Class. Specifically, the central issues raised by this action is whether the Defendant, HERITAGE OPERATING could, under the "General Sales Agreement" contract pursuant to Florida law, require customers, to pay a "Tank Rental Fee", when the contract is silent as to any such fees.

25. The claim of the Class Representative is typical of the claim(s) of each member of the Class. The Class Representative will also seek declaratory and/or injunctive relief to declare the rights of persons within the statutes of limitations period, and to enjoin HERITAGE OPERATING from charging such fees in the future.

26. The Class Representative is a Florida resident who will fairly and adequately protect and represent the interests of each member of the Class. Additionally, the Class Representative is fully cognizant of his responsibilities as Class Representative, and has retained experienced counsel fully capable of, and intent upon, vigorously pursuing this action.

27. The questions of law or fact common to the Class Representative's claim and the claim of each member of the Class predominate over any question of law or fact

affecting only individual members of the Class. Additionally, the prosecution of separate claims by or against individual members of the Class would create a risk of adjudication concerning individual members of the Class which would, as a practical matter, be dispositive of the interest of others members of the Class who are not parties to the adjudication(s), or would substantially impair or impede the ability of other members of the Class who are not parties to the adjudication(s) to protect their interest. Class representation is therefore clearly superior to other available methods for the fair and efficient adjudication of this controversy. Additionally, the Defendant's actions are generally applicable to the Class as a whole thereby making declaratory/injunctive relief to the entire Class particularly appropriate.

**COUNT I**  
**BREACH OF CONTRACT**

Class Representative, ALFRED L. WILLIAMS, II, hereby adopts, affirms and realleges each and every allegation set forth in Paragraphs 1 through 27 and further alleges:

28. The aforesaid actions by the Defendant HERITAGE OPERATING of forcing Class members to pay a "Tank Rental Fee", when their contracts with PEOPLES GAS are silent as to any such fee, constitutes a breach of the aforesaid contract in the following specific ways:

- A) By charging the "Tank Rental Fee" the Defendant, HERITAGE OPERATING has unilaterally improperly modified the contract between the parties;
- B) The Defendant, HERITAGE OPERATING has, after several years reinterpreted the contract to allow it to charge such "Tank Rental Fee" as a "charge for LP Gas and service", even though such terms are not defined in the contract;
- C) The subject contract, like every contract in the State of

Florida, has an implied covenant of good faith and fair dealing. The Defendant, by charging such "Tank Rental Fee", despite the fact that there is no mention of such fee in the contract whatsoever, and despite the fact that for 9 years no such charge was ever made, is in breach of such covenant.

29. As a direct and proximate result of such Breach of Contract, the Plaintiff and members of the Class have suffered damages in the amount of such wrongfully charged "Tank Rental Fees", together with interest on all liquidated sums.

WHEREFORE, the Plaintiff, ALFRED L. WILLIAMS, II, on behalf of himself and all others similarly situated, demands judgment against the Defendant, HERITAGE OPERATING, a successor in interest to PEOPLES GAS, for the amount of such "Tank Rental Fee", together with interest and reasonable attorney's fees and costs.

**COUNT II**  
**DECLARATORY JUDGMENT/INJUNCTIVE RELIEF**

Class Representative, ALFRED L. WILLIAMS, II, hereby adopts, affirms and realleges each and every allegation set forth in Paragraphs 1 through 27 and further alleges:

30. This is an action for declaratory and injunctive relief pursuant to Chapter 86 of the Florida Statutes.

31. Plaintiff, ALFRED L. WILLIAMS, II, individually, and as Class Representative, contends that the PEOPLES GAS contract did not reserve the right to charge a "Tank Rental Fee", and that such charge by HERITAGE OPERATING is wrongful.

32. Further, Plaintiff, ALFRED L. WILLIAMS, II, individually, and as Class Representative, contends that there is no right under either the common law, or statute

or regulation that would permit the Defendant HERITAGE OPERATING to force Class members to, after several years, pay a "Tank Rental Fee" when the contract is silent as to any such fee.

33. That as a result of such conduct by the Defendant HERITAGE OPERATING, the Plaintiff, ALFRED L. WILLIAMS, II, individually, and all Class Members were forced to pay such "Tank Rental Fee", because if they refused to pay, pursuant to the "General Sales Agreement" contract, they would be subject to the Defendant, HERITAGE OPERATING removing its LP Gas tanks and equipment from their property, and HERITAGE OPERATING would charge them for all costs associated with removing the equipment.

34. On the facts of this case, the Plaintiff, ALFRED L. WILLIAMS, II, individually, and as Class Representative, is in doubt as to his rights and the rights of all other purported Class members under the terms and provisions of the subject contact document and Florida law.

WHEREFORE, Plaintiff, ALFRED L. WILLIAMS, II, on behalf of himself and on behalf of all purported Class members, respectfully requests that this Court:

- A) Take jurisdiction over this matter for purposes of rendering a declaratory/injunctive decree;
- B) Having taken jurisdiction, that this Court enter an order declaring that Defendant, HERITAGE OPERATING, by forcing Class members to, pay a "Tank Rental Fee" when the contract is silent as to any such fee violated Florida law;
- C) Enter an order that by virtue of such violation of Florida law, that the Defendant HERITAGE OPERATING is estopped from forcing Class members to, pay a "Tank Rental Fee" when the contract is silent as to any such fee now and in the future;



- D) Require that the Defendant, HERITAGE OPERATING properly notify each and every such Class member of this Court's findings and further require that such Defendant fully compensate each Class member injured as a result of such wrongful conduct;
- E) Grant both preliminary and permanent injunctive relief to prevent any further harm resulting from such acts and/or omissions of the Defendant, HERITAGE OPERATING;
- F) Grant such other relief as this Court deems proper;
- G) Retain jurisdiction over the parties and the subject matter to assess reasonable attorney's fees and costs to Class counsel and any and all penalties this Court deems met and just.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by FAX and U.S. Mail this 3rd day of May 2007 to: November 27, 2006 to: HUNTER H. CHAMBERLIN, ESQ., The Robbins Law Firm, 2639 Martin Luther King, Jr., Street, North, St. Petersburg, FL 33704; and R. CHARLES WILKIN, III, ESQ., Glass Law Firm, P.C., 1515 S. Utica Avenue, Suite 250, Tulsa OK 74104.

LAW OFFICE OF SCOTT T. JOHNI, P.A.  
Scott T. Johni, Esq.  
105 South Edison Avenue  
Tampa, FL 33606  
(813) 286--2811  
Co-Counsel for Plaintiffs

LIGGIO, BENRUBI & WILLIAMS, P.A.  
Suite 3B, The Barristers Building  
1615 Forum Place  
West Palm Beach, FL 33401  
(561) 616-3333 (o)  
(561) 616-3266 (fax)  
Email: [jliggio@liggiolaw.com](mailto:jliggio@liggiolaw.com)

By:

  
JEFFREY M. LIGGIO

Florida Bar No.: 357741

 JENE P. WILLIAMS-RHOADS

Florida Bar No.: 55980



# General Sales Agreement

**Peoples Gas**

00265703

Fred x277

Customer Name <b>Alfred L. Williams II</b>	Home PH	Work PH <b>573-2884</b>
Service Address <b>2295 W. Bay Isle Dr. SE</b>	City <b>St. Pete</b>	St. <b>FL</b> Zip <b>33705</b>
Buyer Name/ Mailing Address <b>same</b>	City	St. Zip
Federal Taxpayer ID#	Acct. #	Tax District <input checked="" type="checkbox"/> City <input type="checkbox"/> County Date Required
Contact Name <b>Ed Parsley</b>	Phone No. <b>522-7575</b>	Date Scheduled Salesperson <b>Fannin</b>

QTY	DESCRIPTION (MODEL / STOCK CODE / SERIAL / ETC.)	UNIT PRICE	AMOUNT
	Gas piping and gas connections to water heater, range, dryer, fireplace and future grill		1384.25
1	40 gallon LP water heater		215.00
	Connect to underground 250 gallon tank owned & maintained by Peoples Gas		

QTY	APP. TYPE	ALLOW. CODE	ALLOWANCE	ANNUAL THERMS PRESENT	GALLONS ADDITIONAL	PEAK HOUR DEMAND (GPH)	DISBURSE AT REGT	Merchandise Charges	
1	WH				180			Installation Charges	1384.25
1	RG				49			Warranty Charges	
1	DR				55			Sales Tax	15.05
					66			Total Cash Price	GL# 71 1614.30
								Allowance Total	
					284			Prepayment <input type="checkbox"/> Cash <input type="checkbox"/> CC <input type="checkbox"/> Check	
					800a			Balance Due <input type="checkbox"/> COD <input type="checkbox"/> CIS <input type="checkbox"/> Other	1614.30
TOTAL									

FUEL REPL	REPLACED SUPPLIER	OLD APPL REMOVED	MANUFACTURER	WATT INPUT	MODEL SERIAL NO.	Deposit	
						Turn-On Charge	
						Other <b>FTC</b>	310.00
						Prepayment <input type="checkbox"/> Cash <input type="checkbox"/> CC <input type="checkbox"/> Check	
						Balance Due <input type="checkbox"/> COD <input type="checkbox"/> CIS <input type="checkbox"/> Other	

<b>AGREEMENT TYPE</b> <input type="checkbox"/> Delivery Only <input type="checkbox"/> Customer Pick Up <input type="checkbox"/> Delivery/Install <input type="checkbox"/> Install Only	<b>INVENTORY STATUS</b> <input type="checkbox"/> Div. Whs. <input type="checkbox"/> Transfer    PSA # <input type="checkbox"/> Cent. Whs. <input type="checkbox"/> On-Order    IS Date	Total Balance Due <b>1614.30</b> Amount To Bill Amount To Collect <b>1614.30</b>
--	--	--

Remarks: **Estimated Billing?**

Terms: **Payment for 50% of total required prior to roughing. Remainder due upon completion prior to final inspection.**

**\*First Tank Charge estimate only - does not include taxes Bill on first Bill.**

The manufacturer of the above described goods provides a limited warranty. Consequently, Peoples Sales & Service itself makes no warranties to buyer, express or implied, and hereby expressly disclaims any warranty of merchantability or fitness for a particular purpose.

I have read all of the terms and conditions on the reverse side and agree to them.

+ **Alfred L. Williams II**    4/29/96    AUTHORIZED BY **EXHIBIT "A"**  
 BUYER/OWNER    DATE    AUTHORIZED BY    DATE

## Office Locations

**Avon Park**  
813/452-2251

**Ft. Lauderdale**  
305/527-1511

**Jacksonville**  
904/739-1211

**North Miami**  
305/940-0139

**Palm Beach Gardens**  
407/694-1103

**St. Petersburg**  
813/895-3621

**Daytona Beach**  
904/253-5635

**Hollday**  
813/934-5300

**Lakeland**  
813/686-3153

**Orlando**  
407/425-4661

**Sarasota**  
813/366-4277

**Tampa**  
813/228-9743

**Eustis**  
904/357-3154

### NATURAL GAS SERVICE:

The Applicant named on the reverse side hereof makes application to Peoples Gas System, Inc. (Company) for natural gas service under the classification indicated on the reverse side hereof:

Gas is to be delivered to me at the outlet side of the Company's gas meter serving the premises indicated on the reverse side hereof, such meter and service line there to be installed and operated pursuant to company's tariff, and if located on my property, the site therefor to be furnished free of charge by me.

The Company and its representative are hereby authorized to enter upon and install on my property the gas meter or meters and gas pipe for furnishing gas to said address, and to ditch and lay pipe as is outside the building. The gas pipe from the Company's gas system to and including said meter or meters shall be owned, operated, and maintained by the Company with a perpetual right of ingress and egress thereto hereby granted to the company for such purpose. All gas pipe, from the outlet side of said meter or meters, shall be owned, operated and maintained by the undersigned at his sole cost and risk.

I will receive and pay for all gas delivered to me according to the applicable rules and regulations filed with the Florida Public Service Commission and the applicable rate schedule, any gas delivered to me at any other delivery point is also subject to the terms and conditions hereof. No oral statement shall change the term of this obligation.

If customer fails or refuses to take gas service from the Company, the Customer shall pay to the Company the actual cost incurred by the Company in constructing the facilities to have been used in providing service to the customer.

Where the main and service line installation expenditures exceed \$10,000, the Customer shall pay to Company the amount, if any, by which the actual construction cost incurred by Company exceeds the maximum allowable construction cost as recomputed less any refunded construction deposit paid by the Customer. The maximum allowable construction cost will be based on five-year actual revenues and cost of gas from the date on which gas service is initiated or on the Customer's discontinuance of the service provided by the Company, whichever should occur first.

### LP GAS SERVICE:

In consideration of Peoples Gas Company (Company), agreeing to supply LP Gas to the consumer named on the reverse side hereof (Consumer), it is mutually agreed that:

Title to and property in the LP Gas tank(s) and equipment are and remain in the Company and Company may add to or deduct from or otherwise alter in any manner its LP Gas equipment. Consumer grants to Company free rights of ingress and egress to the premises of the Consumer for all purposes necessary to the rendering of service and delivery of LP Gas. All equipment and piping shall remain personal property, even if attached to realty, which can be removed from the premises without damage to the premises. Consumer agrees to be responsible for all costs associated with removing tanks and equipment.

Consumer agrees to purchase from Company all of Consumer's requirements for liquefied petroleum gas used in connection with Company's LP gas tank and related equipment provided by Company.

Company may shut off the supply of LP Gas or terminate this agreement and remove its LP gas tank and related equipment at any time for any of the following causes: (a) Breach of any of the terms and conditions hereof. (b) Non-payment of any charges for LP Gas or other charges hereunder. (c) Non-occupancy by Consumer of premises where LP Gas equipment is installed except during any authorized non-usage period. (d) Failure of Consumer to pay Company for special trips to deliver LP Gas made necessary by Consumer's failure to pay bills when due. (e) If any product other than that of the Company is used with said equipment. (f) If a mortgage or other prior lien upon the premises is foreclosed, or if there is a sale or other transfer or conveyance of the premises.

Company has the right to alter its schedule of charges for LP Gas and service at any time without notice.

Consumer agrees to indemnify the Company for destruction of or damage to said equipment (except damages due to ordinary wear and tear).

This agreement is not assignable or transferrable by the Consumer without written consent by the Company.

### PEOPLES SALES & SERVICE:

Buyer agrees the appliance(s) will be installed and operated in compliance with all applicable safety codes and that no flammables will be used or stored near such appliance(s).

The manufacturer of the goods provides a limited warranty. Consequently, Peoples Sales & Service itself makes no warranties to buyer, express or implied, and hereby expressly disclaims any warranty of merchantability or fitness for a particular purpose. There are no warranties that extend beyond the description contained in this General Sales Agreement.

Buyer hereby grants to Peoples Sales & Service a security interest in any appliances or other property purchased by Buyer to secure any portion of the purchase price which remains unpaid from time to time. Peoples Sales & Service shall have the right to exercise the remedies provided for in the event of a default under the Uniform Commercial Code if any amounts owing are not paid when due or if Buyer fails to comply with any other duty under this Agreement.

To prevent tipping, the factory furnishes a anti-tip bracket with your new range. The anti-tip bracket must be anchored to the floor or wall and the range must be engaged to the bracket. Instructions for installing the anti-tip bracket are found in the instruction packet that comes with the range and on the back side of the range.

If the applicant doesn't agree to have Peoples Sales & Service install the anti-tip bracket, the applicant agrees to release and hold harmless Peoples Sales & Service and will assume responsibility for the installation of the anti-tip bracket. Therefore, the applicant knowingly waives any right for any action or claim against Peoples Sales & Service or the manufacturer for not installing or improper installation of the anti-tip bracket.

We ask all new customers to mark and/or locate any underground facilities that may be on your property that do not belong to local utilities (sprinkler system, septic tanks, sewer lines, drainage fields, etc.). Our crews will exercise due care during construction, but cannot assume responsibilities for underground facilities which are not marked and/or correctly located by a property owner prior to construction. We will assume responsibility for contacting local utility companies prior to our construction.

27953708017070101

HERITAGE PROPANE  
13800 62ND ST N  
CLEARWATER, FL 33760-3620



11466-UC70

TEMP RETURN SERVICE REQUESTED

DIRECT PHONE INQUIRIES TO:  
(727) 599-2130

PAGE: 1 of 1

IF PAYING BY MASTERCARD OR VISA, FILL OUT BELOW.  
CHECK CARD USING FOR PAYMENT

☐ MASTERCARD ☐ VISA

CARD NUMBER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

EXP. DATE: \_\_\_\_\_

STATEMENT DATE 03/31/05	NEW BALANCE \$16.05	YOUR ACCOUNT NUMBER 143435
PREVIOUS BALANCE \$0.00	PAYMENT TERMS Due by: 4/19/05	AMOUNT PAID \$

ADDRESSEE: \_\_\_\_\_

ALFRED L. WILLIAMS II  
2295 W. BAY ISLE DR SE  
ST. PETERSBURG, FL 33705-3350

REMIT TO: \_\_\_\_\_  
HERITAGE PROPANE  
13800 62ND ST N  
CLEARWATER, FL 33760-3620

11466-UC70\*1HL0VQZBB001707

☐ IF THE ADDRESS SHOWN ABOVE IS INCORRECT, PLEASE  
SHOW CORRECT ADDRESS ON BACK OF FORM.

STATEMENT

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT

POSTING DATE	REFERENCE	DESCRIPTION OF TRANSACTION	AMOUNT			
2/28/05		Previous Balance	0.00			
3/31/05		Tank Rental	15.00			
3/31/05		Sales Tax	1.05			
PLEASE DIRECT PHONE INQUIRIES TO: 727-599-2130						
ACCOUNT NUMBER	ACCOUNT BALANCE	CURRENT	30 DAYS	60 DAYS	90 DAYS	PAYMENT AMOUNT DUE
143435	16.05	16.05	0.00	0.00	0.00	\$16.05

SSAGES  
alance due by 15th of each month.payments receive  
AC=0.74 the 15th will appear on the next month's  
atementen JAN 1 2005 TANK RENT MIN PRICE IS GOING  
) \$60 YEAR

Heritage Propane  
Serving America With Pride

-----BEGIN PRIVACY-ENHANCED MESSAGE-----

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CONFORMED SUBMISSION TYPE: 10-K

PUBLIC DOCUMENT COUNT: 19

CONFORMED PERIOD OF REPORT: 20000831

FILED AS OF DATE: 20001129

FILER:

COMPANY DATA:

COMPANY CONFORMED NAME: HERITAGE PROPANE PARTNERS L P

CENTRAL INDEX KEY: 0001012569

STANDARD INDUSTRIAL CLASSIFICATION: [5990

IRS NUMBER: 731493906

STATE OF INCORPORATION: DE

FISCAL YEAR END: 0831

</COMPANY-DATA>

FILING VALUES:

FORM TYPE: 10-K

SEC ACT:

SEC FILE NUMBER: 001-11727

FILE NUMBER: 780425

</FILING-VALUES>

BUSINESS ADDRESS:

STREET 1: 8801 S YALE AVE

STREET 2: STE 31

CITY: TULSA

STATE: OK

ZIP: 74137

BUSINESS PHONE: 9184927272

</BUSINESS-ADDRESS>

MAIL ADDRESS:

STREET 1: 8801 SOUTH YALE AVE

STREET 2: STE 310

CITY: TULSA

STATE: OK

ZIP: 74137

</MAIL-ADDRESS>

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EXHIBIT C

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-K

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED AUGUST 31, 2000

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_

COMMISSION FILE NUMBER 1-11727

HERITAGE PROPANE PARTNERS, L.P.

(Exact name of registrant as specified in its charter)

DELAWARE

(State or other jurisdiction of  
incorporation or organization)

73-1493906

(I.R.S. Employer  
Identification No.)

8801 SOUTH YALE AVENUE, SUITE 310, TULSA, OKLAHOMA 74137

(Address of principal executive offices and zip code)

(918) 492-7272

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of class

Name of each exchange on  
which registered

Common Units

New York Stock Exchange

Securities registered pursuant to section 12(g) of the Act: None

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information

statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [ ]

The aggregate market value as of November 6, 2000, of the registrant's Common Units held by nonaffiliates of the registrant, based on the reported closing price of such units on the New York Stock Exchange on such date, was approximately \$142,092,000.

At November 6, 2000, the registrant had units outstanding as follows:

Heritage Propane Partners, L.P.	9,746,196	Common Units
	1,051,471	Subordinated Units
	1,382,514	Class B Subordinated Units

Documents Incorporated by Reference: None

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# HERITAGE PROPANE PARTNERS, L.P.

## 2000 FORM 10-K ANNUAL REPORT

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## PART I

## FORWARD-LOOKING STATEMENTS

CERTAIN MATTERS DISCUSSED IN THIS REPORT, EXCLUDING HISTORICAL INFORMATION, AS WELL AS SOME STATEMENTS BY HERITAGE IN PERIODIC PRESS RELEASES, INCLUDE CERTAIN "FORWARD-LOOKING" STATEMENTS. ALTHOUGH HERITAGE BELIEVES SUCH FORWARD-LOOKING STATEMENTS ARE BASED ON REASONABLE ASSUMPTIONS AND CURRENT EXPECTATIONS AND PROJECTIONS ABOUT FUTURE EVENTS, NO ASSURANCE CAN BE GIVEN THAT



EVERY OBJECTIVE WILL BE REACHED. SUCH STATEMENTS ARE MADE IN RELIANCE ON THE "SAFE HARBOR" PROTECTIONS PROVIDED UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995.

AS REQUIRED BY THAT LAW, HERITAGE HEREBY IDENTIFIES THE FOLLOWING IMPORTANT FACTORS THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM ANY RESULTS PROJECTED, FORECASTED OR ESTIMATED BY HERITAGE IN FORWARD-LOOKING STATEMENTS.

THESE RISKS AND UNCERTAINTIES INCLUDE, AMONG OTHER THINGS:

- o CHANGES IN GENERAL ECONOMIC CONDITIONS IN THE UNITED STATES AS WELL AS CHANGES IN GENERAL ECONOMIC CONDITIONS AND CURRENCIES IN FOREIGN COUNTRIES;
- o WEATHER CONDITIONS THAT VARY SIGNIFICANTLY FROM HISTORICALLY NORMAL CONDITIONS;
- o THE GENERAL LEVEL OF PETROLEUM PRODUCT DEMAND, AND THE AVAILABILITY OF PROPANE SUPPLIES;
- o ENERGY PRICES GENERALLY AND SPECIFICALLY, THE PRICE OF PROPANE TO THE CONSUMER COMPARED TO THE PRICE OF ALTERNATIVE AND COMPETING FUELS;
- o COMPETITION FROM OTHER PROPANE DISTRIBUTORS AND ALTERNATE FUELS;
- o THE AVAILABILITY AND COST OF CAPITAL;
- o CHANGES IN LAWS AND REGULATIONS TO WHICH HERITAGE IS SUBJECT, INCLUDING TAX, ENVIRONMENTAL AND EMPLOYMENT REGULATIONS;
- o THE COSTS AND EFFECTS OF LEGAL AND ADMINISTRATIVE PROCEEDINGS AGAINST HERITAGE OR WHICH MAY BE BROUGHT AGAINST HERITAGE;
- o THE ABILITY OF HERITAGE TO SUSTAIN ITS HISTORICAL LEVELS OF INTERNAL GROWTH; AND
- o THE ABILITY OF HERITAGE TO CONTINUE TO LOCATE AND ACQUIRE OTHER PROPANE COMPANIES AT PURCHASE PRICES THAT ARE ACCRETIVE TO ITS FINANCIAL RESULTS.

#### ITEM 1. BUSINESS

##### MERGER

In August 2000, TECO Energy, Inc. ("TECO"), Atmos Energy Corporation, Piedmont Natural Gas Company, Inc. and AGL Resources, Inc. contributed each company's propane operations, Peoples Gas Company ("Peoples Gas"), United Cities Propane Gas, Inc. ("United Cities"), Piedmont Propane Company ("Piedmont"), and AGL Propane, Inc. ("AGL"), respectively, to U.S. Propane, L.P. ("U.S. Propane") in exchange for equity interests in U.S. Propane. The merger was accounted for as an acquisition using the purchase method of accounting with Peoples Gas being the accounting acquirer.

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In August 2000, U.S. Propane acquired all of the outstanding common stock of Heritage Holdings, Inc., Heritage Propane Partners, L.P.'s General Partner, for \$120 million. By virtue of Heritage Holdings Inc.'s general partner and limited partner interests in Heritage Propane Partners, L.P., U.S. Propane gained control of Heritage Propane Partners, L.P. Simultaneously, U.S. Propane transferred its propane operations, consisting of its interest in four separate limited liability companies, AGL Propane, L.L.C., Peoples Gas Company, L.L.C., United Cities Propane Gas, L.L.C. and Retail Propane Company, L.L.C. (former Piedmont operations) to Heritage Propane Partners, L.P. for \$181.4 million plus working capital. The \$181.4 million was payable \$139.5 million in cash, \$31.8 million of assumed debt, and the issuance of 372,392 Common Units of Heritage Propane Partners, L.P. valued at \$7.3 million and a 1.0101 percent limited partnership interest in Heritage Operating, L.P. valued at \$2.7 million. The purchase price and the issuance price for the Common Units were approved by an independent committee of the Board of Directors of Heritage Holdings, Inc. The issuance price for the Common Units was \$19.73125 per unit under a formula based on the average closing price of the Common Units on the New York Stock Exchange for the twenty (20) day period beginning ten (10) days prior to the public announcement of the transaction on June 15, 2000 (the "Formula Price"). The working capital adjustment is anticipated to be settled in December 2000.

Concurrent with the acquisition, Heritage Propane Partners, L.P. borrowed \$180 million from several institutional investors and sold 1,161,814 Common Units and 1,382,514 Class B Subordinated Units in a private placement to the former shareholders of Heritage Holdings, Inc. based on the Formula Price resulting in net proceeds of \$50.2 million. The total of these proceeds was utilized to finance the transaction and retire a portion of existing debt.

Heritage Propane Partners, L.P. is the surviving entity for legal purposes; however, U.S. Propane's propane operations will be the acquirer for accounting purposes. For purposes of the discussion herein: (1) Peoples Gas is described as the accounting acquirer because Peoples Gas was the acquirer in the transaction that formed U.S. Propane; (2) the propane operations of Heritage Propane Partners, L.P. prior to the series of transactions with U.S. Propane are referred to as Predecessor Heritage; and (3) the combined operations of U.S. Propane's propane operations and Predecessor Heritage are described as Heritage.

Peoples Gas has a fiscal year-end of December 31. The eight-month period ended August 31, 2000 Form 10-K will be treated as a transition period under the rules of the Securities and Exchange Commission. However, this Form 10-K is not a transition report as the registrant will continue to have an August 31 fiscal year-end.

Heritage believes it is presently the fourth largest retail marketer of propane in the United States (as measured by retail gallons sold). Heritage currently serves more than 485,000 active residential, commercial, industrial and agricultural customers located in 28 states. Heritage's operations extend from coast to coast with concentrations in the western, upper midwestern, northeastern and southeastern regions of the United States.

#### BUSINESS OF PREDECESSOR HERITAGE

Heritage Propane Partners, L.P., a publicly traded Delaware limited partnership, was formed in April 1996. Heritage Propane Partners, L.P.'s activities are conducted through its subsidiary, Heritage Operating, L.P. (the "Operating Partnership"). Heritage, with a 98.9899 percent limited partner interest, was the sole limited partner of the Operating Partnership. The Operating Partnership accounts for nearly all of the consolidated assets, sales and operating earnings of Heritage Propane Partners, L.P.

The business of Predecessor Heritage, starting with the formation of Heritage Holdings, Inc. in 1989, has grown primarily through acquisitions of retail propane operations and, to a lesser extent, through internal growth. Since its inception in 1989 through August 9, 2000, Predecessor Heritage completed 70 acquisitions for a total purchase price of approximately \$297 million. Volumes of propane sold to retail customers have increased steadily from 63.2 million gallons for the fiscal year ended August 31, 1992 to 170.9 million gallons for the period ended August 9, 2000.

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#### BUSINESS OF PEOPLES GAS

Peoples Gas is a Florida corporation and formerly a wholly owned subsidiary of TECO. In June 1997, TECO acquired Lykes Energy, Inc. ("Lykes") for approximately 12.1 million shares of its common stock valued at approximately \$300 million. Prior to the merger between TECO and Lykes, Peoples Gas was a wholly owned subsidiary of Lykes.

In January 1998, TECO completed its merger with Griffis, Inc. ("Griffis") for approximately 600,000 shares of its common stock valued at approximately \$15 million. This merger was accounted for as a pooling of interests. Concurrent with the merger, Griffis was merged into Peoples Gas.

#### GENERAL

At the time of the series of transactions that formed U.S. Propane and combined the operations of Predecessor Heritage and U.S. Propane, Peoples Gas was serving more than 70,000 active residential, commercial and wholesale customers located in the Florida peninsula. Peoples Gas has grown by expanding existing markets as well as through acquisitions of independent propane operations located in northeast and southwest Florida. Prior to the series of transactions, Peoples Gas believes it was among the top 25 independent propane distributors nationally and was the largest independent propane distributor in Florida.

Peoples Gas believes it has held competitive advantages in both the residential and commercial markets through its focus on customer service and product reliability. Following is a summary of retail sales volumes per fiscal year for Peoples Gas. The transition period ended August 31, 2000 represents seven months of Peoples Gas stand-alone and one month of Heritage.