

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of :
:
FERRELLGAS PARTNERS, L.P., a limited :
partnership, and :
:
FERRELLGAS, L.P., a limited partnership, :
also doing business as BLUE RHINO, and :
:
AMERIGAS PARTNERS, L.P., a limited :
partnership, also doing business as :
AMERIGAS CYLINDER EXCHANGE, and :
:
UGI CORPORATION, a corporation. :
:

Docket No. 9360

ANSWER OF AMERIGAS PARTNERS LP AND UGI CORPORATION

Pursuant to 16 C.F.R. Section 3.12, Respondents AmeriGas Partners LP (“AmeriGas”) and UGI Corporation (“UGI”) hereby answer the Complaint of the Federal Trade Commission (“FTC”) by paragraph as follows:

1. Respondents deny the allegations of paragraph 1 except that they admit that AmeriGas reduced the amount of propane contained in propane exchange tanks from 17 pounds to 15 pounds for some customers in the summer of 2008.
2. Respondents admit the allegations of sentence 1. Respondents admit that at all times relevant to this Complaint, Respondents were the two largest suppliers of prefilled propane exchange tanks in the United States to retail outlets who then made the tanks available for exchange to consumers, but otherwise denies the allegations of sentence 2. Respondents deny the allegations of sentence 3 and denies that the wholesale propane exchange tank market is a relevant market. Respondents lack sufficient knowledge to admit or deny the factual allegations contained

in the fourth sentence of paragraph 2. Respondents deny the fifth sentence of paragraph 2 and the remaining allegations of paragraph 2.

3. Respondents lack sufficient knowledge to admit or deny the factual allegations contained in paragraph 3.

4. Respondents admit that in June 2008, Blue Rhino informed AmeriGas that it had decided to reduce the propane contained in its exchange tanks from 17 lbs. to 15 lbs. but Respondents lack sufficient knowledge to admit or deny what Blue Rhino may have informed certain retail customers. Respondents deny the remaining allegations of the first sentence of paragraph 4. Respondents admit that in summer 2008, AmeriGas decided to reduce the propane in its propane tanks from 17 lbs. to 15 lbs. Respondents deny the remaining allegations of paragraph 4.

5. Respondents admits the allegations of paragraph 5.

6. Respondents deny the allegations of the first and second sentences of paragraph 6. Respondents lack sufficient knowledge to admit or deny the factual allegations contained in the third sentence of paragraph 6.

7. Respondents deny the allegations of paragraph 7.

8. Respondents deny the allegations of paragraph 8.

9. Respondents deny the allegations of paragraph 9.

10. Respondents lack sufficient knowledge to admit or deny the allegations contained in paragraph 10.

11. Respondents lack sufficient knowledge to admit or deny the allegations contained in paragraph 11.

12. This allegation does not contain facts to which a response is required.

13. The allegations of this paragraph state legal conclusions to which no response is required and to the extent one may be required Respondents lack sufficient knowledge to admit or deny the allegations contained in paragraph 13.

14. The allegations of this paragraph state legal conclusions to which no response is required and to the extent one may be required Respondents lack sufficient knowledge to admit or deny the allegations contained in paragraph 14.

15. Respondents admit that AmeriGas Partners, L.P., is a publicly traded master limited partnership, organized, existing, and doing business, under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 460 North Gulph Road, King of Prussia, Pennsylvania. AmeriGas Partners, L.P., operates a national propane distribution business through its subsidiary, AmeriGas Propane, L.P. AmeriGas Partners, L.P., through AmeriGas Propane, L.P., is engaged in the marketing and distribution of propane and propane supply related services, including the distribution and supply of bulk propane to residential, commercial/industrial, motor fuel, wholesale, and agricultural customers, and the preparing, filling, distributing, marketing, and sale of propane exchange tanks. AmeriGas Propane, L.P. often does business through its AmeriGas Cylinder Exchange program when preparing, filling, distributing or selling propane exchange tanks. It otherwise denies the allegations of paragraph 15.

16. Respondents admit the allegations of paragraph 16.

17. This allegation does not contain facts to which a response is required, but UGI specifically denies that it engaged in or is responsible for the conduct of its subsidiaries and avers that it is an independent corporate entity.

18. This allegation does not contain facts to which a response is required.

19. This allegation does not contain facts to which a response is required.

20. Respondents admit that the propane tanks used in its exchange business are generally portable filled tanks prefilled with propane and are used by end user consumers for supplying fuel for propane, barbeque grills and patio heaters among other things. Respondents admit that historically, such tanks were called “20 lb. tanks” but avers that such nomenclature is no longer common. Respondents deny the remaining allegations of paragraph 20.

21. Respondents admit the allegations of the first two sentences of paragraph 21. Respondents further admit that following the creation of the OPD standard, AmeriGas began filling its propane exchange tanks with approximately 17 to 17.5 lbs. of propane. It lacks sufficient knowledge to admit or deny the factual allegations with respect to how Blue Rhino chose to fill its tanks after the creation of the OPD standard and denies that all of its competitors filled their tanks with 17 or 17.5 lbs. of propane and avers that some exchange companies have filled tanks with different (both lower and higher) amounts of propane. It denies the remaining allegations of paragraph 21.

22. Respondents admit that propane exchange tanks sold in the United States contain a standardized tank and a standardized valve system and aver that the allegations of the second sentence are vague and ambiguous and therefore denies them and the remaining allegations of paragraph 22.

23. Respondents admit that the exchange tanks that it provides to retailers are typically provided to consumers through such retail outlets as home improvement stores, hardware stores, mass merchandisers, supermarkets, convenient stores and gas stations. Respondents deny that there are no other sources of propane tanks and that consumers do not purchase propane tanks from other sources. Respondents admit that that retailers who sell propane exchange tanks usually offers consumers the option of obtaining a prefilled tank in exchange for an empty tank at a set price and will make available a prefilled tank without the need for an exchange, generally to

first time customers or customers who need to replace an old tank. Respondents deny the remaining allegations of paragraph 23.

24. Respondents admit the allegations of paragraph 24 but deny that consumers do not distinguish between exchange companies and brands or the manner in which retailers provide the service and deny the remaining allegations of paragraph 24.

25. Respondents admit that to serve retail outlets that provide propane exchange tanks for a fee, AmeriGas and its competitors need to be able to refurbish, clean, and/or refill the tanks as needed. Respondents otherwise deny the allegations of paragraph 25.

26. Respondents deny the allegations of paragraph 26.

27. Respondents deny the allegations of paragraph 27.

28. Respondents deny the allegations of paragraph 28.

29. Respondents admit that in about 2006, AmeriGas arranged for Blue Rhino to refurbish and fill propane tanks for it in Florida and entered into an agreement sometimes called a co-packing agreement to govern that arrangement. Respondents admit that the companies have entered into several co-packing agreements of that kind. Respondents admit that Blue Rhino processes about 10% of AmeriGas's volume of propane exchange tanks. Respondents lack sufficient knowledge to admit or deny what percentage of Blue Rhino tanks AmeriGas processes for Blue Rhino. Respondents admit that Blue Rhino refurbishes and/or refills exchange tanks for AmeriGas at Blue Rhino facilities in Florida, Colorado, Washington and Missouri. Respondents admit that AmeriGas refurbishes and/or refills exchange tanks for Blue Rhino at AmeriGas facilities in California and New Hampshire. Respondents otherwise deny the allegations of paragraph 29.

30. Respondents admit the allegations of paragraph 30 but deny that early 2008 was the beginning of this period's rapid increases in propane exchange tank input costs.

31. Respondents admit that in or about January 2008, AmeriGas briefly considered a proposal to reduce the amount of propane in its cylinders to about 16 lbs. in order to potentially avoid taking action that could further increase retail prices to consumers. Respondents deny the remaining allegations of paragraph 31.

32. Respondents lack sufficient knowledge to admit or deny the factual allegations contained in paragraph 32.

33. Respondents lack sufficient knowledge to admit or deny the factual allegations contained in paragraph 33.

34. Respondents lack sufficient knowledge to admit or deny the factual allegations contained in paragraph 34.

35. Respondents deny that Wal-Mart is the largest propane exchange retailer in the United States. Respondents lack sufficient knowledge to admit or deny the remaining factual allegations of paragraph 35, except Respondents admit that Blue Rhino serves the majority of Wal-Mart locations nationwide; that AmeriGas services another large significant percentage that is approximately half of what Blue Rhino services and that Ozark Propane Company located in Arkansas also services Wal-Mart locations in Arkansas and Oklahoma.

36. Respondents lack sufficient knowledge to admit or deny the factual allegations contained in paragraph 36.

37. Respondents lack sufficient knowledge to admit or deny the factual allegations contained in paragraph 37.

38. Respondents lack sufficient knowledge to admit or deny the factual allegations contained in paragraph 38.

39. Respondents lack sufficient knowledge to admit or deny the factual allegations contained in paragraph 39.

40. Respondents lack sufficient knowledge to admit or deny the factual allegations contained in paragraph 40 except that Respondents admit that in late June 2008 Blue Rhino informed AmeriGas that it was going to reduce the fill level in its exchange tanks from 17 to 15 lbs. Respondents deny that Blue Rhino communicated any plans about how such 15 lb. tanks were to be priced.

41. Respondents lack sufficient knowledge to admit or deny the factual allegations contained in paragraph 41.

42. Respondents admit the first and second allegations contained in paragraph 42. Respondents lack sufficient knowledge to admit or deny the factual allegations contained in the remaining allegations of paragraph 42.

43. Respondents admit that on June 20, 2008, its management produced a budget that reviewed the possibility of reducing the level of AmeriGas's exchange tanks from 17 to 15 pounds. Respondents otherwise deny the allegations of paragraph 43.

44. Respondents lack sufficient knowledge to admit or deny the allegations contained in paragraph 44.

45. Respondents incorporate its response to paragraph 31 and otherwise deny the allegations contained in paragraph 45, except that Respondents admit after learning that Blue Rhino was planning to reduce the fill level of its exchange tanks, AmeriGas considered how it should react and whether to follow Blue Rhino's lead or not.

46. Respondents lack sufficient knowledge to admit or deny the factual allegations contained in paragraph 46.

47. Respondents lack sufficient knowledge or information to admit or deny the factual allegations contained in paragraph 47.

48. Respondents deny the allegations contained in the first sentence of paragraph 48 with respect to themselves and lack sufficient knowledge to understand what Blue Rhino may have understood. Respondents deny the remaining allegations of paragraph 48.

49. Respondents deny the allegations of paragraph 49 and avers that its July 10, 2008 email to Wal-Mart speaks for itself.

50. Respondents generally lack sufficient knowledge to admit or deny the specific factual allegations contained in paragraph 50 except that they admit that certain telephone records obtained by the FTC in the course of its investigation show that the phone calls alleged in sub-parts (a), (b) (e) (f) (g) and (h) reflect phone calls occurring or being placed on the dates specifically alleged, but they expressly deny that (i) on or about July 10, 2008, and continuing for three months thereafter, sales executives from the two Respondents communicated repeatedly by telephone and email to apprise each other of the status of their discussions with Walmart and to encourage each other to hold firm to convince Walmart to accept the reduction in fill (ii) AmeriGas and Blue Rhino encouraged each other to hold firm and convince Wal-Mart to accept the reduction in fill in any respect and avers that AmeriGas was committed on its own to pursue the fill reduction proposal that it had made to Wal-Mart on July 10, 2008 and which Wal-Mart had never once pushed back on and/or told AmeriGas it did not like or would not accept; and it further denies (iii) the allegations seeking to characterize the discussions contained in sub-part (a) of paragraph 50; (iv) the alleged timing and description of the discussions contained in sub-part (e) of paragraph 50; (v) the claim that AmeriGas suggested issuing an ultimatum to Wal-Mart in subpart (g) of paragraph 50; and (vi) the characterization of an AmeriGas email on September 30, 2008 described in subpart (i) of paragraph 50 which email will speak for itself; and (vii) the

characterizations of any communication described in paragraph 50 to which AmeriGas's Director of National Sales was a party.

51. Respondents lack sufficient knowledge or information to admit or deny the factual allegations contained in paragraph 51.

52. Respondents lack sufficient knowledge or information to admit or deny the allegations contained in paragraph 52, except Respondents deny that any Lowe's demand to Blue Rhino caused AmeriGas to continue to push Wal-Mart to accept the fill reduction or to take any action with respect to Wal-Mart.

53. Respondents lack sufficient knowledge with respect to the first sentence of paragraph 53. Respondents admit that on October 6, 2008, Blue Rhino's Vice President of Sales called Ken Janish at AmeriGas and that telephone records reflect the call lasted for sixteen minutes. Respondents otherwise deny the allegations of paragraph 53.

54. Respondents lack sufficient knowledge to admit or deny the allegations contained in paragraph 54.

55. Respondents deny the allegations of paragraph 55, except it admits that Ken Janish sent a short message to Wal-Mart, which speak for itself, on October 7, 2008.

56. Respondents deny the allegations of paragraph 56, but admit that on October 10, 2008, Wal-Mart emailed AmeriGas and indicated that it would agree to the 15 lb. reduction.

57. Respondents deny the allegations of paragraph 57.

58. Respondents deny the allegations of paragraph 58

59. Respondents deny the allegations of paragraph 59

60. Respondents reincorporate its responses to paragraphs 1-59 above as if fully set forth herein.

61. Respondents deny the allegations of paragraph 61.

62. Except as expressly admitted herein, Respondents deny each and every allegation and claim for relief alleged in the Complaint.

AFFIRMATIVE DEFENSES

Respondents assert the following defenses and reserves its right to raise additional defenses.

1. The Complaint, in whole or in part, fails to state a claim against Respondents upon which relief can be granted.
2. As to the claims against Respondents, the Complaint fails to comply with the requirements of Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), because the issuance of the complaint and relief sought against Respondents are not in the public interest.
3. The claims against Respondents are barred, in whole or in part, by laches.
4. The alleged conduct had substantial pro-competitive justifications and benefitted Wal-Mart, consumers, and the public interest.
5. Respondents reserve the right to adopt any affirmative defenses set forth by Respondents Ferrellgas Partners L.P. and Ferrellgas L.P.

WHEREFORE Respondents respectfully request the Administrative Law Judge (i) deny the FTC's requested relief; (ii) dismiss the complaint with prejudice; (iii) award Respondents their costs of suit, and (iv) award such other and further relief to Respondents as the Administrative Law Judge may deem proper.

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2014, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I sent via Federal Express overnight delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
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Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

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CERTIFICATE OF ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

April 18, 2014

By: s/ Lacey L. Withington
Attorney