

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Cameron)
Creek Apartments,)
)
Complainant,)
)
v.) Case No. 08-1091-GA-CSS
)
Columbia Gas of Ohio, Inc.,)
)
Respondent.)

ENTRY

The attorney examiner finds:

- (1) On September 17, 2008, Cameron Creek Apartments (complainant), which is an apartment complex with 240 units, filed a complaint against Columbia Gas of Ohio, Inc., (Columbia). According to the complaint, in 1996, the complex was permitted and approved for construction by the Building Services Division of the city of Columbus in accordance with the building codes that were in effect in 1996. The complainant alleges that, in 2007, Columbia shut off service to two of the units in the complex because Columbia declared that the method of ventilation to the gas appliances did not allow adequate combustion air to come from outside of habitable spaces, resulting in carbon monoxide issues in those units and creating an unsafe and hazardous condition. According to the complainant, Columbia relies on its tariff, which has been approved by the Commission, as well as Columbia's internally adopted policy that utilizes the National Fuel and Gas Code (NFGC), as its authority to shut off gas to the units if Columbia has a concern about safety. The complainant contends that Columbia has demanded major structural retrofitting of the ventilation system to the gas appliances for all 240 units in the complex by October 13, 2008. Columbia has threatened that, if such retrofitting is not accomplished, it will shut off the gas service to all of the units.

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The complainant states that the ventilation of the gas appliances in the apartments is adequate, does not represent a hazardous condition, and meets the safety code in effect for the local building jurisdiction at the time the complex was approved for construction in 1996. Furthermore, the complainant avers that it has responded to Columbia's concerns by replacing suspect gas appliances, installing carbon monoxide monitors in each unit, retaining an engineer to review the applicable building codes, asking the city and state building authorities to inspect representative units, documenting maintenance protocol, and ensuring appropriate maintenance and combustion air adequacy.

Therefore, *inter alia*, the complainant requests that the Commission: enjoin Columbia from disconnecting service to the complainant's apartment complex on October 13, 2008; enjoin Columbia permanently from interrupting service, threatening shut-off, and requiring application of Columbia's desired building codes; and require Columbia to return to its past procedures with regard to a verified safety issue of shutting off service until the problem is corrected by a licensed contractor.

- (2) On October 8, 2008, Columbia filed its answer to the complaint, citing Section 4905.06, Revised Code, as the authority for the Commission to prescribe any rule or order for the protection of public safety. Columbia notes that, pursuant to this statutory authority, the Commission has promulgated Rule 4901:1-18-02(F), Ohio Administrative Code (O.A.C.), which permits a natural gas company to disconnect service when the supply of gas creates any safety hazard to consumers and states that the company may not restore such service until the hazardous condition is corrected. In addition, Columbia points out that its tariff, which has been approved by the Commission, gives the company the right to disconnect service for safety reasons and allows the company to refuse to reconnect service until the condition is rectified in compliance with the reasonable requirements of the company. Contrary to the allegation by the complainants, Columbia submits that it is not attempting to enforce new building codes retroactively, but that it is using the current NFGC and International Fuel Gas Code (IFGC) as a guide to determine the safety of gas service at customers' residences. According to Columbia, "the real question before

the Commission is whether appliance venting that does not comply with modern safety standards is a 'safety hazard' for purposes of [Rule 4901:1-18-02(F), O.A.C.] and Columbia's tariff."

- (3) As stated previously, in its complaint, the complainant requested that the Commission enjoin Columbia from disconnecting service to the complainant's apartment complex on October 13, 2008. Columbia filed a response to the complainant's request, stating that it will not oppose such a stay of disconnection if the order reserves Columbia's right to disconnect service to any of the apartment units if disconnection is necessary to prevent or resolve a presently or imminently hazardous situation, such as a natural gas leak or a dangerous build-up of carbon monoxide.
- (4) By entry issued October 8, 2008, the attorney examiner found that, during the pendency of this proceeding or until the Commission orders otherwise, Columbia should not terminate service to the apartment complex, unless disconnection to any individual unit in the apartment complex is necessary in order to prevent or resolve a presently or imminently hazardous situation. Moreover, the examiner found that, if Columbia disconnects a unit during the pendency of this case, Columbia should file notice of the disconnection in this docket within three calendar days.
- (5) On November 20, 2008, Columbia filed a motion to modify the stay issued by the attorney examiner on October 8, 2008. Columbia offers that it "would not oppose a modification to the stay prohibiting Columbia from refusing to reconnect gas service . . . due to combustion/ventilation/dilution air configurations" during the pendency of this case, as long as Columbia may refuse if it "believes that reconnection would cause an imminently hazardous situation, such as a natural gas leak or dangerous build-up of carbon monoxide." Furthermore, Columbia requests clarification that the entry "permits Columbia to disconnect service . . . when Columbia has detected unsafe levels of carbon monoxide in the ambient air that are attributable to that apartment's gas appliances, even if Columbia attributes the build-up of carbon monoxide to the combustion/ventilation/dilution air configurations at Cameron Creek."

- (6) On December 4, 2008, the complainant filed a memorandum contra Columbia's motion to modify the stay requesting that the motion be denied. According to the complainant, modification to the October 8, 2008, entry is unnecessary because, since any reconnection request comes after a disconnection, it is "logical and appropriate to read the [entry] as also covering reconnection." The complainant maintains that Columbia should follow the intent of the entry, as well as the requirements of Rule 4901:1-18-06, O.A.C., with regard to reconnection of service. Furthermore, the complainant submits that any refusal to reconnect should be treated in the same manner as the entry treated a disconnection; Columbia should file notice of denial of reconnection and an explanation of the circumstances in this docket within three calendar days of the denial. On December 10, 2008, Columbia filed a reply to the complainant's December 4, 2008, memorandum contra.
- (7) Upon consideration of Columbia's request for modification of the stay issued in the October 8, 2008, entry, the attorney examiner finds that such request is reasonable and should be granted. While, as the complainants maintain, one might infer from the entry that the directive also applies to reconnection situations, the entry did not, in fact, address reconnection. Therefore, the requested modification is necessary. In addition, the examiner finds that, should Columbia deny reconnection, it should file an explanation of the circumstances in this docket within three calendar days of the denial.
- (8) By entry issued October 1, 2008, the Commission scheduled a settlement conference in this matter for October 10, 2008. The settlement conference was held, as scheduled, and a follow-up conference was also held; however, the parties were not able to reach an agreement.
- (9) Upon review of the complaint filed by Cameron Creek and Columbia's response, the attorney examiner finds that, to the extent that the issues posed and the remedies sought by the complainant fall within the jurisdiction of the Commission, the complainant has stated reasonable grounds for complaint. The examiner believes that one of the key issues that must be addressed in this case is whether it is reasonable for Columbia to rely on the NFGC and/or IFGC to determine if supplying gas or providing service to the customer is safe, in accordance

with Columbia's tariff. Accordingly, the examiner finds that this case should be scheduled for a hearing.

- (10) The following procedural schedule shall apply to this case:
- (a) May 5, 2009 - A prehearing conference will be held at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th floor, hearing room F, Columbus, Ohio 43215-3793.
 - (b) June 11, 2009 - Deadline for the service of discovery requests. Parties will respond to discovery requests within 15 calendar days.
 - (c) July 1, 2009 - Deadline for the filing of stipulations of facts, and direct expert and non-expert testimony by the parties.
 - (d) July 8, 2009 - The hearing will commence at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th floor, hearing room F, Columbus, Ohio 43215.
- (11) Response times for motions filed by parties will be as follows:
- (a) Any party wishing to file a memorandum contra a motion must do so within four business days after service of a motion.
 - (b) Any party wishing to file a reply to a memorandum contra a motion must do so within three business days after service of the memorandum contra.
 - (c) The parties will serve motions by electronic means.
 - (d) Rule 4901-1-07, O.A.C., which provides an additional three days' time, where service is made by mail, will not apply.
- (12) In Commission proceedings, the complainant has the burden of proving the allegations of the complaint. Thus, at the hearing, it shall be complainant's responsibility to appear and be prepared to present evidence in support of the complaint.

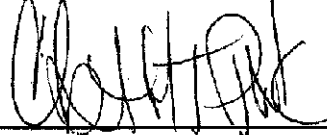
It is, therefore,

ORDERED, That Columbia's November 20, 2008, motion for modification of the October 8, 2008, entry be granted. It is, therefore,

ORDERED, That the parties adhere to the schedule and processes set forth in findings (10) and (11). It is, further,

ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



By: Christine M.T. Pirik
Attorney Examiner

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Entered in the Journal

APR 24 2009



Renee J. Jenkins
Secretary