

**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

RONALD DAUGHERTY,

Complainant,

vs.

C-2022-3036550

AMERIGAS PROPANE, LP,

Respondent.

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code § 5.101(a)-(b), you are hereby notified to file a written response to the enclosed Preliminary Objections within twenty (20) days or the Preliminary Objections may be granted. All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on counsel, and where applicable, the Administrative Law Judge presiding over the issue.

File with:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

With a copy to:

Alexander Harris  
AmeriGas Propane  
460 N. Gulph Road  
King of Prussia, PA 19406  
Alexander.Harris@AmeriGas.com

Date: November 21, 2022

/s/Alexander L. Harris

Alexander L. Harris, Esq.  
(PA Attorney I.D. #311382)  
AmeriGas Propane, L.P.  
460 N. Gulph Road  
King of Prussia, PA 19406  
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*Attorney for AmeriGas Propane, LP*

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**PRELIMINARY OBJECTIONS OF AMERIGAS PROPANE**

Pursuant to 52 Pa. Code § 5.101, Respondent AmeriGas Propane, LP (“AmeriGas Propane”) submits the following Preliminary Objections to the Formal Complaint (“Complaint”) of Ronald Daugherty.

**I. INTRODUCTION**

1. Complainant Ronald Daugherty’s (“Daugherty”) claim concerns the delivery of propane to an individual customer’s tank and not any service or issue regulated by the Pennsylvania Public Utility Commission (the “Commission”).

2. AmeriGas Propane operates a limited amount of underground piping in Pennsylvania and its status as a “pipeline operator” makes it possible to open Commission dockets relating to AmeriGas Propane.

3. Although Daugherty was able to docket his Complaint against AmeriGas Propane as a “pipeline operator,” his Complaint does not concern any safety regulations relating to such pipeline systems.

4. Daugherty's Complaint should be dismissed because the Commission lacks jurisdiction to hear Formal Complaints against pipeline operators.

5. Moreover, Daugherty's Complaint should be dismissed because it concerns the provision of propane delivered by truck to individual tanks at a residence pursuant to a private contract, a service not regulated by the Commission.

6. For the reasons set forth below, AmeriGas Propane respectfully requests that the Commission grant its preliminary objections to the Complaint and dismiss the Complaint in its entirety.

## II. STATEMENT OF FACTS

7. AmeriGas Propane sells and distributes propane to homes and business in Pennsylvania.

8. Daugherty contracted with AmeriGas Propane for the delivery via truck of propane to individual tanks on Daugherty's property. *See* Complaint, at p. 3; *see also* Ex. 1 (Daugherty's initial contract with AmeriGas Propane for delivery of propane to an individual tank on Daugherty's property); Ex. 2 (AmeriGas Propane's current Resident Terms and Conditions); and Ex. 3 (Receipt from Daugherty's most recent propane delivery via truck).

9. On or about November 3, 2022, Daugherty filed a Formal Complaint with the Commission alleging that AmeriGas Propane: (1) improperly charged a paper invoice fee; (2) created a new account for Daugherty's second propane tank; and (3) that AmeriGas Propane delivered propane to the wrong tank on Daugherty's property.<sup>1</sup> *See* Complaint, ¶¶ 4-5.

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<sup>1</sup> The Commission need not reach any issue of fact in order to rule on AmeriGas Propane's Preliminary Objections. AmeriGas Propane, however, notes that it takes customer complaints seriously and has worked with Mr. Daugherty to resolve this situation. The dispute stemmed from confusion over Daugherty's multiple tanks on the same property. As requested in the Formal Complaint, AmeriGas refunded Mr. Daugherty various fees,

10. Although AmeriGas Propane is not a public utility, the Commission’s filing system accepted Daugherty’s Complaint because of AmeriGas Propane’s status as a “Pipeline Operator”. *See* Ex. 4, Printout of Docket (noting AmeriGas Propane’s status as “Pipeline Operator”).

11. AmeriGas Propane does own or operate a limited amount of underground pipeline in Pennsylvania, which is subject to certain safety regulations enforced by the Commission, but Daugherty’s Complaint does not contain any allegations concerning such pipelines and instead is based solely on a contractual arrangement for AmeriGas Propane to make deliveries via truck to Daugherty’s individual tanks. *See generally* Complaint.

### **III. ARGUMENT**

#### **A. Legal Standard for Preliminary Objections.**

12. The Commission’s Rules of Practice and Procedure permit parties to file preliminary objections. 52 Pa. Code § 5.101(a). The Commission’s procedure regarding the disposition of preliminary objections is similar to that under the Pennsylvania Rules of Civil Procedure. *See Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

13. As a result, in ruling upon preliminary objections, the Commission must accept as true all well-pleaded material facts of the non-moving party. *See County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.3d 402 (Pa. 1985).

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eliminated a separate “ship to” tank that was created on his account inadvertently, and given him an account credit for the propane mistakenly delivered to the wrong tank. AmeriGas Propane does not believe there is currently any remaining dispute between the parties.

14. The Commission, however, need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stone & Edwards Ins. Agency v. Dep't of Ins.*, 616 A.2d 1060, 1063 (Pa. Commw. 1992).

15. When considering jurisdiction, the complainant, as the party seeking relief, has the burden of proving that respondent is a jurisdictional public utility. 66 Pa.C.S. § 332(a); 52 Pa. Code § 5.21(a).

**B. The Commission Does Not Have Jurisdiction Over Private Complaints Against Pipeline Operators.**

16. AmeriGas Propane is not a public utility, the Commission's jurisdiction over AmeriGas Propane extends only to AmeriGas Propane's pipeline operations under the Gas and Hazardous Liquids Pipelines Act. P.L. 856, No. 127 (the "Pipeline Act"). The Commission does not have jurisdiction over private complaints against pipeline operators such as AmeriGas Propane therefore Daugherty's Complaint should be dismissed.

17. To bring a Formal Complaint, Daugherty must allege that AmeriGas Propane is a "jurisdictional public utility" and that AmeriGas Propane has also "violated some statute, regulation, order, or tariff provision." 66 Pa. C.S. § 332(a), 52 Pa. Code § 5.21(a). Without proper jurisdiction, the Commission cannot hear a complaint, and the parties may not create jurisdiction where none exists. *Paul v. Alliance Petroleum Corp. d/b/a Diversified Production LLC*, C-2020-3021361, Initial Decision (2021) (citing *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992)); *Roberts v. Martorano*, 235 A.2d 602, 603-04 (Pa. 1967)).

18. Here, the Commission lacks jurisdiction to hear Daugherty's Complaint because AmeriGas Propane is a pipeline operator – not a "jurisdictional utility" – and the Complaint

concerns a private contractual dispute rather than a violation of “some statute, regulation, order, or tariff provision.”

19. When faced with this exact situation, the Commission unequivocally held: “While the pipeline operations of [AmeriGas] may fall under jurisdiction of the Commission, contracted delivery of propane services are not a public utility as defined by 66 Pa.C.S. § 102 and therefore are not within the jurisdiction of the Commission.” *See* Ex. 5, *Poekert v. AmeriGas Propane*, C-202-3025084 (Sept. 17, 2021 Initial Decision), at p. 7; *see also* *Paul v. Alliance Petroleum*, C-2020-3021361 (Jan. 7, 2021 Initial Decision and Feb. 9, 2021 Order) (that even “[a]ssuming that the [respondent] meets the definition of a ‘pipeline operator’ in Section 102, Section 501 does not explicitly grant the Commission to hear Complaints filed by members of the public.”).

20. “Propane distribution under a private contract does not fall within the definition of ‘public utility’ and does not pertain to any law under the Commission’s jurisdiction to administer or any regulation or order of the Commission.” Ex. 5, *Poekert v. AmeriGas Propane*, Initial Decision, at p. 8.

21. AmeriGas Propane respectfully requests that the Court grant its preliminary objection to jurisdiction and dismiss Daugherty’s Complaint.

**C. Daugherty’s Complaint Concerns a Private, Contractual Dispute.**

22. Moreover, even assuming that the Commission has jurisdiction to hear private complaints against pipeline operators (which it does not) or that AmeriGas Propane is a jurisdictional utility (which it is not), the Complaint itself is limited to a private, contractual dispute between the parties and should therefore be dismissed.

23. Daugherty alleges that he has a contract with AmeriGas Propane and that AmeriGas Propane did not honor the contract by charging certain fees. *Compare* Complaint with Ex. 1 (Daugherty’s initial contract) and Ex. 2 (AmeriGas Propane’s current residential terms and conditions) (detailing various fees).

24. All other jurisdiction issues aside, “[i]t is clear that the remedial and enforcement powers vested in the PUC . . . were designed to allow the PUC to enforce its [own] orders and regulations but not to empower the PUC to award damages or to litigate a private action for damages on behalf of a complainant.” *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *see also id.* at 794 (holding that “PUC remedial and enforcement powers do[] not include the power to award damages to a private litigant for breach of contract by a public utility”); *Allport Water Authority v. Winburne Water Co.*, 393 A.2d 673, 675 (Pa. Super. 1978) (holding “the PUC is not jurisdictionally empowered to decide private contractual disputes between a citizen and a utility”).

25. In this exact situation the Commission has held that: “The Commission does not have jurisdiction to decide private contractual disputes between the Complainant and AmeriGas Propane, LP.” Ex. 5, *Poekert v. AmeriGas Propane*, Initial Decision, at p. 8.

#### IV. CONCLUSION

26. For the reasons set forth above, AmeriGas Propane respectfully requests that the Commission grant its Preliminary Objections and dismiss Daugherty's Formal Complaint.

Date: November 21, 2022

Respectfully submitted,

/s/Alexander L. Harris

Alexander L. Harris, Esq.  
(PA Attorney I.D. #311382)  
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King of Prussia, PA 19406  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this day I served a true and correct of the foregoing Preliminary Objections upon the parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54:

Ronald Daugherty  
5 Clayton Place  
Newtown Square, PA 19073  
ronalddaugherty@yahoo.com  
*Complainant*

Date: November 21, 2022

/s/Alexander L. Harris  
Alexander L. Harris, Esq.  
(PA Attorney I.D. #311382)  
AmeriGas Propane, L.P.  
460 N. Gulph Road  
King of Prussia, PA 19406  
(267) 530-4182  
Alexander.Harris@AmeriGas.com

*Attorney for AmeriGas Propane, LP*

# **Exhibit 1**



# PROPANE SUPPLY AGREEMENT AND EQUIPMENT LEASE (RESIDENTIAL CUSTOMERS)

America's Propane Company

This Propane Supply Agreement and Equipment Lease is between AmeriGas Propane, L.P. ("AmeriGas"),

Box 965, Valley Forge, PA 19482 and Ronald DAUGHERTY  
DELIVERY ADDRESS 5 Clayton Place CITY Newtown Sp. STATE PA ZIP 19073 ("Customer").

- EQUIPMENT.** AmeriGas will lease to and provide Customer with a propane storage tank or cylinder and related equipment, which in AmeriGas's judgment, is necessary to provide Customer with propane service. Customer agrees to pay the equipment rental charge established by AmeriGas, where applicable. AmeriGas reserves the right to substitute a tank or cylinder and equipment of different size or capacity if Customer's propane usage changes or to remove tank or cylinder and related equipment during periods of non-usage.
- PROPANE SUPPLY.** Customer agrees that only propane sold by AmeriGas will be used with the AmeriGas owned tank or cylinder and related equipment.
- MINIMUM PURCHASE REQUIREMENT.** If rent does not apply, AmeriGas reserves the right to charge an annual minimum purchase amount of propane equal to 50% of the water capacity of the tank or cylinder leased to Customer by AmeriGas, unless such minimum amount is prohibited or restricted by law. If applicable state law limits a minimum purchase amount, Customer agrees to buy the maximum amount permitted under such state law. If Customer does not buy the annual minimum amount of propane, AmeriGas reserves the right to bill Customer for the difference between the annual minimum gallons and the number of gallons that Customer purchased during the preceding twelve months at the price in effect on the date of the invoice. Upon receipt of the invoice for the annual minimum purchase, Customer has the option of accepting a delivery that meets or exceeds Customer's annual minimum purchase requirement or paying the invoice amount.
- FEES, RATES, AND CHARGES.** Customer agrees to pay AmeriGas's fees, rates and charges in effect on the date that propane is delivered or services are rendered. AmeriGas reserves the right to change its fees, rates and charges from time to time without prior notice. Customer acknowledges that AmeriGas's fees, rates and charges may vary depending upon the volume of propane purchased, Customer classification, ownership of equipment and competitive conditions. AmeriGas also reserves the right to add a surcharge to Customer's invoice or delivery ticket provided the amount of any such surcharge is set forth on the invoice or delivery ticket. AmeriGas's fees, rates, charges and surcharges, if any, are not refundable except to the extent that a refund may be required by law.
- TERM.** The initial term of this agreement shall be one year(s), commencing on the date signed by the Customer and shall continue thereafter until terminated in accordance with Paragraph 12.
- PAYMENT TERMS.** Customer agrees to pay all fees, rates and charges required by this agreement within ten days after the invoice date or on the due date shown, whichever is later, to the location designated by AmeriGas. Where permitted by law, Customer agrees that AmeriGas may send Customer an invoice instead of a delivery ticket. If Customer fails to pay any fees, rates or charges within 25 days after the invoice or due date, AmeriGas may, unless prohibited by law, add a monthly late charge of one and one-half percent to all past due amounts or a late charge not to exceed \$10.00, whichever is greater. AmeriGas reserves the right to require Customer to pay for propane deliveries or services in advance or to post a cash deposit, which may be applied by AmeriGas at any time in whole or in part to the outstanding balance.
- LICENSES, PERMITS AND TAXES.** Customer agrees to pay all taxes, and all license, permit, inspection and requalification fees and expenses associated with the sale or use of the propane, tank or cylinder and related equipment covered by this agreement.
- TITLE TO EQUIPMENT.** The tank or cylinder and related equipment provided to Customer by AmeriGas will at all times remain the property of AmeriGas and will not become a fixture or a part of Customer's real property. **IN THE INTEREST OF SAFETY, DO NOT ALLOW ANYONE TO MAKE ANY ADJUSTMENTS, CONNECTIONS OR DISCONNECTIONS TO THE EQUIPMENT OR REMOVE OR PLUMP OUT THE EQUIPMENT WITHOUT THE WRITTEN PERMISSION OF AMERIGAS. NOTIFY AMERIGAS IMMEDIATELY IF THE EQUIPMENT IS DAMAGED OR MALFUNCTIONS OR IF CUSTOMER EXPERIENCES ANY PROBLEMS WITH THE EQUIPMENT.**
- ACCESS TO EQUIPMENT.** AmeriGas may without prior notice enter Customer's property to deliver propane or to install, repair, service or remove the tank or cylinder or any related equipment provided to Customer by AmeriGas or to perform any other services that it deems necessary under this agreement. Customer agrees to provide AmeriGas with safe, free and unimpeded access to the tank or cylinder and related equipment, free of ice, snow, water, mud and other users. Customer agrees to promptly surrender to AmeriGas the tank or cylinder and related

- equipment when this agreement is terminated for any reason. Paragraph 9 shall survive termination of Customer's relationship with AmeriGas.
- WARRANTIES. AMERIGAS GUARANTEES THAT THE PROPANE DELIVERED WILL MEET THE GAS PROCESSORS ASSOCIATION SPECIFICATIONS FOR COMMERCIAL GRADE OR HD-5 PROPANE.** AMERIGAS MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPANE, EQUIPMENT OR SERVICE SUPPLIED OR PERFORMED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SOME STATES DO NOT ALLOW THIS EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER.
- LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES WILL AMERIGAS BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND BUSINESS INTERRUPTION DAMAGES. THIS LIMITATION WILL APPLY REGARDLESS WHETHER A CLAIM IS MADE OR A REMEDY IS SOUGHT UNDER CONTRACT, TORT OR PRODUCT LIABILITY LAW.
- TERMINATION.** Either party may terminate this agreement at the expiration of the initial term, or at any time thereafter by giving the other party thirty (30) days prior written notice. AmeriGas may terminate this agreement at any time without prior notice if Customer fails to satisfy the terms and conditions of Customer's agreement or if AmeriGas determines that a condition exists that poses a health or safety threat. This provision shall in no way, however, effect the term in any contract involving a special promotion, including water heater agreements, AmeriGuard and Pre-Buy. Before terminating this agreement, Customer agrees to use all propane in the tank or cylinder. AmeriGas reserves the right to charge Customer a service disconnection and/or a restocking fee.
- TEMPORARY EXHAUSTION OF PROPANE.** Except as provided below, AmeriGas is not liable for any loss that Customer sustains as a result of the temporary exhaustion of Customer's propane supply. If Customer participates in AmeriGas's automatic fill program and subject to the provisions of Paragraph 14 set forth below, AmeriGas will reimburse Customer for an amount up to \$5,000.00 for any property loss or property damage that Customer sustains resulting from the temporary exhaustion of Customer's propane supply unless the exhaustion of Customer's propane supply results from circumstances beyond AmeriGas's control or knowledge, including but not limited to an increase in usage by Customer, replacement of appliances without prior notice to AmeriGas, or due to lack of access to the equipment.
- EXCUSED PERFORMANCE.** AmeriGas will not be responsible for any delay or damages caused by events or circumstances beyond its reasonable control, including without limitation, acts of God, fire, storms, floods, labor disputes, wars, hostilities, compliance with laws or regulations, AmeriGas's inability to obtain propane or equipment from its customary suppliers, terminal, refinery or pipeline disruptions, allocation programs, lack of or inadequate transportation facilities. Under any of these circumstances, AmeriGas may allocate propane and equipment among its customers in any manner that AmeriGas in its sole judgment deems reasonable.
- CHANGES TO THE AGREEMENT.** AmeriGas reserves the right to change the applicable terms and conditions (other than fees, rates and charges which may be changed without prior notice) at any time by giving Customer thirty (30) days prior written notice of the change. The notice of change may be in the form of a bill insert or other written notification. By accepting delivery of propane or by paying any fees, rates or charges after Customer has been given notice of changes, Customer will be deemed to have agreed to the changes. This agreement may not be modified orally.
- ATTORNEY'S FEES.** If AmeriGas files a lawsuit or uses a collection agency to enforce any of the terms and conditions of this agreement or to recover possession of any of its equipment, Customer agrees to pay AmeriGas's reasonable costs, including attorney's fees, to the maximum extent permitted by law.
- ARBITRATION.** Except for collection matters, Customer agrees to submit to arbitration of all disputes and issues in any way arising out of or relating to this agreement, including claims for injuries and damages resulting from propane, equipment or services delivered, provided or not provided under this agreement. Paragraph 12 shall survive termination of Customer's relationship with AmeriGas.

2-1000 - will call set up.  
 IF THIS BLOCK IS CHECKED, THIS PROPANE SUPPLY AGREEMENT AND EQUIPMENT LEASE IS FURTHER SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN ATTACHMENT(S) \_\_\_\_\_ WHICH IS/ARE ATTACHED HERETO AND MADE A PART HEREOF.

Annual rental \$100.00.  
AMERIGAS PROPANE, L.P.  
BY: AMERIGAS PROPANE, INC., ITS GENERAL PARTNER  
BY: Rilee Young DATE: 5/13/03  
DISTRICT: 431 E. King St  
ADDRESS: Malvern, PA 19355

CUSTOMER  
BY: [Signature] DATE: 5/12/03  
BILLING ADDRESS: [Signature] 5/12/03  
Sa. de. by. on

# **Exhibit 2**

**THE AMERIGAS REVISED TERMS AND CONDITIONS FOR RESIDENTIAL CUSTOMERS ARE SET FORTH BELOW. PLEASE READ THIS CAREFULLY, AS IT IS INTENDED TO MODIFY AND/OR REPLACE ALL PRIOR AGREEMENTS AND GOVERNS YOUR (ALSO REFERRED TO AS “CUSTOMER” OR “YOU”) RELATIONSHIP WITH AMERIGAS PROPANE, L.P. (ALSO REFERRED TO AS “AMERIGAS”, “COMPANY”, “US”, “WE”, AND “OUR”).**

## **TERMS AND CONDITIONS FOR ONGOING PROPANE-RELATED SERVICES AND EQUIPMENT RENTAL – RESIDENTIAL CUSTOMERS**

**1. ACCEPTANCE OF THESE TERMS AND CONDITIONS.** By accepting or requesting propane delivery or propane-related services from Company or by entering into an agreement with Company (an “Agreement”) which incorporates these Terms and Conditions, you agree to these revised Terms and Conditions in their entirety. Unless your propane supply agreement with Company does not permit modification, this shall serve as a notice of termination of your previous agreement and an offer to do business under these Terms and Conditions. If you find these Terms and Conditions unacceptable, you may reject this offer by terminating your service.

**THESE TERMS AND CONDITIONS REQUIRE THAT DISPUTES BE RESOLVED INDIVIDUALLY IN BINDING ARBITRATION OR SMALL CLAIMS COURT. IN ARBITRATION, THERE IS NO JUDGE OR JURY AND THERE IS LESS DISCOVERY AND LESS APPELLATE REVIEW THAN IN COURT. YOU MAY REJECT THE ARBITRATION PROVISION BY SENDING WRITTEN NOTICE WITHIN THIRTY (30) DAYS OF YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS, AS DESCRIBED IN SECTION 16.**

**2. TERM.** Your term is the period of time for which you have agreed to maintain service with us. If you did not sign a customer Agreement, your term will be three years from the date on which you began service with Company by receiving your first delivery of propane (the “Initial Term”) and **WILL AUTOMATICALLY RENEW MONTH-TO-MONTH THEREAFTER** (each a “Renewal Term”) unless either you or Company provides the other with advance written notice of non-renewal at least thirty (30) days prior to the end of the Initial Term or the then-current Renewal Term. Your notice of non-renewal can be provided to Company in any of the following ways: (1) by U.S. mail, postage prepaid, to Company at Box 965, Valley Forge, PA 19482, Attn: Customer Service; (2) by telephone at 1-800-AmeriGas; or (3) by email at [Customercare@amerigas.com](mailto:Customercare@amerigas.com).

**3. SAFETY INFORMATION.** Safety information has been or will be supplied in your Welcome Packet. If you did not receive the safety information or would like an additional copy, please visit us at [AmeriGas.com/safety](http://AmeriGas.com/safety) or you can contact us toll-free at 1-800-AmeriGas (1-800-263-7442) and we will mail or e-mail it to you. We recommend you regularly visit [AmeriGas.com/safety](http://AmeriGas.com/safety) to view those and other important safety warnings. **If you smell propane or experience any adverse propane conditions or safety-related matters, you should immediately evacuate the premises and dial 9-1-1. You should also contact 1-800-AmeriGas. We recommend purchasing a LP gas detector and a Carbon Monoxide detector.**

## **4. LEASED EQUIPMENT.**

**A. General Provisions.** Company will lease and provide to you a propane storage tank or cylinder, first stage or twin-stage regulator(s) (unless otherwise agreed in writing), and, if applicable in Company's sole discretion, Company may lease and provide to you a tank monitor or propane meter (collectively “Leased Equipment”). In its sole discretion, Company may exchange the Leased Equipment for other equipment more compatible with Customer's actual use. Unless you and Company otherwise agree in writing, Leased Equipment does not include any equipment beyond the first stage or twin-stage regulator, including the propane lines. In the interest of safety, you will not allow anyone to make any adjustments, connections or disconnections to the Leased Equipment or remove or pump-out the Leased Equipment without our written permission. You will notify Company immediately if you suspect that Leased Equipment is damaged, malfunctions or if you experience any problems. **Only propane sold by Company will be used with Leased Equipment.** You agree that if you sell your residence, you will notify Company at least thirty (30) days in advance and will inform the buyer that Leased Equipment is owned by Company. Leased Equipment will at all times remain the property of Company and will not become a fixture or a part of your real property. You agree to promptly surrender to Company all Leased Equipment upon termination of service.

**B. Tank Rent.** You agree to pay tank rent (“Tank Rent”) once per year while the Leased Equipment is installed at your residence. The amount of Tank Rent can vary depending on, among other things, the size of the tank, the location of the residence, and your annual usage. Tank Rent may be increased on an annual basis due to inflation or other factors. For certain Customers who entered into prior minimum use arrangements with Company, Tank Rent is waived if they meet certain minimum propane use requirements. For these Customers, Tank Rent is waived if the Customer purchases two (2) times the water capacity of the tank within the prior twelve (12) months of the Customer's contract year. Please contact 1-800-AmeriGas if you have questions about the Tank Rent that is applicable to you.

**C. Access to Equipment for Delivery and Service.** Company will have an irrevocable right to enter your property without prior notice for deliveries of propane, meter reads, and servicing or removal of Leased Equipment. You agree to provide Company with safe and unimpeded access to it, including but not limited to, access free of ice, snow, water, pets, and other hazards, and you will ensure that entry gates are unlocked prior to delivery. Your delivery may be delayed if AmeriGas does not have safe and unimpeded access to your property. You will mark and identify the location of septic systems, leach pits, underground ponds and similar underground features.

**D. Propane Meters.** If you have a Company propane meter installed in connection with any Leased Equipment, you will be billed for your monthly propane usage. Company reserves the right to bill you based on an estimated usage amount, and then later take an actual reading, after which: (i) you will receive a credit to the extent that your estimated billed usage amount exceeds the actual usage amount or (ii) you will be charged an additional amount to the extent that the actual amount of propane used exceeds the estimated amount.

A monthly Meter Fee as defined in Section 6(B) below applies to customers who have meters.

## **5. PROPANE SERVICE, MAINTENANCE, AND DELIVERY.**

**A. General Conditions.** Company may choose not to deliver propane or perform services if, in its sole discretion, it believes that doing so will pose an unnecessary risk of injury or harm to you, Company's employees, your property, or the public. You agree that Company may lock off your equipment, the Leased Equipment, and/or suspend service if Company believes an unsafe condition exists.

**B. Delivery Options.** Company offers two types of propane delivery:

- **Automatic** – Under this worry-free delivery option, Company will make deliveries to you on either a fixed-cycle basis or upon a number of forecasting factors, including temperatures and usage patterns. To ensure accurate forecasting, please update Company with any changes in your usage, including but not limited to, the number and type of appliances you use. If you have a residence that is not occupied year-round, please see Section 15 for further information about this delivery option.

- **Will Call** – Under this delivery option, Company will deliver propane only after you request a delivery. Company recommends you order a delivery when your tank is approximately 30% full to ensure a timely delivery. Most Will Call deliveries are made within 5-10 business days after you place an order. Weather and other factors may affect delivery times. Company assesses a Will Call Convenience Fee per delivery unless you place an order online using your MyAmeriGas account. If you would like to place an order online, please visit [www.myamerigas.com](http://www.myamerigas.com) to set up a MyAmeriGas account. Expedited delivery requests may be assessed an Expedited Delivery Fee or an Emergency Delivery Fee. For more information about these fees, see Section 6B.

**C. Propane System Maintenance and Repair.** You are responsible for the maintenance and repair of all equipment that you own (“Customer-Owned Equipment”), including compliance with applicable laws and regulations. You are required to notify us in the event that you disconnect the propane system or add or remove appliances so that we may conduct a leak check.

## **6. PRICING, FEES, AND CHARGES.**

**A. Price.** Unless you enter into a fixed-pricing agreement with us you agree to pay Company's price per gallon of propane in effect when you place an order or for Automatic deliveries, on the date of delivery. This price is set by the Company, and includes, among other things, our taxes, our costs to procure the propane, freight and transportation. Your price per gallon may vary depending upon the volume of propane you purchase, customer classification, propane tank ownership, and competitive conditions. We encourage you to review information on our website or contact 1-800-AmeriGas to discuss which pricing options may be best for your needs and to receive current pricing information, as prices change frequently and without prior notice.

**B. Current Fees and Charges.** Company may apply other fees and charges depending on the services requested and/or required. The fees and charges provided below are the most frequently assessed, but other fees and charges may apply depending on the services rendered. Please visit our website or contact 1-800-AmeriGas for specific questions and updated company information. **THE FEES AND CHARGES LISTED BELOW ARE NOT GOVERNMENT IMPOSED, NOR IS ANY PORTION OF THEM PAID TO ANY GOVERNMENT AGENCY. COMPANY RESERVES THE RIGHT TO CHANGE ITS FEES AND CHARGES AT ANY TIME AND WITHOUT PRIOR NOTICE.**

- **Early Termination Fee** – You have received certain benefits from Company in exchange for your service commitment. If you are leasing equipment from Company and you terminate propane service with Company prior to the end of the Initial Term, Company will charge you an Early Termination Fee of \$149.99.

- **Fuel Recovery Fee** – This fee, which is assessed on propane deliveries, helps to offset the significant expense incurred by Company in fueling its fleet of motor vehicles. This fee fluctuates on a monthly basis as Company's cost of fuel fluctuates. For current Fuel Recovery Fee information, please contact 1-800-AmeriGas or visit Company's website.

- **HazMat & Safety Compliance Fee** – This fee is assessed on propane deliveries and helps to offset the costs Company incurs to comply with federal, state and local government regulations, such as those relating to hazardous materials, homeland security, emergency preparedness, workplace safety and related administrative costs. It is also used to fund, in part, among other things, employee safety training, inspections, cylinder requalification, and environmental compliance. This fee is \$11.99 per delivery.

- **Leak Check Charge** – This charge is applied when Company performs a leak check to verify that the propane system does not have a leak. This test is required by law under certain circumstances, which may include: when new piping is installed, if the gas has been turned off for any reason, if there has been an interruption of gas service, or if a leak in the system is suspected. Please contact 1-800-AmeriGas for specifics on when a leak check is required and the current charge.

- **Meter Fee** – This fee applies if your propane usage is measured by a Company-owned meter. This fee helps to offset the cost of the meter, meter reading and related administrative costs. The fee also helps to offset the costs otherwise covered by the HazMat & Safety Compliance Fee (as described above), which is not charged to metered customers. This fee is \$11.99 per month.

- **Paper Invoice Fee** – This fee applies if you choose to receive paper invoices from Company. This fee is \$2.99 per invoice. You may avoid this fee by enrolling in paperless billing in your MyAmeriGas account.

- **Tank Pickup Fee** – Upon termination of service, Company will remove any Company-owned tank on your property. The charge for removal of standard above-ground tanks is \$149.99. The charges for removal of underground Company-owned tanks are described in Section 14.

- **Reconnect Charge** – If your tank is locked off by Company due to nonpayment, this charge will be assessed to remove the lock, perform a leak check and put your propane system back into service. This charge is \$79.99.

- **Returned Check Fee** – This fee is intended to cover the deposit return fee assessed by financial institutions and related administrative expenses associated with the return of a customer check for insufficient funds. This fee is \$33.00.

- **Service Dispatch Charge** – This applies when a service technician is requested to perform diagnostic or other service work on Customer-Owned Equipment. This charge is \$99.99. This charge will not be credited toward service work performed and additional charges may be assessed depending upon the nature of the service work required.

- **Expedited Delivery Fee** – This applies when a customer enrolled in the Will Call delivery option requests a delivery within three (3) days or if any customer requests non-emergency service after business hours or on weekends. This fee is \$200.00.

- **Emergency Delivery Fee** – This applies when a customer enrolled in the Will Call delivery option requests a delivery within one (1) day. This fee is \$300.00.

- **Will Call Convenience Fee** – This applies to customers enrolled in the Will Call delivery option and is charged for each Will Call delivery that is not ordered online. Eligible customers may avoid this fee by switching to Automatic delivery or placing an order online using your MyAmeriGas account. The fee is \$8.99 per delivery.

- **Minimum Delivery Fee** – This fee may be charged for a requested Will Call delivery that is less than 100 gallons and may vary based upon geographic location and tank size.

- **Underground Tank Removal** – See Section 14.

- **Late Fees** – See Section 7.

- **Tank Rent** – See Section 4B.

**7. PAYMENT TERMS AND LATE FEES.** If you have received credit terms from Company, you will be billed after propane is delivered or services are rendered, unless you have enrolled in a budget payment program. You agree to pay the invoiced amount on or before the due date indicated on the invoice. If you dispute an invoice, you must contact 1-800-AmeriGas within thirty (30) days of receipt. If you fail to timely pay all amounts owed to Company, Company may, unless prohibited by law, add a monthly late charge of 1.5% of the average daily balance until paid or a late charge of \$36.00, whichever is greater. If you fail to make a payment on your outstanding amount owed, Company may, after providing written notice to you, suspend service and/or place a lock on Leased Equipment. If Company places a lock on Leased Equipment, all amounts outstanding (including the applicable Reconnect Charge) must be paid in full before service will be restored. Company may at any time require you to pay for propane deliveries or services in advance, to post a cash deposit, or to provide other forms of credit

(over)

enhancement. Company may apply any amounts it holds from you, whether a security deposit or otherwise, at any time in whole or in part against the outstanding balance. **Maryland Customers: If all of the outstanding amount owed is not received within 15 days after it is due, you will pay a late charge of the greater of \$5.00 per month or 10% per month for the part of the outstanding amount that is late for no more than three months, or you will pay up to 1.5% per month of the payment amount that is past due.**

**8. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES WILL COMPANY BE LIABLE FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES. THIS LIMITATION APPLIES REGARDLESS OF WHETHER A CLAIM OR REMEDY IS SOUGHT IN CONTRACT, TORT OR OTHERWISE. COMPANY IS NOT LIABLE FOR ANY DIRECT OR INDIRECT LOSS SUSTAINED BY YOU, OR ANYONE TO WHOM YOU ASSIGN YOUR RIGHTS, AS A RESULT OF THE EXHAUSTION OF YOUR PROPANE SUPPLY, INCLUDING WITHOUT LIMITATION, DAMAGE TO YOUR HOME, REAL PROPERTY OR PERSONAL PROPERTY RESULTING FROM WATER DAMAGE CAUSED BY FROZEN PIPES.**

**9. DISCLAIMER OF WARRANTIES.** COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPANE, TANK, CYLINDER, AND/OR RELATED EQUIPMENT, INCLUDING LEASED EQUIPMENT, OR SERVICE PERFORMED UNDER THESE TERMS AND CONDITIONS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. YOU ACCEPT ALL PRODUCTS AND GOODS DELIVERED AS IS. SOME STATES (SUCH AS CT, KS, ME, MS, NH, WA, MA, AND WV) MAY NOT ALLOW THESE EXCLUSIONS OF IMPLIED WARRANTIES, AND, IF SO, THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

**10. INDEMNIFICATION.** Both Company and Customer agree to indemnify, defend and hold the other harmless from and against any and all claims, liens, demands, suits, damages and liabilities for personal injuries and/or property damage, arising out of or caused by any negligent act or omission on the part of that party, its agents or employees.

**11. TERMINATION OF PROPANE SERVICE.** Unless otherwise specified, and subject to any volume commitment agreement, **YOU MAY TERMINATE YOUR PROPANE SERVICE UPON THE PROVISION OF THIRTY (30) DAYS PRIOR NOTICE TO COMPANY. IF YOU LEASE EQUIPMENT FROM COMPANY AND YOU TERMINATE SERVICE PRIOR TO THE END OF THE INITIAL TERM, COMPANY WILL CHARGE YOU AN EARLY TERMINATION FEE OF \$149.99. COMPANY MAY TERMINATE YOUR PROPANE SERVICE PRIOR TO THE END OF THE INITIAL TERM UPON THE PROVISION OF THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO YOU.**

• For customers with Leased Equipment, upon termination, in order to remove Leased Equipment Company will charge you a Tank Pickup Fee for a standard above-ground tank or the charges described in Section 14 for underground tanks.

• Company will repurchase the propane remaining in Leased Equipment upon termination if the supply of propane remaining in the tank at the time of removal is more than 5% water capacity. If Company repurchases the remaining propane, the repurchase price will be the price per gallon that you paid for your last delivery. We encourage you to wait to schedule your tank removal until the supply of propane remaining in your tank is at 5% water capacity or less.

• Company may terminate your service immediately and without prior notice if you fail to satisfy any material provision contained in these Terms and Conditions, including but not limited to making payment. Company reserves the right to terminate service or suspend deliveries if Company determines, in its sole discretion that a condition exists that poses a health or safety threat to its employees, you or the public.

**THE TERMINATION FEES AND TANK PICKUP FEES LISTED IN THIS SECTION 11 ARE NOT APPLICABLE TO NEVADA RESIDENTS.**

**12. EXCUSED PERFORMANCE.** Company will not be responsible for any delay or damages caused by events or circumstances beyond its reasonable control, including without limitation, acts of God, fire, storms, floods, epidemics, pandemics, other health crises, labor disputes, wars, hostilities, terrorism, changes in laws or regulations, Company's inability to obtain propane or equipment from its suppliers, as well as terminal, refinery, pipeline, or transportation disruptions. Under any of these or similar circumstances, Company shall not be deemed to be in breach of these Terms and Conditions and Company may allocate propane and equipment among its Customers in any manner that Company deems reasonable.

**13. CHANGES TO THE TERMS AND CONDITIONS.** Company reserves the right to amend or add to these Terms and Conditions (other than price per gallon, fees, and charges, which may be changed without prior notice) at any time by giving you prior written notice of the change(s). The notice may be in the form of a bill insert, email, or other written notification. These Terms and Conditions may not be modified orally and describe the entire agreement between Company and you with respect to its subject matter. Any prior arrangements, agreements, contracts, representations, warranties, purchase orders, bids, proposals, offers, or other communications, written or oral, that are inconsistent with these Terms and Conditions, are superseded and of no force or effect. For the avoidance of doubt, these Terms and Conditions do not replace, amend, or eliminate your prior fixed propane pricing, exclusivity, or volume contract commitment(s).

**14. CUSTOMERS WITH UNDERGROUND LEASED TANKS.** You are responsible for all costs of the excavation and removal of Leased Equipment and Company is not responsible for furnishing fill, resurfacing, landscaping or restoring your property to its previous condition upon removal. You will be billed on an hourly basis for this work with local labor rates prevailing, unless other arrangements are provided. The charge to remove an underground tank can vary greatly and is affected by numerous factors, including the size and access to the tank, soil conditions and other impediments. You and Company may mutually agree that Company will sell you the underground tank in lieu of physically removing the tank from your property.

**15. CUSTOMERS WITH RESIDENCES THAT ARE NOT OCCUPIED YEAR-ROUND. IF YOU HAVE CHOSEN AUTOMATIC DELIVERY, IT IS DIFFICULT TO FORECAST HOMES THAT ARE NOT OCCUPIED YEAR-ROUND AS YOUR USAGE PATTERNS CHANGE. IT IS YOUR RESPONSIBILITY TO MONITOR THE PROPANE DISTRIBUTION SYSTEM ON YOUR PROPERTY YEAR-ROUND. COMPANY IS NOT LIABLE FOR DIRECT DAMAGES TO PERSONAL AND REAL PROPERTY (INCLUDING, BUT NOT LIMITED TO, DAMAGE RESULTING FROM FROZEN PIPES OR OTHER WATER DAMAGE) THAT OCCURS AS A RESULT OF THE EXHAUSTION OF PROPANE IN YOUR SYSTEM. WE RECOMMEND YOU PLACE A TANK MONITOR ON YOUR SYSTEM TO MONITOR THE AMOUNT OF PROPANE REMAINING IN YOUR TANK. YOU MUST PROVIDE COMPANY WITH AT LEAST TEN (10) BUSINESS DAYS' ADVANCED NOTICE OF A NEED FOR A DELIVERY TO AVOID THE EXHAUSTION OF YOUR PROPANE SUPPLY.**

**16. CLAIMS AND ARBITRATION. PLEASE READ THIS SECTION CAREFULLY.**

**A. Arbitration Agreement.** Upon the election of either party (or any other entity or individual with the right to invoke arbitration under this provision, including without limitation those entities or individuals named in this Section 16(A)(2)), a Dispute shall be resolved by binding arbitration. "Dispute" means any claim or controversy arising from or relating to these Terms and Conditions, your agreement with Company, or the relationship between you and Company, including without limitation any and all: (1) claims for relief or theories of liability, whether based in contract, tort, statute or otherwise; (2) claims against Company or its parents, subsidiaries, affiliates, predecessors, successors or assigns and any of their directors, officers, employees and agents (any of whom may elect arbitration of claims to which they are a party pursuant to these Terms and Conditions); (3) claims that arose before this Arbitration Agreement; (4) claims that arise after the expiration or termination of this Arbitration Agreement; and (5) claims that are the subject of a purported class action or other representative or collective action. "Dispute" shall not, however, include claims filed by you or Company on an individual basis in small claims court if the amount claimed is within the jurisdiction of that court. However, Company will not demand arbitration pursuant to this agreement to arbitrate in connection with any individual claim that you properly file in a small-claims court of your state or municipality, so long as the claim is pending only in that court. IN THE EVENT THAT THE PARTIES HAVE ANY DISAGREEMENT ABOUT ARBITRABILITY OR THE VALIDITY, SCOPE, OR ENFORCEABILITY OF THIS ARBITRATION CLAUSE, A DULY APPOINTED ARBITRATOR WILL DECIDE SUCH DISAGREEMENT.

**B. Right to Reject this Arbitration Agreement.** Notwithstanding anything in this Arbitration Agreement to the contrary, you may reject this Arbitration Agreement. To do so, you must send Company written notice by mail postmarked no later than thirty (30) days after your acceptance of these Terms and Conditions to Box 965, Valley Forge, PA 19482, Attn: Customer Service. Your rejection notice must be signed, must state that you reject this Arbitration Agreement, and must include your name, address, and Company account number. Your decision to reject this Arbitration Agreement or seek remedies in small claims court will not adversely affect your relationship with or receipt of goods or services from Company.

**C. Procedures for Arbitration.** This Arbitration Agreement is governed by the Federal Arbitration Act ("FAA"). Arbitrations shall be conducted by a single arbitrator and administered by JAMS ("JAMS") pursuant to the code of procedures in effect at the time the arbitration is initiated (the "JAMS Rules"). A current copy of the JAMS Rules may be found at <https://www.jamsadr.com/>. At your election, arbitration hearings will take place in your hometown area. During the arbitration, the parties will be allowed to engage in discovery or exchange of non-privileged information relevant to the dispute. The arbitrator's decision will consist of a written statement stating the disposition of each claim. The award will also provide a concise written statement of the essential findings and conclusions on which the award is based. The arbitrator's decision will be final and binding, except for any appeal right under the FAA. Any court with jurisdiction may enter judgment upon the arbitrator's award.

**D. Right to Attorneys' Fees and Costs.** You may hire an attorney to represent you. You are responsible for your attorneys' fees and costs. You may recover them from the Company in arbitration to the same extent as in court, or as permitted under JAMS Rules. When you initiate arbitration proceedings, you will be responsible for paying your share of the arbitration fees and costs as set forth in JAMS' Arbitration Schedule of Fees and Costs in effect at the time the arbitration is initiated. The Company will be responsible for any additional arbitration fees and costs.

**E. Waiver of Jury Trials and Class Actions.** IN ARBITRATION, DISPUTES ARE RESOLVED BY AN ARBITRATOR RATHER THAN A JUDGE OR JURY. BY THIS ARBITRATION AGREEMENT, YOU AND COMPANY WAIVE THE RIGHT TO PROSECUTE OR PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, OR OTHER REPRESENTATIVE ACTION. UNLESS YOU AND COMPANY AGREE OTHERWISE IN WRITING, THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED ON A CLASS ACTION, MASS ACTION, OR COLLECTIVE BASIS, AND REGARDLESS OF ANY INCONSISTENT PROVISIONS IN THE JAMS RULES, NEITHER THE ARBITRATOR NOR THE JUDGE MAY CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF TO THAT INDIVIDUAL PARTY. THIS CLASS, MASS, REPRESENTATIVE, AND COLLECTIVE ACTION WAIVER IS A MATERIAL AND ESSENTIAL PART OF AND CANNOT BE SEVERED FROM THIS ARBITRATION AGREEMENT.

**17. SEVERABILITY.** If any provisions of these Terms and Conditions are determined to be invalid under applicable law or unenforceable by a court of competent jurisdiction, such provision shall be deemed to be restated to reflect, as nearly as possible, the original intention of this Agreement in accordance with applicable law. The remaining terms will remain unaffected by the invalid or unenforceable term, and each term will continue to be valid and enforceable to the fullest extent of the law.

**18. NOTICE.** Any notice by you shall be sent by U.S. mail, postage prepaid, to Company at Box 965, Valley Forge, PA 19482, Attn: Customer Service. Notice to you may be in the form of a bill insert, stand-alone mailing, email or other written notification.

**19. WAIVER.** If we delay in exercising any of our rights, Company will not be prevented from exercising our rights at a later date. Company's waiver of any breach of these Terms and Conditions at any time shall not excuse future breaches by the Customer.

**20. YOUR CONTACT AND PAYMENT INFORMATION.** You represent and warrant that the name, address, telephone number(s), and other contact and payment information you provide to Company is accurate, complete, and current. You agree to notify Company immediately if there is any change to any of that information.

**21. YOUR CONSENT TO BEING CONTACTED.** By providing a telephone number now or in the future, you agree that Company (and others on its behalf) may contact you via automated means, including with an automatic telephone dialing system or prerecorded or artificial voice. Such calls or text messages may include, without limitation, delivery reminders, delivery confirmations, past-due account notices, account notifications, and attempts to collect any debts from you. Your consent is not a condition of receiving any goods or services. Message and data rates may apply. To opt-out of receiving automated messages and calls, please reply STOP to the text message, call the Company at 1-800-AmeriGas, or update your contact preferences in your MyAmeriGas account.

**22. GOVERNING LAW.** All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of Pennsylvania without giving effect to any choice or conflict of law provision or rule (whether of the State of Pennsylvania or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Pennsylvania.

**23. SURVIVAL.** Paragraphs 1, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 21 and 22 shall survive termination of your relationship with Company, which includes your permission for Company to contact you to collect any debts owed or your return of Leased Equipment.

**24. CUSTOMER-OWNED EQUIPMENT.** The following provisions do not apply to Customer-Owned Equipment: Paragraph 4B - Tank Rent Paragraph 6B with respect to a Tank Pickup Fee, as it relates to the pick-up of Company-owned Equipment; however, the remaining provisions of this paragraph apply.

These Terms and Conditions shall apply to residential customers in all states except where specifically prohibited by law. THESE TERMS AND CONDITIONS DO NOT APPLY TO CUSTOMERS IN CONNECTICUT, DELAWARE, AND NEW JERSEY, OR CUSTOMERS IN VERMONT USING PROPANE THROUGH A METER OR HAVING PROPANE DELIVERED TO ONE OR MORE STORAGE TANKS WITH AN AGGREGATED TOTAL CAPACITY OF 2,000 GALLONS OR LESS. TERMINATION FEES AND TANK PICKUP FEES NOT APPLICABLE TO NEVADA RESIDENTS. PAPER INVOICE FEES NOT APPLICABLE TO MAINE OR NEW YORK RESIDENTS.

Effective March 1, 2022.

# **Exhibit 3**

AmeriGas  
9 N Bacton Hill Road  
Malvern, PA 19355-1005  
610-644-9100

---

DATE: 11/02/20	TIME: 07:34
VOLUME CORRECTED TO 60.0 F	
SALES #:	4710
Delivery Ticket #:	0673212102
DISTRICT #:	9265
VEHICLE #:	320062
DRIVER: ROBERT	ID: 170429
CUSTOMER:	RONALD DAUGHERTY
	5 CLAYTON PLACE
	NEWTOWN SQUARE, PA 19073-1905
ACCOUNT #:	0100764766

---

TOTAL SIZE:	30.0
START%:52	END%:80
QTY(GAL):	8.7
Price/Gallon (\$):	3.339

---

UN 1075, Liquefied Petroleum Gas,  
2.1(Flammable Gas) Non-Corrosive, Odorized

---

Go to My Account on [www.AmeriGas.com](http://www.AmeriGas.com)  
to view your invoice online.

Unless you have a contract that states otherwise, payment is due on the later of the date indicated on your invoice or within 30 days of delivery. Current Terms and Conditions are available at [www.AmeriGas.com](http://www.AmeriGas.com).



# **Exhibit 4**



# Docket Number C-2022-3036550

## Case Summary ^

<b>Docket Number</b>	<b>C-2022-3036550</b>	<b>Status</b>	<b>Active</b>
<b>Applicant</b>		<b>Utility Code</b>	1714322
<b>Complainant</b>	RONALD DAUGHERTY	<b>Utility Name</b>	AMERIGAS PROPANE LP
<b>Respondent</b>	AMERIGAS PROPANE LP	<b>Utility Type</b>	Pipeline Operator
<b>Responsible Bureau</b>	ALJ	<b>eFiling Confirmation Number</b>	2442365
<b>Date Filed</b>	11/04/2022	<b>Date Posted</b>	11/04/2022
<b>Case Description</b>	Ronald Daugherty filed a Formal Complaint vs. Amerigas		

## Daily Actions ^

Action Date	Description	Date Posted
11/7/2022	Document EServed to POR - Document 'Formal Complaint - Daugherty' is eServed - {BF18D895-8ACD-C3EB-888F-84424CB00000}	11/7/2022
11/4/2022	Document Served - Other - See Comments - Assigned to ALJ, copy to BIE Prosecution Assignment.	11/4/2022
11/4/2022	Document EServed to POR - Document 'Formal Complaint - Daugherty' is eServed - {BF18D895-8ACD-C3EB-888F-84424CB00000}	11/4/2022
11/4/2022	Assigned Responsible Bureau - ALJ	11/4/2022
11/4/2022	Case Created - C-2022-3036550	11/4/2022
11/4/2022	Private Document Published on Web - Document 'Formal Complaint - Daugherty' Restricted on Web - {BF18D895-8ACD-C3EB-888F-84424CB00000}	11/4/2022

## Public Documents



There are no Public Documents

## Need More Help?

If you can't find what you're looking for here, please contact the PA Public Utility Commission. Call us at [1-800-692-7380](tel:1-800-692-7380) or [contact us online](#).

**Customer Hotline 1-800-692-7380**

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# **Exhibit 5**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nancy Poekert	:	
	:	
v.	:	C-2021-3025084
	:	
AmeriGas Propane, LP	:	

**INITIAL DECISION**

Before  
Darlene Heep  
Administrative Law Judge

**INTRODUCTION**

This decision sustains the Preliminary Objection of AmeriGas Propane, LP (AmeriGas) and dismisses the Complaint because the Commission does not have jurisdiction over private propane distribution contracts and cannot award monetary damages.

**HISTORY OF THE PROCEEDING**

On March 9, 2021, the Complainant, Nancy Poekert, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against AmeriGas Propane, LP (AmeriGas). The Complaint avers that AmeriGas did not fulfill its promises regarding propane delivery to the Complainant. As relief, the Complainant would like the Commission to monitor the provision of service of AmeriGas with regard to Pennsylvania customers and provide compensation for any costs involved in changing to another propane provider.

On May 26, 2021, an Initial Telephonic Hearing Notice was issued, setting a hearing in this matter for June 29, 2021. Also on May 26, 2021, a Prehearing Order was issued, setting forth procedures and guidelines, including how to request a continuance.

On June 28, 2021, a Notice of Appearance for AmeriGas was filed by Alexander Harris, Esq.

The hearing convened as scheduled on June 29, 2021. Counsel for AmeriGas questioned whether the Commission had jurisdiction over this matter. The Complainant stated that she would prefer that the jurisdiction issue be resolved rather than go forward with the hearing. Given that an Answer was not filed, Mr. Harris was directed to file either an Answer or a dispositive pleading by July 19, 2021, and the hearing was adjourned. An order was issued on June 29, 2021, formalizing the July 19, 2021 deadline.

Also on June 29, 2021, a Cancelled/Rescheduled Initial Call-In Telephonic Hearing Notice was issued, setting a telephonic hearing for September 15, 2021. A Prehearing Order for the September 15, 2021 hearing was issued on June 30, 2021.

In compliance with the June 29, 2021 Order, on July 19, 2021, Preliminary Objections were filed on behalf of AmeriGas. A copy was electronically served upon the Complainant. The Preliminary Objections included a Notice to Plead stating that a written response was due by August 5, 2021.

In an email to the Legal Assistant dated July 19, 2021, the Complainant acknowledged receipt of the Preliminary Objections, requested assistance in responding to the Preliminary Objection and instructions on how to request a continuance and stated that she was on extended vacation. The Legal Assistant referred the Complainant to 52 Pa. Code § 5.61(a)(2), which provides that answers to preliminary objections must be filed within 10 days of the date of service.

The Complainant did not file a response to the Preliminary Objections. The record was closed on August 5, 2021, the due date for the Complainant's response to the Preliminary Objections.

Respondent's Preliminary Objections are procedurally ready for disposition. For the reasons discussed below, the Preliminary Objections will be sustained, and the Complaint will be dismissed.

### FINDINGS OF FACT

1. The Complainant is Nancy Poekert.
2. The Respondent is AmeriGas Propane, LP.
3. On March 9, 2021, the Complainant filed a Complaint alleging that AmeriGas did not fulfill its promises regarding propane delivery.
4. As relief, the Complainant would like the Commission to monitor the provision of service of AmeriGas with regard to Pennsylvania customers and provide compensation for any costs involved in changing to another propane provider.
5. The Respondent did not file an Answer to the Complaint.
6. On July 19, 2021, the Respondent filed Preliminary Objections asserting that the Commission has no jurisdiction regarding propane service contracts.
7. The Complainant did not file a response to the Preliminary Objections.

### DISCUSSION

The Commission's Rules of Administrative Practice and Procedure provide for



the filing of preliminary objections. The Commission's Rules at 52 Pa. Code § 5.101(a) limit preliminary objections to the following grounds:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transp. Interveners v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Phila. Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. *Montague v. Phila. Elec. Co.*, 66 Pa. PUC 24 (1988).

The moving party may not rely on its own factual assertions but must accept, for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *Raynor v. D'Annunzio*, 243 A.3d 41 (Pa. 2020); *County of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the Commission must assume that the factual allegations of the Complaint are true. *Id.* Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Commonwealth v. UPMC*, 652 Pa. 322, 208 A.3d 898 (Pa. 2019); *Dep't of Auditor General v. State Emps. Retirement Sys.*, 836 A.2d 1053 (Pa.Cmwlt. 2003) (*citing, Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlt. 2002)).

Here, AmeriGas has filed Preliminary Objections on the grounds of 52 Pa. Code § 5.101(a)(1), asserting that the Commission does not have jurisdiction over a contractual dispute concerning its propane distribution services. AmeriGas also asserts that the Commission does not have the authority to award the monetary damages sought by the Complainant. The Complainant did not file a response to the Preliminary Objections.

The Complaint concerns propane delivery services for which the Complainant contracted with the Respondent. The Complainant asserts that the Respondent did not fulfill its promises regarding how much propane was to be delivered and when. She also seeks compensation for any costs incurred when changing to a new propane provider, or damages.

AmeriGas Propane asserts that it is not a public utility and that the Commission's jurisdiction over AmeriGas Propane extends only to AmeriGas Propane's pipeline operations under the Gas and Hazardous Liquids Pipelines Act, P.L. 856, No. 127 (the "Pipeline Act"). AmeriGas further asserts that the Commission does not have jurisdiction over private complaints against pipeline operators such as AmeriGas Propane, and therefore Ms. Poekert's Complaint should be dismissed.

The Commission, as a creation of the General Assembly has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code ("Code"). *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992), *alloc. den.*, 637 A.2d 293 (Pa. 1993).

Section 701 of the Code provides that,

The commission, or any person, corporation, or municipal corporation having an interest in the subject matter, or any public utility concerned, may complain in writing, setting forth any act or thing done or omitted to be done by any *public utility* in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission. . . .

66 Pa.C.S § 701 (emphasis added).

Section 102 of the Code defines the term “public utility” as:

- (1)** Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:
  - (i)** Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.
  - (ii)** Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.
  - (iii)** Transporting passengers or property as a common carrier.
  - (iv)** Use as a canal, turnpike, tunnel, bridge, wharf, and the like for the public for compensation.
  - (v)** Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.
  - (vi)** Conveying or transmitting messages or communications, except as set forth in paragraph (2)(iv), by telephone or telegraph or domestic public land mobile radio service including, but not limited to, point-to-point microwave radio service for the public for compensation.
  - (vii)** Wastewater collection, treatment, or disposal for the public for compensation.
  - (viii)** Providing limousine service in a county of the second class pursuant to Subchapter B of Chapter 11 (relating to limousine service in counties of the second class).

66 Pa.C.S § 102 “Public Utility” (footnote omitted). This section further provides that the term “public utility” does not include “[a]ny producer of natural gas not engaged in distributing such gas directly to the public for compensation.” 66 Pa.C.S § 102 “Public Utility” (2)(iii).

At issue here is the fulfillment of a private contract between the Complainant and AmeriGas. While the pipeline operations of the Respondent may fall under the jurisdiction of the Commission, contracted delivery of propane services are not a public utility as defined by 66 Pa.C.S § 102 and therefore are not within the jurisdiction of the Commission. As the Commission has stated, "[e]ntities that are in the business of selling propane and delivery of propane to individual tanks located on the customers' property are not considered public utilities subject to Commission jurisdiction under section 102 of the Public Utility Code, 66 Pa. C.S. § 102." *Application of PPL Gas Utilities Corporation for approval of the abandonment or discontinuance of utility propane sale service*, Docket Number A-122050F2003 (Order entered January 26, 2007) at 7.

Further, the Complainant here is claiming that the Respondent has violated its delivery contract and is seeking damages in the form of any expenses she may incur when switching to a different propane provider. Complaint at 3. As held in *Allport Water Auth. v. Winburne Water Co.*, 393 A.2d 673, 675 (Pa. Super. 1978), "[t]he PUC is not jurisdictionally empowered to decide private contractual disputes between a citizen and a utility."

Also, it is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978). The Commission cannot award the reimbursement sought by the Complainant here. *See Morrow v. Bell Tel. Co. of Pa.*, 330 Pa.Super. 276, 479 A.2d 548 (1984); *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 104 Pa.Cmwlth. 21, 521 A.2d 75 (1987); *Ostrov v. I.F.T., Inc.*, 402 Pa.Super. 87, 586 A.2d 409 (1991). A request for monetary damages must be pursued before a Magisterial District Justice or a Court of Common Pleas. Therefore, the Preliminary Objection will be sustained for lack of jurisdiction. *See Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A. 2d 744 (Pa. Cmwlth. 1995).

Accordingly, the Preliminary Objections are sustained, and the Complaint is dismissed.

## CONCLUSIONS OF LAW

1. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008).

2. A preliminary objection seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979);

2. A Complaint filed with the Commission may concern any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission. services. 66 Pa.C.S § 701; 66 Pa.C.S § 102; *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *Application of PPL Gas Utilities Corporation for approval of the abandonment or discontinuance of utility propane sale service*, Docket Number A-122050F2003 (Order entered January 26, 2007).

3. Propane distribution under a private contract does not fall within the definition of a "public utility" and does not pertain to any law under the Commission's jurisdiction to administer or any regulation or order of the Commission. 66 Pa.C.S § 102; *Application of PPL Gas Utilities Corporation for approval of the abandonment or discontinuance of utility propane sale service*, Docket Number A-122050F2003 (Order entered January 26, 2007).

4. The Commission does not have jurisdiction to decide the private contractual disputes between the Complainant and AmeriGas Propane, LP. *Allport Water Auth. v. Winburne Water Co.*, 393 A.2d 673, 675 (Pa. Super. 1978).

5. The Commission does not have the enforcement powers to award the Complainant the money damages or reimbursement sought in the Complaint. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections of AmeriGas Propane, LP are sustained.
2. That the Complaint of Nancy Poekert against AmeriGas Propane, LP at Docket No. C-2021-3025084 is dismissed.
3. That the Secretary shall mark this docket closed.

Date: September 17, 2021

\_\_\_\_\_/s/\_\_\_\_\_  
Darlene Heep  
Administrative Law Judge