

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the	:	
Complaint of Orwell	:	
Natural Gas Company,	:	
	:	
Complainant,	:	
	:	Case No. 14-1654-GA-CSS
vs.	:	Case No. 15-637-GA-CSS
	:	
Orwell-Trumbull Pipeline	:	
Company, LLC,	:	
	:	
Respondent.	:	

- - -

PROCEEDINGS

before Scott E. Farkas, Hearing Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-C, Columbus, Ohio, called at 10:00
a.m. on Tuesday, November 3, 2015.

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VOLUME I

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On behalf of the Staff of the Public
Utilities Commission of Ohio.

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Tuesday Morning Session,
November 3, 2015.

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THE EXAMINER: The Commission has called
for hearing at this time and place the complaints of
Orwell Natural Gas Company versus Orwell-Trumbull
Pipeline Company in Case Nos. 14-1654-GA-CSS and
15-637-GA-CSS. My name is Scott Farkas. I'm the
Attorney-Examiner assigned to hear these cases.
First let's take appearances and start with the
Complainant.

MR. YURICK: On behalf of Orwell Natural
Gas and Brainard Natural Gas, Mark S. Yurick, that's
Y-U-R-I-C-K, and Devin Parram, P-A-R-R-A-M, with the
law firm of Taft, Stettinius and Hollister, 65 East
State Street, Suite 1000, Columbus, Ohio, 43215.

MS. PIACENTINO: On behalf of the company
Orwell Natural Gas Company, Gina Piacentino, that's
P-I-A-C-E-N-T-I-N-O with the Weldele, W-E-L-D-E-L-E,
and Piacentino Law Group at 88 East Broad Street,
Suite 1650, Columbus, Ohio.

THE EXAMINER: Thank you.
On behalf of the Respondent?

MR. DORTCH: Michael D. Dortch and Justin
M. Dortch with the law firm of Kravitz, Brown and

1 Dortch on behalf of the Respondent Orwell-Trumbull
2 Pipeline Company. Also at the table with me is my
3 client's representative, Miss Jessica Carothers,
4 Accounting Manager for Orwell-Trumbull Pipeline.

5 THE EXAMINER: OCC?

6 MR. KUMAR: On behalf of the Residential
7 Consumers of Orwell Natural Gas Company, Ohio
8 Consumers' Counsel Bruce Weston, by Ajay Kumar and
9 Joseph Serio, 10 West Broad Street, Columbus, Ohio,
10 43215, Suite 180.

11 THE EXAMINER: Thank you.

12 MR. MARGARD: On behalf of the Staff of
13 the Public Utilities Commission of Ohio, Mike DeWine,
14 Ohio Attorney General, William Wright, Section Chief,
15 Public Utilities Section, by Assistant Attorney
16 General Werner L. Margard, 180 East Broad Street,
17 Sixth Floor, Columbus, Ohio.

18 THE EXAMINER: Thank you.

19 I noted there are some pending motions
20 that have not been ruled on. One is the motion of
21 Orwell Natural Gas Company for leave to file direct
22 testimony of Michael Zappitello, and was there any
23 objection to that motion?

24 MR. DORTCH: The company does not object
25 to the late filing of Mr. Zappitello's testimony,

1 your Honor.

2 THE EXAMINER: Okay.

3 And does OCC?

4 MR. SERIO: No objection.

5 THE EXAMINER: Staff?

6 MR. MARGARD: None.

7 THE EXAMINER: Then that will be granted.

8 There was also a motion for protective
9 order on behalf of OCC. Does anybody have any
10 objection to that motion?

11 MR. DORTCH: In fact, your Honor, we'll
12 join in the motion.

13 MS. PIACENTINO: No objection.

14 MR. MARGARD: No objection, your Honor.

15 THE EXAMINER: Then that will be granted.

16 Then there was also initially a motion
17 for protective order filed by the Complainant dealing
18 with two exhibits. One was the Natural Gas Service
19 Agreement and another was the costs, Exhibit 2, which
20 were the invoices related to the second complaint, I
21 believe; is that correct?

22 MS. PIACENTINO: Yes, your Honor, we will
23 withdraw that motion for protective order.

24 THE EXAMINER: All right. Thank you.

25 Now, before we get started, I believe I

1 asked the parties if there was any preliminary
2 matters, and I believe counsel for the Respondent had
3 indicated there was some news with respect to the
4 complaint in 1654.

5 MR. DORTCH: Thank you, your Honor.
6 Actually, your Honor, I have a couple of motions.
7 First, your Honor -- May I approach, your Honor?

8 THE EXAMINER: Yes.

9 MR. DORTCH: I just want to provide you
10 with something that all the parties have had. It is
11 at this point in time not an evidentiary matter.
12 What it is is the notice from my client to the
13 companies indicating that the two invoices that are
14 at issue in Case No. -- well, I'll get it right here
15 in a minute, Case No. 14-1654, have been withdrawn.

16 And, your Honor, I also have before me
17 Complainant's complaint, Complainant's prayer for
18 relief and ask that the Commission find that it sets
19 forth reasonable grounds for the complaint and that
20 it has been complying. It then asks that the recent
21 invoices, the ones that were withdrawn and which are
22 the subject matter of the case, are not in compliance
23 with the tariff and/or the services agreement, order
24 a stay to be enforced to prevent shut-off for
25 residential and commercial customers, award

1 attorney's fees as statutorily authorized or any
2 other remedy permitted by 4905.61.

3 Your Honor, as I said, the invoices have
4 been withdrawn. There is no case remaining. And the
5 additional prayers for relief do not add to the
6 relief that is available to the complainant. There
7 has not been, nor would there be, an effort to shut
8 off residential and commercial customers based on
9 those invoices. Again, the invoices are simply
10 irrelevant. They don't exist.

11 There is a request for award of attorney
12 fees as statutorily authorized. I'm unaware of any
13 statute that would permit the reward of attorney's
14 fees in this situation. And there simply is no
15 requirement that the company be granted any relief at
16 this point in time. There's no case remaining.

17 THE EXAMINER: Okay.

18 Does the Complainant want to respond?

19 MR. YURICK: I can, your Honor. As I'll
20 note for the record, that the companies were notified
21 of the withdrawal of the invoices late on Friday and
22 were not approached about withdrawing the complaint
23 until this morning for several months; therefore, the
24 invoices for which there was no basis were held over
25 the company's head as leverage, and the company was

1 forced to take legal action by filing a complaint in
2 order to litigate the validity of these invoices for
3 which there is no basis.

4 We've not had very much time to confer.
5 At this point, really just at this late moment, have
6 not had adequate time to do a lot of research into
7 what sort of equitable remedy on attorney's fees may
8 be available to us. I don't have a specific response
9 to the assertion that attorney fees are not
10 available.

11 And I would not lead the Court to believe
12 that I know at this point of a statute that would
13 allow us to collect attorney's fees, but I think we
14 should be allowed to at least ask some questions
15 around this in that it also affects the other case
16 which goes to the fairness of the operation, how
17 equitably my client is to be treated in contract
18 negotiations and what action the Commission ought to
19 do to make certain that this public utility acts in a
20 way that is consistent with the law.

21 THE EXAMINER: Okay.

22 Mr. Serio, did you have a response to
23 that?

24 MR. SERIO: Yes, your Honor. To the
25 extent that OTP makes it clear on the record that

1 we're not going to see billing over that pipeline
2 over that time period again which could potentially
3 negatively impact residential customers, we would be
4 okay not further pursuing that direct issue as part
5 of the hearing and think the best thing to do might
6 be to slightly brief it and let the Commission issue
7 an order.

8 I would suggest to make things easy, that
9 the October 22nd letter be marked as an exhibit and
10 we would have it available. The other thing is that
11 we do have some questions remaining that are
12 peripheral questions to that that may impact the
13 remaining complaint case that we would still like to
14 go ahead and pursue.

15 As I indicated to counsel for OTP, OCC
16 would want Mr. Slone's testimony to remain intact and
17 be on the record for the Commission to consider
18 whenever they make a decision in the matter.

19 THE EXAMINER: Does the Staff have
20 anything to add?

21 MR. MARGARD: Thank you, your Honor. I
22 would note that Staff was concerned by the issuances
23 of these invoices. It is a concern that such
24 invoices may be issued again in the future. While
25 they are being withdrawn and there is no basis for

1 pursuing the complaint with respect to those specific
2 invoices, the issues of the company's interpretation
3 of the contract and the matter in which they billed
4 under that contract I believe do remain and are
5 proper subject for inquiry.

6 And I think to that extent, Mr. Serio's
7 request, for example, that the testimony remain is
8 reasonable, and I won't weigh in any further with
9 respect to the motion other than to note that we
10 believe the issues are still reasonable for the
11 Commission's determination.

12 THE EXAMINER: Okay.

13 MR. DORTCH: Your Honor, only one brief
14 response to both the Staff and the concern of the
15 OCC. Let me make it clear that Mr. Osborne, the
16 principal of Orwell-Trumbull Pipeline Company, is
17 firmly convinced that he has claims related to the
18 two-inch pipelines. Those claims involve the value
19 of those pipelines, the reason they were built and
20 the obligation of another entity to purchase those
21 pipelines.

22 We've prevailed on the better nature --
23 the better angels of Mr. Osborne's nature, however,
24 and convinced him that the invoices as they stand
25 should be withdrawn and that the invoices seeking to

1 recover transport across the two-inch lines will not
2 be reissued on the same theory, thus, to the extent
3 that both Staff and OCC are concerned about this
4 becoming an issue again, I'm stating it won't.

5 THE EXAMINER: Okay. So you're basically
6 willing to accept Mr. Serio's --

7 MR. DORTCH: Yes.

8 THE EXAMINER: -- statement with respect
9 to any future billing?

10 MR. DORTCH: Yes, your Honor.

11 THE EXAMINER: That it would not occur
12 with respect to this?

13 MR. DORTCH: Yes, your Honor.

14 THE EXAMINER: Not with respect to the
15 same pipelines in which the invoices that were issued
16 originally are now withdrawn?

17 MR. DORTCH: Correct.

18 THE EXAMINER: Okay.

19 Is that what you were looking for,
20 Mr. Serio?

21 MR. SERIO: I think so, your Honor. I
22 guess what we're looking for is we're not going to
23 see anything retroactive. To the extent Mr. Osborne
24 thinks he has a claim going forward regarding value,
25 that's between Mr. Osborne and Orwell or Gas Natural

1 or some other entity, and they'll resolve it when
2 they resolve it.

3 And to the extent that any financial
4 impact from that decision eventually makes its way to
5 customers, the Commission would retain the
6 opportunity either on the rate proceeding or on the
7 future GCR proceeding to determine the prudence and
8 reasonableness of those costs before they flow to
9 customers. So with that understanding, I think we
10 would be okay.

11 MR. DORTCH: Okay. We understand that
12 the Commission's jurisdiction remains the
13 Commission's jurisdiction.

14 THE EXAMINER: With that clarification by
15 counsel for the pipeline, I'm going to mark this as
16 OTP Exhibit... do you have a preference?

17 MR. DORTCH: 1 would be fine -- or
18 actually -- Yeah, 1.

19 THE EXAMINER: OTP Exhibit 1 will be
20 marked, dated October 28th, 2015 letter from Jessica
21 Carothers indicating that the two invoices that were
22 the subject of the cases in Case No. 1637 are now
23 withdrawn.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 THE EXAMINER: Is there any objection to

1 that being admitted?

2 MR. YURICK: No objection, your Honor.

3 MS. PIACENTINO: No.

4 MR. KUMAR: No objection.

5 THE EXAMINER: That will be admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 THE EXAMINER: I do still believe that
8 I'll allow the parties some latitude with respect to
9 questions that they might have because we're going to
10 see how that goes, but I understand.

11 MR. DORTCH: Understood.

12 THE EXAMINER: And then I'm also going to
13 allow, I believe -- Well, we'll deal with that in a
14 second. You had another motion?

15 MR. DORTCH: Yes, your Honor. I have a
16 second motion, thank you. Your Honor, this motion
17 concerns Case No. 15-637. And, your Honor, the basis
18 of this motion, your Honor, is that section, I
19 believe it's 7, Section 7, I believe of the contract
20 between the Complainant and the Respondent contains a
21 provision that compels any dispute arising from or
22 out of the contract to be settled -- to be referred
23 to arbitration.

24 Again, your Honor, I will approach, if I
25 may, and again, I don't have this as an exhibit, I'm

1 going to suggest that perhaps we do mark it as
2 Exhibit 2. What it is is the arbitration demands,
3 and I'll provide those to everyone later if that's
4 acceptable.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. DORTCH: Your Honor, may I approach?

7 THE EXAMINER: Yes.

8 MR. DORTCH: What I have here, your
9 Honor, is the demand for arbitration by
10 Orwell-Trumbull Pipeline Company, the response and
11 counterclaim of Orwell Natural Gas to the arbitration
12 demand and Orwell-Trumbull Pipeline Company's answer
13 to the counterclaim.

14 Your Honor, the matters before this
15 Commission are indeed subject to the arbitration
16 provision that is contained in their contract. That
17 contract was approved by this Commission in Case No.
18 08-1244, your Honor. I'll confirm that in a moment.
19 Your Honor, Ohio Revised Code Section 2711.01 and
20 oddly enough, your Honor... may I approach?

21 THE EXAMINER: Yes.

22 MR. DORTCH: Thank you. I did bring
23 Chapter 2711 and copies for everyone there.
24 2711.01(A) states, "A provision in any written
25 contract within exception that does not apply to

1 settle by arbitration a controversy that subsequently
2 arises out of a contract or out of the refusal to
3 perform the whole or any part of the contract or any
4 agreement in writing between two or more persons to
5 submit to arbitration any controversy existing
6 between them at the time of the agreement to submit
7 or arising after the agreement to submit from a
8 relationship then existing between them or that they
9 simultaneously create shall be valid, irrevocable and
10 enforceable except on grounds it exists at law or in
11 equity."

12 Your Honor, the courts interpreting this
13 have done two things with arbitrations. Some courts
14 have dismissed the proceedings. Other courts turning
15 to 2711.02, which I think is the better approach
16 perhaps, permits the court or the tribunal to issue
17 an order directing the arbitration to occur and stays
18 the matter pending in that court and tribunal until
19 the report of the arbitrator is issued.

20 At that point in time, the issue that
21 returns to the tribunal that issued the order to
22 direct the arbitration to occur, where that tribunal
23 affirms or modifies or otherwise addresses the
24 arbitration award making it a -- well, typically in a
25 court a judgment that would be enforceable by that

1 court.

2 In this tribunal, of course, it would be
3 an order of this Commission enforceable by this
4 Commission. To the extent that it would be an order
5 enforceable in the courts as well, it could be filed
6 and enforced by the courts of common pleas in this
7 court.

8 So, your Honor, based upon the
9 contractual provision between the parties and based
10 upon the pending arbitration proceeding between the
11 parties, I submit that the appropriate action for
12 this Commission to take at this point in time is to
13 issue an order directing the arbitration to go
14 forward, directing the parties to raise any issues
15 they desire to be heard in that arbitration,
16 including the issues the company wishes heard here
17 today, and then this Commission can address the
18 arbitrator's determination once it has been entered.
19 Thank you.

20 MR. YURICK: Your Honor, on behalf of the
21 companies, what the companies' main claim here is
22 that there was, in fact, no contract. It's clear
23 that the Commission needs to approve a contract. We
24 will attempt to show that this contract was not
25 negotiated at arm's-length; that there was not a full

1 and open disclosure of that fact to the Commission;
2 that the Commission, had it known how the contract
3 was formed, would not have approved it, and
4 therefore, there would be no contract.

5 So the provision 2711.01 -- I apologize,
6 I don't have case law on it -- that would apply if
7 there was a contract, I would ask that the Commission
8 hear the companies' claims that this, in fact, was
9 not a real contract and that the way that it was
10 formed was unfair to regulate consumers; that that
11 unfairness impacted rates to regulated consumers; and
12 that the contract should be held void and void as not
13 ever being appropriately entered into or approved.

14 And, again, we're going to ask that the
15 Commission come up with interim rates and essentially
16 require the pipeline company to come up with a tariff
17 rate because this contract was entered into, the
18 evidence will show, we expect the evidence to show,
19 by two people who reported to the same person that
20 had ownership interests in both of these companies,
21 and therefore, was not a contract by any legal
22 understanding of the word.

23 THE EXAMINER: Thank you.

24 Mr. Serio?

25 MR. SERIO: Thank you, your Honor.

1 Counsel for Orwell hit our main point through our
2 testimony which is we don't believe there was ever a
3 valid contract. And at the time that the Commission
4 reviewed the contract in the 08-1244 proceeding, the
5 Commission was not aware of a number of factors that
6 would negate the contract on its face.

7 Secondly, the Commission under 4905.05
8 has jurisdiction over all utilities in Ohio. And
9 under 4905.22 has jurisdiction over the provision of
10 reasonable rate -- of safe and reliable service for
11 reasonable rates. Both are at the heart of the
12 complaint and at the heart of this dispute here.

13 Even more importantly, if you just cut to
14 the crux of the matter in arbitration, to the extent
15 the arbitrator would rule in favor of Orwell-Trumbull
16 Pipeline, that they can charge even a higher rate,
17 the Commission still has the jurisdiction to
18 determine if that rate, whatever the arbitrator
19 decides, falls within the confines of 4905.22 puts us
20 right back at the PUCO.

21 The Commission's been aware of the
22 arbitration for a significant period of time. The
23 Commission went ahead and set this case for hearing.
24 The parties have prepared for hearing. The parties
25 have put significant resources into it, and it makes

1 eminent sense to go forward with the proceeding
2 today.

3 And if the parties want to brief the
4 matter as to the Commission's jurisdiction of the
5 arbitration, you can direct the parties to do that if
6 the Commission made that determination, but it
7 doesn't make sense when the parties are prepared to
8 go forward today to continue to delay this matter
9 especially going into the winter heating season where
10 potentially we could end up in a situation where in
11 the next GCR case we have even more significant
12 potential disallowances that could be hanging over
13 the company and have a situation where customers
14 considerably overpaid at a time when nobody needs to
15 pay more than they have to for rates.

16 And the fact that you get a disallowance
17 or a refund in the future doesn't help people during
18 the winter heating season when they're paying rates
19 higher than what they should have to pay.

20 THE EXAMINER: Staff?

21 MR. MARGARD: Thank you, your Honor. In
22 the first instance, I would generally echo the
23 comments of my colleagues. I would further note that
24 1277 applies to courts of general record in the State
25 of Ohio and does not apply to the Public Utilities

Commission.

With respect to the specific statutory provision relied upon by Mr. Dortch, it refers to disputes arising out of under the contract or with respect to the performance of the contract. And to the extent that arbitration has been provided for in the contract and to the extent that the arbitration demands do relate to a dispute arising under the contract, there's no reason why that arbitration cannot proceed.

With respect to the complaint that's pending here before the Commission, as both Mr. Yurick and Mr. Serio have noted, the issue here is the just and reasonable nature of the contract itself, and that does remain within the Commission's exclusive jurisdiction. And I believe the Commission has the right to proceed on this matter.

THE EXAMINER: Thank you.

MR. DORTCH: Thank you, your Honor. Your Honor, the very specific provision is 7.6 of the agreement. And that states, "The parties agree that any dispute arising hereunder or related to this agreement shall be resolved by binding arbitration under the auspices of the American Arbitration Association."

1 Then it goes on to address the issue of
2 discovery, and it expressly states that "The
3 arbitrator or arbitrators shall have authority to
4 impose any remedy at law or inequity including
5 injunctive relief. The parties agree that any
6 hearing will be conducted in Lake County, Ohio."

7 This agreement, your Honor, was submitted
8 to this Commission, and the Commission considered
9 this agreement in Case No. 08-1244-PL-AEC. And the
10 Commission issued a decision finding the terms of
11 this agreement to be just and reasonable when it
12 considered it in 2008. Actually, the decision may
13 have been issued in 2009.

14 There is a contract. It has been
15 approved by this Commission. It contains an
16 arbitration clause. Arbitration clauses, not just by
17 the statute I refer to but as a matter of public
18 policy in the State of Ohio are encouraged and they
19 are -- well, they're encouraged by the courts and by
20 the General Assembly and they are to be enforced.

21 The issues of whether there was some
22 inappropriate conduct surrounding the formation of
23 the contract is plainly within the scope of the
24 matters that the arbitrator is justified or
25 authorized by this provision to hear. The matter

1 belongs in arbitration, your Honor, and we move that
2 the Bench issue an order directing the matter to go
3 forward in the pending arbitration proceeding.

4 THE EXAMINER: With respect to your
5 Exhibit 2, is there any objection to admission of
6 that as an exhibit?

7 MR. YURICK: No objection.

8 MS. PIACENTINO: No objection.

9 THE EXAMINER: That will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 THE EXAMINER: I'm going to deny your
12 motion.

13 Is there anything further?

14 MR. YURICK: No preliminary matters, your
15 Honor.

16 THE EXAMINER: Then I would say, again,
17 we should start with your first witness.

18 MR. PARRAM: Orwell Natural Gas calls
19 Mike Zappitello to the stand.

20 THE EXAMINER: Raise your right hand.

21 (Witness placed under oath.)

22 THE EXAMINER: You may proceed.

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MICHAEL ZAPPITELLO

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

DIRECT EXAMINATION

By Mr. Parram:

Q. Would you please state your name for the
record?

A. Michael S. Zappitello.

Q. Please spell your last name.

A. Z-A-P-P-I-T-E-L-L-O.

Q. By whom are you employed?

A. Northeast Ohio Natural Gas.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. And do you have before you a document
that is marked ONG Exhibit 1?

A. Yes, I do.

Q. Are you familiar with this document?

A. Yes, I am.

Q. What is this document?

A. It's my testimony in this case.

Q. Do you have any changes to your
testimony?

A. Yes, I do.

Q. What are those changes?

A. Page 2, line 17, it says "2008." It

1 should be changed to "2009."

2 Page 5, line 3, following the initials
3 "OTPC's" should include "pipelines" to that.

4 THE EXAMINER: So how would that read?

5 THE WITNESS: "OTPC's pipelines to
6 transport gas."

7 THE EXAMINER: Okay.

8 THE WITNESS: Page 8, line 8 should read
9 "Dominion taps on Orwell system were dismantled."
10 Scratch that "in 2008."

11 Same page, line 20, after the word
12 "provision," insert the word "in," I-N.

13 Page 17 at the bottom, the "2010 GCR
14 Opinion and Order," first one should be instead of
15 "6," replace it with "4," and the one below, instead
16 of "7," replace it with "4."

17 Q. Do you have any other changes to your
18 testimony, Mr. Zappitello?

19 A. No, I do not.

20 Q. Mr. Zappitello, if I were to ask you the
21 same questions contained in ONG Exhibit 1 today,
22 would your answers be the same?

23 A. Yes.

24 MR. PARRAM: Your Honor, I move for the
25 admission of ONG Exhibit 1 and tender Mr. Zappitello

1 for Cross-Examination.

2 THE EXAMINER: Okay.

3 MR. SERIO: Could we go off the record
4 for a second?

5 THE EXAMINER: Off the record.

6 (Off the record.)

7 THE EXAMINER: Let's go back on the
8 record.

9 MR. SERIO: Can I approach, your Honor?

10 THE EXAMINER: Yes.

11 MR. SERIO: I'd like to mark for purposes
12 of identification OCC Exhibit No. 1. It's a
13 multiple-page document, two-sided, and it's documents
14 that OCC and the other parties received from
15 Orwell-Trumbull Pipeline I believe either Friday
16 afternoon or yesterday.

17 It's my understanding that Orwell has
18 indicated that they are what they purport to be, and
19 I had some questions about it because OCC hadn't seen
20 it before. And since we're crossing Mr. Zappitello
21 before the company, I had some questions on it. So I
22 thought the best thing to do was to go ahead and mark
23 it so we can go forward.

24 THE EXAMINER: Okay, so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

CROSS-EXAMINATION

By Mr. Serio:

Q. While the copies are being made, I have some other matters I can go through and I can pull that one out for now. Good morning, Mr. Zappitello.

A. Good morning.

Q. One of the corrections you made in your testimony is that you were hired by Cobra Pipeline in 2009, correct?

A. Correct.

Q. Were you employed by Orwell-Trumbull Pipeline during that time period?

A. That's where my paycheck was coming from, yes.

Q. So let me take a step back. When were you first employed by Orwell-Trumbull Pipeline?

A. I believe it was March 2009.

Q. And what was your title when you were retained by Orwell-Trumbull Pipeline?

A. I was first hired to do purchasing.

Q. And the purchasing that you were doing was on behalf of Orwell-Trumbull and Cobra Pipelines only?

A. Correct.

1 Q. So you weren't doing any purchasing
2 directly on behalf of Orwell Northeast or Brainard
3 Utilities, correct?

4 A. Not when I started.

5 Q. Okay. When you started in 2009, did you
6 have the opportunity to become familiar with the
7 various contracts that Orwell-Trumbull Pipeline had
8 that they relied on to provide service to their
9 various customers?

10 A. Over time.

11 Q. And among those contracts would be the
12 2008 contract between Orwell-Trumbull Pipeline and
13 Orwell Natural Gas Company that's the subject of the
14 complaint in this proceeding, correct?

15 A. Yes.

16 Q. Now, when you were retained or hired by
17 Orwell Trumbull Pipeline, who hired you?

18 A. Richard Osborne.

19 Q. And is he the one that indicated to you
20 what your responsibilities and duties would be?

21 A. Yes.

22 Q. Did you in your employment with
23 Orwell-Trumbull Pipeline have the opportunity to
24 interact with Mr. Osborne on a regular basis?

25 A. I wouldn't say regular.

1 Q. When decisions had to be made, did
2 Mr. Osborne make those decisions or did you make
3 decisions regarding purchasing?

4 A. I made the decisions regarding
5 purchasing.

6 Q. And who made the decision regarding
7 contracts, was that in your area or was that
8 Mr. Osborne?

9 A. What time period are we talking?

10 Q. When you were retained from 2009 through
11 the time that you were employed by Orwell-Trumbull
12 Pipeline.

13 A. I was in charge of John D. Oil and Gas
14 Marketing, and I did contracts for them, nothing for
15 the pipelines.

16 Q. When you did contracting with John D. Oil
17 and Gas Marketing, did you have the authority to make
18 decisions regarding entering into contracts on your
19 own, or did Mr. Osborne make the decision regarding
20 John D. Oil and Gas Marketing entering into
21 contracts?

22 A. Existing contracts, I had the authority
23 to negotiate new pricing, new terms. New contracts,
24 I would consult with Mr. Osborne.

25 Q. And the final decisions regarding the new

1 contracts was made by Mr. Osborne, correct?

2 A. Yes.

3 Q. Now, you said in 2010, you began
4 purchasing gas for all the Ohio utilities. Were you
5 employed at that time directly by the utilities or
6 did you do the purchasing on behalf of the utilities
7 while you were still employed by Orwell-Trumbull
8 Pipeline?

9 A. On behalf of the utilities while I was
10 employed by Orwell-Trumbull Pipeline.

11 Q. Now, are you currently employed by
12 Orwell-Trumbull Pipeline?

13 A. No.

14 Q. And who are you employed by today?

15 A. Northeast Ohio Natural Gas.

16 Q. Only Northeast?

17 A. Correct.

18 Q. But you do purchasing for Northeast,
19 Orwell and Brainard, correct?

20 A. Correct.

21 Q. Do you have any connection to any other
22 companies that Mr. Osborne owns or has ownership
23 interest in other than Orwell Northeast and Brainard?

24 A. No.

25 Q. To the extent that you are involved in

1 purchasing, you understand the distinction between an
2 interruptible contract and a firm contract, right?

3 A. Yes.

4 Q. What's the difference between the
5 interruptible and firm contract?

6 A. Interruptible, your supply could be cut.
7 Firm contract guarantees the deliverability outside
8 of a force majeure.

9 Q. In your role of purchasing gas for
10 utilities, among the customers that you purchase for
11 are residential and human needs customers, correct?

12 A. Correct.

13 Q. When you purchased gas for residential
14 human needs customers, do you generally rely on firm
15 transportation contracts or interruptible
16 transportation contracts?

17 A. Firm would come first.

18 Q. And are you familiar with the concept of
19 a sole source provider in a contract?

20 A. Yes.

21 Q. And what is your understanding what a
22 sole source provider is in a contract?

23 A. Only one entity can supply the gas.

24 Q. And to the extent that a contract has a
25 sole source provision in it, that means that

1 regardless of pricing or terms for other available
2 gas supplies, you're still obligated to purchase or
3 transport from that one entity, correct?

4 A. That's my understanding.

5 Q. One of the other corrections that you
6 made in your testimony was on Page 8, had to do with
7 the timing of the dismantling of the taps on the
8 Orwell system that interconnected Orwell to Northeast
9 Ohio?

10 A. Yes.

11 Q. Were you employed by Orwell-Trumbull at
12 the time that those taps were dismantled?

13 A. I'm unsure.

14 Q. Did you have any knowledge about why the
15 tap -- any direct knowledge as to why the taps were
16 dismantled?

17 A. No.

18 THE EXAMINER: Is the reason you
19 scratched out the date because you were unaware of
20 when it exactly happened?

21 THE WITNESS: Correct.

22 Q. (By Mr. Serio) So you don't know who gave
23 the order to dismantle the taps, correct?

24 A. Not directly, no.

25 Q. Now, the term of the 2008 contract is for

1 15 years, correct?

2 A. Yes.

3 Q. In your role as purchasing gas either for
4 Orwell-Trumbull Pipeline or for the utilities, have
5 you ever signed a contract with a 15-year term?

6 A. No.

7 Q. Are you aware of any other contracts that
8 Orwell-Trumbull Pipeline or Orwell Natural Gas have
9 that have a 15-year term?

10 A. No.

11 Q. For the majority of the gas purchasing
12 and transportation contracts that you're familiar
13 with in your employment with Orwell-Trumbull or
14 Orwell, what would be the term that you normally have
15 in those contracts?

16 A. Just for transportation?

17 Q. Let's take transportation first, yes.

18 A. Generally all of them are signed
19 year-to-year and have rollover periods.

20 Q. And why do the majority of your
21 transportation contracts have a term of only one year
22 with a rollover provision?

23 MR. DORTCH: Objection. There's no
24 foundation to establish that he knows why those --

25 MR. SERIO: I can rephrase, your Honor.

1 THE EXAMINER: Thank you.

2 Q. (By Mr. Serio) Have you negotiated gas
3 transportation contracts that included terms of a
4 year-to-year contract with rollover provisions?

5 A. Yes.

6 Q. When you negotiate those contracts, why
7 do you generally include a one-year term with a
8 rollover?

9 A. Market conditions change.

10 Q. So to the extent that you're negotiating
11 a contract, do you find that the shorter year-to-year
12 term is superior to a 15-year term contract?

13 A. Yes.

14 Q. Were you employed by Orwell-Trumbull at
15 the time that the 2008 contract was presented to the
16 PUCO in the 08-1244 docket?

17 A. What time period was that?

18 Q. I believe the contract itself is dated
19 July 1st, 2008.

20 A. No.

21 Q. So to the best of your knowledge, you
22 were not involved with the proceeding where that
23 contract was presented to the PUCO?

24 A. I was not.

25 Q. Now, in your testimony, you talk about on

1 Page 11 maintaining adequate pressure on the OTP
2 system?

3 A. Yes.

4 THE EXAMINER: What line are you
5 referring to?

6 MR. SERIO: It's at the bottom of the
7 page starting on line 19 through line 23.

8 MR. DORTCH: May I have a page reference?

9 MR. SERIO: Page 11.

10 MR. DORTCH: Thank you.

11 Q. (By Mr. Serio) To the extent that you
12 arrange for natural gas transportation for the
13 distribution companies, you use more than just
14 Orwell-Trumbull Pipeline, correct?

15 A. Yes.

16 Q. What other pipelines do you use?

17 A. Cobra Pipeline, Columbia Transmission,
18 Dominion East Ohio.

19 Q. Cobra Pipeline is an affiliate of
20 Orwell-Trumbull Pipeline, correct?

21 A. Same owner.

22 Q. It's owned by Mr. Osborne?

23 A. Yes.

24 Q. Dominion East Ohio is the distribution
25 company in Ohio that you referred to, correct?

1 A. That's correct.

2 Q. And Columbia Transmission Company is the
3 pipeline affiliate of Columbia Gas of Ohio, correct?

4 A. I believe they're an affiliate.

5 Q. Now, do you have the same pressure issue
6 when you arrange for transportation on Cobra,
7 Columbia Gas Transmission or Dominion as you raised
8 in your testimony on Page 11 that you have with
9 Orwell-Trumbull Pipeline?

10 A. No.

11 Q. Is that because Cobra, Columbia Gas
12 Transmission and Dominion East Ohio maintain pressure
13 on their systems as the operator of those systems?

14 A. Dominion East Ohio maintains their own
15 pressure; they operate the system. Columbia
16 Transmission operates their own system. Cobra
17 Pipeline relies on pressures from Columbia.

18 Q. Do you know why Orwell-Trumbull Pipeline
19 does not maintain its own pressure?

20 A. It relies on pressure from either Cobra
21 Pipeline and/or North Coast Pipeline.

22 Q. On Page 12 of your testimony on lines 16
23 through 19, you indicate that "Orwell asked
24 Orwell-Trumbull Pipeline to reinstall interconnection
25 with Dominion..." Who at Orwell made that request?

1 A. I did.

2 Q. And who did you make the request to at
3 Orwell-Trumbull Pipeline?

4 A. Jessica Carothers.

5 Q. And was that done verbally or was there a
6 formal document confirming that request?

7 A. I believe it was e-mail.

8 Q. And it indicates here that OTP has
9 indicated they would consider but have not taken any
10 action yet. Does that mean you've got no final
11 response from Orwell-Trumbull Pipeline regarding your
12 request?

13 A. That's correct.

14 Q. On Page 15 of your testimony, at the
15 bottom of the page, you indicate that you had
16 proposed 60 cents per MCF as a price in lieu of the
17 95 cent transportation rate in the 2008 contract; is
18 that correct?

19 A. Yes.

20 Q. And you indicate there that you made that
21 request to Orwell-Trumbull Pipeline. Who at
22 Orwell-Trumbull Pipeline did you make that request
23 to?

24 A. Jessica.

25 Q. And that would be Miss Carothers?

1 A. Correct.

2 Q. Was that a formal request in writing or
3 e-mail?

4 A. We had a meeting.

5 Q. And you indicate that the proposal was
6 rejected. Did Miss Carothers reject it or was it
7 Mr. Osborne?

8 A. I do not know who made the decision. I
9 got the information back from Miss Carothers.

10 Q. I've got additional copies of OCC Exhibit
11 1. Can you take a look at what's been marked for
12 purposes of identification as OCC Exhibit No. 1, the
13 multiple page document says on the front page,
14 "Dominion East Ohio Global Issues, 10/07/04 Talking
15 Paper." Are you familiar with any of the documents
16 in this package?

17 A. I don't recall seeing this before.

18 Q. Okay. That's your general answer. I've
19 got a few specific questions. They may get
20 redundant, but I just want to cover my bases. So the
21 first page, there's names at the top of that page.
22 Your name is not listed there at all, correct?

23 A. Correct.

24 Q. And there's a bunch of handwritten notes
25 on this document. You don't know who wrote those

1 notes, do you?

2 A. No, I do not.

3 Q. And you don't know, do you, who
4 determined the Orwell issues, the NEO issues or the
5 DEO issues, do you?

6 A. No.

7 MR. PARRAM: I'm going to lodge an
8 objection at this point. The witness has already
9 indicated he's not familiar with these documents.
10 There's been no foundation for questioning the
11 witness on the documents.

12 MR. SERIO: I just want to make sure
13 that's a general "I'm not familiar with them." I had
14 a few specific questions.

15 THE EXAMINER: He's already indicated he
16 hasn't seen this document. He doesn't have any
17 knowledge about it. You don't have any knowledge
18 about this document, do you, or anything that
19 comprises the document?

20 THE WITNESS: No, I do not.

21 Q. (By Mr. Serio) You weren't in attendance
22 at any meetings where any of these documents were
23 passed out?

24 MR. PARRAM: Objection, your Honor.

25 THE EXAMINER: I'm going to sustain the

1 objection.

2 MR. SERIO: That's all I have, your
3 Honor. Thank you.

4 THE EXAMINER: Does Staff have any
5 questions?

6 MR. MARGARD: No. Thank you, your Honor.

7 MR. DORTCH: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Dortch:

11 Q. Good morning, Mr. Zappitello. How are
12 you, sir?

13 A. Good, thank you.

14 Q. Good. I want to make sure I have your
15 title correct. You are the Director of Gas
16 Procurement for Northeast Ohio Natural Gas, Brainard
17 and the complainant, Orwell Natural Gas; is that
18 correct?

19 A. Yes, sir.

20 Q. Whom do you report to?

21 A. Directly Marty Whelan.

22 Q. Is that --

23 THE EXAMINER: I'm sorry, Marty?

24 THE WITNESS: Whelan.

25 Q. That's W-H-E-L-A-N?

1 A. I believe so.

2 Q. And that's true for Orwell and Northeast
3 Ohio Natural Gas, and Brainard, all three?

4 A. Yes.

5 Q. And do you know Mr. Whelan's title for
6 each of the three companies? Is it the same?

7 A. Offhand, I don't.

8 Q. So you don't know whether he's the
9 President of, pick one, Orwell Natural Gas?

10 A. I believe his title is President, but I
11 don't know for a fact.

12 Q. The same true for Brainard, he may be
13 President but you don't know?

14 A. Don't know for a fact.

15 Q. And the same is true for --

16 MR. MARGARD: Northeast.

17 Q. -- Northeast Ohio Natural Gas?

18 A. Correct.

19 Q. Now, I understand that as Director of Gas
20 Purchases, you've been purchasing gas for these
21 companies since at least 2010?

22 A. Correct.

23 Q. Were you purchasing gas before 2010?

24 A. No.

25 Q. For any of the companies?

1 A. Not that I recall.

2 Q. For any other companies?

3 A. No.

4 Q. I thought I understood you to testify in
5 response to Mr. Serio's questions that you started
6 purchasing gas for the pipeline companies and weren't
7 purchasing for the utilities, but you've just said
8 that you were purchasing gas for the utilities since
9 2010. Am I misunderstanding what you're telling me?

10 A. I guess I don't understand what you're
11 asking.

12 Q. Who specifically were you purchasing gas
13 for when you first began purchasing gas, what
14 entities?

15 A. Northeast Ohio Natural Gas, Orwell
16 Natural Gas, Brainard Gas, John D. Oil and Gas
17 Marketing.

18 Q. John D. Oil and Gas Marketing in addition
19 to the pipelines. Now, isn't John D. Oil and Gas
20 Marketing somewhat in competition with Orwell Natural
21 Gas?

22 A. No, sir.

23 Q. What does John D. Oil and Gas Marketing
24 do?

25 A. Provided gas to transport customers, was

1 a marketer.

2 Q. So it's a marketer?

3 A. (Nods head.)

4 Q. Were there other marketers that you
5 purchased gas from?

6 A. Purchased gas from?

7 Q. From.

8 A. Yes, sir.

9 Q. And who were those?

10 A. I can list some. If I leave some off,
11 it's going back to 2010... Constellation NewEnergy,
12 Exelon, BP Canada, Shell, IGS.

13 Q. Okay. And you were purchasing gas from
14 these marketers, including John D. Oil and Gas
15 Marketing, who would be a competitor to Northeast,
16 BP, et cetera; is that fair?

17 MR. PARRAM: Objection. Misstates
18 Mr. Zappitello's testimony. I believe he indicated
19 John D. was not a competitor.

20 MR. DORTCH: He said not a competitor to
21 the utility. I'm asking about being a competitor in
22 any other market.

23 MR. PARRAM: Okay, with that
24 clarification.

25 THE EXAMINER: Proceed. You can answer

1 the question.

2 THE WITNESS: John D. would compete with
3 those other marketers.

4 Q. (By Mr. Dortch) So at the time that you
5 were still buying gas for the utilities, you were
6 buying gas from John D. Oil and Gas Marketing which
7 was an affiliated entity, correct?

8 A. At that time, yes.

9 Q. And you were buying gas from Northeast,
10 BP, Shell, other marketers?

11 A. Northeast is not a marketer.

12 Q. I'm sorry, I can't read my writing. I'm
13 not sure what you said. That may have been -- I
14 don't know what it was. BP Canada, Shell, other
15 marketers, and you were buying from an affiliated
16 marketer, correct?

17 A. I don't understand the question.

18 Q. Let me try again then. You're buying gas
19 for the utilities, I have that much right, correct?

20 A. At that time.

21 Q. And you're buying gas from marketers.
22 And the marketers, including unaffiliated marketers,
23 are BP Canada and Shell and... I've forgotten who
24 else you say because I can't read my writing... but
25 you were also buying gas from John D. Oil and Gas

1 Marketing, correct?

2 A. To the -- The utilities did buy from John
3 D. Oil and Gas Marketing.

4 Q. You were involved in those purchases?

5 A. Yes, sir.

6 Q. You made those purchases on behalf of the
7 utilities?

8 A. Yes, sir.

9 Q. And in making those purchases, you didn't
10 do anything to favor John D. Oil and Gas Marketing
11 over the other marketers, did you?

12 A. Not that I'm aware of.

13 Q. So you were able to act in the best
14 interests of the utilities while dealing with
15 affiliated entities and unaffiliated entities, to the
16 best of your knowledge?

17 A. To the best of my knowledge.

18 Q. And do you think it would have been
19 dishonest or dishonorable to have favored John D. Oil
20 and Gas Marketing versus the other marketers?

21 A. Yes.

22 Q. Would it have been demonstrated a lack of
23 integrity on your part if you did, in your own
24 opinion?

25 A. I don't understand the context of the

1 question.

2 Q. Okay. I asked do you believe it would
3 have demonstrated a lack of -- You understood your
4 role as Director of Gas Purchasing for the utilities.
5 And what was your role? What was your job?

6 A. To purchase gas for these co-ops.

7 Q. And sometimes that would be John D. Oil
8 and Gas Marketing?

9 A. Sometimes.

10 Q. Sometimes it would be others?

11 A. Correct.

12 Q. You said you, to the best of your
13 knowledge, never unduly favored John D. Oil and Gas
14 Marketing or tried to benefit as compared to the
15 others because you were looking for the least cost,
16 right?

17 A. That's what I was trying to do.

18 Q. And you've indicated that it would be
19 dishonest, dishonorable to have favored John D. Oil
20 and Gas Marketing?

21 MR. PARRAM: Objection. One, your Honor,
22 as to asked and answered; number two, as to
23 relevancy. I'm not sure dishonesty or dishonorable
24 as relates to Mr. Zappitello, how that's relevant to
25 this case.

1 MR. DORTCH: Your Honor, I'm asking
2 Mr. Zappitello questions because Mr. Zappitello,
3 among other things, testifies as to the relationship
4 between Mr. Smith, Mr. Rigo and Mr. Osborne. And I'm
5 laying a foundation simply to demonstrate that it is
6 perfectly feasible to act with integrity while
7 serving perhaps competing masters.

8 And Mr. Zappitello has indicated he has
9 done so. And when I asked him the question using the
10 word "integrity," he indicated he didn't understand
11 my question, so I just went back over the line of
12 questions that were precursors to establish that
13 specific question.

14 THE EXAMINER: I'm going to overrule the
15 objection and let you proceed.

16 MR. DORTCH: Thank you.

17 Q. (By Mr. Dortch) I'm not trying to trick
18 you, Mr. Zappitello. I'm just saying you acted with
19 integrity as far as you know; is that fair?

20 A. Yes, sir.

21 Q. And if you had -- I'm not saying you
22 did -- but in your opinion, if someone would have
23 acted to favor the affiliated entity over the
24 unaffiliated marketers at what would presumably cause
25 a higher price to consumers on the pipeline, you

1 would agree that that is an act that shows a lack of
2 integrity; is that fair?

3 A. That's fair.

4 Q. Thank you. Now, you report to Marty
5 Whelan, correct?

6 A. Currently, yes.

7 Q. Today. When you first were hired by
8 Mr. Osborne, whom did you report to?

9 A. Marty Whelan.

10 Q. Do you remember who Marty Whelan reported
11 to?

12 A. Mr. Osborne.

13 Q. And did you know Mr. Thomas Smith?

14 A. Yes.

15 Q. Who is Thomas Smith?

16 A. He was President of the three utilities.

17 Q. So he held the position Mr. Whelan now
18 holds; is that fair?

19 I'm sorry, you said you weren't sure what
20 Mr. Whelan's title is, so I'll withdraw the question.
21 Was Mr. Smith the President of all three utilities,
22 to the best of your knowledge?

23 A. He ran all three utilities.

24 Q. And who was Mr. Steven Rigo?

25 A. He was gas purchaser prior to me.

1 Q. Did he occupy the same position you
2 occupy today on behalf of the same three utilities?

3 A. I'm sure he had other duties.

4 Q. Do you know if he held the title of
5 Executive Vice President to the various utilities?

6 A. I'm not sure of what his title was.

7 Q. Do you know if he performed any function
8 for the pipelines?

9 A. He did.

10 Q. And do you know if Mr. Smith performed
11 any functions for the pipelines?

12 A. No, I do not.

13 Q. How well have you known Mr. Smith and
14 Mr. Rigo?

15 A. I'm sorry?

16 Q. How well did you know Mr. Smith or
17 Mr. Rigo?

18 A. Fairly well.

19 Q. How long did you work with them?

20 A. Mr. Rigo would have been around two years
21 directly, same office.

22 Q. And Mr. Smith?

23 A. Somewhere around six to seven years.

24 Q. Did you form opinions regarding their
25 character while you were working with them?

1 A. Yes.

2 Q. Do you believe that either is dishonest?

3 A. They weren't to me.

4 Q. Do you believe either was dishonorable?

5 A. Not to me.

6 Q. Do you believe either lacked integrity?

7 A. Not to me.

8 Q. Do you believe that you can cite to any
9 situations that might indicate that they were
10 dishonest, dishonorable or acted with a lack of
11 integrity to others, that you personally observed
12 such situations?

13 A. Not personally.

14 Q. You have your testimony before you,
15 correct?

16 A. Yes.

17 Q. You state at Page 2 of your testimony
18 that the purpose of your testimony is to support
19 Orwell Natural Gas' claims against Orwell-Trumbull
20 Pipeline in this proceeding. Well, I'm going to use
21 this proceeding, although I understand we technically
22 have two proceedings in front of us.

23 A. What page?

24 Q. Page 2.

25 A. My testimony?

1 Q. Of your testimony.

2 THE EXAMINER: I believe the purpose is
3 on Page 3.

4 Q. I'm sorry, try Page 3 of your testimony,
5 sir. I am sorry. Page 3, line 3, and do you see
6 your answer is "...to support the claims Orwell
7 asserted against OTP in the two complaints..." that
8 we're here on today?

9 A. I do.

10 Q. Now, I'm going to ignore the complaint
11 filed in 14-1654, all right. I'm going to pretend it
12 doesn't exist for purposes of our discussion here.

13 A. Can you please tell me which one that is?

14 Q. Yes, I can. I have the same trouble with
15 numbers. 14-1654 is the case involving the two
16 invoices, and you've heard the dialogue between the
17 lawyers and the Bench, and I'm sure you had some
18 interesting discussions among yourselves about those.
19 We're just going to pretend those don't exist if
20 that's okay.

21 Instead, we're going to focus your
22 testimony, I want to get focused on the 15-637 case
23 which is the case in which I understand your two
24 complaints to be. And I do understand you have two
25 complaints. One is that the existing contract is

1 neither just nor reasonable. The other is that the
2 terms of the current tariff are unjust and
3 reasonable. Have I got that right?

4 A. You're correct.

5 Q. Let's start with the terms of the tariff
6 which you discuss on Page 18 to 21 of your testimony.
7 If you need time to review anything that you've
8 written, you just let me know and we'll stop, okay.

9 As I understand what you've written here,
10 Pages 18 through 21, you really have two
11 complaints -- well, you have one complaint but it
12 leads to a second issue. As I understand it, the
13 tariff, you believe, is deficient because the terms
14 on which shipment are offered are unclear. That's
15 issue one.

16 And the second issue is that you believe
17 they need to be made clear in order for Orwell
18 Natural Gas to decide whether to ship on
19 Orwell-Trumbull. Have I accurately summarized the
20 nature of your complaint about the tariffs?

21 MR. PARRAM: Can I have a line reference,
22 counsel?

23 MR. DORTCH: It's Pages 18 through 21.
24 That's what I glean from it, is there are two issues.
25 He doesn't believe that the tariff contains specific

1 terms that are necessary for him to decide via the
2 tariff, and he wants the tariff amended to include
3 those terms so that he can decide whether to ship via
4 the tariff.

5 Q. (By Mr. Dortch) Is that accurate?

6 A. No.

7 Q. Okay. You explain to me what's the
8 problem with the tariff. And if you need to review
9 your testimony, Pages 18 through 21 is where you
10 address it.

11 A. The tariff calls for a contract to be
12 negotiated between the parties.

13 Q. I agree.

14 A. I don't believe at this time
15 Orwell-Trumbull will negotiate in good faith.

16 Q. I don't know why you say that, but I'm
17 not asking you that question. I will point out that
18 you have an existing contract that goes on till
19 2015 -- or I'm sorry, 2023. Why is it necessary for
20 Orwell-Trumbull to negotiate the contract at this
21 point in time?

22 A. Are you asking me to go --

23 Q. I am asking you why you feel it is
24 necessary for Orwell-Trumbull to renegotiate the
25 contract at this particular point in time. You have

1 a contract that goes out till 2023.

2 MR. PARRAM: Your Honor, compound
3 question. I think if we can have one question for
4 the witness and he can respond to that. I'm losing
5 track of which question is which.

6 THE EXAMINER: Break up your questions.

7 MR. DORTCH: Yes, your Honor.

8 Q. (By Mr. Dortch) Do you understand my
9 question?

10 A. No, I do not.

11 Q. You say at this time Orwell-Trumbull --
12 Let me rephrase that. You stated at this time you
13 believe Orwell-Trumbull won't negotiate in good
14 faith. That's your statement, correct?

15 A. That's correct.

16 Q. And I said why is it necessary for
17 Orwell-Trumbull to negotiate at this point in time
18 with you at all because there is an existing
19 contract, its terms are clear and that contract does
20 not expire until 2023?

21 A. I can't speak on behalf of
22 Orwell-Trumbull.

23 Q. So you have no reason why Orwell-Trumbull
24 should negotiate with you today?

25 A. No, I have no reason why.

1 Q. So how can you accuse them of negotiating
2 in bad faith if it has no reason to negotiate at all?

3 A. I can base it on my negotiations on the
4 increase that we just heard.

5 Q. Let's talk about that then. You say you
6 can base it on your negotiations about the increase.
7 And what increase -- strike that. Let me lead you a
8 little bit here.

9 You're talking about the increase from 95
10 cents to a \$1.01, correct?

11 A. Correct.

12 Q. And if you've got the exhibits to your
13 testimony up there....

14 A. I believe so.

15 Q. So what is there that you believe to
16 negotiate about the increase of 95 cents to \$1.01 in
17 the first place?

18 Again, isn't that a term of the contract
19 as it exists as it was signed as it was approved by
20 the Public Utilities Commission of Ohio?

21 MR. PARRAM: Objection. Compound
22 question.

23 THE EXAMINER: I'm going to allow him to
24 try to answer that if he can.

25 THE WITNESS: Can you restate the

1 question?

2 MR. DORTCH: I can, and I'll try to break
3 it down for Devin here.

4 MR. PARRAM: Thank you.

5 Q. (By Mr. Dortch) Turn to Exhibit A of your
6 testimony. And then if you will turn to the very
7 last page which is identified Exhibit B OTPC Gas
8 Transmission, LLC, and let me know when you get
9 there.

10 A. Okay.

11 Q. Will you read the last paragraph on this
12 page. You don't have to read it aloud. Let me know
13 when you're through reading.

14 THE EXAMINER: Can you give me the
15 reference again.

16 MR. DORTCH: I'm sorry, your Honor, it's
17 Attachment A. It is the very last page of Attachment
18 A which should say Exhibit B OTPC Gas Transmission,
19 LLC across the top and then the reference is to the
20 last paragraph.

21 Q. Have you read it?

22 A. Uh-huh.

23 Q. Is it fair to say that it provides for
24 the opportunity to renegotiate the rate every five
25 years, but if there's disagreement, then the rate is

1 the higher of 95 cents or a price determined with
2 reference to the Cleveland consumer price index; is
3 that fair?

4 A. That's what it states.

5 Q. And so you asked for a renegotiated rate,
6 correct?

7 A. Correct.

8 Q. And the company response was what?

9 A. Rate of \$1.01.

10 Q. Would you agree that \$1.01 is higher than
11 95 cents?

12 A. Yes.

13 Q. So would you agree that this setting of
14 \$1.01, if it was set properly according to the
15 referenced index, the Cleveland price index, that
16 \$1.01 is indeed the tariff price -- or I'm sorry, the
17 price provided by this contract?

18 A. Correct.

19 Q. Again, so there's nothing to negotiate;
20 it already was determined at the time the
21 negotiations occurred, right?

22 A. Correct.

23 Q. Is there any other reason that you think
24 the company has acted in bad faith with regard to
25 this contract?

1 A. Yes.

2 Q. All right. Other than raising the rate
3 to \$1.01, what else do you think is indicative of bad
4 faith in the company's performance of this contract?

5 A. The length.

6 Q. The length, all right. We'll come back
7 to the length. I'm going to address that later.
8 Anything else?

9 A. This provision at the bottom that we just
10 read.

11 Q. So the automatic price adjustment clause.
12 Let me try that again. The automatic price
13 adjustment clause you think is bad faith even though
14 the two sides agreed to it in 2008?

15 A. I believe it's in bad faith.

16 Q. All right. The length. What else?

17 A. Sole source.

18 Q. Sole source, okay. My question when we
19 got started in all this is we're going to the tariff,
20 though. We'll get to the contract. If I understand
21 your testimony, again, Pages 18 to 21 concerning the
22 tariff, your complaint is that there is no specific
23 rate in the tariff, that it has to be set by
24 contract?

25 A. That's correct.

1 Q. You also complain that there is no shrink
2 rate; is that right?

3 A. Correct.

4 Q. Within the tariff?

5 A. (Nods head.)

6 Q. And if I understand your testimony in 18
7 to 21 about the tariff, those are your only two
8 complaints about the tariff?

9 A. Yes.

10 Q. Okay. And, again, if I understand your
11 testimony which I read at great detail and very
12 carefully, your problem with those two pieces of
13 information being available in the tariff is that you
14 can't determine whether to ship on OTP -- Can I use
15 OTP for Orwell-Trumbull Pipeline?

16 A. (Nods head.)

17 Q. You can't determine from the tariff
18 whether it's advantageous to ship on OTP or not,
19 correct?

20 A. We have no choice.

21 Q. That's not my question. Your testimony
22 indicates that the problem with the tariff is it
23 doesn't have a price and it doesn't have a shrink
24 rate, and you explain the reason this is a problem is
25 because you can't determine from the tariff whether

1 to ship on OTP or not; is that right?

2 Does that summarize your testimony?

3 MR. PARRAM: Objection. Your Honor,
4 Mr. Dortch keeps asking questions about the summary
5 of Mr. Zappitello's testimony. Mr. Zappitello's
6 testimony is his testimony. If he has direct
7 questions about his testimony, that's one thing, but
8 to be summarizing in his own terms and asking
9 Mr. Zappitello to agree to that, that's improper.

10 MR. DORTCH: Actually, your Honor, it's
11 not improper. I'm not sure what basis of the Rules
12 of Evidence would preclude me from trying to boil a
13 witness' testimony down to its essence which is all
14 I'm doing.

15 THE EXAMINER: I'm going to allow him to
16 continue to question.

17 MR. DORTCH: Thank you, your Honor.

18 THE EXAMINER: If there's a part of a
19 question you don't understand or you want
20 clarification on, you should ask for clarification or
21 indicate appropriately.

22 THE WITNESS: Thank you.

23 MR. DORTCH: Thank you, your Honor.

24 Q. (By Mr. Dortch) And Mr. Zappitello, I
25 agree. If you don't understand my question, if you

1 think -- certainly if I misstated anything, please
2 stop me and tell me. I am not trying to trick you.
3 I just want to make certain we get it down.

4 Now, returning to what I was saying,
5 you've got those two problems, shrink rate and
6 transport rate, and you say that the only reason I
7 could find that you say that is a problem is because
8 you can't determine whether to ship on OTP or not
9 from the tariff.

10 A. That is not what I'm saying.

11 Q. Why else is the lack of a price set in
12 the tariff or the lack of a shrink rate set in the
13 tariff cause you -- what other problem is there?

14 A. The reason I'm asking for the tariff to
15 be amended is that we can't negotiate in good faith
16 in Orwell-Trumbull Pipeline --

17 Q. No, sir, I'm asking about the tariff.

18 THE EXAMINER: You have to allow him to
19 answer the question you asked. So I'm going to allow
20 him to answer the question you asked. You can
21 answer. Please proceed.

22 THE WITNESS: Thank you. We're asking
23 that the tariff be amended because the contract is
24 not valid or should not be valid and the fallback
25 would be the tariff rate. Seeing how there is no

1 tariff rate for the transportation end or the shrink
2 spelled out specifically in the tariff, there's
3 nothing to fall back on if the contract is canceled.
4 That's why we are asking that the tariff be amended.

5 Q. (By Mr. Dortch) So if the Commission were
6 to accept your invitation and if the Commission were
7 to determine that a transportation rate of \$1.01 and
8 a shrink rate of 3.7 percent are reasonable, you
9 would be satisfied?

10 MR. PARRAM: Can I have the question
11 reread?

12 (Record read.)

13 MR. PARRAM: It misstates the witness'
14 testimony. I don't think Mr. Zappitello invited the
15 Commission to accept the \$1.01 transportation rate.

16 THE EXAMINER: I think his question is
17 would you accept that if that were the Commission's
18 determination. So would you accept that as -- would
19 you accept that on behalf of the company if that was
20 the determination that the Commission -- if they made
21 that determination?

22 THE WITNESS: If the Commission made that
23 determination, yes, I would accept it.

24 Q. (By Mr. Dortch) Hasn't the Commission
25 already made that determination, Mr. Zappitello?

1 Didn't it approve this contract in 2008?

2 A. Previously.

3 Q. So the rate has been approved, correct?

4 A. Yes.

5 Q. And do you know, does Orwell-Trumbull
6 Pipeline report its shrink rate to the Commission?

7 A. I do not know.

8 Q. Do you know what the shrink rate
9 Orwell-Trumbull applies to you is?

10 A. Yes, I do.

11 Q. And what is that shrink rate?

12 A. 3.7 percent.

13 Q. 3.7 percent. And that shrink rate is
14 calculated annually and then reported to you, is that
15 correct, to your knowledge?

16 A. No.

17 Q. So how do you know you're paying
18 3.7 percent?

19 A. Originally --

20 MR. DORTCH: I'm sorry, may I strike the
21 question and rephrase it?

22 THE EXAMINER: Yes.

23 Q. (By Mr. Dortch) You don't pay shrinkage,
24 do you, sir? That's my problem with my last
25 question.

1 How do you know that 3.7 percent is
2 being applied as a shrink rate?

3 A. That's the amount that Orwell-Trumbull is
4 retaining from our volumes.

5 Q. And you're capable of calculating that
6 number, aren't you?

7 A. Yes, sir.

8 Q. And so you're aware of it. And do you
9 have any reason to believe that that is an
10 inappropriate shrink rate?

11 A. My knowledge of other industry practices,
12 yes, it's inappropriate.

13 Q. Do you know the shrink rate today on
14 Dominion East Ohio?

15 A. Yes.

16 Q. What is that shrink rate?

17 A. 5.1.

18 Q. Is that a reasonable shrink rate?

19 A. It's high and coming down.

20 Q. It's high and coming down, I'm glad you
21 said that. We'll talk about that in a little bit,
22 too.

23 Now, you're an expert on gas purchasing.
24 Have you testified before this Commission before?

25 A. Yes.

1 Q. So you are familiar with the way the
2 Commission works then; is that fair?

3 A. Yes.

4 Q. You said that Dominion East Ohio is high
5 and coming down. How do you know it's high and
6 coming down?

7 A. I base that statement on it's the highest
8 percentage we pay to any pipeline.

9 Q. Do you know whether Dominion East Ohio
10 posts its shrink rate anywhere?

11 A. Yes.

12 Q. Where does it do so?

13 A. I can find it on their online portal.

14 Q. On their online portal. You've gone
15 there, you've seen their rates?

16 A. Yes, sir.

17 Q. Their shrink rates.

18 MR. DORTCH: Your Honor, may I approach
19 the witness?

20 THE EXAMINER: Yes.

21 MR. DORTCH: Your Honor, I don't think I
22 am going to introduce this as an exhibit, but I do
23 want you to know what it is.

24 THE EXAMINER: Okay.

25 MR. DORTCH: Thank you.

1 Q. (By Mr. Dortch) You've testified that the
2 current shrink rate is 5.1?

3 A. Correct.

4 Q. Thank you. I'm going to ask you to take
5 a look at this document, and will you agree with me
6 that that is or at least appears to be a copy of the
7 posting that you stated exists on their website
8 advising shippers of the current ship rate?

9 A. Appears to be their language, but I don't
10 know where it came from.

11 Q. Well, if I made the representation to you
12 that it's directly off their website, would you
13 accept my representation?

14 THE EXAMINER: By "their," you're talking
15 about Dominion East Ohio?

16 Q. Yes, when I say "their," I mean Dominion
17 East Ohio's website.

18 A. Uh-huh.

19 MR. DORTCH: May I, your Honor?

20 THE EXAMINER: Yes.

21 Q. (By Mr. Dortch) Mr. Zappitello, let's be
22 clear about the time frame that we're talking about
23 here. Can you read the first sentence. You don't
24 need to read the second paragraph. Can you read that
25 first paragraph aloud?

1 A. "Effective with April 2014 deliveries and
2 through April of 2014 billing period, the system-wide
3 unaccounted for gas percentage, also known as the
4 fuel retention rate, for Dominion East Ohio
5 transportation customers will decrease from 5.7 to
6 5.5 percent. The revised rate will remain in effect
7 until March 2015."

8 Q. Thank you, sir. So if I understand
9 Dominion East Ohio's language here, you've just
10 demonstrated you're right, it's high and it's coming
11 down. It was 5.7 for the period effective until
12 March 31st of 2014 and it was 5.5 for the period
13 effective till March -- Let's try that again. It was
14 5.7 for the period that ended on March 2014. The
15 period beginning April of 2014 was 5.5, and the
16 period that began April 2015 is 5.1; is that fair?

17 MR. PARRAM: Objection, your Honor. At
18 this point, Mr. Zappitello indicated that he wasn't
19 familiar with the printout of the alleged screenshot
20 from Dominion East Ohio's system as it relates to
21 shrinkage. Now Mr. Dortch is trying to get the
22 witness to testify as to what is actually the
23 shrinkage percentage.

24 THE EXAMINER: What's the purpose of this
25 line of questioning?

1 MR. DORTCH: One of the purposes of the
2 this line of questioning, your Honor, concerns
3 certain calculations that Mr. Zappitello made and in
4 which he relied upon to determine the -- One of the
5 lines of questions concerns the fact, your Honor,
6 that Mr. Zappitello says that the shrink rate is
7 irrelevant for shipping over the difference between
8 3.7 on Orwell-Trumbull and 5.1 on Dominion East Ohio
9 is irrelevant because you add in the cost of the
10 shrink rate on North Coast to Orwell-Trumbull's.

11 I'm trying to simply establish that, one,
12 and I believe I have now established, that in using
13 5.1 as the appropriate shrink rate, that
14 Mr. Zappitello's ignored the fact that the
15 appropriate shrink for the period is 5.5.

16 Second of all, the issue in this case is
17 the reasonableness of this contract. You don't
18 measure the reasonableness of a contract at a
19 particular point in time. It's over the duration of
20 the contract. So the still higher shrink rate in
21 advance is pertinent to in short the competitive
22 price advantages enjoyed by Orwell-Trumbull Pipeline
23 as compared to Dominion East Ohio.

24 MR. PARRAM: Your Honor, if I may. As
25 Mr. Dortch indicated, he's trying to use this

1 document that Mr. Zappitello said he was not familiar
2 with to discredit and counter Mr. Zappitello's
3 calculation of shrinkage when he indicated, one, he
4 hasn't seen that document, it's just an alleged
5 screenshot from Dominion's system as it relates to
6 the shrink percentage. So I think trying to get the
7 witness to adopt this statement is improper.

8 THE EXAMINER: Your Honor, I'm going to
9 sustain the objection. He's indicated what the piece
10 of paper you indicated says. That's all.

11 MR. DORTCH: I'm done with it now, but
12 it's -- very good. Thank you.

13 THE EXAMINER: Can we go off the record
14 for a second?

15 (Recess taken.)

16 THE EXAMINER: So we can proceed.

17 MR. DORTCH: Thank you, your Honor.

18 Q. Mr. Zappitello, before we took a break,
19 we were talking about the tariff and your complaints
20 regarding the tariff. I want to now move to your
21 complaints about the contract. Oh, before we do
22 that, though, you are aware that the Commission
23 approved both the contract and the tariff; is that
24 correct?

25 A. Yes.

1 Q. And you suggest that the Commission may
2 not have been aware that Orwell Natural Gas and
3 Orwell-Trumbull were under common ownership, correct?

4 A. Can you tell me where at in my testimony?

5 Q. Certainly. If you would turn to Page 16
6 of your testimony, and it continues on to 17 of your
7 testimony. You state, "The Commission may not have
8 been aware of a number of factors when it approved
9 the Orwell-OPT contract"; do you see that?

10 A. Yes, sir.

11 Q. And the very first thing that you say is
12 that the Commission may not have known that
13 Mr. Osborne owned OTP and had a substantial ownership
14 interest in Orwell. You see that?

15 A. Yes, sir.

16 Q. Now, you refer to a case number there,
17 08-1244. Did you examine the application in 08-1244?

18 A. I've seen it.

19 MR. DORTCH: I will represent that this
20 is -- I believe this is Exhibit 9 to Mr. Slone's
21 testimony so that everybody has a copy.

22 MR. SERIO: Actually, it's Exhibit 13.
23 Your Honor, do you have a copy of that testimony?

24 THE EXAMINER: No, I need that. Thank
25 you.

1 MR. DORTCH: May I approach, your Honor?

2 THE EXAMINER: Yes.

3 Q. Would you agree with me, Mr. Zappitello,
4 that this appears to be the application filed
5 Orwell-Trumbull Pipeline requesting approval of its
6 contract with Orwell Natural Gas?

7 THE EXAMINER: Can you give me the
8 reference, Mr. Dortch?

9 MR. DORTCH: It's Exhibit 13, your Honor.

10 THE EXAMINER: Thank you.

11 THE WITNESS: I would agree it's the
12 application.

13 Q. (By Mr. Dortch) Would you turn the page
14 to Page 2. Look at paragraph 6. Would you agree
15 with me it expressly states that applicant and each
16 of the shippers currently are affiliates of the
17 common ownership?

18 A. That's what it says.

19 Q. And would you turn back to the first page
20 and would you agree with me that the third and fourth
21 lines down and fifth lines down identify
22 Orwell-Trumbull as transporter and that Brainard
23 Natural Gas Company and Orwell Natural Gas Company as
24 shippers?

25 A. That's what it says.

1 Q. Thank you, sir. You also assert that the
2 notice provisions in the contract, which of course I
3 handed back to Mr. Serio, the notice provisions in
4 the contract indicate that Mr. Smith and Mr. Rigo
5 work out of the same office. Do you recall that in
6 your testimony?

7 A. You'd have to point me to it
8 specifically.

9 Q. Same place, pages 18 to 21. That was
10 your other concern, that the Commission may not have
11 known that Mr. Smith and Mr. Rigo worked out of the
12 same office, correct?

13 A. Correct.

14 Q. But that notice provision that you're
15 referring to is in the contract that was attached to
16 their testimony -- or I'm sorry, attached to the
17 application, correct?

18 A. I don't understand the question.

19 Q. I'll try again. The notice provision
20 that you referred to is contained in the contract,
21 yes?

22 A. You need to show me what provision you're
23 pointing to.

24 Q. The notice provision that you refer to in
25 your testimony is the same notice provisions that

1 appear on Page 10 of 30 of the attachment?

2 A. The addresses, yes.

3 Q. This is what you referred to?

4 A. Yes.

5 Q. It is that the shipper and OTPC are both
6 at 8500 Station Street, Suite 100, Mentor, Ohio?

7 A. Correct.

8 Q. And you will agree with me, won't you,
9 that the contract was attached to the application?

10 A. I don't know that for a fact. I saw the
11 application. I didn't read through the whole thing.

12 Q. You don't know whether the application --
13 all right. Again, sir, with reference to the
14 application, would you agree with me that in
15 paragraph 9 it states that Orwell-Trumbull has filed
16 the above agreement for public view?

17 A. Exhibit A.

18 Q. So the Commission had those addresses
19 before it in the application or as part of the
20 application?

21 A. It should have.

22 Q. So the Commission was aware that they
23 were working out of the same office?

24 MR. SERIO: Objection. He can't testify
25 as to what the Commission did or didn't know.

1 MR. DORTCH: I'll rephrase.

2 Q. (By Mr. Dortch) Orwell-Trumbull Pipeline
3 disclosed to the Commission that the two were working
4 out of the same office by attaching the contract to
5 its application?

6 A. Correct.

7 Q. Now, what's the address that you work at?

8 A. Currently?

9 Q. Yes, sir.

10 A. 8470 Station Street.

11 Q. And do you work out of that address for
12 each of the three pipelines that you purchase gas
13 for?

14 A. Yes, sir.

15 Q. So they share space at the 8470 Station
16 Street address?

17 A. Yes, sir.

18 Q. This contract was signed as of July 1,
19 2008 as the date it was signed. When did you begin
20 with -- When did Mr. Osborne hire you specifically?

21 A. March of 2009.

22 Q. March of 2009. So you have no personal
23 knowledge of the negotiations between Ohio Natural
24 Gas and Ohio -- or I'm sorry, Orwell-Trumbull
25 Pipeline Company?

1 A. What two entities?

2 Q. You have no personal knowledge regarding
3 the course of the negotiations between Orwell Natural
4 Gas and Orwell-Trumbull Pipeline Company; is that
5 fair?

6 A. That's fair.

7 Q. And you have no personal knowledge of the
8 business issues facing the two companies at the time
9 the contract was negotiated; is that fair?

10 A. That's correct.

11 Q. You have no personal knowledge of what
12 Mr. Smith and/or Mr. Rigo considered at the time they
13 negotiated the contract; is that fair?

14 A. That's fair.

15 Q. Let's turn to the terms of the agreement
16 now. As I understand your testimony, and we can turn
17 to Page -- Now, you earlier identified the sole
18 source provision as being a concern to you or what
19 you term a sole source provision, the 15-year length
20 of the contract as being concerns you had with the
21 contract, correct?

22 A. Correct.

23 Q. And I can add to that reviewing your
24 testimony that you are concerned about firm versus
25 interruptible service being a term of the contract?

1 A. Correct.

2 Q. And, of course, you're concerned about
3 the rate of the contract?

4 A. Correct.

5 Q. And you add the arbitration provision?

6 A. Correct.

7 Q. You also add that in combination, these
8 provisions create operational difficulties, and you
9 point to an incident in I guess it was March of 2014
10 or January of 2014 as an example?

11 THE EXAMINER: Do you have a reference in
12 his testimony?

13 MR. DORTCH: It is, your Honor, Pages 10
14 and 11 of Mr. Zappitello's testimony.

15 Q. (By Mr. Dortch) Let's talk about the rate
16 first. You point out that it currently costs \$1.01
17 to ship on OTP; is that correct?

18 A. That's correct.

19 Q. You also say at Page 14 of your
20 testimony, line 21, that it costs \$1.62 per Mcf to
21 ship on Dominion East Ohio; is that accurate?

22 A. Yes.

23 Q. The \$1.62 was calculated using the DTS
24 transportation rate, according to your testimony?

25 A. The \$1.62 was calculated using the prior

1 12 months' volume versus divided by the dollar amount
2 paid to Dominion.

3 Q. I understand that Orwell Natural Gas is a
4 GTS customer of Dominion East Ohio. Is my
5 understanding wrong?

6 A. You're correct.

7 Q. Then why did you make reference to the
8 DTS transportation tariff rate in your testimony?

9 A. Where are you looking?

10 Q. I am looking at the very end of line 20,
11 Page 14.

12 A. It's a typo.

13 Q. So that should be GTS?

14 A. Correct.

15 Q. Thank you, sir. Now, the point that I
16 draw from your testimony, lines 16 through 21, is
17 that while it costs \$1.62 on Dominion East Ohio to
18 measure the true transport rate across
19 Orwell-Trumbull, you have to add North Coast
20 transport and Orwell-Trumbull transport costs
21 together, fair?

22 A. Fair.

23 Q. So today it costs \$1.39 to transport gas
24 on those two combined, and that \$1.39 could be
25 compared to the \$1.62 it costs to transport on

1 Dominion East Ohio, fair?

2 A. The \$1.38 is approximate. It's 38 cents
3 per Dekatherm across North Coast, and it is \$1.01 per
4 Mcf on Orwell-Trumbull.

5 Q. Right. This is your numbers. Is it okay
6 if I continue to use your numbers?

7 A. Yes.

8 Q. I understand what you say, the 38 changes
9 a little bit. Dekatherms are a little smaller than
10 Mcf's, if I remember right.

11 A. Mcf holds the equivalent of more than one
12 Dekatherm.

13 Q. Now, you also point out that there's a
14 difference in gas costs between the two sources that
15 feed these pipelines?

16 A. Correct.

17 Q. And you refer to the winter basis for
18 gas. And what is it you're referring to there
19 specifically?

20 A. I took the forward winter strip, October
21 through March, off of the CME site, which is the
22 Chicago Mercantile Exchange, forward basis for the
23 MichCon Index which is our priced gas out of the
24 Chicago area that feeds into North Coast, and I took
25 the same strip price for Dominion Appalachian

1 Southpoint which is our basis for Dominion Gas.

2 Q. Explain the concept of basis just so it's
3 clear on the record. Is it fair to say the basis is
4 the difference against NYMEX at the two locations?

5 A. Correct.

6 Q. So in Chicago, it's NYMEX plus, your
7 testimony, 63 cents, at least it was in the winter of
8 November 2013 through March 2014, and it was NYMEX
9 minus 75 and six-tenths cents at Dominion Southpoint?

10 A. At the time I did this analysis, yes.

11 Q. Did you do this analysis with reference
12 to November of 2013 -- the five months that you seem
13 to be referring to above at line 12, November 2013
14 through March 2014, or do these figures encompass
15 some other time period?

16 A. When I did this analysis, it would have
17 been the period I believe it was October of '14
18 through March of '15.

19 Q. So to the extent that I understood this
20 referred to the November '13 through March of '14
21 period, I'm inaccurate?

22 Let me make it clear. I don't want to
23 get confused here, and I don't want to confuse you.
24 But would you take a look at Page 14, line 11 through
25 13.

1 A. Uh-huh.

2 Q. And there you seem to be saying that
3 you're considering the five-month period November '13
4 through March '14, and you state you determine what
5 the costs would have been, and it appears that the
6 next question and answer is designed to tell us what
7 the costs would be?

8 A. On the reference to November '13 through
9 March of '14, those are volumes, historical volumes
10 that Orwell shipped on Orwell-Trumbull Pipeline, so
11 it would have been March of '13 through March of '14.

12 Q. Uh-huh.

13 A. Down below, I used a forward strip to try
14 to get the then accurate price or the market price.

15 Q. Let's be clear then what the forward
16 strip is. Can you explain that concept to the
17 lawyers in this room who don't do gas pricing every
18 day?

19 A. You can go out in the market, purchase an
20 amount of gas or you can purchase a basis going
21 forward for any number of years, any number of
22 months. It's a published rate, trades daily on the
23 Chicago Mercantile Exchange.

24 Q. You say it's published daily. Published
25 in sources like Platts and the Dow Jones?

1 A. It's an open website.

2 Q. You can also go to a website and get it?

3 A. (Nods head.)

4 Q. Do you know what Gas Daily is?

5 A. Yes. Yes, sir.

6 Q. Do you believe Gas Daily accurately
7 reports the gas prices daily?

8 A. Yes, sir.

9 Q. Do you and people like you rely upon
10 publications like Gas Daily to make the purchasing
11 decisions that you make?

12 A. Yes, sir.

13 MR. DORTCH: Your Honor, may I approach?

14 THE EXAMINER: Yes.

15 MR. DORTCH: Thank you, your Honor.

16 THE EXAMINER: Thank you.

17 MR. DORTCH: I'm going to ask that these
18 next -- Well, I'm going to ask the witness a question
19 or two about these documents now. I'll have it
20 marked if that's all right with everyone. If you
21 turn to tab 2, skip the spreadsheet.

22 Q. (By Mr. Dortch) Mr. Zappitello, I'm
23 asking you to take a look at some data that we
24 pulled. If you'll look, it's the top sheet anyways,
25 Gas Daily for Monday, January 14, 2006, it looks like

1 or '08? I can't read. Would you agree that this is
2 the data we were just referring to or one source of
3 the data we were just referring to?

4 A. I would agree it's the second page of the
5 Gas Daily for Monday, January 14, 2008.

6 Q. And that page reports gas prices in the
7 column on the right?

8 A. Those are daily gas prices.

9 Q. Thank you. Similarly, if we turn back
10 here, you will again see if we turn back a number of
11 pages, you'll see some different format, but again,
12 Gas Daily, the daily price survey as reported by Dow
13 Jones?

14 A. I'm not familiar with this document.

15 Q. You may not be familiar with that
16 document. Would you agree that it is the daily price
17 survey from Gas Daily and it reports the same
18 locations?

19 A. There's differences. I don't have time
20 to -- I didn't have time to review the documents.

21 Q. Please take a moment and review. Are you
22 satisfied that that would be -- Does that appear to
23 you to be an accurate --

24 A. So your question is, is this page the
25 same information as this page (indicating)?

1 Q. I don't even know if it's every single
2 point, but would you agree the report documents cost
3 prices for Dominion Southpoint and Chicago City Gate?

4 MR. PARRAM: Your Honor, I'm going to
5 object. The witness has not specifically looked at
6 these printouts that Mr. Dortch has handed him. I'm
7 not sure if there's any foundation to question the
8 witness on these particular documents indicating he
9 has no personal knowledge.

10 MR. DORTCH: Your Honor, the witness has
11 indicated he's familiar with Gas Daily. In fact, he
12 identified the beginning of this exhibit as the
13 second page of Gas Daily. Gas Daily, the report, the
14 printed version that we had access to as indicated
15 that the witness does recognize was not available to
16 us for the reason that the Ohio State University
17 library doesn't keep the paper copies.

18 However, the same information as reported
19 by Gas Daily is available online via Dow Jones and
20 this is simply nothing but publicly available gas
21 prices as published by a source the witness has
22 indicated is reliable.

23 THE EXAMINER: I know that's your
24 assertion of what the document is, but that's not
25 what he's saying the document is. He doesn't have

1 any idea what this document is.

2 MR. DORTCH: Your Honor, he has indicated
3 he doesn't know what the electronic printout looks
4 like, that he's not seen that, but again, your Honor,
5 you can take judicial notice of this. It's a
6 publicly available source of natural gas prices
7 published for the world.

8 THE EXAMINER: These are printouts.

9 MR. DORTCH: Of specific dates.

10 THE EXAMINER: Have you ever seen
11 anything like this before?

12 THE WITNESS: I have seen the Gas Daily
13 that he referred to first, Page 2.

14 THE EXAMINER: Page 2.

15 THE WITNESS: I have not seen Dow Jones.

16 MR. PARRAM: Your Honor, if I may.

17 THE EXAMINER: Yes.

18 MR. PARRAM: I can look at the page and
19 see it says Page 2 of Gas Daily, but that doesn't
20 mean I have any personal knowledge of the information
21 in the document. And Mr. Zappitello hasn't indicated
22 he has any personal knowledge regarding these
23 particular documents.

24 If Orwell-Trumbull wanted to present the
25 witness testified regarding their analysis of these

1 particular documents, that would be one thing, but
2 this witness has no personal knowledge of this
3 information.

4 MR. DORTCH: Your Honor, this witness
5 purchases gas using sources that he has identified.
6 The forward strip is what he uses, and he's
7 knowledgeable that these prices are published daily.
8 The source -- One source of accurate information that
9 he testified is Gas Daily. Gas Daily written format,
10 he recognizes. Gas Daily electronic format, he
11 doesn't recognize.

12 THE EXAMINER: He's indicated one page of
13 it, he recognizes one page.

14 MR. DORTCH: The column is all I care
15 about, your Honor, the reporting. And in fact, I
16 don't care about the entire column. I'm simply
17 laying a foundation to show what the costs are at
18 Chicago City Point -- or I'm sorry, Chicago City Gate
19 and Dominion Southpoint as reported in Gas Daily, a
20 publication that Mr. Zappitello has acknowledged he
21 recognizes and that buyers, traders regularly rely
22 upon. It's the same data. It's a different means of
23 stating the data.

24 MR. PARRAM: Your Honor, I guess it goes
25 back to the point if Orwell-Trumbull wanted to

1 present a witness to get this evidence into the
2 record on this particular data, that would be one
3 thing, but to use Mr. Zappitello, who has indicated
4 he's familiar, he knows what Page 2 of Gas Daily
5 looks like but has no familiarity with any of the
6 information in any of these documents, there's no
7 foundation for asking the witness questions on and
8 there's no foundation for the admission of this.

9 THE EXAMINER: I'm going to sustain the
10 objection.

11 MR. DORTCH: Very well, your Honor.
12 Thank you.

13 Q. (By Mr. Dortch) Returning to then your
14 testimony that it's a \$1.62 to ship on Dominion East
15 Ohio, has that price been \$1.62 since you're familiar
16 with it? Has the cost of shipping on Dominion East
17 Ohio fallen, to your knowledge, during your period of
18 time that you've been buying gas?

19 A. It's remained pretty consistent.

20 Q. Pretty consistent, thank you. Now,
21 according to you, the issue isn't really with respect
22 to transport rates, North Coast and Orwell-Trumbull,
23 or as compared to DEO transport. In fact, North
24 Coast and Orwell-Trumbull are cheaper than
25 transporting on the Dominion Southpoint, correct?

1 A. Transportation, yes.

2 Q. It's the gas prices that are the issue?

3 A. Correct.

4 Q. And gas prices at Dominion Southpoint are
5 much lower than in Chicago City Gate today?

6 A. Correct.

7 Q. You've been buying gas now since when?

8 A. 2010.

9 Q. 2010. Do you recall in 2010 whether that
10 same spread existed between Dominion Southpoint and
11 Chicago City Gate?

12 A. It did not.

13 Q. In fact, Chicago City Gate tended to be
14 cheaper; is that fair?

15 A. If memory serves me correct.

16 Q. And Chicago City Gate tended to be
17 cheaper in 2010 and in 2011, 2012, fair enough?

18 A. I would have to see when it began to
19 switch.

20 Q. But it did switch at some point in time?

21 A. Market conditions changed.

22 Q. What were those market conditions if you
23 know?

24 A. The abundance of Appalachian gas.

25 Q. So Utica and Marcellus natural gas plays

1 are the cause of the price spread between Dominion
2 Southpoint and Chicago City Gate today?

3 A. Well, it's supply and demand.

4 Q. The trouble is you can't get gas out of
5 Appalachia today, correct?

6 A. It's supply and demand.

7 Q. There's a glut of gas in eastern Ohio; is
8 that fair?

9 A. Yes.

10 Q. And you can't get that out of eastern
11 Ohio today, can you?

12 A. I am not testifying to the effect of
13 other pipelines in capacities or anything else.

14 Q. You're not an expert in those areas?

15 A. No.

16 Q. Are you generally aware of the pipelines
17 in the Appalachia area?

18 A. Yes.

19 Q. Are you generally aware of proposals for
20 new pipelines in the Appalachia area?

21 A. Yes.

22 Q. Have you heard of the E.T. Rover
23 Pipeline?

24 A. Yes, I have.

25 Q. Are you aware that the E.T. Rover

1 Pipeline has got an application pending before FERC?

2 A. Yes.

3 Q. Are you aware that the E.T. Rover
4 Pipeline's stated capacity is something above
5 two-and-a-half billion cubic feet per day?

6 A. I'm not aware of that fact.

7 Q. Do you have any idea of what it is, in
8 fact?

9 A. Of their...

10 Q. Of announced capacity.

11 A. I know it's large.

12 Q. You're just not sure it's two-and-a-half?

13 A. Correct.

14 Q. But you do know it's large, okay. Do you
15 know what the Nexus Pipeline is?

16 A. I've heard of it.

17 Q. Same thing, do you have any reason to
18 doubt that it's 1.5 billion announced capacity Mcf
19 per day?

20 A. I have no reason to doubt that.

21 Q. And A&R East, have you heard that name,
22 or A&R Pipeline?

23 A. Yes, I have.

24 Q. Is that another pipeline proposed to move
25 natural gas out of eastern Ohio, western

1 Pennsylvania?

2 A. I don't know for fact.

3 Q. You don't know what it will serve?

4 A. I don't know that they have announced
5 anything in A&R specifically.

6 Q. Have you heard of the REX Pipeline or
7 Rocky's Express?

8 A. Yes, sir.

9 Q. Are you aware that Rocky's Express was
10 built to bring gas into Appalachia?

11 A. Yes, sir.

12 Q. Are you aware that nobody is going to
13 bring gas into Appalachia?

14 A. It would seem such.

15 Q. Are you aware that the Rocky's Express
16 Pipeline now is being converted or has been converted
17 for purposes of removing gas from Appalachia and
18 shipping it west?

19 A. Yes, sir.

20 Q. And do you know that the REX Pipeline or
21 have any reason to dispute that the REX Pipeline or
22 Rocky's Express Pipeline has the capacity of a
23 billion and a half Mcf per day?

24 A. I have no reason not to believe it.

25 Q. Are you aware of any market conditions

1 preceding your employment with initially -- I've
2 forgotten, I'm sorry -- what Richard Osborne did you
3 work for first?

4 A. I was hired by and paid by
5 Orwell-Trumbull Pipeline.

6 Q. Prior to your employment by
7 Orwell-Trumbull Pipeline Company, did you have any
8 interests or any reason to follow the market for
9 natural gas?

10 A. No, sir.

11 Q. Now, your testimony, if I understand it
12 accurately, is that you believe given greater
13 flexibility, that you would save 35 cents per Mcf on
14 average by using Dominion Southpoint rather than
15 Orwell-Trumbull Pipeline Company; is that an accurate
16 summary of your testimony?

17 A. No, sir.

18 Q. Would you explain where you get 35 cents
19 per Mcf in your testimony then?

20 A. Well, you referenced Dominion Southpoint.

21 Q. Oh, did I? I'm sorry if I misstated.
22 Let me ask this: If I understood your testimony,
23 you're saying that given greater flexibility, you
24 would use Dominion Southpoint rather than OTPC and
25 that in using Dominion Southpoint, you believe you

1 would save a net 35 cents Mcf for the benefit of the
2 consumers of the pipeline -- of the utilities that
3 you work for?

4 A. Again, you're referencing Dominion
5 Southpoint. At no point am I using that as a
6 reference.

7 Q. Dominion East Ohio. If you had increased
8 access to Dominion East Ohio, rather than using
9 Orwell-Trumbull, you believe you could save a net 35
10 cents per Mcf?

11 A. My analysis for volumes above 2,000 a day
12 that flow through November of 2013 through March of
13 2014, those five months, if we took those volumes,
14 bought that from Dominion East Ohio and then current
15 prices, we would have saved I believe it was \$230,000
16 over that period.

17 I took the 230,000, divided that by the
18 total volume that went through Orwell-Trumbull
19 Pipeline for Orwell Natural Gas and it amounted to a
20 35-cent savings per Mcf, and that was my starting
21 point in negotiations with Jessica.

22 Q. Your point being that -- strike that. If
23 the problem is the combined cost of -- the problem is
24 the cost of gas, why didn't you demand cheaper gas
25 out of Chicago?

1 A. Not available.

2 Q. And if the problem then is higher
3 transport costs, then when the advantage was with
4 Chicago, Dominion East Ohio would have been more
5 expensive, correct?

6 A. Yes.

7 Q. And did you go to Dominion East Ohio and
8 demand that they renegotiate with you to reduce their
9 transport rate so that they would equal
10 Orwell-Trumbull's rates?

11 A. No, sir.

12 Q. Why not?

13 A. Dominion East Ohio is a capped pipeline
14 for us. It only serves systems that no other
15 facility can serve.

16 Q. Does Dominion East Ohio, if it only
17 serves systems that no one else can serve, then why
18 does it matter whether it has to serve Orwell Natural
19 Gas and Orwell-Trumbull serves -- sorry, strike that.

20 You say it's capped. It only serves
21 systems that no other system serves. What do you
22 mean by that? Help me understand.

23 A. Orwell has a number of systems that it
24 relies solely on Dominion East Ohio for a source of
25 gas.

1 Q. And it has systems where it relies on
2 Dominion and can also rely on Orwell, correct?
3 Orwell-Trumbull, I'm sorry.

4 A. No, not currently.

5 Q. And does Orwell have systems that are
6 served by TCO Southpoint or Columbia Gas?

7 A. Not directly.

8 Q. So is it a situation like North Coast and
9 Orwell-Trumbull, you have to rely on another pipeline
10 to get gas off of Columbia to get it to your systems?

11 A. Correct.

12 Q. And what is that pipeline named?

13 A. Cobra Pipeline.

14 THE EXAMINER: Just so I'm clear here,
15 you're saying that Orwell Natural Gas gets gas from
16 Dominion through Cobra Pipeline?

17 THE WITNESS: No, sir.

18 THE EXAMINER: What did you say?

19 THE WITNESS: That Orwell Natural Gas
20 receives TCO gas through Cobra.

21 THE EXAMINER: Columbia. I'm sorry.

22 MR. DORTCH: Your Honor, could we go off
23 the record for a minute?

24 THE EXAMINER: Yes.

25 (Off the record.)

1 THE EXAMINER: Let's go back on the
2 record.

3 Q. (By Mr. Dortch) Mr. Zappitello, I'm going
4 to approach you.

5 MR. DORTCH: If I may, your Honor?

6 THE EXAMINER: Yes.

7 Q. (By Mr. Dortch) And I'm going to hand you
8 a document that's Bate stamped 163 by my office. I
9 think that's 163 or 183?

10 A. 183.

11 Q. 183 by my office, and I will ask you, do
12 you recognize that document?

13 A. No, sir.

14 Q. You do not recognize that document.
15 Thank you, sir. I am then going to ask you to set
16 that document aside and I am going to --

17 MR. MARGARD: Your Honor, just as a point
18 of clarification, appreciating that it's been Bate
19 stamped marked but the document itself hasn't been
20 identified, I think the record is a little unclear as
21 to what it is he said he doesn't recognize. If we
22 could have the document identified for clarity, that
23 would be --

24 MR. DORTCH: I would be happy to identify
25 the document.

1 MR. SERIO: Since we already have
2 identified OCC Exhibit 1 --

3 MR. DORTCH: The document's in there.

4 MR. SERIO: This is the second, third,
5 fourth and sixth pages of OCC Exhibit 1.

6 MR. MARGARD: That's helpful.

7 MR. DORTCH: That's good enough for me as
8 well.

9 THE EXAMINER: Thank you.

10 MR. DORTCH: Your Honor, may I approach?

11 THE EXAMINER: Yes.

12 MR. DORTCH: May we have this document
13 marked as exhibit -- what would this be, 2 or 3?

14 THE EXAMINER: 3.

15 MR. DORTCH: 3. Folks, I am asking about
16 the remainder of the discovery response about which
17 there is no particular dispute, including the
18 secondary production, not the third.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. (By Mr. Dortch) Mr. Zappitello, I'm
21 handing you what has been identified as
22 Orwell-Trumbull Exhibit No. 3. It is the company's
23 response to discovery requests that I served upon the
24 company, and I'll ask if you recognize it.

25 A. Yes, sir.

1 Q. In fact, you are the individual who
2 responded on behalf of the company, correct?

3 A. One of the individuals.

4 Q. If you will take a look at Page 4, item
5 1. The question is, identify all individual -- I'm
6 sorry, if you would look at Page 7, item 11, the
7 question "Identify all individuals who assisted in
8 any way in preparing responses to these
9 interrogatories and requests for production and
10 identify the specific assistance each provided in
11 responding to each interrogatory or request." And
12 you're the only name listed, correct?

13 A. Correct.

14 Q. So you were responsible for the
15 production of these documents that are attached
16 hereto?

17 A. Yes.

18 Q. And to the answers to the interrogatories
19 contained herein, fair?

20 A. Fair.

21 Q. Now, all of the documents that are
22 attached hereto, I assume, were produced by Orwell
23 Natural Gas from the files of Orwell Natural Gas,
24 correct?

25 A. I would have to go through each one.

1 Q. Well, you produced them. I'm
2 representing to you they are exactly what you
3 produced. Did you produce anything other than
4 something that came out of the files of Orwell
5 Natural Gas?

6 A. Not that I'm aware of.

7 Q. And the documents, were they retained in
8 the ordinary course of business of Orwell Natural
9 Gas?

10 A. Yes, sir.

11 Q. And would the documents have been created
12 at or near the time that they purport to have been
13 created for purposes of the business of Orwell
14 Natural Gas?

15 A. Yes, sir.

16 Q. And by persons that have knowledge of the
17 subject matter contained in the documents?

18 A. Yes, sir.

19 Q. Very well. I'm going to ask you then,
20 sir, to turn to Page -- let's turn to Page 3.

21 MR. MARGARD: Bate stamp?

22 MR. DORTCH: You're right, I have not
23 produced all of the documents. I've been selective,
24 cut it down somewhat.

25 Q. (By Mr. Dortch) If you would turn to the

1 Bate stamp that has Bate Stamp 7. This document was
2 produced by Mr. Stephen Rigo?

3 A. It appears to be.

4 Q. And it was addressed to Becky Howell and
5 Brian Wollet. Do you know who Becky Howell and Brian
6 Wollet were?

7 A. Yes, I do.

8 Q. Who were they?

9 A. Becky worked for a number of
10 Mr. Osborne's entities over the years. Brian Wollet
11 works for the pipelines, and I believe he's still
12 there.

13 Q. All right, sir. Just so you've got your
14 reference correct, if you look at the lower left-hand
15 corner, the document's dated November 1st, 2007?

16 A. Uh-huh.

17 Q. Would you read aloud the last sentence
18 above the chart?

19 A. The last sentence?

20 Q. The last sentence above the chart.

21 A. "Orwell's charges will only be in effect
22 from October 1st through the end of this year. DEO
23 has terminated the discounted tariff agreement
24 effective 1-1-2008 at which time Orwell will pay
25 DEO's full tariff, unless a new discounted tariff is

1 negotiated."

2 Q. And this obviously says what it says. Is
3 there a discounted tariff in place with Dominion East
4 Ohio today?

5 A. Not that I'm aware of.

6 Q. Do you know from your service with the
7 companies why DEO terminated the discounted tariff
8 agreement?

9 A. It's my understanding that DEO terminated
10 the contract because Orwell was taking volumes away
11 from the discounted tariff.

12 Q. So Orwell was taking customers from DEO?

13 A. Correct.

14 Q. And that was causing a reduction in DEO's
15 volumes?

16 A. Correct.

17 Q. And DEO, therefore, terminated the tariff
18 or the contract?

19 A. The special contract, correct.

20 Q. And forced Orwell on to full DEO tariff
21 rates?

22 A. That's my understanding.

23 Q. And you understand that the Commission
24 has approved DEO's tariff as being just and
25 reasonable?

1 A. Yes, sir.

2 Q. Thank you. Would you turn to the next
3 page which should be Bate stamped No. 19. You
4 produced this document as well, sir, correct?

5 A. Looks familiar.

6 Q. And if you would go down -- I want to
7 make certain I understand this document. It's based
8 on 2006 volumes. It says that there are 31 meters
9 and the discount provided one; do you see that?

10 A. Yes, sir.

11 Q. Under the full DEO Ohio TTS tariff, do
12 you have to pay for all 31 of those meters?

13 A. Current?

14 Q. Yes.

15 A. Yes, sir, we do.

16 Q. And would you have had to pay, to the
17 best of your knowledge, in 2006?

18 You don't know?

19 A. I don't know.

20 Q. That's fair. If you go down the line
21 further next to "Total Annual," I see a dollar figure
22 "\$151,554" under "Without."

23 A. Yes.

24 Q. And I see a figure \$1.606 compared to
25 \$0.906 with the tariff; do you see that?

1 A. Yes.

2 Q. Do you understand that to be a per Mcf
3 charge?

4 A. It appears to be.

5 Q. Would you turn to the next page of the
6 Exhibit which is Bate Stamp 20. I'll ask you to take
7 a moment and review the very top of the first page of
8 this particular document. And do you understand that
9 to be a calculation of the total volumes shipped
10 through DEO for the years -- months and years
11 identified?

12 A. That's what I understand it to be.

13 Q. Do you know what year the special
14 contract that was terminated was negotiated?

15 A. No, I do not.

16 Q. Subject to check, would you accept 2005
17 as being the date that that contract went into
18 effect?

19 A. On or about.

20 Q. Okay. And we know, because we just saw,
21 that it was terminated at 2007. Would you look at
22 the volumes. Would you agree with me that Orwell was
23 growing at a very rapid rate from 2002 through 2007?

24 A. It appears to be.

25 Q. And would you agree that the volumes

1 being shipped on Dominion East Ohio increased each
2 year to 2005 but then fell off I won't characterize
3 it sharply but fell off at least in 2006?

4 A. Yes, sir.

5 Q. Looks like they're falling off again in
6 2007?

7 A. Through April.

8 Q. Through April. That's presumably when
9 this spreadsheet was created because of the lack of
10 data from May 2007 on; would you agree?

11 A. Yes, sir.

12 Q. Would you turn to the next document, Bate
13 Stamp Page 30. Do you see that document?

14 A. Yes, sir.

15 Q. I again look down in the lower right-hand
16 corner to orient yourself to the date June 15th,
17 2007.

18 A. Yes, sir.

19 Q. And I see that the following is a summary
20 of Orwell Supply Sources. Columbia Gas is
21 identified, Dominion, Orwell-Trumbull. Do you see
22 where that is?

23 A. Yes, sir.

24 Q. Very good. The Dominion East Ohio GTS
25 agreement (firm transportation for 117,972 Mcf), that

1 has to be an annual basis; would you agree?

2 A. I would agree.

3 Q. No way you're shipping 117,000 Mcf as a
4 maximum daily quantity, is there?

5 A. I was not here in 2007, but I would think
6 I would be aware if we were.

7 Q. Now, this is 2007, this is June 2007,
8 this is before the special contract is terminated,
9 you agree?

10 A. On or about.

11 Q. On the back two pages, we see that it's
12 being -- they're talking about the termination as
13 of -- that they will terminate effective 1-1-2008?

14 A. Right.

15 Q. So this is before. If that's an annual
16 number of Mcf for firm transportation, is it
17 appropriate to divide it by 365 days to get the daily
18 Mcf or the actual quantity that would be firm
19 transport on any given day?

20 A. No, sir.

21 Q. No? So you think it's 117,000? No
22 matter how much you put through, it's the first
23 117,000?

24 A. That would be my understanding.

25 Q. Okay, thank you. Do you know what that

1 average is?

2 A. No, I do not.

3 Q. Next page, 33. Here we have somebody
4 comparing the gas purchases for approximately a year
5 and it appears to me as I look at these that we see
6 what we generally expected, that Chicago, DEO aren't
7 terribly different, but in looking at the North Coast
8 number, can you tell whether that charge already
9 includes North Coast transport rate or not?

10 A. No, I cannot.

11 Q. You can't, okay. Thank you. Page 37,
12 next page. Now, the first sentence refers to a
13 delivery meter into Orwell's system. It is not a
14 point where production gas is delivered to DEO. We
15 saw a few notes ago there were 31 meters for that
16 particular year. How many meters, to your knowledge,
17 are delivered into Dominion East Ohio today versus
18 delivery from East Ohio to Orwell or Orwell-Trumbull?

19 A. I'm only aware of two meters that feed
20 into Dominion East Ohio, but I am not with the
21 production company.

22 Q. I understand. You are aware of two. And
23 how many, to your knowledge, come from Dominion East
24 Ohio into Orwell?

25 A. I believe the number is 29.

1 Q. That's Orwell and Orwell-Trumbull
2 combined?

3 A. No.

4 Q. Just Orwell is 29. And do you have any
5 idea how many come into Orwell-Trumbull?

6 A. I'm not aware of any.

7 Q. So you've got 29 meters, and 2, you
8 believe, that feed the other way.

9 A. Two, yes.

10 Q. So do you know the pressure the Dominion
11 East Ohio maintains on its system?

12 A. What section?

13 Q. Okay, that's fair enough. Is there an
14 average pressure that you are accustomed to seeing in
15 Dominion East Ohio's system?

16 A. We generally receive pressures in the
17 40-pound range off their distribution systems.

18 Q. And Orwell-Trumbull is a high pressure
19 intrastate pipeline, correct?

20 A. Yes, sir.

21 Q. And it operates at about 200 psi or
22 attempts to operate at 200 psi; is that fair?

23 A. Lower in the summer, a lot higher in the
24 winter.

25 Q. So if you get gas from Orwell or from DEO

1 into Orwell, you've got to compress that gas and have
2 it injected; is that right?

3 A. Say it again.

4 Q. To get gas from DEO to Orwell Natural
5 Gas, you've got to compress the gas and get it into
6 your system; is that fair?

7 A. No, sir.

8 Q. I left out -- What pressures do you
9 operate at?

10 A. We receive gas from Dominion into our
11 system, and we generally operate in the 40 to 30 --
12 30 to 40-pound range on distribution. So we rely on
13 pressures received from Dominion to feed those
14 systems.

15 Q. But Orwell-Trumbull pressures are around
16 200. Do you have to step those pressures down?

17 A. Yes, we do. We have to regulate them
18 down.

19 Q. Again, if you'd turn to the next page.
20 Would you look at the date, 2002, again.

21 THE EXAMINER: You're referring to Bate
22 Stamp 47?

23 MR. DORTCH: Bate Stamp 47, yes, your
24 Honor.

25 THE EXAMINER: Just so we're clear.

1 THE WITNESS: Yes, I see that.

2 Q. (By Mr. Dortch) And you produced this,
3 but I understand you did not create this. Do you
4 need a moment to review this, or do you recall having
5 seen it?

6 A. I recall having seen it.

7 Q. Would you agree with me that this appears
8 to be a discussion or a report by Mr. Rigo to
9 Mr. Osborne about the potential of Orwell selling gas
10 in Dominion East Ohio? I'll use their words, "in
11 Dominion East Ohio EOG's backyard," do you see that?

12 And Mr. Rigo goes on to analyze what he
13 thinks that the margins would be if they would
14 attempt to do so?

15 A. Yes, sir.

16 Q. And Mr. Rigo concludes, among other
17 things, that he's working with Tennessee to try to
18 justify bringing a pipeline into northeastern Ohio;
19 do you see that?

20 A. Yes, sir.

21 Q. The purpose to bringing a pipeline into
22 northeastern Ohio would be, of course, to compete
23 with DEO Ohio, correct, presumably?

24 A. I was not privy to this.

25 Q. So you don't know?

1 A. No.

2 Q. Do you know what year Orwell-Trumbull
3 Pipeline was constructed? You worked for the company
4 for a while.

5 A. If memory serves, it was 2006.

6 Q. 2006. So at the time that this memo was
7 written, Orwell-Trumbull Pipeline doesn't even exist,
8 does it?

9 A. Not that I'm aware of.

10 THE EXAMINER: Can we go off the record.

11 (Off the record.)

12 (At 1:07 a lunch recess was taken until
13 2:00.)

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1 Tuesday Afternoon Session,
2 November 3, 2015.

3 - - -

4 THE EXAMINER: Back on the record.

5 MR. DORTCH: Thank you, your Honor.

6 Q. (By Mr. Dortch) Mr. Zappitello, may I
7 ask, sir, what page is before you at the moment?
8 Page 47?

9 A. (Nods head.)

10 Q. Thank you. Mr. Zappitello, would you
11 turn to the next page, Bates page 58. Here, again,
12 to orient you, this is a November 2002 memo; do you
13 see that?

14 A. Yes, sir.

15 Q. It's from Steve Rigo. Do you know who
16 Mel Resnick is?

17 A. I believe that is Rick's personal
18 attorney at the time.

19 Q. And, again, I realize you did not create
20 this, but you reviewed this presumably in order to
21 respond to our discovery request. Does it appear to
22 you that Mr. Resnick is an attorney?

23 Does it appear to you that they're
24 seeking some advice as to whether Item 8, which is a
25 prohibition against Orwell stealing customers from

1 DEO, would be illegal?

2 A. I wasn't --

3 Q. You weren't there I understand, but
4 what's your understanding of what this document says?

5 A. It's a conversation between Steve Rigo
6 and Mel Resnick going over the terms and conditions
7 of the contract.

8 Q. Very well. Page 84, the next page. Is
9 that 64? I'm sorry, folks, I can't read little
10 writing anymore. Page 64, again, from Steve Rigo to
11 Richard Osborne November 2002. Do you see where
12 Mr. Rigo's reporting that both agreements contain
13 tariff provisions that prohibit Orwell from serving
14 customers served by Dominion?

15 A. Yes, sir.

16 Q. And do you see the line at the bottom
17 asking if Mr. Osborne would like Mr. Rigo to review
18 those contracts with him?

19 A. Yes, sir.

20 Q. The next page, 109, this obviously is
21 responsive to a different interrogatory. And would
22 you look at Page 110 through I guess it's 140, maybe
23 141, and can you tell me, is that all one exhibit or
24 is that more than one thing, and if it's more than
25 one thing, could you tell us where to divide it.

1 A. 110 would be on -- it's one document.
2 110 would be on the left, 111 in the middle, 112 on
3 the right.

4 Q. Oh, I'm sorry, I overlooked the
5 Interrogatory 5 attachment. I apologize. Could you
6 tell me what this document is?

7 A. This is a document I created to see what
8 the market rate should be on Orwell-Trumbull.

9 Q. This is your analysis of what you
10 believe -- What do you mean by the "market rate for
11 Orwell-Trumbull"?

12 A. Their contract calls for then market
13 conditions in the negotiations. I was trying to show
14 Orwell-Trumbull that this is the market currently
15 today.

16 Q. When you say then market conditions,
17 you're interpreting that to mean your ability to
18 bring in gas at a price equal or below what you can
19 buy it on DEO? Is that how you're interpreting that
20 phrase?

21 A. I don't understand what you're asking.

22 Q. What do you mean by "market condition"?

23 A. I was trying to determine if, in fact, we
24 had DEO availability, these are the rates that we
25 would be willing to negotiate with Orwell-Trumbull.

1 Q. Why does DEO availability affect the
2 market at all?

3 A. We were unable to source their gas.

4 Q. So are you talking about -- What market
5 are you trying to consider, the all-in market for gas
6 and transportation?

7 A. Yes, sir.

8 Q. And that's your interpretation of what
9 the contract is to provide?

10 A. Then market conditions is my
11 interpretation.

12 Q. So it couldn't refer to then market
13 condition for some other purpose in your
14 understanding?

15 A. Not in my understanding.

16 THE EXAMINER: Just for the record, why
17 couldn't Orwell Natural Gas source Dominion?

18 THE WITNESS: The meters have been
19 removed.

20 THE EXAMINER: And do you know when that
21 happened? You already said that. Thank you.

22 Q. (By Mr. Dortch) You can reestablish
23 meters, can't you?

24 A. Yes, sir.

25 Q. And you can reestablish meters directly

1 with Dominion East Ohio?

2 A. Yes, sir.

3 Q. In fact, in order to settle your GCR
4 case, one of the terms is that you would reestablish
5 meters with DEO Ohio, correct?

6 A. That, I'm not aware of.

7 Q. You're not aware that you've already
8 committed to do so?

9 A. No, I've not seen the Commission order.

10 Q. Now, do you understand that what you've
11 referred to as a sole source agreement or sole source
12 provision as being an impediment to establishing
13 connections to DEO Ohio?

14 A. Yes, sir.

15 Q. Why is that?

16 A. The OTP contract calls for sole source,
17 meaning it would interpret this to mean that we can
18 only receive gas to the system that feeds from
19 Orwell-Trumbull, no other source.

20 Q. Unless Orwell-Trumbull is unavailable?

21 A. Unless Orwell-Trumbull is unavailable.

22 Q. And you have testified to that, in fact,
23 in your prefiled testimony. We'll come back to that
24 point. Let's do that later.

25 Would you look at document 142. And this

1 appears to go through -- I'm sorry, I may have this
 2 out of order somehow. The Bate stamping, it looks
 3 like 142 and 145 somehow got printed out of order and
 4 I apologize. It looks like it should start with 134
 5 and then end with 145, at least that's how it was
 6 produced to us, in that order. I'm not sure that's
 7 the correct order, but that's how it was produced to
 8 us. Can you identify that document?

9 MR. PARRAM: Could you point me to where
 10 142 is?

11 MR. DORTCH: I understand the confusion.
 12 It caught me off guard. May I, your Honor?

13 THE EXAMINER: Yes.

14 (Off the record.)

15 THE EXAMINER: So what pages are you
 16 referring to now?

17 MR. DORTCH: Your Honor, I'm referring to
 18 looks like it begins with 110 and then ends at 145.
 19 This was produced in response to our Interrogatory
 20 No. 4. And, unfortunately, the pagination got out of
 21 order somehow, and we've just been trying to correct
 22 that.

23 MR. KUMAR: Interrogatory No. 4 and 5?

24 MR. DORTCH: I'm sorry, 134 to 145.

25 MR. KUMAR: 134, okay.

1 THE EXAMINER: Are you with me, Mike?

2 MR. YURICK: No.

3 THE EXAMINER: Is that a response to
4 Interrogatory 5, though?

5 MR. DORTCH: Interrogatory 5, yes, your
6 Honor.

7 THE EXAMINER: Thank you.

8 Q. (By Mr. Dortch) Your response to
9 Interrogatory Response No. 145?

10 A. To No. 5.

11 THE EXAMINER: The Bate stamp numbers are
12 just out of order.

13 MR. DORTCH: Yeah, the Bate stamp numbers
14 got out of order. I don't know what happened there.
15 I apologize to everybody. I think that's in order.

16 THE WITNESS: It appears to be a document
17 I produced.

18 Q. (By Mr. Dortch) Can you tell me what this
19 document is?

20 A. Offhand, I can't. Can you refresh me on
21 Interrogatory No. 5?

22 Q. Sure. Interrogatory No. 5, sir, asked
23 for "All analysis performed at any time between
24 January 2004 and the present date that compared the
25 all-in costs of delivering natural gas to ONG

1 customers via any combination of facilities and
2 natural gas suppliers," and this is what was produced
3 to us.

4 A. Well, I'll profess to be very confused in
5 the format that it's presented in and not the format
6 that I sent over. It's printed out versus the
7 spreadsheet that I created.

8 Q. This is how it printed out for us, sir.

9 THE EXAMINER: Can you explain, are the
10 pages different or is the information different than
11 when you provided the information in response to the
12 interrogatory?

13 THE WITNESS: Yeah, if you look at this,
14 I'm not sure how the page is pieced together.

15 THE EXAMINER: Let's go off the record
16 for a second.

17 (Off the record.)

18 THE EXAMINER: Let's go back on the
19 record.

20 THE WITNESS: Do you mind if I stand?

21 Q. No, no, if you don't mind if I stand here
22 with you because this is the copy I'm going off of,
23 too. Can you identify this? We asked for an all-in
24 cost which is what this was responsive to.

25 A. What I did is take the Orwell transport

1 bill for the given month starting in July of '12, the
2 Mcf before shrink is a product of multiplying the
3 9,970 times 95 cents to get the volume.

4 MR. PARRAM: Your Honor, it might be
5 helpful to indicate the Bate Stamp of which documents
6 you're pointing to.

7 A. 134. It was adjusted for shrink which
8 was zero in July of '12.

9 Q. Okay.

10 A. And converted to Dekatherms using
11 Orwell's rate, and I don't have that off the top of
12 my head.

13 Q. That's fine.

14 A. And it pages out to all the way to June
15 of '14.

16 Q. So what we're seeing here, if I
17 understand you correctly, is the cost per Dekatherm
18 as you've calculated it on Orwell-Trumbull starting
19 in July '12 ending in June '14?

20 A. It's the cost per Mcf.

21 Q. Cost per MCF, okay. Thank you. And then
22 on Pages 135, 136, 139, 141, 143, 145, what are we
23 looking at there?

24 A. I don't recall.

25 Q. Okay. Fair enough. You don't know what

1 that is. What about pages 142, 143, 144, 145, is
2 that a different document than everything leading up
3 from 134 through 141?

4 A. It is the cost of gas for Dominion.

5 Q. So we have here the cost of gas per
6 Dominion beginning in July '12 and for Orwell
7 beginning in July '12 expressed in Mcf?

8 A. Correct.

9 Q. Dominion is stated on 142, 143, 144 and
10 145, Orwell-Trumbull on 134 through 141; is that
11 accurate?

12 A. Well, I don't know what these are.

13 Q. With the understanding that you're not
14 certain what that was at the bottom of I guess the
15 Orwell spreadsheet --

16 A. 142, 143, 144, 145 are Dominion costs.

17 Q. Taking a look at 143 and 145 for a
18 minute -- Oh, I see, never mind. I understand
19 what -- maybe I don't....

20 THE EXAMINER: Could you tell me the Bate
21 stamp numbers again reflecting which company so just
22 it's in the record.

23 MR. DORTCH: Orwell-Trumbull --

24 THE EXAMINER: I'm asking the witness.

25 THE WITNESS: 134, 136, 138 and 140 are

1 Orwell-Trumbull, the top half of them. I'm unsure
2 what the bottom half is.

3 MR. PARRAM: Bottom half of what?

4 THE WITNESS: Same page numbers. 136,
5 137, 139 and 141 I'm unsure of.

6 THE EXAMINER: I think you listed 136 in
7 both. You said 134, 136, 138, 140 --

8 THE WITNESS: Correct, except for the
9 bottom half. 135, 137, 139 and 141, I do not know.
10 142, 143, 144, 145 are Dominion.

11 THE EXAMINER: Thank you.

12 Q. (By Mr. Dortch) Before we collect these,
13 may I come around, Mr. Zappitello, I want to make
14 certain. I'm looking at 135, 137 and 139
15 specifically now and then at the bottom of 134, 136
16 and 138. And it appears to me, and correct me if I
17 am wrong, but it appears to me that this is a
18 comparison of gas prices through some third source.
19 Is that accurate? Can you tell?

20 A. I don't believe so. I mean, there's no
21 pricing on here. There is on this page.

22 Q. This page, meaning Page 137?

23 A. 137. Without looking at my worksheet, I
24 couldn't tell you.

25 Q. Thank you. We'll keep this sensible.

1 You only need -- never mind. I think we've done as
2 much as we can with that. Thank you.

3 MR. DORTCH: Your Honor, may I suggest so
4 that anybody trying to make any sense of that has
5 something to work with, that we mark the three?

6 THE EXAMINER: We referenced them in the
7 record.

8 MR. DORTCH: You think you can -- okay.
9 I was just going to mark them separately as exhibits,
10 but no, you're good?

11 THE EXAMINER: They're in the record.
12 Unless somebody has a problem, I think we'll all --

13 MR. KUMAR: These may have been
14 originally produced as Excel files. It may be easier
15 if we use the original Excel files.

16 THE EXAMINER: I think at this point,
17 we've identified the pages referenced in the
18 interrogatory responses that you created and
19 provided, so we'll go with that at this point.

20 MR. DORTCH: I'm fine with that, your
21 Honor.

22 THE EXAMINER: Also, it's your witness.

23 MR. PARRAM: We referenced the Bate
24 stamps. We might as well go forward with that.

25 THE EXAMINER: You're content?

1 MR. PARRAM: I'm as content as I can be.

2 THE EXAMINER: Fine.

3 Q. (By Mr. Dortch) Mr. Zappitello, Page 147
4 which is responsive to Interrogatory 7 and 8.

5 A. 146?

6 Q. No, 147, which asks for all --
7 Interrogatory 7 asks for all income statements,
8 balance sheets, cash flow statements, income
9 projections, cash flow projections related to ONG
10 operations prepared during the years 2008 through
11 2015, and 8 asks for any analysis of ONG weighted
12 average cost of capital. And this is what we
13 received in response.

14 To the best of your knowledge, is this
15 the only sheet responsive to a request for income
16 statements, balance sheets, cash flow statements,
17 income projections and cash flow projections related
18 to ONG operations for a seven-year period of time?

19 A. To the best of my knowledge.

20 Q. That's it. Did you prepare document 147?

21 A. I did not.

22 Q. Do you know who prepared document 147?

23 A. Yes.

24 Q. And who prepared document 147?

25 A. Robin Lojack.

1 Q. Robin?

2 A. Lojak.

3 Q. Lojak. Can you spell that for the court
4 reporter?

5 A. I believe it's L-O-J-A-K, but don't tell
6 her if I'm wrong.

7 Q. Page numbers 149 -- would you look at
8 Bates No. 149. And I will represent to you, sir,
9 that this is not a complete -- Well, yes, I'm going
10 to gather that -- Again, we seem to have had a
11 copying issue, but I believe 149 was the first page
12 of this exhibit, 150 is the Table of Contents, and
13 that that there were four other pages attached. I'm
14 not asking you to confirm or deny that. But will you
15 grant me that this purports to be a Valuation
16 Analysis for Orwell-Trumbull?

17 A. It says "Valuation Analysis" on it.

18 Q. You produced this in response to the
19 interrogatory. And do you understand that you merely
20 had excerpts from this report and not a complete copy
21 of the report in your files?

22 A. I do not recall submitting this.

23 Q. You do not?

24 A. No.

25 Q. So you don't know whether you had it in

1 your file at all?

2 A. This is the first time I've seen this.

3 Q. You are responsible for the document
4 production note, correct?

5 MR. DORTCH: May I approach, your Honor?

6 THE EXAMINER: Yes.

7 MR. DORTCH: I'm hopeful I'm the only one
8 struggling with a bad copy. No, I'm not. Folks,
9 this was intended to be Bate stamps 149, 150, 151,
10 152, 153 and 154 which is everything I received in
11 response to Interrogatory 7 and 8.

12 Q. (By Mr. Dortch) Have you seen that
13 document before? Again, I think you indicated no.

14 A. No.

15 Q. You did not see it at the time it was
16 produced?

17 A. Correct.

18 Q. This was produced to me with your
19 original production, so you believe this was
20 something that was added to your production?

21 A. If it was produced, it was by somebody
22 other than me.

23 Q. But, again, you were identified as the
24 only person responsible for the production, correct?

25 A. I'd have to look at the page again for

1 this question.

2 MR. PARRAM: Your Honor, I don't have a
3 copy of the documents.

4 MR. DORTCH: May I, your Honor?

5 THE EXAMINER: Off the record.

6 (Off the record.)

7 THE EXAMINER: Let's go back on the
8 record.

9 Q. (By Mr. Dortch) I did confirm, I'm sorry,
10 between being on the record and off, your Honor, I
11 can't recall, did I ask you on the record, have you
12 ever seen document 149 before?

13 A. I have not.

14 Q. Thank you.

15 Mr. Zappitello, are you familiar with the
16 Dominion East Ohio tariff?

17 A. Yes.

18 Q. And you work with that tariff regularly
19 to calculate gas costs for your -- not gas costs but
20 transportation costs for Orwell Brainard and
21 Northeast Ohio Natural Gas?

22 A. The tariff would only refer to Orwell.
23 NEO has a separate contract. Brainard does not take
24 gas from Dominion.

25 Q. Brainard does not buy gas from Dominion?

1 A. Correct.

2 Q. Let me make sure I understood. NEO has a
3 separate contract. So only Orwell Natural Gas is a
4 tariff customer?

5 A. Correct.

6 Q. Thank you.

7 Do you have a binder in front of you,
8 sir? To make it easy, why don't you get this
9 stuff --

10 MR. DORTCH: May I approach the witness,
11 your Honor?

12 THE EXAMINER: Yes.

13 MR. DORTCH: And may we have this marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. Sir, I'm handing you what has been marked
16 as Orwell-Trumbull Exhibit No. 4 and can you identify
17 that?

18 THE EXAMINER: Can I see a copy?

19 MR. DORTCH: Your Honor, it should be
20 tabbed 6 in your binder.

21 A. Your question?

22 Q. Does that appear to you to be a copy of
23 Dominion East Ohio's tariff on file with the Public
24 Utilities Commission of Ohio?

25 A. This was effective December 22nd, 2008.

1 If there's been updates, I don't know what's on file.

2 Q. I understand. But if there have been no
3 updates to that first page -- Well, why don't you
4 take a moment and go through. Do you agree with me
5 that this appears to be their tariff, and as you will
6 see, it has been updated at some point in time?

7 A. Yes.

8 Q. And the page at the bottom indicates when
9 the updated occurred?

10 A. I agree.

11 Q. Okay. Would you confirm for me that the
12 GTS rate schedule that you are on is, in fact, in
13 there?

14 A. Yes, it is.

15 Q. And would you flip back some more pages
16 and confirm to me that there are a number of riders,
17 pages of which are also present in the tariff?

18 A. Yes, there is.

19 Q. Mr. Zappitello, I need some help
20 understanding how this tariff works. It's not an
21 easy tariff to understand. You pay a volumetric
22 charge that is based upon the number of Mcf's you put
23 through, correct?

24 A. Yes, sir.

25 Q. And that volumetric charge begins with

1 100 Mcf, then goes to the next 400 Mcf with a
2 different charge and then anything over 500 Mcf's is
3 still a different charge?

4 A. Correct.

5 Q. And in addition to that charge, that
6 charge being the volumetric charge, I understand that
7 there are a number of other charges that are imposed.
8 There is, for example, a PIP rider; is that correct?

9 A. Yes, sir.

10 Q. And that's added to the volumetric
11 charge?

12 A. Yes, sir.

13 Q. And there is a migration rider that is
14 added to the PIP charge -- or I'm sorry, added to the
15 volumetric charge?

16 A. Yes, sir.

17 Q. And there are a number of other riders
18 that are addressed in there, correct?

19 A. Yes, sir.

20 Q. Now, there are service fees, monthly
21 service charges as well. Those are based on a per
22 tap basis; is that right?

23 A. Per meter.

24 Q. Per meter basis, thank you.

25 How many meters does Orwell maintain on

1 the Dominion East Ohio system?

2 A. I believe the number is 29.

3 Q. 29 meters, thank you.

4 You also have a rider for excise taxes.
5 There is something called an MDTQ surcharge. Can you
6 explain that to me?

7 A. What page are you referring to?

8 Q. I'm just looking at the numbers here, and
9 we would be in the GTS tariff pages.

10 MR. SERIO: Your Honor, I'm going to
11 object. I think we have a problem here. The
12 Dominion contract that I understand we're referring
13 to was a 2005 contract. And according to the first
14 page of OTP Exhibit No. 4, this was issued 2008. So
15 this tariff was not --

16 THE EXAMINER: Dominion contract?

17 MR. SERIO: Between Orwell and Dominion.
18 So this tariff was not in effect at the time. So to
19 the extent we're doing comparisons, we're not
20 comparing the tariff that was in place when that 2005
21 contract was signed because we're comparing it to a
22 tariff that occurred after the '07 Dominion East Ohio
23 rate case. So we're comparing apples and oranges.
24 The tariff format is the same, but all the numbers,
25 the riders, and some of these riders weren't in

1 effect in 2005. These things are all in effect in
2 2008 but not 2005.

3 MR. PARRAM: I have a separate objection.

4 THE EXAMINER: Okay.

5 MR. PARRAM: The current tariff with
6 Dominion is on file with the Commission, and I'm sure
7 all the parties will stipulate the current tariff
8 states what it states. To have the witness walk
9 through each and every provision on the stand, I'm
10 not sure of the relevancy or how that helps us
11 proceed.

12 MR. DORTCH: Your Honor, I'm happy, one,
13 to stipulate to our use of the tariff on file with
14 the Commission and that's fine. I don't need to walk
15 the witness through every line, but I do need to
16 understand how it works. And some of these
17 provisions aren't clear to me.

18 Second of all, I'm also very happy to
19 stipulate that the current tariff on file is
20 completely irrelevant to the contract that was signed
21 in 2008 if we're willing to stipulate that the cost
22 of natural gas today is equally irrelevant to the
23 issue of whether it was prudent and a good judgment
24 and reasonable to enter into the contract in 2008.

25 Instead we need to compare what the

1 conditions -- I agree we need to be concerned with
2 what the conditions were and the knowledge of
3 management in 2008.

4 THE EXAMINER: As to Mr. Serio's point,
5 this tariff is effective 2008, so how does that
6 affect 2006? Do we know what the tariff --

7 MR. DORTCH: I'm not concerned about
8 2006, your Honor. I'm concerned about 2006 -- the
9 contract was signed in 2008.

10 MR. KUMAR: The contract between OTP and
11 Orwell was signed in 2008. And there's also a
12 contract between Orwell and Dominion at the time in
13 2008.

14 MR. DORTCH: 2008 is my understanding.
15 The contract between Dominion and Orwell that we have
16 in my possession that we're going to take another
17 stab at trying to put into evidence in a bit is a
18 2008 contract.

19 MR. SERIO: Your Honor, I was referring
20 to -- The Dominion contract I'm referring to is
21 attached to Mr. Slone's testimony at Attachment 9 and
22 it's dated April 14th, 2005, the contract between
23 Dominion East Ohio and Orwell that was eventually was
24 voided as a result of actions that Mr. Osborne
25 undertook.

1 And all I'm saying is if we're going to
2 compare the Dominion contract that we know existed,
3 that's a copy of a contract that we have on the
4 record, then you have to look at that 2005 time frame
5 to look at the Dominion tariffs in 2005 to see which
6 charges, which riders, which costs apply. All I'm
7 saying is looking at the 2008 tariff isn't
8 appropriate if you're looking at a 2005 or 2006
9 contract.

10 MR. DORTCH: Your Honor, I'm simply
11 trying to understand how Dominion's tariff works.

12 THE EXAMINER: But you're asking a
13 witness that isn't an employee of Dominion.

14 MR. DORTCH: I understand, but he is an
15 expert in purchasing natural gas through Dominion.
16 He's testified he's familiar with the tariff and he
17 makes decisions to purchase every day. I assume, I
18 mean, based on his testimony he's familiar with the
19 testimony to explain how he understands the tariff
20 works. There's the volumetric charges, there are the
21 riders, there's the issue of the service fees,
22 whatever they may be.

23 THE EXAMINER: Why don't you get to your
24 bottom line.

25 MR. DORTCH: We're getting close to that

1 anyway.

2 THE EXAMINER: With respect to going
3 through every rider, I don't think that's necessary.
4 There are plenty of riders in the tariff. Their
5 evidence will speak for themselves. Why don't you
6 ask him and get to the bottom line.

7 Q. (By Mr. Dortch) I'm sorry, we have to ask
8 about the MDQ now. And the MDQ is the -- actually, I
9 believe DEO refers to it both then and now as the
10 MDTQ. Do you understand them to be one and the same?

11 A. I need to see where it appears in the
12 tariff so I can interpret it.

13 MR. DORTCH: May I?

14 THE EXAMINER: Yes.

15 Q. I don't see it in there, sir. I
16 apologize. Let's set that aside for a moment. I may
17 come back to Exhibit 4. Would you turn to your
18 testimony exhibits.

19 MR. DORTCH: My apologies, your Honor.
20 May I have a moment, your Honor?

21 THE EXAMINER: Yes. Go off the record.

22 (Off the record.)

23 THE EXAMINER: Back on the record.

24 MR. DORTCH: Folks, this is OCC

25 Attachment 9.

1 MR. KUMAR: GS-9?

2 MR. DORTCH: GS-9 from Mr. Slone's
3 testimony.

4 May I approach the witness, your Honor?

5 THE EXAMINER: Yes.

6 Q. (By Mr. Dortch) Mr. Zappitello, do you
7 recognize the document that I've just handed to you?

8 A. Yes, sir.

9 Q. And this, too, is one of the documents
10 that you produced in response to our discovery
11 requests, and you can tell that from the Bate Stamp
12 that has been added?

13 A. I believe so.

14 Q. If you would, sir, would you turn to
15 Exhibit GS-9, and can you identify that as the, A,
16 agreement between Orwell Natural Gas and East Ohio
17 Gas Company dated April 14th, 2005?

18 A. That's what I....

19 Q. And if you would flip through the
20 contract, please. And a couple pages back, you
21 arrive at a letter dated April 14, 2005. The
22 substance of that letter suggests that migration
23 riders Part A and B are waived, correct?

24 A. That's what it says.

25 Q. Then we then have GTS pages out of the

1 General Transportation Service tariff from effective
2 2004?

3 A. Yes, sir.

4 Q. And if you turn to Page 7 of 9, if you
5 look up in the upper left-hand corner, there are Item
6 6, which is rates and charges, and, again, if you
7 compare the bills rendered, the effective date of the
8 tariff, this appears to be effective on bills
9 rendered after April 2, 2004, correct?

10 A. That's what it says.

11 Q. Those three charges were the volumetric
12 charges we were discussing, right?

13 A. I don't know if they are the same.

14 Q. In fact, I think they are, but I don't
15 care if they are. These are volumetric charges,
16 correct?

17 A. Yes.

18 Q. And 6.2 provides for the meter charge
19 that you've already testified occurs, correct?

20 A. Correct.

21 Q. And then 6.3 says that "Any customer that
22 does not receive all of its natural gas requirements
23 through East Ohio are subject to a surcharge equal to
24 \$3 per Mcf times the customer's maximum daily
25 transportation quantity payable monthly"; do you see

1 that?

2 A. Yes.

3 Q. Do you pay a surcharge today on the
4 maximum daily transportation quantity amount?

5 A. Not that I'm aware of.

6 Q. You do not that you're aware of. Now,
7 6.4 provides for a partnership plan rider. It says,
8 "The customers are also responsible for an
9 uncollectible expense rider"; do you see that?

10 A. Yes, sir.

11 Q. Turn to the eighth page now. There is a
12 box, the fourth box or the lower left-hand box, GTS
13 Transportation Customers; do you see that?

14 A. Yes, sir.

15 Q. And the volumetric charges and the
16 service charges that we see in the tariff, Section 6,
17 they're both there in those boxes; do you see?

18 A. Yes.

19 Q. There's a cost for the PIP rider, there's
20 a cost for the migration rider, there's no charge for
21 the transition cost, energy choice program,
22 uncollectible expense rider. There is an
23 uncollectible expense rider of 25 cents in there; do
24 you see that?

25 A. Yes.

1 Q. Then there's an excise tax rider that it
2 works based upon Mcf per month?

3 A. Yes.

4 Q. Is that total quantities transported per
5 month per your understanding?

6 A. That would be my understanding.

7 MR. DORTCH: Your Honor, I'm going to
8 take one more stab at this contract dated January 1,
9 2008. This is the same contract, your Honor, that we
10 referred to earlier. The witness has testified he
11 has not seen it. It was produced with the
12 understanding that the witness maintains it was not
13 in the company's possession.

14 Your Honor, it is a contract, however, to
15 which the company is a party. The test is really not
16 whether the contract is in the company's possession.
17 The test is whether the contract is in the
18 possession, custody or control of the company. It
19 certainly --

20 THE EXAMINER: Are you trying to get this
21 exhibit in through this witness?

22 MR. DORTCH: I am, your Honor.

23 THE EXAMINER: But he is not familiar
24 with the contract.

25 MR. DORTCH: It doesn't matter whether

1 he's familiar with the contract, your Honor. He's
2 the representative of the company who responded to
3 the discovery requests.

4 THE EXAMINER: If you can get the company
5 to stipulate to it....

6 MR. DORTCH: Your Honor --

7 MR. PARRAM: We will not stipulate to it.

8 MR. DORTCH: You will not stipulate to
9 this. This is your --

10 MR. PARRAM: I don't know what it is.
11 I've got to see it.

12 MR. DORTCH: It is the service agreement
13 that Dominion East Ohio and Orwell Natural Gas
14 entered into.

15 THE EXAMINER: Let's go off the record.

16 (Off the record.)

17 THE EXAMINER: Let's go back on the
18 record.

19 Q. (By Mr. Dortch) You did say you're
20 familiar with how the tariff works. And are you
21 taking firm or interruptible service from Dominion
22 East Ohio?

23 A. To my understanding, it's firm service.

24 Q. And explain what firm service is for the
25 record.

1 A. Firm service is uninterruptible. You
2 order X amount, you receive X amount.

3 Q. And is it your understanding that the
4 entire quantities transported on Dominion East Ohio
5 are firm no matter what those quantities are in
6 unlimited volumes?

7 A. I do not know any volume limits.

8 Q. So if I had a document that suggested
9 that the volume limit was 264 Mcf per day, the figure
10 264 doesn't mean anything to you sitting here today?

11 A. No, it does not.

12 Q. Now, you also testified that firm service
13 is more valuable than interruptible service. To try
14 to get you reoriented here, I'm going to stop talking
15 about rates and tariffs for a little bit, but I am
16 going to talk about firm versus interruptible service
17 because that's another one of your areas in the
18 complaint or concern with the existing contract.

19 Firm service costs more than
20 interruptible service generally; isn't that true?

21 A. Generally, yes.

22 Q. Do you know what it costs today per Mcf
23 on Dominion East Ohio?

24 A. Not without research.

25 Q. If Dominion East Ohio's GTS service,

1 terms of its GTS service provided a \$3 charge per Mcf
2 to customers that weren't served solely by Dominion
3 East Ohio, would you understand that that tariff
4 provision applied to Orwell Natural Gas?

5 A. Yes.

6 Q. So, again, if we looked at GS-9 which
7 is -- never mind, skip that one. Strike that
8 question.

9 So that I got this right, you have to
10 designate an amount that will be firm service when
11 you sign a contract for firm service; is that how
12 that works?

13 A. It would be per individual contract, yes.

14 Q. A couple more questions, if you've got
15 those documents still in front of you that are
16 responsive to Interrogatory No. 7.

17 A. You're going to have to point me in the
18 right direction.

19 Q. I sure will, sir. Go to Page 1, Bate
20 stamp 155. In response to my request for contracts
21 to which Orwell Natural Gas is a party, the documents
22 beginning at Page 155 through 161 were produced to me
23 or were among the documents produced to me. And if I
24 look at Page 156, which this purports to be a
25 contract between Spelman Pipeline and Orwell Natural

1 Gas, I see this contract is interruptible?

2 A. Yes, sir.

3 Q. How many pipelines does Orwell ship on
4 again?

5 A. Orwell has contracts to ship on TCO,
6 which is Columbia Transmission, over pipeline,
7 Spelman Pipeline, North Coast Pipeline,
8 Orwell-Trumbull Pipeline.

9 Q. Okay. And the Orwell-Trumbull Pipeline
10 we already understand is interruptible. That's one
11 of your concerns with it. The Spelman Pipeline is
12 interruptible, as we just saw from the contract. Is
13 the Cobra interruptible?

14 A. Yes, it is.

15 Q. Is the TCO interruptible?

16 A. The contract with TCO is a GTS schedule
17 for storage. The storage is firm service.

18 Q. And is there a quantity limit on that
19 storage?

20 A. Yes, there is.

21 Q. Do you know what that is?

22 A. Not offhand.

23 Q. Do you know within -- is that a number
24 calculated daily or is that a number calculated
25 monthly or is that a number calculated annually?

1 A. It's calculated monthly that you're
2 allowed to withdraw and inject.

3 Q. And is that contract sufficient to meet
4 all Orwell Natural Gas's demand for gas through TCO
5 or only some of Orwell Natural Gas's demand?

6 A. Some.

7 Q. Some. Do you have any idea, is it
8 50 percent or less?

9 A. I would have to look.

10 Q. You work with this stuff every day. You
11 don't have a concept of what proportion --

12 A. The GTS rate schedule calls for, I
13 believe, 97,000 Dekatherms maximum.

14 Q. And that's per month?

15 A. That's yearly. That's the max we can
16 inject. We pull out during the colder months. I
17 don't know the daily MDQ what's allowed to be pulled
18 out without researching it.

19 Q. But you do know there's a daily MDQ?

20 A. There will be, yes.

21 Q. What about North Coast, is that firm or
22 interruptible?

23 A. That is interruptible.

24 Q. Do you know what quantity is firm on
25 North Coast?

1 A. Zero.

2 Q. I'm sorry, you did say interruptible. I
3 apologize. One of the things that you complained of
4 is you stated that there was a situation in March of
5 2014 regarding Orwell-Trumbull service, and you
6 specifically noted that it cost a lot of money to
7 obtain gas presumably through TCO from BP?

8 Do you need a specific reference to your
9 testimony?

10 A. Yes, please. Is that Page 10?

11 Q. Yes, Page 10. You note that typically it
12 had BP Canada and North Coast as supply options. I
13 thought North Coast is a pipeline company, BP Canada
14 is a marketer?

15 A. Correct.

16 Q. Are you saying that you need North Coast
17 to ship BP gas?

18 A. There are times that North Coast will bid
19 on delivering gas. So we buy gas from them.

20 Q. Sometimes you do, okay. I understand.
21 You state that North Coast supplies were exhausted
22 due to the extreme weather. Does that mean they
23 couldn't sell gas to you; is that what that means?

24 A. They could not offer. They had none to
25 offer.

1 Q. Were they able to offer transport to you?

2 A. Yes, sir.

3 Q. Even despite the extreme weather?

4 A. Yes, sir.

5 Q. You notice that BP had 500 Dekatherm a
6 day available and also that this amount was not
7 enough to meet Orwell's requirements of 3,750
8 Dekatherms per day. So your problem was a shortage
9 of gas, correct?

10 A. That's correct.

11 Q. Is Orwell-Trumbull capable of
12 transporting 3,750 Dekatherms per day for you?

13 A. Yes, they are.

14 Q. So they were available to provide
15 service, correct?

16 A. Yes, sir.

17 Q. You say that under your sole source
18 contract or the way you interpret it, you're only
19 allowed to use them -- or you're only allowed to use
20 others when North Coast or Orwell-Trumbull is
21 unavailable?

22 A. Yes, sir.

23 Q. But Orwell-Trumbull was available here,
24 weren't they?

25 A. For transport.

1 Q. For transport. Your problem wasn't the
2 transport; it was the ability to purchase gas,
3 correct?

4 A. The sole source.

5 Q. But it's not a sole source; you can buy
6 off any marketer you choose?

7 A. My contention is that if we had the
8 option to purchase Dominion gas, we could have gotten
9 that run. That option was not available to us.

10 Q. You didn't ship this across -- You didn't
11 ship the gas that you bought across Orwell-Trumbull,
12 did you?

13 A. I don't understand.

14 Q. You bought gas from whomever you bought
15 gas from at a high price, and how did you get it
16 delivered to your customers?

17 A. Orwell-Trumbull Pipeline.

18 Q. I see. So North Coast transported that
19 gas for you to Orwell-Trumbull?

20 A. North Coast transported 500 a day.

21 Q. But you needed 3,750 a day?

22 A. Correct.

23 Q. Where did the other 3,250 per day come
24 from?

25 A. As states in my testimony, we bought --

1 or not bought, we made the determination to tap into
2 Spelman Pipeline into Cobra, from Spelman to Cobra.
3 We were able to create enough pressure from Spelman
4 to push gas from Cobra into Orwell-Trumbull. In
5 addition to that, we made another purchase for 9,000
6 Dekatherms from BP that they arranged to get from
7 another source.

8 Q. I'm sorry, how much?

9 A. 9,000 Dekatherms.

10 Q. 9,000.

11 A. At a very high price.

12 Q. At 9,000 Dekatherms -- Well, I'm still
13 confused, though. Can you help me again here. You
14 buy gas in Chicago from BP?

15 A. We bought 500 a day.

16 Q. That was pursuant to an existing
17 contract, I presume?

18 A. Our current NAESB contract.

19 Q. And I don't know what a NAESB contract
20 is. I can guess. Why don't you make --

21 A. North American Standard Energy Board I
22 believe are the initials.

23 Q. But you needed more than what you were
24 committed to purchase, correct?

25 A. We needed more than what was available.

1 Q. Anywhere in Chicago?

2 A. Anywhere at that source for North Coast.

3 Q. Now, was North Coast constrained or
4 simply gas wasn't available at that moment?

5 A. Gas was not available.

6 Q. So if you had purchased the gas earlier,
7 it would have been available presumably?

8 A. Correct.

9 Q. And you were attempting to purchase March
10 gas when?

11 A. February 24th.

12 Q. Had you purchased gas for March in, say,
13 mid January, would that issue have arisen?

14 A. I did not attempt, so I don't know.

15 Q. Did you understand that gas is a
16 commodity and that there are day ahead prices, and
17 you could have purchased at whatever the day ahead
18 price was at that time, correct?

19 A. If gas was available.

20 Q. Why was gas shipped via Spelman and Cobra
21 with an extra tap? Why wasn't it just put on North
22 Coast if that gas -- if North Coast was available?

23 A. That route is not available to North
24 Coast.

25 Q. What route is not available to North

1 Coast? I'm sorry, you're buying gas in Chicago City
2 Gate prices.

3 A. The Spelman gas is sourced from TCO.

4 Q. So BP had gas available on Spelman but
5 not on North Coast, is that how that works?

6 A. I would have to look. I believe it was
7 Constellation that we were using for the TCO portion.

8 Q. Page 11. Maybe I misunderstood your
9 testimony. Page 11, line 8, 9, you say you acquired
10 abnormally expensive gas from BP while installing
11 emergency -- you're not saying that the gas you
12 acquired from BP was shipped on Spelman and Cobra?

13 A. That's correct.

14 Q. You're saying that the 3,000 Dekatherms
15 that you bought as for security purposes, I suppose,
16 that was shipped on Spelman and Cobra?

17 A. No, the 9,000 was shipped on North Coast.

18 Q. Oh. BP, okay.

19 For purposes of your analysis, you
20 assumed that Northeast Ohio would be required to ship
21 2,000 Dekatherms per day on Orwell-Trumbull. Why did
22 you get to the 2,000 figure?

23 A. Northeast Ohio?

24 Q. Did I say Northeast Ohio?

25 A. Yes.

1 Q. Sorry. Afternoon; you get tired. For
2 the purposes of your analysis, in determining the
3 volume that would ship on Dominion East Ohio in order
4 to determine what your savings could be available,
5 you assumed the 2,000 would ship on Orwell-Trumbull
6 and any volumes above 2,000 would be displaced to
7 Dominion; is that accurate?

8 A. Yes, sir.

9 Q. Why 2,000?

10 A. In the 2008 contract in Exhibit B, I
11 believe, there's an MDQ of 2,000 today.

12 Q. The 2008 contract. Again, that's been
13 using -- relying upon Mr. Slone for that. So if we
14 could turn to, what is that, 12? 9?

15 A. There's an attachment in my testimony.

16 Q. Thank you, sir. Attachment A to your
17 testimony. Now, I agree that this contract says,
18 Page 1, that it's an interruptible basis, I see that,
19 but if you turn to Exhibit B, you say there's an MDQ
20 charge -- I'm sorry, you say there's a 2,000 MDQ
21 charge, and I understand that to be stated on Exhibit
22 B. Is that your understanding as well?

23 A. Yes, sir.

24 Q. So the 2,000 Dekatherms per day midway
25 down the page, that's an MDQ?

1 A. That's my understanding.

2 Q. And would you look at the third page of
3 this contract, Item O. Do you see maximum daily
4 quantity where MDQ is defined?

5 A. Yes, sir.

6 Q. MDQ is defined, as I read it here, as a
7 maximum quantity. You've used it as a minimum
8 quantity. Why is that?

9 A. I use it as a maximum.

10 Q. You're assuming that you will ship
11 2,000 -- MDQ says that it's the maximum daily firm
12 natural gas quantity which shipper shall be entitled
13 to nominate to Orwell-Trumbull. You agree with me?

14 A. Yes.

15 Q. When we look at Exhibit B and we see
16 2,000 Dekatherms per day, it's not exactly 2,000 Mcf,
17 but it's close, and you said that's an MDQ, but
18 that's a term that only has meaning in the context of
19 a firm transport contract, correct?

20 A. I would assume that it can be
21 interruptible, also.

22 Q. Why would you have any MDQ for an
23 interruptible contract?

24 A. If the pipeline already has a maximum, if
25 they know their maximum MDQ, the pipeline capacity,

1 and they have issued firm contracts to make up a
2 whole percentage of that, maybe there's only 2,000 a
3 day left.

4 Q. So you think that there may only be 2,000
5 a day left. What kind of volumes do you ship on
6 Orwell-Trumbull in the middle of winter?

7 A. We've been over 10,000 before.

8 Q. You've been over 10,000 per day?

9 A. Yes.

10 Q. I thought you just said this 2,000 is a
11 maximum?

12 A. That's what the contract states.

13 Q. It's maximum for a firm transport?

14 A. This contract calls for interruptible.

15 Q. I agree it does, but it also has an MDQ
16 amount. An MDQ amount, as I read it, doesn't apply
17 to interruptible, does it?

18 A. It can.

19 Q. Explain to me how it does.

20 A. I believe I just did.

21 Q. I missed your explanation then.

22 MR. PARRAM: Objection. Asked and
23 answered.

24 THE EXAMINER: Why don't you try and
25 answer his question.

1 A. If a pipeline has a capacity that they
2 know what their capacity is and they have commitments
3 to ship firm transport for whatever percentage of
4 that capacity, whatever is left could be
5 interruptible. I mean, maybe there's only 2,000 of
6 capacity left.

7 Q. But, sir, you've testified you put over
8 10,000 down that pipe.

9 A. You're asking me two separate questions.

10 Q. I won't argue with you. I'm just trying
11 to make sure I understand, and I clearly don't. You
12 are aware of the other shippers that are on
13 Orwell-Trumbull's system, correct?

14 A. I believe so.

15 Q. And only two of those shippers, to my
16 knowledge, have firm transport contracts, Newbury
17 Schools, and I understand it no longer has it but
18 it's Lake County Hospital?

19 A. John D. Oil and Gas Marketing which is
20 Gas Natural Resources now.

21 Q. Do you do any work for Gas Natural
22 Resources?

23 A. No, I do not.

24 Q. Do you have any idea of the volumes that
25 GNR and Newbury Schools put on Orwell-Trumbull

1 Pipeline?

2 A. Yes.

3 Q. And are they relatively small volumes?

4 A. In the case of Newbury Schools,
5 wintertime, I believe them to be around a thousand a
6 month, maybe a little more. As for GNR, they can be
7 upwards of 60- to 70,000, if I can recall historical
8 numbers. I'm not sure what they're currently at.

9 Q. Is that a month?

10 A. A month.

11 Q. So 60,000 per month would be about 2,000
12 a day?

13 A. Given a 30-day month.

14 Q. And 2,000 plus next to nothing for the
15 school gives us maybe 2,100 a month for firm
16 transport on Orwell-Trumbull; is that fair?

17 A. Between those two, yes.

18 Q. You put more than 10,000 a month down
19 there?

20 A. Orwell has in the past.

21 Q. I still don't understand how 2,000 is a
22 minimum then.

23 A. You asked me a scenario in which a pipe
24 would offer 2,000 MDQ on an uninterruptible contract,
25 and I gave you that scenario. I'm not saying it

1 applies to Orwell-Trumbull or to this contract.

2 Q. That helped me a lot, that last
3 statement.

4 THE EXAMINER: Can we go off the record?
5 (Off the record.)

6 THE EXAMINER: Why don't we break for
7 about ten minutes.

8 (Recess taken.)

9 THE EXAMINER: Back on the record.

10 MR. DORTCH: Yes, your Honor.

11 Q. (By Mr. Dortch) Just a couple more
12 questions, and then I'll let you go, Mr. Zappitello.
13 You would be required just operationally, you have no
14 choice but to make some use of Orwell-Trumbull
15 Pipeline; is that a correct statement?

16 A. That's correct.

17 Q. So you would have to ship some volume on
18 Orwell-Trumbull no matter how much access you had to
19 DEO?

20 A. That's correct.

21 Q. Do you have any concept as you sit here
22 today volumetrically of the gas, whether Mcf or as a
23 proportion of a total, however you might express it,
24 of the quantity that you would be required to ship on
25 Orwell-Trumbull under any circumstance?

1 A. You're going to have to rephrase that.

2 Q. I'll try. That was about as good as I
3 can do. In any quantities that you care to express
4 or can express it, if you have the ability, you know
5 you're going to have to ship on Orwell-Trumbull no
6 matter what you establish at Dominion East Ohio.

7 And my question is, do you have any idea
8 of how great the use you would have to make of
9 Orwell-Trumbull despite DEO even if you prevailed in
10 this proceeding and got all access to DEO that you
11 desired?

12 Would it be 30 percent of system volumes?
13 Would it be expressed more in some number of Mcf? Do
14 you have any ideas?

15 A. Is your question how much gas do we
16 believe we can displace from Dominion from
17 Orwell-Trumbull?

18 Q. That's fair. Thank you for making it
19 much clearer than I expressed it.

20 A. Based on historical volumes of what went
21 through the systems that used to be tied in with
22 Dominion, not knowing if they still have that
23 available capacity but just going backwards based on
24 the volumes that we did receive, I would guesstimate
25 somewhere around 40 percent.

1 Q. So some 40 percent would be shipped on
2 Orwell-Trumbull and 60 percent could be displaced to
3 Dominion or the other way around?

4 A. Other way around. And, again, it's only
5 an estimate.

6 Q. I understand. That's a fair statement.
7 So about 60 percent of your needs you would need
8 Orwell-Trumbull to serve in any event?

9 A. As an estimate.

10 Q. As an estimate.

11 MR. DORTCH: Can I have a moment, your
12 Honor? I may be through.

13 (Off the record.)

14 MR. DORTCH: Thank you, your Honor.

15 THE EXAMINER: Is there any Redirect?

16 MR. DORTCH: Oh, I'm sorry, your Honor,
17 thank you for the brief moment. I didn't mean to
18 indicate that -- I love the sound of my voice, your
19 Honor. I have a few more questions, and then I will
20 indicate when I'm done.

21 Q. (By Mr. Dortch) One last area of inquiry
22 then. Are you generally aware of the relationship
23 between Mr. Osborne and the Board of Gas Natural?

24 A. No.

25 Q. You don't know. Is it true, sir, that

1 you have been directed not to purchase gas from any
2 of Mr. Osborne's companies?

3 A. Yes.

4 Q. What companies have you been ordered not
5 to purchase gas from?

6 A. Any related company.

7 Q. Any company related to Mr. Osborne?

8 A. Correct.

9 Q. And those would include -- I believe you
10 know this, those would include five different
11 production companies; is that accurate?

12 A. Yes, sir.

13 Q. And would the gas available through
14 Mr. Osborne be cheaper than the gas that you're
15 buying through marketers for shipment on North Coast?

16 A. I have not received bids from
17 Mr. Osborne. I can't remember what month it was --

18 Q. That's because you refuse to accept these
19 bids he tenders; is that correct?

20 A. We don't even offer it to him.

21 Q. You don't even ask him to bid on them.

22 In your experience, is production gas
23 generally cheaper than interstate gas?

24 A. Yes, sir.

25 Q. So generally speaking, you believe it

1 would be cheaper to deal with Mr. Osborne?

2 I'll rephrase. Generally speaking, you
3 believe that Mr. Osborne's gas would be cheaper than
4 interstate gas?

5 A. Generally speaking, production gas is
6 cheaper than interstate, yes.

7 Q. Now, if you purchased production gas from
8 Mr. Osborne, would that relieve some of the
9 operational concerns that you've expressed,
10 particularly regarding the north end of the
11 Orwell-Trumbull system?

12 A. I don't believe so.

13 Q. If you purchased gas from Mr. Osborne,
14 would that help relieve some of the operational
15 concerns that you've expressed regarding operation of
16 the Orwell system?

17 A. I don't believe so.

18 Q. Do you know generally where Mr. Osborne's
19 fields are in production fields?

20 A. Generally, yes.

21 Q. Is it generally true they're closer to
22 the north end of the pipeline?

23 A. I would say so.

24 MR. DORTCH: And with that, thank you,
25 your Honor.

1 THE EXAMINER: Okay. Now, is there any
2 Redirect?

3 MR. YURICK: If we can have a moment with
4 the witness.

5 THE EXAMINER: Yes.

6 (Recess taken.)

7 THE EXAMINER: Let's go back on the
8 record. Do you want to do some Redirect?

9 MR. PARRAM: We have a few questions for
10 Redirect.

11 THE EXAMINER: Proceed.

12 - - -

13 REDIRECT EXAMINATION

14 By Mr. Parram:

15 Q. Mr. Zappitello, do you recall Mr. Dortch
16 was asking you questions regarding shrinkage on OTP
17 being 3.7 percent and shrinkage as it relates to
18 North Coast? Could you clarify, when Orwell is
19 purchasing or transporting gas through OTP, what
20 exactly are the shrinkage percentages that Orwell
21 incurs?

22 A. If the gas is sourced through North
23 Coast, you would pay a 1.25 percent shrinkage rate on
24 North Coast and 3.7 on Orwell-Trumbull.

25 Q. So whenever Orwell has to transport gas

1 through OTP, it incurs shrink both from North Coast
2 and from OTP combined?

3 A. For that source, yes.

4 Q. And Mr. Dortch asked you a question
5 specifically as it relates to whether or not you are
6 requesting or whether or not if the Commission grants
7 the company's or Orwell Natural Gas's request, you
8 would still have to be served by OTP. You're not
9 requesting or asking the Commission or seeking to
10 completely terminate the relationship with OTP; is
11 that correct?

12 A. That's correct.

13 Q. What are you asking the Commission to do?

14 A. We're asking the Commission to basically
15 discard the current contract, remove the sole source,
16 remove the... oh, the term I'm using... arbitration
17 clause, in essence, remove the whole contract, add
18 language to the tariff for an interruptible cost for
19 the gas and a shrinkage rate and a tariff rate.

20 Q. If the Commission were to grant your
21 request, in addition to OTP being a transportation
22 source, you would have the ability to have Dominion
23 as a transportation source?

24 A. Yes, because there won't be a sole source
25 amendment in the contract.

1 Q. So if the Commission were to grant your
2 request, you would have an alternative to OTP?

3 A. Yes.

4 Q. So it's not an either/or situation?

5 A. No, just another source of gas.

6 Q. Mr. Dortch asked you a few questions
7 regarding I believe marked as OTP Exhibit 3 which was
8 the company's responses to discovery requests. Do
9 you still have those documents in front of you?

10 A. You're going to have to refresh me.
11 Which? What am I looking at?

12 Q. Specifically a document that was Bate
13 stamped No. 58.

14 A. Okay.

15 Q. And just the general question about all
16 of these discovery responses that Mr. Dortch walked
17 you through, you didn't create these documents
18 yourself?

19 A. No, I did not.

20 Q. And you did not rely on these specific
21 documents in your analysis in your testimony?

22 A. No, I did not.

23 Q. So I want to ask you about --

24 MR. PARRAM: Your Honor, may I approach
25 the witness?

1 THE EXAMINER: Yes.

2 By Mr. Parram:

3 Q. I'm referring specifically to the
4 document that's been Bate stamped as No. 58. Let's
5 make sure we're looking at the same document. Do you
6 see where we're at, document 58?

7 A. Uh-huh.

8 Q. I'd like to direct your attention to the
9 second to last paragraph and the second to last
10 sentence. It starts "At present..." Could you read
11 that?

12 A. "At present their cooperation is critical
13 not only to our future growth plans but to our
14 current business. In several market areas, they are
15 our primary if not sole means of supply."

16 Q. So this was summarizing one of the
17 reasons why it was important to maintain the
18 relationship with Dominion; is that correct?

19 A. Yes, sir.

20 Q. And then I would also like to refer you
21 to the document Bates numbered 64 in the package.
22 It's a memo to Richard M. Osborne from Steve Rigo.

23 A. Yes.

24 MR. PARRAM: And may I approach the
25 witness, your Honor?

1 THE EXAMINER: Yes.

2 MR. PARRAM: Make sure it's the same
3 page.

4 Q. In the document, there's two sets of
5 bullet points, and there's a sentence before the
6 second set of bullet points at the lower half of the
7 page that starts with the sentence, "The
8 advantages..." Could you read that sentence into the
9 record, please?

10 A. "The advantages of continuing to nurture
11 a positive working relationship with Dominion East
12 Ohio Gas are significant."

13 Q. So that's another indication about why it
14 is important to continue the relationship with
15 Dominion East Ohio; is that correct?

16 A. Yes.

17 Q. Now, earlier, Mr. Dortch was asking you
18 some questions about system pressures on Dominion
19 East Ohio and system pressures within OTP and Orwell
20 and being able to interconnect between OTP and Orwell
21 and Dominion. Do you recall that line of
22 questioning?

23 A. Yes.

24 Q. And in your testimony, Attachment MSZ --
25 or I'm sorry, MSZ attachment to your testimony, could

1 you take a look at that?

2 A. Which one is it?

3 Q. I'm sorry, do you still have in front of
4 you ONG Exhibit 1?

5 A. Yes.

6 Q. And ONG Exhibit 1 is your testimony,
7 correct?

8 A. Yes.

9 Q. And in your testimony you have some
10 various attachments?

11 A. Yes, there are.

12 Q. And there is an MSZ attachment to your
13 testimony.

14 A. Attachment F?

15 Q. Yes.

16 A. My packet only goes to E. Thank you.
17 Okay.

18 Q. Do you have the MSZ attachment in front
19 of you?

20 A. Yes, sir.

21 Q. Do you have a color version of that
22 document?

23 MR. PARRAM: May I approach the witness,
24 your Honor?

25 THE WITNESS: Yes, I do.

1 Q. All right. What is MSZ Attachment F?

2 A. It's a map of the Orwell-Trumbull system
3 along with Orwell Natural Gas individual systems.

4 Q. Who created this document?

5 A. Our map guy, Tim Riley.

6 Q. And is this a fair and accurate
7 representation of Orwell Natural Gas's system and
8 Orwell-Trumbull Pipeline's system?

9 A. Yes.

10 MR. PARRAM: Your Honor, I have a
11 full-size version of MSZ Attachment F which is the
12 same map that is in Mr. Zappitello's testimony which
13 is blown up that makes it a little bit easier for the
14 Commission to review. I would like to have this
15 marked as ONG Exhibit 2.

16 THE EXAMINER: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 MR. PARRAM: May I approach the witness,
19 your Honor?

20 THE EXAMINER: Yes.

21 Q. (By Mr. Parram) Now, Mr. Zappitello, when
22 Mr. Dortch was asking you about connections between
23 Dominion East Ohio and OTP, where exactly -- how
24 about we move this way a little bit. It's more
25 important that he can see. Can you please identify

1 where there would be an interconnection between
2 Dominion East Ohio and OTP.

3 A. It's on Eisley Road which is
4 approximately right here (indicating). There's a
5 mark there.

6 Q. And --

7 A. In reference, the green is
8 Orwell-Trumbull. The purple colors are Orwell
9 Natural Gas systems.

10 Q. And it's my understanding or at least
11 from looking at the map, that the interconnection
12 that you pointed to was located in Mentor?

13 A. Mentor, Ohio.

14 Q. This is a direct interconnection between
15 Dominion East Ohio and Orwell-Trumbull Pipeline?

16 A. That's what we're proposing.

17 Q. I believe you indicated earlier that
18 Orwell has proposed to OTP to reestablish that
19 interconnection; is that correct?

20 A. They're currently reviewing it.

21 Q. Please explain the benefits of -- if that
22 interconnection were reestablished, please explain
23 what exactly the benefits would do.

24 A. Currently the way the system is set up,
25 the bottom is fed by North Coast Gas Transmission.

1 That's our primary supply of gas during the winter
2 months. It also has a feed that comes across that's
3 fed by Cobra Pipeline, TCO via Cobra Pipeline.

4 In the wintertime, we have to keep
5 pressures so high up through the system to feed gas
6 all the way to this end. When we up those pressures
7 to feed on the coldest days, we shut end the supply
8 coming off of Cobra that the other transporters, that
9 firm transport, Newbury Schools, GNR, their supply is
10 coming this way, so we're supplanting that volume.
11 We have to bring in additional volume to offset that
12 and to keep roughly 40 pounds here (indicating).

13 What this would do, we can get gas from
14 Dominion East Ohio, they have a pipeline that runs
15 straight through right next to it that runs
16 historically around 160 pounds. So we propose to
17 basically regulate it here and feed this whole
18 portion off of Dominion Gas through Orwell-Trumbull
19 Pipeline still.

20 We've offered to pay for the facilities.
21 We offered to maintain the facilities.
22 Orwell-Trumbull would still get their transport rate,
23 but we have not gotten a ruling from Orwell-Trumbull
24 yet.

25 Q. So it's clear for the record, when you

1 talk about from this way to that way, from the very
2 far down bottom end of ONG Exhibit 2, the far
3 southern end of the map has to get pressures from the
4 far southern end of the map all the way to the
5 northern end near Willoughby and Mentor.

6 A. Willoughby is the farthest.

7 Q. And so I'm accurately summarizing,
8 reestablishing the interconnect in Mentor between OTP
9 and Dominion would help alleviate that problem
10 getting gas all the way from the south up to the
11 north?

12 A. Correct.

13 THE EXAMINER: I was going to ask, what's
14 the distance in miles from the southern most point
15 to --

16 THE WITNESS: Approximately 40 from this
17 point up to here (indicating).

18 THE EXAMINER: Where approximately are
19 your customers on the map located percentage wise?

20 THE WITNESS: The best -- not the best
21 number, a large percentage of the customers are down
22 here (indicating). These are old existing Dominion
23 taps that we would like to resupply or rehook up,
24 whatever the term is, but right now the
25 Orwell-Trumbull contract says it's a sole source and

1 it's precluding us from going ahead with those plans.

2 But we believe this is another solution
3 that helps us help Orwell-Trumbull. When we're
4 pressuring up the system, as stated earlier, the
5 production for Rick is in this area (indicating), so
6 we're shutting that production because the pressures
7 are such that we can't get into the system.

8 THE EXAMINER: Okay.

9 Q. (By Mr. Parram) This sort of tied into
10 the other question I have. There are also
11 interconnections or taps that you've discussed that
12 should be reestablished between Dominion East Ohio or
13 you would like to have reestablished between Dominion
14 East Ohio and Orwell's or ONG's system; is that
15 correct?

16 A. That's correct.

17 Q. Those are separate taps from the one tap
18 we just discussed?

19 A. That's correct. These are taps that used
20 to feed individual Orwell systems. We would like to
21 reestablish them. In the coldest days, it would help
22 us immensely delivering gas up north, but we could
23 offset those volumes. If they're pulling 300 here,
24 that's 300 less that we have to push all the way up.

25 Q. Some of those taps that you identified,

1 so it's clear for the record, when your hand motion
2 was (indicating) here, as you've indicated earlier,
3 this is where the majority of yours is here, correct,
4 or the majority of your customers?

5 A. There are a lot of customers down in
6 through here.

7 THE EXAMINER: And "through here," can
8 you give me a geographic --

9 A. Geauga County. I believe in my
10 testimony, I guesstimated we could offset if we
11 reintroduced these taps with Dominion roughly
12 40 percent of the volumes.

13 THE EXAMINER: Okay. Your northern most
14 system is in what county?

15 THE WITNESS: Lake.

16 THE EXAMINER: And the the southern most
17 point is in?

18 THE WITNESS: It's Mantua, Ohio. I'm not
19 sure if that's still in Geauga County.

20 Q. (By Mr. Parram) Just to be clear, I
21 believe you indicated 29 taps?

22 A. We currently have 29 taps. You can see
23 on here, these individual systems that are off not
24 connected to anything, they're supplied by Dominion.

25 Q. And these were the 29 taps that were

1 dismantled as you discussed?

2 A. No, they are still in commission. The
3 ones that are dismantled are the ones in white.

4 Q. Thank you. I think I may have one or two
5 more questions.

6 THE EXAMINER: There are Dominion taps
7 that are still operational?

8 THE WITNESS: Yes, sir.

9 THE EXAMINER: And do you receive gas
10 through them?

11 THE WITNESS: Yes, sir.

12 THE EXAMINER: So you do receive some gas
13 through Dominion?

14 THE WITNESS: Yes. The taps that we
15 receive gas through now are solely by Dominion and
16 cannot be offset by any other supply.

17 THE EXAMINER: But there are additional
18 taps that were eliminated that Dominion provided gas
19 to the system?

20 THE WITNESS: Yes.

21 THE EXAMINER: At some point, those were
22 eliminated or disconnected at some point?

23 THE WITNESS: Yes, sir.

24 THE EXAMINER: How many of those were
25 there?

1 THE WITNESS: I believe the number is
2 eight.

3 THE EXAMINER: Okay. Thank you.

4 MR. PARRAM: No further questions, your
5 Honor. Thank you.

6 THE EXAMINER: Mr. Serio?

7 - - -

8 RECROSS-EXAMINATION

9 By Mr. Serio:

10 Q. I just need to clarify. On your MSZ
11 Attachment F on the map, on the versions attached to
12 your testimony, the taps that you used to have that
13 were dismantled with a red dot, correct?

14 A. Yes, sir.

15 Q. Okay. And then you indicated that you
16 were hoping to reestablish a connection with Dominion
17 in Mentor, correct?

18 A. Yes.

19 Q. Is that the red dot that's just west of
20 Mentor on the map?

21 A. I'd have to look at the bigger version.
22 It's right here.

23 Q. So that's the spot where it used to be a
24 tap with Dominion; you'd just like to reestablish
25 that particular tap?

1 A. Correct.

2 Q. That's just west of Mentor on the map?

3 A. It's just west of Eisley Road in Mentor.

4 Q. Right, yeah, okay. Because it says on
5 the map itself, it's identified as Mentor, and then
6 just west of that or just to the right of it, there
7 is a dot that used to be an interconnection, that's
8 the one you want to reestablish?

9 A. Correct.

10 THE EXAMINER: Can you just for the
11 Bench's purposes draw a circle around that.

12 Q. (By Mr. Serio) That's the one that you
13 specifically would like to reestablish, but if you
14 had the ability, you'd like to have all eight or nine
15 of those taps back, correct?

16 A. Correct.

17 MR. SERIO: That's all I have, your
18 Honor. Thank you.

19 THE EXAMINER: Staff, any questions?

20 MR. MARGARD: No. Thank you, your Honor.

21 THE EXAMINER: Mr. Dortch?

22 - - -

23 RECROSS-EXAMINATION

24 By Mr. Dortch:

25 Q. Mr. Zappitello, I promise this will not

1 take long. Can you bring that over to him? For my
2 benefit, sir, would you indicate again which tap it
3 is that you're seeking to reestablish?

4 A. Right here (indicating) we'd like to
5 reestablish a tap, a reconnect between Dominion East
6 Ohio and Orwell-Trumbull Pipeline.

7 Q. And if I recall your testimony, the green
8 is Orwell-Trumbull Pipeline?

9 A. Yes, that is correct.

10 Q. So the purple is you. Where is Dominion
11 East Ohio on this map?

12 A. It's not on this map. It runs parallel.

13 Q. While you're standing here, you said this
14 is an accurate depiction of the map, does this show
15 the two-inch lines?

16 A. It shows all of Orwell-Trumbull Pipeline.

17 Q. It show all of Orwell-Trumbull Pipeline,
18 it's your understanding, including the two-inch
19 lines?

20 A. It's my understanding.

21 Q. Turning back to exhibit -- or the
22 document Bate stamped No. 58, and Mr. Parram asked
23 you questions about the sentence at the bottom, I
24 believe. It says Dominion was your primary, if not
25 only source of supply, correct?

1 Have you found that reference, sir?

2 A. What I read was, "At present, their
3 cooperation is critical not only to our future growth
4 plans but also to our current business. In several
5 market areas, they are a primary if not sole means of
6 supply."

7 Q. Thank you. That is written as of when?

8 A. The date on this is 11-4-2002.

9 Q. And is it true, sir, that you testified
10 earlier that, to the best of your knowledge,
11 Orwell-Trumbull Pipeline system was built somewhere
12 around 2006?

13 A. Yes, sir.

14 Q. So Orwell-Trumbull did not exist at the
15 time that this memo was written?

16 A. Not that I'm aware of.

17 Q. And there's been much discussion about
18 the ability to use Dominion East Ohio as an
19 alternative to Orwell-Trumbull, but isn't it true
20 that Orwell-Trumbull was built and designed for the
21 express purpose of being an alternative to Dominion
22 East Ohio?

23 A. I was not involved in the planning or the
24 implementation of Orwell-Trumbull.

25 Q. You've been working for the company,

1 though, since 2008?

2 A. '09.

3 Q. Since 2009. So based upon your
4 interactions with your fellow employees, is it your
5 understanding that Orwell-Trumbull was built for the
6 expressed purpose of being an alternative to Dominion
7 East Ohio?

8 A. It is an alternative to Dominion East
9 Ohio. I was not there when they implemented and
10 planned it.

11 Q. Fair enough. Thank you. Turning to
12 document 64, Mr. Parram asked you about the statement
13 that it was important to encourage a positive working
14 relationship with DEO's contained in this document.
15 Can you find that statement?

16 A. Yes, sir.

17 Q. Do you understand what -- I'm sorry,
18 what's the date of that document?

19 A. November 5th, 2002.

20 Q. November 5th, 2002. And in 2002, even
21 before there was an Orwell-Trumbull Pipeline, is it
22 your understanding based on the information you've
23 seen and reviewed amongst other places here today,
24 that Dominion East Ohio was demanding that
25 Orwell-Trumbull not compete for Dominion Ohio

1 customers in 2002 as a term and condition of the
2 favored terms it was extending to Orwell?

3 A. I would have to look at the individual
4 document to discuss the date.

5 Q. Fair enough. I won't make you do that
6 again. The documents are what the documents are.

7 MR. DORTCH: That's all I have, your
8 Honor.

9 THE EXAMINER: Okay. You're done.

10 THE WITNESS: Really? Thank you.

11 THE EXAMINER: You're welcome.

12 MR. PARRAM: At this time, I would like
13 to move for the admission of ONG Exhibit 1 and ONG
14 Exhibit 2 into the record.

15 THE EXAMINER: Is there any objection to
16 the admission of ONG 1 and 2?

17 MR. DORTCH: ONG 2 is --

18 MR. PARRAM: The full version of the map.

19 MR. DORTCH: -- the full version of the
20 map. No objection, your Honor.

21 MR. SERIO: No objection.

22 MR. MARGARD: No objection.

23 THE EXAMINER: Then ONG Exhibit 1 and 2
24 will be admitted.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 THE EXAMINER: What about OCC Exhibit 1?

2 MR. SERIO: We're not going to move that
3 yet.

4 THE EXAMINER: Yet, okay.

5 MR. DORTCH: Your Honor, I'll move for
6 the admission of I think we have 1, 2, 3 and 4. 1 is
7 the letter marked just for your purposes, your Honor.
8 2 is -- let me see the exhibit list -- the
9 arbitration demand.

10 THE EXAMINER: That was admitted.

11 MR. DORTCH: I'll move for that, your
12 Honor, just for purposes of the record. I didn't ask
13 for any testimony from the witness, but in support of
14 my argument, I'll ask that your Honor take that
15 into --

16 THE EXAMINER: I believe it's admitted.

17 MR. DORTCH: You already did? Thank you.

18 THE EXAMINER: We admitted 1 and 2.

19 MR. DORTCH: 3 is --

20 THE EXAMINER: The tariff?

21 MR. KUMAR: I had 4 as the tariff. 3 is
22 discovery from --

23 MR. DORTCH: We would move for the
24 admission of Exhibit 3 as well, your Honor. That's
25 the responses to discovery absent the contract that I

1 so fervently would like to see admitted and the other
2 documents that are in dispute that I have not
3 bothered to make an issue of.

4 THE EXAMINER: Okay. Any objection?

5 MR. SERIO: No objection to Exhibit 3,
6 your Honor.

7 MR. PARRAM: No objection.

8 MR. MARGARD: No objection.

9 THE EXAMINER: 3 will be admitted subject
10 to the qualifications.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 THE EXAMINER: What about 4?

13 MR. DORTCH: 4 is the tariff. Your
14 Honor, if we can take administrative notice of the
15 current and past versions of the tariff, I don't have
16 any necessity in actually creating more paper in the
17 file.

18 MR. SERIO: I have no objection to taking
19 administrative notice. The tariffs are what the
20 tariffs are, and the Commission can look at anything
21 they want to look at in their own docket.

22 MR. PARRAM: No objection, your Honor.

23 THE EXAMINER: I will take administrative
24 notice of Dominion's tariffs past and present.

25 MR. DORTCH: Thank you, your Honor.

1 THE EXAMINER: Let's go off the record.

2 (Off the record.)

3 - - -

4 ROGER SARVER

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

7 DIRECT EXAMINATION

8 By Mr. Yurick:

9 Q. Good afternoon, Mr. Sarver. Could you
10 please state your name for the record and spell your
11 last name.

12 A. My name is Roger Sarver, and I work for
13 the Public Utility Commission of Ohio as an energy
14 specialist.

15 Q. And your business address is?

16 A. 180 East Broad Street, Columbus, Ohio,
17 43215.

18 Q. And what is your position currently with
19 the Commission?

20 A. I'm an energy specialist, sir.

21 Q. And sir, how long have you been employed
22 by the Staff of the Public Utilities Commission?

23 A. 27, 28 years.

24 Q. And as part of your experience, training
25 and education as a member of the Staff, are you

1 generally familiar with the approval process followed
2 by the Staff in approving gas transportation
3 contracts or agreements between pipelines and
4 distribution companies?

5 MR. MARGARD: Your Honor, I'll object
6 only to the characterization as an approval process.
7 If counsel would accept the review process as an
8 acceptable modification of his question, I'll
9 withdraw.

10 MR. YURICK: I can restate, your Honor.

11 Q. (By Mr. Yurick) As a member of Staff and
12 based on your experience, education, training as a
13 member of Staff, are you generally familiar with the
14 review process followed by Staff in examining gas
15 transportation contracts or agreements between
16 distribution companies and pipeline companies?

17 A. Yes, sir.

18 Q. And if a contract or agreement appears to
19 be reasonable on its face as filed, does the
20 Commission Staff conduct an extensive investigation
21 into the fairness or equity of the terms of such an
22 agreement or contract?

23 A. No, sir. Typically the review process is
24 limited to the application itself. If there's any
25 questions that exist, we will typically contact the

1 utility or one of the parties to get additional
2 information.

3 Q. And would the Commission Staff do
4 anything else based on a facially reasonable
5 arrangement or agreement filed for review of the
6 Staff?

7 A. Not typically. What we would do in a lot
8 of these transportation arrangements, we would
9 examine those in the course of our annual gas cost
10 recovery audits. So we have that application. We
11 have the entry by the Commission approving the
12 application. And then we look at that in the context
13 of the audit to see if the utilities apply that
14 application/contract in the calculation of its costs.

15 MR. YURICK: I don't have any further
16 questions of this witness, your Honor.

17 MR. SERIO: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Serio:

21 Q. Good afternoon, Mr. Sarver. You just
22 indicated that the Staff does a brief review of the
23 application. As part of that review, does the Staff
24 look to see if the application or the contract
25 proposed violates any Commission policy or precedent?

1 A. Typically what the Staff will do is look
2 to see if the transportation arrangement is
3 consistent with an old guideline called 85800 to see
4 if the offering of such a service from a pipeline to
5 a utility creates any disadvantages for customers on
6 the various systems. It's more of a just, you know,
7 if we can see on its surface if there is a
8 detrimental effect to customers, then we will look to
9 recommend to the Commission or recommend to the
10 companies that they refile the application.

11 Q. So to the extent that you find anything
12 in your review that causes Staff to have any problems
13 or concerns, you raise it with the company or the
14 parties and then it's addressed with a refiling or
15 the application's modified?

16 A. Yes, sir.

17 Q. So there wouldn't be any kind of Staff
18 document that would be prepared saying we looked at
19 this contract and we identified these problems?

20 A. No, sir.

21 THE EXAMINER: Just for the record, 85800
22 is?

23 THE WITNESS: It's a transportation
24 guideline that was developed over the years starting
25 back in the late '80s, and it was the basis for all

1 of Ohio's utilities' transportation tariffs. So what
2 the Commission did was establish some broad
3 guidelines that the companies needed to follow in
4 order to establish tariffs and then use the tariffs
5 in place of these special contracts.

6 Because at one time, Staff was reviewing
7 approximately 500 agreements every year from the
8 utilities. So the Commission was looking to reduce
9 the number of applications that are renewed on an
10 annual basis by putting in place a more standardized
11 company tariff that the companies could utilize to
12 minimize its filings and have less paperwork not only
13 for the utilities but also for Commission and
14 Commission Staff.

15 THE EXAMINER: Was that policy generally
16 understood in the industry?

17 THE WITNESS: Yes, it was widely
18 accepted, and the utilities typically commented and
19 participated in reviewing modifications of 85800 over
20 the years.

21 THE EXAMINER: Okay.

22 Q. (By Mr. Serio) Were you individually
23 involved in the review of the Orwell/Orwell-Trumbull
24 contract in Case 08-1244?

25 A. No, sir.

1 Q. The individual from Staff that was
2 involved, is that individual still employed by the
3 Staff?

4 A. No, sir.

5 Q. If you know, at the time that the 08-1244
6 application was being reviewed by the Staff, did the
7 Staff look into any of the issues regarding that
8 contract that have been raised by the parties in this
9 proceeding, for example, the length of the contract,
10 the term of the contract, interruptible versus firm
11 transportation?

12 A. Not to my knowledge, no.

13 Q. Have you seen the testimony that
14 Mr. Slone filed for OCC in this proceeding?

15 A. I've not read his testimony.

16 MR. SERIO: Could I approach, your Honor?

17 Q. For the sake of making this easier, this
18 is a copy of Mr. Slone's testimony and all the
19 attachments.

20 A. Yes.

21 Q. You've been involved in the gas cost
22 recovery audits for Brainard, Orwell and Northeast in
23 2010, 2012 and 2014, correct?

24 A. Yes.

25 Q. And just for the purposes of the record,

1 in the 2010 case, it was 10-209 and 212; in 2012, it
2 was 12-209 and 212; and 2014, it was 14-206, 209 and
3 212, correct?

4 A. Yes, and if you want to add to it, I also
5 did the audit of Orwell's original gas cost recovery
6 audit in 2008 which is 08-204.

7 Q. As part of the Staff, you've also been
8 involved in the investigative audit that the PUCO
9 opened in Case 14-205-GA-COI, correct?

10 A. Yes.

11 Q. You've also been involved in reviewing
12 the two complaint cases that are currently pending as
13 well as other complaints filed between Orwell and
14 Orwell-Trumbull, correct?

15 A. Yes, more on a periphery level, just kind
16 of watching to see what takes place but not following
17 all of the data requests or all of the filings
18 associated with it.

19 Q. So to the best of your knowledge, at the
20 time that the 2008 contract was reviewed by the
21 Staff, the fact that the 2008 contract was for 15
22 years wasn't a factor that the Staff looked into,
23 correct?

24 A. No, sir.

25 Q. And to the extent that that 15-year

1 contract was replacing a three-year 2006 contract,
2 that wouldn't have been reviewed, correct?

3 A. That's -- I can't speak for what the
4 individual looked at or reviewed in the course of
5 their drafting of an entry to submit to the
6 Commission, but I know that I was the one who did the
7 2008 audit and did the initial audit and looked at
8 the services that were being provided to Orwell
9 Natural Gas. And there is limited information out
10 there associated with transportation service from
11 OTP, and there is no information out there as it
12 relates to the three-year contract that was entered
13 into in 2005 between Orwell and East Ohio.

14 Q. Do you know if in its review the Staff
15 looked into the fact that the 2006 and 2008
16 Orwell-Trumbull contracts were for interruptible
17 service and were replacing a Dominion firm
18 transportation contract?

19 A. Can you repeat that again?

20 Q. Sure. Do you know if as part of the
21 Staff's review, did the Staff look into the fact that
22 the Dominion firm service contract, the 2005 Dominion
23 contract, was being replaced by Orwell OTP contracts
24 that provide for interruptible service?

25 A. We were unaware of that.

1 Q. You're familiar with the difference
2 between firm and interruptible service, correct?

3 A. Yes.

4 Q. Generally speaking, does the Staff of the
5 Commission think it's appropriate for distribution
6 companies to rely on interruptible service to serve
7 the winter needs of human needs customers?

8 A. No, sir.

9 Q. You would also agree that the Public
10 Utilities Commission does not favor local
11 distribution companies relying on interruptible
12 service to serve human needs customers during the
13 peak winter heating season, correct?

14 A. No, we do not.

15 Q. Do you know if as part of the review in
16 the 08-1244 proceeding, if the Staff looked into the
17 cost of the contracts versus the cost of the prior
18 Dominion contract?

19 A. I don't know that.

20 Q. Do you know if at the time the Staff did
21 its review, it was aware of the fact that Mr. Rigo,
22 who was signing on behalf of the Orwell-Trumbull,
23 reported directly to Richard Osborne?

24 MR. DORTCH: Objection. Your Honor, the
25 presence of the signatures on the contract, the

1 application itself that was filed in support of the
2 contract and the application that was filed in
3 support of subsequent transfer of shares all plainly
4 disclose that on their face.

5 Certainly I'm not going to be critical of
6 Staff, but the information was right there in the
7 paperwork. Anybody that would look at it could see.
8 So the question of whether the Staff was aware or if
9 you know the Staff was aware or not is -- I mean, it
10 denies the evidence that already is in the record to
11 assert or to imply the Staff would be unaware.

12 MR. SERIO: Your Honor, my question went
13 to --

14 THE EXAMINER: I'm going to allow him to
15 answer the question.

16 A. Would you repeat the question?

17 Q. Sure. At the time that the Staff
18 reviewed the contract, was Staff aware that Mr. Rigo,
19 who signed on behalf of the Orwell-Trumbull Pipeline,
20 reported directly to Richard Osborne?

21 A. No, sir.

22 Q. Do you know if at the time the Staff
23 reviewed the contract, are you aware that Mr. Smith,
24 who signed on behalf of Orwell, also reported
25 directly to Mr. Osborne?

1 A. No, sir, the Staff was unaware of the
2 corporate structure that existed and the level of
3 affiliate relationships/transactions that existed
4 between Orwell and its affiliated companies. That
5 didn't come to light until we did the 2010 audit.

6 Q. Could you turn to Exhibit 13 of
7 Mr. Slone's testimony. That is the 08-1244
8 application of Orwell-Trumbull Pipeline, correct?

9 A. You said 13?

10 Q. 13. If you use the tabs, it's Attachment
11 GS-13.

12 A. Yes, I found the Attachment 13.

13 Q. If you would go -- and that is the
14 application, correct?

15 A. It's the application followed by the
16 contract.

17 Q. If you would turn to Page 2 of the
18 application --

19 A. Okay.

20 Q. -- footnote 1 at the bottom of the page
21 indicates that there was another application pending
22 at the PUCO in Case 08-1196-GA-UNC that would result
23 in Orwell-Trumbull no longer being affiliated with
24 Brainard or Orwell, correct?

25 A. It references joint application of Energy

1 West, Incorporated, Brainard, Northeast and Orwell
2 for approval of transfer of stock.

3 Q. Now, do you know, is Orwell-Trumbull
4 still considered a related -- scratch that.

5 At the time of the 2014 GCR case, was
6 Orwell-Trumbull Pipeline considered a related party
7 to Brainard or Orwell Natural Gas?

8 MR. DORTCH: Objection. Your Honor, I
9 think that requires a legal determination, a legal
10 standard, and Mr. Sarver, with all respect, is a very
11 talented Commission Staff --

12 MR. SERIO: I can rephrase that, your
13 Honor.

14 THE EXAMINER: Thank you.

15 Q. (By Mr. Serio) Mr. Sarver, as part of the
16 Staff reports the Staff filed in the 2014 GCR case
17 for Brainard, Orwell and Northeast, did the Staff
18 report identify the relationship between the
19 distribution companies, Northeast, Orwell and
20 Brainard and the pipeline, Orwell-Trumbull Pipeline?

21 A. The term you used was what? Did we
22 identify?

23 Q. Did you identify the relationship between
24 them?

25 A. We were aware of that through the course

1 of our '10, '12 and '14 audits.

2 Q. And what relationship did the Staff
3 identify in the Staff report?

4 A. I don't know specifically off the top of
5 my head what those....

6 MR. DORTCH: I'm going to object. I
7 think it's irrelevant, in any event. The
8 relationship between the companies in 2014 is not
9 relevant to the application that was filed in 2008.

10 MR. SERIO: I can rephrase again, your
11 Honor.

12 Q. (By Mr. Serio) Do you know if the
13 relationship between Orwell and Brainard that was
14 identified in footnote 1 was modified as a result of
15 the application in 08-1196?

16 A. The relationship was modified. That's
17 what I'm trying to understand, what your question is.
18 From Staff's understanding, the three utilities,
19 being Brainard, Orwell, Northeast, were under at
20 least the majority ownership of either Mr. Osborne or
21 Mr. Osborne's trust or an affiliated company, and
22 those three utilities were sold to the assets, were
23 transferred to Energy West that then later became Gas
24 Natural.

25 Q. And the same Mr. Osborne was the CEO and

1 Chairman of the Board for Gas Natural, correct?

2 A. That is correct.

3 Q. At the time that the Staff reviewed the
4 08-1244 application, was the Staff aware that
5 Mr. Smith, who signed as President of OTP -- who
6 signed as President of Orwell was also a President of
7 Orwell-Trumbull Pipeline?

8 A. I'm not aware of it.

9 Q. Do you know if at the time that the Staff
10 reviewed the application in the 08-1244 proceeding,
11 was the Staff aware that Mr. Smith signed a contract
12 on behalf of OTP with Lake Hospital Systems?

13 A. Not aware.

14 Q. Do you know if at the time of reviewing
15 the application if the Staff was aware that in 2005
16 Mr. Rigo signed a contract on behalf of Orwell as
17 their Executive Vice President with Dominion East
18 Ohio?

19 A. Not aware of that.

20 Q. Do you know if at the time of the
21 application, was the Staff aware that Mr. Rigo was
22 the Executive Vice President of Orwell-Trumbull
23 Pipeline from 2004 to 2013?

24 A. Repeat that again.

25 Q. Sure. Do you know if at the time if the

1 Staff was aware that Mr. Rigo was Executive VP of
2 Orwell-Trumbull Pipeline '04 to '13?

3 A. Was not aware of that.

4 MR. DORTCH: Objection, your Honor. May
5 I understand your answer -- His question is were you
6 aware or Staff aware at the time of the application,
7 and then whatever various things he's asking, and
8 you're saying you weren't aware?

9 THE WITNESS: I was not aware.

10 MR. DORTCH: But the question is was
11 Staff aware? Do you know whether Staff was aware?
12 I'm sorry.

13 Q. (By Mr. Serio) Yeah, all my questions
14 were was the Staff aware of any of those factors?

15 A. I would have the most knowledge of the
16 relationships between the pipeline, or OTP, and the
17 utility, Orwell Natural, and no questions were ever
18 brought to me from the individual who prepared the
19 entry. And so I would take that that he had very
20 limited knowledge other than what was contained
21 within the application.

22 Q. Do you know if at the time that the Staff
23 was reviewing the application, was the Staff aware
24 that Orwell was in the process of dismantling or
25 abandoning a number of taps or interconnections that

1 they had with Dominion East Ohio?

2 MR. DORTCH: Objection. That's not been
3 the testimony. Nobody knows when those taps -- I
4 apologize, Mr. Zappitello testified he had no idea
5 when those taps were disconnected.

6 THE EXAMINER: Do you want to rephrase
7 your question?

8 MR. SERIO: Your Honor, I didn't ask for
9 a time.

10 Q. I said at the time of the review, was the
11 Staff aware that the taps were being dismantled?

12 A. No.

13 Q. In your review of Northeast, Orwell and
14 Brainard GCRs, did you ever come across any analysis
15 that compared the cost of maintaining the Dominion
16 taps in the Dominion contract compared to shifting
17 service over to Orwell-Trumbull Pipeline?

18 A. No.

19 Q. At the time that the Staff reviewed the
20 '08 application, was the Staff aware that Orwell had
21 taken steps to breach the 2005 contract with Dominion
22 East Ohio?

23 MR. DORTCH: Objection. Your Honor, no
24 one breached the 2005 contract with Dominion East
25 Ohio, and there has been no testimony that anyone

1 breached with Dominion East Ohio. And, in fact, the
2 terms of the contract between Dominion East Ohio and
3 Orwell-Trumbull Pipeline were such that Orwell --
4 that the result of competition between
5 Orwell-Trumbull and Dominion East Ohio was expressly
6 stated in the contract, thus a term of the contract,
7 and Dominion exercised its out via that term. It's
8 improper to state that there's been any breach of
9 contract or anybody failed to perform the contract or
10 perform exactly as written.

11 MR. SERIO: Just a second, your Honor.

12 Q. (By Mr. Serio) Let me rephrase the
13 question this way: Do you know if at the time that
14 the Staff reviewed the application they were aware --

15 THE EXAMINER: The application....

16 Q. (By Mr. Serio) -- the 08-1244
17 application, if at the time the Staff was aware that
18 Orwell was taking steps that would enable them to
19 terminate the contract that they had with Dominion
20 East Ohio?

21 MR. DORTCH: Objection. You say Orwell
22 was taking steps to -- that would permit "them."

23 MR. SERIO: That would permit Orwell.

24 MR. DORTCH: Again, objection, your
25 Honor. Mischaracterization. The only evidence in

1 the record says that Dominion East Ohio terminated
2 that contract.

3 Q. (By Mr. Serio) At the time of the 08-1244
4 application review, are you aware of any steps
5 that -- was the Staff aware of any steps that Orwell
6 took that would have enabled Dominion East Ohio to
7 terminate the 2005 contract that Dominion had with
8 Orwell?

9 A. No.

10 Q. At the time that the Staff reviewed the
11 08-1244 proceeding, was the Staff aware that Orwell
12 was charging other transportation customers a lower
13 rate than the rate that was being charged to Orwell?

14 MR. DORTCH: Objection. Again, the
15 evidence does not indicate that at the time that
16 application was filed anybody else had a contract for
17 a lower rate.

18 THE EXAMINER: Are you going to rephrase
19 your question?

20 MR. SERIO: That's what I'm working on,
21 your Honor.

22 THE EXAMINER: Take your time.

23 Q. (By Mr. Serio) Mr. Sarver, do you know
24 when the Commission -- the date of the Commission
25 order approving the application in the 08-1244

1 proceeding?

2 A. Do I know the date that the entry was
3 signed?

4 Q. Yes.

5 A. No, sir.

6 Q. Now, to the extent that the Staff was not
7 aware of any of those factors we just discussed, to
8 the best of your knowledge, did anyone from Staff
9 make the PUCO aware of any of those factors?

10 A. Can you repeat that again?

11 Q. Sure. You've indicated that to the best
12 of your knowledge, Staff was not aware of a number of
13 factors that you and I just discussed, correct?

14 A. Yes, sir.

15 Q. To the extent that you've indicated that
16 the Staff was not aware of it, would you then agree
17 that no one from Staff discussed any of those factors
18 with the Commission?

19 MR. DORTCH: Objection, your Honor.

20 Again, Mr. Sarver, I respect your position, but there
21 are so many members of Staff, and Mr. Serio's
22 question is do you know if any of those members of
23 Staff discussed this, that or the other thing with
24 any of these factors that I've added for you to the
25 Commission. Well, I mean, Mr. Sarver doesn't speak

1 for how many employees are employed by the Commission
2 in 2008 and certainly can't be aware of what all
3 those individuals were doing.

4 MR. SERIO: I can rephrase.

5 Q. (By Mr. Serio) Do you know how many Staff
6 employees reviewed the application in the 08-1244
7 proceeding?

8 A. One.

9 Q. Do you know if that one individual had
10 any conversations with the PUCO regarding any of the
11 factors that you and I discussed regarding the terms
12 and conditions of the contract?

13 A. No, not that I'm aware of.

14 Q. From a regulatory standpoint for the
15 Staff, do you think it's appropriate for the same
16 entity to indicate -- scratch that.

17 What's your understanding of an
18 arm's-length agreement?

19 MR. DORTCH: Objection. Again, we're
20 entering into an area that requires some legal
21 interpretation. Mr. Sarver is not a lawyer.

22 MR. SERIO: I'll rephrase, your Honor.

23 Q. As part your GCR review, does the Staff
24 look at contracts to determine if the contracts were
25 done from a regulatory standpoint on an arm's-length

1 basis?

2 A. We would look at them from a standpoint
3 of not necessarily whose name is on the signature
4 line, but what I'd say, not the net benefit but the
5 cost to the ratepayers of the utility as a result of
6 entering into those contracts.

7 Q. And as part of the 2014 GCR case, did the
8 Staff review the contract between Orwell and
9 Orwell-Trumbull, the 15-year contract, and review the
10 terms and conditions to see if those terms and
11 conditions provided reasonable costs of gas for
12 residential customers?

13 A. I think Staff looked at that in the '10,
14 the '12 and the '14 audits. And Staff in its review
15 of such contract believed that for the majority of
16 Orwell's system, its interconnect with OTP was its
17 sole source of supply. So we didn't look at it and
18 compare it to other supply sources because we were
19 unaware that there was a physical disconnect between
20 Dominion East Ohio and Orwell. So we looked at what
21 we knew and what was presented to us.

22 Q. In your review of contracts in GCR
23 proceedings, are you familiar with exclusivity
24 clauses in contracts?

25 A. Not typically.

1 Q. Is it fair to say that the Staff in
2 reviewing transportation contracts between
3 distribution companies and pipeline companies, you
4 generally do not see exclusivity clauses?

5 A. Typically we do not, but as I go back to
6 that instance where we looked at the OTP agreement
7 with Orwell -- the OTP agreement with Orwell was
8 because we didn't realize, we didn't -- nobody
9 brought it to our attention that there were other
10 supply options out there that had changed over the
11 years. We looked at it as being the sole source of
12 supply. So we didn't look at it as being negative.
13 We just looked at it as being this is the only supply
14 option they have available.

15 MR. SERIO: That's all I have,
16 Mr. Sarver. Thank you.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Dortch:

20 Q. Hi, Mr. Sarver. My name is Mike Dortch,
21 and I represent Orwell-Trumbull Pipeline in these
22 proceedings. I have a few questions for you.

23 You just finished your testimony by
24 stating, if I misunderstood this, you correct me, but
25 you stated that at the time you -- you believe that

1 at the time that Staff examined the contract between
2 Orwell-Trumbull and Orwell Natural Gas, that you
3 believed Orwell-Trumbull was the sole source of
4 supply at Orwell Natural Gas; did I get that right?

5 A. I think that's a statement that's related
6 to specific groups of customers. As Mr. Zappitello
7 said, there are certain groups of customers that only
8 East Ohio can serve. So I distinguished those
9 customers that could be served exclusively by East
10 Ohio from those that could be exclusively served by
11 OTP.

12 Q. I see. And do you know or did you know
13 how customers that Orwell -- I'm sorry. Did you have
14 any idea the number of customers Orwell was serving
15 in 2008 as part of your duties?

16 A. If I pulled out the audit record, I could
17 tell you, but I'm guessing probably 6,000 maybe.

18 Q. I'm sorry, when did you say you began
19 your position with the Commission?

20 A. '88.

21 Q. '88. So if you look at '08, you'd have
22 some idea; if you looked at '06, you'd have some
23 idea?

24 A. They didn't start filing their GCR with
25 the Commission until 2007.

1 Q. The company did not file their GCR --

2 A. They did not file with the Commission --

3 Q. -- until 2007?

4 A. Correct.

5 Q. Are you aware that the pipeline didn't
6 exist before 2006?

7 A. No, I didn't know when it came into
8 existence.

9 Q. So to the extent that its existence did
10 begin in 2006 and it filed its first GCR, Orwell --

11 A. You're overlapping the two.

12 Q. I am. I apologize. The Orwell did not
13 file its first GCR until 2006. My question then was
14 are you aware that the pipeline didn't exist until
15 2006, and you said, no, correct?

16 A. Correct.

17 Q. Is it generally the policy of the
18 Commission, as you understand it, to encourage
19 competition?

20 A. As it relates to lower costs to the
21 customer, yes.

22 Q. It is. Competition is a good thing in
23 short?

24 A. Competition, along with supply
25 alternatives, it allows the utility to then shop

1 between different supply sources and also provides
2 reliability.

3 Q. And to the extent that Dominion East Ohio
4 is the only means of providing supply to Orwell in
5 2005, the creation in 2006 of Orwell-Trumbull
6 Pipeline would increase diversity and increase
7 competition, fair?

8 A. And it did, yes.

9 Q. You said you wished to see competition
10 reduce prices to consumers. And do you have any idea
11 the net effect of Orwell-Trumbull's entry into the
12 market on 2006 on the costs being paid by Orwell's
13 customers as compared to prior or as compared to the
14 only other source, DEO?

15 A. When I did the 2010 audit, I repriced all
16 natural gas deliveries to Orwell. And the majority
17 of the supplies that I priced to Orwell came through
18 OTP and not the North Coast. So that was the least
19 cost option other than local production as far as
20 deliveries to Orwell. And then I tried to minimize
21 any other supplier because it was a higher cost. To
22 answer your question, Dominion at that time was
23 higher than North Cost to OTP.

24 Q. When you say it was higher at that time,
25 what time again were we specifically talking about?

1 A. The 2010 audit covers January of 2008
2 through June of 2010.

3 Q. '08 through '10?

4 A. Yes.

5 Q. And Orwell-Trumbull was cheaper than DEO
6 at that time?

7 A. Yes.

8 Q. And there's an audit for '10 to '12,
9 correct?

10 A. That was 2012.

11 Q. That was 2012. And do you recall, was
12 natural gas provided through Orwell-Trumbull cheaper
13 than natural gas provided by Dominion East Ohio in
14 2012 and for the audit period?

15 A. I think for the majority, the answer is
16 yes.

17 Q. So, again, it's cheaper by
18 Orwell-Trumbull than it was DEO in the audit period
19 '10 to '12?

20 A. Yes.

21 Q. And during the period '12 to '14 --

22 A. It flipped.

23 Q. Do you recall when it flipped
24 specifically?

25 A. I want to say midway or late through

1 2013.

2 Q. Mid or late 2013?

3 A. Yes.

4 Q. And do you understand the cause of that
5 flip?

6 A. Marcellus.

7 Q. Marcellus gas, yes, sir. I'll add the
8 Utica gas, if I may.

9 A. You may.

10 Q. Now, you did not refer to yourself as a
11 gas analyst. I'm sorry, what exactly did you say you
12 were?

13 A. Energy specialist.

14 Q. Energy specialist. In 2006, 2007, 2008,
15 were you an energy specialist at that time?

16 A. I'd have to go back and look at my
17 position description, but I'd say yes.

18 Q. You probably engaged in very similar
19 activities?

20 A. Yes.

21 Q. So based upon your knowledge, experience
22 and training in 2006, '07 and '08, did you have any
23 reason to anticipate the Utica and Marcellus boom?

24 A. I don't know. I don't have a crystal
25 ball.

1 Q. You did not have a crystal ball?

2 A. No crystal ball.

3 MR. DORTCH: Thank you, sir. No more
4 questions.

5 THE EXAMINER: Any Redirect?

6 MR. YURICK: Just a few.

7 - - -

8 REDIRECT EXAMINATION

9 By Mr. Yurick:

10 Q. Mr. Dortch asked you, Mr. Sarver, some
11 questions about competition.

12 A. Yes, sir.

13 Q. Would you agree with me that increasing
14 the number of marketers that a gas purchaser can
15 choose from would be a good way to increase
16 competition for price?

17 A. I think that's one way of doing that, but
18 then you also need to effectuate the delivery of the
19 commodity, and that results in additional
20 interconnects.

21 Q. Correct.

22 A. And then with the additional
23 interconnects maintaining system reliability during
24 critical periods of time.

25 Q. So would I be correct in saying that to

1 the extent that Dominion East Ohio, an
2 interconnection with Orwell-Trumbull Pipeline or
3 simply with Orwell Natural Gas, to the extent those
4 connections bring more marketers into play because
5 those marketers are capable of making deliveries
6 through those interconnections, that would be good
7 for regulated customers because the number of
8 suppliers to choose from would increase?

9 A. It would provide additional
10 opportunities. And the other thing with Dominion,
11 when you're looking at their costs on a cost per cost
12 basis, a lot of their charges are fixed monthly
13 charges, and you're going to incur if you move one
14 unit or if you go to move 10,000 units.

15 So if you have the opportunity to move
16 comparatively priced commodities by bringing
17 additional volumes in through an arrangement where
18 you have a fixed price in place, you pull down your
19 cost per unit. So it's actually beneficial in some
20 instances to flow gas through what conceivably on its
21 surface can appear to be a higher price, what I
22 define as a delivered-to-City-Gate price, than
23 running it through a volumetric charge which is what
24 OTP has under its rate structure.

25 Q. So ideally you would want to increase the

1 number of suppliers capable of delivering to Orwell
2 rather than decrease them?

3 A. Correct.

4 Q. And a sole source arrangement limits the
5 ability of a particular distribution company to bring
6 more marketers into play and limits the number of
7 choices they can make consistent with the sole source
8 of the exclusivity provision of the contract; isn't
9 that right?

10 A. That is correct. The other thing you
11 need to take into consideration especially with these
12 companies is the fact that the more they shift their
13 supply to a single supplier, the more they run into
14 credit limitations that the suppliers have imposed on
15 them.

16 So by increasing the number of suppliers
17 and spreading the risk as far as the dollar amount
18 that any of these suppliers will be held with in a
19 nonpayment situation actually is beneficial to the
20 utility itself.

21 Q. Mr. Dortch asked you and you testified a
22 little bit about a flip in basis gas prices, correct?

23 A. Basically a flip in commodity price.

24 Q. So things like that, since they did
25 happen, can reasonably occur, correct?

1 A. Yes, in what currently exists right now
2 with Dominion East Ohio could flip in years to come.

3 Q. But doesn't a 15-year contract, a 15-year
4 length of contract, doesn't that limit the ability --
5 particularly when it's in tandem with a sole source,
6 doesn't that limit the ability of a natural gas
7 utility to respond to changes or alterations in the
8 market structure and commodity?

9 A. I was working on an answer before you
10 finished the question, so can you repeat it?

11 THE EXAMINER: Could you repeat my
12 question? Actually I think I did a decent job.

13 (Record read.)

14 A. The answer is yes.

15 Q. In your gas cost recovery investigations,
16 did you become aware that there were numerous taps
17 that DEO had from their distribution system into
18 Orwell's distribution system that were
19 decommissioned?

20 A. The answer's no. As we became aware as
21 we did these audits, each successive audit, we
22 learned more and more from the '08 to '10, '10 to '12
23 and '12 to '14, and as we became aware of this
24 information, we would typically put that in our auto
25 reports and try to present that to the Commission to

1 substantiate our case, at least Staff's case, and our
2 recommendation as to either reduce reliance on the
3 specific suppliers or eliminating specific suppliers
4 or our dollar adjustments we were recommending. We
5 had to have a basis for that. So as we became aware
6 of the information, we would put it into our reports.

7 Q. You're aware at this point that there
8 were some Dominion East Ohio taps from their
9 distribution system into Orwell's distribution system
10 that were decommissioned; isn't that right?

11 A. I became aware of that mid year 2015, so
12 that's not contained in our 2014 report.

13 Q. Doesn't the decommissioning of those taps
14 further limit supply options?

15 A. Yes, and it also prevented any instance
16 that the utility may have had to draw in another
17 supply source during critical conditions. They
18 physically could not have done it at that point in
19 time.

20 Q. You talked a little bit in your testimony
21 about cold snaps and particularly in relation to your
22 GCR investigation. Do you recall a situation in this
23 past audit involving roughly 9,000 Dekatherms of gas
24 that was purchased at \$66 per Dekatherm?

25 A. I remember the Staff's disallowance of

1 that dollar amount, yes, sir.

2 Q. So Staff didn't allow the company to
3 recover that money, and essentially the shareholders
4 had to take I think what's called in the business a
5 haircut on the difference between I think your rate
6 pricing was \$6 and change, somewhere between \$6 and
7 \$7 and \$56 that was actually paid for the gas; isn't
8 that right?

9 A. That's correct.

10 Q. Isn't it correct that those \$56 volumes,
11 at least at the point they were purchased, isn't it
12 true that because of the way that the system is
13 configured, that was essentially at least at the
14 point that the company was purchasing gas, wasn't
15 that its only supply option?

16 A. That's what Staff understood.

17 Q. And if the Dominion taps, the
18 transmission taps and the taps from Dominion's
19 distribution system into Orwell's distribution
20 system, if those taps had been available to the
21 company at that point, would they not have had the
22 opportunity to purchase lesser cost quantities based
23 on your investigation and your knowledge of the gas
24 market at that time?

25 A. They would have had that potential

1 assuming they would have found a supplier that had
2 volumes available.

3 Q. And generally, Staff's preference, in
4 terms of the LDC's purchasing gas would be that they
5 had as many options open to them as rationally
6 possible; isn't that right?

7 A. Yeah, I think that's consistent with
8 earlier responses, yes, sir.

9 MR. YURICK: I don't have any further
10 questions at this point. Thank you, your Honor.

11 THE EXAMINER: Mr. Serio?

12 MR. SERIO: No more questions, your
13 Honor.

14 THE EXAMINER: Mr. Dortch?

15 - - -

16 RECROSS-EXAMINATION

17 By Mr. Dortch:

18 Q. Mr. Sarver, Mr. Yurick used the term
19 "sole source agreement" several times in his
20 questions to you.

21 A. I think he called it exclusivity clause.

22 Q. An exclusivity clause. Actually, he used
23 the term "sole source." Have you read the provision
24 in the contract between Orwell-Trumbull and Orwell
25 Pipeline?

1 A. I read it years ago. They also had
2 similar language to a supplier arrangement that was
3 put in place between -- I had a complete blank
4 there -- J Dog, which is John D. Oil and Gas
5 Marketing. Had similar type of language where it
6 basically made them the sole supplier in the form of
7 commodity. And so there was some parallels between
8 that and some of the language within the OTP-Orwell
9 agreement.

10 MR. DORTCH: Just a moment, your Honor.
11 No more questions, sir. Thank you.

12 THE EXAMINER: Mr. Sarver, you're
13 excused.

14 MR. SERIO: Your Honor, I would move that
15 you take administrative notice of the 2010, '12 and
16 '14 GCR cases for Brainard, Northeast and Orwell. We
17 referenced them throughout Mr. Sarver's testimony,
18 and it seems to me that they are relevant to at least
19 some of the issues that we have pending in this
20 proceeding. I think it would make it a lot easier if
21 we had the ability to cite to those three dockets,
22 and I can provide the specific numbers if you want.

23 MR. DORTCH: Your Honor, I would object.
24 I have no problem him taking notice of any specific
25 entries and orders of the Commission even though I am

1 aware that some of those are -- they make interesting
2 reading, but the entire docket, your Honor, we have
3 not referred to. And I don't want to get into an
4 issue of all the evidence in that case we're dragging
5 into this one. If Mr. Serio wants to limit his
6 request to the Commission entries and orders....

7 MR. SERIO: I guess I would limit it to
8 the Staff audit report, testimony filed by the
9 parties and the Commission orders.

10 MR. DORTCH: I haven't reviewed the
11 testimony filed by the parties. I don't believe it
12 would be appropriate to take testimony filed by
13 parties that I have not had an opportunity -- and
14 Orwell-Trumbull Pipeline Company was not a part of
15 that GCR case, so my client has not had an
16 opportunity to cross-examine any of those witnesses
17 or frankly we're completely unaware of what they say.

18 THE EXAMINER: I will take that under
19 advisement and I'll --

20 MR. YURICK: Your Honor, if I could
21 interject, just say my two cents, I think at least
22 the orders and the Staff report, if not the
23 testimony, I think both of those are certified public
24 documents, and I would urge the Court to take at
25 least administrative notice of those documents.

1 MR. DORTCH: And, your Honor, I will not
2 object -- again, I guess I did say entries of the
3 Commission. I'm aware of the Staff report.

4 THE EXAMINER: You don't object to the
5 Staff report, the entries and order of the
6 Commission?

7 MR. DORTCH: Correct. The testimony of
8 the parties, though, that's a step too far for me.

9 MR. SERIO: Your Honor, the Commission
10 refers to testimony in the orders, and if you refer
11 to the order and they're talking about the testimony,
12 it's incomplete if you don't have the testimony
13 available, so that's why it seems to me that's
14 appropriate.

15 THE EXAMINER: Okay. I will ponder that.

16 MR. SERIO: Thank you, your Honor.

17 THE EXAMINER: Okay. It is 5:20. I have
18 a situation I have to respond to, so I think we
19 should conclude today. And do you have any
20 preference whether or not you want to start at 9:00
21 or 10:00 o'clock?

22 MR. DORTCH: 10:00.

23 MR. SERIO: 10:00 only because I have to
24 go see the doctor in the morning, and I don't know
25 that I can be here by 9:00.

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THE EXAMINER: Let's go off the record.

(Off the record.)

THE EXAMINER: We'll recess until
10:00 a.m. tomorrow. Thank you.

(The hearing was adjourned at 5:22 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, November 3,
2015, and carefully compared with my original
stenographic notes.

Cynthia L. Cunningham

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Case No(s). 14-1654-GA-CSS, 15-0637-GA-CSS

Summary: Transcript in the matter of Orwell Natural Gas Company vs. Orwell-Trumbull Pipeline Company, LLC hearing held on 11/03/15 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Cunningham, Cindy