

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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 Ohio 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 9 a.m.
 on Wednesday, July 10, 2013.

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VOLUME III

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On behalf of the Staff of the PUCO.

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Company Exhibit	Identified	Admitted
6 Communication from Mr. Wiertel	646	--

OCC Exhibit	Identified	Admitted
21 INTRASTATE Natural Gas Sales Contract IDENTIFIER: JOHND2011-INTRASTATESales- Service Company #2.1	672	828

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Staff Exhibit	Identified	Admitted
1 Direct Testimony of Patrick Donlon	II-465	584
2 Direct Testimony of Roger L. Sarver	661	827

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Commission-Ordered Exhibit	Identified	Admitted
1 Financial Audit of the Gas Cost Recovery Mechanisms for the Companies filed on February 28, 2013	I-28	827
2 Audit of the Uncollectible Expense Mechanisms for Northeast Ohio Natural Gas in Case No. 12-309-GA-UEx Filed December 7, 2012	I-28	827
3 Audit of the Uncollectible Expense Mechanisms for Orwell Natural Gas filed on February 14, 2013, in Case No. 12-312-GA-UEx	I-28	827

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Wednesday Morning Session,
July 10, 2013.

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EXAMINER FARKAS: Let's go back on the record. I believe when we ended yesterday, we were going to get the attachments to Mr. Donlon's testimony.

MR. MARGARD: We will provide those today. We're hoping to have those yet early this morning. Mr. Donlon is working on them.

EXAMINER FARKAS: Okay. Thank you. I believe your next witness Ms. Lipnis.

MR. MARGARD: Yes, your Honor. Thank you. I would like to call Ms. Heather Lipnis to the stand.

(Witness sworn.)

(Off the record.)

EXAMINER FARKAS: All right. We are ready to proceed. You can proceed, Mr. Margard.

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HEATHER LIPNIS

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

DIRECT EXAMINATION

By Mr. Margard:

Q. Good morning.

A. Good morning.

Q. Just a reminder if you would please make sure you keep your voice up. Sound in this room is a little hinky.

A. Okay.

MR. MARGARD: I am not sure how to spell that.

Q. Will you please state your name and address for the record, please.

A. Heather Lipnis, 10530 Majesty Lane, Concord, Ohio 44077.

Q. Thank you. And, Ms. Lipnis, you are testifying today voluntarily; is that correct?

A. Yes, that's correct.

Q. And you are testifying as a result of your relationship with the companies that are the subject of this case today?

A. Yes.

Q. And your relationship in dealing with the

1 Commission staff both while employed and subsequent
2 to your employment with those companies; is that
3 correct?

4 A. That's correct.

5 Q. Okay. I want to begin by getting a
6 little bit of background about you, if we can,
7 please. Can you briefly describe your educational
8 background, please.

9 A. I went to Miami University, and I got a
10 Bachelor's degree in accounting. I graduated with
11 honors and have a CPA.

12 Q. And when did you complete your CPA
13 license?

14 A. I think about 1998. I graduated in 1995.

15 Q. Okay. Have you had any other sort of
16 specialized training in either finance, accounting,
17 or business management subsequent to your graduation?

18 A. No.

19 Q. I want to talk about your work history
20 since you graduated from college, and I'm not
21 necessarily looking for the barista jobs, but I'm
22 looking for the jobs related to your field of study.
23 Can you briefly outline your work history for us.

24 A. I worked for two public accounting firms
25 doing public audits for big corporations. I worked

1 for Arthur Andersen and Deloitte & Touche. I have
2 worked as a financial analyst for companies going in,
3 doing process improvements, and most recently what I
4 do is basically go into companies -- prior to working
5 at Gas Natural working at companies that needed some
6 type of assistance, meaning processes, policies,
7 procedures put in place, any type of controls needed,
8 their books kind of redone, restructured their
9 accounting systems, made sure that everything flowed
10 properly.

11 Then I worked as an analyst for Energy
12 West and got promoted to corporate controller of Gas
13 Natural, and from there I now work as a controller
14 for Johnson Controls for one of their clients doing
15 books from beginning to end, accounts payable,
16 accounts receivable, beginning to the end of the
17 accounting.

18 Q. Very good. Thank you. Can you tell me,
19 if you recall, when you were hired as an analyst for
20 Energy West?

21 A. I believe it was like February of 2009.

22 Q. And what is Energy West's relationship to
23 Orwell and Northeast?

24 A. At the time they were going through a
25 purchase of Orwell and NEO that did not get finalized

1 until I believe February 5, 2010, so we were going
2 through that from the time that I got hired. My job
3 originally was to move all the accounting from
4 Montana to the Ohio companies, and then in January
5 they went ahead and the purchase was finalized and
6 then that's when -- a little after that was when I
7 was promoted to corporate controller and we were
8 doing consolidations of the companies for the 10-Ks
9 and 10-Qs and the monthly closings.

10 Q. So you were promoted to corporate
11 controller, did I hear you say, in January of 2010?

12 A. It was more like February or March.

13 Q. But early in 2010.

14 A. Yes.

15 Q. I want to back up just a little bit and
16 talk about that work at Energy West during 2009. And
17 can you be more specific about what your duties and
18 responsibilities were at that time?

19 A. We had a company Bangor Gas. I was
20 responsible for doing the accounting for Bangor Gas.

21 Q. And where is Bangor Gas located?

22 A. In Maine and then we got somebody in to
23 do that so I actually transitioned that to one of the
24 other employees and I was working on doing SEC
25 filings, 10-Ks, 10-Qs, working on helping Energy West

1 with any of their reconciliations for their journal
2 entries if they needed assistance with so I was
3 basically helping everybody that was in the Montana
4 office.

5 Q. Okay. Did you have any dealings or
6 responsibilities for any of the Ohio companies at
7 that time?

8 A. No.

9 Q. Then you were promoted to the corporate
10 controller and that's at Gas Natural, correct?

11 EXAMINER FARKAS: Just for the record,
12 Bangor Gas, that's a related company of these other
13 companies?

14 THE WITNESS: It's part of Energy West.

15 EXAMINER FARKAS: Okay.

16 THE WITNESS: It's one of their companies
17 that's owned by Energy West, and Energy West is owned
18 by Gas Natural.

19 EXAMINER FARKAS: Okay. Thank you.

20 Q. So the short answer is it is related to
21 these companies.

22 A. Yeah. I don't know if you consider
23 related because related would be something that's not
24 under the same umbrella so it would be one of the
25 companies owned by Gas Natural.

1 EXAMINER FARKAS: Okay. Thank you for
2 that clarification.

3 Q. Thank you. And what were your duties as
4 corporate controller of Gas Natural?

5 A. It was pretty much the same, but it added
6 the Ohio companies so it was consolidating the Ohio
7 companies with the Energy West companies and doing a
8 consolidation for Gas Natural, the holding company.
9 I was also involved in a stock option that they had,
10 getting the financial information for that, and also
11 with debt refinancing. But at the same time that I
12 got promoted, the Ohio controller Sue Lagoni gave her
13 notice so she was gone and so I got involved in the
14 Ohio companies that I normally wouldn't have been
15 involved in had there been an Ohio controller in
16 place.

17 So that was when Roger started doing the
18 GCR audit so I got involved in what was going on and
19 all the workings of the Ohio companies because of
20 that audit.

21 Q. When you say Roger, you are referring to
22 Mr. Sarver?

23 A. Yes.

24 Q. Okay. So you had an opportunity to work
25 with Mr. Sarver in the course of the companies'

1 previous GCR audit?

2 A. Yes. From the time I started until the
3 time I left the company.

4 Q. And when did you leave the companies?

5 A. November 24, 2010, was my last day. That
6 was also the same day that your report was issued. I
7 think your report was issued at 10 o'clock in the
8 morning, and I was let go about 11.

9 Q. In your mind is there a relationship
10 between those two events?

11 MR. YURICK: Objection.

12 EXAMINER FARKAS: Basis?

13 MR. YURICK: No foundation for an
14 opinion. He can ask her about her -- the basis for
15 any relationship but whether she felt there was a
16 relationship or not I think is irrelevant.

17 MR. MARGARD: That's fine. We can pursue
18 that.

19 Q. Let's talk about the circumstances of --
20 of the end of your employment. Were you terminated?
21 Were you fired?

22 A. No. I was told my position was no longer
23 needed. At that time Tom Smith called me down to his
24 office. I went down, Tom told me that my position
25 was no longer needed, and my services were no longer

1 needed as of today. And I asked if I did anything
2 wrong and he said -- excuse me, he said no. And I
3 said are you sure I did nothing wrong? He said no.
4 I said thank you for the opportunity to work here,
5 and I was escorted upstairs by Darrell Knight and
6 packed my box, and I distributed my work to the other
7 employees and went out of the buildings.

8 Q. Okay. Let me make sure I understand.
9 Tom Smith at the time that you ended your employment
10 was -- had what position with the companies?

11 A. He was the CFO, I think, of Gas Natural.

12 Q. You think he was the CFO of Gas Natural?

13 A. Yes. He had a lot of titles, but I think
14 that was one of them.

15 Q. Okay. Was he your direct report? Was he
16 your supervisor?

17 A. Yes.

18 Q. And when he said your position was no
19 longer needed, did he say which position? You were
20 essentially serving both as an Ohio controller and as
21 a corporate controller at that time.

22 A. At the very end of my employment they had
23 already hired an Ohio controller Larry Brainard so
24 that position was filled. It was my Gas Natural
25 position that was really my title, that was what my

1 role was, so it was that job, and told me that the
2 position was no longer needed and in about two or
3 three days later they posted the job in the paper.

4 Q. Okay. Did you -- but you had asked if
5 there was a reason why the position was eliminated;
6 you were told there was none.

7 A. I was told there was none. I did nothing
8 wrong.

9 Q. Did you have any discussion with
10 Mr. Smith about the audit report over the course of
11 the audit or whether that had anything to do with the
12 end of your relationship?

13 A. No.

14 Q. Okay. Thank you. Where was your office
15 physically located?

16 A. We were in the Match Works building which
17 is in Mentor on Station Street. We were on the
18 second floor so we weren't part of the Ohio companies
19 at the time that I was employed. We had our own
20 office. It was me and one other person.

21 Q. And did you have -- first of all, were
22 there other entities in this building that were
23 related to Energy West or to Orwell and Northeast?

24 A. Yes.

25 Q. And do you recall what other entities

1 were also in the building?

2 A. When you walked into the building, the
3 Ohio companies were to the left. To the right I
4 believe was John D. Oil and Gas.

5 Q. We've had a couple of John D. Oil and Gas
6 entities. There's a John D. Oil and Gas and there's
7 a John D. Oil and Gas Marketing. Are you aware that
8 there were different entities?

9 A. I knew there were different companies. I
10 really couldn't tell you who was employees for who or
11 how they were segregated.

12 Q. Okay. And do you know which entities it
13 was that was in the Mentor building?

14 A. I would think it's the Oil and Gas but
15 that's my --

16 Q. But you're not certain.

17 A. Not sure.

18 Q. Were there other entities also physically
19 located in the building?

20 A. If there were in that office, I do not
21 know.

22 Q. And did you have access to the other
23 entities or to their offices?

24 A. No. The only access that I had was to my
25 office on the second floor. I had no access to the

1 Ohio companies. I didn't have a key or know the
2 codes of the other offices, no.

3 Q. Was that also true in your capacity as
4 Ohio controller?

5 A. Yes. Yes, I had no access to the company
6 other than when the door was open and somebody was
7 there.

8 Q. Did you have access to the companies'
9 books and records? You indicated you were doing some
10 work in switching over accounting systems.

11 A. Yes. And I got promoted. They had a
12 different system than Energy West at the Ohio
13 companies so I was given access to the system that
14 the Ohio companies used, but we weren't wired
15 properly to be able to get that access from our
16 office so I had to go downstairs and use Sue Lagoni's
17 old computer in order to get access to the system and
18 that was where I would do anything that had to do
19 with closing the books and doing the consolidations
20 and getting everything that Energy West needed to go
21 ahead and do our monthly reports so I would have to
22 do that downstairs.

23 Q. Okay. I'm sorry. You mentioned a name
24 Sue.

25 A. Sue Lagoni, she was the Ohio controller

1 before me. She replaced Becky Howell when Becky was
2 promoted.

3 Q. When Ms. Howell was promoted to what
4 position?

5 A. Cobra president.

6 Q. Okay. So you did have some access as
7 needed to be able to use her accounting system to
8 deal with your controller functions relating to the
9 Ohio companies?

10 A. Yes, and they ended up like hardwiring
11 our office so we were able -- I was able to use it
12 upstairs at that time also, so at the end of it I was
13 able to use it in my office instead of going
14 upstairs.

15 Q. Okay. In your role as a corporate
16 controller, did you also perform duties for other
17 related entities, other related Ohio entities?

18 A. Only the Northeast Ohio, Orwell, Brainard
19 companies, not --

20 Q. Brainard, we are talking about the
21 distribution company Brainard Natural Gas?

22 A. Yes. But nothing for like John D. Oil
23 and Gas or Cobra, nothing for them.

24 Q. Okay. Because we've done this with other
25 witnesses, and we have company representatives in the

1 room, I want to discuss briefly what relationships
2 you may have had with folks. Are you acquainted with
3 Stephanie Patton?

4 A. Yes. We've talked on the phone when I
5 was working there, but I've never -- if I met her
6 personally, I wouldn't know who she was right now.

7 Q. Do you have any business dealings with
8 her at all?

9 A. No. That mostly went through Anita.

10 Q. You mentioned Anita, that's Anita Noce?

11 A. Yes.

12 Q. And she is present today.

13 A. Yes.

14 Q. And can you tell me what your business
15 relationship was with her?

16 A. Anita and I had a very good business
17 relationship. Once Sue left, Anita shared a lot of
18 information with me regarding the different things
19 that had gone on with the companies. Times when NEO
20 purchased gas or paid for gas or something for one of
21 the other companies, that the fact that John D. Oil
22 and Gas was using the storage facilities of NEO
23 because they didn't have storage facilities. So
24 Anita and I worked very closely together and she
25 would let me know if Becky was down in the office

1 talking to the employees or if she was in the system
2 so. She was very integral in helping me understand
3 how the Ohio companies worked because it was very
4 different from the Bangor Gas Company.

5 Q. You've given me a lot of information
6 there so I want to make sure I understood it all.
7 First of all, position with the company at that time?

8 A. She was the NEO accountant.

9 Q. Okay. And so she was giving you
10 background on all of the Ohio entities, but she was
11 primarily associated with NEO.

12 A. Yes.

13 Q. And you had made reference to the fact
14 that NEO purchased gas for other entities?

15 A. Yeah. There was a time when
16 Constellation -- J.D. Oil and Gas needed to buy gas
17 from Constellation, but they didn't pay for it. We
18 ended up paying for it so Anita showed me where we
19 ended up paying for the gas, and then we got invoiced
20 from John D. Oil and Gas for it.

21 So we had paid twice. We paid
22 Constellation Gas for the gas and we also paid our
23 portion so we actually needed to get the money back
24 and the receivable was still on the books. She also
25 showed us where they had their gas stored in our

1 wells so we had to get their gas out of our storage
2 facilities. They couldn't get storage so they were
3 using NEO's storage facilities for that.

4 Q. And just to be clear for the record these
5 are things that happened prior to your employment?

6 A. And during.

7 Q. These same kind of incidents occurred
8 while you were corporate controller?

9 A. There was still some gas in the storage
10 facility while I was working there, yes. But most of
11 it was prior to me being the Gas Natural controller,
12 having to do anything with the Ohio companies, yes.

13 Q. What is a -- when we hear the word
14 controller, what does that mean to us? What kind of
15 controls are we talking about? What -- what controls
16 are you or should you have been responsible for?

17 A. A controller is more of an accounting
18 term. It's somebody who kind of oversees the staff
19 and makes sure that everything is following what it
20 should, making sure that, you know, reconciliations
21 are done, everybody is doing their duty, give
22 assistance where needed, jump in miscellaneous ad hoc
23 projects, for instance, the stock offering or the
24 debt refinancing. Controller is more of a word to
25 say that's where the accountants kind of roll up and

1 that person is kind of responsible for overseeing it.

2 Q. So if there were occasions where gas was
3 being paid for twice, two different entities, would a
4 controller be responsible for ensuring that that was
5 noted, mentioned, corrected? They wouldn't be --

6 A. Yes.

7 Q. -- necessarily responsible for the actual
8 payment?

9 A. They wouldn't but they would be
10 responsible for making sure that if anything was done
11 that didn't look appropriate or anything that needed
12 to be fixed was taken care of, that would be the
13 controller's role to bring that to everybody's
14 attention and to make sure it was remedied.

15 Q. And you indicated that you saw occasions
16 of these kinds of incidents during your tenure there.
17 Did you bring these incidents to the attention of the
18 company's management?

19 A. Yes. Actually I had a few meetings with
20 the president of Energy West so we had --

21 Q. The president was?

22 A. The president of Energy West, Kevin.

23 Q. Okay.

24 A. I can't remember his last name right now.
25 I'm sorry.

1 Q. That's okay.

2 A. But we had had some meetings along with
3 Jed Henthorne about some of the findings because I
4 needed to understand is this normal? Is this okay?
5 Are these things that make sense? And like November
6 of -- December of '09 -- November, November of '09,
7 Orwell had purchased -- it went from November of '09
8 to I think June of 2010 about \$2 million of gas on
9 the behalf of Great Plains from BP. Again, something
10 I wasn't sure of did that make sense? Is this
11 something that should happen?

12 Those were things that I would pass on to
13 Jed and try to work with him to understand is this
14 appropriate and what do we need to do to fix it?

15 Q. Great Plains is a -- what --

16 A. Related party.

17 Q. And what does Great Plains do?

18 A. Great Plains Exploration, I'm not really
19 sure what their duties were, what they did.

20 Q. Okay.

21 A. Supply gas, that's a guess.

22 Q. No. I don't want you to guess. Thank
23 you.

24 EXAMINER FARKAS: Wait a minute. Just
25 for the record you say Great Plains Exploration. Is

1 there a Great Plains Natural Gas Company and a Great
2 Plains Land Development Company also?

3 THE WITNESS: There was a land company.
4 I don't know about the other one. I don't recall
5 that when I worked there.

6 EXAMINER FARKAS: Okay.

7 THE WITNESS: But the land company
8 existed when I was there.

9 Q. Mr. Martin Whelan has also testified in
10 this case. He's been obviously relieved of the
11 burden of having to sit through this hearing any
12 longer. Did you have an opportunity to work with
13 Mr. Whelan?

14 A. Very few and far between.

15 Q. Okay. And what was your business
16 relationship with him like?

17 A. We really didn't speak. He was in a
18 completely different office.

19 Q. Thank you. Sitting in the hearing room
20 today is Rebecca Howell. Are you acquainted with
21 Ms. Howell?

22 A. Yes.

23 THE WITNESS: Hi.

24 Q. And what was her position with the
25 companies? You said she was corporate president?

1 A. She was Ohio controller until about
2 January, 2010, when the companies were purchased, and
3 then she got promoted to president of Cobra, a
4 related party.

5 Q. Of Cobra.

6 A. Yes.

7 Q. And she was president of Cobra for the
8 remainder of your tenure?

9 A. Yes.

10 Q. And what was your business relationship
11 like with her?

12 A. We had a very good working relationship
13 in the beginning. I even helped drive her daughter
14 in a parade. But we had a very good working
15 relationship. We were -- she was showing me how the
16 Ohio companies were, things that had gone on. We
17 worked together so that I could kind of learn how the
18 business worked. In the end I think it was a little
19 stressed because we had differences in opinion on
20 accounting. She also had access to the system which
21 to me as a SOX control that was inappropriate to have
22 full rights to the system that she was no longer an
23 employee of. So that kind of put a stress on our
24 relationship.

25 Q. When you say access to the system, what

1 system are you talking about?

2 A. The financial system of the Ohio
3 companies.

4 Q. The Ohio distribution companies?

5 A. Yes.

6 Q. So as president of the pipeline company,
7 she had access to the books and records and
8 accounting system of the distribution companies.

9 A. Yes. And then when she would be
10 downstairs, Anita would call and tell me she was down
11 there instructing the employees to do something or
12 she was looking through files and to come down.

13 Q. Did you have occasion to hear her doing
14 that? I don't want --

15 A. Becky, yeah. I mean, when -- one of my
16 roles was they had limited licenses for the
17 accounting system so when people had to go in and put
18 in meter reads, you had to be able to access it with
19 limited licenses. Only so many people were allowed
20 in the system at a time so my role while the Ohio
21 controller was gone was to go in and knock people out
22 so somebody who had maybe been in the system for a
23 while but didn't have any activity or was in the
24 system and shouldn't be, I would find Becky in there
25 and I would have to knock her out so that one of the

1 employees could go in and do whatever they needed to
2 do and then there was a time that she was actually
3 down with Dawn and I -- we were going through the GCR
4 filing and we were going -- Dawn was explaining to me
5 what she did and Becky came down and was going
6 through the GCR filing that Dawn did and told her to
7 increase the amount of the GCR that was going to get
8 charged to the customer and that the next month don't
9 use that increased amount in the reconciliation, you
10 use the original amount, and that the PUCO wouldn't
11 catch it.

12 EXAMINER FARKAS: And by knock her out
13 you mean take her off the computer, right?

14 THE WITNESS: Yes. Well, out of the
15 system.

16 EXAMINER FARKAS: Out of the system so
17 she wouldn't have access.

18 THE WITNESS: Because she would still be
19 in her computer but it would pull her off the
20 accounting system.

21 EXAMINER FARKAS: Because there were a
22 limited number of people that were under the license
23 agreement with the computer software company?

24 THE WITNESS: Right. So you might --
25 this is just a ballpark. We might be only allowed to

1 have 20 people in at a time but we have 30 people
2 that need access, so if somebody needed to get in and
3 they couldn't, we would have to knock somebody out of
4 that system so the other person could get in.

5 EXAMINER FARKAS: And that was part of
6 your duties.

7 THE WITNESS: Yes.

8 EXAMINER FARKAS: Make sure that was
9 done.

10 THE WITNESS: Yes.

11 EXAMINER FARKAS: Thank you.

12 Q. Again, a lot of information and I want to
13 make sure I have digested, you know. You mentioned a
14 Dawn. This would be Dawn Opara? I'm sorry, if you
15 don't recognize the last name.

16 A. I thought it started with an S.

17 Q. Okay. Could be.

18 A. She was the one that did the filings for
19 the GCR.

20 Q. For the GCR. Did you by the way have any
21 responsibility for GCR filings?

22 A. No.

23 Q. For reviewing any of the GCR filings and
24 approval of them before they were filed?

25 A. No.

1 Q. For reviewing them afterwards to make
2 sure the accounting was correctly performed?

3 A. No.

4 Q. But you mentioned at least one instance
5 with -- where you were with Ms. Howell and Dawn
6 discussing the handling of a GCR?

7 A. Yeah. The audit was still going on with
8 the PUCO so Dawn was showing me what she did, how she
9 did it, how the calculation worked, how the
10 spreadsheet worked, and Becky was coming down and
11 reviewing that with us and showing how there were a
12 whole bunch of different tabs, how the different tabs
13 worked, and how that comes to an answer but sometimes
14 the company didn't like that answer so they would
15 either increase it or decrease it.

16 At the time that I was there they
17 increased the -- she increased the rate. Dawn didn't
18 know how to do it so Becky did it. She went into the
19 spreadsheet and changed it to make the rate go up and
20 then told Dawn to use the old rate when she went
21 ahead and filed the next month.

22 Q. Hoping not to mischaracterize her
23 testimony, I believe Ms. Howell testified she did
24 have some dealings with the GCR aspects of the
25 companies in her capacity as president of the

1 pipeline, because of her experience and expertise in
2 that she was called in to assist as staff was
3 performing its audit of the companies. Is that your
4 understanding of what her involvement with that GCR
5 was?

6 MR. YURICK: Your Honor, there would be
7 an objection and the basis of the objection is I
8 don't have a period of time.

9 EXAMINER FARKAS: Do you want to rephrase
10 your question?

11 Q. During -- during -- you mentioned there
12 was -- you had a relationship with Mr. Sarver while
13 he was conducting an audit of the companies, during
14 that period that the audit was being conducted.

15 A. I didn't request that she help but it's
16 very possible that Tom Smith could have asked her to
17 but I don't know. I'm unaware.

18 Q. To the best of your knowledge, that was
19 or may have been the reason why she was involved with
20 the GCRs?

21 A. It may have been.

22 MR. YURICK: Object. I'm sorry. There
23 would be an objection as to whether may have been.
24 Either the witness has knowledge of this fact or she
25 doesn't.

1 EXAMINER FARKAS: I'll agree with that.

2 MR. MARGARD: That's fine.

3 Q. Do you have any -- any knowledge of any
4 other involvement that Ms. Howell had with GCR
5 filings other than as part of the audit process?

6 A. Well, the timeframe that she was down
7 there with Dawn and I, that was during 2010 so that
8 wasn't through that audit process. That was --
9 actually I think you are auditing that part now.

10 Q. I see. Thank you. What exactly -- what
11 relationship did you have with Mr. Sarver during the
12 course of his auditing of the companies? What --
13 what sort of context did you have and what -- what
14 sort of information did he request of you?

15 A. I would assume that he requested the same
16 information he requested from every company. I don't
17 know what he requested from other companies, but I
18 had just started in that position as Gas Natural
19 controller with the Ohio controller being gone when
20 his audit began. He asked for agreements between the
21 related parties. He asked for agreements from the
22 Marketing company with Orwell and NEO. He asked for
23 gas purchase invoices, payments, things that I would
24 believe are normal.

25 Q. And did you have access to all of that

1 information?

2 A. If -- I really didn't know where a lot of
3 it was so I had to go to the employees of Ohio to ask
4 where that stuff was and a lot of it I think -- some
5 of the agreements we couldn't find or couldn't find
6 signed copies.

7 Q. Okay. I want to get back to the
8 accounting access because we kind of got away from
9 that a little bit. You were aware because you could
10 see that Ms. Howell was in the accounting system; is
11 that correct?

12 A. That's correct.

13 Q. Do you have any knowledge of any changes
14 that she may have made within the accounting system,
15 or were you only able to see that she was in the
16 system?

17 A. I only saw that she was in the system. I
18 would not know what she did.

19 Q. You're not suggesting that you know she
20 made any sort of changes --

21 A. I would not know if she did.

22 Q. Would she have had the ability to do
23 that?

24 A. Yes.

25 MR. YURICK: Object. There will be an

1 objection.

2 EXAMINER FARKAS: I'll allow the answer
3 to stand.

4 Q. Okay. Also present in the room today is
5 Mr. Greg Osborne. Are you acquainted with him?

6 A. Yes.

7 Q. And did you have occasion to work with
8 him, or did you have a business relationship with
9 him?

10 A. No. It was only just friendly. I mean,
11 he was in our meetings and stuff, but at that time I
12 think he was more in charge of John D. Oil and Gas.
13 He was a board member, but he also ran his own
14 business so not really a lot of business
15 interactionwise.

16 Q. When you say a board member, a board
17 member of Gas Natural?

18 A. Yes.

19 Q. Thank you. Are you acquainted with his
20 father Richard Osborne?

21 A. Yes.

22 Q. And did you have dealings with
23 Mr. Osborne, Mr. Richard Osborne?

24 A. The dealings that I had with Rick was we
25 would have meetings every single -- one or two

1 meetings a week at night where in the afternoon I
2 would come in and I would bring in the accounts
3 payable schedule and give him what our payables were
4 and then he would circle what we were supposed to pay
5 and then I would present that back over to the AP
6 person who would go ahead and cut the checks.

7 Q. And I guess so that I'm clear, when you
8 say the accounts payable, for which -- for which
9 entities?

10 A. The Ohio companies.

11 Q. And so you would -- how many accounts
12 would there be in a week?

13 A. How many outstanding payables would there
14 be?

15 Q. Yes.

16 A. There were quite a few. I mean, it was
17 anybody we owed money so there would be customer
18 refunds. There would be related parties purchases,
19 gas purchases. There would be miscellaneous things
20 like cleaning. It was everything that was owed by
21 the companies.

22 Q. And were all of the decisions on who to
23 pay made by Mr. Richard Osborne?

24 A. Yes. He would sign -- he would circle
25 which ones you were supposed to pay, and then you

1 immediately left the meeting and gave that sheet over
2 to the accounts payable person.

3 Q. And this was done every week.

4 A. Uh-huh, one or two times a week.

5 Q. And was -- were you ever told why certain
6 individuals were to be paid and others were not?

7 A. No. Sometimes it was tough because you
8 knew that there was a large payment, for instance,
9 maybe BP had a due date coming up and we needed to
10 make that BP payment, we would have enough money in
11 our bank to pay that, but we wouldn't have enough
12 money to pay other things so what would happen is
13 related parties were given preferential treatment on
14 payment so they would be paid before other things.
15 But we would also if we -- if he circled things we
16 didn't have the cash in the account, those checks
17 would be put into a drawer until cash in the account
18 was available to actually mail those checks.

19 Q. You said preferential treatment was given
20 to related parties. Was that a specific policy, or
21 was that just your experience based on the items that
22 you routinely experienced?

23 A. That was my experience.

24 Q. You were never told "We're only going to
25 pay the related parties. We're always paying related

1 parties first." It was just your experience based on
2 what you observed.

3 A. Just my experience, yeah. I was never
4 told that.

5 Q. All right. And were there -- were there
6 times when you had accounts payable that were past
7 due?

8 A. Yeah. We had AP for like BP, for
9 instance, when we were purchasing the Great Plains
10 Gas, we had payables that were due that we couldn't
11 afford to pay, and either we would cut the check and
12 it would sit in a drawer or we would wait and
13 actually cut the check later.

14 Q. And you are aware the checks were
15 actually cut and not sent for individuals to whom
16 payment was owed?

17 A. Yes.

18 Q. When you say until we had the money,
19 would that be customarily a week? Was it often
20 longer than a week?

21 A. It would depend on how many checks were
22 cut and what the dollar amount was. Anita actually
23 started keeping a spreadsheet of what we had in the
24 bank and what checks were being held in a drawer so
25 that, you know, and then we would go to Tom. We

1 would present those checks to Tom for Tom to sign.
2 They weren't actually signed when they were put in
3 the drawer so once we felt there was enough money to
4 pay something, that check -- those checks would go
5 over to Tom, and Tom would determine yes or no if
6 they would go out or if he felt we would have enough
7 money to cover that.

8 Q. And, again, just so I'm clear Mr. Osborne
9 would determine who would be paid, a check would be
10 cut and then held, and then at some point it would be
11 presented to Mr. Smith, and Mr. Smith would either
12 sign and send it or would put it back in holding as
13 it were?

14 A. It would only be held if we didn't have
15 the funds to pay it so if we didn't have the funds to
16 pay it, it would be held, and when we did have the
17 funds, yes, it would go to Tom Smith and he would
18 sign it or say no because he didn't feel the funds
19 would be there.

20 Q. And who made the decision to hold the
21 checks that the funds were insufficient? Was that
22 done by the person who was cutting the checks?

23 A. No. Anita would go through and kind of
24 come up with an idea, but it was really Tom's, Tom's
25 decision on what was held and what wasn't.

1 Q. Okay.

2 EXAMINER FARKAS: And just for the record
3 this procedure you've described, Mr. Richard Osborne
4 deciding which bills to pay, that occurred one or two
5 times a week during the entirety of the time you were
6 there.

7 THE WITNESS: Yes.

8 EXAMINER FARKAS: Okay. You just had
9 these regular meetings, and he would decide.

10 THE WITNESS: Yes.

11 EXAMINER FARKAS: Okay. Thank you.

12 Q. (By Mr. Margard) Now, that's what you --
13 your responsibilities were with respect to the
14 payables. Did you have similar responsibilities with
15 respect to receivables?

16 A. Well, when -- in my Gas Natural role and
17 also as my Energy West role when we were doing the
18 consolidation, so you had to do the 10-Q and 10-K
19 filings for the SEC reports because now everything
20 was a public company. You had to do related parties
21 so you had to talk about the related parties, related
22 parties' AP, AR, and whatever transactions had
23 occurred during that timeframe. During that time I
24 realized there were a lot of accounts receivables
25 that were due from related parties that hadn't been

1 paid, some of them over a year old, so we would see
2 that the AP was paid timely, but the money coming in
3 was not -- was not given timely.

4 Q. This is something you discovered on the
5 preparation of SEC reports?

6 A. Yes.

7 Q. This was not the kind of weekly review
8 that you did with the payables.

9 A. No. It would come up with like doing
10 reconciliations, account reconciliations, making sure
11 everything was consolidated. You always want to do
12 collections because you need to get your money in so
13 it would have to do with looking at our aging. You
14 have to do, you know, a bad debt analysis of such
15 that's over a certain timeframe of how old it is and
16 that would come up in the bad debt analysis because
17 it was pretty aged.

18 Q. So there are weekly meetings on the
19 payables. Were there regular meetings with respect
20 to the receivables and decisions on how to make
21 collections or which accounts to pursue?

22 A. No, never with me.

23 Q. And you, I assume, then also were never
24 given any instruction on who to pursue for
25 receivables?

1 A. No.

2 Q. And would that have been something that
3 you were directed to do or somebody under your
4 supervision was directed to do at any time?

5 A. To collect receivables?

6 Q. Yes.

7 A. From customers but that's really it. I
8 know they had a very good process for collecting from
9 customers.

10 Q. Would anybody under your purview have
11 been responsible for collecting receivable accounts
12 from noncustomers?

13 A. Not that I am aware of.

14 Q. I guess I want to get back to the
15 accounting software issue. You had indicated
16 Ms. Howell had access. Did anyone else have access
17 to distribution company books and records who was not
18 employed by the distribution company?

19 A. Not to my knowledge, no.

20 Q. Were you ever asked to perform any duties
21 that you felt were outside the scope of your job
22 description?

23 A. The only thing I was ever asked to do
24 that I thought that I was uncomfortable and didn't do
25 it was to sign Tom's name to a check because we

1 needed to do a wire transfer to get money from one
2 company to another so basically we weren't at a
3 negative for the day but luckily we got -- Tom was on
4 vacation. We were able to get I think Rick's
5 signature and was able to do a wire transfer through
6 that because I was not going to sign somebody else's
7 name. I'm not comfortable with that.

8 Q. And just to delve into that circumstance,
9 were you aware that you had Mr. Smith's authorization
10 to do so?

11 A. He did tell me to go ahead and sign his
12 name and leave a copy of the check on his desk, but
13 I'm not comfortable signing somebody else's name.

14 Q. That was your only qualm, not that it was
15 not authorized.

16 A. Right.

17 Q. You weren't comfortable.

18 A. Yeah. I just won't do that.

19 Q. During your time with the companies, were
20 there other practices that you believed were
21 inappropriate?

22 A. I think the practices that were the most
23 inappropriate was just the purchasing of gas for the
24 other companies only because it takes away from the
25 ability to have cash in your account for your own

1 company and it takes away from your credit and it
2 takes away from you being able to pay timely so it
3 strains the relationship, one, to who you are buying
4 the gas from because now you are purchasing a larger
5 amount than what you normally could afford and you
6 don't have the cash coming in to go ahead and take
7 care of that when that happens.

8 It began in November of 2009. I think
9 November and December's payments instead of being
10 paid was taken against some loans that were owed to
11 Rick so instead of getting a check in we decreased
12 the amount of Rick's loan. And then in January and
13 February, they did a netting of receivables and
14 payables between related parties which in essence if
15 a check was cut, it would be the same thing. And
16 then after that timeframe in March, April, May, June,
17 then it was basically paid with a check.

18 Q. You mentioned loans to Mr. Richard
19 Osborne. These would be personal loans?

20 A. They were loans from when he purchased
21 the companies, I believe, the Ohio companies way back
22 then so that was money that was still owed to Rick
23 personally.

24 MR. MARGARD: I see. Okay.

25 I believe that's all the questions I have

1 of this witness. Thank you.

2 EXAMINER FARKAS: Okay.

3 MR. SERIO: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Serio:

7 Q. Good morning.

8 A. Good morning.

9 Q. My name is Joe Serio. I'm an attorney
10 with the Ohio Consumers' Counsel. Do you know who
11 the OCC is?

12 A. A little bit.

13 Q. And what do you know about the OCC?

14 A. Actually not too much because I couldn't
15 even tell you what it stands for. Ohio Consumers'
16 Counsel?

17 Q. Very good. In the course of your working
18 with Mr. Sarver throughout the MP audits and then
19 working with staff and coming to the hearing today,
20 did you ever have any discussions with anyone from
21 the Ohio Office of Consumers' Counsel?

22 A. I actually spoke with you two years ago
23 briefly.

24 Q. Okay. And had you had any conversations
25 with anyone from OCC regarding your coming to testify

1 today?

2 A. I had a conversation with a group of
3 people I believe in June on just what my knowledge of
4 the company was.

5 Q. Do you know if that was the PUCO staff
6 versus the Ohio Consumers' Counsel?

7 A. I don't know who was in the room. I'm
8 sorry.

9 Q. Now, you indicated that you spoke with me
10 a couple of years ago. Do you recall the content of
11 your discussion?

12 A. You had called me it had to be the end of
13 2010 asking me about the GCR audit that was going on
14 with Roger that the report was issued in November,
15 what my knowledge was, what I observed while I was
16 there.

17 Q. Okay. Thank you. Now, you indicated
18 that you worked for two different accounting firms,
19 Arthur Andersen and Deloitte & Touche?

20 A. Yes.

21 Q. When you were employed by either one of
22 those firms, did you ever receive any accommodations
23 or letters indicating that you had done work in an
24 exemplary manner?

25 A. Not in those because you are just staff

1 accountants, but I have always gotten awards at my
2 companies. At Server Relocation I got an Edge Award
3 which is a very distinguished award that you think
4 outside of the box and come up with processes and
5 ideas that help the company in some way, shape, or
6 form, and I also got rookie of the year.

7 Q. Okay. And you indicated you did get your
8 CPA about three years after you graduated, correct?

9 A. Yes.

10 Q. Now, when you were promoted to corporate
11 controller in 2010, that was considered a promotion,
12 correct?

13 A. Oh, yes.

14 Q. You were told it was a promotion?

15 A. Yes. And I got an increase in pay.

16 Q. And were you told at that time that you
17 had done good work and that's why you were being
18 rewarded with the promotion? What were the
19 circumstances?

20 A. Rick called me down to his office, asked
21 me some questions about what it would take to
22 basically move the accounting department over to Ohio
23 from Montana and what we would do about the systems
24 because they were on two different systems, how to
25 merge the systems, and would I be able to do it and I

1 said yes and then next thing you know I got promoted.

2 Q. When you indicate Rick or Mr. Osborne,
3 you are talking about Rick Osborne, correct?

4 A. Rick Osborne, Jr., yes.

5 Q. And a couple of times you said Tom. A
6 couple of times you said Mr. Smith. All of those
7 references are to Mr. Tom Smith, correct?

8 A. Yes.

9 Q. Now, in the course of your employment
10 with Energy West or Gas Natural, did you get any
11 letters of accommodation? Is there anything in your
12 file that indicates that you had personnel reviews
13 that were recognized for your good work?

14 A. Jed and I -- Jed Henthorne at Energy
15 West, I originally reported to him. He was the one
16 that did my one and only review. Nothing bad was on
17 it. I did not ever get anything bad so.

18 Q. So you never got any poor evaluations or
19 any letters of correction or e-mails telling you that
20 you had done something wrong and that your behavior
21 needed to be corrected?

22 A. No, never.

23 Q. Now, as corporate controller, you
24 instituted a number of changes, and you oversaw
25 changes in process?

1 A. More so for the Bangor Gas Company which
2 was what I started doing. Very little in anything
3 with the Ohio companies because it was a new
4 transition. So what I was mostly responsible for was
5 figuring out how to take those financials and
6 consolidating them with Energy West so Jed Henthorne
7 and I worked together how to do that and then what
8 eliminating entries were needed between the two so it
9 wasn't changing anything but it was a brand new
10 process.

11 Q. The process that you implemented, to the
12 best of your knowledge, is that still in place today?

13 A. I have no idea.

14 Q. Now, you indicate you were let get on
15 November 24 of 2010 and that you noticed that was the
16 same day that the MP audit came out in the 2010 case,
17 correct?

18 A. That is correct.

19 Q. And you were told by Mr. Tom Smith that
20 your position was no longer needed?

21 A. That is correct.

22 Q. But you indicated that three days later
23 you saw a posting for the same job?

24 A. That is correct.

25 Q. And that's the job that Mr. Brainard took

1 subsequent.

2 A. No. Mr. Brainard was hired as the Ohio
3 controller. I believe a man by the name of Jonathan
4 was hired for my old role. I don't know because I
5 was gone. I've never met Jonathan, but I was told by
6 somebody who I kept in contact that Jonathan got my
7 position.

8 Q. Now --

9 MR. YURICK: Objection, hearsay.

10 EXAMINER FARKAS: I'll let it stand.

11 Q. Was there anything in the job posting
12 that you saw that was different as far as
13 requirements from the job that you had fulfilled?

14 A. No.

15 Q. Do you know if the individual who took
16 your place had the same credentials that you did, an
17 accounting degree and a CPA?

18 A. I do not know.

19 Q. And you specifically asked Mr. Smith if
20 there was anything you had done wrong, and he
21 specifically told you that there was nothing that you
22 had done wrong that caused your job to be eliminated.

23 A. That is correct. I asked twice.

24 Q. When you saw the job posted three days
25 later, did you call Mr. Smith and inquire as to why

1 they were turning around and putting a job you had
2 just been let go from that you were told they didn't
3 need any more?

4 A. I did not. I mean, it was sad to me but
5 I -- why have confrontation? It wasn't going to end
6 in anything pleasant so there was no reason.

7 Q. And you were -- you were let go in
8 November of 2010, and after that, you got another
9 job?

10 A. Yes.

11 Q. And that's the current position you have?

12 A. Yes.

13 Q. And, again, that's working for who?

14 A. Server -- sorry, that was before.
15 Johnson Controls.

16 Q. And approximately when did you take the
17 position with Johnson Controls?

18 A. I had a few vacations scheduled so I kind
19 of enjoyed a little break. I took the job I believe
20 in February of 2011.

21 Q. Okay.

22 A. Oh, no, I'm sorry. It was March. It was
23 right before Saint Patrick's Day. I apologize.

24 Q. Okay. Now, you indicated there had been
25 instances where Anita. That would be Anita Noce?

1 A. Uh-huh.

2 Q. Told you that, for instance, JDOG was
3 using Northeast Ohio storage facilities?

4 A. That is correct.

5 Q. Now, when she told you this, did she show
6 you any kind of documentation to show that was going
7 on?

8 A. Yes. And actually they still had
9 accounts receivable on the books to account for the
10 transportation of pulling the gas out of storage.

11 Q. Okay. So you had an accounts receivable
12 that showed that JDOG owed Northeast money because
13 they pulled gas out of Northeast storage.

14 A. Yes. It was a transportation charge.

15 Q. Now, which JDOG, can you specify was it
16 John D. Oil and Gas or John D. Oil and Gas Marketing?

17 A. I could not tell you.

18 Q. Do you recall if the accounts receivable
19 specified the exact name of the company?

20 A. It did.

21 Q. So those accounts receivable would still
22 be available today if the Commission decided they
23 wanted to look at those accounts receivable?

24 A. Yes, because the timeframe that I started
25 going through the related party information was for

1 March, 2010, for the quarterly report, to do the
2 related party note for the quarterly reports. So
3 they were still outstanding by March of 2010.

4 Q. So were there multiple accounts
5 receivable that would show this behavior or just the
6 one?

7 A. For that instance of using the storage
8 just the one but you would be able to see if we
9 purchased gas outstanding amounts that were still
10 owed to us for gas we purchased on their behest.

11 EXAMINER FARKAS: When you say "we," you
12 are referring to Northeast.

13 A. Northeast or Orwell.

14 Q. Or Orwell, okay. And then you indicated
15 that Northeast and Orwell purchased gas for other
16 entities?

17 A. Yes.

18 Q. And who were the other entities that they
19 purchased gas for?

20 A. One was JDOG. Again, I don't know if it
21 was JDOG Marketing. I believe it was JDOG Marketing.
22 That was Constellation's gas and then there was also
23 the Great Plains' gas that was purchased from BP.

24 Q. Okay. Let me take those one at a time.

25 A. Okay.

1 Q. So Northeast purchased gas for JDOG
 2 Marketing, and they purchased the gas from
 3 Constellation?

4 A. Yes.

5 Q. And Constellation is another marketer or
 6 a producer, if you know?

7 A. I do not know.

8 Q. And Northeast paid for the gas.

9 A. Yes.

10 Q. Did Northeast get reimbursed for that
 11 payment?

12 A. At the time that I was doing the related
 13 party note it was still outstanding.

14 Q. And, again, there would be accounts
 15 receivables that would show that Northeast purchased
 16 the gas for JDOG from Constellation?

17 A. Yes.

18 Q. And if Northeast was later reimbursed,
 19 there should be some account entry that would show
 20 there was a receivable?

21 A. That's correct.

22 Q. Now, you indicated there was also an
 23 instance with Great Plains?

24 A. Yes. That was with Orwell -- Orwell and
 25 Great Plains. That was from November of '09 through

1 June of 2010.

2 Q. So Great Plains purchased gas from whom,
3 if you know?

4 A. Orwell purchased gas from BP on behalf of
5 Great Plains for about \$2 million.

6 Q. And, again, there would be an accounts
7 receivable entry that would show that and if they
8 were -- and if Orwell was reimbursed by Great Plains,
9 there would be an accounts receivable payment that
10 would show that.

11 A. That's correct.

12 Q. Now, to the extent that they made
13 those -- that either Northeast or Orwell made the
14 payments and then they were later reimbursed, did you
15 ever see any proof of reimbursement?

16 A. If they were reimbursed, I would either
17 see proof of reimbursed or how the money was
18 transferred to pay down a loan or there was one
19 that -- an entry they did to flush receivables and
20 payables where they basically took the net of what
21 was owed to each company and kind of washed them out
22 so they took the related AP and AR for the Ohio
23 companies and paired it to the related AP and AR for
24 the related party companies and kind of did an entry
25 to wash them out against each other.

1 EXAMINER FARKAS: And just for the record
2 AP is an accounts payable, AR accounts receivable?

3 THE WITNESS: That is correct.

4 Q. Now, when they re -- when these -- when
5 either Great Plains or JDOG Marketing reimbursed
6 Orwell or Northeast, did they reimburse just the
7 exact amount of the purchase, or was there any
8 additional fee to account for time value of money or
9 any --

10 A. It was just for the purchase.

11 MR. YURICK: Your Honor, at this point
12 I'm going to object, and the reason for my objection
13 is the use of the term "they." I don't know who they
14 is.

15 EXAMINER FARKAS: Do you want to
16 rephrase?

17 MR. SERIO: Yes, sir.

18 EXAMINER FARKAS: Thank you.

19 Q. Whether JDOG Marketing and Orwell
20 reimbursed either Northeast or Orwell for the
21 purchases that Northeast and Orwell made on behalf of
22 the JDOG Marketing and Great Plains, did the
23 payment -- was it just for the exact amount of the
24 purchase, or was there any additional moneys in the
25 payment that would reflect time value of money or the

1 ability to use the money for that time period?

2 A. It was only for the exact amount of the
3 payment.

4 Q. Now, I also indicated there were
5 instances where other entities, and I think you
6 mentioned Constellation, stored gas owned by
7 Constellation in storage that Northeast Ohio had?

8 A. No. John D. Oil and Gas had -- and I
9 don't know if it was Marketing or Oil and Gas that
10 had their gas in Orwell -- or in NEO's storage
11 facilities.

12 Q. And the NEO storage that you are
13 referring to, is that the storage that Northeast
14 leased from Columbia Gas Transmission Company?

15 A. Yes.

16 Q. And that would be storage that Northeast
17 paid for on an annual basis from Columbia Gas
18 Transmission Company, correct?

19 A. I don't know anything about the payments
20 for that.

21 Q. Did JDOG pay Northeast, if you know, for
22 the ability to put their own gas into the Northeast
23 storage?

24 A. In my research I did not find that. All
25 I found was that they were charged the transportation

1 cost to remove it.

2 Q. You mentioned a Kevin earlier. Do you
3 know if that was Kevin Degenstein?

4 A. Yes.

5 Q. D-E-G-E-N-S-T-E-I-N?

6 A. That's correct.

7 Q. And do you know what Mr. Degenstein's
8 title was when you had the meeting with Energy West?

9 A. President of the company.

10 Q. And who was Mr. Jed Hawthorne that was
11 also at the meeting?

12 A. Henthorne, he was --

13 Q. Henthorne.

14 A. -- the controller of Energy West.

15 Q. Now, one of the things that has come
16 across in your testimony is that from 2009 to 2011,
17 both the Ohio companies, Energy West had a lot of
18 controllers.

19 MR. YURICK: Objection, your Honor, to
20 the characterization.

21 Q. There were numerous controllers for these
22 companies during that time period, correct?

23 EXAMINER FARKAS: Do you still have an
24 objection?

25 MR. YURICK: Yes, your Honor.

1 Q. How many controllers do you recall that
2 the Ohio companies or Energy West had during the two
3 years from 2009 to 2011?

4 A. Energy West was very consistent. It was
5 always Jed Henthorne. He had been there for many,
6 many years. On the Ohio side I don't know who
7 preceded Becky, but it was Becky and it was Sue
8 Lagoni and then the position was open that I was
9 filling in for while we were finding somebody and
10 then there was Larry Brainard.

11 Q. So that's four controllers in a space of
12 two years.

13 A. I wasn't technically considered a
14 controller but there were three actual Ohio
15 controller titles with people in them, yes.

16 Q. In the three-year period.

17 A. Yeah.

18 Q. In your experience in the accounting
19 field would you say that it's normal for there to be
20 that type of turnover in the controller position in
21 that short period of time?

22 MR. YURICK: I'm going to object at this
23 point, your Honor. It was represented, I believe, to
24 both myself and to the Bench that this witness was a
25 concerned citizen who was offering fact testimony.

1 She's now being asked for her opinion as a seasoned
2 accountant as to how many controllers is normal for a
3 company to have. I think that goes beyond the
4 competency of the testimony of a concerned witness
5 who -- or a customer of the company who just wanted
6 to come in and testify about facts.

7 MR. SERIO: Well, your Honor, I didn't
8 ask her opinion. I asked was it in her experience
9 unusual for there to be that type of turnover.

10 EXAMINER FARKAS: I'm going to sustain.

11 MR. SERIO: That's a factual evaluation.

12 EXAMINER FARKAS: I'm going to sustain
13 the objection.

14 Q. (By Mr. Serio) Now, you indicated that
15 Ms. Howell at one point was president of
16 Cobra Pipeline, correct?

17 A. Correct.

18 Q. And during the time that she was
19 president of Cobra she also had access to the
20 accounting records of Northeast and Orwell, correct?

21 A. That's correct.

22 Q. Now, you mentioned SOX earlier I think
23 when Mr. Margard was asking you questions. What is
24 SOX?

25 A. It's Sarbanes Oxley. It's the

1 regulations that were put into effect in the
2 government after the Enron episode. It's controls
3 and ways to make sure that your financial information
4 is valid, correct, and has proper procedures and
5 controls to make sure that it's valid when being
6 audited. So our auditors would also come in and look
7 at our internal controls and see how everything was.

8 Q. Now, during the time that Ms. Howell was
9 president of Cobra and had access to the Northeast
10 and Orwell accounts, were you aware that Cobra was
11 selling services to Northeast and Orwell?

12 A. Yes.

13 Q. Did you ever go to your superiors and
14 tell them that you thought there might be a concern
15 that one of the companies that was selling services
16 to Northeast and Orwell had an officer who had access
17 to the accounts and records of Northeast and Orwell?

18 A. My concern was more of a nonemployee
19 having access to financials which is a major concern
20 to me, and I brought that up to Jed Henthorne and
21 also to the auditors and the SEC lawyers.

22 Q. When you brought it to their attention,
23 did you document through an e-mail, a memo?

24 A. Phone conversations.

25 Q. And you said you also raised this with

1 the SEC lawyers?

2 A. Yeah. We had lawyers that kind of looked
3 out when we were doing our 10-Qs, 10-Ks, and any SEC
4 filings.

5 Q. Do you recall who these SEC lawyers might
6 have been, names, positions, titles?

7 A. I think his name was Chris. I'm sorry.
8 I don't recall.

9 Q. And when you raised these concerns,
10 whether it was with the SEC lawyers or company
11 personnel, what was their reaction?

12 A. We ended up removing her access from the
13 system.

14 Q. Was there any kind of documentation that
15 showed at some point she no longer had access to the
16 system?

17 A. I'm unaware.

18 Q. On a monthly basis do you have a printout
19 that shows whose got access to the accounting system?

20 A. I don't recall that system well enough to
21 be able to answer that, I'm sorry.

22 Q. Now, you indicated that Ms. Howell
23 specifically told Dawn to increase the GCR during the
24 audit period. Now, was that the 2010 audit or during
25 the current audit?

1 A. It was during the 2010 year.

2 Q. So I get this straight, she specifically
3 told Dawn and that would be Dawn Opara.

4 A. I thought her name was S-E-V something.
5 Maybe she got married.

6 Q. But she, Ms. Howell, told Dawn that she
7 should increase the GCR rate. Did she indicate how
8 much?

9 A. My understanding was it was about \$1.50,
10 I'm estimating on that number. And Dawn didn't know
11 how to do it so Becky went in and did it on the
12 spreadsheet for her.

13 Q. And that would have been \$1.50 per unit.

14 A. Yes.

15 Q. And then Ms. Howell specifically went
16 into the system and made the change herself.

17 A. It was an Excel spreadsheet so she went
18 into the Excel spreadsheet.

19 Q. Now, if such a change were made in the
20 Excel spreadsheet, would there be a reconciliation
21 the next month?

22 A. Yes.

23 Q. And wouldn't the reconciliation the next
24 month catch an incorrect entry on the GCR rate?

25 A. One would hope so but she was told to use

1 the other -- the lower amount when she did the
2 reconciliation the following month.

3 Q. Would there be any kind of documentation
4 that would show if the GCR rate had been artificially
5 increased one quarter and then the reconciliation the
6 next month modified so that you would not get the
7 proper reconciliation?

8 A. Yes.

9 Q. What documentation would show that?

10 A. I think this would be the reconciliation
11 spreadsheets that Roger asked for in his audit.

12 Q. Now, you indicated your working
13 relationship with Mr. Greg Osborne during the time he
14 was running JDOG.

15 A. Yes.

16 Q. Was that JDOG Marketing or John D. Gas
17 and Oil?

18 A. I believe it's Oil and Gas. I don't know
19 who ran Marketing.

20 Q. Okay. So he was -- he was running JDOG,
21 and at that time JDOG was selling gas to Northeast
22 and Orwell, correct?

23 A. Yes.

24 Q. Now, to the extent that Mr. Richard
25 Osborne was directing payments, did you ever observe

1 that he made payments to JDOG ahead of payments to
2 other entities that had accounts receivables?

3 A. Yes, but it was mostly Cobra, but yes.

4 Q. Mostly Cobra and that would have been the
5 company that Ms. Howell was president of at the time,
6 correct?

7 A. Yes.

8 Q. When you saw -- you saw Cobra invoices,
9 correct?

10 A. Yes.

11 Q. Do you recall if the Cobra invoices ever
12 charged a processing fee?

13 A. Yes.

14 Q. And to your knowledge was that processing
15 fee 25 cents per unit?

16 A. Yes.

17 Q. And do you know if there was ever any
18 attempt to verify whether the volumes that were
19 charged that 25 cents were actually processed?

20 A. I was attempting to do that when I was
21 let go.

22 Q. How were you attempting to verify whether
23 gas that Cobra charged a processing fee was actually
24 processed?

25 A. We were trying to determine how much gas

1 the customers used and what we got charged for. We
2 were trying to back into it.

3 Q. Did you discuss your attempts to verify
4 that with anyone?

5 A. It was with Kevin Degenstein and Jed
6 Henthorne and then we were also looking at the
7 imbalance, the imbalance between NEO and Cobra, gosh,
8 at the beginning -- or end of 2009, beginning 2010
9 was about 500,000 as a credit and it raised up to
10 almost about \$950,000 by like March.

11 Q. Okay. I'm not an accountant. You are
12 going to need to take a step back and explain to me
13 how those numbers would have gone into your
14 determination as to whether the gas that was charged
15 a processing fee was actually processed on the
16 Cobra system.

17 A. Because when you look at the gas, you
18 have the imbalance on the pipeline, how much gas is
19 being used, if you put more in than you use or took
20 more out than you use so you have an imbalance on
21 that pipeline and you use that imbalance to see,
22 well, if I put in this much gas and I only got this
23 much out, what's your difference and that's the
24 imbalance between Cobra and the company and those are
25 supposed to be reconciled and cleared up quite timely

1 but it was growing throughout 2010.

2 So that would have to go into the
3 calculation because you know what supposedly you put
4 into the pipe and you know what you charged your
5 customer so the difference would be what's still
6 sitting in the pipe that you haven't used or that you
7 used somebody else's gas for.

8 EXAMINER FARKAS: Are you okay?

9 THE WITNESS: I'm good, thank you.

10 Q. So you were comparing how much gas
11 customers actually used to how much gas the companies
12 Northeast and Orwell were charged for by Cobra,
13 correct?

14 A. Yeah.

15 Q. And you found that Cobra was charging
16 Northeast and Orwell more -- it would only be
17 Northeast, correct?

18 A. Yes.

19 Q. So Cobra was charging Northeast for more
20 gas than customers on the Northeast Cobra system were
21 actually using.

22 A. Yes. So our imbalance was growing.

23 Q. And in part you attribute that imbalance
24 to Cobra was charging the processing fee, but the gas
25 wasn't being processed.

1 A. That just came out in my findings. I
2 don't know how.

3 Q. Oh, okay. Now, when it came out in
4 your -- when the fact -- when your concern that
5 Cobra gas that was being charged a processing fee but
6 might not be getting processed, how did that occur to
7 demonstrate that to you?

8 A. Jed Henthorne has a process where -- and
9 he did it in Bangor, Maine, where you track all your
10 ins and you kind of have a reconciliation so you know
11 basically where you're ending and it's to show, yes,
12 this is what I purchased, this is how much came into
13 our pipeline, this is what went out, and this is
14 where our imbalance sits. So he was trying to get me
15 to have that for the Ohio companies too, and I was
16 struggling on how to come up with that calculation.

17 Q. Now, if the PUCO were inclined to
18 investigate Northeast and Orwell to determine if
19 their purchasing practices and policies during the
20 time period that you were employed there were done in
21 a manner that would be consistent with the Commission
22 requirements stated in the Ohio Revised Code, what
23 kind of documents would the Commission want to look
24 at in order to determine if there had been any
25 irregularities that occurred?

1 MR. YURICK: Your Honor, I'm going to
2 pose the same objection that I posed earlier in that
3 this witness is being asked an opinion based on her
4 experience, training, and knowledge as an accountant
5 what the PUCO ought to look at in an investigation
6 which I do believe goes a little bit further than an
7 opinion or testimony that a concerned citizen would
8 be able to offer.

9 MR. MARGARD: Your Honor, if I may speak
10 to that as well.

11 EXAMINER FARKAS: Okay.

12 MR. MARGARD: Such an investigation is
13 the recommendation made by staff in its testimony in
14 this case. This is testimony from a witness who may
15 have access to documents in the course of her
16 employment with these companies. This is a matter
17 that is within her factual purview and I think she
18 ought to be permitted to respond.

19 MR. SERIO: I'm comfortable with the
20 staff response, your Honor.

21 EXAMINER FARKAS: I'm going to allow the
22 answer.

23 You want the question reread?

24 THE WITNESS: Yes, please.

25 EXAMINER FARKAS: Okay. Would you reread

1 the question.

2 (Record read.)

3 A. You would want to look at the payments
4 for gas purchases. You would want to look at related
5 party payments and invoices. And you would want to
6 look at what you invoiced the customers, how much gas
7 you invoiced customers for during each timeframe.

8 Q. Now, you indicate that there was one
9 instance where you witnessed Ms. Howell directing
10 Anita to make a change, and then Ms. Howell made the
11 change herself. If such changes were physically made
12 on spreadsheets, how would the documents that you
13 just referenced show that those kinds of changes were
14 made?

15 A. It would be Dawn, not Anita.

16 Q. I'm sorry, Dawn.

17 A. That's okay. You would have to look at
18 the GCR reconciliation spreadsheets. It's a
19 spreadsheet that the company has that has numerous
20 tabs that feed into how the GCR is calculated. You
21 would want those Excel files.

22 Q. If -- to the extent that Ms. Howell made
23 the change that you witnessed on the spreadsheet and
24 if the following month the reconciliation used the
25 incorrect number as you had indicated she instructed

1 should be done, how would you show -- how would the
2 document show that those two changes had been made?

3 A. Well, you would -- you file that GCR
4 amount with the PUCO so you would be able to go on to
5 the system and see what rate was filed and then when
6 you do your trueup, you would be able to see what
7 rate was used.

8 Q. Do you know what month that incident
9 occurred?

10 A. I don't unfortunately. I'm sorry. It
11 was during 2010. I think it was later in the year.
12 I'm not -- I can't be exact on the month, I'm sorry.

13 Q. When you say later in the year, do you
14 recall if it was in the -- during the winter season?

15 A. Well, I was gone by November so it would
16 have been before then.

17 Q. So it occurred during 2010 prior to
18 November.

19 A. Yes.

20 Q. I believe you indicated earlier that
21 accounts receivables and payables were washed, I
22 think your term was. Do you recall that?

23 A. Yes.

24 Q. What did you mean by washed?

25 A. It was labeled, if I recall correctly,

1 flush accounts -- flush payables and receivables so
2 what they did was they looked at the total amount of
3 receivables for NEO from related parties and the
4 total amount of payables to -- for that same company
5 to related parties and kind of netted them together
6 to see if you could kind of wash it off because if
7 you have a payable, you basically owe the company,
8 and if you have a receivable, they owe you. So it's
9 not good accounting practice. You wouldn't want to
10 do that but.

11 Q. Was it done on a company-by-company
12 basis, or were Northeast and Orwell consolidated?

13 A. It was done by Northeast and Orwell
14 separately, but it was for all related parties.

15 Q. So to the extent it was done company by
16 company, there wouldn't be any fallout from one
17 company receiving too much and another getting too
18 little?

19 A. No.

20 Q. The GCR incident with Ms. Howell, do you
21 recall if that was for Northeast or for Orwell or for
22 both companies?

23 A. I do not recall which one it was for, I'm
24 sorry.

25 MR. SERIO: That's all we have, your

1 Honor.

2 Thank you very much.

3 EXAMINER FARKAS: Why don't we take a
4 10-minute recess.

5 MR. YURICK: Your Honor, I'm going to
6 move the court at this point for an adjournment for
7 the period of at least an hour. This witness has
8 testified extensively, much more extensively than any
9 normal fact witness off the street, about -- about
10 matters that at this point I can't confirm or deny
11 because I've had no ability to speak to this witness,
12 depose her, take any discovery. She's had
13 conversations with the OCC, and she's had
14 conversations with the staff.

15 I'm -- I believe yesterday with the
16 concerned citizen witness, that that was an
17 unworkable situation for me, and I think that I may
18 have allowed that to get to me a little bit. I have
19 no desire to embarrass myself or take any kind of
20 frustration for the fact that I can't prepare to
21 cross-examine these witnesses out on the witness or
22 be impolite or disrespectful to either counsel or the
23 court. Therefore, I'm going to ask at this time that
24 as a matter of due process and fairness I be allowed
25 some -- some minimal time, at least 60 minutes, to

1 prepare to cross-examine this witness on her
2 extensive factual testimony which the other two
3 parties to the case had prior knowledge of and I had
4 none.

5 EXAMINER FARKAS: Okay. You are
6 asking -- you want about an hour to prepare?

7 MR. YURICK: Correct, your Honor.

8 EXAMINER FARKAS: Any objection to that?

9 MR. MARGARD: Your Honor, it's hard to --
10 to imagine why that's -- I appreciate counsel's
11 concern. By the same token this was an employee of
12 the companies that has been well known to them for
13 some time. They have known for some time that she
14 intended to testify, had every opportunity on their
15 own to contact her to find out what the subject of
16 her testimony might be.

17 There was no indication they made an
18 effort, whether she declined an effort to speak with
19 them. They have all of their company personnel here
20 available to counsel them. It's hard for me to
21 understand why we would need to afford that much of
22 an opportunity to prepare for cross-examination. I
23 don't have an objection per se.

24 The company obviously has the opportunity
25 to present rebuttal testimony and has indicated that

1 they intend to do that with respect to the testimony
2 that was offered yesterday. I think honestly that
3 that's -- that's sufficient.

4 EXAMINER FARKAS: Okay. Mr. Serio.

5 MR. SERIO: We don't necessarily have
6 objection to the hour. I would like to correct one
7 thing that counsel stated. The witness had a contact
8 with OCC back in 2010. There was no contact with OCC
9 regarding this case so I just want to make sure
10 that's clear. Having said that OCC has been in the
11 position in the past where we would have liked time
12 so I'm not going to oppose somebody else getting
13 time.

14 MR. YURICK: And I didn't mean to suggest
15 that you had contact with her other than the contact
16 that she mentioned, so to clarify that, and I
17 appreciate your professionalism.

18 EXAMINER FARKAS: Just for the record,
19 Mr. Yurick, you knew this witness was -- was going to
20 testify?

21 MR. YURICK: I had a subpoena. I had
22 no -- no ability or no knowledge of -- of what the
23 substance of her testimony was, and frankly in
24 preparing for the hearing given that the subpoenas
25 were issued last week during a holiday week, I had no

1 opportunity or no chance to contact this witness in
2 any kind of reasonable fashion. She's testified for
3 close to 90 minutes. I'm only asking for an hour to
4 be able to confer with my client.

5 EXAMINER FARKAS: I think your request is
6 reasonable. I think we'll break until 11:30.

7 MR. YURICK: Thank you, your Honor.

8 (Recess taken.)

9 EXAMINER FARKAS: Let's go back on the
10 record.

11 MR. MARGARD: Your Honor, as a
12 preliminary matter before we resume
13 cross-examination, at the request of the parties and
14 at the direction of the Bench we provided parties
15 with a clean copy of the draft RFP that was attached
16 to Mr. Donlon's testimony as PD-1, and we have
17 substituted those pages in the copy that was given to
18 the court reporter. I would, therefore, now
19 respectfully renew my motion to admit Staff Exhibit
20 No. 1.

21 EXAMINER FARKAS: Is there any objection?

22 MR. YURICK: No objection, your Honor,
23 from the company.

24 MR. SERIO: No objection your Honor.

25 EXAMINER FARKAS: Then Staff Exhibit 1

1 will be admitted.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 EXAMINER FARKAS: Okay. Mr. Yurick, you
4 can proceed.

5 MR. YURICK: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Yurick:

9 Q. Ma'am, my name is Mark Yurick. I
10 represent the companies in this case.

11 A. Hello.

12 Q. I would like to ask you a few questions.
13 When were you first contacted by the PUCO in
14 reference to your testimony here today?

15 A. To this case?

16 Q. Yes.

17 A. I'm not good with dates, I'm sorry. I
18 work from home now so my days kind of merge together,
19 but I'm thinking it was the beginning of June.

20 Q. The beginning of June of this year?

21 A. Yes.

22 Q. Okay. And how -- who did you speak to?

23 A. Mr. Sarver.

24 Q. And I think earlier in your testimony you
25 referred to Mr. Sarver as Roger.

1 A. Yes.

2 Q. And you do that sometimes.

3 A. I go back and forth with everybody's name
4 I've noticed so I apologize.

5 Q. I just want to make sure it was clear for
6 the record who it was you were referring to.

7 A. Yes.

8 Q. How many -- did you -- how long did you
9 speak with Mr. Sarver in the beginning of June about
10 your testimony here today?

11 A. Probably about 15 minutes.

12 Q. And were you contacted again by the PUCO
13 staff or the Attorney General about your --

14 A. Just recently, yes.

15 Q. And can you give me an approximate time
16 when that was?

17 A. About coming in here?

18 Q. Yes.

19 A. That would have been probably two weeks
20 ago.

21 Q. And was -- I believe your testimony was
22 that when you were first contacted by Mr. Sarver in
23 the beginning of June, that was by telephone?

24 A. Yes.

25 Q. Is that correct?

1 A. Always by telephone.

2 Q. And do you know or are you aware of how
3 Mr. Sarver got your home telephone number?

4 A. It's my cell phone. It's been the same
5 since I worked there.

6 EXAMINER FARKAS: Since you worked where?

7 THE WITNESS: At Gas Natural, sorry.

8 EXAMINER FARKAS: That's okay.

9 Q. Then two weeks ago you also had a
10 telephone call?

11 A. Yes, to tell me to keep this week open.

12 Q. Okay. And who contacted you at that
13 point?

14 A. Roger, or Mr. Sarver, whichever you
15 prefer.

16 Q. Whatever you prefer, ma'am. I just want
17 to keep the record clear.

18 A. Okay.

19 Q. So you were told to keep this week
20 open --

21 A. Yes.

22 Q. -- is that right? Now, the first time
23 you were contacted about your testimony, did you
24 discuss the substance of your testimony, what you
25 were going to say?

1 A. No.

2 Q. Okay. And two weeks ago when you were
3 contacted, did you discuss the substance of your
4 testimony?

5 A. Not really, no.

6 Q. Okay. When you say not really, what do
7 you mean? Did you talk about it or?

8 A. Not really, no. That's how I speak. It
9 was just basically to tell me to keep this day
10 open -- actually I think he said the 9th, but I got
11 confused so hence the reason I'm here today.

12 Q. And did you have any other contacts or
13 discussions with either the Attorney General's Office
14 or the staff about your testimony here today?

15 A. There was one phone conference and,
16 again, don't know the dates but it would be in
17 between those two where they asked me some questions
18 of what I've seen.

19 Q. Do you know who was on the telephone
20 conference?

21 A. I do not. I apologize.

22 Q. Do you know how -- do you know how many
23 people were on the telephone conference?

24 A. I do not. I apologize.

25 Q. Do you remember if Mr. Sarver was on the

1 telephone conference?

2 A. Yes.

3 Q. Okay. Do you remember if Mr. Margard was
4 on the telephone conference?

5 A. I'm horrible with names. As you can
6 tell, I can't remember people's last names.

7 Okay. He was on.

8 MR. MARGARD: Just identifying myself.

9 A. No. Honestly I don't know who was on the
10 phone other than Mr. Sarver because I know him and I
11 know his voice but, no, I do not know how many people
12 were on nor do I know who they were. I apologize for
13 that.

14 Q. How long did the telephone conference
15 last?

16 A. About half an hour to an hour. Talking
17 specifically about the case it was half an hour. My
18 dogs decided to chase a chipmunk up a gutter so I had
19 to hold off the conversation for 15 minutes as I
20 tried to control the poor dogs for the chipmunk so
21 most of it was not for the case for that time.

22 Q. Okay. Do you remember any questions that
23 you were asked during that half hour to hour
24 telephone conference?

25 A. They really just wanted to know what

1 timeframe I was there, what was my -- why I left or
2 what was the result of me leaving and coming in and
3 testifying.

4 Q. Your testimony here today you mentioned
5 several, I guess, contacts or instances where you
6 were uncomfortable with or felt that the company
7 engaged in conduct that was in your mind anyway you
8 had reservations about. Did you talk about any of
9 those instances in the half hour to hour telephone
10 conference?

11 A. Yes.

12 Q. And do you recall what -- what was said?

13 A. I talked about the GCR change and Great
14 Plains. Oh, and the Cadillac Escalade that was on
15 the books.

16 Q. I'm sorry?

17 A. The Cadillac Escalade that was on the
18 books.

19 Q. The Cadillac Escalade that was on the
20 books.

21 A. Yeah. Those are pretty much the three
22 main points.

23 Q. Was that the only contact you had with
24 the AG and/or the staff for your testimony here
25 today?

1 A. Yes.

2 Q. Okay. Now, previous to your testimony
3 here today did you have contact with Mr. Sarver in
4 the context of your duties with the company?

5 A. Previous -- like what do you mean my
6 duties?

7 Q. When you were still employed at the
8 company, did you have previous contacts with
9 Mr. Sarver regarding the financial condition of the
10 company, the GCR filings, anything to do with the --
11 your work at the company?

12 A. Well, anything that Roger asked for I was
13 the one that was his go-to so I was the one that was
14 giving him anything that he needed.

15 Q. And when were you the go-to person? I
16 guess you would consider yourself the primary contact
17 from the companies with Mr. Sarver during what period
18 of time?

19 A. It would have been like March of 2010
20 through when I left November, during our audit period
21 of time.

22 Q. So March of 2010 to --

23 A. November of 2010.

24 Q. 2010, okay. And during that time how
25 many times -- if you recall, how many times did you

1 speak with Mr. Sarver?

2 A. He was in our office trying to get data I
3 think for about three days, and then I think he came
4 back and then said send an e-mail or give me a call
5 on anything that he might need, for instance, like a
6 contract or something like that, but I think he was
7 actually physically in our office for probably a week
8 on two different occasions. I'm going by memory
9 here.

10 Q. And during the period March, '10, through
11 November, '10, Mr. Sarver was in the office for
12 approximately a week at a time on two different
13 occasions. How many other times would he contact
14 you, say, during a normal week?

15 A. It depends. At the beginning of the
16 audit it was a lot more because he needed all the
17 information and being new to that position and not
18 having an Ohio controller at times it was hard to get
19 what he was looking for so if he was looking for
20 contracts or he was looking for invoices for
21 purchasing, I had to learn where to get those and how
22 to get those and who to go to. It was probably a lot
23 more back and forth in the beginning because it was
24 my learning.

25 Q. And your -- your contacts with

1 Mr. Sarver, he asked you for information.

2 A. Yes.

3 Q. Okay. Did you -- were you in contact
4 with anybody in the company regarding information
5 that you were being asked for?

6 A. Yes.

7 Q. Okay. Who were you in contact with at
8 the company?

9 A. It was anybody who would have the
10 information, Anita, Robin, oh, a gentleman who used
11 to do the gas buying, an older gentleman with white
12 hair, I can't remember his name, Steve, somebody by
13 the name of Steve. There was also some people I
14 think from Cobra that may have some contracts. I was
15 talking to anybody that somebody told me to go to to
16 try and get the information that was requested.

17 Q. So how much time do you think you spent
18 speaking with Mr. Sarver about the audit? Could you
19 estimate?

20 A. Which timeframe?

21 Q. From March, '10, to November, '10, which
22 is the timeframe I think he gave me.

23 A. Yes. I have no idea. It was part of the
24 audit and part of my responsibilities so incorporated
25 in my normal day. I can't really give you an amount

1 of dollars, hours, I'm sorry.

2 Q. And were you cooperative with Mr. Sarver?

3 A. Yeah.

4 Q. Did you provide all the information that
5 Mr. Sarver asked for at that time?

6 A. Anything that I could find. If I
7 couldn't find it, I couldn't provide it.

8 Q. Did you ever consult with anyone else,
9 your immediate report Mr. Smith or anybody else at
10 the company, regarding what you were asked to
11 provide?

12 A. Yeah. I would have gone to Mr. Smith if
13 I didn't know where to find anything.

14 Q. If you could find something or you were
15 able to find something, were you keeping track of
16 what you provided to Mr. Sarver so that people in the
17 company would also be provided with that information?

18 A. Well, it would be given to me from
19 whoever the employee was so they would have it. But
20 there was no file or anything.

21 Q. So you weren't keeping a list or
22 corresponding or documenting what was being provided
23 to the PUCO?

24 A. No, because it wasn't only going through
25 me.

1 Q. Okay. To your knowledge who also was
2 being asked for information by Mr. Sarver?

3 A. Well, Dawn had to provide the information
4 for the GCRs so that was --

5 Q. I'm sorry. Do you know Dawn's last name?

6 A. I don't. I'm so sorry. I thought it was
7 like S -- S-E-V something. She was doing the GCR
8 audit at that time.

9 Q. Okay.

10 A. I am not good with names. I apologize.
11 It's been two years.

12 Q. So Dawn was also being asked by
13 Mr. Sarver for information in connection with the
14 companies --

15 A. Yes.

16 Q. -- to your knowledge. And was Dawn
17 reporting to you what she was being asked for?

18 A. No.

19 Q. You basically just told Dawn if
20 Mr. Sarver calls you, just provide him whatever he
21 wants.

22 A. She was contacted before I took over the
23 role so she was already being asked for stuff before
24 I took over so I kind of joined in after it had
25 started.

1 Q. And you said you had contact with
2 Mr. Sarver I believe from March, '10, to November,
3 '10. Were you corporate controller that entire time?

4 A. Yes.

5 Q. Okay. You weren't made corporate
6 controller in August of '10?

7 A. No.

8 Q. Okay. When were you made corporate
9 controller?

10 A. It was at the first quarter of 2010. I'm
11 not sure of the exact date.

12 Q. Okay. You -- I think you said you spoke
13 at some point with SEC counsel for the company; is
14 that right?

15 A. Our lawyers, yes.

16 Q. And do you remember that person's name?

17 A. I thought it was Chris.

18 Q. No idea what Chris's last name was by any
19 chance?

20 A. No, I'm sorry.

21 Q. Okay. And what was the substance of your
22 conversation with your SEC lawyer?

23 A. We talked on numerous occasions because
24 we were trying to get the information together for
25 the proxy and for the 10-K filings and then the 10-Q

1 so we were always in contact.

2 Q. Did you speak to SEC counsel regarding
3 the three topics that you spoke with the PUCO staff
4 about?

5 A. I would know -- yes, because they were
6 related parties.

7 Q. So you spoke to SEC counsel regarding an
8 alteration to the GCR numbers; is that right?

9 A. No. You know what, that wouldn't have
10 gone to the SEC lawyer, no, because that's not a
11 related party issue, no.

12 Q. You would have spoken to the SEC lawyer
13 about a Great Plains' transaction?

14 A. Yes.

15 Q. And you would have spoken to the SEC
16 lawyer about a Cadillac Escalade?

17 A. Yes.

18 Q. Okay. What did the SEC lawyer say to you
19 about the transaction and the Escalade?

20 A. They wanted the information for the
21 related party note so we were trying to get a related
22 party note together so they asked me to dig in and
23 try to figure out how much we spent and everything
24 that we need to do to make sure that the related
25 party note was correct so we had to figure out how

1 much gas was purchased by one to the other because
2 you have to put in what your purchases and
3 transactions are with related parties and then the
4 Cadillac Escalade they were bringing up to management
5 to figure out why it was on the books.

6 Q. And do you know what the SEC lawyer
7 concluded regarding the transaction and the truck?

8 A. The truck they were going to have removed
9 from our books, but then Rick, Jr., was made an
10 employee of the company so it stayed. And the other
11 one was included in our related party like the
12 amounts in our related party stuff. So we were
13 working on first quarter, and it had to do with first
14 quarter.

15 Q. So your concerns were addressed; is that
16 correct?

17 A. Yes.

18 Q. Okay. Are you familiar with a gentleman
19 named John Mortel?

20 A. Yes.

21 Q. And did you speak with John Mortel about
22 your testimony here today?

23 A. I asked him if he would be willing to
24 come in as a witness. That's all I asked.

25 Q. And when did you contact Mr. Mortel?

1 A. After Mr. Sarver contacted me.

2 Q. And how did you get Mr. Mortel's
3 telephone number?

4 A. I've always had it. We were friends.

5 Q. So you called Mr. Mortel at home?

6 A. Wiertel, sorry. W, it's with a W.

7 Q. Oh, I'm sorry.

8 A. That's okay.

9 MR. SERIO: I'm sorry, it's Wiertel?

10 THE WITNESS: Wiertel.

11 MR. SERIO: Okay.

12 Q. So you contacted Mr. Wiertel on his cell
13 or at home?

14 A. I would assume it's his cell number.

15 Q. And this was after Mr. Sarver had
16 contacted you?

17 A. Yes.

18 Q. Did Mr. Sarver ask you to contact
19 Mr. Wiertel?

20 A. He asked if there was anybody that I knew
21 that might want to testify.

22 Q. And did Mr. Sarver indicate was there
23 anybody that you -- I mean Mr. Sarver knew that the
24 contents or the subject matter upon which you were
25 going to testify; is that correct?

1 A. No. No.

2 Q. Did Mr. Sarver ask you "Do you know
3 anybody that wants to testify on behalf of the
4 company favorably?" Did he ask you that?

5 A. John could have been that. He didn't ask
6 one way or the other, whether favorable or
7 unfavorable.

8 Q. So you contacted Mr. Wiertel and what was
9 Mr. Wiertel's contact with the company?

10 A. What was that? I'm sorry.

11 Q. What was his connection to the company,
12 Mr. Wiertel?

13 A. He was the sales -- or salesperson when I
14 worked there.

15 Q. Is he still with the company?

16 A. No.

17 EXAMINER FARKAS: Just for clarification,
18 the company, who are we talking about? Which
19 company?

20 MR. YURICK: I'm sorry. I'm speaking now
21 of either one of the companies.

22 EXAMINER FARKAS: Northeast or Orwell.

23 MR. YURICK: Northeast or Orwell.

24 EXAMINER FARKAS: Was that your
25 understanding also?

1 THE WITNESS: Yes, yes.

2 EXAMINER FARKAS: Thank you.

3 MR. YURICK: Appreciate the
4 clarification.

5 EXAMINER FARKAS: Okay.

6 Q. So Mr. Wiertel had been a salesperson.
7 Do you know how or why Mr. Wiertel left the
8 companies?

9 A. He was asked to leave. I have no idea
10 why.

11 Q. So Mr. Wiertel didn't to your knowledge
12 leave the company voluntarily, right? He was -- he
13 was terminated.

14 A. That's correct.

15 Q. So you contacted Mr. Wiertel on his cell
16 number and said what? "Would you be willing to come
17 in and testify about what a great company" -- "what
18 great companies these are?" Is that what you asked
19 him?

20 A. I didn't really ask anything like that.
21 I said "There is an audit. Would you be willing to
22 come in and talk?"

23 Q. You had no -- no idea whether Mr. Wiertel
24 as a -- as a terminated employee would have testified
25 in a positive or negative light in connection with

1 the company; is that what you're saying?

2 A. I think he would have testified in an
3 honest light and would have been honest about
4 anything that he was testifying about. I don't know
5 if it would be positive or negative.

6 Q. You had no preconceived notion about
7 whether that testimony of a terminated employee would
8 be positive or negative regarding the company that
9 terminated him?

10 A. Absolutely not.

11 Q. No idea.

12 A. No, because I don't feel that mine is
13 positive or negative either so it's just factual.

14 Q. Are you familiar with the accounting
15 software that was used by the companies during the
16 time that you were corporate controller?

17 A. Which companies?

18 Q. Northeast and Orwell.

19 A. Yes.

20 Q. What was the name of the software?

21 A. I have no idea. I don't recall.

22 Q. If I told you -- if I represented to you
23 that it was Navision, N-A-V-I-S-I-O-N, Software,
24 would that refresh your recollection and would you
25 agree with me that is the software program that the

1 two local distribution companies Orwell and Northeast
2 Ohio Gas used for their accounting purposes?

3 A. Yes.

4 Q. Okay. And are you aware or to your
5 knowledge wouldn't any change that Ms. Howell would
6 have made to any record, general ledger, entry,
7 spreadsheet, or other financial document, wouldn't --
8 wouldn't Navision Software have tracked that, and
9 wouldn't that change have been recoverable by the
10 software? Do you know?

11 A. Probably by an IT person but we did not
12 have an IT person on staff.

13 Q. If the company -- as corporate
14 controller, if you had had a concern that there was
15 an inaccurate or incorrect entry made into a
16 financial document, general ledger, or workpaper, to
17 your knowledge you would have been able to call an IT
18 person, an outside IT person, or you would have been
19 able to recommend to your supervisor that an IT
20 person be called to recover that change?

21 A. I wouldn't know because I don't know IT
22 and how Navision works behind the scenes, but I did
23 tell Tom that she was in there so that would have
24 been his call.

25 Q. Now, you stated, I believe, that you were

1 present when Ms. Howell made an alteration to a gas
 2 cost recovery Excel spreadsheet; is that right?

3 A. That's correct.

4 Q. When did that change occur?

5 A. It was later in 2010, but I don't know
 6 when.

7 Q. Where did this take place?

8 A. In Dawn's cube.

9 EXAMINER FARKAS: I'm sorry, you said
 10 Dawn's cubical?

11 THE WITNESS: Yeah, yeah, she had a cube.

12 Q. So you were present. Was Dawn present?

13 A. Yes.

14 Q. And Ms. Howell was present --

15 A. Yes.

16 Q. -- is that correct? And what time of day
 17 did this occur?

18 A. I have no idea.

19 Q. It happened later in 2010. Was it
 20 December?

21 A. No. I wasn't there in December.

22 Q. So was it in October?

23 A. I think I said I don't remember the
 24 month. I don't remember the month. It was before
 25 the end of November.

1 Q. And how did you happen to be present in
2 Dawn's cube at some point later in 2010?

3 A. Because Dawn called me down to go through
4 how to do it. There was a whole bunch of different
5 spreadsheets. She was trying to understand what she
6 was doing and how to go through it so we were trying
7 to work through it.

8 Q. Now, where was Dawn's cube located? In
9 what office?

10 A. It was downstairs in the Ohio companies'
11 office.

12 Q. And where is that office?

13 A. In the Match Works building.

14 Q. When you say it was downstairs, it was on
15 the first floor or the ground floor?

16 A. Yes.

17 Q. Or the ground floor?

18 A. I guess it would be ground floor.

19 Q. And where was your office located?

20 A. On the second floor.

21 Q. I think you -- pardon me if I'm repeating
22 myself. You don't recall what time of day this was.

23 A. No.

24 Q. Okay. Did Dawn often call you down to
25 her cubical to ask you questions?

1 A. Yes.

2 Q. How long had Dawn been in her position at
3 that point?

4 A. I don't know.

5 Q. Who did Dawn report to?

6 A. At what point in time?

7 Q. At the point in time that we're talking
8 about which you don't remember, sometime late in
9 2010.

10 A. I don't know who they would report to
11 because they had no Ohio controller so I would assume
12 Tom.

13 Q. Okay. Who did the Ohio controller report
14 to?

15 A. Tom. So I would assume with that
16 position open it would be Tom.

17 Q. And at that point you were corporate
18 controller; is that correct?

19 A. Yes.

20 Q. So as corporate controller, the Ohio
21 controller to the best of your knowledge didn't
22 report to you?

23 A. There was no Ohio controller at that
24 time.

25 Q. Okay.

1 A. And when Larry got hired, he reported to
2 Tom.

3 EXAMINER FARKAS: And Tom would be Tom
4 Smith?

5 THE WITNESS: Yes, please -- I mean yes.

6 Q. You're absolutely right, ma'am, and I'm
7 glad you corrected me. You said there was no Ohio
8 controller. Would the position of the Ohio
9 controller have reported to the corporate controller
10 at that point?

11 A. Originally when I was told that I got the
12 job, it was supposed to be that the Ohio controller
13 and Energy West would report to me. Then it was
14 decided that it was just the Ohio controller. The
15 Ohio controller left, and when Larry was hired,
16 neither one reported to me.

17 Q. So at this time, the time that you had
18 this meeting in Dawn's cubical sometime in 2010, you
19 don't really know who she reported to?

20 A. No.

21 Q. But she called you -- did she call you on
22 the telephone?

23 A. Yes.

24 Q. And said "Can you come down to my
25 cubical; I have a question about the GCR filings"?

1 A. Yes.

2 Q. And what happened next?

3 A. So we were down there and we were going
4 through it and she was showing the different tabs and
5 where she came up with her calculations and then
6 Becky came in and we kind of started over.

7 Q. Okay. Did anybody call Becky?

8 A. I have no idea.

9 Q. Did you call Becky?

10 A. No.

11 Q. Because I would assume you would know
12 that, right?

13 A. No, I did not call Becky.

14 Q. You don't know whether Dawn called Becky
15 or not.

16 A. I have no idea.

17 Q. To your knowledge had Becky --
18 Ms. Howell, had she had any experience with the GCR
19 filings to that point?

20 A. Well, of course. She was the Ohio
21 controller before she was promoted.

22 Q. So she would have had knowledge regarding
23 the GCR filings; is that correct?

24 A. Yes.

25 Q. At that point did you have familiarity

1 with the Ohio GCR filings?

2 A. I was starting to learn it.

3 Q. So did Ms. Howell have more or less
4 experience with the Ohio GCR filings than you had?

5 A. I don't know her experience but I would
6 assume more.

7 Q. Okay. So how long were you speaking to
8 Dawn before Ms. Howell arrived?

9 A. Probably about 5 minutes.

10 Q. When Becky arrived, what happened then?

11 A. We were going through the filings and all
12 the different tabs because everything feeds into the
13 front so when Becky came, we started over because we
14 were following everything through to make sure it all
15 tied so Dawn is sitting there showing where she got
16 all of her calculations and where it all tied up and
17 rolled up into.

18 Q. So Dawn was going through her numbers on
19 the spreadsheet and explaining the source for her
20 inputs into the Excel spreadsheet; is that correct?

21 A. That's correct.

22 Q. And what were you doing at this point?

23 A. Standing there watching her.

24 Q. And were you asking any questions or
25 providing any input or feedback at that point?

1 A. I was just asking questions.

2 Q. And Ms. Howell, what was she doing?

3 A. She was watching as Dawn was going
4 through it.

5 Q. And what happened after Dawn went through
6 her calculations?

7 A. We came up with the GCR number based on
8 everything that Dawn input, and Becky said that it
9 seemed too low so we needed to make it higher.

10 Q. And did Ms. Howell indicate why she
11 thought that the GCR calculation looked low? Did you
12 ask her why she thought the GCR number looked low?

13 A. No.

14 Q. She just indicated to yourself and Dawn
15 that the GCR number looked low.

16 A. Yes.

17 Q. And what happened next?

18 A. So she said to add money to it, and Dawn
19 didn't know how to do that.

20 Q. When you say add money to it, to increase
21 the GCR audit. Was that to increase the estimated
22 gas cost number, to increase the cost of gas? What
23 input was Ms. Howell indicating needed to have
24 increased?

25 A. That's the part that Dawn didn't

1 understand.

2 Q. So I'm asking you as you sit here, do
3 you -- well, let me finish my question, if you would,
4 please. What -- what part of the GCR filing to the
5 best of your recollection did Ms. Howell request to
6 be increased?

7 A. She didn't request. She just said
8 increase the GCR. When Dawn didn't know how to do
9 it, Becky got into her seat and did it and I do not
10 know what she increased or decreased or what she
11 changed.

12 Q. So you weren't able to watch or
13 Ms. Howell didn't explain to you what she was doing?

14 A. No. There's quite a few tabs on the
15 spreadsheet.

16 Q. Did she explain to Ms. O -- to Dawn what
17 she was doing?

18 A. No.

19 Q. Is it your testimony as you sit here
20 today, ma'am, that Ms. Howell was purposely putting
21 an incorrect number into a report that was to be
22 filed with the Public Utilities Commission of Ohio?

23 A. I wouldn't know if it was an incorrect
24 number. The thing that she stated that I'm
25 testifying to is that when we did the reconciliation

1 the following month, she said to use the original
2 number, not the adjusted number, and that the PUCO
3 would not know it.

4 Q. Well, let's take it one thing at a time.
5 I am asking you then Ms. Howell was inputting numbers
6 into Dawn's spreadsheet --

7 A. Uh-huh.

8 Q. -- according to you. Is it your
9 testimony that Ms. Howell was intentionally reporting
10 an incorrect number on a report that was going to be
11 filed with the Public Utilities Commission of Ohio?

12 A. She was intentionally increasing it.

13 Q. Was she intentionally reporting an
14 incorrect, falsified number to the Public Utilities
15 Commission of Ohio?

16 A. The GCR is an estimate so you could
17 estimate high, you could estimate low, but when you
18 reconcile it, you need to reconcile it with your
19 estimate.

20 Q. Okay. I'm going to try to ask you again.
21 And, ma'am, if you could -- if you could focus your
22 answer on the question that I'm asking, is it your
23 testimony here today that in the presence of yourself
24 and Dawn sometime near the end of 2010 at Dawn's
25 cubical that Ms. Howell was intentionally reporting a

1 number that she knew to be false on a record that was
2 going to be filed at the Public Utilities Commission
3 of Ohio?

4 A. She was intentionally increasing it.
5 Now, like I said, it's an estimate so you could
6 estimate high or you could estimate low. Where the
7 problem occurs is what you do the following month
8 when you true it up. So it's not an incorrect number
9 or invalid number or a falsified number or whatever
10 word you used. It's an estimate. It's when you true
11 it up the following month that causes the problem so
12 she was instructing Dawn the following month to put
13 the incorrect number in the reconciliation so she was
14 not doing anything wrong in her audit -- her
15 estimate. It was what to do the following month that
16 was incorrect.

17 Q. So as you sit here today, when you say
18 that Ms. Howell inputted a number into the GCR Excel
19 spreadsheet, it is not your testimony that Ms. Howell
20 was intentionally reporting a false number to the
21 Public Utilities Commission of Ohio; is that correct?

22 A. She was not reporting an intentional
23 incorrect estimate.

24 Q. Okay.

25 A. But the following month she was telling

1 Dawn to make it wrong.

2 Q. We'll get there.

3 A. Okay.

4 Q. Again, my -- my question to you is on
5 this estimated date that you spoke about at the end
6 of 2010, in Dawn's cubical with yourself and
7 Ms. Howell when you were asked to come and help Dawn
8 with her GCR calculations, did Ms. Howell at that
9 point intentionally falsify or report an incorrect
10 number on a GCR spreadsheet that was to be filed and
11 reported to the Public Utilities Commission of Ohio?

12 MR. MARGARD: Your Honor, I object. I
13 think we've answered this question enough times.

14 EXAMINER FARKAS: Yeah. You have asked
15 the same question three times. She has given you the
16 same answer all three times. She has indicated for
17 purposes of the estimate that was not the issue.
18 It's with the following month where the -- where in
19 her opinion, you can correct me if I'm wrong, where
20 the -- where the act she considers improper takes
21 place.

22 THE WITNESS: That's correct.

23 EXAMINER FARKAS: Would that be fair?

24 THE WITNESS: Yes.

25 EXAMINER FARKAS: It's not changing the

1 estimate which is a report to the Commission because
2 in her opinion that estimate can be high or low.
3 That's not where the error -- that's not where the
4 impropriety takes place. It is in the following
5 month when you account for the over or underestimate
6 so I would direct you to next ask her about that
7 following month because she has answered your
8 question with respect to the initial estimate.

9 Would that be accurate?

10 THE WITNESS: Yes.

11 EXAMINER FARKAS: Thank you.

12 Q. (By Mr. Yurick) So a month later you
13 indicate that you had a -- that Ms. Howell made a
14 statement to use an incorrect number. Okay. Who was
15 present when you had this conversation?

16 A. Conversation where she said use the
17 original number?

18 Q. Yes.

19 A. Me, Dawn, and Becky.

20 Q. So, again, that was yourself, Dawn last
21 name unknown, and Ms. Howell. And where was -- was
22 this a meeting or?

23 A. You already asked me that. It was in her
24 cube. It's the same conversation.

25 Q. I'm sorry. I thought the answer to my

1 question was that Dawn asked you to come to her cube
2 and look at her GCR numbers; is that right?

3 A. Yes.

4 Q. Ms. Howell appeared approximately 5
5 minutes later on this day which is unknown during an
6 unknown time of day, and she sat at the computer and
7 did some inputs into the Excel spreadsheet; is that
8 right?

9 A. Yes.

10 Q. And that you said that at that time the
11 estimate that Ms. Howell inputted into the Excel
12 spreadsheet was an estimate that was not incorrect,
13 she did not intentionally falsify or report any
14 incorrect number; is that right?

15 A. I don't know what her intention was.

16 Q. To your knowledge she did not report an
17 incorrect -- intentionally falsified incorrect number
18 on the Excel spreadsheet at that time. I thought
19 that was your testimony.

20 EXAMINER FARKAS: You have already asked
21 that question. She has answered that.

22 MR. YURICK: I've asked that question at
23 least four times.

24 EXAMINER FARKAS: She's answered the
25 question.

1 MR. YURICK: When I asked her what
2 happened the next month, she said she was talking
3 about the same instance so I apologize. I'm a little
4 bit confused. The conversation where Ms. --

5 EXAMINER FARKAS: Did the conversation
6 about making the change in the second month, did that
7 conversation take place at the same time the first
8 conversation took place about changing the estimates?

9 THE WITNESS: Yes. Thank you.

10 MR. YURICK: I'm sorry. I thought it was
11 a month later, your Honor, she indicated that that
12 took place.

13 Q. (By Mr. Yurick) So Ms. Howell inputted
14 some numbers into an Excel spreadsheet and then she
15 made a statement?

16 A. Yes.

17 Q. Okay. And what did she say at that
18 point?

19 A. She said when you do the following month,
20 use the original number and the PUCO will not know.

21 Q. Okay. When you say the original number,
22 what did you take that to mean?

23 A. The one before it was adjusted and
24 increased which would be the number that Dawn came
25 to.

1 Q. So to the best of your recollection,
2 Ms. Howell indicated to Dawn that she should
3 intentionally misrepresent a number in a GCR filing
4 because the Commission would never catch it.

5 A. That is correct.

6 Q. And she purposefully then instructed Dawn
7 to falsify a report that was required by the PUCO to
8 be filed with them and this wasn't an error. She was
9 specifically instructing Dawn to report a falsified
10 incorrect number; is that correct?

11 A. Well, your first question said
12 purposefully. What was your question? Could you
13 please restate?

14 MR. YURICK: May I have the court
15 reporter read back the question, please.

16 (Record read.)

17 A. Okay. So to answer the first part of
18 your question, I don't know what Becky's purpose was,
19 but for the second part of your question, yes, she
20 was telling her to put an incorrect number in the GCR
21 for the reconciliation. I kind of took that as a
22 two-part question.

23 Q. Did you report to Mr. Smith or anybody
24 else that this conversation had taken place?

25 A. I reported it to Jed Henthorne.

1 EXAMINER FARKAS: To who?

2 THE WITNESS: Jed Henthorne.

3 Q. And when did you report this to
4 Mr. Henthorne?

5 A. Right at that conversation so it would
6 have been after that, same day.

7 Q. And did you document this conversation
8 with Mr. Henthorne with an e-mail?

9 A. No.

10 Q. A memo?

11 A. No.

12 Q. Did you ask Mr. Henthorne what he
13 intended to do about this?

14 A. No.

15 Q. Did Mr. Henthorne indicate to you what he
16 intended to do about this?

17 A. No.

18 Q. Did Dawn ask you "Am I really supposed to
19 do this," or did she make any kind of statement
20 about, "Gosh, I don't think that's right"?

21 A. Yes.

22 Q. Okay. What did -- what did Dawn say?

23 A. Dawn said she was uncomfortable doing
24 that, and I told her just follow the correct process
25 and put the correct number in.

1 EXAMINER FARKAS: Just for the record who
2 is Jed?

3 THE WITNESS: Jed Henthorne is the
4 controller of Energy West who was my original boss.

5 Q. Now, when you spoke to Mr. Henthorne, did
6 you indicate to him that you had already told Dawn to
7 go ahead and use the correct number?

8 A. Yes.

9 Q. Okay. And Mr. Henthorne made no
10 statement to you at that time?

11 A. I wouldn't recall what he said.

12 Q. Did he say something like -- did he
13 indicate that you needed to take any action, anything
14 of that nature?

15 A. Well, nothing was done incorrectly yet so
16 there was no action you could take on something that
17 wasn't done wrong.

18 Q. So to your knowledge the correct number
19 was reported to the Public Utilities Commission of
20 Ohio?

21 A. I do not know what was done the following
22 month. I wasn't involved in that one so it may or
23 may not have been.

24 Q. Were the GCR filings Dawn's
25 responsibility?

1 A. Yes.

2 Q. And you indicated to Dawn that she should
3 report the correct number --

4 A. Yes.

5 Q. -- is that right? And you were just
6 saying you don't know whether or not that was
7 actually done?

8 A. I don't know what she did the following
9 month, no.

10 Q. Did you contact the SEC attorney?

11 A. No.

12 Q. Did you talk to anybody other than Jed
13 Henthorne, the controller of Energy West, about this
14 incident?

15 A. Not that I recall.

16 Q. Okay. Do you recall any other instance
17 where Becky Howell instructed anybody to do anything
18 that you thought was incorrect?

19 A. No.

20 Q. And do you have any knowledge that
21 Ms. Howell made any change to any financial record,
22 general ledger, or other financial document of the
23 companies Orwell or Northeast Ohio Gas?

24 A. At what timeframe?

25 Q. During the time that you were employed by

1 the company.

2 A. During the time I was employed by the
3 company?

4 Q. Yes.

5 A. She was still Ohio controller during some
6 of that time so, yes, she would have.

7 Q. She would have made changes to records
8 but what I'm saying is do you have any knowledge that
9 she improperly made any change to any record, general
10 ledger, or other financial document of the company or
11 falsified any other report to the Public Utilities
12 Commission or any other regulatory agency?

13 A. None that I am aware of, no.

14 Q. I think you testified earlier that you
15 were aware of an instance where one of the related
16 companies used Northeast Ohio's credit to purchase
17 gas from Constellation; is that right?

18 A. We purchased the gas from Constellation.

19 Q. When you say "we," who do you mean?

20 A. NEO.

21 Q. So was this transaction done in
22 connection with the company called Aleris to the best
23 of your recollection?

24 A. I have no idea.

25 MR. SERIO: Excuse me, your Honor. Could

1 we get a spelling?

2 MR. YURICK: A-L-E-R-I-S.

3 MR. SERIO: Thank you.

4 A. I don't believe it was. Aleris was a
5 company that went and became -- they lost their
6 contract so they came -- they were a company that was
7 a whole different instance so it was not the same
8 instance. So if you are referring it happened then,
9 it might have happened twice.

10 Q. No. I'm asking you the incident that you
11 referred to that was very -- that wasn't -- I didn't
12 say who the transaction was with. I'm asking you the
13 transaction that you were referring to, the
14 transaction with Aleris --

15 A. It was with -- NEO bought the gas from
16 Constellation and most of the gas was for JDOG or
17 JDOG Marketing, one of the two. If the gas was used
18 for a customer, I don't know which customer it was
19 used for.

20 Q. And are you -- when you say JDOG, are you
21 referring to John D. Oil and Gas or John D. Oil and
22 Gas Marketing?

23 A. I'm not sure which one it was for. I
24 would assume Marketing, but I get the two confused.

25 EXAMINER FARKAS: Why would you assume

1 it's the Marketing?

2 THE WITNESS: Because the Marketing is
3 the one that did -- basically was the one we had the
4 agreement with. That was with the agency agreement
5 so I would assume it's Marketing.

6 EXAMINER FARKAS: Thank you.

7 Q. And who did NEO purchase gas for?

8 A. What do you mean? When?

9 Q. Do you -- you are familiar that NEO as a
10 distribution company purchased and distributed gas,
11 correct?

12 A. Yes.

13 Q. So what I'm asking you is who did NEO
14 purchase the gas from?

15 A. One of them was BP.

16 Q. Okay. Anyone else?

17 A. I'm sure one of them was Constellation.

18 Q. Okay. Anybody else?

19 A. I wouldn't remember.

20 Q. Did they ever purchase gas from their
21 affiliated marketer?

22 A. JDOG Marketing?

23 Q. Yes.

24 A. Yes.

25 Q. So NEO did purchase gas from JDOG

1 Marketing, correct?

2 A. Yes.

3 Q. This transaction where NEO purchased gas
4 for JDOG Marketing, what was the amount of the
5 purchase?

6 A. I don't know. I wouldn't recall at this
7 point.

8 Q. Do you know if the purchase was local
9 production or interstate gas?

10 A. Again, don't recall at this point.

11 Q. Do you recall what time period this was?

12 A. 2009.

13 Q. Any particular month in 2009?

14 A. I believe it was July because it was
15 still on the books in March and it was -- the next
16 month would have been -- the next quarter would have
17 been a year so I'm assuming July, '09.

18 Q. And I think -- I don't mean to be
19 repetitive, ma'am, I swear.

20 A. That's okay.

21 Q. The amount -- do you recall what the
22 amount was?

23 A. I could estimate if you would like; but,
24 no, I don't recall the exact amount.

25 Q. Was there an actual draw on a letter of

1 credit then for this gas?

2 A. By who?

3 Q. By JDOG Marketing.

4 A. I don't know what JDOG Marketing did in
5 their financials.

6 Q. Okay. When NEO purchased gas for JDOG,
7 either John D. Ohio Gas or John D. Ohio Gas
8 Marketing, how was that gas purchased? How -- was it
9 a check, a bank draft, drawn on a letter of credit?

10 A. It was paid to Constellation by a check.

11 Q. Or a wire?

12 A. I am not sure which one, but it was paid
13 by NEO through either one of those two.

14 Q. And this gas did not go to NEO.

15 A. Only a portion of it, a small amount did.

16 Q. To the best of your knowledge, at the
17 time of this transaction did NEO owe either John D.
18 Ohio Gas or John D. -- I keep saying Ohio and I
19 apologize. It's a verbal tick that I can't seem to
20 get rid of.

21 At the time of this transaction did NEO
22 owe either John D. Oil and Gas or John D. Oil and Gas
23 Marketing money for gas that was purchased by NEO?

24 A. I do not know.

25 Q. You don't know whether there was an

1 amount due and owing from NEO to JDOG or JDOG
 2 Marketing at this time?

3 A. In July of '09?

4 Q. When the transaction occurred which you
 5 thought was around July of '09, did NEO owe JDOG or
 6 JDOG Marketing any money?

7 A. I would not know. I wasn't with the
 8 company at that point.

9 Q. If you weren't in the company at that
 10 point, how did you become aware that NEO purchased
 11 the gas?

12 A. Anita.

13 Q. So you had a conversation with Anita
 14 Noce?

15 A. Yes.

16 Q. Okay. And Anita Noce was employed at the
 17 time you had the conversation how?

18 A. The NEO accountant.

19 Q. Where did the conversation take place?

20 A. In her desk, her cubical.

21 Q. Where was her desk or her cubical
 22 located?

23 A. On the ground floor of the Match Works
 24 building.

25 Q. And what prompted the conversation?

1 A. Related party transactions trying to
2 figure out what was still owed and what the
3 information was for it.

4 Q. So did Ms. Noce call you on the phone?

5 A. No. We were trying to figure out how to
6 do related party notes so I was down in her office.

7 Q. So it was for lack of a better word a
8 meeting to discuss related party transactions?

9 A. Related party AR and AP.

10 Q. And how did the conversation go? What
11 happened?

12 A. We needed to figure out what the balances
13 in the AR and AP was and that was one of them.

14 Q. And what did Ms. Noce say about the
15 transaction?

16 A. She pulled it back up and showed the
17 documentation. She showed the invoice from
18 Constellation Gas, she showed the payment, and she
19 went ahead and showed the invoice from I'm assuming
20 JDOG Marketing to us for the gas that we purchased
21 that we used.

22 Q. Okay. She pulled the documentation, and
23 the documentation showed that NEO had purchased gas
24 for either JDOG or JDOG Marketing.

25 A. Yes. She had written on there ours, and

1 at the bottom she had theirs. It was broken out into
2 two different lines.

3 Q. So a ours, a O-U-R-S, and theirs, T-H --

4 A. O-U-R-S and T-H-E-I-R-S.

5 Q. And that documentation indicated that NEO
6 purchased a small amount of gas but they also
7 purchased a large amount of gas for either JDOG or
8 JDOG Marketing?

9 A. Yes.

10 Q. And did you have a conversation with her
11 at that point?

12 A. With who?

13 Q. With Anita.

14 A. Yes.

15 Q. There was nobody else present at the
16 meeting, was there?

17 A. I don't know. I don't know who her was.
18 I'm sorry.

19 Q. I don't either, ma'am. You were there.
20 Was there anybody else at the meeting?

21 A. Just me and Anita.

22 Q. Okay. So did you have a conversation
23 with Anita at that point?

24 A. Well, yes. We were going through what
25 the AR was.

1 Q. And what did you say to Anita about this
2 related party transaction?

3 A. She brought the backup of where we also
4 paid the invoice to JDOG for the same gas.

5 Q. Okay. And did you indicate to her, "Huh,
6 that's funny, it looks like we paid for the gas
7 twice"?

8 A. Oh, no. She told me we paid for the gas
9 twice.

10 Q. Did she seem to think this was okay or
11 what was --

12 A. No. She did not think it was okay.

13 Q. What did she say about it then?

14 A. She said -- she just showed it. She was
15 giving facts.

16 Q. Well, did you say anything to her at that
17 point?

18 A. No, because we were just documenting what
19 the AP and AR were.

20 Q. And you were employed how at this point?

21 A. Gas Natural controller.

22 Q. So you were the Gas Natural controller,
23 and what did you do about the fact that there
24 appeared to be an incorrect process or procedure
25 going on?

1 A. That was the conversation with Kevin
2 Degenstein and Jed Henthorne.

3 Q. So at the time you didn't tell Anita to
4 do anything or to make any correction or to --

5 A. What would there be to tell her to do?

6 Q. I think I'm supposed to be asking the
7 questions, ma'am.

8 A. There's nothing I could tell her to do.
9 I mean, it's done and it's in the past. It's over.
10 You can't change it.

11 Q. So I'm just asking you did you -- did you
12 give her any instruction at that point?

13 A. There was nothing to do. It was already
14 in the past so all you could do was keep it on the
15 books and get paid.

16 Q. So your answer, so I don't have to ask
17 the question again, your answer would be, "No, I
18 didn't instruct her to do anything," right?

19 A. Correct, because there is nothing to do.

20 Q. So when did you have a conversation with
21 Mr. Degenstein and Mr. Henthorne?

22 A. The conversations would have started in
23 about April because that's when we started putting
24 together the related party note.

25 Q. And what did you tell Mr. Degenstein and

1 Mr. Henthorne about the purchase of natural gas by
2 NEO for either JDOG or JDOG Marketing?

3 A. I told him the same thing I just told
4 you.

5 Q. That it appeared that you had a related
6 party that was purchasing gas for JDOG or JDOG
7 Marketing and since the regulated entity wasn't using
8 that gas, that was incorrect? Is that the substance
9 of what you said?

10 A. No. I stated exactly what I just stated
11 to you, that they purchased gas from Constellation.
12 It was gas that JDOG Marketing used, we then paid
13 JDOG Marketing for the gas, and we had an open
14 receivable on our books.

15 Q. Okay. And what did Mr. Degenstein and
16 Mr. Henthorne say about that?

17 A. That that's incorrect, we shouldn't be
18 doing that.

19 Q. Did they give you any instruction about
20 that?

21 A. I'm almost going to ask you a question
22 again. I don't know what instruction you are
23 expecting. You can't do something to the past.

24 Q. I'm just asking you did they -- did
25 they -- did they ask you to do anything, to make any

1 report, to document it, to write a memo to somebody?

2 A. Together, yes.

3 Q. So you did -- they did instruct you to
4 put together a report and document this instance of
5 what you saw as an inappropriate related party
6 transaction; is that right?

7 A. That's correct.

8 Q. Okay. They didn't say, "Well, we are
9 just going to cover that up." You know, "Don't talk
10 to anybody about that." They told you to "Go ahead
11 and document that and make a report on that."

12 A. That's correct.

13 Q. And did you do that?

14 A. Yes.

15 Q. And who was that report sent to?

16 A. Kevin Degenstein and Jed Henthorne.

17 Q. And was that report document an e-mail?

18 How was it -- how was it --

19 A. It would have been e-mail since they were
20 in Montana.

21 Q. And did you keep a copy of that?

22 A. I would have had one in the office.

23 Q. Okay. Do you have a copy of it with you
24 now?

25 A. No.

1 Q. Okay. And you said you thought this was
2 around April of 2010?

3 A. That would have been when we would have
4 started looking into everything. The report was
5 later.

6 Q. Do you know when approximately that
7 report would have been sent?

8 A. It would have been done later because
9 there was a lot more stuff on it so it incorporated
10 everything with the findings with related party
11 issues so it would have been later in the year, but
12 it was being continually discussed.

13 Q. And to the extent that you were finding
14 mutual transactions between related parties, were you
15 instructed to document those?

16 A. Yes.

17 Q. And those made their way into your
18 report.

19 A. Yes.

20 Q. Are you familiar with Cobra Pipeline?

21 A. Yes.

22 Q. Would it be correct to say Cobra Pipeline
23 doesn't sell gas?

24 A. I think they are a transportation
25 company, right. They are a pipeline so the gas goes

1 through the pipeline. I would assume they don't sell
2 gas, but I don't know if they do or not.

3 Q. And I think you said earlier that there
4 was a large imbalance on the Cobra Pipeline for --

5 A. Yes.

6 Q. -- NEO; is that right?

7 A. Yes.

8 Q. And I think you said that it was
9 somewhere on the order of \$950,000 by March --

10 A. Yes.

11 Q. -- correct?

12 A. Yes, that's correct.

13 Q. Now, do you know whether or not those --
14 the customers of Northeast Ohio Gas are harmed by
15 Cobra having an imbalance with NEO?

16 A. My assumption would be yes if it was a
17 large imbalance.

18 Q. And how would that be?

19 A. Because we are paying for gas that we did
20 not use.

21 Q. And if the imbalance were caused by a
22 mistake in -- a mistake in estimate of how much gas
23 you were going to use, would that hurt customers?

24 A. No, because you would correct it the next
25 month and buy less gas but unfortunately ours was

1 going from about 500 to 950.

2 Q. But customers aren't charged on the basis
3 of Cobra Pipeline having a balance with NEO.

4 A. But the customers -- the company had to
5 end up putting out cash and buying gas so we were low
6 on cash.

7 Q. So to the extent there is an imbalance on
8 Cobra Pipeline, the customers are using the gas,
9 correct?

10 A. Uh-huh.

11 Q. They are making an estimated cost for the
12 gas, correct?

13 A. Uh-huh.

14 Q. And there's no charge or adder or rider
15 that a customer would be responsible for solely
16 because there is a pipeline imbalance, correct?

17 A. Well, you would be purchasing more gas
18 than you need so your GCR would be higher.

19 Q. But -- so your -- in your estimation in
20 March of 2010, NEO was buying too much gas?

21 A. Yes, because you weren't using it. You
22 had 900 some thousand you didn't use still in the
23 pipe.

24 Q. It wasn't that there was -- there was gas
25 being consumed that wasn't purchased so it wasn't a

1 negative balance.

2 A. I'm sorry. I don't understand the
3 question.

4 Q. Let me ask it this way, so if -- to the
5 best of your knowledge, if a local distribution
6 company doesn't purchase enough gas in a particular
7 month to cover their customers' needs, do their
8 customers just not receive gas?

9 A. No.

10 Q. Okay. Isn't it that the pipeline company
11 would still serve the customers their gas needs and
12 would credit the company and essentially the next
13 month say "You have a negative imbalance because your
14 customers purchased more gas than you thought they
15 were going to purchase"?

16 MR. MARGARD: Your Honor, if I can -- if
17 I could just interpose at this moment. The witness
18 is being asked some operational questions how the
19 pipeline functions, and obviously to the extent she
20 has knowledge of how the pipeline operates, she's
21 free to answer or should answer.

22 But I would like to have some sort of
23 foundation or at least have the record reflect that
24 she does or does not have the knowledge to be able to
25 respond to these questions.

1 EXAMINER FARKAS: Okay.

2 THE WITNESS: I don't.

3 EXAMINER FARKAS: You don't have the --

4 THE WITNESS: No.

5 EXAMINER FARKAS: Thank you.

6 Q. Okay. So I appreciate that, ma'am, and,
7 please, if I ask you a question you don't know the
8 answer, saying that "I don't know the answer" is
9 perfectly appropriate. You don't know as a former
10 controller for Gas Natural how a pipeline charges an
11 LDC; is that right?

12 A. I know that we put more gas in the pipe
13 than we used, and it was continually growing so we
14 were putting more gas in and not using it. That's
15 what I know.

16 Q. Do you know if the reverse were true, if
17 the company was using less gas than they were
18 purchasing from the pipeline, would that hurt
19 customers?

20 A. Well, the following month you would true
21 it up because the pipeline would expect you to
22 replace that gas. So you would make it up the
23 following month. Unfortunately we weren't doing
24 that. It was getting greater and greater and greater
25 so we should have been purchasing less gas to put in

1 the pipeline because we weren't using what was
2 already in there. It's kind of like your gas tank.
3 You don't want to keep filling it and filling it if
4 it's overfull.

5 Q. And, again, just so I'm clear on this,
6 this large positive imbalance occurred in April of
7 '10?

8 A. It was at the end -- it was March, '10.

9 Q. March of '10.

10 A. Because, again, we were doing the 10-Q
11 for the first quarter.

12 Q. Now, ma'am, you were controller of Gas
13 Natural, Inc. Do you know whether or not the
14 companies -- and when I say the companies, I mean Gas
15 Natural and related companies -- do you know if they
16 were audited?

17 A. Yes, we were audited.

18 Q. And did those audits occur yearly?

19 A. Yes, but the auditors changed frequently.

20 Q. So it wasn't the same auditor all the
21 time.

22 A. No.

23 Q. Okay. And were these -- do you remember
24 the names of any of the auditing companies that
25 audited you?

1 A. It was Hein at that point.

2 Q. Could you spell that, please.

3 A. H-E-I-N. I think it's Hein & Associates.

4 Q. Anybody else that you remember?

5 A. Not during that time period, no.

6 Q. Did you also have a separate I think you
7 called it a SOX audit?

8 A. No. It's kind of incorporated. It's an
9 internal control audit.

10 Q. Okay. And were you familiar with those
11 audit findings?

12 A. Well, you have to remember while I was
13 there the audit period was for 2009 so we weren't
14 consolidated so the audit period wasn't for 2010.
15 That would have occurred at the end of the year.

16 Q. Were you familiar with the audit that was
17 done for 2009?

18 A. No. Well, yeah, but I don't remember
19 what the findings were, but it would have been only
20 for Energy West. My belief is they did not find
21 anything substantial. But, again, it's only for
22 Energy West.

23 Q. You did not really speak to Mr. Whelan;
24 that was your testimony?

25 A. Correct.

1 Q. Do you know who Mr. Whelan is?

2 A. Yes, but I would not be able to pick him
3 out if he was in this room.

4 Q. Okay. And were you controller for
5 Northeast Ohio Gas?

6 A. No.

7 Q. What was your connection with Northeast
8 Ohio Gas?

9 A. Just stepping in when the Ohio controller
10 wasn't there. I had to do reconciliations.

11 Q. So you never spoke to Mr. Whelan about
12 the operations of Northeast Ohio Gas.

13 A. I was involved in one meeting where he
14 was meeting with Roger to go through the pipelines.
15 But I was more there as just in the meeting. They
16 had a big map, and they were going through where the
17 pipelines were, but I didn't really speak.

18 Q. When you worked on GCR audits, those are
19 trued up quarterly; isn't that right?

20 A. GCR audits?

21 Q. Yes.

22 A. I don't recall if they were quarterly or
23 monthly.

24 Q. So if you were to -- and to your
25 knowledge, is there documentation necessary to be

1 submitted to the PUCO for true-ups?

2 A. Yes.

3 Q. Okay. So you would have to actually
4 document your sales figures as well as your purchase
5 figures, correct?

6 A. Correct.

7 Q. Okay. So if you were to incorrectly
8 report an estimate in one quarter, generally it would
9 be picked up in the true-up in the next quarter;
10 isn't that right?

11 A. Correct, or in the same quarter if it
12 fell correct.

13 Q. And you spoke about flushing or netting;
14 is that right?

15 A. Yes.

16 Q. And are you testifying here today that
17 flushing or netting of renewables -- I'm sorry,
18 receivables and payables was done incorrectly?

19 A. No. Not a good business practice but not
20 illegal.

21 MR. YURICK: If I could have a moment,
22 your Honor.

23 EXAMINER FARKAS: Yes.

24 Before you ask your next question I do
25 have a question. You had just indicated to an

1 answer -- in an answer about something being not a
2 good business practice if that was done. Could you
3 sort of elaborate on that? What were you referring
4 to?

5 THE WITNESS: You don't really want to
6 net your receivables and payables together. You want
7 to keep them clean so if you owe somebody something,
8 you want to pay them a check or if they owe you
9 something, you want to get a check in from them
10 because when you net your receivables and payables,
11 it kind of makes it disappear.

12 So when you're trying to do and track
13 your accounting, it's not real clear what happened to
14 that, and you need to make sure that both companies
15 are on the same page. So if you say, well, I have
16 \$10,000 of receivables and I have \$9,000 of payables,
17 I'm going to take that \$9,000 payables and write it
18 off against that \$10,000 and it's going to leave a
19 balance of \$1,000 and I owe you. You need to make
20 sure that it's done the opposite way on the other
21 company too so it's just not good business practice.

22 EXAMINER FARKAS: Is that something that
23 you are saying these companies were doing?

24 THE WITNESS: Yes.

25 EXAMINER FARKAS: And as a common

1 practice?

2 THE WITNESS: It would happen randomly.

3 EXAMINER FARKAS: Okay. So it does
4 happen, and it happens not only for them but other
5 businesses do it?

6 THE WITNESS: I've never seen it in any
7 other business I've worked for or audited.

8 EXAMINER FARKAS: And it is not something
9 you consider good business practice, although it is
10 not something that violates law.

11 THE WITNESS: Correct.

12 EXAMINER FARKAS: Thank you.

13 Q. (By Mr. Yurick) Ma'am, you testified I
14 think earlier that the company was audited yearly; is
15 that right?

16 A. Yes.

17 Q. And do you know whether any of the audit
18 reports indicated that in an independent auditor's
19 opinion, not in the opinion of a former employee,
20 that it wasn't a good practice to net receivables and
21 payables?

22 A. It wasn't brought to their attention
23 while I was there. Like I said, the audit was for
24 '09.

25 Q. So you don't know whether the audit for

1 2010 the auditors recommended against the practice or
2 said the practice was acceptable.

3 A. I do not know.

4 Q. We talked a little bit about a person
5 named John Wiertel.

6 A. Yes.

7 Q. Is that right? Okay. That's John
8 Wiertel. Do you know if his last name is spelled
9 W-I-E-R-T-E-L?

10 A. That sounds correct.

11 Q. Now, would it surprise you -- and I think
12 you said you talked to him by phone. Would it
13 surprise you if in Mr. Wiertel's opinion you
14 contacted him and tried to get him to testify against
15 the companies?

16 A. I just asked him if he would testify.

17 Q. So it would surprise you if
18 Mr. Wiertel -- Mr. Wiertel's words that you asked him
19 "because of how badly you were treated if you would
20 testify against Orwell Natural Gas."

21 A. No, I would never say that. I don't know
22 if John was treated badly, and I know that John and
23 Greg are friends so why would I think he was treated
24 badly?

25 Q. And you would be surprised if he, for

1 instance, sent an e-mail suggesting that it has been
2 a couple of years since you -- since he had seen or
3 spoken to you and that he thought the call a couple
4 of months ago was odd and that after some small talk,
5 you asked him because of how badly he was treated, if
6 he would testify against Orwell Natural Gas in a
7 trial? That would surprise you?

8 A. Yes, because I asked him first whether I
9 called -- "I'm calling because I wanted to see if you
10 would testify as a witness," did not state bad or
11 good, and then afterwards we small talked.

12 Q. Did you also contact him after you were
13 terminated and in that phone call you indicated to
14 him that you had been terminated and said that you
15 thought that the company was unscrupulous and that
16 you were going to go to the PUCO to report on the
17 company because you were let go?

18 A. I would never use the word unscrupulous,
19 and I would not have said I was going to the PUCO
20 because I didn't.

21 Q. So if Mr. Wiertel were to have sent me an
22 e-mail saying that he thought that after his release
23 you were released as well, that you called him to let
24 him know that you had been released and talked about
25 how unscrupulous the business people and where your

1 employees were and how you were going to contact the
2 PUCO and tell the PUCO what -- what bad people your
3 employers were because you were let go.

4 MR. MARGARD: Your Honor, I'll object to
5 this point. I understand the question whether the
6 witness would be surprised by someone's comments, but
7 at this point counsel is essentially testifying for
8 Mr. Wiertel. Obviously if they would like to call
9 him as a rebuttal witness, they are free to do that.
10 Whether or not the witness would be surprised by such
11 statements seems to me to be irrelevant.

12 EXAMINER FARKAS: I'm going to sustain
13 the objection.

14 MR. YURICK: Can I have this marked as an
15 exhibit.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 A. Boy, you scratched a lot out.

18 Q. Showing you what's been marked Company's
19 Exhibit No. 6, does that appear to be a communication
20 from John Wiertel?

21 A. I would assume so.

22 Q. Okay. Are you familiar with
23 Mr. Wiertel's Hotmail address?

24 A. No.

25 Q. Do you want to take a minute to read the

1 Company's Exhibit 6?

2 A. I'm reading.

3 MR. SERIO: Your Honor, I'm going to
4 object to any questions based on this document. We
5 have no authentication. If Mr. Wiertel wants to come
6 testify, he can. Otherwise this almost reads like
7 it's some type of an affidavit yet, No. 1, we don't
8 know what all the blocked out information is. We
9 have no knowledge as to whether Mr. Wiertel sent this
10 or somebody else sent it under his name. It's
11 absolutely unreliable and constitutes complete
12 hearsay. And I would object to any questions based
13 on it because then you are just putting hearsay into
14 the record.

15 MR. MARGARD: Your Honor, obviously to
16 the extent that the witness can identify this
17 document and authenticate it herself, counsel can
18 certainly proceed. Otherwise I would join in
19 Mr. Serio's motion, and I would move to strike any
20 questions asked about it.

21 EXAMINER FARKAS: Okay. Do you want to
22 respond?

23 MR. YURICK: Yeah. I'm not offering this
24 at this point for the truth of the matter asserted in
25 this e-mail. I am asking the witness to testify as

1 to whether or not she agrees with these
2 characterizations, whether this was her recollection
3 of the conversation, and whether -- whether she
4 believes that this was -- was an accurate
5 representation of the events. If she does believe
6 that it's an accurate representation of the events
7 and that she's willing to testify that this is --
8 this is a true and correct recitation of what
9 occurred between her and Mr. Wiertel, then I'm not
10 going to call Mr. Wiertel as a rebuttal witness
11 because the witness will have said, "Yes, everything
12 that happened there was correct."

13 At this point I'm not offering this for
14 the truth of it. I'm offering -- I'm basically
15 offering it to find out whether or not the witness
16 agrees that this is a true and accurate
17 representation of what occurred. And if she doesn't,
18 then if need be, I'll call Mr. Wiertel and get him to
19 authenticate this document and put it into the
20 record. If it's not, I don't even know that I need
21 to put that document into the record because it will
22 be in testimony that this is -- this is a true and
23 accurate representation of what occurred, and I don't
24 think I need to have Mr. Wiertel come in and
25 authenticate or provide an evidentiary fundament for

1 it.

2 EXAMINER FARKAS: Well, I think to the
3 extent you have asked some questions that relate
4 directly to this and she has indicated her opinions
5 with respect to the questions you've asked that have
6 some relationship to words in this document and she
7 has never seen this document and Mr. Wiertel is not
8 here and I don't believe you're going to take the
9 stand, unless you want to, I'm going to sustain the
10 objection not to admit it because the only two
11 parties on this document are Mr. Wiertel and I assume
12 the other would be yourself.

13 MR. YURICK: I guess a minor point, I
14 haven't really moved it into evidence at this point.
15 If I am not going to be allowed to ask her questions
16 about the document, then I'm not going to be able to
17 ask her questions about the document. I wasn't given
18 any opportunity to depose this witness. I apologize
19 for reiterating. I wasn't given any opportunity
20 realistically to have any discovery.

21 Two years ago the witness talked to OCC
22 regarding some -- something involving the companies,
23 and the witness has had several meetings and several
24 telephone calls with the staff, but if you're not
25 going to let me ask her questions about the e-mail,

1 then I'm not going to be asking her questions about
2 the e-mail, I suppose.

3 EXAMINER FARKAS: Okay.

4 MR. SERIO: Your Honor, he has already
5 asked questions about the e-mail.

6 EXAMINER FARKAS: Yes.

7 MR. SERIO: I don't want the record to
8 reflect he was denied that opportunity. She has
9 already denied these are words she used so putting
10 the e-mail into the record just clutters the record.
11 She has already been asked the questions and
12 responded to them, and if counsel has any questions
13 about any conversations she had with OCC or staff, he
14 has got the opportunity to ask questions about those
15 right now also.

16 EXAMINER FARKAS: Well, I noted what you
17 said for the record that your questions -- your
18 previous several questions relate directly to words
19 that are in this e-mail, and she has indicated she
20 does not agree with the characterizations that you've
21 made that are similar, if not the same, as to what's
22 in the e-mail.

23 MR. YURICK: Well, I would just ask that
24 it be noted for the record I have not asked for this
25 e-mail correspondence to be admitted into the record

1 at this point.

2 EXAMINER FARKAS: Okay.

3 MR. YURICK: I simply had the exhibit
4 marked and asked the witness to review it. Again, if
5 I'm going to be prohibited from asking this witness
6 questions about conversations that she had with other
7 people, that goes directly to her credibility and --
8 and conversations when I wasn't afforded an
9 opportunity to ask this witness any questions or
10 conduct any discovery and the other parties to the
11 discussion were, then I suppose that's the way the
12 ruling is going to go.

13 EXAMINER FARKAS: Well, no. I would beg
14 to differ, that I have not disallowed any questions.
15 You can ask her any question. Ask her any question
16 that you wish. I am not saying you cannot ask her
17 questions. In fact, I allowed many of the questions
18 that are directly related to this document in your
19 Exhibit 6. So I'm not saying you can't ask her any
20 questions. By all means do. She is here. All I'm
21 saying is that this e-mail, I am not going to allow
22 you to proceed with it.

23 MR. YURICK: If I could have a moment,
24 your Honor.

25 EXAMINER FARKAS: Yes.

1 Q. (By Mr. Yurick) Okay, ma'am.

2 EXAMINER FARKAS: And for the record, if
3 you wish to call Mr. Wiertel, I'm going to allow you
4 to do that.

5 Q. Ma'am, other than Mr. Wiertel did you
6 talk to any other terminated employees of the
7 companies about testifying?

8 A. No.

9 Q. It was just Mr. Wiertel.

10 A. Yes.

11 Q. Did you talk to any present employees of
12 the company about your testimony?

13 A. No.

14 Q. So Mr. Wiertel was the sole person either
15 currently working for the companies or who previously
16 worked for the companies that you're -- that you
17 contacted about your testimony today.

18 A. I didn't contact them about my testimony
19 today, no.

20 Q. You didn't contact Mr. Wiertel about your
21 testimony today.

22 A. Correct. I did not contact him about my
23 testimony.

24 Q. What did you contact him for?

25 A. I asked him if he wanted to testify.

1 Q. Did you ask anybody else if they wanted
2 to testify?

3 A. No.

4 Q. You didn't contact any previously
5 employed person of these companies and say do you
6 want to testify too?

7 A. No.

8 Q. You didn't contact any current employees
9 of the companies and ask them any questions about any
10 topic that we covered here today?

11 A. No.

12 Q. Just to be absolutely certain you didn't
13 speak with Ms. Bates, I believe it is?

14 A. I have never met Ms. Bates in my entire
15 life.

16 Q. So you don't know Cindy Bates.

17 A. No. I do not know what she looks like.
18 I know nothing about her.

19 MR. YURICK: I have no further questions
20 at this point.

21 EXAMINER FARKAS: Any redirect?

22 MR. MARGARD: If I can just briefly on a
23 couple of short subjects.

24 - - -

25

REDIRECT EXAMINATION

1
2 By Mr. Margard:

3 Q. We were talking toward the end of your
4 cross-examination with Mr. Yurick about business
5 practices and the washing or flushing. Earlier in
6 your direct testimony you made reference to
7 offsetting certain amounts with respect to a loan
8 involving Mr. Osborne. Do you recall that testimony?

9 A. Yes.

10 Q. Was that a similar sort of
11 washing/flushing sort of process, or was that
12 accounted for according to proper business practices?

13 A. It again would be one that I wouldn't do.
14 I don't think it's proper business practice but not
15 illegal, but it falls under the same category. It's
16 kind of like flushing the payables versus
17 receivables.

18 Q. I only asked because it seemed like a
19 similar sort of circumstance.

20 A. It is, yes.

21 Q. Clarifying. You also in your testimony
22 in cross-examination made reference to an Escalade.

23 A. Yes.

24 Q. With respect to -- well, I guess I am not
25 entirely certain what that was in respect to. What

1 does that incident involve?

2 A. When we were doing the related parties
3 note, it came up there was a Cadillac Escalade --
4 there were two Escalades on the books so we
5 couldn't --

6 Q. And if I can slow you down, on the books
7 of who, please?

8 A. One of the Ohio companies.

9 Q. On the Ohio distribution companies?

10 A. Yes.

11 Q. I'm sorry, please continue.

12 A. And we looked into it. It turned out it
13 was Rick, Jr.'s Cadillac Escalade and Rick, Sr.'s was
14 also on the books so we were paying for Rick -- we
15 had it listed as an asset so we had an asset for the
16 Cadillac Escalade and then we were also paying for a
17 more -- like a loan of \$1,100 a month.

18 Q. For each Escalade \$1,100?

19 A. No, just for that Escalade. We were also
20 paying for Rick, Sr., but Rick, Sr., was the CEO and
21 on the board and that's not an issue.

22 Q. Do you remember which of the companies
23 these Escalades were on the books of?

24 A. I do not. It was either Orwell or NEO.
25 I apologize.

1 Q. Who would that be?

2 A. I know Tom had a car. I believe Darrell
3 Knight might have. There were quite a few cars on
4 the books but they were all employees of the
5 companies.

6 Q. They were full-time employees?

7 A. Yes.

8 MR. SERIO: That's all, your Honor.

9 EXAMINER FARKAS: Okay.

10 MR. YURICK: If I could just have a
11 moment.

12 EXAMINER FARKAS: Yes.

13 - - -

14 RE-CROSS-EXAMINATION

15 By Mr. Yurick:

16 Q. So you had a conversation about this
17 automobile, truck, whatever, being on the books of
18 some company under your control; is that right?

19 A. Yes.

20 Q. And when you brought that concern to
21 the -- did you bring that concern to somebody in the
22 company?

23 A. Yes.

24 Q. Did you report that? Who did you bring
25 that to the attention of?

1 A. It was brought to Tom. It was brought to
2 Kevin and Jed and it was brought to the SEC lawyer in
3 the related party note.

4 Q. And was that concern addressed?

5 A. Yes. They put him on the books.

6 MR. YURICK: I have no further questions
7 of this witness.

8 EXAMINER FARKAS: Okay.

9 MR. SERIO: Your Honor, I do have a
10 question. Counsel mentioned that one of the factors
11 going on here is the credibility of the witness, and
12 it seems to me there is a document available that
13 would help address the witness's credibility and that
14 would be the e-mail with the report that she sent to
15 Mr. Degenstein and Mr. Henthorne approximately April
16 of 2010.

17 To the extent that the corporate
18 controller Ms. Howell works in Ohio and supervises
19 the Ohio companies, it would seem to me this
20 Commission has the authority and jurisdiction to
21 require the company to provide a copy of that e-mail
22 and the attached report so that we could see for sure
23 if it occurred, and if it did occur, then if this was
24 a follow-up on what happened about it. That rests
25 solely with the Commission and the Commission can

1 make that decision so we don't have to argue whether
2 the witness was more credible or less credible
3 without any documentation to back it up.

4 EXAMINER FARKAS: What is the e-mail
5 again you are talking about?

6 MR. SERIO: I believe that the witness
7 indicated there was an e-mail and a report that she
8 sent to Mr. Degenstein and Mr. Henthorne that
9 documented --

10 EXAMINER FARKAS: Yes.

11 MR. SERIO: -- NEO buying gas from
12 Constellation for JDOG and then NEO paying JDOG for
13 the same gas, essentially paying for the same gas
14 twice.

15 EXAMINER FARKAS: This is the April, '10,
16 I think.

17 THE WITNESS: I don't know the date of
18 when I sent it. It was a working document. It had
19 about 12 different items on it with exhibits.

20 EXAMINER FARKAS: The record -- it's in
21 the record so if the Commission chooses to make --
22 take some action with respect to that, that is their
23 prerogative.

24 Thank you for your testimony.

25 THE WITNESS: Thank you.

1 EXAMINER FARKAS: Appreciate it. Why
2 don't we break for lunch and come back and Mr. Sarver
3 will be our next witness.

4 (Thereupon, at 1:10 p.m., a lunch recess
5 was taken until 2 p.m.)

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Wednesday Afternoon Session,
July 10, 2013.

- - -

EXAMINER FARKAS: You may proceed.

MR. MARGARD: Thank you, your Honor. The staff would call to the stand Mr. Roger Sarver, please.

(Witness sworn.)

MR. MARGARD: Your Honor, I would request that the prefiled testimony of Roger L. Sarver filed in this case on July 1, 2013, be marked for purposes of identification as Staff Exhibit No. 2.

EXAMINER FARKAS: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

ROGER L. SARVER

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

DIRECT EXAMINATION

By Mr. Margard:

Q. Sir, would you please state your name and business address.

A. My name is Roger L. Sarver. My business address is 180 East Broad Street, Columbus, Ohio 43215.

1 Q. Mr. Sarver, do you have before you what
2 has been marked as Staff Exhibit No. 2?

3 A. That would be my prefiled testimony?

4 Q. Yes, sir.

5 A. Yes, sir.

6 Q. And are you the same Roger L. Sarver?

7 A. Yes.

8 Q. And was this testimony prepared by you or
9 at your direction?

10 A. Yes.

11 Q. Mr. Sarver, as you sit here today, do you
12 have any changes, corrections, modifications, or
13 amendments of any kind to this document?

14 A. Yes, sir, I do. Excuse me. On page 8,
15 it's the bullet point that starts with "Staff
16 recommends the Commission adopt it's AA." The last
17 sentence in that paragraph references "proposed
18 alternative pricing of local purchases as shown
19 below." That needs to be changed to "as shown on the
20 top of page 7."

21 And then in the copying of documentation
22 RLS-4 was copied twice or included twice in my
23 testimony. There should be only one copy of that in
24 my testimony.

25 Q. Okay.

1 A. That's all the changes that I have.

2 Q. Sir, if I were to ask you the same
3 questions as contained in this document, would your
4 responses be the same?

5 A. Yes, sir.

6 Q. Mr. Sarver, just as another matter, have
7 you been present throughout this hearing today?

8 A. Yes, sir.

9 Q. And throughout the course of this hearing
10 to date?

11 A. Yes, sir.

12 Q. Were you, sir, responsible in any way for
13 the preparation of Commission-Ordered Exhibits 1, 2,
14 or 3, the financial audit of Northeast Ohio and
15 Orwell and the uncollectible expenses for each
16 company?

17 A. Yes, sir.

18 Q. And what was your responsibility with
19 respect to those exhibits?

20 A. I was supervisor of those both -- I
21 should say of all four of those audits.

22 Q. And other than as modified by your
23 testimony marked as Staff Exhibit No. 2, do you have
24 any changes, corrections, modifications, or additions
25 to the Commission-ordered audit reports?

1 A. None other than I recognized it in my
2 testimony.

3 MR. MARGARD: Very good. Thank you, your
4 Honor.

5 At this time I would move for the
6 admission of Staff Exhibit No. 2. I would further
7 move for the admission of Commission-Ordered Exhibits
8 1, 2, and 3, all subject to cross-examination, and I
9 tender Mr. Sarver for that purpose.

10 EXAMINER FARKAS: Thank you.

11 Mr. Serio.

12 MR. SERIO: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Serio:

16 Q. Good afternoon, Mr. Sarver.

17 A. Good afternoon.

18 Q. I believe you indicated you were in the
19 hearing room this morning when Ms. Lipnis testified,
20 correct?

21 A. Yes, sir.

22 Q. And you heard her discussion of an
23 alleged incident where Ms. Howell adjusted the GCR
24 filing by increasing the GCR for a period, did you
25 not?

1 A. Yes, sir, I did.

2 Q. In the course of your audit, did you come
3 across a month where you identified an increase in
4 the GCR that you did not think that was warranted?

5 A. I would say I came across a quarter that
6 appeared to be different than the prior two quarters.
7 There was only a period of nine months which were
8 three quarterly filings that Ms. Lipnis was with Gas
9 Natural.

10 Q. And what was that time period?

11 A. The period of time had to do with filings
12 that took place in March, 2010; June, 2010; September
13 of 2010. Those GCR filings encompassed the actual
14 adjustments for the period of September, 2009,
15 through May of 2010. And what I noticed was in the
16 first two quarters of the audit, as noted in the
17 audit report, the company had included consistently
18 free gas which overstated their monthly sales
19 volumes.

20 And then when I reached -- or looked at
21 March, April, May, what staff found or what I found
22 was March, April, and May the company's
23 jurisdictional sales volumes were understated to the
24 tune of about 181,000 units. And then in the
25 subsequent quarter company and staff sales volumes

1 matched up.

2 MR. YURICK: I'm sorry. Could I get the
3 sales number again from the court reporter, please.

4 (Record read.)

5 A. With that difference in sales volumes
6 where the company's sales volumes were lower than
7 those verified by staff during the course of its
8 audit, the company calculated actual adjustment for
9 that quarter was 53,161. When staff made the
10 adjustment for the purchased gas cost along with the
11 verified sales volumes, the adjustment went from a
12 positive 53 to a negative \$1.062 million.

13 Q. So that meant that it went from there
14 being an overpayment to an underpayment?

15 A. Correct. The total effect staff has got
16 it here as shown on RLS-6, should be on page 2, and
17 the combined effect is adjustment 1.116043.

18 EXAMINER FARKAS: Could I stop for a
19 second? Do you have the attachments to his testimony
20 that he is just now referring to that I could have?

21 MR. MARGARD: I have a copy. I have an
22 extra copy as well.

23 EXAMINER FARKAS: Let's go off the record
24 for a second.

25 (Discussion off the record.)

1 Q. Okay. Now, is it your understanding that
2 the adjustment that you caught corrected any of the
3 error that Ms. Lipnis testified about?

4 A. It accounted for differences in sales
5 volumes of \$181,000 along with the purchased gas cost
6 difference in the neighborhood of \$285,000.

7 Q. Now, I asked Ms. Lipnis this morning if
8 the Commission were to order the forensic
9 investigation -- accounting investigation that you
10 are recommending, would an accountant be able to go
11 back and look at the company books and determine if
12 there had been any other instances of changes like
13 that. To the best of your knowledge, would an
14 accountant going back or forensic accountant going
15 back looking at the company books be able to identify
16 if there were any other instances where such a change
17 occurred?

18 A. I would think that if the company
19 maintains its records and are able to track what the
20 company is doing with their accounting systems but
21 this is also part and parcel of the gas cost recovery
22 audits and that's what the Commission instructs us to
23 do in the course of our GCR audits so this is not
24 uncommon for staff to find differences in purchased
25 gas costs and sales volumes in the course of its GCR

1 audits.

2 Q. Now, you've made a recommendation in the
3 Staff Report and in your testimony for a
4 disallowance, correct?

5 A. Yes, sir.

6 Q. Does the disallowance amount in your
7 testimony and in the staff report include any
8 disallowance for the 25-cent processing fee on the
9 Cobra system associated with gas purchases for
10 volumes that were charged the fee but did not
11 necessarily get processed?

12 A. No, sir.

13 Q. The staff report indicates that on page
14 18 that Orwell ceased providing transportation
15 service to these customers, being residential
16 customers, in May of 2011, six months after it
17 assured staff it would cease its residential
18 transportation program.

19 EXAMINER FARKAS: Do you have a
20 reference?

21 MR. SERIO: Page 18 of the staff report,
22 top of the page.

23 EXAMINER FARKAS: Thank you.

24 A. I think I may be without a staff report.
25

1 Q. I'm sorry?

2 A. I think I'm without a staff report.

3 Thank you, sir. Page 18?

4 Q. Yes, top of the page.

5 A. Yes.

6 Q. Is it your understanding that as a result
7 of the opinion and order in the 2010 audit, the
8 10-209 and 10-212-GA-GCR cases that the Commission
9 directed the companies to cease a residential
10 transportation program -- any residential
11 transportation that was occurring because they did
12 not have a residential transportation tariff?

13 A. Can you specifically reference that in
14 the opinion and order and stipulation?

15 Q. If you could -- do you have a copy of the
16 opinion and order?

17 A. I do not have the opinion and order. I
18 have the stips.

19 Q. For the record I'm handing Mr. Sarver the
20 opinion and order in Case No. 10-209, 10-212-GA-GCR
21 dated October 26, 2011. If I go to page 8 of that
22 opinion and order, at the bottom of the opinion and
23 order it discusses the residential transportation
24 program, correct?

25 A. Yes, sir.

1 Q. And is it your understanding that the
2 company was -- that both Northeast and Orwell would
3 cease any residential transportation as a result of
4 the staff's finding in the last case?

5 A. Staff's understanding was that
6 residential transportation was to end as of November,
7 '10.

8 Q. As of when?

9 A. As of November, '10.

10 Q. And was that because the company agreed
11 to it, or was it your understanding the Commission
12 ordered that?

13 A. My understanding was that the company was
14 going to do that voluntarily.

15 Q. And in the staff report in this case on
16 page 18, you've indicated that the transportation
17 program continued six months after staff was assured
18 that it would cease, correct?

19 A. That is correct.

20 Q. Now, were you in the room when I asked
21 Mr. Whelan and Ms. Patton about the fees that
22 Northeast and Orwell paid to JDOG during the audit
23 period?

24 A. Yes, sir.

25 Q. And do you recall that the two figures

1 were \$418,730.65 for Northeast and \$229,175.41 for
2 Orwell, correct?

3 A. Yes, sir.

4 Q. In the course of your staff
5 investigation, did you determine that the fees paid
6 by Northeast and Orwell were similar with those two
7 figures, or did you determine that there was a
8 different amount paid in fees to JDOG?

9 A. I'm trying to pull that spreadsheet up
10 right now.

11 During the course of our audit we
12 requested from the company the I'll call agency fees
13 that were paid from -- we actually went all the way
14 back to July of 2009. But for the audit period for
15 Northeast, management fees/agency fees totaled
16 \$583,417.80 for Northeast. And for the period of
17 time from July, '10, through June, 2012, Orwell paid
18 \$224,991.60 in agency fees.

19 MR. YURICK: I'm sorry, can I get that
20 figure again, ma'am?

21 THE WITNESS: Agency fees for which
22 company?

23 MR. YURICK: The last one you just
24 mentioned.

25 THE WITNESS: For Orwell was 224,991.6.

1 Q. Now, is it your understanding that was
2 the fees that were actually paid, or is that the fees
3 that were billed?

4 A. My understanding from the individual that
5 provided me with these numbers is that was the amount
6 that was paid.

7 Q. And who provided you those numbers?

8 A. Cindy Rolf or Cindy Bates at the time.

9 Q. When you heard the company acknowledge
10 the dollar amounts that I previously mentioned, the
11 418,730 and 229,175, and realized that those amounts
12 were different than the amounts you had, do you have
13 any understanding of what would cause the amounts
14 that you have to be different than the amounts that
15 were reported to OCC?

16 A. The only thing that I could think of they
17 were capturing different periods of time.

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

19 EXAMINER FARKAS: Yes.

20 MR. SERIO: I would like to have marked
21 for purposes of identification OCC Exhibit 21.

22 EXAMINER FARKAS: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. SERIO: It's an intrastate contract.

25 IDENTIFIER: JOHND2011-INTRASTATEsales-Service

1 Company #2.1. And it's a three-page document, and on
2 the third page it's signed by Jonathan Harrington and
3 Rebecca Howell on February 23, 2011. Do you have
4 that, Mr. Sarver?

5 A. Yes, sir, I do.

6 Q. Are you familiar with this contract?

7 A. I've seen numerous contracts in the
8 course of this audit. It looks what I'll say
9 somewhat familiar or similar to other contracts that
10 I've seen during the course of the audit.

11 Q. Is it your understanding that this
12 contract was the contract that was put in place in
13 2011 to replace the contracts that were terminated as
14 a result of the stipulation and opinion and order in
15 the 2010 GCR case?

16 A. Can you repeat that question, please?

17 EXAMINER FARKAS: Do you want to reread
18 the question.

19 (Record read.)

20 A. My understanding of this contract was
21 that it was put into place in February of 2011. The
22 Commission did not issue its opinion and order in
23 this case until October of 2011 so this preceded not
24 only the hearing in the 2010 cases but also the
25 opinion and order and the stipulation.

1 Q. If you could turn to page 15 of the staff
2 report.

3 A. Yes, sir.

4 Q. If I look at OCC Exhibit 21, I look under
5 the whereas clause, paragraph No. 1 says the "Service
6 Company agrees to pay John D. the greater of NYMEX
7 plus 75 cents per Thousand Cubic Feet plus any
8 applicable transportation costs, shrinkage costs and
9 taxes or the market price, plus any applicable
10 transportation costs, shrinkage and taxes," correct?

11 A. Yes, sir.

12 Q. Now, if I look at the staff report on
13 page 15, it says "Producers on Orwell were paid on
14 average 10 cents above NYMEX but Orwell was billed
15 the TCO Appalachian index plus \$1.50 through July
16 2011 and randomly thereafter."

17 A. Yes, sir.

18 Q. Is it your understanding that under the
19 contract marked OCC Exhibit 21 they were only
20 supposed to pay NYMEX plus 75 cents per thousand
21 cubic feet?

22 MR. YURICK: I'm sorry, instead of 10
23 cents?

24 Q. No, that they were supposed to pay NYMEX
25 plus 75 cents per thousand cubic feet.

1 A. What staff found in the course of its
2 audit was this paragraph under agreement No. 1 that
3 was the greater of NYMEX plus 75 cents was never
4 billed.

5 Q. So to the extent that on page 15 of the
6 staff report the billing was TCO Appalachian Index
7 plus \$1.50, do you know how the TCO Appalachian Index
8 compares to the NYMEX price?

9 A. For the audit period?

10 Q. Generally speaking is it comparable?

11 A. What I've found starting back in 2008
12 that NYMEX ran about 26 cents less, 27 cents less
13 than the Appalachian Index, but as of 2012, that
14 basis differential had shrank to about a half a cent
15 where NYMEX was one-half of a cent less than the
16 Appalachian Index.

17 Q. Is there anything in the staff report or
18 in your testimony that would recommend to the
19 Commission that any penalty be applied to the company
20 as a result of any of the actions that occurred
21 during the audit report?

22 A. Can you clarify that question?

23 Q. The staff recommends a disallowance,
24 correct?

25 A. Yes, sir.

1 Q. And the disallowance is simply to correct
2 errors that the staff found?

3 A. I don't know if we would define them as
4 errors or if you would define them as staff did not
5 agree with the pricing provisions that were imposed
6 upon the utilities by JDOG for local production
7 purchases.

8 Q. Did the staff view the disallowance
9 recommendation as a penalty or as a correction to
10 what was a price that you did not consider
11 appropriate?

12 A. Correction.

13 Q. Is there anything in your testimony or in
14 the staff report regarding anything beyond a
15 correction that would be in the form of a penalty as
16 a result of the company's actions during the audit
17 period?

18 MR. YURICK: There will be an objection
19 as I think the staff report speaks for itself.

20 EXAMINER FARKAS: I'll let him answer.

21 A. There is no penalty.

22 Q. Is there anything in the staff report or
23 your testimony that would preclude the Commission
24 from instituting a penalty if they decided to impose
25 one?

1 MR. YURICK: I'll interpose an objection.

2 EXAMINER FARKAS: Okay.

3 MR. YURICK: I think the staff report
4 again speaks for itself as to whether or not the
5 Commission is precluded from issuing massive
6 penalties on the company --

7 MR. SERIO: Let me reword the question.

8 MR. YURICK: -- for some unknown reason.
9 I think the law speaks for itself.

10 Q. Is there anything in your testimony or
11 your recommendation where you urge the Commission not
12 to impose any penalty on the company?

13 MR. YURICK: There would be an objection
14 to the form of the question. The witness is being
15 asked to say something, opine as to something that
16 either is in the staff report or isn't in the staff
17 report or is in the law or isn't in the law.

18 EXAMINER FARKAS: I think he is just
19 asking anywhere in the testimony if you recommended a
20 penalty. I think that's a fair question.

21 MR. YURICK: Of course.

22 A. There is no penalty recommended in the
23 staff report or in my testimony.

24 EXAMINER FARKAS: Thank you.

25 MR. SERIO: That's all I have, your

1 Honor.

2 Thank you, Mr. Sarver.

3 EXAMINER FARKAS: Mr. Yurick.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Yurick:

7 Q. Mr. Sarver, good afternoon, sir. Could
8 you please turn to page 2 of your testimony. First,
9 I want to ask you some questions about the question
10 numbered 6 on lines 12 through 21 on page 2 and it --
11 the answer continues on page 3, the first two lines
12 of your testimony.

13 A. So you're starting with what line, sir?

14 Q. Line 12, that's numbered question 6 on
15 page 2 and then it carries over through line 21 of
16 page 2 to lines 1 and 2 on page 3. Do you see that
17 question and answer, sir?

18 A. Yes, sir.

19 Q. Okay. You state in your answer to that
20 question that "Staff met with the Companies and their
21 attorney to address the requirements of drafting a
22 request for proposal for the solicitation of an asset
23 manager." That's on lines 19 through 21. Do you see
24 that, sir?

25 A. Yes, sir.

1 Q. How many times did you and/or other staff
2 members meet with the companies or their attorneys to
3 discuss drafting the RFP for the solicitation of an
4 asset manager?

5 A. We met in April of 2012 and we met in
6 June of 2012 and the rest was e-mail correspondence.

7 Q. And the meeting in April of 2012, where
8 was that meeting held?

9 A. At the companies' counsel's offices.

10 Q. And who was present at the April, '12, if
11 you recall, sir?

12 A. I think a few members from OCC, one or
13 two companies' staff members, their attorney, and I
14 want to say two or three people from the Commission's
15 staff.

16 Q. And who was there from staff, if you
17 recall?

18 A. Myself, Vern Margard, don't know if Devin
19 Parram was there.

20 Q. And do you know who was there from the
21 company?

22 A. Only individual that I can remember is
23 Marty Whelan.

24 Q. And you said the companies' attorney.

25 A. Was Andy Sonderman.

1 Q. And were there members of the OCC there?

2 A. Yes.

3 Q. Do you remember who was there from the
4 OCC?

5 A. I want to say Joe Serio was there and I
6 don't know if Greg Slone was there and I don't
7 remember anyone else.

8 Q. Do you recall how long the meeting
9 lasted?

10 A. No, sir.

11 Q. Okay. The June, '12, meeting, do you
12 know where that meeting was held?

13 A. I want to say the same place.

14 Q. Who was there at the June meeting?

15 A. I think less individuals but I don't
16 remember. I remember less of that meeting than I do
17 of the initial meeting.

18 Q. And the rest of the correspondence you
19 said was e-mail correspondence?

20 A. Yes, sir.

21 Q. And how many e-mails were sent back and
22 forth, if you can recall?

23 A. I do not recall.

24 Q. Okay. Was it more than, say, a couple?

25 A. What do you define as a couple?

1 Q. Two.

2 A. Yes.

3 Q. Probably less than 20.

4 A. Far less.

5 Q. Okay. Now, at either of these two
6 meetings or through e-mail correspondence were the
7 companies -- were the companies' attorney provided
8 with a template, model, form, or example of an RFP
9 that you considered acceptable?

10 A. No, sir.

11 Q. And to your knowledge did the OCC
12 representatives provide the companies or the
13 companies' attorney with a template, model, form, or
14 example of an RFP that they considered acceptable?

15 A. No, sir. The company took it upon
16 themselves to initiate the process.

17 Q. So is it your testimony that nobody from
18 the company ever asked you for a template, model,
19 form, or example of an RFP that you would consider
20 acceptable, and you decided or determined that it was
21 unnecessary to offer one?

22 A. No RFP was requested by the company.

23 Q. And no RFP was provided to the company,
24 correct?

25 A. None was requested, none was provided.

1 Q. And to your knowledge, is -- is there a
2 standard model, form, template, or exemplar of an RFP
3 that would be readily available for use in gas
4 purchasing situations?

5 A. I think each RFP is specific to the
6 entity that is requesting a solicitation of bids.

7 Q. So would it be fair to say -- I don't
8 mean to put words in your mouth but would it be fair
9 to say you are aware of no standard model, form,
10 template, example, or exemplar of generally used RFPs
11 used in gas purchasing situations; is that correct?

12 A. I'm not aware of a standardized form,
13 sir.

14 Q. And, likewise, are you aware of any rule
15 or regulation, statute, or any other codified
16 material setting forth minimum acceptable standards
17 for inclusion in an RFP for gas purchasing services?

18 A. I'm not aware of a standard, sir.

19 Q. And are you aware of any rule, order,
20 regulation, statute, or other codified materials
21 setting forth a minimum response time or minimum
22 number of responders to an RFP in order for that RFP
23 process to be considered lawfully competitive?

24 A. No, sir.

25 Q. Were there any minimum time periods to

1 your knowledge or minimum number of responders
2 required and that number was incorporated into the
3 stipulation reached in Case No. 10-209-GA-GCR?

4 A. Can you repeat the first part of your
5 question, sir?

6 Q. Yes, I'm sorry. Maybe -- if I'm going
7 too fast, I apologize.

8 A. It was a lengthy question.

9 Q. It's been a hard hearing for me so I
10 apologize. Were any minimum time periods or minimum
11 number of responders to an RFP incorporated into the
12 actual stipulation reached in Case No. 10-209-GA-GCR?

13 A. Not to my understanding.

14 Q. On the top of page 3, I guess carried
15 over from the bottom of page 2, you say "Over the
16 years Staff has developed a greater understanding of
17 the Companies' procurement practices, regulatory
18 compliance and management philosophy." Do you see
19 that?

20 A. Yes, sir.

21 Q. Okay. What are the regulatory compliance
22 and management philosophies of the companies?

23 A. The regulatory compliance would be
24 defined as how the companies work with the Public
25 Utilities Commission to respond to data requests,

1 cooperation, a process to compliance with
2 stipulations and opinions and orders. The management
3 philosophy is I would take that as to how the company
4 makes decisions as it relates to the gas procurement
5 function.

6 Q. And you say that "Staff has a greater
7 understanding of the Companies' procurement
8 practices, regulatory compliance and management
9 philosophy." What is your understanding as a man --
10 as a person on staff of the companies' procurement
11 practices, regulatory compliance, and management
12 philosophy?

13 A. Can you repeat that? I am not
14 distinguishing the difference between that and the
15 last question.

16 Q. So I asked you what your understanding --
17 the first question was I asked you what your
18 understanding was of the definitions of regulatory
19 compliance and management philosophy of the
20 companies. And I think you said that regulatory
21 compliance was how the companies worked with staff to
22 respond to data requests and cooperate in the audit
23 process. And I think you said that management
24 philosophy was how the companies make decisions in
25 running the companies and their procurement

1 decisions.

2 And so what I asked you was could you
3 tell me for these two companies, Orwell and Northeast
4 Ohio Gas, what are their regulatory compliance and
5 management philosophies?

6 A. Their regulatory compliance would be, at
7 least from my experience with the two companies, I
8 would define that as being they like to function
9 based on upper management's decisions. And sometimes
10 those decisions are contrary to regulatory
11 compliance, and their management philosophy is driven
12 by upper management.

13 Q. And was there a particular person in
14 upper management or a particular position in upper
15 management that was driving the regulatory compliance
16 and management philosophy?

17 A. I can't answer that question.

18 Q. Okay. Did you ever have any
19 conversations or meetings with any upper management
20 personnel regarding their regulatory compliance and
21 management philosophy?

22 A. The highest level individual that I spoke
23 with was Marty Whelan who was a vice president. At
24 no time during the course of our audits were we
25 provided with an opportunity to talk to Tom Smith but

1 that was in the 2010 audit. So Marty has been the
2 highest management individual that staff has had an
3 opportunity to sit down and talk with.

4 Q. Okay. Is there any particular material
5 in any documentation or publications of the company,
6 their website, any publicly available material from
7 their public filings that you used to discern the
8 companies' regulatory compliance and/or management
9 philosophy?

10 A. No. I base that on working with the
11 company and the audits of Orwell and Northeast dating
12 back to 2008, Brainard audit '09, the Northeast and
13 Orwell audits of '10, the Brainard audit of '11, and
14 the Orwell/Northeast audits in '12. That's my
15 experience and my exposure.

16 Q. So your experience was from working on --
17 I'm sorry, the companies' audits in the '08 period,
18 the Brainard audit in '09, and then I lost you
19 because I couldn't write fast enough.

20 A. The Orwell/Northeast audits in '10.

21 Q. Okay.

22 A. The Brainard audit in '11, the
23 Orwell/Northeast audits in '12. Some of those audits
24 were GCR only. Some of those audits included the
25 unaccounted for gas, the unaccounted for expense

1 rider.

2 Q. And did you have contact with different
3 people in the company to, I guess, determine their
4 regulatory compliance and management philosophy?

5 A. Staff typically worked with technical.

6 Q. Any particular people in technical?

7 A. In the beginning it was -- I don't
8 remember who was there in 2008. I think I worked
9 with Stephanie in 2008. 2009 is a blur but I would
10 have to say that would be Becky. For 2010 for Orwell
11 and Northeast, it was a combination of Stephanie,
12 Dawn, Becky, and Heather, along with some interaction
13 with Marty.

14 MR. SERIO: Your Honor, for clarification
15 could we get last names with those so that we?

16 EXAMINER FARKAS: That's a reasonable
17 request. Last names.

18 A. I will go with Stephanie Patton. I will
19 go with Becky Howell, Dawn Opara, Heather Lipnis, and
20 Marty Whelan, and then in 2011, Brainard audit I
21 think I worked with Anita Noce.

22 Q. And was there -- were there particular
23 individuals whose statements or representations led
24 you to believe that the companies' regulatory
25 compliance and management philosophy was to make

1 decisions based on upper management?

2 A. Can you repeat the question, please?

3 Q. I'm sorry. Probably not.

4 MR. YURICK: But could I ask the court
5 reporter if she would please read it back.

6 (Record read.)

7 A. No, not any individual statement.

8 Q. Okay. Drawing your attention to lines 6
9 through 9, the answer to question No. 7, you say "The
10 point that Staff took from its 2010 audits of Orwell
11 and NEO was that the Companies' decisions were driven
12 by their affiliated/related parties' interests." Do
13 you see that?

14 A. Yes, sir.

15 Q. Okay. What led you to believe that the
16 companies' decisions were driven by the interest of
17 their affiliated/related parties' interests?

18 A. Because none of the decisions that staff
19 had viewed in the course of the 2010 audit focused on
20 the interest of the utilities' customers. They
21 focused on the interests of the related parties.

22 Q. Any particular related parties?

23 A. Great Plains, JDOG.

24 Q. Anyone else?

25 A. Not necessarily.

1 EXAMINER FARKAS: Do you know if that's
2 JDOG --

3 THE WITNESS: JDOG, that's John D. Gas
4 and Oil Marketing.

5 EXAMINER FARKAS: Marketing, thank you.

6 Q. Were you of the opinion or are you of the
7 opinion that the interest of regulated consumers and
8 the interests of affiliated or related parties are
9 always adverse to each other?

10 A. Always?

11 Q. Yes.

12 A. No.

13 Q. So sometimes in your opinion the
14 interests of regulated consumers and the interests of
15 affiliated and related parties to the LDCs would be
16 in harmony with each other; isn't that right?

17 A. That could happen.

18 Q. Okay. On page 3, line 12, you state
19 "This resulted in Orwell and NEO paying higher than
20 normal prices for gas." Do you see that?

21 A. Yes, sir.

22 Q. And I think you're referring to your --
23 the previous line where you say that, as we went
24 over, that "the Companies' decisions were driven by
25 their affiliated/related parties' interests, which

1 resulted in higher purchased gas costs for their
2 sales customers with minimal benefit"; is that
3 correct?

4 A. That's what that says.

5 Q. And what is a normal price for gas in
6 your opinion, sir?

7 A. I guess the normal price for gas at least
8 for Northeast would have been preJDOG.

9 Q. And preJDOG would have referred to what
10 time period?

11 A. Prior to February of 2008.

12 Q. Do you know what the normal price for gas
13 in February of 2008 was in terms of the dollar
14 figure?

15 A. No.

16 Q. Okay. Do you know whether the normal
17 price for an Mcf or dekatherm of gas in February of
18 2008 would have been the same as the normal price for
19 gas during the audit period in dollars and cents?

20 A. You are drawing a comparison between
21 February of 2008 and this current audit period?

22 Q. Correct.

23 A. Were they one and the same?

24 Q. Were they -- were they the exact same
25 dollar figure?

1 A. I don't think there was any exact same
2 price figure.

3 Q. Correct. So my point, and you would
4 agree with it, is that the normal price of gas in
5 February of '08 might be different from the
6 quote-unquote normal price of gas during the audit
7 period in terms of dollars and cents?

8 A. The dollar figure would be different
9 because the time period is different.

10 Q. Yes. And prices for gas, normal prices
11 or other prices for quantities of gas, will
12 ordinarily fluctuate over time, correct?

13 A. The price of natural gas will fluctuate.

14 Q. Is there an index or other reference
15 material that would be available to an interested
16 person to determine what a normal price for gas was?

17 A. For purchases of natural gas in the state
18 of Ohio most entities will turn to NYMEX. Some
19 entities will also use in their comparisons the
20 Appalachian Index for TCO along with Dominion
21 Transmission. Those are the prevailing indexes that
22 utilities in the state of Ohio utilize along with
23 most local producers in the state of Ohio.

24 Q. So you mentioned NYMEX. You mentioned
25 TCO.

1 A. TCO Appalachian.

2 Q. Appalachian Index.

3 A. Right.

4 Q. And you mentioned Dominion Transmission.

5 A. Dominion Transmission Appalachian.

6 Q. Now, would I be correct in assuming that
7 those indexes for normal prices for gas would refer
8 to interstate gas volumes?

9 A. Both interstate and local.

10 Q. So to the best of your knowledge, would
11 NYMEX have an efficient indexing system for local
12 production?

13 A. Efficient indexing system, define.

14 Q. So if I were an uninterested arm's length
15 buyer of local production, could I expect to go to a
16 particular local producer and purchase gas at the
17 NYMEX price plus delivery?

18 A. I guess that all is dependent on where
19 you are buying it.

20 Q. So it could vary from the NYMEX price,
21 could it not, for local production?

22 A. Local production will vary based on
23 location.

24 Q. Is there a particular statute, code
25 provision, rule, regulation, order, or other codified

1 material that you are aware of that defines or sets
2 forth a test or a calculation for determining a
3 quote-unquote normal price for gas?

4 A. There is not.

5 Q. Okay.

6 EXAMINER FARKAS: You have to speak up a
7 little.

8 THE WITNESS: Yes, sir.

9 Q. On page 3, question No. 8, the question
10 is on lines 18 and 19, the answer is on lines 20 and
11 then continues over to page 4, lines 1 through 5. I
12 want to ask you a question about that. You state
13 there -- in answer to the question "What did Staff
14 recommend in the 2010 cases to minimize the influence
15 of the related parties on Orwell and NEO," you state
16 "Staff found that Orwell and NEO were in the best
17 position to procure their own interstate and local
18 supplies and they had the personnel capable of
19 performing the gas procurement functions." Do you
20 see that?

21 A. Yes, sir.

22 Q. Okay. Was the finding that the companies
23 were in the best position to procure their own
24 interstate and local supplies and that the companies
25 had personnel capable of performing procurement

1 functions incorporated into the stipulation in the
2 2010 audit cases?

3 A. Not specifically, no.

4 Q. Okay. So you are not aware of any
5 specific provision in the stipulation that came out
6 of the 2010 cases that required that Orwell and NEO
7 procure their own interstate and local supplies
8 because they had the personnel capable of performing
9 those functions, correct?

10 A. That was not a requirement.

11 Q. Okay. On page 4, the question starts on
12 lines 15 and 16 and your answer is on lines 17
13 through 21, continues over to the next page, lines 1
14 and 2 of page 5, you stated "the stipulation stated
15 that Gas Natural Service Company would act as a gas
16 procurement manager and would be free of the
17 restrictions currently in place by virtue of the
18 terminated contracts between GNS and John D. Oil and
19 Gas Marketing, LLC, or JDOG." And "the parties
20 agreed that the intended date for first competitive
21 bidding process would be November 1, 2011." Do you
22 see that?

23 A. Yes, sir.

24 Q. So the stipulation and settlement in the
25 2010 cases contemplated an RFP process; is that

1 correct?

2 A. Yes.

3 Q. Now, that RFP process included both local
4 production, correct?

5 A. Included both local production.

6 Q. And interstate gas, correct?

7 A. Yes.

8 Q. Okay. Why did the staff recommend an RFP
9 for local production if the staff had found as you
10 state on the last page that the companies themselves
11 were in the best position to procure their own
12 interstate and local supplies?

13 A. Because that was a stipulation to reach
14 an agreement that staff was adamantly against local
15 production being purchased by JDOG.

16 Q. Okay.

17 A. But we agreed for the purposes of this
18 case to agree to that.

19 Q. So you agreed in the stipulation that the
20 companies could issue an RFP for both interstate and
21 local gas supplies, correct?

22 A. That is correct.

23 Q. And for purposes of your audit report and
24 for purposes of your testimony, do you have a
25 criticism of the RFP as it relates to interstate

1 supplies?

2 A. Not that I'm aware of.

3 Q. Okay. So you would agree with me then
4 that as far as interstate supplies for gas volumes
5 which would be likely listed on a NYMEX and have a
6 fungible measurement, discernible price, that the
7 companies purchased and accounted for those
8 interstate supplies without any perceived bias or
9 perceived favoritism toward any affiliate or related
10 company; isn't that right?

11 A. I don't think staff has those findings in
12 its report.

13 Q. On page 5 of your testimony, numbered
14 question 12, lines 4 through 10, on the 4th line down
15 you -- the first part of the answer there is a
16 notation that the companies completed the RFP process
17 over a year after the stipulation was entered into;
18 is that right?

19 A. Correct.

20 Q. And then you note on line 9 about halfway
21 through the page that the companies omitted staff's
22 comments. Do you see that?

23 A. Yes.

24 Q. What staff comments did the company omit
25 specifically?

1 MR. MARGARD: Your Honor, merely for
2 purposes of the record, of course, Mr. Donlon was the
3 staff witness who testified with respect to the RFP
4 process. I'm not entering a formal objection because
5 as all the parties in the room are aware, Mr. Sarver
6 had considerable participation in the RFP process.
7 But at least with regard to specific questions, that
8 was the purpose of Mr. Donlon's testimony. Not
9 entering an objection, merely noting it for the
10 record.

11 EXAMINER FARKAS: Thank you. To the
12 extent you are aware with respect to this, you can
13 answer the question.

14 MR. YURICK: I would ask the court, you
15 know, as a matter of record not to respond to an
16 objection but to also clarify in the record that the
17 statement occurs in Mr. Sarver's testimony that the
18 companies omitted staff's comments. I'm simply
19 asking for clarification of what particular comments
20 Mr. Sarver was referring to here on his testimony on
21 page 5, line 9 of his prefiled testimony.

22 EXAMINER FARKAS: That's a fair question.

23 A. The one item that stands out in my mind
24 had to do with the attachment that made or required
25 bidders to work with JDOG in the local production

1 contracts. Other than that nothing else stands out.

2 Q. Now, the staff this morning provided a
3 clean copy of the RFP documents I'm going to try to
4 find here.

5 EXAMINER FARKAS: This is the attachment
6 to Mr. Donlon's testimony?

7 MR. YURICK: Mr. Donlon's testimony,
8 that's correct.

9 THE WITNESS: I don't have any of those
10 documents.

11 MR. MARGARD: May I provide my copy to
12 the witness, your Honor?

13 EXAMINER FARKAS: Yes.

14 Q. You have it in front of you, Mr. Sarver;
15 is that correct?

16 A. I have a document that's multi-page.

17 Q. Okay. Do you recall that that document
18 looks like the draft RFP that the companies provided
19 to staff pursuant to their requirement that the
20 companies engage in an RFP process for interstate and
21 local production?

22 A. I don't have the draft in front of me,
23 sir. I have a request for gas supply proposals. It
24 looks like the one -- this one goes back to July 1 so
25 this is the draft, yes, sir.

1 Q. So that's a draft and the -- if you could
2 turn to Attachment A Schedule 1 which is several
3 pages back in the document.

4 A. Okay.

5 Q. The document itself appears to be roughly
6 six -- numbered pages there are six numbered pages it
7 looks like but there are several unnumbered pages in
8 front but can you find Attachment A Schedule 1?

9 EXAMINER FARKAS: I believe it's the
10 sixth page from the end.

11 A. Yes, sir.

12 Q. Okay. And where it says "local
13 production" -- "local production is currently under
14 contract with John D. Oil and Gas Marketing.
15 Successful bidder must account for such supplies as
16 John D. will continue to manage under 64 base
17 contracts covering 218 receipt points and 7 separate
18 market areas." Do you see that?

19 A. Yes, sir.

20 Q. Is that -- is that the staff -- is that
21 the verbiage that you referred to previously that
22 staff would have preferred to have taken out of the
23 RFP?

24 A. Yes.

25 Q. Okay. Now, do you know or are you aware

1 that several of the systems that make up Northeast
2 Ohio Natural Gas and/or Orwell Natural Gas are I
3 believe the verbiage is stranded systems.

4 A. Isolated.

5 Q. Okay. Isolated systems, thank you very
6 much. So are you aware that some of the systems that
7 comprise Northeast Ohio Gas and/or Orwell are
8 isolated systems?

9 A. That I am aware of.

10 Q. Okay. And an isolated system is a system
11 that really isn't connected at this point anyway to
12 other pipelines and can really only economically be
13 served by local production; is that right?

14 A. In -- if the company has some I want to
15 say portions of its system that are supplied only
16 through local production.

17 Q. And if it were to be shown that these 64
18 base contracts covering 208 receipt points in 7
19 separate market areas were -- were local production
20 that was -- that needed to serve these isolated
21 systems in order for those systems to be reliable,
22 would you still have an objection to the verbiage in
23 this -- in this RFP?

24 A. I don't think that's what this says, that
25 you need all this -- all these contracts, all these

1 receipt points to serve the isolated systems. I
2 think this is capsulating all local production. And
3 I think that there's a lot of flexibility the utility
4 has to go out and to contract for local production
5 with other producers off the Cobra systems and to
6 minimize its utilization of local production moved
7 through Cobra so, yes, I do have a problem with this
8 schedule the way it's written.

9 Q. I understand that. I'm really just
10 trying to get -- to make sure that the record is
11 clear that I and my client specifically understand
12 what the objection is. And would I be correct in
13 saying that this verbiage says the successful bidder
14 must account for these supplies and not
15 necessarily -- I mean, that that's the verbiage
16 that's used, they have to account for those supplies
17 and that's all it says.

18 A. Such supplies JDOG will continue to
19 manage under 64 base contracts.

20 Q. So let me ask you if it would be
21 reasonable in looking at this -- if I were a
22 potential bidder on local production, would it be
23 reasonable for me to look at this verbiage and say,
24 well, I'm going to have to account for these supplies
25 so I'm either going to have to buy from John D. or

1 I'm going to have to go to the local producers that
2 JDOG has contracts with and get them to sell me the
3 gas instead.

4 A. I don't read it that way.

5 Q. Okay. Would that be an unreasonable
6 interpretation if I were looking at this in your
7 mind?

8 A. I would not interpret it that way.

9 Q. And let me say the conclusion that you
10 came to that -- for local production anyway that the
11 companies themselves were actually in the best
12 position to procure local production, did you reach
13 that conclusion prior to the RFP going out?

14 A. I reached that in the course of the 2012
15 audit.

16 Q. So when -- when the stipulation was
17 entered into, was it not your opinion already that
18 the companies were in the best position to procure
19 their local production by themselves the way they had
20 done prior to 2008?

21 A. Well, what I -- in the 2010 audits I
22 focused primarily on Orwell Natural Gas and the
23 pricing of -- the pricing of gas to Orwell's system.
24 Another individual prepared a lot of the detail work
25 and calculations associated with Northeast. In this

1 audit I focused on Northeast and became much more
2 familiar with how the company operated and how it
3 accounted for local production, who at the company
4 worked on local production, and the amount of work
5 required by the utility to facilitate the purchase of
6 local production. So, yes, my opinions have changed
7 slightly because I have a better understanding of
8 what is taking place with the companies.

9 Q. I guess you would agree with me though
10 that if staff had concluded prior to the RFP going
11 out that the companies were really in the best
12 position to procure their local production by
13 themselves, that regardless of what verbiage you used
14 in an RFP process, if the staff's mind was made up
15 that the companies were in the best position to
16 procure their own local production, probably any RFP
17 for local production wasn't necessarily going to be
18 satisfactory; isn't that reasonable?

19 A. No.

20 Q. Okay. Why not?

21 A. Because you are ignoring the fact that
22 local production for isolated systems is such a small
23 percentage of the total throughput or the total
24 purchased volumes for Northeast and for Orwell. And
25 the company has options out there available to it

1 that it's not considering. So staff looked at it as
2 if we can introduce something new in the process at
3 least for this audit, that may benefit the customers.
4 It may result in lower costs to them. But what we
5 found was that there was no urgency shown by the
6 company to put forth an RFP process and to move
7 forward into the competition market.

8 Q. So let me ask you this, if the companies
9 were to agree to procure local production by
10 themselves, the actual LDCs would go out and obtain
11 the best price they could for local production, would
12 that address your concerns?

13 A. That would be a step in the right
14 direction.

15 Q. Would it be an adequate step in the right
16 direction? I mean, do you think that would address
17 your concerns that there was no sort of affiliate
18 injected into the process between the LDCs and the
19 local producers and that the market could more or
20 less work its magic?

21 A. I think staff would still want to closely
22 supervise, review the local production purchases of
23 the utilities by reviewing closely the contracts they
24 have entered into, the rationale for negotiating the
25 pricing, the terms. Right now, we are lacking in

1 confidence. We would like to monitor it very
2 closely. But, yes, that would be a step in the right
3 direction to move the utility toward a level of
4 independence where you can put the utility back in a
5 position where it's making the decision on how it
6 should purchase gas on behalf of its customers.

7 Q. I think you said that local production
8 was a relatively small percentage of the companies'
9 gas purchases; is that right?

10 A. I said isolated systems.

11 Q. Okay. So the isolated systems are a
12 relatively small percentage of -- of the gas
13 purchases made by the company; is that right?

14 A. That is my understanding.

15 Q. Okay.

16 EXAMINER FARKAS: Do you have a number,
17 percentage number?

18 THE WITNESS: Off the top of my head, I
19 don't. I've seen the numbers fluctuate anywhere from
20 a few hundred customers to 7 or 8 hundred customers
21 so I don't know what the precise number is for
22 customers that are located on isolated systems.

23 EXAMINER FARKAS: Thank you.

24 Q. Now, would you agree with me that if the
25 companies, the local distribution companies, Orwell

1 and Northeast Ohio Natural Gas, were to go out and
2 purchase gas from local producers, there's no real
3 guarantee that a local producer would sell to the
4 local distribution companies for the same price that
5 the local producer would sell their local production
6 to an alternative supplier?

7 A. I would disagree. I disagree with that
8 statement. I think the utility if knowledgeable and
9 knows how to operate its systems and has alternatives
10 can be very competitive in the market.

11 Q. So would you agree with me that generally
12 speaking if the LDCs make gas purchases by
13 themselves, that the amounts of gas that they would
14 require could reasonably be more affected by the
15 seasonal demand fluctuations?

16 A. I think seasonality is a factor that
17 these utilities have to operate with, but at the same
18 time the company has firm transportation from storage
19 services on Columbia Gas Transmission that allow them
20 to purchase at a much -- much higher load factor than
21 what was exhibited during the audit period so if they
22 have effectively used the assets they have in place,
23 they can be much more competitive, and they can
24 negotiate from the position where they can sit down
25 with these producers and negotiate favorable terms.

1 Q. And would you agree with me that seasonal
2 fluctuation in a vacuum could at least potentially
3 affect the price that one would pay for local
4 production?

5 A. Can you repeat that?

6 Q. Probably not but I can ask the court
7 reporter to read it over again.

8 (Record read.)

9 A. Okay. I guess define vacuum.

10 Q. Okay. So all other things equal, all
11 other considerations held at a static, if I were --
12 if I were purchasing local production from a local
13 producer and I wanted to buy 10,000 dekatherms per
14 month, would the price that I would pay at least
15 potentially be different than somebody who wanted to
16 buy 50,000 dekatherms in a single month?

17 A. Not necessarily.

18 Q. I understand that that -- that that local
19 producer since he is unregulated and can basically
20 sell his local production for whatever he wants
21 decides to sell his gas for whatever he wants. But
22 I'm asking you assume that I'm a reasonable local
23 producer. Isn't it true that I would prefer
24 generally speaking, all other things equal, to sell
25 to an entity whether it's an LDC or a marketer who

1 was going to buy a constant quantity of gas per month
2 as opposed to different potential purchasers whose
3 quantities could vary greatly month to month?

4 A. I think the utility has the opportunity
5 to purchase on a consistent year-round basis local
6 production if they effectively utilize the services
7 that they have with the pipelines.

8 Q. I appreciate that. But my question is
9 assume the utilities -- for whatever reason assume a
10 utility, a hypothetical utility, wanted to buy a
11 constant volume of gas per month and another
12 purchaser, a utility or marketer, wants to buy local
13 production from a particular local producer and their
14 requirements varied greatly month to month or with
15 the seasons. Isn't that inconstancy of demand a
16 rational factor that a local producer could take into
17 consideration in pricing its gas?

18 A. It could also take into consideration
19 credit worthiness if they are going to get paid for
20 the gas they sold but --

21 Q. Correct. I agree with you there.

22 A. Okay.

23 Q. But could you answer the question I asked
24 you?

25 A. I don't think it's the sole driving

1 factor in determining price.

2 Q. I'm not suggesting it is the sole.

3 A. It is a component.

4 Q. It is a component. Then you would agree
5 with me that --

6 A. But it is not the only component.

7 Q. Correct. I understand that it's not the
8 only component, and I would agree with you. But
9 seasonality or fluctuations in demand is at least a
10 factor, a rational factor, in determining a price
11 that a local producer would sell to a particular
12 purchaser; isn't that right? It's a factor, not
13 exclusively but it is a factor.

14 A. It is a factor.

15 Q. Okay. And would the raw quantity of
16 local production also be not the exclusive
17 determinator but a factor in pricing local
18 production, in other words, if a particular purchaser
19 was going to buy all of my local production and
20 another purchaser was only willing to buy a certain
21 amount of my local production, say, 20 percent, might
22 I not give the person who is going to buy all of
23 my -- 100 percent of my local production a better
24 price on my local production than somebody who is
25 only going to buy a smaller quantity?

1 A. What you're assuming with your scenario
2 is the fact that this producer has alternatives, that
3 this producer can sell to multiple markets so what is
4 going to determine the price for that producer is the
5 market that he is selling into. It's not going to be
6 a quantity issue for that individual.

7 Q. Agreed. My question does assume that the
8 local producer or the seller has options.

9 A. Okay.

10 Q. One option is option A, selling to
11 somebody who is willing to buy all of his local
12 production. The other option being option B which is
13 another purchaser who is only willing to buy 10
14 percent of his local production.

15 A. And if he can buy 10 percent and pay a
16 dime premium and the producer can sell the other
17 90 percent to another marketer, the producer is going
18 to maximize his revenue stream so he's going to do
19 both.

20 Q. What if the person who is -- who wants to
21 buy 100 percent, is willing to buy 100 percent, says
22 I'll buy all of your gas for a nickel over whatever
23 your cost is and the -- wouldn't you expect that
24 the -- but if you only offer me 90 percent, I'm not
25 willing to spend the nickel. Option B person who is

1 only willing to spend 10 percent, couldn't he expect
2 to pay more? Isn't that local producer going to want
3 to make up his margin, all things being equal?

4 A. I'm using your scenario, and you have a
5 producer that has the ability to sell into a market
6 that's got multiple buyers.

7 Q. Correct.

8 A. Okay? The understanding is that that
9 producer is going to be limited by the ceiling price
10 into that market. So regardless of how many people,
11 entities who want to buy the gas, that want to buy
12 50 percent, 10 percent, or 100 percent, that producer
13 is not going to get any more than that market would
14 bear so if an entity is willing to buy 10 percent and
15 pay a dime more or 100 percent and a dime less, the
16 producers end up.

17 Q. So in your opinion the quality of gas
18 purchased wouldn't be a factor in a local producer
19 when he is determining a price to sell?

20 A. His price is going to be set by the
21 market. It's not a matter of quantity. That's where
22 we're going to go our separate ways and agree to
23 disagree.

24 Q. Well, do you believe that there is an
25 efficient market for local production on an isolated

1 system?

2 A. You just said that there's an isolated
3 system so there's no market so there's no competition
4 for the producer's production so the price is going
5 to be limited to the utility. That's the only entity
6 that's going to buy its gas. But are you talking
7 about gas delivered to Columbia Gas Transmission?
8 That's a market. That's going to be multiple buyers
9 and that price is going to be set by Columbia Gas
10 Transmission's Appalachian Index and that producer
11 will not get any more than that delivered into that
12 pipeline.

13 Q. I guess I wasn't talking about a specific
14 pipeline or a specific buyer or a specific -- really
15 a specific transaction. I was asking hypothetically
16 if I find a local producer and I'm going to sell
17 local production to a potential buyer, is the amount
18 that the potential buyer is going to buy a valid
19 factor to consider in pricing local production?

20 A. Absent ignoring the market that he's
21 selling into? Quantity doesn't matter.

22 Q. Okay. So a local producer, a reasonable
23 local producer, in your mind would sell quantities of
24 gas, measures of gas for the same price regardless of
25 the quantity purchased.

1 A. If you are ignoring the facts that this
2 individual has to sell in the market, is this an
3 isolated market with one buyer or is this -- is this
4 a market with 100 buyers? The market is going to set
5 the price that that producer will receive regardless
6 of if it's 1,000 units or 5 units. So if you want to
7 define the market that we are talking about, I'll try
8 to answer your question. But you're talking about a
9 hypothetical that I have not seen.

10 Q. Well, that's true. I am asking you
11 whether or not you have an opinion not about a
12 particular market but about markets generally and
13 that would be if I'm a local producer in an
14 inefficient market, not interstate market, where
15 prices are set through an index and gas is easily
16 transported and transport costs and the price for
17 competitive gas is easily ascertainable through an
18 index.

19 If I'm a local producer and I can sell my
20 gas for whatever I want in whatever quantities I want
21 and I'm -- and I have a potential purchaser and he is
22 willing to buy 100 percent of my gas, might I not
23 give that purchaser a discount over what I would be
24 willing to sell 10 percent of my gas to a competitive
25 buyer?

1 A. As of right now, you are saying you have
2 a market, more than one.

3 Q. I have more than one but not necessarily
4 an infinite number.

5 A. And the question is --

6 EXAMINER FARKAS: Can I ask a question,
7 see if I can get to the bottom?

8 THE WITNESS: Bottom of this?

9 EXAMINER FARKAS: Bottom line? If you
10 are saying there are two buyers available for a -- to
11 purchase gas.

12 THE WITNESS: Correct.

13 EXAMINER FARKAS: That the seller of the
14 gas has options, resells to how much he sells to how
15 much he is going to sell it for versus a producer
16 that has one buyer the buyer basically is in the
17 position to set the price and quantity.

18 THE WITNESS: To an extent. What you see
19 with local production on isolated systems is if the
20 utility needs that local production to sustain system
21 reliability, they will tend to pay a little bit more.
22 If a producer has more than one buyer, the utility
23 will tend to pay a little bit more for -- to have
24 that gas available, but it also means that that local
25 producer will take any unpurchased supplies and move

1 them into another market.

2 EXAMINER FARKAS: At whatever price he
3 can get.

4 THE WITNESS: Correct.

5 Q. (By Mr. Yurick) Now, with interstate
6 production, gas is largely set by a competitive
7 market and is easily determinable through reference
8 to NYMEX or another reference point, right?

9 A. The price out there in the market varies
10 considerably based on the entities purchasing the
11 gas, where they are located, what their options are
12 that they have available to them.

13 Q. But generally speaking if I'm purchasing
14 on the interstate market, I'm probably not going to
15 pay a lot more than NYMEX plus whatever delivery
16 charges, shrink, whatever ancillary costs there are
17 involved. I am not going to pay a lot more than
18 NYMEX, and I'll probably buy gas -- assuming I'm
19 connected to an interstate pipeline, I can buy gas at
20 NYMEX price from pretty much anywhere, right? It's
21 available --

22 A. You can buy gas. It's that NYMEX plus
23 that is determined by where you are located, what
24 your options are, and what you are requesting.

25 Q. On page 5 also of your testimony, lines

1 12 through 22, question and answer to No. 13, this is
2 "What did Staff discover in the course of the 2012
3 audits of Orwell and Northeast as it related to the
4 2010 stipulation?" Do you see that question?

5 A. Yes.

6 Q. And you note on lines 17 and 18 that "GNS
7 did not solicit offers from other marketers." Do you
8 see that? End of line 17, beginning of line 18.

9 A. I do see that, yes.

10 Q. Okay. Wasn't the RFP for full
11 requirements gas purchases?

12 A. You are ignoring the fact that there was
13 an --

14 EXAMINER FARKAS: There was what?

15 A. There is an interim period of time when
16 the Commission signed the opinion and order and when
17 the RFP was issued.

18 Q. Oh, okay. So -- so once the RFP was
19 issued and a contract was entered into, you would
20 agree with me that the fact that GNS did not solicit
21 offers from any marketers was because the RFP was for
22 full requirements, right?

23 A. Correct.

24 Q. You also note in here this -- on lines 20
25 and 21 "JDOG continued to bill the agency fees to the

1 Companies through November, 2012, without a
2 contract"; is that right?

3 A. That is my understanding, yes.

4 Q. But isn't it true the companies didn't
5 include any of these agency fees in any of their GCR
6 filings?

7 A. It doesn't matter.

8 Q. I understand that that may be your
9 opinion, but I'm asking you is it true that the
10 company did not include those agency fees in the GCR
11 filings?

12 A. The GCR starting September, 2011, but
13 ignores the fact that the utility is going to pay a
14 fee with no contract out there to support the fee
15 that is paid.

16 Q. All -- my question was just -- I wasn't
17 trying to ignore anything. I am not trying to, you
18 know, stop you from testifying to whatever you want
19 to testify to. My point was simply that I just
20 wanted to clarify or -- or note that the companies
21 did not include an agency fee in their GCR filings
22 beginning September of '11; is that right?

23 A. That is correct.

24 Q. And do you know whether the contract
25 between JDOG Marketing and the companies required the

1 payment of agency fees? Do you know that?

2 A. I can't find a contract that binds the
3 utility to JDOG to pay that agency fee.

4 Q. On page 6 of your testimony, lines 6
5 through 22, you have some bullet points, your
6 recommendations, referring to your recommendations in
7 the 2012 audit.

8 A. Those should simply be copies out of the
9 report itself.

10 Q. The first bullet you say if NEO and
11 Orwell are going to be required to require -- I'm
12 sorry, "Staff recommends NEO and Orwell examine its
13 least cost options for meeting its sales customers'
14 requirements through its different supply sources on
15 a monthly basis." Is that right?

16 A. Yes.

17 Q. Okay. So if NEO and Orwell are going to
18 be required to perform their own purchasing function
19 and find their least cost options, there really would
20 be no reason for the LDCs to enter into an RFP
21 process; isn't that right?

22 A. No.

23 Q. Okay. Why is that wrong?

24 A. Because it says examine least cost
25 options. It makes sure the utilities participating

1 in the process of determining what's least cost
2 options, it can still have an asset manager that
3 oversees and says, "Hey, this purchase was out of the
4 market, out of line with what we can do, you need to
5 reprice it." This simply says the utility is in
6 control. It should remain in control of purchased
7 gas costs and the determination of what is least cost
8 for these utilities.

9 Q. Is there kind of any code provision,
10 rule, regulation, statute, or other reference
11 material that defines what a fair price for local
12 production is?

13 A. A fair price?

14 Q. Correct.

15 A. Do I reference fair price?

16 Q. Do you know of any code, regulation,
17 rule, statute, Commission order, or other reference
18 material that would define a quote-unquote fair price
19 for local production?

20 A. I've never heard the definition of fair
21 price so.

22 Q. Would you agree with me there are not
23 necessarily efficient markets for local production
24 gas?

25 A. Not necessarily efficient markets.

1 Q. In other words, there are not any
2 enumerable volume of purchasers and suppliers who --
3 who are engaged in a fair, open market where everyone
4 has access to the information, the relevant
5 information, that would determine pricing like
6 quantities, you know, demand amounts, those sorts of
7 considerations.

8 A. I would say that not all markets are the
9 same. I would say local producers in the state of
10 Ohio are very knowledgeable as to what's going on,
11 what the prices are that they have available to them.
12 They are aware of their options. They are aware of
13 where they can move their gas to. I would not
14 discount the Ohio local producers and their knowledge
15 as to what is going on in the market.

16 Q. Would you at least agree with me that
17 there is no index like a NYMEX that would tell me by
18 going to it what a fair price for local production
19 would be?

20 A. I disagree with that too.

21 Q. You would disagree with that.

22 A. Because what I would say is that in Ohio
23 about 80 Bcf a year is produced currently in 2012.
24 And of that 80 Bcf 60 Bcf of it flowed into the
25 Dominion East Ohio system. The Dominion East Ohio

1 system is set with a ceiling price established by
2 Dominion Appalachian or Dominion Transmission. The
3 other 20 Bcf largely goes into Columbia Gas
4 Transmission and is set by the TCO Appalachian Index.
5 There is a very small amount of local production that
6 is consumed by isolated systems in the state of Ohio.
7 So I would say that the prevailing pricing in the
8 market is going to be set by the Appalachian Index
9 and the Dominion Transmission Index.

10 Q. Okay. So in your opinion would any price
11 in excess of those two indexes be excessive?

12 A. Potentially.

13 Q. Okay. On page 7 it's actually -- you
14 begin the bullet on page 6 but the top of page 7 you
15 have an alternative premium price listed. And
16 there's a graph and it says "Local Producers" on the
17 left-hand side, "Average NYMEX for the Audit Period,
18 Staff Alternative Premium NYMEX Plus, JDOG Premium
19 NYMEX Plus," and then a "Difference," correct?

20 A. Yes.

21 Q. And under "Local Producers" you have
22 listed "Cobra, NEO non-Cobra," and "Orwell"; is that
23 right?

24 A. Yes.

25 Q. When you say "Local Producers Cobra,"

1 what are you referring to in that graph?

2 A. Local producers that are physically
3 connected to Cobra.

4 Q. When you say "Local Producers NEO
5 non-Cobra," what are you referring to?

6 A. Any producer who is not physically
7 connected to Cobra.

8 Q. When you say "Local Producers Orwell,"
9 what are you referring to?

10 A. Local producers that feed into Orwell.

11 Q. Now, the next column you say "Average
12 NYMEX for the Audit Period." Do you see that?

13 A. Yes, sir.

14 Q. And it says for Cobra \$3.834; is that
15 right?

16 A. Yes.

17 Q. NEO non-Cobra \$3.82; is that correct?

18 A. Yes.

19 Q. And Average NYMEX for the Audit Period
20 Orwell \$4.01, correct?

21 A. That is the weighted average of the
22 purchases times the NYMEX for the months where
23 Northeast and Orwell purchased gas from JDOG.

24 Q. So why are the NYMEX prices for the audit
25 period different between Cobra, NEO non-Cobra, and

1 Orwell?

2 A. You have different purchase quantities
3 for different months. You had several months for
4 some of these where no purchases were made. You had
5 some purchases that were only made in months where
6 NYMEX pricing was higher. So when you take the
7 purchases for each month times the NYMEX that existed
8 for that month, you get a weighted average. NYMEX
9 price for the average, it takes into consideration
10 the NYMEX for the month and each and every purchase
11 that took place during the audit period for contracts
12 that were nonGatherco, nonmixed.

13 Q. I guess I'm a little bit confused because
14 the NYMEX numbers are different. Isn't the NYMEX
15 price independent of when a quantity of gas or -- or
16 where it's delivered? I mean, isn't a NYMEX price an
17 index price that you just -- you could say if it
18 varied over time, you would take an average NYMEX
19 price, but shouldn't it be the same NYMEX price
20 regardless?

21 A. If I have NYMEX and it's at \$4 and I buy
22 10 units and I have NYMEX at \$3 and I buy 50 units,
23 if I put those two together, I'm going to have a
24 different weighted average than simply taking the \$3
25 plus the \$4 and dividing by 2.

1 Q. Okay. So this number takes into
2 consideration -- it's not just the index price.

3 A. No.

4 Q. It's actual -- it's an average price per
5 quantity of all qualities purchased during the audit
6 period; is that right?

7 A. That's a weighted average for the entire
8 audit period.

9 Q. In the next column you have "Staff
10 Alternative Premium NYMEX Plus." Do you see that?

11 A. Yes, sir.

12 Q. And for Cobra it's 50 cents?

13 A. Yes, sir.

14 Q. For NEO non-Cobra it's 70 cents, and for
15 Orwell it's 25 cents; is that right?

16 A. Yes, sir.

17 Q. Okay. Now, I notice that the numbers in
18 each of those cases are different; is that right?

19 A. Yes, sir.

20 Q. Okay. Why would the Cobra premium NYMEX
21 plus be more than the NEO non-Cobra NYMEX plus
22 premium?

23 A. The non-Cobra of 70 cents is higher than
24 the Cobra of 50 cents?

25 Q. Yes. Why is it higher?

1 A. Because what I have to do then is look at
2 the starting point as to what local producers will
3 pay. That determines the amount of my base and then
4 to that base I add the staff alternative premium. So
5 if I start at -- with Cobra \$3.83 which is just the
6 average, but if I start and go to the staff audit
7 report and I turn to page 15, and I look at the table
8 at the top of that page and I look to see what local
9 producers were paid under the contracts that were
10 provided in the 2010 case, it would show me that
11 Cobra producers are paid a weighted average of \$3.37
12 which is 45 cents less than their weighted average
13 NYMEX.

14 So when I'm looking at these
15 alternatives, I have to look at what the producers
16 were paying to determine what amount needs to be
17 added on to them.

18 Q. Okay. So looking at the staff report on
19 page 15, you've got sort of a similar looking chart
20 with some different numbers in it.

21 A. Yes.

22 Q. You've got systems Cobra, non-Cobra, and
23 Orwell, right? Average NYMEX price and that column
24 is the same as the column on your testimony page 7,
25 right?

1 A. Should be.

2 Q. And Weighted Average Price Paid to
3 Producers.

4 A. Yes.

5 Q. You've got \$3.376 per dekatherm for
6 Cobra, right?

7 A. Yes.

8 Q. \$4.40 per dekatherm for non-Cobra, right?
9 And then \$4.01 per Mcf for Orwell; is that right?

10 A. Yes. And dekatherm shown there for
11 non-Cobra should be a \$4.40 per Mcf.

12 Q. And the column "Weighted Average Price
13 Paid to Producers \$3.376 per dekatherm, \$4.40 per
14 Mcf, and \$4.11 per Mcf." That "Weighted Average"
15 column, where did those numbers come from?

16 A. That's if I go back to the pricing that
17 was provided to staff in 2010, if I take the price
18 that was paid to the producers times the quantity
19 that was billed to Northeast, to Orwell by JDOG and
20 multiply those out, I come up with that weighted
21 average for the entire audit period of \$3.37 for
22 Cobra, \$4.40 per Mcf for non-Cobra, and \$4.11 for
23 Orwell. That's looking at all the contracts that
24 were provided to staff that we could match up along
25 with all the volumes in the period.

1 Q. These are contracts between JDOG who is
2 John D. Oil and Gas Marketing, correct?

3 A. Yes.

4 Q. And the local producers, correct?

5 A. Yes.

6 Q. Now, as part of the staff of the
7 Commission, would you agree with me that generally
8 speaking if an affiliate is to transact with an
9 affiliated reg -- if a nonregulated affiliate was to
10 transact business with a regulated affiliate, that
11 transaction should be done at arm's length, correct?

12 A. That's what you would expect.

13 Q. Okay. Well, that's what you would hope
14 for. Ideally those transactions would be done at
15 arm's length, would they not?

16 A. Ideally they would be done at arm's
17 length.

18 Q. So and if these contracts were done at
19 arm's length, there's no reason to assume that the
20 LDCs would know what the Marketing company paid to
21 local producers; isn't that right?

22 A. If you want to ignore the fact that the
23 utilities were buying their own local production in
24 the first place before JDOG was inserted into the
25 process, yes, but I'm not ignoring that fact.

1 Q. I'm just asking you in a perfect world as
2 a regulator you would hope that it would be an arm's
3 length transaction between an affiliate regulated
4 company and a non -- and an affiliated nonregulated
5 company if -- let me rephrase that, if I might,
6 please.

7 MR. YURICK: Begging the court's
8 patience.

9 Q. In a perfect world, wouldn't you want an
10 affiliate transaction between a regulated affiliate
11 and a nonregulated affiliate to be arm's length?
12 Isn't that what you would want?

13 A. I think I've said yes to that.

14 Q. Okay. And that's really all I'm asking
15 you. I am not asking you to ignore anything. I'm
16 just saying in a perfect world that the affiliate
17 local distribution company would have no idea what an
18 affiliate nonregulated marketing entity who was
19 selling them gas quantities, they wouldn't want to
20 know that information, how much the marketer was
21 paying to local producers, right?

22 A. I don't think I agree with that
23 statement. I think the utilities, one, were in a
24 position to know the prices, and Mr. Whelan sat here
25 and testified from 2004 to 2008 he was in the market

1 buying local production. He is well versed on local
2 production. He stays in contact with the producers
3 through maintenance of the system. So to ignore that
4 fact and to ignore his understanding of what the
5 prices are, what's available to the utility is
6 unacceptable.

7 Q. Let me ask you this, these prices, the
8 \$3.376 per dekatherm, \$4.40 per Mcf, and \$4.11 per
9 Mcf, those dollar amounts were from contracts from --
10 that you reviewed in the 2010 audit?

11 A. Yes, sir.

12 Q. And those were prices paid to local
13 producers during what time period?

14 A. Anywhere from 2007, 2008 through the
15 audit period for Northeast which was August of 2009
16 so relatively short amount of time. And then for
17 Orwell it was June of 2010.

18 Q. But for this audit period would it be
19 fair to say that we don't really know what the
20 marketer paid to local producers?

21 A. We cannot verify. We asked for that
22 information. But it can be assumed based on the
23 movement of the market and the declining basis
24 differentials, that if the local producers in Ohio
25 were to negotiate new contracts, that the basis

1 differential would decrease and what staff has found
2 here would simply overstate the cost paid to local
3 producers and understate the revenue generated by
4 JDOG.

5 Q. And is JDOG Marketing a regulated entity?

6 A. Not that I am aware of.

7 Q. So the PUCO doesn't regulate the profits
8 of JDOG Marketing; isn't that correct?

9 A. It's a public utility, regulates Orwell
10 and Northeast.

11 Q. Correct. So if JDOG Marketing makes --
12 no matter what they make, no matter what their
13 profits are, whether they are too high or too low,
14 the Public Utility -- the Public Utilities Commission
15 doesn't really regulate that piece of the puzzle, do
16 they?

17 A. They don't regulate unregulated folks.

18 EXAMINER FARKAS: Can I interject a
19 question?

20 You had indicated staff asked for
21 information. What information did you ask for?

22 THE WITNESS: When we were negotiating
23 the settlement in the 2010 case, staff made it -- we
24 were adamant about local production. Our concerns
25 were with its prices and the availability of the

1 contracts going forward, and at the time we sat down
2 and negotiated the 2010 stipulation, we were I won't
3 say explicitly informed but informed that the
4 contracts for local production would be available for
5 review in the course of the next audit.

6 EXAMINER FARKAS: These are contracts
7 between what companies?

8 THE WITNESS: JDOG and the producers.

9 EXAMINER FARKAS: Okay. And did you ask
10 for that information during the course of this audit?

11 THE WITNESS: We asked for it repeatedly
12 during the course of this audit.

13 EXAMINER FARKAS: Did you get that
14 information?

15 THE WITNESS: No, we did not.

16 Q. (By Mr. Yurick) These were contracts
17 between JDOG and the producers that you were asking
18 for; is that right?

19 A. Yes, sir.

20 Q. And did you ask the utilities for those
21 contracts?

22 A. We requested those in the course of our
23 audit, yes, sir.

24 Q. Okay. Now, ordinarily if this were an
25 arm's length transaction where the utilities were

1 purchasing gas quantities and local production from
2 JDOG Marketing, would JDOG Marketing necessarily be
3 required to provide their contracts with local
4 producers to the local distribution companies?

5 A. Required to?

6 Q. Yes.

7 A. They did not in this case.

8 Q. Okay. So if the local distribution
9 companies didn't have the contracts between JDOG and
10 local producers, that wouldn't strike you as
11 particularly shocking, correct?

12 A. What's shocking is the fact they were
13 provided in the last case and they were not provided
14 in this case.

15 Q. Well, I don't know, just because a
16 company doesn't have to provide something doesn't
17 mean that they don't provide it, right?

18 A. Well, when you make that known to the
19 parties in the course of stipulating the agreement,
20 that information will be available for review, it
21 leads people to believe that when they negotiate in
22 good faith, that that will be an outcome they can
23 expect to receive.

24 Q. And is there a particular provision in
25 the stipulation that came out of the 2010 gas cost

1 recovery audits that states that John D. Ohio -- John
2 D. Oil and Gas Marketing will provide its contracts
3 with local producers to the Public Utilities
4 Commission?

5 A. That language is not in the stipulation
6 but what the company's counsel made available in the
7 course of the '10 audit was information held by JDOG
8 and that information was assumed -- assumed,
9 requested be available for the course of this audit.
10 So we agreed to the stipulation under the pretense
11 that this information would be available for review
12 in the course of the '12 audit.

13 Q. And if I recall correctly, I'm just going
14 to call it JDOG Marketing so I don't foul it up yet
15 again, but am I correct in saying that JDOG Marketing
16 was not a signatory of the stipulation that came out
17 of the 2010 gas cost recovery case?

18 A. No. But the attorney representing the
19 utilities along with JDOG were one and the same.

20 Q. Okay. With regard to your al --

21 EXAMINER FARKAS: Before you get to that
22 I would like to take a recess, about 10 minutes, so
23 why don't we take a recess.

24 (Recess taken.)

25 EXAMINER FARKAS: All right. Let's go

1 back on record. You may proceed now.

2 Q. (By Mr. Yurick) I think we were talking
3 about the staff report on page 15 and your testimony
4 at page 7. My question is in the staff report at
5 page 15, the weighted average price paid to
6 producers, we can't verify that those prices paid to
7 producers were actual prices paid to producers during
8 the audit period, right?

9 A. Staff has no way to verify those,
10 correct.

11 Q. Now, for your alternative pricing
12 structure on page 7, there's no code provision,
13 statute, rule, regulation, or order that adopts,
14 requires, or even supports necessarily this specific
15 alternative pricing structure; isn't that right?

16 A. That is correct.

17 EXAMINER FARKAS: Wait a minute. Just to
18 clarify what you're saying is the prices used in the
19 chart on page 15, you cannot verify that those are
20 the prices paid by the company for -- those are the
21 prices paid to producers during this audit period.

22 THE WITNESS: Correct. If we took the
23 pricing that we got out of the 2010 audit --

24 EXAMINER FARKAS: 2012 audit period.

25 THE WITNESS: Correct. Understand we got

1 those contracts in I want to say October or November
2 of 2010 so some of those prices that we received in
3 late '10 are applicable to Northeast and to Orwell
4 because of the overlap in the audit periods.

5 EXAMINER FARKAS: Okay. Just not all of
6 them.

7 THE WITNESS: Not all of them.

8 EXAMINER FARKAS: Thank you.

9 Q. (By Mr. Yurick) Are you familiar at all
10 with the pricing structure proposed by the Office of
11 Consumers' Counsel witness Mr. Slone?

12 A. Vaguely.

13 Q. Would you agree with me generally that
14 Mr. Slone proposes a different pricing structure than
15 your alternative pricing structure?

16 A. Yes, sir.

17 Q. So would you agree there is more than one
18 possible acceptable pricing structure that could be
19 used to calculate a reasonable or fair gas cost for
20 local production?

21 A. Yes, sir.

22 Q. On lines -- again, this would be line 6
23 through 14, you state "Staff found JDOG billed its
24 agency/broker fees to the Companies for the entire
25 audit." Do you see that?

1 A. Yes, sir.

2 Q. You say "The Companies ceased seeking
3 recovery of these fees through their GCRs as of
4 September, 2011," right?

5 A. Yes.

6 Q. Would you agree that if the companies
7 were contractually obligated to JDOG which is John D.
8 Oil and Gas Marketing, if they were contractually
9 obligated to pay the agency fee, then there would
10 have been a binding legal obligation for those
11 companies to pay the fee.

12 MR. MARGARD: Obviously based on his
13 nonexpert -- nonlegal expert opinion.

14 A. If there was a contract that supported
15 that fee that the companies entered into, they
16 contractually would pay that fee.

17 Q. I mean, the Commission can't unilaterally
18 declare by edict contracts between parties to be
19 nonbinding, right, to the best of your knowledge?

20 A. I am not even going to try to answer that
21 question.

22 EXAMINER FARKAS: Okay.

23 Q. You're not aware of the Public Utilities
24 Commission having the power to nullify contracts
25 between -- between parties, between two contracting

1 parties, are you?

2 MR. MARGARD: Obviously, your Honor, this
3 witness cannot testify on behalf of the Commission or
4 what the Commission can and cannot do.

5 MR. YURICK: I asked him about his
6 awareness, your Honor.

7 EXAMINER FARKAS: I'll let him if he is
8 aware.

9 THE WITNESS: I am not aware of what the
10 limitations that the Commission has.

11 EXAMINER FARKAS: Thank you.

12 Q. (By Mr. Yurick) And I think you noted
13 there was no request to include these agency fees in
14 the GCR as of September 21, correct?

15 A. That's --

16 Q. Is that right?

17 A. That's what that says.

18 Q. On page 7, lines 15 and 16, you say
19 "Staff recommends that only the Commission approved
20 tariff provisions be offered to the companies'
21 customers"; is that right?

22 A. Yes.

23 Q. Do you see that?

24 A. Okay.

25 Q. And by that bullet are you referring to

1 the situation referred to in the staff report where
2 staff determined that there were residential
3 transportation customers that the companies were
4 serving?

5 A. That is the offshoots of that
6 recommendation. I have my concerns now because this
7 audit has progressed with charges of the processing
8 fee, but I think that will be a matter to address in
9 an upcoming audit.

10 Q. Okay. Well, I guess if -- if Cobra was
11 charging a fee that's in their tariff incorrectly,
12 then you would have a problem with Cobra charging a
13 fee that wasn't -- that they weren't legitimately
14 able to collect, right?

15 A. Repeat your question, please.

16 Q. If Cobra were charging a treatment or a
17 processing fee that they weren't able to charge, you
18 would -- I think your concern would be whether
19 Cobra was charging an appropriate fee under your
20 tariff; is that what you are referring to when you
21 talk about through the process of this audit you
22 became concerned about Cobra?

23 A. Concerned about the processing fee
24 imposed by Cobra on all volumes sold or metered to
25 Northeast customers on Cobra Churchtown's system.

1 Q. Okay. But I'm just asking you at the
2 time you put your testimony together, lines 15 and
3 16, let's say one of your concerns would be the
4 residential transportation customers?

5 A. That was my primary concern, yes, sir.

6 Q. And to your knowledge and in your
7 investigation of the GCR filings of the companies and
8 their management practices, did you become familiar
9 with a community called Breckenridge?

10 A. I think that is a retirement center.

11 Q. Okay. And do you know as a result of
12 your audit whether or not these residential transport
13 customers were all part of this Breckenridge
14 Retirement Community?

15 A. I don't know specifically that the
16 customers were residential transporters, if they were
17 associated with Breckenridge.

18 Q. Do the companies have the ability under
19 their tariff to provide transportation service to
20 commercial customers?

21 A. I think that they do.

22 Q. Okay. And if this Breckenridge
23 Retirement Community was a single retirement center
24 that was in the nature of, say, residential
25 condominiums for retirees and this community was all

1 owned by a single owner and residents were -- while
2 billed separately were all part of a single
3 aggregated retirement community, would you -- would
4 you think that the company could rationally or
5 reasonably conclude that this was a commercial
6 operation like a retirement apartment complex or
7 other -- a nursing home or a hospital?

8 Do you think that the company could
9 reasonably conclude that if that were the case, if
10 all these customers were residents of Breckenridge
11 and this was a residential retirement community, a
12 single residential retirement community, do you -- do
13 you think that the company could reasonably conclude
14 that pursuant to their tariff this was actually
15 commercial transportation?

16 A. I don't view it that way, and I don't
17 think prior legal counsel viewed it in that fashion.
18 You have individual customers contracting for
19 transportation service with JDOG.

20 Q. Do you think that the management of the
21 company could maybe make an honest mistake in
22 concluding that since this was one community owned by
23 a single developer and the individuals living there
24 live in circumstances similar to a retirement home or
25 a nursing home, do you think that that could be the

1 result of an honest mistake in interpretation?

2 A. Can be the result of an honest mistake?

3 Q. Correct.

4 A. I view this as a utility offering a
5 service that it doesn't have tariffs to offer.

6 Q. Well, I understand that in your opinion
7 you don't believe that under the companies' tariffs
8 the companies have the ability to provide residential
9 transportation service, correct?

10 A. Yes.

11 Q. Would you agree with me that a
12 circumstance where you have a retirement community
13 owned by a single developer and the individuals live
14 in circumstances that are in some ways like a
15 retirement home or a condominium or apartment
16 complex, do you think that an individual could
17 reasonably conclude that this was, in fact,
18 commercial transportation rather than residential
19 transportation service?

20 A. No.

21 Q. Let me ask you this, are you familiar or
22 have you been familiar with other cases where local
23 distribution companies provide gas service to a
24 retirement home or a nursing home?

25 A. Is that a single meter or is that

1 multiple meters with individual -- each individual
2 customer is contracting for separate service as,
3 what's the term called, it is for -- there is a
4 definition within 85800 that defines customers that
5 are utilizing the service for residential to have
6 specific requirements as to what needs to be met to
7 allow them to be a transportation customer. I'm
8 unaware of any of that language or provisions in
9 Orwell or Northeast tariffs.

10 Q. Okay. Let me just ask you with regard to
11 a retirement home. We have individual units or
12 rooms. Retired individuals live in their own room or
13 apartment, but the community is owned by a single
14 developer, and at least theoretically the residents
15 can vary the temperature in their rooms through the
16 use of a thermostat. Do you think it would be
17 incorrect or unlawful for a gas distribution company
18 to characterize that as a commercial transportation
19 service?

20 A. Is the commercial apartment complex
21 facility the only customer of the utility, or is
22 there separate and individual accounts for each
23 transportation customer?

24 Q. Let me ask you why, why does that matter
25 if the developer --

1 A. Because in the one instance you are
2 describing that's commercial. The facility has got a
3 master meter and all the gas flows through it and I
4 don't have an individual contract with each of the
5 individual customers. You have one contract with a
6 commercial property. And that's how you are
7 describing this to me which doesn't appear to be the
8 case for Orwell for this period of time.

9 Q. Okay. So your objection to the service
10 being characterized as commercial would be that the
11 individual members of the Breckenridge community
12 which is owned by a single developer and the folks
13 living there actually have their own individual
14 meters? Is that the objection?

15 A. I take it as you've got 45 individual
16 transportation customers.

17 Q. So if you had the same circumstance where
18 the Breckenridge community developer had a single
19 meter and he was a single customer but in all other
20 cases the situations were identical, you would say
21 that the companies could provide gas service to this
22 community under their tariff provision that allows
23 them to provide commercial transportation?

24 A. With the limitation that you are serving
25 human need customers and there are going to be

1 specific requirements associated with that
2 transportation service.

3 Q. Okay.

4 EXAMINER FARKAS: So you're
5 differentiating residential -- this -- if what you
6 are saying is the gas was delivered, transported to
7 the retirement community and if one meter -- one
8 customer, one bill sent, that's different than
9 multiple bills, multiple companies, multiple meters.
10 They are separate customers.

11 THE WITNESS: Yes. You have got a bunch
12 of separate customers that are residential in nature
13 that are contracting with the utility and with the
14 marketer JDOG for service.

15 EXAMINER FARKAS: Versus just one
16 customer, the owner of the facility, being billed by
17 the company for gas. Okay. Thank you.

18 Q. And to the best of your knowledge in your
19 investigation, putting it in the staff report, did
20 the companies cease service to the Breckenridge
21 Retirement Community?

22 A. I think that ceased effective April of
23 2011.

24 Q. Okay. On the chart you had this --
25 the -- these premium levels, 50 cents, 75 cents, and

1 25 cents. Did you have a particular guide index or
2 reference material in calculating the specific
3 premium level?

4 EXAMINER FARKAS: And the chart you are
5 referring to is the staff report or his testimony?

6 Q. Page 7 of your testimony.

7 A. There was no specific guidelines. What
8 staff did was look at the premiums that were being
9 charged by JDOG during the audit period and the prior
10 audit period that ranged from 6 cents to 10 cents to
11 15 cents to premiums that staff was finding that were
12 charged for interstate transportation service --
13 interstate transportation of interstate gas so we
14 looked at the range and what was required to provide
15 the different services. What we looked at was
16 services that on systems where the utilities were
17 providing assistance would have the lowest margins
18 because the utilities were participating in the
19 process.

20 Volumes that were flown on Cobra, that
21 was more of a system that was separate and distinct
22 where the utility Northeast was not participating
23 actively in the process of verifying local
24 production.

25 Q. Okay. And the chart on page 7, that

1 alternative pricing structure that you proposed here
2 and in the staff report, that pricing structure is
3 repricing for local production only, correct?

4 A. Yes.

5 Q. On page 9 of your testimony, lines 4
6 through 10, it says "Staff recommends the Commission
7 find the RFP process did not lead to competitive bids
8 as required by the Stipulation and as ordered by the
9 Commission in Case No. 10-209-GA-GCR," correct?

10 A. That is our recommendation, yes, sir.

11 Q. And does that recommendation include only
12 local production, or was that both local production
13 and interstate gas?

14 A. I think that was the entirety of the RFP
15 process.

16 Q. But in the -- in your audit -- staff
17 audit report and in your testimony, you were not able
18 to conclude that the companies paid more than a fair
19 price or a competitive price for interstate gas;
20 isn't that right?

21 A. But the RFP the way it was structured was
22 combined so you couldn't separate one out from the
23 other.

24 Q. Okay. So you have a criticism of the RFP
25 as a whole, but you are not suggesting -- and I'm

1 just trying to clarify for the record. You are not
2 suggesting here that the companies paid an
3 inappropriate amount for their interstate gas
4 supplies; is that right?

5 A. That is correct.

6 Q. Does this recommendation that you make on
7 page 9, does this contemplate a minimum number of
8 responders to be considered a competitive response or
9 competitive result?

10 A. There is no defined minimum.

11 Q. Now, in your estimation if an RFP process
12 is fair and competitive, is there a difference
13 between a competitive process and a competitive
14 result?

15 A. I think that was the question asked of
16 Mr. Donlon yesterday.

17 Q. Yes, it was.

18 A. Mr. Donlon's answer was? I think he
19 distinguished the process and the result are
20 separately distinct.

21 Q. So may I take it by your answer you are
22 in agreement with the difference between a
23 competitive process and a competitive result?

24 A. There is a difference.

25 Q. Okay. Can I go to any code, statute,

1 order, rule, regulation, or any other reference
2 material to find out what the difference in the
3 definition between a competitive result and a
4 competitive process is?

5 A. Not that I am aware of.

6 Q. And in your mind if a fair RFP process
7 results in a single response, can that ever be
8 considered a competitive result?

9 A. I think if the process is developed
10 properly, a single response would be acceptable.
11 There are other instances where 20 responses would
12 not be acceptable.

13 Q. Agreed. Agreed.

14 MR. MARGARD: And, again, your Honor,
15 once again since we are back in the RFP process that
16 Mr. Donlon was staff's witness on the RFP process.
17 What Mr. Sarver has done here is to restate and
18 reiterate the recommendations as stated in the staff
19 report and he certainly has experience and can
20 testify to them. Questions with respect to the RFP
21 process were more properly directed to Mr. Donlon.

22 MR. YURICK: And with all due respect to
23 learned counsel, page 9 of Mr. Sarver's testimony
24 says the "Staff recommends the Commission find the
25 RFP process did not lead to competitive bids as

1 required by the Stipulation and as ordered by the
2 Commission" and that's all I am asking him about.

3 EXAMINER FARKAS: All right. I didn't
4 say not to ask him questions.

5 Q. Does this recommendation that you set
6 forth on page 9, lines 4 through 6, does it include a
7 minimum response time for potential bidders to become
8 prequalified and/or respond initially to the RFP?

9 A. I don't think it defines within that
10 recommendation, no. It's all part of a process that
11 in the end will lead to a competitive result.

12 Q. There's no specific minimum response time
13 for, say, submitting a prequalification agreement in
14 your recommendation to the Commission in connection
15 with an RFP.

16 A. I think it's based on what the company
17 was trying to achieve with the structuring of its
18 request for proposal.

19 Q. And as you -- as you sit here today, is
20 there a template or model, exemplar, example of an
21 RFP for gas purchasing services that in your opinion
22 based on your experience and extensive training in
23 utility law that you believe the company should be
24 required to follow?

25 A. Extensive training in utility law, I feel

1 that's a stretch.

2 Q. Based on your ex -- on your encyclopedic
3 knowledge of utility regulation and your extensive
4 experience, do you believe that there is a template,
5 model, example, or other source material of an RFP
6 for gas purchasing services that you believe the
7 companies should follow?

8 A. I do not have that template nor am I
9 aware that one exists.

10 Q. For purposes of this recommendation would
11 you recommend that the responses be received in an
12 anonymous fashion?

13 A. No. I don't think that is of benefit nor
14 does it change the outcome.

15 Q. Do you believe or does your
16 recommendation with regard to the RFP -- would you
17 prohibit affiliated companies from responding to the
18 RFP?

19 A. No.

20 Q. On the provisions of Ohio law bottom of
21 page 9, you state that "Many of the same problems
22 exist" and you are referring to the 2012 audit period
23 and the 2010 audit period many of the same problems
24 existed. Part of this is due to the fact that a
25 substantial amount of time passed from the end of the

1 2010 audit period and the time the Commission signed
2 its opinion and order. Do you see that?

3 A. Yes, sir.

4 Q. And you would agree with me that the
5 companies can't control or dictate the timing of the
6 issuance of the Commission's order?

7 A. That is correct.

8 Q. One thing that was more in the way of a
9 housekeeping measure on page 10, lines 6 through 9, I
10 just want to make sure I'm dealing with the correct
11 period here, you in answer to numbered question 17
12 "What were the 2012 purchased gas cost audit periods
13 for Orwell and NEO," and your answer is "Staff
14 audited the purchased gas costs for NEO from
15 September, 2009, through May, 2012" which is a
16 33-month period, "and for Orwell from July, 2010, to
17 June, 2012," which is a 24-month period. Do you see
18 that?

19 A. Yes.

20 Q. Now, on the cover of the audit report
21 that was issued in the case, the cover sheet
22 indicates that this is a Financial Audit of the Gas
23 Cost Recovery Mechanisms for the Effective GCR
24 Periods March 1, 2010, through February 29, 2012. Do
25 you see that?

1 A. On the cover page of the report, yes, I
2 do.

3 Q. The cover page of the staff report.

4 A. Yes.

5 Q. And then for Orwell it says Financial
6 Audit of the Gas Cost Recovery Mechanisms for the
7 Effective GCR Periods July 1, 2010, through June 30,
8 2012, which matches up with your answer on page 10,
9 correct?

10 A. That is correct.

11 Q. So is the correct date that should be on
12 the cover of the staff audit report September, 2009,
13 through May, 2012, rather than March 1, 2010, through
14 February 29, 2012?

15 A. What confuses people with these dates is
16 the fact that they represent the effective period
17 that's listed on the cover page of each of the GCR
18 filings. What you've listed here is the period of
19 time contained within the actual adjustment which is
20 called the reporting period which differentiates,
21 lags behind by six months.

22 So in the course of these 2012 audits,
23 what we did is take the standardized language for the
24 audit periods, incorporated those into the entries
25 that initiated the audits, and then because we were

1 trying to sync the Orwell along with the Northeast
2 audit periods because of the impending RFP process,
3 we moved or extended the purchased gas audit period
4 as far forward as we could, but it does not exceed
5 the effective period that's listed here.

6 Q. Okay. I appreciate the clarification.

7 A. Okay.

8 Q. So the reason that the dates for
9 Northeast Ohio Natural Gas Corporation, March 1,
10 2010, through February 29, 2012, is that September,
11 2009, is six months prior; is that right?

12 A. Yes.

13 Q. Okay.

14 A. And what we actually did was added one
15 quarter to the end of the audit period so if we
16 changed anything, we would change February to May 31.

17 Q. Okay. Turning to page 11 of your
18 testimony, in answer to numbered question 21 -- the
19 question was "What was Staff's primary concern as it
20 initiated its 2012 audit?" Do you see that question?

21 A. Yes.

22 Q. And then on lines 10 and 11 you state
23 "Staff's primary concern was JDOG's procurement of
24 gas for these Companies." Do you see that?

25 A. Yes.

1 Q. Was staff's primary concern over JDOG
2 procuring gas for the companies, was this a carryover
3 concern from the last audit?

4 A. Yes.

5 Q. And do you believe that you were likely
6 to be suspicious or at least take a very close look
7 at any RFP process or any other kind of process that
8 resulted in JDOG Marketing or some other affiliated
9 company purchasing gas for these distribution
10 companies?

11 A. I would say it's an overall lack of
12 confidence in these companies and related parties.

13 Q. Well, Mr. Sarver, let me just ask it this
14 way and without any disrespect or without any --
15 without any inference at all of any impropriety or
16 improper motive, if these companies engaged in the
17 most perfect RFP process possible and the result was
18 that an affiliate ended up buying gas for these LDCs
19 for the next audit period, wasn't staff due to the
20 previous audit likely to be extremely skeptical of
21 any process, RFP or otherwise, whose end result was
22 JDOG Marketing or another affiliate continues to buy
23 gas for the LDCs?

24 A. I think the entire process regardless of
25 the RFP, if you want to focus on that, but that's

1 just a subset of the entirety, associated with these
2 companies is the fact that we just lack confidence in
3 what it is that they are doing and what it is that
4 they are reporting to the Commission. It's not
5 specific to the RFP.

6 Q. I understand that. And I've read the
7 audit reports, and I know I could read between the
8 lines what they say. My -- really my question is no
9 matter what process these LDCs follow, no matter how
10 perfect the RFP process was, isn't it true that if
11 that process resulted in one response and that
12 response was from an affiliated company, that
13 affiliated company was going to continue to purchase
14 gas for these LDCs and supply to the regulated
15 customers, isn't it true at that time staff would
16 likely have been skeptical of that process?

17 And I'm just talking about the RFP
18 process at this point. Isn't it likely that the
19 staff was going to be extremely skeptical or take an
20 extremely close look at that process if that was the
21 result?

22 A. I would say the staff with any affiliated
23 or related party transaction with any utility would
24 closely scrutinize the transaction.

25 Q. So it's true -- and I appreciate your

1 answer. It's true that any time an unregulated
2 affiliate is involved in a transaction with a
3 regulated affiliate, there's going to be an increased
4 level of scrutiny by staff of those transactions.
5 That's true, is it not?

6 A. Can you repeat that?

7 Q. Yes.

8 A. I think I understand it.

9 Q. I think I can rephrase it and make it a
10 little clearer. Any time a regulated company is
11 involved in a transaction with an affiliate, isn't it
12 true -- and I am not suggesting that it's
13 inappropriate, but isn't it true that staff is likely
14 to look at that transaction a little more closely
15 than it would look at a transaction with a
16 nonaffiliated company? Isn't there at least an
17 increased level of scrutiny of a transaction with an
18 affiliate?

19 A. I would say that that's for all
20 industries that come before the Commission.

21 Q. Yes. And the reason that the staff takes
22 a closer look at affiliate transactions is there is
23 always a potential of inappropriate treatment or
24 inappropriate levels of merged corporate interest
25 involved in affiliated transactions; isn't that

1 right?

2 A. That there is a level of interaction
3 that's -- that could exist between affiliated parties
4 that you would not expect to exist between
5 nonaffiliated companies.

6 Q. Understood. And yet there are
7 circumstances with regulated companies of those
8 regulated companies engaging in transactions with
9 nonregulated affiliate companies that the PUCO allows
10 or permits; isn't that right?

11 A. There are instances where they allow and
12 there is instances where the Commission has what I
13 will say disallowed those transactions.

14 Q. And isn't it true that that increased
15 level of scrutiny of an affiliate transaction would
16 be even further increased if the staff had found in
17 the immediately preceding audit period that an
18 affiliate transaction at least appeared to be
19 inappropriate?

20 A. I think the level of scrutiny would be
21 across the board, not just the RFP process but for
22 all transactions, all filings, every document that's
23 passed between companies and staff would have a level
24 of -- increased level of scrutiny in staff's attempt
25 to determine the accuracy and validity of the

1 documentation.

2 Q. But wouldn't I be correct in saying that
3 if a staff audit report found that an affiliate
4 transaction during a particular audit period may have
5 been inappropriate and an RFP was issued in a
6 subsequent audit period that resulted in a
7 transaction between those same two affiliated
8 entities, that it would be a very tall order, it
9 would be very difficult to convince the staff of the
10 Commission that that RFP process was fair.

11 A. I don't think that that instance would
12 require any more scrutiny than an instance where in
13 the prior audit the utility had no infractions and no
14 questions as to their transactions and contract. I
15 think the level of scrutiny is going to be there with
16 or without prior audit recommendations. You're still
17 focused on the affiliate transactions.

18 Q. But, I mean, really wouldn't it almost be
19 an insurmountable burden for a company to satisfy the
20 Commission staff that an RFP process that resulted in
21 the same transactions or similar transactions that
22 the Public Utilities Commission staff found to be at
23 least apparently inappropriate in a previous audit
24 period, wouldn't it be an almost insurmountable
25 burden to show that that RFP process and/or the RFP

1 result was quote-unquote fair and/or quote-unquote
2 competitive?

3 A. I wouldn't say it's insurmountable. I
4 think it's based on the utility and how they approach
5 the process, how they involve the related parties,
6 how they work to increase the level of confidence of
7 all the parties at the table that have a complete
8 understanding of the process that is taking place.

9 Q. But wouldn't you agree with me, sir, it
10 would be extremely difficult for a company to -- to
11 convince the staff of the PUCO that an RFP process
12 that resulted in an affiliated marketer selling to an
13 affiliated regulated entity was fair when in a
14 previous audit period the staff found that there was
15 at least an appearance of impropriety in that exact
16 same transaction? Wouldn't that be a very difficult
17 burden for a company to satisfy?

18 A. It's a level the company could obtain,
19 could achieve. Dayton Power & Light in 2000 and --
20 2002 had an issue where it took its asset management
21 agreement and placed it with its affiliate and that
22 was disallowed and the company turned right around
23 and worked extremely well with staff and other
24 parties to put back in place a process that was
25 acceptable to all so I don't agree with your

1 assessment.

2 Q. You don't think that it was difficult for
3 DP&L to get the confidence of staff back in that
4 transaction?

5 A. No. I think they opened the process and
6 said this is what -- the conditions and parameters we
7 need to work under. They welcomed the process and
8 made it very easy.

9 Q. Now, on lines 16 through 22, there's a
10 question. You say "In the 2010 audits, what led
11 Orwell to procure its supplies from JDOG?" Do you
12 see that?

13 A. Yes, sir.

14 Q. And you say "Orwell" -- and this is on
15 lines 20 through roughly 22 and kind of bleeds over
16 onto the next page, you say "Orwell's name was being
17 used by JDOG in the interstate market to purchase
18 quantities of gas in excess of Orwell's sales
19 customers' requirements." Do you see that?

20 A. Yes, sir.

21 Q. Now, how was Orwell's name being used and
22 how did it help JDOG with interstate purchases?

23 A. How did they use -- how did they use the
24 utility's name?

25 Q. Yes.

1 A. Well, Steve Rego picked up the phone and
2 said I'm calling and replacing on behalf of. Each
3 company has its own contract number with the vendors.
4 I'm placing an order for this quantity of gas.
5 Quantity -- some quantities were purchased on behalf
6 of the utilities. Some quantities were purchased on
7 behalf of JDOG and Great Plains.

8 Q. So Mr. Rego was employed by who at the
9 time that he did this?

10 A. This is JDOG.

11 Q. So Mr. Rego who was employed by JDOG, I'm
12 assuming we are talking about JDOG Marketing,
13 correct?

14 A. Correct.

15 Q. He picked up the phone and said I'm
16 buying X quantities of gas for Orwell.

17 A. I'm guessing Mr. Rego has a contract
18 number with the vendors that he says put it under
19 this contract this quantity. I don't know
20 specifically how that was done, but when we reviewed
21 the invoices provided in the course of the audit, the
22 utilities' names were on there as who was being
23 billed, and at some point in time during the audit
24 period those companies were in a position where they
25 could buy no more gas from these vendors because they

1 had reached their credit limits. These vendors were
2 not willing to sell these companies any more gas
3 until their bills were paid down.

4 Q. And was JDOG Marketing able to enter into
5 contracts with interstate sellers on behalf of
6 Orwell? Did they have that power?

7 A. Enter into. They simply used the
8 company's identity in the purchase of natural gas.
9 They picked up the phone, called BP, and said bill
10 this quantity to this contract. Didn't specify that
11 they were JDOG acting on behalf of the utilities.
12 That was not defined in the market.

13 Q. And then was it -- so Orwell's customers
14 didn't end up using that gas?

15 A. No.

16 Q. And Orwell didn't charge JDOG Marketing
17 back for those gas quantities?

18 A. I don't know. In the course of our audit
19 we took the cost out there that was available in the
20 market, and we repriced all of the gas purchases to
21 Orwell for the audit period.

22 Q. Would you agree with me that Orwell
23 Natural Gas never sought to recover in a GCR filing
24 the cost of interstate gas that was not sold to
25 Orwell's customers?

1 A. I disagree with that.

2 Q. When did Orwell seek to recover in a GCR
3 filing the cost of interstate gas not sold to
4 Orwell's customers?

5 A. In the 2010 audit, there was numerous
6 occasions where that happened.

7 Q. To your knowledge in the 2012 audit that
8 we are actually talking about here, would you agree
9 that Orwell never sought to recover in any of the GCR
10 filings for this audit period the cost of any
11 interstate gas that was not sold to Orwell's
12 customers?

13 A. Staff did not find those instances,
14 correct.

15 Q. On page 12, you say at the top "Staff
16 found this treatment by JDOG of Orwell's credit
17 occurred at the beginning of the 2012 audit." Do you
18 see that?

19 A. Yes, sir.

20 Q. In your mind is use of Orwell's name the
21 same as use of Orwell's credit?

22 A. When you go to a vendor and you tell them
23 to bill to a specific contract number, there is no
24 difference. You are using the utility's credit and
25 identification for the purpose of making a purchase.

1 Q. And do you know if anybody at Orwell
2 Natural Gas authorized anybody from JDOG Marketing to
3 use Orwell's credit?

4 A. Do I know?

5 Q. Yes.

6 A. My understanding from the audit process
7 of 2010 was the company, being Tom Smith, and for
8 Northeast Marty Whelan, they had no knowledge this
9 was taking place.

10 Q. On lines 13 through 15 you say "With this
11 organizational structure, JDOG was free to utilize
12 NEO's name and credit in the market to purchase
13 supplies for its transportation customers and Great
14 Plains Exploration, another affiliate." Do you see
15 that?

16 A. Yes.

17 Q. Are you talking about during the 2010
18 audit period or the current audit period?

19 A. It was the 2010 audit period and through
20 October or November of 2010 so it was the first half,
21 first -- the beginning of the 2012 audit.

22 Q. So for the beginning of the 2012 audit
23 period, staff found that JDOG Marketing utilized
24 NEO's name and credit in the market to purchase
25 supplies for transportation customers in Great Plains

1 Exploration; is that correct?

2 A. Yes.

3 Q. Okay. And are you referring to a
4 specific transaction?

5 A. I'm referring to purchases from BP from
6 the period September, 2009, to November, 2010.

7 Q. And what was the amount of that
8 transaction, if you know?

9 A. I don't know. It varied by month.

10 Q. And to your knowledge did JDOG during
11 this period seek to recover the cost of any gas
12 supplies that was not utilized by Northeast Ohio
13 Gas's customers?

14 A. Did JDOG seek to recover?

15 Q. I'm sorry. Did Northeast Ohio Gas seek
16 to recover in the current GCR period amounts for
17 obtaining any gas that was not used by Northeast Ohio
18 Gas's regulated customers?

19 A. Not in this audit period.

20 Q. If the two companies in this audit, NEO
21 and Orwell, purchased gas -- local production gas by
22 themselves, would that satisfy the staff as far as
23 the relationship -- the interrelationship with the
24 affiliate JDOG Marketing?

25 A. I think that's one piece.

1 Q. So would I be correct -- I'm just trying
2 to get it clear for the record. After three days, my
3 brain is a little fuzzy so I do apologize,
4 Mr. Sarver, and I thank you for your patience, but if
5 the two companies in this audit, NEO and Orwell, were
6 ordered by the Commission to purchase local
7 production by themselves, that would at least assist
8 in effectively remedying the conflict of interest or
9 the apparent conflict of interest that the staff sees
10 in the companies' local production purchases.

11 A. It would put the companies in a position
12 to have more control over their gas procurement
13 function along with establishing pricing, that
14 interaction relationship with producers, resolving
15 the bills, establishing a credit, yes.

16 Q. Now, would you agree with me that there
17 is no guarantee that local producers will sell local
18 production to the two companies in this audit, the
19 regulated companies, LDCs, Northeast Ohio Gas and
20 Orwell, for the same price, the unknown price, that
21 they sell to JDOG Marketing for?

22 A. There are no guarantees.

23 Q. On the bottom of page 12 and over into
24 page 13, I'm asking you about questioning -- numbered
25 question 24 which begins on the bottom of page 12 and

1 continues through the middle of page 13. You
2 recommend "that a Commission-ordered investigation be
3 opened into the Companies and all affiliated/related
4 Ohio regulated parties, including but not limited to
5 Northeast Ohio Natural Gas Corporation, Orwell
6 Natural Gas Company, Brainard Natural Gas Company,
7 Cobra Pipeline, and Orwell Trumbull Pipeline." Do
8 you see that?

9 A. Yes, sir.

10 Q. And are you aware of any precedent,
11 order, statutory authority, or other codified
12 reference material that gives the Commission the
13 authority to order an audit of companies in a GCR
14 proceeding who are not party to that proceeding?

15 MR. MARGARD: Once again, to the extent
16 he is aware without rendering any opinion as to the
17 Commission's authority.

18 EXAMINER FARKAS: With that
19 qualification.

20 A. I am not aware.

21 Q. How many GCR -- litigated GCR cases have
22 you been involved in?

23 A. Less than half dozen.

24 Q. And I think your testimony states -- I'm
25 not trying to give away your age here, Mr. Sarver. I

1 believe that your testimony states that you have been
2 at the Public Utilities Commission since 1988; is
3 that correct?

4 A. Yes.

5 Q. And I believe you started as a gas
6 analyst 2; is that right?

7 A. If that's what my testimony says.

8 Q. It's on -- I can refer you if you need to
9 refresh your recollection. It's on page 1 of your
10 testimony.

11 A. It's been a long time ago.

12 Q. Okay. And you were -- you assisted and
13 led gas cost recovery financial audits with local
14 distribution companies as a gas analyst; is that
15 right?

16 A. Starting back in 1990.

17 Q. And then you were promoted to gas cost
18 recovery supervisor in 1995, and as the GCR
19 supervisor, you had overall responsibility for all
20 Commission-initiated GCR audits and financial and
21 management performance audits; is that right?

22 A. Since '95.

23 Q. And then you have been in your current
24 position since 1998, and as it relates to GCR audits,
25 that position includes the same responsibilities you

1 had as a GCR supervisor but hopefully included a
2 raise, correct?

3 And in all that time you have been
4 involved in less than half a dozen litigated GCR
5 cases, right?

6 A. That's correct.

7 Q. But in all that time you have not been
8 involved in any case where the Commission ordered or
9 you were referred to any precedent, statute, or other
10 codified or Commission-adopted material or reference
11 that where the Commission-ordered audits of companies
12 that weren't even involved in the GCR proceeding to
13 undergo management and forensic accounting on this;
14 isn't that right?

15 A. I think the unique nature of this audit
16 and what we've experienced over the years has led
17 staff to believe that this is the best way to move
18 forward and address the issues that seem to be
19 occurring.

20 Q. I have no quarrel with characterizing
21 this experience as a unique one, Mr. Sarver, but my
22 question was in actual -- you know, in actual
23 experience, in your years of experience and your
24 connections to GCR audits, are you aware of any time
25 where the Commission ordered or where your attention

1 was drawn to any statute, rule, regulation, or other
2 codified or adopted material where the Commission
3 pursuant to any statute, rule, regulation, or ordered
4 forensic accounting and management audits in a GCR
5 proceeding of companies not involved in that GCR
6 proceeding?

7 A. This would be a first.

8 Q. This would be a first. How would you
9 define -- you refer here to a forensic accounting
10 audit, I believe.

11 A. Yes, sir.

12 Q. And how do you define a forensic
13 accounting audit?

14 A. Forensic accounting audit would go in and
15 look at detail as to the transactions, and Heather
16 was up here speaking as to how to take your
17 receivables, your payables, how to trace those, how
18 to keep those separate, how to make sure that they
19 are, you know -- flow evenly through the system. I
20 don't know if she called it proper or some definition
21 of good business practice was what we would have the
22 auditors come in and look for to see if they can look
23 or trace seamlessly through the process the utility
24 gets an invoice here, here is how it's processed,
25 here it goes back out the door in the form of a

1 payment, basically go through the process from start
2 to finish.

3 Q. Now, are you aware of or do you know that
4 the companies are subjected to a yearly audit by a
5 third-party auditor as Ms. Lipnis or Heather
6 interchangeably indicated?

7 A. I think that was mentioned in testimony,
8 yes, sir.

9 Q. And how would the forensic accounting
10 audit that -- that you are -- or that staff is
11 recommending the Commission order, how would it
12 differ from the third-party annual accounting audit
13 that takes place with the companies yearly?

14 A. This would be a specialized firm that
15 focuses in that area of auditing along with
16 Commission selection so the Commission would be the
17 client at that point in time.

18 Q. And are you aware of any such specialized
19 firms that conduct forensic accounting audits?

20 A. I'm unaware of those firms.

21 Q. Have you ever been involved in a
22 Commission-ordered forensic accounting audit as you
23 define it?

24 A. No, sir.

25 Q. And how would a forensic audit address an

1 issue that would properly be considered in the GCR
2 case?

3 A. I think this would be open under a COI so
4 this would be open to the Commission and the finding
5 of the auditors as it relates to the forensic along
6 with the management performance audits, those
7 findings would be presented to the Commission, and
8 the Commission at that point in time would decide
9 this would not be GCR. This would be that it was
10 initiated or sprung from this audit or GCR audit but
11 it would have a life of its own outside the GCR.

12 Q. So once the Commission -- once the
13 Commission opens an investigative docket that case
14 would go wherever it was and would not necessarily
15 impact this GCR case; is that right?

16 A. I don't know how the two would be
17 intertwined at that point.

18 Q. Okay. How do you define a management
19 performance audit?

20 A. Management performance audit typically
21 encompasses the organizational structure, the
22 policies and procedures that have been put into place
23 by management and how they relate to the gas
24 procurement function as well as with other
25 functionalities.

1 Q. And who would conduct a management
2 performance audit?

3 A. We've had numerous management performance
4 audits conducted by the Public Utilities Commission
5 since probably 1998.

6 Q. So would that performance -- management
7 performance audit, would that be performed by the
8 Commission staff itself?

9 A. It would be an external auditor.

10 Q. And are there particular external
11 auditing firms that the Commission's used to perform
12 a management performance audit?

13 A. Can you repeat the question, please? I
14 think I understand it, but I would like to.

15 Q. Are there particular audit firms that the
16 Commission's used in the past to perform management
17 performance audits?

18 A. The Commission as it relates to gas
19 procurement, yes. But in this instance it may be a
20 new firm or completely different than what we've used
21 in the past.

22 Q. Can you name any of the firms that you've
23 used to conduct management performance audits in the
24 past?

25 A. Three off the top of my head would be

1 Exeter & Associates we use frequently for the gas
2 procurement management performance audits.

3 Q. I'm sorry, if I might try your patience,
4 sir, could you spell that for me, please?

5 A. Exeter, E-X-E-T-E-R.

6 Q. Thank you.

7 A. Another one we've used is McFadden &
8 Associates. We've used Stone & Webster. We've used
9 Liberty. Those are some that come to mind that we've
10 used I'll say in the last ten years.

11 Q. And you would recommend this
12 comprehensive management performance audit for all of
13 the companies you've listed; is that right?

14 A. Yes.

15 Q. And do you know based on your experience
16 with doing management performance audits at the
17 Commission what the potential cost of a management
18 performance audit would generally be?

19 A. It depends on the scope. It depends on
20 the duration of -- that these auditors are required
21 to look at. They range anywhere in the neighborhood
22 of \$50,000 up.

23 Q. And you would recommend a comprehensive
24 management performance audit of NEO, Orwell,
25 Brainard, and Cobra Pipeline, and Orwell Trumbull

1 Pipeline; is that right?

2 A. I think those are the five listed.

3 Q. So at \$50,000 and up for a comprehensive
4 management performance audit for five companies,
5 that's a minimum \$250,000; isn't that correct?

6 A. That's not per company.

7 Q. Okay. I'm sorry. I misunderstood.
8 Based on your experience with management performance
9 audits, comprehensive management audits, for the five
10 companies that you've listed here, what would you
11 expect a ballpark cost for these five management
12 performance audits to be?

13 A. I don't even know where I would start.
14 It would have to be defined by the request for
15 proposal and what the Commission required that
16 request for proposal to contain.

17 Q. And what about the forensic accounting
18 audit, do you have any idea what a forensic
19 accounting audit of five companies might cost?

20 A. No, sir.

21 Q. Okay. So would you expect that the cost
22 for forensic accounting audits and the cost for
23 comprehensive management performance audits of these
24 five companies might be substantial?

25 A. It might be substantial.

1 Q. Further on down the page on page 13, you
2 state "The audits shall be paid for by the Companies
3 and should not be recoverable through rates of any
4 kind." Do you see that?

5 A. Yes, sir.

6 Q. Now, why would the -- why does the staff
7 recommend that audits of five companies, both
8 forensic accounting audits and management performance
9 audits of these five companies, not be recoverable in
10 rates of any kind?

11 A. I think staff's thought process was
12 that -- was that we're dealing with an issue here
13 that management needs -- this involves management and
14 that these companies if allowed to recover the costs
15 from the customers would not gain their attention
16 absent doing that.

17 Q. Would you not say -- and I know Mr. Serio
18 asked you some questions. Would you not say that
19 should the Commission order these audits, that that
20 would be at least potentially a substantial
21 forfeiture or penalty to these companies?

22 A. Potentially.

23 Q. Let me ask you this, if the audits were
24 to be done and the audits found that the gas
25 purchasing functions of the two companies involved in

1 this GCR proceeding were done correctly and
2 appropriately, would staff still insist the companies
3 not be permitted to recover the cost of the audits in
4 rates?

5 A. I guess we'll cross that bridge when we
6 come to it.

7 Q. Well, I would like to, if you can, sir,
8 cross that bridge now and say that if the audits were
9 to find that the gas purchasing functions of the two
10 companies involved in the GCR proceeding were correct
11 and appropriate, that they were prudent, at least
12 reasonably prudent, would you still insist that the
13 companies not be permitted to recover the cost of the
14 audits and rates?

15 A. I think if the auditors came back and
16 said that what staff has witnessed from 2008 to 2013
17 was appropriate, fair, reasonable, and in the best
18 interest of these utilities' customers, the staff
19 would consider allowing the company recovery of those
20 costs.

21 Q. So what possible reason could the staff
22 have for insisting that the companies be subjected to
23 these audits if the auditors found that the companies
24 involved acted correctly and appropriately? What
25 reason could there be?

1 A. I don't understand your question.

2 Q. Okay. If the audits come back and found
3 that the gas purchasing functions of the two
4 companies involved in the GCR proceeding were
5 correct, appropriate, reasonable, and prudent, why
6 would the PUCO staff -- what could -- what basis
7 would the PUCO staff have for requiring that these --
8 the cost of these audits not be paid for in rates?

9 A. I guess staff hasn't reached the point
10 that we've reached the conclusion that these
11 companies and their management have entered into
12 agreements and operated in an appropriate fashion.

13 Q. I fully understand that, sir. Nobody
14 appreciates that more than me at this point.

15 A. So I can't get to the point where you're
16 at right now.

17 Q. Hypothetically let's say the Commission
18 orders the audits, the company goes through the
19 audits, and the audits show that the gas purchasing
20 functions of these two companies involved in the GCR
21 proceeding were correct, appropriate, prudent, and
22 reasonable. Would you agree to allow the companies
23 to recover the cost of all these audits in rates?

24 A. I think at that point in time the
25 decision will be out of my hands as to who or how the

1 gas would have been recovered. This is simply a
2 recommendation to the Commission that they are
3 willing to adopt or modify if they determine it's
4 reasonable.

5 Q. Now, what if the audits were to find the
6 gas purchasing functions of these two companies, the
7 two companies involved in this GCR proceeding, were
8 correct and appropriate during the audit period,
9 would you then still insist that the companies not be
10 permitted to recover the costs of the audits in
11 rates?

12 A. I can't distinguish that question from
13 the prior question.

14 Q. The prior question was if the audits were
15 to find that the gas purchasing functions of the two
16 companies involved in this GCR proceeding were always
17 correct and appropriate, would you still insist the
18 companies not be permitted to recover the costs of
19 these audits and rates. And you answered that
20 question, I trust, to the best of your ability.

21 This question is if the audits were to
22 find that there were mistakes in prior audit periods
23 but if the audits were to find that the gas
24 purchasing functions of the two companies involved in
25 this GCR proceeding during the audit period were

1 correct and appropriate. Maybe there were mistakes
2 years previously. Maybe there were mistakes in the
3 2008 period. Maybe there were mistakes in the 2010
4 period. But for this audit period if the audits were
5 to show that the gas purchasing function of these two
6 companies involved in this GCR case during the
7 relevant audit period were correct, appropriate,
8 prudent, and reasonable, would you allow the
9 companies at least to recover the cost of the audits
10 in their rates?

11 A. I guess I would view it as if it was
12 fair, appropriate, reasonable during this audit
13 period, sir --

14 Q. Yes.

15 A. -- we wouldn't be sitting in this
16 hearing.

17 Q. I understand that that's your opinion.

18 A. That is my opinion and that's the
19 opinion -- that's why I recommended to the Commission
20 consider ordering a Commission-ordered investigation.

21 Q. But hypothetically and maybe -- maybe
22 given the positioning of these things that the
23 possibility is remote, okay, but if by some wild
24 streak the independent auditors were to disagree with
25 you and find that the gas purchasing functions of the

1 two companies involved in the GCR proceeding were
2 correct, appropriate, reasonable, and prudent, would
3 you at that point allow the companies to recover the
4 costs of the audits in rates?

5 A. So you're out there, the audits have been
6 conducted.

7 Q. Yes.

8 A. Conclusions have been reached.

9 Q. Correct.

10 A. And we're considering at that point in
11 time recovery of costs.

12 Q. Yes.

13 A. I guess when we get there, we will make
14 that decision, but it's -- you're assuming that staff
15 is in a position to order these companies to either
16 not recover the costs or recover the costs.

17 EXAMINER FARKAS: Interpose a question
18 here, would Roger Sarver be in a position to make the
19 determination as to whether or not the companies
20 could recover the cost through rates or would that be
21 something that the Commission itself --

22 THE WITNESS: I think that question is
23 much easier to answer. I think if you had the
24 forensic auditors come back and if the MP auditors
25 come back and say, "Staff, you're all wrong,

1 you're -- you know, you jumped the gun, your
2 conclusions are inaccurate and inappropriate, the
3 companies did everything that they should have done
4 on behalf of their customers," then, yeah, at that
5 point in time, you know, the audits were justified,
6 they provided a benefit, they probably have some
7 recommendations associated with improvements, but the
8 company at that point in time should be allowed to
9 recover the costs. But I'm not in a position to make
10 that decision.

11 EXAMINER FARKAS: And you are never going
12 to be in a position to make that decision because you
13 are not a Commissioner; is that accurate?

14 THE WITNESS: That is correct.

15 EXAMINER FARKAS: You do not have the
16 votes as -- to make that decision.

17 THE WITNESS: I do not. I simply could
18 make a recommendation, and the Commission is at their
19 discretion.

20 EXAMINER FARKAS: Thank you.

21 MR. YURICK: Your Honor, with all due
22 respect to the Bench, I -- Mr. Sarver has the power
23 apparently to make a recommendation to the
24 Commission --

25 EXAMINER FARKAS: Absolutely and I was

1 just distinguishing the fact that in your questions
2 you were -- you were posing them as if he was in a
3 position to make the decision. He is in a position
4 at some point to make a recommendation, but he does
5 not have the authority to make the decision. That's
6 the only qualification I was making in my
7 questioning.

8 MR. YURICK: I appreciate the
9 clarification, your Honor.

10 Q. (By Mr. Yurick) If these audits were to
11 conclude that the gas purchasing functions of the two
12 companies involved in this gas cost recovery case
13 during the audit were correct, appropriate,
14 reasonable, and prudent, would you be willing to
15 recommend to the Commission that the companies be
16 permitted to recover the cost of the audits in rates?

17 A. Would I be willing to recommend?

18 Q. Yes.

19 A. In that instance, yes.

20 Q. Okay. If the companies were to agree
21 that they would purchase local production themselves,
22 would that alleviate some of the concerns that lead
23 to your recommendation to the Commission that
24 forensic and management performance audits be
25 performed and not recovered in rates?

1 A. That -- I still would be hesitant to drop
2 that recommendation, yes.

3 Q. Let me ask you this, assume that the
4 audits are done, how many things -- how many topics
5 does the audit, either the management audit or the
6 management audit -- comprehensive management audit or
7 the forensic accounting audit, how many findings --
8 how many inappropriate things do those audits have to
9 show that the companies did improperly before you
10 would be willing to recommend or -- let me rephrase
11 that.

12 EXAMINER FARKAS: Please.

13 Q. Assume the audit reports, both forensic
14 accounting and management -- comprehensive management
15 audits, are done, okay? Let's say the audits come
16 back and show that the company did some things great
17 and acted on behalf of their ratepayers in some
18 respects but that the audit recommends that the
19 company firm up certain things, certain
20 relationships, or firm up certain management
21 practices, and the company agrees to do that. How
22 many recommendations or how many improper findings do
23 the audit reports have to show before you would be
24 willing to recommend that the companies be able to
25 recover the cost of the audits in rates?

1 MR. MARGARD: Your Honor, if I may, I'm
2 very sympathetic to the companies' position that it
3 would like to be assured of recovery of the cost of
4 any audits should they be ordered. I think
5 Mr. Sarver has on a number of occasions now indicated
6 that it depends, and it depends on a great many
7 things including what type of audits are ordered and
8 what the scope is. And we, for example, have been
9 considering the findings for this audit period
10 without having any idea what sort of period such
11 audits might cover. While I'm very sensitive to the
12 companies' curiosity what Mr. Sarver may recommend at
13 some point in the future, given the results that are
14 purely speculative at this point, I think frankly we
15 have beaten this horse pretty well to death.

16 MR. YURICK: Well, I'm simply inquiring.
17 You know, a recommendation has been -- that has been
18 made by the staff through Mr. Sarver's testimony that
19 there be audits done, forensic accounting audits and
20 management performance audits done, of five companies
21 and that the companies not be able to recover the
22 cost of these audits through rates of any kind.

23 I don't believe that it would be fair,
24 reasonable, rational, or appropriate if all of these
25 audit reports come back clean to expect that the

1 companies would bear the burden of paying the cost
2 for these audits to simply exonerate themselves.

3 All I'm trying to find out is if the
4 audits come back absolutely clean, would staff be
5 willing to recommend that the companies be permitted
6 to recover on the costs of the audits in their rates?

7 EXAMINER FARKAS: I think he has answered
8 that question.

9 MR. YURICK: He has answered that
10 question; but then, secondly, if these audit reports
11 come back with a minor number of small NITs but the
12 companies were found to purchase gas -- the two
13 companies involved in this GCR audit were found to
14 have purchased gas in a reasonably prudent manner
15 over the audit period, I -- I believe that it would
16 still not be rational for the Commission to go on an
17 affiliated companywide inquiry of this nature and any
18 small NITs that any of these companies may have
19 committed or any minor recommendations that the
20 auditors might make to these companies would mean
21 that the companies don't get to recover the cost of
22 any of these audits.

23 I apologize. I'm trying to do the best I
24 can to find out what sort of calamitous findings need
25 to be uncovered in these audit reports for this

1 rather nuclear option of the companies paying for
2 management performance audits and forensic accounting
3 audits which are unprecedented during the
4 Commission's -- during the Commission's witness's
5 tenure. I'm just trying to get a feel for that, and
6 I don't think it's unreasonable.

7 EXAMINER FARKAS: Well, I think you have
8 asked a series of questions attempting to get at
9 that, and I think the witness has attempted to give
10 you his best guess as to what the conditions would be
11 under which he would recommend that the companies be
12 allowed to recover the cost through rates. But it's
13 all speculative at this point, and I think we have
14 covered it so I would ask you to move on.

15 MR. YURICK: Thank you, your Honor.

16 Q. (By Mr. Yurick) If the companies -- the
17 two companies involved in this GCR, and I'll even
18 throw in Brainard which is also an LDC that's not
19 covered in this GCR proceeding during this audit
20 period, if those companies were to procure interstate
21 gas only from an independent marketer through an RFP
22 process, would you still recommend the audits?

23 A. Yes.

24 Q. Okay. Now, we talked about JDOG, and
25 JDOG is not a regulated entity; is that right?

1 A. No.

2 Q. And JDOG can buy and sell local
3 production and interstate gas for any price that it
4 can find a willing buyer; isn't that right?

5 A. Sounds reasonable.

6 Q. I mean, do you know as an unregulated gas
7 marketer in your -- in your experience as a utility
8 regulator, an unregulated marketer can buy and sell
9 local production and interstate gas for whatever a
10 willing buyer is willing to pay; isn't that right?

11 A. Yes. The willing buyer part I question
12 what that's defined as, but in theory your statement
13 is correct.

14 Q. And the Commission -- since JDOG's not a
15 regulated entity the Commission doesn't know what
16 JDOG pays for gas, right?

17 A. Not with any certainty.

18 Q. And the -- I think you said the
19 Commission asked JDOG for its contracts with local
20 producers to find out what JDOG pays for gas; is that
21 right?

22 MR. MARGARD: To clarify you mean staff
23 asked?

24 Q. I'm sorry, yes. The Commission staff,
25 staff asked for JDOG's local production contracts to

1 find out what JDOG pays for gas; isn't it right?

2 A. Staff did request that.

3 Q. Now, did staff inquire of any of the
4 local producers that were identified in the last
5 audit what price they're selling local production to
6 JDOG for?

7 A. We did not go to the individual
8 producers.

9 Q. We may have covered this, I apologize if
10 I did, I'll try to go quickly, would you agree me
11 there is really no efficient market for local
12 production?

13 A. No.

14 Q. So you believe there is an efficient
15 market for local production?

16 A. Yes. It functions here in Ohio.

17 Q. And where would I find an index for local
18 production in Ohio? What reference material?

19 A. Three of those at the beginning of this.

20 Q. That was the TCO Appalachian Index was
21 one; is that right?

22 A. Dominion Transmission.

23 Q. Dominion Transmission and NYMEX.

24 A. Yes, sir.

25 Q. Is that right, is NYMEX gas -- is local

1 production sold on a NYMEX market?

2 A. Is local production sold on the NYMEX
3 market?

4 Q. Yes.

5 A. I don't know what the NYMEX market is.
6 NYMEX is a pricing point, an index, that if used
7 strictly for what Mr. Overcast said it was, it would
8 be a futures contract. But I know very few entities
9 that use that to price their gas. A futures contract
10 is to hedge their price so that they have a defined
11 point at a point in time, but most local producers in
12 the State of Ohio use NYMEX because it's readily
13 available to them. They can determine what the
14 prices are. They can look at NYMEX as a way if they
15 want to enter into a fixed price arrangement, that
16 they can use a strip or a series of NYMEX future
17 prices to determine what they can expect to become,
18 so.

19 Q. NYMEX is the New York Mercantile
20 Exchange, isn't it?

21 A. It's a pricing point out there for the
22 country.

23 Q. Well, would you agree with me that NYMEX
24 stands for New York Mercantile Exchange?

25 A. That I will agree with.

1 Q. Okay. The pricing of a local production
2 would you agree with me could consider many factors
3 including but not limited to volume? We had a little
4 discussion about that, and you may not agree with me.
5 Do you think volume is important in pricing local
6 production, the volume that somebody purchases?

7 A. No. I think it's the market that
8 determines the prices.

9 Q. So you would say that consistency of
10 demand also does not enter into pricing of local
11 production?

12 A. No.

13 Q. Okay. What about seasonality demand?
14 Seasonality, would you say that enters into it?

15 A. I would say marketing is going to be the
16 driving -- driver for pricing.

17 Q. How about the number of alternative
18 buyers, would that be a market --

19 A. That is market.

20 Q. And what about transportation and other
21 costs involved in the sales alternatives?

22 A. That's the net back from market.

23 Q. So would that enter into it?

24 A. If you have a market.

25 Q. And --

1 EXAMINER FARKAS: Could we go off the
2 record for a second?

3 (Discussion off the record.)

4 (Recess taken.)

5 EXAMINER FARKAS: Let's go back on the
6 record.

7 Q. (By Mr. Yurick) Mr. Sarver, can I draw
8 your attention to page 11 of the staff report.

9 A. Page 11.

10 Q. 11.

11 A. Yes, sir.

12 Q. And you're talking about local production
13 on page 11 at the top. It's -- I can tell that
14 because there's a header that says "Local
15 Production." And the last sentence of that first
16 paragraph on page 1 says "The downside for producers
17 was that heat sensitive customers' volumes fluctuated
18 with large consumption in the winter and little or
19 none in the summer, forcing producers to shut-in
20 their production or seek new markets." Do you see
21 that?

22 A. Yes.

23 Q. Okay. So isn't it true that if volumes
24 fluctuate with large consumption in the winter and
25 little or none in the summer, that producers have to

1 absorb a cost or factor the cost for shutting in
2 their production or seeking new markets in the price
3 for their local production gas?

4 A. Is that a question?

5 Q. That is a question. Isn't that true?

6 A. What the market -- what the producers
7 would take into consideration is what's the market
8 they are producing into. Is that into a market that
9 is limited to just one customer or is that into a
10 market where you have a gathering line or a pipeline
11 or means of getting into a much larger market?

12 Q. Well, I'm talking about specifically the
13 reference in the staff report on page 11 when you say
14 "The downside for producers was that heat sensitive
15 customers' volumes fluctuated with large consumption
16 in the winter and little or none in the summer,
17 forcing producers to shut-in their production or seek
18 new markets," and I think we're talking about these
19 two systems since this is in the audit report and we
20 are talking about these two systems so -- so --

21 A. Two systems.

22 Q. The two companies, Orwell and NEO, right?

23 A. It's an observation of what takes place
24 out there in the market.

25 Q. Right.

1 A. Yes.

2 Q. Then in the next section you say "With
3 the introduction of JDOG, producers, located in the
4 Cobra systems received lower pricing than producers
5 severing the companies directly. The lower prices
6 accounted for the cost to move the gas from its point
7 of production to its point of consumption. Some
8 production was moved off Cobra into the interstate
9 markets, which meant producers could sell more gas at
10 an even flow rate than at a lower price." Do you see
11 that?

12 A. I do see that.

13 Q. So the introduction of JDOG, did that
14 help producers or did it hurt them?

15 A. I don't think it changed their position.
16 They still had the -- with the introduction of JDOG
17 into the process there's another transportation fee
18 that they need to account for to get their gas. What
19 was Columbia Gas Transmission's gathering system now
20 is an operating entity where there is a separate fee
21 that they need to pay to Cobra to get that same gas
22 to Columbia Gas Transmission so it could have
23 potentially hurt customers or hurt producers by
24 imposing an additional charge or a higher charge than
25 what they were paying under Columbia Gas

1 Transmission.

2 Q. Okay. But aren't you saying here that
3 producers were -- were able to accept lower prices
4 because they were able to sell more gas? Am I
5 mischaracterizing that?

6 A. I'm saying they accept lower prices
7 because that's what the market would bear.

8 Q. And before the introduction isn't the
9 note in the previous section where you say "The
10 downside for producers was that heat sensitive
11 customers' volumes fluctuated with large consumption
12 in the winter and little or none in the summer,
13 forcing producers to shut-in their production or seek
14 new markets," aren't you referring to the local
15 producers' direct distribution customers at that
16 point?

17 A. You are ignoring the fact that these
18 producers on what is now Cobra were the same
19 producers that were on Columbia Gas Transmission's
20 gathering line. And, now, you are trying to take
21 that and say that those customers -- or those
22 producers have now benefited with the introduction of
23 Cobra. Really nothing has been changed other than
24 what was Columbia Gas Transmission is now Cobra.

25 Q. Well, I was really just asking the

1 question there are two references in the staff report
2 to there being a downside for local producers in the
3 fact that they had to shut in their production or
4 seek new markets and then there was this reference to
5 local producers being able to sell more gas at a
6 lower price and you're -- these references that are
7 in the staff report are in a gas cost recovery audit
8 for Orwell and NEO so I'm assuming that these
9 statements have something to do with Orwell and NEO
10 and the price they paid for gas because that's what a
11 GCR case is.

12 A. It's a generalization of local production
13 in Ohio.

14 Q. Okay. You increased your previous actual
15 adjustment in -- that was set forth in the staff
16 report to \$2,730,454 during the audit period which
17 would include over \$900,000 due to repricing local
18 production; is that right?

19 A. I think pricing of local production went
20 down as a result of our meeting where Holmesville
21 volumes and cost were removed from local production
22 that was -- resulted in let's say a 40 or 50 thousand
23 dollar reduction in the adjustment to local
24 production.

25 Q. So would you agree with me that the

1 adjustments for local production was on the order of
2 \$850,000, give or take?

3 A. Going from 984 down to say 940.

4 Q. Okay. So \$940,000 roughly due to
5 repricing pursuant to the methodology set forth in
6 your testimony in your staff report; is that right?

7 A. That is correct for Northeast.

8 Q. Okay. And did you do a repricing for
9 Orwell?

10 A. Yes.

11 Q. Okay. And how much was the repricing for
12 Orwell?

13 A. I don't know the magnitude of that. I
14 didn't separate that out from the other adjustments
15 that were made to purchase gas costs for that audit
16 period.

17 Q. Now, based on your experience in GCR
18 cases, would you consider that a large adjustment for
19 systems this size?

20 A. I would say that it's a medium sized. I
21 would consider the adjustment the staff recommended
22 in the Brainard case for 2011 was 120 customers and
23 \$105,000 adjustment to be large.

24 Q. Okay. So other than companies that are
25 somehow related to Gas Natural, would you consider

1 the adjustment that you recommended in this case for
2 this GCR audit period, would you consider that to be
3 a large adjustment for systems of this size?

4 A. I would say it's somewhere in the medium
5 range. If it turned into 3 or 4 dollars per unit as
6 far as a reconciliation adjustment the Commission
7 ordered, I would consider that to be large. This is
8 probably going to come in in the magnitude of maybe
9 30, 40 cents, maybe a little bit more so not extreme.
10 Take that dollar amount and divide it by end sales
11 volumes.

12 Q. I think I may have asked you this, but
13 are you aware of any rule, regulation, statute, code,
14 or other reference material that would require or
15 constrict local producers from charging a particular
16 price for their local production?

17 A. Local producers will achieve or negotiate
18 a rate that's commiserate with the market they serve.

19 Q. There is no Commission rule, regulation,
20 order, administrative code, provision, anything of
21 that nature that says if you're a local producer,
22 thou shall not charge more than X for your local
23 production?

24 A. They can charge whatever they are able to
25 charge.

1 Q. Okay. Now, as long as local production
2 costs less than interstate gas delivered, would you
3 agree with me that customers are benefiting from the
4 purchase of local production?

5 A. There is a limitation associated with
6 local production and I think that it's been brought
7 up by more than one witness where local production
8 had a reliability issue and because of the impurities
9 still contained in the local production which results
10 in freeze-offs during extreme conditions which
11 reduces its reliability and reduces the price you are
12 paying for local production.

13 Q. But from a pure monetary standpoint if
14 you pay less for local production than interstate gas
15 costs delivered, customers, regulated customers,
16 benefit from those purchases, don't they?

17 A. On an economic basis that would be best.

18 Q. And regardless of whether the seller,
19 whether it's the local producer or a marketer, makes
20 25 cents or 25 dollars on a sale of a particular
21 supply of gas, as long as the local distribution
22 company is buying gas at the least cost for a
23 reliable supply, customers benefit, right?

24 A. I'm trying to understand your question
25 there.

1 Q. Okay.

2 A. They benefit by buying local production
3 if it's a penny less than buying interstate gas? Is
4 that the conclusion you are wanting me to draw?

5 Q. Well, they benefit. To the extent of a
6 penny, it might not be a large benefit but. No. My
7 question is that benefit to customers on gas
8 purchases is not dependent on the profit to the
9 seller, is it?

10 A. I think I'm losing you but if you could
11 repeat that question, please.

12 Q. So hypothetically if a local producer
13 sells gas that it gets for nothing for \$5 an Mcf and
14 interstate gas delivered costs \$7 an Mcf, the fact
15 that the local producer is making \$5 an Mcf because
16 it got the gas for free doesn't in any way affect the
17 benefit to the distribution company's customers of
18 the fact that the local production costs less than
19 the interstate gas, does it?

20 A. I will grant you the fact that if you're
21 dealing with \$7 interstate and \$5 local, is the value
22 of local \$5? Is the value of local \$3? And that's
23 what you are -- what your comparison is ignoring is
24 the fact that what is the true value of that gas for
25 that market? And you're trying to interpret that

1 interstate is one penny more, then it makes sense to
2 buy local production irregardless of the price and
3 you're ignoring the fact that that gas has a value in
4 the market, and it's defined by the market that it
5 serves. So I don't agree with your assumption.

6 Q. So it's your -- your testimony and
7 essentially the basis of your testimony that local
8 production has a defined value that is readily and
9 easily discernible by a potential purchaser of local
10 production; is that correct?

11 A. Each market has its own value, and it's
12 dependent upon the producer and the buyers in that
13 market to determine what that price is. Some of the
14 market such as Columbia Gas Transmission or Columbia
15 Transmission have a much larger group of sellers and
16 buyers that set that price.

17 Q. So if I were to ask you what the value of
18 a dekatherm of local production on the Churchtown
19 system was today, where would I go find that price?

20 A. Go look at the Appalachian Index, back
21 out the transportation charge, the shrink, and the
22 processing fee, compare that to the Appalachian, and
23 it will be within 1 or 2 pennies of the Appalachian
24 Index.

25 Q. Same thing if I wanted to find the value

1 of a dekatherm of local production on Holmesville?

2 A. Holmesville would be the same.

3 Q. Okay.

4 A. Less a processing fee.

5 Q. So if I went to a local producer and I
6 said "I'm willing to buy a dekatherm of gas local
7 production on Churchtown" and he was going to offer
8 me a particular price, could I compare it to the
9 Appalachian Index, the TCO Appalachian Index, back
10 out the transportation and shrink, and I should pay
11 no more than that for local production; is that
12 right?

13 A. I would say that for local production
14 produced in the state of Ohio, marketers buying in
15 that market, that that would represent 80 to
16 90 percent of Ohio local production would be priced
17 in that fashion.

18 Q. Okay. I think you've used the term NYMEX
19 which we agreed was New York Mercantile Exchange; is
20 that right?

21 A. Yes.

22 Q. Okay. Are you familiar with the standard
23 NYMEX contract?

24 A. You're talking a futures contract.

25 Q. Yes.

1 A. Okay. Are we talking about purchase of
2 local production using NYMEX futures contracts?

3 Q. No. I just mean a standard NYMEX
4 contract for interstate gas delivery, okay? Are you
5 familiar with the elements of such a contract?

6 A. It has -- NYMEX has a starting point.

7 Q. Okay. Would it usually be for a fixed
8 quantity?

9 A. It can vary. It could be any quantity of
10 gas. It could be 500 units. It could be 50,000
11 units.

12 Q. Would it usually be delivered to a
13 particular place?

14 A. There is a point where the gas is
15 purchased.

16 Q. Okay. Would that point usually be the
17 Henry Hub?

18 A. No.

19 Q. Okay. Where else could it be?

20 A. Anywhere across the United States.

21 Q. Would that contract for interstate gas
22 usually be delivered on a uniform basis daily for the
23 month or would it vary?

24 A. It could be you could buy a quantity of
25 gas for one day. You could do gas daily. You could

1 do three days a week, a month. You could ask to
2 deliver it in whatever form or fashion that you
3 negotiated with the seller.

4 Q. Okay. For NEO and Orwell is the gas
5 that's delivered, the local production gas, delivered
6 at the Henry Hub to the best of your knowledge?

7 A. Is local production delivered to the
8 Henry Hub.

9 Q. Yes.

10 A. I would say no.

11 Q. Okay. Do you know where the gas is
12 delivered?

13 A. For local production?

14 Q. Yes.

15 A. I guess into the market that it is
16 serving.

17 Q. Would you agree with me that it could be
18 delivered into numerous delivery points including
19 farm taps, interstate pipelines, and/or the LDC's own
20 pipelines?

21 A. Yes. That would be the market.

22 Q. Is the same amount of gas delivered to
23 NEO and Orwell every day of the month from local
24 producers to your knowledge?

25 A. It would vary based on the market that

1 they are delivering into.

2 Q. Do NEO and Orwell take gas from local
3 production on every day of the year, every day of the
4 year from every local contract, every local well
5 contract?

6 A. The answer would be no.

7 Q. And at some -- sometimes isn't the system
8 pressure too high for gas to flow in from the
9 gathering system resulting in shut-in wells from time
10 to time?

11 A. I think a witness testified to that.

12 Q. So that would be correct?

13 A. Yes.

14 Q. And do you believe that local producers
15 will sell local production for the same price that
16 JDOG Marketing purchases local production to any
17 purchaser?

18 A. I don't understand that question. Can
19 you repeat it?

20 Q. Do you believe there is a uniform price
21 that all local producers will sell local production
22 for the same price?

23 A. I don't think there is a uniform price.
24 It's going to be set by the market.

25 Q. Do you know how many local producers sold

1 to JDOG Marketing?

2 A. No.

3 Q. I'm sorry?

4 A. No, I don't know how many producers sold
5 to JDOG.

6 Q. And do you know whether all producers
7 that provide gas to Orwell pay a uniform price for
8 their local production?

9 A. From review of the contracts that we have
10 examined based on 2010, there is not a uniform price
11 but the price tends to stay within a range.

12 Q. And would that price be uniform for
13 Cobra versus non-Cobra volumes?

14 A. There would be a differential between
15 those but based on the market.

16 Q. Now, I've looked at your NYMEX prices for
17 the audit period again on your chart, okay? And for
18 Orwell it's \$4.01 per Mcf, for Cobra it's \$3.834 per
19 dekatherm and for non-Cobra \$3.82 per Mcf; is that
20 right?

21 A. Are you referring to the table on page
22 15?

23 Q. Yes, page 7 of your testimony but I think
24 it's page 15 also.

25 A. I think the numbers you listed are

1 consistent with the table.

2 Q. So it seems to me that the prices for
3 Cobra and non-Cobra volumes are very close.

4 A. Yes.

5 Q. Okay. But the price for Orwell is a
6 little different.

7 A. Yes.

8 Q. Okay. What accounts for the difference
9 between the price for Orwell, the NYMEX price for
10 Orwell, and the NYMEX price for the Cobra and
11 non-Cobra systems?

12 A. It's based on the volumes purchased
13 versus the existing for monthly NYMEX. There was
14 instances where relatively there were no natural or
15 local production purchased for Orwell customers due
16 to the fact that they had a transportation customer
17 who consumed or was assigned local production prior
18 to him being assigned to the utility.

19 Q. For your "Staff Alternative Premium NYMEX
20 Plus" which is the next column?

21 A. Yes.

22 Q. Are you aware based on your experience of
23 any LDCs purchasing gas for exactly those NYMEX plus
24 premiums?

25 A. Those premiums would be specific to this

1 audit period.

2 Q. So you're not aware of any other LDC
3 that -- as you sit here today, to the best of your
4 knowledge, you're not aware of any specific LDC that
5 pays for local production specifically the prices
6 that you've set forth on your table on page 7 and
7 page 15 -- I'm sorry, not page 15, it's page 7 of
8 your testimony?

9 EXAMINER FARKAS: I believe it's page 15
10 of the staff report.

11 Q. Yeah. Well, page 7 of your testimony,
12 you're not aware of anyone -- any specific LDC that
13 pays exactly those prices.

14 A. I am not aware.

15 Q. Is that fair? Okay. And is there any
16 index, standard reference material, either market or
17 Commission ordered, that sets forth a standard
18 premium price over NYMEX that an LDC is permitted to
19 pay for local production?

20 A. There is none.

21 Q. Okay. And are you aware of any LDCs that
22 pay no more than 21 cents over the cost -- over cost
23 for local production gas?

24 A. No, a lot of LDCs that pay cost.

25 Q. On page 21 of your testimony, you state

1 there that the premiums were over -- there you allude
2 were over 20 cents per unit; is that right?

3 A. Are you on testimony or staff report?

4 Q. I'm sorry, on your testimony, the
5 beginning of -- at the top of page 21.

6 A. Yes, sir.

7 Q. You say "Staff's Alternative Premium
8 generated sufficient revenue to cover all costs as
9 well as a premium over 20 cents per unit"; is that
10 right?

11 A. That's what that says, yes, sir.

12 Q. And actually the -- when you take into
13 consideration all the other costs involved with your
14 premium levels, the -- the amount over the cost that
15 you are allowing is over 20 cents per unit because
16 it's 21 cents per unit; isn't that right?

17 A. I would have to go to the tables that
18 I've submitted as far as 7 -- I want to say 7 and 8,
19 RLS-7 for Cobra Churchtown turned out poorly but it's
20 21 cents, and RLS-8 for Cobra Holmesville is 21
21 cents. When you take out the processing fee, both of
22 those generate approximately the same rate per unit.

23 Q. So but when you say in your testimony
24 over 20 cents per unit, it's a penny over 20 cents
25 per unit; isn't that right?

1 A. But my statement is accurate.

2 Q. I didn't say it was -- I didn't say it
3 wasn't accurate, okay? I'm saying when you say over
4 20 cents per unit, the specific figure is 21 cents;
5 isn't that right?

6 A. Yes, sir.

7 Q. Gatherco volumes?

8 A. Yes, sir.

9 Q. Did you attach a premium to Gatherco
10 volumes?

11 A. I priced Gatherco at cost.

12 Q. So are you aware of any other LDC that's
13 able to purchase gas at cost?

14 A. Yes.

15 Q. Okay. Who is that?

16 A. They can purchase local production at
17 cost. I know Ohio Cumberland Gas contracts with
18 Gatherco. There is no 15-cent premium that they add
19 to their charge when they buy gas from Gatherco, and
20 they don't pay \$1.50 so they go into the market,
21 contract on behalf of their customers, and flow
22 through their gas cost recovery costs of buying local
23 production.

24 Q. Was it reasonable to expect a local
25 producer or a marketing company to always sell their

1 gas at cost? It reminds me of those old commercials
2 how do you make any money and the guy goes volume.
3 If you're buying at cost and selling at cost, you're
4 not making any money, right? That's a pretty tight
5 standard; wouldn't you agree?

6 A. So is there a question there?

7 Q. Yeah. The question is is there any rule,
8 regulation, Commission order, other reference
9 material that mandates that a marketing company sell
10 its gas -- it's local production gas to LDCs for
11 cost?

12 A. I don't think that's what staff
13 recommended in its audit report, sir.

14 Q. For Gatherco you did -- you did say that
15 Gatherco volumes you did allow a premium. They were
16 to be passed through --

17 A. I think --

18 Q. -- to the LDCs at cost.

19 A. -- you are confusing the fact that with
20 Gatherco the only thing that Gather --

21 Q. If that's the only thing I'm confusing
22 here, God bless you, Mr. Sarver.

23 A. But Gatherco was simply local production
24 that was read and then invoiced by Gatherco to
25 Northeast, Northeast verified the volumes in-house

1 with its own personnel, remitted the invoice back to
2 JDOG who then cut -- wrote an invoice and sent it
3 back to Northeast. In that instance there was no
4 service provided. It was simply here is your bill,
5 and we've already verified as a utility what all the
6 volumes are, where they came in, who consumed them,
7 and they remit that back to JDOG. There was no
8 service provided so there was no premium added.

9 Q. Now, you were here when Ms. Lipnis and
10 Ms. Bates testified; is that right?

11 A. I was in and out, yes.

12 Q. Okay. Now, were you here when both of
13 those individuals said that they had contact with you
14 in reference to this GCR case?

15 A. Yes. When both of those individuals left
16 there or were terminated from their positions, I
17 received a call from both of them that informed me
18 that they were no longer with the utilities and that
19 if I had any questions or interest or use of their
20 services in the future, that I should contact them.

21 Q. So they both indicated to you that they
22 had been terminated by the company?

23 A. I got a call from both of those
24 individuals, yes, sir.

25 Q. But, I mean, did they actually indicate

1 to you during those phone calls that their tenure
2 with the company was short lived not by their own
3 choice but by the choice of the company that formerly
4 employed them? Did they indicate to you they had
5 been fired?

6 A. They informed me that they were let go.

7 Q. Okay. So both of these individuals
8 indicated to you that they were let go by the
9 companies affiliated with the two LDCs involved in
10 this gas cost recovery proceeding which is Northeast
11 Ohio Gas and Orwell; is that correct?

12 A. Can you repeat that? I'm trying to find
13 the question in there.

14 Q. Both of these individuals, Ms. Lipnis and
15 Ms. Bates, indicated to you they had been terminated
16 by companies affiliated with the two companies that
17 were involved in this GCR case; is that right?

18 A. I think Ms. Bates was an employee of
19 Orwell, and Ms. Lipnis was an employee of Gas
20 Natural.

21 Q. But they told you they were fired when
22 they called you?

23 A. They said they were let go is the words
24 that they used.

25 Q. And did it occur to you that as people

1 who had been terminated by a company, that they might
2 not have favorable feelings about the company or be
3 favorably disposed toward the company as sometimes
4 people who were let go from their jobs aren't happy
5 about it?

6 A. I didn't get this impression. I both --
7 with both of those individuals felt that they were in
8 a better place.

9 Q. Is it your experience generally that
10 employees that are let go by a company are favorably
11 disposed toward their former employer?

12 A. I didn't say -- that's a mix. It depends
13 on the circumstances surrounding it as if they feel
14 they were wrongly terminated but neither one of those
15 individuals indicated that they had any ill will
16 towards the utilities.

17 Q. Well, it's not uncommon in your
18 experience for people who are fired to have negative
19 feelings or a negative impression about the company
20 that fired them; isn't that right?

21 A. I'm sorry. I started laughing but I'm
22 going to refrain. If you could repeat your question.

23 MR. YURICK: Could you read the question
24 back, ma'am, please.

25 (Record read.)

1 A. That is an impression or a response that
2 people could have to that situation but I did not
3 sense that with either one of these individuals.

4 Q. Now, you've been involved in gas cost
5 recovery audits for quite some time; isn't that
6 right, Mr. Sarver?

7 A. That's accurate.

8 Q. And I know you've only litigated six GCR
9 cases or you said less than half a dozen GCR cases.
10 But you've been involved in a lot of GCR cases that
11 weren't litigated; isn't that right?

12 A. A few hundred.

13 Q. And would you say that it's standard
14 procedure for the Commission to be contacted by
15 former employees in the context of the GCR case and
16 have those employees volunteer information about gas
17 cost recovery audits to the Commission, or would you
18 say that's unusual?

19 A. I would say that there's nothing usual
20 about these cases or these companies.

21 Q. So you would agree with me that it's not
22 standard operating procedure for the staff to talk to
23 former employees of companies undergoing a GCR audit
24 and then arrange for or prepare them or talk to them
25 about testifying in a GCR case?

1 A. I'm not familiar with staff issuing audit
2 reports where company employees were let go the day
3 the reports are docketed, sir. There's nothing
4 normal or usual here but both of these individuals I
5 worked with closely in the course of these audits and
6 never got the impression that there was any ill will
7 or negative feelings toward the utilities.

8 Q. But, again, my question, I apologize for
9 reasking it but -- and I'm sure you'll get an
10 opportunity to talk more when your own attorneys ask
11 you questions, but my question is it's not standard
12 operating procedure for the Public Utilities
13 Commission of Ohio in the context of a gas cost
14 recovery case to speak with and arrange for testimony
15 by former employees; isn't that right?

16 A. This is a first, sir.

17 Q. So this is literally the first time -- I
18 wasn't even going for a first but this is the first
19 time in the history of the Commission's GCR cases
20 that the staff of the Public Utilities Commission has
21 actually spoken to and arranged for testimony by
22 former employees of gas local distribution companies
23 that are being audited in a GCR case.

24 A. It's the first time they have been
25 approached by the employees to say that "if you have

1 questions, you're welcome to contact us." That is
2 correct.

3 Q. Okay. Now, you work with a number of
4 individuals in gas cost recovery audits; isn't that
5 right?

6 A. Are we talking with these utilities or
7 statewide?

8 Q. With these utilities.

9 A. Over the course of the last five or six
10 years, that's accurate.

11 Q. Now, did you work with Ms. Stephanie
12 Patton in the context of the GCR?

13 A. Since about '96.

14 Q. And Ms. Patton is sitting at the end of
15 the row of chairs here, and you recognize her, don't
16 you, sir?

17 A. Yes, of course.

18 Q. And to your knowledge she still works for
19 the company, doesn't she?

20 A. Today she does, yes, sir.

21 Q. And you also worked with Ms. Noce and
22 Ms. Howell on GCR audits in the past, haven't you?

23 A. Yes, sir.

24 Q. Okay. And to your knowledge, to the best
25 of your knowledge, both of those individuals still

1 work for the company, don't they?

2 A. As of today, yes, sir.

3 MR. YURICK: Okay. If I could have a
4 moment, your Honor, I may be done.

5 EXAMINER FARKAS: Okay.

6 Q. Just very briefly, Mr. Sarver, did either
7 of these employees provide you after they were
8 terminated with any corporate documents?

9 A. No, sir.

10 Q. Okay. And Ms. -- Ms. Howell, did you
11 work with her on the 2008 audits?

12 A. I think at the very end of it there was
13 some discussions related to customer billing or sales
14 volumes or daily register reports, something along
15 those lines, but I think I predominantly worked with
16 Stephanie through that audit.

17 Q. And in your -- I'm not suggesting that
18 you may or may not have always agreed or disagreed
19 with the employees of the company, but did you always
20 think that they seemed to be trying to do a decent
21 job with their gas cost recovery audits? Can you say
22 one way or the other?

23 A. Really I don't have an opinion on that,
24 sir.

25 Q. And I guess when Ms. Lipnis was

1 testifying, she testified about an irregularity in
2 gas cost recovery for a particular quarter, and I
3 think you found some -- some adjustments in 2010; is
4 that right?

5 A. I think Mr. Serio asked a line of
6 questions, and it was associated with one of the
7 first three quarters of 2010.

8 Q. Okay. I think Ms. Lipnis said at that
9 point that there was a large positive imbalance that
10 Northeast Ohio Gas had accumulated on the
11 Cobra Pipeline so they were -- they were inflating
12 the amount of gas that they were buying, and somehow
13 they had a large quantity of gas on the pipeline. Do
14 you remember that testimony?

15 A. I was not following her discussion on
16 that topic.

17 Q. Neither was I and as a matter of fact,
18 Mr. Sarver, to your knowledge and based on your
19 examination of the gas cost recovery documents, isn't
20 it true that Northeast Ohio Gas at least through most
21 of the year 2010 had a large negative imbalance?

22 A. That's what I found. Starting in
23 September of 2009, they had a positive imbalance
24 going out of 2009. By the time they hit December,
25 they went negative and remained negative until June

1 or July of 2010.

2 Q. Okay. So if -- if Ms. Lipnis testified
3 there was a large positive imbalance and that the
4 companies were somehow intentionally purchasing large
5 amounts of gas that they didn't need in order to beef
6 up their gas cost recovery numbers, she would be
7 based on your knowledge wrong; isn't that right?

8 A. I didn't find excessive amounts of
9 purchased gas costs.

10 Q. In fact, if anything, they were buying
11 less gas than they should have been because they had
12 a negative imbalance on Cobra during most of 2010;
13 isn't that right?

14 A. What I found was little or no gas was
15 purchased for Northeast for the first half of 2010.

16 Q. And both Ms. Bates and Ms. Lipnis when
17 you talked to them, did you ever go back and review
18 any of your calculations or your records in response
19 to your conversations with them?

20 A. No, sir.

21 MR. YURICK: I have no further questions
22 at this time. Thank you, your Honor.

23 EXAMINER FARKAS: Thank you.

24 Do you have any redirect?

25 MR. MARGARD: May I have a few moments?

1 EXAMINER FARKAS: Yes.

2 Go off the record.

3 (Recess taken.)

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

6 Do you have any redirect?

7 MR. MARGARD: Just a few questions, thank
8 you, your Honor.

9 - - -

10 REDIRECT EXAMINATION

11 By Mr. Margard:

12 Q. Mr. Sarver, how many years have you been
13 doing GCR audits for the Commission?

14 A. A little over 23 years.

15 Q. And I believe you testified in response
16 to cross-examination that in the course of those
17 years you've conducted literally hundreds of these
18 audits; is that correct?

19 A. Yes.

20 Q. And as Mr. Yurick pointed out on a number
21 of occasions, very few, perhaps even less than half a
22 dozen of these have gone to hearing; is that correct?

23 A. That is correct, and more than half of
24 them have been with either Orwell, Northeast, or
25 Brainard.

1 Q. So in your experience of conducting
2 audits, these companies have presented a unique
3 circumstance?

4 A. A unique challenge, yes, sir.

5 Q. Is that unique challenge one of the
6 reasons why you've made the extraordinary
7 recommendation you have in this case?

8 A. Yes, I've not seen an instance where the
9 Commission has found the situation and made a
10 recommendation and not had the utilities respond
11 typically quickly and positively to those changes,
12 those recommendations, and then have those issues
13 going forward disappear.

14 Q. And indeed have you had any experience in
15 conducting audits where there have been issues where
16 you have seen the employees level of turnover that
17 you have seen with these companies?

18 A. No.

19 Q. Mr. Sarver, you were asked a number of
20 questions about those extraordinary measures that you
21 recommended and the costs that should be borne by
22 those. I would ask that you just summarize, please,
23 your rationale for your recommendation that a
24 forensic audit and management performance audit be
25 performed by the Ohio -- of the Ohio regulated

1 entities and why at least at this time you believe
2 the company should bear that cost.

3 MR. YURICK: There would be an objection
4 to the form of the question and I believe that the
5 rationale for the audits is already set forth in
6 Mr. Sarver's testimony.

7 EXAMINER FARKAS: I'll let him answer.

8 A. I view it as a means of moving forward
9 with these companies. We've made our recommendations
10 through the course of repeated GCR audits, and we're
11 making some progress but not as rapidly or to the
12 extent that we believe is necessary. So staff has
13 felt that taking it to the next level to look more in
14 depth into how the companies are operated, what
15 transactions are taking place would be a step in the
16 right direction to alleviate these concerns and
17 problems going forward.

18 Q. And your subsequent recommendations or
19 what additional steps are taken would be dependent on
20 the outcome of the results of those audits?

21 A. Correct. I have no clue as to what these
22 audits will find or what they will conclude.
23 Mr. Yurick presented several questions if they get a
24 clean bill of health, what will take place in the
25 future. And I don't know that answer because I've

1 never been to this point before with any utility.

2 MR. MARGARD: Very good. Thank you. I
3 have no further questions.

4 EXAMINER FARKAS: Mr. Serio.

5 MR. SERIO: Thank you, your Honor.

6 - - -

7 RECROSS-EXAMINATION

8 By Mr. Serio:

9 Q. Mr. Sarver, it's your position that the
10 need for the forensic audit came about because of the
11 concerns that you've uncovered over the last two MP
12 audits, correct?

13 A. Over the -- what I would define this as
14 these are more at least from staff's expertise to be
15 financially focused with some what I'll call
16 peripheral management, but I don't think that staff
17 has the expertise to determine at a management level
18 what is taking place and how to remedy it.

19 Q. But you would agree with me but not for
20 what you uncovered during the last two audits, you
21 would not be making the recommendation for the
22 forensic audit, correct?

23 A. No. I think that if we made the
24 recommendations in '10 and we were what appears to be
25 moving down a different path, no, not at all.

1 Q. So would it be fair to say that one of
2 the reasons that you've recommended the company not
3 get cost recovery of a forensic audit is because the
4 forensic audit is being necessitated in part by the
5 company's own actions?

6 MR. YURICK: Your Honor, I'll object at
7 this point because I really think this is entering
8 the arena of friendly cross at this point, and I
9 really think that with all due respect to Mr. Serio
10 and his capabilities and his talent, he's really just
11 leading the witness to say what the witness already
12 wants to say so I don't think this is in any way
13 appropriate cross-examination at this point.

14 EXAMINER FARKAS: I'm going to let him
15 answer, but I will just note we don't like friendly
16 cross.

17 MR. SERIO: Well, for what it's worth,
18 your Honor, OCC Witness Slone did on page 31 of his
19 testimony also make a recommendation for having the
20 Commission consider ordering an additional, more
21 detailed audit or investigation of Northeast and
22 Orwell's management practices. That was not simply
23 piggybacking on what Mr. Sarver said.

24 EXAMINER FARKAS: I understand, I
25 understand.

1 You can answer the question.

2 A. I think the recommendation that staff has
3 made has been necessitated based on what -- what was
4 found over the course of the audit.

5 MR. SERIO: That's all, your Honor.
6 Thank you.

7 EXAMINER FARKAS: And do you have any
8 follow-up?

9 MR. YURICK: I don't at this point, your
10 Honor. Thank you very much.

11 EXAMINER FARKAS: All right. Thank you
12 for your testimony and your patience.

13 THE WITNESS: Thank you, sir.

14 MR. MARGARD: Your Honor, I would
15 respectfully renew my motion for admission of Staff
16 Exhibit No. 2. And I would further renew my motion
17 of Commission-Ordered Exhibits 1, 2, and 3.

18 EXAMINER FARKAS: Any objection to the
19 admission of Staff Exhibit 2?

20 MR. SERIO: No, your Honor.

21 MR. KRAVITZ: Mr. Sarver's testimony?

22 MR. MARGARD: That's it.

23 MR. SERIO: Vern, what's Staff Exhibit 3?

24 MR. MARGARD: Commission-Ordered Exhibits
25 1, 2, and 3.

1 MR. SERIO: Your Honor, I would move for
2 admission --

3 MR. YURICK: I have no objection, your
4 Honor.

5 EXAMINER FARKAS: Okay. Staff Exhibit 2
6 will be admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 EXAMINER FARKAS: I believe the
9 Commission-ordered exhibits by rule come in
10 automatically.

11 MR. MARGARD: They do but as a formality.

12 EXAMINER FARKAS: I appreciate that.

13 MR. MARGARD: Keep the record clean and
14 ensure the current and correct copies are given to
15 the court reporter.

16 EXAMINER FARKAS: I can appreciate that.
17 Is there any objection to Commission-Ordered Exhibits
18 1, 2, and 3?

19 MR. SERIO: No, your Honor.

20 MR. YURICK: No, your Honor.

21 EXAMINER FARKAS: Then those will be
22 admitted.

23 (EXHIBITS ADMITTED INTO EVIDENCE.)

24 EXAMINER FARKAS: And I believe we have
25 OCC Exhibit 21.

1 MR. SERIO: I would move admission of OCC
 2 Exhibit 21, the interstate contract.

3 EXAMINER FARKAS: Is there any objection
 4 to that exhibit? I believe it is a three-page
 5 exhibit.

6 MR. YURICK: Three pages.

7 MR. SERIO: Three pages, and it also says
 8 Service Company #2.1.

9 MR. YURICK: No objection, your Honor.

10 EXAMINER FARKAS: Staff, does staff?

11 MR. MARGARD: No objection, your Honor.

12 EXAMINER FARKAS: Then that will be
 13 admitted.

14 (EXHIBIT ADMITTED INTO EVIDENCE.)

15 EXAMINER FARKAS: That covers all the
 16 exhibits, I believe, that we had.

17 Now, let's go off the record for a
 18 second.

19 (Discussion off the record.)

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

22 It's the request of the company to
 23 provide rebuttal testimony. They've indicated they
 24 want to provide rebuttal testimony for four witnesses
 25 and that testimony will be -- must be filed on or

1 before July 17, and then we would have a hearing --
2 the hearing would reconvene on Monday, the 22nd, at
3 9 o'clock.

4 I believe that should be it for today.
5 Appreciate everybody staying and we'll be adjourned.

6 MR. YURICK: Thank you, your Honor.

7 MR. SERIO: Thank you, your Honor.

8 (Thereupon, the hearing was adjourned at
9 7:10 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, July 10, 2013, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5728)

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Summary: Transcript in the matter of Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company hearing held on 07/10/13 - Volume III electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.