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**BEFORE**
**THE SUPREME COURT OF OHIO**

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| In the Matter of the Complaint of Cameron Creek Apartments, | ) | Case No. _____ |
| Appellee, | ) | Appeal from the Public Utilities Commission of Ohio, Case No. 08-1091-GA-CSS |
| v. | ) | |
| Columbia Gas of Ohio, Inc., | ) | |
| Appellant. | ) | |

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**NOTICE OF APPEAL**
**BY COLUMBIA GAS OF OHIO, INC.**

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COLUMBIA GAS OF OHIO, INC.

## NOTICE OF APPEAL

Pursuant to R.C. 4903.11 and R.C. 4903.13, Columbia Gas of Ohio, Inc. ("Columbia Gas") hereby gives notice that it is appealing the Public Utilities Commission of Ohio's ("Commission") Opinion and Order and Entry on Rehearing in *In the Matter of the Complaint of Cameron Creek Apartments v. Columbia Gas of Ohio, Inc.*, Case No. 08-1091-GA-CSS ("*Cameron Creek*"). A copy of the Opinion and Order, dated June 22, 2011, and the Entry on Rehearing, dated August 17, 2011 (collectively, "Orders"), is attached.

What is at issue in *Cameron Creek* is the safety of Columbia Gas's residential customers. For decades, the Commission's rules and Columbia Gas's approved tariff have authorized Columbia Gas to disconnect natural gas service to a customer's premises when supplying gas would create a safety hazard. For decades, Columbia Gas has used the National Fuel Gas Code ("Code") as Columbia Gas's yardstick for evaluating the safety of customer house lines, appliance installations, and appliance venting. In the *Cameron Creek* Orders, the Commission concluded that Columbia Gas's "practice of referencing and enforcing" the National Fuel Gas Code "is just and reasonable." (Opinion and Order at 19.) Yet, the Commission also reached the contradictory conclusion that a violation of the National Fuel Gas Code is not a safety hazard. To reach that conclusion, the Commission effectively rewrote the Code to render its requirements voluntary for existing residential buildings.

The Commission's Orders in *Cameron Creek* threaten the safety of not only the residents of Complainant/Appellee Cameron Creek Apartments ("Cameron Creek"), but all of Columbia Gas's residential customers. Cameron Creek is a 240-unit apartment complex constructed in 1997-1998. The venting for Cameron Creek's gas water heaters and furnaces (*i.e.*, the pipes that bring in air for the appliances and the pipes that vent the products of combustion from the

appliances) does not comply with the National Fuel Gas Code that was in effect in 1997-1998. The appliances were, and still are, vented such that any carbon monoxide they produce can float into the living space of the apartments, rather than being vented outside like the Code requires.

Instead of upholding Columbia Gas's position that Cameron Creek must correct these safety violations, the Commission misconstrued the National Fuel Gas Code to excuse Cameron Creek from compliance. The Code allows the "authority having jurisdiction" to approve "alternate" solutions that incorporate new technology or newly developed safe practices. Another provision allows the "authority having jurisdiction" to approve special engineering to ensure an adequate supply of combustion, ventilation, and dilution air to the appliances. The Commission decided that when the City of Columbus approved a modification to Cameron Creek's building plans in 1996 to add a 4-inch fresh air supply duct to each unit, that constituted approval of an "alternate" solution, even though 4-inch air ducts were not a new technology. The Commission alternatively concluded that the addition of 4-inch fresh air supply ducts was a "specially engineered solution," even though the problem that solution purportedly solves (the initial inadequacy of the expected air supply *to* Cameron Creek's gas appliances) is different than the problem caused by Cameron Creek's venting configuration (the residents' potential exposure to carbon monoxide *from* Cameron Creek's gas appliances). The Commission also concluded that the City of Columbus was the "authority having jurisdiction" to approve this "alternate" or "specially engineered" solution, even though the City was not acting under the National Fuel Gas Code in 1997-1998. Finally, the Commission cited the happenstance of Cameron Creek's "less tight" construction, resulting in apartment units more vulnerable to infiltration of outside air, and Cameron Creek's decision to install carbon monoxide detectors after Columbia Gas expressed its concerns about the complex's Code violations. For these reasons, the Commission concluded

that Cameron Creek did not need to comply with the Code's appliance venting requirements. Instead, the Commission concluded that Cameron Creek had provided a "reasonable margin of safety" for its residents by installing carbon monoxide detectors and keeping its buildings drafty.

The Commission's Orders reflect the following errors:

(1) The Commission's Orders are unreasonable because their conclusion that a violation of the National Fuel Gas Code's safety requirements is not a hazardous condition is unsupported by the evidence.

(2) The Commission's Orders are unreasonable because their conclusion that the National Fuel Gas Code permits persons to avoid compliance with the Code's requirements for venting combustion products *from* gas appliances by supplying additional air *to* the appliances is unsupported by the plain language of the Code and the other evidence presented at hearing.

(3) The Commission's Orders are unlawful because their conclusion that Columbia Gas is not the "authority having jurisdiction" to approve variations from the National Fuel Gas Code's venting requirements is contradicted by Columbia Gas's approved tariff.

(4) The Commission's Orders are unreasonable because their conclusion that installing carbon monoxide detectors provides a reasonable margin of safety in drafty buildings constructed in violation of the National Fuel Gas Code's appliance venting safety requirements is unsupported by the evidence.

(5) The Commission's Orders are unreasonable because they provide Columbia Gas with no clear guidance on how it may apply the National Fuel Gas Code in other existing residential structures.

(6) The Commission's Orders are unreasonable because applying the vague, self-contradictory, and subjective standards in the *Cameron Creek* orders to Columbia Gas's other customers would impose an enormous administrative burden.

For each of these reasons, as will be further explained in Appellant's Brief, Appellant Columbia Gas of Ohio, Inc. respectfully requests that this Court reverse the Commission's Orders and remand for further proceedings as necessary.

Respectfully submitted,

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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. | ) | Case No. 08-1091-GA-CSS |
| Columbia Gas of Ohio, Inc., | ) | |
| Respondent. | ) | |

OPINION AND ORDER

The Commission, considering the complaint, the evidence of record, the arguments of the parties, and the applicable law, hereby issues its opinion and order.

APPEARANCES:

Wiles, Boyle, Burkholder, and Bringardner Co., LPA, by Thomas L. Hart and Brian M. Zets, 300 Spruce Street, Floor One, Columbus, Ohio 43215, on behalf of the complainant, located in Galloway, Ohio, Cameron Creek Apartments.

Porter, Wright, Morris & Arthur LLP, by Eric B. Gallon and Mark S. Stemm, Huntington Center, 41 South High Street, Columbus, Ohio 43215, on behalf of the respondent, Columbia Gas of Ohio, Inc.

OPINION:

I. HISTORY OF THE PROCEEDINGS

Columbia Gas of Ohio, Inc. (Columbia or the company), is a natural gas company, as defined in Section 4905.03(A)(5), Revised Code, and a public utility as defined in Section 4905.02, Revised Code. Cameron Creek Apartments (Cameron Creek or the complainant), which is an apartment complex with 240 units, is a customer of Columbia.

On September 17, 2008, Cameron Creek filed a complaint against Columbia. Cameron Creek is located in Galloway, Ohio, provided natural gas by Columbia, and subject to the building codes established by the city of Columbus, Ohio (City). In its complaint, Cameron Creek alleges, among other things, that Columbia has demanded major structural retrofitting of the ventilation to the gas appliances for all 240 units in the

complex. According to the complainant, if such retrofitting is not done, Columbia threatened to shut off the gas service to all of the units. By entry issued October 1, 2008, the attorney examiner, *inter alia*, scheduled a settlement conference in this proceeding for October 10, 2008.

On October 8, 2008, the attorney examiner, in accordance with Rule 4901-9-01(E), Ohio Administrative Code (O.A.C.), ordered that Columbia shall not terminate service to the apartment complex, unless disconnection to any individual unit in the complex is necessary in order to prevent or resolve a presently or imminently hazardous situation. By entry issued April 24, 2009, the attorney examiner granted Columbia's motion to modify the directive in the October 8, 2008, entry, such that the company may 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." In addition, 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. Columbia has filed several notices of disconnection or denial of reconnection in this docket, in accordance with the examiner's directives; however, none of them pertained to the issues raised in this complaint case.

In the April 24, 2009, entry, the attorney examiner established the procedural schedule in this matter and set the hearing to commence on July 8, 2009. By entry issued May 12, 2009, the hearing was rescheduled to July 15, 2009. The hearing was held on July 15 through July 17, 2009, at the offices of the Commission. Briefs and reply briefs were filed by the parties on August 31, 2009, and September 14, 2009, respectively.

## II. APPLICABLE LAW

The complaint in this proceeding was filed pursuant to Section 4905.26, Revised Code, which provides, in relevant part, that the Commission will hear a case:

> [u]pon complaint in writing against any public utility . . . that any rate . . . charged . . . is in any respect unjust, unreasonable unjustly discriminatory, unjustly preferential, or in violation of law . . . or that any . . . practice . . . relating to any service furnished by the public utility . . . is . . . in any respect unreasonable, unjust, . . . unjustly discriminatory, or unjustly preferential.

It should be noted that, in complaint cases before the Commission, the complainant has the burden of proving its case. *Grossman v. Public Utilities Commission* (1966), 5 Ohio St.2d 189, 190, 214 N.E.2d 666, 667. Thus, in order to prevail, the complainant must prove the allegations in its complaint, by a preponderance of the evidence.

## III. DISCUSSION AND CONCLUSIONS

### A. Background

The Cameron Creek apartment complex received its building permit in 1997 and its final occupancy permit in 1998 (Tr. II at 327). The complex consists of 240 multi-storied, apartment units. There are 20 buildings in the complex, each containing 12 one-, two-, or three-bedroom units. There are 40 one-bedroom units, 124 two-bedroom units, and 76 three-bedroom units. The apartments are two-storied flats, with each second-floor apartment directly above a first-floor apartment. The roof of each building has only one gas appliance vent for each pair of first- and second-floor apartments. (CCA Ex. 39 at 11; CCA Ex. 42; CGO Ex. 6 at 3-4, Atts. 2-8).

Both a one-bedroom and a two-bedroom apartment were described on the record and each had the gas furnace and water heater in a closet accessible by a door, which had a gap between the door and the floor, inside the bathrooms. In addition, the walls of the closets had two air grilles that open up into the unit's main living room. The furnace's four-inch vent connection and the water heater's three-inch vent connector tied together into either a five-inch or six-inch vent. The five- or six-inch vent from the first-floor appliances was tied together with the second-floor appliances and vented through the roof with single stacks. There are hard-wired combination smoke detector and carbon monoxide (CO) alarm in the main living area of each apartment. The three-bedroom apartment is similar to the one- and two-bedroom apartments, but its appliances are located in a closet accessible by a full door and a half door from the hallway, not the bathroom. (CGO Ex. 6 at 6-8.)

On January 14, 2008, and February 14, 2008, Columbia sent Cameron Creek letters stating that it was aware that combustion ventilation air is being utilized in the units from indoor spaces adjacent to the closets housing the gas water heaters and furnaces, in violation of the National Fuel and Gas Code (NFG Code), and that remedial measures would need to be done to ensure tenant safety (CCA Exs. 14A, 15). The parties had discussions and shared communications in an attempt to resolve the situation, including efforts to find funding to help Cameron Creek retrofit its units; however, they were unable to reach a resolution (CGO Br. at 4; CCA Exs. 3-5, 7-8, 17). On August 13, 2008, Columbia informed Cameron Creek's counsel that it would disconnect gas service to the units if Cameron Creek did not rectify its violations of the NFG Code by October 13, 2008. Cameron Creek's attorney responded stating that the units complied with all relevant codes at the time of construction and that CO detectors had been installed; if gas service was refused, the response indicated that Cameron Creek would pursue legal remedies. (CCA Exs. 8, 35; Complaint Ex. T.)

On September 15, 2008, Columbia sent a letter to the residents of Cameron Creek informing them that Columbia would have to disconnect their gas service, due to Cameron Creek's refusal to fix the NFG Code violations, which could lead to serious illness or death. The letter further stated that Columbia was going to terminate service to Cameron Creek at the end of October 2008, if the problem was not resolved. According to Cameron Creek witness Kauffman, the property manager for the complainant, after they received the letter, residents were concerned and some even withheld rent payments. (CCA Exs. 35, 36 at 3-4.)

According to Ms. Kauffman, Columbia began red tagging gas appliances because of their locations at Cameron Creek in 2006, citing violations of the NFG Code. The witness states that she became aware of the situation when residents, who were being reconnected after having been disconnected for nonpayment, brought to her attention that Columbia would not relight the pilot light. The witness estimates that, between early 2006 and October 2008, approximately 100 red-tag events occurred. She explains that Columbia would red tag the gas appliance, not the meter, and then a licensed vendor would inspect and restart the appliances. (CCA Ex. 36 at 1-2.)

As further detailed below, the positions of the parties are as follows:

(1) Columbia: The company asserts that the location and configuration of Cameron Creek's gas appliances violate the NFG Code and cause a hazardous condition in the following respects:

(a) The water heaters in the one- and two-bedroom units violate the NFG Code because they do not obtain all combustion air from outdoors and are installed in bathroom closets, the doors of which are not weather-stripped and self-closing; thus, these water heaters take combustion air from the apartments' habitable spaces.[1]

(b) The apartments are located in multi-storied buildings, and the water heaters and furnaces in both the first-story and second-story apartments share common vents that go through the roofs of the buildings, and impermissibly obtain combustion, ventilation, and dilution air from

1 *See* Section 6.30(a), National Fuel Gas Code (1996 Edition); and Section 10.28.1(1), National Fuel Gas Code (2006 and 2009 Editions) (CGO Ex. 6, Atts. 9, 11).

habitable space.[2] (CGO Br. at 14-16.) Therefore, Columbia believes that seven-inch combustion air feed ducts must be installed in all utility rooms and all post exhaust vents/chimneys must be separated (CCA Ex. 37 at 10).

(2) Cameron Creek: The complainant requests that Columbia be prohibited from terminating service, by unilaterally declaring a safety hazard under the NFG Code, 10 years after construction was approved and completed under the code adopted by the city of Columbus, and that Columbia be prohibited from requiring expensive remedial construction. Cameron Creek estimates that it would cost a minimum of $1,500 per unit to complete Columbia's demand for seven-inch ducts to all utility closets and to separate the venting of gas appliance exhaust air from multiple apartment units, so that all units have a dedicated exhaust vent (CCA Ex. 39 at 22; Atts. 4A, 4B).

B. Cameron Creek's Position

Cameron Creek presented four witnesses for direct examination and called two witnesses for direct examination, as-on-cross. Robert Schultz, a professional engineer, former staff member of the Ohio Board of Building standards, former local building code official in Powell, Ohio, and consultant in areas including building codes, mechanical codes, and fuel gas codes, testified on behalf of Cameron Creek (CCA Ex. 39 at 2-5). Joseph Busch, registered architect, former State Architect for the state of Ohio, and retired chief building official for the City, also testified on behalf of Cameron Creek. Cheryl Roahrig, a mechanical inspection supervisor with the City's Building Department, who is also a fire protection inspector, building inspector, residential building inspector, and holds numerous licenses, was called by Cameron Creek to testify (Tr. I at 221-222). Melissa Kauffman, the property manager for Cameron Creek, testified for Cameron Creek (CCA Ex. 36 at 1). In addition, the two witnesses Cameron Creek called for direct examination, as-on-cross, were Jeffery Prachar, a service technician with Columbia, and Charles McCreery, in-house counsel for NiSource Corporation Services (NiSource) (Tr. III at 529, 612).

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[2] *See* Section 7.6.4, National Fuel Gas Code (1996 Edition); and Section 12.7.4, National Fuel Gas Code (2006 and 2009 Editions) (CGO Ex. 6, Atts. 10-11).

1. Code and Tariff Provisions

Mr. Schultz explains that the Ohio Building Code and the Ohio Mechanical Code (Mechanical Code) were adopted as general law in Ohio and have been approved by the City as comprehensive laws covering all aspects of residential and commercial construction. They are adopted and written to be enforced by local building departments under the authority of the state Board of Building Standards and Chapters 3781 and 3791, Revised Code. (CCA Ex. 39 at 23-24.) In 1996, when Cameron Creek was constructed, the City applied the 1995 Ohio Basic Building Code (1995 Building Code) (CCA Ex. 37 at 1-2). The 1995 Building Code was in effect until 1998 (CCA Ex. 39 at 12). Furthermore, the International Fuel Gas Code (IFG Code) was adopted by the Mechanical Code in 2002 (Tr. I at 237).

Mr. Schultz explains that the NFG Code, applied in this situation by Columbia, is a national model code, which constitutes a recommended general standard for installation and operation of gas piping and appliances. The NFG Code is written by a private organization, the National Fire Prevention Association, for fire prevention, rather than a building code. According to the witness, the NFG Code requirements for combustion air for gas appliances were not included in the 1995 Building Code. (CCA Ex. 39 at 13, 23-24, 34; Att. 1.) Mr. Schultz submits that, despite the fact that Columbia's training materials require its employees to ensure compliance with the NFG Code and local codes, consideration of local codes and the original approval seems to have been ignored (CCA Ex. 39 at 32).

Mr. Busch states that, at the time Cameron Creek was approved and issued its certificates of occupancy in 1996, the witness oversaw all aspects of the building department for the City. With regard to the NFG Code, Mr. Busch states that, when evaluating and approving combustion air requirements for gas appliance operations for Cameron Creek in 1996, the City would have only used the NFG Code as references in the Mechanical Code or the 1995 Building Code. (CCA Ex. 37 at 2-3.)

Cameron Creek witnesses Busch and Schultz agree that the 1995 Building Code allowed for the combination of indoor and outdoor air to feed the combustion of gas appliances, as is the situation at Cameron Creek, because the 1995 Building Code recognized that construction at that time was not "tight" with regard to air infiltration and allowed for greater outside air infiltration. In addition, the witnesses affirm that the 1995 Building Code allowed for the construction and installation of multi-story vents to serve the gas appliances from multiple units, such as the ones as Cameron Creek. (CCA Exs. 37 at 1-2, 39 at 12.) Likewise, Mr. Schultz notes that the 2006 IFG Code, allows for multi-story post-exhaust venting of gas appliances of multiple units (CCA Ex. 39 at 11).

Ms. Roahrig offers that the Mechanical Code in effect in 1996 allowed for the use of indoor air and outdoor air for combustion purposes. It also allowed for direct connection mechanical ventilation to be used. Ms. Roahrig testified that there are various ways to meet the section of the code pertaining to combustion air other than with outside air and points out that the four-inch ducts at Cameron Creek do bring fresh outdoor air to provide ventilation, make up air, and combustion air into the units. (CCA Br. at 4; Tr. I at 254; Tr. II at 301, 323.)

Mr. Busch testified that, during his tenure as the City's chief building official, and Ms. Roahrig confirms that, in the late 1990s, there were thousands of buildings approved under the 1995 Building Code and Mechanical Code that allowed for combustion for gas appliances to be obtained from indoor and outdoor air sources. Ms. Roahrig offers that, at that time, it was common practice to locate gas appliances in bathrooms or interior utility closets supplied with indoor combustion air similar to Cameron Creek. In addition, Mr. Busch and Ms. Roahrig agree that there were also many complexes that had multi-story exhaust vents for gas appliances utilizing combination air that served multiple dwelling units. Since 1996, Mr. Busch explains that dwellings have become more tightly constructed and requirements have been changed to require more direct supply of outside air to the appliance. In his opinion, the apartments at Cameron Creek are not "unusually tight" construction as defined by the building codes; thus, they allow for an adequate amount of air infiltration into all living areas and interior rooms based on the construction practices in the mid-1990s. In Ms. Roahrig's opinion, these buildings are still safe today. (CCA Ex. 37 at 6; Tr. I at 266-267.)

According to Cameron Creek, the fact that the gas appliance operations and configurations at Cameron Creek in 1997 were approved by the City under the 1995 Building Code and Mechanical Code, proves that Cameron Creek complied with safety requirements of Ohio law. However, Cameron Creek notes that Columbia did not reach the same conclusion, because it utilized different standards than the City, by ignoring the City's approval procedures and failing to consider the four-inch outside air ducts that bring fresh air into each utility closet to aid combustion. (CCA Br. at 5.) Cameron Creek asserts that the safety status of its older buildings will not change and they do not become "less safe" because tighter construction methods are required for newer buildings as code standards evolve (CCA Br. at 13).

The NFG Code allows for an "engineered solution," which Mr. Schultz states occurred in 1996, when the City approved the building plan after a four-inch fresh air supply duct was added to bring in outdoor air to the return air plenum in each apartment's mechanical room. Mr. Schultz states that Sections 1.2, 5.3.4, and 6.30.1 of the 1996 NFG Code, considered together, permit other measures and special engineering to provide an adequate supply of air for combustion, ventilation, and dilution of gases that is approved by the authority having jurisdiction; thus, the witness asserts that the sections of

the NFG Code cited by Columbia as being violated could be ignored. Therefore, it is the witness' opinion that the manner in which Cameron Creek was approved by the City in 1996 is the exact same procedure that Columbia is attempting to force Cameron Creek to perform again in 2008. (CCA Ex. 39 at 13-14; CCA Br. at 3-4; Tr. II 408, 491-493, 501.)

Mr. Busch and Mr. Schultz agree that Columbia's request for the placement of seven-inch combustion air feed ducts to all utility rooms and the separation of all post exhaust vent/chimneys would constitute building alterations and a renovation; thus, it would require current compliance with the building code for the whole heating, venting, and air conditioning (HVAC) system. (CCA Exs. 37 at 10, 39 at 21.) Mr. Busch believes that Columbia's request that the complex be brought up to current building code requirements is excessive, unless there is proof that the systems are malfunctioning based on the code used to approve them when they were built. Mr. Busch asserts that, if Columbia is allowed to regulate the configuration and placement of gas appliances in buildings, a major conflict will arise between the City, which has the authority to enforce building codes, and Columbia. In the opinion of Mr. Busch, the Ohio Board of Building Standards should have final approval authority over construction and gas appliance operations and configuration. (CCA Ex. 37 at 10-11.)

Mr. Busch further explains that, when the building code is updated or a new building code is adopted, as long as an older building is maintained pursuant to the building code in effect at the time it is built and there is no change to the use of the building, the City still considers the building to be in an approved condition, and it is not considered unsafe or in violation of the building code. Only if there is a serious hazard, as determined by the chief building official of the City, are changes to the building required. Mr. Busch and Mr. Schultz affirm that the City operates under a "like for like" policy that allows the replacement of certain household components, such as old water heaters and furnaces, without triggering the application of the new code, as long as a permit is pulled. According to Mr. Busch, a state-certified building department can not apply building codes 12 years later that it had not applied at initial approval. Mr. Busch does not recall Columbia ever attempting to retroactively apply building regulations or construction standards to gas appliances. According Mr. Busch, in the past, when there has been a disagreement between the City's jurisdiction and enforcement of a building code issue and Columbia's concern over the same issue, the two entities have worked together to resolve the issue. (CCA Exs. 37 at 3-5, 9; 39 at 28.)

Cameron Creek believes that Columbia is mistaken about which codes and standards applied to gas appliances at Cameron Creek. The complainant points out that Mr. McCreery, in-house counsel for NiSource, testifying as-on-cross, acknowledged that he communicated the opinion to complainant's counsel that the appliance configurations violated the 1996 NFG Code. However, Cameron Creek notes that the NFG Code has never been adopted by the state of Ohio and was not enforced by the City when the plans

were approved. (CCA Br. at 14; Tr. III at 618.) Furthermore, Cameron Creek points out that Columbia was aware of Ms. Roahrig's conclusions regarding the safety of the complainant's appliance operations, as set forth in her January 22, 2008, letter (CCA Br. at 15; CCA Ex. 2; Tr. III at 614). The complainant notes that Columbia recognized the City as the authority having jurisdiction to interpret and enforce building and mechanical codes and to approve Cameron Creek as compliant with those codes (CCA Br. at 15; CCA Ex. 40; Tr. III at 615). According to Cameron Creek, despite such recognition and because of Columbia's concern about liability, Columbia continues its demand for remedial construction changes at Cameron Creek. (CCA Br. at 15; CCA Ex. 5; Tr. III 624.) Cameron Creek goes on to note that Mr. McCreery appealed to the City officials again regarding Cameron Creek by contacting City Attorney Rick Pfeiffer, stating that the City currently follows the IFG Code which prohibits this type of installation, unless it falls within some narrow exceptions, at Cameron Creek. After reviewing the matter, Mr. Pfeiffer responded that the City saw no problem and stated that he was "puzzled how something could be approved as safe when it was constructed and put in use, and now be viewed as not being so." Cameron Creek believes that this response should have been reason enough for Columbia to reassess its conclusions on safety, review the code and the City's approval process, and given Columbia pause on applying new standards retroactively to past approval. (CCA Br. at 15-16; CCA Ex. 6; Tr. at 630.)

Cameron Creek contends that Columbia is not following its tariff stating that Columbia did not actually find and document physical evidence of a safety issue related to gas appliance configurations, rather Columbia red tagged gas service in support of its agenda regarding the NFG Code. Furthermore, Columbia did not follow its tariff and simply disconnect service and allow the alleged dangerous condition to be corrected as the Commission's Rule 4901:1-18-03(D), O.A.C., requires. According to Cameron Creek, Columbia conferred with the local building authority on the situation and then ignored the City's opinion and attempted to unilaterally assert authority and dictate substantial remedial construction. (CCA Reply Br. at 2.)

Cameron Creek points out that Mr. McCreery acknowledged in a communication that Columbia's tariff requires that Columbia "must defer to the local authority pursuant to building and construction inspections and permitting" (CCA Br. at 16; CCA Ex. 7). The complainant argues that, as recognized in Columbia's tariff, under Chapters 3781 and 3791, Revised Code, as well as Section 104.1 of the Ohio Building Code, local, state certified building departments have the exclusive authority to regulate construction, arrangement, and erection of buildings or parts thereof (CCA Br. at 16-17; Columbia Tariff at Fourth Revised Sheet No. 8, Section 8). According to Cameron Creek, when Columbia attempted to enforce the NFG Code on buildings approved under a different code and dictate remedial actions on previously approved appliance installations, Columbia was attempting to regulate construction, arrangement and erection, in violation of its tariff and Chapters 3781 and 3791, Revised Code. In addition, when Columbia tried to enforce the

NFG Code combustion air standards on Cameron Creek 10 years after buildings were approved and service was established without the application of such regulations, Columbia violated its tariff and the spirit and intent of Section 3781.21(C), Revised Code, and its specific prohibition on the retroactive enforcement of standards not effective at the time of initial approval. Cameron Creek submits that Columbia's tariff does not allow the company to condition gas service on major remedial construction when the local jurisdiction finds no safety or code issue. Cameron Creek contends that Columbia acted unilaterally and unreasonably in demanding that the whole apartment complex be substantially retrofitted under Columbia's code interpretation within an impossible timeframe and conditioned service termination with this demand. (CCA Br. at 18, 23.)

Cameron Creek recommends that Columbia continue to approach these types of issues in the field as it has been, stating that, when such issues are not based solely on the interpretation or application of a code by Columbia, the complainant recognizes Columbia's authority to shut off gas service. After service interruption, however, Columbia should not unilaterally opine on compliance methods or dictate specific remedial construction standards. Rather, the building owner should achieve compliance and safety based on compliance with local building codes. Where the safety question is less clear and conflicts on codes are evident, Columbia should confer with and defer to the local building department. (CCA Br. at 20.)

Cameron Creek points out that Columbia's own policy and tariffs, which were in effect in 1997, require that the company not allow meter setting and gas service establishment for buildings that are not service ready with gas appliances in place and operational. However, Cameron Creek asserts that Columbia witness Ramsey contradicted this policy and the tariff by surmising that, in 1997 at Cameron Creek, Columbia set the meters and established service without inspecting the house lines or appliances. (CCA Br. at 2-3; Tr. I at 78-79; CCA Ex. 22.) Cameron Creek asserts that, either Columbia applied the 1996 NFG Code to Cameron Creek when it supplied gas to the apartments after finding them compliant and safe, or Columbia did not apply the 1996 NFG Code to Cameron Creek in 1997 and is just now attempting to do so for the first time. If the latter is the case, Cameron Creek argues that Columbia would be violating Chapter 3781, Revised Code, and the Ohio Building Code against retroactivity. (CCA Reply Br. at 6; CCA Ex. 39, Att. 5.) Cameron Creek insists that, under state law, only building officials can apply new codes to older approval, and this is only after a finding of a serious safety issue under the building code (CCA Reply Br. at 7).

Cameron Creek points out that the NFG Code preface requires users of the code, such as Columbia, to defer to state and local laws. Cameron Creek submits that consulting state and local laws would have been a recognition that only state-certified building departments can interpret codes and regulate building construction. Columbia's actions

amounted to regulation of construction under Chapters 3781 and 3791, Revised Code, and the Ohio Building Code. (CCA Ex. 39, Att. 8; CCA Reply Br. at 3).

2. Inspections and Alleged Incidents

Ms. Roahrig testified that, if there was a serious safety issue, the building would have to either be brought back to the original condition when the building plan was approved or it would need to be brought up to the current requirements, in order to abate the serious hazard. She states that, when she visited Cameron Creek in 2008, she performed combustion air calculations on indoor air, found proper ventilation, appropriate efficiency ratings of appliances, and adequate air changes from outside to inside air; she did not find a serious hazard. Ms. Roahrig explains that the systems at Cameron Creek were being maintained and she did not see that any alterations had been made; thus, there was nothing that the complainant did to bring the building codes into play. Therefore, Ms. Roahrig could not tell the owner to bring things up to current code and she could not apply the current code retroactively. (Tr. I at 256, 259-260, 264, 319; CCA Ex. 2; CCA Br. at 9-10, 18.)

Cameron Creek points out that it has operated safely for the past decade. Moreover, Cameron Creek states that no evidence was presented on the record to indicate any credible CO incidents other than those related to conventional equipment failure, replacement, or maintenance needs. According to the complainant, Columbia based its actions to shut down Cameron Creek on two alleged CO incidents; however, Columbia did not document or conduct follow up investigations to determine the cause of these alleged incidents. Complainant notes that there is no evidence that suggests that equipment configuration/location or the volume of combustion air feeding the appliances is problematic. In addition, the complainant points out that, while two incidents were reported, since the water heaters were replaced or serviced in the two units, they have operated safely. (CCA Br. at 6; CCA Exs. 8, 17.) The Cameron Creek property manager, Ms. Kauffman, states that she is not aware of any time that a vendor, when inspecting and restarting an appliance, found an actual operational problem with an appliance. During the winter months of 2008 and 2009, Ms. Kaufmann notes that no CO alarm went off in an apartment at Cameron Creek and no other safety issue related to the gas appliances occurred (CCA Ex. 36 at 1-2, 6).

In reviewing Cameron Creek's maintenance and service records with regard to how the complainant responded to Columbia's red tagging for allegations of CO problems, Mr. Schultz notes that the complainant took appropriate action and asked licensed mechanical contractors and plumbers to test and inspect the appliances. When evidence of problems were found, Cameron Creek hired licensed technicians to replace the appliances. According to Mr. Schultz, the records show typical and expected issues for appliances of this age and use pattern. The records do not show, and there is no physical evidence to

suggest an inherent, overall problem with the installation, configuration, surrounding construction, utilization, or condition of the gas appliances. (CCA Ex. 39 at 34-35; Att. 11.)

As stated previously, there were two alleged CO incidents reported by Columbia at Cameron Creek. When asked about the June 16, 2008, occurrence at 5744 Red Carnation Drive at Cameron Creek when a CO detector went off, Mr. Busch opines that either the mist from the shower or a gas problem could have tripped the detector. He does not believe that the theory that humidity inhibits safe combustion inside gas appliances is necessarily true and believes that there are more factors that would need to be known before the cause could be determined. Based on his review of records after that incident, he also believes that the failure could have been due to lack of maintenance on that equipment. (CCA Ex. 37 at 7-8.) In Mr. Schultz's opinion, the incident resulted because the water heater needed service and the gas vent was not drafting properly (CCA Ex. 39 at 36; CCA Br. at 7).

With regard to the incident documented at 5587 Red Carnation Drive at Cameron Creek, Mr. Schultz states that the record reveals that the gas water heater likely failed due to age and use, and it was replaced. He further expects that, due to the placement and sensitivity of the CO detectors that have been wired into each apartment at Cameron Creek, the gas appliances will experience more attention. (CCA Ex. 39 at 36-37.)

In Mr. Busch's opinion, with the proper maintenance and the identification and resolution of serious hazards by building officials, Cameron Creek is in compliance with state and local building codes. Furthermore, as long as no source of the design air supply has been blocked or eliminated, Mr. Busch contends that combination combustion air, from both inside and outside the buildings, is adequate for safe gas appliance operations. (CCA Ex. 37 at 9-10.) Mr. Schultz believes that Columbia's position that the four-inch air supply vents currently used by Cameron Creek do not provide any combustion air, just return air, is wrong. He points out that the outside air does reach the combustion area and, under the 1995 Building Code, is counted toward total combustion air requirements. (CCA Ex. 39 at 31.) Furthermore, Ms. Roahrig notes that the furnaces installed at Cameron Creek have a draft safeguard switch, which is a safety device that permits the safe shutdown of the furnace during blocked vent conditions or if there is a power outage (CCA Br. at 11; CCA Reply Br. at 17; Tr. II at 335). Cameron Creek maintains that the only way to prevent blockage of exhaust vents is maintenance and vigilance. While vents may become blocked, the complainant offers that safety devices on furnaces, CO detectors, adequate ventilation air under the building codes, and constant fresh air exchanges protect residents. (CCA Br. at 12.)

Mr. Schultz reviewed over 50 red tags left by Columbia and notes that only two reflected CO readings; those readings were relatively low and were taken at the lower door of the gas appliances near the combustion chamber where CO is expected to be found

prior to safe venting. Furthermore, the witness notes that Columbia's CO testing policies call for written documentation of CO readings and strongly emphasizes that the testing for CO be done in the ambient air of the dwelling, which are the rooms that are typically occupied. Mr. Schultz believes that either Columbia was not following its written procedures when red tagging or Columbia had not documented actual CO findings that would evidence inadequate combustion air. (CCA Ex. 39 at 18-19.)

Mr. Schultz explains that CO is created when combustion air is inadequate and natural gas is not burning clean. He submits that the combustion air feeding gas appliances at Cameron Creek was adequate at the time it was approved in 1996 and is adequate today. (CCA Ex. 39 at 6, 17, 35.) Based on combustion air calculations he performed on July 1, 2009, Mr. Schultz states that it is adequate for gas appliance operations at Cameron Creek. He asserts that the calculations show that indoor air alone is sufficient and in accordance with the plans approved in 1996 and the requirements at the time of construction. Moreover, he offers that the existing, as-built condition wherein both indoor and outdoor combination air is available and supplied to the gas appliance provides an even better situation than is required. Mr. Schultz also points out that the blower door tests he conducted on July 1, 2009, show outdoor air infiltration into the building; thus, demonstrating that the units are neither "tight construction" nor "unusually tight construction," as defined in the Mechanical Code and Rule 4101:2-2, O.A.C. Thus, they provide sufficient air to meet the requirements at the time of construction and under current code requirements. Furthermore, Mr. Schultz notes that the units have all had interconnected and hardwired combination smoke/CO detector alarms installed. (CCA Ex. 39 at 9, 15, 20-21, 30; Atts. 3C, 3D, 6). During his evaluation of the property on at least four site visits, Mr. Schultz conducted a smoke test of the furnace unit in the heating mode with the dryer and bathroom exhaust fans operating and all doors and windows closed. He states that he observed a positive draft flow of the water heater and a clean burning flame at the furnace with no visible draft or combustion air difficulties for the gas appliances. In addition, Mr. Schultz reviewed tests and inspections that were performed by licensed heating and plumbing contractors in October 2008 on furnaces and water heaters in 11 units; these tests revealed no excessive CO production from gas appliances and there was no evidence that combustion air was inadequate to support safe operations of the appliances (CCA Ex. 39 at 16-17, Att. 3A). Furthermore, the witness offers that, if excessive CO was being produced at Cameron Creek based on inadequate combustion air, symptoms would have be presented in humans, pets, and plants over the last decade (CCA Ex. 39 at 19; CCA Br. at 9). Cameron Creek believes that, based on Mr. Schultz's tests, the apartment construction allows for sufficient air infiltration from the outside to insure the adequate supply of combustion air to gas appliances (CCA Br. at 11).

C. Columbia's Position

Columbia called four witnesses for direct examination. Stephen Erlenbach, a project engineer with SEA, Inc., testified on behalf of Columbia (CGO Ex. 6 at 1). In addition, Michael Ramsey, Operations Compliance Manager for NiSource in Ohio and a professional engineer, testified on behalf of Columbia (CGO Ex. 1 at 1). Dawn Bass, a former service technician and technical trainer, and current program specialist with NiSource, also testified on behalf of the company. (CGO Ex. 2 at 1).

1. Code and Tariff Provisions

Mr. Erlenbach explains that the NFG Code is a consensus document that is co-sponsored by the National Fire Protection Associations and the American Gas Association and is intended to promote public safety by providing requirements for the safe and satisfactory utilization of gas. (CGO Ex. 6 at 2.) Columbia explains that, while the gas appliances at Cameron Creek comply with the building code enforced by the City at the time of installation, the appliances were not installed in compliance with the NFG Code in effect at the time of installation, which is the reference standard the company uses for evaluating the safety of customer house lines and appliance installation and venting (CGO Br. at 2). Mr. Ramsey explains that, at the time service was established at Cameron Creek in 1997, the gas appliances were not yet installed and, consistent with the company's policy at that time, Columbia simply established gas service to the meter and did not inspect the appliance installations. The witness further offers that, under the current rules of the Commission, Rule 4901:1-13-05(A)(3), O.A.C., Columbia is required to establish service only after the house lines and one appliance drop are installed. (Tr. I at 78-79.)

Columbia points out that the NFG Code is essentially the same fuel gas code that the state of Ohio and the City are currently applying, the IFG Code, which was first adopted in 1998. Therefore, Columbia argues that, if the state of Ohio found the IFG Code to be a reasonable reference for the safety of gas appliances and appliance venting, then Columbia's adoption of the similar NFG Code as its safety reference cannot be unreasonable. (CGO Br. at 12.)

Columbia considers violations of the NFG Code to be significant safety hazards and a threat to human life (CGO Ex. 1 at 4; CGO Br. at 19). Columbia believes that Cameron Creek's violation constitutes a safety hazard and argues that the Commission's rules and Columbia's approved tariff permit the company to disconnect residential service in the case of a safety hazard and to withhold service until the hazard is remedied. According to Columbia, its tariff permits it to require a customer to install appliance venting or rectify a hazardous condition, in accordance with the "reasonable requirements" of the company. Columbia asserts that its reasonable requirements for appliance installation and venting are the requirements set forth in the NFG Code, citing for support Rule 4901:1-18-03(D),

O.A.C.[3]; and Columbia Tariff P.U.C.O No. 2, Third Revised Sheet No. 4, Section 15(B)(4) and Fourth Revised Sheet No. 8, Sections 8-9. Columbia affirms that both the Commission's rules and the company's tariff were in effect prior to the construction of Cameron Creek. (CGO Br. at 7-9.) Columbia insists that neither its policies or its tariff in 1997 required it to inspect appliance installations before establishing gas service (CGO Reply Br. at 11).

Mr. Ramsey explains that Columbia has a policy that requires a service technician to turn off the gas supply, attach a red tag to a customer's gas appliance, if it is in an unsafe condition, and explain to the customer what must be done to correct the problem. The customer is told not to use the appliance until a qualified repairman makes the repairs. According to Mr. Ramsey, Columbia considers violations of the NFG Code to be significant safety hazards and a threat to human life that would warrant a red tag. Mr. Ramsey explains that Columbia adopted, as part of the company's policy, the NFG Code to be the reference standard for safety in evaluating customer house lines and appliance installation and venting. This policy was in effect in 1996 and is still in effect. (CGO Ex. 1 at 3-6; Att. 1, 2; CGO Br. at 7.) He further states that the company applies the most current NFG Code in place at the time of inspection. Mr. Ramsey notes two situations where Columbia applies something other than the currently-effective NFG Code: Columbia would apply the code in effect at the time of installation if the particular appliance installation or venting configuration was in compliance with the NFG Code at the time it was installed, but the code was subsequently changed and it did not state that the change was retroactive; and it will apply the local building code if Columbia is aware that the local building code contains a requirement that is different or more restrictive than the NFG Code. (CGO Ex. 1 at 7; CGO Br. at 10; Tr. I at 50-51.)

Ms. Bass agrees with Mr. Ramsey that it would not be feasible for Columbia's technicians to red tag only those appliances that have been altered since the building plans were approved or those that do not comply with the codes in effect at the time the plans were approved. The witnesses point out that the technicians would not know when the particular plans were approved or whether the appliance had been altered since it was installed. Furthermore, Mr. Ramsey states that Columbia does not have the staffing necessary to call the local building authorities to ensure that the municipality agrees that appliance installation is a safety hazard. Ms. Bass believes that such a process would increase the record-keeping burden on the service technicians. Mr. Ramsey asserts that Cameron Creek's proposal in this case would create uncertainty and have a negative effect on public safety because it would be more difficult for Columbia to identify a hazardous situation. In addition, Ms. Bass offers that the technicians would not be able to ascertain

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3 Effective November 1, 2010, Chapter 4901:1-18, O.A.C., was amended. Therefore, throughout this order, we will refer to the rule number that is currently in effect, Rule 4901:1-18-03(D), O.A.C., which is identical to Rule 4901:1-18-02(F), O.A.C., which was in effect at the time of the filing of this complaint and is the rule cited by Columbia.

what would be required to fix a problem; thus, Cameron Creek's request that Columbia not be allowed to red tag an appliance, if the remedy would be expensive, does not make sense. According to Mr. Ramsey, the benefit of using the NFG Code is that it provides a bright-line test if an appliance installation or venting is in violation it is a safety problem. Finally, Ms. Bass notes that, just because there has never been a CO incident in the past, a violation of the NFG Code could cause a CO incident in the future, as conditions in the apartment change. (CGO Ex. 1 at 8-10; CGO Ex. 2 at 6-9.)

Ms. Bass explains that she was trained in 1993 on the requirements of the NFG Code, including how to calculate combustion/ventilation air. She states that, even though the NFG Code and the training materials have been updated since 1993, the training has not changed substantially. The witness offers that, any time a new edition of the NFG Code is released, the service technicians receive a summary of the differences between the prior edition and the new one; if the changes are more than minor, the technicians are brought in for a one-day review. According to Ms. Bass, Columbia service technicians apply the NFG Code any time they are establishing or reestablishing gas service. Before a technician can put gas into a dwelling, they must perform testing and inspections, including inspections of the appliances and piping inside, and the facilities outside of the dwelling. Ms. Bass explains that, in the field, if a technician sees that an existing appliance or installation was in violation of the current NFG Code, but the resident or owner could show that it was in compliance with the NFG Code at the time it was installed, then Columbia would apply the NFG Code that was in effect at the time of installation. If a Columbia technician finds that an appliance is in violation of the NFG Code, he is to turn off the gas to the appliance and red tag it. If the technician visits the dwelling multiple times and finds the same violation to the NFG Code, he is to disconnect service to the dwelling. (CGO Ex. 2 at 2-5.) Columbia requests that the Commission permit it to enforce the NFG Code at Cameron Creek because, even if Cameron Creek or any Columbia customer fails to maintain their gas appliances properly, Columbia can minimize the chances of harm occurring from CO (CGO Reply Br. at 19).

Columbia disagrees with Cameron Creek witness Schultz's statement that the NFG Code provisions for alternate materials, equipment, and procedures, found in Section 1.2 of the 1996 NFG Code, allow for the installations at Cameron Creek that are at issue in this case. According to Columbia witness Erlenbach, the purpose of Section 1.2 of the 1996 NFG Code is to allow the authority having jurisdiction to approve the use of newly developed practices and technology. (CGO Br. at 18; Tr. III at 671, 675.) Moreover, Columbia asserts that, converse to what Cameron Creek believes, for purposes of the Commission's rules and Columbia's tariff and policies, Columbia is the "authority having jurisdiction" under these NFG Code sections; thus, because Columbia has not approved the appliance installations, Cameron Creek has not shown that its appliance installations are acceptable to the authority having jurisdiction (CGO Br. at 19).

Columbia points out that Section 3781.16, Revised Code, provides, in part, that Sections 3781.06 to 3981.18, Revised Code, do not limit the powers of the Commission; thus, Columbia derives its authority to terminate service when there is a safety hazard from the Commission's rules and Columbia's tariff, and the Ohio Building Code is not an impediment According to Columbia, the statute explicitly affirms the Commission's co-equal authority to govern such things as appliance installations and venting, where necessary. (CGO Reply Br. at 4, 7).

2. Inspections and Compliance

Columbia witness Erlenbach inspected the gas appliances at Cameron Creek and reviewed their compliance with the NFG Code (CGO Ex. 6 at 2). Mr. Erlenbach states that the utility closets were not isolated from the habitable space inside the apartments and that all air combustion was not being supplied directly from outdoors. (CGO Ex. 6 at 6-8.) According to Columbia, even if the four-inch vents did bring in some outside air directly into the bathroom closets, which Columbia submits they do not, the NFG Code would still be violated because the closets are still connected to the living space (CGO Reply Br. at 9).

When inspecting the Cameron Creek apartments, Mr. Erlenbach consulted the 1996, 2006, and 2009 editions of the NFG Code. During his inspection, the witness found the following violations of these code editions. First, he states that each two-story building uses a common gas vent to vent the appliances in both the first-story and second-story apartment, while relying on habitable space volume inside to provide combustion, ventilation, and dilution air. Mr. Erlenbach asserts that the use of a common vent for both stories creates a dangerous living environment because, if the common vent becomes blocked, the products of combustion, including CO, from any appliance below the blockage, will spill through the upper draft hood opening on the water heater and are free to enter the habitable space, rather than through the roof vent. Second, he points out that the one- and two-bedroom apartments had water heaters in closets in the bathrooms without weather-stripped solid doors with a self-closing devices and without obtaining all combustion air from outdoors. The witness attests that the purpose of the requirement that water heaters not be in bathrooms, bedrooms, or any occupied room normally kept closed, unless the closet door is weather-stripped, has a self-closing device, and all combustion air is supplied directly from outside, is to protect occupants from any spillage of combustion products from the water heater draft hood opening. He points out that CO alarms are not required by code and, in any event, they are vulnerable to power outages or battery failure. In addition, even if an alarm is outside the bathroom, the CO within the bathroom could rise to a hazardous level without setting off the alarm. (CGO Ex. 6 at 9-15.) Based on these concerns, Mr. Erlenbach disagrees with the City's position, as stated by Ms. Roahrig's statement that there is no safety issue at Cameron Creek, because "the mechanical equipment appeared to be in good condition and there was not evidence that the mechanical systems or structure has been altered from its original approval." Mr.

Erlenbach points out that, if a person is exposed to enough CO for a sufficient period of time, it can cause death. (CGO Ex. 6 at 13, 16).

CONCLUSION:

At the outset, the Commission acknowledges that the IFG Code, which is similar to the NFG Code enforced by Columbia, was adopted into Ohio law as part of the Mechanical Code in 2002, and these codes are treated by the City in conjunction with the Building Code, and the Ohio Plumbing Code. Thus, in this case, we need only to consider Columbia's application of the NFG Code to Cameron Creek, because it was approved prior to 2002 when the City adopted the IFG Code.

In 1997, Cameron Creek received its building permit from the City and Columbia initiated gas service at the complex. At that time, the City enforced the 1995 Building Code, which did not reference the NFG Code. It was not until 2002 that the City's Mechanical Code began referencing and enforcing the IFG Code, which is similar to the NFG Code. The 1995 Building Code did not require that all combustion air be obtained from outdoors, allowed for multi-storied dwellings to utilize one gas vent, and permitted the placement of gas appliances in bathroom closets that did not have weather-stripped solid doors with self-closing devices. In 1997, Columbia, through its tariff, enforced the NFG Code, which, to this day, requires that multi-storied dwellings obtain all combustion air from outdoors and not utilize one gas vent, and that gas appliances placed in bathroom closets have weather-stripped solid doors with a self-closing device. At the time it initiated gas to Cameron Creek, Columbia did not inspect the gas appliances to determine if they were in compliance with the NFG Code, it just turned the gas on at the meter.

Initially, the Commission would note that neither party contests the fact that Section 3781.16, Revised Code, which is the section of the Ohio building standards pertaining to the effect of the standards on state authorities, does not limit the Commission's powers under Title 49, Revised Code. This case is before the Commission for the purpose of determining whether certain provisions of Columbia's tariff, and its policies and procedures with respect to the disconnection or refusal to connect/reconnect service, are just and reasonable.

The first question the Commission must address is whether Columbia's current policy of enforcing the NFG Code, as referenced in the tariff, is just and reasonable. There is no doubt that the number one priority when it comes to the provision of natural gas service is that all possible measures are taken to ensure the health and safety of the public. To that end, the Commission believes it is necessary that, prior to connection or reconnection of gas service, Columbia must apply a standard of review that is in keeping with the most current safety standards enforced by the gas industry. Both parties in this case agree that the NFG Code is an acknowledged compilation of standards; in fact, the

City, in 2002, adopted reference to the similar IFG Code in the building code that it enforces. Therefore, the Commission finds that, with regard to this initial question, the complainant has not sustained its burden of proving that Columbia's tariff is unjust or unreasonable, in accordance with Section 4905.26, Revised Code. Columbia has not violated its tariff by applying the NFG Code, and its practice of referencing and enforcing of the most recent NFG Code is just and reasonable.

Having determined that Columbia's current practice is appropriate, the Commission now turns to the overriding question posed in this case by the complainant: whether Columbia has properly applied the NFG Code to the facts in this matter. The question is, if Columbia believes that there is a potentially hazardous condition in a dwelling that was approved for occupancy in prior years, pursuant to City codes that were in effect at the time of such approval, and the construction in that dwelling has not been altered such that the City code would require that it be brought up to current code, can Columbia require that the dwelling be retrofitted in order to bring it into compliance with the current NFG Code before Columbia will connect or reconnect gas service.

The Commission is mindful of the fact that, while Columbia's tariff applied the NFG Code in 1997 when gas service was initially turned on at Cameron Creek, it appears that Columbia did not begin enforcing the NFG Code requirements regarding appliance hookups until 2002 when required to do so by the Commission's rules. While Columbia's practice and the Commission rule requiring the company to inspect the appliances before turning the gas on may be more recent than 1997, that leaves older dwellings that were approved by the City building authority in accordance with the City code enforced at an earlier date in a difficult situation. However, the Commission notes that these dwellings were approved under the City code in effect at the time of construction and were deemed safe in accordance with those requirements. The Commission believes that, absent a verifiable hazardous condition in an individual dwelling, for Columbia to now cite the potential for a hazardous situation and mandate that older dwellings must now update their ventilation for gas appliances to conform to current NFG Code requirements is not a reasonable resolution to these situations. Under this process, thousands of dwellings, that were approved prior to the City including the IFG Code in the City building code requirements, not just Cameron Creek, would be required to potentially expend over $1,000 per unit to bring the ventilation system up to current code or risk having their gas service disconnected. In addition, as the record reflects, once the dwellings alter their construction from the one that was initially approved by the City, there is a great possibility that the dwelling will also be subject to additional code requirements; thus, having to incur more expense.

Over the last decade, Columbia had two reports of alleged CO difficulties at the Cameron Creek apartments. However, Cameron Creek's experts attest that those situations resulted because the equipment needed maintenance, repair, and/or

replacement. Evidence was submitted by Columbia regarding CO exposure. However, Cameron Creek's expert Schultz confirms that the problems that occurred were typical for appliances of this age and usage pattern. The witness further notes that there is no physical evidence to suggest an inherent, overall problem with the installation, configuration, surrounding construction, utilization, or condition of the gas appliances. Moreover, Cameron Creek's assertion that the water heaters that were replaced or serviced in the two units reported have since then operated safely was not refuted on the record. Columbia did not substantiate that either of those situations were an indication that there was an actual serious CO hazard either in the dwelling at question or at Cameron Creek in general. Since 1997, Cameron Creek indicates it has operated safely with no evidence of CO in the apartments' ambient air. Moreover, there has been no reported problem related the health of humans, animals, or plants.

Cameron Creek's experts established on the record that, because Cameron Creek was constructed in the 1990s, its construction was less "tight" than what is the standard for current construction. The inspections and tests, including the blower door test, conducted by one of Cameron Creek's experts showed that, with the less tight construction of Cameron Creek, there was adequate outside air infiltration for the gas appliances. Furthermore, Cameron Creek effectively called to question the sufficiency of the CO tests performed by Columbia, pointing out that the only CO readings taken by Columbia were at the lower combustion doors of appliances, which is where CO is expected to be present. The record reflects that, if the apartments were built today with the tighter construction perimeters, the type of ventilation present at Cameron Creek would not result in an adequate supply outdoor air for combustion air purposes. However, Cameron Creek was not tightly constructed and it has not undergone any renovations; thus, the Cameron Creek experts agree that there is adequate outdoor air combustion. As attested to by both the former and present City officials, Cameron Creek has not altered its construction since its inception in 1997, such that it is required under the City codes to bring its buildings up to the current building code standards.

In these difficult economic times it is hard to justify imposing additional costs on consumers and property owners in a situation where there is no record evidence that there was a verifiable hazardous condition. There is no question that, when there is a verifiable safety hazard, Columbia has the right, under its tariff and the Commission's rules, to disconnect gas service and require customers to address the safety issue. However, there is no evidence in this case that there is a hazardous safety issue at Cameron Creek; rather, Columbia is threatening to disconnect service due to the potential for a hazardous situation that is not documented on the record and is not verified. Therefore, the Commission agrees that Columbia's attempt to force retrofitting, at this time, when there is no verifiable safety hazard, essentially equates to retroactive enforcement of standards that Columbia did not seek to enforce in 1997 when service was initially established.

Cameron Creek witnesses testified that, as long as proper maintenance and repair is required, and hazards are identified and addressed, Cameron Creek is in compliance with state and local building codes and there is no imminent safety threat at the Cameron Creek apartments. In Cameron Creek's situation, it has attempted to mitigate the concerns raised by Columbia by installing interconnected and hardwired combination smoke/CO detectors in each apartment. The Commission agrees that the key to sustaining a safe and hazard-free complex at Cameron Creek is continued and diligent maintenance and repair of the gas appliances, ventilation system, and CO detectors, as well as the replacement of the appliances when necessary. Cameron Creek has a full-time management and maintenance staff to cover these duties and it is the responsibility of Cameron Creek to ensure that these items continue to operate safely.

As we stated previously, we find that it is reasonable for Columbia, in accordance with its tariff, to rely on the most current NFG Code to determine if supplying gas service to a customer is safe. However, the Commission finds that the NFG Code specifically provides for alternative and engineered solutions, which Columbia did not take into account in the application of the NFG Code to the facts of this case. In this situation, Cameron Creek modified its building plans to add a 4-inch fresh air supply duct and submitted to the City engineering calculations from a licensed professional engineer verifying that combustion air was adequate for gas appliances. Mr. Schultz, a professional engineer and former member of the Ohio Board of Building Standards, testified that this constituted a specially engineered solution to provide an adequate supply of air for combustion, ventilation, and dilution of gases, which was approved by the appropriate jurisdictional authority when, in 1996, the City approved the Cameron Creek building plan. As a result, we find that the record indicates that Cameron Creek complied with the alternative compliance methods allowed in the 1996 NFG Code.

The Commission considers prescriptive compliance with the NFG Code to be a safe harbor for customers; however, if compliance is economically or practically unreasonable, we find that a program of maintenance and monitoring should be enforced, subject to review by the Commission's Staff, in order to ensure that the same level of safety espoused by the NFG Code is achieved. In this case, the Commission finds that the complainant demonstrated that it is providing a reasonable margin of safety for its occupants. Among the specific factors shown by the Cameron Creek are: the presence of a hard-wired CO detector adjacent to the air vents to the appliance closet; compliance with venting requirements in the applicable building code when built; nontight construction and a lack of material changes to the building since constructed; and demonstration through a blower door test of significant outside air infiltration. The Commission believes that, where older structures cannot demonstrate prescriptive NFG compliance or the existence of a specially engineered solution with an appropriate professional engineering verification, Columbia should balance any requirements for extensive retrofits with a rule of reason. While it is essential that a facility remains safe even when reasonably foreseeable maintenance,

repair, or replacement of equipment might be needed, a reasonable safety margin can be provided by a combination of structural elements and monitoring that warns occupants of developing risks. With regard to Cameron Creek's situation, Columbia appears to have given limited weight to the installation of CO monitors, an important step taken by Cameron Creek, and to the engineering studies provided by the complainant.

Thus, since the city of Columbus, as the local jurisdiction having building code authority, approved Cameron Creek's design at the time of the construction, we find that such approval, in this case, constitutes an alternative and/or engineered solution pursuant to the NFG Code. However, in the absence of prescriptive NFG Code compliance or a specially engineered solution that is compliant with the building code and supported by a professional engineering verification of adequacy, Columbia continues to have the ability to require retrofits that are necessary to ensure a reasonable margin of safety. Therefore, because Cameron Creek has demonstrated compliance with the City building code regulations at the time the dwelling was built, as well as the NFG Code, and because the 1995 Code took into account the necessary combustion features to assure safety, there have been no renovations or alternations (this does not include the replacement of gas appliances) that called into play the City building code requirement that the dwelling be brought up to current code, and there is no known safety issue, Columbia cannot require retrofitting.

Accordingly, the Commission finds that the complainant has sustained its burden of proof, such that Columbia may not disconnect or refuse reconnection of service citing potential unsubstantiated hazard conditions due to noncompliance with the NFG Code. However, pursuant to the City building code requirements, if the Cameron Creek dwellings are altered, as determined by the City building code, then the dwellings must be brought up to current City building code standards and Columbia may then enforce the NFG Code in effect at that time. Moreover, the Commission notes that any future CO tests taken by Columbia must be taken in an appropriate and objective location in the dwelling, consistent with Columbia's policy that testing for CO be done in the ambient air of the dwelling. Having made these determinations, the Commission strongly encourages Cameron Creek and Columbia to continue to communicate and work with the City building authority regarding the construction relating the gas appliances at Cameron Creek, and to consider potential upgrades that may gradually bring the complex up-to-date with current standards.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) Columbia is a natural gas company, as defined in Section 4905.03(A)(5), Revised Code, and is a public utility as defined by Section 4905.02, Revised Code.

(2) On September 17, 2008, Cameron Creek, which is a customer of Columbia with 240 apartment units, filed a complaint against Columbia.

(3) On October 8, 2008, as modified on April 24, 2008, the attorney examiner ordered that, during the pendency of this proceeding or until otherwise ordered by the Commission, Columbia shall not terminate service to the apartment complex, subject to the exception set forth in the entry.

(4) The hearing in this matter was held on July 15 through July 17, 2009.

(5) Briefs and reply briefs were filed by the parties on August 31, 2009, and September 14, 2009, respectively.

(6) The burden of proof in a complaint proceeding is on the complainant. *Grossman v. Public Utilities Commission* (1966), 5 Ohio St.2d 189, 214 N.E.2d 666.

(7) Columbia has not violated its tariff and its practice of referencing and enforcing of the most recent NFG Code is just and reasonable.

(8) The complainant has sustained its burden of proof, to the extent set forth in the conclusion of this order, such that Columbia may not disconnect or refuse reconnection of service citing potential unsubstantiated hazardous conditions due to noncompliance with the NFG Code.

ORDER:

It is, therefore,

ORDERED, That the complainant has sustained its burden of proof, to the extent set forth herein. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

CMTP/vrm

Entered in the Journal
JUN 22 2011

Betty McCauley
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

CONCURRING OPINION OF COMMISSIONER STEVEN D. LESSER

I concur with the decision in this case that Cameron Creek has met the requirement of an engineered solution in lieu of prescriptive compliance with the NFG Code, but I believe that compliance should include an ongoing maintenance and monitoring program to ensure the safety of the tenants. The evidence of record of incidents demonstrates the need for vigilance in the care of the fresh air supply, and the placement and testing of the carbon monoxide devices. The occupants of the apartments deserve some ongoing review that ensures that a system that does not meet the current prescriptive requirements of the NFG Code remains comparably safe.

Steven D. Lesser, Commissioner

Entered in the Journal
JUN 22 2011

Betty McCauley
Secretary

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ENTRY ON REHEARING

The Commission finds:

(1) On September 17, 2008, Cameron Creek Apartments (Cameron Creek or the complainant) filed a complaint against Columbia Gas of Ohio, Inc. (Columbia). Cameron Creek is located in Galloway, Ohio, provided natural gas by Columbia, and subject to the building codes established by the city of Columbus, Ohio (City). In its complaint, Cameron Creek alleges, among other things, that Columbia demanded major structural retrofitting of the ventilation to the gas appliances for all 240 units in the complex. According to the complainant, if such retrofitting is not done, Columbia threatened to shut off the gas service to all of the units. On October 8, 2008, Columbia filed its answer to the complaint denying all material allegations in the complaint.

(2) On June 22, 2011, the Commission issued its order stating that the question posed in this case was: if Columbia believes that there is a potentially hazardous condition in a dwelling that was approved for occupancy in prior years, pursuant to the building code (City Code) established by the City that was in effect at the time of such approval, and the construction in that dwelling had not been altered such that the City Code would require that it be brought up to current code, can Columbia require that the dwelling be retrofitted in order to bring it into compliance with the current National Fuel Gas (NFG) Code before Columbia will connect or reconnect gas service. Initially, the Commission determined that Columbia had not

violated its tariff, and that Columbia's practice of referencing and enforcing the most recent NFG Code is just and reasonable. However, the Commission further concluded that the complainant had sustained its burden of proof such that Columbia may not disconnect or refuse reconnection of service citing potential unsubstantiated hazardous conditions due to noncompliance with the NFG Code.

In reaching this conclusion, the Commission noted that, while prescriptive compliance with the NFG Code is a safe harbor for customers, if compliance is economically or practically unreasonable, a program of maintenance and monitoring should be followed in order to ensure that the same level of safety espoused by the NFG Code is achieved. In considering the facts in this case, the Commission concluded that the complainant demonstrated that it is providing a reasonable margin of safety for its occupants, including: the presence of a hard-wired carbon monoxide (CO) detector adjacent to the air vents to the appliance closet; compliance with venting requirements in the applicable building code when built; nontight construction and a lack of material changes to the building since it was constructed; and demonstration through a blower door test of significant outside air infiltration. Where older structures cannot demonstrate prescriptive NFG Code compliance or the existence of a specially engineered solution with an appropriate professional engineering verification, the Commission determined that Columbia should balance any requirements for extensive retrofits with a rule of reason. The Commission further stated that, while it is essential that a facility remains safe even when reasonably foreseeable maintenance, repair, or replacement of equipment might be needed, a reasonable safety margin can be provided by a combination of structural elements and monitoring that warns occupants of developing risks.

In this case, since the City, as the local jurisdiction having building code authority, approved Cameron Creek's design at the time of the construction, the Commission determined that such approval constitutes an alternative and/or engineered solution pursuant to the NFG Code. However, in the absence of prescriptive NFG Code compliance or a specially engineered solution that is compliant with the City Code and supported by a professional engineering verification of adequacy, the

Commission found that Columbia continues to have the ability to require retrofits that are necessary to ensure a reasonable margin of safety. Therefore, because Cameron Creek demonstrated in this case that it was in compliance with the City Code regulations at the time the dwelling was built, as well as the NFG Code, and because the 1995 Ohio Basic Building Code (1995 Code) enforced by the City took into account the necessary combustion features to assure safety, there have been no renovations or alternations that called into play the City Code requirement that the dwelling be brought up to current code, and there was no known safety issue, the Commission concluded that Columbia cannot require retrofitting.

(3) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in the proceeding by filing an application within 30 days after the entry of the order upon the journal of the Commission.

(4) On July 22, 2011, Columbia filed an application for rehearing of the Commission's June 22, 2011, opinion and order in this matter. As discussed in further detail below, Columbia set forth six grounds for rehearing.

(5) Cameron Creek filed a memorandum contra Columbia's application for rehearing on August 3, 2011, arguing that Columbia made no new argument that had not already been considered in the order in this case. Cameron Creek's arguments are further delineated below.

(6) In its first assignment of error, Columbia asserts that the order is unreasonable because it incorrectly concluded that the addition of four-inch fresh air supply ducts to Cameron Creek's units was an alternative compliance method or engineered solution under the NFG Code and, thus, excused Cameron Creek from the NFG Code's appliance venting requirements (Columbia App. at 3).

Quoting Section 1.2 of the 1996 NFG Code, Columbia contends the Commission misconstrued the statement, "[t]he provisions of the code are not intended to prevent the use of any material, method of construction, or installation procedure not

specifically prescribed by this code *provided any such alternate is acceptable to the authority having jurisdiction"* (emphasis added). Columbia argues that, contrary to the Commission's finding that the City is the local jurisdiction having building code authority, Columbia, and not the City, is the "authority having jurisdiction" referenced in the 1996 NFG Code. Columbia reasons that the City could not have been the "authority having jurisdiction" at the time Cameron Creek was built, because the City did not apply the NFGC in 1996. Thus, Columbia asserts that the addition of the four-inch fresh air supply ducts to the units at Cameron Creek was not an "engineered solution" under the 1996 NFG Code "because the City of Columbus did not apply the NFGC in 1996, and Cameron Creek did not undertake the project at Columbia's request or for Columbia's approval." According to Columbia, the addition of the ducts might have qualified as an "engineered solution" under the 1996 NFG Code had Cameron Creek come to Columbia for approval of the installation. (Columbia App. at 3-4.)

Furthermore, Columbia maintains that the four-inch fresh air supply ducts could not have been an "alternative solution" because they were not a newly developed technology in 1996 and because the air ducts solved a different problem than Cameron Creek's improperly vented gas appliances caused. According to Columbia, the four-inch fresh air supply ducts were intended to help prevent CO production; while the appliance venting requirements were intended to ensure that any CO produced by the appliance would not jeopardize residents. Thus, the ducts and the venting requirements do not serve the same purpose. (Columbia App. at 4-6.)

(7) In reply, Cameron Creek notes that Columbia continues to argue that it should be allowed to retroactively apply the most recent version of the NFG Code to the complainant, regardless of the fact that the building department originally approved the structure as safe and in compliance with the then-existing code (CCA Memo Contra at 2).

(8) Initially, the Commission notes that it is unrefuted on the record that Sections 1.2, 5.3.4, and 6.30.1 of the 1996 NFG Code, considered together, permit other measures and special engineering to provide an adequate supply of air for combustion, ventilation, and dilution of gases that is approved

by the authority having jurisdiction. Furthermore, Cameron Creek presented expert testimony from a professional engineer and building code expert that supports the fact that the addition of the four-inch fresh air supply ducts to the units, which was approved by the City, conforms to these provisions (CCA Ex. 39 at 13-14). Columbia contests whether the City is the "authority having jurisdiction." Instead, Columbia continues to argue that it has been vested as the "authority having jurisdiction," regardless of the fact that Columbia has failed to reference any record evidence, or any codified rule or statute that supports Columbia's assertion that it is the "authority" that has "jurisdiction" over dwellings. The Commission believes Columbia's reasoning that it is the jurisdictional authority, because it adopted and applied the NFG Code in 1996, which is not a codified document, rather than a governmental entity formed for the purpose of enforcing codified building standards in Ohio, is erroneous. While the Commission agrees that it is necessary for Columbia to interpret and apply the standards, such as the NFG Code, that it utilizes in its day-to-day business, such necessity does not grant Columbia the unequivocal right to claim that it is the "authority having jurisdiction" over acceptable alternatives. As we determined in our order, based upon the facts in this case, the City, as the local building code authority, approved the design of Cameron Creek at the time of construction and such approval by the City constituted an alternative and/or engineered solution pursuant to the NFG Code. With respect to Columbia's first assignment of error, the Commission finds that Columbia has raised nothing new that was not thoroughly considered and addressed by the Commission in its order. Therefore, Columbia's first assignment of error is without merit and should be denied.

(9) For its second assignment of error, Columbia maintains that the order is unreasonable and unlawful because the conclusion that Cameron Creek provided its residents a reasonable margin of safety requires Cameron Creek to adequately maintain its gas appliances, an obligation that the complex has not performed consistently in the past and the Commission has no power to enforce. Columbia points out that, had the appliances at Cameron Creek been vented in the manner required by the NFG Code, the CO detected in the two incidents noted on the record, where there was improper maintenance of the

appliances, would have been vented to outside the units. (Columbia App. at 6-8.)

(10) In response, Cameron Creek submits that Columbia continues to spread fear that the current gas appliance ventilation system places residents in danger, despite the lack of any legitimate verified CO issues at Cameron Creek. The complainant points out that Columbia even cites in its application for rehearing to five newspaper articles printed in 1996 to scare everyone into believing the Commission erred and the only solution is to retroactively apply the NFG Code. Moreover, Cameron Creek notes that, as the record reflects, at the time Cameron Creek was built, it was common practice to locate gas appliances in bathrooms or interior utility closets and to utilize indoor combustion air. Extensive building retrofitting is not required simply because the code is updated or a new code is adopted; changes are only required if there is a documented serious safety hazard. Cameron Creek offers that, according to the record, the apartments were safe when they were built and they are still safe today. (CCA Memo Contra at 2-3, 5.)

(11) As noted in the order, the Commission believes that the number one priority in the provision of natural gas service is to ensure that all possible measures are taken to ensure the health and safety of the public. The Commission based its decision in this case on the evidence presented on the record pertaining to Cameron Creek's situation and Columbia's application of its tariff and the NFG Code to the facts in this matter. On rehearing, it appears that Columbia is attempting to incite further review by the Commission based solely on events that have no relation to the issues in this case. Furthermore, we note that, in support of its second assignment of error, Columbia also attempts to justify its CO readings for the two alleged CO incidents that were reported in the last decade at Cameron Creek by footnoting that the tests were taken at appropriate and objective locations in the dwellings (Columbia App. at 6 FN 1); however, the unrequited evidence of record clearly shows that such was not the case (CCA Ex. 39 at 18-19). The bottom line is that Columbia did not substantiate on the record that there was an actual serious CO hazard at Cameron Creek. Therefore, the Commission concluded that Columbia's attempt to force retrofitting at Cameron Creek, when there is no verifiable safety hazard, essentially equates to retroactive

enforcement of standards that Columbia did not seek to enforce in 1997 when service was initially established. The Commission acknowledges Columbia's diligent efforts to ensure the safety of its customers and the public. Once any safety issue is resolved or mitigated, it is the responsibility of the property owners and occupants to follow through and maintain the safety of the dwellings. In this case, Cameron Creek sustained its burden of proving that any CO hazard had been mitigated; therefore, the maintenance responsibility now lies with Cameron Creek and the occupants. Therefore, in order to ensure the continued safety of the occupants, it is necessary for Cameron Creek to develop an ongoing maintenance and monitoring program to ensure that the alternative and/or engineered solution continues to be comparably safe to the prescriptive requirements in the NFG Code. Cameron Creek's program should include maintenance and monitoring of the CO detectors and other safety devices. Accordingly, the Commission finds that Columbia has raised no new issue on rehearing and its second assignment of error should be denied.

(12) The third assignment of error cited by Columbia states that the order is unreasonable because the conclusion that CO detectors will keep Cameron Creek's residents safe is not supported by the evidence. Columbia submits that the record indicates that, even when the CO detectors are working, the CO could rise to dangerous levels in a closed bathroom and that a power outage would render a CO detector with a dead battery useless. Moreover, Columbia notes that Cameron Creek did not present evidence that, since the CO detectors were installed, it has maintained them. (Columbia App. at 8-9.)

(13) According to Cameron Creek, Columbia wants the Commission to declare an approach that can guarantee safety; however, this cannot be done. Cameron Creek avers that no gas appliance configuration, even under the current NFG Code, can guarantee absolute safety and no CO. Instead, Cameron Creek asserts that the hard-wired CO detectors, maintenance plan, and safety devices on the furnaces provide residents with ample safety, and the residents must trust in the fact that the City issued occupancy permits and Columbia has been providing service since 1996. (CCA Memo Contra at 4-5.)

(14) Contrary to Columbia's assertion, as thoroughly discussed in our conclusion in the order, this case did not turn merely on the fact that the complainant installed hard-wired CO detectors with battery back-ups. While the CO detectors were one mitigating factor that Cameron Creek presented in this case, the record, in total, reflected other factors as well, including Cameron Creek's compliance with venting requirements in the applicable building code when built, nontight construction and a lack of material changes to the building since constructed, and the demonstration through a blower door test of significant outside air infiltration. Columbia appears to have taken our order out of context by focusing in on one factor. As we stated previously, in light of the fact that Cameron Creek has sustained its burden of proof in this case, the responsibility to ensure that the necessary maintenance continues rests with Cameron Creek and the occupants of the complex, and it is expected that Cameron Creek will employ a thorough maintenance and monitoring program to ensure the continued safety of the occupants. Accordingly, the Commission finds that Columbia's third assignment of error is without merit and should be denied.

(15) In its fourth assignment of error, Columbia contends that the order is unreasonable because it holds that nontight construction justifies noncompliance with the NFG Code, which is not supported by the evidence and will discourage participation in utility demand-side management (DSM) programs. Columbia asserts that the complainant's arguments that looser construction standards for homes built in the 1990s or earlier allow such homes to safely obtain combustion, dilution, and ventilation air from inside the residence is belied by the NFG Code itself, since the 1996 NFG Code prohibited the appliance venting configurations present at Cameron Creek. (Columbia App. at 9-10.)

(16) In response, Cameron Creek points out that, when the complex was approved in 1996, the City utilized the state building code and the mechanical code to approve safe operations at Cameron Creek and such codes: recognized that adequate combustion air could reach gas appliances from several sources; allowed for multi-story vents to service the appliances for multiple units; and recognized the construction at Cameron Creek was not tight with regard to air infiltration, which

allowed for greater outside air infiltration. Thus, Cameron Creek reasons that, whether the latest version of the NFG Code requires different appliance configuration does not mean older buildings, such as Cameron Creek, are less safe or noncompliant. Furthermore, Cameron Creek states that Columbia's assertion that customers will no longer take advantage of Columbia's energy efficiency DSM program does not mean that the Commission's decision is unreasonable or unlawful. (CCA Memo Contra at 4-5.)

(17) The Commission's role in this case was to review the facts and evidence of record, in concert with the applicable statutes and rules, to determine if the complainant sustained its burden of proof. Columbia has drawn a definitive line and refuses to consider the facts presented in this case that support our finding that Cameron Creek complied with the alternative compliance methods permitted by the 1996 NFG Code. As we articulated in our order, where older structures cannot demonstrate prescriptive NFG Code compliance or the existence of a specially engineered solution with an appropriate professional engineering verification, Columbia should balance any requirements for extensive retrofits with a rule of reason. We believe that a reasonable safety margin can be provided by a combination of structural elements and monitoring that warns occupants of developing risks. Finally, contrary to Columbia's comment, the Commission disagrees that our determinations in this complaint case, which are based on the evidence of record, will in any manner effect or discourage continued progress and participation in DSM programs. Accordingly, the Commission concludes that Columbia's fourth assignment of error is without merit and should be denied.

(18) Columbia argues, in its fifth and sixth assignments of error, that the order is unreasonable because it does not leave Columbia with a workable, practical way to ensure safety. Furthermore, Columbia maintains that it is unclear how Columbia is to enforce the Commission's new reasonable margin of safety test at other customers' residences and the order is unreasonable because putting the Commission's holdings into effect for all of Columbia's residential customers would be unduly burdensome. Columbia questions whether it can terminate, or refuse to connect, natural gas service

immediately, and then give the customer time to provide the necessary evidence mentioned by the Commission in the order, or whether it must allow the customer to keep operating in violation of the NFG Code, until it can be determined whether the appliance installation was approved by the local building authority and that there have been no material changes to the building since construction. Furthermore, Columbia asserts that, because of the ambiguous and subjective nature of the test that the Commission would apply to determine safety, in the absence of prescriptive NFG Code compliance, the amount of evidence to meet the customer's burden of proof, and the length of time for the process, would impose significant record-keeping requirements on Columbia. Columbia believes that such a system would endanger customers' health and safety. (Columbia App. at 11-16.)

(19) In reply, Cameron Creek submits that, for Columbia, it would be easier to retroactively apply the NFG Code than to train Columbia's technicians on which code legally can be applied. While Columbia would like the Commission to offer precise guidance on how the company should conduct its business, legally apply the NFG Code, and comply with the Commission's order, Cameron Creek asserts that such answers are for Columbia to determine and are not an appropriate ground for rehearing. Whether Columbia must interpret the Commission's decision and determine how best to avoid retroactively and improperly applying the NFG Code does not make the order unlawful and unreasonable. (CCA Memo Contra at 2, 6.)

(20) Columbia would like for there to be a clear bright-line test that would unequivocally signify when compliance with a reasonable safety code has been met; for Columbia, that bright line is achieved through strict adherence to the NFG Code. While the Commission commends Columbia's efforts, as proven by Cameron Creek on the record in this case, a bright-line test is not sustainable where the governing building code authority has deemed the dwelling safe for occupancy, and the complex management has attested that a program of maintenance and monitoring is being imposed to ensure the same level of safety espoused by the NFG Code. Every situation is unique and the Commission is confident that the close relationship that Columbia has with its customers will

enable the company to balance any requirements for extensive retrofits with a rule of reason. There is no doubt that it behooves all stakeholders, Columbia, owners, and occupants, to work together to ensure that there is a safe hazard-free environment. Accordingly, the Commission finds that Columbia's fifth and sixth assignments of error are without merit and should be denied.

It is, therefore,

ORDERED, That Columbia's application for rehearing be denied in its entirety. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

CMTP/vrm

Entered in the Journal

AUG 17 2011

Betty McCauley

Betty McCauley
Secretary

## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was served by electronic mail and U.S. Mail on this 14th day of October, 2011, upon the following counsel for Appellee Cameron Creek Apartments:

Thomas L. Hart
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I further certify that a true and accurate copy of the foregoing Notice of Appeal was served by U.S. Mail on this 14th day of October, 2011, upon the Chairman of the Public Utilities Commission of Ohio, Todd Snitchler, at the following address:

Chairman Todd A. Snitchler
Public Utilities Commission of Ohio
180 E. Broad Street
Columbus, Ohio 43215

Eric B. Gallon

## CERTIFICATE OF FILING

I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was filed on this 14th day of October, 2011, in the Public Utilities Commission of Ohio's Docketing Division.

Eric B. Gallon

COLUMBUS/1600481v.3