

Investigative Report on Consumer Protection Propane Complaints Covering the Period from November 1, 2007 to February 5, 2009

On November 17, 2008, the Department of Consumer Protection began an investigation of all propane complaints received by the department since November 1, 2007. There were 93 complaints submitted to DCP during that period and 39 are open as of 1/15/2009.

There were fourteen primary issues uncovered in the investigation:

- 1) Customer signs up with a low introductory rate and rents a tank from the company for an extended contract
 - a. The low introductory rate is often below the average Connecticut retail price
 - b. Most contracts are signed for 5 to 7 years
 - c. Tanks have a rental fee but are not rent-to-own which locks a customer into the company
- 2) After the introductory rate expires the company raises the rate for fuel
 - a. Rate is usually increased by \$1/gallon or more from the introductory rate
 - b. Rate and margin often increases gradually over contract to well above rate company charges new customers or people who own their own tank
 - c. New rate is usually above average retail price for the market
 - d. Post-introductory rate is not disclosed in the contract or has a vague description such as "competitive price"
- 3) Home buyer is not made aware at closing that a company owns the propane tank on their property and the company tries to enforce the contract and fees on the new homeowner
- 4) Fire marshal regulations prevent a customer from getting a delivery from any company other than the one that owns the propane tank
- 5) Customer is subject to fees, including tank removal fees, to leave the company and/or break a contract
- 6) Customer who complains about the delivery price often has it dropped by \$0.70/gallon or more from the charged rate
- 7) Average margins for retail propane delivery have increased dramatically since last season (attached)
 - a. Margin has increased 54% from last season to this season
 - b. Largest margin percentage increase before this season was 15%
- 8) Customer who own their tank can buy propane from any company at a significant savings
 - a. Price for non-renter is usually below average retail price
- 9) Customer has charges added to delivery cost
 - a. Examples include hazmat fee, administration fee, rental fee, low usage fee, etc.
 - b. Charges/fees are not disclosed at contract signing
- 10) Long term contracts are amended on invoices or delivery tickets by the company
- 11) Company that buys out another propane company does not honor all the terms of the contracts from the old company
- 12) Contracts that the customer signs have language that allows the company to change terms of the contract at their discretion and without notice
 - a. Company may change the unit price agreed to in the contract
 - b. Company may change the fees agreed to in the contract

- 13) Company does not depreciate cost of installed tank when customer tries to buy rented tank to terminate contract with company
 - a. Company usually charges what it would cost to buy and install a new tank
- 14) Safety and costs of a homeowner owning a propane tank may be exaggerated by company to get customer to sign up for a contract and tank rental
 - a. Property taxes for a propane tank are charged to a company that owns that tank but many towns don't charge a homeowner taxes if they own the tank
 - b. Tanks are not required to be tested annually
- 15) Propane company does not remove tank in a timely manner when customer terminates contract
 - a. Fire marshal regulation requires tank to be removed within 15 business days
 - b. Notice by Fire marshal's law has to be sent to old company by new company

After investigating the 93 complaints received by DCP, there are four recommendations for resolution and referral of the investigation:

- 1) The current 39 open complaints will be investigated by DCP
 - a. Each complaint has been or will be forwarded to the company
 - b. A written response from the company will be requested within 10 days
 - c. Failure to respond to the complaint will result in further administrative action
- 2) Publish a brochure (attached) and post information on the DCP web site for customers who would like to own their own propane tank
- 3) Rewrite and/or clarify existing laws and regulations to resolve some of the issues
 - a. Reduce/Eliminate conflict in 16a-22b and 14-329b over fees
 - b. Make tanks rent-to-own or clarify terms
 - c. Put in protections to account for tank depreciation so a company does not charge more than what it cost to originally install the tank
 - d. Need legal interpretation on contract modification as it relates to 16a-22b and 14-329b or change the law to allow a customer time to dispute a contract modification and potentially break the contract without penalty
 - e. Add a provision regarding maximum length of contract
 - f. Require company to post all rates and fees a customer may be subject to during the life of the contract and maintain said records in writing
 - g. Add regulations for tank ownership disclosure at closing of house
 - h. Any prices, fees, or surcharges must be disclosed and posted
 - i. Any changes or modifications proposed to a signed contract must be sent in a separate letter from a bill or delivery ticket
- 4) Refer investigation to the Attorney General's Office to look at anti-trust/anti-competitive actions based on the following issues:
 - a. Length of introductory rate is not defined in contract
 - b. Contracts state that future price after introductory rate is based on "market" rate. (Note: Market rate not defined by statute)
 - c. Homeowners only able to fill tank if they are not owned by another company
 - d. Tank renters pay significantly higher rates than people who own their tanks despite tank rental fees
 - e. Low usage customer pays much higher rate and low usage fee
 - f. 54% increase in margins from 2007-08 season to 2008-09 season(attached)

Propane Investigative Report Attachments

State Laws Related to Propane

Fire Marshal Regulations Related to Propane

Number of Propane Complaints Submitted to Consumer Protection by Year

Summary of Propane Complaint Received by Consumer Protection from November 1, 2007 to January 15, 2009

Propane Complaints by Company from November 1, 2007 to January 15, 2009

Margins in the Propane Industry from Energy Information Administration - East Coast

Connecticut State Heating Oil and Propane Price Survey – OPM

Referral Letter from Consumer Protection to Attorney General

Propane Brochure on Propane Heating in Connecticut

State Laws Related to Propane

Sec. 14-329. Standard gallon. Delivery through meter. Disclosure of purchaser's costs associated with retail fuel oil or propane gas. Exemptions. Penalties. (a) The standard gallon shall be the unit of measurement for all sales of gasoline, kerosene, fuel oils or similar substances sold or offered for sale for the purpose of creating power or heat. Each delivery of gasoline in a quantity of fifty gallons or more and each delivery of kerosene, fuel oil or similar substance in a quantity of five gallons or more shall be the complete contents of a vehicle tank or it shall be through a meter. Each such tank or meter shall be sealed by a sealer of weights and measures before being used. The term "vehicle tank", as used herein, means a container, which may or may not be subdivided into two or more compartments, mounted upon a wagon or motor truck and used for the delivery of such fluids. The term "compartment" means the entire tank whenever the tank is not subdivided; otherwise it means any one of those subdivided portions of the tank which are designed to hold such fluids. Each delivery through a meter shall be delivered through a meter equipped with a numeral reset counter, a register with a zero start or an accumulative ticket printer, which meters shall print an accurate record of all deliveries in gallons and tenths. Such ticket printer shall print the gallonage reading of the meter before and after delivery is made and each ticket shall be locked in the meter between readings so as to prevent fraud. Each delivery shall be accompanied by a delivery ticket and a duplicate thereof, on which shall be distinctly expressed in ink or other indelible substance, in gallons, or gallons and tenths when so required, the quantity of such fluid so delivered, with the name of the seller and the name of the purchaser of such fluid. One of such tickets shall be surrendered, upon demand, to the sealer of weights and measures, for his inspection, and such ticket or, when the sealer desires to retain the original ticket, a measure slip issued by the seller or his agent, shall be delivered to the purchaser or his agent or representative at the time of the delivery of such fluid. If the purchaser or his agent takes such fluid from the place of purchase, a delivery ticket showing the actual number of gallons, or gallons and tenths, delivered shall be given to the purchaser or his agent at the time of delivery. Delivery tickets shall bear the name or identification number of the seller's driver and shall be sequentially numbered. Copies of delivery tickets shall be retained by the seller for one year and shall be available for inspection during normal business hours. No seller, or agent of such seller, shall possess a delivery ticket which has been printed with a record of a delivery which has not occurred. The method of determining the number of gallons of any such fluid delivered shall be by measuring the same in measures that have been tested and sealed by a sealer of weights and measures.

(b) No person, firm or corporation shall sell at retail fuel oil or propane gas to be used for residential heating unless all of the purchaser's costs associated with such fuel oil or propane gas, including, but not limited to, unit price and any delivery surcharge, are disclosed to the purchaser, in writing, at the time the purchaser enters into a purchase contract with the seller or at the time of renewal of such contract. Such disclosures shall be made by the seller when the purchaser places an order for such fuel oil or propane gas if there is no contract between the seller and purchaser.

Sec. 16a-22b. Surcharge on price of fuel oil or propane prohibited. Exception. (a) No retail dealer of fuel oil or propane shall assess a surcharge on the price of fuel oil or propane delivered to a customer if the delivery of the fuel oil or propane is in an amount in excess of one hundred twenty-five gallons, except that a surcharge may be assessed if a delivery is made outside the normal service area or the normal business hours of the dealer or extraordinary labor costs are involved in making a delivery.

(b) No retail dealer of fuel oil or propane shall assess a residential customer a minimum delivery surcharge on any delivery initiated by the seller, including any delivery under an automatic delivery agreement.

Fire Marshal Regulations Related to Propane

Department of Public Safety Regulations

Sec. 29-331-5. Connecticut Supplement to NFPA 58-1995.

The National Fire Protection Association, Inc., NFPA 58-1995, Standard for the Storage and Handling of Liquefied Petroleum Gases, is amended to meet the needs of Connecticut as follows:

CHAPTER 4 LP-GAS LIQUID TRANSFER

(Amd) 4-2.2 Cylinders or Tanks to be Filled, Evacuated, Disconnected or Transported and Disconnecting Regulator(s).

(Amd) 4-2.2.1 Cylinders or tanks shall be filled, evacuated, disconnected or transported and regulator(s) disconnected only by the owner or upon the owner's authorization. At consumer premises where the fixed container is owned by the LP Gas supplier, no person other than the owner and those authorized by the owner shall connect or disconnect any cylinder or tank or regulator(s) containing liquefied petroleum gas, whether in the liquid or vapor state unless the following requirements are met:

(a) Sufficient notice shall be given to the LP-Gas supplier to disconnect and remove its cylinder or tank or regulator(s) prior to the installation of another cylinder or tank by the person, firm, corporation or LP-Gas supplier requesting the disconnection. Sufficient notice shall be in writing received by the LP-Gas supplier or owner a minimum of four business days prior to the scheduled disconnection on the fourth day. Written notice shall include the person, firm, corporation or LP-Gas supplier requesting the disconnection, the address and name of the consumer, and the scheduled date and time of disconnection. Disconnection by the owner or the owner's authorized agent shall be coordinated so as not to cause an interruption of service greater than the time required to disconnect the notified supplier's equipment and reconnect the replacement equipment of the notifying owner, unless the user authorizes an extended interruption of service to the notified supplier.

(b) After providing sufficient notice, the person, firm, corporation or LP-Gas supplier requesting disconnection or transportation may then disconnect the LP-Gas supplier-owned cylinder(s), tank(s) or regulator(s) downstream of a meter or upstream of a non-LP-Gas supplier or downstream of a regulator(s) owned by the LP-Gas supplier if connected to the gas stream, in a manner that renders the cylinder or tank free of leaks, with valves turned off and all openings plugged, and move on the consumer premises the cylinder(s) or tank(s), whether empty or full, to a safe location meeting the separation distance requirements between tanks and cylinders in Table 3-2.2.2.

(c) No person, firm or corporation, other than the owner and those authorized to do so, shall transport or carry by any means of conveyance whatsoever over public highways and roads, any cylinder or tank containing liquefied petroleum gas, whether in the liquid or vapor state.

(d) The owner of the cylinder or tank shall remove the disconnected cylinder, tank or regulator(s) from the consumer premises within 15 business days after the actual date and time of disconnection.

(e) If the person, firm, corporation or LP-Gas supplier who requested disconnection does not disconnect the cylinder(s), tank(s) or regulator(s) on the day of the scheduled disconnection, the person, firm, corporation or LP-Gas supplier shall be required to reschedule the disconnection giving sufficient notice to the owner of the cylinder(s), tank(s) or regulator(s) as described in subsection (a) of this section.

(f) In the event of an emergency such as the need for domestic heating during extreme cold weather conditions, leak or fire involving a cylinder, tank or regulator(s), an LP-Gas supplier is authorized to disconnect or evacuate the cylinder or tank at the direction of a public emergency response agency such as the fire department.

Number of Propane Complaints Submitted to Consumer Protection by Year

Food & Standards Complaints (as of 1/15/2009)

Calender Year	Total Complaints	Propane
2003	173	2
2004	243	8
2005	468	15
2006	755	25
2007	444	26
*2008	3580	77
2009	41	12

(2008 includes F&S and Gas price Gouging)

**Summary of Propane Complaint Received by Consumer Protection
November 1, 2007 to January 15, 2009**

Propane Company	Complaints	Subsidiary
		Propane Gas Services, F&S Propane, Arrow Gas
Inergy Propane	33	
Amerigas Propane	13	
Bemer's Gas	10	
Hocon Gas	9	
Osterman Gas	5	
Spicer Gas Co	5	
All Gas & Equipment	4	
Superior Gas	4	
Paraco Gas	3	
Not Specified	2	
Suburban Gas	2	
Musco	1	
Pioneer Gas Co	1	
Uncas Gas	1	
Total	93	

Margins in the Propane Industry from Energy Information Administration - East Coast

http://tonto.eia.doe.gov/oog/info/twip/twip_propane.html

Margins	2008-09	2007-08	2006-07	2005-06	2004-05	2003-04	2002-03	2001-02	2000-01
Oct	164.2	102.4	123.5	91.8	86.4	83.1	74.9	85.7	71.3
	190.6	100.5	123.0	97.6	84.6	79.4	76.0	84.8	72.1
	199.5	100.7	121.9	97.6	84.2	81.6	75.7	84.0	68.9
Nov	190.9	99.6	123.2	101.0	81.1	83.2	76.1	84.0	73.1
	188.4	100.8	122.5	101.9	87.9	85.2	76.2	83.7	74.9
	196.3	108.6	125.0	106.6	91.8	84.9	78.1	85.6	77.3
	200.7	115.6	120.0	115.2	94.5	85.3	79.0	86.2	76.8
Dec	198.6	114.8	121.0	113.4	93.9	85.9	77.7	90.4	73.6
	191.8	122.5	120.2	111.5	94.6	86.9	78.1	90.7	73.4
		124.0	116.0	110.2	101.1	83.9	77.9	91.5	74.3
		122.8	118.5	105.6	106.3	82.3	76.0	92.8	68.7
Jan		124.2	122.0	104.8	101.7	84.0	75.4	92.3	67.4
		120.8	123.4	105.1	104.5	86.2	75.8	90.5	64.1
		127.1	126.1	110.8	108.4	85.0	77.5	87.9	54.9
		137.2	133.1	115.5	111.2	77.6	78.7	88.8	58.8
Feb		137.6	132.8	120.5	107.2	86.8	76.7	90.8	55.6
		135.8	131.5	116.0	107.6	84.4	76.0	92.2	67.5
		139.2	126.4	123.1	107.9	89.3	71.8	92.9	84.4
		148.8	124.3	123.9	108.4	98.2	73.4	92.7	94.4
Mar		146.2	120.6	126.7	108.0	94.8	81.1	92.0	97.0
		136.4	125.6	127.7	106.5	94.4	81.3	91.6	97.6
		138.3	122.6	124.1	104.5	89.7	64.1	91.5	100.3
		140.8	123.7	127.0	102.9	104.1	92.4	89.5	99.1
	139.8	120.9	128.2	99.6	103.5	100.4	86.8	96.6	
							85.6	93.6	

Average Margin by Heating Season

	2008-09	2007-08	2006-07	2005-06	2004-05	2003-04	2002-03	2001-02	2000-01
Avg Margin Pct	\$1.91	\$1.24	\$1.24	\$1.13	\$0.99	\$0.87	\$0.78	\$0.89	\$0.77
Increase	54%	1%	10%	13%	14%	12%	-12%	15%	
\$ Increase	\$0.67	\$0.01	\$0.11	\$0.13	\$0.12	\$0.10	-\$0.11	\$0.12	

Connecticut State Heating Oil and Propane Price Survey

OPM -- http://www.ct.gov/opm/cwp/view.asp?a=2994&q=386258&opmNav_GID=1808

	HEATING OIL		PROPANE	
	AVG. \$/GAL	AVG. \$/MMBTU	AVG. \$/GAL	AVG. \$/MMBTU
5-Jan-09	2.452	17.681	2.578	28.224
29-Dec-08	2.388	17.219	2.601	28.481
22-Dec-08	2.449	17.655	2.663	29.155
15-Dec-08	2.519	18.160	2.641	28.919
15-Dec-08	2.519	18.160	2.641	28.919
8-Dec-08	2.553	18.409	2.630	28.796
24-Nov-08	2.747	19.807	2.733	29.921
17-Nov-08	2.889	20.831	2.801	30.671
10-Nov-08	2.992	21.576	2.825	30.929
3-Nov-08	3.036	21.892	2.876	31.485
27-Oct-08	3.050	21.990	2.876	31.494
20-Oct-08	3.283	23.670	2.924	32.016
13-Oct-08	3.421	24.670	2.982	32.647
6-Oct-08	3.757	27.091	3.057	33.473
17-Mar-08	3.961	28.562	2.907	31.824
10-Mar-08	3.780	27.257	2.854	31.245
3-Mar-08	3.651	26.325	2.836	31.049
25-Feb-08	3.551	25.601	2.842	31.113
18-Feb-08	3.479	25.082	2.796	30.616
11-Feb-08	3.339	24.077	2.811	30.778
4-Feb-08	3.375	24.336	2.825	30.929
28-Jan-08	3.394	24.473	2.842	31.118
21-Jan-08	3.402	24.533	2.807	30.729
14-Jan-08	3.436	24.772	2.820	30.878
7-Jan-08	3.501	25.245	2.799	30.650
31-Dec-07	3.457	24.928	2.773	30.358
24-Dec-07	3.396	24.483	2.739	29.992
17-Dec-07	3.389	24.434	2.747	30.075
10-Dec-07	3.318	23.926	2.722	29.802
3-Dec-07	3.337	24.058	2.710	29.675
26-Nov-07	3.353	24.179	2.684	29.389
19-Nov-07	3.259	23.498	2.656	29.081
12-Nov-07	3.264	23.531	2.673	29.271
5-Nov-07	3.180	22.931	2.585	28.299
29-Oct-07	2.994	21.586	2.536	27.770
22-Oct-07	2.905	20.946	2.503	27.406
15-Oct-07	2.832	20.417	2.433	26.641
8-Oct-07	2.802	20.205	2.425	26.557

January 20, 2009

Dear Attorney General Blumenthal:

We recently completed an investigation of propane complaints submitted to Consumer Protection since November 1, 2007. Our investigation found fourteen general issues complainants had with their propane companies. Some of these issues can be addressed through direct investigation by Consumer Protection, while others require rewriting or clarifying existing laws and regulations.

There are seven issues that I feel can best be addressed through an anti-trust investigation by you and the Office of Attorney General:

- 1) Companies lock in customers to a long-term (5 to 7 year) contract using a low introductory rate that dramatically rises above the market average for future deliveries. These customers are locked-in to staying with the company based on multiple fees for terminating the contract.
- 2) The length of the introductory rate is not defined in the contract.
- 3) Contracts are often vague about what the non-introductory rate will be after the introductory rate expires.
- 4) Tank renters pay significantly higher rates than people who own their tanks despite tank rental fees.
- 5) Homeowners are not able to fill a tank owned by another company leaving customers locked into one delivery option.
- 6) Low usage customers pay a much higher rate and have a low usage fee added to the delivery.
- 7) Margin per gallon has risen dramatically for propane dealers this season. The margin has increased 54% or \$0.67 from the 2007-08 season to this season. Prior to this season the highest margin increases were 15% and \$0.13.

Insofar as these issues fall under your anti-trust authority, I am referring them to you, with the promise that my office will make available any materials that you may need to proceed.

Sincerely,

Jerry Farrell, Jr.