

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO 2009 AUG 31 PM 5:26

In the Matter of the Complaint of)
Ronald Levi,)
)
Complainant,)
)
v.)
)
Columbia Gas of Ohio, Inc.,)
)
Respondent.)

PUCO

Case No. 09-84-GA-CSS

**MEMORANDUM IN OPPOSITION OF COLUMBIA GAS OF OHIO, INC.
TO RONALD LEVI'S MOTION TO COMPEL RESPONDENT
TO PERFORM SAFETY INSPECTION ON PROBLEMS DISCOVERED
ON JUNE 16, 2009**

I. INTRODUCTION

Complainant Ronald Levi has a stove that Respondent Columbia Gas of Ohio, Inc. ("Columbia") disconnected from gas service because it had a gas leak. He also has a furnace that he himself disconnected from gas service because he is concerned it might have a gas leak. Rather than hire a certified plumber to come to his house and examine and repair those appliances, Mr. Levi filed a Motion to Compel Respondent to Perform Safety Inspection on Problems Discovered on June 16, 2009 ("Motion to Compel Safety Inspection") in this matter. In his Motion, Mr. Levi asks the Public Utilities Commission of Ohio ("Commission") to compel Columbia to "recheck the complainant's 'red-tag' [sic] stove and furnace at no charge to the complainant." (Motion to Compel Safety Inspection at 2.) Mr. Levi asserts that Columbia is obligated to perform such an inspection by the National Fuel Gas Code. (See *id.* at 1.) Mr. Levi further asserts that Columbia is obligated to inspect the pipes because, he claims, Columbia "has a reasonabl[e] degree of certainty * * * that gas is escaping" from his appliances. (*Id.* at 4.)

Columbia respectfully requests that the Commission deny Mr. Levi's Motion. Under Columbia's approved tariff, Columbia is not required to reinspect Mr. Levi's stove and furnace for leaks. The National Fuel Gas Code, which Columbia has adopted as a guide to determine the safety of gas piping and appliance installations inside customers' residences, does not obligate Columbia to reinspect Mr. Levi's stove and furnace for leaks. And, because Mr. Levi's stove is red-tagged and his furnace is disconnected, there is no reason to believe gas is, or even could be, escaping from those appliances. Mr. Levi's Motion is unsupported by law or fact and should be denied.

II. BACKGROUND

In his Motion, Mr. Levi states that the gas was shut off to his residence on May 12, 2009, after a leak was found in Mr. Levi's house line. (See *id.* at 3.) Mr. Levi states that Columbia reestablished service to his property on June 16, 2009, but red-tagged (turned off gas to) his stove. (See *id.*) Mr. Levi further states that his "[f]urnace was disconnected from [his] gas line at [the] time of re-inspection," due to Mr. Levi's "great apprehension about leaks to and in the furnace." (*Id.*) In a previous Motion, Mr. Levi explained that he "capped off the gas line leading up to the furnace" because he was "suspicious of the furnace after discovering that a portion of the gas pipe to it was by appearance not in it[s] original condition." (Motion to Reconnect Gas Supply at Meter to Residence with Certain Provisions ("Motion to Reconnect") at 2.)

Mr. Levi gives no indication, however, that he has hired a certified plumber to inspect his stove and furnace and repair any leaks. This may be explained by his statement, in his previous Motion to Reconnect, that he cannot find a plumber who is willing to waive all legal defenses before performing the necessary repairs:

Though complainant was told that complainant needed a certified and licensed plumber to find [the gas leak in Mr. Levi's gas appliances, pipes, or other apparatus], complainant made a stipulation that no plumber need apply unless

they waived any defenses against their alleged negligence in failing to resolve the problem. Any damages occurring such as an explosion or reoccurring leak detected before explosion would put them in an automatic liability position. As a result, there were no plumbers willing to attempt to fix the problem.

(Motion to Reconnect at 2.)

III. LAW AND ARGUMENT

Regardless of the reason for Mr. Levi's failure to get the gas leak in his stove repaired, Columbia is not obligated to keep returning to Mr. Levi's house and doing free pressure checks for leaks. Columbia's approved tariff states, in relevant part:

[P]rior to the establishment or **reestablishment** of gas service, the gas piping downstream of the meter must be tested by the Company, or its representative, in accordance with Chapter 4901:1-13-05(A)(3) of the Ohio Administrative Code to determine that no leaks exist.

The first inspection or test at any premises shall be without charge. . . . In the case of a defect or other unsatisfactory condition that is limited to a particular appliance or appliances, the Company may in its discretion shut off the flow of gas to the affected appliance(s) and establish service to the premises. **In such cases, the necessary correction shall be made at the customer's expense, and the Company shall not be responsible for inspecting or testing such corrections.**

Tariff, P.U.C.O. No. 2, Fourth Revised Sheet No. 8, ¶8 (emphasis added). The tariff further explains that Columbia "is not responsible for maintenance of . . . appliances[.]" Id. ¶10.

Instead, if Columbia is aware of a "defect or [hazardous] condition" in a customer's gas appliances, Columbia may simply "discontinue the supply of gas to such appliances" until the "condition has been rectified . . . in compliance with the reasonable requirements of the Company." Id. ¶11.

That is what Columbia has done. As Mr. Levi himself explained, Columbia tested the gas piping downstream of the meter when it reestablished gas service at Mr. Levi's residence on June 16, 2009. (See Motion to Compel Safety Inspection at 3.) Upon finding a gas leak in Mr. Levi's stove, Columbia shut off gas to the stove and established service to the remainder of the

premises. Thus, Mr. Levi's suggestion to the contrary notwithstanding, Columbia does not have "a reasonabl[e] degree of certainty * * * that gas is escaping" from his stove and furnace. (Motion to Compel Safety Inspection at 4.) There is currently no gas service to the stove and furnace that are the subject of Mr. Levi's Motion, so those appliances cannot be leaking.

Under Columbia's tariff, it is now Mr. Levi's responsibility to correct the leak in his his stove. See Tariff, P.U.C.O. No. 2, Fourth Revised Sheet No. 8, ¶8. Even after Mr. Levi repairs his stove, Columbia is not required to come back and inspect or test the stove. See *id.* Nor is Columbia required to inspect Mr. Levi's disconnected furnace for leaks. The tariff makes clear that Mr. Levi is responsible for "maintain[ing] all gas-burning appliances. The Company shall have no obligation to install, maintain, or repair appliances." Tariff, P.U.C.O. No. 2, Third Revised Sheet No. 7, ¶7. Moreover, the "Customer assumes all responsibility * * * for the installation and use of appliances in connection [with house piping downstream from the outlet side of the meter]." Tariff, P.U.C.O. No. 2, Third Revised Sheet No. 3, ¶10. If Mr. Levi is concerned about leaks in his furnace, it is his obligation under Columbia's tariff to hire a certified plumber to inspect the furnace.

The National Fuel Gas Code ("NFGC") does not require Columbia to inspect Mr. Levi's stove or furnace either, contrary to Mr. Levi's vague assertions. Mr. Levi's argument that Columbia "owes a duty to the Complainant under [the] National Fuel and [sic] Gas Code ('NFGC')"' is based upon an April 24, 2009 Entry in a complaint case case against Columbia called *Cameron Creek Apartments v. Columbia Gas of Ohio, Inc.*, Case No. 08-1091-GA-CSS ("*Cameron Creek*"). (Motion to Compel Safety Inspection at 2.) The issue in *Cameron Creek* is whether Columbia is permitted to disconnect residential gas service to an apartment complex if the gas appliances in that complex are installed and vented in a manner that violates the gas

safety code that Columbia has adopted, the National Fuel Gas Code. The April 24, 2009 Entry from *Cameron Creek* that Mr. Levi cites in his Motion (see id.) says, in relevant part, that “Columbia * * * is using the current NFGC * * * as a guide to determine the safety of gas service at customers’ residences.” (*Cameron Creek*, April 24, 2009 Entry at 2, ¶2.) Nothing in the National Fuel Gas Code, or in the Commission’s April 24, 2009 Entry in *Cameron Creek*, obligates Columbia to return to Mr. Levi’s residence and inspect his appliances again. Columbia’s effort to protect the safety of the residents of Cameron Creek Apartments by applying the appliance installation and venting requirements in the National Fuel Gas Code is completely irrelevant to Mr. Levi’s complaint.

IV. CONCLUSION

For all of these reasons, Columbia Gas of Ohio, Inc. respectfully requests that the Commission deny Mr. Levi’s Motion to Compel Respondent to Perform Safety Inspection on Problems Discovered on June 16, 2009.

Respectfully submitted,



Eric B. Gallon (Counsel of Record)
Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, Ohio 43215
Tel: (614) 227-2190
Fax: (614) 227-2100
Email: egallon@porterwright.com

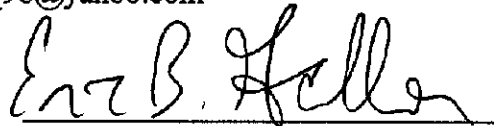
Stephen B. Seiple, Assistant General Counsel
200 Civic Center Drive
P.O. Box 117
Columbus, Ohio 43216-0117
Tel: (614) 460-4648
Fax: (614) 460-6986
Email: sseiple@nisource.com

Attorneys for Respondent
COLUMBIA GAS OF OHIO, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Memorandum in Opposition to Ronald Levi's Motion to Strike was served upon the Complainant by e-mail and regular U.S. mail on the 31st day of August, 2009, at the following addresses:

Ronald Levi
3220 Talmadge Road
Toledo, OH 43606
ron_levi_98@yahoo.com

A handwritten signature in black ink, appearing to read "Eric B. Gallon", written over a horizontal line.

Eric B. Gallon