

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

MICHAEL BABILYA,

Complainant,

vs.

C-2024-3051867

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: February 20, 2025

/s/Alexander L. Harris

Alexander L. Harris, Esq.
(PA Attorney I.D. #311382)
AmeriGas Propane, L.P.
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Attorney for AmeriGas Propane, LP

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PRELIMINARY OBEJCTIONS 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 Michael Babilya.

I. INTRODUCTION

1. Complainant Michael Babilya’s (“Babilya”) 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. Babilya filed his Complaint against AmeriGas Propane as a “pipeline operator,” but his Complaint does not concern any safety regulations relating to such pipeline systems.

4. Babilya'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.

5. Moreover, Babilya's Complaint should be dismissed because the Commission lacks jurisdiction to hear Formal Complaints against pipeline operators.

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. Babilya contracted with AmeriGas Propane for the delivery via truck of propane to individual tank on Babilya's property. *See* Ex. 1, Complaint, at p. 2¹; *see also* Ex. 2 (Babilya's initial contract with AmeriGas Propane for delivery of propane to an individual tank on Babilya's property); Ex. 3 (AmeriGas Propane's current Residential Terms and Conditions); and Ex. 4 (Receipt from Babilya's most recent propane delivery via truck).

9. Babilya alleges that he has had issues with AmeriGas' auto-pay system, receiving propane while portions of his bill were awaiting payment by various assistance programs, and enrolling in budget billing.² *See* Ex. 1, Complaint, at p. 2.

¹ AmeriGas has not received a copy of the specific complaint made to the PUC. Babilya, however, filed a complaint with the Pennsylvania Office of the Attorney General referencing the fact that he contacted the PUC regarding the same issues. Ex. 1, Complaint, at p. 2.

² 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. Babilya to resolve this situation. Members of AmeriGas' Customer Advocacy team reached out directly to Mr.

10. Although AmeriGas Propane is not a public utility, the Commission’s filing system accepted Babilya’s Complaint because of AmeriGas Propane’s status as a “Pipeline Operator.” *See* Ex. 5, Printout of Docket (noting AmeriGas Propane’s status as “Pipeline Operator”).³

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 Babilya’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 Babilya’s individual tank. *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. Intervenor 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).

Babilya, provided him with hundreds of dollars in credits, and placed him on a fixed payment plan. AmeriGas Propane does not believe there is currently any remaining dispute between the parties.

³ AmeriGas apologizes for not filing this pleading earlier. As it is not a jurisdictional utility, AmeriGas does not receive notices from the PUC in the same manner regarding customer disputes. The current notice was sent via regular mail the home address of a field employee. AmeriGas will work with Commission staff to see if there is a way of changing this process of notification for AmeriGas in the future.

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 This Dispute.

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").

17. To bring a Formal Complaint, Babilya 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 Babilya'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. 6, *Poekert v. AmeriGas Propane*, C-2021-3025084 (Sept. 17, 2021 Initial Decision), at p. 7; *see also* Ex. 7, *Daugherty v. AmeriGas Propane*, C-2022-3036550 (Feb. 9, 2023 Initial Decision), at p. 7 (“The Commission does not have jurisdiction to decide the private contractual disputes between the Complainant and AmeriGas Propane, LP.”); *Paul v. Alliance Petroleum*, C-2020-3021361 (Jan. 7, 2021 Initial Decision and Feb. 9, 2021 Order) (holding 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. 6, *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 Babilya’s Complaint.

IV. CONCLUSION

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

Date: February 20, 2025

Respectfully submitted,

/s/Alexander L. Harris

Alexander L. Harris, Esq.
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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:

Michael Babilya
466 Brendon Drive
Leola, PA 17540
Complainant

Date: February 20, 2025

/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



Consumer Complaint Form

Attorney General Michelle A. Henry

Bureau of Consumer Protection
15th Floor, Strawberry Square
Harrisburg, PA 17120

1-800-441-2555 - PA ONLY
1-717-787-9707

consumers@attorneygeneral.gov
www.attorneygeneral.gov

Your Information

Please check if you or an immediate family member is a member of the military or a veteran. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Please check if you are age 60 or older. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Name: Michael Babilya			
Address: 466 Brendon Drive			
City: Leola	State: PA	Zip: 17540	County: Lancaster
Best Phone Number: (717) 992-2267	Alternative Phone:		Email Address:

Who is the complaint against?

Business Name: AmeriGas	Phone Number: (800) 263-7442	
Person to whom you spoke:		
Mailing Address: 3927 East Newport Road	Office/Suite: 3927 East Newport Road	
City: Gordonville	State: PA	Zip: 17529

Complaint Information

Products or Services Purchased:	
Date Purchased	Purchase Price:
Payment Method:	Where and how did you sign the contract (if applicable):?
Have you contacted other agencies? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Agencies Contacted and actions they took (if known) PUC - they told him to report to the AG's Office	

Complaint Summary

Case Worker at the VA Contact Information:
Nicole Sanchez - Social Worker
717-279-1458

Consumer purchases propane heat through AmeriGas. He was set up for auto-pay of \$125 a month through the budget bill. Consumer figured out in August that the auto-pay was no longer in place and began making payments himself. Consumer was told by AmeriGas that they had notified him via email in Spring of 2023 that they were updating their system and needed him to confirm that he still wished to use auto-pay. Consumer has never had an email address and subsequently did not receive this notification. AmeriGas did not alert Consumer through the mail of this update. In October of 2023 Consumer received a bill for non-payment.

Consumer has had the assistance of Nicole at the VA to try and fix the situation. Consumer received a bill for over \$700 which he is unable to pay due to his fixed income. Consumer did not have heat for four days because AmeriGas required the entire bill be paid prior to providing more propane. Nicole and Consumer were able to get the funds covered through the VA and Wounded Warriors. A payment was made to AmeriGas but approximately \$90 still remained for the bill. AmeriGas refused to deliver propane, despite the fact that they had received confirmation the remainder would be paid by assistance programs.

Representatives and Supervisors at AmeriGas have continued to tell Consumer and Nicole different things regarding payments and payment plans. Consumer needs to be put back on the budget billing plan due to the nature of his income but was denied. AmeriGas has "extended" the due dates of some payments but will not allow Consumer to continue to be on the budget billing.

One representative told Consumer and Nicole that "If this is so important why did the Consumer only make a payment today" rather than trying to assist Consumer with his needs as an elderly veteran.

Complaint Resolution

AmeriGas has been incredibly difficult to deal with and therefore Consumer requests that there be more consistency when trying to fix issues within AmeriGas. Consumer would like to be put on the budget billing plan of \$125 per month but NOT on auto-pay so that he can make sure payments are made which is what Consumer can afford with his current budget.

What is your race or ethnicity?

Prefer Not To Answer

PLEASE READ CAREFULLY

The Attorney General cannot act as your private attorney. As a law enforcement agency, the primary function of the Office of Attorney General is to represent the public at large by enforcing laws prohibiting unfair or deceptive practices. The Attorney General, through the Bureau of Consumer Protection, provides a mediation service to consumers where an attempt may be made to mediate your individual consumer complaint if it falls within the jurisdiction of the office. Please be advised that the information you provide will be shared with the party against which you have filed a complaint. Additionally, your complaint may be shared with or referred to other governmental law enforcement or regulatory agencies. Your complaint will also be kept on file with our office and the information contained therein may be used to establish violations of Pennsylvania Law. Attached to this complaint form is an informational sheet which will help you in completion of the complaint form and also will explain in greater detail the mediation process. By signing below, I authorize the Bureau of Consumer Protection to contact the party(ies) against which I have filed a complaint in an effort to reach an amicable resolution. I further authorize the party(ies) against which I have filed a complaint to communicate with and provide information related to my complaint to the Bureau of Consumer Protection. I verify that I have read and understand the informational sheet about this process; and, that the information provided is true and correct to the best of my knowledge, information and belief.

YOUR SIGNATURE

DATE

Exhibit 2



103 100961

Residential Propane Supply Agreement & Equipment Lease

District # 9220

This Propane Supply Agreement and (Equipment) Lease ("Agreement") is between AmeriGas Propane Inc, (hereinafter and in all documents ancillary hereto referred to as the "Company"), Address: 3927 E Newport Rd Gordonville PA 17529 and the Customer identified below (hereinafter referred to as "Customer").

Customer: <u>Mike Babilya</u>	Business Phone: <u>(717) 598-4924</u>	Fax: _____	eMail: _____
Primary Contact: _____	Business Phone: _____	Cell: _____	Fax: _____
eMail: _____			
Installation/Delivery Address: <u>466 Brendon Dr</u>	City: <u>Leola</u>	State: <u>PA</u>	Zip: <u>17540</u>
Billing Address: _____	City: _____	State: _____	Zip: _____

LEASE EQUIPMENT AGREEMENT

A. General Provisions. Upon request, the Company ("us" or "our" or "we") will lease and provide to you various equipment, including a propane storage tank or cylinder, regulator(s), and related equipment (the "Leased Equipment"). 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 tank without our written permission. You agree that if you sell the residence where the Leased Equipment has been installed, you will notify the Company at least 30 days in advance that the sale is taking place and will inform the buyer that the Leased Equipment is owned by the Company.

B. Propane System Maintenance & Repair. Except for the Leased Equipment, you are responsible for the maintenance and repair of your entire propane system. 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 on the Leased Equipment. You will notify the Company immediately if the Leased Equipment is damaged or malfunctions, or if you experience any problems with the system.

C. Rent. You agree to pay the Company annual tank rent during the period the Leased Equipment is installed at your residence. The amount of the rent can vary by geography and may be affected by, among other things, the size of the tank(s) and your actual annual usage.

D. Access to Equipment. You agree that the Company has an irrevocable right of entry and exit to your property, without prior notice, to deliver propane or to install, repair, service, or remove the Leased Equipment, or to perform any other services that the Company deems reasonably necessary. You agree to provide the Company with safe, free and unimpeded access to the Leased Equipment, including, but not limited to, access free of ice, snow, water, mud and other hazards. You will mark or otherwise identify the location of septic systems, leach pits, underground ponds and similar underground features as necessary to allow the Company to safely install the Leased Equipment, perform services and make deliveries. You agree that the Company has no obligation to contact you to access the Leased Equipment and may suspend deliveries or service in the event the Company is unable to reasonably access the Leased Equipment. You agree to promptly surrender to the Company the Leased Equipment when your relationship with the Company is terminated for any reason.

E. Title to Equipment. The Leased Equipment will at all times remain the property of the Company and will not become a fixture or a part of your real property.

F. Propane Meters. If you have a Company propane meter installed on the Leased Equipment, you will be billed for your actual propane usage rather than per delivery. The Company reserves the right to bill you based on an estimated usage amount, which will later be followed-up by an actual reading, based on which: (i) you will receive a credit to the extent that the estimated amount exceeds the actual propane 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 Service Fee as defined below is applied to all customers who have meters.

2. TERM. The term applicable to this Agreement shall be for one (1) year ("Term") beginning on the date signed by Customer and will automatically renew from year-to-year thereafter ("Renewal Term") until terminated by either party as provided herein.

3. SAFETY INFORMATION. Safety information has been supplied in your Welcome Packet. If you did not receive the safety information, please contact us at 800-501-8953 and we will mail this information to you. Additionally, the Company's safety warnings are also contained on our website. We strongly advise you to regularly visit our website to view those and other important safety warnings. If you smell propane or experience any other propane or safety-related matters, you should immediately contact your local district office.

4. PROPANE SUPPLY. You agree that only propane sold by the Company will be used with the Leased Equipment.

5. PRICING, FEES, RATES, AND CHARGES.

A) General Provisions:

You agree to pay the Company's price per gallon, fees, rates, and charges in effect on the date that propane is delivered, services are rendered, or as may be set forth on the delivery ticket. **THE COMPANY RESERVES THE RIGHT TO CHANGE ITS PRICES, FEES, RATES, AND CHARGES WITHOUT PRIOR NOTICE.** If you are not enrolled in a fixed price program you understand and agree that you will not receive prior notice of the price of propane before a delivery, but may obtain pricing information by calling the local district office servicing your account. The Company's price per gallon, fees, rates, and charges, if any, are not refundable except to the extent that a refund may be required by law.

B) PRICE

• For Guaranteed Price Protected ("GPP") customers – These programs provide for a fixed price per gallon for a predetermined period of time or volume. Specific program information is available on our website. See your GPP agreement for specific pricing details.

• For customers not enrolled in a GPP or other fixed price program, you will receive a price per gallon set by the Company 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 equipment and competitive conditions.

C) Price Dispute Resolution Procedure:

Due to the potential pricing volatility in energy markets, you have the right to discuss the price of propane delivered to your account and the Company will make reasonable efforts to resolve pricing disputes through the following standardized process: If you would like to discuss your price with the Company, you should initially contact your local district office. If you are not satisfied after discussions with the local district office, you may advance the issue to the Area Director. Any unresolved dispute can be further escalated to the office of the Operations Vice President if you believe it is necessary. The local district office will provide contact information.

D) Current Fees and Charges. In addition to the price per gallon, the Company reserves the right to apply other fees and charges to your account depending on the services required. The fees and charges provided below are the most frequently assessed, but other charges may apply depending on the services rendered. Please contact your local district office for specific questions regarding fees and charges.

• **Fuel Recovery Fee** – This fee, which is assessed for propane deliveries and service calls, helps to offset the significant expenses incurred by the Company in fueling its fleet of commercial motor vehicles. This fee fluctuates on a monthly basis as the Company's cost of fuel fluctuates. The fee as of the date of this Notice is \$7.83. For updated Fuel Recovery Fee information, please contact your local district office on a monthly basis or visit the Company's website.

• **HazMat & Safety Compliance Fee** – This fee, which is assessed for propane deliveries and service calls, 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 re-qualification, and environmental compliance. **THE FEE IS NOT GOVERNMENT IMPOSED, NOR IS ANY PORTION OF IT PAID TO ANY GOVERNMENT AGENCY.** The fee as of the date of this Notice is \$10.59.

• **Leak Check Fee** – This charge is applied when the Company must perform a leak check to verify that the propane system does not have any leaks. This test is required by law under certain circumstances, which may include: when a new piping system is installed, if the gas has been turned off or if there has been an interruption of gas service, or in the event a leak in the system is suspected. The local district office can provide specifics on when a leak check is required and the current fee.

• **Pump-Out/Restocking Charge** – This charge defrays the cost associated with pumping out a tank that contains propane in excess of five percent water capacity, and returning the tank to the Company's inventory. You can avoid this charge by continuing service with the Company until the supply of propane in the tank is less than five percent. Depending on the size of the tank/cylinder, this charge may be up to \$149.00.

• **Special Trip Charge** – This charge is incurred by customers who request immediate deliveries or non-emergency service after business hours or on weekends. This charge can vary due to the distance involved and/or the time required to service the request and will be based on local labor rates, which can be obtained from your local district office.

• **Meter Service Fee** – This fee is incurred by customers who are charged for their propane based on an amount of usage as measured by the Company's meter. This fee defrays the cost of meter reading, meter maintenance and related administrative costs. The fee as of the date of this Notice is \$9.99 per month.

• **Service Dispatch Charge** – This charge is to cover the costs associated with dispatching a service technician to a customer's residence or other location to perform diagnostic or other service work on customer-owned equipment and appliances or to pick-up a Company-owned tank or cylinder. You should note that upon our arrival additional charges may be assessed depending upon the nature of the problem. The Service Dispatch Charge is \$39.99. This charge will not be credited toward service work performed. Please check with your local district office regarding the availability of appliance repair service.

• **Returned Check Charge** – This charge 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. The Returned Check Charge is \$33.00.

Note: The Fuel Recovery Fee & HazMat & Safety Compliance Fee does not apply to customers in Connecticut.

Because these fees are subject to change, we suggest you regularly visit the Company website in order to view a list of our most current fees and charges, or you can call the local office servicing your account to speak with a Customer Relations Representative.

6. PAYMENT TERMS AND LATE FEES. You agree to pay the Company's price per gallon and all fees, rates, and charges on or before the due date indicated on the invoice. Where permitted by law, the Company may send you an invoice instead of a delivery ticket. If you fail to pay all amounts due within 25 days after the due date, the Company may, unless prohibited by law, add a monthly late charge of 1.5% of the average daily balance or a late charge of \$36.00, whichever is greater. The Company reserves the right to require you to pay for propane deliveries or services in advance or to post a cash deposit, which may be applied by the Company at any time in whole or in part to the outstanding balance.

7. LICENSES, PERMITS AND TAXES. You agree to pay for all licenses, permits, and taxes associated with the sale or use of the propane and Leased Equipment or service covered by this Agreement.

8. LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES WILL THE COMPANY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGE TO PLUMBING (INCLUDING WATER DAMAGE FROM FROZEN PIPES), SEPTIC SYSTEM, DRIVEWAY, LAWN AND/OR LANDSCAPING.

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 OR SERVICE SUPPLIED OR PERFORMED UNDER THIS AGREEMENT OR ANY PRIOR AGREEMENT OR UNDERSTANDING, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SOME STATES (CT, KS, ME, MS, NH, WA, AND WV) DO NOT ALLOW THIS EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMERS IN THOSE STATES.

10. TERMINATION. Unless otherwise specified, your propane service may be terminated for convenience at the end of any Term or Renewal Term upon the provision of thirty (30) days prior written notice to the other party. In the event service is terminated, the Company reserves the right to charge you a Service Dispatch Charge, the Pump-Out/Restocking Charge (if the supply of propane remaining in the tank is more than 5%), and the HazMat and Fuel Recovery fee, if applicable. The Company may terminate service with you at any time, without prior notice, if you fail to satisfy any term in this Agreement or if the Company determines, in its sole discretion, that a condition exists that poses a health or safety threat. **TERMINATION FEES NOT APPLICABLE TO NEVADA RESIDENTS.**

11. 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, labor disputes, wars, hostilities, terrorism, compliance with laws or regulations, Company's inability to obtain propane or equipment from its customary suppliers, terminal, refinery or pipeline disruptions, allocation programs or lack of or inadequate transportation facilities. Under any of these or similar circumstances, Company may allocate propane and equipment among its Customers in any manner that Company, in its sole judgment, deems reasonable.

12. CHANGES TO THE AGREEMENT. The Company reserves the right to change this Agreement (other than price per gallon, fees, rates, 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. By accepting delivery of propane or by paying any invoice, fees, rates, or charges after you have been given notice of the change(s), you will be deemed to have agreed to the change(s). This Agreement may not be modified orally.

13. CUSTOMERS WITH UNDERGROUND LEASED TANKS. At the time of installation and removal of the Leased Equipment, you will mark or otherwise accurately identify the location of all underground systems that are not marked by your State's "Call Before you Dig" program, including, but not limited to, sprinkler lines, septic systems, leach pits, underground ponds and similar underground features. You are responsible for all costs of the excavation and removal of the Leased Equipment and the 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 of the tank, access to the tank, the soil conditions and other impediments. The Company may at its option charge you for the value of the underground tank in lieu of physically removing the tank from your property.

14. CUSTOMERS WITH RESIDENCES THAT ARE NOT OCCUPIED YEAR-ROUND. If you are enrolled in the Company's automatic delivery program, we will make periodic deliveries to your vacation/seasonal residence based upon a number of factors, including temperature conditions and the number and types of propane appliances in your vacation/seasonal residence. In return, we depend upon you to notify our office if you should change any propane appliances, use your vacation/seasonal residence more than customary or any other change or development which may cause your residence to use more propane gas than customary. It is your responsibility to notify us if your tank percentage falls below 30%.

We do not accept responsibility for any damage caused by your failure to notify our office of any changes in your propane use and the Company disclaims any and all liability for losses or damages that occur as a result of your failure to provide adequate advanced notice of a need for a delivery.

15. CLAIMS AND ARBITRATION

A. Arbitration Agreement. Upon the election of either party, a Dispute shall be resolved by binding arbitration. "Dispute" means any claim or controversy arising from or relating to the relationship between you and the 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 the Company or its parents, subsidiaries, affiliates, predecessors, successors or assigns and any of their directors, officers, employees and agents; (3) claims that arose before or after the expiration or termination of this or any prior Agreement; and (4) claims that are the subject of a putative class action in which no class has been certified. "Dispute" shall not, however, include: (1) issues relating to the scope, validity or enforceability of this arbitration agreement; (2) claims filed by you or the Company on an individual basis in small claims court; or (3) claims filed by or on behalf of the Company to collect money you owe the Company.

B. Right to Reject this Agreement or Changes to this Agreement. Notwithstanding anything in this Agreement to the contrary, you may reject this arbitration agreement or future changes to this arbitration agreement. To do so, you must send the Company written notice by certified mail postmarked no later than thirty (30) days after your first receipt of this arbitration agreement (if rejecting the arbitration agreement) or notice of the change (if rejecting changes to the arbitration agreement) to Box 965, Valley Forge, PA 19482, Attn: General Counsel. Your decision will not adversely affect your relationship with or receipt of goods or services from the Company.

C. Procedures for Arbitration. This arbitration agreement is governed by the Federal Arbitration Act. Arbitrations shall be administered by the American Arbitration Association ("AAA") pursuant to its Commercial Arbitration Rules and Supplementary Procedures for Consumer Related Disputes (collectively the "AAA Rules") as modified by this arbitration agreement. If your claim is less than \$10,000, you may choose whether the arbitration will be decided on the papers or after a telephonic or in-person hearing.

D. Waiver of Jury Trials and Class Actions. IN ARBITRATION, DISPUTES ARE RESOLVED BY AN ARBITRATOR RATHER THAN A JUDGE OR JURY. WHETHER IN ARBITRATION OR COURT, YOU AND THE COMPANY WAIVE THE RIGHT TO PROSECUTE OR PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, OR OTHER REPRESENTATIVE ACTION. UNLESS YOU AND THE COMPANY AGREE OTHERWISE IN WRITING, THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION BASIS, AND NEITHER THE ARBI-

TRATOR NOR JUDGE MAY CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. THE ARBITRATOR/JUDGE 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.

E. Severability of this Provision. If this arbitration agreement's class action waiver is found to be illegal or unenforceable, the entire arbitration agreement shall be null and void. If any other provision in this arbitration agreement is found to be illegal or unenforceable, that provision shall be severed from the arbitration agreement and the remainder of the arbitration agreement shall remain in full force and effect.

16. SEVERABILITY. In the event that any provisions of this Agreement are determined to be invalid under applicable law or unenforceable by a court with appropriate 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 such term will continue to be valid and enforceable to the fullest extent of the law.

17. NOTICE. Any notice by you shall be sent by U.S. mail, postage prepaid, to the 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.

18. WAIVER. If we delay in exercising any of our rights, the Company will not be prevented from exercising our rights at a later date. The Company's waiver of any breach of this Agreement at any time shall not excuse future breaches by the customer.

19. SURVIVAL. Paragraphs 1, 5, 6, 8, 11, 16 and 18 shall survive termination of your relationship with the Company.

20. CUSTOMER OWNED EQUIPMENT. The following provisions do not apply to Customer-owned equipment:

Paragraph 1: • Leased Equipment
Paragraph 5(D): • Pump-Out/Restocking Charge as it relates to the pick-up of the Company-owned Equipment.

Paragraph 7: • Licenses Permits & Taxes as it relates to permits for tank installation; however, the remaining provisions of this paragraph apply.

21. TERMS AND CONDITIONS. From time to time, the Company issues Terms & Conditions. The issuance of the Terms & Conditions will replace this Agreement thirty (30) days after your receipt or upon the effective date listed on the Terms & Conditions, whichever is later. By accepting delivery of propane, or by paying any invoice, fees rates, or charges, you are deemed to have accepted the Terms & Conditions and does not require your signature.

Please contact your local Company office for updated fees rates and other charges. You can also find a copy of the amounts of updated fees, rates and other charges on the Company's website.

EQUIPMENT RENTAL FEE

Rental Fee Amount: _____
Month Due _____ Monthly _____ Quarterly _____ Semi-Annual _____ Annual _____

DESCRIPTION OF LEASED EQUIPMENT

Tank/Cylinder: 2-420# Serial Number: _____
Regulator: _____ Other: _____

If this block is checked, this Propane Supply Agreement is further subject to the terms and conditions set forth in Attachment(s) _____, which is/are attached hereto and made a part hereof.

CUSTOMER Mike Babilya
SIGNATURE: Michael G. Babilya
PRINT NAME: _____
DATE: _____

COMPANY: Amer Gas Propane Inc
SIGNATURE: Charlie [Signature]
TITLE: CLL
DATE: 11/3/15

Exhibit 3

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. Your Agreement, if applicable, and these revised Terms and Conditions are collectively referred to herein as the "Terms and Conditions." 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 incorporate our Privacy Policy, which can be found at www.amerigas.com.

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 17.

2. TERM. Your term is the period of time for which you have agreed to maintain service with us.

- **Leased Equipment.** If you are leasing equipment from Company, your term will be three (3) years from the date on which you signed your Agreement, or if you did not sign an Agreement, 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.
- **Customer-Owned Equipment.** If you are not leasing equipment from Company, your term will be month-to-month unless either you or Company provides the other with prior notice of termination.

Your notice of non-renewal or termination 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 1-800-263-7442 (1-800-AmeriGas); or (3) by email at Customercare@amerigas.com.

3. SAFETY INFORMATION. Safety information has been or will be supplied in your Welcome Packet. If you would like an additional copy, please visit us at www.amerigas.com/safety or you can contact us toll-free at 1-800-263-7442 and we will mail or e-mail it to you. We recommend you regularly visit www.amerigas.com/safety to view those and other important safety warnings. You are responsible for providing all occupants of your home with the safety information provided by Company and for ensuring all occupants are familiar with the odor of propane. **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 1-800-263-7442. We recommend purchasing an LP gas detector and a Carbon Monoxide detector.**

4. LEASED EQUIPMENT.

A. General Provisions. Company may lease and provide to you a propane storage tank or cylinder, first stage or twin-stage regulator(s), and related equipment, and/or, 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 downstream of any Company-owned regulator or meter, including piping, equipment, and/or appliances. Unless otherwise agreed to in a writing signed 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 and title to Leased Equipment shall not pass to Customer, any subsequent purchaser of the property, or any other third party (including creditors). You agree to promptly surrender to Company all Leased Equipment upon termination of service and agree to take all necessary steps to assist Company with the retrieval of any Leased Equipment.

B. Safety. In the interest of safety, you will not allow anyone to make any adjustments, connections, or disconnections to the Leased Equipment or provide service to, move, remove, or pump-out the Leased Equipment without our written permission. You are required to inspect the Leased Equipment regularly, for instance to look for overgrown bushes near your tank, fallen tree branches, or any other issue. You must notify Company immediately if you suspect that Leased Equipment is damaged, malfunctions, or if you experience any problems. **Customer agrees that only Company and its authorized representatives shall deliver propane to the Leased Equipment. Only propane sold by Company will be used with the Leased Equipment. YOU AGREE THAT IF YOU DO NOT STRICTLY FOLLOW THESE REQUIREMENTS, WE WILL NOT BE RESPONSIBLE FOR ANY DAMAGES THAT MAY OCCUR IN CONNECTION WITH THE PROPANE OR LEASED EQUIPMENT, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, DEATH OR PROPERTY DAMAGE.**

C. Equipment Rent. You agree to pay equipment rent ("Equipment Rent") (previously called "Tank Rent") once per year while the Leased Equipment is installed at your residence. The amount of Equipment Rent can vary depending on, among other things, the size of the tank, the type of equipment installed at the residence, the location of the residence, and your annual usage. Equipment Rent may be increased due to inflation or other factors. For certain Customers who entered into prior minimum use arrangements with Company, Equipment Rent is waived if they meet certain minimum propane use requirements. For these Customers, Equipment 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 1-800-263-7442 if you have questions about the Equipment Rent that is applicable to you.

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 7(B) below applies to customers who have meters.

E. Tank Monitor. If you have a Company tank monitor installed in connection with the Leased Equipment or Customer-Owned Equipment, as defined in Section 5(E), we collect your tank telemetry, which includes, but is not limited to, your location information (GPS location of tank monitor) and your tank's propane levels. The tank monitor will at all times remain the property of Company or its service providers and will not become a fixture or a part of your real property.

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 or authorized representatives, your property, or the public. You agree that Company may lock off Customer-Owned Equipment, the Leased Equipment, and/or suspend service if Company believes an unsafe condition exists.

B. Access to Equipment for Delivery and Service. Company and its authorized representatives will have an irrevocable right to enter your property without prior notice for deliveries of propane, meter reading, equipment installation, inspections, and servicing or removal of Leased Equipment. You agree to provide Company and its authorized representatives with safe and unimpeded access to your property, 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 or service. You agree not to erect structures, fences, or other improvements and not to plant or grow trees or shrubs that restrict access to the Leased Equipment and any Customer-Owned Equipment. If access across a customer-owned bridge or driveway is required, you are

required to ensure that the bridge or driveway will safely accommodate the weight of the delivery or service vehicle and to ensure that the bridge is accessible for safe crossing by the delivery or service vehicle prior to delivery. **We will not complete your delivery if AmeriGas does not have safe and unimpeded access to your property and the propane system.** You will mark and identify the location of septic systems, leach pits, underground ponds, and similar underground features.

C. Adverse Weather or Remote Areas. You are required to remove all snow from Leased Equipment or Customer-Owned Equipment in areas that experience snowfall so that we may access the Leased Equipment or Customer-Owned Equipment to make a delivery or complete service work. You are required to keep Leased Equipment or Customer-Owned Equipment free from snow and ice or other hazards. Your delivery or service may be significantly delayed if there are adverse weather conditions, such as floods, heavy snowfall, or hurricanes, or if the delivery/service address is in a remote area.

D. Delivery Options. Company offers two types of propane delivery:

- **Automatic** – Under this delivery option, Company will make deliveries to you on either a fixed-cycle basis or when we estimate you will need propane. Our estimate is based 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. Weather conditions or changes in your circumstances can significantly affect your propane use. You must continue to monitor your available propane especially if you have had a period of high usage. Company will determine, in its sole discretion, if you are an appropriate fit for automatic delivery and may, at our option, remove you from automatic delivery at any time and require you to place orders via our Will Call delivery option. If you have a residence that is not occupied year-round, please see Section 16 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. We may adjust this percentage from time to time, due to weather or other factors. Please check our website for current order placement recommendations. Most Will Call deliveries are made within 7-10 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 to set up a MyAmeriGas account. If you provide us with less than seven (7) days' notice that a delivery is needed, we may not be able to meet your schedule. Expedited delivery requests may be assessed an Emergency Delivery Fee and if you do not place your order on time, you may incur additional costs if we are required to perform a leak check. For more information about these fees, see Section 7(B).

E. Customer-Owned Equipment. You are responsible for the maintenance and repair of all equipment that you own ("Customer-Owned Equipment"), including compliance with any and all applicable laws and regulations and manufacturer-recommended maintenance. If you have Leased Equipment, Customer-Owned Equipment includes all equipment downstream of any Company-owned regulator, including all piping, equipment, and/or appliances. You are required to notify us of any work on any part of your propane system or related appliances, including but not limited to repair, removal, installation, adjustment, modification, maintenance, and/or service of any part of the propane system and/or related appliances. It is your obligation to follow all applicable safety practices and to visually inspect your propane system and equipment regularly, and to notify us if you detect any problems. AmeriGas has no responsibility for the continuing inspection and maintenance of your propane system.

6. SERVICE, INSTALLATION AND REPAIR.

A. Installation and Starting Service. For both Leased Equipment and Customer-Owned Equipment, we may install the equipment, upon our mutual agreement, and the cost of installation will generally be charged to you at our then-current rates. You may be charged the Site Survey Fee if a site survey is required prior to installation. We may perform a Safety Assurance Check in accordance with our policies prior to starting the delivery of propane to any new customer and at such other times as we determine is necessary, in our discretion. The cost of the Safety Assurance Check will be charged to you at our then-current rates. For new customers with Customer-Owned Equipment, if we determine that there is an issue with your propane system, you must fix the problem at your expense before propane service may begin. For more information about the Site Survey Fee and Safety Assurance Check, see Section 7(B).

B. Maintenance and Repair. (a) Leased Equipment. We will maintain and repair ordinary wear and tear of Leased Equipment at our cost, but you are responsible for any damage to the Leased Equipment while it is on your property that is beyond ordinary wear and tear. If Company is required to fix damage to Leased Equipment beyond ordinary wear and tear, you will be billed for the work in accordance with Company's then-current labor rates and parts charges and other fees and charges. (b) Customer-Owned Equipment. AmeriGas may perform maintenance, repair, testing, diagnostic, or inspection services on Customer-Owned Equipment, at your request and upon our mutual agreement, from time to time. You agree to pay for any maintenance, repair, testing, diagnostic, or service work, or parts provided by Company in accordance with Company's then-current labor rates and parts charges and other fees and charges. For more information about the cost of our maintenance, repair, testing, diagnostic or inspection services, please call us at 1-800-263-7442.

7. PRICING, FEES, AND CHARGES.

A. Price. Unless you enter into a pricing agreement with us, you agree to pay Company's price per gallon of propane in effect for you on the date you place an order for Will Call deliveries, or for Automatic deliveries, the Company's price per gallon of propane in effect for you on the date of delivery. For customers with a meter, the price for your prior month's usage is Company's price per gallon in effect for you on the date your meter is read. Your price is set by Company in our discretion, and includes, among other things, our taxes, our costs to procure the propane, freight, and transportation. Your price per gallon is specific to you and may vary depending on a number of factors which will vary over time, including but not limited to, the volume of propane you purchase, customer classification, delivery type, location, propane tank ownership, and competitive conditions. Company reserves the right to set its price per gallon and to vary that pricing among its customers at its sole discretion. We encourage you to review information on our website or contact 1-800-263-7442 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. Unless you enter into a pricing agreement with us, you understand and agree that, unless otherwise stated by Company in writing, any price quoted by Company on or prior to the Agreement date applies only to Customer's first delivery of propane and that your price for subsequent deliveries could vary with each such delivery.

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 1-800-263-7442 for specific questions and updated amount 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 may fluctuate on a monthly basis if Company's cost to procure fuel fluctuates. For current Fuel Recovery Fee information, please contact 1-800-263-7442 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 \$14.99 per delivery.
- **Safety Assurance Check** – This fee applies when a Company representative determines it is necessary to perform a check of the propane system to assess whether the propane system is safe prior to delivery. A Safety Assurance Check may be required in certain situations, including but not limited to prior to

beginning service with Company or after an interruption of propane service. The cost of a Safety Assurance Check may vary based on the type and location of your propane system. Please contact 1-800-263-7442 for specifics on when a Safety Assurance Check is required and our current rates.

- **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 1-800-263-7442 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 \$12.99 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 Leased Equipment on your property. The charge for removal of tanks is \$299.99. The process for removal of underground Leased Equipment is described in Section 15.
- **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 return your propane system to service. This charge is \$109.99.
- **Returned Check Fee** – This fee is intended to cover the deposit return fee assessed by financial institutions and related administrative expenses associated with any ACH payment that is unable to be processed by the financial institution, including any withdrawal of authorization for the payment before it is processed. This fee is \$33.00.
- **Service Dispatch Charge** – This applies when a service technician is dispatched to your service location to perform diagnostic or other service work, except where the service technician is dispatched to perform maintenance and repair on Leased Equipment related to ordinary wear and tear. This charge is \$119.99. 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.
- **Emergency Delivery Fee** – This fee applies when a customer requests a delivery within one (1) day. This fee is \$300.00.
- **Will Call Convenience Fee** – This fee 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. This fee is \$9.99 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.
- **Site Survey Fee** – This fee applies if we need to survey your property to determine the proposed location of your tank and the cost of installation, or if we need to add, move, or upgrade the size of your existing tank. The cost of the Site Survey Fee may vary. Please contact 1-800-263-7442 for specifics on when a Site Survey Fee is required and our current rates.
- **Underground Tank Removal** – See Section 15.
- **Late Fees** – See Section 8.
- **Credit Card Surcharge** – See Section 8.
- **Equipment Rent** – See Section 4(C).

C. License, Permit and Taxes. You shall pay for all taxes, licenses, or permits required or imposed by governmental entities in connection with the sale, installation, storage, or use of propane sold or equipment leased hereunder.

8. PAYMENT TERMS, LATE FEES, AND CREDIT CARD SURCHARGE. 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 pay by credit card, Company may, unless prohibited by law, impose a credit card surcharge which will not be greater than our cost of acceptance and will not be imposed on other forms of payment such as ACH, debit card or third party payment-options. To avoid paying the credit card surcharge, alternative payment methods are available such as ACH, debit card or third party payment-options. If you dispute an invoice, you must notify us at 1-800-263-7442 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 and/or disconnect your meter. 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 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.**

9. 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 DAMAGE TO YOUR DRIVEWAY OR 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.

10. 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.

11. INDEMNIFICATION. Customer agrees to indemnify, defend, and hold Company 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 Customer or its agents or employees, or breach of the Terms and Conditions by Customer or its agents or employees.

12. 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.** If you are leasing equipment, you agree that if you sell your residence, you will notify Company at least thirty (30) days in advance of closing and will inform the

buyer that the Leased Equipment is owned by Company and will remain on the property.

- For customers with Leased Equipment, upon termination, in order to remove Leased Equipment, Company will charge you a Tank Pickup Fee .
- Company may repurchase the propane remaining in Leased Equipment upon termination of service and removal of the Leased Equipment if the supply of propane remaining in the tank at the time of termination of service and removal of Leased Equipment is more than 5% of the water capacity of the tank and the following requirements are met: (1) you must notify us at least thirty (30) days in advance that you will be terminating service; and (2) the Leased Equipment will not remain on the property for the next resident. If all the above requirements are not met, Company may not repurchase the propane remaining in Leased Equipment upon termination, unless required by law. If you are moving out of your residence and Leased Equipment remains on the property, Company will not repurchase the remaining propane in Leased Equipment, unless required by law, and the remaining propane should be included in any transfer of the residence to the new resident. If Company repurchases the remaining propane, the repurchase price will be the price per gallon that you paid for your last delivery. Company may at its sole discretion repurchase the remaining propane from you in the event the requirements above are not met.
- 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, authorized representatives, you, or the public. You are responsible for paying all amounts owed to Company, even after termination of service.

THE TERMINATION FEES AND TANK PICKUP FEES LISTED IN THIS SECTION 12 ARE NOT APPLICABLE TO NEVADA RESIDENTS.

13. 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, or other adverse weather or environmental condition, epidemics, pandemics, or other health crises, explosion, power blackout, equipment failure, 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.

14. CHANGES TO THE TERMS AND CONDITIONS. Company reserves the right to amend, modify, 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, stand-alone mailing, online account notification, or other written notification. You agree that the amendment or modification will become effective thirty (30) days after you receive the notice unless you contact AmeriGas in writing prior to its effective date and terminate service. 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 are 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).

15. CUSTOMERS WITH UNDERGROUND LEASED TANKS. You are responsible for the excavation of Leased Equipment and for furnishing fill, resurfacing, landscaping, or restoring your property to its previous condition upon removal. Following the excavation of the Leased Equipment, Company will schedule the removal and bill all applicable charges and fees for which you will be responsible. You and Company may mutually agree that Company will sell you the underground tank in lieu of physically removing the tank from your property.

16. 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 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 THAT 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' ADVANCE NOTICE OF A NEED FOR A DELIVERY IN ORDER TO AVOID THE EXHAUSTION OF YOUR PROPANE SUPPLY.

17. 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 Section 17(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 Arbitration Agreement 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 AGREEMENT, 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 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 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.

18. 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 these Terms and Conditions 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.

19. 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, online account notification, or other written notification.

20. 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 Customer.

21. 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.

22. 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 Company at 1-800-263-7442, or update your contact preferences in your MyAmeriGas account.

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

24. SURVIVAL. Sections 1, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 17, 18, 19, 20, 21, 22, 23, and 24 shall survive termination of your relationship with Company, which includes your permission for Company to contact you to collect any debts owed or arrange your return of Leased Equipment.

25. CUSTOMER-OWNED EQUIPMENT. The following provisions do not apply to Customer-Owned Equipment: Section 4(C) – Equipment Rent, and Section 7(B) with respect to a Tank Pickup Fee, as it relates to the pick-up of Leased Equipment; however, the remaining provisions of Section 7(B) 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 ARE NOT APPLICABLE TO NEVADA RESIDENTS. PAPER INVOICE FEES ARE NOT APPLICABLE TO MAINE OR NEW YORK RESIDENTS.

Effective October 22, 2024

Exhibit 4

AmeriGas
3927 E Newport Road
Gordonville, PA 17529-9717
717-768-8248

DATE: 03/26/24 TIME: 14:24
VOLUME CORRECTED TO 60.0 F
SALES #: 4452
Delivery Ticket #: 0732070252
DISTRICT #: 9220
VEHICLE #: 322323
DRIVER: RONALD ID: 10363563
CUSTOMER: MIKE BABILYA
466 BRENDON DR
LEOLA, PA 17540-9575
ACCOUNT #: XXXXXXXXXX

TOTAL SIZE: 248.0
START%:41 END%:80
QTY(GAL): 98.4
Price/Gallon (\$): 4.249

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

Go to My Account on 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.

Exhibit 5

Document Search

The Public Document Search tool allows you to access documents associated with a case such as public meeting orders, motions and statements, administrative law judge decisions, secretarial letters, etc. Documents dated from mid-2000 to present are available.

NOTE: Certain information may not be available for documents prior to 2009, for example eFiling Confirmation Number. Please contact the Secretary's Bureau at 717-772-7777 to obtain these documents.

[View Advanced Search](#)

Docket Number

Alpha-numeric code that identifies a case. Example: A-2019-1234567

[Add Additional Search Criteria](#)

Search Results

Docket Nbr	Document Name	Post On Date	Document Type	Case Type	Utility Name	Utility Type
C-2024-3051867	MICHAEL BABILYA V AMERIGAS PROPANE FC NOTICE	10/30/2024	Secretarial Letter	Formal Complaint	AMERIGAS PROPANE LP	Pipeline Operator

Showing results 1 - 1 of 1

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 6

**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.Cmwlth. 2003) (*citing, Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 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

Exhibit 7

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ronald Daugherty

v.

AmeriGas Propane, LP

:
:
:
:
:

C-2022-3036550

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This decision sustains the Preliminary Objections of AmeriGas Propane, LP and dismisses the Complaint because the Commission does not have jurisdiction over private propane distribution contracts.

HISTORY OF THE PROCEEDING

On November 4, 2022, the Complainant, Ronald Daugherty, filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against AmeriGas Propane, LP (AmeriGas or Respondent). The Complaint avers that AmeriGas is improperly charging him a fee for paper bills and failed to correctly complete his order for fuel delivery to his 484-gallon tank. As relief, the Complainant requests that AmeriGas reimburse him for: 1) all the paper fees charged on his accounts; 2) the high fuel recovery fees; and 3) all charges for incorrect deliveries.

On November 21, 2022, 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 December 12, 2022.

The Complainant did not file a response to the Preliminary Objections.

On January 9, 2023, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to me.

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 Ronald Daugherty.
2. The Respondent is AmeriGas Propane, LP.
3. On November 4, 2022, the Complainant filed a Complaint alleging that AmeriGas is improperly charging him a fee for paper bills and failed to correctly complete his order for fuel delivery to his 484-gallon tank.
4. As relief, the Complainant requests that AmeriGas reimburse him for: 1) all the paper fees charged on his accounts; 2) the high fuel recovery fees; and 3) all charges for incorrect deliveries.
5. On November 19, 2022, the Respondent filed Preliminary Objections asserting that the Commission has no jurisdiction regarding propane service contracts.

6. 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.*, Docket No. C-00935435 (Opinion and Order entered 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.P.U.C. 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*, 208 A.3d 898 (Pa. 2019); *Dep't of Auditor Gen. v. State Emps. Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 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.

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 where.

AmeriGas asserts that it owns or operates a limited amount of underground pipeline in Pennsylvania. However, Mr. Daugherty's Complaint does not contain any allegations concerning such pipelines and instead is based solely on a contractual arrangement for AmeriGas to make deliveries via truck to Mr. Daugherty's individual tanks. *See* Attachment to the Complaint, p. 1. AmeriGas further argues that the Commission does not have jurisdiction over private complaints against pipeline operators such as AmeriGas and seeks to dismiss Mr. Daugherty's Complaint for lack of jurisdiction.

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).

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 at 7 (Order entered Jan. 26, 2007).

Further, the Complainant here is challenging charges related to AmeriGas’ delivery contract. Complaint at ¶ 4. As held in *Allport Water Authority 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.” Therefore, the Preliminary Objections for lack of jurisdiction will be sustained. See *Poorbaugh v. Pa. Pub. Util. Comm’n*, 666 A. 2d 744 (Pa. Cmwlt. 1995).

Accordingly, the Complaint of Ronald Daugherty against AmeriGas Propane, LP 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).

3. 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. 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 Jan. 26, 2007).

4. 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 Jan. 26, 2007).

5. 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 (Pa. Super. 1978).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections of AmeriGas Propane, LP are sustained.
2. That the Complaint of Ronald Daugherty in Ronald Daugherty v. AmeriGas Propane, LP at Docket No. C-2022-3036550 is dismissed.
3. That the Secretary shall mark this docket closed.

Date: February 9, 2023

/s/
Eranda Vero
Administrative Law Judge