

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. :

- - -

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 Monday, July 22, 2013.

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VOLUME IV-REBUTTAL

- - -

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On behalf of the Residential Consumers of  
Northeast Ohio Natural Gas Corporation  
and Orwell Natural Gas Company.

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On behalf of the Staff of the PUCO.

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| Company Exhibit                         | Identified | Admitted |
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| 7 Rebuttal Testimony of Thomas J. Smith | 835        | 917      |
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| Staff Exhibit   | Identified | Admitted |
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| 3 Northeast Ohio Natural Gas Corporation Purchased Gas Adjustment 09-209-GA-GCR | 914        | 973      |
| 4 Page 46 from Gas Natural's 10-K with the Securities and Exchange Commission   | 971        | 975      |

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OCC Exhibit Identified Admitted

22 Orwell Natural Gas Company  
and Northeast Natural Gas  
Company's Supplemental  
Responses to the Office of the  
Ohio Consumers' Counsel's  
Second Set of Interrogatories 947 975

23 Orwell Natural Gas Company  
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Company's Responses to the  
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Counsel's Amended First Set  
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Monday Morning Session,

July 22, 2013.

- - -

EXAMINER FARKAS: Let's go on the record.

This is a continuation of the hearing in Case No.

12-209-GA-GCR, et al.

At this time I think you're up.

MR. YURICK: Thank you, your Honor. The company would call to the stand Mr. Tom Smith.

EXAMINER FARKAS: Okay.

(Witness sworn.)

EXAMINER FARKAS: You may be seated.

MR. YURICK: Your Honor, may I approach?

(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

THOMAS J. SMITH

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

DIRECT EXAMINATION

By Mr. Yurick:

Q. Good morning, sir.

A. Good morning.

Q. Could you please state your name and spell your last name for the record.

A. My name is Thomas J. Smith, S-M-I-T-H.

1           Q.    And, Mr. Smith, are you currently  
2           employed with Gas Natural, or were you at the time of  
3           the audit employed by Gas Natural in connection with  
4           one of the regulated utilities, Orwell Natural Gas or  
5           Northeast Natural Gas?

6           A.    Yes, I was.

7           Q.    And are you here to offer testimony on  
8           behalf of Northeast Natural Gas and Orwell Natural  
9           Gas Company?

10          A.    Yes, I am.

11          Q.    And handing you what's been marked  
12          Company's Exhibit 7, is that a copy of your rebuttal  
13          testimony filed in the GCR cases herein?

14          A.    Yes, it is.

15          Q.    And was that testimony prepared by you or  
16          at your direction?

17          A.    Yes.

18          Q.    And if I asked you the questions posed in  
19          the rebuttal testimony of Thomas J. Smith prefiled  
20          here and marked as Company's Exhibit No. 7, would  
21          your answer be the same to those questions as you sit  
22          here today?

23          A.    Yes, they would.

24          Q.    Do you have any corrections, deletions,  
25          or modifications to that testimony?

1           A.    No, I do not.

2                   MR. YURICK:  Your Honor, at this point  
3   the companies would move the admission of Company's  
4   Exhibit No. 7, and we would tender the witness for  
5   cross-examination.

6                   EXAMINER FARKAS:  Thank you.

7                   Mr. Serio.

8                                   - - -

9                                   CROSS-EXAMINATION

10   By Mr. Serio:

11                  Q.    Good morning, Mr. Smith.

12                  A.    Good morning.

13                  Q.    Am I correct that the purpose of your  
14   rebuttal testimony is to respond to and contradict  
15   the testimony given by Cindy Bates at the hearing on  
16   July 11, 2013, in this case?

17                  A.    That is correct.

18                  Q.    And is it your testimony contradicting  
19   Ms. Bates based on your extensive expertise in the  
20   natural gas industry and your experience with LDCs?

21                  A.    That is correct.

22                  Q.    And also your authority as president of  
23   Northeast and Orwell, correct?

24                  A.    That's correct.

25                  Q.    Now, you were president of Northeast and

1       Orwell during the audit period, correct?

2             A.     That is correct.

3             Q.     And you are not the president of  
4       Northeast or Orwell today, correct?

5             A.     I'm president of Orwell.

6             Q.     You are still president of Orwell.

7             A.     Yes.

8             Q.     But you're no longer president of  
9       Northeast, correct?

10            A.     That's correct.

11            Q.     And can you tell me when you ceased being  
12       president of Northeast?

13            A.     It was in June of this year.

14            Q.     And why did you cease being president of  
15       Northeast?

16            A.     It was the chairman's choice.

17            Q.     And the chairman would be --

18            A.     Richard M. Osborne.

19            Q.     Were you given any explanation behind his  
20       choice to no longer have you as president of  
21       Northeast?

22                   MR. YURICK:   There would be an objection  
23       on the basis of hearsay.

24                   EXAMINER FARKAS:   I'll allow it if he  
25       knows.



1 A. No.

2 Q. So you were given no explanation; you  
3 were simply removed as president of Northeast?

4 A. That's correct.

5 Q. And Mr. Whelan became president of  
6 Northeast?

7 A. That's correct.

8 Q. Was this part of any succession plan, or  
9 was this a sudden change?

10 A. I suspect it was part of a succession  
11 plan.

12 Q. Had you been made aware that that  
13 succession plan was going to be put in place?

14 A. Not until it happened.

15 Q. Now, some -- I have some questions that I  
16 think you covered some of this with my colleague in  
17 the last GCR audit. You have a B.S. degree in  
18 business administration from John Carroll, correct?

19 A. That's correct.

20 Q. And you were a CPA. You took and passed  
21 the exam in 1969?

22 A. Yes.

23 Q. And I recall that you were only licensed  
24 through you said approximately 1980 or '85. Can you  
25 tell me why your license lapsed at that time?

1           A.    I didn't keep up with my requirements,  
2           licensing requirements. I didn't believe I needed  
3           the certificate in my job duties at that time.

4           Q.    And in that 1980 to 1985 time period, you  
5           were employed by Mr. Osborne, correct?

6           A.    What time period was that?

7           Q.    1980 to 1985, about the time your license  
8           lapsed.

9           A.    No.

10          Q.    No. Who were you employed by?

11          A.    Ameritrust.

12               EXAMINER FARKAS: I'm sorry? Ameritrust?

13               THE WITNESS: Uh-huh.

14          Q.    Now, I believe you indicated you first  
15          worked with Peat Marwick and that was an accounting  
16          firm.

17          A.    Correct.

18          Q.    And the time you were with Mr. Marwick's  
19          firm you didn't do any audits of utility companies;  
20          is that correct?

21          A.    That is correct.

22          Q.    And then you worked for Ameritrust for 16  
23          years in their accounting and corporate development  
24          departments?

25          A.    That's correct.

1           Q.    And your emphasis there was mergers and  
2           acquisitions.  You didn't do anything with utilities  
3           there, correct?

4           A.    Correct.

5           Q.    You began working for Mr. Osborne -- and  
6           that's Richard Osborne, the chairman who you  
7           mentioned previously, correct?

8           A.    Correct.

9           Q.    And you began working for him in the  
10          1987-1988 time period?

11          A.    Correct.

12          Q.    And I believe you went to work for OsAir  
13          Securities; is that correct?

14          A.    Correct.

15          Q.    And what was OsAir Securities?

16          A.    It was a securities company.

17          Q.    And were they involved with utilities at  
18          all?

19          A.    No.

20          Q.    And what was your role or function at  
21          OsAir Securities?

22          A.    It was mergers and acquisitions.

23          Q.    And from there you went to work for  
24          People Savings Bank; is that correct?

25          A.    That's correct.

1 Q. And you did consulting there?

2 A. Consulting initially.

3 Q. And then you actually went to work for  
4 them as their CFO, their chief financial officer?

5 A. That's correct.

6 Q. And after that, you went to work for  
7 Mr. Osborne's auto dealership, correct?

8 A. Correct.

9 Q. And then I believe you went to work for a  
10 Retirement Management Company?

11 A. That's correct.

12 Q. And what was your function there?

13 A. We managed assisted living facilities.

14 Q. And from there then you became president  
15 of Liberty Self-Store, correct?

16 A. That's correct.

17 Q. And what kind of company was Liberty  
18 Self-Store?

19 A. It owned and operated self-storage  
20 facilities.

21 Q. Now, I believe in 2004 you became the  
22 treasurer for Orwell Natural Gas Company; is that  
23 correct?

24 A. It was somewhere in that time period.

25 Q. And what were -- as treasurer, what were

1 your duties?

2 A. It was primarily head accountant.

3 Q. What would be the difference between the  
4 duties of the treasurer and just the staff  
5 accountant?

6 A. The treasurer or controller is at a  
7 higher level.

8 Q. In your opinion is the treasurer or  
9 controller interchangeable?

10 A. No. The treasury function usually has to  
11 do with handling money, not necessarily strictly  
12 accounting.

13 Q. And then I believe after six months to a  
14 year at Orwell, you became president of Orwell,  
15 correct?

16 A. That's correct.

17 Q. Now, when you became president, what were  
18 your duties as president?

19 A. It was to oversee the operation.

20 Q. Now, prior to being employed as treasurer  
21 for Orwell, you had no prior utility experience,  
22 correct?

23 A. That's correct.

24 Q. And you went to work for Orwell as  
25 treasurer, and within a year you were made president

1 of the company, correct?

2 A. Correct.

3 Q. Now, in the time you were treasurer, what  
4 did you do to learn the business of the company in  
5 order to function as president?

6 A. What did I do? I listened to the  
7 employees that were purchasing gas for JDOG, their  
8 jobs, and learned on the job.

9 Q. In your experience with distribution  
10 companies, did you find that it's a usual practice  
11 for someone to become president of a utility with  
12 less than one year's experience as treasurer prior  
13 to -- prior to being named president?

14 A. I couldn't tell you.

15 Q. In your time as president of Orwell and  
16 Northeast Gas Company, did you ever have  
17 opportunities to talk to the officers of other  
18 distribution companies in Ohio or the United States?

19 A. Yes.

20 Q. And did you ever compare their  
21 backgrounds to your own?

22 A. Yes.

23 Q. And did you find that their experience  
24 prior to being named president was more extensive in  
25 the utility field than your own?

1           A.    I really couldn't say.

2           Q.    Now, at the same time you were named  
3 president of Orwell you were also named president of  
4 Northeast and Brainard, correct?

5           A.    No. That occurred, I believe, about a  
6 year, year and a half later. I believe it was like  
7 2005, somewhere in that timeframe.

8           Q.    Okay. Now, when you were named the  
9 president, I believe in the last case my colleague  
10 asked you a question of what did you see your duty as  
11 president and do you recall your answer to him at  
12 that time?

13          A.    No, I don't.

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

15               EXAMINER FARKAS: Yes.

16               MR. SERIO: I have a copy of the  
17 transcript of Mr. Smith's testimony in the last  
18 proceeding, the 10-209-GA-GCR and 10-212-GA-GCR. I  
19 only copied the pages of cross-examination starting  
20 on page 786, and I wasn't going to make it an exhibit  
21 inasmuch as it has already been administratively  
22 noticed, but I had copies made today to make it a  
23 little easier.

24               EXAMINER FARKAS: Okay. Thank you.

25          Q.    And you do recall testifying in that

1 other proceeding, correct?

2 A. Yes.

3 Q. If you would turn to page 795 of the  
4 transcript.

5 EXAMINER FARKAS: Page again?

6 MR. SERIO: 795.

7 EXAMINER FARKAS: Thank you.

8 A. Okay.

9 Q. Do you see your answer -- the second  
10 answer on the page about your primary responsibility  
11 as president?

12 A. Yes.

13 Q. So at the time you -- you indicated your  
14 primary responsibility was to make sure you had  
15 adequate staff, an adequate operations manager, and  
16 an adequate accounting manager, correct?

17 A. That's what I said, yes.

18 Q. Now, as president -- you were also  
19 president of Orwell Trumbull Pipeline, correct?

20 A. Yes.

21 Q. Now, you indicated in the 2010 proceeding  
22 that you were not functionally involved with Orwell  
23 Trumbull, although you were president. Can you  
24 explain to me what you meant by "not functionally  
25 involved"?



1           A.    I didn't oversee the operations, and I  
2 did not oversee the accounting.

3           Q.    Okay.  What did you do as president of  
4 Orwell Trumbull?

5           A.    I held that title and that was it.

6           Q.    At the time you held the title but were  
7 not functionally involved, who was the functional  
8 head of the company?

9           A.    I don't recall.

10          Q.    Now, when you were president of Orwell  
11 Trumbull, were you compensated for the position of  
12 president of Orwell Trumbull?

13          A.    No, I was not.

14          Q.    Now, I believe you indicated at some  
15 point that the presidency of Orwell Trumbull was  
16 given to Ms. Howell, Becky Howell?

17          A.    Yes.

18          Q.    And I believe you indicated in the 2010  
19 case that it was because Rick wanted someone  
20 stronger.

21          A.    Correct.

22          Q.    You can look at page 796 of the  
23 transcript.

24          A.    796.

25          Q.    Last answer on the page.

1 A. That's correct.

2 Q. And Rick was Mr. Rick Osborne, correct?

3 A. Correct.

4 Q. And Ms. Howell was the Becky Howell who  
5 testified both in the last proceeding and in this  
6 proceeding, correct?

7 A. That's correct.

8 Q. And do you -- what did you mean by he  
9 wanted someone stronger?

10 A. He needed stronger accounting personnel.

11 Q. Do you know if Ms. Howell is a CPA?

12 A. I believe she is not.

13 Q. But you were a CPA.

14 A. Was.

15 Q. At the time she was named president, did  
16 Ms. Howell have your experience of working for a  
17 major accounting firm or a major bank doing  
18 accounting work for them?

19 A. I don't believe so.

20 Q. Yet he wanted someone with a stronger  
21 accounting background, and he replaced you with  
22 someone that had less experience than you did.

23 A. Uh-huh.

24 Q. And you were president of Cobra Pipeline,  
25 correct?

1           A.     That's correct.

2           Q.     And I think you also indicated that you  
3     were not functionally involved with Cobra at the  
4     time.

5           A.     That's correct.

6           Q.     So your answers regarding Cobra would be  
7     the same as the answers that I just -- you just gave  
8     me regarding Orwell Trumbull?

9           A.     Yes.

10          Q.     And who became -- who actually was  
11     running or who became president of Cobra when you  
12     were replaced?

13          A.     When I was what?

14          Q.     When you were replaced.

15          A.     I think it's Becky, but I can't be  
16     certain.

17          Q.     And Becky would be Ms. Howell.

18          A.     Yes.

19          Q.     Now, I believe you indicated in the last  
20     hearing that you are also president of Great Plains  
21     Natural Gas Company? 798 in the transcript.

22          A.     Yes.

23          Q.     And you indicated that there was no one  
24     reporting to you in that position as president of  
25     Great Plains because it was strictly a shell holding

1 company.

2 A. That's correct.

3 Q. Can you explain to me the purpose of a  
4 shell holding company?

5 A. A shell holding company in a virtual  
6 acquisition shielded the owner from liability.

7 Q. And the owner would be Mr. Osborne?

8 A. Correct.

9 Q. And what kind of liability would a shell  
10 holding company shield him from?

11 A. Be subject to the same liability that any  
12 corporation would.

13 Q. Did you receive any compensation as  
14 president of Great Plains Natural Gas Company?

15 A. No, I did not.

16 Q. And I believe you were also president of  
17 Lightning Pipeline?

18 A. Correct.

19 Q. And that was a shell holding company that  
20 was the parent company of Orwell?

21 A. That's correct.

22 Q. Did you receive compensation as Lightning  
23 Pipeline?

24 A. No, I did not.

25 Q. And to the extent that was a shell

1 holding company, again, it was designed simply to  
2 shield Mr. Osborne from liability?

3 A. Correct.

4 Q. Now, you indicated previously that for  
5 Orwell Trumbull and Cobra Pipelines you did not  
6 functionally oversee the two pipelines. At the time  
7 you were president who oversaw the accounting and the  
8 financial part of the business for those two  
9 entities?

10 A. The accounting was a Jeff, I can't  
11 remember his last name, and the operations was Steve  
12 Williams.

13 EXAMINER FARKAS: Before you get too far,  
14 when you were president of Great Plains and Lightning  
15 Pipeline, the shell corporations, did they file tax  
16 returns?

17 THE WITNESS: As part of Gas Natural,  
18 they are part of the consolidated tax return.

19 EXAMINER FARKAS: Consolidated? But did  
20 those two companies, Great Plains and Lightning  
21 Pipeline, have income?

22 THE WITNESS: In an accounting world on  
23 an equity basis their income is the same as Orwell or  
24 NEO on an equity basis.

25 EXAMINER FARKAS: But on a nonequity

1 basis.

2 THE WITNESS: They have no income.

3 EXAMINER FARKAS: Okay. Thank you. Any  
4 other employees?

5 THE WITNESS: No.

6 EXAMINER FARKAS: Okay. Thank you.

7 Q. (By Mr. Serio) Now, I believe you were  
8 also vice president and chief financial officer of  
9 Energy West?

10 A. That's correct.

11 Q. And what was Energy West?

12 A. Energy West was a utility holding company  
13 in Montana.

14 Q. Now, what's the difference between a  
15 utility holding company and a shell holding company?

16 A. The -- initially Energy West operated as  
17 a utility, and it was a utility until we spun them  
18 out about two years ago.

19 Q. So there were actual employees that  
20 worked for Energy West?

21 A. Yes. There was a Montana division and a  
22 Wyoming division.

23 Q. And those were actual local distribution  
24 companies in those states, correct?

25 A. Yes.

1           Q.    Now, in the previous case you also  
2 indicated you were vice president of OsAir and was  
3 OsAir still the same as OsAir Securities or were  
4 those different?

5           A.    No.  It's a different company.

6           Q.    And what was OsAir?

7           A.    OsAir is a real estate developer and  
8 operates an industrial gas business.

9           Q.    You said industrial gas business?

10          A.    Yes.

11          Q.    Can you explain to me what you mean by  
12 that?

13          A.    The company owns a nitrogen plant, and we  
14 pipe nitrogen approximately 40 miles to various  
15 industrial customers.

16          Q.    Is that the only gas that the OsAir is  
17 involved with is nitrogen?

18          A.    It at one time handled both oxygen and  
19 nitrogen.

20          Q.    Are other natural gases such as pentane  
21 or butane a part of their gas at all?

22          A.    Yes.

23          Q.    And what is their business with regard to  
24 butane and pentane?

25          A.    They used to sell propane on a retail --

1 Q. I said pentane, not propane.

2 A. Oh, I don't know about pentane.

3 Q. Now, you were also president of Spellman  
4 Pipeline?

5 A. Yes.

6 Q. And what's Spellman Pipeline?

7 A. Spellman Pipeline is a pipeline owned by  
8 I believe Lightning Pipeline. We bought it --  
9 purchased from a Marathon pipeline company.

10 Q. And what function does the Spellman  
11 Pipeline have?

12 A. It's a gas transportation.

13 Q. Is that currently -- does Spellman  
14 currently transport natural gas in Ohio?

15 A. Yes.

16 Q. And to what customers do they transport  
17 gas?

18 A. I couldn't tell you.

19 Q. Does Spellman transport any gas to Cobra,  
20 Northeast, or Brainard?

21 A. I believe it does some to Northeast but  
22 I'm guessing. I don't know.

23 Q. You're president of Spellman Pipeline,  
24 correct?

25 A. Correct.



1 Q. And you are also president of Northeast?

2 A. Correct.

3 Q. You were. And you don't know if one of  
4 the companies that you are president of transported  
5 gas to another that you are president of.

6 A. That's correct.

7 Q. Now, you also indicated that you were  
8 employed by Gas Natural Service Company?

9 A. Correct.

10 Q. What title did you hold with Gas Natural  
11 Service Company?

12 A. Oh, I think it's president, but I can't  
13 be certain.

14 Q. What is Gas Natural Service Company?

15 A. It buys and purchases the gas for the  
16 Ohio utilities.

17 Q. A marketing company?

18 A. It's a service company.

19 Q. What services other than purchasing  
20 natural gas do they provide?

21 A. That's it.

22 EXAMINER FARKAS: But, again, you don't  
23 know if you are president of Gas Natural?

24 THE WITNESS: No.

25 Q. Are you --

1 THE WITNESS: Not Gas Natural, of the  
2 service company.

3 EXAMINER FARKAS: Gas Natural Service  
4 Company, that's different than Gas Natural.

5 THE WITNESS: Uh-huh.

6 EXAMINER FARKAS: Do you -- do you ever  
7 recall being president of it?

8 THE WITNESS: I probably am.

9 EXAMINER FARKAS: But you're not sure?

10 THE WITNESS: I'm not sure.

11 EXAMINER FARKAS: Okay. Thank you.

12 Q. (By Mr. Serio) Are you familiar with  
13 marketing companies in Ohio, natural gas marketing  
14 companies?

15 A. I have some knowledge of them, yes.

16 Q. What knowledge -- what's your  
17 understanding of a natural gas marketing company in  
18 Ohio?

19 A. A natural gas marketing company in Ohio  
20 primarily buys gas from either producers or other  
21 providers and sells it to end use customers.

22 Q. Based on that understanding is there  
23 anything that Gas Natural Service Company does  
24 different than what marketing companies do in Ohio?

25 A. I don't believe so.

1           Q.    Okay.  And I believe you indicated you  
2           were still president of the Retirement Management  
3           Company?

4           A.    Yes.

5           Q.    And, again, that has nothing to do with  
6           utilities at all, correct?

7           A.    Correct.

8           Q.    And then I believe there is also a  
9           Bedford Properties Company?

10          A.    Correct.

11          Q.    Was that -- what was Bedford Properties?

12          A.    Bedford Properties originally was a  
13          retirement facility; and, now, it owns a parking  
14          garage.

15          Q.    Nothing to do with a utility industry?

16          A.    Nothing to do with utilities.

17          Q.    Now, you also indicated that you were  
18          president of John D. Oil and Gas Exploration,  
19          correct?

20          A.    For a short time period, that was the  
21          successor to Liberty Self-Store.

22          Q.    Okay.  And Liberty Self-Store has been a  
23          company that was in the business of purchasing  
24          self-storage units, correct?

25          A.    And operating them.

1           Q.   And operating them. So John D. Oil and  
2 Gas Exploration succeeded Liberty Self-Store and  
3 because oil and gas exploration is in the name, do I  
4 assume at some point they changed their business from  
5 self-storage units to oil and gas exploration?

6           A.   That is correct.

7           Q.   Now, what exactly did John D. Oil and Gas  
8 Exploration do with gas exploration in the business?

9           A.   What did it do? It drilled wells.

10          Q.   So it was actually a producer.

11          A.   Correct.

12          Q.   Now, there's also a John D. Oil and Gas  
13 Marketing, correct?

14          A.   Correct.

15          Q.   Were you employed by John D. Oil and Gas  
16 Marketing?

17          A.   I don't recall whether I was an officer  
18 of that or not.

19          Q.   What did John D. Oil and Gas Marketing  
20 do?

21          A.   It was a gas marketing company.

22          Q.   So it would have done similar functions  
23 to Gas Natural Service Company?

24          A.   Similar.

25          Q.   Is it safe to say that even though they

1       were affiliates they were competitors in the field of  
2       selling natural gas?

3               A.     No.

4               Q.     No. Did they work together in selling  
5       natural gas?

6               A.     No.

7               Q.     If I was a utility company and Gas  
8       Natural Service Company came to me to sell natural  
9       gas, would I have any way of knowing they were  
10      affiliated to John D. Oil and Gas Marketing?

11              A.     I don't know.

12              Q.     And during the last audit period who was  
13      the president of John D. Oil and Gas Marketing?

14              A.     It's either Becky or somebody else. I'm  
15      not sure who it was. It could have been me.

16              Q.     Can you look at page 805 of the  
17      transcript, bottom of the page. It indicates there  
18      that Gregory Osborne was president of John D. Oil and  
19      Gas Exploration.

20              A.     Correct.

21              Q.     So do you know what your function was if  
22      he was president?

23              A.     In --

24              Q.     During the last audit case.

25              A.     What was my function?

1 Q. Yes.

2 A. You had asked about Marketing initially.

3 Q. Okay. I'm sorry, yeah, we are getting  
4 them confused. So he was -- Mr. Osborne was  
5 president of John D. Oil and Gas Exploration.

6 A. Yes.

7 Q. And you believe that you might have been  
8 president of John D. Oil and Gas Marketing.

9 A. I just don't recall.

10 Q. Now, during the time that you were  
11 president of Northeast, Orwell, and Brainard, roughly  
12 2005 to 2013, you were also employed by  
13 Cobra Pipeline, Orwell Trumbull Pipeline, John D. Oil  
14 and Gas Marketing, Great Plains Exploration, Gas  
15 Natural, and Energy West. Can you tell me who you  
16 were compensated by when you were president of  
17 Northeast and Orwell?

18 A. For several years I was compensated by  
19 NEO. The last several years I have been compensated  
20 by Energy West.

21 Q. Can you tell me roughly in that period  
22 from 2005 to 2013 when the change went from NEO to  
23 Energy West?

24 A. My guess is it was somewhere around 2009  
25 or 2010.

1           Q.    Now, when you were compensated by NEO,  
2   you were doing work for the other Ohio utilities,  
3   correct?

4           A.    Correct.

5           Q.    But all your compensation came from  
6   Northeast?

7           A.    Yes.

8           Q.    Was there any allocation of cost to  
9   Orwell or Brainard?

10          A.    No.

11          Q.    Do you know a Mike Zappitello?

12          A.    Yes.

13          Q.    And how do you know him?

14          A.    Mike buys the gas for the Ohio utilities  
15   through John D. Oil and Gas Marketing.

16          Q.    During your tenure of Northeast, did  
17   Mr. Zappitello ever work for Northeast?

18          A.    Not that I am aware of.

19          Q.    Or Orwell?

20          A.    No.

21          Q.    Or Brainard?

22          A.    No.

23          Q.    And you indicated Mr. Zappitello buys gas  
24   on behalf of John D. Oil and Gas Marketing, I believe  
25   you said?

1           A.    Yes.

2           Q.    Do you know if he is employed by any  
3 other companies?

4           A.    I don't know.

5           Q.    For example, do you know if he works for  
6 Mentor Energy and Resources Company?

7                   MR. YURICK: Your Honor, I'm going to  
8 pose an objection at this point. I think we are  
9 getting a little bit beyond Mr. Smith's general  
10 background and knowledge in the oil and gas industry  
11 and beyond the scope of the rebuttal testimony that  
12 he has offered so.

13                   MR. SERIO: Your Honor, it seems to me  
14 that what's at issue here is the credibility of  
15 Ms. Bates versus the credibility of Mr. Smith. I'm  
16 trying to explore his knowledge as president so that  
17 we can put his credibility in proper perspective  
18 against Ms. Bates.

19                   EXAMINER FARKAS: I'm going to allow the  
20 question.

21           Q.    I'll repeat. I was asking if you know  
22 whether he is employed by Mentor Energy and Resources  
23 Company; OsAir, Inc.; John D. Resources; or Great  
24 Plains Exploration, Ltd?

25           A.    I don't know.



1           Q.    Now, can you tell me what business  
2 relationship there is between John D. Oil and Gas  
3 Marketing and John D. Oil and Gas Exploration?

4           A.    The business relationship?

5           Q.    Are they affiliated companies?

6           A.    I don't know if they are affiliated. I  
7 know the Marketing company bought from the  
8 Exploration company.

9           Q.    Are both companies ultimately owned by  
10 Mr. Osborne?

11          A.    Yes.

12          Q.    Now, at times in your role as president  
13 of Northeast and Orwell, you were also indicated as  
14 president of Cobra or John D. Oil and Gas and there  
15 were instances during your term as president when  
16 Northeast and Orwell would purchase gas from Cobra or  
17 from John D. Oil and Gas; is that correct?

18          A.    That's correct.

19          Q.    Now, what did you do when there were  
20 transactions between different affiliates that you  
21 were an officer of to make sure that the transactions  
22 were arm's length?

23          A.    I would review prices occasionally but  
24 not every time.

25          Q.    What's your definition of an arm's length

1 transaction?

2 A. It's a transaction between two  
3 independent parties.

4 Q. And if the companies are affiliated, what  
5 do you think is necessary in order for the  
6 transaction to be an arm's length one?

7 A. I couldn't answer that.

8 Q. Did the companies under your tenure,  
9 Northeast and Orwell, have any safeguards in place to  
10 make sure that any business transactions with  
11 affiliates were done at an arm's length basis?

12 A. Yes.

13 Q. And what were those safeguards?

14 A. Generally speaking we would get other  
15 outside pricing.

16 Q. So you would solicit other bids and  
17 compare those to the affiliate?

18 A. Occasionally, yes.

19 Q. Occasionally. Did you do it all the  
20 time?

21 A. No.

22 Q. Why not?

23 A. I just did it on a test basis.

24 Q. What do you mean by a test basis?

25 A. A sample.

1           Q.    So, for example, the first time that  
2           there was a transaction between Northeast and Orwell  
3           or Cobra and John D. Oil, you would do a sample at  
4           that time, correct?

5           A.    Or look at it for reasonableness.

6           Q.    And then if the contract was replaced  
7           with another contract, would you look at it again at  
8           that point?

9           A.    Yes.

10          Q.    Did you ever have any instances where the  
11          transaction with the affiliates, the price was not in  
12          line with the prices that you were getting from  
13          nonaffiliates?

14          A.    Not that I recall.

15          Q.    Now, when you were president of Northeast  
16          and Orwell prior to 2008, Northeast and Orwell  
17          purchased local production in-house, correct?

18          A.    Correct.

19          Q.    And then in 2008, John D. Oil and Gas  
20          Marketing was brought in to do the purchasing for the  
21          two utilities, correct?

22          A.    That's correct.

23          Q.    Why was John D. Oil and Gas Marketing  
24          brought in to do a function that previously the  
25          company had done in-house?

1           A.    Because we believed that centralizing the  
2           function with one person, one company was more  
3           efficient for the company.

4           Q.    Who was doing the purchasing for  
5           Northeast and Orwell prior to 2008?

6           A.    I don't have exact dates but there was  
7           Mike Zappitello and Steve Rego were involved for  
8           Orwell, and NEO I believe it was Steve.

9           Q.    Okay. So prior to 2008, at some point  
10          Mr. Zappitello and Mr. Rego were employed by either  
11          Northeast or Orwell --

12          A.    Mike was never employed by Orwell or NEO  
13          to my knowledge.

14          Q.    Okay. So did -- prior to 2008, did  
15          Orwell do local production purchasing in-house?

16          A.    It's somewhere in that timeframe that we  
17          did it in-house, yes.

18          Q.    And if you did it in-house, do you recall  
19          who the in-house employees that did the purchasing  
20          were?

21          A.    Yes. It was Steve Rego.

22          Q.    Mr. Rego, okay. And he did it for both  
23          Northeast and Orwell?

24          A.    I believe so. Stephanie may have --  
25          Patton may have done some of the NEO purchases. I

1 just don't recall.

2 Q. So you went from having one or two  
3 in-house employees do it to having Mr. Zappitello do  
4 the work for JDOG Marketing, correct?

5 A. That's correct.

6 Q. If you turn to page 823 of the  
7 transcript, in the last hearing you indicated that  
8 one of the reasons that you used JDOG Marketing was  
9 that things got more complicated when Orwell Trumbull  
10 Pipeline was built. Do you recall that? Bottom of  
11 page 823.

12 A. Bottom?

13 Q. Bottom of page 823.

14 A. Uh-huh.

15 Q. What do you mean by Orwell Trumbull  
16 Pipeline was built? What exactly was built at the  
17 time?

18 A. The Orwell Trumbull Pipeline somewhere in  
19 that time period was built.

20 Q. So there was no previous pipeline; the  
21 entire pipeline was built in that time period?

22 A. Yes. It was over about a two-year  
23 period.

24 Q. Do you know how many miles Orwell  
25 Trumbull is?

1           A.    My recollection is it's about 40 or  
2   50 miles.

3           Q.    Well, what function does Orwell Trumbull  
4   Pipeline have as far as transporting gas for Orwell  
5   and Northeast?

6           A.    It provides transportation from an  
7   alternate source other than Columbia Gas and  
8   Dominion.

9           Q.    What's the alternate source?

10          A.    It's the -- oh, it's Northeast Pipeline.  
11   I got the name wrong, but it will come to me.

12          Q.    Would that be another interstate  
13   pipeline?

14          A.    Yes.

15          Q.    Do you know if it was Rocky's Express?

16          A.    No.

17          Q.    Now, when you say it got more  
18   complicated, what was complicated to have another  
19   option to purchase gas?

20          A.    Well, what was more complicated? Well,  
21   the companies essentially doubled in size. There was  
22   a new source. It was not as simple as it used to be.

23          Q.    Now, was local production sourced on  
24   Orwell Trumbull, or was that interstate gas?

25          A.    It was both.

1           Q.    Now, you also indicated things got more  
2 complicated when Cobra Pipeline was purchased.  How  
3 many miles is the Cobra Pipeline?  Do you know?

4           A.    It's in three segments, and I couldn't  
5 tell you the mileage.

6           Q.    Am I correct what is today the  
7 Cobra Pipeline used to be part of Columbia Gas  
8 Transmission or TCO?

9           A.    Correct.

10          Q.    And prior to it being purchased and made  
11 Cobra, the gas flowed through the same pipe as the  
12 TCO tariffs as today flows under the Cobra tariffs,  
13 correct?

14          A.    I don't believe they are the same tariff.

15          Q.    Well, but the function of transporting  
16 gas for that same pipe is the same when it was TCO as  
17 when it's Cobra, correct?

18          A.    They perform the same function.

19          Q.    But they have different tariffs.

20          A.    That's my understanding.

21          Q.    Now, Cobra Pipeline charges for  
22 shrinkage, correct?

23          A.    I believe they do.

24          Q.    And TCO also charges for shrinkage,  
25 correct?

1 A. I believe so.

2 Q. And when Cobra Pipeline was part of TCO,  
3 the shrinkage rate was one rate for both TCO and the  
4 portions that are now Cobra, correct?

5 A. Correct.

6 Q. But now it's separate Cobra, there is an  
7 additional shrinkage rate on the Cobra Pipeline,  
8 correct?

9 A. That's correct.

10 EXAMINER FARKAS: Could we go off the  
11 record for a second?

12 (Discussion off the record.)

13 EXAMINER FARKAS: Go back on the record.

14 Q. Now, I believe you indicated in the prior  
15 case that in all your positions as president, you  
16 reported directly to Mr. Osborne, correct?

17 A. That is correct.

18 Q. Now, earlier I asked you about the  
19 difference between treasurers and controllers.

20 A. Uh-huh.

21 Q. And I believe you indicated generally  
22 controllers -- are controllers at a higher level than  
23 treasurers?

24 A. It probably varies from company to  
25 company. I would say as a general rule, that one is



1 above the other in any particular company.

2 EXAMINER FARKAS: Could I just interject  
3 here? When you say you report to Mr. Osborne, how  
4 often are you reporting to Mr. Osborne?

5 THE WITNESS: At least once a week we  
6 talk.

7 EXAMINER FARKAS: Okay. Is he -- and he  
8 is aware of what's going on with these companies?

9 THE WITNESS: Yes.

10 EXAMINER FARKAS: Is he aware of what  
11 prices companies are charging and paying?

12 THE WITNESS: I'm sure he is.

13 EXAMINER FARKAS: Okay.

14 Q. (By Mr. Serio) Now, to the extent you  
15 report to Mr. Osborne, did he provide you direction  
16 on what you should do as president of Northeast and  
17 Orwell?

18 A. Not necessarily.

19 Q. Not necessarily. Does that mean  
20 sometimes he would give you direction?

21 A. Sometimes he would give me direction.  
22 Sometimes he would directly go to operations  
23 managers.

24 Q. To the extent that there was a contract  
25 pending between one of the LDCs, either Northeast or

1       Orwell, and one of the other affiliate companies  
2       owned by Mr. Osborne such as JDOG Marketing, did he  
3       ever give you instructions you should purchase gas  
4       from JDOG Marketing?

5             A.     No.

6             Q.     Did you ever have any instances where you  
7       did not purchase from an affiliate and then you  
8       informed Mr. Osborne and he indicated he would prefer  
9       you purchase from the affiliate?

10            A.     I don't recall.

11            Q.     Now, during your presidency of Northeast  
12       and Orwell from 2005 to 2013, how many controllers  
13       did Orwell have?

14            A.     Boy, that's a -- I just don't recall. It  
15       may have been several; it may have been one.

16            Q.     Was Heather Lipnis a controller for  
17       Orwell during your time period?

18            A.     No. She was controller for Energy West  
19       and Gas Natural.

20            Q.     What about Jonathan Harrington?

21            A.     Jonathan was the controller for Gas  
22       Natural and Energy West.

23            Q.     What about Ms. Howell?

24            A.     She is -- was the controller of Gas  
25       Natural.

1 Q. Larry Brainard?

2 A. Larry was the Ohio companies controller.

3 Q. What about Sue Lagoni?

4 A. Sue was the Ohio controller at one time.

5 Q. So the different individual utilities,  
6 Northeast, Orwell, and Brainard, did not have  
7 individual controllers, but you generally had an Ohio  
8 controller for all three companies?

9 A. Yes.

10 Q. And that would have been during your  
11 entire tenure from '05 to '13?

12 A. Yes.

13 Q. Do you recall other than Mr. Brainard and  
14 Ms. Lagoni there was any other controllers for the  
15 Ohio companies?

16 A. There was another one before Sue, Marie.  
17 I just don't recall her name.

18 Q. And is Mr. Brainard still the Ohio  
19 controller to your knowledge?

20 A. No, he is not.

21 Q. Do you know who is?

22 A. I couldn't tell you right now, no.

23 Q. When did Mr. Brainard cease being the  
24 Ohio controller?

25 A. Last Friday.

1           Q.    Can you tell me the circumstances of  
2   Mr. Brainard no longer being controller?

3           A.    He tendered his resignation.

4           Q.    Was any reason given for tendering his  
5   resignation?

6           A.    He couldn't take the pressure.  His  
7   health was going -- deteriorating.  He was developing  
8   ulcers and high blood pressure.

9           Q.    So counting the new controller who you  
10   can't recall, that means that there were at least  
11   four controllers for the Ohio companies during the  
12   period from 2005 to 2013?

13          A.    That's correct.

14          Q.    And how many controllers has Gas Natural  
15   had during your time employed by Gas Natural?

16          A.    Three, I believe.

17          Q.    And what time would that cover?

18          A.    That would cover -- oh, I couldn't tell  
19   you, probably 2006 -- no, it's after.  It's 2009,  
20   2010, sometime in that time period to the current.

21          Q.    So in roughly a four- or five-year period  
22   they have had at least three different controllers?

23          A.    Yes.

24          Q.    Now, in your experience is it normal for  
25   there to be that many controllers in that short a

1 time period for companies?

2 A. It's not unusual but it does happen.

3 Q. Now, does the controller in any way help  
4 ensure that transactions among affiliates are arm's  
5 length?

6 A. I would hope so.

7 Q. So that would be one of the functions the  
8 controller has.

9 A. Of which company?

10 Q. Of the Ohio companies.

11 A. That's correct.

12 Q. And also with Gas Natural.

13 A. That's correct.

14 Q. Now, is it possible there is a higher  
15 turnover among controllers for the Ohio companies  
16 because there is concern with how transactions among  
17 the affiliates are handled?

18 MR. YURICK: Objection.

19 Q. If you know.

20 A. I don't know. The last one was health.

21 EXAMINER FARKAS: You want to wait until  
22 I make a ruling before you answer.

23 THE WITNESS: Oh, I'm sorry.

24 EXAMINER FARKAS: That's okay with me. I  
25 don't care.

1           Q.    Two weeks ago in the hearing the company  
2 introduced as Exhibit No. 2 a Gas Natural, Inc., Code  
3 of Business Ethics -- Code of Business Conduct for  
4 Directors, Officers, and Employees.

5           A.    That's correct.

6           Q.    Are you familiar with that document?

7           A.    I know we have it. I couldn't rattle it  
8 off to you.

9           Q.    Did you sign a copy of it?

10          A.    I believe I did.

11          Q.    Do you know when the code of conduct was  
12 put in place?

13          A.    I don't recall.

14          Q.    Do you know if it was after the last  
15 audit case or prior to it?

16          A.    No. I think it has been around for a  
17 number of years.

18          Q.    And you indicated that you did sign this  
19 agreement, correct?

20          A.    Yes.

21          Q.    Do you know if Mr. Osborne, Rick Osborne,  
22 signed it?

23          A.    I don't know.

24          Q.    Do you know if Mr. Greg Osborne signed  
25 it?

1           A.    I don't know.

2           Q.    To the extent that it's supposed to be  
3   for directors, officers, and employees, would you  
4   assume that both Mr. Rick and Greg Osborne would have  
5   signed it?

6                   MR. YURICK:  Objection.  I think the  
7   witness already testified he didn't know.

8                   EXAMINER FARKAS:  I'll sustain the  
9   objection.

10          Q.    Now, to your knowledge does the code of  
11   conduct indicate how affiliate transactions are to be  
12   handled?

13          A.    I just don't recall.

14          Q.    Who's responsible for enforcing the code  
15   of conduct?

16          A.    Each employee is responsible.  They sign  
17   the form.

18          Q.    Is there someone that's employed by  
19   either Northeast or Orwell whose job it is to make --  
20   one of their job duties is to make sure that everyone  
21   follows the code of conduct?  Is there a compliance  
22   officer?

23          A.    There's probably a designated compliance  
24   officer but I couldn't tell you who that is.

25          Q.    Do you know how the code is actually --

1 code of conduct is actually enforced other than  
2 giving employees a copy?

3 A. No, I don't.

4 Q. Now, you know Ms. Cindy Bates, correct?

5 A. Yes.

6 Q. Did you hire Ms. Bates?

7 A. Yes, I did.

8 Q. And you were familiar with her  
9 background, education, and work experience when you  
10 hired her, correct?

11 A. Yes.

12 Q. And as president of the company, what was  
13 your working relationship with Ms. Bates? How did  
14 you interact as president with her role?

15 A. As I indicated in my testimony, I did  
16 review the GCR.

17 Q. Do you know how to do a GCR calculation?

18 A. No, I don't.

19 Q. Does Ms. Bates know how to do one to your  
20 knowledge?

21 A. I hope she did.

22 Q. How often did you work with Ms. Bates?

23 A. Probably only about 20 minutes a month.

24 EXAMINER FARKAS: I just have another  
25 question. You said you reviewed the GCR.



1 THE WITNESS: Uh-huh.

2 EXAMINER FARKAS: But you don't know how  
3 actually to do a GCR?

4 THE WITNESS: That's correct.

5 EXAMINER FARKAS: What was the extent of  
6 your review?

7 THE WITNESS: I would look at their  
8 estimates.

9 EXAMINER FARKAS: What did you say?

10 THE WITNESS: I would look at their  
11 estimates and see where they were on the over and  
12 under. If they continued to grow the -- that number  
13 one way or the other means their estimates were  
14 wrong, and I would occasionally adjust them.

15 EXAMINER FARKAS: Okay. Thank you.

16 Q. (By Mr. Serio) And by over and under, you  
17 mean the estimates from prior experience had grown  
18 too large and you were trying to reconcile those  
19 through either the actual adjustment -- the RA, AA,  
20 or BA, correct?

21 A. If she continually undercollected, to me  
22 that meant she was doing the estimates wrong or her  
23 estimates were off.

24 Q. Was she responsible for making the  
25 estimates herself, or did she get that information

1 from somebody else?

2 A. She was responsible for making the  
3 initial estimate.

4 Q. During the time that she was involved  
5 with working with the GCR, did she ever have -- did  
6 you ever have opportunity where you had any  
7 situations where she was informed that her work was  
8 inadequate or didn't meet your expectations?

9 A. Was she informed?

10 Q. Yes.

11 A. I don't know.

12 Q. Did you ever determine that her work was  
13 inadequate or did not meet expectations?

14 A. You want my opinion; is that what you are  
15 asking?

16 Q. As president of the company.

17 A. She did not meet my expectations.

18 Q. What did you do about the fact that she  
19 did not meet your expectations?

20 A. Well, I let her immediate superior know,  
21 and I also, you know, encouraged them to work  
22 together to correct some of those deficiencies.

23 Q. And who was your direct supervisor?

24 A. Larry Brainard.

25 Q. To the extent that you identified

1 deficiencies in her work, what were those  
2 deficiencies?

3 A. One of her other responsibilities other  
4 than the GCR at that point in time was system  
5 balancing, and she fell way behind in system  
6 balancing.

7 Q. What do you mean she fell behind?

8 A. She was behind by two or three months,  
9 maybe more.

10 Q. Meaning that for two or three months she  
11 didn't do anything to correct the imbalance? What  
12 exactly do you mean by that?

13 A. In balancing the system you balance each  
14 one of our individual systems and there's more than  
15 one. Obviously it was a complicated system. The ins  
16 and the outs have to be equal.

17 Q. So it was her job to make sure that each  
18 of the systems were in balance on the different  
19 pipelines that you have?

20 A. No, from the city gate versus sales. It  
21 was not balancing the pipelines.

22 Q. What would cause a difference between  
23 city gate and sales?

24 A. Shrink.

25 Q. Other than shrink is there anything that

1 would cause that difference?

2 A. Not that I can think of.

3 Q. So she was behind in reconciling the  
4 shrink between the city gate and sales volumes?

5 A. She was behind in balancing the system.

6 Q. Was she ever directly informed that her  
7 work was inadequate?

8 A. She was told she was behind, and we  
9 encouraged her to catch up.

10 Q. Now, on your testimony at page 2 --

11 A. Testimony today?

12 Q. Your testimony, your direct testimony, it  
13 indicates that from time to time you had to make  
14 adjustments to her calculations.

15 A. That's correct.

16 Q. How often did you have to make those  
17 corrections?

18 A. Oh, I don't recall.

19 Q. Half the time? Less than half the time?

20 A. Less than half the time.

21 Q. And what type of adjustments did you  
22 make?

23 A. I would either increase or decrease her  
24 estimate.

25 Q. And that was based on your expertise or

1 based on the imbalances from prior periods?

2 A. That was based on my experience in the  
3 business and what had happened to the over and under.

4 Q. Now, you indicated that you had been told  
5 one portion of Ms. Bates' testimony involved an  
6 incident that you believe to be untrue. What  
7 specifically were you told about Ms. Bates'  
8 testimony?

9 A. I was told she had adjusted the sales  
10 volumes.

11 Q. That's all you were told, she adjusted  
12 them?

13 A. Yes.

14 Q. And you're saying that she never adjusted  
15 sales volumes? That's what's untrue?

16 A. I don't know what she had ended up doing.  
17 I had told her to correct the estimate.

18 Q. Okay. So you were told she did an  
19 adjustment to sales volumes and what you told her was  
20 to correct the estimate.

21 A. That's correct.

22 Q. So to the extent that she said that she  
23 was told to adjust sales volumes, that is not an  
24 untrue statement. What's untrue about her statement?

25 A. What is true about it?

1           Q.    What's untrue?  You indicated, I believe,  
2   it's untrue.

3           A.    You just used a double negative.  I am  
4   not sure how to answer it.

5                   EXAMINER FARKAS:  Do you want to rephrase  
6   your question?

7           Q.    On line 10 you say on your testimony  
8   there was an incident that you believed to be untrue.

9           A.    That is correct.

10          Q.    What was untrue about what you were told  
11   of her testimony?

12          A.    I was told in her testimony that I told  
13   her to adjust the sales volume and that is not  
14   correct.

15          Q.    So when you said from time to time you  
16   would have her make adjustments, did you tell her to  
17   make adjustments?

18          A.    I told her to make adjustments to the  
19   estimate.

20          Q.    What's the difference between making an  
21   adjustment to the estimate and making the adjustment  
22   that Ms. Bates testified to?

23          A.    I think the estimate is estimated --  
24   estimating what your cost is going to be.  The sales  
25   should be trailing -- my understanding should be the

1 trailing 12 months of sales.

2 Q. So Ms. Bates testified that she was told  
3 to make an adjustment to sales, and you're saying  
4 that you never told her to adjust sales.

5 A. That is correct.

6 Q. But you did tell her to make adjustments  
7 to her calculations.

8 A. To her estimate.

9 Q. Were the estimates to sales?

10 A. No. The estimate was future gas cost.

11 Q. And the GCR filings, are there ever  
12 estimates of sales volumes that are included in the  
13 calculation?

14 MR. YURICK: Objection, your Honor. I  
15 don't think he could --

16 EXAMINER FARKAS: If he knows.

17 THE WITNESS: Pardon?

18 EXAMINER FARKAS: If you know the answer,  
19 you can answer.

20 THE WITNESS: No.

21 EXAMINER FARKAS: No, what? So you don't  
22 know?

23 THE WITNESS: I don't know.

24 EXAMINER FARKAS: Thank you.

25 Q. (By Mr. Serio) The one incident that

1 Ms. Bates testified to when you told her not to make  
2 the adjustment, what was the result of not making the  
3 adjustment? Was the GCR higher or lower?

4 A. I don't recall.

5 Q. So you don't recall if estimated sales  
6 are part of the calculation, and you don't recall  
7 whether the GCR would have been higher or lower, but  
8 you do recall telling her not to adjust the sales  
9 numbers.

10 A. That's correct.

11 Q. You're familiar with the processing fee  
12 that's on the Cobra Pipeline?

13 A. Not as -- I know there is a fee, but I  
14 just couldn't tell you what it is.

15 Q. Would that have been something that would  
16 have been in Mr. Whelan's expertise when you were  
17 president?

18 A. Yes.

19 Q. Would it surprise you to know that  
20 Mr. Whelan testified he didn't know with certainty  
21 whether the gas on the Cobra system that's charged  
22 the processing fee actually gets processed?

23 MR. YURICK: There would be an objection,  
24 your Honor.

25 EXAMINER FARKAS: I will sustain the



1 objection.

2 MR. SERIO: Well, your Honor, he is  
3 allowed to rely on what he was told about Ms. Bates'  
4 testimony and testify to that. I'm trying to  
5 determine his reaction to the fact that his vice  
6 president and now his successor as president didn't  
7 know with certainty whether gas that's charged a fee  
8 is actually processed. I don't see a difference.

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

11 Q. (By Mr. Serio) Do you know if the gas on  
12 the Cobra system that's charged a fee actually goes  
13 through the processing plant?

14 A. There is gas that goes through a  
15 processing plant down in Marietta, yes.

16 Q. Do you know if all the gas on the  
17 Churchtown system goes through that processing plant  
18 before it goes to customers?

19 A. That I don't know.

20 Q. Do you know if the fee is charged on all  
21 the volumes on the Churchtown system?

22 A. That I don't know.

23 EXAMINER FARKAS: And would that include  
24 at any time even while you were president of  
25 Cobra you don't --

1 THE WITNESS: That's correct.

2 EXAMINER FARKAS: You just don't know.

3 THE WITNESS: Don't know.

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

5 EXAMINER FARKAS: Yes.

6 MR. SERIO: Earlier in the proceeding  
7 there was a document marked as OCC Exhibit No. 11.  
8 It was some discovery responses from the company to  
9 OCC. In particular the interrogatories talk about  
10 whether Northeast pays a processing charge to Cobra  
11 and, if so, how much the charge is. In particular  
12 I'm pointing to Interrogatory No. 100 where the  
13 question refers to page 13 of the staff audit report  
14 and questions whether Northeast paid the 25-cent  
15 processing fee or charge on all volumes on the  
16 Churchtown system.

17 And the response there is that the  
18 companies didn't have sufficient information to  
19 determine whether JDOG is paying a Cobra 25 percent  
20 charge on the Churchtown system.

21 MR. YURICK: I'm sorry. Go ahead. I  
22 didn't mean to cut you off, Mr. Serio.

23 Q. My question to you is based on the  
24 response to that interrogatory, do you -- does that  
25 help you with any indication as to whether that

1 25-cent fee is paid on all volumes on the Churchtown  
2 system, the Cobra system?

3 MR. YURICK: There would be an objection  
4 to the form of the question and the fact that the  
5 witness is being asked to formulate an opinion based  
6 on an answer to an interrogatory --

7 EXAMINER FARKAS: I will let him use it  
8 to refresh his recollection. Does that refresh your  
9 recollection?

10 THE WITNESS: No, no, it does not.

11 Q. I'm also going to show you the questions  
12 back and forth to each other. Question 96 refers to  
13 the response to Interrogatory 94 as to when the  
14 processing fee is paid on all local production on the  
15 Churchtown system. And if you go back to the answer  
16 No. 94, that answer indicates that the companies  
17 state Northeast pays a lump sum to JDOG for local  
18 production delivered to the city gate. There is not  
19 a processing charge on the invoices from JDOG for the  
20 Churchtown system, and then it says the companies do  
21 not have sufficient information to determine whether  
22 JDOG pays the processing charge to Cobra for local  
23 production purchased on the Churchtown system.

24 Does that help refresh your recollection  
25 with the fee at all?

1           A.    No.

2           Q.    As president of Northeast, do you think  
3           it's important for you to know whether customers are  
4           being charged that processing fee on all the volumes  
5           that flow on the Churchtown system?

6                   MR. YURICK:  Objection, your Honor.  I  
7           think at this point Mr. Smith said that he was no  
8           longer president of Northeast Ohio.

9           Q.    At the time that you were president of  
10          Northeast Ohio, did you think it was important to  
11          know whether customers that were paying 25 cents on  
12          each volume of gas on the Cobra Churchtown system for  
13          processing, whether that gas was actually processed?

14          A.    I left that up to our operational folks  
15          to take care of.

16          Q.    As president -- when you were president  
17          of Northeast, did you have a fiduciary duty to  
18          customers to ensure that customers were not charged  
19          for fees that were not -- for fees for services that  
20          were not rendered?

21                   MR. YURICK:  There would be an objection,  
22          your Honor.

23                   EXAMINER FARKAS:  I will let him answer  
24          it.

25          A.    We have a duty to do the best we can.

1           Q.    And in your opinion does that duty  
2   include making sure the customers don't pay for fees  
3   that they don't receive a service for?

4           A.    Yes.

5           Q.    Now, are you familiar with the term wet  
6   gas?

7           A.    Yes.

8           Q.    And is it your understanding that wet gas  
9   refers to natural gas that has additional other  
10   natural gases such as butane and pentane?

11          A.    That is correct.

12          Q.    And those, in fact, are the wet gases  
13   that the processing plant on the Cobra system removes  
14   from natural gas, correct?

15          A.    Right.

16          Q.    Is it your understanding that those other  
17   wet gases have value?

18          A.    Yes.

19          Q.    And is it your understanding that that  
20   value is, in fact, greater than the value of natural  
21   gas itself?

22          A.    That I don't know.

23          Q.    When gas is processed at the Cobra plant  
24   for Northeast customers, do you know what happens to  
25   the wet gases that are removed?

1           A.    I believe they were sold to Mark West.

2           Q.    And did Northeast get any credit for the  
3   sale of those wet gases?

4                   MR. YURICK:  Your Honor, there will be an  
5   objection.  We didn't offer this witness as an expert  
6   on the processing fee or to testify about the  
7   processing fee or the price of --

8                   EXAMINER FARKAS:  I will let him answer  
9   this question, but I think we're reaching here.

10          A.    Do you want to repeat the question,  
11   please?

12          Q.    Does Northeast get a credit for the sale  
13   of those wet gases to Mark West?

14          A.    I don't know.

15          Q.    Do you know if Cobra Pipeline sells any  
16   of those liquids or gases to OsAir?

17                   MR. YURICK:  Again, your Honor --

18                   EXAMINER FARKAS:  I'm going to sustain  
19   the objection.

20          Q.    Are you familiar with the fees that  
21   Northeast and Orwell paid to JDOG Marketing while you  
22   were president --

23          A.    Yes.

24          Q.    -- of Northeast?  Do you know the  
25   magnitude of those fees?

1           A.    No.

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

3                   EXAMINER FARKAS:  Yes.

4           Q.    Previously OCC Exhibit 6 was entered into  
5 the record.  And Interrogatories 24 and 25 to that  
6 discovery asked the amount of the fees paid to JDOG  
7 by Northeast and Orwell.  And you see the figure  
8 \$418,730.65 for Northeast?

9           A.    Yes.

10          Q.    And do you see the \$229,175.41 for  
11 Orwell?

12          A.    Yes.

13          Q.    And that -- those two amounts would cover  
14 the roughly two years of the audit period, correct?

15          A.    That I don't know.

16          Q.    Do you see in the question there it asks  
17 if that was over the audit period?

18          A.    Yes.

19          Q.    Okay.  Do you know what services JDOG  
20 Marketing provided to Northeast and Orwell in  
21 exchange for the \$600,000 in fees?

22          A.    They purchased the local production gas,  
23 arranged for contracts with that gas, and also  
24 arranged for interstate gas purchases.

25          Q.    Now, to the extent that was -- the fees

1 were related to local production, those are the  
2 fees -- that's the service that prior to 2008  
3 Northeast and Orwell did in-house while you were  
4 president?

5 A. Local production, yes.

6 Q. Now, is it your understanding that part  
7 of those fees require Mr. Zappitello from JDOG  
8 Marketing to nominate, schedule, and confirm gas  
9 volumes on Columbia Gas Transmission Company, TCO?

10 A. That was my understanding, yes.

11 Q. Do you know if, in fact, Ms. Patton does  
12 the nominating, scheduling, and confirmation of gas  
13 volumes on Columbia Gas Transmission?

14 A. That I don't know.

15 Q. I recall in your cross-examination you  
16 indicated to me that one of your duties as president,  
17 treasurer, and secretary of the three Ohio utilities  
18 was to make sure you had adequate staff, correct?

19 A. Correct.

20 Q. And do you recall in the last case  
21 Mr. Sauer asking you if you thought Ms. Howell was  
22 qualified for the job that she had?

23 A. I don't recall.

24 Q. If you look at page 863 of the transcript  
25 I gave you. You might want to look at page 862 also



1 to get the context. You indicated previously it was  
2 Mr. Osborne's decision to promote Ms. Howell to C --  
3 from the CFO position, correct?

4 A. Yes.

5 Q. And did you not agree?

6 A. That was the promotion to what position?

7 Q. From the CFO.

8 A. It doesn't say that.

9 Q. On line 8 it says, "She was CFO while all  
10 this was going on." You say, "That's correct."

11 "It was your decision to promote her?"

12 And you say, "No, it was not."

13 A. That's correct.

14 Q. But it was Mr. Osborne's decision. Why  
15 did you disagree with Mr. Osborne's decision to  
16 promote her?

17 A. I meant to say it was not my decision.

18 Q. Right. And did you agree with his  
19 decision?

20 A. It was not my decision to question it.

21 Q. But you were president of the company,  
22 and you stated that your duty was to make sure you  
23 had adequate staff.

24 A. Correct.

25 Q. So how does making sure you have adequate

1 staff conform with it wasn't your decision on whether  
2 to promote her or not?

3 A. It was Mr. Osborne's decision.

4 Q. Now, you're not currently employed by  
5 Northeast, correct?

6 A. That is correct.

7 Q. Are you being compensated for your  
8 appearance today?

9 A. I receive compensation from Gas Natural.

10 Q. Are you involved with training Mr. Whelan  
11 to take over as president for Northeast?

12 A. Marty has pretty much run that operation  
13 except for the accounting for the last number of  
14 years.

15 Q. Have you scheduled any time with  
16 Mr. Whelan since your leaving Northeast as president  
17 in order to bring him up to speed on functions as  
18 president?

19 A. No, I have not.

20 MR. SERIO: That's all I have, your  
21 Honor. Thank you.

22 Thank you, Mr. Smith.

23 EXAMINER FARKAS: Mr. Margard.

24 MR. MARGARD: Thank you, your Honor.

25 - - -

CROSS-EXAMINATION

By Mr. Margard:

Q. Good morning, Mr. Smith.

A. Good morning.

Q. Mr. Serio's examination was thorough. I hope I won't have too much additional for you, but I do have some clarifying questions. You indicated that you first began working for Mr. Osborne in about 1987 with OsAir Securities, correct?

A. Correct.

Q. And that was a securities firm.

A. Correct.

Q. And that's different than OsAir, Incorporated.

A. Correct.

Q. And that OsAir, Incorporated, you indicated was a property developer and a manufacturer of gases?

A. Correct.

Q. And both of those entities are owned by Mr. Richard Osborne; is that correct?

A. Yes.

Q. Are they public or private?

A. Well, OsAir Securities was jointly owned by Rick and his brother Michael.

1 Q. Okay. Private company or public?

2 A. Private.

3 Q. Thank you. Are you acquainted with  
4 OsGas?

5 A. Yes.

6 Q. And what is OsGas?

7 A. OsGas or OsAir?

8 Q. OsGas.

9 A. OsGas is -- I keep forgetting, it was the  
10 PA exploration company.

11 Q. And PA you mean Pennsylvania?

12 A. Pennsylvania, yes.

13 Q. And that's the entity that filed  
14 bankruptcy at the beginning of last year?

15 A. Yes.

16 Q. Now, you also indicated in response to  
17 questions from Mr. Serio that you were the -- at the  
18 time of your previous testimony an officer with  
19 Retirement Management Company.

20 A. Correct.

21 Q. You were president then; is that correct?

22 A. Correct.

23 Q. Are you still?

24 A. I believe so.

25 Q. You believe you are?

1 A. Uh-huh.

2 Q. And what business does it perform?

3 A. It owns one assisted living facility.

4 Q. And what is the name of that facility?

5 A. It's a Cardinal retirement village. I  
6 don't know whether they are presently using that. We  
7 have got a triple net lease to at least one customer.

8 Q. And I'm going to ask you to repeat in  
9 just a moment because I had trouble hearing you over  
10 the siren.

11 MR. MARGARD: With your indulgence.

12 EXAMINER FARKAS: I will always indulge  
13 the emergency crews and the staff.

14 Q. You want to repeat your answer?

15 A. It was a Cardinal retirement village with  
16 which we now have triple net lease to do one  
17 individual.

18 Q. Does it manage any others?

19 A. No.

20 Q. But -- and it owns that village?

21 A. Not currently, no.

22 Q. Not currently, okay. Do you know whether  
23 that retirement community was, is, or has ever been  
24 served by either Orwell or Northeast Ohio?

25 A. To my knowledge it has not.

1 Q. Were you aware that there was a -- a  
2 retirement community or a community that was served  
3 by one of the companies on a residential  
4 transportation service?

5 A. I don't recall. There is one with  
6 Brainard where we have a nursing home.

7 Q. Okay. And just for the record that  
8 nursing home is not associated with Retirement  
9 Management Company in any way?

10 A. No.

11 Q. And you became the treasurer of Orwell in  
12 2004.

13 A. Correct.

14 Q. Did you have any responsibility for GCR  
15 filings as treasurer of Orwell?

16 A. No.

17 Q. About six months later you became the  
18 president of Orwell and Northeast?

19 A. Yes.

20 Q. Continued as president of Orwell.

21 A. Correct.

22 Q. And you subsequently also became the  
23 president of Brainard Natural Gas.

24 A. Correct.

25 Q. At the time of your previous testimony

1       you were vice president and CFO of Gas Natural?

2             A.     Correct.

3             Q.     Are you still?

4             A.     Yes.

5             Q.     And vice president and CFO of Energy  
6       West?

7             A.     Correct.

8             Q.     And are you still?

9             A.     Yes.

10            Q.     We had some discussion about controllers  
11       and CFOs and who reports to who, and I believe you  
12       indicated that that sort of depends on the company.

13            A.     Uh-huh.

14            Q.     Is that true within this family of  
15       related entities?

16            A.     Is what true?

17            Q.     I was trying to figure out if you were  
18       speaking in general terms or if you were speaking  
19       specifically in terms of the Gas Natural family.

20            A.     The question he asked me as I understand  
21       it was do companies normally have this sort of  
22       turnover with controllers. My answer or my response  
23       intended it to be that depends on the companies.  
24       Some companies have a lot of turnover; some don't.

25            Q.     Okay. Let's -- let's take a look at

1     these distribution companies in Ohio. Do they have  
2     chief financial officers?

3             A.     They have key accountants, key financial  
4     officers, yes.

5             Q.     And when you say key officers, are you  
6     talking about key accountants?

7             A.     Key accountants.

8             Q.     But without a specific title.

9             A.     Correct.

10            Q.     And who would they report to?

11            A.     The Ohio companies would report to Larry  
12     Brainard.

13            Q.     Or previously to Mr. Brainard as the  
14     controller of the Ohio utilities.

15            A.     Yes, yes.

16            Q.     Okay. And Mr. Brainard would report to  
17     whom, please?

18            A.     He would report to the controller of the  
19     holding company.

20            Q.     Okay. And what was the relationship  
21     between the CFO and the controller of the holding  
22     company?

23            A.     The controller would report to me.

24            Q.     As the CFO.

25            A.     Yes.



1           Q.    And who did you report to as president of  
2 the utilities?

3           A.    I think Mr. Osborne.

4           Q.    As chairman of the board.

5           A.    Yes.

6           Q.    You didn't have any responsibility for  
7 the controller of the Ohio utilities?

8           A.    I had input but I did not -- he did not  
9 directly report to me.

10          Q.    You also indicated you were at the time  
11 of your previous testimony the executive vice  
12 president of OsAir.

13          A.    Correct.

14          Q.    And which OsAir are we talking about?

15          A.    OsAir the industrial gas and real estate  
16 developer.

17          Q.    Thank you.  And are you still?

18          A.    Yes.

19          Q.    And that you were president of Spellman  
20 Pipeline, we discussed that this morning.

21          A.    Yes.

22          Q.    And are you still president of Spellman?

23          A.    I don't recall.  I probably many.

24          Q.    Who would have informed you you were no  
25 longer president if you were no longer?

1           A.    I would suppose Mr. Osborne.

2           Q.    But to the best of your knowledge, he has  
3 not told you that?

4           A.    I just don't recall.

5           Q.    Are you aware that Spellman Holdings  
6 filed an application with the Commission in July of  
7 2011 indicating that Mr. Martin Whelan was the  
8 president of Spellman Pipeline?

9           A.    I just don't recall.

10          Q.    Do you know whether, in fact, he is the  
11 president of Spellman Pipeline?

12          A.    No, I don't.

13          Q.    And I believe you indicated Spellman is  
14 currently providing intrastate gas transportation in  
15 Ohio; is that correct?

16          A.    Right.

17          Q.    Do you -- do you know if Spellman  
18 Pipeline is currently extending lines to participate  
19 as part of the Utica and Marcellus shale operations  
20 in the state of Ohio?

21          A.    That I don't know.

22          Q.    Okay. I want to get back to your  
23 responsibilities as president of the distribution  
24 companies. And you were, as I'm understanding it,  
25 president of these companies during the audit period

1 of this case; is that correct?

2 A. Correct.

3 Q. Are you aware of what the audit period of  
4 these cases is?

5 A. No, I'm not.

6 Q. Just so that we have some context, the  
7 audit period for Northeast is from March of 2010  
8 through the end of February of 2012.

9 A. Uh-huh.

10 Q. Do you have that in mind?

11 A. Uh-huh.

12 Q. And for Orwell is from July of 2010  
13 through June of 2012. And just to make sure that we  
14 tied that up, you were, in fact, president of the  
15 companies during that time.

16 A. Yes.

17 Q. Okay. And I believe you indicated you  
18 did not have any responsibility for the preparation  
19 or the filing of GCR with the Commission.

20 A. That's correct.

21 Q. You indicated in your prefiled testimony  
22 today that Ms. Bates at least during her time with  
23 the companies performed the initial calculations of  
24 monthly estimates.

25 A. Correct.

1           Q.    I wanted to make sure that the record is  
2 clear what you're referring to when you say "monthly  
3 estimates." Will you define what that means, please.

4           A.    It's my understanding she would have to  
5 estimate the cost of gas for the coming month.

6           Q.    The cost of gas. Would this be the total  
7 cost that the company was expected to expend?

8           A.    No. It was the actual cost per Mcf she  
9 was expecting to pay.

10          Q.    So we're talking about the price of gas  
11 in the market.

12          A.    Yes.

13          Q.    And that was her responsibility to  
14 perform that calculation?

15          A.    Yes.

16          Q.    And do you know --

17          A.    Or to make that estimate.

18          Q.    To make that estimate. And what  
19 information did she rely on to the best of your  
20 knowledge to make that estimate?

21          A.    I don't know.

22          Q.    Do you know if anyone associated with the  
23 companies -- and by associated I mean the related  
24 entities as well -- provided that information to  
25 Ms. Bates?

1           A.    That I don't know.

2           Q.    Now, you indicate to the best of your  
3 knowledge she had no prior experience in the natural  
4 gas industry.

5           A.    That's correct.

6           Q.    Did somebody train her how to perform  
7 this calculation?

8           A.    It was my understanding her predecessor  
9 Dawn did.

10          Q.    And Dawn is still with the companies; is  
11 that correct?

12          A.    Yes.

13          Q.    With the related companies?

14          A.    I couldn't tell you whose payroll she's  
15 on, but she does the accounting for one of the other  
16 utilities.

17          Q.    During the audit period were there others  
18 who were performing this same function?

19          A.    I don't recall.

20          Q.    Were there others whose estimated  
21 calculations you would have reviewed during the audit  
22 period?

23          A.    I just don't recall.

24          Q.    You weren't Ms. Bates direct supervisor,  
25 were you?

1 A. No.

2 Q. Who was?

3 A. Larry Brainard.

4 Q. As the controller, he was her supervisor?

5 A. Controller of the Ohio companies, yes.

6 Q. Okay. To the best of your knowledge, was  
7 there any prescribed method for calculating this GCR  
8 estimate?

9 A. That I don't know.

10 Q. And you also would not know if that was  
11 the method that was approved or discussed at any time  
12 with the Commission or the Commission staff?

13 A. That I don't know.

14 Q. Why would these estimates have to be  
15 revised?

16 A. It was my opinion she constantly  
17 consistently underestimated or undercollected  
18 consistently. It indicated to me her estimation and  
19 her process were faulty.

20 Q. What do you mean by undercollect?

21 A. It means we did not charge the customer  
22 enough, and we would have to -- we would be  
23 undercollected versus overcollected.

24 Q. Okay. How did you make that  
25 determination based on the information that she

1 provided to you?

2 A. She gave me every month what she was  
3 going to use, and she also gave me the history on the  
4 over and under account.

5 Q. And we've heard reference to the over and  
6 under account numerous times in this proceeding.  
7 Would you please specifically indicate what that  
8 account is and how that informed your decision  
9 whether to revise her estimates.

10 A. It's an account on the balance sheet. We  
11 keep track of that -- that account for the  
12 undercharged or overcharged gas to the customers.

13 Q. Are these overcharges, undercharges that  
14 you are referring to components of the GCR mechanism?

15 A. Pardon?

16 Q. Are these components of the GCR  
17 mechanism?

18 A. I believe so.

19 Q. Now, you've indicated that you are not  
20 intimately familiar with the GCR mechanism itself; is  
21 that right?

22 A. Correct.

23 Q. Do you know what the different component  
24 parts of the GCR in Ohio are?

25 A. I know there is an AA and there is a BA.

1 Q. And do you know what those refer to?

2 A. No.

3 Q. Do you know what their relationship is to  
4 each other?

5 A. I know it's the catch up.

6 Q. How often would you have to make  
7 revisions based on information that was communicated  
8 to you by Ms. Bates?

9 A. I believe I answered that question. I  
10 don't recall what I said.

11 Q. Well, I'm just trying to recall as well  
12 because I don't honestly. You said in your testimony  
13 you did it from time to time.

14 A. From time to time, I don't think it was  
15 over half the time.

16 Q. Okay.

17 EXAMINER FARKAS: I think that was your  
18 answer previously.

19 THE WITNESS: Thank you.

20 EXAMINER FARKAS: Just for the record.

21 Q. Obviously not trying to trip you up. It  
22 just didn't register with me.

23 And when you would make these revisions,  
24 were they always increases, or did you ever decrease?

25 A. They could have been decreases.



1 Q. Do you recall whether you ever revised --

2 A. I don't recall.

3 Q. Did you rely on any other source of  
4 information to check the accuracy of these estimates  
5 other than the over/under account?

6 A. No.

7 Q. Did you or anyone who reported to you  
8 ever do any analysis to determine which estimates  
9 were more accurate, yours or hers?

10 A. That I don't know.

11 Q. Now, it's true, isn't it, and just from a  
12 mechanical point of view, when you increase the  
13 estimates, you increase the amount of revenue that's  
14 generated from customers?

15 A. That's correct.

16 Q. And in the event that that revenue  
17 generation is too high, there would have to be  
18 subsequent adjustments that would then credit back to  
19 customers; is that correct?

20 A. Yes.

21 Q. By the way did anyone else have any other  
22 responsibility for reviewing and revising these  
23 estimates?

24 A. I don't think so.

25 Q. Did you have any responsibility for

1 reviewing the filings that she made with the Public  
2 Utilities Commission?

3 A. No, I did not review the actual filings.

4 Q. Are you aware of whether anyone else had  
5 any responsibility for reviewing her filings with the  
6 Public Utilities Commission?

7 A. I believe Larry occasionally would review  
8 it, but I can't be certain.

9 Q. Do you know how the companies forecasted  
10 their gas purchases?

11 A. My recollection is we would take a look  
12 at historical volumes and adjusted them for weather.

13 Q. And who was responsible for making those  
14 forecasts?

15 A. I couldn't tell you.

16 Q. Did Ms. Bates have any responsibility for  
17 making those forecasts?

18 A. I couldn't tell you.

19 Q. Do you know if anyone provided that  
20 information to her for purposes of her making her  
21 estimates?

22 A. I am sure she got our historical numbers  
23 from probably Mike Zappitello.

24 Q. Mr. Smith, have you reviewed the GCR  
25 filings that are the subject of this case?

1 A. No, I have not.

2 Q. Have you reviewed staff's audit report in  
3 this case?

4 A. Pardon?

5 Q. Have you reviewed the staff's audit  
6 report in this case?

7 A. No, I have not.

8 Q. Are you aware of the magnitude of the  
9 adjustments to the GCR mechanism the company had to  
10 make during this audit period?

11 A. I know they were large. I know they were  
12 in excess of a million dollars.

13 MR. MARGARD: Your Honor, I would like to  
14 mark an exhibit to show the witness. I believe we  
15 are at Staff Exhibit 3; is that correct?

16 MR. SERIO: Your Honor, I think 1 was the  
17 financial audit. 2 was --

18 MR. MARGARD: Those are Commission  
19 ordered.

20 MR. SERIO: Those are Commission ordered.

21 EXAMINER FARKAS: I think the last Staff  
22 Exhibit was Mr. Sarver's testimony. That was 2.

23 MR. MARGARD: Thank you.

24 May I approach, your Honor?

25 EXAMINER FARKAS: Yes.

1 MR. MARGARD: Your Honor, I have marked  
2 for purposes of identification Staff Exhibit 3 Gas  
3 Cost Recovery Rate Calculation of Northeast Ohio  
4 Natural Gas Corporation filed with the Commission on  
5 February 28, 2010.

6 EXAMINER FARKAS: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. Mr. Smith, are you familiar with this  
9 type of document?

10 A. I have seen it, but I don't review it.

11 Q. I am going to represent to you, sir, as  
12 indicated on the stamp on this document a calculation  
13 that was, in fact, filed --

14 A. Correct.

15 Q. -- by the company by Ms. Dawn Opara it  
16 indicates at the bottom with respect to the company's  
17 GCR mechanism.

18 A. Correct.

19 Q. And I'm going to ask you to take a look  
20 at the actual adjustment summary calculation. Do you  
21 see that?

22 A. Yes.

23 Q. And do you see that there are four  
24 different quarterly adjustments indicated there?

25 A. Yes.

1 Q. And all of those adjustments are  
2 negative?

3 A. Correct.

4 Q. What would that indicate to you based on  
5 your familiarity with the GCR mechanism?

6 A. It would mean we have overcollected on  
7 GCR.

8 Q. That you had overcollected on GCR.

9 A. Uh-huh.

10 Q. And indeed the total actual adjustment  
11 was on the magnitude of \$2.65 per Mcf?

12 A. Uh-huh.

13 Q. But you're not aware, are you, sir, how  
14 often during the audit period the actual adjustment  
15 was negative as opposed to positive?

16 A. No, I don't.

17 EXAMINER FARKAS: And you're talking  
18 about which audit period?

19 MR. MARGARD: Current audit period.

20 EXAMINER FARKAS: Thank you.

21 MR. MARGARD: Yes, thank you.

22 A. No, I am not.

23 Q. This would have been a calculation for  
24 the GCR that went into effect at the beginning of the  
25 current audit period; is that your understanding?

1           A.    Uh-huh.

2           Q.    We could tell, couldn't we, certainly by  
3   looking at these filed rate calculations whether, in  
4   fact, the company was overcollecting or  
5   undercollecting its GCR?

6           A.    This one it would appear that we're  
7   overcollecting.

8           Q.    During what period was the company  
9   undercollecting, if you know?

10          A.    I did not review these forms.  I reviewed  
11   what was on the general ledger.

12          Q.    Okay.  Back to the revisions of the  
13   estimates -- and I assume you would have discussions  
14   with Ms. Bates when you would revise those estimates;  
15   is that correct?

16          A.    Yes.

17          Q.    And did you at any time tell her how the  
18   revision was being made?

19          A.    No.

20          Q.    Did you give her any instruction on how  
21   to use the over/under account in combination with the  
22   other information to arrive at a what you believe to  
23   be more appropriate calculation?

24          A.    I don't know how I came to my conclusion.

25               MR. MARGARD:  I believe that's all the

1 questions I have for Mr. Smith.

2 EXAMINER FARKAS: Okay. Why don't we  
3 take a 10-minute recess and come back.

4 (Recess taken.)

5 EXAMINER FARKAS: Okay. Let's go back on  
6 the record.

7 MR. YURICK: Your Honor, the company has  
8 no redirect for Mr. Smith at this point, and I would  
9 renew my motion to admit Company's Exhibit No. 7, the  
10 rebuttal testimony of Mr. Tom Smith.

11 EXAMINER FARKAS: Any objection to the  
12 admission of Company Exhibit 7?

13 MR. SERIO: No objection, your Honor.

14 MR. MARGARD: No, your Honor.

15 EXAMINER FARKAS: It will be admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER FARKAS: Thank you for your  
18 testimony.

19 MR. MARGARD: Your Honor, staff would  
20 respectfully move for the admission of Exhibit 3. We  
21 have received a request from the company that if we  
22 were to admit this exhibit, that we admit all of the  
23 pages of that exhibit as it indicates there it is  
24 page 1 of 11. We have no objection to that and what  
25 I would like to do is to hold off on a ruling on that

1 motion until we can provide all of those pages to the  
2 parties. We will do that at the next break.

3 EXAMINER FARKAS: Okay. Thank you.

4 MR. YURICK: Your Honor, if we are ready  
5 to proceed --

6 EXAMINER FARKAS: Yes.

7 MR. YURICK: -- to the next witness, the  
8 company would call Ms. Becky Howell.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 (Witness sworn.)

11 EXAMINER FARKAS: You may be seated.

12 - - -

13 REBECCA HOWELL

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

16 DIRECT EXAMINATION

17 By Mr. Yurick:

18 Q. Ms. Howell, could you please state your  
19 name and spell your last name for the record.

20 A. Rebecca Howell, H-O-W-E-L-L.

21 Q. And, Ms. Howell, are you employed by Gas  
22 Natural?

23 A. I'm employed by Gas Natural, yes.

24 Q. Okay.

25 EXAMINER FARKAS: You will have to speak



1 up too, please.

2 THE WITNESS: Okay.

3 Q. And is it your purpose here to offer  
4 testimony on behalf of Gas Natural, Incorporated?

5 A. Yes, it is.

6 Q. Showing you what's been marked Company  
7 Exhibit 8, is that a copy of your prefiled rebuttal  
8 testimony filed herein in this GCR case?

9 A. Yes, it is.

10 Q. And was that testimony completed by you  
11 or at your direction?

12 A. Yes, it was.

13 Q. And if I asked you the questions that  
14 were posed in your re -- Company's Exhibit 8, would  
15 your answers be the same as you sit here today?

16 A. Yes.

17 Q. Do you have any corrections or  
18 modifications, additions to your testimony?

19 A. Yes. Originally the first page of  
20 Exhibit 2 needs to become now the first page of  
21 Exhibit 1. And the second page of Exhibit 2 had an  
22 incomplete document so there was a second page for  
23 Exhibit 2 added to make it complete.

24 Q. Now, showing you what's been marked  
25 Exhibit 1 and Exhibit 2 to your testimony, are those

1 the correct exhibits?

2 A. Yes, they are.

3 Q. Okay. So if I were to substitute in your  
4 prefiled testimony Company Exhibit 8 for -- at tab 1  
5 at Exhibit 1 and tab 2 at Exhibit 2, would that  
6 correct the exhibits to your testimony?

7 A. Yes, it would.

8 Q. Now, showing you what's been marked now  
9 Company's Exhibit 8, is that your complete and  
10 corrected rebuttal testimony filed on behalf of the  
11 company in this GCR case?

12 A. Yes, it is.

13 Q. And, again, if I were to ask you the  
14 questions set forth therein, your answers would be  
15 the same today, correct?

16 A. Correct.

17 MR. YURICK: At this point the company  
18 would move the admission of Company Exhibit 8 and  
19 would tender the witness for cross-examination, your  
20 Honor.

21 EXAMINER FARKAS: Thank you.

22 You may proceed.

23 MR. SERIO: Thank you, your Honor.

24 - - -

25

CROSS-EXAMINATION

By Mr. Serio:

Q. Good morning, Ms. Howell.

A. Good morning.

Q. Your testimony indicates that you are currently employed by Gas Natural. What is your current position?

A. I'm currently working on the software conversion for the company.

Q. You're not controller any more?

A. No, I am not.

Q. Okay. When you testified two weeks ago, you were controller for Gas Natural, correct?

A. Correct.

Q. So when did that change occur?

A. Last Monday.

Q. Was that something that was planned, your no longer being controller for Gas Natural?

A. I moved over to the position. We had a position to lead up the team for the big software conversion, the two-year project, and I chose to move over to that.

Q. So this was not an unexpected change on your part?

A. No.

1           Q.    Is there another controller for Gas  
2 Natural that's taking your place now?

3           A.    Yes.

4           Q.    And who is that?

5           A.    Don Whiteman.

6           Q.    And is Mr. Whiteman someone that was  
7 previously employed by Gas Natural, or is he a new  
8 employee?

9           A.    New employee.

10          Q.    And as controller for Gas Natural, he'll  
11 oversee the controllers for the Ohio LDCs, correct?

12          A.    Correct.

13          Q.    Has the new controller for Gas Natural  
14 started yet?

15          A.    Yes.

16          Q.    And was that Monday --

17          A.    Monday.

18          Q.    Now, counsel indicated that you were --  
19 the question to you that you were testifying on  
20 behalf of Gas Natural, but your testimony says you're  
21 testifying on behalf of Northeast Ohio and Orwell.  
22 So can you clarify?

23          A.    They are subsidiaries of Gas Natural so  
24 testifying on their behalf for this -- this hearing.

25          Q.    Now, you're responding to the testimony

1 from Ms. Lipnis and not Ms. Bates, correct?

2 A. Correct.

3 Q. And you indicate that when you worked  
4 with Ms. Lipnis, you were at that time an employee of  
5 Cobra Pipeline, correct?

6 A. I was an employee of Cobra Pipeline.

7 Q. And, in fact, you were the president of  
8 Cobra Pipeline?

9 A. Correct.

10 Q. And Cobra Pipeline when you were  
11 interacting with Ms. Lipnis was actually selling  
12 services to Northeast and Orwell, correct?

13 A. I really didn't have interaction with  
14 Ms. -- with Ms. Lipnis.

15 Q. Okay. So you did not have much  
16 interaction with her at all.

17 A. No.

18 Q. So when it says you would periodically  
19 assist, how often did that occur?

20 A. During the time that I was the president,  
21 one time that I can think of.

22 Q. I'm sorry?

23 A. One time --

24 Q. One time?

25 A. -- that I can think of.

1           Q.    So instead of periodically you assisted  
2   once --

3           A.    Yes.

4           Q.    -- correct?  And so --

5           A.    Clarify once that I physically went over  
6   there and helped, yes.

7           Q.    Okay.  And when you say during that time  
8   period, what time period are you talking about?

9           A.    I don't know the exact date.  I know when  
10  I moved over as president was in March of 2010.

11          Q.    So March of 2010 through approximately  
12  when?

13          A.    I was president until October of 2012.

14          Q.    So roughly a two-and-a-half-year period.

15          A.    Is when I was president.

16          Q.    And you assisted her one time when there  
17  was a question about the GCR filing.

18          A.    Periodically Dawn would send me other  
19  e-mail questions but very minor questions.  I mainly  
20  just assisted on one.

21          Q.    Now, is Dawn the only one that would ever  
22  ask for your assistance, or did Ms. Lipnis also ask  
23  for your assistance?

24          A.    No, she did not.

25          Q.    I'm sorry?

1           A.    Ms. Lipnis did not.

2           Q.    So any time you were asked to assist,  
3   that request came from Dawn Opara, correct?

4           A.    Actually Tom Smith would ask me to help  
5   her.

6           Q.    Okay.  So on page 1 of your testimony, on  
7   line 21 when you say you periodically would be asked  
8   to assist, those requests would come from either  
9   Mr. Smith or Ms. Opara.

10          A.    Mainly Mr. Smith.

11          Q.    And that was during that  
12   two-and-a-half-year period when you were president of  
13   Cobra.

14          A.    Correct.

15          Q.    So while you were president of Cobra the  
16   president of Northeast would ask you to help his  
17   people do the GCR filing.

18          A.    Not often but at times.  Not help to  
19   prepare it, it was to review.

20          Q.    Okay.  And to the extent that you were  
21   reviewing the GCR filings, did you ever give advice  
22   on whether there should be changes made to the  
23   filing?

24          A.    No.  I would just help them to review it.

25          Q.    So you would review it and basically

1 indicate that what you saw was okay.

2 A. Okay or not okay, yes.

3 Q. Okay. All right. So if you indicated  
4 there was a concern, do you know if they ever made  
5 modifications to the GCR filing as a result of your  
6 concerns?

7 A. After I left, no, I do not because I  
8 wouldn't stay there and watch them file it.

9 EXAMINER FARKAS: What were you reviewing  
10 when they asked you to review the GCR filings?

11 THE WITNESS: The one particular time I  
12 went over I know their gas cost I believe it was like  
13 at \$3, and they knew something was wrong because they  
14 said the gas cost was higher than that so they asked  
15 me to come over and look at it.

16 EXAMINER FARKAS: And so what documents  
17 did you look at?

18 THE WITNESS: I should say the estimated  
19 gas costs.

20 EXAMINER FARKAS: What document did you  
21 look at when you reviewed the documents?

22 THE WITNESS: The only thing I looked at  
23 was their past gas costs because they were saying it  
24 was higher than so I looked historically at their  
25 past gas costs.



1 EXAMINER FARKAS: And what did you look  
2 at to get that information?

3 THE WITNESS: On their over/under  
4 schedule there is a place where it shows what their  
5 actual gas cost had been historically.

6 EXAMINER FARKAS: So you as an employee  
7 of Cobra got access to Northeast's information.

8 THE WITNESS: To review for that  
9 particular period, yes.

10 EXAMINER FARKAS: All right. Thank you.

11 Q. Now, the information that you looked at,  
12 did that include information regarding projected  
13 sales?

14 A. No. The only thing I looked at was their  
15 expected gas costs.

16 Q. And the expected gas costs would include  
17 any of the costs that came -- that flowed from  
18 Cobra to Northeast and Orwell, correct?

19 A. I didn't look at that in detail, no.

20 Q. But that would -- that information would  
21 have been included in those -- in that information  
22 that you had access to.

23 A. I didn't see that information. I only  
24 saw the over/under schedule to show what their gas  
25 costs were historically.

1           Q.    Was that information regarding  
2   Cobra billings to Northeast and Orwell part of the  
3   GCR calculation?

4           A.    That I don't know.  I wasn't doing that  
5   calculation.

6           Q.    Now, it says here that in your testimony  
7   that Ms. Lipnis also worked on the GCR filings.  What  
8   was her role working on the GCR filings?

9           A.    I do not know that.

10          Q.    Was there anybody else at Northeast or  
11   Orwell that could look at the GCR filing and provide  
12   the same level of review that you provided?

13          A.    I don't know that either.

14          Q.    Do you know why Mr. Smith would ask you,  
15   a president of a supplier to Northeast, instead of  
16   going in-house to ask one of the other Northeast  
17   employees?

18          A.    No, I do not.

19          Q.    To the extent you were employed by  
20   Cobra as their president, did you find it unusual an  
21   LDC customer of yours would ask them to review your  
22   GCR filings?

23          A.    I just was helping out because they asked  
24   me to.

25          Q.    Does Cobra provide service for any LDC in

1 Ohio other than Northeast, Orwell, or Brainard?

2 A. What do you mean by provide service?

3 Q. Are there any other LDCs that take  
4 service from Cobra?

5 A. No.

6 Q. Now, Dawn Opara that you mention in your  
7 testimony, there was some confusion two weeks ago  
8 regarding Dawn's last name. Are there any other  
9 Dawns employed by Northeast or Orwell, or is she the  
10 only Dawn that you are aware of?

11 A. She's the only Dawn I am aware of.

12 Q. Sorry anywhere in the record there is a  
13 reference to Dawn, it's your understanding that would  
14 be Dawn Opara?

15 A. Correct.

16 Q. Now, on page 2 of your testimony, you  
17 indicate if you were assisting with a review of the  
18 company's GCR, you would review GCR estimates to the  
19 best of your ability. What do you mean by that?

20 A. Exactly what I did when I assisted her  
21 that day, I had heard the gas costs she had  
22 calculated was \$3. I went back and looked at what  
23 their gas costs had been running in the past and  
24 tried to help her in that way to the best of my  
25 ability.

1           Q.    Did you -- did you tell her that the  
2           numbers she was using were incorrect?

3           A.    I did not get into that much information  
4           with her, no.  That wasn't my position.

5           Q.    What exactly did you tell her?

6           A.    This was a conversation from two years  
7           ago.  I just know I told her her gas cost -- her  
8           expected gas costs appeared to be low compared to  
9           what their gas costs had been running historically.

10          Q.    I notice that you're testifying regarding  
11          this incident, and Ms. Noce is testifying regarding  
12          this incident, but Ms. Opara is not testifying  
13          regarding this incident.  Do you know why?

14          A.    I do not know why.

15          Q.    Now, you indicated that you would never  
16          personally report any false number in your testimony.  
17          If you are told to make a modification to a filing by  
18          senior management, would you put the numbers that  
19          senior management gave you into the filing?

20               MR. YURICK:  Objection, your Honor.

21               EXAMINER FARKAS:  Basis?

22               MR. YURICK:  She's a fact witness, and he  
23          is asking her a hypothetical so I don't think it's  
24          appropriate for her to answer.

25               EXAMINER FARKAS:  I'll let her answer it

1 if she has an opinion.

2 A. I would never put any information that I  
3 didn't think was factual or accurate into a filing.

4 Q. If you were told to put different numbers  
5 in, you would verify that those were correct numbers  
6 before you would use them?

7 A. Yes.

8 Q. Now, when you were doing the GCR, were  
9 you ever instructed to change any of the numbers that  
10 you were using in the GCR?

11 A. I was never filing a GCR.

12 MR. MARGARD: I'm sorry. Can I have that  
13 answer repeated, please?

14 EXAMINER FARKAS: She said she never  
15 filed a GCR. Is that accurate?

16 THE WITNESS: Yes.

17 Q. So what's the basis for your expertise to  
18 review a GCR filing if you never did a GCR filing?

19 A. I really only played a part in the  
20 expected gas costs on that filing, and I was going  
21 back to check the historical cost prior to that time  
22 to make sure it was in line or not.

23 Q. So was your function more of just looking  
24 at numbers and comparing numbers from the filing to  
25 numbers that you were aware of somewhere else or was

1       there any --

2               A.     That wasn't my function to check the GCR.

3               Q.     Prior to becoming president of Cobra, did  
4       you work for Northeast and Orwell?

5               A.     Yes.

6               Q.     And what was your job with Northeast and  
7       Orwell?

8               A.     I was a controller.

9               Q.     And as controller, what was your  
10      interaction with the GCR process?

11              A.     I did not check those at the time;  
12      Mr. Smith did. He approved them.

13              Q.     As the controller of Northeast and  
14      Orwell, did you consider yourself the senior  
15      accountant for the company?

16              A.     Yes.

17              Q.     And is it your understanding that GCR  
18      filing is an accounting calculation?

19              A.     Yes.

20              Q.     Yet you never reviewed the accounting  
21      calculation as controller?

22              A.     Because I knew Mr. Smith was doing it.

23              Q.     Mr. Smith as what?

24              A.     Well, as president, I guess I said CFO  
25      but president. There was a time he was CFO and then

1 president.

2 Q. Didn't reviewing GCR filings come under  
3 your responsibility as controller?

4 A. No.

5 Q. So what was your responsibility as  
6 controller?

7 A. To review financial statements and  
8 present financial statements accurately.

9 Q. But the GCR filings were not financial  
10 statements that you had reviewed.

11 A. No.

12 Q. Now, at the bottom of page 2 you  
13 indicate -- the question is are you aware of any time  
14 during the audit period when Northeast's Actual  
15 Adjustment was incorrect?" And then you indicate  
16 that there was one instance where you were made aware  
17 of it and that you informed staff. So you're saying  
18 that that's -- the one incident you made staff aware  
19 of is the only incident during the time period that  
20 you were president for Cobra, when you were reviewing  
21 GCR filings, that was the only instance where you are  
22 aware of that there was any problem with the actual  
23 adjustment?

24 A. Actually Dawn Opara made them aware of  
25 that and just asked me for advice on that and if

1       there was any accuracy -- or any changes I needed to  
2       make to her letter for the adjustment and it was an  
3       actual adjustment that we were -- that she found  
4       error in that we were reducing down for the error.

5               Q.     Okay.  If you could turn to your Exhibit  
6       2.  At the top of the page this is an e-mail from  
7       Dawn Opara to Becky Howell.  It says "For NEO, in  
8       September, I used the sales accrual from Anita's  
9       sheets," and Anita would be Ms. Noce?

10              A.     Correct.

11              Q.     And what would her sheets refer to?

12              A.     I don't know what she was talking about  
13       there, her sheets.

14              Q.     Did you respond to Ms. Opara that you  
15       didn't know what she was referring to with those  
16       sheets?

17              A.     I don't believe I responded after this  
18       e-mail, no.

19              Q.     So to the extent it says "after it was  
20       already filed," do you know what the "it" was  
21       referring to?

22              A.     In which part are you reading?

23              Q.     The sentence -- next sentence begins  
24       "After it was already filed, it was determined that  
25       it was incorrect."  So what was the first "it" that



1 was already filed?

2 A. I can't put words in her mouth, but I'm  
3 assuming the GCR filing since that's --

4 Q. Is that what you assumed from this e-mail  
5 when you got it?

6 A. Correct, since that's the subject line.

7 Q. So your understanding from this e-mail  
8 was this GCR filing had already been made but that  
9 she was told to leave it alone rather than correcting  
10 it.

11 A. Yes.

12 Q. That's what you understood. And the  
13 "he," who is that referring to?

14 A. Mr. Sarver.

15 Q. Now, there's an e-mail below that from  
16 Becky Howell to Dawn Opara and it says "For the  
17 audit, I ran the sales reports using" and then  
18 there's a less than greater than and the letter T and  
19 an asterisk.

20 A. Correct.

21 Q. What does that mean?

22 A. It means not equal to and the rate code  
23 is -- we have rate codes that start with T for  
24 transportation and anything after the T.

25 Q. It says that you had been using that

1 since you started here. When did you start here?  
2 What was the timeframe?

3 A. That is Dawn's saying she had been using  
4 that since she started.

5 Q. Oh, okay. So -- all right. Let's try  
6 going to the end of the e-mail string and go forward.  
7 Maybe it will be easier to follow it that way. The  
8 last e-mail -- or the first one in this stream was  
9 from you to Ms. Opara dated Monday, November 29, at  
10 12:38 p.m., correct?

11 A. Correct.

12 Q. And you're asking Dawn "why are we having  
13 differences between what is getting filed on the GCR  
14 for sales volumes and the GCR audit?"

15 A. Correct.

16 Q. Now, when you say we, who are you  
17 referring to, the "we" there?

18 A. Just the company, that's all.

19 Q. And the company you are referring to is  
20 Northeast and Orwell.

21 A. Correct.

22 Q. Not Cobra.

23 A. No.

24 Q. So when you say "we," you meant the other  
25 two companies and not yourself on behalf of Cobra.

1 A. Correct.

2 Q. And then the next sentence says "When we  
3 run the daily invoicing report at the time of the  
4 filing," the "we," again, that refers to just  
5 Northeast and Orwell and not you as part of Cobra.

6 A. Correct.

7 Q. Then it says "It should be the exact same  
8 report with the exact same numbers that are run  
9 months or years later." What do you mean by that?

10 A. Meaning if they are trying to get the  
11 sales figures, when you run the daily invoicing  
12 report, if you run it today or if you run it two  
13 years from now, it should be the same figure.

14 Q. All right. Then your next sentence says  
15 "Is someone back-posting to prior months again?"

16 A. Uh-huh.

17 Q. What is back-posting?

18 A. Mr. Sarver and I found that in our audit  
19 from 2008 where if the billing should have truly  
20 belonged into the prior period, it could be the first  
21 day of the next month, and they would post it back to  
22 the prior period knowing where that would belong. It  
23 would sometimes mess up our sales figures.

24 Q. Now, when you say --

25 A. So we corrected that so they could no

1 longer do that, locked them out of that.

2 Q. When you said going back to the 2008  
3 audit, did you mean the audit that was the subject of  
4 the 10-209 and 10-212 case?

5 A. Yeah, I'm not sure.

6 Q. Or the one prior to that?

7 A. I am not sure if it was the 2006 audit or  
8 '08 audit. I can't recall which one it was.

9 Q. So to the extent you're questioning  
10 back-posting again, there was back-posting that was  
11 occurring prior to the 2009 audit.

12 A. I don't recall if it was the '6 audit or  
13 the '8 audit, but we had corrected that and locked  
14 all the users out so they could no longer back-post.  
15 Here I was questioning are they able to do that  
16 again. I did not know because I did not work on that  
17 side at the time.

18 Q. Okay. I need to get my time references  
19 straight. The current audit case is the Docket No.  
20 12-209 meaning it was the 2012 audit, correct?

21 A. Uh-huh.

22 Q. And the prior case that we had two years  
23 ago was the 10-209. That meant it was the 2010 audit  
24 so you're referring to audits that were prior to the  
25 last one, correct?

1 A. Prior to this one, yeah.

2 Q. Okay. You keep saying this one.

3 A. 2012.

4 Q. Okay. Was it prior to the 2010 audit  
5 also?

6 A. I don't recall if it was the '8 audit or  
7 the '10 audit. I would have to go back and look.

8 Q. Okay. So the problem with individuals  
9 back-posting was supposed to be taken care of.

10 A. Correct.

11 Q. And the Larry that you referred to is  
12 Mr. Brainard?

13 A. No. That is our software programmer.

14 Q. Okay. So he -- it was his job to lock  
15 out so that no one could go back and back-post prior  
16 months' data.

17 A. When I was there during the audit with  
18 Mr. Sarver, yes, I did ask the programmer to lock  
19 people out so they could not back-post. After I  
20 left, I don't know what happened with that. I don't  
21 remember.

22 Q. Is it possible that back posting was  
23 still occurring after that -- after you left?

24 A. I have no idea.

25 Q. Now, the next e-mail up is from Dawn to

1     you dated Monday, November 29, at 1:28 p.m. So  
2     that's about an hour after the first e-mail here,  
3     correct?

4             A.     Correct.

5             Q.     And there she's attaching the Orwell  
6     March, 2009, I assume a filing as an example?

7             A.     Yeah. I don't recall what she attached  
8     on there, but I know there was discussion on the free  
9     gas because we were trying to take out the free gas  
10    and correct it because it was in prior audits put in  
11    in error.

12            Q.     So the free gas error was the second  
13    error that had been occurring and the back posting  
14    was the first one and those are both supposed to be  
15    taken care of.

16            A.     Correct.

17            Q.     Now, there's a figure of \$98,213.5 and a  
18    figure \$97,964. Do you know if those are Mcf or  
19    dekatherms?

20            A.     I don't know that.

21            Q.     And those are supposed to be the same  
22    number, correct?

23            A.     I don't know that either.

24            Q.     You don't know that either. Okay. Now,  
25    at the bottom of page 1 of Exhibit 2, there's an

1 e-mail from you to Dawn dated November 29 at 1:41  
2 p.m. so this is about 20 minutes after you got the  
3 message from Ms. Opara, correct?

4 A. Correct.

5 Q. And yours is saying you cannot run a  
6 daily invoicing report with the filter on Orwell.  
7 And you're explaining that filter would include large  
8 general transportation, correct?

9 A. Correct.

10 Q. And if it included large general  
11 transportation, that would skew the numbers because  
12 large general transportation customers is not a part  
13 of the GCR, correct?

14 A. Correct.

15 Q. Then you say you will need to specify  
16 each GCR rate code that Orwell has for your filter.  
17 What do you mean by that?

18 A. That means those are specifically just  
19 rate codes for GCR customers.

20 Q. And then your last line "I figured the  
21 main difference was free gas" so it's your assumption  
22 that the difference between the 98,000 and the 97,000  
23 is free gas.

24 A. Yeah. I figured at the time that -- or I  
25 was guessing at the time maybe we were off by what

1 the error was at the time of free gas before we were  
2 correcting that error.

3 Q. Now, there's no -- there's no follow-up  
4 from Ms. Opara back to you in this exchange of  
5 e-mails listed here, correct?

6 A. Correct.

7 Q. So what happened with this situation?  
8 Anything more that you are aware of?

9 A. No.

10 Q. So do you know if it, in fact, was free  
11 gas? Do you know what the resolution -- how it was  
12 resolved?

13 A. I do not.

14 Q. Then the two e-mails at the top of page 1  
15 of Exhibit 2, those are related to each other but  
16 they are a separate incident than the e-mail stream  
17 at the bottom of page 1 carrying over onto page 2,  
18 correct?

19 A. Correct.

20 Q. And the bottom of -- the second e-mail on  
21 page 1 of Exhibit 2 from Dawn to you dated Tuesday,  
22 March 15, at 9:02 a.m., that is Ms. Opara asking you  
23 a question, correct?

24 A. I think she is just telling me she was  
25 running her sales reports at the time.



1 Q. Why was she informing you of how she was  
2 running sales reports?

3 A. At that point I was assisting with the  
4 2010 audit.

5 Q. Even though at this time you were -- you  
6 were president of Cobra.

7 A. Right. Because I believe they asked me  
8 to assist since I was the controller at the time of  
9 the audit.

10 Q. When you say "they asked me to assist,"  
11 Mr. Smith again?

12 A. Yes.

13 EXAMINER FARKAS: Was that a frequent  
14 occurrence when you were there that Mr. Smith would  
15 ask you as an officer of one company to assist  
16 employees of another company in preparing GCR  
17 information?

18 THE WITNESS: That wasn't -- I wouldn't  
19 say a frequent thing. I think at the time it was  
20 because I was the controller of that company during  
21 that audit that he asked me that.

22 EXAMINER FARKAS: Did it happen more than  
23 just in this --

24 THE WITNESS: No.

25 EXAMINER FARKAS: -- occasion?

1           Q.     (By Mr. Serio) Now, I believe that you  
2           indicated when you testified previously that your  
3           office was actually located in the same building as  
4           the LDCs when you were working for the  
5           Cobra Pipeline, right?

6           A.     No.

7           Q.     You were not located in the same  
8           building?

9           A.     No.

10          Q.     So any communication that you had with  
11          Ms. Opara or with Ms. Lipnis would have occurred over  
12          the phone or through e-mail?

13          A.     Yeah, just e-mail mostly, sometimes over  
14          the phone.

15          Q.     You were in the hearing last -- two weeks  
16          ago when the company introduced the code of conduct  
17          as an exhibit in this case?

18          A.     Yes.

19          Q.     Are you familiar with the code of  
20          conduct?

21          A.     Not with all the material in it but the  
22          general.

23          Q.     Did you sign a copy of that code of  
24          conduct?

25          A.     I believe I did.

1           Q.    And when you were -- up until last week  
2           when you were controller for Gas Natural, who was it  
3           that you understood to be in charge of enforcing the  
4           code of conduct or making sure that all Gas Natural  
5           employees and their subsidiaries had adhered to the  
6           code of conduct?

7           A.    That I don't know.

8           Q.    Who asked you to sign the code of  
9           conduct?

10          A.    It was given to me in my HR packet.

11          Q.    Did you ask who would be in charge of --

12          A.    I did not.

13          Q.    -- enforcing it? As a controller, is one  
14          of the functions that you had to make sure the  
15          transactions between affiliates were done in an arm's  
16          length manner?

17          A.    Yes.

18          Q.    So to that extent the code of conduct  
19          would have been consistent with what your job as  
20          controller should do?

21          A.    That falls into compliance, not under  
22          controller.

23          Q.    If as controller you found an incident  
24          that you thought was improper, is that something that  
25          would have fallen under your responsibility, or would

1       you have taken that to someone else?

2               A.     I would have taken it to someone else.

3               Q.     Who would that have been?

4               A.     Mr. Smith.

5               Q.     Now, in February of 2011, you were the  
6 controller and secretary for John D. Oil and Gas  
7 Marketing, correct?

8               A.     That was the -- in the legal documents  
9 what I was. I wasn't the working controller, no.

10              Q.     What's the difference between the legal  
11 controller and the working controller?

12              A.     I was listed as the controller, as an  
13 officer, but I did not keep the books of John D.  
14 Marketing, no. That was Mr. Kobani, Jeff Kobani,  
15 that Mr. Smith spoke of.

16              Q.     Who did you report to when you were  
17 controller and secretary for John D. Oil and Gas?

18              A.     I guess Mr. Osborne at that time.

19              Q.     Was there a president for John D. Oil and  
20 Gas Marketing?

21              A.     Yes.

22              Q.     And who would that have been?

23              A.     I believe it was Mr. Smith.

24              Q.     So you were the legal controller for  
25 John -- and secretary for John D. Oil and Gas

1 Marketing, Mr. Smith was the president, but you  
2 reported to Mr. Osborne.

3 A. Yes.

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

5 EXAMINER FARKAS: Yes.

6 MR. SERIO: Your Honor, I think 21 is the  
7 next number.

8 EXAMINER FARKAS: I think you are 22.

9 MR. SERIO: 22. I would like to have  
10 marked for purposes of identification as OCC Exhibit  
11 No. 22, it's part of but not the complete set of  
12 supplemental responses to the OCC from the company.  
13 It's the cover page, the signature page, and then  
14 it's one of the attached contracts that was provided  
15 in response to OCC Interrogatory 50.

16 EXAMINER FARKAS: It's so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. If you could take a look at that attached  
19 contract, Ms. Howell.

20 Okay. This is the -- this "Gas Sales  
21 Contract Supercedes Prior Contract" and then the "New  
22 Identifier: JOHND2008-INTERSTATEsales-LDCs #1.1.1."  
23 And it's a three-page contract, and on the second  
24 page of that contract under John D. Oil & Gas  
25 Marketing, LLC, that's your signature, correct?

1 A. Correct.

2 Q. So you were the legal controller, and you  
3 were also signing contracts on behalf of John D. Oil  
4 and Gas Marketing, correct?

5 A. Correct.

6 Q. Now, did John D. Oil and Gas Marketing  
7 have other employees other than yourself and the  
8 other gentleman that you mentioned a couple minutes  
9 ago whose name I don't recall now?

10 A. Mike Zappitello was a direct employee of  
11 John D. Marketing. I was on Orwell Trumbull  
12 Pipeline's payroll, and they disbursed payroll on  
13 time spent on each company.

14 Q. So you're listed as the controller to  
15 John D. Oil and Gas Marketing, but you were paid by  
16 Orwell Trumbull Pipeline.

17 A. Yeah. I was -- I wasn't the true  
18 controller at the time, Jeff Kobani was, but all of  
19 our payroll went through Orwell Trumbull Pipeline,  
20 and we did a disbursement based on time.

21 Q. Okay. You said you weren't the real  
22 controller yet when you signed this contract, your  
23 title was controller.

24 A. That's what it is in the legal documents,  
25 yes.

1 Q. And at the time this contract was signed  
2 Mr. Osborne owned J.D. Oil and Gas Marketing, LLC,  
3 correct?

4 A. Correct.

5 Q. Now, at this time when you signed this  
6 contract February 23, 2011, were you also employed by  
7 Gas Natural as controller at that time?

8 A. No, I was not.

9 Q. So you became controller for Gas Natural  
10 after this contract was signed, correct?

11 A. Correct.

12 Q. And Mr. Smith signed this contract on  
13 behalf of the three LDCs as president. Now, you  
14 indicated that Mr. Zappitello was also employed by  
15 John D. Oil and Gas Marketing. And what was his  
16 position with John D. Oil and Gas Marketing at that  
17 time?

18 A. He was the manager.

19 MR. SERIO: May I have just a moment,  
20 your Honor?

21 EXAMINER FARKAS: Yes.

22 Q. If you recall, OCC had an exhibit we  
23 cross-examined you with two weeks ago, it was OCC  
24 Exhibit 7. It was a number of different brokerage  
25 and interstate contracts. There are about 17 of

1       them. Do you recall that package of contracts?

2             A. I recall looking at them, yes.

3             Q. And do you recall that there were a  
4       number of those different contracts that had  
5       Mr. Zappitello listed on the contract and it wasn't  
6       clear -- you weren't clear if he was employed by  
7       other entities such as Mentor Energy Resources  
8       Company or OsAir?

9             A. I'm clear he was an employee of John D.  
10       Marketing but not the other companies, no.

11            Q. You know that he was not employed by  
12       those companies?

13            A. I do not know that.

14            Q. Okay. So when you signed those contracts  
15       with Mr. Zappitello, your understanding was he was  
16       only -- what was your understanding with his role  
17       when you signed different contracts with him?

18            A. My understanding of his role?

19            Q. Did you understand that he was only  
20       employed by John D. Oil and Gas Marketing?

21            A. Yes, that was my understanding.

22            Q. So to the extent that the contract lists  
23       other company names, do you have any explanation to  
24       what might account for that?

25            A. No.



1 Q. At the time you were controller for John  
2 D. Oil and Gas Marketing, did you report to  
3 Mr. Osborne, Rick Osborne?

4 A. Yes.

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

6 EXAMINER FARKAS: Yes.

7 Q. I'm going to show you OCC Exhibit No. 7.  
8 I'm going to show you contract No. 7 from that. The  
9 contract No. 7 was signed by you as corporate  
10 controller for Gas Natural, Inc., on November 28,  
11 2012, correct?

12 A. Correct.

13 Q. And that was a contract between John D.  
14 Resources, LLC, and Gas Natural Service Company.  
15 Now, can you tell me who John D. Resources, LLC, who  
16 they are compared to John D. Oil and Gas Marketing or  
17 John D. Oil and Gas Exploration?

18 A. It's my understanding they are a  
19 producer.

20 Q. And this producer was owned by  
21 Mr. Osborne also, correct?

22 A. I don't know who the owners are of John  
23 D. Resources.

24 Q. Well, the contract that you signed with  
25 them lists Mr. Osborne as president, correct?

1 A. Correct.

2 Q. And that's the same Mr. Osborne that was  
3 your boss that you reported to as controller for Gas  
4 Natural, correct?

5 A. Correct.

6 Q. So you were signing the contract for your  
7 boss.

8 A. I didn't actually see him sign this but,  
9 yes, I did sign this contract.

10 Q. So you were signing a contract with your  
11 boss, correct?

12 A. Correct.

13 Q. And to the extent there is other  
14 contracts in OCC Exhibit 7 similar to this one where  
15 you've signed and Mr. Osborne has signed, all those  
16 contracts you are signing with your boss, correct?

17 A. Signing with him as president of whatever  
18 company, correct.

19 Q. Now, when you signed those contracts, did  
20 you have the ability to refuse to sign the contract  
21 on behalf of Gas Natural if you felt the contract was  
22 not a good contract for customers of Gas Natural who  
23 ended up being Northeast and Orwell?

24 A. I guess I could have refused, yes.

25 Q. Did you ever refuse to sign one of those

1 contracts?

2 A. No.

3 Q. And why not?

4 A. Based on history and everything that was  
5 witnessed in the past, it was determined that it was  
6 the best cost gas for us.

7 Q. And that history includes everything that  
8 happened in the 2010 audit, correct?

9 A. Correct.

10 Q. So to the extent that in the 2010 audit  
11 there were instances where there was concern about  
12 the price that Northeast and Orwell were paying to  
13 affiliates, it didn't cause you to have concern that  
14 you were continuing to sign additional contracts with  
15 affiliates owned by your boss?

16 MR. YURICK: Your Honor.

17 A. That's not true.

18 MR. YURICK: Your Honor, I'm going to  
19 object. No. 1, I don't think that was her testimony;  
20 but, No. 2, I'm trying to be polite and respectful of  
21 counsel and not interpose a lot of objections if I  
22 can think of any tangential even connection to her  
23 rebuttal testimony but, your Honor, with all due  
24 respect to opposing counsel, I think we're going very  
25 far afield at this point of this -- the topic of the

1       rebuttal testimony.

2                       So there's two bases for my objection.  
3       No. 1, I don't think that the witness said anything  
4       like what counsel has represented; but, No. 2, I  
5       think we're getting pretty far off of her rebuttal  
6       testimony at this point.

7                       MR. SERIO: Your Honor, again, the heart  
8       of the testimony gets to the credibility of the  
9       witness, and to the extent that we have instances  
10      here where the witness was signing contracts on  
11      behalf of Northeast and Orwell with her boss and  
12      she's saying it's based on history and that history  
13      includes contracts in the last audit case were found  
14      to be not in the best interest of customers, I think  
15      that goes directly to the credibility of the witness.

16                      EXAMINER FARKAS: I'll let her answer  
17      this question.

18                      Why don't -- would you read the question  
19      back.

20                      (Record read.)

21                      A. At the time I signed them, it was my  
22      understanding that an RFP had gone out and the RFP  
23      was a good RFP and I could sign those contracts on  
24      behalf of Gas Natural.

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

1 Honor.

2 Thank you, Ms. Howell.

3 EXAMINER FARKAS: Mr. Margard.

4 MR. MARGARD: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Margard:

8 Q. Good morning, Ms. Howell.

9 A. Good morning.

10 Q. Just to be clear, you've been present  
11 throughout this hearing, correct?

12 A. Correct.

13 Q. And your rebuttal testimony is intended  
14 to rebut those portions of testimony you have heard  
15 with which you disagree; is that correct?

16 A. Correct.

17 Q. Within the scope of your responsibilities  
18 of the companies. Now, you indicated to Mr. Serio  
19 you have a new job, but I didn't hear a title. Do  
20 you have a title for this job?

21 A. It's just a coordinator for our software  
22 project.

23 Q. And can you describe the nature of this  
24 software project?

25 A. We're converting our entire company into

1 new accounting and billing software. It's been in  
2 the works for a while, and we are just getting it off  
3 the ground.

4 Q. And what is this new software?

5 A. It's called Cogsdale.

6 EXAMINER FARKAS: Can you spell that?

7 THE WITNESS: C-O-G-S-D-A-L-E.

8 EXAMINER FARKAS: Thank you.

9 Q. And when was the last software conversion  
10 done?

11 A. There has not been one done that I know  
12 of. Everyone is operating on their own software,  
13 each market.

14 Q. When we say everyone, are we talking  
15 about all of the related entities?

16 A. All the subsidiaries of Gas Natural.

17 Q. So this is intended to put all of the  
18 subsidiaries on the same software; is that correct?

19 A. Correct.

20 Q. Who -- who informed you of the change in  
21 position?

22 A. I volunteered.

23 Q. You volunteered. I thought that's what  
24 you had said, but I wanted to make sure that was what  
25 I had heard. Now, you indicate that Mr. Donald

1 Whiteman has assumed your position as controller; is  
2 that correct?

3 A. Correct.

4 Q. Are you acquainted with Mr. Whiteman?

5 A. Not much, no.

6 Q. Are you acquainted with his background  
7 and experience?

8 A. No.

9 Q. Are you aware whether he has any  
10 experience at all with respect to natural gas?

11 A. That I don't know for sure.

12 Q. Are you aware whether he has any  
13 experience at all with respect to public regulation?

14 A. No.

15 Q. You're aware that the companies have made  
16 a filing indicating that there has been directors and  
17 principal officers?

18 A. I know there was going to be a filing. I  
19 didn't know if it was filed yet.

20 Q. You haven't seen the filing?

21 A. No.

22 Q. You weren't provided with a copy of it?

23 A. I don't believe I was, no.

24 Q. Do you know what experience Mr. Whiteman  
25 has as a corporate controller?

1           A.    I do not know his experience.

2           Q.    Do you know if he's a CPA or if he has  
3 any accounting background at all whatsoever?

4           A.    I know he has an accounting background.  
5 I am not sure if he is a CPA.

6           Q.    I want to talk about the accounting  
7 software. You were present when testimony was  
8 offered that you while president of Cobra Pipeline  
9 had access to the financial accounting software of  
10 the local distribution companies, were you not? You  
11 were present?

12          A.    Yes.

13          Q.    And you did, in fact, have such access;  
14 is that correct?

15          A.    For a short period.

16          Q.    And during what period?

17          A.    When they were in transition trying to  
18 find a new controller.

19          Q.    Can you be more specific with respect to  
20 dates?

21          A.    I don't even recall the dates.

22          Q.    When they were transitioning from which  
23 controller to which controller?

24          A.    I believe it was after Sue Lagoni.

25          Q.    And the controller who replaced her was?



1           A.    I am not sure.

2           Q.    And did you, in fact, while serving as  
3 president of Cobra Pipeline access that accounting,  
4 books and records of the local distribution  
5 companies?

6           A.    I could get in there and see things. I  
7 could not really change anything. I was in a view  
8 only mode.

9           Q.    I understand that that's what you are  
10 indicating your capabilities were. Did you, in fact,  
11 access that information, financial information?

12          A.    In a view only mode when I was asked to,  
13 yes.

14          Q.    You say you were when you were asked to.  
15 Is that the only time you accessed it?

16          A.    Yes.

17          Q.    And who would ask you to access that  
18 information?

19          A.    Mr. Smith.

20          Q.    And for what purpose?

21          A.    Just if they were -- because they were  
22 without a controller at the time just answer a  
23 question or help with anything they needed help with.

24          Q.    Now, Mr. Brainard is no longer the  
25 controller of the Ohio utilities, correct?

1 A. Correct.

2 Q. Has a replacement been named for him?

3 A. Yes.

4 Q. And who would that be?

5 A. Her name is Lori.

6 Q. Lori?

7 A. Yeah.

8 Q. Do you know her last name?

9 A. Stevens, I believe. Lori Stevens, I  
10 believe.

11 Q. Did she come from within or from without  
12 the Gas Natural family?

13 A. Without but I did not play a part in  
14 hiring her so.

15 Q. Have you met her?

16 A. I have met her.

17 Q. Were you -- did you have any involvement  
18 in her hiring?

19 A. No, I did not.

20 Q. Do you know what her educational or work  
21 background is?

22 A. I do not.

23 Q. Do you know whether she has any  
24 experience with the natural gas industry?

25 A. I do not know that.

1           Q.    We have had some discussions about  
2   Ms. Opara.  Does Ms. Opara still work for Gas  
3   Natural?

4           A.    Yes, she does.

5           Q.    And do you know for which entity she  
6   specifically works?

7           A.    I know for most of her time was for one  
8   of our out-of-state entities.

9           Q.    And she works in the Mentor office; is  
10   that correct?

11          A.    Correct.

12          Q.    And by the way which office do you now  
13   work in?

14          A.    The Mentor office.

15          Q.    So you work in the same office?

16          A.    Correct.

17          Q.    You have attached a couple of documents  
18   to your testimony that involved communications  
19   between you and Ms. Opara.  Are these the sum total  
20   of the communications relating to these issues in  
21   which you were included?

22          A.    I don't know if that's all of them or  
23   not.

24          Q.    And to the best of your knowledge, these  
25   only represent communications between you and

1 Ms. Opara and would not necessarily include  
2 communications between Ms. Opara and others in the  
3 companies; is that correct?

4 A. Correct. I don't know what her  
5 communication was with -- with others.

6 Q. In preparing your rebuttal testimony, did  
7 you make any inquiry with anyone as to whether there  
8 were any other communications?

9 A. I did not.

10 Q. You relied solely on the direct  
11 communications that you had with Ms. Opara; is that  
12 correct?

13 A. Correct.

14 Q. Now, you have testified previously with  
15 respect to your experience with GCRs, but I want to  
16 make sure we have our timelines straight. What  
17 experience do you have in the presentation of GCR  
18 filings?

19 A. I do not -- I wasn't involved with them  
20 when I was controller. Whoever would prepare them  
21 would take them to Mr. Smith for approval.

22 Q. Have you yourself ever prepared a GCR  
23 filing for any of these entities?

24 A. No.

25 Q. Have you been responsible for providing

1 information that was input into those calculations?

2 A. No.

3 Q. But you were asked from time to time to  
4 review them; is that correct?

5 A. Correct.

6 Q. And you were asked by Mr. Smith to review  
7 them?

8 A. Yes.

9 Q. Were you ever asked by anyone else to  
10 review GCR filings?

11 A. No.

12 Q. You were present today during Mr. Smith's  
13 testimony?

14 A. Yes.

15 Q. And you have no reasons to dispute  
16 anything that he said this morning?

17 A. By what he says I have no reason to  
18 dispute.

19 Q. I'm sorry, I didn't hear.

20 A. No, I do not. Sorry.

21 Q. Sirens again. Thank you. You have  
22 heard -- been present throughout the testimony today.

23 A. Yes.

24 Q. And you have heard reference to the GCR  
25 estimate.

1           A.    Yes.

2           Q.    Are you acquainted with what the estimate  
3 is? Can you define that for us?

4           A.    It's what you expect your gas cost to be  
5 going forward.

6           Q.    When you say gas cost, are there  
7 components of that cost or are --

8           A.    For your EGC is just what you -- your  
9 best estimate of what you believe your expected gas  
10 costs would be in the future.

11          Q.    Okay. When you see EGC, expected gas  
12 cost, do you know how the expected gas cost component  
13 of the GCR is calculated?

14          A.    It's based off your sales and a NYMEX  
15 price, NYMEX plus price.

16          Q.    NYMEX and sales. And what period of  
17 sales?

18          A.    For the -- I think the historical past  
19 year.

20          Q.    The historical past year? Is there any  
21 component of gas volume that's included as part of  
22 that calculation?

23          A.    It's based on your sales times your NYMEX  
24 prices for your expected gas costs.

25          Q.    That's the entirety of the EGC

1 calculation as you understand it?

2 A. Yes, as I understand it.

3 Q. Okay. Now, you indicate historical.  
4 Need it be based strictly on historical figures or  
5 could it be based on projected figures?

6 A. That I don't know.

7 Q. Do you know whether the company ever  
8 explored trends or forecasted trends in gas prices?

9 A. That I do not know.

10 Q. And I take it that you had no involvement  
11 in training anyone in the calculation of the GCR?

12 A. I did not, no.

13 Q. Or in how the GCR is to be reported.

14 A. No.

15 Q. And you had no involvement with any of  
16 the filings that have been made to the Commission  
17 with respect to the GCR.

18 A. No.

19 Q. As controller, what responsibility did  
20 you have with respect to internal audits?

21 A. To internal audits?

22 Q. Yes, ma'am.

23 A. I would work with the auditors as well as  
24 our staff accountants, the outside -- or outside  
25 auditors, I should say.

1           Q.    Thank you.  You're familiar with Sarbanes  
2   Oxley.

3           A.    Correct.

4           Q.    Who on behalf of the local distribution  
5   companies is responsible for compliance with Sarbanes  
6   Oxley?

7           A.    That I do not know.

8           Q.    Okay.  Who with respect to Gas Natural is  
9   responsible for Sarbanes Oxley compliance?

10          A.    I don't know who is ultimately  
11   responsible.

12          Q.    You were also president at Orwell  
13   Trumbull Pipeline, correct?

14          A.    Correct.

15          Q.    And Orwell Trumbull Pipeline serves which  
16   of these distribution companies?

17          A.    Orwell Natural Gas.

18          Q.    Just Orwell.  Am I correct in  
19   understanding that Orwell's service from Orwell  
20   Trumbull is based on a contractual relationship?

21          A.    I believe they have a contract.

22          Q.    And the rates that they are charged are  
23   based on that contract; is that correct?

24          A.    It's a tariff rate.  In Orwell Trumbull's  
25   contracts the tariff has to be -- the rates are



1 approved through the contracts.

2 Q. I want to make sure that we're taking --  
3 that I'm clear. Orwell Trumbull Pipeline has  
4 tariffs, correct?

5 A. Correct.

6 Q. And tariff rates with respect to the  
7 transportation of natural gas.

8 A. Correct.

9 Q. Do they also have contractual  
10 relationships charging different rates?

11 A. I wasn't in charge of all the contracts  
12 so I'm not sure. I don't recall.

13 Q. Are you aware of any contractual  
14 relationship between Orwell and Orwell Trumbull?

15 A. I know we charge them the tariff rate.

16 Q. It's your understanding that Orwell  
17 Trumbull charges the tariff rate to Orwell Natural  
18 Gas.

19 A. I believe so, yes.

20 Q. And has always?

21 A. As far as I know.

22 Q. As in your various roles with the  
23 companies and based on your relationship and history  
24 of dealings with the Public Utilities Commission, are  
25 you aware of which transactions require Commission

1 approval and which do not?

2 A. For which company are we speaking of?

3 Q. Well, let's talk specifically about --  
4 maybe I should ask it this way, is there a difference  
5 in your mind with respect to these two companies?

6 A. Okay. Could you repeat the question?

7 Q. I'm sorry. We'll try. Based on your  
8 experience in this industry and with this Commission,  
9 do you have an understanding of which transactions  
10 require Commission review and approval and which do  
11 not?

12 A. For Orwell Natural Gas and Northeast  
13 Ohio?

14 Q. Yes, ma'am.

15 A. I guess as far as financing goes, I do  
16 but not contracts because I wasn't really in charge  
17 of the contracts.

18 Q. And would that include both financing  
19 as -- in terms of financing on behalf of the  
20 companies and financing by the companies? Is that a  
21 distinction that means something to you?

22 A. I know when we get any debt, we need to  
23 get it approved through the Commission. I do not  
24 know of contracts because I wasn't -- I didn't deal  
25 with the contract management.

1           Q.   And it's your understanding that all debt  
2   is approved by the Commission or just long-term debt?

3           A.   Long-term debt.

4           Q.   Are you acquainted with short-term  
5   obligations undertaken by these companies during the  
6   audit period?

7           A.   I am not, no.

8           Q.   Would you have in your role as controller  
9   had any responsibility for becoming aware of or  
10   reviewing any debt obligations assumed by these  
11   companies on a short-term basis?

12          A.   I wasn't controller during this audit  
13   period so I do not know.

14          Q.   Would you have been aware in any of your  
15   various capacities of any short-term obligation as  
16   assumed by either of these companies during the audit  
17   period?

18          A.   I don't remember at the time, no, back  
19   when I was controller.

20          Q.   As corporate controller, while you were  
21   corporate controller, did you have responsibility for  
22   assisting with the preparation of reports to the  
23   Securities and Exchange Commission?

24               MR. YURICK: Your Honor, I guess at this  
25   point there would be an objection. Again, I think

1 I've tried to not interrupt the flow of thought, but  
2 I think we are getting fairly far afield from the  
3 topic of this witness's rebuttal testimony.

4 EXAMINER FARKAS: I'm going to let her  
5 answer this question.

6 THE WITNESS: Can you repeat it?

7 MR. MARGARD: Would you reread, please.

8 (Record read.)

9 A. I only assisted with our 10-Qs and 10-Ks.

10 Q. And the 10-Qs are -- just so we're clear  
11 are what kind of document?

12 A. Quarterly financial document showing our  
13 financial position.

14 Q. Excuse me for interrupting. I apologize.  
15 Are you finished?

16 A. Yes.

17 Q. And the 10-Ks are?

18 A. They are an annual representation.

19 Q. And are you familiar with those reports?

20 A. I play a part in filing them, yes.

21 Q. And you've read them?

22 A. Yes.

23 Q. Are you familiar with the 2012 10-K  
24 report?

25 A. Yes.

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

2 EXAMINER FARKAS: Yes.

3 MR. MARGARD: Your Honor, I have marked  
4 for purposes of identification Staff Exhibit 4, a  
5 one-page document that I will represent is a page 46  
6 from the company's 10-K filing with the Securities  
7 and Exchange Commission.

8 EXAMINER FARKAS: For 2012? For 2012?

9 MR. MARGARD: For 2012, yes, your Honor.

10 EXAMINER FARKAS: Okay. So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Does this look familiar to you,  
13 Ms. Howell?

14 A. I don't normally prepare the reporting on  
15 this but, yes, it looks familiar.

16 Q. Does it appear to you to, in fact, be a  
17 page from the company's 10-K --

18 A. Yes.

19 Q. -- that relates to controls and  
20 procedures?

21 A. Yes.

22 Q. And is it not true, Ms. Howell, that the  
23 10-K does not include an attestation from your  
24 internal auditor regarding the internal controls over  
25 financial reporting?

1           A.    That I don't know.

2           Q.    I'll draw your attention to the fourth  
3 section there titled "Attestation Report of  
4 Independent Registered Accounting Firm." Give you a  
5 moment to look that over.

6           A.    Right.

7           Q.    Does that sound accurate to you?

8           A.    Yes.

9           MR. MARGARD: Your Honor, I have no  
10 further questions of the witness.

11           EXAMINER FARKAS: Any follow-up?

12           MR. YURICK: If I could have a moment to  
13 confer, your Honor.

14           EXAMINER FARKAS: Yes. Go off the  
15 record.

16           (Recess taken.)

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

19           MR. YURICK: Your Honor, the company has  
20 no redirect for this witness.

21           EXAMINER FARKAS: Okay. Thank you for  
22 your testimony.

23           I believe you want to move?

24           MR. YURICK: Yes. I would renew my  
25 motion to admit Exhibit No. --

1 EXAMINER FARKAS: 8.

2 MR. YURICK: -- 8.

3 EXAMINER FARKAS: Okay. Any objection to  
4 the admission of Company Exhibit 8?

5 MR. MARGARD: None, your Honor.

6 MR. SERIO: No, your Honor.

7 EXAMINER FARKAS: Okay. Then that will  
8 be admitted.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 EXAMINER FARKAS: Staff.

11 MR. MARGARD: Thank you, your Honor. I  
12 have provided during the break all of the parties  
13 with the full 11 pages of Staff Exhibit No. 3. And I  
14 would renew my motion for its admission. I would  
15 also, your Honor, move for admission of Staff Exhibit  
16 No. 4.

17 EXAMINER FARKAS: Okay. Any objection to  
18 the admission of Staff Exhibits 3 and 4?

19 MR. YURICK: Your Honor, I have no  
20 objection to the admission of Staff Exhibit No. 3 at  
21 this point.

22 EXAMINER FARKAS: Okay. Then we will  
23 admit that.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 MR. YURICK: Staff Exhibit 4 is one page

1 within an undeterminate number of pages what's been  
2 represented to be an SEC filing. I don't think the  
3 witness authenticated or was really able to provide  
4 an adequate basis for admitting that so the company  
5 will object to the admission of Staff Exhibit No. 4.  
6 No objection to Staff 3 though.

7 EXAMINER FARKAS: Okay.

8 MR. MARGARD: Thank you, your Honor. The  
9 witness did indicate she did have some involvement in  
10 the preparation of the filings and specifically the  
11 10-K filings to the SEC. She indicated she had read  
12 the 2012 10-K filing. She indicated that she  
13 recognized that this was a part of the 2012 10-K  
14 filing. She was familiar with its contents and from  
15 the representations contained in it, I think, your  
16 Honor, that's more than sufficient for the admission  
17 of this document.

18 EXAMINER FARKAS: Does OCC have a  
19 position?

20 MR. SERIO: The only thing I would add,  
21 your Honor, to the extent it's one page we don't have  
22 to burden the record. You could take administrative  
23 notice of the entire 10-K and just leave this  
24 individual page as an exhibit number.

25 MR. MARGARD: And, your Honor, staff



1 would have no objection to that outcome if the Bench  
2 so chooses.

3 EXAMINER FARKAS: Is that a document that  
4 is accessible through -- if we Google searched it?

5 MR. MARGARD: It is a publicly available  
6 document, yes.

7 EXAMINER FARKAS: I'm going to admit it,  
8 and I'm taking administrative notice of the entire  
9 10-Q filing by the companies for 2012.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 EXAMINER FARKAS: Mr. Serio, I believe we  
12 have OCC Exhibit 22.

13 MR. SERIO: Yes, your Honor. I would  
14 move OCC Exhibit 22 into the record.

15 EXAMINER FARKAS: Any objection?

16 MR. YURICK: No objection, your Honor.

17 MR. MARGARD: No objection, your Honor.

18 EXAMINER FARKAS: Okay. Then that will  
19 be admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 EXAMINER FARKAS: Why don't we take a  
22 lunch break until 1:30 and then we'll come back and  
23 finish the rebuttal testimony.

24 (Thereupon, at 12:23 p.m., a lunch recess  
25 was taken until 1:30 p.m.)

1 Monday Afternoon Session,  
2 July 22, 2013.

3 - - -

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

6 You have one more witness?

7 MR. YURICK: Yes, your Honor. At this  
8 time the companies would call Anita Noce.

9 (Witness sworn.)

10 EXAMINER FARKAS: You can be seated.

11 - - -

12 ANITA NOCE

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

15 DIRECT EXAMINATION

16 By Mr. Yurick:

17 Q. Good afternoon, ma'am. Could you please  
18 state your name and spell your last name for the  
19 record.

20 A. Anita M. Noce, N-O-C-E.

21 Q. And, Ms. Noce, are you employed by the  
22 Gas Natural Companies?

23 A. Yes, I am.

24 Q. Is it your intention today to offer  
25 testimony on behalf of the two local distribution

1 companies that are involved in the audit case that  
2 we're hearing today, those two local distribution  
3 companies being Orwell and Northeast?

4 A. Yes.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 Q. Okay. Now, handing you what's been  
7 marked Company's Exhibit 9, is that a copy -- a true  
8 and accurate copy of your prefiled rebuttal testimony  
9 filed in this case?

10 A. Yes.

11 Q. And that was testimony prepared by you or  
12 at your direction?

13 A. Yes.

14 Q. And if I were to ask you the questions  
15 that are posed in Company's Exhibit 9, as you sit  
16 here today, would your answers be the same?

17 A. Yes.

18 Q. Do you have any corrections, additions,  
19 or modifications to the testimony at this time?

20 A. No.

21 MR. YURICK: Your Honor, at this point I  
22 would move the admission of Company's Exhibit No. 9,  
23 and I would tender the witness for cross-examination.

24 EXAMINER FARKAS: Thank you.

25 Mr. Serio.

1 MR. SERIO: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Serio:

5 Q. Good Afternoon, Ms. Noce.

6 A. Good afternoon.

7 Q. I don't have your background as far as  
8 employment, education, so if you could bear with me,  
9 I have a few questions about that. You're currently  
10 employed by Gas Natural. What's your current  
11 position?

12 A. I'm going to be assisting Becky with the  
13 software conversion.

14 Q. Okay. So that's your position going  
15 forward?

16 A. Yes.

17 Q. During the audit period what was your  
18 position?

19 A. From -- well, until December of 2011, I  
20 was the lead accountant for Brainard, NEO, and  
21 Orwell, and in December of 2000 -- I'm sorry, it  
22 was -- yeah, December of '11, I went over to  
23 Cobra Pipeline.

24 Q. So from December of 2011 until your move,  
25 when did you go to Gas Natural?

1 A. October of '12.

2 Q. Okay. So -- and how long were you lead  
3 accountant for the LDCs?

4 A. From December of '10.

5 Q. And prior to that?

6 A. I was the accountant for Northeast Ohio  
7 Natural Gas and Brainard Natural Gas.

8 Q. And roughly how long did you have those  
9 positions as accountant?

10 A. I started in August of 2007.

11 Q. Okay. So you were there prior to when  
12 JDOG started purchasing gas for Northeast and Orwell?

13 A. Yes.

14 Q. Okay. Now, when you went from accountant  
15 to lead accountant, I assume that was an increase in  
16 responsibilities, some type of promotion?

17 A. Yes.

18 Q. And then in December of '12, you were  
19 transferred to Cobra.

20 A. Correct.

21 Q. What was your position at Cobra?

22 A. I was the controller reporting to Jeff  
23 Kobani.

24 EXAMINER FARKAS: Excuse me. I thought  
25 you said in 2011 you went to Cobra.

1 THE WITNESS: That's correct.

2 EXAMINER FARKAS: Okay. And then didn't  
3 you just say "in 2012" in this question?

4 MR. SERIO: I thought I said December of  
5 '11.

6 EXAMINER FARKAS: Okay.

7 MR. SERIO: If I didn't, that's what I  
8 meant.

9 EXAMINER FARKAS: I stand corrected.  
10 Thank you.

11 Q. (By Mr. Serio) And why did you go from  
12 being lead accountant for Northeast to  
13 Cobra Pipeline?

14 A. It was a change of position.

15 Q. Is that a change of position that you  
16 applied for, or was that a change of position that  
17 was made -- that, you know, you just got transferred?

18 A. I was transferred.

19 Q. And do you know who made that transfer,  
20 who made the decision to transfer you?

21 A. I was -- it was discussed with Becky  
22 Howell. I don't know who made the decision.

23 Q. And did the transfer to Cobra come with  
24 an increase in pay, or was it a promotion?

25 A. Yes.

1 Q. And then in October of '12, you became --  
2 I'm sorry. When you went to Cobra, you went as the  
3 controller.

4 A. Correct.

5 Q. Okay. And then just recently -- when did  
6 you go from controller of Cobra to Gas Natural?

7 A. October of 2012.

8 Q. Okay. And you were at Gas Natural from  
9 October of '12 until roughly June, July of '13?

10 A. I'm still currently there.

11 Q. Okay. When are you supposed to transfer  
12 over for this new project?

13 A. It's going to be tomorrow or whenever we  
14 get back to the office.

15 Q. Okay. Do you have an accounting degree?

16 A. Yes.

17 Q. When did you get your degree?

18 A. I believe it was -- I graduated in 2009.

19 Q. And where did you go to college?

20 A. Lakeland Community College.

21 Q. And are you a CPA?

22 A. No.

23 Q. Have you sat for any of the CPA exams?

24 A. No.

25 Q. Do you have any advanced degrees in

1 accounting?

2 A. What do you mean by advanced degrees?

3 Q. Anything beyond your Bachelor's degree.

4 A. No.

5 Q. Prior to joining Northeast and Orwell as  
6 an accountant, did you have any experience doing any  
7 accounting work for distribution companies?

8 A. No.

9 Q. So all your utility experience starts  
10 with your time with Northeast and Orwell, correct?

11 A. Correct.

12 Q. So in 2009, you were an accountant with  
13 Northeast and Orwell, correct?

14 A. Correct.

15 Q. And at that time where were you  
16 physically located?

17 A. I was located in the Mentor office on  
18 Station Street.

19 Q. And that would have been in the Northeast  
20 and Orwell floor of the building, correct?

21 A. Yes.

22 Q. When you went to Cobra, did you stay in  
23 the Northeast and Orwell floor, or did you move to a  
24 Cobra part of the building?

25 A. I was transferred to the Cobra office in



1 Willoughby.

2 Q. And then when you went to Gas Natural,  
3 did you stay in Willoughby, or were you located  
4 physically back in the Mentor office?

5 A. I was transferred back to the Mentor  
6 office.

7 Q. And was that physically where Northeast  
8 and Orwell -- on the same floor or different floor?

9 A. No, it was same floor.

10 Q. And you're familiar with Ms. Lipnis,  
11 correct?

12 A. Yes, I am.

13 Q. And when you worked with her, she was a  
14 Northeast employee?

15 A. I don't know who she was employed by.

16 Q. When you say in your testimony I worked  
17 together with her from May, '12, to October, '10, and  
18 during that time period you were an accountant for  
19 Northeast and Orwell, correct?

20 A. I was the accountant for Northeast. I  
21 was not the accountant for Orwell.

22 Q. Okay, for Northeast. And when she was --  
23 when you were working with her, she assisted the  
24 accounting department for Orwell, correct?

25 A. Correct, because there wasn't a

1 controller in place.

2 Q. And she was doing the controller's job  
3 for the Ohio companies at that time, correct?

4 A. I don't know what her title was. I just  
5 know she was assisting when we didn't have a  
6 controller.

7 Q. Now, on page 2 of your testimony, you  
8 talk about John D. Oil and Gas Marketing, JDOGM, and  
9 your understanding that JDOGM is a marketing company  
10 that purchases gas on behalf of Northeast and Orwell,  
11 correct?

12 A. Correct.

13 Q. Now, on line 13, you indicate that  
14 "purchasing the same gas two times would have been an  
15 unwarranted expense to Northeast and its customers,"  
16 correct?

17 A. Correct.

18 Q. So you have an understanding of what  
19 would be considered an appropriate expense and what  
20 would be considered an inappropriate expense,  
21 correct?

22 A. Correct.

23 Q. And you were in the hearing two weeks ago  
24 during the three days that we were in hearing,  
25 correct?

1 A. Yes.

2 Q. And you heard Mr. Whelan's testimony  
3 regarding Cobra Pipeline and the processing fees?

4 A. Yes.

5 Q. And are you familiar with Cobra Pipeline?

6 A. Yes.

7 Q. And are you familiar with the Churchtown  
8 system and the processing fees that are on the  
9 Cobra system?

10 A. I did not get involved in the operations  
11 on Cobra.

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

13 EXAMINER FARKAS: Yes.

14 MR. SERIO: I would like to have marked  
15 for purposes of identification OCC Exhibit No. 23.  
16 This is the Amended First Set of Interrogatories and  
17 Requests for Production of Documents that OCC sent to  
18 the company.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. And if you would turn to page 11 of that  
21 document. Now, if you look at questions 44, 46, 48,  
22 49, 50, there is a series of questions there that  
23 asks about volumes received by either Northeast or  
24 Orwell and then it lists different types of  
25 production that they received anywhere from local

1 production through Cobra to interstate deliveries  
2 through Dominion East Ohio to interstate gas through  
3 Orwell Trumbull. Do you see that series of  
4 questions?

5 A. Yes.

6 Q. And the response there is to "See Exhibit  
7 1," and it says "Prepared by Anita Noce," correct?

8 A. Correct.

9 Q. And that's you?

10 A. Yes.

11 Q. So you're familiar with that question and  
12 the response to it.

13 A. Yes.

14 Q. If you could turn to Exhibit 1, and  
15 unfortunately the pages were not marked, but I think  
16 it's the very first document after the Certificate of  
17 Service. Now, to the extent that I want to go  
18 through Exhibit 1 and find the volumes that are local  
19 production delivered through the Cobra Pipeline, can  
20 you tell me exactly where on Exhibit 1 those volumes  
21 would be listed? Which column? And if it helps, I  
22 think if you go in about 20 or 25 pages, there's a  
23 page that says "Northeast Ohio Natural Gas Exhibit 1"  
24 in the upper left-hand corner, and then the center of  
25 the page it says "TCO-Cobra Transporter" and I think

1 that might be but I may not --

2 A. If you're talking about local production?

3 Q. Yes.

4 A. No. That is on the section that is  
5 titled "Local Production."

6 Q. Okay. So that would be the section after  
7 where it says "TCO-Cobra transporter"?

8 A. Yes.

9 Q. And it just says "Local Production" at  
10 the top of the page.

11 A. Correct.

12 Q. All right. Just so I make sure I got the  
13 right one, the first column says "Month September-09.  
14 Supplier JDOGM/other"; is that the correct first  
15 page?

16 A. Yes.

17 Q. Then it says "Total Purchased Cost  
18 \$37,323.38"?

19 A. Correct.

20 Q. And then "Mcf Purchased \$8,625.5."

21 A. Correct.

22 Q. So that's the page where it shows local  
23 production on the Cobra system.

24 A. Correct.

25 Q. Now, can you tell me of the local

1 production of the Cobra system which of the volumes  
2 were charged to 25-cent -- the 25-cent processing  
3 fee?

4 A. I didn't review the invoices for billing.  
5 I didn't sign off on the gas purchase invoices so I  
6 could not identify those.

7 Q. But if I look at the pages here for local  
8 production, I would actually go to the dates and find  
9 JDOGM for Churchtown or any references to Churchtown  
10 and those would be the volumes where the fee might  
11 have applied, correct?

12 A. I -- again, I didn't verify the charges  
13 for Cobra.

14 Q. You were in the room when Mr. Whelan  
15 testified about the processing charge?

16 A. Correct.

17 Q. And do you recall hearing Mr. Whelan  
18 indicate he did not know for certainty if the volumes  
19 that are charged, if they actually get processed?

20 A. That's correct.

21 Q. In your opinion if the volumes are not  
22 actually processed but they are charged a fee, would  
23 that constitute an unwarranted expense to Northeast  
24 and its customers?

25 A. Yes.

1           Q.    Now, you were also in the room when  
2   Ms. Patton testified, correct?

3           A.    Correct.

4           Q.    And did you hear her testimony regarding  
5   her duties of nominating, scheduling, and confirming  
6   gas volumes for Columbia Gas Transmission, TCO?

7           A.    Yes.

8           Q.    And did you also hear the testimony where  
9   she was asked if that was one of the duties that  
10   JDOGM was supposed to do pursuant to their contract  
11   with Northeast and Orwell?

12          A.    I don't remember exactly what she said.

13          Q.    But do you recall that that's one of the  
14   functions that JDOG Marketing is supposed to do for  
15   Northeast and Orwell?

16          A.    I don't know. The only functions that I  
17   know that they are doing is gas purchasing.

18          Q.    Well, let me ask you this, if Ms. Patton  
19   is actually doing the nominating, scheduling, and  
20   confirming on TCO and that's a function that by  
21   contract JDOG Marketing is supposed to do, would you  
22   also consider that an unwarranted expense to  
23   Northeast and its customers?

24          A.    That wouldn't be my decision. I am not  
25   involved in the operations.

1           Q.    I understand you are not involved in it.  
2   My question was based on the same analysis that you  
3   used on lines 12 and 13, that purchasing gas two  
4   times would have been an unwarranted expense, would  
5   paying for services that you are actually doing  
6   in-house constitute an unwarranted expense?

7           A.    If you are paying for something that is  
8   not being offered, then, yes, but I can't say what --  
9   who is doing what.

10          Q.    Okay. Fair enough. Now, you indicate on  
11   page 2 of your rebuttal testimony that you are  
12   unaware of any transactions between Northeast,  
13   Constellation, and JDOG where Northeast paid for the  
14   same volume of natural gas twice. Is it possible  
15   that a transaction occurred where they paid twice for  
16   the same volumes, and you are just not aware of it?

17          A.    I think it would have been captured when  
18   I was closing the books because I had to prepare a  
19   gas purchase analysis in order to close the books.  
20   And I reviewed the general ledger so if it would have  
21   been paid twice, it would have -- I would assume it  
22   would have stuck out.

23          Q.    Now, do you know for a fact it would have  
24   stuck out, or are you making that assumption?

25          A.    Being that I reviewed the general ledger,



1 I think it would have been caught.

2 EXAMINER FARKAS: What did you mean by  
3 the term "closing the books"? What's that?

4 THE WITNESS: I prepared the month end  
5 account recs and general entries for Northeast Ohio.

6 EXAMINER FARKAS: Okay.

7 Q. Now, on page 3 of your testimony, you  
8 indicate that as an accountant for Northeast during  
9 the time period of the transaction, you would not  
10 have discussed any accounting issues with Ms. Lipnis  
11 due to the fact that your supervisor was Ms. Howell.  
12 Do you know what Ms. Howell's position was at that  
13 time?

14 A. I was referring to where Ms. Lipnis said  
15 we discussed this in July of 2009. I would not have  
16 discussed anything with her in 2009.

17 Q. Okay. In July of 2009, do you know what  
18 Ms. Howell's position was?

19 A. She was a controller.

20 Q. For who?

21 A. Northeast Ohio, Orwell, and Brainard.

22 Q. And in 2009, July, 2009, Ms. Lipnis was  
23 the controller for Gas Natural, correct?

24 A. I have no idea. I didn't have any -- any  
25 interactions with her.

1 EXAMINER FARKAS: Well, could I just ask  
2 a question?

3 MR. SERIO: Sure.

4 EXAMINER FARKAS: You said on page 1,  
5 line 20, that you did work together with her.

6 THE WITNESS: But it wasn't until May of  
7 2010.

8 EXAMINER FARKAS: Okay. So you did have  
9 interaction with her.

10 THE WITNESS: Right. Just not during the  
11 year of 2009.

12 EXAMINER FARKAS: Thank you.

13 Q. (By Mr. Serio) If she was in error  
14 regarding the time period, could the discussion  
15 regarding this potential event of purchasing gas  
16 twice, could that have occurred in 2010?

17 A. No. It would not have occurred with her  
18 if there would have been any discussion. It would  
19 have occurred with Mr. Smith. I reported to him when  
20 we were in between a controller.

21 Q. But in 2010, she was acting as controller  
22 for the Ohio companies.

23 A. She was not acting as controller. She  
24 was assisting the accounting department since we  
25 didn't have a controller.

1           Q.    I guess what's the difference between  
2 acting as the controller and assisting the accounting  
3 department?

4           A.    She wasn't making decisions. We didn't  
5 go to her with questions. We would go to Mr. Smith.

6           Q.    Okay. You didn't go to her, but could  
7 she have come to you with regard to this situation  
8 and ask questions?

9           A.    She did not.

10          Q.    She did not. Are you familiar with the  
11 code of conduct that the company introduced in the  
12 hearing two weeks ago?

13          A.    Yes.

14          Q.    Have you signed a copy of the code of  
15 conduct?

16          A.    Yes.

17          Q.    And what's your understanding of what the  
18 code of conduct does?

19          A.    To be honest with you, I have not read it  
20 recently so I can't verbatim tell you anything that's  
21 in this.

22          Q.    Generally speaking what's your  
23 understanding of what it does?

24          A.    Employees --

25          Q.    Or purports to do.

1           A.    To conduct themselves professionally  
2 while at work and doing their jobs.

3           Q.    Do you know who enforces or who the  
4 compliance officer for the code of conduct is?

5           A.    No.

6           Q.    As an accountant, are you familiar with  
7 Sarbanes Oxley?

8           A.    Yes.

9           Q.    Do you know who the compliance officer  
10 for Sarbanes Oxley is at Northeast?

11          A.    No.

12          Q.    Do you know who it is for Gas Natural?

13          A.    No.

14          Q.    Or for Orwell?

15          A.    No.

16               MR. SERIO:  That's all I have, your  
17 Honor.

18               Thank you very much, Ms. Noce.

19               THE WITNESS:  You're welcome.

20               EXAMINER FARKAS:  Thank you.

21               Mr. Margard.

22               MR. MARGARD:  Just a second, your Honor.

23                       - - -

24

25

CROSS-EXAMINATION

By Mr. Margard:

Q. Good afternoon, Ms. Noce.

A. Good afternoon.

Q. First of all, I want to start off with the same question that I asked your colleague earlier and that is can you confirm for me that your -- your rebuttal testimony is the extent of the testimony that you're disputing in this case?

A. Correct.

Q. And you have been present throughout the hearing.

A. Correct.

Q. Now, Mr. Serio asked you some questions about your educational background, and I just wanted to clarify the record with respect to one point. He asked you if you had received any advanced degrees beyond your Bachelor's. You don't have a Bachelor's degree, do you?

A. That's correct. I have an Associate's degree.

Q. Associate's degree. You state in your testimony that you were directly responsible for the accuracy of Northeast's books. Can you expand on that a little bit and tell me specifically what your

1 duties and responsibilities were?

2 A. I prepare the account recs for the  
3 balance sheet, and I made the journal entries that  
4 needed to be made in order to close the books is what  
5 you call it for month end for Northeast.

6 EXAMINER FARKAS: Just for the record you  
7 have used the term "recs." Can you explain what that  
8 is?

9 THE WITNESS: Account reconciliations.  
10 We do them for the balance sheet accounts, and you  
11 just look at the reasonableness for the transactions  
12 that went through them and that they are accurate.

13 EXAMINER FARKAS: So that's what you  
14 meant by "recs."

15 THE WITNESS: Yes.

16 EXAMINER FARKAS: Thank you.

17 Q. (By Mr. Margard) So you were doing  
18 general ledger accounting.

19 A. Yes.

20 Q. You were not responsible for reviewing  
21 the individual invoices?

22 A. No.

23 Q. And, therefore, you didn't approve  
24 individual invoices for payment?

25 A. I did not approve the gas invoices, no.

1           Q.    You made a distinction there.  There were  
2 invoices that you did approve?

3           A.    Recurring for utilities, telephones, yes.

4           Q.    Okay.  Thank you.  Now, you have had some  
5 responsibilities for preparing and filing GCR  
6 reports, correct?

7           A.    That's correct.

8           Q.    Just so that we're clear can you tell us  
9 what period of time you were responsible for  
10 preparing GCR calculations and reports and for which  
11 companies?

12          A.    I did them for all three companies, for  
13 Brainard, NEO, and Orwell, and the first ones I did  
14 were in June I believe it was 2010 -- no, 2011, and I  
15 ended doing them in January of '12.

16          Q.    So for six months you were responsible  
17 for all three companies.

18          A.    Correct.

19          Q.    Did you have responsibility for any  
20 individual company during any other period of time?

21          A.    What do you mean by that?

22          Q.    Was that the only period of time during  
23 which you were responsible for performing GCR  
24 calculations and filing reports?

25          A.    No.  I started doing them again in May of

1 2013.

2 Q. And for all three companies?

3 A. Correct.

4 Q. So then you're familiar with the GCR  
5 calculation.

6 A. Correct.

7 Q. And you're familiar with the components  
8 of the GCR mechanism?

9 A. Correct.

10 Q. Can you identify those components for us,  
11 please?

12 A. There's the EGC which is the expected gas  
13 costs. There are AAs, BAs, and RAs.

14 Q. Can you expand on that, tell us what the  
15 acronyms stand for just for clarity sake?

16 A. The AA is the actual adjustment. The BA,  
17 I'm not sure what the B stands for. It's got  
18 something that's a part of the normal quarter trueup,  
19 just the AA is. And then we recorded any adjustments  
20 that staff wanted made from an audit in the RA.

21 Q. Okay. What is involved in determining  
22 the EGC?

23 A. The way that I calculate them is based on  
24 the definition that I pulled from the PUCO website.  
25 I take the historical purchased volumes and I times



1 those by the future NYMEX plus basis and then they  
2 are divided by historical sales volumes.

3 Q. So it does volumes and not just sales and  
4 not just market price?

5 A. Correct.

6 Q. Thank you. You've heard both Mr. Smith  
7 and Ms. Howell talk about the GCR estimate. Are you  
8 familiar with that phrase?

9 A. I believe they are referring to the EGC,  
10 estimated gas cost.

11 Q. Okay. And do you have any additional  
12 information to share with us in terms of the process  
13 that the companies used to determine that estimate?

14 A. It was just what I explained.

15 Q. You indicated that you used the futures  
16 NYMEX plus basis.

17 A. Correct.

18 Q. And you used sales.

19 A. Correct.

20 Q. Historic sales.

21 A. Yes.

22 Q. For what period of time?

23 A. For the prior year, 12 months.

24 Q. For the prior 12 months and historic  
25 volumes as well.

1 A. Purchased volumes, yes.

2 Q. Purchased volumes. And for what period?

3 A. The prior 12 months, completed 12 months.

4 Q. Okay. Thank you very much. Those all  
5 seem like fairly objective numbers. Where would you  
6 get the information to make that calculation?

7 A. From the actual invoices.

8 Q. Would there be any reason to revise or  
9 modify any of those numbers?

10 A. If -- not on my decision but if, you  
11 know, people who reviewed it felt that it wasn't in  
12 line or whatever, they would have that right to make  
13 that change.

14 Q. And who reviewed the filings that you  
15 prepared?

16 A. In 2011, it was Larry Brainard and  
17 Mr. Smith. When I started doing them in May, it was  
18 Larry Brainard and Becky Howell and Mr. Osborne also  
19 reviewed them.

20 Q. Mr. Richard Osborne?

21 A. Yes.

22 Q. Okay. Thank you. You were asked some  
23 questions about this 2009 purchase and discussions  
24 that you may or may not have had with Ms. Lipnis. I  
25 just want to make sure I'm clear on this, is it your

1 understanding that she testified that this discussion  
2 occurred in 2009?

3 A. I believe so, yes.

4 Q. That's your understanding of her  
5 testimony? But it's your testimony that there was no  
6 discussion at all at any time.

7 A. No.

8 Q. No, there was no discussion?

9 A. There was no discussion with her, no.

10 Q. Thank you. But you were not responsible  
11 for approving any of those invoices in July of 2009,  
12 were you?

13 A. No.

14 Q. And it is possible, isn't it, that  
15 invoices from two different vendors for the same  
16 purchase and for the same amount could have been  
17 approved?

18 A. It's unlikely. Like I said, I  
19 reviewed --

20 Q. But it's possible?

21 A. Not when I was reviewing the general  
22 ledger.

23 Q. How would those individual invoices have  
24 appeared on the general ledger?

25 A. They have to be coded to a general ledger

1 account. And when I was doing the gas purchases for  
2 the month end close, I would review the accrual  
3 account and the expense account for the gas  
4 purchases.

5 Q. You were also asked some questions about  
6 which individuals for the companies were responsible  
7 for Sarbanes Oxley compliance, and I believe you  
8 indicated you did not know --

9 A. That's correct.

10 Q. -- is that correct? Do you know who  
11 generally in the corporation is responsible for that  
12 compliance?

13 A. No.

14 Q. Do you know what responsibility the  
15 controller has for that compliance?

16 A. No, I haven't studied it for every  
17 industry. I don't know if it's the same for every  
18 company. I don't know.

19 Q. What was your understanding of your  
20 responsibility as an assistant controller?

21 A. I did various projects. I did various  
22 different things. I didn't have a set day-to-day  
23 procedure and job.

24 MR. MARGARD: Okay. If I may have a  
25 moment, your Honor?

1 EXAMINER FARKAS: Yes.

2 MR. MARGARD: I have no further  
3 questions. Thank you.

4 MR. YURICK: If I could have a few  
5 moments.

6 EXAMINER FARKAS: Yes. Go off the  
7 record.

8 (Recess taken.)

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

11 MR. YURICK: Your Honor, the company has  
12 no further questions of the witness at this point in  
13 time.

14 EXAMINER FARKAS: You are excused. Thank  
15 you very much.

16 MR. YURICK: I would renew my motion to  
17 admit company Exhibit No.?

18 EXAMINER FARKAS: 9.

19 MR. YURICK: I would renew my motion for  
20 the admission of Company Exhibit No. 9, the rebuttal  
21 testimony of Anita Noce.

22 EXAMINER FARKAS: Any objection?

23 MR. SERIO: I don't have any objection,  
24 but I was wondering if we could get one  
25 clarification. I believe one of the last questions

1 to Mr. Margard she indicated Rick Osborne, and it  
2 wasn't clear if that was the Chairman Rick Osborne or  
3 the President of JDOG Marketing Rick Osborne. I  
4 don't think they are the same individual.

5 MR. YURICK: Yeah, they are.

6 MR. SERIO: Oh, okay.

7 EXAMINER FARKAS: With that  
8 clarification.

9 MR. SERIO: Yes.

10 EXAMINER FARKAS: No objection?

11 MR. SERIO: No.

12 EXAMINER FARKAS: Staff?

13 MR. MARGARD: No objection.

14 EXAMINER FARKAS: Then Company Exhibit 9  
15 will be admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER FARKAS: I believe Exhibit No.  
18 23.

19 MR. SERIO: OCC would move Exhibit No.  
20 23.

21 MR. YURICK: No objection, your Honor.

22 EXAMINER FARKAS: Staff?

23 MR. MARGARD: No objection.

24 EXAMINER FARKAS: That will be admitted.

25 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 EXAMINER FARKAS: I believe that's all of  
2 our exhibits we dealt with.

3 Let's go off the record for a second.

4 (Discussion off the record.)

5 EXAMINER FARKAS: The briefing schedule  
6 will be as follows: Initial briefs will be due to be  
7 filed on or before August 19 and reply briefs  
8 August 30, and you can serve me electronically. I  
9 would ask you to serve all the other parties  
10 electronically.

11 And for purposes of the brief the parties  
12 do not have to -- they can if they want but they  
13 don't have to put any procedural history of the case.

14 Is there anything further?

15 MR. SERIO: You indicated we can serve  
16 you electronically. Did you want a hard copy?

17 EXAMINER FARKAS: No, I do not. Thank  
18 you.

19 Anything further from anybody? Company?

20 MR. YURICK: Nothing from the company,  
21 your Honor.

22 EXAMINER FARKAS: OCC?

23 MR. SERIO: No, your Honor.

24 EXAMINER FARKAS: Staff?

25 MR. MARGARD: No, your Honor.

1 EXAMINER FARKAS: We stand adjourned.  
2 (Thereupon, the hearing was concluded at  
3 2:16 p.m.)

4 - - -

5 CERTIFICATE

6 I do hereby certify that the foregoing is  
7 a true and correct transcript of the proceedings  
8 taken by me in this matter on Monday, July 22, 2013,  
9 and carefully compared with my original stenographic  
10 notes.

11

12

13 Karen Sue Gibson, Registered  
14 Merit Reporter.

15 (KSG-5730)

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Summary: Transcript in the matter of Northeast Ohio Natural Gas Corporation and Orwell Natural Gas Company hearing held on 07/22/13 - Volume IV - Rebuttal electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.