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Mono County Grand Jury Final Report for the Year 2017 – 2018

Investigation #4
Town of Mammoth Lakes Franchise Agreement with AmeriGas
Final Report by Grand Jury Investigative Committee

Analysis:

A complaint letter was received by the Grand Jury regarding alleged AmeriGas excessive billing practices and a non-responsive customer service department leaving the complainant without a remedy for the disputed billing. In addition, Grand Jury members have heard of similar disputes, and have noted other complaints in the local papers to the extent where local police response and intervention was required when some AmeriGas customers attempted to discontinue service.

While the Grand Jury cannot investigate private contracts between individuals and independent services providers the Town of Mammoth Lakes has a Franchise Agreement with AmeriGas, and therefore the Grand Jury formed a Committee to review/determine AmeriGas and TOML compliance with the terms of the Agreement.

Methodology:

The Franchise Committee reviewed the Agreement and collected supporting documentation, and as a result created and submitted twenty-one (21) questions to the Town staff with respect to both parties' contractual obligations, as well as the Town's statutory and fiduciary responsibility to the citizens of Mammoth Lakes.

Findings:

The Franchise Agreement was adopted to provide monetary, safety, and aesthetic benefits to the citizens of the Town of Mammoth Lakes. As representation for its citizens, Town staff was entrusted with oversight and administration of the Agreement. Several Articles of the agreement have not been maintained, resulting in adverse financial and safety impacts and misrepresentations to the citizens of the Town.

The Town of Mammoth Lakes has not:

- Verified nor audited AmeriGas's financial records to determine the accuracy of the 2% franchise fee, nor has TOML maintained on an annual basis a record of the methods of calculation of the franchise fee.

- Ensured that the access fee imposed for pipeline use, and adjusted every 3 years, is the same for all suppliers who access the pipeline and that the fee shall not exceed the cost AmeriGas attributes to its own use.

- Reviewed and/or verified the Capital Recovery Analysis (CRA) to justify the continued charge of 32 cents per gallon. The CRA was levied to offset Rock Creek Energy's initial costs of system construction and maintenance.

- Ensured that AmeriGas submit an Emergency Response Plan on an annual basis.

- Required AmeriGas to provide updated as-built plans for utility lines they acquired during their purchase of the infrastructure.

- Required AmeriGas to annually submit changes to plans and/or reports of their inventory of facilities to the Town Engineer.

- Considered whether the Agreement has unfairly had an impact on competition for propane services, or whether the Agreement has had a negative impact on consumer interests.

Recommendations:

Based upon our review of the Agreement and information gathered for this investigation, the Grand Jury recommends the following:

- The Town audit AmeriGas to ensure the proper calculation of the 2% franchise fee.

- The Town notice and hold the appropriate hearing(s) to determine whether to re-negotiate or modify the Franchise Agreement, on terms designed to protect the Town's citizens from a disruption of adequate propane service including noticing of rate changes.

- The Town take provisions to ensure the health and safety of the citizens of Mammoth Lakes, and the various properties within or adjacent to the Town's jurisdictions and/or any other authorized remedies along with promoting competition.

- The TOML shall monitor and enforce all terms of the Franchise Agreement as outlined in the findings above for better fiscal management.

- The TOML Accounts Payable / Finance Department shall refine its record keeping system so as to better monitor invoices, bills and contracts to ensure that it acts in the best interest of the businesses, residents and property owners within the town of Mammoth Lakes.

Mono County Grand Jury Final Report for the Year 2017 – 2018
Investigation #5
Town of Mammoth Lakes Propane Billings
Final Report by Grand Jury Investigative Committee

Analysis:
Reference

Numerous citizen complaints have arisen over the last several years that AmeriGas, one of the two propane providers to the community of Mammoth Lakes, is increasing propane rates, contrary to the terms and provisions of existing written agreements between AmeriGas and those citizens and/or HOA's all while asserting its compliance with such agreements. The Grand Jury has examined billings from AmeriGas to the Town of Mammoth Lakes from several Town facilities to see what TOML was paying for its propane.

Methodology:

AmeriGas invoices to TOML for five Town owned facilities were requested. The invoice periods were not specified except to cover at least four seasons. TOML staff remitted to the Grand Jury invoice statements for the period of 7/2016 through 2/2018 but stated that they could not locate some invoices. Consequently, Grand Jury members directly contacted the local AmeriGas office to acquire the missing invoices, with limited success.

Billing rates in cost per gallon paid by TOML to AmeriGas are included in the Table below. In addition, cost per gallon paid by TOML to Eastern Sierra Propane for the Lake Mary at Lakeview Road intersection is included for comparative purposes. Blank spaces represent missing invoices or times of the year when deliveries may not have occurred.

Findings:

- Discrepancies in the monthly rate charges were noted between various sites. For example, in 12/2017 TOML rates varied from $1.94 to $5.02 per gallon between the four sites.
- The TOML has not maintained complete records of its monthly bills.
- The TOML does not appear to have a negotiated contract for rates for its propane purchases.
- The TOML has shown no evidence of its actions to internally review, dispute, audit or negotiate propane rates.
- The TOML has not been acting in the best interests of its citizens due to its lack of fiscal oversight.

TABLE – RATES CHARGED BY AMERIGAS AND EASTERN SIERRA PROPANE TO THE TOWN OF MAMMOTH LAKES*

Cost Per Gallon paid by TOML to Amerigas					Eastern Sierra Propane for Lakeview Rd @ Lake Mary Rd
Invoice Date	**Town Yard**	**Community Center**	**Airport Terminal (Two Meters)**	**Old Police Dept.**	
7/2016	$2.63				
8/2016	$2.64				
9/2016	$2.79			$1.80	$2.23
10/2016	$2.79		$1.87	$1.87	
11/2016	$3.15		$1.94	$1.93	$2.33
12/2016	$3.33	$1.96*	$1.99-$2.02	$2.00	$2.43
1/2017	$3.63		$2.10-$2.17	$2.17	$2.63
2/2017	$3.94	$2.25*	$2.29-$2.25	$2.25	$2.63
3/2017	$3.94		$2.26	$2.13	$2.63
4/2017	$3.94			$2.15	$2.63
5/2017	$3.94	$2.13*	$2.15	$2.13	
6/2017	$3.94			$2.06	
7/2017	$4.08				
8/2017	$2.43				
9/2017	$2.58	$2.08			
10/2017	$4.54		$2.18	$2.19	
11/2017	$4.64	$2.28	$2.27	$2.30	
12/2017	$5.02	$2.33	$2.33	$1.94	
1/2018	$2.99	$2.38	$2.40-$2.38	$2.33	
2/2018	$3.10	$2.37	$2.38-$2.38	$2.37*	

* Invoice received directly from AmeriGas
Note: Blank cells = information was not available

Recommendations:

- The TOML proceed to negotiate its propane rates with all available propane providers.
- The TOML Accounts Payable Department shall refine its record keeping system so as to better monitor invoices, bills and contracts to ensure that it acts in the best interest of the businesses, residents and property owners within the town of Mammoth Lakes.