

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :  
Regulation of the :  
Purchased Gas Adjustment :  
Clauses Contained Within :  
the Rate Schedules of : Case Nos. 12-209-GA-GCR  
Northeast Natural Gas : 12-212-GA-GCR  
Corporation and Orwell :  
Natural Gas Company. :

In the Matter of the :  
Regulation of the :  
Uncollectible Expense :  
Riders of Northeast Ohio : Case Nos. 12-309-GA-UEX  
Natural Gas Corporation : 12-312-GA-UEX  
and Orwell Natural Gas :  
Company. :

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PROCEEDINGS

before Mr. Scott E. Farkas, Attorney Examiner, at the  
Public Utilities Commission of Ohio, 180 East Broad  
Street, Room 11-C, Columbus, Ohio, called at 10 a.m.  
on Monday, July 8, 2013.

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VOLUME I

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On behalf of the Staff of the PUCO.

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Monday Morning Session,

July 8, 2013.

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EXAMINER FARKAS: The Commission has called for hearing at this time and place in the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained Within the Rate Schedules of Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company and in the Matter of the Regulation of the Uncollectible Expense Riders of Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company, Case Nos. 12-209-GA-GCR, 12-212-GA-GCR, 12-309-GA-UEX, and 12-312-GA-UEX.

My name is Scott Farkas. I have been assigned as the Attorney Examiner in this case. At this time I will take appearances. First on behalf of the company.

MR. YURICK: Your Honor, on behalf of the company Mark S. Yurick, that's Y-U-R-I-C-K, law firm of Taft, Stettinius & Hollister, 65 East State Street, Suite 1000, Columbus, Ohio 43215. Also Mr. Zachary Kravitz from the same firm and Mr. Erik Walter of the law firm of Dworken & Bernstein, all making an appearance on behalf of the companies.

EXAMINER FARKAS: Okay. Thank you. And

1 Consumers' Counsel.

2 MR. SERIO: Thank you, your Honor. On  
3 behalf of the residential utility customers of  
4 Northeast and Orwell Gas Companies, Bruce J. Weston,  
5 Consumers' Counsel, by Joseph P. Serio and Larry S.  
6 Sauer.

7 EXAMINER FARKAS: Okay. And on behalf of  
8 the staff.

9 MR. MARGARD: Thank you, your Honor. On  
10 behalf of the staff of the Commission, Mike DeWine,  
11 Ohio Attorney General, William Wright, Section Chief,  
12 Public Utilities Section, by Assistant Attorneys  
13 General Werner Margard and Devin Parram, 180 East  
14 Broad Street, 6th Floor, Columbus, Ohio.

15 EXAMINER FARKAS: Okay. Thank you.  
16 We'll note for the record that the company had been  
17 directed to publish notice of the hearing and there  
18 is in the docket proof of publication by the company,  
19 and I'll ask if there is anybody here from the public  
20 that wishes to make a statement.

21 Hearing none and seeing none, I'll note  
22 that for the record.

23 I believe the first matter is the  
24 company's motion to quash the subpoenas, motion to  
25 exclude testimony, or in the alternative motion to

1 continue the hearing following July 5. I -- did  
2 staff file any response?

3 MR. MARGARD: We did, your Honor,  
4 although we are prepared to address the motion this  
5 morning.

6 EXAMINER FARKAS: OCC.

7 MR. SERIO: Not yet, your Honor. The  
8 company did not ask for expedited consideration.  
9 Under the rules we have 15 days, and we would note  
10 that an immediate decision absent the opportunity to  
11 file a formal response would in our opinion be  
12 prejudicial.

13 EXAMINER FARKAS: Okay. You want to  
14 respond?

15 MR. MARGARD: Thank you, your Honor. The  
16 motion has been made to quash at least as far as  
17 staff is concerned subpoenas issued to members of the  
18 public who staff does desires to call to testify as  
19 to factual matters.

20 As the Bench is aware, there is no  
21 Commission rule that requires the prefiling of  
22 testimony of nonexpert witnesses. There is, of  
23 course, a rule, a very detailed rule, that pertains  
24 to the prefiling of direct expert testimony. That is  
25 not the case for these witnesses.

Furthermore, there is nothing in any order issued by the Bench that would require the prefiling of testimony from nonexpert witnesses. As the companies pointed out, the Bench has issued two procedural orders, one on the 23rd of January, another on the 29th of April, both indicating that testimony to be filed by parties should be filed seven days prior to the date of hearing.

However, staff understood that to relate to expert testimony. They anticipated that when the January order was issued, and we believe that the Bench made it very clear in its April order that that was the intent of its order. The -- on page 3 of the Bench order from April 29 in paragraph 7, the Bench indicates it's the expectation of the Attorney Examiner that all of the parties who will offer witnesses with expert testimony timely file all expert testimony as duly ordered in this entry.

It appears very clear to us the Bench's order was to relate to expert witnesses and not nonexpert fact witnesses. Therefore, the motion to quash should be denied.

EXAMINER FARKAS: Okay. Thank you.

Do you want to respond at all?

MR. SERIO: Yes, your Honor, I will



1     respond.   The motion to quash for OCC was only for  
2     Ms. Patton, and the company's basic argument was it  
3     wasn't provided -- we didn't give notice seven days  
4     prior to the hearing.   The company acknowledges that  
5     we could not have done any prefiled testimony with  
6     Ms. Patton inasmuch as she is not an employee or  
7     under contract to OCC.

8             In addition, the company motion indicates  
9     that we did depose Ms. Patton on July 1 which would  
10    have been the seventh day prior to the hearing.   We  
11    had an immediate transcript available the next day,  
12    the 2nd, and on the 3rd, we issued the subpoena, we  
13    asked -- requested the subpoena so we didn't not do  
14    it in a timely manner.   We acted as expeditiously as  
15    we could based on the timeline which in part was  
16    based on the witness's availability and cooperating  
17    with her rather than having the deposition the  
18    previous week which had been our original intent in  
19    the notice as we filed it.

20            The other thing I would like to point out  
21    in the previous GCR cases, in the 10-209 and  
22    10-212-GA-GCR cases, OCC did the same process.   We  
23    got subpoenas -- requested subpoenas five days prior  
24    to the hearing for Mr. Smith and for one of the  
25    company's attorneys, Jodi Tomaszewski, and both

witnesses appeared at hearing as directed through --  
by the subpoena and did provide testimony at the  
hearing even though they weren't noticed seven days  
prior which is the argument that the company is  
making.

Essentially they are trying to put one  
Commission rule against the other because the  
subpoena rule, 4901-1-25 Section (E) states that the  
subpoena has to be filed no later than five days  
prior to the commencement of the hearing, and the  
company acknowledges OCC did follow that procedure.

EXAMINER FARKAS: Okay. Thank you.

Yes.

MR. SERIO: If your Honor wants to hear  
argument regarding the company's ability to do  
depositions of public witnesses inasmuch as in all  
likelihood they are residential customers of the  
State of Ohio, OCC has a definite interest in it, and  
we would have arguments that we would like to present  
so I don't know if you want that or if you want to  
take it later on in the proceeding.

EXAMINER FARKAS: You can -- you could  
make that argument now, if you wish.

MR. SERIO: Okay. Your Honor, first of  
all, the current financial audit for the companies is

1 done pursuant to Revised Code Section 4905.32 and  
 2 Administrative Code Section 4901:1-14. The staff  
 3 audit report at page 3 acknowledges that. The  
 4 4901:1-14-08, the hearing section of the  
 5 Administrative Code, indicates that a hearing by the  
 6 PUCO is mandatory, it is not discretionary, and the  
 7 burden of proof is on the companies, in this case  
 8 Northeast and Orwell.

9 4901:1-14-08 Section (B)(1), (3), (4),  
 10 and (5) list the various areas that are subject for a  
 11 management performance audit and those include the  
 12 result of the management performance audit,  
 13 compliance by the company with previous Commission  
 14 performance recommendations, recommendations of  
 15 efficiency of the companies' gas production policies  
 16 and practices, and such other practices, policies, or  
 17 factors as the Commission considers appropriate.

18 It is our belief that if members of the  
 19 public wanted to appear at a hearing and testify  
 20 regarding any one of those four items, the Commission  
 21 rules clearly allow members of the public to do that.

22 In addition, 4901:1-14-08(C) indicates  
 23 that the Commission shall -- that the company shall  
 24 publish notice of the hearing. And the intent of the  
 25 notice of hearing is to provide to members of the

1 public notice so they can attend a hearing and offer  
2 testimony if they would like.

3 The two entries issued by the Bench that  
4 indicated a legal notice, the January and the April  
5 entries, both note in the legal notice all interested  
6 parties that could attend and testify. There's no  
7 limitation to customers.

8 And if you look through the proof of  
9 publications that the company docketed on July 3,  
10 every one of them is the same language, "all  
11 interested parties" and not limited to all customers.

12 Now, the PUCO is the creature of statute  
13 and only has the authority vested in it as given by  
14 the legislature and there is nothing in Chapter 49 --  
15 or 4905.302 that permits the PUCO to direct any  
16 interested person who wants to appear at a PUCO local  
17 public hearing or evidentiary hearing to be deposed  
18 by the company. There's nothing in the  
19 Administrative Code that permits it. There was  
20 nothing in the legal notice in either one of the  
21 Attorney Examiner's entries. There was nothing in  
22 the proofs of publication that gave the public notice  
23 that if you show up as an interested party, prior to  
24 being permitted to give testimony you would be  
25 subjected to a deposition.

Moreover, if you look at the Commission's own website, the Commission's website includes -- give me just one second here -- how to testify at a PUCO public hearing, one of the documents. Nothing in that document indicates that the public would be subjected to a deposition, and nothing in the PUCO website which is one of the things that the public notice directs customers to indicates that prior to being allowed to testify you would be subject to deposition.

Moreover, it would be bad public policy to have any situation where a member of the public that was an interested person would be subject to deposition. First, it would have a potential chilling effect and contradict the whole intent of having local public hearings because now in order to testify, you're first subjected to a deposition.

Secondly, had the staff not done the courtesy of providing notice that the members were going to come, members of the public could have showed up on their own and there would have been no opportunity to depose because if you're going to impose the restriction that there is the right to depose, then members of the public would come to a local public hearing, have to be deposed, and then

1       come back at a later date in order to testify.

2       Again, none of that is in the rules. It's not in the  
3       Administrative Code. It's not in any of the notices,  
4       and to my knowledge it's never been a requirement by  
5       the PUCO. Thank you.

6               EXAMINER FARKAS: Okay. Thank you.

7               Do you want to reply?

8               MR. YURICK: I would, your Honor. In no  
9       particular order, if these witnesses were people  
10      coming in pursuant to a public notice that was posted  
11      and wanted to volunteer their testimony, that would  
12      kind of indicate to me that neither the OCC or the  
13      staff had ever spoken to these folks so my client  
14      might have a fair playing field in allowing -- in  
15      cross-examining the witnesses as to what their  
16      testimony was and the foundation was.

17              As it stands, since these folks were  
18      subpoenaed by the OCC and the staff and since there  
19      have been representations made that they are not  
20      testifying as expert witnesses and are testifying as  
21      fact witnesses, it is logical to conclude that there  
22      has been some prior contact with these folks by the  
23      OCC and the staff and that the OCC and the staff know  
24      what these witnesses are going to say.

25              The company on the other hand does not

1 know this. The company would be -- is completely in  
2 the dark as to the substance of what these witnesses  
3 are going to testify to. And I think due process  
4 would demand that the company not be subjected to  
5 trial by ambush and should be able to depose these  
6 witnesses who have obviously been in contact with the  
7 other parties of this case.

8 Furthermore, it is somewhat difficult to  
9 imagine what these witnesses are going to testify to  
10 in a gas cost recovery case if their testimony does  
11 not somehow include opinions or facts that are  
12 offered at least in part based on their expertise.  
13 This is -- this is not a case of -- where the issues  
14 run the gamut of possible issues. For instance, this  
15 is not like a rate case where the Commission's  
16 interested in what the impact of a rate increase  
17 would be on customers. This -- this is a gas cost  
18 recovery case. It's really just a matter of has the  
19 company appropriately accounted for and purchased  
20 their gas in a prudent matter.

21 I don't know what these witnesses are  
22 going to testify to. But if they are not at least in  
23 some manner familiar with gas cost recovery and the  
24 potential issues involved, I don't know what they  
25 are -- I don't know what they are going to talk

1 about. And really the company is just asking for a  
2 relatively modest amount of time to be able to not be  
3 ambushed by witnesses who have had previous contact  
4 with other parties to the case and to find out what  
5 they are going to testify to and what -- what their  
6 motive is for volunteering to testify in the gas cost  
7 recovery case.

8 EXAMINER FARKAS: Okay. Thank you.

9 MR. SERIO: Your Honor, I need to correct  
10 a factual mistake. OCC was not involved in the  
11 subpoenas for the members of the public. OCC has had  
12 absolutely no contact with those members of the  
13 public. Any understanding OCC has comes strictly  
14 from conversations with staff counsel, so to the  
15 extent that the company is indicating there was prior  
16 contact, that strictly applies potentially to the  
17 staff and in no way whatsoever to OCC. And our  
18 subpoena was limited only to Ms. Patton, and the  
19 company did have notice via our deposition.

20 EXAMINER FARKAS: Okay. Thank you.

21 As to the motion to quash the subpoena  
22 and motion to exclude testimony, I'm going to deny  
23 that. The entries that were cited by the company in  
24 its motion, the April 29 entry I believe is the one  
25 you cited to -- I'm sorry, the January 23 entry,



1     there are two additional entries that were issued by  
2     the Commission by me on April 29, 2013, and June 13,  
3     2013, actually the most recent one. And in finding 8  
4     of the June 13 entry it says "In addition, all  
5     parties intending to file direct expert testimony  
6     should file such testimony as previously directed."

7             And in the entry on June 13, it says in  
8     finding 8, "In addition, all parties filing direct  
9     expert testimony should file such testimony as  
10    previously directed." So it's clear that that was  
11    the directive. It was expert testimony.

12            Secondly, the Commission has never  
13    required subpoenaed witnesses to prefile testimony.  
14    To the extent that the company wishes to do a  
15    deposition of these people, I'm going to deny that,  
16    but I will allow you leeway on your  
17    cross-examination.

18            As to the request to continue the  
19    hearing, I am not continuing the hearing at this  
20    time. I would like to hear from -- well, strike  
21    that.

22            I understand that the company is -- that  
23    the -- Mr. Osborne is ill.

24            MR. YURICK: That's correct, your Honor.

25            EXAMINER FARKAS: He has access to a

1 phone though, correct?

2 MR. YURICK: He does have access to a  
3 phone.

4 EXAMINER FARKAS: And he is familiar with  
5 the issues in the case, is he not?

6 MR. YURICK: He is familiar with the  
7 issues in the case. Frankly the draft stipulation  
8 that was circulated between and among the parties  
9 was -- there were substantial modifications in the  
10 requirements made of the company in the stipulation,  
11 and we have not had an opportunity due to  
12 Mr. Osborne's ill health to sit down and have  
13 meaningful discussions with him in terms of questions  
14 and answers for what the ramifications are and allow  
15 him to get familiar enough with the potential  
16 settlement agreement that he is comfortable settling  
17 the case without more information from his technical  
18 folks and his attorneys. He is not able to travel  
19 and is extremely ill.

20 EXAMINER FARKAS: How is he in a position  
21 to do any kind of settlement negotiations if he is  
22 very ill?

23 MR. YURICK: The plan, your Honor, was to  
24 travel to Mr. Osborne and sit down with him and have  
25 a by -- a byplay with Mr. Osborne and allow him to

1 ask questions and get more information about  
2 requirements in the stipulation.

3 So the hope was that at some point during  
4 this week we would be able to travel to Mr. Osborne,  
5 sit down with him personally, and he is in sufficient  
6 enough help -- or sufficient enough health to be able  
7 to at least sit down with us, it might be at his  
8 house, but to have a meaningful conversation over --  
9 over settlement negotiations. I'm informed that  
10 Mr. Walter -- and I don't know if Mr. Walter has --  
11 Mr. Walter is in the same geographic area as  
12 Mr. Osborne is and might be able to comment more on  
13 the specifics of Mr. Osborne's health condition, and  
14 I would ask that he be allowed to do that, but he  
15 apparently had -- had contracted MRSA and was  
16 dangerous -- his health condition was extremely  
17 dangerous.

18 Erik.

19 EXAMINER FARKAS: Do you know when he  
20 contracted MRSA?

21 MR. WALTER: Approximately four weeks  
22 ago, if I may, it was news to my firm as well. He  
23 was on his way to Montana. He passed out at the  
24 airport. He continued his flight, not getting into  
25 HIPAA issues, continued with his flight to Montana.

1 He was unresponsive the following day which would be  
2 on a Tuesday. They basically had to get into the  
3 room. I don't know if they had to break down the  
4 door or had the innkeeper help.

5 He was immediately sent to I.C.U. in the  
6 Montana hospital where I have photos of this. His  
7 leg contracted MRSA to a degree, and in my 16 years  
8 of practice I've never used this as an excuse, but  
9 his leg was split open in var -- various areas. They  
10 were not sure if he was going to make it. He spent  
11 two and a half weeks in Montana. He was then life  
12 flighted back to the Cleveland Clinic. They were --  
13 actually they were diagnosed at the Cleveland Clinic  
14 they may not have gotten it. It was the flesh eating  
15 type MRSA. If you would like to see photos, I have  
16 those. It is one of the most severe issues I've ever  
17 seen in a client.

18 EXAMINER FARKAS: Okay. Now, in purposes  
19 of settlement discussions, when -- how intimate --  
20 how -- strike that.

21 How involved has he been the last four  
22 weeks prior?

23 MR. YURICK: He has been somewhat  
24 involved, your Honor. I spoke with him personally by  
25 telephone on Friday. But the settlement negotiations

1 in general have taken -- have progressed more not  
2 surprisingly on the eve of the hearing than they had  
3 previously.

4 And the fact of the matter is that any  
5 final decision on the settlement agreement,  
6 particularly because these -- the settlement  
7 agreement that's being discussed involves companies  
8 that aren't even parties to the GCR case --

9 EXAMINER FARKAS: Do you have the  
10 authority to settle this case?

11 MR. YURICK: Mr. Osborne has final  
12 authority to settle the case and I can't --

13 EXAMINER FARKAS: So even if you agreed  
14 to something, you would still have to get  
15 Mr. Osborne's approval.

16 MR. YURICK: I do have to get  
17 Mr. Osborne's approval, yes, sir.

18 EXAMINER FARKAS: Do you have the  
19 authority to enter into outlines of a settlement, or  
20 everything has to be run by Mr. Osborne?

21 MR. YURICK: At this point everything has  
22 to be run through Mr. Osborne, although I have  
23 received input back from company officials as to what  
24 their -- what they are willing to live with and what  
25 really is critical to get Mr. Osborne's authority on.

1 And I think really at this point there's -- the  
2 sticking point is the issue of requirements of  
3 companies that are affiliated that are not parties to  
4 this case.

5 EXAMINER FARKAS: Okay. Now, what is  
6 your take on the situation?

7 MR. MARGARD: Your Honor, the  
8 negotiations have as Mr. Yurick indicates involved  
9 companies regulated by the Commission that are not  
10 parties to this case, entities that are owned by  
11 Mr. Osborne, somewhat different sort of situation  
12 than his ownership of the distribution companies  
13 here.

14 We certainly understand Mr. Yurick's  
15 situation that he may require his client's approval  
16 before he could agree to the terms that staff has  
17 proposed. Staff is certainly amenable to continuing  
18 those discussions. We believe that where the  
19 discussions currently stand is in the best interest  
20 of all involved including the staff.

21 We obviously want to be assured we are  
22 able to conduct those discussions in a meaningful  
23 fashion, that if, in fact, Mr. Osborne is the one who  
24 has ultimate authority on behalf of the companies,  
25 that he be able to be in a position to render his

1 approval or disapproval in a timely fashion to keep  
2 negotiations moving forward.

3 We also understand the constraints of the  
4 holiday weekend. It's difficult for me to say  
5 whether additional time would result in progress in  
6 our negotiations, but we certainly would not object  
7 to that at least on a limited basis in the hopes that  
8 something could be resolved.

9 EXAMINER FARKAS: Okay. Mr. Serio.

10 MR. SERIO: Thank you, your Honor. OCC  
11 has been involved in the settlement discussions. The  
12 response that went to the company was a joint  
13 response from staff and OCC. We're never opposed to  
14 taking time to try to resolve a matter if it can be  
15 done so but like staff we're concerned that we would  
16 have an indefinite continuance without some  
17 limitations. You know, we need to either determine  
18 whether we can settle or go forward, especially in  
19 light of the fact from OCC's perspective there are  
20 members of the public, interested parties, that have  
21 indicated a desire to participate in the process, and  
22 I would feel very uncomfortable leaving them hanging  
23 as to when and if they might be afforded that  
24 opportunity after there was legal public notice that  
25 they would be given such an opportunity.

1 EXAMINER FARKAS: And the last proposal  
2 that the staff and -- Mr. Yurick, the last proposal  
3 that staff and OCC provided to you, has  
4 Mr. Osborne -- have you had a chance to talk to  
5 Mr. Osborne about it?

6 MR. YURICK: I had a chance to talk to  
7 him very briefly on Friday. He had questions and  
8 there were issues that he wanted to have further  
9 discussion with. I know Mr. Walter has spoken to  
10 Mr. Osborne more at length personally because he  
11 is -- he is sort of there, and it's my understanding  
12 that for the most part there is an agreement in  
13 principle but there is one aspect, again, involving  
14 these companies that are not parties to the hearing  
15 that he had some questions about and didn't really  
16 understand how in the context of a GCR hearing for  
17 two local distribution companies he was going to have  
18 to have essentially management and forensic  
19 accounting audits of two companies that while they  
20 are regulated are not parties to this case. He just  
21 didn't seem to understand that.

22 Am I misstating that, Mr. Walter?

23 MR. WALTER: Your Honor, one of the  
24 aspects that we're having issues with, I don't know  
25 if there is a settlement in principle but there is



1 understanding, but Mr. Osborne is, one, old school.  
 2 I can't even leave him a voicemail message. He does  
 3 not have voicemail on his cell. He would like to sit  
 4 down with everybody at his home. He is finally where  
 5 we don't have to wear special suits or anything. He  
 6 can sit and we can present everything with management  
 7 there to go over the pros and cons of the proposed  
 8 settlement, what this means, and what a hearing means  
 9 that goes full board and the ramifications on any  
 10 findings here so he --

11 EXAMINER FARKAS: When are you proposing  
 12 this would be done?

13 MR. WALTER: Well, because we had this  
 14 week slated off we would sit down with him this week,  
 15 your Honor.

16 EXAMINER FARKAS: So you're talking about  
 17 sitting down with Mr. Osborne and the Board of  
 18 Directors, I assume, or other people of interest that  
 19 make decisions in the company this week?

20 MR. WALTER: It would be Mr. Osborne and  
 21 management that is familiar with the audit to  
 22 basically give him an appraisal of what's been going  
 23 on and what their comments are, the ones that work  
 24 with it every day, not necessarily the Board of  
 25 Directors. Mr. Osborne has the controlling -- he is

1 the decision maker, your Honor. So we would be able  
2 to do that this week.

3 MR. MARGARD: Your Honor, if I may just  
4 for clarity of the record, Mr. Yurick noted a couple  
5 of items that were part of the negotiations, and just  
6 to be clear those items are, in fact, contained in  
7 Mr. Sarver's public testimony in this case. I didn't  
8 want the Bench to somehow mistakenly understand that  
9 we were disclosing matters that were still the  
10 subject of confidential settlement negotiations.  
11 That's the substance of the subject that Mr. Yurick  
12 was addressing.

13 EXAMINER FARKAS: Okay. Thank you.

14 MR. SERIO: The only thing I would ask,  
15 and we have reached some agreement on a large number  
16 of items, the items remaining in number may be small  
17 but are not insignificant and in and of themselves  
18 could be sufficient to cause us to require to go  
19 forward with the hearing so.

20 EXAMINER FARKAS: Okay. Why don't we  
21 take a 10-minute recess and then I'll come back.

22 (Recess taken.)

23 EXAMINER FARKAS: Okay. Let's go back on  
24 the record.

25 As this case has been continued twice

1 previously, I can appreciate the fact that the  
2 parties want to -- the company wants to continue  
3 again for purposes of settlement but there have been  
4 ample opportunities for settlement in this case so  
5 we're going to go forward today, and you can make  
6 your calls at lunch or after the hearing today or  
7 during the hearing if you want to talk to  
8 Mr. Osborne, but we're going to go forward.

9 So you can call your first witness.

10 MR. MARGARD: Your Honor, perhaps now  
11 that the Bench has made its ruling on the company's  
12 motion, it might be advisable for us to go off the  
13 record and discuss witness order and other logistical  
14 detail.

15 EXAMINER FARKAS: Okay. Let's go off the  
16 record.

17 (Discussion off the record.)

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

20 In terms of the order of witnesses just  
21 for today, and Dr. Overcast would be tomorrow and  
22 other witnesses would be tomorrow, if we have time  
23 today, we'll start with Mr. Whelan, and then the  
24 second witness will be Slone, third witness will be  
25 Patton, fourth -- fourth witness will be Donlon

1 assuming we get to all those folks.

2 Yes.

3 MR. MARGARD: Thank you, your Honor. If  
4 we may, before we begin calling witnesses, I would  
5 like to mark for convenience sake and for purposes of  
6 identification the audit reports that have been filed  
7 in these dockets. I would propose, your Honor, that  
8 the financial audit of the gas cost recovery  
9 mechanisms for the companies filed on February 28 of  
10 2013 be marked as Commission-Ordered Exhibit 1; that  
11 the audit of the uncollectible expense mechanisms for  
12 Northeast Ohio Natural Gas in Case No. 12-309 filed  
13 December 7, 2012, be marked as Commission-Ordered  
14 Exhibit 2; that the audit of the uncollectible  
15 expense mechanisms for Orwell Natural Gas docketed on  
16 February 14, 2013, in Case No. 12-302 be marked for  
17 purposes of identification as Commission-Ordered  
18 Exhibit No. 3.

19 EXAMINER FARKAS: Thank you.

20 (EXHIBITS MARKED FOR IDENTIFICATION.)

21 MR. MARGARD: In addition, your Honor,  
22 the staff would respectfully request that the Bench  
23 take administrative notice of the proceedings in the  
24 prior GCR cases involving these companies, that being  
25 Cases 10-209-GA-GCR and 10-212-GA-GCR.

1           The reason for this, your Honor, is that  
2           there is considerable overlap. Indeed those cases  
3           were resolved by stipulation. The stipulation was  
4           reached in that case three quarters of the way  
5           through the current audit period for Northeast Ohio  
6           Natural Gas. Many of the same contracts were in  
7           place. Many of the same players were in place.

8           While we realize that circumstances have  
9           changed some during and since conclusion of the  
10          current audit period, that the very significant  
11          overlap between these two cases warrants notice being  
12          taken of the proceedings in those cases.

13          EXAMINER FARKAS: Okay. With no  
14          objection they will be -- administrative notice will  
15          be taken.

16          MR. YURICK: And just for the record  
17          there is no objection to that, your Honor.

18          EXAMINER FARKAS: Thank you.

19          MR. SERIO: No objection.

20          EXAMINER FARKAS: Okay.

21          Okay. You can call your first witness  
22          Mr. Whelan.

23          MR. YURICK: The companies, your Honor,  
24          would respectfully call Mr. Martin Whelan to the  
25          stand.

1 (Witness sworn.)

2 EXAMINER FARKAS: You can be seated.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 - - -

5 MARTIN K. WHELAN

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

8 DIRECT EXAMINATION

9 By Mr. Yurick:

10 Q. Mr. Whelan, good morning.

11 A. Good morning.

12 Q. You have been sworn. Can you please  
13 state your full name and spell your last name for the  
14 record, sir.

15 A. Martin K. Whelan, W-H-E-L-A-N.

16 Q. And how are you employed, sir?

17 A. I'm currently the president of Northeast  
18 Ohio Natural Gas.

19 Q. Showing you what's been marked Company's  
20 Exhibit No. 1, is that a copy of your direct prefiled  
21 testimony filed in this case on June 21, 2013?

22 A. Yes.

23 Q. And was that testimony -- was that  
24 testimony composed by you or at your direction?

25 A. By me.

1 Q. Okay. And do you have any corrections --  
2 drawing your attention to page No. 4 of your prefiled  
3 testimony, do you have any corrections to your  
4 prefiled testimony at this time?

5 A. Yes. I stated there was five  
6 prequalified -- prequalified bidders for the RFP and  
7 there were actually six.

8 Q. So that on line 2 of page 4, would you  
9 substitute the word "six" for "five"?

10 A. Yes.

11 Q. And then on line 3, would you also  
12 substitute the word "six" for "five"?

13 A. Yes.

14 Q. Other than those corrections if I asked  
15 you the questions that are contained in your prefiled  
16 testimony, Company's Exhibit 1, would your answers to  
17 those questions be the same today as they were when  
18 you filed the testimony?

19 A. Yes.

20 MR. YURICK: Your Honor, I would move and  
21 I'll re-move but I will move at this time to admit  
22 the prefiled testimony of Company Witness Whelan  
23 marked herein as Company Exhibit No. 1 and would  
24 request that be identified and admitted into  
25 testimony in the hearing today.

1 EXAMINER FARKAS: Okay.

2 MR. YURICK: With that I'll proffer the  
3 witness for cross-examination.

4 EXAMINER FARKAS: Thank you.

5 Mr. Serio.

6 MR. SERIO: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Serio:

10 Q. Good morning, Mr. Whelan.

11 A. Good morning.

12 Q. When you submitted your prefiled  
13 testimony, it indicated you were at that time the  
14 vice president of Northeast Ohio, and you just  
15 indicated previously that you are now president of  
16 Northeast Ohio. Can you tell me when that change  
17 occurred?

18 A. Approximately 10 days ago.

19 Q. And who are you replacing or whose place  
20 are you taking as president?

21 A. Tom Smith's.

22 Q. And can you tell me what were your duties  
23 as vice president?

24 A. I was in charge of all operations and  
25 pipeline maintenance, meter reading, and I assisted



1 customer service.

2 Q. What functions at the company did not  
3 fall under your supervision as vice president?

4 A. Accounting.

5 Q. Just the accounting.

6 A. Accounting.

7 Q. Now as president, does accounting also  
8 fall under your supervision?

9 A. I don't know.

10 Q. Okay. When you were promoted to  
11 president, what were you told your duties would be?

12 A. I was told that I was going to be named  
13 the president of the company and that I would sit  
14 down with upper management in a couple of weeks and  
15 they would explain what my new role and my function  
16 was going to be.

17 Q. Who informed you that you would be  
18 promoted to president?

19 A. I believe it was Greg Osborne.

20 Q. And who is Mr. Greg Osborne?

21 A. That's -- he's chairman of the gas -- not  
22 chairman. He is the director of the Gas Natural  
23 Board.

24 Q. Was your promotion to president something  
25 that had been in plan for a while, or did it come

1 about suddenly?

2 A. To me it came about suddenly. I'm not  
3 sure whether it was a plan for upper management or  
4 not.

5 Q. Were you given any explanation as to why  
6 you were being promoted in your words suddenly?

7 A. No.

8 Q. Did you inquire as to potentially why  
9 this change was occurring?

10 A. I believe since you deposed me that it's  
11 because Mr. Smith is trying to work less hours and  
12 semi-retire.

13 Q. Now, you indicated that you would be  
14 meeting with upper management. Who would constitute  
15 upper management?

16 A. I believe it would be Greg Osborne and  
17 Kevin Degenstein.

18 Q. And who is Mr. Degenstein?

19 A. He is the president of the Gas Natural.

20 EXAMINER FARKAS: Could you spell his  
21 last name?

22 THE WITNESS: I sure couldn't.

23 EXAMINER FARKAS: Okay. How do you  
24 pronounce it?

25 THE WITNESS: Degenstein. We can get you

1 the spelling.

2 EXAMINER FARKAS: Okay. Thank you.

3 Q. So you still don't know if as president  
4 accounting would fall under your level of  
5 supervision, correct?

6 A. I do not.

7 Q. Did accounting fall under Mr. Smith's  
8 area of supervision?

9 A. I believe so.

10 Q. Now, prior to being vice president and  
11 chief operating officer for Northeast, your function  
12 with the company was mainly involved in pipeline  
13 construction and maintenance, correct?

14 A. And operations.

15 Q. And operations. And what exactly did  
16 operations, construction, and maintenance of the  
17 pipeline infrastructure involve?

18 A. It involves operating the pipeline on a  
19 daily basis, maintaining the pipeline on a daily  
20 basis, and construction and installation of new  
21 pipelines.

22 Q. So the construction/installation is  
23 literally just adding new pipe to the system,  
24 correct?

25 A. Correct.

1 Q. And maintenance of the system is going  
2 out and repairing pipe or replacing it as necessary,  
3 correct?

4 A. Detecting it, checking it for cathodic  
5 protection, standard pipeline maintenance, yes.

6 Q. You indicated the third was operation of  
7 the system. Can you tell me exactly what operation  
8 of the system involves?

9 A. Monitoring meters, monitoring regulator  
10 stations, reading meters, the day-to-day function to  
11 make sure the pipeline system is operating correctly.

12 Q. Now, prior to joining Northeast in  
13 September of 2002, had you ever had any experience  
14 working in the natural gas industry other than  
15 construction of natural gas pipeline infrastructure?

16 A. I -- I had drilled wells, sputted wells,  
17 worked on wells, laid gathering systems, laid  
18 transmission systems, and laid distribution systems  
19 so it was all in the gas field, but it wasn't in the  
20 operation of a public utility.

21 Q. So with regards to the day-to-day  
22 operations of a public utility, your experience  
23 starts September of 2002, correct?

24 A. Yes.

25 Q. And to the extent that it involves

1 anything other than construction, maintenance, or  
2 replacement of the physical system, when did that  
3 experience begin with Northeast?

4 A. January of 2004.

5 Q. So in approximately nine years you've  
6 gone from having no experience in the natural gas  
7 industry other than construction, maintenance, or  
8 repair of the system to president of Northeast,  
9 correct?

10 A. Yes.

11 Q. Do you have any educational experience or  
12 expertise in accounting, engineering, or any other  
13 specified field?

14 A. I would say engineering, but I don't have  
15 a degree in engineering.

16 Q. Your experience and expertise would be in  
17 the day-to-day installation, repair, and running of  
18 the company, correct, running of the pipeline system?

19 A. Yes.

20 Q. Do you have any graduate degrees at all?

21 A. No.

22 Q. Now, you indicated other than accounting  
23 as vice president, you were involved with all aspects  
24 of the operations of the company. Did that include  
25 gas purchasing and related to the contracts?

1           A.    Not since 2008, no.

2           Q.    So prior to 2008 -- from 2004 to 2008,  
3    did gas purchasing issues and contracts relating to  
4    gas purchasing issues, that was under your  
5    supervision?

6           A.    For local production, yes.

7           Q.    And you indicated for local production.  
8    The other type of production would be interstate  
9    purchases, correct?

10          A.    Yes.

11          Q.    And who handled the interstate purchases  
12   from 2004 to 2008?

13          A.    I believe it was Steve Rego.

14          Q.    Who is Mr. Rego?

15          A.    He worked for Orwell Natural Gas.

16          Q.    This is in the period 2004 to 2008?

17          A.    I know he was there in 2004.  When he  
18   left, I don't recall.

19          Q.    And where is Mr. Rego employed today, if  
20   you know?

21          A.    I don't know.

22          Q.    But he is no longer employed by either  
23   Northeast or Orwell, correct?

24          A.    I don't believe so.

25          Q.    He's not employed by Northeast.

1           A.    Correct.

2           Q.    Now, from 2004 to 2008, what specific  
3 involvement did you have with gas purchasing issues  
4 and contracts?

5           A.    We would deal with the local producers  
6 that were tied directly into NEO's system, and we  
7 would procure gas from them to go into the NEO  
8 system.

9           Q.    Did you actually get involved in the  
10 negotiations of the contracts?

11          A.    Yes.

12          Q.    And in the negotiation of contracts is  
13 one of the things that you looked at was market price  
14 and what the final price of any contract would be  
15 that you would sign?

16          A.    Yes.

17          Q.    Now, am I correct that one of the reasons  
18 that Northeast takes both local production and  
19 interstate gas is because the company cannot meet all  
20 of its requirements through just local production?

21          A.    That's correct.

22          Q.    And how much of the system cannot be  
23 served by just local production?

24          A.    I believe right now it's a 70/30 split at  
25 70 percent interstate and 30 percent local production

1 intra and interstate.

2 Q. So that means that 70 percent of the  
3 system cannot be served by only local production?

4 A. Local production tied into the  
5 distribution system, correct.

6 Q. Now, in order to get the 70 percent of  
7 the gas supply that you need, for the parts of the  
8 system that can't be served by local production, you  
9 rely on interstate pipeline transportation and  
10 storage services, correct?

11 A. And intrastate pipeline and  
12 transportation and production that's tied onto the  
13 intrastate pipelines.

14 Q. The intrastate pipelines that you  
15 referred to, would those be Cobra and who else would  
16 that involve?

17 A. Cobra.

18 Q. Just Cobra. And as far as the interstate  
19 pipelines that you rely on, that would be Columbia  
20 Gas Transmission Company or TCO?

21 A. TCO, Tennessee, and Dominion.

22 Q. And Dominion would be Dominion East Ohio  
23 Gas Company, correct?

24 A. Correct.

25 Q. That's a local distribution company in



1 Ohio.

2 A. Yes.

3 Q. Okay. How much of the Northeast system  
4 can be served by interstate gas?

5 A. I don't have those numbers on top of my  
6 head.

7 Q. Do you know rough percentage? 75  
8 percent? 90 percent?

9 A. I would believe that since TCO sold some  
10 of their assets I would say probably around  
11 30 percent.

12 Q. So it's your understanding that only  
13 30 percent of the system can be served by interstate  
14 gas?

15 A. Interstate gas that doesn't have to go  
16 through an intrastate pipeline to get there, yes.

17 Q. Okay. So roughly 30 percent of the  
18 system can be served by local production, roughly  
19 30 percent by interstate gas, and then the remaining  
20 40 percent by interstate gas that relies on  
21 intrastate distribution?

22 A. Roughly.

23 Q. So that means that you have to have about  
24 30 percent of the system served by local production.

25 A. Yes, but some of that local production is

1 on intrastate pipelines.

2 Q. Now, as far as your contracts with TCO  
3 and Tennessee, you have both firm transportation and  
4 firm storage service on TCO, correct?

5 A. Correct.

6 Q. And all of your storage is through your  
7 firm -- is through your firm storage service with  
8 TCO, correct?

9 A. I believe we also have a general  
10 transportation service storage.

11 Q. With TCO.

12 A. Yes, sir.

13 Q. You have no storage with Tennessee,  
14 correct?

15 A. No.

16 Q. And your Tennessee contract, is that firm  
17 storage -- firm service or interruptible?

18 A. I believe it's interruptible, but I could  
19 be wrong.

20 Q. Now, generally speaking would you say  
21 that local production is a cheaper source of gas for  
22 Northeast compared to interstate gas?

23 A. Yes.

24 Q. And would you agree that that has been  
25 the case for a number of years?

1 A. Yes.

2 Q. So if we go back to 2004 through 2008  
3 when you were involved in the purchasing, it was  
4 generally true that during that time period local  
5 production was generally cheaper than interstate gas,  
6 correct?

7 A. Yes.

8 Q. And since 2008, have you seen anything in  
9 the market that would indicate to you that local  
10 production is not still cheaper generally speaking  
11 than interstate gas?

12 A. No.

13 Q. Now, is one of the reasons that local  
14 production is cheaper than interstate gas is because  
15 of the cost of firm service -- firm transportation  
16 service and firm storage service that's embedded into  
17 the cost of interstate gas?

18 A. Yes.

19 Q. And that would be the demand charges that  
20 you get from the pipelines, in this case TCO,  
21 correct?

22 A. Yes.

23 MR. MARGARD: Your Honor, while Mr. Serio  
24 is looking for his exhibit can I just kindly ask  
25 Mr. Whelan if he would please keep his voice up a

1 little bit. It can be difficult to hear you in the  
2 back.

3 EXAMINER FARKAS: Yes.

4 THE WITNESS: I don't want to yell at  
5 you, Vern.

6 MR. MARGARD: I think I know you well  
7 enough, Mr. Whelan, to know yelling is not part of  
8 your essential character.

9 MR. YURICK: Your Honor, if Mr. Serio is  
10 going to provide exhibits to the witness, may the  
11 witness be allowed to grab his eyeglasses?

12 EXAMINER FARKAS: Yes. That's a  
13 reasonable request.

14 MR. YURICK: Can we take like 2 minutes,  
15 your Honor?

16 EXAMINER FARKAS: Yes. Let's take 2  
17 minutes. Off the record.

18 (Discussion off the record.)

19 EXAMINER FARKAS: Okay. Let's go back on  
20 the record.

21 Q. Mr. Whelan, I don't have those TCO  
22 tariffs with me. I will pick up after lunch. I'm  
23 going to go to a different area right now. You  
24 indicated that your basic understanding local  
25 production is cheaper than interstate gas, so would

1 it be your belief that you should maximize the amount  
2 of local production you could put into the system  
3 versus interstate gas in order to provide the lowest  
4 cost gas for customers?

5 A. Not always, no.

6 Q. What would be the exceptions for not  
7 purchasing lower priced local gas versus higher  
8 priced interstate gas?

9 A. Reliability.

10 Q. I'm sorry?

11 A. Reliability.

12 Q. And of the local production that you have  
13 what are the reliability concerns that you've got?

14 A. A lot of the wells are -- don't produce  
15 enough pressure on the coldest days of the year to  
16 keep the system alive. We'll have to supplement it  
17 with interstate gas which will in turn shut the wells  
18 in.

19 Q. To the extent --

20 A. Freeze-off problems with liquids.

21 EXAMINER FARKAS: What is that?

22 THE WITNESS: Freeze-off problems with  
23 liquids.

24 Q. To the extent that there is reliability  
25 concerns, does that mean that the contracts you have

1 with local production is -- is even lower priced  
2 because it's not reliable enough to produce gas on  
3 the coldest days?

4 A. Not always. It's -- we have quite a few  
5 distinct systems. And some of the gas, whether we  
6 have interstate gas or we don't, we need both  
7 production gas and the interstate gas. Some of the  
8 systems have solely production gas on it. It's a  
9 system by system that you would analyze and try to  
10 decide what the best mix of gas coming into the  
11 system is going to provide the most reliability to  
12 the system and, of course, cost is a -- is a part of  
13 it, but reliability supercedes cost always.

14 Q. What's the minimum percentage of gas you  
15 need from local production in order to operate the  
16 system?

17 A. I don't -- off the top of my head I don't  
18 know. And it would be different -- there is some  
19 systems you need 100 percent on local gas. There is  
20 some you could get by without any. If -- there's  
21 distinct different systems.

22 Q. On an overall basis would you say that  
23 you need at least 25 percent of your gas to come from  
24 local production in order to operate the system?

25 A. I don't have that number off the top of

1 my head.

2 Q. But you are in charge of operating the  
3 system and making sure gas flows.

4 A. I am and I worry here about each  
5 individual system operating properly. I don't --  
6 what the overall percentage is not even a word to me.

7 Q. What are the different individual systems  
8 you talk about? Let's go through those one at a  
9 time. Can you list them all for me first?

10 A. No. There is 100 of them.

11 Q. There's 100 different systems on the  
12 Northeast. How many customers does Northeast have?

13 A. 15,000, 16,000.

14 Q. So approximately 15,000. Is that  
15 residential or is that residential and commercial and  
16 industrial?

17 A. It's a combination of residential  
18 customers and transportation.

19 Q. You have got 15,000, and they are broken  
20 into over 100 different systems?

21 A. Between farm taps and city gates and  
22 pipelines, absolutely.

23 Q. Are those systems interconnected?

24 A. Some are and some aren't.

25 Q. How many of the 100 are interconnected?

1           A.    I guess I need you to clarify,  
2   interconnected with what?  Each with --

3           Q.    With each other so you can put gas into  
4   one system and get gas to another one.

5           A.    25.

6           Q.    So roughly 25 percent of the system is  
7   interconnected and 75 percent is not.

8           A.    I would say that's a fair.

9           Q.    Now, would that 75 percent apply to  
10   75 percent of the customers or 75 percent of the  
11   pipeline?

12          A.    Just the pipeline.

13          Q.    And do you know roughly how many  
14   customers would be covered by the 75 percent of the  
15   system that is not interconnected?

16          A.    No.

17          Q.    Any estimate at all?

18          A.    No.

19          Q.    Now -- now, when you have your local  
20   production, are there transportation fees associated  
21   with local production?

22          A.    If the local production is tied onto an  
23   interstate pipeline, yes.

24          Q.    So the only local production that has  
25   transportation fees is the local production that goes



1 on a Cobra system, correct?

2 A. Yes.

3 Q. And that would fall within the 40 percent  
4 roughly that's needed to operate the system, correct?

5 A. Yes.

6 Q. And what's the level of the  
7 transportation fees on the Cobra system?

8 A. I believe it's 50 cents a dekatherm.

9 Q. And how does that compare, if you know,  
10 to the demand charges that you have with TCO in  
11 magnitude?

12 A. I'm sure it's more. I'm sure.

13 Q. So --

14 EXAMINER FARKAS: Can you speak up?

15 THE WITNESS: Sorry. I'm sure -- I'm  
16 sure the 50 cents a dekatherm is more than what we  
17 pay in TCO.

18 Q. So the firm transportation charges on TCO  
19 are less than the transportation charges on Cobra.

20 A. Not necessarily the firm transportation  
21 charges. Dekatherm, per dekatherm I would say  
22 Cobra is more expensive than TCO.

23 Q. Now, in addition to the transportation  
24 charges on Cobra, what other charges, if any, does  
25 Cobra have that TCO does not?

1 A. Cobra has a processing fee.

2 Q. And can you explain or describe what the  
3 processing fee is?

4 A. Processing fee is 25 cents a dekatherm  
5 additional charge for processing and compressing gas  
6 from Cobra into TCO.

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

8 EXAMINER FARKAS: Yes.

9 Q. I'm handing you a multiple-page document  
10 that I'm going to mark for purposes of identification  
11 as OCC Exhibit No. 1.

12 EXAMINER FARKAS: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. And if you look at that, that says in the  
15 upper left-hand corner "Cobra Pipeline Company, LTD,"  
16 correct?

17 A. Yes.

18 Q. And that would be the rules and  
19 regulations governing transportation of natural gas  
20 on Cobra, part of their tariff, correct?

21 A. Yes.

22 Q. And if you look at Section 8, it says  
23 "Processing and Compression." Is that the processing  
24 fee that you were talking about?

25 A. I believe so.

1 Q. And just so we're clear, if you look on  
2 the third page of that document I gave you under X,  
3 it defines what processing means, correct?

4 A. Yes.

5 Q. And processing is removing among other  
6 things butane, propane, and other hydrocarbons from  
7 natural gas, correct?

8 A. Yes.

9 Q. And page First Revised Sheet No. 7 is  
10 where paragraph 8 is listed and that charge for  
11 processing is 25 cents per dekatherm, correct?

12 A. Yes.

13 Q. And that charge occurs when two things  
14 apply, the gas that's being processed has a heat  
15 content greater than 1,130 Btu per cubic foot, and it  
16 is actually processed through the company's  
17 processing plant and the company being Cobra,  
18 correct?

19 A. Correct.

20 Q. Now, the only time you pay the Cobra fee  
21 is when the gas is actually processed, correct?

22 A. I don't know.

23 Q. So is it possible that you pay the fee to  
24 Cobra for gas that is not processed?

25 A. I don't know.

1 Q. Who would know at Northeast?

2 A. I don't know. The first time I saw those  
3 Cobra bills was when you showed them to me.

4 EXAMINER FARKAS: Was when? When? You  
5 are going to have to speak up.

6 THE WITNESS: I'm sorry, they were sent  
7 to me prior to my deposition.

8 EXAMINER FARKAS: Okay. You had not seen  
9 a bill prior to that time?

10 THE WITNESS: No. It wasn't my  
11 responsibility.

12 EXAMINER FARKAS: Okay.

13 MR. SERIO: May I approach, your Honor?

14 EXAMINER FARKAS: Yes.

15 Q. I'm going to hand you a fairly  
16 significant document that I've marked for purposes of  
17 identification as OCC Exhibit No. 2.

18 EXAMINER FARKAS: So marked.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. And those are invoices to Northeast Ohio  
21 Natural Gas Company from Cobra Pipeline Company,  
22 correct?

23 A. Yes.

24 Q. And if you look at them, there's a large  
25 number of them and each one has a separate -- is a

1 different invoice date, correct?

2 A. Yes.

3 Q. And it's generally one invoice per month,  
4 correct?

5 A. Unless there is a revision, yes.

6 Q. And that would be -- the first one would  
7 be October 20, 2009?

8 A. Yes.

9 Q. And the last one would be May 15, 2012,  
10 correct?

11 A. Yes.

12 Q. Now, if I look at that invoice on the  
13 first page, on the left-hand side of the document, it  
14 has contract number and then it lists the letter C,  
15 contract number, letter H, contract number, letter N.  
16 Can you identify what the different letters refer to?

17 A. Churchtown, Holmesville, and North  
18 Trumbull.

19 Q. And so contract number C is for Church --  
20 the Churchtown system, contract number H is for the  
21 Holmesville system, and contract number N is for the  
22 North Trumbull system, correct?

23 A. Yes.

24 Q. And then if you look directly opposite  
25 that, it shows different fees, correct?

1 A. Yes.

2 Q. And the third fee listed is a treating  
3 fee, correct?

4 A. Yes.

5 Q. Is it your understanding that the  
6 treating fee is the same as the processing fee?

7 A. Yes.

8 Q. And here it indicates that the fee is  
9 \$395. Do you see that?

10 A. Yes.

11 Q. So that would have been 25 cents per  
12 dekatherm of gas so I would take 25 cents times the  
13 net 1,525 MMBtu and multiply it out and that would  
14 give me 395, correct?

15 A. I would assume so, yes.

16 Q. Now, if I take the total charges listed  
17 for the three systems, the \$1,157.50 for Churchtown,  
18 the \$2,736.50 for Holmesville, and \$702.50 for North  
19 Trumbull, and add those together, would that be the  
20 total Cobra invoice for October 20, 2009?

21 A. Yes.

22 Q. So I could do that for each one of these  
23 Cobra invoices and adding those three numbers on the  
24 first page of each monthly invoice would give me the  
25 total bill that you pay to Cobra each month, correct?

1           A.    Yes.

2           Q.    Now, if you look at the first -- about  
3   the first 12, so if you go from October 20, 2009,  
4   through August 17, 2010, each one of those monthly  
5   invoices shows a treating fee for the Churchtown  
6   system, correct?

7           A.    Yes.

8           Q.    Then beginning with the September 17,  
9   2010, we have four months where there is no treatment  
10   fee, correct? I think it's the September 17, 2010 --

11          A.    I just had to get to that part.

12          Q.    -- through December 17, 2010.

13          A.    You're right.

14          Q.    Now, can you tell me why there was no  
15   treating fees -- treatment fees for these four  
16   months?

17          A.    It appears to me that the utility had a  
18   positive imbalance and was burning that off. It  
19   didn't buy any gas or move any gas across the system.

20          Q.    Okay. So then if we pick up January 14,  
21   2011, I have two months that include a treatment fee,  
22   January and February of 2011, correct?

23          A.    Yes.

24          Q.    And then beginning in March of 2011  
25   through April 16, 2012, there's no treatment fee

1 listed on any of those months, correct?

2 A. Through when, please?

3 Q. Beginning March 17, 2011, ending April  
4 16, 2012.

5 EXAMINER FARKAS: All but the last one.

6 A. Yes, sir.

7 Q. Okay. So as I go through the different  
8 months, if there is a treatment -- treating fee  
9 listed, then in those months you actually took gas on  
10 the Churchtown system, and if there is no fee listed,  
11 then you did not take any gas on the Churchtown  
12 system, correct?

13 A. Can you try that one more time?

14 Q. Sure. If I go through each monthly  
15 invoice and I see a dollar amount listed under  
16 treating fees, then that indicates gas was taken on  
17 the Churchtown system and you paid the processing  
18 fee, correct?

19 A. Yes.

20 Q. And if there is no dollar amount listed,  
21 then that means you did not take any gas on the  
22 Churchtown system so you did not pay a treating fee,  
23 correct?

24 A. I would believe we took gas on the  
25 Churchtown system every single one of these months.



1 Whether it was working off an imbalance or it was  
2 supplied by another supplier, we didn't get a  
3 transportation charge, I don't know. But I don't  
4 think that we could keep our customers lit without  
5 taking gas off the Churchtown system every month.

6 Q. So the months that show zero for  
7 Churchtown on the first page of the invoice, that  
8 means you didn't purchase gas from Churchtown but you  
9 still may have moved gas through the Churchtown  
10 system, correct?

11 A. We could have been burning off an  
12 imbalance on the Churchtown system, or the gas could  
13 have been supplied/delivered to the city gate on the  
14 Churchtown system. I don't know without going  
15 through each individual one and.

16 Q. You've indicated an imbalance on the  
17 system. That's what you see on page 2 of the  
18 invoice, correct?

19 A. Yes.

20 Q. So if we start with the October 20, 2009,  
21 invoice and we go to the second page, the last column  
22 to the far right says "Imbalance," correct?

23 A. Correct.

24 Q. And that's where you're talking about  
25 burning off an imbalance, correct?

1           A.    It would actually be on the bottom  
2           because it adds those imbalances together and it  
3           gives you a total for the month and then it gives you  
4           your total previous imbalance.

5           Q.    So in October -- for October 20, 2009,  
6           you had a total imbalance of 99,570. Is that Mcf or  
7           dekatherms?

8           A.    Dekatherms. Actually for October you  
9           actually had a negative imbalance of 41,272 for the  
10          month.

11          Q.    I'm sorry. Were you done?

12          A.    Hum?

13          Q.    Were you done with your answer?

14                EXAMINER FARKAS: You said for the month?

15                THE WITNESS: Yes. I believe that's what  
16          he asked me.

17          Q.    Okay. So you went into September, '09,  
18          with an imbalance of 140,842, and you reduced that  
19          imbalance by 41,272 dekatherms in that month,  
20          correct?

21          A.    Correct.

22          Q.    Now, you reduced your imbalance yet you  
23          did pay a treatment fee on the Churchtown system,  
24          correct?

25          A.    It appears to be, yes.

1           Q.    Now, can you tell me how would you end up  
2           with an imbalance -- is that a positive imbalance,  
3           the 140,842, or a negative imbalance?

4           A.    It's a positive imbalance.

5           Q.    Then the negative imbalance would be  
6           indicated with the parentheses, correct?

7           A.    Correct.

8           Q.    So how did you end up with an imbalance  
9           of 140,842 dekatherms on the Cobra system going into  
10          September of '09?

11          A.    I don't know.

12          Q.    I'm sorry?

13          A.    I don't know.

14          Q.    Can you tell me what would cause the  
15          system to be that far out of balance?

16          A.    They bought more gas on the system than  
17          they burned.

18          Q.    And the purchases that would have been  
19          made on the system would have been of local  
20          production, correct?

21          A.    It could have been local production. It  
22          could be interstate production. It could be either.

23          Q.    Any way to break down how much of the  
24          140,000 was interstate and how much was local  
25          products?

1           A.    Not looking -- not glancing at this, not  
2           on the imbalance. There is not enough information to  
3           tell you what's in there.

4           Q.    Now, to the extent any of that imbalance  
5           was caused by local production, that would be local  
6           production that was purchased on behalf of Northeast  
7           by one of your affiliate companies, John D. Oil and  
8           Gas, correct, JDOG?

9           A.    I believe during 2009, yes.

10          Q.    Okay. And JDOG earns an agency fee for  
11          any local production, correct, that they purchase on  
12          behalf of Northeast?

13          A.    I don't believe so in 2009.

14          Q.    It's your --

15          A.    I'm not sure. I'm not sure if I  
16          understand what you are asking.

17          Q.    In 2009 when JDOG was purchasing local  
18          production on behalf of Northeast, did JDOG earn an  
19          agency fee for each dekatherm of gas that was  
20          purchased on behalf of the company?

21          A.    I don't know. I don't believe the agency  
22          fees came into effect until after the stipulation  
23          from the last audit.

24          Q.    Do you know if there was any type of  
25          charge included in the fees that you got from JDOG

1 for purchases that occurred in September of 2009  
2 other than an agency fee?

3 A. I would assume it was -- I mean, I'm  
4 assuming it was a delivered cost to the city gate. I  
5 can't even assume that because those bills are moving  
6 gas. I don't know.

7 Q. Who would know that information at  
8 Northeast?

9 A. I don't know.

10 Q. Now, if I look at the third page of the  
11 October 20, 2009, invoice that's part of OCC Exhibit  
12 No. 2, if I look at the top part of the page, it  
13 breaks down Churchtown, Holmesville, North Trumbull,  
14 correct?

15 A. Yes, sir.

16 Q. And there's a number indicated but  
17 there's no numbers below that. And then next to it  
18 under Churchtown it indicates the "Name, TCO to  
19 Cobra, Shrink," and "Total."

20 A. Yes.

21 Q. And it repeats those for each of the  
22 three systems, correct?

23 A. Correct.

24 Q. Now, since there's no numbers except for  
25 North Trumbull, can we look at the North Trumbull

1 column?

2 A. Sure.

3 Q. There it says "Name Actual." What does  
4 "Actual" mean for "Name"?

5 A. I don't know.

6 Q. Do you know what "TCO to Cobra 10,758"  
7 means?

8 A. That would be the gas that was brought in  
9 from the interstate to Cobra to serve the customer.

10 Q. And that would be dekatherms?

11 A. Yes, sir.

12 Q. And the shrink would be 377 dekatherms of  
13 shrink on the Cobra system?

14 A. Yes, sir.

15 Q. And can you explain what shrink is?

16 A. It's the pipeline. It could be through  
17 usage or lose, whatever is in their tariff for lose.

18 Q. So the total of 10,381 is the net from  
19 what flows from TCO to Cobra less the shrink,  
20 correct?

21 A. Correct.

22 Q. So that means that you took 10,381  
23 dekatherms of gas from TCO to Cobra. Now, on the  
24 invoice where does it show that you paid for that  
25 10,381 dekatherms?

1           A.    It doesn't.  It looks like the bulk of it  
2   went to a positive imbalance.

3           Q.    Instead of paying for the gas that works  
4   off the imbalance; is that how it works?

5           A.    Hum?

6           Q.    Instead of getting a bill for 10,381 is  
7   that just worked off of your imbalance?

8           A.    It actually created a positive imbalance  
9   on that system.

10          Q.    And that's because if you take the 10,381  
11   and you look at page 2 of the 10-20-09 invoice, on  
12   the last line on the right-hand side under "Delivery"  
13   it says "Scheduled 10,381," correct?  That's the same  
14   number?

15          A.    Yes.

16          Q.    Now, if I go back to page 3 on the bottom  
17   half of the page, it lists numbers there.  Can you  
18   tell me what those numbers under "Number" mean?

19          A.    Those are meter numbers.

20          Q.    Those are meter numbers and then under  
21   "Deliveries" it says "Name" and then it lists  
22   "Lowell, Whipple No. 2, Beverly, Coal Run,  
23   Watertown."  Can you tell me what those are?

24          A.    Those are the NEO city gates.

25          Q.    Are those separate city gates, some of

1 the 100 different systems that you testified to  
2 previously?

3 A. Yes.

4 Q. Now, where it says "Allocation," what  
5 does the number under "Allocation" mean?

6 A. I believe that's the actual burn of that  
7 year.

8 Q. So that's how many actual dekatherms were  
9 burned by that individual system.

10 A. Correct.

11 Q. So, for example, Lowell was allocated 423  
12 dekatherms, correct?

13 A. Yes.

14 Q. Now, is that for the month?

15 A. Yes.

16 Q. So if I knew the average burn for a  
17 residential, industrial, commercial customer, I  
18 could -- I could figure out roughly how many  
19 customers were in the local area based on that burn,  
20 correct?

21 A. Sure.

22 Q. So obviously --

23 EXAMINER FARKAS: You are going to have  
24 to speak up.

25 THE WITNESS: I'm sorry.



1 EXAMINER FARKAS: It's okay.

2 Q. The smaller the number the fewer the  
3 customers that are on that particular system,  
4 correct?

5 A. Not necessarily.

6 Q. That could be because the mix of  
7 customers could be more industrial if they are  
8 smaller.

9 A. Or commercial instead of residential,  
10 yes.

11 Q. Now, at the bottom of the numbers it says  
12 "To Storage Cobra To TCO 44,000 Allocation." Can you  
13 tell me what that means?

14 A. I'm assuming the way it was written out  
15 they took 44,000 dekatherms of their imbalance and  
16 moved it off of Cobra and into TCO storage.

17 Q. And that was done in lieu of what source  
18 of gas? What did this replace?

19 A. I'm not sure I understand the question.

20 Q. If you didn't have the ability to work  
21 off the imbalance, would that have been interstate  
22 purchases or more local purchases?

23 A. These volumes I would say it would be  
24 local purchases.

25 Q. So the imbalance that was on Cobra could

1 have been made up of either local production or  
2 interstate purchases, and then by using that  
3 imbalance you replaced local production, correct?

4 A. I don't think you replaced anything. You  
5 use -- you were trying to burn your positive  
6 imbalance.

7 Q. You created the positive imbalance in the  
8 first place because you purchased either too much  
9 local production or too much interstate gas, correct?

10 A. Yes.

11 Q. So going into this month, you had this  
12 large imbalance that you needed to work off so by  
13 taking gas from your imbalance, you did not purchase  
14 local production, or you did not purchase interstate  
15 gas? Which did you replace with your imbalance?

16 A. These volumes on that system probably  
17 local production.

18 Q. Now, under the number for the Holmesville  
19 system there is a designation "EM." Can you tell me  
20 what that means?

21 A. Electronic measurement.

22 Q. And then at the bottom there it says "UM  
23 Mar." Can you tell me what that means?

24 A. Those are direct tap customers that don't  
25 go through a city gate.

1           Q.   And to the extent that it lists for West  
2           Millersburg "96 Allocation," would that be, if you  
3           know, residential, commercial, or industrial  
4           customers?

5           A.   The 96 is probably a combination  
6           actually.

7           Q.   And would the same be true with North  
8           Holmesville?

9           A.   North Trumbull?

10          Q.   Under --

11          A.   I'm sorry.

12          Q.   Under Holmesville the last line is North  
13          Holmesville 4,499.

14          A.   Yes. Those systems are -- I mean, I  
15          guess it depends on what you want to call an  
16          industrial or a commercial. A lot of those customers  
17          are Amish sawmills and Amish stores, and they use  
18          natural gas to produce things.

19          Q.   And a direct tap customer is a customer  
20          that's right on the pipeline system, correct?

21          A.   Yes.

22          Q.   And the pipeline system in this case  
23          would be the Cobra system, correct?

24          A.   Correct.

25          Q.   Now, the Cobra to TCO designation had two

1 asterisks listed. And at the bottom of the page it  
2 says "Cobra will not charge transport for delivery to  
3 storage." Do you see that?

4 A. Yes.

5 Q. And the reason there is no transport  
6 charge is because they're simply doing an accounting  
7 and there is no actual gas flowing, correct?

8 A. I don't know why they are not doing --  
9 according to this sheet the gas actually flowed.

10 Q. So you think the gas actually flowed, but  
11 Cobra did not charge a transportation fee?

12 A. According to this September Actuals  
13 44,000 dekatherms went from Cobra Churchtown to TCO  
14 Storage.

15 Q. And you have no understanding of why  
16 Cobra did not charge a transportation fee for the gas  
17 that actually moved on its system.

18 A. I don't unless they were trying to clean  
19 up their own imbalances.

20 Q. Now, if I look at the fourth page of the  
21 October 20, 2009, Cobra monthly invoice, it lists a  
22 number of customers there. And are those commercial  
23 or industrial customers?

24 A. Those are Northeast Ohio transport  
25 customers.

1           Q.    They are transportation customers, and  
2 they would have to be either commercial or industrial  
3 customers, correct?

4           A.    Yes.  They have to meet a criteria.

5           Q.    That's because Northeast doesn't allow  
6 residential customers to transport gas, correct?

7           A.    Correct.

8           Q.    Now, the shipper listed there is the  
9 various marketers that are shipping the gas on behalf  
10 of those transportation customers, correct?

11          A.    Yes, sir.

12          Q.    And then usage is how much they are  
13 actually shipping?

14          A.    Yes.

15          Q.    And then the shrink would be the  
16 amount --

17          A.    The usage -- I'm sorry.

18          Q.    I'm sorry?

19          A.    I'm sorry.  The usage would be what the  
20 customer actually burned that NEO read the meter.

21          Q.    Okay.  And then you have a 1 percent  
22 shrink rate and then there is a total usage.  So are  
23 you adding 1 percent to the usage to get the total  
24 usage?

25          A.    Yeah.  At the time Northeast Ohio's

1 shrink was 1 percent so if International Auto  
2 Components usage was 4,331 dekatherms, they would  
3 have had to ship 4,375 dekatherms to the NEO city  
4 gate.

5 Q. Okay. Now, then at the bottom of those  
6 customers under Millersburg it says "Meter Read  
7 3,872." What does that mean? The 3,872, what does  
8 that represent?

9 A. That represents the meter that -- the NEO  
10 city gate meter.

11 Q. And that meter is indicating how much was  
12 actually burned on that day or that month?

13 A. In that month.

14 Q. So then where it says "Constellation,  
15 Energy America, Exelon," the amounts there are how  
16 much gas they actually delivered, correct?

17 A. Yes.

18 Q. So it looks like the balances, that they  
19 delivered 5,999 dekatherms more than these  
20 transportation customers actually burned, correct?

21 A. Yes.

22 Q. Now, what happened to that excess gas  
23 that the transportation customers delivered?

24 A. Well, it didn't go through the meter so  
25 it would go on Northeast Ohio's imbalance with Cobra.

1           Q.   And does Cobra bill Northeast for its  
2 imbalances?

3           A.   No.

4           Q.   Now, how do you -- now, the 5,999  
5 dekatherm imbalance, how does that get corrected on  
6 page 2 of this same invoice?

7           A.   I'm not sure.

8           Q.   Okay. Let me ask you this, if the  
9 transportation customers delivered that gas and at  
10 the time they purchased that gas let's say the price  
11 was \$2 a dekatherm and then if later months they take  
12 the gas back when the gas is \$4 a dekatherm, they are  
13 just balancing out in volumes, correct? They are not  
14 balancing out in value of the gas.

15          A.   Correct.

16          Q.   Is there anywhere that the value of the  
17 gas does any accounting to differentiate between  
18 delivering \$2 gas and then taking back gas when it's  
19 \$4?

20          A.   No.

21          Q.   So when that happens, you are relying on  
22 the nontransportation customers to adjust their  
23 usage -- their purchases in order to account for the  
24 imbalance from transportation customers, correct?

25          A.   I'm not sure what you are asking me.

1           Q.    You have transportation customers, and  
2           you have GCR customers.  Those are the only kind of  
3           customers you have, right?

4           A.    Yeah.

5           Q.    If a transportation customer delivers too  
6           much gas, then in order to stay in balance you have  
7           to adjust what you are doing for the GCR, correct?

8           A.    Okay.

9           Q.    Is that correct?

10          A.    Yes.

11          Q.    Okay.  So that is actually what you do on  
12          a monthly basis, when the transportation customers  
13          deliver too much or not enough, you adjust the GCR  
14          volumes in order to accommodate those imbalances,  
15          correct?

16          A.    Yes, except that the way that this is set  
17          up and the way that this would flow this should go to  
18          NEO's OBA statement.  The gas should be sitting  
19          waiting for NEO to pull it into the system.  It  
20          shouldn't cost the transportation customers --  
21          residential customers anything.  Gas is laying in the  
22          system.  It's bought.  It's paid for.

23          Q.    If NEO reduces purchases of local  
24          production in a month in order to accommodate excess  
25          transportation volumes, then those customers are



1 perhaps losing the opportunity to purchase that local  
2 production at a local price, aren't they?

3 A. I suppose so but if you're getting credit  
4 for 5,999 dekatherms of natural gas that the GCR --  
5 that does not go into the cost of gas on the GCR, I  
6 am not sure how you figure that's hurting customers.

7 Q. The residential -- if that 5,999  
8 dekatherms flowed to the GCR, the GCR would pay for  
9 that gas, correct?

10 A. The 5,999 dekatherms was paid for by the  
11 transportation customers, it was delivered to NEO to  
12 be burned, and it's going to get burned eventually.  
13 It's already paid for. It's sitting on an OBA  
14 somewhere.

15 Q. Do those transportation customers pay any  
16 kind of balancing fee in order for you to keep them  
17 in balance?

18 A. No.

19 Q. Now, the other two systems here, Honey  
20 Run and West Warren, are those -- so then  
21 Millersburg, Honey Run, and West Warren, those are 3  
22 of the over 100 systems you referred to, correct?

23 A. Yes.

24 Q. Are they the only three that are on the  
25 Cobra system?

1 A. No.

2 Q. How come the others don't appear here?

3 A. Apparently they don't have a marketer on  
4 the system.

5 Q. So if I go through each of these invoices  
6 and I look at the same page, I could see how many of  
7 the 100 systems actually took gas from Cobra during  
8 the audit period, correct?

9 A. To a point because some of the systems  
10 that are on here are tied into other systems that  
11 wouldn't -- all these invoices show is where the NEO  
12 city gate is, but if Char is tied into Mount Eaton,  
13 it wouldn't show.

14 Q. But on the Cobra system you would only  
15 have the systems that are listed on this comparable  
16 page 4 on each monthly invoice, correct?

17 A. Those are your city gates off of Cobra,  
18 yes. But a city gate off Dominion and a city gate  
19 off Cobra could be tied together.

20 Q. Now, if I add up all the treating fees  
21 for each of the Cobra invoices, would that give me  
22 the total amount that Northeast paid to Cobra for all  
23 processing during the audit period?

24 A. I would assume so.

25 Q. And I believe you indicated previously

1       that you don't know if all of the volumes associated  
2       with those fees actually went through the processing  
3       plant, correct?

4             A.    Well, it's confusing to me because I'm  
5       looking at a bill that says 44,000 dekatherms went  
6       through the processing plant off to TCO, but you only  
7       got charged for a couple hundred dekatherms on the  
8       bill, so I'm not sure how that works.

9             Q.    Do you know if you get any other bills  
10      from Cobra that would reflect any processing fees  
11      other than this set of Cobra invoices?

12            A.    I do not.

13            Q.    Is it possible that you get additional  
14      invoices from Cobra that would charge other  
15      processing fees that are not listed in this set of  
16      invoices?

17            A.    It's possible but I don't believe we do.

18            Q.    Who would know that for certain?

19            A.    I don't know.

20            Q.    Now, I believe earlier we indicated that  
21      JDOG has been purchasing gas for Northeast since  
22      2008, correct?

23            A.    Yes, sir.

24            Q.    And prior to 2008 who did the purchasing  
25      of local production for Northeast?

1           A.    It was a combination of myself and Tim  
2   Roshetko.

3           Q.    And who is Mr. Roshetko?

4           A.    Mr. Roshetko is a sales representative  
5   for Northeast.

6           Q.    And you were both employees of Northeast  
7   at that time, correct?

8           A.    Yes.

9           Q.    So the purchasing was done in-house.

10          A.    Yes.

11          Q.    And to the extent that the purchasing was  
12   done in-house, your salaries, yours and  
13   Mr. Roshetko's, were built into Northeast's base  
14   rates, correct?

15          A.    I would hope so.

16          Q.    They weren't charged to GCR customers to  
17   the best of your knowledge, correct?

18          A.    No, sir.

19          Q.    Now, when JDOG was inserted into the  
20   process, who made the decision to insert JDOG into  
21   the process?

22          A.    I don't know.

23          Q.    How were you informed that you would no  
24   longer be purchasing gas?

25          A.    We were told that they were going to hire

1 the marketing company to get the -- do the gas  
2 purchasing, and they gave us a drop dead date when  
3 they wanted the marketing company to do the gas  
4 purchases.

5 Q. Who told you that?

6 A. I believe it was Mr. Smith.

7 EXAMINER FARKAS: Mr. who?

8 THE WITNESS: Mr. Smith.

9 Q. Who was the former president of the  
10 company, correct?

11 A. Yes.

12 Q. And he was president at the time that he  
13 told you that the marketer was being selected,  
14 correct?

15 A. Yes.

16 Q. Were you told that the marketer was being  
17 selected because you and Mr. Roshetko were not  
18 purchasing the lowest possible cost gas?

19 A. No.

20 Q. Were you and Mr. Roshetko able to  
21 purchase gas on a monthly basis, local production, in  
22 order to meet all the company's needs?

23 A. At the time, yes.

24 Q. Did you have any problem where there were  
25 months that you couldn't purchase the gas that was

1 needed, or were you successfully able to purchase gas  
2 each month?

3 A. I believe we purchased as much local  
4 production gas as we could each month.

5 Q. And, again, you indicated previously by  
6 purchasing that local production, that was the  
7 cheapest gas that Northeast had available to it,  
8 correct?

9 A. At the time, yes.

10 Q. Now, when JDOG was inserted into the  
11 process, did JDOG charge Northeast for going out and  
12 purchasing gas on its behalf?

13 A. I would assume so.

14 Q. Do you know how much JDOG was charging  
15 Northeast starting in 2008 to go out and purchase gas  
16 on behalf of Northeast?

17 A. I do not.

18 Q. Would you agree with me that any  
19 additional charges that JDOG built into their  
20 purchasing would have been costs that would have been  
21 flowed through GCR customers?

22 A. Up until 2008, yes. No, I'm sorry. Yes,  
23 I understand.

24 Q. Beginning 2008.

25 A. Yes.

1           Q.    Now, if you look at purchases prior to  
2   2008 and after 2008, did the company purchase roughly  
3   the same amount of local production after 2008 as  
4   they did prior percentagewise?

5           A.    I believe so.  It's a tough question  
6   because in 2008, there was another layer of pipeline  
7   and over 5,000 customers added.

8           Q.    If you look at just the system that was  
9   consistent pre2008 to after 2008, that would be  
10  roughly 10,000 customers.

11          A.    Okay.

12          Q.    Would you say that the purchases before  
13  JDOG and after JDOG were roughly the same amount of  
14  local production?

15          A.    Yeah.

16          Q.    So would it be fair to assume if the same  
17  amount of local production was purchased, we should  
18  still see post2008 that local production was  
19  generally cheaper than interstate gas?

20          A.    No.  The reason I say that, again, is  
21  because there was a pipeline inserted between some of  
22  that interstate gas and the end use.

23          Q.    Right, but I said for purposes of  
24  comparison focus on the 10,000 customers that you had  
25  prior to 2008 and you had after 2008.  That did not

1 include the customers that you added.

2 A. Okay.

3 Q. If you look at that, would you assume  
4 that local production after 2008 would still have  
5 been cheaper generally speaking than interstate  
6 purchases?

7 A. I would assume so.

8 Q. So you were given no reason why JDOG  
9 began purchasing gas for Northeast instead of you and  
10 Mr. Roshetko doing it, correct?

11 A. Correct.

12 Q. Were you curious as to why you no longer  
13 had that responsibility?

14 MR. YURICK: Objection, your Honor. I  
15 don't think it's at all relevant whether he was  
16 curious or not.

17 MR. SERIO: Your Honor, he is vice  
18 president of the company at the time, and one of the  
19 duties that he has been doing consistent and doing  
20 well is taken away from him. I would think he would  
21 be curious why it was taken away. Was I not doing a  
22 good job? Was there a better opportunity out there?

23 EXAMINER FARKAS: I'll allow the  
24 question.

25 Q. Were you curious at all, Mr. Whelan?



1           A.    I was.  I just assumed that because of  
2   the additional customers, because of the additional  
3   pipelines, and because of the additional interstate  
4   pipelines that management made a decision that they  
5   wanted me to focus more on the operations than they  
6   did the purchase of local production.

7           Q.    Did you ever go to management and  
8   indicate you were not capable of doing the purchasing  
9   after the other system or the other 5,000 customers  
10  were added?

11          A.    No.

12          Q.    Did the -- did management ever ask you if  
13  you were capable of still doing purchasing in-house?

14          A.    No.

15          Q.    We were talking about the imbalance on  
16  Cobra, and I believe you indicated that imbalance  
17  could be caused by interstate gas, correct?

18          A.    That imbalance could be caused by --  
19  yeah, it can be caused by anything.

20          Q.    Now, wouldn't an interstate gas imbalance  
21  flow directly to your TCO storage?

22          A.    No, not --

23          Q.    Why not?

24          A.    Because when Cobra was inserted between  
25  TCO and Cobra, Cobra inherited --

1           Q.    I'm sorry.  You said when Cobra was  
2           inserted between TCO and Cobra.

3           A.    Yes.  Cobra bought their assets off of  
4           TCO.

5           Q.    Okay.

6           A.    So a lot of the meter stations that would  
7           have been tied directly off of TCO and we would have  
8           used our storage and our OBAs for now become  
9           Cobra meters instead of TCO meters.  We went from  
10          having five TCO meters in Holmesville to having one  
11          TCO meter which was Cobra's.

12               EXAMINER FARKAS:  You used OBA.  What  
13          does that mean?

14               THE WITNESS:  Operational balancing  
15          agreement.

16          Q.    So by Cobra purchasing the line from TCO  
17          an additional cost was added on to the GCR costs for  
18          Northeast customers, correct?

19          A.    Yes.

20          Q.    So if you purchase an excess of  
21          interstate gas on the TCO system, you don't  
22          necessarily flow that excess gas into TCO's storage  
23          direct.  You sometimes have to go through the  
24          Cobra system to get it to TCO storage?

25          A.    No.  It's the other way around.  You have

1 to purchase some of your interstate supplies that's  
2 actually going through the interstate pipeline off of  
3 TCO. If you nom 40,000 dekatherms from TCO to  
4 Cobra North Trumbull, that 40,000 dekatherms is going  
5 to flow to Cobra North Trumbull. Your imbalance  
6 could end up with Cobra, not TCO.

7 Q. Right, but if you have any interstate  
8 purchases that are excessive on the TCO system, can  
9 those flow direct to the TCO storage that you  
10 contract for?

11 A. Some of them, yes. Some of them, no. If  
12 it's -- if the gas gets nomed to Cobra, the gas flows  
13 to Cobra.

14 Q. We're talking two different things. I'm  
15 referring just to interstate purchases --

16 A. Okay.

17 Q. -- on the TCO system.

18 A. Correct.

19 Q. So if you purchase on the TCO system --

20 A. Yes.

21 Q. -- can all of those excess purchases flow  
22 direct to TCO storage?

23 A. Not if it's not to Cobra. That's the  
24 same answer I've given you three times, that if you  
25 are buying interstate gas and there's certain meters

1     that have an OBA, there's certain meters that have  
2     GTS, there's certain meters that are -- fall under  
3     FSS, and there are certain meters that fall under  
4     FTS. Once that gas is nominated to Cobra that gas is  
5     off the TCO system. It's not on TCO any more.

6             Q.     If it's interstate purchases on TCO,  
7     physically where does that gas go?

8             A.     Wherever we send it to.

9             Q.     And if it's a positive imbalance, you  
10    send it to TCO storage.

11            A.     If it's a positive imbalance on TCO, we  
12    can send it to TCO storage. If you sent too much gas  
13    into Cobra, it would go onto Cobra's OBA.

14            Q.     So since you pay for TCO storage anyway  
15    isn't it cheaper for GCR customers to send those  
16    positive imbalances to your TCO storage?

17            A.     I don't think you send the positive  
18    imbalances anywhere on purpose. The positive  
19    imbalances you find out 20 days after you've already  
20    nominated the gas at the end of the month and read  
21    the meters.

22            Q.     On a daily basis are you aware of how  
23    your imbalances are working?

24            A.     100 percent, no. There's not enough for  
25    the system to electronically meter.

1           Q.    How much of the system is electronically  
2 metered?

3           A.    Maybe 20 percent.

4           Q.    20 percent is numbers or volumes?

5           A.    A combination of both.  It's probably  
6 about the same.

7           Q.    So on a daily basis you know about -- how  
8 about 20 percent of your system is doing, correct?

9           A.    Yeah.

10          Q.    And on a daily basis you can look back a  
11 day and compare what you nominated versus what you  
12 actually took, correct?

13          A.    On certain meters, yes.

14          Q.    On a daily basis for the non -- for the  
15 nonmetered parts of the system, do you have any  
16 ability to determine how you're doing with  
17 nominations versus actual burn rates based on actual  
18 weather versus projected weather?

19          A.    We monitor the weather, and we try to  
20 read the meters once a week, even the ones that  
21 aren't electronically metered, but that's still not  
22 an absolute science.  It's still -- it is what it is.  
23 Yes, it's cheaper to move gas into FSS storage if you  
24 can put it in FSS storage, but you can't use FSS  
25 storage 12 months out of the year either.

1           Q.    Now, when JDOG was inserted into the  
2   process of purchasing gas, who did you interact with  
3   at JDOG that was doing the actual purchasing for  
4   Northeast?

5           A.    I believe it started out as Steve Rego,  
6   and then it transferred to Mike Zappitello.

7           Q.    And Mr. Rego had previously been an  
8   employee of Orwell, correct?

9           A.    I'm not sure whose payroll he was on. I  
10   know he was at Orwell and ONG but I don't know.

11          Q.    So when you interacted with him, he was  
12   indicating that he was working on behalf of JDOG,  
13   correct?

14          A.    Yes. He took over the gas purchasing  
15   functions for all three utilities.

16          Q.    So in 2008, do you know if Mr. Rego was  
17   still on the Orwell payroll or not?

18          A.    I do not know.

19          Q.    You said it transitioned from Mr. Rego to  
20   Mr. Zappitello.

21          A.    Correct.

22          Q.    Was there any other individuals at JDOG  
23   that you interacted with?

24          A.    Not that I recall.

25          Q.    So is it your understanding that all the

1 functions that JDOG did on behalf of Northeast were  
2 done by either Mr. Rego or Mr. Zappitello?

3 A. I have no idea.

4 Q. Now, once JDOG began doing purchases of  
5 local production for Northeast, did Northeast do any  
6 kind of analysis to determine what kind of price they  
7 were getting from JDOG versus the price that they  
8 were paying prior to JDOG doing the purchasing?

9 A. I did not.

10 Q. Do you know if anybody at the company  
11 did?

12 A. I do not.

13 Q. In your opinion would it have been  
14 reasonable to do some kind of analysis to determine  
15 if JDOG was able to make purchases of local  
16 production at a rate comparable or better than what  
17 you were doing when it was being done in-house?

18 MR. YURICK: Objection.

19 EXAMINER FARKAS: I will allow the  
20 question.

21 A. Yes.

22 Q. Was there a decision made by anybody in  
23 management not to do an analysis like that?

24 MR. YURICK: I will object again. I  
25 don't know how he could possibly know.

1 EXAMINER FARKAS: If he knows, he can  
2 answer.

3 Q. Did anyone from management say to you "I  
4 don't want any analysis done"?

5 A. No one from management told me they  
6 didn't analyze it. I answered that question I don't  
7 know, and I would have to answer I don't know. I'm  
8 not sure that someone there didn't analyze it, that  
9 there is not a spreadsheet somewhere.

10 Q. Now, when Mr. Rego and then  
11 Mr. Zappitello were doing the purchasing for JDOG,  
12 did they base their purchasing on information that  
13 Northeast provided to them?

14 A. I would say in the beginning, yes.

15 Q. During the audit period did Northeast  
16 still provide information to Mr. Rego and then  
17 Mr. Zappitello that they would use in going out and  
18 determining how much gas, local production, to  
19 purchase on behalf of Northeast?

20 A. Yes.

21 Q. So they didn't do any independent  
22 analysis; they simply took the information you gave  
23 them and then went out and contracted for volumes of  
24 gas to meet your requirements, correct?

25 A. No.



1 Q. No?

2 A. They would send us what they felt we  
3 needed for the month and prior to the month. We  
4 would review it and say "we think you should do this"  
5 or "we think you should do that" and make a  
6 recommendation.

7 Q. Generally speaking was the recommendation  
8 that they sent to you one that you accepted or one  
9 that you had to modify?

10 A. I would say it would depend on the time  
11 of the year, and during some of this audit period,  
12 you know, especially in '10, everything was getting  
13 modified because it wasn't the time of year.

14 Q. When you say time of year, do you mean  
15 winter heating season versus summer heating season?

16 A. Yes.

17 Q. During which period did you have more  
18 modifications to the recommendations that JDOG would  
19 send? During the winter?

20 A. Obviously during the winter.

21 Q. I'm sorry?

22 A. During the winter.

23 Q. And the winter heating period would  
24 generally be considered the period from September to  
25 March, correct?

1           A.     Correct.

2           Q.     Now, when you were doing purchasing of  
3     local production, was your purchasing prior to 2008  
4     done based on a NYMEX price, New York Mercantile  
5     Exchange?

6           A.     It would be a starting point, yes.

7           Q.     And from that starting point would you  
8     add or subtract from that price with your local  
9     contractor?

10          A.     Both.

11          Q.     Both.

12          A.     Both.

13          Q.     When would you add to the NYMEX for local  
14     production? Under what circumstances?

15          A.     If it was captive, if it was in a place  
16     where it was needed more than it was needed somewhere  
17     else.

18          Q.     So if you had a producer that was needed  
19     to send production to your system and that producer  
20     had other alternatives, that would generally get that  
21     producer a NYMEX plus price, correct?

22          A.     Correct.

23          Q.     And if you had a producer that was  
24     captive to your system, would that generally mean  
25     that you could get a NYMEX minus price?

1           A.    No.  If the producer was captive to our  
2           system, we could also be captive to him.  If the  
3           producer was captive to our system, we had another  
4           supply source, yes, it would mean you could get a  
5           NYMEX minus price.

6           Q.    Okay.  So other than whether there were  
7           competitive options, did anything else factor into  
8           your NYMEX plus or your NYMEX minus when you were  
9           negotiating local production contracts prior to 2008?

10          A.    Reliability.

11          Q.    And that reliability would have been  
12          based on if you could get that gas from the producer  
13          on the peak date, correct?

14          A.    Or if we needed that gas to handle a peak  
15          day.

16          Q.    So if the producer was reliable on the  
17          peak day, they might be able to get more of a  
18          premium, and if the producer was less reliable, that  
19          would generally mean less of a premium, correct?

20          A.    Correct.

21          Q.    Now, do you recall in your deposition me  
22          asking you when you purchased local production based  
23          on the NYMEX, were your purchases NYMEX plus a basis  
24          generally or NYMEX less a basis?

25          A.    Yes.

1           Q.    Do you recall your answer being that they  
2           were all NYMEX plus a basis?

3           A.    Yes.

4           Q.    So what you just indicated now with the  
5           NYMEX less for the producers that were captive to  
6           your system or the producers that weren't as  
7           reliable, is that different than the answer you gave  
8           me during deposition?

9           A.    The answer -- you asked me a question  
10          about something I did five years ago. After the  
11          deposition, I went back through some of my notes and  
12          looked at them; and, yes, it's a different answer  
13          than you got in your deposition.

14          Q.    Okay. So but what you're saying now your  
15          recollection is that there were some NYMEX plus and  
16          some that were NYMEX minus.

17          A.    Correct.

18          Q.    Okay. Now, when you were purchasing gas  
19          prior to 2008, was there any basis included in your  
20          contracts with local producers?

21          A.    Sometimes, yes.

22          Q.    Now, when you included this basis, what  
23          was included in the basis?

24          A.    Depending on whether the producer was  
25          tied in, it could be a TCO Appalachian instead of a

1 NYMEX or it could be Dominion South Point. Typically  
2 it just -- depending on if you were competing for the  
3 gas or not, you would give them an adder to that  
4 NYMEX number.

5 Q. So, again, you would look at competitive  
6 options, and if the gas had a competitive option,  
7 they might be able to extract more of a premium; and  
8 if the gas did not have as many options, you might be  
9 able to reduce.

10 A. If your producer's gathering system is  
11 tied into Dominion and Dominion is paying \$1 and the  
12 same producer is tied into us, we pretty much need to  
13 pay the same dollar or above to get the gas.

14 Q. Okay. Now, when you were talking about  
15 the basis and adders during the deposition, you  
16 indicated that some producers had the option of going  
17 to other utilities, and other utilities might have  
18 enhancement programs. Do you recall that?

19 A. Yes.

20 Q. What other utilities were you referring  
21 to when you said "other Ohio utilities"?

22 A. Dominion East Ohio.

23 Q. And was it only Dominion East Ohio?

24 A. That's the only utility that we would  
25 compete for gas for that I know has an enhancement or

1 had an enhancement program at the time.

2 Q. What was their enhancement program at the  
3 time?

4 A. Off the top of my head I don't recall.

5 Q. Is that enhancement program still in  
6 place today?

7 A. I don't know.

8 Q. Was it in place during the audit period?

9 A. I don't know. I believe it was but I  
10 don't know for sure.

11 Q. Do you know how much per dekatherm that  
12 enhancement program forced you to increase your  
13 pricing by?

14 A. During the audit period it changed  
15 because of the price of gas. I mean, if Dominion  
16 said they were going to give you 1,200 dekatherms an  
17 Mcf, and that's what we were paying which was firm,  
18 it changed.

19 EXAMINER FARKAS: Just for the record  
20 what's an enhancement program?

21 THE WITNESS: The utility -- the Ohio --  
22 Dominion East Ohio had a program where they were  
23 encouraging Ohio local production gas into their  
24 system, and they were paying a premium for it.

25 EXAMINER FARKAS: To incent people to go

1 on their system. Okay. Thank you.

2 Q. And the premium they were willing to pay  
3 was based on what their alternative interstate would  
4 have been, correct?

5 A. I would assume so.

6 Q. So there would have been a limit to how  
7 much incentive they could pay based on what the  
8 interstate market was doing at the time.

9 A. I would assume so.

10 Q. Now, when you are looking at these  
11 marketers -- the producers that had competitive  
12 options on a per dekatherm basis, can you tell me  
13 generally how much more you would have to pay them on  
14 the plus side in order to purchase gas from those  
15 producers?

16 A. The utility purchased gas in Mcfs so I'm  
17 not sure what it would be per dekatherm, but it would  
18 be 50 cents to a dollar depending on where the  
19 producer was located, how bad we needed their gas,  
20 and what kind of Btu content.

21 Q. A lot of the producers you are dealing  
22 with, their alternative would have been to sell into  
23 the Dominion system or sell onto the Cobra interstate  
24 system and then flow it to TCO and other interstate  
25 customers?

1           A.    Or, yeah, Gatherco or Piedmont.

2           Q.    And you're saying that would have been  
3 roughly 50 cents to a dollar, that competitive  
4 markup?

5           A.    Depending on where they were at.

6           Q.    For the producers that were captive how  
7 much would generally you get in the way of a discount  
8 off the NYMEX?

9           A.    I don't know.  It's going back -- I don't  
10 know.

11          Q.    Do you know if JDOG pays a similar  
12 premium for production -- for local production that  
13 has competitive options versus Ohio production that  
14 does not?

15          A.    I don't know.

16          Q.    Now, you indicated previously that you  
17 are buying on an Mcf basis versus a dekatherm basis,  
18 correct, on local production?

19          A.    On local production sold directly into  
20 the utility's pipelines, yes.

21          Q.    Now, where does Btu content come into  
22 play with Mcf versus dekatherm purchases?

23          A.    I believe all the gas on the Cobra system  
24 and all gas on the TCO system is dekatherms.

25          Q.    Now, the local production is Mcf?



1           A.    The local production sold directly into  
2           the company's pipelines is on Mcfs.  The local  
3           production that would be sold to Cobra would be on  
4           dekatherms.

5           Q.    When Cobra processes local production  
6           that goes into the system, they take heavier, wet  
7           gases such as propane and butane out of the natural  
8           gas, correct?

9           A.    Only in Churchtown.

10          Q.    Only for Churchtown.

11          A.    Yes.

12          Q.    Now, when they take the heavier gases,  
13          the wet gases out, of the natural gas, you still get  
14          the same volume, Northeast, so if 1,000 units went  
15          into the processing plant and they took 100 units of  
16          wet gases out, they would just replace that 1,000  
17          units with 1,000 units of natural gas, correct?  So  
18          you would still be whole?

19          A.    Correct.

20          Q.    Now, when the butane and the propane and  
21          the wet gases are taken out, are you familiar with  
22          the value of butane and propane compared to natural  
23          gas?

24          A.    Yes.

25          Q.    Would it be safe to say that butane and

1 propane are more valuable than dry natural gas?

2 A. Currently, yes.

3 Q. Do you know a magnitude of how much more  
4 valuable they are?

5 A. No.

6 Q. When they take out those heavier gases,  
7 the butane and propane, do you know if they sell  
8 those gases off?

9 A. I would assume so.

10 Q. Now, would they sell them off at a higher  
11 price? Is there any kind of crediting mechanism that  
12 Northeast would get because you took the gas through  
13 their system and they were able to strip those more  
14 valuable gases out?

15 A. No. Pursuant to Cobra's tariff, no.

16 Q. So Cobra's tariff you have to pay for  
17 them to process the gas, and they get to keep the  
18 expensive by-products of processing the gas also.

19 A. I guess. I'm not sure how much it would  
20 cost a dekatherm to move gas across there if they  
21 weren't keeping that. The rate might triple.

22 Q. Have you ever looked into it to determine  
23 what the rate would be compared to what you are  
24 giving up in the way of the value of those wet gases?

25 A. I don't think -- I'm not sure what -- we

1 have had this conversation before. What are you  
2 giving up? If you put a thousand dekatherms in and  
3 you take a thousand dekatherms out, what did you give  
4 up?

5 Q. If you put 1,000 dekatherms in and 100  
6 dekatherms of butane came out and you got 100  
7 dekatherms of gas back, you would still have 1,000  
8 units, correct?

9 A. If 1,000 dekatherms of gas went in and  
10 1,000 dekatherms of gas went out, what did you lose?

11 Q. If that gas was valued at \$2 an M and you  
12 put in \$2,000 of gas and you got out \$2,000 worth of  
13 gas, right?

14 A. Okay.

15 Q. If they stripped out 100 dekatherms of  
16 butane and sold that for \$10,000, would you feel that  
17 you were made whole, or did you lose an opportunity  
18 to sell that butane and make that profit yourself?

19 A. I guess the only opportunity I would have  
20 to sell butane would be if I had a processing plant.  
21 The utility doesn't have a processing plant.

22 Q. And did you ever determine a comparison  
23 between the 25 cents processing fee and the value  
24 that they get from selling off those wet gases to see  
25 if you are getting a deal or if you are giving up the

1 potential to reduce the GCR costs because you could  
2 sell off those wet gases and make additional money?

3 A. We looked at whether we could put a  
4 processing plant at the town border and do that, but  
5 it wasn't feasible because the flows aren't  
6 consistent enough.

7 Q. Did you do any analysis to compare the  
8 processing fee to the lost revenues from selling off  
9 the wet gases?

10 MR. YURICK: Objection, asked and  
11 answered, I believe, but.

12 EXAMINER FARKAS: I'll let him answer it.

13 A. I don't know why we would. We don't own  
14 a processing plant. We are a utility.

15 Q. If Cobra was not an affiliate, would you  
16 be more interested in what they do and the profit  
17 they raise from selling off those heavy gases?

18 A. No.

19 MR. YURICK: Objection.

20 EXAMINER FARKAS: Go ahead.

21 A. I don't ask TCO what their profit is or  
22 Dominion.

23 Q. Does TCO or Dominion process gas?

24 A. Absolutely, every day.

25 Q. Do they have a processing plant, and do

1 they charge you a processing fee for removing liquids  
2 from gas?

3 A. To the best of my knowledge, Dominion has  
4 processing plants. Whether they charge you or not I  
5 don't know but -- because I don't move gas through  
6 them but they have the plants.

7 Q. So we're talking about something that  
8 doesn't occur for the Northeast system. I'm talking  
9 about for the Northeast system is the fact that  
10 Cobra is an affiliate enter into the equation of not  
11 questioning how much you could get potentially from  
12 selling off those heavy liquids?

13 A. Cobra has a published tariff that was  
14 approved by this Commission. Why would I question  
15 that?

16 Q. For the benefit of GCR customers perhaps.

17 A. I don't -- I don't question TCO or  
18 Dominion's published tariff. Why would Cobra's  
19 published tariff be any different than TCO's  
20 published tariff or Dominion's published tariff?

21 Q. Do TCO or Dominion strip wet gases from  
22 gas that you purchase and send on their systems?

23 A. I'm assuming they do because the  
24 processing plant in Churchtown belonged to TCO before  
25 it belonged to Cobra.

1           Q.    When it belonged to TCO, did you get an  
2   invoice like the Cobra invoices in OCC Exhibit 2 that  
3   indicated a treating fee?

4           A.    No, because it wasn't in their tariff;  
5   it's in Cobra's tariff.

6           Q.    So the affiliate found a way to exact  
7   additional revenues --

8           A.    No.

9           Q.    -- from GCR customers.

10          MR. YURICK:  Objection.

11          EXAMINER FARKAS:  I believe he has  
12   answered that question.

13                Just for future reference, Mr. Whelan, if  
14   your counsel objects, don't -- don't continue to  
15   answer.

16          THE WITNESS:  Yeah, I know.

17          EXAMINER FARKAS:  Okay.  Thank you.

18          Q.    Do all gases on the Cobra system flow  
19   through the processing plant before it goes to  
20   customers?

21          A.    No.

22          Q.    Do you know how much of the gas on the  
23   Cobra system goes through the processing plant before  
24   it goes to customers?

25          A.    Whose customers?

1           Q.    Northeast customers.

2           A.    None of it.

3                   EXAMINER FARKAS:  Let's go off the record  
4   for a second.

5                   (Discussion off the record.)

6                   (Thereupon, at 12:26 p.m., a lunch recess  
7   was taken until 1:30 p.m.)

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Monday Afternoon Session,

July 8, 2013.

- - -

EXAMINER FARKAS: All right. Let's go  
back on the record.

Ready to proceed, Mr. Serio?

- - -

MARTIN K. WHELAN

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

CROSS-EXAMINATION (Continued)

By Mr. Serio:

Q. Good afternoon, Mr. Whelan. This morning  
we had a discussion about the TCO tariffs and the  
firm transportation and firm storage service, if you  
recall that.

A. Yes.

MR. SERIO: Could I approach, your Honor?

EXAMINER FARKAS: Yes.

Q. I would like to hand you a document  
marked for purposes of identification as OCC Exhibit  
3.

EXAMINER FARKAS: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. And it says "FERC Gas Tariff Fourth



1 Revised Volume No. 1 (Superseding Third Revised  
2 Volume No. 1) of Columbia Gas Transmission, LLC,  
3 Filed with the Federal Energy Regulatory Commission."  
4 Do you see that?

5 A. Yes.

6 Q. If you could turn to page V.2. It's in  
7 the upper right-hand corner. Do you have that page?

8 A. I don't. How far back is it?

9 Q. I'm sorry?

10 A. How far back is it?

11 Q. It's about the fifth page back.

12 EXAMINER FARKAS: It is the first  
13 horizontal page like that.

14 Q. Right in the upper right-hand corner it  
15 said V.2. It says "Currently Effective Rates FTS."

16 A. Okay.

17 Q. And that shows what the firm  
18 transportation service rates for Columbia  
19 Transmission Company are, correct?

20 A. Yes.

21 Q. And that's effective June 1, 2013?

22 A. That's what it says, yes.

23 Q. So the reservation or demand charge would  
24 be the \$6.28 figure under "Total Effective Rate,"  
25 correct?

1           A.    Yes.

2           Q.    And that's the charge that you pay TCO to  
3 have the right for firm transportation service per  
4 dekatherm, correct?

5           A.    I don't know.

6           Q.    Now, if you go eight pages back from  
7 that, and it's V.9. at the upper right-hand corner,  
8 this shows the applicable firm storage service rate,  
9 correct?

10          A.    I'm sorry, what page?

11          Q.    V.9. Upper right-hand corner.

12          A.    Okay.

13          Q.    And that shows the firm storage service  
14 rate for TCO, correct?

15          A.    Yes.

16          Q.    And that would be 1.05 -- \$1.509?

17          A.    That's what it says, yes.

18          Q.    And that's effective February 1, 2013,  
19 correct?

20          A.    Yes.

21          Q.    So that's the magnitude of the charges  
22 that are built into the interstate transportation  
23 costs that flow into the GCR, correct?

24          A.    I'm not sure what you're asking.

25          Q.    That is the demand cost that's built into

1 GCR -- into the GCR as a result of paying TCO for  
2 demand costs for firm storage and firm  
3 transportation, correct?

4 A. Okay.

5 Q. And then this morning we also talked  
6 about the value of the propane and butane. Do you  
7 recall that?

8 A. Yes.

9 MR. SERIO: Could I approach again, your  
10 Honor?

11 EXAMINER FARKAS: Yes.

12 Q. I would like to hand you a one-page  
13 document marked for purposes of identification OCC  
14 Exhibit 4.

15 EXAMINER FARKAS: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. SERIO: And I have got a second  
18 one-page document I would like to mark OCC Exhibit 5.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. Now, OCC Exhibit No. 4 is the Pembina  
21 Pipeline Corporation in the upper left-hand corner.  
22 It says "Risk Management Disclosure as of March 30,  
23 2012." Do you see that for identification purposes?

24 A. Yes.

25 MR. YURICK: Your Honor.

1 EXAMINER FARKAS: Yes.

2 MR. YURICK: There will be an objection  
3 at this point. I don't think there is any foundation  
4 for asking this witness any question about this piece  
5 of paper. I don't know how he could authenticate it  
6 or identify it.

7 MR. SERIO: I can do that, your Honor.

8 EXAMINER FARKAS: Okay.

9 Q. (By Mr. Serio) This morning when we were  
10 discussing the value of what gases -- you indicated  
11 it was your understanding that propane and butane had  
12 values significantly greater than dry gas. Do you  
13 recall that?

14 A. Yes.

15 Q. Have you ever looked to see what the  
16 value of propane and butane is compared to natural  
17 gas?

18 A. No.

19 Q. Do you have any idea of the magnitude of  
20 the value greater than the natural gas itself for  
21 butane and propane?

22 A. Currently it's pretty high, but it  
23 fluctuates just like anything else.

24 Q. If you look at OCC Exhibit 5, it comes  
25 from the U.S. Energy Information Administration. Are

1       you familiar with the EIA?

2               A.     Yes.

3               Q.     And have you used EIA documents in the  
4       course of your duties?

5               A.     Yes.

6               Q.     And that shows the spot -- that shows the  
7       prices for propane spot price at Mont Belvieu, Texas,  
8       correct?

9               A.     Yes.

10              Q.     And those are prices from January of '92  
11       through May of '13, correct?

12              A.     Correct.

13              MR. YURICK:  There would be an objection  
14       at this point to OCC Exhibit No. 5 because as far as  
15       I'm aware, there's no one who's testified or is going  
16       to testify that somehow solids from the  
17       Cobra Pipeline could be economically transported or  
18       utilized at Mont Belvieu, Texas, so I don't think  
19       this has any relevance, and I'm not certain that this  
20       witness could even testify this is a true and  
21       accurate copy of a U.S. Energy Information  
22       Administration document as of a particular date.

23              MR. SERIO:  Your Honor, the Commission  
24       can take administrative notice of other governmental  
25       documents.  The witness has indicated he is familiar

1 with the Energy Administration -- EIA documents. He  
2 has used them in the past. This is an EIA document  
3 that should be self-authenticating and the witness  
4 just indicated he is familiar that the price  
5 fluctuates over time and here it shows the price  
6 fluctuates from '92 to 2013 so it's within the area  
7 of expertise that he indicated he is familiar with.

8 MR. YURICK: And I would just reiterate,  
9 your Honor, assuming all that's true, there is no  
10 evidence to suggest that any solids, liquids, or  
11 other character of material can be economically  
12 transported or sold by these utilities in this gas  
13 cost recovery case in Mont Belvieu, Texas.

14 MR. SERIO: That's correct, your Honor.  
15 However, this is a case about their management  
16 practices. And to the extent that management  
17 neglected to look into the opportunity that selling  
18 these more valuable gases would have, then that would  
19 constitute imprudence on the part of the management  
20 and that is exactly what an MP audit case is supposed  
21 to do. This is a piece of evidence that gives  
22 magnitude of value to those heavy gases that at this  
23 point are given to an affiliate pipeline so the  
24 affiliate pipeline can profit from selling them  
25 rather than any of those revenues being credited back

1 to the gas company that purchased the gas and paid  
2 for the extraction in the first place.

3 EXAMINER FARKAS: I'm going to overrule  
4 the objection, allow him to answer these questions to  
5 the extent he's aware, he has knowledge.

6 Q. (By Mr. Serio) Now, Mr. Whelan, looking  
7 at the bottom of OCC Exhibit 5, is that the kind of  
8 fluctuations you were talking about when you said the  
9 market price of those heavy gases fluctuates over  
10 time?

11 A. Sort of but not really. For this chart  
12 to have any value we would have to have the same  
13 chart for the Henry Hub natural gas prices.

14 Q. That would be for the natural gas prices  
15 for Henry Hub, correct?

16 A. You would have to appreciate the Henry  
17 Hub natural gas prices to compare this to see if the  
18 heavies were worth more or less than the natural gas.

19 Q. Now, the gas is listed on OCC Exhibit 4,  
20 propane, normal butane, and ISO butane. Those are  
21 three of the wet gases that can be extracted from the  
22 local production that goes through the  
23 Cobra processing plant, correct?

24 A. I would assume so.

25 Q. It would be your understanding based on

1 your reading of the Cobra tariff, OCC Exhibit 1, that  
2 those are, in fact, the type of gases that are  
3 extracted, correct?

4 A. Correct.

5 Q. Now, if you look on OCC Exhibit No. 4 and  
6 you look at the first set of numbers under "Forward  
7 Market Strip," the second one says FRAC Spread Hedged  
8 Volumes." Do you see that?

9 A. No. And even with my glasses the print  
10 is just too small.

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

12 EXAMINER FARKAS: Yes.

13 Q. Second set of numbers.

14 A. Okay.

15 Q. Here. "FRAC Spread Hedged Volumes."

16 A. Okay.

17 Q. Do you see the little shaded that says  
18 "Natural Gas Participating Options" and then below  
19 that "Natural Gas"?

20 A. Okay.

21 Q. And if you go across, you see quarter  
22 two, quarter three, quarter four, quarter one and  
23 that gives a price for the comparable natural gas.  
24 Do you see that?

25 A. Yes.



1 Q. Would that be the kind of comparison you  
2 would want to see for Henry Hub to -- in order to  
3 evaluate the natural gas compared to the wet gases?

4 A. I would assume so, yes. I mean, in all  
5 honesty I don't even know where the Pembina Pipeline  
6 is.

7 Q. Now, you are familiar that Northeast has  
8 a contract with Gas Natural, correct? Gas Natural  
9 Corporation?

10 A. No.

11 Q. I'm sorry, Gas Natural Service Company.

12 A. Yes.

13 Q. Yes. And who is Gas Natural Service  
14 Company?

15 A. I believe it's a subsidiary of Gas  
16 Natural, Inc. That is the clearing house for our  
17 utility gas purchases, keep track of the contracts  
18 and the pricing and they monitor invoices.

19 Q. And is Gas Natural an affiliate of  
20 Northeast?

21 A. Gas Natural, Inc.?

22 Q. Gas Natural Service Company.

23 A. I would assume so, yes.

24 Q. Now, by the function of a clearing house,  
25 explain to me exactly what you mean by clearing

1 house.

2 A. In the last audit it was brought to our  
3 attention that you guys didn't like our contract  
4 management so they took the contract management  
5 function away from the three utilities and put it  
6 with a separate corporation to manage all the  
7 contracts.

8 Q. Now, to the extent that Gas Natural or  
9 Gas Natural Service Corp., I will use them  
10 interchangeably, if that's okay.

11 A. Yeah.

12 Q. To the extent they manage the contracts,  
13 do they do anything more than verify the numbers on  
14 the contracts?

15 A. I don't know.

16 Q. Do you know if they look into the  
17 qualitative effect of the contracts to determine if  
18 the contract is producing a good price for a product?

19 A. I don't know.

20 Q. Has Northeast ever done any evaluation to  
21 determine how effective Gas Natural Service Company  
22 is in maintaining the contracts and making sure that  
23 the billings happen correctly, that the contract  
24 terms are followed?

25 A. I'm sure that they have.

1 Q. Do you know that for a fact?

2 A. I'm sure it's part of the audit process  
3 for Northeast Ohio Natural Gas that those contracts  
4 are audited by an independent auditor.

5 Q. And who would that independent auditor  
6 be?

7 A. I don't know.

8 Q. Have you ever seen such an audit?

9 A. We go through an audit every year, SOX  
10 audit and a financial audit.

11 Q. Have you ever seen the results of an  
12 audit that showed an evaluation of how effective Gas  
13 Natural Service Company is in keeping track of the  
14 contracts?

15 A. No.

16 Q. Now, your testimony talks about the RFP  
17 that was sent out, and I believe you indicated there  
18 were 15 bidders that were sent the RFP, correct?

19 A. I believe, yes.

20 Q. And you corrected us today and indicated  
21 six of those bidders submitted a bid prequalification  
22 agreement, correct?

23 A. Yes.

24 Q. Now, do you know what the bid  
25 prequalification agreement was?

1 A. No.

2 Q. Do you know if that was to determine if  
3 they had the financial wherewithal to engage in the  
4 bid?

5 A. I don't know.

6 Q. Do you know if the original 15 bidders  
7 that were sent the RFP all had the financial ability  
8 to do the purchasing that was requested in the RFP?

9 A. I don't know.

10 Q. Now, you got 6 out of 15 to respond with  
11 a bid prequalification agreement. Were you concerned  
12 that only 6 of the 15 responded with a bid  
13 prequalification agreement?

14 A. No.

15 Q. I'm sorry?

16 A. No.

17 Q. Do you recall during the deposition I  
18 asked you in looking at the RFP process after the  
19 fact, does it cause you any concern to realize that  
20 only 6 of the 15 suppliers that were sent the RFP  
21 responded with a bid prequalification agreement? Do  
22 you recall that? Do you recall answering "yes"?

23 A. Okay. Then yes.

24 EXAMINER FARKAS: You have to speak up,  
25 sir.

1 Q. Would you like me to show you a copy of  
2 your deposition to refresh your memory?

3 A. Sure.

4 Q. If you would go to page 35. I believe  
5 what you have is a mini transcript, four pages per  
6 page. If you go specifically to page 35. Actually  
7 the -- it's the carryover. The question is at the  
8 bottom of page 34, and then your answer "yes" is at  
9 the top of page 35.

10 A. Okay.

11 Q. Okay. So in the deposition you indicated  
12 that it did cause you some concern that the majority  
13 of the potential bidders did not submit a  
14 prequalification bid, correct?

15 A. Correct.

16 MR. YURICK: Your Honor, I think I would  
17 like to interpose an objection, but I would like to  
18 ask the court reporter to read the original  
19 question --

20 EXAMINER FARKAS: Okay.

21 MR. YURICK: -- if that's possible.

22 EXAMINER FARKAS: Yes.

23 (Record read.)

24 MR. YURICK: And I would interpose an  
25 objection at this point, your Honor. I don't mean to

1 break your concentration, Mr. Serio, but I think that  
2 the question in the deposition is -- is slightly  
3 different in that he asks here in looking at the RFP  
4 process after the fact, and the question that was  
5 posed here today did not contemplate a backward  
6 looking answer. I think the question was did it  
7 cause him concern at the time.

8 MR. SERIO: I can clarify it, your Honor.

9 EXAMINER FARKAS: Okay. Thank you.

10 Q. (By Mr. Serio) Mr. Whelan, were you told  
11 at the time that only 6 of the 15 potential bidders  
12 submitted prequalification bids?

13 A. At the time?

14 Q. Yes.

15 A. No.

16 Q. So you didn't find that out until after  
17 the fact, correct?

18 A. That's correct.

19 Q. So any concern that only 6 of the 15 by  
20 definition would have been after the fact, correct?

21 A. I guess, if you put it like that.

22 Q. Now, did you do any follow-up with the  
23 nine suppliers that did not do a bid prequalification  
24 agreement to determine why they chose not to do so?

25 A. No.

1 Q. And why didn't you do that?

2 A. I felt that after the six-month contract  
3 was awarded, we would refine the process and put it  
4 back out to get bid again during the six-month  
5 period.

6 Q. Is it possible the reason they didn't bid  
7 was for some reason other than it was a six-month  
8 contract?

9 A. Anything is possible.

10 Q. Would it not have made sense to determine  
11 what those concerns were before you went forward with  
12 another RFP?

13 A. Yes.

14 Q. But you didn't do that, correct?

15 A. We didn't go forward with the RFP, so no.

16 Q. And you only got one bid out of the six  
17 that submitted prequalification agreements, correct?

18 A. Correct.

19 Q. Did it cause you any concern that only  
20 one out of six actually submitted a bid?

21 A. Yes.

22 Q. Did you do any follow-up with the other  
23 five to determine why they didn't even make a bid?

24 A. No.

25 Q. Now, in your opinion was the end result

1 of that RFP process a competitive bid?

2 A. Yes.

3 Q. And what did you base that conclusion  
4 that it was a competitive bid on?

5 A. It was sent out to 15 marketers, 15  
6 marketers had the opportunity to prequalify, 15  
7 marketers had the opportunity to ask questions, and  
8 15 marketers had an opportunity to sell the gas.

9 Q. And only one submitted a bid, correct?

10 A. Correct.

11 Q. And it turned out to be the same  
12 affiliate that was -- that was providing the service  
13 previously, correct?

14 A. Correct.

15 Q. Did that cause you any concern that  
16 perhaps the affiliate had been able to use  
17 information that they had that nobody else did in  
18 putting together a bid?

19 A. Until after the project was awarded I  
20 didn't know it was an affiliate.

21 Q. Once it was awarded you determined that  
22 it was a competitive result, correct?

23 A. I determined it was a competitive result  
24 based on the independence of the bidding process and  
25 the bidding process being fair.



1           Q.    So you were -- you were content that the  
2 process itself was good and, therefore, any end  
3 result would be a competitive bid, correct?

4           A.    The process was fair which made it  
5 competitive.

6           Q.    Is it possible that even though you went  
7 through a competitive process the end result was a  
8 price that was not competitive?

9           A.    Yes.

10          Q.    Did you do any analysis to determine if  
11 the end price from that single bid was truly a  
12 market-based competitive price?

13          A.    No.

14          Q.    And why not?

15          A.    I don't know.

16          Q.    Were you told not to?

17          A.    No.

18          Q.    Now, other than yourself was there  
19 anybody else that works for Northeast or Orwell  
20 involved in developing the RFP process?

21          A.    I wasn't involved in developing the RFP  
22 process. I was involved --

23          Q.    Go ahead.

24          A.    -- in awarding the bid.

25          Q.    Was there anybody else from the companies

1 involved in analyzing the bids and awarding the bids?

2 A. Darrell Knight.

3 Q. And who is Mr. Knight?

4 A. He was the operations manager of Orwell  
5 Natural Gas.

6 Q. Is he still with Orwell today?

7 A. No.

8 Q. Do you know why he left?

9 A. He got promoted.

10 Q. He got promoted. Where did he get  
11 promoted to?

12 A. He is the general manager of Frontier  
13 Natural Gas at North Carolina.

14 Q. Is that another affiliate company?

15 A. It's owned by Gas Natural.

16 Q. Now, did Mr. Knight agree with your  
17 determination that the bid was a competitive one?

18 A. Yes.

19 Q. Do you have any documentation in the  
20 record to date that indicates that he agreed with  
21 your assessment?

22 A. I believe that we sent both Mr. Smith and  
23 Mr. Sonderman an e-mail both agreeing to award the  
24 contract.

25 Q. That wasn't the question. My question

1 was was there anything in the record in this case  
2 that indicates that he agreed with your assessment?

3 A. I don't believe so.

4 EXAMINER FARKAS: I have a question  
5 related to your question. On page 6 of your  
6 testimony you indicate -- you say, "I reviewed the  
7 bid to ensure that it conformed to the requirements  
8 of the RFP." And "If there were more than one  
9 bidder, I would have selected the lowest." And then  
10 further on line 9 "I believed the single bid was  
11 competitive," but on line 14 you said, "Yes, I do.  
12 We sent the invitation to bid," and "We accepted the  
13 single bid" on line 19. Can you tell me -- sometimes  
14 you say "I" and sometimes you say "we."

15 THE WITNESS: The way that the process  
16 was set up they wanted one representative for each  
17 utility to review the bids and award it so I did that  
18 for Northeast and Darrell Knight did that for Orwell.

19 EXAMINER FARKAS: Okay.

20 THE WITNESS: The process itself was done  
21 by the company and the company's attorneys to come up  
22 with the RFP and independent auditor and independent  
23 web host and their individual requirements.

24 EXAMINER FARKAS: Okay. Thank you.

25 Q. (By Mr. Serio) As a result of the bid,

1       what was the agency fee that JDOG was going to charge  
2       Northeast and Orwell?

3               A.     I believe it was 6 cents.

4               Q.     And do you know what the prior agency fee  
5       that Northeast was charged by JDOG was?

6               A.     I believe it was 15 cents.

7               Q.     Is the fact that the charge was 9 cents  
8       less than it had been the reason that you concluded  
9       it was a good price?

10              A.     It was one of them.

11              Q.     Now, that 9-cent fee was for local gas  
12       production, correct?

13              A.     I'm sorry?

14              Q.     The reduction from 15 cents down to 6  
15       cents, that 9-cent reduction, that was for intrastate  
16       gas, correct?

17              A.     Interstate gas.

18              Q.     Interstate gas. Do you know how much the  
19       fee had been for intrastate gas?

20              A.     No.

21              Q.     I'm sorry?

22              A.     No.

23              Q.     Do you know if it had been 75 cents?

24              A.     I don't know.

25              Q.     You don't.

1 EXAMINER FARKAS: I'm sorry to go back to  
2 this, but I just have another question for you, was  
3 Mr. Osborne -- did he ultimately make the decision to  
4 accept the bid?

5 THE WITNESS: No. Darrell Knight and I  
6 did ultimately.

7 EXAMINER FARKAS: So Mr. Osborne had  
8 nothing to do with the bid?

9 THE WITNESS: That's correct.

10 EXAMINER FARKAS: To your knowledge.

11 THE WITNESS: To my knowledge, yes.

12 Q. (By Mr. Serio) Now, you're familiar with  
13 Mr. Zappitello, correct?

14 A. Yes.

15 Q. Mr. Zappitello works for JDOG, correct?

16 A. Yes.

17 MR. SERIO: Could I approach, your Honor?

18 EXAMINER FARKAS: Yes.

19 MR. SERIO: I think it is going to be OCC  
20 Exhibit No. 6.

21 EXAMINER FARKAS: Yes.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Handing you a fairly significant  
24 document, on the title it says "OCC Exhibit 6," and  
25 it's titled "Orwell Natural Gas Company and Northeast

1 Natural Gas Company's Responses to the Office of the  
2 Ohio Consumers' Counsel Amended First Set of  
3 Interrogatories, and Requests for Production of  
4 Documents." Do you see that.

5 EXAMINER FARKAS: Do you see that?

6 A. I'm sorry, yes.

7 Q. And there's three components to that  
8 document, correct? There's three clips, three  
9 separate clips, in the total document?

10 A. Yes.

11 EXAMINER FARKAS: Is that accurate?

12 THE WITNESS: Yes.

13 Q. Okay. Now, if you look at the first set  
14 of documents which is the actual interrogatories  
15 themselves.

16 A. Yes.

17 Q. If you go to interrogatory Nos. 24 and  
18 25.

19 A. Okay.

20 Q. And 24 asks "What were the total fees  
21 paid by Northeast for the audit period for services  
22 provided by JDOG?" Do you see that?

23 A. Yes.

24 Q. And indicates "\$418,730.65," correct?

25 A. Yes.

1           Q.   And then question 25 asks the same  
2 information for Orwell, correct?

3           A.   Actually according to this -- yeah, yeah.

4           Q.   And the response says "the total fees  
5 paid by Northeast," but I think it was corrected by  
6 Ms. Patton during her deposition that meant Orwell  
7 and that was \$229,175.41, correct?

8           A.   Yes.

9           Q.   There's about \$640,000 paid to JDOG  
10 during the audit period, correct?

11          A.   According to this, yes.

12          Q.   Do you have any reason to doubt that the  
13 information that the company provided in discovery  
14 responses in not accurate?

15          A.   No.

16          Q.   Now, if you look at interrogatory No. 23,  
17 that asks to identify the JDOG employees involved in  
18 the procurement of natural gas for Orwell and  
19 Northeast in the audit period and you see there it  
20 listed Mr. Zappitello is the only individual from  
21 JDOG that provided those services. Do you see that?

22          A.   I see where it says that, yeah.

23          Q.   So that means that for the services that  
24 Mr. Zappitello provided Orwell and Northeast paid  
25 about \$640,000 during the audit period, correct?

1           A.    Yes.

2           Q.    And that's for services that prior to  
3   2008 that you and the marketing individual,  
4   Mr. Roshetko, did in-house, correct?

5           A.    We didn't buy interstate -- if this is  
6   for local production, then yes.

7           Q.    Now, as vice president of Northeast, from  
8   time to time do you have the opportunity to talk to  
9   your counterparts at other local distribution  
10  companies in Ohio?

11          A.    Yes.

12          Q.    And during the course of those  
13  discussions, have you ever compared what you're  
14  paying for local production compared to what they are  
15  paying for local production?

16          A.    Not since 2008.

17          Q.    I'm sorry?

18          A.    Not since 2008.

19          Q.    And why haven't you had those discussions  
20  since 2008?

21          A.    Purchasing gas wasn't my responsibility.

22          Q.    If you had those discussions prior to  
23  2008, did you find that Northeast and Orwell were  
24  generally paying comparable prices to what other  
25  local distribution companies in Ohio were paying for



1 local production?

2 A. Yes.

3 Q. And you don't know today if what you're  
4 paying through JDOG is comparable to what other local  
5 distribution companies are paying today, correct?

6 A. I do not.

7 Q. And as much as you have been vice  
8 president, now president of the company, do you think  
9 it might be important for your GCR customers to know  
10 that as a result of the JDOG contract that they are  
11 paying comparable prices for local production as  
12 other local distribution companies in Ohio?

13 A. Yes.

14 Q. Yet you haven't done any of that  
15 analysis, correct?

16 A. I have only been president for two weeks.

17 Q. The prior --

18 A. It wasn't my responsibility to purchase  
19 local gas after 2008.

20 Q. The prior president never did any of that  
21 analysis that you are aware of, did he?

22 A. I don't know.

23 Q. And you never did any of that kind of  
24 analysis as vice president to determine if your GCR  
25 customers were getting a good price, did you?

1           A.    Not since 2008.

2           Q.    You simply accepted whatever price JDOG  
3 was charging you, correct?

4           A.    I accepted whatever price the person in  
5 charge of buying gas was paying.

6           Q.    And the person buying gas was your  
7 affiliate JDOG, correct?

8           A.    Somebody -- yeah, correct.

9           Q.    Were you ever told not to look into what  
10 other companies were paying since 2008?

11          A.    No.

12          Q.    Could you turn to Interrogatories 30 and  
13 31. Your response to OCC Interrogatory 30 indicates  
14 that the companies did not get a bill for JDOG for  
15 local production for 6 months of the 33-month audit  
16 period, correct?

17          A.    Yes.

18          Q.    And the response of 31 lists what those  
19 six months were, correct?

20          A.    Yes.

21          Q.    And I believe at the deposition  
22 Ms. Patton indicated that the "February, 2012,"  
23 should have been "February, 2010." Do you recall  
24 that?

25          A.    I don't.

1 Q. Would you accept, subject to check, that  
2 Ms. Patton did correct that during her deposition?

3 A. Yeah, I would accept that.

4 Q. Do you know why the company did not get a  
5 bill from JDOG for those 6 months of the 33-month  
6 period?

7 A. No.

8 Q. I'm sorry?

9 A. No.

10 Q. No, you don't know? So that means the  
11 647 -- \$640,000 that was paid to JDOG actually was  
12 for only 27 months' worth of work and not for 33  
13 months, correct?

14 A. Yes.

15 Q. Now, the other two documents in OCC  
16 Exhibit 6, they are both copies of the PUCO GCR  
17 report, correct?

18 A. Yes.

19 Q. And in the upper right-hand corner I  
20 handwrote a 1 and a 2 just so we could keep them  
21 separate. Do you see that?

22 A. Yes.

23 Q. If you would look at the last page -- and  
24 I'm sorry, not the last page. Well, let me ask you  
25 this, do you know why the company provided two

1 different copies of the audit report in response to  
2 OCC interrogatories --

3 A. I do not.

4 Q. -- and request to produce?

5 A. I do not.

6 Q. You don't know, okay.

7 MR. SERIO: Could I approach, your Honor?

8 EXAMINER FARKAS: Yes.

9 Q. I'm going to hand you multiple documents  
10 in a rubber band. I believe there is 17 of them, and  
11 they are numbered in the top center part of the page.

12 MR. SERIO: I would like to have this  
13 identified as OCC Exhibit No. 7.

14 EXAMINER FARKAS: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. If you could take a moment to look at the  
17 17 different documents, I think you'll find these are  
18 various contracts among different affiliates  
19 including Northeast, Orwell, Gas Natural, JDOG, and  
20 others. Are you generally familiar with these  
21 contracts?

22 A. No.

23 Q. None of them at all?

24 A. I haven't gone through them all but so  
25 far, no.

1 Q. Okay. Let me ask you some direct  
2 questions. Maybe that will help. If you look at  
3 document No. 2, that says it's a base contract for  
4 sale and purchase of natural gas. Do you see that?

5 A. Yes.

6 Q. As between John D. Oil and Gas Marketing  
7 Company and Gas Natural Service Company, correct?

8 A. Yes.

9 Q. And about a third of the way down the  
10 page under John D. Oil and Gas it indicates  
11 "Attention: Mike Zappitello," correct?

12 A. Yes.

13 Q. So that's Mr. Zappitello that you are  
14 familiar with at JDOG, correct?

15 A. Yes.

16 Q. Now, if you go to the third document,  
17 that's a contract between Mentor Energy and Resources  
18 Company and Gas Natural. Do you know who Mentor  
19 Energy and Resources Company is?

20 A. No.

21 Q. Do you know if they are an affiliate of  
22 Northeast?

23 A. I do not know.

24 Q. If you look at contract No. 4, that says  
25 "Base Contract for Sale and Purchase of Natural Gas."

1 About a third of the way down it says "Mentor Energy  
2 and Resources Company, Attention: Mike Zappitello."

3 A. Okay.

4 Q. Do you know if that's the same Mike  
5 Zappitello that works for JDOG?

6 A. I do not.

7 Q. Unless there is two Mike Zappitellos it's  
8 the same that works for JDOG and Mentor?

9 A. I would make that assumption.

10 EXAMINER FARKAS: You would?

11 THE WITNESS: Yes, sir.

12 Q. Do you know who OsAir is?

13 A. Yes.

14 Q. And is OsAir an affiliate of Northeast?

15 A. I don't know.

16 Q. If you look at document No. 5, that says  
17 "Base Contract for Sale and Purchase of Natural Gas,"  
18 about a third of the way down it says "Attention:  
19 Mike Zappitello" under "OsAir, Inc.," correct?

20 A. Yes.

21 Q. Can we assume that's the same Mike  
22 Zappitello that works for JDOG and Mentor Resources?

23 A. I think that's.

24 EXAMINER FARKAS: Are you familiar with  
25 Mr. Zappitello's telephone number?

1 THE WITNESS: Pardon me?

2 EXAMINER FARKAS: Are you familiar with  
3 his telephone number, Mr. Zappitello's?

4 THE WITNESS: Yeah. I am sure I have it.

5 EXAMINER FARKAS: Is the telephone number  
6 listed under his name his telephone number?

7 THE WITNESS: All I'm familiar with is  
8 his cell phone.

9 EXAMINER FARKAS: Okay.

10 THE WITNESS: Neither one of these are  
11 his cell phone, I'm sorry.

12 EXAMINER FARKAS: That's okay.

13 Q. (By Mr. Serio) If you look at the  
14 numbers, they are all the same, correct? If you look  
15 at document 2, document 5, and document 8, they all  
16 list telephone (440) 869-2929, correct?

17 A. Yeah.

18 Q. And they all list the same fax number,  
19 correct?

20 A. Yeah, but that's not his phone number.  
21 That's the wrong phone number.

22 EXAMINER FARKAS: Is that his e-mail  
23 address?

24 THE WITNESS: Yes.

25 Q. So if his e-mail address is at

1 Cobra Pipeline, does he work for Cobra Pipeline also,  
2 if you know?

3 A. I don't believe so but.

4 Q. Do you know who Great Plains Exploration  
5 is?

6 A. Yes.

7 Q. Do you know if they are an affiliate of  
8 Northeast?

9 A. I do not know.

10 Q. Could you look at document No. 13, "Base  
11 Contract for Sale and Purchase of Natural Gas." Go  
12 down about a third of the page. It says "Great  
13 Plains Exploration Ltd., Attention: Mike  
14 Zappitello."

15 A. Correct.

16 Q. Same Mr. Zappitello, correct?

17 A. I would assume so.

18 Q. Same phone number, same fax number, same  
19 e-mail address.

20 A. Correct.

21 Q. So now he works for at least four  
22 different companies. So Mr. Zappitello is able to  
23 work for four different companies and still bill  
24 Northeast and Orwell \$640,000 over the audit period,  
25 correct?



1 A. Yes.

2 Q. Do you know how many hours Mr. Zappitello  
3 works for Northeast and Orwell, or do you just get a  
4 bill?

5 A. Neither.

6 Q. I'm sorry?

7 A. Neither.

8 Q. How do you determine how much to pay? Is  
9 it based on an hourly rate?

10 A. I think I've stated before I was not  
11 responsible for approving or paying any of these gas  
12 bills.

13 Q. Okay. I'm asking you if you know how --  
14 what the payments are based on.

15 A. No, I do not.

16 Q. Do you know who with Northeast would be  
17 able to tell me that information?

18 A. No, I do not.

19 MR. SERIO: Can I approach again, your  
20 Honor?

21 EXAMINER FARKAS: Yes.

22 Q. I'm going to hand you a document I would  
23 like to have marked for identification purposes OCC  
24 Exhibit 8.

25 EXAMINER FARKAS: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. And this is titled "Orwell Natural Gas  
3 Company and Northeast Natural Gas Company's  
4 Supplemental Responses to the Office of the Ohio  
5 Consumers' Counsel's Second Set of Interrogatories,"  
6 correct?

7 A. Yes, sir.

8 Q. Could you turn to question No. 59 in this  
9 document and specifically I'm requesting to direct  
10 you to look at 59A, B, and C.

11 A. Okay.

12 Q. And your responses to 59A, B, and C  
13 indicates that, yes, the company JDOG includes a  
14 processing fee on the Churchtown system and that the  
15 processing fee is charged on all local production  
16 sourced on the Cobra Churchtown and you pay 25 cents  
17 per dekatherm, correct?

18 A. Yes.

19 MR. SERIO: May I approach, your Honor?

20 EXAMINER FARKAS: Yes.

21 MR. SERIO: I would like to be marked for  
22 purposes of identification OCC Exhibit No. 9.

23 EXAMINER FARKAS: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. I believe that's titled an

1 "Organizational Chart." Are you familiar with that,  
2 Mr. Whelan?

3 A. No.

4 Q. The first page "Orwell Natural Gas and  
5 Northeast Ohio Natural Gas Organizational Chart, May,  
6 2013," correct?

7 A. Yes.

8 Q. Under "NEO" where it says Mr. "Marty  
9 Whelan," is that you, sir?

10 A. Yes.

11 Q. Where it says "Chief Operating Officer"?

12 A. Yes.

13 Q. In 2000 -- in May, 2013, were you chief  
14 operating officer or vice president?

15 A. Chief operating -- both.

16 Q. Both.

17 A. Vice president, chief operating officer.

18 Q. So it's just an oversight it doesn't list  
19 vice president there.

20 A. Correct.

21 Q. And then below it says "Stephanie Patton,  
22 Chief Administrative Officer."

23 A. Yes.

24 Q. Now, it doesn't show Mr. Smith as the  
25 president on this organizational chart, correct?

1 A. No.

2 Q. Is there a reason that the president of  
3 NEO was not listed on the NEO organizational chart?

4 A. I don't know. I didn't do it.

5 Q. Okay. Do you know who Becky Howell is?

6 A. Yes.

7 Q. And she's the corporate controller for  
8 Energy West, correct?

9 A. Yes.

10 Q. Yet it looks like she is at the top of  
11 the organizational chart, correct?

12 A. Yes.

13 Q. Do you report to her?

14 A. No.

15 Q. Do you know why she is listed above you  
16 on the corporate organizational chart?

17 A. No.

18 Q. If I go back through other pages of this  
19 document, that just shows the same organizational  
20 chart for different time periods, correct?

21 A. That's what I see, yeah.

22 Q. And every one where it says "Marty  
23 Whelan," that's you on each of these, correct?

24 A. Yes.

25 Q. Now, if I look at January, 2013,

1 Mr. Smith is -- happens to be on it as president and  
2 CFO of Energy West, but he is not listed as the  
3 president of Northeast. Do you know why?

4 A. I do not.

5 Q. And, again, if I look in January of 2012,  
6 Mr. Smith again is listed as president and Energy  
7 West employee but not as an employee of Northeast  
8 Ohio, correct?

9 A. Yes, sir.

10 Q. Do you know why he is not listed as the  
11 president of Northeast?

12 A. I do not.

13 Q. During January of 2012 and January, 2013,  
14 did you report directly to Mr. Smith?

15 A. Yes.

16 Q. So you were reporting to somebody that  
17 under this organizational chart was not an employee  
18 of Northeast.

19 A. To the best of my knowledge, Mr. Smith  
20 was the president of Northeast up until I became  
21 president of Northeast.

22 Q. Okay. If I look at the last page, June,  
23 2010, there it list Mr. Smith as president and CFO of  
24 NEO and ONG so you don't know why his title changed  
25 from June, 2010, to the title that he has got listed

1 on these other dates, do you?

2 A. No, sir.

3 MR. SERIO: Can I approach again, your  
4 Honor?

5 EXAMINER FARKAS: Yes.

6 Q. I would like to hand you a one-page  
7 document this time marked for purposes of  
8 identification as OCC Exhibit No. 10.

9 EXAMINER FARKAS: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. And that is OCC Interrogatory No. 42 --  
12 41 and 42. Do you see that?

13 A. Yes, sir.

14 Q. Now, if you look at OCC Interrogatory 42,  
15 it indicates there that the company's position is  
16 that it did not claim that natural gas for customers  
17 was procured at the lowest price available during the  
18 audit period, correct?

19 A. Yes, sir.

20 Q. And that would be consistent with your  
21 position that during the audit period the companies  
22 did not purchase the lowest price available natural  
23 gas, correct?

24 A. That would concur with my position that  
25 sometimes reliability is more important than cost.

1 Q. And just to put this into context  
2 question Nos. 41 and 42 came from the Amended First  
3 Set of Interrogatories and Requests for Production of  
4 Documents that OCC got. I'll hand you the full set,  
5 and you can see that Interrogatory 41 and 42 came  
6 from that set, correct? I just didn't want to burden  
7 the docket with an extra 100 pages.

8 EXAMINER FARKAS: Thank you.

9 MR. SERIO: May I approach again, your  
10 Honor?

11 EXAMINER FARKAS: Yes.

12 MR. SERIO: A multiple page document this  
13 time marked for purposes of identification as OCC  
14 Exhibit No. 11.

15 EXAMINER FARKAS: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. And this is titled "Orwell Natural Gas  
18 Company and Northeast Natural Gas Company's Responses  
19 to the Office of the Ohio Consumers' Counsel's Fourth  
20 Set of Interrogatories, and Request for Admission."  
21 Do you see that?

22 A. Yes.

23 Q. Now, if you could turn to question 94.  
24 And the question is "Does Northeast pay a processing  
25 charge to Cobra or to JDOG for local production

1 purchased on the Churchtown system?" And do you see  
2 that in the response on page 8 about the fourth  
3 sentence it says, "The Companies do not have  
4 sufficient information to determine whether JDOG pays  
5 a processing charge to Cobra for local production  
6 purchased on the Churchtown system."

7 A. Yes.

8 Q. So the answer here is that you don't have  
9 enough information to determine whether you pay the  
10 processing charge. Yet earlier this morning when we  
11 looked at the Cobra invoices, the Cobra invoices  
12 indicated that for a few months during the audit  
13 period you did, in fact, pay Cobra the 25-cent fee  
14 for gas on the Churchtown system, correct?

15 A. Correct.

16 Q. So can you tell me what other information  
17 you would need so that you would know for certain  
18 whether you are paying that fee or not?

19 A. I don't know what JDOG is paying Cobra.  
20 It's not the same gas.

21 Q. Oh, I see. So the point here is that you  
22 don't know whether JDOG pays it, but you know that  
23 Northeast pays it.

24 A. We paid it on some of the volumes, yeah.

25 Q. Now, prior to the issuance of the RFP



1 that we discussed earlier, you had a contract with  
 2 J -- with J.D. Oil and Gas that provided JDOG with  
 3 the greater of NYMEX plus 75 cents per thousand cubic  
 4 feet plus transportation costs, shrinkage, and taxes  
 5 or the market price plus any applicable  
 6 transportation, shrinkage, and taxes, correct?

7 A. I don't know.

8 Q. I'm sorry?

9 A. I don't know.

10 Q. You weren't familiar with the contracts  
 11 that were in place prior to the --

12 A. No.

13 Q. Do you know who at Northeast would have  
 14 been?

15 A. No.

16 Q. Do you know who at Northeast would have  
 17 been in charge of that contract if it was in place  
 18 during the audit period?

19 A. No.

20 MR. SERIO: If I could have just a  
 21 minute, your Honor, I think I might be done.

22 EXAMINER FARKAS: Okay.

23 Q. Do you know if anybody associated with  
 24 Gas Natural verifies whether the gas that's on the  
 25 Cobra system for Northeast customers actually goes

1 through the processing system?

2 A. I do not.

3 MR. SERIO: Thank you, Mr. Whelan.

4 That's all I have.

5 Thank you, your Honor.

6 EXAMINER FARKAS: Okay. Mr. Margard.

7 MR. MARGARD: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Margard:

11 Q. Good afternoon, Mr. Whelan.

12 A. Good afternoon.

13 Q. Am I pronouncing your name correctly? I  
14 think I pronounced it incorrectly for a long time. I  
15 apologize.

16 A. That's all right.

17 Q. I want to begin with your background and  
18 your work history. I think Mr. Serio asked you if  
19 you had any graduate degrees. Do you have a college  
20 degree, sir?

21 A. No, sir.

22 Q. Do you have any kind of business  
23 management education or training of any kind?

24 A. No.

25 Q. Have you ever had any experience running

1 a company or business of your own before?

2 A. Yes, yes.

3 Q. And what business was that, please?

4 A. I was the vice president and operations  
5 manager of a heavy highway construction company.

6 Q. And how long did you perform that  
7 responsibility?

8 A. About ten years.

9 Q. And what were your duties and  
10 responsibilities there?

11 A. I did estimating. I did hiring and  
12 firing. I did payroll. I did the books. I  
13 taught -- I pretty much did everything.

14 EXAMINER FARKAS: You have to speak up a  
15 little.

16 THE WITNESS: Sorry.

17 Q. So you were responsible for the  
18 accounting functions there for that company?

19 A. I was.

20 Q. Now, throughout your examination today by  
21 Mr. Serio, you seemed to be focusing on your current  
22 position and on Northeast Ohio Natural Gas  
23 operations; is that correct?

24 A. That's correct.

25 Q. And you have extensive familiarity with

1       Orwell's operations as well, correct?

2             A.    Yes, sir.

3             Q.    How long has it been since you have been  
4       responsible for any Orwell operations?

5             A.    Technically since 2004.

6             Q.    2004?

7             A.    But I help -- I still help their guys.

8             Q.    And can you describe what you mean by  
9       helping their guy?

10            A.    If they have a problem, if they need  
11       help, you know, I know the system pretty well.  I  
12       built a lot of our system.

13            Q.    And, again, you are talking about actual  
14       pipe operations, actual physical operation of the  
15       system.

16            A.    Yes, yes.

17            Q.    In the course of your discussion with  
18       Mr. Serio about intrastate gas and where it came into  
19       the system, you had mentioned Cobra Pipeline.  
20       Cobra is connected to the Northeast system, correct?

21            A.    Yes.

22            Q.    And that is a related company, correct?

23            A.    Yes.

24            Q.    Orwell is also served by Cobra, correct?

25            A.    Yes.

1           Q.   And also by another related pipeline  
2 company; is that correct?

3           A.   Yes, Orwell Trumbull.

4           Q.   Orwell Trumbull Pipeline?

5           A.   Yes.

6           Q.   Also a related entity?

7           A.   Yes.

8           Q.   Do you know who owns that pipeline?

9           A.   I believe Mr. Osborne.

10          Q.   And by Mr. Osborne we mean Mr. Richard  
11 Osborne?

12          A.   Yes.

13          Q.   Where are the offices of Northeast Ohio  
14 Natural Gas located?

15          A.   Northeast, I guess their headquarters is  
16 Mentor, Ohio. They have a service center in  
17 Pleasantville, Ohio; service center in Strasburg,  
18 Ohio.

19          Q.   Do these companies share office space  
20 with any of the other related entities?

21          A.   I believe there is one Cobra operations  
22 guy that works out of Strasburg, and I believe that  
23 there is one NEO operations guy that works out of  
24 Cobra just because that puts them closer to their  
25 actual system and service area.

1           Q.    I understand.  Thank you.  Now, you've  
2 indicated you have only been president of Northeast  
3 for a very short time.

4           A.    Yes.

5           Q.    And that someone is going to sit down to  
6 discuss with you your duties and responsibilities.

7           A.    Yes.

8           Q.    Has that happened yet?

9           A.    No.

10          Q.    And you have been president since when?

11          A.    I think it will be two weeks on  
12 Wednesday.

13          Q.    Two weeks, okay.  Do you have a timeframe  
14 during which you expect to have this sitdown  
15 discussion?

16          A.    I believe it's going to be at the end of  
17 the month.

18          Q.    And you expect that discussion to be with  
19 whom, please?

20          A.    Kevin Degenstein.

21          Q.    And he is the chief -- chief executive  
22 officer for Gas Natural?

23          A.    Yes.

24          Q.    What duties have you been performing over  
25 the last two weeks that were different than what you

1 were doing before you became president?

2 A. Really none. I'm still doing my old job.

3 EXAMINER FARKAS: Can you speak up,  
4 please?

5 THE WITNESS: Sorry. There is a wall  
6 between us.

7 Q. In your current responsibilities which  
8 are really no different than your prior  
9 responsibilities, do you attend meetings at the  
10 company with other company officers?

11 A. I have, yes.

12 Q. Is it part of your regular duties and  
13 responsibilities?

14 A. If -- yes. A lot of them are by -- are  
15 telephonic meetings so they are not a meeting.

16 Q. In this day and age that's fairly common.  
17 What type of meetings do you regularly attend in your  
18 current position?

19 A. The first Thursday of the month and third  
20 Thursday of the month we have operations meetings  
21 with all the different -- different operating  
22 entities just to talk about who's having problems and  
23 to try to get each other -- help each other out.

24 Q. Okay. Any others?

25 A. I have meetings with the NEO staff, I try

1 to, at least one a week; if not, every other week,  
2 with the different offices in Strasburg and  
3 Lancaster.

4 Q. The operations meetings that you  
5 mentioned, you mentioned different operating  
6 entities. What all entities would be included?

7 A. When we have the biweekly one, it is the  
8 Gas Natural meeting so it's Ohio, Montana, Wyoming,  
9 Pennsylvania, and North Carolina. We just sit down  
10 and go over different regulatory stuff, different O&M  
11 stuff, and work ideas off of each other.

12 Q. Okay. Thank you. You also attend  
13 financial meetings for the company?

14 A. Yes.

15 Q. And how often?

16 A. It varies. They used to be every month,  
17 and now they are -- sometimes they are every month.  
18 Sometimes they are once a quarter. It just depends.

19 Q. And what is the purpose of these  
20 meetings?

21 A. To go over the local financials.

22 Q. Can you be more specific?

23 A. Instead of -- they have a board meeting  
24 for Gas Natural which is the consolidated. We'll  
25 have a meeting to go over the individual Orwell's



1       financials or NEO's financials or Brainard's  
2       financials.

3               Q.     Other than reporting functions are there  
4       decisions made at these meetings?

5               A.     Typically, no.

6               Q.     And who typically is in attendance?

7               A.     Whoever is doing the NEO accounting,  
8       myself is the NEO operating; Ms. Patton and whoever  
9       is doing the Orwell accounting and Orwell operating.

10              Q.     Do you recall testifying at the last time  
11       we litigated these cases?

12              A.     Yes, sir.

13              Q.     And do you recall testifying then about  
14       what you then called weekly risk meetings?

15              A.     We still have those, but I'm not involved  
16       in them any more. I believe Miss Patton is.

17              Q.     And what were the weekly risk meetings?

18              A.     They were gas positions, gas purchases,  
19       gas -- I believe more on the financial lines of the  
20       gas purchases.

21              Q.     But having to do with gas purchases and  
22       sales for the utilities?

23              A.     In a whole, how much was in storage and  
24       OBAs and so forth.

25              Q.     Okay. Are there also meetings that are

1 held to discuss regulatory filings, specifically GCR  
2 filings here at the Commission?

3 A. I don't believe so.

4 Q. At least not that you are aware of.

5 A. No, sir.

6 Q. I want to clear up at least in my mind  
7 some of the invoices, the questions that Mr. Serio  
8 was asking you. And, first of all, just to make sure  
9 I'm clear, I thought I understood you to say that one  
10 of the functions of Gas Natural Services, Inc., is to  
11 monitor invoices currently; is that correct?

12 A. Yes, sir.

13 Q. And when you say monitor invoices, are  
14 you just checking math, or do you have any idea  
15 exactly what it is?

16 A. My idea or my belief is they take the  
17 actual invoice, match it to the actual contract, make  
18 sure that the invoice is billed correctly for both  
19 volume and dollars, and then approve it.

20 Q. And how long has Gas Natural Services,  
21 Inc., been performing this function?

22 A. They came about somewhere in that last  
23 audit period there, sometime in 2011.

24 Q. Now, with respect to the Cobra invoices  
25 marked as OCC Exhibit No. 2, and I don't have any

1 specific invoice I'm going to ask you about, but you  
2 recall the invoices?

3 A. Yes.

4 Q. And you indicated there were months where  
5 there were no treatment fees, that the company would  
6 be burning off imbalances?

7 A. That's my assumption, yes.

8 Q. Now, and, again, I want to be clear about  
9 this, it's your assumption based on your review of  
10 those documents --

11 A. Just looking at the invoices, yeah.

12 Q. The changes in the imbalance, you don't  
13 have any firsthand knowledge of what was actually  
14 being done at that time?

15 A. I don't remember. I'm sure I do  
16 somewhere.

17 Q. You indicated that even though there  
18 would be zeros indicated that the company was still  
19 taking gas. It was, in fact, working off these  
20 imbalances --

21 A. Correct.

22 Q. -- right? And even though it was still  
23 taking gas, it was not being invoiced for that gas by  
24 Cobra, correct, working down those imbalances?

25 A. I don't know. I would have to look at

1 the invoices to see when the gas hits there.

2 Q. When the gas hits there?

3 A. I would have to look at the invoice to be  
4 honest with you to make sure I --

5 Q. Feel free to, if that would help refresh  
6 your recollection.

7 A. What months? Could you pick one?

8 Q. I would say pick one that would help  
9 inform your answer. I didn't have any particular  
10 month in mind.

11 A. Yeah, I believe when the company gets the  
12 allocated version of the bill which is what they  
13 flowed, they were getting billed on the actual so  
14 there's.

15 Q. Well, you are talking about allocated  
16 bills. Can you explain the allocation process for  
17 us?

18 A. It's my understanding from these invoices  
19 the allocated portion is the actual meter read.

20 Q. So, and I don't know, let's -- let's take  
21 a month. Just, for example, I happen to have in  
22 front of me the November 19, 2010, invoice.

23 EXAMINER FARKAS: I'm sorry, which month?

24 MR. MARGARD: November 19, 2010.

25 EXAMINER FARKAS: Okay. Thank you.

1 A. Okay.

2 Q. And if we took a look at the Churchtown,  
3 that's the C, correct? On the first page shows zero  
4 totals all the way across?

5 A. Yes.

6 Q. But on the second page shows an allocated  
7 delivery 38,000, negative imbalance?

8 A. Yes.

9 Q. You said there was no cost invoiced by  
10 Cobra for these volumes?

11 A. I'm -- that's correct.

12 Q. But the company still would have been  
13 assessed some kind of a commodity cost for that,  
14 wouldn't it?

15 A. You would assume so, yes.

16 Q. And would you also assume that that  
17 commodity charge would have been rendered by John D.  
18 Gas and Oil?

19 A. Yes, sir.

20 Q. Do you know, sir, whether the charges  
21 assessed by John D. Gas and Oil would have included  
22 the treatment charges?

23 A. I don't know whether they include the  
24 treatment charges, but I do know for a good portion  
25 of the gas that they bring to the system it includes

1       whatever Cobra's fees are.

2               Q.     So even though there may be zero  
3       reflected on the Cobra's invoices the company may  
4       still have been paying processing fees through the  
5       commodity charge.

6               A.     That's correct.

7               Q.     Mr. Serio also asked you some questions  
8       trying to understand the mechanics of the balancing  
9       of the system, and he asked you, for example, what  
10      happened when transportation customers would deliver  
11      more gas into the Cobra system than they took through  
12      the meter. Do you recall those questions?

13              A.     Yes.

14              Q.     First of all, does the company maintain  
15      any sort of individual accounts for its  
16      transportation customers to be able to monitor their  
17      balance or imbalance status?

18              A.     Some of the transportation customers have  
19      electronic meter reading, and they do have access to  
20      that electronic meter reading.

21              Q.     When you say "they," you mean the  
22      customer or the company?

23              A.     Both. The customer would be able to --  
24      if the customer paid for the electronic metering,  
25      they would have access to their electronic metering.

1 The company would also have access to that electronic  
2 metering.

3 Q. So the company does monitor  
4 transportation customer imbalances for those that  
5 have electronic metering; is that correct?

6 A. The company monitors all the  
7 transportation imbalances. It's just a matter of  
8 timing and when they monitor. The electronic  
9 metering is a little bit faster obviously at this  
10 point.

11 Q. Okay. Now, I at least am not yet  
12 entirely clear on what happens to these positive  
13 imbalances on the Cobra system. Where does the gas  
14 actually go?

15 A. Sometimes it doesn't actually flow. I  
16 mean, it could be -- Cobra has the same OBA with TCO  
17 so if the gas doesn't make it into the Cobra system,  
18 then Cobra would be positive on TCO. If the gas was  
19 coming from out of the Cobra system, the Cobra-- the  
20 gas could have been delivered to TCO, and it just  
21 circles basically.

22 Q. But the Cobra system itself doesn't have  
23 any way of maintaining positive imbalances, does it,  
24 on the system?

25 A. On the system, no, but they can maintain

1 positive imbalance with their TCO OBAs.

2 Q. And that OBA allows it to essentially  
3 make paper trades, if you will?

4 A. It's the same as what we -- it's the same  
5 schedule basically that we get for Cobra. They are  
6 either positive or they are negative on TCO.

7 Q. I see. When JDOG works down the  
8 imbalances on Cobra by selling the commodity to the  
9 distribution company, whose gas is that?

10 A. I would assume it's theirs.

11 Q. JDOG's.

12 A. Yes.

13 Q. You don't know that it's theirs; you just  
14 assume that?

15 A. Well, typically for JDOG to have a  
16 positive imbalance they would have had to have bought  
17 more gas than they sold so I have to assume that the  
18 gas that they have on a positive imbalance is their  
19 gas.

20 Q. Do you monitor JDOG's imbalances?

21 A. No.

22 Q. Do you have, in fact, any idea what  
23 JDOG's balance situation is?

24 A. No.

25 Q. Okay. With respect to the RFP that you



1 discuss in your testimony, first of all, you state on  
2 page 3 of your testimony that company coordinated  
3 with staff and OCC in designing and implementing the  
4 RFP. Would you please detail for us the extent of  
5 that coordination.

6 A. I can't.

7 Q. You can't because you were not involved  
8 with it?

9 A. I based that off of what our previous  
10 attorney had explained to us on how the RFP was  
11 written.

12 Q. So that -- that statement is not based on  
13 any personal knowledge that you have about how that  
14 was --

15 A. That's correct.

16 Q. -- coordinated? Okay. Now, I understand  
17 that the different marketers were able to ask  
18 questions about the RFP and about the RFP process; is  
19 that correct?

20 A. Yes, sir.

21 Q. But, now, that's not true of the 15 to  
22 whom the bid request was sent. That's only true with  
23 the six that prequalified?

24 A. After the fact and from looking at it  
25 after the fact, I would say, yes, that did not come

1 about.

2 Q. Do you know if any of the other nine that  
3 did not prequalify ever posed any questions or sought  
4 any additional information with respect to the RFP?

5 A. I don't know.

6 Q. You don't know. And just so that I'm  
7 clear, you have indicated that you thought the single  
8 bid that the company received and accepted was  
9 competitive because of the process, correct?

10 A. Yes.

11 Q. Not because of the actual --

12 A. Outcome.

13 Q. -- outcome.

14 MR. MARGARD: I have no further  
15 questions.

16 EXAMINER FARKAS: Thank you.

17 Redirect?

18 MR. YURICK: Your Honor, if I may, if I  
19 may have a few minutes with the witness?

20 EXAMINER FARKAS: Let's take a recess  
21 until 3.

22 MR. YURICK: Thank you.

23 (Recess taken.)

24 EXAMINER FARKAS: Okay. Let's go back on  
25 the record.

1 Do you have any redirect, Mr. Yurick?

2 MR. YURICK: Just a few questions, if I  
3 may, your Honor.

4 EXAMINER FARKAS: Okay.

5 - - -

6 REDIRECT EXAMINATION

7 By Mr. Yurick:

8 Q. Mr. Whelan, you were asked several  
9 questions about the RFP. When you selected a bidder,  
10 did you know who -- whose bid it was you had  
11 selected?

12 A. No.

13 Q. Okay. And that was because the -- the  
14 RFP responses were submitted anonymously; is that  
15 correct?

16 A. Each prequalified bidder had a bidder  
17 letter.

18 Q. So the response that you chose you didn't  
19 know who you chose until after you chose that person.

20 A. That's correct.

21 Q. Or that company.

22 A. I believe I chose bidder N.

23 Q. You were asked several questions also  
24 about Cobra treatment and the separation of liquids  
25 from natural gas. Do you recall that?

1 A. Yes.

2 Q. Does Cobra's tariff require to disclose,  
3 measure, or account for the value of any liquid  
4 separated from treated natural gas?

5 A. No.

6 Q. Do you have any idea what effect on  
7 prices that Cobra charges would be if Cobra Pipeline  
8 had to disclose, measure, and credit back pipeline  
9 customers for liquid separated from natural gas?

10 A. I assume their -- their transportation  
11 fees would be a lot higher.

12 Q. Is there any reason for you based on your  
13 experience in the natural gas industry to assume that  
14 Cobra would treat natural gas and separate solids  
15 free of charge?

16 A. No.

17 Q. And in your experience is it an expensive  
18 process to separate gas from liquids, and is it  
19 expensive to build a treatment plant that is capable  
20 of separating liquid components from natural gas as  
21 it's treated?

22 A. Yes.

23 MR. YURICK: I have no further questions  
24 of this witness at this time, your Honor.

25 EXAMINER FARKAS: Okay. Mr. Serio.

1 MR. SERIO: Thank you, your Honor.

2 - - -

3 RECROSS-EXAMINATION

4 By Mr. Serio:

5 Q. Mr. Whelan, you indicated it's expensive  
6 to separate the wet liquid from the dry natural gas.  
7 What do you base that knowledge on?

8 A. As I stated earlier, we looked at some of  
9 the town borders to do that.

10 Q. That was building the plant. Did you  
11 actually look into what it costs to run the plant and  
12 actually do the processing?

13 A. It still needs a compressor, and you  
14 still have to compress the gas into the J -- and you  
15 still need compressor fuels for that, so pretty much.

16 Q. Did you do any comparison between that  
17 price and the value of the wet gases that's stripped  
18 out of the natural gas?

19 A. No.

20 Q. So you don't know if, in fact, you get  
21 two times more value from the wet gases than the cost  
22 of processing, do you?

23 A. No.

24 MR. SERIO: That's all I have, your  
25 Honor.

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EXAMINER FARKAS: Okay.

- - -

RECROSS-EXAMINATION

By Mr. Margard:

Q. We talked a lot about this process fee. I guess I just want to be straight on what all happens. Cobra did not perform any processing on any gas that it delivered to Northeast Ohio Natural Gas; is that correct?

A. Performed processing on the gas if it left the system and went to TCO storage. If the gas was used on the system, it did not perform processing.

Q. But it charged anyway, didn't it?

A. I don't know. I mean, I looked at the bills. I think some months it did and some months it didn't and it's -- I would need to go through all the bills, look them over.

Q. But you are not testifying today that all of the charges rendered were for gas that came out of TCO storage, are you?

A. No, I'm not.

Q. And to that extent is it your opinion that Cobra should not have charged for those processing fees?

1           A.    I do believe some of these bills are  
2 incorrect.

3           Q.    And are you also testifying that Gas  
4 Natural Service Company did not catch the error?

5           A.    They -- some of these months I don't  
6 think Gas Natural Service Company was involved yet  
7 but some of these months, yes, that's correct.

8           Q.    And to the extent that the service  
9 company was not involved, it would be the company  
10 itself that did not catch the error; is that correct?

11          A.    Whoever was doing it at that time, yes.

12          MR. MARGARD:   That's all I have.   Thank  
13 you.

14          EXAMINER FARKAS:   Thank you for your  
15 testimony.

16          THE WITNESS:   Thank you.

17          MR. YURICK:   At this point, your Honor, I  
18 would renew my motion to admit into evidence the  
19 prefiled testimony of Mr. Whelan which has been  
20 marked herein as Company's Exhibit 1.

21          EXAMINER FARKAS:   Is there any objection  
22 to the admission of Company Exhibit 1?

23          EXAMINER SEE:   No objection, your Honor.

24          MR. MARGARD:   No objection.

25          EXAMINER FARKAS:   It will be admitted.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 MR. SERIO: Your Honor, OCC would move  
3 the admission of OCC Exhibits 2, 3, 4, 5, 6, 7, 8, 9,  
4 10, 11.

5 EXAMINER FARKAS: Okay. Not OCC Exhibit  
6 1?

7 EXAMINER SEE: I started with 2; I meant  
8 to start with 1. My apologies, your Honor.

9 EXAMINER FARKAS: That's okay.  
10 Is there any objection to the admission  
11 of OCC Exhibits 1 through 11?

12 MR. YURICK: Your Honor, the sole  
13 objection that I have goes, if I can get it, to OCC  
14 Exhibit No. -- Nos. 4 and 5. No. 4 --

15 EXAMINER FARKAS: Okay. Wait a minute.  
16 So you do not object to the admission of OCC Exhibits  
17 1, 2, 3, 6, 7, 8, 9, 10, 11.

18 Staff, does staff have any objection?

19 MR. MARGARD: No objections to any of the  
20 exhibits, thank you, your Honor.

21 EXAMINER FARKAS: So I'm going to admit  
22 OCC Exhibits 1, 2, 3, 6, 7, 8, 9, 10, 11.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER FARKAS: Okay. Now, with  
25 respect to OCC Exhibits 4 and 5 --



1                   MR. YURICK: OCC Exhibit No. 4 appears to  
2 be a page from a Pembina Pipeline Corporation  
3 document. I do not believe this is a public record  
4 or a government-issued record. I don't believe that  
5 the witness could or did testify that it was a true  
6 and accurate copy of what it purported to be.  
7 Essentially, your Honor, I just don't believe that  
8 there is any foundation or evidentiary fundament upon  
9 which to base admission of OCC Exhibit No. 4.

10                   EXAMINER FARKAS: Okay. With respect to  
11 OCC Exhibit 5.

12                   MR. YURICK: With respect to OCC Exhibit  
13 5 I realize that is a -- purports to be anyway an  
14 official document from U.S. Energy Information  
15 Administration. My objection to that is as a  
16 document, that by -- on its face purports to be a  
17 propane spot price for Mont Belvieu, Texas, and since  
18 there is no testimony anywhere that any petroleum or  
19 other liquids involved in this case could have  
20 economically been transported to Mont Belvieu, Texas,  
21 for sale, it's the company's position that this  
22 exhibit is wholly without evidentiary relevance to  
23 any matter that could be decided in this proceeding.

24                   It's simply a list of prices for  
25 petroleum and other liquids in Mont Belvieu, Texas,

1       which as far as I know has no connection whatever to  
2       any issue that's involved in this case.

3               EXAMINER FARKAS:   Okay.   Mr. Serio.

4               MR. SERIO:   Take OCC Exhibit 5 first,  
5       your Honor, because it is an Energy Information  
6       document, it is a government document,  
7       self-authenticating, and at the very least you can  
8       take administrative notice.   Both documents are  
9       offered to give some quantification to what the  
10      witness acknowledged was a fact, undisputed, that the  
11      heavy gases, propane, butane, have significant value  
12      greater than dry natural gas.   This is to put some  
13      context to it instead of just leaving it as  
14      significant value in the record.

15              We acknowledge that this is not an exact  
16      pricing but to the extent that even on OCC Exhibit 4  
17      demonstrates some pricing comparisons between natural  
18      gas options and the liquids, it is relevant and the  
19      Commission can give it what value it wants to in  
20      looking at the information contained in both  
21      documents.

22              MR. YURICK:   Your Honor, if I might  
23      respond, you know, the testimony came in without  
24      objection that these liquid additives to natural gas  
25      had value apart from the value of natural gas.   But I

1 think that allowing these exhibits into the record as  
2 some sort of comparison pricing or some indicator of  
3 a specific value that the witness doesn't know about  
4 would be incorrect.

5 EXAMINER FARKAS: Does staff -- you don't  
6 have any objection?

7 MR. MARGARD: No objection.

8 EXAMINER FARKAS: I'm going to admit both  
9 exhibits, OCC Exhibits 4 and 5.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 EXAMINER FARKAS: I believe the next  
12 witness was going to be Mr. Slone.

13 MR. SAUER: OCC calls Greg Slone to the  
14 stand and would like to have his testimony marked as  
15 OCC Exhibit 12.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 (Witness sworn.)

18 EXAMINER FARKAS: So sworn and you can  
19 have a seat.

20 You may proceed.

21 - - -

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GREGORY SLONE

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

DIRECT EXAMINATION

By Mr. Sauer:

Q. Please state your full name and business  
address for the record.

A. Gregory Slone, S-L-O-N-E. My business  
address is 10 West Broad Street, Suite 1800,  
Columbus, Ohio 45 -- 43215.

Q. Are you the same Greg Slone whose direct  
testimony was filed in these cases on July 1, 2013?

A. I am.

Q. And on whose behalf do you appear?

A. The Office of the Ohio Consumers'  
Counsel.

Q. Do you have your prepared testimony with  
you on the stand?

A. I do.

Q. And did you prepare the testimony or have  
it prepared at your direction?

A. I did.

Q. Do you have any changes or corrections to  
your direct testimony?

A. I do. There are several. Starting on

1 page 10, line 20, "Opinions" should not be plural.

2 It should just be "Opinion."

3 On page 16, line 3, "LDC" should also be  
4 plural and so it would read "LDCs."

5 Also on page 16, line 4, "its" should be  
6 "their."

7 On line 5 on page 16, "rate" should be  
8 "rates."

9 Also on line 5, "Piedmont" should be  
10 "Ohio Cumberland."

11 On line 6, "100 percent" should be  
12 "50 percent."

13 And still on page 16 on lines 16 and 17,  
14 instead of "the highest" it should be "a high."

15 On page 18, line 1 -- I'm sorry, line No.  
16 3, there should be a space between "2008" and  
17 "Northeast" and a space between "Northeast" and the  
18 word "and."

19 On page 21, line No. 5, there should be  
20 another space after the word "standards" and the word  
21 "the" should be capitalized.

22 And on page No. 25 the reference No. 32  
23 should say "See Attachment 15."

24 EXAMINER FARKAS: Can you do that one  
25 again, please?

1 THE WITNESS: On page 25, the footnote on  
2 32 --

3 EXAMINER FARKAS: Okay.

4 THE WITNESS: -- should say "See  
5 Attachment 15" instead of "Attachment 14."

6 Q. Are those all your corrections,  
7 Mr. Slone?

8 A. They are.

9 Q. Other than the corrections to your  
10 testimony you just discussed, if I asked you today  
11 the same questions found in your direct testimony in  
12 OCC Exhibit 12, would your answers be the same?

13 A. They would.

14 MR. SAUER: OCC moves for the admission  
15 of OCC Exhibit 12 and tenders the witness for  
16 cross-examination.

17 EXAMINER FARKAS: Okay. Thank you.

18 You may proceed.

19 MR. YURICK: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Yurick:

23 Q. Mr. Slone, good afternoon. Mr. Slone, I  
24 believe prior to you joining the OCC as a senior  
25 energy analyst, you were employed by American

1 Municipal Power or AMP; is that correct?

2 A. That's correct.

3 Q. And I believe you were vice president of  
4 generation services for American Municipal Power; is  
5 that correct?

6 A. For a period of time, that's correct.

7 Q. And prior to that you held a number of  
8 positions with American Municipal Power of basically  
9 increasing responsibilities; is that right?

10 A. That's correct.

11 Q. Okay. So how did you start out at AMP?

12 A. I joined the company to work on a gas  
13 marketing business that they had formed shortly  
14 before I got there. I think it was in the fall of  
15 2000.

16 Q. And at some point in your tenure with  
17 AMP, you actually did participate in an RFP process;  
18 is that correct?

19 A. That's correct.

20 Q. Okay. And what was that RFP process for?

21 A. Well, the -- one RFP process was the  
22 purchase of coal for the Corset Station Power Plant  
23 and another RFP was for the solicitation of a natural  
24 gas provider for a municipal aggregation that  
25 business that I ran at AMP was involved with.

1           Q.    Now, when you did your coal RFP,  
2 approximately what year was that?

3           A.    I believe it was around 2003 or 2004.

4           Q.    And did you do a number of RFPs for coal  
5 procurement or just the one?

6           A.    Just the one.

7           Q.    Okay. And did you enter into a long-term  
8 contract as a result of the RFP process?

9           A.    I think it was a two-year arrangement.

10          Q.    So after the two years, how did you  
11 get -- how did you procure coal?

12          A.    Well, it changed from the RFP process.  
13 The provider who won the RFP was providing low sulfur  
14 and high sulfur coal through their contract. Because  
15 of the volatility and the price that we were starting  
16 to see on purchasing low sulfur coal we actually took  
17 that process in-house, and the entity that did have  
18 both just delivered high sulfur coal.

19          Q.    So when you switched from procuring both  
20 high sulfur and low sulfur coal, did you issue an RFP  
21 for the coal that you procured outside?

22          A.    The remaining high sulfur coal was -- I'm  
23 trying to think of the percentage. It was maybe 25  
24 percent of the total. And due to the proximity of  
25 the -- of the coal from the provider there really



1 wasn't an -- a viable alternative. We did look  
2 around, talk to some other providers, but their mines  
3 were 20 miles from the plant, and they were offering  
4 a substantial discount from what other offers we  
5 could get.

6 Q. But in order to find that out, you had  
7 sort of informal conversations with other suppliers;  
8 you didn't go through an RFP process.

9 A. That's correct.

10 Q. And then with the aggregation program you  
11 did an RFP for suppliers to government opt-out  
12 customers; is that right?

13 A. To -- it was an RFP for a supplier to  
14 various aggregation programs that we have.

15 Q. And how many RFPs did you put together to  
16 find suppliers for your government aggregation  
17 programs?

18 A. I believe there were only two.

19 Q. And how did you procure supplies after  
20 the two RFP procedures?

21 A. We would contact various suppliers that  
22 were doing business on -- if it was Columbia's  
23 system, we would contact the CRNG providers that were  
24 doing business with Columbia; it was Dominion, same  
25 thing on their system, and just have ongoing

1 discussions about their aggregation programs, their  
2 interest level, and what type of services they could  
3 provide. We were typically talking to five to seven  
4 at any given time, five to seven suppliers you might  
5 be having discussions with for each aggregation as it  
6 became available.

7 Q. And so would you agree with me that after  
8 the initial RFPs, you had informal discussions with  
9 likely suppliers to find gas suppliers for your  
10 government aggregation customers?

11 A. I wouldn't call them informal. I would  
12 say they were pretty in depth conversations.

13 Q. Okay. But you didn't issue formal RFPs  
14 after the first two times anyway.

15 A. No.

16 Q. Okay. And you -- yet you continued to  
17 contract with suppliers to serve your government  
18 aggregation customers at AMP despite the fact that  
19 you didn't issue formal RFPs, correct?

20 A. That's correct.

21 Q. And would you agree with me that an  
22 RFP -- the letters RFP are an acronym that stand for  
23 the words request for proposal?

24 A. I believe that's correct.

25 Q. And other than the coal RFP and the two

1 gas RFPs, had you participated in the design or  
2 implementation of other RFP processes?

3 A. Not that I recall.

4 Q. Okay. And would you agree with me that  
5 the definition that we agreed on would be the meaning  
6 of the letters RFP, that you were not relying on any  
7 statute, rule, regulation, other codified reference  
8 material in agreeing with me on that definition,  
9 correct?

10 A. No, I'm not.

11 Q. RFP, or request for proposal, is somewhat  
12 like a bid process but instead of advertising to all  
13 suppliers generally you would send usually an RFP to  
14 a select number of potential suppliers and ask them  
15 to submit proposals; would you agree with me on that?

16 A. Yes, I would agree.

17 Q. And do you believe that despite the fact  
18 that you did not engage in an RFP process for coal at  
19 AMP, that you were procuring coal for your AMP  
20 municipal customers at a competitive or a good price  
21 for high sulfur coal?

22 A. For high sulfur coal.

23 Q. Yes.

24 A. Yes. I was convinced we were getting a  
25 very good price for the high sulfur coal.

1           Q.    Okay.  And in the case of gas suppliers  
2           for government aggregation customers, after you  
3           stopped doing RFP processes, for those gas suppliers  
4           would you agree with me that you continued to receive  
5           competitive prices for gas supply?

6           A.    I felt like we got the same responses  
7           only in a more timely fashion than if I was just  
8           sitting down individually with the suppliers and  
9           having a discussion as opposed to issuing an RFP and  
10          then waiting a period of time for the responses to  
11          come in, and so I believe the process we used was the  
12          same as an RFP.

13          Q.    So you would agree with me then that you  
14          can procure commodities at good and/or competitive  
15          prices even if you don't issue any RFP; isn't that  
16          right?  It's possible to do that?

17          A.    That's what we found.

18          Q.    Would you agree with me that an RFP would  
19          generally go to providers of a service or supplier  
20          that's well known in the area of being capable to  
21          respond to a particular request?

22          A.    You're saying if I'm issuing an RFP  
23          for -- for the -- for AMP for the coal supply, we're  
24          going to send it to providers that I believe can  
25          perform the services I require?

1           Q.    Yes.  Would you agree with me that  
2           generally speaking an RFP would go to providers of  
3           service or supply that are capable of being  
4           responsive to that request in a particular geographic  
5           area?  In other words, if Gorsuch is in southeastern  
6           Ohio, you wouldn't necessarily send an RFP to a coal  
7           mine in Colorado due to your perception of the cost  
8           of transporting the coal would likely make the  
9           response not competitive?

10          A.    In that particular scenario you just used  
11          I probably wouldn't send a request for proposal to a  
12          mine in Colorado.  I would, however, talk to mines in  
13          Colorado about low sulfur coal.

14          Q.    All right.  Generally, so you would agree  
15          with me in any RFP process there is an informal  
16          process of editing even before you send the RFP out  
17          to potential bidders, right?

18          A.    I don't know if I would use the word  
19          "editing."  If you mean evaluating who the potential  
20          providers might be and selecting a group of companies  
21          to submit the RFP to, I don't know if I would call it  
22          formal or informal.  I think there is a process you  
23          would go through depending on your knowledge of the  
24          industry to determine who might be able to provide  
25          the services you are looking for.

1           Q.    So taking, for example, the RFP done for  
2   AMP, and you were looking specifically for low sulfur  
3   coal so you did an RFP for that, correct?

4           A.    No.  I was looking -- in the RFP itself I  
5   was looking for low and high sulfur coal.

6           Q.    Oh, okay, in the RFP itself.  Okay.  Do  
7   you remember how many potential bidders you  
8   distributed that RFP to?

9           A.    I don't recall.  It was a number I'm  
10   going to say in the neighborhood of 10, but it may  
11   have been more.  It's been a long time.

12          Q.    And do you remember how many responses  
13   you got to the 10 requests that were sent out?

14          A.    As I recall, there were three.  There may  
15   have been four, but it's -- again, it's been a long  
16   time.

17          Q.    And when you got those responses, those  
18   weren't submitted anonymously.  You actually knew the  
19   company that was responding; isn't that right?

20          A.    That's correct.  We knew who the response  
21   was from.

22          Q.    And have you ever done an anonymous RFP  
23   where the responses were done anonymously?

24          A.    I've never -- I've never been in a  
25   position where I was issuing an RFP that I felt an

1 anonymous response was of any value.

2 Q. And would you agree with me that the  
3 components or the makeup for the procedures that  
4 anyone would follow in an RFP are not necessarily  
5 uniform?

6 A. I would agree.

7 Q. And would you agree with me that some of  
8 the components and some of the procedures that were  
9 followed in those RFPs were not precisely the same  
10 procedures in or components, say, from a coal RFP to  
11 the gas RFP?

12 A. There were many differences between the  
13 two RFPs that you are discussing that I was involved  
14 with.

15 Q. So not only can RFPs differ on the entity  
16 involved but they can differ based on the situation  
17 involved; isn't that right?

18 A. Yes.

19 Q. And I think we agreed that there was no  
20 specific statute, rule, regulation, or other codified  
21 or reference material that we were using to define  
22 the phrase request for proposal, or RFP, correct?

23 A. That's correct.

24 Q. Okay. Likewise, there's no specific code  
25 provision, statute, rule, regulation, or order that

1 would specify, for example, how many potential  
2 responders an RFP is required to be sent to in order  
3 to be considered competitive.

4 A. There is in my mind.

5 MR. YURICK: Could you read my question  
6 back, please.

7 (Question read.)

8 Q. So could you answer that question, sir?

9 A. I'm sorry. You are asking how many RFPs  
10 that need to be issued or returned?

11 Q. I will try to clarify it. There is no  
12 code provision, statute, rule, regulation, or order  
13 that specifies a minimum number of potential  
14 responders that an RFP must be sent to in order to be  
15 considered competitive.

16 A. No. When you --

17 Q. I'm correct?

18 EXAMINER FARKAS: Are you agreeing with  
19 his question?

20 THE WITNESS: Yes, agreeing with the  
21 question.

22 A. When you said responders, it threw me. I  
23 was thinking you were talking about responses coming  
24 back, but you were actually talking about the RFPs  
25 that were being issued and sent out.



1           Q.    Correct.  I am talking about initially  
2   when you send out the RFP to various chosen entities,  
3   there's no code provision, statute, rule, regulation,  
4   or order that says in order to be considered a  
5   competitive result, you have to send these RFP  
6   documents to 15, 20, 25 people.  There's no guidance  
7   on that in a code, rule, regulation, order.

8           A.    There is none that I am aware of.

9           Q.    Now, we talked a little bit in your  
10  deposition about the difference between a competitive  
11  process for an RFP and a competitive result for an  
12  RFP.  Do you remember that conversation vaguely?

13          A.    I do.

14          Q.    And I believe in -- when we talked, you  
15  believed there was a difference between a competitive  
16  process and a competitive result; is that correct?

17          A.    That's correct.

18          Q.    And I believe that you felt that a  
19  competitive process was followed in the RFP that the  
20  company issued pursuant to the stipulation in the  
21  last audit.

22          A.    I believe what I looked at -- and I think  
23  I said I didn't really look too closely.  I don't  
24  recall exactly what the process was that was sent  
25  out.  But from what little I read of it, it looked

1     like a -- a competitive process was being  
2     established, although I did have some concerns about  
3     the RFP itself.

4             Q.     Okay. And let me ask you based on your  
5     experiences with your RFPs and based on what you've  
6     looked at here, would you say that there is anything  
7     that could be considered a universal or generally  
8     accepted template or model for an actual RFP?

9             A.     Not that I'm aware of.

10            Q.     Okay. And are there any rules,  
11     regulations, code provisions, or other reference  
12     materials, orders that set forth any minimum standard  
13     for a response to an RFP?

14            A.     Not that I am aware of.

15            Q.     And would you agree with me there is no  
16     rule, regulation, code provision, or statute that  
17     sets forth a minimum standard for a time for response  
18     to an RFP?

19            A.     I am not aware of any standard. I think  
20     that is an issue that's wholly dependent on that RFP,  
21     how much time the issuers of the RFP have before they  
22     need the services to begin.

23            Q.     Okay. But there is no rule, regulation,  
24     code provision, statute, or order that says if you're  
25     issuing an RFP for this, you have to allow this much

1 time for a response; isn't that right?

2 A. That's right. I think it's up to the  
3 individual issuer.

4 Q. And you would agree with me also there is  
5 no rule, regulation, specific code provision, or  
6 statute that would set forth a minimum number of  
7 responders to an RFP?

8 A. Now, you're asking there's no rule that  
9 says there's a minimum number of responders?

10 Q. That's correct.

11 A. Since I am not aware of any rules related  
12 to the issuance for the RFP process, I think the  
13 answer would have to be, no, I am not aware of it.

14 Q. So you would agree with me there is no  
15 rule, regulation, statute, or other codified  
16 reference materials that sets forth a minimum number  
17 of responders for an RFP process to be considered  
18 competitive?

19 A. I'm not aware of any.

20 Q. Okay. I do believe that one of the  
21 criticisms that you made of the RFP process filed --  
22 or followed, excuse me, in -- by the companies was  
23 that there was a single responder, correct?

24 A. That was one of two issues I think I had  
25 with the process.

1 Q. But that was one of the issues.

2 A. That's one of the issues.

3 Q. And are there any circumstances based on  
4 your experience, training, and knowledge where a  
5 single response to an RFP would be considered a  
6 competitive result?

7 A. Not if I'm in charge of the RFP.

8 Q. And would your answer be the same if that  
9 one response was an anonymous response?

10 A. It would be the same.

11 Q. So in your mind if there is only one  
12 responder to an RFP process, that that process even  
13 though it was a competitive process did not result in  
14 a competitive outcome?

15 A. That's correct. If I issue an RFP and I  
16 can only get one entity to give me a proposal, I'm  
17 going to start looking at bringing that work inside.  
18 I'm not going to be happy with one offer of services.

19 Q. But you would agree with me, would you  
20 not, that there is no statute, rule, regulation,  
21 Commission order, or other codified reference  
22 material that would suggest that a single response to  
23 an RFP by law invalidated the RFP process?

24 A. I am not aware of any laws regarding the  
25 RFP process.

1           Q.    Now, I believe you're familiar with the  
2           stipulation that the companies and the staff and the  
3           OCC entered into in the 2010 audit case; is that  
4           correct?

5           A.    That's correct.

6           Q.    And in order -- did that stipulation  
7           require in an RFP process that the RFP be sent to a  
8           minimum number of potential responders?

9           A.    I don't know.

10          Q.    You would agree with me that the  
11          stipulation did require the companies to engage in an  
12          RFP process.

13          A.    I would agree with that.

14          Q.    Do you recall whether the stipulation  
15          required that in order for the RFP process to be  
16          considered adequate that the company receive a  
17          certain number of responses to the RFP?

18          A.    I don't recall that discussion.

19          Q.    Do you recall any provision in that  
20          stipulation that mandated that if the competitive  
21          process were to only result in responds from a single  
22          bidder, that that RFP process be scuttled and the  
23          company regroup and reissue the RFP?

24          A.    I'm really -- I don't recall the  
25          specifics of what was being discussed.  It's been

1 several years. That would have been, however, my  
2 intention if -- had the result we got been more --  
3 been what we -- what we saw, then I would have wanted  
4 to -- to have redone it. The problem at that point  
5 was it took over a year to get the RFP in place and  
6 that was a surprise to everyone.

7 Q. Well, you will probably get to talk about  
8 that with your lawyer, but my question was was there  
9 anything in the stipulation that specifically stated  
10 if you only get -- if the companies only get one  
11 responder to this RFP process, they have to scuttle  
12 the results of the RFP and start over. Do you recall  
13 anything?

14 A. I don't recall that.

15 Q. I think we talked about during your  
16 deposition a few days ago existing relationships with  
17 suppliers. Do you remember anything about that  
18 vaguely?

19 A. Vaguely.

20 Q. And I think you said that your experience  
21 is if there is an existing supplier of a particular  
22 commodity to a business, a utility, that that  
23 existing relationship tends to scare off potential  
24 bidders for supply; is that right?

25 A. I believe I said that someone already had

1 the business, or if there was an affiliate involved,  
2 that both of those issues have potential to scare off  
3 potential bidders.

4 Q. And I know that you mentioned the  
5 potential chilling effect of an affiliate  
6 relationship, but I think we also talked about the  
7 chilling effect that any existing relationship, even  
8 an existing relationship between a company and a  
9 nonaffiliated supplier; isn't that right?

10 A. We talked about both.

11 Q. Correct.

12 A. I believe it was my opinion that an  
13 affiliate would be more problematic but that they  
14 were both potential problems to getting as many  
15 responders as possible.

16 Q. And in a particular situation would you  
17 agree with me it's somewhat difficult to determine  
18 why there are a certain number of responders to an  
19 RFP process?

20 A. I think that's correct. It's difficult  
21 to determine why someone did or someone didn't  
22 respond and that's why we usually follow up and ask,  
23 try to learn so that the next whether it was an RFP  
24 or an informal contact would be more productive.

25 Q. So would you agree with me that going

1 through an RFP process, that doesn't necessarily  
2 guarantee that you are going to get the lowest  
3 supply, correct?

4 A. You said lowest supply. You mean lowest  
5 price?

6 Q. Lowest priced supply, I'm sorry.

7 A. I'm not sure that going through an RFP  
8 process guarantees anything. It doesn't even  
9 guarantee you are going to get a single bid.

10 Q. And there are other ways, in your case at  
11 AMP direct negotiation, where companies can receive  
12 competitive prices for their supply needs, correct?

13 A. I felt that's what we experienced, yes.

14 Q. You mentioned affiliate relationships.  
15 Are there any circumstances that you believe an  
16 affiliate is capable of responding to an RFP in a  
17 fair, competitive RFP process?

18 A. I'm not sure that's the proper question.

19 Q. Okay.

20 A. I don't think -- I don't think that's  
21 what the issue is.

22 Q. Well, I'm just going to ask you the  
23 question, okay, which is in your opinion can an  
24 affiliate ever participate in an acceptable, fair,  
25 competitive RFP process or in the alternative if an



1 affiliate responds to an RFP, is the result of that  
2 RFP per se tainted and noncompetitive?

3 A. I don't know.

4 Q. Do you have a preference?

5 A. I'm sorry. Is that a question?

6 Q. Yes. Do you have a preference? If you  
7 are setting up a fair, open, competitive RFP process,  
8 do you want affiliates to be permitted to offer  
9 responses to that RFP?

10 A. Generally I would say no.

11 Q. So generally speaking if an affiliate  
12 bids an RFP process or if an affiliate participates  
13 in an RFP process and submits a response for supply  
14 in an RFP process, in your mind that competitive  
15 procedure or that RFP process is tainted and in some  
16 ways less than adequately competitive?

17 A. Yes, especially in this case.

18 Q. Okay. And you're aware that in other  
19 contexts, for example, electric supply, that the  
20 Commission does allow affiliated entities to bid on  
21 supply contracts, correct?

22 A. I've seen it both ways.

23 Q. Yes. So I'm just asking you if you --  
24 you've seen our RFP process that the Commission has  
25 allowed where affiliates are permitted to submit

1 responses?

2 A. Yes, I have seen -- I have seen that with  
3 some of the electric ESP auctions.

4 Q. Do you believe that the ability for  
5 potential bidders to ask questions in a secured data  
6 room and receive -- and all bidders receive answers  
7 to those questions anonymously, do you think that's a  
8 good characteristic of an RFP or something that  
9 should make the RFP process more competitive?

10 A. I think to the extent a potential  
11 responder to the RFP can get as much information as  
12 they desire in order to make an informed bid, I think  
13 that's the positive. So to the extent that it was  
14 information available in the information room, I  
15 would say that's probably a positive.

16 Q. And do you believe that anonymous  
17 responses are at least potentially a good process to  
18 follow in an RFP process to get a competitive result?

19 A. I think you're asking once the -- when  
20 the bids come in, that I would choose the bid without  
21 knowing who I was picking, do I think that's a good  
22 approach? No, I don't.

23 Q. Okay. Why not?

24 A. I think we've covered this in the  
25 deposition, but to me some of those suppliers that

1     may bid maybe don't have the ability in my mind or in  
2     my company's mind to perform the work. They may be  
3     bidding for part of the -- of the bid. And if we got  
4     a -- an attractive bid for part of the -- of the  
5     services, maybe there was a way to package that bid  
6     with another one. I'm -- I would want to know  
7     potentially who I'm dealing with. I'm not sure I  
8     understand the reason for the anonymous bid unless it  
9     is as a potential way to show that there is no bias,  
10    but I don't think an anonymous bid -- if people are  
11    concerned about there being bias in an RFP process, I  
12    don't think the fact that it is being put out there  
13    as an anonymous bid, an evaluation is going to  
14    alleviate those people who have that concern about a  
15    bias potentially existing.

16           Q.     So you would say that if an affiliate is  
17    permitted to bid, that anonymous responses don't  
18    necessarily do anything to ensure against showing  
19    bias to an affiliate?

20           A.     I think some of your -- some of our  
21    bidders might look at it that way. And the best way  
22    to know would be to ask.

23           Q.     I guess I'm asking you do you think that  
24    having anonymous responses is at least a potential  
25    way of addressing concerns of bias in favor of an

1 affiliate?

2 A. It wouldn't alleviate my concerns.

3 Q. So it wouldn't -- it wouldn't alleviate  
4 them. Would it address them to any extent?

5 A. Not really.

6 Q. And looking at the process that the  
7 companies went through to come up with their supply  
8 agreement, do you remember from your examination how  
9 many potential bidders the RFP was initially sent to?

10 A. I recall 15.

11 Q. Okay. And would that be an adequate  
12 number in your mind there would be competitive  
13 response to the RFP process?

14 A. I would have thought 15 would have been  
15 an adequate number to send the RFP process to.

16 Q. Okay. And I believe out of the 15, 6 of  
17 those potential responders submitted prequalification  
18 agreements; is that -- is my recollection correct on  
19 that?

20 A. That's what I recall as well.

21 Q. And if one were designing and running an  
22 RFP process, do you believe that 6 of 15 submitting  
23 prequalification agreements, do you believe that was  
24 an adequate competitive response?

25 A. I would have preferred more. I would

1 have been disappointed if I sent 15 requests for  
2 proposals out and all they had to do was get  
3 prequalified, just to get prequalified, to start  
4 digging into the information or try to do their  
5 investigation, I would -- that doesn't sound like a  
6 lot of effort and I would have anticipated a higher  
7 number.

8 Q. On the order of what number would you  
9 have considered adequate?

10 A. Well, I would have preferred 10 or more,  
11 I think, anyways. I certainly would have wanted more  
12 than half just because I don't think it took that  
13 much effort to just get prequalified. The fact that  
14 9 of the 15 bidders didn't bother to get qualified  
15 which as I remember wasn't a huge effort. Maybe I'm  
16 underestimating the other teams' effort that it took  
17 to develop them immediately.

18 Q. But there could be other reasons why  
19 potential bidders didn't go to the effort, for  
20 example, if the quantities were particularly low for  
21 them or if they weren't able to potentially supply  
22 the gas at what they thought was a competitive price,  
23 right?

24 A. Could be a multitude of reasons and we  
25 should know what those reasons are today.

1           Q.    At that point in the process when you  
2           sent out 15 RFPs and you get 6 responses back,  
3           should -- do you feel the process should have been  
4           scrapped at that point?

5           A.    If we were two months after the  
6           stipulation, so fairly early in the process, I might  
7           have considered tweaking it when we only got six.  
8           Because we were a year after the stipulation had been  
9           signed and we were just then getting the RFP process  
10          in place -- I don't know the exact timing of when  
11          those six came back to the company. My guess is it  
12          was fairly well along in that year. I probably would  
13          have gone -- continued forward with just the six  
14          because of the time delays we already experienced.

15          Q.    And, again, there's nothing in the  
16          stipulation that said if you only get six responses  
17          to the RFP, you have to scrap it, right?

18          A.    Not that I recall.

19          Q.    Okay. Then of the six you received one  
20          response, and you, I believe, would have a problem  
21          with getting the single response from the six; is  
22          that right?

23          A.    That's right.

24          Q.    And I think we sort of covered it but  
25          I'll ask so it's clear, in your mind if you only get

1 one response, that's not a competitive outcome no  
2 matter how good of a process you provide; is that  
3 right?

4 A. That one response is not competing with  
5 any other response so that's right.

6 Q. I believe you had also a criticism of the  
7 pricing paid by Orwell and Northeast for local  
8 production of gas; is that correct?

9 A. By pricing you mean the contract with  
10 JDOG and the 75 cents that they were putting in the  
11 agreement plus transportation?

12 Q. Right. All -- basically you had a  
13 price -- you had a concern with prices paid by the  
14 two local distribution companies for local production  
15 of gas; is that right?

16 A. I had a problem with the contracts and  
17 the prices -- how the prices were being set up in the  
18 contracts for local production of gas, that's  
19 correct.

20 Q. And I believe you did a recalculation of  
21 the supplies based on the historical difference  
22 between the prices that the local distribution  
23 companies historically paid for local production  
24 versus the prices that the local distribution  
25 companies were paying pursuant to their agency

1 agreements with JDOG.

2 A. That's correct.

3 Q. And I believe that you found that the --  
4 if you looked at historical costs that local  
5 production was purchased at an average rate that was  
6 a \$1.03 per Mcf less than the average cost of  
7 interstate gas supply; is that correct?

8 A. That's correct.

9 Q. Okay. And I believe you also say in your  
10 testimony that after JDOG began purchasing local gas  
11 production for Northeast for the five-year period,  
12 the average cost of local gas averaged 85 cents per  
13 Mcf more than the average cost of interstate gas; is  
14 that correct?

15 A. That's correct.

16 Q. Now, the prices for interstate gas and  
17 the prices for local production gas varied over that  
18 time period. In some cases they were fairly  
19 volatile, weren't they?

20 A. There was a good range.

21 Q. Okay. But when you took the \$1.03 per  
22 Mcf when compared to interstate gas supplies and the  
23 85 cent per Mcf more, that was not a weighted number;  
24 that was an arithmetic average, wasn't it?

25 A. It's an arithmetic average. I did not go



1 back and take the amount of local gas deliveries each  
2 year and make it a weighted average.

3 Q. So hypothetically if the price paid for  
4 local production gas was \$6 an Mcf, or I should say  
5 6.03, and the price of gas for local production was  
6 \$5, that would account for your \$1.03 difference,  
7 right? That would be an example of how you came up  
8 with \$1.03? If interstate gas was \$6.03 and local  
9 production was \$5, that would leave you with \$1.03  
10 difference, right?

11 A. Right.

12 Q. Okay. But, likewise, if the price of  
13 local production was \$1 and the price of interstate  
14 gas was \$2.03, that would give you the same \$1.03  
15 difference, right?

16 A. Right.

17 Q. Even though on a percentage basis in the  
18 second example the interstate gas was literally twice  
19 as expensive as the local production gas, a little  
20 more. It's 103 percent.

21 A. All right. There may have been cases  
22 over the years that was true. I don't know.

23 Q. And in at least one of your examples  
24 interstate gas -- even interstate gas was still more  
25 expensive than local production purchased through

1 JDOG, wasn't that correct, in at least one year?

2 A. Are you talking about before 2008?

3 Q. Yes. I believe I'm talking about post --

4 A. Post2008.

5 Q. Right.

6 A. I believe there was one year, I think it  
7 was 2009, where local gas was slightly less. I think  
8 it was 8 cents less than the interstate gas.

9 Q. Would you agree that reliability of  
10 supply also figures into a prudence determination?

11 A. I think reliability of supply would enter  
12 into a prudence evaluation, yes.

13 Q. And let me ask you this, the contract  
14 that was entered into as a result of the RFP process,  
15 you do have an opinion and a criticism of the local  
16 production portion of prices paid by Northeast Ohio  
17 Gas, correct, to JDOG?

18 A. I'm saying the contract is not clear.

19 Q. Okay. Well, based on your repricing and  
20 your opinions related to repricing, it seems that you  
21 disapprove of the price that NEO paid JDOG for local  
22 production; is that correct?

23 A. Certainly through the audit period.

24 Q. Okay. My question would then be what  
25 about the prices that the -- both NEO and Orwell paid

1 to JDOG for interstate gas? Do you have a similar  
2 problem with that? Do you have an opinion on that?

3 A. I haven't really looked at them like I  
4 have local gas. The contract itself on the face of  
5 it without too much in depth research looks  
6 significantly lower for JDOG's adder that they get or  
7 price they get for delivering interstate gas. As I  
8 recall, it's 15 cents through the audit period versus  
9 the 75 cents for local production. At least that's  
10 what the contracts say.

11 Q. But, again, your opinion -- and your  
12 opinion is limited to local production on Northeast;  
13 isn't that right?

14 A. Northeast and Orwell, I make no  
15 recommendation on the interstate purchases by JDOG.

16 Q. Okay. And interstate gas is generally  
17 priced through, I believe Mr. Serio referred to it  
18 earlier, NYMEX which is the New York Mercantile  
19 Exchange; is that right?

20 A. That would be one way to do it.

21 Q. Okay. And would I be correct in stating  
22 that the NYMEX price for interstate gas is a  
23 generally accepted -- accepted gauge of what a  
24 1,000 cubic feet of gas would be available on the  
25 open market minus transport, shrink, and other like

1 charges.

2 A. Well, the NYMEX is -- is a price for on a  
3 technical term basis which I think is a physical  
4 point in the southwest and then you can compare that  
5 to other points, other indexed points like TCO  
6 Appalachian pool.

7 Q. So it is an index price, and it's set  
8 by -- would you agree with me it's set by a  
9 relatively efficient market for interstate gas?

10 A. I assume so.

11 Q. Okay. And it is -- it is an index and  
12 it's published so -- so it's something that you could  
13 go and find in reference material.

14 A. That's correct.

15 Q. Would you agree with me for local  
16 production there is no currently effective, clear,  
17 published index price?

18 A. I would not be aware of where to go look  
19 to find an index price for local production.  
20 However, I would think someone in the business of  
21 purchasing local production would be able to tie that  
22 particular well site that they were looking to  
23 purchase gas to -- or gas pumped to an Appalachian  
24 pool price or to a NYMEX price plus or minus.

25 Q. I mean, that's fair but my question is

1 would you agree with me that there is no  
2 corresponding source material like a NYMEX price for  
3 local production?

4 A. Not that I am aware.

5 Q. Okay. And would you agree with me a lot  
6 of factors go into pricing local production?

7 A. I would agree.

8 Q. Okay. And, for example, some of those  
9 factors might be whether or not it's economically  
10 rational to transport that local production to the  
11 Henry Hub.

12 A. Well, I don't think it would make any  
13 sense to transport it to the Henry Hub, no.

14 Q. Okay. So really my question is if there  
15 were -- if there were no economically feasible way to  
16 transport it to a particular place, then there  
17 wouldn't be a price for the gas at that place because  
18 you couldn't really economically get it there, right?

19 A. I guess if -- I guess I would agree with  
20 that if you're saying -- if you're saying there's a  
21 production well that's flowing into the  
22 Cobra Churchtown system, and the alternative was  
23 Northeast takes the gas or the gas is going to go to  
24 the Columbia Gas Transmission System, then you are --  
25 then you know basically what the Appalachian pool

1 price is. You know what it costs to get you there.  
2 You can work backwards and determine approximately  
3 the value of your gas at that -- at that point.

4 Q. And there's no rule, law, regulation,  
5 statute, or code provision that mandates a minimum  
6 price for local production, correct?

7 A. Not that I'm aware of.

8 Q. There's also no statute, rule, code  
9 provision, or other legally-adopted Commission  
10 reference to a maximum price that a local producer  
11 could charge for local production gas, is there?

12 A. Not that I am aware.

13 Q. Another factor that might go into local  
14 production might be the volume production that a  
15 particular buyer is willing to purchase; isn't that  
16 right?

17 A. I think it would depend -- price and  
18 volume would both have a part in what a producer  
19 might be willing to sell his gas for.

20 Q. All right. So if I'm a buyer and I would  
21 literally go into a local producer and say I'll buy  
22 everything you can produce, that producer may be  
23 willing to sell me that local production for a price  
24 lower than somebody whose only going to take a small  
25 percentage of the production.

1           A.    Maybe but it depends on how liquid he  
2           thinks his gas is.  If he's got plenty of people that  
3           want to buy it and the fact that you're offering to  
4           take it all at a discount but he thinks he can sell  
5           it all at a higher price maybe to multiple providers,  
6           my guess is he'll probably sell it to multiple  
7           suppliers.

8           Q.    I understand there are a lot of factors  
9           that go into pricing.  I'm just trying to get us to  
10          agree on several of those potential factors.

11          A.    I think the factors, the volume, the  
12          price, the competitive options that the producer of  
13          the gas has, those are all factors that can affect  
14          the price that he is able to request for his gas.

15          Q.    What about the consistency of demand?  If  
16          I can give you a hypothetical, let's say I'm willing  
17          to take 10,000 dekatherms from a local producer per  
18          month, whereas, somebody else leaves the particular  
19          amount they are willing to take at a particular price  
20          open so I might take 50 dekatherms in December but I  
21          might only need 2000 dekatherms in July, would that  
22          affect my price potentially?

23          A.    It could.  My understanding is that these  
24          producers, local producers, want to open flow the  
25          well.  They want to sell whatever they produce,

1       however much their system -- they are delivering into  
2       containment so their first choice would be to sell it  
3       all would be my guess, but I'm not a producer. I'm  
4       just saying that could be a factor.

5               Q.     Going back to the stipulation, was there  
6       any requirement in the stipulation that the companies  
7       buy gas, local production, at a particular level of  
8       premium over the NYMEX price?

9               A.     I don't know.

10              Q.     Okay. So you don't know if there was  
11       anything in the stipulation that said the companies  
12       shall issue an RFP for their local and interstate  
13       production, but the companies shall not produce local  
14       production if the price of local production is in  
15       excess of \$1.05 plus the NYMEX price?

16              A.     I don't know.

17              Q.     I think you looked at also some other  
18       smaller gas distribution companies in Ohio to compare  
19       with Orwell and Northeast; is that right?

20              A.     That's correct.

21              Q.     One of those systems was Piedmont --

22              A.     Piedmont was one of them.

23              Q.     I believe another was Eastern; is that  
24       correct?

25              A.     Correct.



1           Q.   And I believe another one was Ohio  
2   Cumberland; is that right?

3           A.   That's correct.

4           Q.   Okay.  How many customers did Piedmont  
5   have?

6           A.   I don't recall.  All five companies had  
7   less than 30,000 customers as I recall.  So anywhere  
8   from 1,000 to 30,000, in that range, I think all five  
9   were in there so I would consider all five of them  
10  small local gas distribution companies.

11          Q.   Okay.  So would you agree with me,  
12  subject to check, if I told you that Ohio Cumberland  
13  had 1,543 customers?

14          A.   Subject to check.

15          Q.   And would you agree with me, subject to  
16  check, that Piedmont had 1,559 customers?

17          A.   Yes.

18          Q.   That Eastern had 6,053 customers, subject  
19  to check?

20          A.   Yes.

21          Q.   Orwell had 6,609 customers; is that  
22  right?

23          A.   Yes.

24          Q.   But Northeast had 14,548.

25          A.   Sounds about right.

1           Q.    And the -- would you agree with me that  
2           the number of customers for Northeast at 14,548 is  
3           quite a bit different than the number of customers  
4           that Ohio Cumberland has at 1,543?

5           A.    I think the total is different but there  
6           may be a lot more going on there.  Piedmont may have  
7           two systems that count for those 1,500 customers, and  
8           I think I heard Mr. Whelan say Northeast has 100  
9           systems so Northeast's various systems may be smaller  
10          than Piedmont.  I'm just not sure.

11          Q.    But you would agree with me the  
12          difference between 14,000 plus customers and 1,500  
13          customers is significant?

14          A.    Not in what we were looking at here, no,  
15          I don't think it is.

16          Q.    Okay.  So you looked at these three small  
17          LDCs and I think you actually put together a graph  
18          and it looks like -- looked to me from the graph that  
19          generally Eastern Natural Gas paid a little more for;  
20          would you agree with that?

21          A.    You are looking at Attachment 5?

22          Q.    Yes.

23          A.    So that graph goes from 2003 through  
24          January of 2013.  Just visually looking at it, it  
25          looks like Eastern has an average higher price for

1 its GCR than does Piedmont or Ohio Cumberland.

2 Q. Okay. And then if you look at Ohio  
3 Cumberland, it looks like toward the early part of  
4 the graph they were generally paying less than  
5 Eastern but a little bit more than Piedmont, right?

6 A. I think -- I think the early part of the  
7 graph Piedmont is a little cheaper, and then near the  
8 latter part of the graph I think that Ohio Cumberland  
9 has been cheaper on average in the last three or four  
10 years.

11 Q. Okay. I see that. I won't quibble with  
12 that.

13 A. It's not the best -- it's a little busy  
14 of a graph, I'll admit.

15 Q. But at some point Ohio Cumberland is  
16 paying a little bit more than Piedmont, and sometimes  
17 they are paying a little bit less.

18 A. Yes.

19 Q. And then over time it looks like, you  
20 know, Ohio Cumberland is paying more or less -- less  
21 than Eastern but a lot of times more than Ohio  
22 Cumberland.

23 A. Right. I think that Piedmont and Ohio  
24 Cumberland changed a little bit positions. Eastern  
25 is generally always or almost always higher, and

1 certainly if we look since January of 2010, Eastern  
2 has always been higher than the other two.

3 Q. And it looks like the highest price paid  
4 by anybody was around between May and September of  
5 '08 by Piedmont who a lot of times was paid less than  
6 Eastern, but in this instance they paid over 16 bucks  
7 an Mcf between May and September of '08 in Attachment  
8 5 in your testimony.

9 A. I think there's one -- one month there  
10 where.

11 Q. Now, the lowest price was probably paid  
12 by Ohio Cumberland toward September, '12; January,  
13 '13.

14 A. Yes.

15 Q. You say Piedmont buys 100 percent of its  
16 gas from local producers, right?

17 A. Yes. That's what I recall.

18 Q. And Ohio Cumberland split right down the  
19 middle at 50/50.

20 A. Right.

21 Q. And then Eastern, they get 100 percent of  
22 their gas purchases through interstate; is that  
23 right?

24 A. That's right.

25 Q. And even by your graph here, the prices

1     paid by these three small local distribution  
2     companies, they vary pretty wildly in that period,  
3     don't they?

4             A.     They can -- the prices.

5             Q.     So like, for instance, Ohio Cumberland in  
6     January, '13, is paying a little over 2 bucks for an  
7     Mcf, right? Am I reading that correctly?

8             A.     For what month again?

9             Q.     September, January -- September, '12;  
10    January, '13, they are paying a little over 2  
11    bucks --

12            A.     2 to 3 dollars, somewhere in there.

13            Q.     2 to 3 bucks for an Mcf of gas in --  
14    between May of '08, Piedmont is paying over \$16 per  
15    Mcf; isn't that right?

16            A.     That's right.

17            Q.     And the explanation for why these gas  
18    prices vary so widely over periods of time between  
19    these three LDCs aren't terribly easy to explain, are  
20    they?

21            A.     I don't think they are easy to explain,  
22    no.

23            Q.     A lot of different factors can impact on  
24    the prices paid for an Mcf of natural gas for a small  
25    system, right?

1           A.    Or for a large system.

2           Q.    So if -- if there were a large cold snap,  
3           a freak cold snap, that could account for Piedmont  
4           Gas's over \$16 per Mcf, but it might not, right?

5           A.    It might not. It might have.

6           Q.    It's just difficult to tell why somebody  
7           is paying a certain amount for gas just by looking at  
8           pricing, right?

9           A.    Right.

10          Q.    Now, you went back, and, again, I think  
11          you said earlier you repriced gas during the audit  
12          period for local production for Northeast and Orwell;  
13          is that right?

14          A.    That's correct.

15          Q.    And are you familiar with the testimony  
16          of Mr. Sarver?

17          A.    I am not.

18          Q.    You did not look at Mr. Sarver's  
19          testimony in this case?

20          A.    Just briefly. I had 186 pages of  
21          deposition that I was going through trying to do an  
22          errata. Took a little bit of my time.

23          Q.    So you are placing the blame squarely  
24          where it belongs; is that right?

25          A.    I am.

1           Q.    You don't need to explain to me.  I'm  
2           sure you are a very busy man.  At any rate would you  
3           accept, subject to check, my representation that the  
4           staff in this case repriced local production for  
5           Northeast local production; would you accept they did  
6           that?

7           A.    I would accept that.

8           Q.    And, in fact, they did that in the audit  
9           report, didn't they, also?

10          A.    As far as I recall.

11          Q.    And would you accept that if the staff's  
12          recommendation is use NYMEX as an index and add 50  
13          cents, 75 cents, and 25 cents to NYMEX prices, that  
14          that repricing methodology that was utilized by staff  
15          differs from the methodology that you used to reprice  
16          local production on Northeast and Orwell?

17          A.    Their methodology appears to differ from  
18          my methodology, that's correct.

19          Q.    So do you vehemently disagree with  
20          staff's methodology?

21          A.    No, not at all.  I simply did my own  
22          analysis.

23          Q.    In other words, more than one method of  
24          pricing local production is reasonable; isn't that  
25          right?

1           A.    I think mine is reasonable. I think the  
2   staff's is reasonable so we have two there. I would  
3   assume there could be more. I really don't know.

4           Q.    But certainly there's more than one  
5   reasonable way to reprice local production for  
6   Northeast; isn't that right?

7           A.    There appears to be at least two.

8           Q.    And the factors that go into pricing that  
9   local production are some of the things we discussed  
10  like volume, constancy, frequency, regularity, and  
11  deliverability; isn't that right?

12          A.    Not in my case.

13          Q.    Okay. But the factors that somebody  
14  would actually pay for local production, not  
15  necessarily in this case but just generally, could  
16  vary on a wide variety of factors, right?

17          A.    What -- what someone paid for local  
18  production there could be a number of factors, that's  
19  correct.

20          Q.    Okay. And there is no standardized index  
21  like NYMEX for local production that we have  
22  established.

23          A.    Not that I am aware.

24          Q.    Would the potential for heat generation  
25  of gas, could that factor into the price if it's --



1 are you familiar with the term hot gas?

2 A. I am.

3 Q. Okay. What's hot gas in your mind?

4 A. High Btu gas.

5 Q. Okay. So would -- could a seller offer  
6 and could a buyer rationally decide to pay more for  
7 hot gas than they would for gas of lower Btu content?

8 A. I assume it depends on the particular  
9 circumstances of the gas itself and the system the  
10 gas is going into.

11 Q. Okay. But, I mean, but there is at least  
12 a potentially rational reason for paying more for  
13 high Btu local production than lower Btu interstate  
14 gas; isn't that correct?

15 A. I think in this case that's true if you  
16 were in a confined system where that gas is going to  
17 be used right there, it's never going to be going  
18 through a processing plant, it's not going to be  
19 going into interstate suppliers. Years ago when  
20 liquid gas was being brought over from Nigeria, it  
21 was coming in in excess of 1,300 Btus. It was  
22 burning out water heaters left and right and so there  
23 could be a situation where a small LDC might ask that  
24 producer to do something with his gas before it  
25 entered his system. That's what I'm saying. There

1 are a number of different issues that could come up.

2 Q. But a rational buyer could consider some  
3 of these factors, for instance, Btu content in  
4 purchasing decisions?

5 A. I believe, sure, it can be considered.

6 Q. And your analysis and the staff's  
7 analysis didn't necessary factor that in in this  
8 case?

9 A. It didn't ignore it either.

10 Q. I guess what I'm saying you didn't  
11 specifically consider it because you assumed -- am I  
12 correct in assuming that you felt that the Btu  
13 content of the gas over a period of time when you  
14 were looking at historical prices didn't change?

15 A. I assumed it might not have, or it could  
16 have changed depending on the new wells coming in.  
17 That information wasn't available on the annual  
18 report that I found so I didn't consider it.

19 Q. Let's talk about Cobra Pipeline and  
20 liquids, okay? Is it your understanding  
21 Cobra Pipeline has a treatment plant?

22 A. It's my understanding there is a -- I  
23 don't know whether they call it a treatment plant,  
24 processing plant but there is a plant that is taking  
25 the heavier hydrocarbons out and leaves methane gas

1 before that gas is delivered into the TCO system.

2 Q. Are you familiar with any of the  
3 pipelines that provide similar services?

4 A. You're talking about interstate  
5 pipelines?

6 Q. Any pipeline that treats gas. Are you  
7 familiar with any?

8 A. I assume numerous of them have that. I'm  
9 not intimately familiar with any of them.

10 Q. Is it your opinion that there is any code  
11 regulation, tariff provision, statute, or other -- or  
12 order adopted by the Commission that would require a  
13 pipeline company to remove liquid elements from  
14 natural gas at no charge to a gas distribution  
15 company?

16 A. My understanding is that for stripping  
17 plants that are on interstate pipelines, the FERC  
18 would regulate how that's done and how they charge.  
19 I'm only aware in Ohio at this point, there may be  
20 others, I'm only aware of the one processing plant  
21 that is being regulated by the PUCO. There may be  
22 others. So you were asking if that particular plant  
23 should do that stripping for -- do that processing  
24 for nothing?

25 Q. Yeah. Is it -- are you aware of any

1 rule, regulation, statute, code provision, order, or  
2 tariff provision that would require Cobra to separate  
3 liquids from gas without charge?

4 A. No. The only document I would be aware  
5 of that would have any control over that processing  
6 plant would be the tariff that Cobra has on file.  
7 That's the only documents I would be aware of.

8 Q. And would you agree with me that the  
9 tariff states if gas is treated, that Cobra can  
10 charge 25 cents -- I don't know if it was Mcf or  
11 dekatherm.

12 A. I believe it's dekatherm.

13 Q. 25 cents per dekatherm for treating, in  
14 other words, removing liquids from natural gas? Is  
15 that -- isn't that permitted in Cobra's tariff?

16 A. My understanding of what the tariff says,  
17 I believe I have a copy of it here, but I believe if  
18 it's over 1,130 or 1,160 Btu per cubic foot, and if  
19 the gas is processed through the Cobra's processing  
20 plant, then they would be entitled to charge 25 cents  
21 per dekatherm for such gas, I believe.

22 Q. I can show you if it would help what's  
23 been marked and admitted as OCC No. 1 and draw your  
24 attention to paragraph 8 on First Revised Sheet No. 7  
25 Cobra Pipeline Company, Ltd., Tariff that states

1 1,130 Btu -- that if -- it states as follows in  
 2 numbered paragraph 8, "Processing and Compression  
 3 Charge of 25 Cents Per Dekatherm, Processing and  
 4 compression charge shall only apply when gas received  
 5 by Company at the Receipt Point has a heat content in  
 6 excess of 1,130 Btu per cubic foot and is processed  
 7 through a processing plant on Company's system."

8 A. I believe that's exactly what I said.

9 Q. So you would agree with me, yes?

10 A. No. You kept using the term "treatment,"  
 11 and I don't see that word in here. That's why I --  
 12 what I saw was processed through a processing plant.  
 13 I'm not sure that treatment is the same as  
 14 processing. It may be; it may not be. I'm not sure.

15 Q. Okay. We'll stick with the word  
 16 processing then. Is there anything in Cobra Pipeline  
 17 Company, Ltd's tariff that requires the Cobra company  
 18 if they remove or separate out liquid elements from  
 19 natural gas that somehow the Cobra Pipeline Company  
 20 give a credit back to a customer in the amount of  
 21 those -- those liquids?

22 A. I think if you look at original sheet No.  
 23 5, would be about halfway down, and it says it's the  
 24 "Company's sole obligation with respect to  
 25 liquifiabiles is to redeliver to Customer thermally

1 equivalent qualities of gas less applicable  
2 Shrinkage." So I read that to say the company in  
3 their tariff could redeliver this -- the equivalent  
4 Btus and not deliver it but as I -- as I read this  
5 tariff again, I haven't perused it that much, it  
6 looks like the company could offer rates lower than  
7 the 25 cents, possibly down to zero.

8 Q. All right. But there is nothing that  
9 requires it to offer lower rates. That's at the  
10 company's discretion; isn't that correct?

11 A. Yes.

12 Q. Cobra's? And there is nothing that --  
13 aside from this provision where admittedly they can  
14 redeliver thermally equivalent quantities of gas less  
15 applicable shrinkage for liquifiabiles, there's  
16 nothing that says that they have to credit the amount  
17 that they -- that the Cobra Pipeline receives from  
18 the sale of liquifiable back to the company, correct?

19 A. Not the way I read this tariff.

20 Q. And this tariff was adopted and approved  
21 by the Public Utilities Commission of Ohio, correct?

22 A. I assume so.

23 Q. And there's no law, statute, code  
24 provision, regulation, order, or other reference  
25 material that you are aware of that states that the

1 Cobra Pipeline Company has to refund the amount that  
2 they get for separated liquids back to the customer  
3 that's -- has that gas in their pipeline, correct?

4 A. Not that I am aware of.

5 MR. YURICK: If I could have just a  
6 moment, your Honor, I think I'm done.

7 MR. SERIO: Your Honor, would this be a  
8 good opportunity for a break? The witness has been  
9 on the stand an hour and a half.

10 MR. YURICK: That's fine with me.

11 EXAMINER FARKAS: Why don't you wait and  
12 see if you have anything further.

13 MR. YURICK: If I could have just a  
14 minute.

15 EXAMINER FARKAS: Sure.

16 MR. YURICK: Your Honor, if I could just  
17 ask one other thing.

18 Q. (By Mr. Yurick) Would you agree -- are  
19 you generally familiar with -- with tariffs such as  
20 the one that is set forth in OCC Exhibit No. 1 for  
21 Cobra Pipeline?

22 A. The tariff we have been discussing for  
23 the last several minutes.

24 Q. Yes. Are you generally familiar with  
25 tariffs of this type?

1           A.     Somewhat.

2           Q.     Would you agree with me based on your  
3     experience, training, and education in this field  
4     that generally speaking prices and pricing schedules  
5     set forth in a tariff are -- for particular services  
6     are to an extent interrelated? In other words,  
7     companies are going to have revenue requirements that  
8     allow them to earn a certain rate of return, correct?  
9     That would be factored into their pricing generally,  
10    wouldn't it?

11          A.     I would assume.

12          Q.     Okay. So if they are making money in one  
13    aspect of their business, they might be able to ask  
14    for less of a charge to be competitive in another  
15    area of business, right?

16          A.     I don't know.

17          Q.     So it's at least potentially possible  
18    that if Cobra Pipeline were required to separate out  
19    liquids out of natural gas at no charge, that in  
20    order to pay for their treatment plant and for the  
21    cost of treatment, they might have to charge more for  
22    other services? It's at least potentially possible  
23    that other fees would go up, correct?

24          A.     I guess anything is possible. This  
25    tariff looks to me to be the first tariff. These



1 pages are all first revised sheets. I believe or I  
2 understand that Cobra became -- was purchased from  
3 Columbia Gas Transmission in 2008. I don't know if  
4 they have had an audit or multiple audits so I don't  
5 know what their situation is as far as how long this  
6 particular tariff and these numbers will remain in  
7 place. I'm not sure if they are too much or too low.

8 Q. But at least it's potentially possible  
9 that the rates set forth here were part of a  
10 comprehensive rate scheme and that the rate for one  
11 service is at least partially interdependent for a  
12 rate for another service?

13 A. I can't answer that. I don't know.

14 MR. YURICK: I have nothing further at  
15 this time.

16 EXAMINER FARKAS: Okay. Why don't we  
17 take 10 minutes.

18 (Recess taken.)

19 EXAMINER FARKAS: Do you have any  
20 questions?

21 MR. MARGARD: Your Honor, if I may just  
22 very briefly.

23 - - -

24 CROSS-EXAMINATION

25 By Mr. Margard:

1 Q. Good afternoon, Mr. Slone.

2 A. Good afternoon.

3 Q. You indicated in cross-examination that  
4 you really didn't have much time to take a look at  
5 Mr. Sarver's testimony. I wondered if you had an  
6 opportunity to review Mr. Donlon's testimony.

7 A. Just briefly.

8 Q. In no greater detail.

9 A. No.

10 Q. Mr. Donlon in his testimony answers a  
11 question what qualities create an effective RFP, and  
12 he lists a number of items. Do you recall that  
13 question and answer?

14 A. I'm sorry, I don't.

15 MR. MARGARD: Very good. That's --  
16 that's all I had, your Honor. Thank you.

17 EXAMINER FARKAS: Okay. Do you have any  
18 redirect?

19 MR. SAUER: Just a couple of questions,  
20 your Honor.

21 - - -

22 REDIRECT EXAMINATION

23 By Mr. Sauer:

24 Q. Do you remember when Mr. Yurick was  
25 asking you some questions about your time at AMP-Ohio

1 and your doing some RFPs for coal and aggregation  
2 programs?

3 A. Yes.

4 Q. When you were involved in those processes  
5 where you were trying to determine whether you were  
6 achieving competitive prices for coal or for  
7 aggregation services, did you rely on the process  
8 itself, or did you do an independent analysis to  
9 determine whether the result was competitive?

10 A. Well, we were doing additional analysis  
11 on top of the RFP responses we got.

12 Q. And you were also asked some questions  
13 about high flame processing. To your knowledge are  
14 there any statutes, rules, regulations, Commission  
15 orders that would require a customer -- customer to  
16 pay a processing fee for gas that has not been  
17 processed?

18 A. I think the tariff speaks for itself. If  
19 the gas is not over a certain Btu, 1,350, and if it  
20 does not go through the processing plant, they are  
21 not entitled, they being Cobra, is not entitled to  
22 charge a processing fee for that gas.

23 In this particular case based on some  
24 discovery responses and responses to depositions,  
25 it's obvious to me that all the gas that went into

1 the Cobra Churchtown system from local production was  
 2 charged a processing fee, and in Mr. Whelan's  
 3 deposition he pointed out that none of the gas  
 4 consumed by the customers on Northeast's Churchtown  
 5 system, none of that gas would have gone through the  
 6 processing plant so at the very least the gas that  
 7 was charged a processing fee that was consumed by the  
 8 Northeast customer on Churchtown's system should not  
 9 have been charged a processing fee and based on the  
 10 discovery responses they were and Cobra had no  
 11 authority to charge that fee to those customers or to  
 12 Northeast.

13 MR. SAUER: Thank you, your Honor. I  
 14 have no further questions.

15 EXAMINER FARKAS: Okay.

16 MR. YURICK: Nothing further, your Honor.

17 EXAMINER FARKAS: Okay. Thank you for  
 18 your testimony.

19 MR. SAUER: Your Honor, I would ask that  
 20 OCC Exhibit No. 12 be admitted into the record.

21 EXAMINER FARKAS: Is there any objection?

22 MR. YURICK: No objection, your Honor.

23 MR. MARGARD: No, your Honor.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 MR. SAUER: And, your Honor, should we

1 mark now the schedules that we'll provide tomorrow as  
2 exhibits, or do you want to do that at a later time?

3 EXAMINER FARKAS: No, you can do that now  
4 if you want.

5 MR. SERIO: Well, it's the Bench's  
6 pleasure. Would you rather we substitute or make it  
7 12A?

8 EXAMINER FARKAS: Oh, you mean -- are we  
9 off the record? Let's go off the record.

10 (Discussion off the record.)

11 EXAMINER FARKAS: Back on the record. I  
12 believe we are going to adjourn for the day. We'll  
13 reconvene at 9 a.m. And I believe we decided Patton  
14 would be the first witness. That will be the first  
15 witness, and depending on Dr. Overcast's schedule we  
16 will work him in if that's okay.

17 Okay. Thank you.

18 (Thereupon, the hearing was adjourned at  
19 5:01 p.m.)

20 - - -

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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 Monday, July 8, 2013,  
and carefully compared with my original stenographic  
notes.

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Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-5726)

- - -

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Summary: Transcript in the matter of Northeast Natural Gas Corporation and Orwell Natural Gas Company hearing held on 07/08/13 - Volume I electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.