

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 38TH JUDICIAL CIRCUIT
MONROE COUNTY

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

Plaintiff,

v

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

Defendants.

No. 18-

141102
-CP

HON.

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ATTORNEY GENERAL'S COMPLAINT FOR EQUITABLE RELIEF, CIVIL
FINES, AND DAMAGES

I. Parties and Venue

1. Attorney General Bill Schuette brings this civil action on behalf of the People of the State of Michigan and on behalf of classes of Michigan consumers as described below. The Attorney General is authorized to bring this action under MCL 445.905 and MCL 445.910. The Attorney General may obtain injunctive

relief, actual damages, and other appropriate relief under the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.* And the Attorney General may bring a *parens patriae* action to pursue tort and individual claims under MCL 445.911 to vindicate consumer rights.

2. Defendant AmeriGas Partners, L.P., is a publicly 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, Defendant AmeriGas Propane, L.P. does business in Michigan under the assumed names of Holton's LP Gas, Schultz Bottle Gas and Rural Gas & Appliance. Within this Complaint, Defendants shall be collectively referred to as "AmeriGas."

3. Schultz Bottle Gas was an independent operation headquartered in Milan, Michigan. AmeriGas purchased this operation and continued to operate at this site until 2015. Though AmeriGas closed that location in recent years, it continues delivering propane to Schultz Bottle Gas customers in Monroe County. Because AmeriGas is transacting business in Monroe County, this Court is an appropriate venue.

4. Upon information and belief, AmeriGas is the largest retailer of residential propane in both Michigan and the United States.

II. Background

5. In 2014, the Attorney General formally investigated AmeriGas for alleged MCPA violations. Based on that investigation's findings, the Attorney General filed a lawsuit against AmeriGas in Berrien County Circuit Court (Docket No. 14-0248-CP). Through that lawsuit, the Attorney General alleged that AmeriGas engaged in unlawful activities, including charging some of its customers per-gallon prices for residential propane that were grossly in excess of prices charged by other residential propane retailers in Michigan. The parties resolved the Berrien County lawsuit through a Settlement Agreement shortly after it was filed. In that Agreement, AmeriGas did not admit to any MCPA violations. But AmeriGas did agree that, "[t]o the extent AmeriGas has engaged in any unfair, deceptive, and unconscionable business and sales practices, AmeriGas shall immediately cease and desist such practices." (Settlement Agreement, § 5.1 – Exhibit A). The Settlement Agreement resolved all claims between the parties for the home heating season covering October 1, 2013, through March 31, 2014.

6. From April 1, 2014, through the summer of 2016, the Attorney General received more than 150 complaints from consumers concerning a variety of AmeriGas' business practices, including new allegations of price gouging.

7. In October 2016, the Attorney General filed an *Ex Parte* Petition setting forth probable cause to believe AmeriGas is violating the MCPA based on multiple business practices. See *Schuette v AmeriGas*, Monroe County Circuit Court Docket No. 16-139361-CZ. Upon finding that probable cause existed, this Court authorized

the issuance of civil investigative subpoenas. Thus, the Attorney General commenced a second investigation of AmeriGas.

8. This most recent investigation was prolonged by AmeriGas' refusal to produce documents required under a subpoena *duces tecum* authorized by this Court. To gain compliance with the subpoena, the Attorney General filed a motion resulting in an Order Granting Attorney General's Motion to Enforce Civil Investigative Subpoenas, issued by this Court on September 29, 2017.

9. The investigation is now complete, giving rise to this lawsuit. The Attorney General found sufficient evidence to conclude that AmeriGas was engaged in many, but not all, of the unfair trade practices described in the *Ex Parte* Petition. And the Attorney General learned of additional MCPA violations through the investigation that were unknown when it began.

10. Although many consumers may think of propane as a utility because it is used for home heating, it is not regulated as a utility like natural gas, electricity, or telephone services. Because consumers are conditioned to see government-mandated fees in connection with utility bills, there is an opportunity for confusion regarding whether they apply to propane. Further, while a utility company's usage costs and service fees are regulated, Michigan law does not give the Public Service Commission authority over costs and fees imposed by residential propane retailers. AmeriGas' fees as described in its consumer billings not only suggest that the fees are mandated, but also make propane more expensive for its customers and make cost comparisons among retailers more confusing for all consumers.

11. Most consumers using propane for home heating use a tank leased from the retailer that supplies the propane. Like other residential retailers, AmeriGas will not fill another company's tank. Thus, consumers who have leased a tank from AmeriGas cannot get it filled by another supplier. While many consumers may have selected AmeriGas, others purchased their homes with an AmeriGas tank already on, or buried under, their property and then simply continued the relationship. In other instances, as with many of the Holton's LP, Rural Gas, and Schultz Bottle Gas customers, AmeriGas became the propane provider when it bought out the smaller company with which the consumer had originally chosen to do business.

12. The MCPA states that the following are unfair, unconscionable, or deceptive practices in the conduct of trade or commerce:

(f) Disparaging the goods, services, business, or reputation of another by false or misleading representation of fact.

(n) causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.

(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.

(r) Representing that a consumer will receive goods or services "free" or "without charge", or using words of similar import in the representation, without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised.

(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 the consumer.

(t) Entering into a consumer transaction in which the consumer waives or purports to waive a right, benefit, or immunity provided by law, unless the waiver is clearly stated and the consumer has specifically consented to it.

(u) Failing, in a consumer transaction that is rescinded, canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.

(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.

(aa) causing coercion and duress as the result of the time and nature of a sales presentation.

(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.

13. As documented through consumer complaints, AmeriGas responses, affidavits, testimony, and documents obtained under the investigative subpoenas, AmeriGas has engaged in the following unfair, deceptive, and unconscionable business practices in violation of the MCPA:

- Some market-priced customers were charged per-gallon propane prices grossly exceeding those charged by other companies in Michigan during the 2015-16 home heating season;
- Through its Terms and Conditions, AmeriGas provides a confusing explanation about how its market prices are set, which fails to provide consumers reasonable notice about the

factors affecting their propane prices. Further, in trying to explain its own market prices, AmeriGas has made misleading statements about prices charged by competitors;

- By charging additional fees on most deliveries it made during the 2015-16 home heating season, AmeriGas exacerbated the excessive prices charged to some market-based customers;
- AmeriGas' explanations to consumers of the costs offset by the Fuel Recovery and HazMat Fees are misleading;
- Application of the Will Call Convenience Fee to consumers receiving low-income home-energy assistance from the Michigan Department of Health and Human Services (DHHS) is unfair because such consumers are will-call customers as a result of their economic circumstances;
- By charging additional fees on most deliveries, AmeriGas confuses customers about the total costs involved in a propane order and makes it difficult for consumers to compare costs among propane retailers;
- Effective December 1, 2015, AmeriGas modified its written customer policies such that it no longer compensates former customers for the propane left in tanks upon discontinuation of service, which also operates to discourage customers from switching propane providers and unfairly penalizing those who do;
- AmeriGas uses marketing materials telling Michigan consumers they can get free tank installation, without giving equal prominence to the qualifications of that offer;
- AmeriGas puts customers with buried propane tanks in the unconscionable position of paying grossly excessive per-gallon prices or paying excavation costs;
- AmeriGas sold tanks at grossly excessive prices to two consumers who had complained to the Attorney General about issues relating to underground tanks;
- After acquiring Schultz Bottle Gas in 2014, AmeriGas allowed numerous consumers to run out of propane. AmeriGas' personnel knew there were deficiencies in the inherited auto-fill records but failed to take reasonable steps to ensure promised deliveries.

- AmeriGas charged fees existing under its general Terms and Conditions to customers of its subsidiary, Schultz Bottle Gas, even though it had never given them notice of those fees.
- AmeriGas uses training materials for its customer service representatives creating a likelihood that consumers, as part of a sales pitch, will be told AmeriGas has never broken a fixed-price promise. This statement is false, or at least highly misleading, in light of events that were part of the Attorney General's 2014 investigation of AmeriGas.

These assertions are detailed in this Complaint. And many of these unlawful activities are ongoing.

III. Factual Allegations

A. Unfair trade practices relating to the market price of propane

1. AmeriGas charged some customers grossly excessive prices during the 2015-16 home heating season.

14. AmeriGas customers may choose a program that locks them into a specific price-per-gallon for an entire home heating season. AmeriGas refers to this option as the Guaranteed Price Program (GPP). Customers not opting for a GPP are referred to by AmeriGas as "market price" customers. This section relates only to market price customers.

15. The home heating season runs each year from October 1 through March 31. During this time, the Michigan Department of Licensing and Regulatory Affairs (LARA) conducts a weekly price survey by sampling propane retailers throughout the State. For the 2015-16 home heating season, 41 propane retailer locations were included in the survey, including three AmeriGas locations. (Affidavit of Alex Morese of LARA – Exhibit B). Each year, LARA uses the information gathered

through this survey to publish a weekly average of per-gallon propane prices on its website. This information provides consumers a context within which to consider their propane bills. Some of the complainants to the Attorney General referenced those weekly averages.

16. From October 5, 2015, through March 7, 2016, the highest-reported per-gallon price from any of the 41 sampled locations always came from an AmeriGas location. These prices were consistent with the consumer complaints the Attorney General was receiving and were grossly in excess of the statewide averages. The average, highest, and lowest reported per gallon survey prices for the 2015-16 home heating season are illustrated in the table below.

	10/5	10/12	10/19	10/26	11/2	11/9	11/16	11/23	11/30	12/7	12/14	12/21
AVERAGE/GAL	\$1.63	\$1.63	\$1.63	\$1.61	\$1.62	\$1.63	\$1.63	\$1.63	\$1.65	\$1.66	\$1.65	\$1.65
HIGH PRICE	\$3.00	\$3.04	\$2.98	\$3.07	\$2.97	\$2.97	\$2.90	\$2.96	\$3.03	\$3.01	\$2.97	\$2.97
LOW PRICE	\$0.88	\$0.88	\$0.88	\$0.88	\$0.81	\$0.81	\$0.84	\$0.84	\$0.82	\$0.82	\$0.87	\$0.73
	12/28	1/4	1/11	1/18	1/25	2/1	2/8	2/15	2/22	3/1	3/7	
AVERAGE/GAL	\$1.66	\$1.66	\$1.68	\$1.68	\$1.71	\$1.68	\$1.71	\$1.70	\$1.71	\$1.71	\$1.70	
HIGH PRICE	\$2.96	\$2.97	\$2.97	\$2.97	\$2.69	\$2.70	\$2.67	\$2.66	\$2.66	\$2.67	\$2.70	
LOW PRICE	\$0.74	\$0.77	\$0.74	\$0.72	\$0.69	\$0.74	\$0.76	\$0.76	\$0.77	\$0.77	\$0.82	

17. AmeriGas refers to its physical locations in Michigan as district offices, which serve geographic sub-areas called districts. Per-gallon pricing is determined on a district-by-district basis. On any given day, the per-gallon price charged by AmeriGas to a Michigan consumer in one AmeriGas district may be different than the per-gallon price charged to a Michigan consumer served by a neighboring district office, even when the consumers share similar characteristics such as annual usage and volume delivered. This can result in wide disparities among the AmeriGas districts reporting to the Federal Energy Information Agency, from which

LARA received the survey data for the three AmeriGas locations reporting in 2015-16. For the week of October 26, 2015, AmeriGas' Gratiot location reported to the Federal EIA a market price of \$3.07 per gallon, while the AmeriGas Kalamazoo district reported a market price of \$1.93 per gallon.

18. For the 2015-16 home heating season, AmeriGas' prices were grossly excessive as compared to prices being charged by its competitors in Michigan, as reflected in the statewide average. During many weeks, AmeriGas' prices were also grossly excessive even when compared only to the highest, non-AmeriGas location included in the LARA survey. See Morese Affidavit, Exhibit B.

19. Throughout the 2015-16 home heating season, AmeriGas contracted with an entity called Market Analytics to provide real-time information about its pricing compared to competitors. Market Analytics supplied AmeriGas with three separate reports each month: one each relating to AmeriGas' two largest competitors (Ferrellgas and Suburban) and one relating to small independent suppliers in Michigan. These reports reveal AmeriGas was accumulating its own data showing competitor pricing consistent with the LARA survey.

20. William M. of Oliver was the first consumer that complained to the Attorney General regarding excessive pricing for the 2015-16 home heating season. AmeriGas charged William \$2.92 per gallon for an October 21, 2015 delivery of 285.8 gallons of propane. William observed that this price was significantly higher than the statewide averages published online by LARA, which

was \$1.63 as of October 19, 2015. (Pricing complaints and AmeriGas' responses – Exhibit C).

21. As the winter continued, more consumers complained to the Attorney General that AmeriGas prices were grossly in excess of what competitors were charging. In January, Karole B. of Bronson reported a price of \$2.77 per gallon. (Exhibit C, pp. D-008-D-009), Renay S. of Sand Lake reported a price of \$2.87 per gallon (Exhibit C, pp. D-012-D013), and Rebecca M. of Three Rivers was charged \$2.75 per gallon (Exhibit C, pp. D-016-D-019). In comparison, the statewide averages published by LARA that month ranged from \$1.66 to \$1.71.

22. Data provided to the Attorney General from AmeriGas during the investigation confirms Monroe County residents were among those Michiganders charged grossly excessive per-gallon prices. For example, Milan residents John G., Randy H., and Stephanie C. were all charged more than \$2.68 per gallon for deliveries during the 2015-16 home heating season.

During the investigation, the Attorney General obtained data from AmeriGas showing it charged some consumers even higher per-gallon prices than described in consumer complaints. For example, Robert L. of Hale was charged \$4.618 per gallon for 98 gallons. And Raymond F. of Williamston paid nearly \$4.00 per gallon on each of four different deliveries; specifically, Raymond's deliveries during the 2015-16 home heating season were as follows:

11/25/15: 294 gallons @ \$3.939
1/6/16: 156 gallons @ \$3.939
2/3/16: 257 gallons @ \$3.959
2/17/16: 155 gallons @ 3.929

23. For unknown reasons, AmeriGas excessively charges some consumers more profoundly than others. For example, the data supplied by AmeriGas during the investigation shows that only two consumers served by its Eaton Rapids District Office paid per-gallon propane prices above \$3.01 during the 2015-16 home heating season. The highest per-gallon price was paid by Jena A. of Howard City, who was charged \$4.549 for the 27 gallons delivered to her. And, Raymond F., as described in the preceding paragraph was charged the second, third, fourth, and fifth highest per-gallon rates. The sixth highest rate charged by the Eaton Rapids District Office for this time period was \$3.00 per gallon to Michael C. of Watervliet, who was charged \$3.00 per gallon for 287 gallons. Thus, Jena and Raymond paid grossly excessive prices even when compared only to other AmeriGas customers served by its Eaton Rapids District Office.

24. During the investigation, AmeriGas attempted to justify its prices by suggesting that it provides superior service and safety. But the corporate designee produced to explain AmeriGas' pricing in investigative testimony acknowledged the company's position in this regard is based largely on anecdotal information and that he was not aware of documents or reports substantiating such assertions. This corporate designee was James Marshall, a regional vice president who is part of the AmeriGas senior leadership team. Upon information and belief, AmeriGas' claims to superior service and safety do not justify the grossly excessive per-gallon propane prices alleged in this Complaint.

25. District managers at AmeriGas may earn bonuses based on earnings. The 2015-16 home heating season saw above-average winter temperatures reducing demand for propane, which served as a real-time challenge to district managers striving to achieve these benchmarks because a lower volume of propane was being sold. One mechanism available to district managers to increase sales volume was to recruit new customers.

26. During the 2015-16 home heating season, AmeriGas was engaged in a marketing campaign aimed at attracting new or returning customers. This campaign emphasized sales to consumers with customer-owned propane tanks who are able to shop their business around based on per-gallon pricing. As part of this campaign, AmeriGas gave its district locations discretion to offer steep discounts to secure new customers and make sales. In training materials related to this effort, district managers were told “[d]on’t lose the order” and “[m]ake sure we are the best price in town.” As a result, spreadsheets obtained from AmeriGas demonstrate that many Michigan consumers were charged less than \$1 per gallon based on these promotional rates.

27. Upon information and belief, per-gallon prices paid by some ongoing AmeriGas customers during the 2015-16 home heating season were increased, at least in part, as a counter-balance to the discounts being given through the marketing campaign.

28. A spreadsheet AmeriGas provided in response to the Attorney General’s subpoena *duces tecum* shows deliveries from multiple district offices from January

11 through January 23, 2016. The spreadsheet gives information about 314 propane deliveries. The spreadsheet shows consumers receiving market and promotional pricing ranging from \$0.79 per gallon up to \$2.95 per gallon. The ten lowest-priced Michigan consumers on this spreadsheet were:

Date	Customer	Home City	District Office	Cost	Gallons	Volume Tier
1/18/2016	Teresa S.	Grand Ledge	Eaton Rapids-Lansing	0.79	200	XS
1/14/2016	Jessica V.	Houghton Lake	Harrison	0.80	46	S
1/19/2016	Joel M.	Beaverton	Harrison	0.80	46	L
1/15/2016	Damien F.	Roscommon	Harrison	0.80	223	L
1/11/2016	Tim F.	Bellevue	Eaton Rapids-Lansing	0.80	247	L
1/12/2016	Micah H.	Kalamazoo	Kalamazoo	0.80	558	L
1/20/2016	Amanda C.	Beaverton	Harrison	0.80	320	L
1/12/2016	Derek P.	Harrison	Harrison	0.80	373	L
1/14/2016	Jessica V.	Houghton Lake	Harrison	0.80	354	S
1/20/2016	Joel M.	Beaverton	Harrison	0.80	354	L
1/13/2016	Kyle H.	Mason	Eaton Rapids-Lansing	0.80	375	XS

Meanwhile, the ten consumers paying the highest per-gallon rates as depicted on the spreadsheet were:

Date	Customer	Home City	District Office	Cost	Gallons	Volume Tier
1/13/2016	Michael K.	Three Rivers	Kalamazoo	2.97	260	S
1/11/2016	Ron B.	Merrill	Ashley	2.97	212	M
1/12/2016	Scott S.	St. Johns	Ashley	2.97	182	M
1/11/2016	Christian R.	Lansing	Eaton Rapids-Lansing	2.96	58	XS
1/14/2016	Mary T.	Bath	Eaton Rapids-Lansing	2.96	75	XS
1/11/2016	Dudley M.	Charlotte	Eaton Rapids-Lansing	2.95	59	XS
1/14/2016	Ilonika G.	Houghton Lake	Harrison	2.95	135	XS
1/11/2016	Terry D.	Climax	Kalamazoo	2.95	127	S
1/14/2016	Jim W.	Bath	Eaton Rapids-Lansing	2.95	176	S
1/12/2016	Dan R.	Plainwell	Kalamazoo	2.95	200	S

The remaining consumers listed in the spreadsheet paid prices falling in the wide range between these highs and lows.

29. AmeriGas' corporate pricing manager sent an email on December 4, 2015 that raised concerns flowing from the special pricing being offered under this marketing campaign based on the Market Analytics reports. The email stated: "For the last couple of months, we've been seeing that our first fills and first year prices are well below independents' prices. These discounted rates will affect our ability to be competitive on our regular pricing." (Exhibit D).

30. During the 2015-16 home heating season, AmeriGas received calls from Michigan consumers who were unhappy with the per-gallon prices they were being charged. As that season began, AmeriGas authorized its telephone representatives to give price concessions to consumers of up to \$0.25 per gallon to try to keep them as customers. Larger price concessions could be made by district managers. Although he said he was not in a position to know whether it actually occurred in 2015-16, Mr. Marshall testified AmeriGas officials had discretion to try to maintain a district's earnings benchmarks by increasing market prices charged to some consumers to make up for price concessions given to complaining customers.

31. AmeriGas' average product costs for the propane it was selling throughout the 2015-16 season was less than \$1.00 per gallon. For example, the product cost for the Eaton Rapids District Office was \$0.6676 per gallon. This product cost includes both the actual cost AmeriGas paid to acquire the propane and its transportation costs to bring that propane to its plant in Eaton Rapids for distribution.

32. Upon information and belief, the Eaton Rapids District Office could have achieved precisely the same earnings in 2015-16 without charging Raymond F. the per-gallon prices identified in paragraph 22 above. Similarly, AmeriGas' district offices serving Michigan consumers could have achieved precisely the same 2015-16 earnings without deviating as much as they did from the statewide averages reported in the LARA survey. This could have been accomplished through better oversight over aspects of its operations, including the marketing campaign incentives, concessions, and the disparities among the per-gallon prices being charged to market-priced consumers.

2. AmeriGas' explanation of its market pricing is confusing.

33. AmeriGas, through both its Terms and Conditions and its telephone representatives, refers to consumers who are not on a fixed-price program as paying a "market price."

34. AmeriGas' use of the phrase "market price" in communicating with customers and potential customers is misleading. Although an AmeriGas customer subject to market-based pricing might reasonably assume the per-gallon rate he or she will be charged will bear some relationship to the market costs of propane, the company has crafted its Terms and Conditions in an ambiguous manner suggesting that AmeriGas may have its own "market" price that has nothing to do with the industry price:

Unless you have an agreement which determines your price, you will receive the Company's daily market price per gallon that is set at the Company's discretion, which includes, among other things and without

limitation, our costs to procure the propane, freight and transportation, and may vary depending upon the volume of propane purchased by the customer, customer classification, ownership of propane tank and competitive conditions. You may contact your District office to receive current pricing information as pricing changes frequently and without prior notice to the customer. (AmeriGas' Terms and Conditions as mailed to consumers in Fall 2017, Exhibit E. With the exception of minor, grammatical adjustments, this text has been substantially the same from April 1, 2014 through the filing of this lawsuit.

This text contains an additional ambiguity with respect to the role a customer's propane volume plays in price-setting. It is unclear from this policy whether the focus is on the size of a particular propane delivery, annual usage, or some other volume criteria.

35. Putting aside any issues uniquely affecting AmeriGas' per-gallon pricing during the 2015-16 home heating season, AmeriGas generally knows that its per-gallon pricing to non-GPP customers is higher than per-gallon rates charged by competitors. As referenced in the prior section, AmeriGas professes it provides superior safety and service and prices its propane accordingly. AmeriGas' assertion in this regard is not described in the text of AmeriGas' Terms and Conditions relating to how its market prices are set, meaning consumers are not informed how this affects per-gallon rates.

36. The confusing nature of AmeriGas' use of the term "market price" leads to further misrepresentations by its customer service representatives. Upon information and belief, some of these employees do not understand that AmeriGas' market price is distinct from a more conventional understanding of that term. This can lead to employees providing unclear information about prices being offered by

competitors. For example, in a telephone recording obtained during the investigation, an AmeriGas employee told consumer Karol B. that “those are probably new customer specials that you’re hearing” and “unfortunately, that is not the market rate today” in reaction to a price given to Karol by an AmeriGas competitor.

37. Lisa Aviz, who formerly worked in AmeriGas’ district office in Coldwater provided investigative testimony. Ms. Aviz testified that, at AmeriGas’ direction, she trained customer representatives to respond to a customer complaining about other companies having lower pricing than AmeriGas by making a statement such as “it’s probably a first fill price.” AmeriGas has made similar statements in responses to consumer complaints forwarded to it by the Attorney General, even though it knows those responses are forwarded to the consumers and that the prices being cited by the consumers in their complaints are consistent with the true market prices.

B. Unfair trade practices relating to AmeriGas’ Fuel Recovery, HazMat, and Will Call Convenience Fees

1. Fuel Recovery and HazMat Fees

38. Under its current Terms and Conditions, effective December 1, 2017, AmeriGas explains its Fuel Recovery and HazMat Fees as follows:

Fuel Recovery Fee – This fee, which is assessed on propane deliveries, helps to offset the significant expenses incurred by the Company in fueling its fleet of motor vehicles. This fee fluctuates on a monthly basis as the Company’s cost of fuel fluctuates. For updated Fuel Recovery Fee information, please contact your local office or visit the Company’s website.

HazMat & Safety Compliance Fee – This fee, which is assessed on propane deliveries, helps to offset a portion of the costs the Company incurs to comply with federal, state and local government regulations, including, but not limited to, hazardous materials, homeland security, emergency preparedness and workplace safety. It is also used to fund, among other things, employee safety training and inspections, cylinder requalification, and environmental compliance. The fee as of the date of this Notice is \$10.99.

AmeriGas' explanation of these fees has been substantively the same in every version of its Terms and Conditions in effect from April 1, 2014, through the date of the filing of this Complaint. The only difference is that the version presently on AmeriGas' website does not include a sentence informing consumers about the current Fuel Recovery Fee amount. Cf Exhibit E.

39. From April 1, 2014, through the date of the filing of this Complaint, AmeriGas has generally imposed these fees upon all residential propane deliveries in Michigan, for GPP and market price consumers alike. Under AmeriGas' Terms and Conditions, these fees can also be imposed on all other service calls, including tank pick up upon service termination. Upon information and belief, AmeriGas employees sometimes remove these fees from the accounts of consumers who complain either about them specifically or the size of their propane bill generally.

40. The names and amounts for the Fuel Recovery and HazMat fees are established by AmeriGas. AmeriGas began applying the Fuel Recovery Fee in 2005 and later added the HazMat Fee. Because it is the nation's largest supplier of residential propane, AmeriGas understands it is in a position to affect pricing methodologies. In an internal communication to its customer service employees

regarding its introduction of other new fees, AmeriGas made the following historical statement about its HazMat Fee:

AmeriGas has a history of leading the industry in new directions, like when AmeriGas became the first major propane company to introduce a hazardous materials fee. This now-common practice was achieved through a dedicated effort of our front-line personnel to lead the way with implementation. [Exhibit F]

41. Upon information and belief, some propane retailers in Michigan have fees comparable to AmeriGas' HazMat Fee, but many do not. There are many residential propane providers in Michigan that do not use add-on fees for propane deliveries and charge only the per-gallon rate and sales tax. Upon information and belief, AmeriGas' HazMat and Fuel Recovery fees make it more difficult for consumers to compare propane prices being offered among competitors in Michigan.

42. The names and amounts of the HazMat and Fuel Recovery Fees consumers see on their AmeriGas bills create an illusion of officiality. Although the AmeriGas Terms and Conditions explain these fees are not government mandated, the reality is that not all AmeriGas customers will read that document or the fine print on the reverse side of their invoices. They will simply see fees as line items on their invoices. Because the fees are not set at round numbers and consumers are accustomed to seeing government-mandated fees on utility bills such as with telephone and electricity, some are confused by the nature of these fees. For example, the Attorney General received a complaint from Donald P. of Gregory asking whether these fees are government mandated. (Fees complaints and AmeriGas responses – Exhibit G.)

43. Generally speaking, both fees, as described in AmeriGas' Terms and Conditions, relate to routine operating expenses involved in acquiring, transporting, and delivering propane to commercial and residential customers. The bulk of these expenses are anticipated in AmeriGas' district-level budgeting. Upon information and belief, it is not essential for AmeriGas to use the Fuel Recovery Fee and HazMat Fee labels to generate the revenues needed to offset the expenses to which they purportedly relate.

44. During the 2014-15 home heating season, AmeriGas did not impose either fee on its customers receiving propane under the Schultz Bottle Gas brand. And Mr. Marshall testified that there are some states in which AmeriGas does not charge a HazMat Fee. AmeriGas does not budget margins on propane differently for districts in such states. Upon information and belief, this is because the majority of costs to which the HazMat Fee relates are simply offset against the propane revenue derived from per-gallon sales.

45. In its Terms and Conditions, AmeriGas describes both the Fuel Recovery and HazMat Fees as being used to "offset" specified costs. This is misleading. Upon information and belief, AmeriGas budgets revenue to be generated from the sale of propane at per-gallon prices to offset these same expenses, while still achieving a profit. This fact is material to the transactions AmeriGas is engaging in with Michigan consumers, but is neither disclosed to consumers nor is something they could reasonably know.

46. The income statements from AmeriGas' Eaton Rapids and Ashley District Offices for 2015-16 are included as Exhibit H. The statements show AmeriGas breaks its revenue into two categories: propane and non-propane. The propane revenue comes from the per-gallon propane sales to both residential and commercial customers. The non-propane revenue comes from fees and services, including imposition of the HazMat and Fuel Recovery fees. For both districts, the propane revenue generated from per-gallon propane sales was sufficient to offset all operating expenses, including those to which the Fuel Recovery and HazMat fees relate.

47. AmeriGas further confuses Michigan consumers through its responses to questions and complaints about the HazMat and Fuel Recovery fees. AmeriGas knows from experience that the Attorney General shares its responses to consumer complaints with the complaining consumer. In responding to Donald P.'s complaint, AmeriGas said it uses these fees to recoup specific aspects of its overhead expenses. Regarding the Fuel Recovery Fee, AmeriGas said, "[w]hile various other suppliers may build these costs into the price of the propane, AmeriGas chooses to list this charge separately." (Exhibit G). But this response is misleading because AmeriGas factors its diesel fuel costs into the per-gallon price of its propane. AmeriGas even tells market price consumers this fact in the Terms and Conditions section quoted in paragraph 34 above.

48. In responding to Donald P.'s question about the HazMat Fee, AmeriGas said that this fee is used to offset safety training and hazardous material

costs. (Response to Donald P. complaint, Exhibit G). Similarly, in an internal document designed to train customer service representatives that respond to frequently asked questions, AmeriGas explains that the HazMat Fee is used to “defray” safety expenses. But AmeriGas, in explaining why its per-gallon prices during the 2015-16 home heating season were so much higher than other retailers, said the price includes “an extensive safety department which [sic] provides safety training year-round to our employees.” (AmeriGas response to Renay S. complaint –Exhibit C, pp D-014-D015).

49. Testifying about an internal memo AmeriGas uses to justify the HazMat Fee, Mr. Marshall explained, “The bulk of the expenses articulated in the justification memo relate to employee labor costs.” For example, the memo includes as safety costs the time various district-level employees such as drivers, service technicians, telephone representatives, and district managers spend performing functions like inspecting vehicles and equipment and attending meetings and trainings. These are expenses AmeriGas budgets for in the “Employee costs” line item seen on the income statements at Exhibit H. Upon information and belief, AmeriGas budgets the anticipated revenue from the per-gallon sales of propane at a sufficient level to recoup these costs.

2. Will Call Convenience Fee

50. On December 1, 2015, AmeriGas added a new fee it had not charged consumers before. This fee applies to customers who control their propane deliveries by placing affirmative orders, as opposed to having AmeriGas

automatically fill their tanks at the company's discretion. Though the description of this fee has not changed since its inception, its amount has increased since its original amount of \$4.99 per will call delivery.

51. This fee has a coercive effect on consumers who obtain government assistance in paying their home heating bills through the Low Income Home Energy Assistance Program (LIHEAP) administered by the Michigan Department of Health and Human Services (DHHS). These consumers, by virtue of economic necessity, receive their propane on a will call basis. AmeriGas is treating the faxed propane orders from DHHS on behalf of such consumers as a will call order to apply the Will Call Convenience Fee. Because DHHS' assistance is capped for each recipient (e.g., \$1,200 for winter 2015-16), DHHS' payment of this fee to AmeriGas ultimately reduces the overall number of gallons available under this program.

52. LIHEAP consumers cannot obtain help from the LIHEAP for paying AmeriGas' service dispatch and early termination fees, making it more difficult for them, as compared to other consumers, to switch to a propane retailer that does not charge a Will Call Convenience Fee.

C. Unfair trade practices that discourage Michigan consumers from leaving AmeriGas

1. No refunds for returned propane

53. During the Attorney General's 2014 investigation, AmeriGas' generally compensated consumers for propane returned to the company when service was terminated.

54. AmeriGas now includes a provision in its Terms and Conditions stating the general policy that it will not reimburse former customers for propane left in their tanks. This policy was first stated in Section 11, paragraph 3 of the Terms and Conditions taking effect December 1, 2015, as follows:

Unless required by law, the Company does not repurchase propane remaining in the tank or provide customer refunds for any unused propane. The Company, may however, in its sole discretion, repurchase the propane remaining in the tank in certain circumstances. If the Company determines to repurchase the remaining propane, the repurchase price will be based upon the lower of the price per gallon that you paid or the Company's current daily market price.

AmeriGas did not clearly notify consumers of this policy change and simply circulated new Terms and Conditions with this new text. AmeriGas did not, nor does it, specifically advise consumers making propane purchases that they will forfeit their ownership rights of paid-for propane should they cancel service. Upon information and belief, AmeriGas' policy not to repurchase propane has been continuously in effect since December 1, 2015, through the filing of this lawsuit.

55. AmeriGas enforces its general policy of not compensating Michigan consumers for returned propane, even though it then resells the returned propane to other consumers or business customers. This is the case, even though Mr. Marshall admitted in his investigative testimony that the consumers own the propane. During the investigation, AmeriGas supplied the Attorney General with a spreadsheet showing more than 200 Michigan consumers who had not been compensated for returned propane under the new policy. As that spreadsheet

included only propane returns up to October 21, 2016, the number of affected Michigan consumers is now likely larger.

56. In the spreadsheet identifying consumers who have returned propane for which AmeriGas has not provided compensation, AmeriGas identifies the consumers, the number of gallons they have returned, and the value of the returned propane. Examples of consumers identified in this spreadsheet include:

- Geraldine L. of Auburn Hills returned 398 gallons, which AmeriGas valued at \$1,066.24.
- Charles Z. of South Haven returned 325 gallons, which AmeriGas valued at \$809.25.

57. The spreadsheet also clarifies that AmeriGas has enforced its new policy against Michigan consumers in a manner inconsistent with its own Terms and Conditions. Within each new version of its Terms and Conditions, AmeriGas tells consumers they become bound by revisions to the Terms and Conditions upon accepting a propane delivery after their effective date. However, AmeriGas has applied its policy not to repurchase propane that took effect on December 1, 2015, to the return of propane delivered prior to that date. Examples of such consumers include:

- Dwayne F. of Coloma returned 315 gallons that had been delivered in October 2014. AmeriGas valued this propane at \$758.84.
- Isabel and Troy O. of Hartford returned 340 gallons that had been delivered in January 2015. AmeriGas valued this propane at \$646.00.

- Charlotte L. of Bridgeman returned 275 gallons that had been delivered in February 2015. AmeriGas valued this propane at \$604.73.

58. Upon information and belief, AmeriGas does not enforce its policy not to repurchase propane in every state. Thus, AmeriGas' practice in some states is to repurchase propane from consumers who terminate service.

59. Even in enforcing its policy not to repurchase propane against Michigan consumers, AmeriGas does so in an inconsistent manner. District managers are given discretion to waive that policy and compensate consumers for returned propane on a case-by-case basis. And, in response to a second consumer complaint from Donald P., AmeriGas stated, "[i]n fact, it is the Howell AmeriGas District Office policy to refund customers for the propane left in their tank at the time of pick-up." (AmeriGas response to Donald P. complaint – Exhibit G). Upon information and belief, there is no lawful reason for AmeriGas to treat Monroe County and other Michigan consumers less favorably than those served by the Howell district location with respect to compensation for propane returned to AmeriGas upon service termination.

60. AmeriGas' policy not to repurchase propane unlawfully penalizes consumers for terminating service and is unconscionable. Under its Terms and Conditions, AmeriGas charges a variety of fees designed to ensure it is compensated for operating expenses it incurs when a consumer terminates service.

61. AmeriGas' policy not to repurchase propane forces some consumers to pay for a propane delivery at whatever per-gallon price the company charges. Even if the consumer believes the price to be unfair, he or she will have to pay for that

propane even if it is returned to AmeriGas and will have to pay various fees to terminate service. This will include paying AmeriGas a \$149.99 pump-out fee for AmeriGas to transmit the propane from the consumer's tank back onto the delivery truck so that it can be re-sold.

2. Free tank installations and Early Termination Fee

62. At the same time it introduced its new policy not to repurchase propane, AmeriGas rolled out a new Early Termination Fee of \$149.99. This fee was first expressed in the Terms and Conditions effective on December 1, 2015, and has remained substantially the same since that time. In the current Terms and Conditions, that fee is explained as follows:

Early Termination Fee – For customers with Leased Equipment, you have received certain benefits from the Company in exchange for your service commitment, which may include, but are not limited to, the installation costs of the Leased Equipment. In the event that you terminate propane service with the Company prior to the end of the Initial Term, the Company will charge you an Early Termination Fee as of the date of your request. The Early Termination Fee is \$149.99.

63. AmeriGas sometimes mails promotional offers to Michigan consumers to generate business. Upon information and belief, in the time since the Early Termination Fee was introduced, postcards like those depicted in Exhibit I were sent by AmeriGas, or a person or entity acting on its behalf, to Michigan consumers through the United States mail.

64. In these mailings and similar advertisements, AmeriGas told Michigan consumers a leased propane tank will be installed for free when joining

AmeriGas. AmeriGas has relegated the conditions upon that offer, such as the Early Termination Fee, to a smaller footnote.

3. Treatment of consumers with underground propane tanks

65. Some Michigan consumers have underground propane tanks due to customer preference, deed restrictions, or neighborhood association rules. In August 2014, the Attorney General received the following complaint against AmeriGas from Shirlee B. of Eagle:

February 6, 2007, I entered into a contract with Rural Bottled Gas to install an underground propane tank, which was a requirement for the property we purchased. Ultimately, Rural sold their business to AmeriGas. I have spoken with Robb Torres, District Manager with AmeriGas several times to request purchasing the underground propane tank we purchased from Rural Gas. He told me they are not in the business of selling their tanks. They have now backed us into a corner because we are unable to contract with another propane company which has a much better price for the propane. Our only option is to have a company come in, excavate where the tank is, which is buried in the landscaping, have the gas pumped out and have another company come in and install another tank in the same place. This tank is 7 years old now...it seems as though to allow purchasing of the tank should not be a problem as the tank could not be used again for another customer. There are a number of people that purchased property with the stipulation we had to have underground tanks on Jones Road, which are having the same difficulty we are. All we are trying to do is obtain propane with a company that offers the best price. They are not allowing the purchase I believe because they do not want to lose our business. We would prefer at this point and time not to do business with AmeriGas as we are unhappy with their service. I am hoping we can obtain a resolution to this situation without having to have our yard completely destroyed and the expense to release ourselves from AmeriGas.

At the time of her complaint, AmeriGas refused to offer Shirlee a solution other than to have a contractor excavate the tank for her, which would have cost her

thousands of dollars. But, after the Attorney General forwarded Shirlee's complaint to AmeriGas, she was offered the opportunity to purchase the tank for \$1,000. No explanation was made for how this price was calculated. But it was the price Shirlee had to pay for a seven-year-old propane tank if she wanted to end her relationship with the company that happened to buy out the propane retailer she had originally selected. So, Shirlee paid it. (Exhibit J, p L-021.)

66. In 2016, the Attorney General received a complaint from Steven B. of Grand Ledge regarding the underground propane tank on his property. According to Steven, the prior owner of his home told him he owned the tank and that he could order propane from any company he desired. But AmeriGas was demanding that Steven return the tank. (Steven B consumer complaint – Exhibit J.) On October 12, 2016, AmeriGas sent the Attorney General a response to Steven B.'s complaint in which it asserted the tank is owned by the company, but that Steven could buy it for \$817.00. AmeriGas did not explain how it calculated this price and attached a largely illegible invoice apparently from 2003 as purported evidence of its ownership of the tank. This invoice was for tank installation and does not provide conclusive evidence of its ownership. Upon information and belief formed through the investigation, AmeriGas inferred its ownership of the underground tank on Steven's property from the absence of contrary documentation in records it obtained when acquiring Rural Gas and Appliance. Steven paid AmeriGas \$817.00 to purchase this underground tank.

67. AmeriGas has inconsistent practices regarding the sale of underground tanks that operate to the disadvantage of consumers like Shirlee and Steven. To attract the business of a new customer, AmeriGas will agree to sell an underground tank for installation. At times, AmeriGas has installed an underground tank for a consumer under an agreement allowing the consumer to purchase the tank in a future year for a price reflecting its reduced value over time. (See, e.g., Affidavit of Thomas R, Exhibit K) However, AmeriGas' general practice is not to sell an existing underground tank. Thus, this general practice operates in such a way that AmeriGas will not sell an underground tank installed by a smaller propane company that it has subsequently acquired or that was installed on a property through arrangements made by a home's prior owner.

68. As demonstrated through the documentation attached to Thomas' affidavit at Exhibit K, AmeriGas charged Shirlee and Steven grossly excessive prices to purchase the underground tanks on their properties as compared to the prices AmeriGas would charge consumers for similar tanks installed under an agreement directly with AmeriGas. The investigation showed the price Shirlee paid for the seven-year-old tank on her property was set by an Area Director, and AmeriGas failed to provide documentation showing how that price was calculated. Upon information and belief, the District Manager for the Eaton Rapids District Office set Steven's \$817.00 price for the thirteen-year-old tank on his property with reference to an asset list showing that was the price AmeriGas had recently paid for a new tank of the same size.

69. A Consumer owning a propane tank can shop around to get the best price. Upon information and belief, AmeriGas' practice of not selling existing, underground tanks is designed as a safeguard against losing business to competitors offering lower prices.

70. AmeriGas' practices regarding the sale of underground tanks are unconscionable and put affected consumers under duress. Consumers with underground tanks installed by a previous company or homeowner are placed in the unfair position of having to choose between paying AmeriGas per-gallon prices that likely exceed those available from competitors or absorbing excavation costs so the tank can be returned to AmeriGas. Consumers choosing the latter expense must then also pay AmeriGas the service dispatch fee for picking up the tank, as well as any other costs that may be applicable—including the pump-out and termination fees. They also would be subject to the AmeriGas policy not to repurchase propane.

D. Unfair trade practices affecting Schultz Bottle Gas customers

71. Upon information and belief, AmeriGas acquired Schultz Bottle Gas in or around August 2014. AmeriGas filed documentation with the Michigan Department of Licensing and Regulatory Affairs showing it was beginning to transact business under the Schultz Bottle Gas name.

72. Upon information and belief, AmeriGas did not advise Schultz Bottle Gas customers that it was now their propane supplier for at least a year after acquiring Schultz Bottle Gas. During the investigation, AmeriGas provided the Attorney General documentation showing that it was taking steps to advise these customers

of this acquisition in the Fall of 2015, but the documentation does not definitively establish if or when such notifications were distributed.

73. Upon information and belief, during the 2014-15 and 2015-16 home heating seasons, AmeriGas continued operating the Schultz Bottle Gas location in Milan that had been the latter company's headquarters prior to the acquisition. During this time, the Schultz Bottle Gas signage remained the same, and customers calling the established Schultz Bottle Gas telephone number were greeted by telephone representatives answering the phone using the Schultz Bottle Gas name.

74. Upon information and belief, prior to being acquired by AmeriGas, some Schultz Bottle Gas customers signed up to receive propane on an automatic fill basis on a schedule to be determined by Schultz Bottle Gas. After acquiring Schultz Bottle Gas, AmeriGas found these records to be poorly kept on the database. AmeriGas appointed Richard Schneider as the manager of the Schultz Bottle Gas office in Milan after AmeriGas took over operations. Mr. Schneider testified during the investigation that multiple consumers ran out of propane because of missing information in the database and because two former employees left with hard copies of customer information.

75. Mr. Schneider testified that approximately 20-30 Schultz Bottle Gas customers complained about running out of propane during the winter of 2014-15, and another 10-20 such complaints were received during the spring and summer of 2015. While AmeriGas did not have complete information identifying which of its

customers were signed up for auto-fill. Mr. Schneider testified he believed the Schultz Bottle Gas database "had a complete list of all Schultz Bottle Gas customers, past and present." Upon information and belief, AmeriGas had the information and ability needed to reach out to Schultz Bottle Gas customers about a known problem with its records identifying which customers were signed up for auto-fills but did not do so. Consequently, some Schultz Bottle Gas customers unnecessarily ran out of propane when AmeriGas did not deliver on promises it inherited by virtue of its acquisition.

76. Under its Terms and Conditions, AmeriGas charges a leak check fee when a consumer runs out of propane and then has service reinstated. Even though AmeriGas had not given notice to its Schultz Bottle Gas customers about its fee structure, it applied leak check fees to consumers whom it allowed to run out of propane as described in the preceding paragraphs. In his testimony, Mr. Schneider could not definitively say all affected consumers had these fees refunded. Mr. Schneider and AmeriGas claimed the leak check and special trip fees were removed for Michael F., who is one of the consumers AmeriGas allowed to run out of propane even though he was a Schultz Bottle Gas customer. But Michael F. is not sure this occurred because he was not compensated for the propane left in his tank, and he never received a final accounting from AmeriGas. (Michael F affidavit, Exhibit L.) Michael returned his tank when it was AmeriGas' policy to compensate consumers for the propane left in their tanks.

77. In approximately September 2015, AmeriGas transitioned the Schultz Bottle Gas customers onto the computer database it uses for the majority of its consumers. Consequently, AmeriGas began charging the Schultz Bottle Gas customers Fuel Recovery and HazMat fees. AmeriGas did this even though it had not distributed its Terms and Conditions to these customers. In a filing with this Court opposing the Attorney General's effort to enforce the subpoenas, AmeriGas admitted an "inadvertent error in charging customers HazMat and Fuel Recovery fees without sending those customers a welcome packet informing them of those fees." AmeriGas ignored the fact it had also imposed leak check, tank rental, and other fees upon former Schultz Bottle Gas customers who did not have notice of those fees before their imposition.

78. Upon information and belief, AmeriGas did not attempt to identify consumers who had been inadvertently charged HazMat and Fuel Recovery fees without receiving notice of them through a welcome packet from AmeriGas until the Attorney General expressed concerns about fees charged to the Schultz Bottle Gas customers in the *Ex Parte* Petition giving rise to the investigation.

79. AmeriGas' admission in the above-referenced court filing applies only to Fuel Recovery and HazMat fees collected from its acquisition of Schultz Bottle Gas through November 30, 2015. But AmeriGas' charging of those fees to these customers after that date is also inappropriate. Upon information and belief, throughout the 2015-16 home heating season, the Schultz Bottle Gas homepage expressly advertised that there were "[n]o HazMat or Delivery Charges." Attached

is a printout of a screenshot the Attorney General captured on February 22, 2016, of the Schultz Bottle Gas homepage. (See Exhibit M.) Mr. Schneider testified he considers the Fuel Recovery Fee a delivery fee. Hence, even if AmeriGas did distribute its Terms and Conditions to Schultz Bottle Gas customers in the Fall of 2015, the contradictory statement on the Schultz Bottle Gas website about not charging HazMat and delivery fees could have created confusion among its customers, or potential customers, in this regard.

80. Even after the Attorney General commenced the investigation giving rise to this lawsuit, AmeriGas attempted to charge at least one Schultz Bottle Gas for a tank rental fee under its Terms and Conditions even though the consumer had not placed a propane order on or after December 1, 2015, which would have been a condition predicate to imposing such a fee under the plain text of that document. Responding to this consumer's complaint to the Attorney General, AmeriGas removed that fee. Upon information and belief, AmeriGas still has not undertaken to affirmatively identify other consumers who have been charged tank rental, service dispatch, tank pump-out, and other fees after December 1, 2015 even though they had not received propane deliveries after that date.

E. Unfair trade practices relating to 2014 settlement agreement

1. Misleading statement in training scripts

81. AmeriGas provides training materials to its customer service representatives, which includes as a talking point the idea that AmeriGas has never broken a fixed-price promise. Specifically, one such document states:

Our written agreements are ironclad; there are:
No per-gallon deposits on gallons you may not use
No provisions permitting the price guarantee to be broken
AmeriGas has never broken a Pre-Buy, AmeriGuard or AmeriLock
price promise

This statement is false or misleading.

82. The Attorney General's 2014 investigation of AmeriGas involved three primary issues, one of which was the company's failure to honor fixed-price promises made to Michigan consumers. Ultimately, the Attorney General obtained evidence validating this concern through that investigation and commenced suit against AmeriGas on claims related to this and other concerns.

83. In settling that lawsuit, AmeriGas acknowledged in paragraph 6.1 of the settlement agreement:

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.

AmeriGas' investigation of this problem came only after the Attorney General made it one of the subjects of the 2014 investigation. AmeriGas broke fixed-price promises to Michigan consumers during the 2013-14 home heating season, and that situation was not truly rectified until the Attorney General filed the previous lawsuit. Upon information and belief, in making its assertion about how it has never broken a fixed-price promise to Michigan consumers, AmeriGas does not disclose the material facts about the role of the Attorney General's investigation

and lawsuit or the subsequent settlement. These facts are relevant, and not reasonably knowable by the consumers.

2. Breach of 2014 agreement

84. As quoted in paragraph 5 above, AmeriGas was obligated under the 2014 settlement agreement to cease all unfair, deceptive, and unconscionable business practices. As alleged in this Complaint, it has failed to do so. Indeed, AmeriGas' grossly excessive pricing practices are a recurrent allegation.

COUNT I – SECTION III(A) CLAIMS REGARDING PRICING

85. The Attorney General incorporates paragraphs 1 through 84 above as though fully set forth here.

86. AmeriGas' pricing practices for the 2015-16 home heating season, as set forth in section III(A) above are an unfair trade practice under MCL 445.903(1)(z). Upon information and belief, this violation is manifest in two distinct ways: (1) AmeriGas charged grossly excessive prices for propane to a substantial number of residential customers in Michigan during the 2015-16 home heating season when compared to the price at which propane was being sold by other residential retailers within this State; and (2) AmeriGas charged some of its own customers who were subject to market pricing at rates that were grossly in excess of the per-gallon prices it was charging to the majority of its own residential customers who were similarly situated. Upon information and belief, the customers in the second group are a subset of the first, larger group.

87. The grossly excessive prices charged to AmeriGas market-priced consumers as alleged in Section III(A) were exacerbated by application of the HazMat, Fuel Recovery, and Will Call Convenience Fees described in Section III(B).

88. AmeriGas' use of phrases like "market price" in its Terms and Conditions, and communications with Michigan consumers as alleged in Count III(A)(2) violate MCL 445.903(1)(f), (n), (s), (bb), and (cc). AmeriGas further engages in these unfair trade practices through its ambiguous and misleading explanations about how market pricing is accomplished at AmeriGas and in communicating about prices offered by competitors.

89. The Attorney General seeks injunctive relief, as well as damages on behalf of all consumers named in Section III(A) and all similarly situated consumers in the State of Michigan.

COUNT II - SECTION III(B) CLAIMS REGARDING FEES

90. The Attorney General incorporates paragraphs 1 through 89 above as though fully set forth here.

91. As alleged in Section III(B)(1), AmeriGas violates MCL 445.903(1)(n), (s), (bb), and (cc) through confusing and misleading representations regarding its Fuel Recovery and HazMat fees. Further, AmeriGas practices regarding these fees violate these subsections because AmeriGas' fees are likely to confuse consumers who attempt to compare propane prices amongst different retailers.

92. As alleged in Section III(B)(2), AmeriGas' application of the Will Call Convenience Fee to Michigan LIHEAP consumers violates MCL 445.903(1)(aa).

93. The Attorney General seeks injunctive relief, as well as damages on behalf of all consumers named in Section III(B) and all similarly situated consumers in the State of Michigan.

COUNT III – SECTION III(C)(1) CLAIMS REGARDING RETURNED PROPANE

94. The Attorney General incorporates paragraphs 1 through 93 above as though fully set forth here.

95. Regarding propane returned to the company upon discontinuance of service, AmeriGas' policies and practices as alleged in Section III(C)(1) violate MCL 445.903(1)((n), (t), (u), and (y).

96. By taking propane belonging to Michigan consumers without compensation in the manner alleged in Section III(C)(1), AmeriGas is engaging in statutory conversion under MCL 600.2919a(1)(a). Alternatively, AmeriGas' misconduct constitutes common law conversion.

97. The Attorney General seeks injunctive relief, as well as damages on behalf of all consumers named in Section III(C)(1) and all similarly situated consumers in the State of Michigan.

COUNT IV – SECTION III(C)(2) CLAIMS REGARDING FREE TANK INSTALLATION MARKETING

98. The Attorney General incorporates paragraphs 1 through 97 above as though fully set forth here.

99. As alleged in Section III(C)(2), AmeriGas' marketing to Michigan consumers regarding free tank installations violate MCL 445.903(1)(r).

100. For this Count, the Attorney General seeks only injunctive relief.

COUNT V - SECTION III(C)(3) CLAIMS REGARDING UNDERGROUND TANKS

101. The Attorney General incorporates paragraphs 1 through 100 above as though fully set forth here.

102. AmeriGas' policies and practices in refusing to sell underground tanks to Michigan consumers as alleged in section III(C)(3) violate MCL 445.903(1)(n) and (aa).

103. Upon information and belief, AmeriGas' practices in this regard have caused financial harm to yet unidentified Michigan consumers who have sought to terminate their relationship with AmeriGas, but have been unable to do so. Such consumers have been forced to pay the per-gallon rates dictated by AmeriGas, even when such rates are less favorable than those available from competitors.

104. Regarding consumers Shirlee B and Steven B, as alleged in paragraphs 65 through 70, AmeriGas violated MCL 445.903(1)(n) and (z) by charging them grossly excessive prices for aged, underground tanks.

105. The Attorney General seeks injunctive relief, as well as damages on behalf of all consumers named in Section III(C)(3), and all similarly situated consumers in the State of Michigan.

**COUNT VI – SECTION III(D) CLAIMS REGARDING SCHULTZ BOTTLE
GAS**

106. The Attorney General incorporates paragraphs 1 through 105 above as though fully set forth here.

107. By failing to deliver propane to Schultz Bottle Gas customers and by failing to take reasonable steps to ensure such consumers did not run out of propane, AmeriGas violated MCL 445.903(1)(q), (y), and (cc). In charging these consumers leak check and other fees under these circumstances, AmeriGas violated MCL 445.903(1)(n) and (aa).

108. In charging Schultz Bottle Gas customers HazMat, Fuel Recovery, tank rental, leak check and other fees without giving them notice of such fees, AmeriGas violated MCL 445.903(1)(n), (s), and (cc). Further, by charging these customers the Fuel Recovery and HazMat fees while a contradictory statement appeared on the Schultz Bottle Gas website, AmeriGas violated MCL 445.907(1)(bb).

109. The Attorney General seeks injunctive relief, as well as damages on behalf of all consumers named in Section III(D) and all similarly situated consumers in the State of Michigan.

**COUNT VII – SECTION III(E)(1) CLAIMS REGARDING MARKETING
STATEMENT ABOUT FIXED-PRICE CONTRACTS**

110. The Attorney General incorporates paragraphs 1 through 109 above as though fully set forth here.

111. As alleged in Section III(E)(1), AmeriGas has created a likelihood that Michigan consumers have been, and will be, told AmeriGas has never broken a fixed-price promise. AmeriGas has thus violated MCL 445.903(1)(s), (bb), and (cc).

112. For this Count, the Attorney General seeks only injunctive relief.

COUNT VIII - SECTION III(E)(2) CLAIMS REGARDING BREACH OF 2014 SETTLEMENT

113. The Attorney General incorporates paragraphs 1 through 112 above as though fully set forth here.

114. As alleged in Section III(E)(2), AmeriGas breached the 2014 settlement agreement with the Attorney General by persisting in unfair, deceptive, and unconscionable trade practices as alleged through this Complaint.

115. The Attorney General seeks injunctive relief, as well as damages on behalf of all consumers named in this Complaint and all similarly situated consumers in the State of Michigan.

RELIEF REQUESTED AND JURY DEMAND

Based upon the above allegations, the Attorney General requests a jury trial to determine liability and damages under MCL 445.910 and MCL 445.911. This should include actual and punitive damages for all persons named in this complaint and classes of similarly situated AmeriGas customers. These actual damages should include full restitution of all unlawful charges, late fees, fines, and penalties. These damages should also compensate the Plaintiff classes for interest and other consequential expenses. As relates to the conversion claim on behalf of

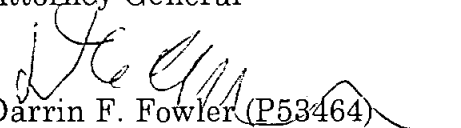
Michigan consumers who have not been compensated for propane returned to AmeriGas, the Attorney General seeks treble damages.

In addition, under MCL 445.905, the Attorney General seeks the following relief:

- A. Preliminary and permanent injunctions enjoining AmeriGas from engaging in the unlawful conduct detailed throughout this Complaint;
- B. A declaratory judgment that AmeriGas has breached the 2014 settlement agreement, with companion order for specific performance;
- C. Declaratory judgments on such other matters that may be useful in determining the rights and obligations of the parties;
- D. A civil fine of \$25,000 for each violation that is determined to be persistent and knowing;
- E. Award the Attorney General his costs in bringing this action, including reasonable attorney fees; and
- F. Award such other relief as this Court deems just and appropriate.

Respectfully submitted,

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Date: June 27, 2018