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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Complaint
of Cameron Creek Apartments,

Complainant

v.

Columbia Gas of Ohio, Inc.,

Respondent.

Case No. 08-1091-GA-CSS

REPLY BRIEF OF COMPLAINANT

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REPLY BRIEF OF COMPLAINANT
CAMERON CREEK APARTMENTS

I. Introduction

This case raises the issue of Columbia Gas's ("Columbia") authority to enforce its chosen standards for customers' premises and force building alterations when evidence and the local building department do not support the finding of a hazardous condition. Analyzing this issue requires a review of the whole history, all the facts and all of Columbia's actions at Cameron Creek.

In this regard, the importance of Columbia's post hearing brief is not what it includes, but the issues and facts that Columbia has not addressed, ignored or misconstrued to fit its position. In particular, the tariff authority and language cited and applied by Columbia does not fit the facts at Cameron Creek. Columbia did not address or explain how its attempts to regulate construction can be reconciled with tariff provisions requiring deference to local building code authorities and R.C. 3781 and 3791 and Columbia's application of the NFGC to Cameron Creek retroactively.

II. Columbia Acted Outside of Existing Tariff Authority at Cameron Creek

Columbia's brief claims its actions and the situation at Cameron Creek are consistent with its existing authority under Tariff section 31 from 1991 and its subsequent versions. (Columbia Brief at 8). This is not accurate as the facts at Cameron Creek do not support this claim or match the language of the section. Contrary to its allegation, Columbia did not, "... disconnect and withhold residential natural gas service pending the remediation of a dangerous or hazardous situation..." (Id. at 7). Rather, Columbia allowed service restoration by licensed contractors, or service was restored by Columbia staff, following red tagging on over fifty occasions over two years, without any alterations at Cameron Creek. (Hearing Transcript at 572; 574, ln. 17-24).¹ Columbia did not actually find and document physical evidence of a safety issue related to gas appliance configurations, but rather the red tagging was done in support of Columbia's NFGC agenda and authority argument.

In addition, Columbia was not following the Tariff section as claimed because it did not simply disconnect service and allow the alleged dangerous condition to be corrected as specified by rule. (OAC 4901:1-18-01(E)). Although Columbia initially conferred with the local building department on the issue of safety and combustion air requirements, consistent with tariff requirements and past practices, it ultimately ignored the local authority when it did not receive its desired answer. Despite Columbia's admission that it must defer to local jurisdictions on building construction and code compliance issues, Columbia attempted to unilaterally assert such authority on its own by dictating substantial remedial construction at Cameron Creek. (PUCO No. 2, Columbia Gas of Ohio Inc, Fourth Revised Sheet No. 8, § 8, 12-03-2008; Columbia Gas

¹ When citing to the Hearing Transcript, this Brief will refer to the "Trans."

of Ohio, PUCO No. 2, Third Revised Sheet No. 8, § 31, 6-30-2008, Standards for Customer's Property, second sentence; CCA Exhibit 7, ¶ 3). Columbia's threat to terminate service was based on its unsupported position that an overall hazard existed in all apartments. The attempt to condition future gas service based on the demand for specific and substantial construction went beyond the meaning of Columbia's tariff. Columbia's demand and its condition were attempts to regulate building construction contrary to law. (CCA Exhibit 39; RJS 7 at 2; Trans. at 464-465).

The NFGC calls for users, such as Columbia Gas, to defer to state and local laws when its states,

"Users of this document should consult applicable federal, state and local laws and regulations. The International Approval Services-U.S. Inc. and the National Fire Protection Association do not, by the publication of this document, intend to urge action that is not in compliance with applicable laws, and this document may not be construed as doing so." (CCA Exhibit 39; RJS 8; 1996 NFGC, un-numbered first page captioned "NOTICE").

Columbia did not heed this admonishment by the publishers and writers of the NFGC. (CCA Exhibit 39; RJS 8 at 2; 1996 NFGC at 54-1 for copyright information; 54-3 for writing procedure). Columbia violated this section by ignoring state law and then used the NFGC to contradict and supplant local regulations. Consulting state and local laws would have meant deferring to the conclusion that only state-certified building departments can interpret codes and regulate building construction. Columbia selectively applied other portions of the NFGC related to combustion air regulations, but ignored this one.

Nothing in Ohio law or the tariff sections Columbia cited allows a gas utility to adopt authority reserved in the Revised Code which provides local, state certified building departments with exclusive jurisdiction to regulate building construction and

remediation. (CCA Exhibit 39; RJS 5 at 1; OBC § 104). Such a reading and expansion of the tariff would be in violation of R.C. 3781 and 3791 and the Ohio Building Code (the "OBC").

There is no debating that Columbia's actions amounted to regulation of construction under R.C. 3781 and 3791 and the OBC. (CCA Exhibit 39; RJS 5 at 7; OBC § 101.4.1, Referenced Codes: Mechanical at 2; OAC 4101:2-1 to 4101:2-15). Mandating combustion air feed ducts be installed through walls, ceilings, floors and other structural members and attempting to direct mechanical equipment placement and operations amounts to construction regulation under Ohio law. (*Id.*). Columbia has not debated this point or even argued in its brief that it did not attempt to regulate construction. It does not attempt to argue that its tariff provides such authority. The fact is that Columbia Gas has attempted to demand remedial construction at Cameron Creek without authority and this is a fact the Commission cannot overlook.

The fact that Columbia did not understand the true impact and actual cost of the changes it attempted to force at Cameron Creek, along with the unreasonable timeframe Columbia demanded, are good examples of why Columbia's tariff requires deference to local building departments. (CAA Exhibit 39; RJS 4-B; Trans. at 344; CCA Exhibit 2).

Columbia has long utilized tariff section 31 and prior or later versions of this section to support the proposition that meeting its "reasonable requirements" means its customers must comply with and satisfy local building codes and safety standards. Cameron Creek believes this authority is used appropriately every day and should continue. The same can be said when Columbia disconnects service and requires

customers to address an actual and imminent safety issue. However, Columbia's actions at Cameron Creek are not consistent with either of these legitimate uses of Columbia's authority.

Rather than deferring to the local code official's findings on code compliance, Columbia attempted to regulate Cameron Creek's construction and appliance installations based on its own standards. Endorsing Columbia's actions will create authority independent of R.C. 3781 and 3791 and outside of current tariff provisions that require deference and coordination with local jurisdictions on code and construction issues. (CCA Exhibit 7, ¶ 3).

Additionally, Columbia's demands amount to retroactive enforcement of standards it did not seek to enforce more than ten years ago at initial service establishment. While Columbia has applied portions of the NFGC to fit its case, it has ignored others, such as the prohibition against retroactive application of the NFGC to systems that are in compliance at the time of installation. (CCA Exhibit 39; RJS-8 at 3; 1996 NFGC at 54-7, § 1.3, Retroactivity). The 1996 NFGC, Section 1.3 states, "...the provisions of this *Code* shall not be applied retroactively to existing systems that were in compliance with the provisions of the *Code* in effect at the time of installation." (Id.). Thus, either Columbia applied the 1996 NFGC to Cameron Creek when it inspected, approved and supplied gas to the apartments after finding them compliant and safe, or Columbia did not apply the 1996 NFGC to Cameron Creek and is attempting to apply it now for the first time. Under the former scenario, the NFGC itself prohibits the extension of the 2006 NFGC to older approved construction. Under the latter scenario, if Columbia is allowed to apply a standard now that it did not apply twelve years ago, the

spirit and intent of the state law provision against retroactivity would be violated, and the consequences would be far reaching and unreasonable.² (R.C. 3781.12; OBC § 102.6; Chapter One Commentary, Ohio Board of Building Standards at 19-20; CCA Exhibit 39; RJS-5 at 9-10).

In its brief, Columbia makes the unsupported statement that the NFGC is "essentially the same as" the codes used by the State of Ohio and City of Columbus. (Columbia Brief at 12). One very important difference between the International Fuel Gas Code ("IFGC") and the NFGC is that the IFGC was adopted into Ohio law as the Ohio Mechanical Code ("OMC") in 2002. (Trans. at 475, In. 8-12). The NFGC has never been adopted as law by the Ohio Board of Building Standards. (Trans. at 340, In. 22-25). Another important difference is that Ohio law treats the OMC, Ohio Plumbing Code and the OBC as a family of codes that work and legally apply together while Columbia is attempting to apply specific provisions of the NFGC without regard to other codes and provisions in effect under Ohio law. (CCA Exhibit 39; RJS 5 at 9; OBC § 102.4; Trans. at 302, In. 2-9; 340).

Columbia's Brief goes on to state that, "[i]f the State of Ohio found the IFGC to be a reasonable reference for the safety of gas appliances and appliance venting systems, Columbia's adoption of the similar NFGC as its safety reference cannot be unreasonable." (Columbia Brief at 12). This statement shows a fundamental misunderstanding of building codes, enforcement authority and the issue of retroactivity, as well as the reason why this complaint is before the Commission - Cameron Creek was approved under the applicable 1996 code standards and now it is unreasonable

² The IFGC that Columbia cites in its brief contains a specific provision that allows the continued use of previously approved installations in direct contradiction to Columbia's misleading arguments that the IFGC and the current Ohio Mechanical Code disallows the conditions at the complex. This IFGC provision is consistent with the prohibition against applying new codes to previously approved buildings. (CCA Exhibit 39; RJS 5 at 13; IFGC § 102.2).

that Columbia is attempting to apply a specific standard, not effective in Ohio until 2002, by arguing that it "is similar" to another code it does not have authority to enforce.

As state law prohibits municipal building departments from enforcing codes and standards retroactively, it is unreasonable for Columbia to act as if it has authority to do what building departments cannot. (R.C. 3781.12). No tariff section can be cited to support Columbia's actions in newly applying a standard ten plus years after service establishment. The Administrative Rules Columbia cites in an attempt to analogize its authority to enforce the NFGC, because Ohio adopted the IFGC in 2002, do not support Columbia's argument. These rules were effective in 2007. (Columbia Brief at 12, Fn. 63). Prior effective dates for the rule sections cited by Columbia are listed in the Administrative Code. All these dates are after Cameron Creek was approved under the OMC in 1997. (Columbia Brief at 12, Fn. 63). Clearly, Columbia does not have authority under R.C. 3781 and 3791 to enforce either the NFGC in the manner attempted or the IFGC with regard to building construction, code interpretation and enforcement.

Under state law, only building officials are able to apply new codes to older approvals, but this is only after a finding of a serious safety issue under the Building Code. (OBC § 102.6; CCA Exhibit 39; RJS 5 at 7-8; OBC §115.1-§115.2; CCA Exhibit 39; RJS-5 at 14). The provisions of R.C. 3781.12 and the OBC prohibiting retroactive application of new standards to older approvals apply equally to the OMC. (OBC §102.4; CCA Exhibit 39; RJS-5 at 9). Columbia cannot somehow ignore this statutory and long recognized principle of building code regulation because Ohio adopted the IFGC in 2002 and argue that the IFGC is "similar" to the NFGC.

The Chief Building Official, the City's Supervisor of Mechanical Inspectors and the City Attorney all reviewed Columbia's arguments that a safety issue exists at Cameron Creek, and all disagreed. Where the local jurisdiction does not find evidence to apply codes retroactively, Columbia has no authority to take independent action to retroactively apply its chosen code. In 1997, Columbia found Cameron Creek safe and established gas service and it is unreasonable to now require Cameron Creek to adhere to new conditions after more than ten years of safe operations.

The facts of this matter show Columbia did not act in accordance with its tariff. Instead, it has attempted to expand its authority in order to justify its actions. During the commission hearing Columbia admitted it directed field staff to red tag "the complex", meaning all appliances at Cameron Creek. (Trans. at 572, In. 8-25; 572-574). Commission support of such tactics would allow red tags, which have been used as a serious tool to document actual physical evidence of safety issues, to be utilized without objective criteria and become a policy instrument to build cases for tariff changes and other agendas. Such unsupported and unilateral declarations of safety hazards by Columbia field staff relating to buildings, construction or equipment installations would not be subject to review and consultation from objective, well-trained, licensed and experienced experts from local building departments. Columbia's field findings, calculations and decision-making would become final orders, un-reviewed and un-appealable to anyone but the Commission upon the filing of complaints.

III. Columbia Lacks Authority Under its Tariff because Cameron Creek Is Safe

This case is not about Columbia's authority and ability to withhold gas service when there is a clear safety issue with a gas appliance. Cameron Creek does not

dispute, and in fact supports, Columbia's power to terminate service when evidence supports the determination that a customers' appliance or property creates danger. When Columbia initially brought the alleged safety issues to the Columbus building department, had the department agreed with Columbia, there would have been no dispute and no complaint filed. Ohio law would have mandated Cameron Creek to make changes to comply with the local jurisdiction's findings. However, Cameron Creek was compelled to bring this case before to the Commission because the facts of this matter do not match Columbia's now limited coverage of the history at Cameron Creek or support a finding of a safety problem at the apartment complex based on appliance installations, locations and operating conditions.

The findings of the Columbus building department and code officials on the issue of safety are most persuasive because of their regulatory role, expertise and objectivity. These findings should be given the most weight by the Commission in deciding this matter.

Columbia's citation to its authority under tariff section 31 from 1991 is also misplaced because the authority granted under this section is reserved for situations in which an actual safety problem must be cured. (Columbia Gas of Ohio, Inc., PUCO No. 2, Original Sheet No. 8, section 31, effective 12-3-91). Under the tariff and Columbia's policies such problems are to be supported by physical evidence, and clear and objective observations supporting a finding of imminent danger. (CCA Exhibit 39 at 17-19; RJS 3(B) at 14-15). In this case, both Columbia's red tag policy and its carbon monoxide procedures and testing manual call for physical evidence such as, soot build up, appliance scorching, unacceptable flame characteristics, vent draft problems, and

actual carbon monoxide readings to support a finding of excessive carbon monoxide. (CCA Exhibit 39 at 19). Without documented evidence of danger or obvious, objective observations of a safety problem - when a safety or code compliance issue is not clear - based on its tariff and under its past practices, Columbia is to seek guidance from the local building department to resolved conflicts. (Trans. at 49-51; 108, ln. 2-10; 29, ln. 17 to 30, ln. 3).

Columbia's citation to the 1991 version of section 31 also ignores the immediately preceding section in the tariff, section 30. This section requires Columbia to inspect the customers' internal lines and appliance venting prior to establishing service and states that the company has no obligation to provide gas service until an inspection and testing demonstrates compliance with company requirements. This tariff provision worked in concert with inspections and approvals of gas appliance installations by local building departments that Columbia relied on if appliances were not in place when Columbia was on site. (Trans. at 19, ln. 4-8).

A critical fact that Columbia's Brief ignored is that Columbia must have found Cameron Creek's appliance installation safe and acceptable at the time of initial service establishment in 1997, and, in fact, Columbia has done so for ten years thereafter. Columbia either accepted the Columbus' building department's inspections or its Columbia's own approvals, because gas was supplied safely without incident. It is also undeniable that Columbia's service staff visited and serviced Cameron Creek units from 1997 until this controversy arose. They were able to see and worked near gas appliances and did so without raising NFGC issues.

The Commission hearing made it clear that Columbia disregarded over a decade of safe operations, lack of evidence of carbon monoxide in the ambient air in the apartments and did not consider the City's plan approval procedure under the OMC that allowed the feeding of outside combustion air to gas appliances at Cameron Creek. The facts also establish that Columbia first sought, but ultimately disregarded, the findings of the local building department at Cameron Creek.

IV. Cameron Creek proved that combustion air reaching gas appliances is adequate and creates safe conditions.

(a) Combustion air calculations completed by Cameron Creek's expert Schutz and regulator Roarhig, as well as the original approval procedures used by the City, count outside air infiltration into indoor space and the dedicated 4-inch outside air ducts that feed the utility closets toward overall combustion air volume. This supports a finding of adequate combustion, ventilation and safe gas appliance operations. Columbia did not count or consider the dedicated, 4-inch outside air ducts in performing combustion air calculations. (Trans. at 94-96; 98, In. 10-15). Thus, from the beginning of this controversy, Columbia has incorrectly analyzed gas appliance operations at Cameron Creek and mistakenly concluded that combustion air was inadequate. This mistake was function differences in expertise and a lack of understand of how Cameron Creek was approved by the City.

(b) Tests performed or overseen by expert Schutz, including smoke testing, and blower door testing showed both the free movement of air in buildings at Cameron Creek and significant air infiltration from the outside based on less tight construction. (CCA Exhibit 39 at 15-16; 20-21). The physical construction at Cameron Creek reflects

building standards that mean outside air dilutes and dissipates potential hazards such as carbon monoxide build-up if a problem occurs. This construction contrasts with more updated use of sealed utility rooms with dedicated outside air feeds that reflect today's tighter construction methods. When Columbia applied today's combustion air and ventilation standards that are meant to regulate tighter construction, it ignored the prior codes used to approve Cameron Creek and its actual construction.

(c) Another fact of physical science that Columbia has not addressed is that inadequate combustion always creates excessive levels of carbon monoxide. (CCA Exhibit 39 at 17, In. 12-14). If there had been such a problem at Cameron Creek, one would expect documentation of numerous human, animal and plant carbon monoxide symptoms, and reports to health and building regulators. Such documentation and reports would be certain based on the apartments' long operating history. (CCA Exhibit 39 at 19, In. 11; 20, In. 2).³ The record in this case shows only two carbon monoxide incidents. Third party licensed contractors documented these as equipment failure or necessary maintenance. (CCA Exhibit 39; RJS Exhibits 22, 23). In addition, Columbia made numerous trips, inspections and carbon monoxide tests over the last several years, as evidenced by at least 50 red tags left on site. Despite this attention, the only documented levels of carbon monoxide readings at Cameron Creek were taken at lower doors of appliances, locations contrary to Columbia's own testing methods. (CCA Exhibit 39; RJS 3B at 4, ¶2; 5). These readings were at levels that could be expected at such locations, but they were still low. (CCA Exhibit 39 at 18; RJS 53(C); 54(C)). It is most telling that Columbia did not document readings of excessive carbon monoxide in

³ A comparison of public records at the Columbus Building Services Division indicates that apartments at Cameron Creek were completed and initially occupied over a four year plus period from the first units in 1997 to others in 1998, 1999 and 2000. Columbia Gas assumed facts not in the record and in any case not accurate when it stated on page 2 of its brief that all units were occupied in 1997.

the “ambient” or living spaces of the apartments, as called for under its own procedures. (CCA Exhibit 39 at 18; RJS 3B at 3-5; 13).

(d) As the most important and definitive evidence that Cameron Creek is safe, the Commission should give the highest weight to the City’s approval of gas appliance installations and related construction under the OMC and its more recent review of the apartments. The City’s approval and/or review were based on the following:

- i. The OMC allowed multiple sources of combustion air to feed gas appliances when Cameron Creek was approved. (CCA Exhibit 39; RJS 1 at M-1001.2; M-1003.2; M-1004).
- ii. Cameron Creek’s engineer submitted combustion air calculations in order to gain the City’s approval under the OMC and to satisfy the City plans examiner. (CCA Exhibit 25 at 3; Trans. at 299-302; 319, In. 3-15; 323-324).
- iii. The combination of air infiltration from outside to inside and dedicated 4- inch air supply to each utility closet creates overall combustion air volume that is safe according to the City’s chief mechanical systems regulator. (Trans. at 323, In. 5 to 324, In. 17).
- iv. The City’s building officials and legal counsel have also found that this approved condition has not changed and the buildings remain safe and compliant today. (CCA Exhibits 2; 6).

V. Columbia’s Search for a Position at Cameron Creek

Taken as a whole, Columbia’s actions at Cameron Creek amounts to a declaration of an unsafe condition without sufficient evidence. Columbia’s position is in search of a theory, to support a conclusion, to bootstrap a Tariff provision that does not

apply in this matter. Columbia's brief reveals the company's own changing characterization of risks. On page 4 the brief cites Columbia's Chuck McCreery's email of August 13, 2008, which states, "[t]he units remain out of compliance with the National...Fuel Gas code[] regarding **the source of combustion/dilution air** for the appliances and thus represent a safety risk." (emphasis added) However, pages 19, 20 and 21, of Columbia's Brief are devoted to the theoretical and potential risk associated with vent blockages, power outages, dead batteries and alarm failures. Columbia redefined and re-characterized the risks at Cameron Creek from an immediate risk and imminent threat of harm based on alleged inadequacy of combustion air, to a potential risk from multiple hypothetical scenarios relating to blocked vents and power outages. This change occurred because Cameron Creek proved combustion air was adequate and created safe conditions, and therefore Columbia cast about for a new justification for its unwarranted positions.

Columbia seemingly lost track of the fact that it did not threaten to terminate gas service to all residents because alleged, "...NFGC violations **could** pose a safety hazard to the complex's residents", as stated in its brief. (Columbia Brief at 1, ln. 12-13, emphasis added). This statement only reflects Columbia's expert's new theory of "potential threat to occupants" based on possible blocked vents. (Columbia Exhibit 6 at 16, ln. 1-13). The service termination threat came because Columbia alleged that carbon monoxide created risk at that time. This theory was based on normal living conditions because gas appliances allegedly did not receive enough combustion/ventilation/dilution air. This was first documented in Columbia's letter of January 14, 2008 to Cameron Creek management in which Columbia stated it was,

"aware that combustion ventilation air is being utilized from spaces adjacent to the water heating and gas furnace closet in apartments within the Cameron Creek [sic] apartment complex", and that this was in violation of, "the 1996 NFGC..." (CCA Exhibit 15).

Columbia's letter of September 15, 2008 to all Cameron Creek residents also described, "a serious safety issue...involving both your water heater and furnace..." (CCA Exhibit 35). The focus of the second paragraph of this letter is gas appliances not receiving, "enough oxygen for the proper burning of the natural gas." This paragraph goes on to state, "Improper combustion can result in carbon monoxide (CO) poisoning, which can cause serious illness or death." (CCA Exhibit 35). Potential risk from blocked vents was *not mentioned in the prior correspondence, or even raised until Mr. Erlenbach's pre-filed hearing testimony.* This most recent, unqualified risk was not characterized as an "imminent" threat and was not why Cameron Creek was threatened with service termination.

Ultimately, the allegation of combustion air inadequacy was not supported with evidence. Columbia cannot escape that the true basis for its threat to terminate Cameron Creek was the mistaken conclusion that combustion air was inadequate. (CCA Exhibits 35; 3, ¶ 1, referring to "current interior air system"; 8, ¶ 1, "...the fact remains that the units remain out of compliance with the National and International Fuel Gas codes regard the source of combustion/dilution air for the appliances and thus represent a safety risk."). In prepared testimony, at the Commission hearing and in its Brief, Columbia did not even attempt to support its declaration of an unsafe condition based on combustion air inadequacy and instead for the first time posed a new theory.

Again, this new theory ignored how Cameron Creek was approved and did not address how and why the City found and continues to find it safe. It also failed to consider the applicable version of OMC and vintage construction standards. It only focused on one aspect and one provision of the NFGC to the exclusion of others. This "rifle-shot" approach to interpreting one section of a code or standard out of context and to the exclusion of others is another reason Columbia should defer to local building authorities when questions arise about building safety, code interpretation or construction regulation issues. (Trans. at 302, In. 6-9).

Columbia's new analysis and description of the potential risk of vent blockage is possible at any dwelling, but is not likely to occur at Cameron Creek. There is no evidence to support that it ever has occurred at Cameron Creek. The safeguards against this potential risk include a vigilant maintenance program. A full time management and maintenance staff make Cameron Creek safer than most homes and apartments that do not have either. Other safe guards include existing safety devices on all furnaces that shut them off if an exhaust vent were to become blocked. (Columbia Exhibit 4 at 16, §E2). In addition, hard-wired carbon monoxide detectors with battery backup have improved safety at Cameron Creek. Most importantly, more than adequate combustion and ventilation air from multiple sources at Cameron Creek would dilute excessive carbon monoxide and move it away from a bathroom and/or to an alarm should a vent become blocked.

The free movement and overall volume of air in the apartments as evidenced by smoke testing and blower door tests address the hypothetical situations posed by Columbia's expert. Erlenbach first posed a scenario in which power is interrupted to the

carbon monoxide detectors already installed in all units at Cameron Creek and batteries are dead. This scenario ignores common sense realities and other layers of safety warnings and devices. In fact, batteries give a warning chirp for some time before dying and are replaced and inspected regularly at Cameron Creek by maintenance staff. However, even if a power outage occurs, and back-up batteries also fail, the furnace in the unit would also shut down based on a lack of electricity. The largest source of potential carbon monoxide production would not create risk. Mr. Erlenbach's analysis ignored this.

As described in testimony at the hearing, if vent blockage occurs, and power is still on, the furnaces at Cameron Creek also shut down based on a pressure sensing safety switch. (Columba Exhibit 4 at 16, E(2); Trans. p. 346, ln. 18-25). Thus, in the winter months, a resident would likely notice the result of a blocked vent because of furnace shut down and lack of heat. Maintenance would likely be contacted to investigate and address any issues.

If a vent blockage or power outage occurs when a resident is sleeping, again the furnace would not be operational based on a lack of power or because the furnace safety switch senses pressure and shuts off the furnace. When people are sleeping washing machines or dishwashers could be in use, but power would have to be on. The free movement of air in the units at Cameron Creek in this case would sound a functional alarm if carbon monoxide is produced from a water heater malfunction. If power is lost, and detector batteries are dead, and the only operational appliance is the water heater, the carbon monoxide produced from a pilot light would be diluted by overall air volume as it is dispersed in the living room through the more than adequate

vent openings from the utility closets to that room. (CCA Exhibit 39 at 16, In. 4-8). This would occur before reaching a sleeping room.

Another scenario that Mr. Erlenbach posed relates to resident safety while bathing in units where the utility room is located in the bathroom. If the power is out, and detector batteries are also dead, and the only operational appliance is the water heater, again, the vent openings that communicate directly from the utility closet to the living room would allow carbon monoxide produced to flow from the utility closet to the living room where it would be dissipated. The vent openings between the utility closet and the living room and the free air movement between these spaces, as well as the large volume of air flow from the outdoors based on construction standards all mean that carbon monoxide would move and be diluted throughout the living space rather than building up in the bathroom. (Trans. at 471, In. 1-17; CCA Exhibit 39 at 20). It is important that Mr. Erlenbach's scenario of a resident bathing without power and a blocked vent presupposes exhaust from a water heater moving into the bathroom through a solid door, rather than freely exiting the utility closet via the large vent openings between the utility closet and the larger open living room space. Common sense should be the guide to reviewing this hypothetical theory as no evidence was provided for it at hearing or in testimony.

The best evidence that Cameron Creek is safe in light of Mr. Erlenbach's posing an unproven, potential risk, is the approval by the City of Columbus under section M-1004 of the Ohio Mechanical Code. (CCA Exhibit 39; RJS-2 at 3; CCA Exhibit 25). Municipal plans examiners and building officials of state certified building departments are aware of and consider such risks, their likelihood and the safety measures in place

to counter them. No building approval or regulatory system can guarantee safety in the face of multiple hypothetical scenarios. Cameron Creek met state regulatory requirements at approval and has been determined to be safe in its current condition.

VI. Facts and Issues Not Addressed by Columbia

There are simply too many other issues, questions and facts in this matter that Columbia has not completely addressed or wholesale ignored. Some of these include the following:

- If the NFGC was effective in 1996 and Columbia applied it, why was Cameron Creek supplied gas initially? (CCA Exhibit 15; Columbia Brief at 3, ¶1).
- If, "Columbia applies the NFGC when gas service is initially established at a residence and afterwards – basically, any time Columbia's service technicians are establishing or re-establishing gas service", then why was Cameron Creek allowed to operate from 1997, 1998, 1999 as units were occupied until 2008 when the NFGC issues were first formally raised? (Columbia Brief at 10, ¶1).
- If Columbia considers, "...violations of the National Fuel Gas Code to be significant safety hazards and a threat to human life", how could Columbia have possibly decided to allow gas services restoration within hours of red tagging appliances over fifty times and over a two year period at Cameron Creek? (Columbia Brief at 10, ¶2; CCA Exhibit 39, 1(C)-59(C)).
- If Columbia "tariff states that it must defer to the local authority pursuant to building and construction inspections and permitting", how can it ignore the Columbus building department's finding that Cameron Creek is safe, and its own

admission that it was code compliant and properly permitted under state law. (CCA Exhibits 4; 5; 7, ¶13).

- If its tariff only allows Columbia to terminate service and wait for corrections when it identifies a danger, how can it be reasonable to go beyond tariff authority and R.C. 3781 and 3791 to attempt to regulate building and demand substantial remedial construction, when the building department does not find a danger?
- How can Columbia only apply portions of the NFGC to the exclusion of provisions that call for consultation with state and local codes and compliance with same?
- How can Columbia ignore the Ohio Mechanical Code at the time of approval of Cameron Creek, the details and basis of the approval that show safety, and previous construction practices and the inclusion of the dedicated outside air feeds to each utility room that prove adequate combustion air and thus safety?
- How can Columbia ignore both RC and NFGC prohibitions against applying codes retroactively?
- How can Columbia ignore Cameron Creek's safe operating history since 1997?

In addition, Columbia has not addressed;

- The scientific fact that inadequate air combustion always causes excessive carbon monoxide and for over ten years of operations there were no documented reports of such exposure to humans, animals or plants.
- That it ignored evidence that 50 plus red tags at Cameron Creek do not show excessive carbon monoxide levels in the ambient air.

- That it ignored evidence from licensed contractors on contemporaneous invoices providing conventional explanations for equipment failure related to two carbon monoxide incidents, not related to NFGC compliance.
- That the NFGC was not an adopted building code or standard by the State of Ohio when Cameron Creek was built and Columbia's enforcing the NFGC conflicts with local building department approvals and RC 3781 and 3791. There is no tariff authority for this and allowing it will create numerous conflicts and disputes relative to thousands of older, approved dwelling units. (Trans. at 266).

Other portions of Columbia's post hearing brief attempt to mischaracterize facts or testimony in this matter and need to be addressed.

In the introduction to its brief, Columbia asserts that a witness called by Cameron Creek agreed that the apartment complex could pose a hazard. (Columbia Brief at 1, In. 11). This is an inappropriate attempt to misconstrue and re-characterize Cheryl Roahrig's testimony. When taken as a whole this testimony and Mrs. Roahrig's involvement at Cameron Cree should be viewed by the Commission as a strong statement of the complex's safe condition.

A careful review of the transcript supports this. All Mrs. Roahrig agreed to in cross examination was that a proposed hypothetical was **possible** given the multiple conditions and factors as posed to her. (Trans. at 315, In. 6). She did not testify that such a situation was certain or even probable, or qualify the potential risk in any way.

On the other hand, Cheryl Roahrig testified that the furnaces at Cameron Creek are manufactured with a device that shuts them down if an exhaust vent is blocked. (Trans. at 346, In. 7-8). She testified that overall combustion and ventilation air in the

units make them safe and that this was the basis of the approval by Columbus, as well as ongoing compliance. (Trans. at 301, In. 5 to 303, In. 5; 318, In. 16-25; 319 In. 1-15; 324 In. 2-7). She also clarified that it is under current code, not the 1996 version of OMC used to approve Cameron Creek, that door sweeps and self-closing doors are required for utility closets in bathrooms served by multiunit, multi-story venting. (Trans. at 304; 305, In. 1-20). She made it clear that under the 1996 version of the OMC, the multiunit, multi-story venting at Cameron Creek was allowed, as it was at thousands of other dwelling units constructed at the time. (Trans. at 254; 266).

In addition, Roahrig emphasized that maintenance is the key to keep any building or mechanical system safe after it has been approved. She made this point in response to Columbia's counsel asking her about the safety of apartment units that meet NFGC compliance. (Trans. at 313, In. 7-13). Her answer was that, "[a]nything could be a risk if it's not maintained." (Trans. at 313, In. 22-23). No building can be made completely safe. Whether NFGC compliance and Columbia's construction demands are mandated or not, the need for ongoing maintenance at apartment complexes and at single-family homes to keep vents free of obstructions is the only way to prevent vent blockage.

To claim that Cheryl Roahrig's position is that Cameron Creek is anything but safe and code compliant is a gross mischaracterization of her testimony. Her expert view in this matter can be best summarized in the letter she wrote and the position she outlined in January of 2008, which has not changed based her testimony. (CCA Exhibit 2). When asked what would have to be done to make buildings at Cameron Creek safe, she answered, "I think they're safe now, so I don't understand your question." (Trans. at 267, In. 5-6).

VII. Conclusion

If Columbia would have terminated service at Cameron Creek and then waited to restore service based on the Columbus building department's findings and guidance, it would have been operating under its tariff authority. Rather than wait for corrections before restoring gas, or working out an alternative resolution when the City did not agree with its conclusions, Columbia attempted to enforce its own regulations. When it faced challenges, questions and legal arguments, and when a water heater at Cameron Creek failed, Columbia attempted to impose its requirements in an unreasonable time frame. The unmanageable costs and the additional approval conditions from the City were not considered by Columbia and meant that Columbia's requirements could not happen. The dislocation of 240 families would have resulted had the Commission not intervened.

Columbia's argument that a violation of the NFGC by itself creates a safety hazard is not an appropriate legal argument because the NFGC is not an effective state regulation applicable to construction or Cameron Creek's original approval. Even if Columbia could apply only limited provisions of the NFGC retroactively to regulate Cameron Creek construction, the alleged NFGC violation does not alone support a finding of or create a safety problem in the real world. (Trans. at 43; 44). Combustion air is more than adequate to support safe appliance operations and the risks described from vent blockage are not different than thousands of other approved dwellings considered safe by state certified building departments.

Columbia has shown a lack of expertise at Cameron Creek and misunderstanding of building code regulation in attempting to enforce only a very limited

combustion air standard that was written in response to construction codes and buildings practices requiring tighter construction. In trying to force this standard on a building that was approved when codes allowed less tight construction and multiple sources of combustion air to feed safe appliance operations, Columbia is providing the reasons why its tariff authority should not be changed and its deference to local building departments should continue.

The Commission should also reinforce limitations on how and why Columbia can use red-tags and its ability to unilaterally declare building construction unsafe. Such authority should be used only for actual threats and true risks supported by objective findings and evidence, rather than to support a public policy agenda. The Commission should require Columbia to return to its standard practices and the settled meaning of its tariff with regard to service interruptions for actual safety reasons only when they are obvious or supported by evidence.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2009, a true and accurate copy of the foregoing Reply Brief of Complainant Cameron Creek Apartments in this matter was served by electronic mail and by First-Class United States Mail, postage paid, upon the following counsel for Respondent Columbia Gas of Ohio:

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I further certify that an electronic copy of the foregoing Brief was served upon the attorney examiner assigned to this case, Christine Pirik, at:
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