

## 1           BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

2                               - - -

3       In the Matter of the               :  
4       Complaint of Cameron            :  
5       Creek Apartments,               :  
6                               Complainant,               :  
7                               :  
8       vs.                               : Case No. 08-1091-GA-CSS  
9                               :  
10       Columbia Gas of Ohio,           :  
11       Inc.,                            :  
12                               Respondent.               :

13                               - - -

## 14                               PROCEEDINGS

15       before Ms. Christine Pirik, Hearing Examiner, at the  
16       Public Utilities Commission of Ohio, 180 East Broad  
17       Street, Room 11-F, Columbus, Ohio, called at 9:00  
18       a.m. on Thursday, July 16, 2009.

19                               - - -

## 20                               VOLUME II

21                               - - -

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8 On behalf of the Complainant.

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14 On behalf of the Respondent.

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1 Thursday Morning Session,  
2 July 16, 2009.

3 - - -

4 HEARING EXAMINER: Go back on the record.  
5 Cameron Creek, I believe we're going to call the next  
6 witness. Miss Roahrig is coming back in  
7 approximately a half hour, so we will get as far as  
8 we can on the procedural matters with the next  
9 witness and then when Miss Roahrig gets here, we'll  
10 take a break from Mr. Schutz and we'll move forward  
11 with her cross-examination.

12 Good morning, Mr. Schutz. Please raise  
13 your right hand.

14 (Witness sworn.)

15 HEARING EXAMINER: Thank you. Please be  
16 seated.

17 MR. ZETS: Good morning, Mr. Schutz.

18 THE WITNESS: Good morning.

19 MR. ZETS: Permission to approach.

20 HEARING EXAMINER: Yes.

21 MR. ZETS: Examiner Pirik, I'd like to  
22 have marked the direct testimony of Robert J. Schutz,  
23 I believe it is CCA 39.

24 HEARING EXAMINER: Yes, 39. The document  
25 is so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 - - -

3 ROBERT J. SCHUTZ

4 being first duly sworn, as prescribed by law, was  
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Zets:

8 Q. For the record, Mr. Schutz, could you  
9 please state your name.

10 A. My name is Robert J. Schutz. Middle  
11 initial J, as in John, last name is S-c-h-u-t-z.

12 Q. I've handed you what's been marked  
13 Exhibit CCA 39. Can you identify that for us,  
14 please.

15 A. I can, sir. It's a packet that contains  
16 the testimony that I provided earlier with the  
17 attachments that I referenced in my testimony.

18 Q. Could you take a look at Exhibit CCA 39  
19 and indicate whether you believe that is a true and  
20 accurate copy of the direct testimony that you  
21 provided in this case?

22 A. It appears to contain all the pages that  
23 I recall, yes, sir.

24 Q. At this time do you believe there's any  
25 information which you need to add or supplement to

1 that direct testimony?

2 A. Sir, on page 11 of the document, line 17.

3 Q. Yes.

4 A. At the end of the line the words "from  
5 the" should be stricken. It should read "and a page  
6 on the same topic from the 2006 National Fuel Gas  
7 Code."

8 Q. Okay. Appears to be a typo.

9 A. And on page 25, lines 12 and 13, it's  
10 supposed to read "changes at Cameron Creek Apartments  
11 inappropriate and contrary."

12 I have no further changes, it's as I  
13 recall it.

14 MR. ZETS: Hearing Examiner, procedurally  
15 I'd like to get some direction on how you want to  
16 proceed because we have filed a motion to supplement  
17 some additional testimony to Mrs. Pirik, but that's  
18 probably all going to be subject to a motion to  
19 strike. We can go with his direct testimony and go  
20 forth with the motion to strike with respect to the  
21 direct testimony that was already filed.

22 HEARING EXAMINER: I think what we'll do  
23 is we will just consider that at the end of all the  
24 motions to strike that we'll deal with at this point,  
25 I think.

1 MR. ZETS: The motion for supplemental  
2 testimony?

3 HEARING EXAMINER: Yes. We'll deal with  
4 that at the same time.

5 MR. ZETS: Okay.

6 HEARING EXAMINER: Thank you, Mr. Schutz.  
7 You will continue soon.

8 THE WITNESS: You're welcome, ma'am.  
9 We'll go off the record.

10 (Discussion off the record.)

11 HEARING EXAMINER: We'll go back on the  
12 record. Miss Roahrig is present so now we will  
13 continue with her cross-examination before addressing  
14 the other procedural matters that we have.

15 MR. STEMM: Thank you.

16 HEARING EXAMINER: Mr. Stemm.

17 MR. STEMM: Hearing Examiner Pirik, may I  
18 suggest that I begin with a short motion to strike  
19 before I begin my cross-examination.

20 HEARING EXAMINER: Yes; that would be  
21 appropriate.

22 MR. STEMM: Columbia Gas of Ohio would  
23 first move to strike Cameron Creek Apartments Exhibit  
24 25. Miss Roahrig testified on voir dire that she was  
25 not involved with plan preparation, review, or

1 approval. She can't authenticate the copies that  
2 have been -- that are purported to be Westlake  
3 apartment plans. All she can testify to is the  
4 recognition of a city stamp such that she sees a city  
5 stamp and she reviews a revision sheet and she  
6 concludes that the city had issued a building permit  
7 for this particular property; but she can't  
8 authenticate.

9 And she also was presented with an  
10 incomplete set of documents. If you notice, on the  
11 diagram, the large Exhibit 25 at page 12, there's an  
12 index, and mechanical drawings are actually M1 and  
13 M2, and we've only seen M1 in this case and that's  
14 all that she was shown, evidently.

15 In the revision sheets, the addendum we  
16 looked at, the 8-1/2-by-11 sheets, there's also a  
17 reference to Revision M2 that we do not have. So  
18 this witness has basically been presented with an  
19 incomplete set of something that she cannot verify  
20 herself other than to look at the page like we can  
21 look at the page and ask to testify about those  
22 plans.

23 The fact that she can read plans does not  
24 enable her to accurately testify that these are, in  
25 fact, true and accurate copies for Cameron Creek;



1 they're Westlake apartments. There is a copy --  
2 there is some stamp of approval, but beyond that I  
3 think it would only be appropriate for Cameron  
4 Creek's witness to introduce these type of documents  
5 who actually have knowledge of the plan preparation  
6 or of the construction and the approval process.

7 HEARING EXAMINER: Mr. Hart.

8 MR. HART: Thank you. Cheryl Roahrig is  
9 certainly, based on her position, her expertise, her  
10 longevity with the department, her familiarity with  
11 procedures, she can certainly look at a set of plans,  
12 an approval narrative that is a city record that is  
13 actually a public record, she can interpret those.  
14 She can certainly say how the approval took place  
15 historically, what steps were taken.

16 The documents that were included in the  
17 exhibit are, in fact, the key parts of the approval  
18 process for the mechanical plans that are relevant to  
19 this case. They show the addition of an addendum  
20 that made the city's conditional approval final.

21 We're talking about city records that are  
22 public records that have city stamps and from the  
23 department that Miss Roahrig directly works for and,  
24 in effect, manages.

25 HEARING EXAMINER: Yes, Mr. Stemm.

1                   MR. STEMM: Very briefly. I didn't hear  
2 any testimony that she went and found these documents  
3 in the city filing, in the city records. What I  
4 heard in the testimony is she showed up at the  
5 lawyer's office and they presented these particular  
6 hand-selected documents without giving her the other  
7 ones that specifically, supposedly, if you read the  
8 literal language of this, dealt with the HVA system  
9 including Replacement Sheet M2 which we don't have  
10 here.

11                   So I don't think it's a matter of these  
12 being public records. I think these are records that  
13 counsel pulled out and asked her to look at.

14                   HEARING EXAMINER: Mr. Hart, one last  
15 statement.

16                   MR. HART: She did, in fact, look at all  
17 the plans when she was in my office. We have the  
18 whole set. She did look at M2. She did look at, you  
19 know, everything related to that approval. But in  
20 terms of relevancy, the mechanical plans are what's  
21 critical, the combustion air regulation is what's  
22 critical to this case, and that's what the exhibit  
23 is.

24                   HEARING EXAMINER: The difficulty I have  
25 with this exhibit, first of all, is even the portion

1 of the exhibit on the page that has the drawing that  
2 you were questioning her on, with the water mark it's  
3 pretty difficult to even know or see what the  
4 reference is.

5           Was that water mark a creation of, I  
6 mean, is that the way it's presented when you go to  
7 get it as a public record? Is that how it was  
8 presented to you because there was some difficulty in  
9 the storage of it wherever they store these types of  
10 plans?

11           MR. HART: Well, we produced the plans in  
12 response to the discovery request and that's the  
13 condition they were in.

14           HEARING EXAMINER: My question is are  
15 these plans -- is the reason these water marks are on  
16 here because of the way Cameron Creek stored them or  
17 because of the way the city stored them in their  
18 storage facility?

19           MR. HART: They were at Cameron Creek.  
20 But they're still a city document.

21           HEARING EXAMINER: I understand they're a  
22 city document. But was there any attempt made to get  
23 a real copy that didn't have water marks on it? I  
24 have a hard time believing that the city doesn't  
25 store their documents in a location that would not

1 render them impossible to read, which these are  
2 basically impossible to read.

3 MR. HART: Well, Examiner, they're not  
4 impossible to read for an expert who knows -- who's  
5 looking at the blueprints.

6 HEARING EXAMINER: Well, I appreciate  
7 that. But we have Commission employees that need to  
8 look at these as evidence, and it's very difficult to  
9 take a faulty document and actually understand it. I  
10 mean, certainly on that piece of paper I see there's  
11 a line and she mentioned that that was the duct that  
12 we were looking at, but there's no indication on the  
13 document itself that that's what it is because it  
14 looks like it's been washed out by the water mark.

15 MR. HART: If I could address, the city  
16 does not have -- I don't believe their policy is to  
17 keep plans. You can get final permit approvals from  
18 the city, but not the plans themselves. The plans  
19 themselves with the approval go back to the owner.  
20 And that's what the client had on site and I don't --  
21 I think age and time, I mean, I don't know how they  
22 got water marked.

23 HEARING EXAMINER: Miss Roahrig, does the  
24 city keep copies of these plans like on microfiche or  
25 microfilm, do you know?

1 MRS. ROAHRIG: We have a retention  
2 schedule. We keep all copies of occupancy permits  
3 once they've issued the final occupancy, but I cannot  
4 answer to the retention schedule for the plans and  
5 other paperwork.

6 HEARING EXAMINER: Okay.

7 MRS. ROAHRIG: Some of them they do have  
8 on microfilm, but I don't know the retention  
9 schedule.

10 HEARING EXAMINER: I can say, I mean, I  
11 have concerns over partial documents. I have  
12 concerns over nonoriginal documents or final  
13 documents.

14 MR. HART: Examiner, if I may.

15 HEARING EXAMINER: Yes, Mr. Hart.

16 MR. HART: We do have the full set if  
17 that's something the Commission wants. In the shape  
18 they're in we do have all the -- every sheet with the  
19 city approval on them.

20 MR. STEMM: They all are in the same  
21 condition.

22 HEARING EXAMINER: Yes, they are all in  
23 the same condition I'm sure.

24 MR. STEMM: And I don't think M2 was in  
25 there because I don't recall seeing it.

1           MR. HART: For the record, I believe I  
2 produced that to Mr. Stemm in my office. I believe I  
3 produced that.

4           HEARING EXAMINER: I understand,  
5 Mr. Hart. My point is I don't care to receive in the  
6 record documents that are partial documents with no  
7 title, no way to authenticate the document, because  
8 it's just a random page or a few pages out of a total  
9 document and it's not -- it's not Columbia's  
10 responsibility to supplement a document that you are  
11 presenting as one of your exhibits.

12           So for future exhibits, if you have any  
13 other partial documents that you intend on bringing  
14 in as exhibits, I would hope that you would review  
15 those documents and be sure that, one, they have page  
16 numbers on them, and two, they are clearly designated  
17 as to what they are so there's some reference point.

18           On these documents what I'm going to do  
19 is I'm going to deny the motion to strike, but the  
20 only purpose of these documents is for the date stamp  
21 as to when the plans were actually approved that the  
22 witness testified to. That is the only purpose that  
23 these documents will be in the record is to see that  
24 date stamp.

25           I just don't think with the damage to the

1 document and the fact that you can't actually tell  
2 what that one specific line is on that page, I just  
3 don't think we can utilize them for that purpose.

4 So I'll deny the motion to strike. I'll  
5 keep the documents in for the purpose of the date  
6 stamp.

7 MR. STEMM: Thank you.

8 I would also on behalf of Columbia Gas of  
9 Ohio make a motion to strike Cameron Creek Apartment  
10 Exhibit 28 in the black binder there. They put in  
11 front of Miss Roahrig a copy of an apparent service  
12 order invoice from a Rippel Company, and on voir dire  
13 she admitted she had no knowledge whatsoever of this  
14 document.

15 HEARING EXAMINER: I'm sorry, tell me  
16 again what number.

17 MR. STEMM: Twenty-eight. It's a single  
18 page in the black binder.

19 HEARING EXAMINER: Mr. Hart.

20 MR. HART: The document is a blower door  
21 test. Mrs. Roahrig knows what a blower door test is  
22 and what it shows, and she interpreted the document  
23 and stated exactly what it shows.

24 HEARING EXAMINER: Motion to strike is  
25 granted.

1                   MR. STEMM: Finally, Hearing Examiner  
2 Pirik, there was some initial effort to ask the  
3 witness questions about Cameron Creek Apartments  
4 Exhibit 30 which was the, apparently a mix of pages  
5 in backward order from various Bryant furnace  
6 manuals, if you recall.

7                   As we ended the day, however, Mr. Hart  
8 never actually asked any questions specific -- after  
9 identifying the exhibit. We had objected and then it  
10 seemed that he had stopped trying to ask questions  
11 about it. So we would suggest that this exhibit  
12 probably hasn't -- I mean, it was marked, so we would  
13 simply move to strike it for lack of foundation.  
14 There was never any explanation of how it's relevant  
15 to the case.

16                  HEARING EXAMINER: Mr. Hart.

17                  MR. HART: It's not a mix of random pages  
18 at all. It's a complete manual of the Bryant  
19 company's furnace that have been -- that are in all  
20 the apartments at Cameron Creek. It is a document  
21 that is in the stream of commerce, a product that has  
22 been in the stream of commerce, it's available, you  
23 know, widely, including on the internet. It's a  
24 company document of a product.

25                  The only reason I didn't ask questions



1 about it is because I didn't actually -- I don't  
2 think I actually asked for it to be entered  
3 yesterday, but I did run out of time.

4 HEARING EXAMINER: Mr. Stemm, do you have  
5 a response?

6 MR. STEMM: My only comment would be  
7 based on what Mr. Hart said, is that he still hasn't  
8 explained how this witness can authenticate and  
9 discuss it, but beyond that I was under the distinct  
10 impression yesterday that although we were trying to  
11 finish up, that he had, in fact, finished his direct  
12 and that he was not planning to resume direct exam  
13 this morning. I thought it was going to be time for  
14 cross-exam when we got here, and motions to strike.

15 So when he said he simply ran out of  
16 time, it seemed to me that he closed his direct exam  
17 and there were no questions on this document.

18 MR. HART: Examiner. If I may.

19 HEARING EXAMINER: Mr. Hart.

20 MR. HART: I discussed this manual with  
21 Mrs. Roahrig and believe she reached a conclusion  
22 about the manual and I wanted to ask her about it.  
23 That was the purpose for the exhibit.

24 HEARING EXAMINER: First of all, I want  
25 to say that, yes, we ended the hearing yesterday

1 afternoon, there was no motion or no request to  
2 continue direct examination of this witness even  
3 though the witness was so gracious to agree to come  
4 here today without a valid subpoena. So there was  
5 adequate time for the complainant to request  
6 continuation of the direct if, in fact, you intended  
7 on utilizing this document and wanted to actually ask  
8 questions on the document.

9 Motion to strike granted.

10 Mr. Stemm, is there anything else?

11 MR. STEMM: No, your Honor. We would  
12 proceed with cross-examination of the witness.

13 HEARING EXAMINER: You may proceed.

14 - - -

15 CHERYL L. ROAHRIG

16 being previously duly sworn, as prescribed by law,  
17 was examined and testified as follows:

18 CROSS-EXAMINATION

19 By Mr. Stemm:

20 Q. Good morning, Ms. Roahrig.

21 A. Good morning.

22 Q. Thank you sincerely for coming back  
23 today. We do appreciate it. We know it's an  
24 inconvenience to your schedule.

25 MR. STEMM: Before I begin, Ms. Pirik,

1 for the record let me ask, when you discussed the  
2 limited purpose for which you were admitting CCA 25,  
3 CCA 25 had an 11-page piece to it in the book.

4 HEARING EXAMINER: Yes.

5 MR. STEMM: Our motion to strike did  
6 cover that as well for some of the same reasons in  
7 terms of what I mentioned before about this witness's  
8 lack of knowledge and this not coming from the city  
9 files, this is coming from counsel. But I'll just  
10 ask you to clarify whether you intended -- if you  
11 understood my motion to also include this.

12 HEARING EXAMINER: I did not understand  
13 your motion to also include this. I believed you  
14 were just talking about pages 12 through 15 which are  
15 the actual plan documents --

16 MR. STEMM: Okay.

17 HEARING EXAMINER: -- and the purpose of  
18 those documents. And that was purely all I was  
19 talking about is pages 12 through 15 and the purpose  
20 of those documents and the date stamp on those  
21 documents. I believe the -- well, let me see.

22 So my ruling purely went to those pages  
23 12 through 15, but, you know, if you would like to --

24 MR. STEMM: Can I just assert a motion to  
25 strike the remainder for your consideration?

1 HEARING EXAMINER: For the remainder of  
2 it? Can we break it down because I --

3 MR. STEMM: Yes, I think that's  
4 appropriate.

5 HEARING EXAMINER: Yes. I appreciate you  
6 calling this to my attention because it wouldn't have  
7 been clear on the record.

8 MR. STEMM: Thank you.

9 HEARING EXAMINER: So why don't we take  
10 the addendum portion which is the response at pages 1  
11 through 7.

12 MR. STEMM: Well, number one, this  
13 addendum references documents and information that  
14 are not included with the addendum. For example, if  
15 you turn to page 3, which is the page the witness was  
16 asked about, at item 13 there's -- to completely  
17 understand this document you need to refer to a  
18 number of revised sheets including Replacement Sheet  
19 M2 which was never offered here at this hearing.

20 There's also references under the  
21 Combustion Air category in this document that  
22 indicates the computations were submitted. This  
23 witness read the fact that computations were  
24 submitted, but this document doesn't show us what  
25 those computations are or were so that we can

1 cross-examine the witness on that, and that was a key  
2 point of this document, that alleged compliance with  
3 M-1004 was based on computations that we do not have.

4 And then just, finally, the overall  
5 objection on the entire exhibit in terms of this  
6 witness's ability to, you know, take this document  
7 and testify under oath that this is a true and  
8 accurate copy of this response.

9 There are some handwritten notes on this  
10 document, but none of them are from the witness. She  
11 testified she was not involved in this process at all  
12 for this apartment complex to the best of her  
13 recollection, and there are no official Columbus  
14 stamps or seals on this document 1 through 7.

15 HEARING EXAMINER: Mr. Hart, where did  
16 this document come from, and whose writing is this on  
17 the document?

18 MR. HART: The document came -- the  
19 document was combined with the plans that we were  
20 able to find at Cameron Creek in their storage. The  
21 person that's in writing is the actual city plans  
22 examiner, who still works for the city, I believe his  
23 name is Mark Cohen, I'm not sure of the first name,  
24 but the document is the narrative that goes with the  
25 plans. It was the final approval. And when you're

1 ready, I'd like to address Mr. Stemm's other points.

2 HEARING EXAMINER: Go ahead.

3 MR. HART: First, Mrs. Roahrig did  
4 authenticate it and did state what it is which is  
5 it's the routine business of the city to use these  
6 response addendums when they have questions about a  
7 proposed construction project. They ask for  
8 clarifications and the architect or engineer involved  
9 provides those. That's what happened in this case  
10 with the reference to computations.

11 We don't have the computations; they've  
12 been lost in time. We did try to get them from the  
13 original engineer, unsuccessfully. But this is not  
14 something counsel came up with. This is a city  
15 document that Mrs. Roahrig is very familiar with, she  
16 did authenticate it and identify it. It's part of  
17 the city's routine approval of construction plans.

18 And the main relevancy of the document is  
19 page 3 where, you know, even though we don't have the  
20 computations, it's very clear that after they were  
21 submitted the city noted that they've been --  
22 computations have been submitted indicating  
23 compliance with state and local code, and  
24 Mrs. Roahrig did identify M-1004 as the Ohio  
25 Mechanical Code in effect in 1996.

1 HEARING EXAMINER: Mr. Stemm.

2 MR. STEMM: I would only add that this is  
3 a record of Cameron Creek. This is not a city  
4 record. This response was done by Cameron Creek's  
5 agent. And if it was received by the city, you know,  
6 that's Mr. Hart's testimony perhaps, but the bottom  
7 line is this is not something that is  
8 self-authenticating from the city's files. This is a  
9 response provided by Cameron Creek and maintained in  
10 their possession.

11 MR. HART: Examiner.

12 HEARING EXAMINER: No, I don't need any  
13 further arguments.

14 With regard to pages 1 through 7, I'm  
15 going to deny the motion to strike but I'm going to  
16 recognize that this document really was not  
17 authenticated. It is a document that was provided by  
18 the complainant, and the witness stated that that is  
19 the process that is entered into which is an addendum  
20 to say what the problems are with any given site.  
21 So, I mean, she testified as to what it is, but she  
22 can't testify as to the truth therein because this is  
23 not her document.

24 So it is good for the purpose of the  
25 process, but not necessarily -- and not for the truth

1 of the matter therein.

2 Now let's turn to page -- I'm not sure  
3 what pages 8 through 11 are, but why don't we turn to  
4 those, Mr. Stemm.

5 MR. STEMM: I share that confusion  
6 because my motion to strike is based on the fact  
7 that, first of all, there was no testimony at all  
8 about what we've marked as now pages 8 through 11 of  
9 Cameron Creek Exhibit 25, and so the witness has done  
10 nothing at all to lead to the introduction of these  
11 pages.

12 And just on the face of the pages one can  
13 see that these are about structures and buildings  
14 that have nothing at all to do with the residential  
15 units. We're talking about the first page is just a  
16 commentary from a code showing some office and  
17 auditorium configurations, and then the next three  
18 pages, the mail kiosk, a detail about the mail kiosk,  
19 and then page 11, the revised toilet room plan for  
20 what appears to be in some kind of community room or  
21 whatever we can -- I'm only presuming it has nothing  
22 to do with the residential unit because I've seen the  
23 residential units and they do not each have a men's  
24 toilet room and a women's toilet room in each  
25 apartment. It looks more like a public facility.



1           So we have heard nothing at all in the  
2 record that would support the introduction of pages 8  
3 through 11 of this document.

4           HEARING EXAMINER: Mr. Hart.

5           MR. HART: They're just additional pages  
6 that were with the same narrative that went into the  
7 city for approval. The BOCA code was -- the BOCA  
8 code commentary, and I'm just guessing frankly, the  
9 BOCA code was the precursor to what Ohio used before  
10 it adopted the Ohio Mechanical Code, so a lot of  
11 guidance at that time came from that precursor code.

12           HEARING EXAMINER: So the purpose of  
13 pages 8 through 11 really was to complete the  
14 document. They were attachments to the addendum or  
15 part of that document.

16           MR. HART: Yes. They were just with the  
17 document, correct.

18           HEARING EXAMINER: I'm going to grant the  
19 motion to strike. It doesn't appear as if there's  
20 any purpose for them in this hearing and so I'm going  
21 to grant the motion to strike for pages 8 through 11.

22           Is there anything further, Mr. Stemm?

23           MR. STEMM: No, that would be all for the  
24 motions to strike.

25           HEARING EXAMINER: Okay.

1 MR. STEMM: Thank you for allowing that.

2 Q. (By Mr. Stemm) Good morning again,  
3 Miss Roahrig.

4 A. Good morning.

5 Q. I apologize for that additional delay, we  
6 needed that clarification so I knew what questions  
7 that I should ask you.

8 A. Okay.

9 Q. Do you have a copy of the black binder?

10 A. Yes, sir.

11 Q. Could you turn to tab 25 which is the  
12 document we were just discussing, it's got a sticker  
13 that says "CCA 25" on it at the bottom. You remember  
14 testifying about this document yesterday?

15 A. Yes.

16 Q. If you could turn to page 3 for me of  
17 CCA 25. And I think you recall testifying that you  
18 see under "HVAC is not approved," it says,  
19 "Combustion air is required into each furnace room in  
20 accordance with M-1004 OBBC."

21 A. Yes.

22 Q. Do you see that?

23 A. Yes.

24 Q. And then if you turn to tab 26 which  
25 follows this document, there's an excerpt from the

1 OBBC Mechanical Code chapter 10 on combustion air.

2 Do you see that?

3 A. Yes.

4 Q. And down near the bottom you see there's  
5 a section M-1004 standard on outdoor air?

6 A. Yes.

7 Q. Is that the standard that you believe is  
8 referenced in this Exhibit 25 of page 3?

9 A. It is an addendum the plans examiner did  
10 question that they had to be in accordance with the  
11 M-1004, and that's why the engineer responded back  
12 with the computations that were submitted and the  
13 plans examiner approved. This is just an addendum to  
14 the plan approval.

15 Q. All right. I understand that. If you  
16 look at Exhibit 26, which is the code provision, just  
17 above the outdoor air provision do you see the one  
18 that says "Inside Air"?

19 A. Yes.

20 Q. And I'm just trying to -- I want you to  
21 educate me a little bit here.

22 A. Okay.

23 Q. There's an inside air provision and then  
24 the outdoor air provision; let's go back to that.  
25 The first sentence of the outdoor air provision says,

1 "Where the space in which fuel-burning appliances are  
2 located does not meet the criteria for indoor air as  
3 specified in Section M-1003," right?

4 A. Correct.

5 Q. So based on what your interpretation of  
6 Exhibit 25, page 3 is, is that because Cameron Creek  
7 had to comply with M-1004, that meant that they could  
8 not satisfy the combustion air standard without  
9 bringing in air from the outdoors?

10 A. That's not the way I understand it. It  
11 wasn't clear on the original plan submittal so the  
12 plans examiner submitted that. And as I stated  
13 earlier, there is various ways to meet that section  
14 of the code of combustion air. If you look in all  
15 your codes and your standards, such as NFPA, you'll  
16 notice in there that there is engineered  
17 installations to meet the equivalency, so there's  
18 various ways that they can meet the intent of the  
19 code without adhering to the strict letter by letter.

20 Q. Okay. And I appreciate that. In this  
21 case, though, based on what you read in the addendum,  
22 the response to the addendum at page 3, Exhibit 25,  
23 combustion air is required in accordance with M-1004.  
24 Is that what this says?

25 A. That's what the plans examiner notated to

1 get a response back from the engineer.

2 Q. Okay. And if you look at the standard  
3 1004, that applies for spaces in which the fuel  
4 appliances are located that do not meet the indoor  
5 air standard, correct?

6 A. That's correct, but it also isn't the  
7 full code. The full set of code. There's other  
8 sections that would apply to the combustion air and  
9 not just chapter 10.

10 Q. Okay. So based on the limited documents  
11 that we've seen here together is it fair to say that  
12 you really don't know how Cameron Creek complied with  
13 the combustion air standard just on the face of these  
14 documents without seeing the computations and the  
15 engineering response and the like?

16 A. Again, I'm not a plans examiner. We  
17 follow the approved plans when we was on the job  
18 site, and based on the different chapters within the  
19 codes when I was out there, that's what it was based  
20 on.

21 Q. Okay. But based on the documents in  
22 front of you, do these documents tell us exactly how  
23 Cameron Creek satisfied the inspector, who was  
24 someone other than yourself perhaps back in 1997,  
25 that the combustion air computations were adequate

1 and that combustion air standards were met?

2 A. I cannot tell that from this document.

3 Q. Okay.

4 A. Just that they were provided and  
5 satisfied by the plans examiner.

6 Q. Thank you.

7 Now, if you turn to Exhibit 26, which is  
8 the standard we were looking at for outdoor air, and  
9 you've testified that you're familiar with this  
10 standard, correct?

11 A. Yes.

12 Q. It indicates that, at point 1 of 1004,  
13 that "Where the space in which fuel-burning  
14 appliances is located does not meet the criteria for  
15 indoor air as specified in 1003, the room shall have  
16 two openings to the outdoors." Is that what it says?

17 A. Yes, it is.

18 Q. Okay. When you were at Cameron Creek,  
19 did you inspect to locate two openings to the  
20 outdoors in each of the gas appliance closets?

21 A. No.

22 Q. And do you know if they have two openings  
23 to the outdoors?

24 A. No, they do not.

25 Q. Now, you were asked a question yesterday

1 by Mr. Hart, he asked you whether -- he said "What  
2 did the code say about using one common vent to  
3 exhaust multiple dwelling units?" Do you remember  
4 that question?

5 A. Yes.

6 Q. And you asked, "Are you talking about the  
7 vent itself, the gas vent, or the combustion air?"  
8 And he said he's asking about the exhaust vent, a B  
9 vent.

10 A. Uh-huh.

11 Q. Do you remember that?

12 A. Yes.

13 Q. And at the time we were talking about the  
14 code that applied at Cameron Creek, correct?

15 A. Yes.

16 Q. Now, I think you told him, and correct me  
17 if I'm wrong, that you could use a multistory vent,  
18 but there are stipulations there for that.  
19 Restrictions. Correct?

20 A. Yes.

21 Q. And you said, for example, there had to  
22 be a separate enclosure with access to the outside.  
23 Do you recall that?

24 A. Yes.

25 Q. Now, have you inspected Cameron Creek to

1 determine whether they have a multiunit, multistory  
2 vent for their gas?

3 A. They do.

4 Q. They do. And are the gas appliances  
5 located in a separate enclosure apart from the  
6 habitable space?

7 A. They're located in a separate enclosure.

8 Q. And do they rely entirely on outside air?

9 A. Rely entirely on outside air?

10 Q. Yes.

11 A. You mean outdoor combustion air, the  
12 outside air coming in?

13 Q. Right.

14 A. No.

15 Q. Now, you mentioned that you also need  
16 door sweeps and self-closing doors; is that correct?

17 A. Under current codes, yes.

18 Q. I thought you were talking about the  
19 earlier code when you gave that answer.

20 A. No; that's under the current code.

21 Q. Okay. Thank you for that clarification.  
22 Pardon me for just one moment.

23 MR. STEMM: May I approach the witness?

24 HEARING EXAMINER: Yes.

25 MR. STEMM: I would like to have marked



1 Columbia Gas of Ohio Exhibit 3.

2 HEARING EXAMINER: The document will be  
3 so marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. Ms. Roahrig, take a second to look at  
6 that two-page excerpt, and I'll state for the record  
7 that these are two pages from a code that I believe  
8 you are familiar with, but you tell me if you are  
9 familiar with it or not.

10 A. Yes, I am.

11 Q. Okay. Thank you. And do you agree that  
12 these provisions appear to be from the 1998 Ohio  
13 Mechanical Code?

14 A. Yes.

15 Q. Do you see section 303.2 there talking  
16 about hazardous locations?

17 A. Yes.

18 Q. "Equipment shall not be located in a  
19 hazardous location unless listed and approved for  
20 specific installation." Do you see that?

21 A. Yes.

22 Q. And then the next section, Prohibited  
23 locations.

24 A. Yes.

25 Q. Are you familiar with that standard?

1           A.    Yes, I am.

2           Q.    Are you knowledgeable as to the safety  
3 reasons why the Ohio Mechanical Code -- and the city  
4 follows the Ohio Mechanical Code, correct?

5           A.    Yes.

6           Q.    Are you aware of why the city, what  
7 safety reasons are important in enforcing standard  
8 303.3?

9           A.    Yes, I am.

10          Q.    Could you give me some explanation for  
11 that?

12          A.    Well, for sleepings rooms they --  
13 sleeping rooms, it could deplete the oxygen if it  
14 doesn't have enough combustion air provided. For  
15 bathrooms and toilet rooms they don't want it just  
16 open into -- set into that type of environment  
17 without it being completely enclosed. Same way with  
18 storage closets. And surgical rooms for the same  
19 reason as sleeping rooms.

20          Q.    And why is that? Why don't we want that  
21 to happen?

22          A.    They just don't want a fuel-burning  
23 appliance located in that area without being enclosed  
24 or, like I said earlier, because of the possible --  
25 the effect that the appliance could have on the space

1 when it's a sleeping area.

2 Q. Okay. Just so I understand, what is the  
3 safety concern behind this rule?

4 A. Is the oxygen within the space.

5 Q. Is that a health hazard?

6 A. It could be, yes.

7 Q. And the rule we're talking about  
8 indicates "Fuel-fired appliances shall not be located  
9 in, or obtain combustion air from, any of the  
10 following rooms or spaces," and it lists the rooms  
11 that you listed, correct?

12 A. Under Exceptions -- well, yes, it does  
13 list prohibited locations.

14 Q. Okay. Now, the depletion of oxygen, you  
15 said. Is there any carbon monoxide issue there in  
16 terms of locating gas-fired appliances in a bathroom  
17 or a closet?

18 A. Depends on the volume and, again, what  
19 type of by-products there could be. I can't testify  
20 that there will be.

21 Q. Right. It's possible there could be a  
22 carbon monoxide exposure, correct?

23 A. Yes.

24 Q. If this standard is not followed.

25 A. This particular section? Again, there's

1 several sections to the code and there's other means  
2 besides just prohibited locations.

3 Q. Okay. But this standard, would you agree  
4 with me, does explicitly prohibit gas-fired  
5 appliances from being located in these spaces unless  
6 you meet one of these exceptions which the rule then  
7 goes on to give you?

8 A. Well, not the standard, but this code  
9 reference number within this code.

10 Q. Okay. This code indicates that you can  
11 have direct-vent appliances that obtain all  
12 combustion air directly from outdoors, correct?

13 A. Yes.

14 Q. And if so, then you can put it in a  
15 bathroom closet, correct?

16 A. Yes.

17 Q. I think you also said the enclosure had  
18 to be separated. Were you talking about the weather  
19 strip and the self-closing device on the door?

20 A. Yes.

21 Q. And that's also referenced in this  
22 standard?

23 A. 1998. Under that code section number.

24 Q. Okay. But do you agree that, you know,  
25 as of 1998 that this is an important safety standard

1 to be followed?

2 A. It's within the code, yes.

3 Q. If you turn to the second page of  
4 Columbia Gas Exhibit 3, and that's page 46 from the  
5 1998 Ohio Mechanical Code, do you recognize that as  
6 well?

7 A. Yes, I do.

8 Q. And if you would look at section 801.20.

9 A. Yes.

10 Q. Are you familiar with that standard?

11 A. 1998 standard, yes.

12 Q. Okay. And what are the safety reasons  
13 behind that standard, if you know?

14 A. On the 801.20, I can't testify to the  
15 safety reasons of that other than maybe -- and it's  
16 only a maybe -- if the flue gas would spill. But  
17 again, this is a 1998 edition, it wasn't like that in  
18 1995, and I believe it's changed again in the current  
19 edition.

20 MR. STEMM: I would strike the last part  
21 of the answer as nonresponsive.

22 HEARING EXAMINER: Motion denied.

23 MR. STEMM: Okay.

24 Q. I understand this is from the '98 code.  
25 I'm simply trying to understand, and I think you've

1 answered that you don't -- you are not aware of the  
2 safety reasons behind this multistory prohibited  
3 standard; is that your testimony?

4 A. Yes.

5 Q. Okay. If a common venting system became  
6 clogged or blocked and it was connected with more  
7 than one unit, could that pose a safety problem, in  
8 your mind?

9 A. Depends on the type of appliance because  
10 your appliances have safety devices on them.

11 Q. Okay. Well, can you think of any type of  
12 appliance where that would pose a concern for you,  
13 whether it was a hot water heater or gas furnace?

14 A. Could be a boiler. There's several types  
15 of appliances.

16 Q. And for some appliances if the vent  
17 becomes blocked, you have a serious safety hazard,  
18 don't you?

19 A. Yeah, that and depending on the occupancy  
20 and where it's located.

21 Q. Okay. Now, you were talking about the  
22 prohibited location rule we were just discussing on  
23 page 1 of Columbia Gas Exhibit 3 and you talked about  
24 the depletion of oxygen that could occur in a  
25 bathroom or a sleeping room. Do you recall that

1 testimony?

2 A. In a sleeping room, yes.

3 Q. Do you know why it's important not to  
4 install fuel-fired appliances in bathrooms or  
5 bathroom closets?

6 A. Just the smaller area, they don't want  
7 them open to that area because of the volume of the  
8 space, and also because when -- the exhaust fan that  
9 could be located in that restroom.

10 Q. And if the appliance did have some kind  
11 of a maintenance or malfunction problem or if the  
12 exhaust vent became clogged and there was incomplete  
13 combustion or incomplete venting, could that post a  
14 serious safety hazard for the bathroom occupant?

15 A. If there was incomplete combustion, yes.

16 Q. And one way to avoid that risk is to make  
17 sure the bathroom closet is completely sealed off  
18 with a solid weather-stripped door and self-closing  
19 device and use outside air, correct?

20 A. Based on the 1998 code.

21 Q. Right. But regardless of what year it  
22 is, that is a solution to avoid that serious safety  
23 hazard you just mentioned.

24 A. It depends on the year. I can't say, you  
25 know, no matter what the year because the 1998 code

1 wasn't in effect in '95.

2 Q. Right. And I'm not asking you to enforce  
3 it in any particular -- I'm just talking about the  
4 rationale behind it.

5 A. Codes are constantly changing so  
6 appliances, everything, technology.

7 Q. Okay. All I asked is when you describe  
8 what could happen in the bathroom setting, would you  
9 agree that that would not be a risk if the  
10 appliance -- combustion air is taken from outdoors  
11 and the enclosure is equipped with a solid  
12 weather-stripped door and self-closing device.

13 A. It could still be a risk.

14 Q. Okay. In terms of the bathroom being  
15 contaminated with carbon monoxide from incomplete  
16 combustion from the bathroom closet?

17 A. You just asked if I -- correct me if I'm  
18 wrong, but his question was it couldn't be a risk if  
19 the combustion air was taken from the outside and had  
20 weather-stripped doors, correct?

21 Q. Yes.

22 A. Anything could be a risk if it's not  
23 maintained.

24 Q. Okay. The risk I was specifically  
25 focusing on, though, is the risk of the by-products



1 of incomplete combustion from a bathroom closet  
2 entering the bathroom.

3 A. If there was no combustion air at all,  
4 means to provide the combustion air, it could be.

5 Q. Okay. We talked about if there's  
6 incomplete combustion for whatever reason, I guess  
7 what I'm asking you, if I'm confusing, please let me  
8 know, once you use solid weather stripping and a  
9 self-closing device on the bathroom closet and take  
10 all the combustion air from the outside, then you no  
11 longer have the risk of carbon monoxide leaving the  
12 closet and entering the bathroom, correct?

13 A. As long as the systems are maintained.  
14 If the weather stripping -- they don't destroy any of  
15 that envelope.

16 Q. You need good weather stripping, right?

17 A. Currently, yes.

18 Q. Okay.

19 MR. STEMM: Pardon me for a second.

20 Q. Ms. Roahrig, flipping again to Columbia  
21 Gas Exhibit 3 on the second page that we were talking  
22 a little bit about, the common venting system for  
23 appliances located on more than one floor level be  
24 prohibited, when you have more than one unit on  
25 different floors attached to the common venting

1 system -- and I'm not sure if you've already answered  
2 this, if you have, tell me -- if that vent would  
3 become clogged at some point, that would then pose a  
4 serious safety hazard to all the units that were  
5 connected to that common vent, correct?

6 A. It may.

7 Q. Let me -- I would like to turn to the  
8 letter that you provided to Cameron Creek which I  
9 believe was marked as Cameron Creek Apartments  
10 Exhibit No. 2. Do you remember testifying about that  
11 letter yesterday?

12 A. Yes.

13 Q. And I just want to understand exactly  
14 what you did that led to this letter so let me ask  
15 you this: In the first paragraph, I believe you  
16 mentioned this yesterday, that you responded to  
17 Starner Heating and Cooling's request to come out,  
18 correct?

19 A. Yes.

20 Q. And Starner was concerned with whether  
21 there was sufficient combustion air; is that correct?

22 A. No.

23 Q. Okay. Please correct me.

24 A. Starner's wanted to know how to get  
25 combustion air brought into a unit. They weren't

1 concerned with it. They were asking how to bring  
2 combustion air in.

3 Q. Okay. And did you have any information  
4 from them about what prompted them to want to bring  
5 additional combustion air in if they did have a  
6 concern about whether there was enough?

7 A. No.

8 Q. Okay.

9 A. I didn't ask why they -- they questioned  
10 based on codes how to bring combustion air in.

11 Q. Okay. So you just assumed for whatever  
12 reason, whether they needed it or not, they wanted to  
13 do it and they wanted to know how to do it; is that  
14 accurate?

15 A. They didn't say they wanted to, they were  
16 just questioning on how to bring combustion air in.

17 Q. Okay. I understand. And that was your  
18 sole focus when you were out there was to look at the  
19 steps it would take to bring in outdoor combustion  
20 air; is that correct?

21 A. Yes.

22 Q. Now, in terms of the second paragraph of  
23 your letter where you indicated that to your  
24 knowledge, you see in the middle of the paragraph  
25 there, you say to your knowledge -- "To my knowledge

1 there is no evidence or record that a serious safety  
2 issue has occurred" --

3 A. Yes.

4 Q. -- "or is probable with the existing  
5 conditions." Now, I understand you looked at some  
6 mechanical equipment according to this letter, and it  
7 appeared to you to be in good condition, correct?

8 A. Yes; it was maintained.

9 Q. And approximately how many units did you  
10 inspect while you were there?

11 A. I was in a unit with the two gentlemen  
12 from Cameron Creek and with Starner's.

13 Q. Did you say "a" unit or "eight" units?

14 A. A unit. One.

15 Q. One unit? Okay.

16 And you indicated that you didn't see any  
17 alteration of the structure that would trigger any  
18 kind of duty to upgrade the current code, correct?

19 A. I didn't say "structure." I didn't see  
20 any alteration to the equipment.

21 Q. Okay. I stand corrected. So based on  
22 the equipment appearing to be in good condition to  
23 you in that one unit and the fact that you didn't see  
24 any alteration in the mechanical systems in that one  
25 unit, you didn't have any information to suggest that

1 there might be any serious safety issue present at  
2 Cameron Creek; is that fair to say?

3 A. Repeat the question, please.

4 Q. Sure. I'm just trying to --

5 A. That's fine.

6 Q. -- go through your letter, but I'm glad  
7 you asked me to do that. I'll be happy to do that.

8 In your second paragraph of the letter  
9 there you talk about mechanical equipment appeared to  
10 be in good condition in the one unit you saw,  
11 correct?

12 A. Yes.

13 Q. And you knew from the original approval  
14 when the building permit had issued, correct?

15 A. No.

16 Q. Okay. Strike that. You knew that from  
17 your observation in the one unit you saw mechanical  
18 equipment that appeared to be in good condition,  
19 correct?

20 A. Yes.

21 Q. And you did not see any evidence that the  
22 mechanical systems had been altered from their  
23 original approval, correct?

24 A. Correct.

25 Q. And based on that you had no basis to

1 believe or conclude that there was a serious safety  
2 issue? Is that correct?

3 A. Based on what I seen when I was in the  
4 unit, that is correct, because I couldn't see where  
5 there was a safety issue based on the configuration  
6 of the unit, of the indoor air, and the mechanical  
7 furnace equipment room.

8 Q. Okay. Did you make calculations of the  
9 total volume for combustion air?

10 A. Yes, I went through calculations when I  
11 was there.

12 Q. And I think we agreed, that was the  
13 standard that you were focused on was the combustion  
14 air sufficiency, correct?

15 A. Yes.

16 Q. And that's a different standard than  
17 multistory, multiunit venting or bathroom closets and  
18 weather stripping and outside air, correct?

19 A. Yes.

20 Q. You were not asked to address those  
21 latter issues, were you?

22 A. No.

23 Q. One last question on the letter. In your  
24 first sentence there in the second paragraph you said  
25 that there was no evidence that the mechanical

1 systems or structure had been altered from original  
2 approval.

3 A. Right.

4 Q. I think that's why I asked you assuming  
5 you looked up the original approval. Did you look up  
6 the original approval to be able to determine that  
7 there hadn't been any alteration?

8 A. That's not standard procedure.

9 Q. Okay.

10 A. When we go into a lot of existing  
11 structures, basically it is existing and only can we  
12 have requirements done if they replace or alter a  
13 system or if there is a serious safety issue noted.

14 Q. My question is you didn't actually go  
15 back and look at the original approval documents  
16 before your visit, correct?

17 A. It's not required, no.

18 Q. I wasn't suggesting it was required, just  
19 factually you did not do it.

20 A. I just wanted to clarify it's an existing  
21 system after the original approval.

22 Q. Thank you.

23 Do you recall a question yesterday where  
24 you were asked about knowledge you would have in your  
25 position of carbon monoxide -- high carbon monoxide

1 incidents, would those have all been brought to your  
2 personal attention. And you said -- I believe you  
3 said "That's our procedure. Now, whether that would  
4 have been brought to my attention," and then you kind  
5 of trailed off. Was your point that you would expect  
6 to be informed but you can't guarantee that everyone  
7 follows procedure?

8 A. It may not have been directly brought to  
9 my attention. It was brought to the HVAC  
10 department's attention because we go out with the  
11 property maintenance code enforcement officer and  
12 confirm the high CO and then go take our normal  
13 procedures from there, but it doesn't have to be  
14 brought directly to my attention. There is myself  
15 and two field supervisors, so it could be brought to  
16 any one of us three.

17 Q. The two field supervisors, do they work  
18 under your supervision?

19 A. Yes, they do.

20 Q. And are you -- since 1996 you've been the  
21 mechanical inspection supervisor?

22 A. Yes.

23 Q. Do you have any counterparts?

24 A. What do you mean as counterparts?

25 Q. Are there any other mechanical inspection



1 supervisors?

2 A. There's two field supervisors that are --  
3 that I oversee along with the field inspectors.

4 Q. Okay. Do the field supervisors sometimes  
5 handle problems without reporting every detail to  
6 you?

7 A. I would hope so. Yes.

8 Q. Okay. So you don't always know what  
9 complaints they may receive and take care of.

10 A. No.

11 Q. There was some testimony about Cameron  
12 Creek Apartments having a four-inch duct that came in  
13 to provide some air into the return plenum.

14 A. Return air drop, yes.

15 Q. The return air drop. Do you recall that  
16 testimony?

17 A. Yes.

18 Q. If there was a common practice of that  
19 air duct being turned off or blocked at Cameron  
20 Creek, would you consider that a serious safety  
21 hazard?

22 A. If the fresh air outdoor air duct was  
23 removed or closed off, I would be concerned at that  
24 point.

25 Q. As a serious safety hazard?

1           A.    If both appliances were in operation.

2           Q.    Then yes?

3           A.    Well, there's other -- no, I can't say  
4 yes to that as a serious safety issue.

5           Q.    Are you familiar with the configuration  
6 of that four-inch so-called fresh air duct that comes  
7 into the return air drop at Cameron Creek?

8           A.    Yes.

9           Q.    Would you agree with me that that doesn't  
10 really supply combustion air to the furnace or the  
11 hot water heater in the bathroom closets? Does it?

12          A.    I'd have to redefine that for you. It  
13 doesn't supply directly, but it does provide for  
14 fresh air to be brought into the structure and the  
15 air changes based on ventilation and keeping fresh  
16 air within that space.

17          Q.    So in other words, the air ends up  
18 getting blown into the apartment and then the  
19 habitable space air ends up in the bathroom closet?

20          A.    No. It recirculates through your HVAC  
21 system, through your supply ducts, your supply and  
22 return. The fresh air brings fresh air into the  
23 unit, replaces some of the older air, and then it  
24 gets recirculated.

25          Q.    Okay. But in terms of you saw those air

1 transfer grills on the walls outside the --

2 A. That's the high/low indoor combustion  
3 air.

4 Q. Right. And that's bringing air into the  
5 closet for combustion, or allowing airflow into the  
6 closets, correct?

7 A. Yes. Not only for combustion, but also  
8 for the appliances.

9 Q. Okay. The fresh air duct allows some  
10 fresh air to be brought into the apartment which will  
11 then get mixed with whatever goes in through those  
12 air grills, correct?

13 A. Yes.

14 Q. And that's the indirect combustion air  
15 that you're talking about.

16 A. It's ventilation, mechanical ventilation  
17 for the HVAC system.

18 Q. Okay. We're getting close to the end.

19 A. That's fine.

20 Q. You've been very patient with us.

21 A. I'm okay. Are you?

22 Q. I'm hanging in there.

23 A. Good.

24 Q. You were asked yesterday about the number  
25 of buildings that were approved by the city for

1 building permits in the mid- to late-1990s. Do you  
2 remember those questions?

3 A. Yes.

4 Q. You indicated in terms of the number in  
5 which gas appliances were located in bathrooms or  
6 interior utility closets supplied with indoor  
7 combustion air similar to Cameron Creek, you said you  
8 really didn't have a number on that but you thought  
9 it was a common practice --

10 A. Yes.

11 Q. -- in the mid- to late-'90s.

12 Now I guess, first of all, have you  
13 conducted any type of study of that period of time to  
14 determine a basis for characterizing something as a  
15 common practice in apartment design?

16 A. No, I have done no study.

17 Q. All right.

18 A. Just what we common see on a day-to-day  
19 basis.

20 Q. Okay. Just kind of you're sitting here  
21 in 2009 and you're trying to think back to 1996 or  
22 '97, late-1990s, was there a sudden change where you  
23 suddenly did not see these gas appliances in  
24 bathrooms anymore?

25 A. We still seen them in bathrooms and

1 enclosures, but again, we had the weather stripping  
2 in place in the late-1990 -- if the codes were  
3 approved after that date, in the late-1990s/  
4 early-2000.

5 Q. Certainly the code we looked at today, I  
6 showed you just a sample code of the 1998 Mechanical  
7 Code.

8 A. Yes.

9 Q. And that certainly required the things  
10 you just mentioned in terms of the outside air --

11 A. It may have. Depends on when the plans  
12 were submitted. It could have been under 1998, been  
13 under the 1995 code. It depends on --

14 Q. I understand that.

15 A. Okay.

16 Q. Whatever was submitted after the  
17 effective date of the Ohio Mechanical Code effective  
18 in 1998 would have required all these additional  
19 things for the bathroom closets, right?

20 A. Unless they went with an engineered  
21 installation and, as I stated earlier. An engineered  
22 design and the plans examiner would approve that.

23 Q. And that would deal with the issue of  
24 total combustion air volume, correct?

25 A. I can't answer for the plans examiner.

1 Q. Okay.

2 A. And how the engineer designed that  
3 system. Could be on a case-by-case.

4 Q. Okay. Now, you had testified yesterday,  
5 were you asked about building approval back in the  
6 day of Cameron Creek, the 19- -- I think the final  
7 occupancy permit was in 1998 and the building permit  
8 was issued in 1997. Does that sound right?

9 A. Yes.

10 Q. Okay.

11 A. Well, the billing permit would have been  
12 issued prior to the occupancy.

13 Q. Right. And the document that we saw that  
14 was admitted into evidence showed January 29th,  
15 1997, I believe up in the corner. Mr. Cohen signing  
16 off on it.

17 A. Yes.

18 Q. Would that have been basically the date  
19 that the building permit was approved?

20 A. It was plan approval. Building permit  
21 might have been -- would have been issued after plan  
22 approval.

23 Q. Okay. But when you were asked questions  
24 about the buildings back then being approved, you  
25 said it would have been done according to the

1 approved plans and manufacturers' specifications; do  
2 you remember that?

3 A. Yes.

4 Q. So you do have to look at the approved  
5 plans done according to the code, but you also have  
6 to look at the manufacturers' specifications for  
7 installation of the gas appliances, correct?

8 A. Yes.

9 MR. STEMM: May I approach the witness?

10 HEARING EXAMINER: Yes.

11 MR. STEMM: I will ask this be marked as  
12 Columbia Gas of Ohio Exhibit 4.

13 HEARING EXAMINER: The document is so  
14 marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. I just want to ask you a general question  
17 about if you have familiarity with recognizing, in  
18 your past experience or knowledge, installations,  
19 start-up, operating instruction manuals for natural  
20 gas furnaces.

21 A. Yes, I do.

22 Q. And what I've marked as Columbia Gas  
23 Exhibit 4, would you agree with me that this is a,  
24 looks like a sample of an installation, start-up,  
25 operating instructions manual for a upflow gas-fired

1 induced-combustion furnace?

2 A. Yes.

3 Q. In fact, this applied to the 383KAV type  
4 of furnace according to the manual, correct?

5 A. Based on the first page.

6 Q. Okay. Now, I'll ask you, do you know  
7 what type of furnaces are actually used at Cameron  
8 Creek?

9 A. They were just central warm air furnaces.

10 Q. You're not sure of the brand name and the  
11 model number.

12 A. Didn't look at the brand name. Again,  
13 it's existing.

14 Q. This manual is a sample that happens to  
15 apply to the Bryant 383KAV series, and your testimony  
16 is that you do have to comply with manufacturers'  
17 specifications, right?

18 A. Yes.

19 Q. And if you would look at the bottom of  
20 page 1 of Columbia Gas Exhibit 4, could you read in  
21 the first column there -- there's a little arrow  
22 pointing to the paragraph at the bottom there. Do  
23 you see where it says "Follow all safety codes"?

24 A. Yes.

25 Q. Could you read that for me?



1           A.    "Follow all safety codes. In the United  
2 States, follow all safety codes including the  
3 National Fuel Gas Code No. 54 - 1992/ANSI Z223.1-1992  
4 and the Installation Standards, Warm Air Heating and  
5 Air Conditioning Systems (NFPA 90B) ANSI/NFPA 90B,"  
6 and then it goes on into Canada.

7           Q.    Okay. Do you see the date of this  
8 installation manual up in the right-hand corner says  
9 "5-96"?

10          A.    Yes.

11          Q.    Thank you. That's all I had on that.  
12                Have you seen other furnace installation  
13 manuals that indicate that safety codes should be  
14 followed such as this one?

15          A.    Yes, I have. But the code addresses that  
16 also.

17          Q.    Excuse me?

18          A.    The code addresses that also.

19          Q.    Okay. Let me ask you this, yesterday I  
20 believe you were asked --

21                HEARING EXAMINER: I'm sorry, Mr. Stemm.

22                When you say "the code addresses that  
23 also," what code are you referring to?

24                THE WITNESS: I'm referring to the Ohio  
25 Mechanical Code.

1 HEARING EXAMINER: Thank you.

2 Go ahead, Mr. Stemm.

3 MR. STEMM: Thank you. Bear with me for  
4 one minute here.

5 Q. For example, the Ohio Mechanical Code  
6 that we looked at, just the sample I gave you,  
7 Exhibit 3, talks about installation according to  
8 manufacturers' installation instructions; is that  
9 what you're referring to?

10 A. Well, I'm referring to that but also we  
11 can only reference a standard that's identified per  
12 the code, and 90A, then standards aren't referenced  
13 in the code. And also it talks about when there's  
14 conflicts between the manufacturers' specifications  
15 and the code requirements.

16 Q. And whatever the more restrictive, safest  
17 or restrictive requirements will apply, correct?

18 A. When they talk about the conflicts in  
19 code, yes, it would be the more restrictive.

20 Q. The more restrictive. What's going to  
21 promote the best safety; correct?

22 A. Again, you have to follow the approved  
23 plans also.

24 Q. Okay.

25 MR. STEMM: May I just have one moment?

1 HEARING EXAMINER: Yes.

2 MR. STEMM: No further questions. Thank  
3 you very much.

4 HEARING EXAMINER: Redirect, Mr. Hart?

5 MR. HART: Thank you, Examiner.

6 - - -

7 REDIRECT EXAMINATION

8 By Mr. Hart:

9 Q. Mrs. Roahrig, Mr. Stemm in his  
10 cross-examination asked you about how the manual that  
11 was entered in exhibit as COH-4 affects city  
12 approval, affects how the city approves gas  
13 appliances.

14 A. Yes.

15 Q. How does the Ohio Mechanical Code address  
16 the issue of manufacturers' manuals and guidelines?

17 A. The Ohio Mechanical Code requires that  
18 the appliances be listed and labeled and installed  
19 according to the conditions of that listing, so  
20 that's -- but there are sometimes occasions there  
21 could be conflicts. To give you an example, some  
22 manufacturers of furnaces require certain distances  
23 on the sides and back of the furnace to zero where  
24 the mechanical code would require further distances.  
25 But that's how the state looks at it: They have to

1 be listed and labeled. If they're not a listed and  
2 labeled appliance, then they have to go through the  
3 board for the approval process.

4 Q. So is it fair to say that a city  
5 department that's using the Ohio Mechanical Code to  
6 approve equipment would also consider those  
7 manufacturer guidelines? Is that a fair statement?

8 MR. STEMM: Objection to the leading  
9 nature of that question.

10 HEARING EXAMINER: Could you restate the  
11 question, Mr. Hart? Just restate the question.

12 Q. What are all the things that a city  
13 building department would consider when approving a  
14 gas appliance installation at an apartment building?

15 A. Well, any building. We, again, have to  
16 follow approved plans, we have to follow the  
17 manufacturers' specifications, again, how the  
18 equipment was listed and labeled. We can only follow  
19 any standards or reference based on how it is within  
20 the code pertaining to that issue.

21 As an inspector, if we find differences  
22 or issues, then we are to take it back to the plans  
23 examiner and the chief building official for the  
24 final determination.

25 Q. So those are the types of judgments a

1 city building department would make in approving a  
2 building?

3 A. The inspector, when they're out there  
4 again, they would have to use good judgment, and when  
5 they see issues of concern that vary from the  
6 approved set of plans, we are required to take it  
7 back to our chief building official.

8 Q. Mr. Stemm also asked you about common  
9 venting systems for multiple units and the potential  
10 for an exhaust vent, you know, a common venting  
11 system becoming blocked; do you remember that?

12 A. Yes.

13 Q. And I believe in response to that  
14 question you mentioned the issue of an appliance  
15 safety device.

16 A. Yes.

17 Q. What type of safety device, if any, would  
18 a furnace have to safeguard against a blocked exhaust  
19 vent?

20 A. There's a couple safety devices on the  
21 furnace. One, they have a pressure device that if it  
22 doesn't sense the pressure in the vent, it will shut  
23 the furnace down. It's got to maintain a certain  
24 pressure.

25 They also have a high-limit switch that's

1 contained in them to where the furnace gets over a  
2 certain temperature or overheats, it will shut the  
3 unit down. And also they have a flame safeguard. So  
4 if it's not sensing the right flame based on the  
5 primary air coming into the unit, the flame will cut  
6 in and out and, therefore, the unit will keep cycling  
7 on and off.

8 Q. And if I could go back to the first  
9 safety device you mentioned, I believe you said it  
10 was a sensor that sensed pressure in the vent?

11 A. Yes.

12 Q. Was that the exhaust vent?

13 A. Yes.

14 Q. So in that situation with that type of  
15 safety device, if an exhaust vent is blocked, what  
16 happens?

17 A. The switch would sense that there isn't  
18 enough pressure and the unit would not run. It would  
19 shut it down.

20 Q. Thank you.

21 Mr. Stemm also asked you about weather  
22 stripping and self-closing doors as requirements  
23 under the code. Were those requirements in effect in  
24 1996?

25 A. On the weather stripping?

1           Q.    And self-closing doors.  Or either; I'm  
2   sorry.

3           A.    I'd have to review the -- well, the 1996  
4   would have been based on the 1995 code.  I know the  
5   weather stripping may have been there, but I don't  
6   have memory of the self-closing door being in place.  
7   I apologize, but codes change constantly.

8           Q.    Sure.  No reason to apologize.  
9                 When the city -- when your department's  
10   considering which code's in effect, how do they make  
11   that determination?

12          A.    At the time of plan submittal.

13          Q.    So not at permitting or final occupancy  
14   but --

15          A.    It's at the time of plan submittal and it  
16   has to be according to the edition that the state  
17   mandated.

18          Q.    So is that initial plan submittal?

19          A.    Yes.

20          Q.    And when were the plans for Cameron Creek  
21   Apartments approved by the city?

22          A.    I have to look back at the plans  
23   approval, and you had an exhibit in here?  According  
24   to the stamp that was on these plans.

25          MR. HART:  I believe that is entered in

1 terms of the issue of time.

2 HEARING EXAMINER: Yes, it is.

3 Q. So if I may, I'd like to ask the witness  
4 to take a look at that cover sheet for the plans and  
5 see if you can find the approval date.

6 A. Based on this set of plans it was  
7 approved January 23rd, 1997. Based upon this  
8 sheet.

9 Q. And what code would have been in effect,  
10 the city or state code if you were using a state  
11 code, what code would have been in effect for that  
12 plan approval based on that '97 date?

13 A. The 1995 code.

14 Q. Would the 1998 Mechanical Code, the Ohio  
15 Mechanical Code, was that in effect?

16 A. No.

17 Q. When a code changes from one year to the  
18 next let's say, can a building department go -- or  
19 does a building department go back and apply the new  
20 code to the former approval?

21 A. No; we can't do that. Not again. Not  
22 unless there was an alteration or a change made.

23 Q. You also testified, I believe you used  
24 the phrase in your testimony in response to the  
25 question from Mr. Stemm, you referred to the NFPA,



1 correct?

2 A. Yes.

3 Q. What is that?

4 A. The NFPA, it's the National Fire  
5 Protection Agency.

6 Q. Does the NFPA have anything to do with  
7 the NFGC, the National Fuel Gas Code?

8 A. National?

9 Q. Yes, ma'am.

10 A. It's an NFPA document.

11 Q. So the National Fuel Gas Code is an NFPA  
12 document.

13 A. Yes; NFPA 54.

14 Q. In your position and based on your state  
15 license and your position as a regulator, do you  
16 regularly receive training updates on various codes?

17 A. Continuously. You have to maintain ten  
18 hours of continuing education every year and just I  
19 get -- I'm a member of ICC so I get updates on that,  
20 and also I maintain contact with industry.

21 Q. The industry meaning what?

22 A. The HVAC industry. Contractors  
23 associations.

24 Q. How about fire protection professionals,  
25 is that an example of the industry that you keep in

1 contact with?

2 A. We work with fire inspectors but I don't  
3 maintain contact with them, no.

4 Q. Okay. Do you receive regular training on  
5 the NFGC?

6 A. NFGC?

7 Q. Yes, ma'am.

8 A. No. It's the IFGC.

9 Q. And that is --

10 A. The international.

11 Q. -- the international.

12 Has the city ever -- city of Columbus  
13 ever adopted or enacted into its codes the National  
14 Fuel Gas Code?

15 A. Not to my knowledge.

16 Q. Do you think if the city had, in your  
17 role as a regulator that you would know that?

18 THE WITNESS: Were you --

19 MR. STEMM: I'm not going to object.

20 HEARING EXAMINER: You're fine. You can  
21 answer.

22 A. Repeat the question, please.

23 Q. If city council enacted into law in  
24 ordinance form the NFGC to regulate gas appliances in  
25 Columbus, Ohio, let me ask it this way, would it be

1 your job to enforce that code?

2 A. First of all, the city couldn't enact it.  
3 It would be in conflict with the state-mandated  
4 codes. They can't do that, so I don't know.

5 Q. Why would it be a conflict?

6 A. We're a certified building department.  
7 All certified building departments have to follow  
8 what is mandated by the state of Ohio; they can't be  
9 in conflict.

10 Q. So your regulatory and enforcement job  
11 with the city is based on what the state of Ohio  
12 adopts as its code; is that your testimony?

13 A. Yes.

14 Q. And what code is that?

15 A. It's the Ohio Building Code, Ohio  
16 Mechanical Code, and Ohio Plumbing Code, them's the  
17 codes, the rest is standards.

18 Q. And what were those codes in 1995 or in  
19 '96?

20 A. Same, the Ohio Building, Ohio Mechanical,  
21 Ohio Plumbing.

22 Q. Has the state ever adopted the National  
23 Fuel Gas Code?

24 A. You'd have to ask the state, but not to  
25 my knowledge, no.

1           Q.    But if the state did adopt it, you would  
2 enforce it.

3           A.    I'd have to.

4           Q.    In his questioning Mr. Stemm also asked  
5 you about, I believe about regulatory steps that it  
6 would take to bring outside air into an apartment  
7 with a -- that's configured like Cameron Creek with  
8 an interior utility closet where the gas appliances  
9 are located; is that correct?

10          A.    Well, he asked -- he asked about my  
11 meeting when I went out there, on what the purpose of  
12 my meeting was, and that's what we went over was the  
13 purpose of the meeting.

14          Q.    So at the meeting you talked about steps  
15 necessary to add that outdoor air vent?

16          A.    Yeah. I just talked about the  
17 requirements if it's based on code, on the combustion  
18 air requirements and how to obtain that.

19          Q.    Can you tell us what those steps would be  
20 from a regulatory standpoint?

21               MR. STEMM:  Objection; it exceeds the  
22 scope of my cross-examination.  Now, the witness  
23 herself identified that fact.  I did not ask her  
24 anything about what the steps were, and I did not  
25 solicit any explanation, and I didn't question or

1 argue about them. He is now supplementing and is  
2 going down the scope of cross.

3 HEARING EXAMINER: Mr. Hart, do you have  
4 a response?

5 MR. HART: Well, can I give a  
6 hypothetical?

7 MR. STEMM: It's on the same topic.

8 HEARING EXAMINER: Yeah; I'm not sure.  
9 You can try to give a hypothetical, we'll see where  
10 that goes.

11 MR. HART: I think it's very important, I  
12 will say, this hypothetical.

13 HEARING EXAMINER: This is redirect; just  
14 keep that in mind.

15 MR. HART: Yes, Examiner.

16 Q. (By Mr. Hart) If an older building was  
17 required by your department to add combustion air,  
18 the addition of additional outside combustion air,  
19 what steps would be necessary?

20 MR. STEMM: Objection. Same objection  
21 basis. Exceeds the scope. Redirect is supposed to,  
22 as the Hearing Examiner understands, is limited to  
23 the scope of cross.

24 MR. HART: I think Mr. Stemm did ask  
25 about the addition of combustion air into these

1 units, into units in general. I think he asked the  
2 same question. And it's a -- it's also a key matter  
3 in this case, what would it take.

4 HEARING EXAMINER: Mr. Stemm.

5 MR. STEMM: The witness and I agree that  
6 I did not ask that question. I simply said that was  
7 the purpose of your meeting, to discuss combustion  
8 air, but I never asked anything about what steps  
9 would or would not be required. Not one single  
10 question about that. That's something perhaps he  
11 could have asked her about on his direct, but now  
12 he's trying to supplement his direct on redirect and  
13 we'd just object to that or this hearing will just  
14 continue on indefinitely.

15 MR. HART: Well, if I could.

16 HEARING EXAMINER: Yes, Mr. Hart.

17 MR. HART: Thank you. Mr. Stemm opened  
18 the door. He asked about this. This is a critical  
19 element to this case, and this witness is an expert  
20 regulator who knows what those steps would be. I'm  
21 asking about it now because Mr. Stemm asked about it.

22 HEARING EXAMINER: I'll allow one  
23 question and then I'll allow Mr. Stemm to, obviously,  
24 recross on the issue. But one question.

25 MR. HART: Thank you.

1                   Can the reporter read the last -- can I  
2 see if that's the right question first before I --

3                   (Record read.)

4           Q.    Thank you, that is my question.

5           A.    If an existing building was required to  
6 add combustion air, first they'd have to go back  
7 through the plan approval process because of the  
8 alteration made to the existing structure. The  
9 concerns with that would be based on the occupancy of  
10 the building, the work that's being done and how it  
11 affects the overall structure of that building.

12                   As I explained in my letter, I explained  
13 that. The reasoning why and what steps would have to  
14 be taken, I stated in my letter that they would have  
15 to go back through the permit and inspection approval  
16 process based on any changes, additions, or  
17 alterations that were made to an existing system.

18           Q.    Thank you. Mrs. Roahrig, what are the  
19 purposes of building codes, purpose or purposes, in  
20 your view?

21                   MR. STEMM: We would object to the extent  
22 it calls for a legal conclusion, but the witness can  
23 give her impression.

24                   HEARING EXAMINER: Yes, you can give your  
25 impression.

1 THE WITNESS: I can give it?

2 HEARING EXAMINER: Yeah, just be sure  
3 that you don't try to make a legal statement here and  
4 you'll be fine.

5 A. To protect public health, safety, and  
6 welfare.

7 MR. HART: Does she need a break?

8 THE WITNESS: No.

9 MR. HART: I'm going to give you one  
10 because I'm done.

11 HEARING EXAMINER: Are you?

12 MR. HART: Yes, ma'am, Examiner.

13 HEARING EXAMINER: Mr. Stemm.

14 MR. STEMM: Just a couple quick  
15 questions.

16 - - -

17 RECROSS-EXAMINATION

18 By Mr. Stemm:

19 Q. You, in response to Mr. Hart's question  
20 about safety devices that may or may not be in gas  
21 appliances when you have a clogged vent -- do you  
22 remember that testimony?

23 A. Yes.

24 Q. First of all, did you inventory all the  
25 appliances at Cameron Creek while you were there to



1 determine what type of safety devices they may or may  
2 not have on them?

3 A. Not on -- no, I did not do an inventory.

4 Q. So you don't know what the situation is  
5 at Cameron Creek with respect to the safety devices,  
6 correct?

7 A. The furnaces are manufactured that way,  
8 but no, you're correct, I didn't do an inventory.

9 Q. Okay. And how about the hot water  
10 heaters?

11 A. What about the hot water heater?

12 Q. Did the hot water heaters, to your  
13 knowledge, at Cameron Creek have any safety devices  
14 that would activate in case of a flue blockage?

15 A. Not because of a flue blockage, not on a  
16 hot water tank.

17 Q. Thank you.

18 Now in terms of the furnace issue apart  
19 from the hot water heater issue, isn't it true that  
20 the pressure switch on the furnace would only  
21 activate if the vent is completely blocked?

22 A. It could be partially blocked. If  
23 there's a blockage from animals or debris, may not  
24 have the pressure and it would sense the pressure and  
25 shut down.

1 Q. I guess what I'm getting at --

2 A. As long as it's not functioning  
3 correctly.

4 Q. But in our case we have hot water heaters  
5 next to the furnaces in these closets, correct?

6 A. Yes.

7 Q. And they have an open draft hood on them,  
8 right?

9 A. Yes, they do.

10 Q. So even if the common vent is clogged,  
11 the pressure switch would never see the blockage as  
12 the products of the combustion would be just spilling  
13 out of the water heater, correct.

14 A. Repeat the question.

15 Q. Okay. In the case of Cameron Creek, the  
16 water heater has an open draft hood, correct?

17 A. Yes.

18 Q. So even if the common vent is clogged,  
19 the pressure switch on the furnace would never  
20 actually see or detect the vent blockage because the  
21 products of combustion would be spilling out of the  
22 water heater. Is that possible?

23 A. That would be possible.

24 Q. Okay. Now, you talked about the  
25 International Fuel Gas Code. Are you familiar with

1 all the similarities between the International and  
2 the National Fuel Gas Code?

3 A. They're basically written the same, yes.

4 Q. Okay. Now, you were asked about whether  
5 you understood the National Fuel Gas Code to be an  
6 NFPA publication and I think you said it was,  
7 correct?

8 A. Yes.

9 Q. But it's not actually written by National  
10 Fire Prevention Association employees, is it?

11 A. I can't tell you who writes the National  
12 Fuel Gas Code.

13 Q. Are you aware that it too, like the  
14 International, has a technical committee that's  
15 composed of a wide range of professionals and  
16 experts?

17 A. They have a committee, I do know that.

18 Q. Okay. And like the International, that  
19 committee promulgates and periodically reviews  
20 standards?

21 A. I can't speak to that. I don't know how  
22 the committee operates for the National Fuel Gas  
23 Code.

24 Q. Okay. Fair enough.

25 MR. STEMM: At this time we've completed

1 our cross-examination and we would move for the  
2 admission of Columbia Gas Exhibits 3 and 4.

3 HEARING EXAMINER: Mr. Hart, Mr. Stemm  
4 has completed his recross and is moving for admission  
5 of Exhibits 3 and 4.

6 MR. HART: I have no objection to that.

7 HEARING EXAMINER: Those documents will  
8 be admitted into the record.

9 (EXHIBITS ADMITTED INTO EVIDENCE.)

10 HEARING EXAMINER: Now, Mr. Hart.

11 MR. HART: Do I need to move my documents  
12 also?

13 HEARING EXAMINER: Yes, you do. Yes, I  
14 ruled on motions to strike --

15 MR. HART: I understand.

16 HEARING EXAMINER: -- but I didn't rule  
17 on the admissibility of the documents. That was for  
18 purposes of cross-examination.

19 MR. HART: Thank you. I'll move what's  
20 been marked CCA 25, the narrative portion, subject to  
21 and consistent with your ruling on the motion to  
22 strike. And then I think the front of the plan  
23 approval was also, because they're both together,  
24 those two documents, correct?

25 HEARING EXAMINER: Twenty-five is a big

1 document and I ruled on the pages page by page; is  
2 that what you're referring to?

3 MR. HART: Yes, ma'am.

4 HEARING EXAMINER: So my motions to  
5 strike on the pages with regard specifically to this  
6 witness stands.

7 MR. HART: Yes.

8 HEARING EXAMINER: So the admission of  
9 this document, CCA 25, will be subject to my granting  
10 or denying of the motions to strike.

11 MR. HART: Yes, that's what I was trying  
12 to say.

13 HEARING EXAMINER: Okay. Okay.

14 Mr. Stemm, do you have objections?

15 MR. STEMM: No, your Honor.

16 HEARING EXAMINER: CCA 25 will be  
17 admitted onto the record subject to the motions to  
18 strike, the rulings.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 HEARING EXAMINER: Twenty-six?

21 MR. HART: Yes, I also want to move to  
22 enter CCA 26 on the record at this hearing.

23 HEARING EXAMINER: Mr. Stemm.

24 MR. STEMM: We would have no objection to  
25 CCA 26.

1           MR. HART: I think you ruled on  
2 everything else.

3           HEARING EXAMINER: No, I have not ruled  
4 on -- I just ruled on motions to strike.

5           MR. HART: Okay.

6           HEARING EXAMINER: Well, if I strike  
7 them, then we don't have to rule admission of them,  
8 but I do have a question on CCA 26.

9           MR. HART: Twenty-six?

10          HEARING EXAMINER: I don't believe you  
11 addressed page 2 and I don't know what page 2 is.

12          MR. STEMM: That is true, we would move  
13 to strike that page. Thank you. She just talked  
14 about page 1.

15          MR. HART: Well, it's the administrative  
16 code section that provides the authority to enact --  
17 state authority to enact chapter 10, which is the  
18 cover exhibit. So --

19          HEARING EXAMINER: And where specifically  
20 on page 2 are you referring to?

21          MR. HART: It would be 4101:2-1-04,  
22 Authority to Adopt. All it is is an administrative  
23 code section showing that the Board of Building  
24 Standards has the authority to adopt the Ohio  
25 Mechanical Code and did back then.

1 HEARING EXAMINER: Mr. Stemm.

2 MR. STEMM: You know, they can cite that  
3 regulation in their brief. This witness did not at  
4 all talk about it or explain it. I think the  
5 appropriate -- we have no objection to them citing  
6 administrative code provisions in their brief and  
7 discussing them from a lawyer's view, but with this  
8 witness I don't think that's appropriate to have that  
9 page into evidence.

10 HEARING EXAMINER: I'll grant the motion  
11 to strike with regard to page 2 of CCA 26, and I will  
12 admit into the record page 1 of CCA 26.

13 MR. HART: Thank you, Examiner.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 HEARING EXAMINER: Thank you very much  
16 for coming back today.

17 THE WITNESS: You're welcome.

18 HEARING EXAMINER: We really appreciate  
19 your understanding and cooperation.

20 (Witness excused.)

21 HEARING EXAMINER: Rather than continuing  
22 with the motions to strike, because I think that will  
23 take some time, I think we'll take a break now until  
24 five after and then we'll come back and deal with the  
25 motions to strike at that point.

1 MR. STEMM: Thank you.

2 (Recess taken.)

3 HEARING EXAMINER: We'll go back on the  
4 record. I believe we were at the motions to strike  
5 Mr. Schutz's testimony is where we are.

6 MR. ZETS: Just as a practical matter  
7 before we get started on the motion to strike, I also  
8 have another copy of CCA Exhibit 39. I would like to  
9 switch that with the official one I showed Mr. Schutz  
10 only in that this now has actually -- all the exhibit  
11 pages are numbered sequentially, and the copy that's  
12 up there on the stand with him now is not. For  
13 purposes of the motion to strike this one will make,  
14 arguably, for a better record because the exhibits  
15 are now numbered in the copy I have with me here.

16 HEARING EXAMINER: That's the only  
17 difference?

18 MR. ZETS: That's the only difference.

19 HEARING EXAMINER: And you only have one  
20 copy of that.

21 MR. ZETS: Well, no. I have two. I have  
22 one that's been marked with the numbers and the one  
23 that I showed him.

24 HEARING EXAMINER: Okay.

25 MR. ZETS: I can have him just



1 reidentify --

2 HEARING EXAMINER: Can we go off the  
3 record for a minute.

4 (Discussion off the record.)

5 HEARING EXAMINER: We'll go back on the  
6 record. At this time we're going to address the  
7 motions to strike of Mr. Schutz's testimony.  
8 Mr. Stemm, I understand you have some motions that,  
9 based on past precedent, you'll be withdrawing.

10 MR. STEMM: Or amending and reducing.

11 HEARING EXAMINER: Or amending and  
12 reducing. So would you like to go through those at  
13 this time?

14 MR. STEMM: Yes, I can do that. I  
15 believe our first motion to strike was directed at  
16 page 7. We are now, instead, starting that motion to  
17 strike at page 8, line 1, after the word "codes." So  
18 that motion is now page 8, line 1, after the word  
19 "codes" to line 5 after the word -- well, excuse me.  
20 The words that would be stricken in our proposed  
21 motion to strike starts with "that were utilized by  
22 the Columbus Building Department to approve  
23 construction at the Cameron Creek Apartments" for  
24 lack of foundation, and then our motion would not  
25 start up again to strike until we get to -- well,

1 that would be it for that one. Just those words.

2 HEARING EXAMINER: Why don't we do this,  
3 because I'm going to find this difficult, let's just  
4 go through one by one. To the extent I'm going to  
5 deny a motion, then I'm going to say that. And if  
6 I'm asking questions, then at that point if you could  
7 clarify what exactly you are -- because that means  
8 that's one I have not made a decision on yet.

9 MR. STEMM: Okay.

10 HEARING EXAMINER: Because I just think  
11 that might be easier.

12 MR. STEMM: Okay. I'll do it your way.

13 HEARING EXAMINER: That might be easier.  
14 I appreciate you doing it my way, Mr. Stemm.

15 So page 7, the first motion to strike,  
16 page 7, line 21, to page 8, line 7, was the original  
17 request. That motion is denied.

18 Page 10, lines 10 through 13.

19 MR. STEMM: Our motion is limited to just  
20 striking the word "exclusive" and everything else  
21 could stay.

22 HEARING EXAMINER: Mr. Hart, is this your  
23 witness? Or Mr. Zets? Mr. Zets.

24 MR. ZETS: Let me find the word  
25 "exclusive" in there.

1 HEARING EXAMINER: Line 12.

2 Let me say motion granted.

3 MR. ZETS: Okay. That's only for the  
4 word "exclusive."

5 HEARING EXAMINER: Yes.

6 Page 11, lines 5 and 6. Mr. Stemm, does  
7 this stand?

8 MR. STEMM: Yes, this stands.

9 HEARING EXAMINER: Mr. Zets, do you have  
10 a response? I need a response to this one.

11 MR. ZETS: Okay. I think the first  
12 lines, 5 and 6, I don't think it's outside his area  
13 of expertise. Mr. Schutz, as he says on the first  
14 couple, actually on page 3 of his testimony, he's a  
15 professional engineer. I think based on his  
16 knowledge and experience he has the ability to  
17 indicate what the NFGC is and, in fact, what it does  
18 or does not mandate. I don't think that's outside of  
19 his area of expertise, I mean, that's what he's here  
20 to testify on.

21 HEARING EXAMINER: Mr. Stemm.

22 MR. STEMM: I would just add that there's  
23 no indication in his testimony that he is here to  
24 testify or that he has experience with the National  
25 Fuel Gas Code, and as Ms. Roahrig herself explained

1 to us, her expertise with the code that Mr. Schutz is  
2 also familiar with does not include the National Fuel  
3 Gas Code but, rather, the International. So on the  
4 face of his testimony there's nothing in here at all  
5 that says that he has the expertise to interpret  
6 provisions of the NFGC.

7 MR. ZETS: If I may, the first, on page 6  
8 he says "My testimony explains" and the first one is  
9 "the local and state building codes and regulatory  
10 requirements utilized by the City of Columbus to  
11 approve installation, construction, and gas appliance  
12 configuration." That's what his testimony is all  
13 about, how does the NFGC play into that specific part  
14 of his testimony. That's what he's here for. Their  
15 expert's here to say that he's not right. There's no  
16 great secret to all of it.

17 HEARING EXAMINER: Mr. Stemm.

18 MR. STEMM: Well, that has nothing to do  
19 with his expertise, number one, and we already heard  
20 testimony from Ms. Roahrig the city of Columbus  
21 process does not include the NFGC and for that reason  
22 she's not familiar with it, so there's certainly no  
23 reason to presume he is based on the fact he's going  
24 to testify how the city of Columbus approves things.

25 HEARING EXAMINER: I'm going to deny the

1 motion to strike.

2 Page 11, lines 10 through 14. Mr. Stemm,  
3 does this stand?

4 MR. STEMM: Yes, it does, your Honor.

5 HEARING EXAMINER: Mr. Zets, I need  
6 feedback on this motion.

7 MR. ZETS: I make the same argument,  
8 Attorney-Examiner Pirik, and also include when you  
9 take a look at Mr. Schutz's background, he says he  
10 has technical training in plumbing, sheet metal,  
11 masonry, heating and ventilation and trade schools,  
12 Columbia Gas of Ohio, and the U.S. Army Engineer  
13 School, so there's no reason to believe he is not  
14 qualified to give the information that's found in  
15 lines 10 through 14 on page 11.

16 HEARING EXAMINER: I am going to grant  
17 the motion to strike with regard to the phrase "that  
18 call for Columbia Gas to make sure that local codes  
19 are being followed, along with the National Fuel Gas  
20 Code." That verbiage will be stricken from the  
21 record. The remainder of this section that's  
22 requested to be stricken shall be denied.

23 So the part that is still in the record  
24 reads: ". . . Columbia Gas's internal training  
25 program. Section 1.2 states: House lines and

1 appliance installations shall be in accordance with  
2 the NFGC and local codes."

3 With regard to page 11, lines 17 through  
4 20, that motion is denied.

5 Page 12, line 5, to page 13, line 2.  
6 That motion is denied.

7 Page 14, lines 4 through 15. That motion  
8 is denied.

9 Page 14, lines 15 through 20. That  
10 motion is denied.

11 Page 16, lines 13 through 17. That  
12 motion is denied.

13 Page 17, lines 1 through 12 and Exhibit  
14 RJS-3A. I'm going to deny this motion, and I want to  
15 note for the record that in light of the fact that  
16 this is an administrative hearing I'm going to allow  
17 this testimony to be put into the record, but we need  
18 to note that testing was performed by other  
19 individuals and I will allow the witness to clarify  
20 if asked those questions on cross-examination.

21 Page 17, lines 15 through 22. I'm going  
22 to deny this motion, but I want to note that with  
23 regard to Columbia's policies, any statement by this  
24 witness is his interpretation of Columbia's policies  
25 and it's not necessarily asserted for the truth of

1 that matter.

2 Page 18, lines 6 through 10. I'm going  
3 to deny that motion.

4 Page 18, line 10, to page 19, line 3.  
5 Once again, page 18, line 10, to page 19, line 3, I'm  
6 going to deny that motion which, in effect, likewise  
7 denies the separate motion on page 18, lines 14  
8 through 18.

9 MR. STEMM: Meaning, again, not for the  
10 truth?

11 HEARING EXAMINER: Yes. Absolutely.  
12 That will go for all of my rulings here.

13 Page 19, lines 3 through 10; deny that  
14 motion.

15 Page 19, line 15, to page 20, line 2.  
16 Mr. Zets, I need a response to this motion.

17 MR. ZETS: The objection was based on  
18 foundation, said Mr. Schutz had not demonstrated his  
19 basis to know what the residents reported to local  
20 authorities. Without citing the line and verse, I  
21 apologize, I know Mr. Schutz's testimony says he  
22 reviewed the maintenance logs, service programs and,  
23 in fact, the red tags that were in fact placed on the  
24 appliances at these various locations inside Cameron  
25 Creek Apartments, so I believe he does have the basis

1 to know what residents reported based upon those  
2 limited facts.

3 If Columbia Gas believes maybe his  
4 knowledge is flawed, that's subject to  
5 cross-examination, but he said he had reviewed those  
6 records and that's what his testimony is based upon.

7 HEARING EXAMINER: I understand you just  
8 responded to the red tags and the maintenance log.  
9 Can you respond to the health concerns?

10 MR. ZETS: Well, I think his opinion is  
11 that there is not a health concern, as was Cheryl  
12 Roahrig's position there is not a health concern, out  
13 there based upon his review of the maintenance  
14 records and the red tags.

15 HEARING EXAMINER: Mr. Stemm.

16 MR. STEMM: Well, if he's willing to  
17 amend his testimony more along those lines, but right  
18 now the testimony is much broader than that in terms  
19 of this witness is basically testifying that it is  
20 telling that no incidents were reported and no health  
21 concerns were raised during these years. Now, he  
22 doesn't say raised to who, reported to who; he simply  
23 makes the blanket statement.

24 We're saying this witness simply has  
25 shown no foundation to be able to do that in terms of



1 having surveyed each of the residents during those  
2 time periods to find out whether they had any  
3 incidents. This witness would not know whether there  
4 were any incidents.

5 If his testimony is based solely on  
6 reviewing some document that Cameron Creek gave him,  
7 then we can talk about what that document is, but we  
8 need to, you know, make the testimony clear on that  
9 because this statement is much broader than what I  
10 just heard the suggestion that it meant to be.

11 MR. ZETS: Again, I think that's the  
12 subject of cross-examination if they don't believe  
13 that that's -- that his conclusion is flawed in some  
14 way based upon his testimony.

15 HEARING EXAMINER: I'm going to withhold  
16 ruling on this issue and allow cross-examination, and  
17 if you'd like to renew the motion at that time, then  
18 I will consider it at that time.

19 MR. STEMM: Thank you.

20 HEARING EXAMINER: Page 20, line 11, to  
21 page 21, line 3, and page 30, lines 10 and 13, and  
22 page 9, lines 14 and 15, and page 9, lines 18 and 23.  
23 I'm going to deny those motions.

24 Turning now to page 21, line 14, Exhibits  
25 RJS-4A and 4B, and page 22, lines 1 through 15.

1                   MR. STEMM: Can we take those one at a  
2 time?

3                   HEARING EXAMINER: Yes.

4                   MR. STEMM: I guess if I may, page 21,  
5 line 14 really raises the question that we're going  
6 to be getting into with, you know, the July 13th  
7 documents that were served. So at your pleasure, we  
8 can deal with it now or we can --

9                   HEARING EXAMINER: I think we should deal  
10 with it now since it's in the order of the motion. I  
11 think we should just go ahead and deal with it.

12                  MR. STEMM: As you know, I asked for  
13 permission to make an oral motion to strike given the  
14 timing of all of this, so if I may.

15                  First of all, just a little background.  
16 There are two basic reasons for moving to strike the  
17 cost estimates that were served on July 13th in the  
18 form of two e-mails that counsel evidently received,  
19 according to the e-mail, on Friday July 10th, 4:14  
20 p.m., and gave us around 9:30 in the morning Monday,  
21 the following Monday, July 13th.

22                  The motion to supplement contains some  
23 reasoning, and I'll address that as I go, but let me  
24 first just go down the list of reasons.

25                  Number one, it's obviously an untimely

1 effort to supplement direct examination which is  
2 directly contrary to the Hearing Examiner's very own  
3 and very clear statement on July 2nd during the  
4 conference call to Mr. Zets where he was informed  
5 "Make sure Mr. Hart understands there will be no more  
6 supplementation of direct" when this July 2nd  
7 version of the Schutz testimony was allowed in.

8           Nonetheless, here we are talking about an  
9 effort to supplement with information we first saw on  
10 July 13th.

11           The motion from Cameron Creek itself to  
12 attempt to make a case for excusable delay  
13 notwithstanding the Hearing Examiner's stern  
14 admonition on July 2nd falls short for a few  
15 reasons. First of all, Cameron Creek for a year and  
16 a half has complained about cost being a chief  
17 complaint. There's certainly no excuse to wait as  
18 long as they have to bring forth this information.

19           Secondly, Columbia requested the cost  
20 information during discovery in a timely fashion in  
21 May, but Cameron Creek in its response on June  
22 2nd said no estimates had yet been obtained and  
23 they reserved the right to supplement.

24           When Cameron Creek revealed that Schutz  
25 would be a witness, Cameron Creek disclosed his areas

1 of testimony without any mention of the cost data,  
2 the cost issue. When Cameron Creek supplemented its  
3 discovery later in June, still no cost estimates were  
4 provided; they were not received until July 13th.

5 In the motion the asserted busy travel  
6 schedule of Mr. Schutz is cited and the vacation of  
7 Ms. Roahrig is cited as an attempt to excuse their  
8 failure to provide this information either by the  
9 July 1st or, in Mr. Schutz's case, July 2nd  
10 testimony deadline, or during discovery during the  
11 period it should have been provided.

12 Well, we've learned from Ms. Roahrig that  
13 her vacation had nothing to do with anything in terms  
14 of her willingness to cooperate with Cameron Creek.  
15 She said she would have met with them in June. She  
16 made herself available. She was willing to help.  
17 She was not an impediment to them getting whatever  
18 information they felt they needed from her.

19 And Mr. Schutz's busy travel schedule for  
20 those days preceding in June gives no explanation  
21 for, number one, why the prefiling deadline was  
22 missed or for why we had to wait until July 13th  
23 instead of perhaps sooner than July 13th to see  
24 this information.

25 So Cameron Creek's attempt to blame

1 unavailability of persons is no excuse for missing  
2 discovery deadlines in addition to missing the  
3 prefiled testimony deadline or for delaying release  
4 of the information all the way to July 13th.

5           Mr. Schutz's own testimony that he filed  
6 in this case contradicts Cameron Creek's explanation  
7 in its own motion of witness unavailability. He  
8 claims in his prefiled testimony on July 1 that he  
9 had evaluated the construction changes, that is at  
10 page 21 where we are right now, as well as the  
11 changes that would be needed to meet current  
12 regulatory standards of state and local building  
13 codes.

14           So their explanation for needing Roahrig  
15 falls short because here the testimony itself admits  
16 that he had what he needed and the only thing that  
17 evidently they didn't get was pricing from American  
18 Air, which I'll get to in a minute as our second  
19 reason for opposing the admission.

20           So I guess all of these reasons, there's  
21 absolutely no good cause for excusing, once again, a  
22 violation of rules, a violation of your requests, and  
23 an untimely submission of additional direct testimony  
24 exhibits. That's only one reason.

25           The second reason is Mr. Schutz himself

1 is not the proper witness to introduce this cost  
2 information that he now wants to introduce. In his  
3 electronically filed July 1st testimony at page --  
4 what's marked as 185, at line 18, you'll see that at  
5 that time he was estimating on July 1st that the  
6 cost estimates could range as high as \$5,000 per unit  
7 minimum, which shows he had no clue what the pricing  
8 would be because when we finally see what the pricing  
9 estimates are, the very next day, on July 2nd he  
10 estimates approximate cost estimates are \$1,500 per  
11 unit.

12 So it's clear he's guessing between July  
13 1st and July 2nd as to where the pricing is going  
14 to come in, and now that it's finally come in on July  
15 13th through these e-mails that Mr. Schutz  
16 forwarded -- and, Hearing Examiner, I assume you have  
17 copies of the two e-mails attached to your motion --  
18 you can see that a company called American Air  
19 provides the information on pricing in both of the  
20 estimates, and there's certainly no indication in the  
21 e-mail and certainly not the prefiled testimony that  
22 Mr. Schutz had anything at all to do with coming up  
23 with this pricing.

24 This third party, American Air, is not  
25 here for us to cross-examine, so that's a separate

1 reason for denying admission of these additional  
2 exhibits or allowing any testimony on them in  
3 addition to the multitude of reasons not to excuse  
4 the untimely effort to introduce this material.

5 Thank you.

6 HEARING EXAMINER: Mr. Zets.

7 MR. ZETS: Hearing Examiner Pirik, I'd  
8 actually like to just say -- actually I'd like to,  
9 while this is my witness, I'd like to defer the  
10 argument on this one issue to Mr. Hart because you  
11 can see the e-mails came from him. He had direct  
12 contact with Mr. Schutz, so he has a much better  
13 understanding of all the facts because he personally  
14 lived those.

15 HEARING EXAMINER: Okay. We're just not  
16 going to do tag-teaming here.

17 MR. ZETS: No. I will now be quiet until  
18 we get back to the motion.

19 HEARING EXAMINER: I certainly will allow  
20 Mr. Hart.

21 MR. HART: Thank you, and I do apologize  
22 for the lateness of this submittal. I have explained  
23 in the motion the vacation schedules and the work  
24 schedule of Mr. Schutz and then Cheryl Roahrig's  
25 vacation schedule.

1           In addition to that, really what happened  
2 was the contractor we were trying to ask to give the  
3 estimates for a real-world estimate on this work was  
4 unsure. You know, he wanted a very clear  
5 interpretation of the code and, frankly, he wouldn't  
6 produce something that he knew was going to be in a  
7 proceeding without talking to Cheryl Roahrig because  
8 when he contacted the city, she was on vacation and  
9 we had to wait.

10           And we didn't anticipate that. We  
11 thought that, you know, he would produce it. I think  
12 Bob Schutz and I thought the issues were clear, but  
13 the contractor wanted, you know, the authority from  
14 the top. We didn't, frankly, we didn't do it earlier  
15 because I didn't get the expert on board and I was  
16 dealing with a lot of other things on this case in  
17 the month of May, and Mr. Schutz traveled probably  
18 about 45 days in May and June, and that's how this  
19 happened.

20           HEARING EXAMINER: Mr. Stemm, do you have  
21 a response?

22           MR. STEMM: Only that I heard no excuse  
23 for excusable delay or violation of the rules, again,  
24 that holds water, but also Mr. Hart's further  
25 emphasized without refuting or even responding to my



1 argument that this is not the appropriate witness to  
2 introduce this information.

3 Mr. Hart basically conceded that some  
4 contractor who's not here in the hearing room is the  
5 one who they wanted to get opinions from and, to that  
6 contractor's credit, he was not willing to give them  
7 the opinions they wanted until he got further  
8 information. Well, fine, but that contractor is not  
9 in this room as a witness, and if Cameron Creek  
10 intends to introduce that contractor's opinions on  
11 pricing, then they should have put him on the witness  
12 list.

13 HEARING EXAMINER: First of all, I want  
14 to note for the record that the examiner did not  
15 receive a copy of these estimates. The examiner had  
16 to go to Docketing to get her own copy of these.  
17 Complainants did not serve the examiner with copies  
18 of these on the 13th; and that was inappropriate,  
19 especially for a late-filed document.

20 Why does it say on RJS-4A and B that "Bob  
21 lost estimates to upgrade"? What does that mean?  
22 Because that's not the explanation you're giving me.

23 MR. HART: I actually believe, Examiner,  
24 I hesitate saying it, but I believe it's the truth, I  
25 think someone in our office put -- the person in

1 editing the document put an L in there instead of a  
2 C.

3 HEARING EXAMINER: So it should read "Bob  
4 cost estimates to upgrade"?

5 MR. HART: Yes, Examiner. We were under  
6 a time crunch.

7 HEARING EXAMINER: Well, mentioning the  
8 time crunch, perhaps you could clarify for me, in the  
9 complaint itself, page 7, you mention an estimated  
10 cost of \$73,000.

11 MR. HART: Yes.

12 HEARING EXAMINER: Perhaps you could also  
13 clarify for me, because I was under the impression,  
14 and it's been on the record already that there was  
15 some discussion with the city of Columbus as far as  
16 funding to do this kind of retrofitting, did you not  
17 have cost estimates at that time?

18 MR. HART: Well, I think you asked about  
19 two issues so I'll take them in turn. I was not  
20 involved in the situation when the 73 number was  
21 developed. I tried to find where that came from. I  
22 tried to find, you know, and my guess based on some  
23 of the e-mail chains, that it was based on -- there  
24 was a debate around the same time about changing over  
25 six units that Columbia had -- had stopped gas to.

1 But I never found the, you know, the  
2 genesis or anything about that \$73,000. I could  
3 never find that, so I honestly don't know what it  
4 was. And no one -- no client of mine in this case  
5 could tell me.

6 In terms of the other issue, the only  
7 party that was trying to seek funding for Cameron  
8 Creek, to my knowledge, was Columbia Gas for I think  
9 mainly city sources. My client's position during  
10 that whole time was that the changes weren't needed  
11 and that it was up to code so it didn't need funding.  
12 We had no involvement in that whatsoever, and I  
13 didn't personally. And, frankly, that all happened  
14 before I was hired.

15 I guess to add, at the time that I filed  
16 the complaint, you know, I had seen the 73,000 and I  
17 mentioned it in the complaint.

18 HEARING EXAMINER: So you were on board  
19 with this complaint when it was filed.

20 MR. HART: Yes, Examiner. I filed it.

21 HEARING EXAMINER: And when was the  
22 complaint filed?

23 MR. HART: September 17th, I believe,  
24 of 2008. I don't have the -- I do. Yes, that's the  
25 docketed date.

1 HEARING EXAMINER: Well, I think what I'm  
2 going to do is I'm going to withhold ruling on this  
3 until after lunch and, because quite honestly, based  
4 upon what was actually filed in the motion versus  
5 what was originally thought by cost estimates that  
6 were lost, I have big questions in my mind.

7 You do realize that it's not a procedure  
8 of the Commission to allow people to reserve the  
9 right to supplement. The only time you're allowed to  
10 supplement is if there's really good cause, and good  
11 cause does not include waiting until the last minute  
12 to get a cost estimate. I don't know where that's on  
13 the chart.

14 So I need to look at this over lunch and  
15 see what to do with it; I haven't decided yet. So to  
16 continue with the rest of them

17 MR. STEMM: We would suggest the one on  
18 page 22, then, is one that you would include in your  
19 consideration over lunch.

20 HEARING EXAMINER: Right, as well as the  
21 exhibits themselves.

22 MR. STEMM: As well as the exhibits  
23 themselves.

24 HEARING EXAMINER: And then we still have  
25 page 22, lines 1 through 15.

1           MR. STEMM: And that's what I mean, we're  
2 talking about -- he's referring to exhibits that  
3 aren't yet in. You see there on 1 through 15, RJS-4,  
4 and then we move to strike the last sentence of that,  
5 lines 14 and 15, on top of the mention of the  
6 exhibits which are not attached to the testimony  
7 based on an approximate cost.

8           There's no foundation, no indication at  
9 all in this direct testimony that this witness has  
10 any basis at all to opine on a cost per unit minimum  
11 given the day before he estimated it at 5,000, now  
12 he's saying 1,500, and then two weeks later he  
13 finally gets the price information from a contractor  
14 who's not here. That's why we're moving to strike  
15 even the timely filed approximate cost assertion at  
16 lines 14 and 15, because there's clearly no  
17 indication that he has any basis to give a reliable  
18 number there. But if you'd like, we can proceed with  
19 the rest while you ponder all that --

20           HEARING EXAMINER: Yes, that's what I'm  
21 going to do.

22           MR. STEMM: -- over lunch.

23           HEARING EXAMINER: Yes. Just to clarify,  
24 I want to be sure for the record, the difficulty with  
25 the filing of testimony is that this case is not open

1 to electronic filing, so the testimony that the  
2 complainants electronically filed on July 1st had  
3 to be hard copy filed on July 2nd.

4 To further complicate things,  
5 Mr. Schutz's testimony was filed at 5:33 on July  
6 1st, which, pursuant to our docketing electronic  
7 filing process, puts it filed on July 2nd. So I  
8 know, Mr. Stemm, you keep referring to the July  
9 1st filing for Mr. Schutz. It's really July 2nd,  
10 but I understand what you're referring to. You're  
11 referring to the electronically-filed version.

12 MR. STEMM: We received it on the 1st.  
13 Yes, your Honor, thank you.

14 HEARING EXAMINER: And I stated in my  
15 entry it would be the July 2nd hard copy filings  
16 that would be examined in this case and would go  
17 forward as the evidence in this case. However, for  
18 impeachment purposes, so to speak, I could see the  
19 utilization of something that was electronically  
20 filed if you were cross-examining the witness at that  
21 point.

22 So I see that you're making that  
23 comparison, but I want to be sure that the record  
24 reflects that it is the hard copy filing on the  
25 2nd that is the testimony in this case, and the

1 other documents perhaps could be used for some other  
2 purpose, but not for the testimony that's presented  
3 at this time.

4 MR. STEMM: Yes. Thank you for that.

5 HEARING EXAMINER: So, yes, I will  
6 withhold ruling for those three motions to strike  
7 that relate to RJS-4A and 4B until after lunch. So  
8 let's continue with the rest of the documents and see  
9 if we can get through those before we take our break.

10 Page 21, lines 16 through 23. Motion  
11 denied.

12 Page 23, lines 2 through 17. Motion  
13 denied.

14 Page 24, lines 4 through 9. Motion  
15 denied.

16 Page 24, lines 12 through 23. Mr. Zets,  
17 I need your response to this motion.

18 MR. ZETS: I would say that the  
19 information contained in lines 12 through 23 are his  
20 opinion in this case based upon the facts that are  
21 known to him and the codes that he interprets in  
22 order to give that opinion.

23 HEARING EXAMINER: Mr. Stemm.

24 MR. STEMM: We zeroed in on this  
25 provision, Hearing Examiner Pirik, because it goes

1 well beyond him giving his opinion or experience on  
2 certain codes. Now he's giving purely legal  
3 conclusions, inserting clear anti-retroactivity  
4 provisions inconsistent with a statute, 3781. He's  
5 talking about the balance of statutory sections.

6 His continued reference in each of these  
7 sentences to either the statute or the general laws  
8 of Ohio I think are purely legal conclusions,  
9 different from the material you've allowed in thus  
10 far which are his interpretations and opinions on a  
11 particular code provision that he has some experience  
12 applying in practice.

13 HEARING EXAMINER: I'm going to grant the  
14 motion.

15 Page 25, lines 3 through 9. Mr. Zets, do  
16 you have a response to this?

17 MR. ZETS: One second.

18 We would be willing to concede I guess --  
19 just so I'm clear, it's page 25, lines 3 through 9  
20 which is basically the first part of the question  
21 that starts on page 25; is that what we're talking  
22 about?

23 HEARING EXAMINER: Correct, that's all  
24 we're talking about.

25 MR. ZETS: We would be willing to



1 withdraw or concede that you could strike the  
2 preamble to the question that begins "In your expert  
3 opinion based on your experience."

4 HEARING EXAMINER: It will be stricken  
5 from the record.

6 Page 25, line 10, to page 28, line 2.  
7 Mr. Zets, do you have a response to this?

8 MR. ZETS: The objection is that it's  
9 leading. I think that mischaracterizes actually the  
10 testimony on those pages. I think the question --  
11 the answer hypothetically assumes -- hypothetically  
12 assumes what Mr. Schutz's opinion is in that  
13 Columbia's actions were contrary to the Ohio Building  
14 Code, and then from that assumption then he goes on  
15 and gives the rest of his opinion.

16 If counsel believes that that  
17 hypothetical isn't correct for some reason, he has  
18 more than ample opportunity to examine Mr. Schutz on  
19 whether or not Mr. Schutz's opinion that Columbia's  
20 actions were contrary to the building code is proper  
21 or not. Then the rest of his testimony flows from  
22 that assumption.

23 HEARING EXAMINER: And with regard to the  
24 testimony?

25 MR. ZETS: The testimony itself is his

1 actual opinion then that follows from -- it's his  
2 opinion. That's not actually legal testimony,  
3 whether -- it's his opinion as to whether or not and  
4 why it violates -- why Columbia's actions were  
5 contrary to the building code.

6 HEARING EXAMINER: Mr. Stemm.

7 MR. STEMM: Thank you, Hearing Examiner.  
8 That sentence in the question, I don't see anything  
9 at all that suggests it's a hypothetical. He  
10 simply -- the question presumes Columbia's attempt to  
11 demand remedial construction changes. There's no  
12 assume that that's happening.

13 And then in terms of the answer, it  
14 follows from the previous model that you've just  
15 stricken on page 24 where, again, he's making legal  
16 opinions about Columbia Gas's utility as a public  
17 utility under its tariff and its regulatory rules and  
18 statutes to do what it does and legal interpretations  
19 of various statutes including 3781 and 3791.

20 So we would ask actually that, I think  
21 our motion to strike stopped at line 2 or -- excuse  
22 me.

23 HEARING EXAMINER: Line 2 of page 28.

24 MR. STEMM: Yes. That's right. So this  
25 whole section sounds like something counsel would

1 write in a brief.

2 MR. ZETS: I think that --

3 HEARING EXAMINER: I'm sorry, just a  
4 minute, Mr. Zets.

5 MR. ZETS: I'm sorry.

6 HEARING EXAMINER: I'm going to grant the  
7 motion to strike. I believe that also covers, then,  
8 page 25, lines 16 through 19, and page 26, lines 8  
9 through 14. I believe that this is information that  
10 is interpretation, legal interpretation, that would  
11 be appropriate for briefing.

12 Page 28, line 4, to page 30, line 1.

13 MR. STEMM: Just to be clear, your Honor.

14 HEARING EXAMINER: Yes, Mr. Stemm.

15 MR. STEMM: Our objection to page 28 is  
16 strictly leading questions whereas then the legal  
17 testimony, the legal conclusion part of our objection  
18 picks up on page 29.

19 HEARING EXAMINER: Yes.

20 MR. STEMM: I'm not sure that was clear  
21 in the motion.

22 HEARING EXAMINER: No, but it follows  
23 with what my thoughts are on this. I was going to  
24 deny the motion with respect to lines 4 through 21 on  
25 page 28, and I need arguments with respect to page 29

1 and the first line on page 30.

2 Mr. Zets.

3 MR. ZETS: I'm sorry, which lines again?

4 HEARING EXAMINER: The full page 29 and  
5 the first line on page 30.

6 MR. ZETS: One second, please.

7 We have no response at this time.

8 HEARING EXAMINER: Motion granted. So  
9 just to clarify with regard to this, it's page 28,  
10 line 4 through 21 is denied. Page 29, line 1,  
11 through page 30, line 1 is granted.

12 Turning to page 31, line 15. Motion  
13 denied.

14 Page 31, line 21, to page 32. Line 2,  
15 motion denied.

16 Page 32, line 13, to page 33, line 10.  
17 I'm going to deny that motion. There's like two  
18 motions within this certain section, so with respect  
19 to the request for page 32, line 13, to page 33, line  
20 10, and the arguments of nonresponsive and outside  
21 areas of expertise, those arguments posed by  
22 Columbia, I'm going to deny the motion.

23 Now I'm going to turn to page 33, line 1  
24 through 10 and the argument of legal testimony posed  
25 by Columbia Gas. Mr. Zets, do you have a response to

1 that?

2 MR. ZETS: Yes. Just a second.

3 I guess, you know, the testimony -- I'm  
4 sorry.

5 HEARING EXAMINER: We're on page 33.

6 MR. ZETS: Yeah. I'm sorry. I  
7 apologize, I started to look at the wrong line.

8 HEARING EXAMINER: No; that can be  
9 confusing.

10 MR. ZETS: I was trying to look at my  
11 note then refer back to the line.

12 I guess, again, when Mr. Schutz is  
13 testifying, the sentence actually spills over ". . .  
14 Columbia attempted to force changes at Cameron Creek  
15 despite the local codes, the original approval  
16 procedures," he goes on. I think these are, again,  
17 Mr. Schutz's testimony and his opinion as an expert  
18 witness in this case to be able to opine on truly  
19 what he believes. I don't think he's actually  
20 interpreting the local codes or -- he's not  
21 interpreting the law or giving legal opinion on this,  
22 he's merely offering his opinion for the benefit of  
23 the Commission.

24 Again, because when you see there like on  
25 line 4, it starts "Perhaps a change should be

1 considered to require and guide Columbia staff,"  
2 again, those are his opinions. He's not interpreting  
3 state law. He's giving his opinion on what he  
4 believes; a change should happen.

5 HEARING EXAMINER: Mr. Stemm, do you have  
6 a response?

7 MR. STEMM: Well, I guess the first part  
8 of that answer on page 33, he is referring to the  
9 same retroactivity legal provisions that have been  
10 stricken before, he just doesn't say it. He talks  
11 about -- he says the state law emphasis against  
12 applying newer code requirements. He's presuming  
13 that his lawyerly interpretations are correct of the  
14 statutes we've already talked about without naming  
15 the statutes in this case.

16 And then the second part of that answer  
17 where he starts with "Perhaps," now he's offering his  
18 legal opinion how the law should be changed presuming  
19 that it should be changed or that it needs to be  
20 changed, which ties into his erroneous legal opinions  
21 above that. So we tied the motion to strike to both  
22 segments of that answer.

23 And, frankly, candidly, we had a little  
24 trouble interpreting this answer since there was no  
25 question that preceded it, it starts out the answer

1 "No," and for that reason we'd move to strike the  
2 whole thing, but you can definitely discern in the  
3 last part of that how the legal opinions and  
4 conclusions come into it.

5 HEARING EXAMINER: And I do agree that  
6 there really is no question prior to this answer. I  
7 believe, though, in his first sentence of his answer  
8 he basically poses what the question is, so I left a  
9 legal leniency with regard to that.

10 As to this language on -- his response on  
11 page 33, I'm going to grant the motion to strike from  
12 line 1 through the words "building official" on line  
13 4; that part is granted.

14 I'm going to deny the motion to strike  
15 this sentence that begins with "Perhaps" on line 4  
16 and ends with -- and I'm going to end that sentence  
17 with the words "local jurisdiction" on line 7. That  
18 portion is denied and that will be in the record.

19 I'm going to grant the motion with  
20 respect to the words on line 7 beginning with "in  
21 order to" through line 10.

22 The next motion is page 33, lines 14  
23 through 22. Motion denied with respect to the  
24 arguments of leading question and legal testimony.

25 Page 33, lines 14 through 17, with

1 respect to the argument foundation, I'm going to deny  
2 that motion.

3 With respect to page 33, lines 22 through  
4 23, and page 34, line 1, which I believe -- I just  
5 want to clarify. That ends after the word  
6 "infiltration"; is that correct?

7 MR. STEMM: That is correct.

8 HEARING EXAMINER: And the argument on  
9 this is foundation. Mr. Zets, do you have a  
10 response?

11 MR. ZETS: Again, going back to  
12 Mr. Schutz's extensive educational background and  
13 business experience, I think he has the ability to  
14 offer the testimony as to how buildings during that  
15 period, again we're talking about in 1996, how they  
16 were constructed. In fact, he was in the industry  
17 and has an extensive knowledge of how buildings had  
18 been constructed in 1996; I think you can see that  
19 from the testimony when he describes his background  
20 and experience.

21 HEARING EXAMINER: I'll deny the motion.

22 MR. STEMM: You've made your decision. I  
23 will just sit here and take it.

24 HEARING EXAMINER: Thank you. Because  
25 we're not done yet.



1                   Page 34, lines 2 through 4. Motion  
2 denied.

3                   Page 34, lines 9 through 22. At this  
4 time I'm going to deny this motion and, likewise,  
5 with regard, and I think I said this previously but I  
6 am re-emphasizing, with regard to foundation issues  
7 I'm going to deny them at this time, and then if  
8 cross-examination goes forward and you find the  
9 necessity to renew the motion, I will accept it at  
10 that time again, but up front I'm going to deny it.  
11 So you will need to cross on this issue.

12                   MR. STEMM: Thank you.

13                   HEARING EXAMINER: Page 36, lines 20  
14 through 22. Again, I'm going to deny this, this is a  
15 foundation issue, and then we will open it up for  
16 cross-examination.

17                   At this time I think we should break for  
18 lunch until 1:45.

19                   MR. STEMM: Thank you.

20                   HEARING EXAMINER: Thank you. We'll see  
21 you then.

22                   (At 12:18 p.m. a lunch recess was taken  
23 until 1:45 p.m.)

24                   - - -

1 Thursday Afternoon Session,  
2 July 16, 2009.

3 - - -

4 HEARING EXAMINER: We'll go back on the  
5 record. I believe the point where we are is a  
6 decision regarding the motion to strike page 21, line  
7 14, and Exhibits RJS-4A and 4B. What I decided to do  
8 is go forward and allow cross-examination on that  
9 portion of the document and, similar to the questions  
10 about foundation, that I will allow questioning on  
11 for foundational purposes, I will allow similar  
12 questions on the cross-examination. And then if you  
13 want to renew your motion to strike, then I will  
14 review it at this time.

15 I'm not going to say whether I'm granting  
16 or denying that one at this point. I'm just going to  
17 leave that one open until cross-examination.

18 Was there anything else that we needed to  
19 cover before we started with the witness on cross?

20 MR. STEMM: Just so I understand the  
21 ruling, it applies not only to the references in the  
22 prefiled testimony, but also to the motion to  
23 supplement with the new exhibits.

24 HEARING EXAMINER: Yes. Yes.

25 - - -

1 ROBERT J. SCHUTZ

2 being previously duly sworn, as prescribed by law,  
3 was further examined and testified as follows:

4 CROSS-EXAMINATION

5 By Mr. Stemm:

6 Q. Good afternoon, Mr. Schutz. My name is  
7 Mark Stemm. I'm one of the attorneys for Columbia  
8 Gas.

9 A. Hi, Mr. Stemm.

10 Q. Good afternoon.

11 You have before you a newly page numbered  
12 copy of CCA Exhibit 39 before you.

13 A. I do, sir.

14 Q. And could you turn to Exhibit RJS-11  
15 which is pages 1 through 10.

16 A. Yes, sir.

17 Q. Do you see that document there? Let me  
18 ask you a few questions. Did you prepare these  
19 tables and those ten pages?

20 A. No, sir, I did not.

21 Q. Were they prepared under your direct  
22 supervision?

23 A. These tables are generated --

24 Q. Just "yes" or "no." Were these prepared  
25 under your direct supervision?

1           A.    Of course not.

2           Q.    The answer is "no"?

3           A.    No, sir.

4           Q.    Thank you.

5                   Are these records reflected in these  
6 summary tables records that you regularly keep as  
7 part of your business operation as an outside  
8 consultant?

9           A.    No, sir, they're not.

10          Q.    Are these documents, is this -- strike  
11 that.

12                   Is this ten-page table something that you  
13 were provided by lawyers from Cameron Creek?

14          A.    Yes, sir, it is.

15          Q.    And before you were provided a copy of  
16 this ten-page table by lawyers from Cameron Creek,  
17 had you seen it?

18          A.    I had not seen it. I was aware that the  
19 company did provide it. Who keeps these is part of  
20 their attorney business.

21          Q.    But my question is the first time you saw  
22 this is when it was provided by lawyers for Cameron  
23 Creek?

24          A.    Yes, sir.

25          Q.    Now, if you would turn to, beginning at

1 page 11 of Exhibit RJS-11, it begins a report called  
2 Preventative Maintenance Tracking Report. Do you see  
3 that?

4 A. I do, yes, sir.

5 Q. For the record, I believe that goes from  
6 page 11 through page 16 of RJS-11; is that correct?

7 A. That is correct.

8 Q. Are any of the notations on these  
9 preventative maintenance tracking report forms yours?

10 A. No, sir.

11 Q. Did you supervise the completion of these  
12 tracking reports?

13 A. No, sir.

14 Q. Did you first see these preventative  
15 maintenance tracking report forms when they were  
16 provided to you by Cameron Creek's lawyers?

17 A. I can't recall if I've seen these at the  
18 place of business in part, but in the complete  
19 package, yes, sir, the first time I saw them as a  
20 package was from Cameron Creek's attorneys.

21 Q. And this package you're referring to,  
22 this is the package of documents that the attorneys  
23 asked you to attach to your prefiled testimony?

24 A. No, sir. I'm talking about pages 11 --  
25 as marked now 11 through 16 with all six pages

1 together.

2 Q. Oh, I see, that package.

3 A. These are separate documents --

4 Q. Okay.

5 A. -- maintained by the user.

6 Q. So as to the accuracy of the tables at  
7 pages 1 through 10 of RJS-11, your knowledge is  
8 limited to lawyers for Cameron Creek handing it to  
9 you, and your knowledge would be limited to their  
10 knowledge, correct?

11 A. On these specific pages that is correct.

12 Q. Now, on pages 11 through 16 of RJS  
13 Exhibit 11, have you had an opportunity to compare  
14 these copies to the originals maintained by Cameron  
15 Creek's maintenance department?

16 A. I have, yes, sir.

17 Q. And did you do that after they were  
18 provided to you by lawyers for Cameron Creek or  
19 before?

20 A. That's why I say I can't recall the  
21 order. I did not see all six of these pages in  
22 advance, but I know that I've seen a couple of these  
23 pages in advance of them being provided as a total  
24 package.

25 Q. Okay. And you're talking specifically

1 now about what's labeled Preventative Maintenance  
2 Tracking Reports?

3 A. That is correct, yes, sir.

4 Q. And of the pages 11 through 16 of this  
5 Exhibit RJS-11, can you identify for us with  
6 precision which of these six pages you had reviewed  
7 the originals of before or after seeing this package  
8 from the attorneys?

9 A. Yes, sir. I believe that the page that's  
10 indicated No. 11 --

11 Q. Okay.

12 A. -- is the one that's being currently  
13 maintained by the maintenance staff at the Cameron  
14 Creek Apartments and that's the one that I had seen  
15 in advance of the package, which is obviously the  
16 older ones.

17 Q. And No. 11, page 11 of RJS-11, were you  
18 able to verify this is a true and accurate copy of  
19 the original form maintained by the Cameron Creek  
20 maintenance department?

21 A. To the best of my knowledge from viewing  
22 it then, it appears to be the same one I saw, yes,  
23 sir.

24 Q. Okay. But as for pages 12 through 16,  
25 those are copies of documents provided to you for the

1 first time by Cameron Creek lawyers, correct?

2 A. Correct; they're historical documents.

3 Q. Turn to RJS-11, pages 17 through 20,  
4 which is titled a Voyager Report. Do you see that?

5 A. I do, yes, sir.

6 Q. Did you have a hand in preparing this  
7 Voyager report or vendor ledger, as it says below  
8 that?

9 A. No, sir.

10 Q. Was it prepared under your direct  
11 supervision?

12 A. It was not.

13 Q. Was the first time you saw this Voyager  
14 report when it was provided to you by lawyers for  
15 Cameron Creek?

16 A. I was aware from the apartment manager  
17 that they generate the report in this fashion, but  
18 yes, the first time I saw it was from the attorneys.

19 Q. And other than receiving this copy from  
20 the attorneys do you have any personal knowledge if  
21 this is a true and accurate copy of any particular  
22 Voyager report?

23 A. I do not.

24 Q. And then finally in RJS-11 if you would  
25 turn to the last three pages of that exhibit, these



1 appear to be invoices generated by someone other than  
2 you, correct?

3 A. That is correct, they're invoices  
4 generated by someone other than me.

5 Q. And were you present for the work that  
6 was reportedly done according to what's written on  
7 these invoices?

8 A. Only page 23. I was not present for  
9 pages 21 and 22.

10 Q. So for pages 21 and 22 --

11 A. And I'm sorry, I stand corrected. I was  
12 there for a June date in this year, 2009. I stand  
13 corrected. It's a 2008 invoice so, no, sir, I was  
14 not.

15 Q. So for pages 21, 22, and 23 of RJS  
16 Exhibit 11 you have no personal knowledge that these  
17 are true and accurate copies of these vendor  
18 invoices, true?

19 A. That is true.

20 Q. And you also have no personal knowledge  
21 that the work that's reflected as having been done  
22 was actually done as it's portrayed on these  
23 invoices?

24 A. When you ask personal knowledge, does  
25 that mean firsthand or secondhand knowledge, sir?

1 Q. Firsthand.

2 A. I do not have firsthand knowledge.

3 Q. And these three documents, pages 21, 22,  
4 23, these are not documents that you regularly keep  
5 in the course of your consulting business, are they?  
6 These are documents from Cameron Creek.

7 A. First part of your question the answer is  
8 no, I do not, sir. And to the second question is  
9 yes, they are Cameron Creek.

10 Q. Thank you.

11 And did you receive these copies of  
12 invoices, pages 21, 22, and 23, from attorneys for  
13 Cameron Creek?

14 A. Yes, sir, I did.

15 Q. Was that the first time you saw them?

16 A. These three invoices, that's correct,  
17 yes, sir.

18 Q. If you would turn to page 11 of your  
19 prefiled direct testimony, please.

20 A. I'm there, sir.

21 Q. At line 18 you reference a page from the  
22 2006 National Fuel Gas Code which found that  
23 multistory post-exhaust venting of gas appliances of  
24 multiple dwelling units was allowed, and you indicate  
25 that you have attached that particular page showing

1 that.

2 A. Yes, sir.

3 Q. RJS-10.

4 A. Yes, sir.

5 Q. Could you identify that page from the  
6 National Fuel Gas Code in your RJS-10 for me?

7 A. I could. Just prior to the pages we came  
8 from, RJS-11, two pages prior to that would be RJS  
9 Exhibit No. 10.

10 Q. I believe it's a two-page exhibit.

11 A. Correct. Of the two-page exhibit  
12 numbered 1 and No. 2, page No. 2 is a single-page  
13 excerpt that I removed from an actual copy of the  
14 2006 International Fuel Gas Code and provided to the  
15 attorneys for this exhibit, yes, sir.

16 Q. Well, I was confused because I saw that  
17 on the page, but in your testimony you said it came  
18 from the National Fuel Gas Code. That was my  
19 question.

20 A. It may be a typo. The error is mine.  
21 The page from the International Fuel Gas Code and  
22 from the National Fuel Gas Code would be identical  
23 except the one from the National Fuel Gas Code would  
24 be marked Appendix G, as in golf. This one's  
25 Appendix B, as in bravo, which is from the

1 International Fuel Gas Code. They use the same  
2 pages.

3 Q. So do you have a --

4 A. I provided the wrong page to the  
5 attorneys.

6 Q. Should we correct your line 18 of your  
7 testimony to change the "N" to an "I" in terms of  
8 what is attached?

9 A. I think we could do that if you're  
10 willing to allow me to state that the page would be  
11 the same page in the National Fuel Gas Code but it  
12 would be identified G-4 as opposed to B-4.

13 Q. You're welcome to offer that answer.

14 A. Thank you, sir.

15 Q. Whether it's correct I cannot verify at  
16 this point because I'm just now learning of the  
17 change, you understand.

18 A. That's fine, sir.

19 Q. Let me --

20 MR. STEMM: May I approach the witness?

21 HEARING EXAMINER: You may.

22 MR. STEMM: Let me mark as Columbia Gas  
23 Exhibit -- 5?

24 HEARING EXAMINER: Yes, 5.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1           Q.    Take a minute, Mr. Schutz, to look  
2 through the excerpt that I've marked as Columbia Gas  
3 Exhibit No. 5.

4           A.    Yes, sir.

5           Q.    Okay. You recognize these pages also as  
6 coming from the 2006 International Fuel Gas Code?

7           A.    I do, sir.

8           Q.    Thank you.

9                    If you would turn -- I apologize. Let's  
10 number this exhibit starting with the cover page as  
11 page 1, 2, 3, 4, 5, and 6, this is a six-page  
12 exhibit.

13          A.    Yes, sir.

14          Q.    Is page 6 of Columbia Gas Exhibit 5 the  
15 same page that you attached as page 2 to RJS Exhibit  
16 10?

17          A.    It's from two different versions of the  
18 2006 IFGC book, but it's intended to be the same  
19 page.

20          Q.    Is the substance of the diagrams and the  
21 description the same?

22          A.    Yes, sir, it is.

23          Q.    Now, you indicated that this comes from  
24 the International Fuel Gas Code, correct?

25          A.    I did, yes, sir.

1           Q.    Did you mean to say that it comes from an  
2 appendix to the International Fuel Gas Code?  Would  
3 that be more accurate?

4           A.    Certainly more accurate.  I didn't mean  
5 to say that, but it would be more accurate.

6           Q.    Would it also be accurate to say that the  
7 appendix is not actually part of the International  
8 Fuel Gas Code?

9           A.    I need to know if you're asking a  
10 question in terms of the book, which is titled the  
11 "2006 International Fuel Gas Code," or whether you're  
12 asking about a specific adoption of that code book.

13          Q.    What I'm asking, isn't it true that page  
14 6 of Columbia Gas Exhibit 5 and page 2 of RJS Exhibit  
15 10 is an appendix page that is informational,  
16 informative only, and not actually part of the code?

17          A.    I need to preface my response with the  
18 fact that I instruct for the International Code  
19 Council.  This code is one of the code books that I  
20 am employed to instruct.  The code book that we  
21 instruct contains the appendices; they are part of  
22 our code book.  But if the code is adopted in part by  
23 a local jurisdiction, the appendices is notified to  
24 them as additional material that they must  
25 specifically adopt or reject, yes, sir.

1           Q.    So if you turn to page 5 of Columbia Gas  
2 Exhibit 5 for me, do you recognize this as the first  
3 page to Appendix B where you find the diagram that  
4 you selected for your prefiled direct testimony?

5           A.    Help me out.  Where am I looking?

6           Q.    Page 5 of Columbia Gas Exhibit 5.  I just  
7 handed you that six-page document on the  
8 International Fuel Gas Code and we all numbered our  
9 pages.

10          A.    Sorry.  And could you ask the question  
11 again, please?

12          Q.    Sure.  Identify for me, if it isn't true,  
13 that this is the front page of Appendix B to the  
14 International Fuel Gas Code of 2006 from which you  
15 selected the diagram that we see in your prefiled  
16 testimony page 2, RJS Exhibit 10.

17          A.    Yes, sir.

18          Q.    And what is the parenthetical statement  
19 that is part of this international fuel code book  
20 below the title of Appendix B?

21          A.    "This appendix is informative and is not  
22 part of the code."

23          Q.    Do you agree with that?

24          A.    I do, yes, sir.

25          Q.    Now, turning back to the diagram itself,

1 which is both -- the substance is the same, correct,  
2 RJS-10, page 2, and Columbia Gas Exhibit 6?

3 A. Yes, sir.

4 Q. Or, Exhibit 5 page 6.

5 A. Yes, sir.

6 Q. Do these diagrams show anywhere the  
7 source of combustion ventilation to dilution air  
8 coming from -- whether it comes from the outside or  
9 occupiable space?

10 A. They do not.

11 Q. In fact, would you agree with me that if  
12 you are going to gas vents serving the appliances on  
13 more than one floor, you would need to make sure that  
14 none of the combustion, ventilation, or dilution air  
15 is supplied from an occupiable space?

16 A. I would not, no, sir.

17 Q. Okay. Let's take it one step at a time.

18 A. Okay.

19 Q. First of all, the page 4 of Columbia Gas  
20 Exhibit 5, can you turn to that for me?

21 A. I have it, yes, sir.

22 Q. And could you read for me section  
23 503.6.10.1?

24 A. It's at the bottom right of indicated  
25 page 4 which is actually page 83 of the 2006



1 International Fuel Gas Code which is known as the  
2 IFGC. It reads as follows: "All appliances  
3 connected to the common vent shall be located in  
4 rooms separated from occupiable space. Each of these  
5 rooms shall have provisions for an adequate supply of  
6 combustion, ventilation and dilution air that is not  
7 supplied from an occupiable space (see Figure  
8 503.6.10.1)."

9 Q. Thank you.

10 Now, does your job require you to  
11 commonly apply the National Fuel Gas Code to your  
12 work?

13 A. Yes, sir, it does.

14 Q. Do you consider yourself knowledgeable as  
15 to provisions of the National Fuel Gas Code that  
16 apply to the location, venting, and combustion air  
17 volumes for gas appliances in residential structures?

18 A. I do.

19 Q. I take it you've been to Cameron Creek?

20 A. I have, sir.

21 Q. I believe you were there, in fact, the  
22 day I was there, weren't you?

23 A. I was fortunate to be in your  
24 accompaniment, yes, sir.

25 Q. Likewise, sir.

1                   Now, at Cameron Creek each two-story  
2 building uses a common gas vent to vent the gas-fired  
3 appliances in both the first-story apartment and a  
4 second-story apartment above it while relying on  
5 habitable space volume inside the apartments to  
6 provide combustion, ventilation, and dilution air;  
7 true?

8                   A.    That is true.

9                   Q.    And the water heaters and furnaces in the  
10 Cameron Creek Apartments are category 1 equipment;  
11 true?

12                  A.    They are, yes, sir.

13                  Q.    Do you remember seeing the air grills in  
14 each unit?

15                  A.    Yes, sir, of course.

16                  Q.    And those were installed to specifically  
17 allow for air transfer between the apartment's  
18 habitable space and the appliance closet, correct?

19                  A.    Two of the three were. There's a third  
20 one that's for the plenum supply.

21                  Q.    Okay. We're talking about the one- and  
22 two-bedroom apartments?

23                  A.    In all of them, sir.

24                  Q.    Okay.

25                  A.    There are three grills. Two grills are

1 the ones I think you're asking me about, the high and  
2 the low.

3 Q. I understand. You are correct. Thank  
4 you. But those are specifically there to allow air  
5 transfer into the appliance closet from the apartment  
6 habitable space, correct?

7 A. That's correct.

8 Q. Now, would you agree with me that the  
9 1996 National Fuel Gas Code provisions on locating  
10 the water heater and the furnace prohibit the  
11 configuration that Cameron Creek uses in the one- and  
12 two-bedroom closets where the bathroom closet is  
13 used?

14 MR. ZETS: I interrupt for clarification.  
15 The version in effect in '96, because I think from  
16 Cheryl Roahrig's testimony that '95-'96 blurs the  
17 line on what was the '95 version which was in effect  
18 in '96 or then that subsequent version that came  
19 after the effective 1995 version.

20 HEARING EXAMINER: Could you clarify,  
21 please?

22 MR. STEMM: Sure, your Honor.

23 Q. I'm referring to the National Fuel Gas  
24 Code that took effect during the summer of 1996 and  
25 is commonly known as the 1996 National Fuel Gas Code.

1 Are you familiar with that version?

2 A. I am familiar with it, yes, sir. And  
3 your question, I'll answer your question, the answer  
4 to your question is no, sir, unless you only want me  
5 to apply the single paragraph that you referred me  
6 to.

7 Q. Well, I do want to take them one at a  
8 time, and I'm referring to paragraph 6.30.1 which  
9 lists water heaters as a prohibited installation in  
10 bathrooms, bedrooms, or any occupied rooms normally  
11 kept closed, unless the enclosed space has a  
12 weather-stripped solid door with a self-closing  
13 device, and where all combustion air is obtained from  
14 the outdoors.

15 A. You're asking me to ignore the paragraphs  
16 in chapter 1 of the National Fuel Gas Code.

17 Q. I'm not asking you -- excuse me, I'm not  
18 asking you to ignore anything. I'm simply asking you  
19 to answer my question which focuses on section 6.30.1  
20 of the National Fuel Gas Code of 1996, and would you  
21 agree with me, sir, that Cameron Creek's  
22 configuration of its water heaters in the bathroom  
23 closets in the one- and two-bedroom units does not  
24 comply with that provision?

25 A. Specifically the way you asked the

1 question you are correct. I agree with you.

2 Q. Thank you.

3 HEARING EXAMINER: Mr. Stemm, I just want  
4 to be sure. Were you referencing a document that's  
5 like in an exhibit that actually shows that provision  
6 number? Because I believe there is something, but I  
7 don't know where it is and I want to be sure that if,  
8 you know, similar to where we have the International  
9 Fuel Gas Code here --

10 MR. STEMM: Right. The provision that  
11 I've just quoted from is in the testimony of Stephen  
12 Erlenbach that has not yet been introduced, but it's  
13 quoted there, and I'm just using that as my  
14 reference. This witness has testified he's familiar  
15 with it, so --

16 HEARING EXAMINER: That's fine. I just  
17 want to be sure in this portion of the record in the  
18 transcript there's some cite to where we can locate  
19 the actual language that you are reading. So you did  
20 exactly what I asked you to do.

21 MR. STEMM: And the answer to your  
22 question would be this particular standard is quoted  
23 at page 11 of the prefilled testimony of Stephen E.  
24 Erlenbach which will be introduced -- proposed for  
25 introduction later today hopefully.

1 HEARING EXAMINER: I appreciate that.  
2 You may continue.

3 MR. STEMM: Thank you.

4 Q. (By Mr. Stemm) The water heaters at  
5 Cameron Creek are not direct vent type water heaters,  
6 are they?

7 A. They are not.

8 Q. Would you agree with me too, sir, that  
9 section 7.6.4 of the 1996 National Fuel Gas Code  
10 titled Gas Vents Serving Equipment on More than One  
11 Floor also is violated with the multiunit, multistory  
12 venting used at Cameron Creek?

13 A. Referring to that section of the code and  
14 ignoring the remainder of the code, yes, sir.

15 Q. If you would turn to -- first let me ask  
16 this, the National Fuel Gas Code provisions that we  
17 just discussed, the two --

18 A. Yes, sir.

19 Q. -- that I raised for you, those are  
20 separate and distinct from the standards on total  
21 combustion air volume requirements, correct?

22 A. I believe they are, sir.

23 Q. In other words, you could meet the  
24 requirements for inside and outside air for total  
25 combustion volume for a particular unit and still

1 violate the two National Fuel Gas Code provisions  
2 that we've just discussed, correct?

3 A. Well, the first half of your statement is  
4 correct. You could do other measures under the code  
5 in which case you can ignore the two sections that  
6 you brought to my attention. So they're not a  
7 violation.

8 Q. But in this case we discussed that  
9 Cameron Creek does not comply with either of the two  
10 specific provisions I cited for you, correct?

11 A. That is correct.

12 Q. Okay.

13 A. But my statement still stands correct,  
14 sir.

15 Q. Let me ask you to turn to page 13 of your  
16 testimony, prefiled testimony, am I correct to read  
17 that your answer from page 9, excuse me, from page  
18 13, line 9 -- are you with me?

19 A. I am.

20 Q. -- to page 14, line 2, your answer  
21 derives from your reading of Exhibit RJS-2, correct?

22 A. That is correct.

23 Q. Now, we've had some discussion about the  
24 response of the addendum and the building permit  
25 process previously; I believe you were in attendance

1 for that?

2 A. I was, yes, sir.

3 Q. And you heard some testimony regarding  
4 questions over whether anyone has actually reviewed  
5 the computations that were referenced in the  
6 response. Have you reviewed those computations?

7 A. I have not. Those computations are not  
8 available, sir.

9 Q. If you would turn to page 17 of your  
10 prefiled testimony, sir, and specifically I will  
11 refer you to -- start with lines 1 through 7 of your  
12 answer there. Are you with me?

13 A. Yes.

14 Q. You reference testing that was performed  
15 in October 2008 by someone other than yourself,  
16 correct?

17 A. That is correct.

18 Q. And your basis of knowledge concerning  
19 the results of those tests are derived from the  
20 documents attached as Exhibits RJS-3A, correct?

21 A. Only in part, sir.

22 Q. My question is: You assume that the  
23 tests were completed in the manner that such testing  
24 would typically be performed under city protocols.  
25 Do you see that?



1           A.    I see it, and is that a question?

2           Q.    Well, I'm making sure you're there with  
3 me.

4           A.    Okay.

5           Q.    My question is: Did you interview the  
6 individuals who conducted the tests that you  
7 reference here in October 2008?

8           A.    In part I did.

9           Q.    And if you move down the page, at line  
10 18 -- well, start at line 15, you indicate that you  
11 read, excuse me, you reviewed over 50 red tags along  
12 with Columbia Gas's CO testing guidelines and an  
13 operations policy governing red-tagging appliances.  
14 Do you see that?

15          A.    I do.

16          Q.    And I believe you attached at least some  
17 of that to your testimony, correct?

18          A.    I did attach copies, yes, sir.

19          Q.    Okay. Now, you indicated at page 17,  
20 line 22, that in reviewing these red tags you noted  
21 that Columbia technicians wrote down actual CO  
22 readings only on a very limited number of occasions  
23 as we go onto page 18. Do you see that?

24          A.    I do.

25          Q.    And then at page 18, line 19, you attempt

1 to explain that based on your conclusion, that  
2 Columbia Gas may not have been following their  
3 written procedures regarding red-tagging. Do you see  
4 that?

5 A. I do.

6 Q. Okay. Let's take a look at the  
7 attachment to your testimony which is RJS-3B. Can  
8 you find that?

9 A. I have that.

10 Q. Now, as a part of what I think is Exhibit  
11 3B, it starts out with a typed page numbered document  
12 of 28 pages, correct?

13 A. That is correct.

14 Q. And then after that 28 pages there is an  
15 unnumbered exhibit page, set of pages, with a sticker  
16 that says Garrett Exhibit O and a Bates stamp number  
17 last three digits being 742.

18 A. I have it, yes, sir.

19 Q. 743.

20 A. Uh-huh.

21 Q. Is this a copy of the red-tag policy you  
22 were relying on in your testimony at page 17?

23 A. It is, sir.

24 Q. And 18, excuse me.

25 A. Yes, sir. My policy that I had from

1 Columbia Gas company that was provided to me during a  
2 class that they gave me was older than this one. The  
3 attorneys furnished me with one that appears to be  
4 more current.

5 Q. And this appears to be effective or  
6 issued at least February 1st, 2001, correct?

7 A. Yes. That's correct, sir.

8 Q. Now, if you would turn to --

9 HEARING EXAMINER: Before we go any  
10 further, I do appreciate the page numbers here, but  
11 if in the future if we're numbering pages, we need to  
12 start at the first page of the exhibit, go through  
13 the whole exhibit with sequential numbers. It  
14 doesn't matter if the document in the exhibit has a  
15 page number or not, and let me explain.

16 The relevance of that is if in writing  
17 the order or in citing in briefs you need to cite a  
18 page number in an exhibit, for example in this  
19 exhibit 3B there will be multiple page 1s. And so it  
20 doesn't really -- we're not going to be able to cite  
21 those pages either in the order or in the briefs if,  
22 in fact, that's what we're referring to.

23 So it's going to make it difficult, and  
24 I'm not sure how to cure that at this point since  
25 we're going down the road of this exhibit, but -- I

1 don't know.

2 Can we go off the record for a minute.

3 (Discussion off the record.)

4 HEARING EXAMINER: We'll go back on the  
5 record.

6 We've renumbered this exhibit somewhat,  
7 and perhaps you could clarify what page of the  
8 exhibit you were referring to in your earlier  
9 cross-examination.

10 MR. STEMM: I would be happy to, your  
11 Honor.

12 Q. (By Mr. Stemm) Mr. Schutz, I am now in  
13 Exhibit RJS Exhibit 3B at page 1B.

14 A. And I'm there with you, yes, sir.

15 Q. It looks like a two-page document, pages  
16 1B and 2B.

17 A. Correct.

18 Q. And you identify this as the policy you  
19 relied upon for the red-tagging answer you gave, and  
20 I guess I'm just -- please identify for me in this  
21 policy where it indicates that the service tech  
22 should indicate on the red tag itself any CO testing  
23 result that was obtained.

24 A. This document is two pages, it's a  
25 NiSource Energy Distribution/Columbia Gas Companies

1 document, date issued February 1st, 2001. The  
2 answer to your question is on page 1B. Under 1, in  
3 the middle of the page, 1. General, the second  
4 paragraph, "In addition to leaving the red tag, the  
5 employee shall inform the customer (verbally or in  
6 writing on the red tag), why the appliance was turned  
7 off" et cetera.

8 Q. Okay. So where does it say that the red  
9 tag must have the result of any CO test that was  
10 done?

11 A. The CO test, sir, and the guidance for  
12 that is contained in a separate manual that's also an  
13 exhibit here.

14 Q. So in answer to my question, this policy  
15 itself you now admit does not instruct the service  
16 techs to always write on the red tag the results of  
17 any CO reading, correct?

18 A. Related to these two pages, you're  
19 correct.

20 Q. And in fact, if you turn to page 2B of  
21 Exhibit 3-RJS and look at section 3 on records --

22 A. Yes, sir.

23 Q. -- the employee is not to record on any  
24 other information regarding the red-tagging of an  
25 appliance. Do you see that on the DIS order or MVT

1 completion form?

2 A. I'm not sure I understood the way you  
3 said that. Ask me again, please.

4 Q. Okay. I'm going to withdraw that  
5 question.

6 You've now indicated that you really  
7 meant to refer to a different policy document which,  
8 correct me if I'm wrong, you're referring to now the  
9 front 28-page document that you've somehow obtained  
10 and that you believe is the document from Columbia  
11 Gas called Carbon Monoxide Investigations; is that  
12 correct?

13 A. That is not correct, sir.

14 Q. Okay.

15 A. My reference still stands. This is the  
16 reference that tells the employee how to mark what  
17 they find in the field. You specifically asked me  
18 about carbon monoxide readings. The guidance for  
19 that is in a separate document. But this is the  
20 document that tells the employee to make notations on  
21 the job site before they leave it, in my opinion,  
22 sir.

23 Q. Okay. But this document which we're  
24 referring to as pages 1B and 2B of Exhibit RJS-3B,  
25 which is a February 2001 revised document called Use

1 of Red Tag on Appliances -- correct?

2 A. That's correct.

3 Q. -- it indicates, as you stated, that the  
4 employee shall inform the customer, verbally or in  
5 writing, as to why the appliance was turned off and  
6 what must be done to correct it. Correct?

7 A. Yes, sir.

8 Q. So would you agree with me that pursuant  
9 to this policy service techs are not required to fill  
10 out the red tag beyond what the red tag calls for on  
11 its face?

12 A. Yes, sir, I'd agree with that.

13 Q. Now, is there some other document that  
14 you believe is a Columbia of Ohio -- Columbia Gas of  
15 Ohio procedure, policy, or manual that indicates that  
16 all carbon monoxide test results are to be noted on a  
17 red tag?

18 A. I believe after becoming familiar with  
19 the carbon monoxide investigation document, which is  
20 listed as my attachment or Exhibit 3B, contains  
21 several references that would indicate that in order  
22 to be customer friendly the service technician would  
23 do that.

24 If I could refer to page No. 1 in my  
25 Exhibit 3B, your Honor, and it's not numbered, it

1 would be page -- well, it's their page No. 1.

2 HEARING EXAMINER: We're utilizing the  
3 numbers of this document so it is 3B page 1.

4 THE WITNESS: 3B, page No. 1, the final  
5 paragraph on that page, "As Columbia employees, we  
6 want to educate our customers," and then it goes on  
7 and it's specifically making reference to carbon  
8 monoxide and making them aware without causing them  
9 fear, but trying to make them aware of the situation  
10 and it goes on at great detail in the document to  
11 explain the different levels in parts per million so  
12 that they know whether to alert or educate.

13 Q. What is the date on this investigation,  
14 this manual that you're referring to?

15 A. This is a document October 14, 1994, the  
16 same document that was shared with me in one of the  
17 classes that I took from Columbia Gas employees.

18 Q. And what was the date on the revised  
19 policy concerning use of red tags?

20 A. It was February 1st of the year 2001.

21 Q. Okay. Are you aware of any -- strike  
22 that.

23 In your testimony at pages 17 and 18 you  
24 underscore the fact that you reviewed over 50 red  
25 tags left at Cameron Creek and reached an opinion on



1 the basis of your belief that those red tags on only  
2 two occasions actually indicated an actual carbon  
3 monoxide reading. Do you remember that testimony?

4 A. I do remember the testimony, and that's  
5 correct because I correlated these red tags with the  
6 maintenance document or the DIS document that's  
7 maintained by Columbia Gas that you referred to in my  
8 No. 11 to cross-reference that document and the times  
9 that it indicated carbon monoxide levels.

10 Q. And what is the policy of Columbia Gas on  
11 recording on the DIS document information regarding  
12 the red-tagging of appliances?

13 A. It requires them to indicate the carbon  
14 monoxide levels, if they had them, and the locations.

15 Q. And what is your basis for saying that?

16 A. The guidelines that you're reading  
17 indicate to their technician when they're to report  
18 to their supervisors and to record.

19 Q. Which guidelines?

20 A. This 3B document.

21 Q. And you're talking about the 1994 manual  
22 on carbon monoxide investigations?

23 A. I am, yes, sir.

24 Q. Okay. And that is not the policy on use  
25 of red tags, though, is it?

1           A.    It is not.  That's correct.

2           Q.    Does the red-tag form itself used by the  
3 company specifically have a space for writing in a  
4 carbon monoxide test reading?

5           A.    It has ample space on the reverse side of  
6 it, yes, sir.

7           Q.    I'm not talking if there's room.  I'm  
8 just saying does the form itself call for that  
9 information to be filled in each and every time a red  
10 tag is prepared?

11          A.    Are you asking if it's a preprinted  
12 question?

13          Q.    Yes.

14          A.    It is not.  You're correct.

15          Q.    So would you agree with me that there  
16 could have been carbon monoxide test readings that  
17 were taken but not recorded on a red tag based on  
18 everything we've discussed here today?

19          A.    Absolutely.  Especially knowing the  
20 employees in the field personally.

21          Q.    When you concluded that Columbia Gas may  
22 not have been following their written procedures when  
23 red-tagging, were you referring to the procedure that  
24 we marked as 1B and 2B of RJS Exhibit 3B?

25          A.    I was more likely referring to my Exhibit

1 3B, the training material and operating guidelines,  
2 sir.

3 HEARING EXAMINER: You mean you referring  
4 to pages 1 through 28 of Exhibit 3B.

5 THE WITNESS: Yes, ma'am. Thank you.

6 Q. What steps were you able to take to  
7 confirm that Exhibit RJS-3B, pages 1 through 28, is  
8 actually a true and accurate copy of an  
9 investigations manual from Columbia Gas Distribution  
10 Companies as of October 14th, 1994?

11 A. I relied on the reputation of the company  
12 and my attorneys, sir. I had a bound set of these  
13 documents in a previous office where I was employed,  
14 and it appears to be the same as the document that I  
15 had.

16 Q. Okay. That's fine.

17 If you could turn to page 19 of your  
18 prefiled testimony, sir. At page 11 there you  
19 offer -- line 11 on page 19, you offer your belief.  
20 Do you see that?

21 A. Yes, sir, I do.

22 Q. Did you conduct any survey of the Cameron  
23 Creek residents to determine whether the issue of  
24 carbon monoxide had presented itself in their lives  
25 based on human, pet, or plant symptoms over the last

1 decade?

2 A. Not the residents. The employees, but  
3 not residents.

4 Q. Which likewise I take it, then, that you  
5 have no knowledge of any health effects that the  
6 residents may have reported to, for example, their  
7 medical professionals?

8 A. No; I did verify with the Franklin County  
9 health department that they had no reported  
10 incidences. I would assume that health professionals  
11 or others would at least log that in if they had such  
12 a situation.

13 Q. But if I go to my doctor and complain,  
14 you're not going to know about that, are you?

15 A. If he reports it, he or she, as they  
16 should. But no.

17 Q. Is it accurate to say, Mr. Schutz, that  
18 your section II of your testimony at page 15 which  
19 continues onto page 21, line 3, that the subject  
20 of -- all your opinions reflected there deal with the  
21 subject of combustion air?

22 A. Commencing on page 15 and going how far,  
23 sir?

24 Q. Line 3 of page 21.

25 A. Oh. I'm sorry. Are you on page 21 or

1 page 15? Oh, 15 to 21? I'm sorry.

2 Q. Yeah, 15 to 21 at line 3.

3 A. Yes, that would be fair.

4 Q. Now, even assuming -- well, strike that.

5 Did you -- strike that.

6 Would you agree with me that the  
7 standards in the International Fuel Gas Code are very  
8 similar to the standards in the National Fuel Gas  
9 Code that concern these gas appliances?

10 A. They are similar with differences, yes,  
11 sir.

12 Q. Would you agree that both codes come  
13 about relying on a large committee of dedicated  
14 professionals and experts to come up with standards  
15 that adequately protect public health, safety, and  
16 welfare?

17 A. Wow. The two groups function entirely  
18 differently, but specifically to using personnel --  
19 yes, using different procedures they do rely upon  
20 those kinds of people, yes.

21 Q. And the goal of both fuel gas codes,  
22 whether International or National, is to protect  
23 public health, safety, and welfare.

24 A. I disagree. The International Fuel Gas  
25 Code very clearly by its preamble is based on public

1 health, safety, and welfare because it's adopted by  
2 government employees, by code officials; the other  
3 document is not. The other document is a standard.  
4 It's not a code. And it's written for a different  
5 reason. It's written primarily by the industry.

6 Q. Well, the National Fuel Gas Code has been  
7 around a lot longer than the International Fuel Gas  
8 Code, correct?

9 A. Absolutely. Yes, sir.

10 Q. And many of the standards that have been  
11 developed in the National Fuel Gas Code since the  
12 1970s are now found in the International Fuel Gas  
13 Code, correct?

14 A. Yes.

15 Q. Would you agree with me that the National  
16 Fuel Gas Code is intended to promote public safety by  
17 providing requirements for the safe and satisfactory  
18 utilization of gas?

19 A. I would.

20 Q. Would you agree with me that the National  
21 Fuel Gas Code has been in place since the  
22 early-1970s?

23 A. As -- yes, as the NFGC it has been. It  
24 predates that, but yes, sir.

25 Q. But as the NFGC, around 1974?

1           A.    That's right.

2           Q.    Would you agree that the NFGC was  
3 originally developed and is periodically updated  
4 using the consensus standards development process  
5 approved by the American National Standards  
6 Institute?

7           A.    That's how they function, yes, sir.

8           Q.    Otherwise known as ANSI.

9           A.    ANSI.

10          Q.    ANSI?

11          A.    Yes, sir, A-N-S-I.

12          Q.    Correct. And this process that is  
13 followed for the National Fuel Gas Code brings  
14 together knowledgeable persons representing various  
15 viewpoints and interests to achieve consensus on  
16 fire, gas, and other safety issues. Agree?

17          A.    I do.

18          Q.    Do you agree that the code is a  
19 cumulative result of many individuals and  
20 organizations that are knowledgeable with respect to  
21 the installation of gas piping and equipment designed  
22 for utilization of gaseous fuels?

23          A.    I would agree. You're reading from their  
24 preamble, yes, sir.

25          Q.    I just want to make sure you agree.

1 A. I do.

2 Q. Okay, good.

3 A. I have to as a member.

4 Q. This is on the record so you're a smart  
5 man.

6 A. Thank you.

7 Q. If a company policy says "thou shall  
8 comply with A and B" and there is no compliance with  
9 A, then the company policy is violated whether or not  
10 there's compliance with B, correct?

11 MR. ZETS: Objection as to vague. I  
12 think without knowing what A and B are the question  
13 is impossible to answer.

14 MR. STEMM: I'll ask the witness.

15 Q. I think you understand the question, but  
16 if you don't, you can ask.

17 A. I don't. My comment would have been the  
18 same. I'm sorry.

19 Q. All right. Well, let me -- I will be  
20 happy to rephrase whenever I confuse you. If a  
21 policy indicates thou shall comply with the National  
22 Fuel Gas Code and local codes as opposed to or local  
23 codes, the "and" would signify compliance with both,  
24 correct?

25 A. Yes; if you can.



1           Q.    Okay.  So if you can't comply with the  
2 first, then you haven't complied with the policy at  
3 all, correct?

4           A.    You're asking me the question by  
5 disregarding the total document.  Mrs. Roahrig  
6 pointed out to you that there are times when there  
7 are conflixtions in the code itself and how we have  
8 to resolve those conflicts, but answering your  
9 question specifically for today, yes, if it says "A  
10 and B," then you would have to have both together,  
11 not separated.

12          Q.    Okay.  And I'm simply referring to your  
13 testimony at page 32, line 20, where you cite to what  
14 you claim to be a Columbia Gas policy that indicates  
15 "installations shall be in accordance with NFGC and  
16 local codes."

17          A.    Right.

18          Q.    Correct?

19          A.    Yes, sir.

20          Q.    So once the company determines there's no  
21 compliance with the National Fuel Gas Code, there's  
22 no reason to look at local codes because the "and"  
23 part of the sentence can no longer be met if the  
24 first can't be met, right?

25          A.    No, that's not correct.  And that's the

1 point I just tried to make. The local code could be  
2 equivalent to the National Fuel Gas Code, so you're  
3 gaining compliance through B of A, and again,  
4 Mrs. Roahrig tried to point that out to you.

5 Q. I accept that. But the bottom line is  
6 for the company's provision of safe gas service they  
7 rely on the National Fuel Gas Code as a starting  
8 point for safety.

9 A. I agree with that, yes, sir.

10 Q. Okay. Now, have you ever performed the  
11 job of a gas utility service tech?

12 A. Not as a direct technician. I've  
13 assisted, yes.

14 Q. You haven't actually served as a service  
15 tech, correct?

16 A. Ohio requires that you have to be  
17 licensed and certified, so my answer to you is no,  
18 sir, I haven't. I've assisted.

19 Q. If you would turn to page 33 of your  
20 prefiled testimony, please.

21 A. Yes, sir.

22 Q. At page 33, line 22, a sentence begins  
23 "This was based on the recognition."

24 A. Yes, sir.

25 Q. And I just want a clarification. Are you

1     testifying that the state of Ohio -- this was a state  
2     of Ohio recognition or somebody else's recognition?

3             A.     It was based on the State of Ohio's, and  
4     it was well known during testimony on the codes in  
5     1995 that this was the common type of construction  
6     and was verified by me during inspections of  
7     buildings during that time period.

8             Q.     And what was the common type of  
9     construction that suddenly changed from -- Cameron  
10    Creek was constructed in 1997, I believe, for first  
11    occupancy in August '98, correct?

12            A.     That is correct.

13            Q.     Okay. And then did something happen in  
14    1998 where Ohio apartment buildings were no longer  
15    constructed anything like Cameron Creek with the use  
16    of bathroom utility -- gas appliance utility closets  
17    and multiunit, multistory vents to exhaust gas  
18    appliances?

19            A.     Correct.

20            Q.     So what was the sea change from the  
21    beginning of 1998 to the end of 1998 and what is your  
22    basis for that?

23            A.     During 1998 the state of Ohio adopted  
24    additional codes and revised the Ohio Building Code,  
25    the Ohio Mechanical Code, and incorporated some

1 additional new materials.

2 Q. Okay. So they basically added some  
3 additional safety protections?

4 A. Sure. Yes, sir.

5 Q. Now, let me ask you to turn to your  
6 Exhibit RJS-3A which --

7 A. Has 25 pages, yes, sir.

8 Q. Yes. That's what I was just about to say  
9 for the record, consists of 25 pages. It begins with  
10 page 1, a cover letter from American Air Heating  
11 Cooling and Electric dated October 8th, 2008. Do  
12 you see that?

13 A. I do see it.

14 Q. Would you agree that this set of  
15 documents involves 12 apartments out of 240  
16 apartments in the complex?

17 A. I'd have to count them again, but that's  
18 approximately correct, yes, sir.

19 Q. That was my count at least. You'll agree  
20 subject to check?

21 A. I would, yes, sir.

22 Q. Okay. So approximately 5 percent of the  
23 apartments were inspected or tested in this instance  
24 by American Air?

25 A. That's correct.

1 Q. How were you involved in this exercise?

2 A. I was not involved until after the  
3 exercise had been completed and was engaged for this  
4 project and made aware that these had been done.

5 Q. Okay. So your knowledge of what was done  
6 here is obtained solely from you reading these  
7 documents?

8 A. No, sir. My knowledge is from the  
9 individual that was in charge at American Air because  
10 he and I reviewed this letter and the attached  
11 documents and the way he and his personnel conducted  
12 themselves in doing these tests.

13 Q. So you would agree that soot buildup in  
14 the heat exchanger is a sign of insufficient oxygen  
15 or combustion air?

16 A. That's what we teach; yes, sir.

17 Q. And you agree that the flame rollout  
18 could be caused by insufficient oxygen or lack of  
19 combustion air?

20 A. Could be. Yes, sir, that's correct.

21 Q. Okay. Did the person from American Air  
22 provide you with copies of these documents attached  
23 as Exhibit RJS-3A?

24 A. I had them provided through the  
25 attorneys, not directly to me, sir.

1           Q.    Reviewing a number of these documents it  
2   seemed to be the case where it was a fairly common  
3   practice for the fresh air duct to be turned off in  
4   some of these units. Did you notice that?

5           A.    Yes, sir, I did.

6           Q.    Based on the configuration of that fresh  
7   air duct, is that something that the residents  
8   themselves could do?

9           A.    No, it's not, sir. They can't get to it.

10          Q.    So someone at Cameron Creek at some point  
11   in time must have turned those off to a number of  
12   apartments?

13          A.    No. No. I believe what you're finding  
14   is the same procedure that I followed when I tested  
15   this. They turned it off in order to see what the  
16   reaction would be without that air being available.

17          Q.    Well, the note says "Fresh air return is  
18   turned off, should be on." It sounds like during  
19   their inspection they discovered it had been turned  
20   off and that they were warning that it should be on.  
21   Is that not how you're reading what I'll say is  
22   page -- I'll just pick a sample here -- page 4 of  
23   this exhibit?

24          A.    I remember that that's the same comment  
25   that was on page 6 as well. There's an intake on the

1 outside of the building that's gets obstructed and  
2 needs to be maintained by maintenance staff, gets  
3 cleaned, so I was aware of that. The one on 4 I  
4 can't explain. There's no damper on any of the ones  
5 that I looked at that could actually be closed off.

6 Q. You don't see the page that I'm referring  
7 to?

8 A. I do see the comment on page 4 that  
9 you're referring to in the middle of the page on my  
10 No. 4.

11 Q. Right.

12 A. The right-hand side of the fourth line,  
13 "Fresh air return is turned off, should be on." I  
14 can't answer that one, the only indication I saw with  
15 their technicians is you can block birds and  
16 insects -- not insects. Take birds, a lot of  
17 activity could block the outlet on the outside of the  
18 dwelling unit, but those are maintained by local  
19 maintenance staff. There's no dampers on these, so I  
20 don't know what this is referring to.

21 Q. So in that case if you look at page 6 of  
22 this exhibit, you were aware of the situation where  
23 the fresh air duct was on, but the outside grill was  
24 plugged with lint?

25 A. No. What I was aware of -- I saw this

1 comment, of course. During observations I looked for  
2 a similar situation and I found none of them with  
3 that. And the maintenance staff told me one of the  
4 things they do routinely is watch for that kind of  
5 occurrence.

6 Q. For lint or birds?

7 A. Yes, sir. And they don't have a choice.  
8 The code requires that you have to cover that inlet.

9 Q. But there are a number of these that  
10 indicate that the fresh air return is turned off and  
11 it should be on. There's another one that indicates  
12 that, at page 5, in fact, of this exhibit --

13 A. Yeah, you can look for more of them, sir.  
14 I can't answer.

15 Q. You can't explain that?

16 A. No. I mean, I know the configuration of  
17 the furnace and that there's a fresh air port on the  
18 bottom of the furnace, and I don't know if that's  
19 what they're indicating. That would be separate --  
20 the fresh air that I'm talking about is undampered  
21 and it comes into a large plenum box so there's  
22 always fresh air coming into the unit.

23 There could be a small one inside the  
24 Bryant unit that could be in the Off position, it's  
25 not going to make a considerable amount of



1 difference.

2 Q. So you disagree with American Air's  
3 opinion that when they find fresh air's off and they  
4 say it should be open --

5 A. No, I don't.

6 Q. -- you don't think that's important?

7 A. No. I don't disagree at all.

8 Q. And the air that you just talked about  
9 coming into the plenum, that is not direct combustion  
10 air, is it?

11 A. It's not direct combustion. It could be  
12 indirect combustion air, yes, sir.

13 Q. As it circulates around the apartment,  
14 for the hot water heater for example.

15 A. I think it can circulate directly from  
16 its plenum to the water heater.

17 Q. But it's indirect.

18 A. Yeah. It would be indirect because it's  
19 directed through the furnace first. I don't know if  
20 we answered that. It's a minor amount, but I  
21 wouldn't ever say it's unimportant.

22 Q. But you say it is pretty minor in terms  
23 of --

24 A. Quantity? Sure.

25 Q. -- combustion air provided in that means.

1           A.    I'm having to assume what this technician  
2 is referring to and I'd rather not do that.

3           Q.    Okay.

4           A.    I can't identify from the writing.

5           Q.    I guess it would be probably more helpful  
6 if the technician himself could be here to allow  
7 questioning on these documents, wouldn't it?

8           A.    Not necessarily.

9           Q.    Well, you're having difficulty answering  
10 the questions, aren't you?

11          A.    Well, on that specific item. What we  
12 used this for was an indication of the operating  
13 status of the equipment and whether we found  
14 indications of either gas leaks or carbon monoxide.  
15 That's what we wanted these documents for.

16          Q.    And it seems like many times there -- the  
17 furnace was quite dirty and needed to be cleaned. Is  
18 that correct?

19          A.    Yes, sir. It's an apartment complex.

20          Q.    Now, again, the issue of complying with  
21 the indoor and outdoor -- excuse me. The issue of  
22 complying with indoor and outdoor combustion air  
23 requirements, that's a completely separate different  
24 subject than the requirements that you and I talked  
25 about with the National Fuel Gas Code on multistory

1 venting and gas appliances in bathroom closets,  
2 correct?

3 A. Totally different, yes, sir.

4 Q. Okay. Let me -- do you have before you a  
5 copy of the motion for leave to file supplemental  
6 exhibits filed by Cameron Creek's counsel on July  
7 13th which contains the two e-mails that you sent?  
8 I really don't need you to have the motion. Do you  
9 have the two e-mails that you sent to Mr. Hart on  
10 Friday, July 10th?

11 A. I have them in my binder. And I could  
12 use my Pepsi if you --

13 MR. STEMM: With permission of the  
14 Hearing Examiner, may he retrieve those documents and  
15 his Pepsi?

16 HEARING EXAMINER: Yes.

17 THE WITNESS: Thank you.

18 Q. Mr. Schutz, do your friends call you  
19 "Bob"?

20 A. They do. You may, sir.

21 Q. Well, thank you for that. I wasn't quite  
22 leading to that, but I appreciate that.

23 There was some indication in the exhibits  
24 that were attached to your prefiled testimony that  
25 Bob lost estimates to upgrade. Do you know what that

1 refers to?

2 A. I do, sir, and as the attorney Mr. Hart  
3 tried to point out, it's a typo.

4 Q. Okay.

5 A. It was "cost" estimates. What he did on  
6 my type -- they typed my testimony and then they put  
7 in parentheses the areas where I was supposed to add  
8 my document in, and so it was supposed to say "Bob  
9 put cost estimate" or something similar to that, yes,  
10 sir.

11 Q. Okay. I appreciate that.

12 Well, let's turn to -- and I don't know  
13 how we want to refer to this, quite honestly I didn't  
14 know that I would be questioning the witness on these  
15 documents. Everyone has a copy in front of them. I  
16 don't want to make it a Columbia Gas exhibit really  
17 because it's something I'm going to move to strike.  
18 I guess for identification I can mark it as a  
19 Columbia Gas exhibit.

20 HEARING EXAMINER: No, it should not be  
21 marked as a Columbia Gas exhibit, it's being offered  
22 as a Cameron Creek exhibit.

23 THE WITNESS: Can I waive it?

24 MR. STEMM: I don't think we've had it  
25 marked yet. Would you like them to mark it?

1 HEARING EXAMINER: I believe that it is,  
2 I mean, the intent I believe was to mark it as --

3 MR. STEMM: Oh, RJS 4A and B.

4 HEARING EXAMINER: RJS 4A and B. That's  
5 my understanding.

6 THE WITNESS: Yes, ma'am.

7 MR. STEMM: This is a July 13th version  
8 of RJS-4A as opposed to the July 2nd version which  
9 simply is a sheet that says "Reserve right to  
10 supplement." But for purposes of the record when I  
11 refer to RJS-4A, I will be referring to the July 10  
12 versions of these two pages. Is that fair?

13 HEARING EXAMINER: So to clarify, and I  
14 think you did a good job, but just so I understand  
15 for the record, RJS-4A and 4B as filed on July 2nd  
16 just contained two basically blank pages stating  
17 "Reserve right to supplement" and "Bob lost estimates  
18 to upgrade" on both of them.

19 MR. STEMM: Right.

20 HEARING EXAMINER: Subsequently on July  
21 13th Cameron Creek filed a motion to supplement and  
22 actually inserted RJS-4A and 4B. I mean, it is noted  
23 in the motion attached to it that the first document  
24 A is remedial construction work demanded by Columbia  
25 Gas.

1           MR. STEMM: These both have titles on  
2           them that are slightly different than that in terms  
3           of the document themselves. We could call them  
4           proposed RJS-4A, proposed --

5           HEARING EXAMINER: Well, I'm going to  
6           allow you to make motions to strike and we're still  
7           going to deal with that I believe, but for purposes  
8           of identification the document that is dated Friday,  
9           July 10th, 2009, at 4:14 p.m. will be stated as 4A.

10          MR. STEMM: Okay.

11          HEARING EXAMINER: And the document  
12          that's dated Friday, July 10th, 2009, at 4:34 p.m.  
13          will be documented as 4B.

14          MR. STEMM: Okay.

15          HEARING EXAMINER: Does that --

16          MR. STEMM: That's fine.

17          HEARING EXAMINER: I think that clarifies  
18          it and now you will be able to cross.

19          MR. STEMM: Thank you, your Honor.

20          Q.    (By Mr. Stemm) Mr. Schutz, referring your  
21          attention to RJS-4A -- do you have that before you?

22          A.    I do, sir.

23          Q.    At the bottom of that sheet there's a  
24          reference to American Air and the Total Estimate  
25          (American Air Company). Do you see that?

1           A.    Yes, sir, I do.

2           Q.    It's my understanding that these  
3 estimates of cost or pricing came from American Air  
4 Company; is that correct?

5           A.    No.  What it means is that I verified the  
6 estimates with them because I don't know current  
7 market prices for sheet metal and ductwork.  I use  
8 RSMeans and my own cost estimating for labor, but I  
9 need to get materials from suppliers and verify the  
10 prices are close.  But what I was verifying here is  
11 that American Air is the company that I verified  
12 these costs with.

13          Q.    And when you said you verified, did you  
14 use their pricing for these exhibits or your own  
15 estimated pricing?

16          A.    It would be appropriate to say 4A, the  
17 one that you're referring me to, is American Air's  
18 estimate with my verification.  That's why I added  
19 the note because, obviously, their pricing was  
20 incomplete.

21          Q.    Based on not including wall and ceiling  
22 work or repairs?

23          A.    Yes; they made an assumption that didn't  
24 seem appropriate to me.

25          Q.    And then RJS-4B, at the bottom of that

1 page it says "Pricing furnished by American Air and  
2 Conley Remodeling."

3 A. Yes, sir.

4 Q. So I take it the pricing for 4B was  
5 provided by those two entities?

6 A. Again, I verified my pricing, my  
7 estimating, with them, contractors currently in the  
8 field.

9 Q. When did you do this verification work?

10 A. I'll bet it took two months to put these  
11 prices together because I probably attempted to get  
12 prices from 12 different companies, most of whom  
13 walked away from it because of the nature of this  
14 work. Most of the companies wouldn't give pricing on  
15 it because they believed the work is inappropriate  
16 and --

17 Q. Well, I'll strike all that. That wasn't  
18 part of my --

19 MR. STEMM: Move to strike.

20 THE WITNESS: I'm sorry.

21 MR. STEMM: Nonresponsive.

22 HEARING EXAMINER: Motion to strike  
23 granted.

24 Q. We'll get through a lot faster --

25 A. Yes, sir.



1 Q. -- if you just answer my questions.

2 A. I understand.

3 Q. Did you at the time of the prefiling of  
4 your testimony on July 2nd, what I'll call the  
5 second version of your testimony where you made some  
6 reference to costing, by that time did you have  
7 the -- you said you had been working on this for two  
8 months so evidently you had some workpapers at that  
9 time already based on your own calculations; is that  
10 correct?

11 A. That is correct, sir.

12 Q. And did you attach those or explain the  
13 content of those anywhere in your prefiled testimony?

14 A. What I did in my prefiled testimony is I  
15 used the \$1,500 per unit estimate that I had on my  
16 workpapers but I didn't file them because I hadn't  
17 verified them.

18 Q. Well, the day before I saw you use a  
19 number \$5,000 per unit.

20 A. You did.

21 Q. And then the next day it was 1,500.

22 A. Yes, sir. That's because I advised the  
23 attorneys that the numbers I was getting from those  
24 contractors that I didn't mention -- I'm sorry --  
25 varied from \$500 to \$5,000 a unit.

1           Q.    So, again, as of the time you filed your  
2 testimony, you didn't know whether you could sit up  
3 here and testify whether it would be 1,500 or 5,000 a  
4 unit.

5           A.    No.  What I knew was I was comfortable  
6 with \$1,500 a unit.  That was a number that I  
7 reworked and verified myself and all I needed to do  
8 was, again, get contractors that verified my field  
9 numbers.

10          Q.    Well, in your first version that was  
11 filed you put 5,000 in your testimony on the day  
12 before?

13          A.    I did.

14          Q.    You weren't comfortable with that number,  
15 but you used it?

16          A.    I did.

17          Q.    And the next day you thought the better  
18 of it and thought I better go to the lower side?

19          A.    No.  No.  Yes, on appearance that's how  
20 it appears.  What I'm saying is I had cost estimates  
21 from \$500, a proposal from this American Air, to  
22 \$5,000 a unit.  I had my own cost estimates which we  
23 as engineers work up on a design project of \$1,500,  
24 so I told the attorneys and I reported that the  
25 worst-case situation here was \$5,000 a unit.

1                   But in doing my pretrial I thought that  
2 was not appropriate. My numbers verified the 1,500,  
3 I was comfortable with that number.

4                   Q.    Okay. So based on your own work --  
5 strike that.

6                   The pricing that was obtained from these  
7 other entities, American Air and Conley Remodeling,  
8 did not come out to either 1,500 or 5,000 per unit,  
9 correct?

10                  A.    That's right, they did not.

11                  Q.    And you chose now to use their numbers in  
12 lieu of the number that you independently came up  
13 with, correct?

14                  A.    Well, I used my number plus the advice  
15 that I got from the city of Columbus when the  
16 supervisor returned from vacation and advised me that  
17 there's the possibility that you can see that they  
18 would require interlocking of the dampers, so I had  
19 to add that amount, and then because of the painting  
20 and the damper work we now were in a situation we'd  
21 have to move tenants out of these units.

22                  Q.    Okay. Well, here's what I'm trying to  
23 understand --

24                  A.    Yes, sir.

25                  Q.    -- this e-mail that you forwarded to

1 Mr. Hart marked RJS-4A, this evidently is an e-mail  
2 from you, correct?

3 A. That is, yes, sir.

4 Q. What did you receive from American Air  
5 that allowed you to draft this e-mail Friday  
6 afternoon July 10th?

7 A. The president of American Air called us  
8 and gave us an estimate of \$500 a unit based upon  
9 simply a conversation that he had been involved with  
10 Columbia Gas representatives that said all he had to  
11 do was install a seven-inch combustion air duct to  
12 each mechanical room. And the city of Columbus  
13 advised us that it would not meet code requirements  
14 and would not be an acceptable installation, but he  
15 priced it that way anyway. And then after I asked  
16 him to verify that price, he said "Oh, by the way,  
17 that means the maintenance people will do the  
18 painting and the gyp board" and yadda yadda and  
19 changed the whole nature of this estimate on me.

20 Q. But just so I -- let's focus our  
21 attention on 4A.

22 A. Okay.

23 Q. The \$500 a unit number which is there  
24 twice to add up to a thousand --

25 A. Yeah.

1           Q.    -- that's American Air's number that they  
2 gave verbally to you over the telephone sometime  
3 prior to 4 o'clock July 10th.

4           A.    That's correct.

5           Q.    Did you review American Air's workpapers  
6 as to how they arrived at those numbers?

7           A.    I didn't.

8           Q.    Now, on RJS-4B, did these numbers also  
9 come from a telephone conversation?

10          A.    The verification came from phone  
11 conversations with these companies, yes, sir.

12          Q.    But I want to know what other -- did they  
13 send you e-mails?

14          A.    No.

15          Q.    Or other documents.

16          A.    No, sir. I worked these prices up.

17          Q.    Over the telephone with these  
18 individuals?

19          A.    No. I worked the prices up myself and  
20 then indicated to them the pricing that I was  
21 including for these and just verified the pricing.

22          Q.    So when you say you verified the pricing,  
23 I'm confused. At the bottom of e-mail 4B it says,  
24 "Pricing furnished by American Air, Mike Sliemers,  
25 and Conley Remodeling, Sam Conley."

1           A.    Yeah, an example, in the middle of that  
2 page is eliminate two existing wall transfer  
3 openings; that's tearing the louvers off, putting the  
4 gyp board back, taping it in and painting it. That  
5 \$300 to do that came from Sam Conley at Conley  
6 Remodeling.

7           Q.    And you had nothing at all to do with the  
8 estimate of that \$300.

9           A.    Correct.

10          Q.    Who provided you the \$200 estimate to  
11 seal utility room doors?

12          A.    Sam did that as well. I had 250. He  
13 said he could do it for 200.

14          Q.    Is it part of your job experience to  
15 quote estimates for this type of alteration?

16          A.    Yes, sir. I've done design work, and to  
17 bid a document or bid a job you have to prepare an  
18 engineer's estimate for the customer.

19          Q.    But in this case rather than use your own  
20 numbers, you are furnishing us numbers provided by  
21 Sam Conley and Mike Sliemers for RJS-4B, correct?

22          A.    Absolutely. Yes, sir.

23          MR. STEMM: Well, at this point, your  
24 Honor, we would move to strike and I don't know if  
25 you want to hear this now or later, I may be about

1 done with the cross-examination. Would you want me  
2 to first make sure I'm done with cross, or can I go  
3 ahead and enter into the motion to strike these  
4 e-mails?

5 HEARING EXAMINER: I have a couple  
6 questions on these e-mails and so let me go ahead and  
7 ask some questions just because I need to understand  
8 what's actually here.

9 MR. STEMM: You want to ask your  
10 questions first, correct?

11 HEARING EXAMINER: Yes.

12 MR. STEMM: Yes.

13 - - -

14 EXAMINATION

15 By Hearing Examiner Pirik:

16 Q. I'm trying to figure out on RJS-4A, where  
17 does that \$1,000 per unit figure appear on RJS-4B? I  
18 assume there's --

19 A. It doesn't, your Honor. The prices on 4A  
20 were submitted by American Air based upon the  
21 direction that was given by Columbia Gas of Ohio.  
22 And when I asked them to verify those numbers, those  
23 are their numbers, and so I provided those to the  
24 attorney. But before I turned them in to them I  
25 verified them with American Air, and that's when they

1 asked me to add the note that didn't include that  
2 additional work which meant this was not going to be  
3 a complete job.

4 Q. So July 10th, the July 10th -- well,  
5 the 4A, the RJS-4A is totally their estimate.

6 A. That's correct. Yes, ma'am.

7 Q. And then 4B is your --

8 A. Correct. In confidence I couldn't say  
9 that you could do the work required based on 4A. It  
10 couldn't be done. It wouldn't be a complete job,  
11 nobody could approve it. So I submitted 4B as a more  
12 realistic cost estimate for this proposed work  
13 somewhere in the neighborhood of approximately 400-  
14 to 600,000 dollars.

15 Q. I don't have a calculator in front of me  
16 so I can't add all this up to see if it actually  
17 equals that.

18 A. Yes, ma'am.

19 Q. Do you see the line that says "New  
20 subtotal \$1,600 per unit"?

21 A. Yes, ma'am.

22 Q. And then it says "Plus 500."

23 A. Right.

24 Q. "Equals 2,000"?

25 A. Yeah.



1 Q. Should that be 2,100?

2 A. It should be 21, and if you do the  
3 multiplication down, the total worked out right. I  
4 don't know how that line didn't -- probably messed up  
5 my Excel.

6 Q. So I mean, again, I don't have a  
7 calculator, but then if you carry that down, then  
8 this new subtotal is 2,600 per unit, and then I have  
9 no idea how that affects the numbers at the bottom.

10 A. It's 240 --

11 Q. I'm sorry?

12 A. It's 240 units.

13 Q. I guess I'm not following exactly. How  
14 do these three numbers -- how do you arrive at  
15 \$348,000?

16 A. There's 240 housing units, dwelling  
17 units.

18 Q. Correct.

19 A. So the cost per unit, per dwelling unit  
20 is multiplied times 240 units for the total complex.

21 Q. Correct. But, I mean, if you take the  
22 2,600 per unit and you times it times 240, where is  
23 that number? I don't have a calculator, so I . . .

24 A. It would change the numbers by \$4,000.  
25 That last number should be 604,000. So it would add

1 \$4,000 to each of those numbers, approximately.

2 Q. Okay. But that's still -- okay. So that  
3 answers my question as far as the 2,600 times 240  
4 equals \$604,000.

5 A. No. I'm sorry.

6 MR. STEMM: Not 6.

7 A. Your Honor, I misled you. The second  
8 number, the 480 would become 604,000, and the last  
9 number instead of \$600,000 would be \$840,000.

10 Q. Okay. What happens to the first number?  
11 Nothing? It just stays the same?

12 A. I didn't multiply that one for you.

13 Q. So 2,600 times 240 equals what? What  
14 number does that equal?

15 A. I get 412. That's not right.

16 MR. STEMM: Real quick, I made my motion  
17 to strike prematurely. I apologize. If this  
18 document came in, I was going to show all sorts of,  
19 you know, showing it's sloppy work, but I thought he  
20 testified the 300 number isn't mine, the 200 number  
21 isn't mine, you know, he can't claim -- if he can't  
22 claim all these numbers as his, then we need the  
23 third party.

24 So my motion to strike was basically  
25 based on these people not in the hearing room. If

1 you want me to go through and do what you're doing, I  
2 can do some more of that. So if it would influence  
3 your decision on striking this in its entirety.

4 HEARING EXAMINER: I just --

5 MR. STEMM: But I appreciate what you're  
6 doing, too.

7 HEARING EXAMINER: I'm trying to very  
8 simply understand even what the document is and where  
9 the numbers came from and who came up with those  
10 numbers. So if you have further questions that don't  
11 get into that issue, I would want you to go through  
12 that because --

13 MR. STEMM: Do you want me to do mine  
14 first before you do any more?

15 HEARING EXAMINER: Well, I don't --

16 Q. If you have an answer.

17 A. Yes, ma'am.

18 Q. Yes.

19 A. The \$2,600 per unit would be the correct  
20 number, you're correct, times 240 units would be  
21 \$624,000 instead of the 600.

22 Q. Okay. So that's what I came up with  
23 also. But where is 624,000? What line does that fit  
24 in under these three numbers at the bottom?

25 A. The \$600,000 would become \$624,000.

1           Q.    Okay.  And then I'll let Mr. Stemm  
2 continue with his cross-examination, so what do the  
3 348,000 and the 480,000 dollars represent?  What are  
4 those?

5           A.    They should be -- you take the first  
6 total, the \$1,600 per unit times 240 units, that  
7 would be based -- the basic code compliance per the  
8 city of Columbus requirements.  Then the second line  
9 was intended to match the \$2,100 per unit that you so  
10 properly corrected me on instead of 2,000.  And then  
11 the last line -- and that's because the city  
12 indicated during the meeting that we would have to  
13 electronically control those fire dampers, they  
14 couldn't just be plain dampers.

15                   And then the last line, which is now the  
16 624,000 which is based on \$2,600 per unit, is based  
17 on having to move the residents out for two days to  
18 do the work.

19           Q.    That answers those questions.  That  
20 clarifies that for me.

21           A.    Yes, ma'am.

22                   HEARING EXAMINER:  Mr. Stemm.

23                   MR. STEMM:  Thank you for another  
24 opportunity.

25                   HEARING EXAMINER:  You may continue.

1                   MR. STEMM: Sure. I'll complete my cross  
2 of this and then I'll renew my motion to strike.

3                   HEARING EXAMINER: That would be  
4 appropriate.

5                   MR. STEMM: Would that be preferable?

6                   HEARING EXAMINER: Yes.

7                   - - -

8                   CROSS-EXAMINATION (continued)

9 By Mr. Stemm:

10                  Q. Let's just try to -- let me try to  
11 simplify this.it The cost estimates for contractor,  
12 engineer estimate, and design professional, at the  
13 subtotal it says, "say \$100 a unit." Is that your  
14 "say \$100 a unit" estimate?

15                  A. Yeah. Those are lump-sum items that  
16 applied to all 240 units so I just divided it  
17 approximately. That's correct.

18                  Q. And are those your numbers or somebody  
19 else's numbers?

20                  A. They're my numbers based upon talking to  
21 the city of Columbus to find out how much they would  
22 charge for doing plan review and permits for each one  
23 of these dwelling units.

24                  Q. Okay.

25                  A. And that's approximate because until they

1 actually review the plans, that's all we could do.

2 Q. So the \$100 a unit is a pretty rough  
3 number.

4 A. Yes, sir.

5 Q. And the 300, the 200, the 500, the 500,  
6 the next four numbers, those came from either  
7 American Air, Mike Sliemers, or Conley Remodeling,  
8 right?

9 A. It came from me with their verification.  
10 I asked them to verify and/or adjust.

11 Q. Okay. Well, but as it turns out you went  
12 with their numbers, correct?

13 A. Yeah. If we can find a contractor that  
14 would do it. I did go with their numbers, yeah.

15 Q. You testified that the \$300 number, for  
16 example, was their number.

17 A. Yes, sir.

18 Q. And the \$200 was their number, correct?

19 A. Yes, sir.

20 Q. And the same with the 500 and the 500,  
21 correct?

22 A. That's correct.

23 Q. Okay. So the \$1,600 a unit estimate, did  
24 it come from American Air, Conley Remodeling, or a  
25 combination of both?

1           A.    Combination of all three of us.

2           Q.    But it was their numbers.

3           A.    Yeah.

4           Q.    Because they were different from what you  
5 had estimated.

6           A.    You're right.  Yes, sir.

7           Q.    All right.  Now, I can't understand why  
8 you are multiplying everything by 240 to come into  
9 compliance with the National Fuel Gas Code provisions  
10 that Columbia Gas has cited in its expert testimony  
11 because the three-bedrooms wouldn't require the same  
12 work as the two- and the one-bedrooms, correct?

13          A.    Well, that's estimated in here.  It  
14 points out when you have to separate and so forth,  
15 but it's averaged over the 240 units.  You're  
16 correct, the work is going to be -- there's  
17 probably -- well, that's okay.

18          Q.    I mean, I'm not seeing a distinction  
19 between the work for a three-bedroom unit which is  
20 going to be considerably different than the work for  
21 a one- or a two-bedroom unit in any of these cost  
22 figures.

23          A.    That's because we tried to take the 240  
24 units and just average out what the costs are going  
25 to be over the entire apartment complex and then so

1 that it could be understandable per unit.

2 Q. Well, but you would agree with me that  
3 the work's going to be different based on the  
4 different configuration of where the utility closet  
5 is near, which wall it's near.

6 A. Sure. Now you can see why it takes two  
7 months to try to put this together.

8 Q. The outside wall for the three-bedroom;  
9 whereas the interior bathroom closets pose a whole  
10 different situation for bringing in outside air,  
11 correct?

12 A. Right. And so does when we can move  
13 tenants in and out and when these facilities are  
14 available.

15 Q. But I'm just talking about the physical  
16 layout of the apartment. Doing the three-bedroom  
17 apartment is going to be much less expensive if you  
18 assume everything else, that you have to do these  
19 requirements and do these things you say you have to  
20 do, than the one- and two-bedrooms based on the  
21 difference between the apartment layout, correct?

22 A. Correct.

23 Q. Okay. And I'm just not seeing any --

24 A. You won't.

25 Q. -- distinction.



1           A.    You won't because the contractors  
2 identified that. For example, it says "Install new  
3 seven-inch combustion air duct." Each of the  
4 three-bedroom units that you just talked about is  
5 different, so that's their average price, averaging  
6 out the mixture across this complex.

7           Q.    Well, the three-bedrooms have a utility  
8 closet in the hallway, right?

9           A.    Yes, sir.

10          Q.    Is that in a different location in every  
11 three-bedroom unit?

12          A.    Sure. The duct is. Sometimes the duct  
13 can go vertically out of the building and sometimes  
14 it's going to have to go horizontal, it can't go  
15 vertically.

16          Q.    In the three-bedroom though, you're not  
17 going to need a combustion air duct, right, because  
18 it's not in the bathroom closet? You can take the  
19 combustion air from, well, you have to seal off the  
20 utility closet, but the three-bedroom, the utility  
21 closet's right along an outside wall, isn't it?

22          A.    Depends on the configuration that  
23 Columbus is going to allow. At this point this is an  
24 estimate because until there's actual plans,  
25 construction documents drawn up on this, you can't

1 get a firm price on this kind of thing, that's why we  
2 did it as an estimate. And it's actually  
3 conservative, I'd be surprised if you could get it  
4 for this kind of money.

5 Q. Okay.

6 MR. STEMM: Well, your Honor, I would  
7 renew my motion to strike. You've already confirmed  
8 for yourself 4A were entirely somebody else's  
9 numbers, and 4B, while he may have made some initial  
10 estimates, he ended up using others' numbers and  
11 these have been proven through cross-examination to  
12 be highly unreliable figures, obviously a  
13 mistake-prone document to begin with that your Honor  
14 did a great deal of correction on as well as we  
15 learned it's such a, you know, general estimate that  
16 we have no way to cross-examine with these  
17 contractors who now he's claiming didn't take any  
18 consideration of the highly different configuration  
19 between the three-bedroom units, which there are 40  
20 of, versus the one- and two-bedroom units.

21 The one- and two-bedroom units, as the  
22 testimony will show, if it hasn't already, have  
23 bathroom utility closets which create two violations,  
24 and the three-bedrooms have hallway closets, which  
25 the only violation is the common vent for multistory

1 units. So these figures are so unreliable and I'm so  
2 unable to cross-examine the people that put them  
3 together that I don't think they should be allowed  
4 into the record. We would strongly, strongly oppose  
5 their admission.

6 HEARING EXAMINER: Mr. Zets.

7 MR. ZETS: I take issue actually with all  
8 four of those because it's a complete  
9 mischaracterization of what Mr. Schutz said. The  
10 motion said that, you know, the differences weren't  
11 taken into account. That's absolutely wrong.

12 Mr. Schutz stood there and said this is a  
13 general estimate. When he looked at it, they  
14 installed a new seven-inch combustion air duct. He  
15 said that was a number that was taken in on average.  
16 Whether it had to go horizontal, whether it had to go  
17 vertical, that's a cost estimate that takes into  
18 account the differences in the variations of those  
19 numbers.

20 The motion's also based on the fact he  
21 says, Well, these are someone else's numbers. That's  
22 not what Mr. Schutz said. He said "Because I do  
23 estimates, I'm an engineer, we put together these  
24 estimates. I put together my numbers, then verified  
25 them with the contractors." So these are his

1 original numbers that have been verified by these  
2 separate subcontractors.

3           They are not unreliable. They are his  
4 numbers. They are his best estimate of the numbers,  
5 and they are accurate. He was able to cross-examine  
6 him; we spent 45 minutes over it. He didn't need  
7 someone else in here. He was fully capable, and he  
8 is a very good attorney, to cross-examine these.  
9 They should be admitted into the record as part of  
10 his direct testimony.

11           HEARING EXAMINER: Mr. Stemm, do you have  
12 anything further?

13           MR. STEMM: I guess Mr. Zets and I heard  
14 Mr. Schutz's testimony differently in terms of whose  
15 numbers these actually are, and I'll just let the  
16 record speak for itself on that.

17           HEARING EXAMINER: I've been really  
18 troubled by this exhibit and I'm really not sure what  
19 to do with it because it was provided so late in the  
20 process, and I have to say, with regard to RJS-4A,  
21 I'm going to grant that motion to strike. Based upon  
22 my questioning of the witness this is clearly not his  
23 estimate and doesn't -- it does not feed into RJS-4B.

24           With regard to RJS-4B, I'm not even sure  
25 what weight to give the document, but there is a

1 nexus with the witness on this document, I'm honestly  
2 not sure what figures come from where, but I'm going  
3 to leave it to the Commission to decide what weight  
4 to give this document, if any. So I'm going to deny  
5 that motion to strike.

6 Mr. Stemm, do you have further  
7 cross-examination?

8 MR. STEMM: I might just have a few.

9 May I have a minute? I didn't ask  
10 permission.

11 HEARING EXAMINER: No; that's fine.

12 MR. STEMM: Thank you.

13 I have a few more questions, your Honor,  
14 on RJS-4B, if I might.

15 HEARING EXAMINER: Yes. I also, before  
16 you go on with your cross-examination, I want to be  
17 sure that the record is clear just to be clear of the  
18 right numbers.

19 So at the bottom of the page, Mr. Schutz,  
20 you have a number \$348,000. That's the correct  
21 calculation; is that correct?

22 THE WITNESS: Yes, ma'am.

23 HEARING EXAMINER: Okay. Then the next  
24 number which as provided was \$480,000. Would you  
25 agree that that should be \$504,000 based upon the

1 number that we changed above?

2 THE WITNESS: Did you have the first  
3 number at 384,000 [sic] --

4 HEARING EXAMINER: Yes.

5 THE WITNESS: -- is that what you said?  
6 Yes, ma'am.

7 HEARING EXAMINER: And the second number  
8 should be 504,000.

9 THE WITNESS: That's correct.

10 HEARING EXAMINER: And then the next  
11 number we discussed is 624,000.

12 THE WITNESS: That's correct.

13 HEARING EXAMINER: Okay.

14 THE WITNESS: Yes, ma'am.

15 HEARING EXAMINER: I think that clarifies  
16 the record at least on the calculations. That's all  
17 I had, Mr. Stemm.

18 MR. STEMM: Thank you for helping.

19 Q. (By Mr. Stemm) Mr. Schutz, I just want to  
20 go back and make sure I understand. Is it your  
21 testimony that you believe a new seven-inch  
22 combustion air duct would be necessary for all of the  
23 three-bedroom apartments if you follow this set of  
24 directions according to Exhibit 4B?

25 A. No. No, sir.

1 Q. And I don't mean whether you think it's  
2 necessary for combustion air standard compliance --

3 A. Doesn't matter. I understand your  
4 question.

5 Q. You understand my question.

6 A. Columbia Gas has directed that the only  
7 way they'll continue service is a seven-inch  
8 combustion air duct.

9 Q. Okay. I move -- fine. That's not my  
10 question. So you don't understand it.

11 Let's assume hypothetically that you do  
12 need to bring the building up to compliance with not  
13 only the National Fuel Gas Code but current city and  
14 state codes. That's what this exercise is about,  
15 right?

16 A. That's right. Yes, sir.

17 Q. Okay. And my point is, is once you fix  
18 the multiunit, multistory vent situation in these  
19 three-bedroom apartments, you don't need to bring in  
20 a new seven-inch combustion air duct into the utility  
21 closet in a hallway which is not in a bathroom, do  
22 you?

23 A. I'm sorry, sir, I have to disagree with  
24 you. My dilemma here is Columbia Gas has directed a  
25 certain activity and the city of Columbus in a letter

1 has advised that regardless of that you now have the  
2 hypothetical A and B that you gave me. This  
3 apartment complex is being directed to do both A and  
4 B. They have to comply with Columbia Gas's  
5 seven-inch combustion air directive and separate, and  
6 then Columbus Building Department has said, "Oh, by  
7 the way, when you touch those utility closets, you're  
8 now into a renovation and under the Ohio Building  
9 Code you have to become fully compliant with the  
10 current code which on July 1st changed."

11 Q. Let's try to go back a bit. Let me  
12 present a hypothetical question to you.

13 A. Okay.

14 Q. Assume that all Columbia Gas wants for  
15 the three-bedroom apartments at this point is a fix  
16 to the multiunit, multistory venting.

17 A. Yes, sir.

18 Q. And that's it --

19 A. Okay.

20 Q. -- for the three-bedroom apartments.

21 A. I'm with you.

22 Q. And assume that combustion air is not a  
23 problem for the three-bedroom units and, in fact, the  
24 interior space is adequate to come through the air  
25 grills and into the utility closet in the hallway.



1           A.    Uh-huh.

2           Q.    Okay?  If you accept those assumptions,  
3 then there would be no reason to install a new  
4 seven-inch combustion air duct into the three-bedroom  
5 apartments, true?

6           A.    If I accept your assumptions, yes, sir,  
7 that's true.

8           Q.    Thank you.  Now, your, I won't say "your  
9 estimate," I will say this Exhibit 4B also provides a  
10 price if the Columbus Building Department requires  
11 electronically interlocked vent dampers.  Do you see  
12 that?

13          A.    I do see it.

14          Q.    And American Air or Conley Remodeling  
15 estimated that to be about \$500 for those?

16          A.    Yes.

17          Q.    Okay.  Now --

18          A.    No.  That's my estimate, sir.

19          Q.    That one is one of yours?

20          A.    All these estimates are my estimates.  
21 The only thing I told you is that I verified some  
22 estimates and if I could get a cheaper job from a  
23 contractor, I amended a couple of those to the  
24 contractor-given price.

25          Q.    You told me in previous testimony to

1 eliminate two existing wall transfer openings the  
2 \$300 number was strictly one of these contractors.  
3 That's what you told me in testimony.

4 A. No, sir, I didn't. I said that I did all  
5 these estimates and then I called all these  
6 contractors along with ten other contractors to  
7 verify prices, and if I could get a better price from  
8 a contractor, I used their price.

9 Q. Let me ask you this, on these  
10 electronically interlocked vent dampers, those would  
11 only be required if the new duct, assuming there was  
12 a new duct necessary, would have to cross or  
13 penetrate a fire-rated wall or floor, correct?

14 A. That's correct. Yes, sir.

15 Q. And the outside wall of the building is  
16 not a fire-rated wall, correct?

17 A. We can't determine that at this point.  
18 Columbus Building Department advised us that they  
19 might consider it because it depends on the proximity  
20 to another building or how much of the exterior of  
21 the wall already has openings on it because you're  
22 only allowed . . .

23 Q. Do you know if the current four-inch  
24 fresh air duct has one of these electronic dampers?

25 A. It does not, and that was because that

1 was directed in the plan approval, it said that the  
2 dampers had to be removed.

3 Q. But would you at least concede that the  
4 outside wall in those three-bedroom apartments where  
5 the utility closet is in the hallway very well may  
6 not need a interlock vent damper even if you did have  
7 to install a new combustion air duct?

8 A. I'm really uncomfortable answering the  
9 question because I don't know what's going to be  
10 required of the authorities having jurisdiction here.

11 Q. And the fact that you don't know means  
12 you really don't know what the cost of this project  
13 would be if it was taken on.

14 A. No; that's not true. I did a cost  
15 estimate based on what I would anticipate the cost  
16 for this project would be given the two directives,  
17 the one from Columbia Gas and the letter from the  
18 Columbus Building Department, sir.

19 Q. Well, we're not even going to talk about  
20 the one from Columbia Gas because that's been  
21 stricken from the record, so I'm just focused on 4B.  
22 Would you agree that this estimate represents the  
23 maximum possible cost assuming that all 240 units  
24 need the maximum amount of work, in your view, to  
25 come up to the Columbus City Code?

1           A.    I would like to tell you that I believe  
2   it's a safe estimate, but it has the possibility of  
3   going either way, yes, sir.

4           Q.    So we really don't -- again, this is a  
5   soft number.

6           A.    Yeah.

7           Q.    Okay.

8           A.    I mean, we got a code change right now.

9           Q.    Okay. Now, is it your -- you claim to  
10   have knowledge on the Ohio Building Code and what the  
11   city of Columbus building regulations expect,  
12   correct?

13          A.    I do.

14          Q.    Okay. Is it your testimony that in a  
15   three-bedroom unit, if the habitable space provides  
16   enough total combustion air volume, and after the  
17   multiunit, multistory venting is corrected, is it  
18   your testimony that the Columbus code would still  
19   require you to install a new seven-inch or any new  
20   combustion air duct reaching into the utility closet  
21   in the hallway of the three-bedrooms?

22          A.    My testimony was that none of these  
23   changes are necessary at all, sir.

24          Q.    You don't understand my question.

25          A.    Okay. I'm sorry.

1           Q.   First of all, installing the new  
2 seven-inch combustion air duct is not your perception  
3 of a requirement of the city, correct?

4           A.   That's correct. The state.

5           Q.   It's your perception of the Columbia Gas  
6 demand, correct?

7           A.   Yes, sir.

8           Q.   And in our hypothetical you already  
9 agreed with me that if that's not Columbia Gas's  
10 actual demand for additional combustion air, then  
11 your cost estimate would be totally off even greater  
12 than it is now, correct?

13          A.   It would be zero.

14          Q.   Okay.

15          A.   There's no renovation required if you  
16 take the hypothetical that you just gave me. If you  
17 take this directive of Columbia Gas, the seven-inch  
18 air duct for combustion air, away from this directive  
19 today and the separation of the multistory vent  
20 connection, there is no renovation required under the  
21 Ohio Building Code. It is zero, sir.

22          Q.   Okay. Well, you misunderstood. I never  
23 said we weren't going to separate the multistory  
24 venting.

25          A.   I'm sorry.

1           Q.    I strictly limited my question to total  
2 combustion air volume being adequate.

3           A.    Well, you did that.  I understood that.

4           Q.    And that's a different issue than whether  
5 multistory, multiunit venting is prohibited for  
6 venting.

7           A.    You're, again, keeping in mind one  
8 paragraph that you keep honing in on on multistory.

9           Q.    Okay.

10          A.    If you gave me the hypothetical that  
11 there's sufficient air infiltration under the  
12 building code to supply combustion air, that  
13 requirement goes away as well.  You don't -- the  
14 multistory can continue to be connected.

15          Q.    Okay.  And that's your expert opinion on  
16 that?

17          A.    Absolutely.

18          Q.    All right.  I'm glad to hear that.

19                Let me ask you this, the Resident  
20 Relocation line, are you now claiming to be an expert  
21 in resident relocation costs, or did somebody provide  
22 you this number?

23          A.    No, I -- I don't pretend to be an expert  
24 in relocation costs, sir.  Based upon some recent  
25 relocations that I've done, some recent work and the

1 cost of putting people in lodging and subsistence for  
2 the day using the federal government travel expenses  
3 as an average, I just used those costs.

4 Q. So do you have workpapers that document  
5 everything you just said in terms of looking at all  
6 of these various charts and government figures to  
7 come up with this very even round \$500 number for  
8 resident relocation?

9 A. I do.

10 Q. And did you provide these workpapers to  
11 your counsel?

12 A. No, sir. I was at a remote site teaching  
13 classes. These e-mails came from -- I don't even  
14 remember what city I was in when I sent these to  
15 them.

16 Q. Mr. Schutz, under -- let's just talk  
17 about the current Ohio Mechanical Code for a moment.

18 A. Current code?

19 Q. Yeah.

20 A. Yes, sir.

21 Q. Current code, or even the 1998 code,  
22 which I think we talked about in the past, I believe  
23 I did with Miss Roahrig. Multiunit, multistory  
24 venting is prohibited but with exceptions, correct?

25 A. Yes.

1           Q.    And that's a chapter of prohibitions  
2 separate from the combustion air requirements.

3           A.    I'd like to -- I jumped on that one.  You  
4 said that multistory venting is prohibited in the  
5 code.  Is that what you said, sir?

6           Q.    With the exceptions the code allows for  
7 it.  For example, if you have a separate space that  
8 is provided to the outside.

9           A.    It's not prohibited.  There's a paragraph  
10 in the code book that deals with multistory  
11 connections, so it's actually permitted.

12          Q.    Let me ask if you agree with this --

13          A.    Which code are you in, sir?

14          Q.    I'm looking at the 1998 Ohio Mechanical  
15 Code, section 801.20.

16               MR. ZETS:  Could I ask that he show the  
17 witness what he's reading from so he could follow  
18 along and I could possibly have a copy so I know what  
19 he's talking about.

20               MR. STEMM:  Sure.  It's marked as  
21 Columbia Gas Exhibit 3; I believe we all have it.

22               (Discussion off the record.)

23          Q.    Now, where in that rule, Mr. Schutz, does  
24 it say if you have an adequate supply of indoor and  
25 outdoor combustion air, you may do multistory -- use



1 multistory common venting systems for appliances  
2 located on more than one floor level?

3 A. Forgive me. When you started your  
4 question to me, you said under current Ohio  
5 Mechanical Code, and then you said the 1998  
6 mechanical code. Now you're giving me the 1998  
7 mechanical code.

8 Q. Let's start with the '98 code.

9 A. We're doing this hypothetically because  
10 this code doesn't apply to anything in today's  
11 conversation, right?

12 Q. Well, I know it's not the current code.

13 A. Right.

14 Q. But these --

15 A. And it did not apply to this job.

16 Q. Well, that's for the lawyers to argue  
17 about.

18 A. No, sir. It's not. That's a --

19 Q. Do you have a copy of the current Ohio  
20 Mechanical Code? I mean, we can --

21 A. I do.

22 Q. I wanted to first start with the 1998  
23 Ohio Mechanical Code because that's the first Ohio  
24 code that adopted the International Fuel Gas Code  
25 standards, correct?

1           A.    It did not.  That's not correct.

2           Q.    The International Fuel Gas Code standards  
3 were adopted --

4           A.    2002, sir.

5           Q.    Okay.

6           A.    The 1998 is --

7           Q.    Referenced.

8           A.    That's the first International Fuel Gas  
9 Code was in 1998.  We took that to code hearings in  
10 April of that year and we adopted in '98 at the  
11 international level.  The state of Ohio didn't adopt  
12 that code until 2002, sir, by reference.

13          Q.    Okay.

14          A.    Four years later.

15          Q.    Would you agree with me, though, that  
16 Ohio did have something called an Ohio Mechanical  
17 Code effective in 1998 and I've handed you two pages  
18 from it?

19          A.    Yes, but the code that was in -- related  
20 to this job was the 1995 Ohio Building Code which was  
21 the 1993 BOCA code.

22                HEARING EXAMINER:  Can we stop just for a  
23 minute.

24                THE WITNESS:  I'm sorry.

25                HEARING EXAMINER:  I think it's time for

1 us to take a ten-minute break. And I do appreciate  
2 that you're referencing something else, but really  
3 all you need to do is answer the questions that are  
4 being asked by Mr. Stemm.

5 THE WITNESS: I'm sorry.

6 HEARING EXAMINER: No; I think you're  
7 trying to clarify the record, which I do appreciate,  
8 but it's Mr. Stemm who owns the questions. So why  
9 don't we take a ten-minute break and we'll come back  
10 at 4:15 and we'll resume.

11 (Recess taken.)

12 HEARING EXAMINER: Go back on the record.  
13 Mr. Stemm.

14 MR. STEMM: Thank you, Hearing Examiner.

15 Q. (By Mr. Stemm) Mr. Schutz, have you had  
16 an opportunity to pull your copy of the 2007 Ohio  
17 Mechanical Code which you said you had with you? Is  
18 that the current code, the 2007 Ohio Mechanical Code,  
19 in terms of mechanical code?

20 A. It is, yes, sir.

21 Q. Could you just grab it?

22 A. Yeah, unfortunately, I don't have it, and  
23 my apologies to you.

24 Q. Okay. If you don't have it, we'll let  
25 you sit down.

1 HEARING EXAMINER: We'll go off.

2 A. The 2007 mechanical code is the 2006  
3 international mechanical code with Ohio revisions, so  
4 I don't have the Ohio, but I have the base document.

5 Q. That's fine.

6 A. This is going to prove your point.

7 Q. Well, go ahead, you keep it.

8 A. All right.

9 Q. You keep it.

10 Is that code numbered the same as the  
11 2007 Ohio Mechanical Code?

12 A. It is, sir.

13 Q. Okay. You are questioning my use of the  
14 1998 mechanical code to ask you about the section  
15 801.20 multistory prohibited, and let's just look at  
16 the current code and just confirm for me that they're  
17 identical. There's no difference between the '98 and  
18 the current code in terms of the prohibition of  
19 common venting system for appliances located on more  
20 than one floor level.

21 A. Correct. 801.19.

22 Q. I guess the number changed from 801.20 to  
23 801.19, but the standard is identical, correct?

24 A. It is.

25 Q. And my question was simply in looking at

1 the prohibition, and I'm not talking about any  
2 specific apartment complex, I'm just asking you in  
3 terms of interpreting this provision, would you agree  
4 with me that the adequacy of -- combination of indoor  
5 or indoor and outdoor air for combustion is not  
6 listed as an exception here for purposes of allowing  
7 common venting systems for appliances located on more  
8 than one floor level?

9 A. Yes, sir. I would agree.

10 Q. You would agree with that?

11 A. Yes.

12 Q. And in fact, if you want to use common  
13 venting systems, the appliance enclosures cannot  
14 communicate at all with the occupiable spaces of the  
15 apartment, correct?

16 A. That's correct, in the mechanical code,  
17 yes, sir.

18 Q. Now, in the current 2007 code there's  
19 also prohibition of fuel-fired appliances to be  
20 located in bathrooms or toilet rooms or storage  
21 closets, correct?

22 A. Correct.

23 Q. And then there are certain exceptions to  
24 that, for example, for direct-vent appliances.

25 A. I know I'm supposed to just answer.

1 You're aware you're asking me questions on the  
2 mechanical code and not the fuel gas code, right,  
3 sir?

4 Q. Yes, I am aware of that.

5 A. All right.

6 Q. But I'll withdraw that last question.  
7 Back on page 19 of your prefiled  
8 testimony --

9 A. Yes, sir.

10 Q. -- I think you assumed that a resident's  
11 doctor may report to local health authorities any  
12 health impacts from carbon monoxide poisoning. Is  
13 that what you presumed?

14 A. Yes, sir, I did.

15 Q. Now, according to the CO investigations  
16 manual that you attached to your testimony, greater  
17 than 200 parts per million of CO would create a  
18 slight headache, tiredness, dizziness or nausea; does  
19 that sound right?

20 A. Depends on the time of exposure, sir.  
21 The numbers vary based on exposure time.

22 Q. Well, for purposes of my question would  
23 you agree that CO exposure of some kind can create  
24 slight headaches, tiredness, dizziness, nausea?

25 A. Now, that's according to the Columbia Gas

1 manual you're asking me about. Yes, sir.

2 Q. I'm asking you if you agree that --

3 A. No.

4 Q. -- carbon monoxide exposure can cause  
5 headaches.

6 A. Yes, sir.

7 Q. And I did say "carbon monoxide," right?

8 A. Yes, sir.

9 Q. And --

10 A. That was a shorter question than the  
11 first one.

12 Q. All right. And if someone has persistent  
13 headache, they may tell their doctor about their  
14 headache, correct?

15 A. Yes, sir.

16 Q. Do you really think the doctor's going to  
17 report to the local health authority that their  
18 patient has a headache?

19 A. No, sir. I didn't say that.

20 Q. Okay. Just want to be clear on that.

21 Did someone from Columbia Gas tell you  
22 directly that it was requesting a seven-inch  
23 dedicated combustion feed duct into all utility  
24 closets in all apartments at Cameron Creek?

25 A. Not directly, sir.

1 Q. So that is information that was provided  
2 to you by someone else?

3 A. It was in a letter that's on Columbia Gas  
4 letterhead and I saw a copy of that letter, yes, sir.

5 Q. Was that a letter to you?

6 A. No, sir. It's part of the documents that  
7 were provided during discovery.

8 Q. Mr. Schutz, if you could turn to RJS  
9 Exhibit 2, specifically pages 9, 10, 11, and 12.

10 A. Yes, sir.

11 Q. Do these four pages have any bearing on  
12 your testimony today?

13 A. Yes, sir.

14 Q. Did you specifically refer to the mail  
15 kiosk framing plan in your testimony today?

16 A. No, sir.

17 Q. Or the revised toilet room plan for the  
18 men's and women's toilets?

19 A. No, sir.

20 Q. Could you turn to RJS Exhibit 7, please.  
21 Do you see page 1 of RJS-7 at the bottom there where  
22 there's a start of an e-mail, it says "Chuck and  
23 Rick"?

24 A. Got it. Yes, sir.

25 Q. Do you see where there's a conversation



1 about Columbia Gas's interim proposal?

2 A. I do.

3 Q. In the second line there's a comment  
4 about "I believe we are prepared to accept the terms  
5 of your proposal." Do you see that?

6 A. I do.

7 Q. Do you have any personal knowledge of the  
8 settlement discussions that went on between Columbia  
9 Gas and Cameron Creek?

10 A. No, sir.

11 Q. And you see the next page, the last page  
12 of this exhibit --

13 A. Which is -- yes, formerly Exhibit F.  
14 Page No. 2.

15 Q. Right, page 2.

16 A. Yes, sir.

17 Q. The next-to-last paragraph it says "At  
18 this point we are continuing to explore alternative  
19 solutions."

20 A. Sure.

21 Q. These documents reflect settlement  
22 negotiations going on at the time, don't they?

23 A. They do.

24 Q. Okay. Turn to Exhibit . . .

25 MR. STEMM: I have no further questions

1 on cross. I understand there may be some questions  
2 from opposing counsel so you advise as to when you  
3 would like me to renew the motion to strike as you  
4 said I could do on completion of cross, and I will  
5 wait or do it now, your choice.

6 HEARING EXAMINER: I'm going to allow  
7 redirect at this point in time.

8 Mr. Zets.

9 - - -

10 REDIRECT EXAMINATION

11 By Mr. Zets:

12 Q. Mr. Schutz, I guess let's just start  
13 right where you left off; that might be the easiest  
14 point. I know when you were asked questions by  
15 counsel regarding acknowledging the seven-inch duct  
16 requirement by Columbia Gas, you had indicated that  
17 you had read that somewhere. Looking specifically at  
18 RJS-7, page 2, looking at that e-mail dated February  
19 19th, 2008, from Mr. McCreery to Mr. Dillon, does  
20 that refresh your memory with respect to that  
21 seven-inch diameter duct?

22 A. It does, yes, sir.

23 MR. STEMM: Objection, your Honor. We  
24 were preparing to object to the admission of these  
25 documents because they reflect settlement

1 negotiations, and the witness confirmed that they  
2 represent settlement negotiations as well as the fact  
3 that he was not personally involved, and we would  
4 object to any further testimony on the record  
5 because, as we know, settlement negotiations should  
6 not be admissible into an evidentiary record and  
7 these two pages reflect just that.

8 MR. ZETS: I don't think I asked them to  
9 be admitted. I can use anything to refresh a  
10 witness's memory. I only asked if that document  
11 refreshes his memory because there seemed to be an  
12 area of question as to whether he came up with the  
13 seven-inch duct. Now, he testified he saw it in an  
14 e-mail. I'm not asking it to be admitted right now.  
15 I just used it to refresh his memory.

16 HEARING EXAMINER: Mr. Zets, these two  
17 pages of this document represent settlement  
18 negotiation information and the witness stated that  
19 in his cross-examination; that's what the motion to  
20 strike references.

21 MR. ZETS: Okay.

22 HEARING EXAMINER: Okay. Do you agree  
23 that they reference settlement negotiations?

24 MR. ZETS: No, I don't agree with that.

25 But his answer is still permitted to

1 stand? I mean, I just asked him to --

2 HEARING EXAMINER: Mr. Zets, don't argue  
3 with me.

4 MR. ZETS: I'm sorry. That was a  
5 question.

6 HEARING EXAMINER: I'm saying that I'm  
7 not talking about his answer right now. I'm talking  
8 about these two documents and the motion to strike  
9 based upon the fact that they represent settlement  
10 negotiations between the parties.

11 MR. ZETS: I'm sorry. We're on the  
12 motion to strike? I thought I was doing my redirect.

13 HEARING EXAMINER: And I understand that.  
14 And in the middle of your redirect Mr. Stemm made a  
15 motion to strike because he did not agree that we  
16 should have further redirect on this topic due to the  
17 fact that what you're referencing are documents that  
18 have settlement negotiation information in them.

19 MR. ZETS: All right. I wasn't asking  
20 this be admitted. I just merely asked if that  
21 refreshed his memory. I'm not going to ask -- no  
22 other questions about that document.

23 HEARING EXAMINER: Okay.

24 Q. (By Mr. Zets) Mr. Schutz, actually a  
25 couple of hours ago --

1 HEARING EXAMINER: Mr. Zets, I haven't  
2 ruled yet.

3 MR. ZETS: I'm sorry.

4 HEARING EXAMINER: Just wait until I'm  
5 done in total reading the documents over again.

6 MR. ZETS: I'm sorry.

7 HEARING EXAMINER: In looking at RJS-7 I  
8 see at the bottom of RJS-7 what appears to be an  
9 e-mail chain where it begins "Chuck and Rick, per our  
10 conversation," to the bottom of page 1, that does  
11 appear to be a response to settlement discussions  
12 between the parties.

13 But in reading the remainder of the  
14 document, pages 1 and 2, it seems to be very factual  
15 information, so while it may have been provided  
16 during the course of that, it doesn't reveal anything  
17 other than factual information being shared between  
18 the individuals on this e-mail -- these e-mails  
19 which, once again, shows the dangers of e-mail  
20 discussions because you don't know really where they  
21 came from or what their purpose was stated other than  
22 people having discussions back and forth.

23 So from me reading this and not being  
24 privy to where the e-mails come from or what the  
25 perhaps further string of e-mails are, I'm going to

1 strike at the bottom of page 1 beginning with the, it  
2 says "Chuck and Rick, Per our conversation," through  
3 the bottom of page 1 which ends "(which we," it  
4 doesn't even continue on to the next page so I don't  
5 know what the e-mail talks about, but it does appear  
6 as if it's talking about settlement negotiations.

7 The rest of it, I'm going to deny the  
8 motion to strike and allow it to stay in the record  
9 because it seems factual to me.

10 Mr. Zets, do you recall your question or  
11 would you like the court reporter to try to find out  
12 what it was? You were questioning on page 2 to  
13 refresh the witness's memory.

14 MR. ZETS: I'll ask the question again.  
15 I think I got the question and the answer, but I will  
16 ask the question I believe I asked him before.

17 Q. (By Mr. Zets) Mr. Schutz, looking at page  
18 2 of RJS-7, does that refresh your memory with  
19 respect to where your information about the  
20 seven-inch duct came from?

21 A. Yes, sir. That's one of the places that  
22 it was referenced.

23 Q. Were there others that you can recall?

24 A. Conversations with Mr. Starner, and the  
25 city of Columbus Building Department.

1 Q. And who is Mr. Starner again?

2 A. He was the mechanical contractor that was  
3 consulted over one of the incidents that happened and  
4 was in the conversations between Columbia Gas people  
5 and the city of Columbus over the combustion air  
6 duct.

7 Q. Moving on, a while ago Mr. Stemm had  
8 asked you questions about the 1992 NFGC, in  
9 particular section 6.30.1. Do you remember those  
10 questions?

11 A. I do, sir.

12 Q. And you were asked a question about  
13 whether or not Cameron Creek Apartments -- let me  
14 start with this. Strike that.

15 The 1992 NFGC section 6.30.1 was quoted  
16 to say, quote, "Water heaters shall not be installed  
17 in bathrooms, bedrooms, or any occupied rooms  
18 normally kept closed." And Mr. Stemm had asked you  
19 whether or not Cameron Creek apartment meets that  
20 standard. What was your response again?

21 MR. STEMM: Objection, your Honor. I  
22 never asked a single question about a 1992 code.

23 HEARING EXAMINER: I don't recall that  
24 question either.

25 MR. STEMM: I don't think there is a '92

1 NFGS code.

2 THE WITNESS: Confused with the 2002.

3 MR. ZETS: Did I say "1992 NFGC"?

4 MR. STEMM: That's what you said, but I  
5 never said it.

6 MR. ZETS: Well, correct me if I'm wrong,  
7 but I thought you pulled the quote from  
8 Mr. Erlenbach's testimony which is right here where I  
9 tabbed when you read on page 11 of his testimony that  
10 cited that specific question. I know it was three  
11 hours ago now, but when you asked -- when you read  
12 that sentence, I put a blue tab there.

13 MR. STEMM: You said "1992."

14 MR. ZETS: On page 11, you read from  
15 Mr. Erlenbach's testimony --

16 MR. STEMM: Well, if you want me to  
17 explain, page 9 I'm citing the 1996 code, and then  
18 when you get to page 10, he adds a comment that same  
19 requirement was contained in the '92 code, but I  
20 never asked about the '92 code. I was reading from  
21 the '96 code; so I'll clarify that for Mr. Zets.

22 MR. ZETS: Okay.

23 HEARING EXAMINER: Thank you.

24 Q. (By Mr. Zets) All right. Based on the  
25 1996 NFGC with respect to water heaters being



1 installed in bathrooms, do you remember that  
2 question?

3 A. I do, sir.

4 Q. Okay. And I believe you had said that  
5 Cameron Creek Apartments does not meet that 1996  
6 requirement, correct? Because I think you --

7 A. Yes, sir. That is how I answered him.

8 Q. And then you tried to say something else  
9 with respect to "but other parts of the code." Could  
10 you please explain to us what you were trying to say?

11 A. Yes, sir. Chapter 1 of the National Fuel  
12 Gas Code has provisions that are very similar to the  
13 provisions in the International Fuel Gas Code that  
14 permit other engineered solutions.

15 Q. What does "another engineered solution"  
16 mean? Or what are those?

17 A. The National Fuel Gas Code, while it's a  
18 respected standard and it is not a code, it's a  
19 standard, and has been around a while, as has been  
20 pointed out, is actually based on ASHRAE document 62  
21 which Mr. Busch spoke to yesterday.

22 So all the fundamentals come from ASHRAE,  
23 the American Society of Heating and Refrigeration and  
24 Air-conditioning Engineers. And in the ASHRAE  
25 document there's a document we call the principles

1 handbook that we design from and that permits you to  
2 acknowledge infiltration in existing conditions and  
3 allows mechanical engineers, people that are  
4 registered and sign and seal their work, to submit  
5 alternative designs.

6 Chapter 1 says specifically in the  
7 National Fuel Gas Code that you can consider  
8 alternative designs, and that's what we tried to  
9 point out that when there appears to be a section in  
10 the code, an A and a B, that sometimes you can up  
11 front do an engineered solution that's considered  
12 acceptable.

13 And under Ohio law and Ohio code for  
14 building officials and designers there's a specific  
15 section of our code that says that if the designer  
16 demonstrates the intent to substantially meet the  
17 requirements of any code section, you shall. It's  
18 mandatory. You must approve that design. And I  
19 believe that's what Columbus city did in 1996 and  
20 1997 with the design of these buildings.

21 Q. Because they used the provisions from  
22 that earlier section you just talked about to meet  
23 the requirements under the '96 NFGC taken as a whole,  
24 both section 6.30.1 plus that other section you just  
25 mentioned.

1           A.     That's correct.

2                     MR. STEMM:  Objection to the leading  
3 nature of the question.

4                     HEARING EXAMINER:  I agree.  You need to  
5 let the witness answer the question, but don't lead  
6 him into what the answer is.  I'll allow him to  
7 answer this question, but you need to make sure your  
8 following questions are appropriate.

9                     MR. ZETS:  Very good.

10           A.     My answer would have been chapter 1, and  
11 I can't recall the specific section because it  
12 changes each year, but it's approximately 1.2 or 1.4  
13 specified that you are to permit alternative designs.

14           Q.     I have the same question for you with  
15 respect to the multistory venting.  I believe during  
16 your cross-examination Mr. Stemm asked you questions  
17 with respect to the 1996 NFGC and multifamily -- or  
18 multifamily, I guess it is multifamily -- multistory  
19 venting in a multifamily unit.  Do you remember those  
20 questions?

21           A.     I do.

22           Q.     He asked you a very specific question,  
23 whether the Cameron Creek Apartments met the very  
24 specific requirement.  Do you remember that?

25           A.     I do.  Yes, sir.

1           Q.    Okay.  Could you remind us what your  
2 answer to that was.

3           A.    Well, my answer was yes, but I also said  
4 that that didn't take the entire code into  
5 consideration.

6           Q.    What do you mean by that?

7           A.    The code in that section actually  
8 permits, again, alternative design, and specifically  
9 points out that -- the word that was used to me is  
10 "prohibited."  Multistory is prohibited.  The  
11 mechanical code prohibits multistory, but the fuel  
12 gas code, which deals just with fuel gas appliances,  
13 not with wood-burning, oil-burning appliances, deals  
14 specifically with natural gas, uses the word  
15 "permitted."  Multistory is permitted in that code.  
16 And that's why I said you can have a conflict between  
17 the two codes.

18                   If you use a natural gas unit over into  
19 the International Fuel Gas Code, or the one they were  
20 presenting me with, the National Fuel Gas Code, and  
21 we talked about that one section, but there's another  
22 section in there that says the authority having  
23 jurisdiction can permit alternative design including  
24 the use of interior combustion air.

25           Q.    What is the authority having --

1           A.    Jurisdiction.

2           Q.    -- jurisdiction in this situation?

3           A.    We call it the AHJ.  It's acknowledged  
4 both in the tariffs and in the codes that we're  
5 talking about today.  The National Fuel Gas Code  
6 actually defines it.  They have the definition of  
7 authority having jurisdiction and also the word  
8 approved, and says that you can approve a design so  
9 long as it's approved by the authority having  
10 jurisdiction.

11                   And it goes on to say the authority  
12 having jurisdiction is the state or local government  
13 that is so designated as having the authority over  
14 the building, construction, and installation of  
15 equipment.  And then goes further and says that could  
16 be a fire department, but more likely is a building  
17 department.  And in Ohio the Revised Code reserves  
18 those requirements to certified building departments  
19 or the state of Ohio.

20           Q.    Take the 1996 National Fuel Gas Code as a  
21 whole with respect to multistory venting; what is  
22 your opinion with respect to whether Cameron Creek  
23 meets that requirement?

24           A.    It's hypothetical because you cannot and  
25 would not ever apply the '96 National Fuel Gas Code

1 or the International Fuel Gas Code to --

2 Q. Why is that?

3 A. -- those apartments because, as  
4 Ms. Roahrig pointed out, they are existing, they were  
5 done under approved sets of plans pursuant to the  
6 Ohio Building Code in 1996 and 1997, and that  
7 document required compliance with the Ohio Mechanical  
8 Code which used the 1993 BOCA National Mechanical  
9 Code as its reference document.

10 There was no International Fuel Gas Code  
11 in existence, and the state of Ohio specifically,  
12 specifically did not adopt or allow the use of the  
13 National Fuel Gas Code, NFPA Standard 54. It was  
14 excluded from the building code intentionally. There  
15 are two exceptions to that --

16 Q. What are those?

17 A. -- I'll go ahead and mention them, and  
18 that is we allowed NFPA 54, which is known as the  
19 National Fuel Gas Code, only for purging and testing  
20 of gas lines. Two sections only out of chapter 8.

21 Q. What was the other exception? You said  
22 there were two; that was one.

23 A. One is purging and the second is testing  
24 of gas lines.

25 Q. I gotcha.

1                    Could you turn to page 19 of your  
2 prefiled testimony, Exhibit CCA 39.

3            A.    And the exhibit, sir?

4            Q.    Not the exhibit. Line 19. Page 11, line  
5 19 [sic].

6            A.    Yes, sir.

7            Q.    I'm sorry. Did I say of Exhibit CCA 39,  
8 which is your prefiled testimony?

9            A.    Okay. Yes, sir.

10           Q.    There's been some questions regarding  
11 this paragraph here. Your testimony starts "I also  
12 believe that if excessive carbon monoxide." Do you  
13 see where I'm at? It starts on line 11, page 19.

14           A.    Yes, sir.

15           Q.    Could you explain for us why you believed  
16 excessive carbon monoxide -- I'm sorry. Strike that.

17                    Could you explain for us why you believe  
18 that if excessive carbon monoxide was being produced  
19 at Cameron Creek based upon inadequate air  
20 combustion, the issues would have presented itself?

21            A.    In addition to being a certified building  
22 official I'm a volunteer firefighter in this area.  
23 Carbon monoxide poisonings are pretty widely spread  
24 around all of us when they actually occur and are  
25 documented because, obviously, we are always

1 concerned about it and we use it and I use it in  
2 training, so we try to make ourselves aware of it.

3 If there had been widespread situations  
4 where there was elevated carbon monoxide at this  
5 apartment complex or any other in central Ohio, I  
6 believe we'd have heard about it over a period of  
7 time, and what I was trying to indicate was I just  
8 wasn't made aware of -- I or any of my associates.

9 And I also believe that, as I stated to  
10 the other attorney, certainly doctors would not  
11 report headaches unless they knew that the headache  
12 had been derived from carbon monoxide poison or the  
13 possibility, then they do.

14 Columbia Gas people are very good about  
15 reporting to local fire departments when they have  
16 situations that seem to be chronic or ongoing, and we  
17 weren't made aware of it. And in this time frame,  
18 1995-1996, I specifically attended training classes  
19 by Columbia Gas and wasn't being made aware.

20 Q. Okay. If I could turn your attention a  
21 little further up in your testimony, page 32, please.

22 A. Okay.

23 Q. If you would turn to that page.

24 A. Yes, sir.

25 Q. There were some questions on your



1 cross-examination from Mr. Stemm regarding this  
2 testimony in particular, I think the sentence that  
3 starts on line 20, "Despite this emphasize in  
4 Columbia training materials." Do you see where I'm  
5 at?

6 A. I do.

7 Q. You go on to say ". . . the review and  
8 consideration of local codes and the original  
9 approval seems to have been ignored." Let me ask you  
10 this, the part that you quote here is from the NFGC,  
11 this specific section 1.2, correct?

12 A. Yes, sir.

13 Q. Okay. And that reads, quote, "House  
14 lines and appliance installations shall be in  
15 accordance with the NFGC and local codes," close  
16 quote. Where does that quote come from again?

17 A. That's from the document that we attached  
18 as Exhibit 9 which is from the Columbia Gas company  
19 training document.

20 Q. Okay.

21 A. Their section stipulates that.

22 Q. The Columbia Gas stipulation -- the  
23 Columbia Gas document stipulates that the appliance  
24 installation has to be in accordance with the NFGC.

25 A. Right. And I was simply testifying that

1 as a staff member at the Board of Building Standards,  
2 to my knowledge, and I did training classes for  
3 Columbia Gas while at the state of Ohio, including  
4 being a speaker at some of their conferences, they  
5 didn't make us aware of the National Fuel Gas Code or  
6 any shortcomings in the Ohio Building Code or the  
7 Ohio Mechanical Code and make recommendations to us.

8 So if -- they have a requirement in their  
9 own training document to be aware of local codes, but  
10 when Miss Bass testified, she specifically said that  
11 they don't go out and talk to local departments --

12 MR. STEMM: Objection to the witness  
13 testifying about what some other witness testified.

14 THE WITNESS: But it was in --

15 HEARING EXAMINER: Objection sustained.

16 THE WITNESS: Sorry.

17 MR. ZETS: Can I have one second, please?

18 HEARING EXAMINER: Yes.

19 MR. ZETS: No further questions at this  
20 time.

21 HEARING EXAMINER: Mr. Stemm, do you have  
22 recross?

23 MR. STEMM: Just a couple.

24 - - -

25 RECROSS-EXAMINATION

1 By Mr. Stemm:

2 Q. Mr. Schutz, you said you were a volunteer  
3 fireman. What station?

4 A. Liberty Township, sir.

5 Q. That's up in Powell?

6 A. Delaware County.

7 Q. Delaware County. And Cameron Creek is  
8 way down in western Franklin County.

9 A. Yeah. We have a Central Ohio Fire  
10 Inspector's Association.

11 Q. Okay. Just for the record, you were  
12 mentioning some different sections of the National  
13 Fuel Gas Code and I just want to make sure we know  
14 which ones you were talking about when you were  
15 answering questions --

16 A. 7.6.4.

17 HEARING EXAMINER: Why don't we go ahead  
18 and let Mr. Stemm complete his --

19 THE WITNESS: I'm sorry, ma'am.

20 HEARING EXAMINER: -- question.

21 Q. You were talking about how Columbia Gas  
22 didn't consider certain things in chapter 1 of the  
23 National Fuel Gas Code. Do you remember that  
24 testimony?

25 A. Yes, sir, I do.

1           Q.    Okay.  Now, I'm referring now to the 1996  
2 fuel gas code, there's a provision, just let me ask  
3 you if you're aware of it, under the combustion,  
4 ventilation air, chapter 5, 5.3.4 provides for  
5 specifically -- excuse me, especially engineered  
6 installations.  Are you familiar with that standard?

7           A.    I am familiar with it.

8           Q.    And would you agree with me that that is  
9 a standard that allows special engineering approved  
10 by the authority having jurisdiction to provide an  
11 adequate supply of air for combustion, ventilation,  
12 and dilution of gases, flue gases?

13          A.    Yes, sir.

14          Q.    Now, you've referred to chapter 1 and you  
15 said it was either 1.2 or 1.4.

16          A.    I can't remember.  1.3 is retroactivity  
17 which says you won't apply new code to existing  
18 situations, so it can't be 1.3.

19          Q.    Okay.  1.2, Alternate materials,  
20 equipment, and procedures.

21          A.    That's it.  The last sentence, I believe.

22          Q.    Okay.  And you agree with me that the  
23 first sentence says "The provisions of this code are  
24 not intended to prevent the use of any material,  
25 method of construction, or installation procedure not

1 specifically prescribed by this code provided any  
2 such alternate is acceptable to the authority having  
3 jurisdiction"?

4 A. Absolutely. Yes, sir.

5 Q. Okay. So you believe -- I didn't see  
6 anything in there about special engineered solutions.  
7 Is there any mention of that in this particular  
8 provision?

9 A. It doesn't need to be. It talks about  
10 installation procedures.

11 Q. Okay.

12 A. The other special engineered is separate.  
13 That's an entirely separate issue.

14 Q. Okay, that's your opinion. That's fine.  
15 I just wanted to make sure on the record we know  
16 which section you're opining on.

17 A. Okay.

18 Q. Now, the authority having jurisdiction is  
19 much broader than a city building code department or  
20 a state building code official. As you said, it  
21 could be others, correct?

22 A. Yes, sir. In which code book are you in,  
23 sir?

24 Q. In the 1996 National Fuel Gas Code which  
25 is what we're talking about.

1           A.    Okay.

2           Q.    That's the one you were talking about, I  
3 believe.

4           A.    No, sir.  Well, yes and no.

5           Q.    Because we were talking about Cameron  
6 Creek in 1996, correct?

7           A.    When I addressed you, sir, I was  
8 addressing the National Fuel Gas Code.  When I was  
9 addressing the redirect, I was addressing the Ohio  
10 codes.

11          Q.    Okay.

12          A.    3781 of the Ohio Revised Code and the  
13 Ohio Building Code have a separate definition for the  
14 authority having jurisdiction.  But you're correct, I  
15 was also referring to that one which is broader.

16          Q.    It is broader, correct?

17          A.    Yes, sir.

18          Q.    In fact, authority having jurisdiction  
19 under the National Fuel Gas Code could be an  
20 insurance inspection department, a rating bureau, it  
21 could be even the property owner, correct?

22          A.    Not in Ohio, but yes, sir.

23          Q.    Under the National Fuel Gas Code.

24          A.    Yes, sir.

25          Q.    And it could be anyone having statutory

1 authority where public safety is primary, correct?

2 A. Same answer, not in Ohio, but in that  
3 book, yes, sir.

4 Q. Okay. And you say "not in Ohio" because  
5 the Ohio Mechanical Code has not adopted the National  
6 Fuel Gas Code but, rather, the International Fuel Gas  
7 Code, correct?

8 A. Even beyond that, yes, that's correct,  
9 but I said that the Ohio Building Code and the Ohio  
10 Board of Building Standards, the state of Ohio has  
11 not adopted NFPA Standard 54 which you're calling the  
12 National Fuel Gas Code.

13 Q. Okay.

14 A. So it's not available to us in Ohio.

15 Q. And I'm only asking about the '96 code  
16 because I understood your answer to Mr. Zets to be  
17 that.

18 A. I'm sorry.

19 Q. Okay. But you would -- are you  
20 knowledgeable as to Columbia Gas's statutory and  
21 regulatory authority as a public utility to make  
22 determinations on the safe provision of natural gas  
23 to customers?

24 A. I'm familiar with Title 49 and the  
25 subsequent chapters, and I'm familiar to a degree

1 with their tariffs having worked with them for a  
2 number of years. I have to be honest with you, I'm  
3 confused by two references in their tariffs, one  
4 which says that if there's a certified local building  
5 department, they must defer to that building  
6 department, and then a separate section that uses the  
7 National Fuel Gas Code. So they have two conflicting  
8 statements in their tariff.

9 Q. Okay. Well, I --

10 A. I don't know how to answer you. I am  
11 familiar with it, but not convinced I'm --

12 Q. Are you also -- excuse me. Are you  
13 finished?

14 A. -- not convinced that I know the proper  
15 answers to that.

16 Q. Do you consider yourself an authority on  
17 public utility tariffs?

18 A. No, I don't, sir. That's the point.

19 Q. Okay. Did you read the line in the  
20 tariff about it's the gas company that determines  
21 whether there's a safety issue or not with the  
22 provision of gas?

23 A. Yes, sir.

24 Q. Did you read that line too?

25 A. Uh-huh.



1 Q. Okay.

2 MR. STEMM: No further questions, your  
3 Honor. I just want to move on to our motion to  
4 strike at the appropriate time.

5 HEARING EXAMINER: Thank you, Mr. Schutz.  
6 I have no questions.

7 THE WITNESS: I'm sorry, your Honor, did  
8 you say you had no questions?

9 HEARING EXAMINER: I have no questions.  
10 You are excused. Thank you very much.

11 THE WITNESS: Thank you, ma'am.

12 (Witness excused.)

13 HEARING EXAMINER: I'm first going to  
14 turn to Mr. Zets and ask him to move the admission  
15 and then we will go through and you can at that time  
16 make your motions to strike and I will make my final  
17 decision about that as well as the motion to admit at  
18 that time.

19 MR. STEMM: You reminded me I need to  
20 move the admission of Columbia Gas Exhibit 5.

21 HEARING EXAMINER: Yes, I have that in  
22 front of me also.

23 MR. STEMM: Thank you.

24 HEARING EXAMINER: We'll do that after we  
25 do this one.

1 MR. ZETS: So I'll go first.

2 HEARING EXAMINER: Mr. Zets, yes.

3 MR. ZETS: At this point I would like to  
4 move Exhibit CCA 39 be moved into the record as  
5 evidence subject to the hearing officer's ruling with  
6 respect to Exhibit RJS-4A which was stricken a little  
7 while ago.

8 HEARING EXAMINER: As well as the other  
9 motions to strike.

10 MR. ZETS: Yeah, as well as the other  
11 rulings on the motions to strike that we had  
12 previously discussed.

13 HEARING EXAMINER: Correct.

14 MR. STEMM: And the couple that are  
15 coming up.

16 HEARING EXAMINER: Yes. And now I turn  
17 to you, Mr. Stemm.

18 MR. STEMM: First of all, for the record,  
19 we will for the moment oppose the admission of  
20 Mr. Schutz's testimony pending a decision on our  
21 remaining motions to strike and at this time Columbia  
22 Gas would move to admit Columbia Gas Exhibit No. 5.

23 HEARING EXAMINER: We can do that, but I  
24 was first asking you whether or not -- you know, I  
25 will mark it as moved.

1 MR. STEMM: You want me to go through --

2 HEARING EXAMINER: Yeah, I wanted to deal  
3 with his exhibits first. I was just doing it in the  
4 order I was prepared for at the moment.

5 MR. STEMM: Okay. Well, at page 19 of  
6 Mr. Schutz's testimony you held open the possibility  
7 for cross-examination before you ruled, let me just  
8 zero it in. At page 19, line 21 he is saying that it  
9 is telling that no incidents were reported and no  
10 health concerns were raised during the winter months  
11 of these two years.

12 This witness has admitted that he in no  
13 way can tell or testify under oath that zero  
14 incidents were reported to anyone and that no health  
15 concerns were raised by anyone to anyone because he  
16 simply does not have that information.

17 I will concede that on the record he has  
18 explained what information he does have, so by  
19 striking this absolute statement the record will  
20 still reflect his actual knowledge about what he  
21 bases his opinion on that he's not hearing about  
22 incidents, and we're not moving to strike that.  
23 We're just -- this absolute statement that he is  
24 trying to claim that there have been no incidents,  
25 period, we move to strike based on the

1 cross-examination.

2 HEARING EXAMINER: So you've narrowed it  
3 down to page 19, line 21, beginning with the word  
4 "it," "it is," and does that carry on to page 20,  
5 line 2? Where does it end?

6 MR. STEMM: I would say, just to be  
7 accurate here, line 15, "The lack of the reporting of  
8 chronic, health conditions and carbon monoxide  
9 symptoms," we would propose that say: "The lack of  
10 calls to the local authorities and the building  
11 department also indicate a lack of evidence." That's  
12 basically what he testified to. That, he could be  
13 knowledgeable on.

14 So take out "of the reporting" and make  
15 it, you know, strike out "of the reporting of  
16 chronic, health conditions and carbon monoxide  
17 symptoms, and," so the sentence at 15 would read "The  
18 lack of calls to the local authorities gave him some  
19 indication."

20 And then we would strike -- strike the  
21 words "it is telling" at line 21, "it is telling that  
22 no incidents," we would say strike that -- well, I  
23 don't know how you'd make it a complete sentence, but  
24 we would want to strike at least through "2009."  
25 That's just something he cannot say.

1 HEARING EXAMINER: Okay.

2 MR. STEMM: You could just take out the  
3 word "while" and his sentence could just read "Some  
4 symptoms may have been reported . . . in mid  
5 September."

6 HEARING EXAMINER: That's fine. We don't  
7 need to reword it. I think it's fine if we cut it  
8 off -- if we start at line 15 beginning with the  
9 words "the reporting" to line 16 ending with  
10 "symptoms, and," line 21 beginning with the words "it  
11 is" through line 22 ending with the term "2009." Is  
12 that what your motion to strike encompasses?

13 MR. STEMM: Yes, your Honor.

14 HEARING EXAMINER: Mr. Zets.

15 MR. ZETS: You can make a ruling, your  
16 Honor.

17 HEARING EXAMINER: I will grant that  
18 motion.

19 Mr. Stemm.

20 MR. STEMM: My next motion was at -- I'm  
21 going to -- at page 34 he is asked about certain  
22 records in RJS Exhibit 11, and I started the  
23 cross-examination of RJS Exhibit 11 and the first ten  
24 pages were that table summary. The witness admitted  
25 he had absolutely no participation, involvement,

1 knowledge of what went into preparing that table, and  
2 that that was simply handed to him by counsel and the  
3 first time he saw it was when the lawyers handed it  
4 to him and wanted to attach it to his testimony.

5 So we would, whether you call it a motion  
6 to strike or not to admit into evidence RJS-11, the  
7 first ten pages would be our first motion.

8 HEARING EXAMINER: Mr. Schutz, I  
9 apologize. With this motion to strike I'm going to  
10 need you to come back to the stand. I have a couple  
11 questions for you.

12 THE WITNESS: That's fine, ma'am. I  
13 understand.

14 HEARING EXAMINER: Thank you for being  
15 available.

16 THE WITNESS: Yes, ma'am.

17 HEARING EXAMINER: So your first motion  
18 regards the first ten pages.

19 MR. STEMM: Yes, your Honor, of Exhibit  
20 11.

21 HEARING EXAMINER: Of RJS-11. Pages 1  
22 through 10.

23 Do you have that in front of you,  
24 Mr. Schutz?

25 THE WITNESS: Yes, ma'am, I do.

1 HEARING EXAMINER: Let me ask you,  
2 Mr. Zets, before I ask my questions, do you have a  
3 response to the motion to strike pages 1 through 10?

4 MR. ZETS: Your Honor, we have no  
5 response and actually have no opposition to the  
6 motion with respect to pages 1 through 10.

7 HEARING EXAMINER: So you're willing for  
8 this to be stricken from the record?

9 MR. ZETS: I guess I don't know if I want  
10 to agree with the way that was phrased, but we have  
11 no opposition to the motion. It could be unopposed.

12 HEARING EXAMINER: Unopposed, okay. Well  
13 then I will just make that very easy and say pages 1  
14 through 10 will be stricken from the record.

15 MR. STEMM: Let me know when you're  
16 ready, your Honor.

17 HEARING EXAMINER: You can move forward,  
18 Mr. Stemm.

19 MR. STEMM: Thank you. Continuing with  
20 RJS-11, pages 11 through 16, we move to strike those  
21 pages as well. The witness did testify that he had  
22 seen the original of the first page, page 11 of this  
23 exhibit, but that he had no involvement in the  
24 preparation and the completion of this form. He did  
25 not supervise or was in any way involved with the

1 completion of these documents, and the last five  
2 pages of this portion of the exhibit he had never  
3 seen until the lawyers for Cameron Creek put it in  
4 front of him and attached it to his testimony.

5           So on the basis of his inability to  
6 authenticate, his lack of involvement in preparation,  
7 and the fact that he admitted that these are not his  
8 business records, these are records of another entity  
9 that were simply shown to him, we would move to  
10 strike all six pages.

11           HEARING EXAMINER: Mr. Zets.

12           MR. ZETS: Whether they're his business  
13 records is not relevant to whether his opinion can be  
14 based upon them. If they are truly a business record  
15 document, they fall under the exception to the  
16 hearsay rule and they would be admissible. He  
17 doesn't have to -- the expert witness doesn't have to  
18 have created the documents in order for him to opine  
19 on those documents. I would ask that they not be  
20 stricken from the record.

21           HEARING EXAMINER: Mr. Schutz.

22           THE WITNESS: Yes, ma'am.

23           HEARING EXAMINER: With regard to pages  
24 11 through 16, do you know who created these  
25 documents?



1 THE WITNESS: Yes, ma'am. I know the  
2 maintenance staff at the apartment complex in doing a  
3 review, one of the decisions on whether you can apply  
4 new code or whether you apply the retroactivity  
5 paragraph --

6 HEARING EXAMINER: No; I'm just asking on  
7 these documents, whether you are aware of who created  
8 these documents.

9 THE WITNESS: Yes, ma'am. The  
10 maintenance staff at the apartment.

11 HEARING EXAMINER: Were these documents  
12 created in the ordinary course of business; are you  
13 aware of that?

14 THE WITNESS: According to them,  
15 according to Mr. Weaver, the maintenance supervisor,  
16 and to the manager, yes, ma'am.

17 HEARING EXAMINER: Can you attest to the  
18 truth of the information within these documents?

19 THE WITNESS: Of course not. No, ma'am.

20 HEARING EXAMINER: With that statement in  
21 mind and the fact that he can't really attest to the  
22 truth of the matter contained in these documents I'll  
23 deny the motion to strike, but let the record reflect  
24 that they will be taken appropriate weight by the  
25 Commission based upon the fact that the witness

1 cannot attest to their veracity.

2 MR. STEMM: We would next turn to the  
3 next set of pages in RJS-11 starting with page 17  
4 through 20 which is entitled a Voyager Report and a  
5 Vendor Ledger. Again, whether or not -- business  
6 record or not of Cameron Creek, which I don't think  
7 this witness is authorized to testify on, but in any  
8 event our main argument is that there's been no  
9 foundation laid in his testimony for him to be  
10 introducing or discussing these documents since he  
11 has no personal knowledge or involvement in their  
12 preparation.

13 HEARING EXAMINER: Mr. Zets.

14 MR. ZETS: No opposition.

15 HEARING EXAMINER: Then pages 17 through  
16 20 shall be stricken from the record of RJS-11.

17 MR. STEMM: And finally in RJS-11, pages  
18 21, 22, and 23, the witness conceded on  
19 cross-examination at the top of the examination that  
20 these were simply invoices of another contractor that  
21 were shown to him, that he had no knowledge other  
22 than what was reflected in these documents that  
23 anyone could read. He initially thought he may have  
24 been out at the site on one of these, then he  
25 realized he was off by a year and it wasn't really

1 that one.

2 So I believe these have been stricken  
3 before and we would ask that they be stricken again,  
4 again, not having a proper witness to introduce them.

5 HEARING EXAMINER: Mr. Stemm, where were  
6 they stricken before?

7 MR. ZETS: Actually, that was a point I  
8 was going to make.

9 HEARING EXAMINER: Mr. Zets, are you  
10 aware --

11 I think I know what you're referring to.  
12 I think you're referring to Miss Kauffman's  
13 testimony.

14 MR. STEMM: Yes.

15 HEARING EXAMINER: And I believe I denied  
16 that motion and I believe I let them in, but I'm not  
17 sure these are the exact same documents.

18 MR. STEMM: Yeah, I may be mistaken and  
19 thinking of another one. I may be thinking of the  
20 chart that you just, you granted --

21 HEARING EXAMINER: Yes, I believe you  
22 are.

23 MR. STEMM: -- a motion on that one,  
24 Ms. Kauffman --

25 HEARING EXAMINER: Yes.

1           MR. STEMM:  -- which she said her  
2 maintenance department did.

3           HEARING EXAMINER:  The invoices were  
4 allowed in but, again, I don't think all of these  
5 were part of her testimony.  Maybe two of them were,  
6 but there was only one Starner's invoice.  There were  
7 two Rescue Rooters and one Starner's.

8           MR. STEMM:  We're checking right now to  
9 see if they're the same.  If they've already been  
10 admitted through Kauffman, then perhaps we would  
11 withdraw our motion.  If they're already in the  
12 record, then he can comment on them as a . . .

13          HEARING EXAMINER:  Can you point out --  
14 maybe you can share with Mr. Stemmm.

15          MR. ZETS:  To the best of my recollection  
16 in reviewing the documents, if we're back to looking  
17 at CCA 39, the invoice number 21 is different, but  
18 the invoices that are marked on pages 22 and 23 --

19          MR. STEMM:  That's correct.

20          MR. ZETS:  -- were previously admitted  
21 during Miss Kauffman's testimony.  So while I would  
22 have no opposition to the motion with respect to the  
23 exhibit that's been hand numbered page 21, I believe  
24 22 and 23 are already admitted and his testimony is  
25 based upon evidence that has already been admitted

1 into the record.

2 MR. STEMM: We agree with that  
3 representation and would withdraw our motion to  
4 strike as unnecessary as to the other two documents,  
5 22 and 23 of RJS-11.

6 HEARING EXAMINER: Well, given that  
7 there's no opposition to page 21 being stricken I  
8 will grant the motion to strike; however, I'd  
9 recommend counsel for complainant wait until counsel  
10 for the company actually decides whether they're  
11 going to withdraw or not before you actually concede  
12 something, but that's my --

13 MR. ZETS: It's been two long days. I  
14 knew what he was going to do.

15 HEARING EXAMINER: And the other two  
16 motions were withdrawn. Trying to move us along I  
17 can tell, Mr. Zets, and I appreciate that.

18 MR. STEMM: I think that's all we have.

19 HEARING EXAMINER: Those are the only --

20 MR. STEMM: I mean, we would like to  
21 renew our motion to strike Exhibit 4B based on the  
22 additional cross-examination and testimony. I feel  
23 like it may be futile at this point, but for the  
24 record I would indicate that the witness did provide  
25 additional grounds for the hearing officer to find

1 that these numbers are entirely unreliable and would  
2 be more misleading if allowed in the record than if  
3 excluded from the record.

4 I would also argue that they're  
5 completely irrelevant and inadmissible only because  
6 cost is not an issue when you're determining safety  
7 compliance under any standard of code. But that  
8 would be my renewed motion.

9 HEARING EXAMINER: And I appreciate that  
10 clarification and, again, the Commission is going to  
11 put the appropriate weight on this document realizing  
12 that it's a difficult document to review and consider  
13 it and put -- and to verify it. And I would expect  
14 that arguments would be made in briefs on this issue  
15 as far as what the purpose of this case is and the  
16 safety aspect. So I would expect both counsel to  
17 make the appropriate arguments.

18 With that being said, with the motions to  
19 strike that I have granted and subject to that I will  
20 admit CCA 39 into the record.

21 (EXHIBIT ADMITTED INTO EVIDENCE.)

22 HEARING EXAMINER: And now you can be  
23 excused.

24 THE WITNESS: Thank you, ma'am.

25 (Witness excused.)

1                   HEARING EXAMINER: With regard to  
2 Columbia Exhibit 5, you've made the motion to admit  
3 that document.

4                   Mr. Zets, do you have any objections?

5                   MR. ZETS: No.

6                   HEARING EXAMINER: The document will be  
7 admitted into the record.

8                   (EXHIBIT ADMITTED INTO EVIDENCE.)

9                   HEARING EXAMINER: We'll go off the  
10 record.

11                   (Discussion off the record.)

12                   HEARING EXAMINER: We'll go back on the  
13 record. We're going to recess until 9 o'clock  
14 tomorrow.

15                   (The hearing adjourned at 5:36 p.m.)

16                   - - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, July 16, 2009, and carefully compared with my original stenographic notes.

\_s/Maria DiPaolo Jones\_\_\_\_\_  
Maria DiPaolo Jones, Registered  
Diplomate Reporter and CRR and  
Notary Public in and for the  
State of Ohio.

My commission expires June 19, 2011.

(MDJ-3417)

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Summary: Transcript Cameron Creek Apartments/Columbia Gas Vol-II 7/16/09 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.