

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of: :  
Application of Ormet :  
Aluminum Corporation for : Case No. 09-119-EL-AEC  
for Approval of a Unique :  
Arrangement with Ohio :  
Power Company and Columbus:  
Southern Power Company. :

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PROCEEDINGS

before Mr. Rebecca L. Hussey and Mr. Gregory Price,  
Attorney Examiners, at the Public Utilities  
Commission of Ohio, 180 East Broad Street, Room 11-C,  
Columbus, Ohio, called at 10:00 a.m. on Wednesday,  
June 17, 2009.

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VOLUME IV

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1                               Wednesday Morning Session,  
2                               June 17, 2009.

3                               - - -

4                               EXAMINER PRICE: We will dispense with  
5                               appearances this morning, but before we take our  
6                               first witness, do we have any preliminary matters we  
7                               need to rule upon?

8                               Seeing none, Mr. McNamee, call your  
9                               witness.

10                              MR. McNAMEE: Staff will call Mr. Robert  
11                              B. Fortney.

12                              EXAMINER PRICE: Please be seated and  
13                              state your name and business address for the record.

14                              THE WITNESS: My name is Robert B.  
15                              Fortney, F-O-R-T-N-E-Y. My address is 180 East Broad  
16                              Street, Columbus, Ohio.

17                              - - -

18                              ROBERT B. FORTNEY  
19                              being by me first duly sworn, as hereinafter  
20                              certified, deposes and says as follows:

21                              DIRECT EXAMINATION

22                              By Mr. McNamee:

23                              Q. Mr. Fortney, by whom are you employed and  
24                              in what capacity?

25                              A. I am employed by the Public Utilities

1 Commission of Ohio. I am a public utilities  
2 administrator 3.

3 Q. You previously testified in this case.

4 A. Yes, I did.

5 Q. Okay.

6 MR. McNAMEE: Your Honor, at this time I  
7 would ask to have marked for identification two  
8 exhibits. One is denominated the Rebuttal Testimony  
9 of Robert B. Fortney. I'd like to have that marked  
10 as Staff Exhibit 2.

11 EXAMINER PRICE: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MR. McNAMEE: I would like to have the  
14 single-page document that is marked at the top "Ormet  
15 Delta Rev Cap/Price Floor examples." I would like to  
16 have that marked as Staff Exhibit 2A.

17 EXAMINER PRICE: So marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. Mr. Fortney, do you have before you what  
20 has been marked for identification as Staff Exhibits  
21 2 and 2A?

22 A. Yes, I do.

23 Q. What are those?

24 A. Staff Exhibit 2 is my written rebuttal  
25 testimony, and Staff Exhibit 2A would be an

1 attachment that my written testimony references.

2 Q. Okay. Were Staff Exhibits 2 and 2A  
3 prepared by you or under your direction?

4 A. Yes, they were.

5 Q. Do you have any additions or corrections  
6 you need to make to either of these things this  
7 morning?

8 A. No, I don't.

9 Q. Okay. Are the contents of what has been  
10 marked for identification as Staff Exhibits 2 and 2A  
11 true and correct to the best of your knowledge and  
12 belief?

13 A. Yes, they are.

14 Q. If I asked you the questions contained in  
15 the Staff Exhibit 2 again here this morning, would  
16 your answers be the same as presented therein?

17 A. Yes, they would.

18 Q. Do you adopt Exhibits 2 and 2A as your  
19 rebuttal testimony in this case?

20 A. Yes, I do.

21 MR. McNAMEE: With that, your Honor, the  
22 witness is available for cross-examination.

23 EXAMINER PRICE: Consumers' Counsel.

24 MR. POULOS: Yes, Your Honor. Thank you.

25 - - -

CROSS-EXAMINATION

By Mr. Poulos

Q. Good morning, Mr. Fortney.

A. Good morning.

Q. The purpose of the testimony that was filed and just introduced in direct is to recommend a price floor, correct?

A. In essence, yes, I mean, as described in question No. 4. The answer to question No. 4 talks about the conversation that Mr. Kurtz and Mr. Fayne had when Mr. Fayne was on the stand. As it reads: "Mr. Kurtz further asked 'So if that was the intent and the Commission felt that the language did not effectuate that intent, then the solution would be for the Commission to modify the language.'

"Mr. Fayne responded 'That would certainly be within their prerogative.'

"The purpose of my rebuttal testimony is to provide the Commission with staff's recommendation as to what the modified provision should be."

Q. The modified provision for a price floor?

A. For a price floor, yes.

Q. Prior to the rebuttal testimony in your initial direct testimony, you recommended that the Commission bifurcate and review the 2010 rates and



1 beyond, the rates, correct?

2 A. That's correct. My initial testimony  
3 recommended that the application as it pertained to  
4 the year 2009 be approved by the Commission and that  
5 the remaining nine years be bifurcated and set for  
6 hearing at a later date.

7 Q. Based on your testimony in answer to  
8 question 10, is it still the case that you're  
9 recommending a review each year of the proposed  
10 figures?

11 A. Depending on what the Commission rules in  
12 this application, yes, I think it is quite possible  
13 that some mechanism needs to be established to review  
14 the contract in ensuing years from 2010 through 2018.

15 Q. Why would there need to be a mechanism?

16 A. If the Commission were to find that  
17 either the \$54 million delta revenue cap was --  
18 should be adjusted depending on circumstances in  
19 future years, then there would need to be some  
20 mechanism for them to do that.

21 Q. I want to discuss the \$54 million cap and  
22 your reasons for it, which is addressed, at least  
23 initially, in answer to question 10 of your rebuttal  
24 testimony. You list three reasons, at least as I  
25 understand it. The first one for the \$54 million cap

1 is around the approximate -- approximately Ormet's  
2 annual wages, correct?

3 A. Yes. I believe in their application that  
4 it was presented that at least at the time of the  
5 application there were 1,000 employees and the  
6 approximate labor expense was \$56 million.

7 Q. Now, you are aware -- do you recall the  
8 testimony of Dr. Coomes that 40 percent of the jobs  
9 are West Virginia, from West Virginia residents?

10 A. I don't recall the exact number, but yes,  
11 I'm aware of that.

12 Q. And you are aware that the \$56 million  
13 wage total you just cited, that includes the West  
14 Virginia residents in your wage calculation, correct?

15 A. Yes, I'm aware of that.

16 Q. You would agree that none of those  
17 residents from West Virginia are customers of  
18 AEP-Ohio, correct?

19 A. I assume that's correct, yes. I don't  
20 know how they could be.

21 Q. Why would you include the wages from  
22 those West Virginia residents?

23 A. This was a -- more of a -- actually,  
24 since I didn't correct this, I see that the small  
25 letter (b) has been omitted from the word "Staff,"

1 the second sentence there. But it was kind of a  
2 sanity check on, okay, I'm recommending \$54 million.  
3 Is there any other potential rationale which would  
4 justify that as being a reasonable number. So that  
5 was a number that had been -- was on the record and  
6 had been discussed as maybe a reasonable benefit that  
7 Ormet was giving to the state of Ohio, and it was  
8 more of a sanity check than the discount or the price  
9 cap or the delta revenue cap or should be tied to the  
10 number of employees or the salary. It was just more  
11 or less another rationale that seemed to indicate  
12 that might be a reasonable number.

13 Q. Thank you. Looking at the number (b),  
14 which actually is not there, but it starts "Staff  
15 believes that a 25% discount given to a customer is a  
16 reasonable maximum incentive."

17 A. Yes.

18 Q. Maximum from what?

19 A. Total rate.

20 Q. From the total rate.

21 A. Yes.

22 Q. That includes the riders as well?

23 A. Yeah. And here, again, this is a rather  
24 subjective number that I'm recommending as a staff  
25 member as perhaps a number that could be used in not

1 only this case but in other cases as the maximum  
2 discount to be given to customers seeking special  
3 arrangements for whatever reason, that a 25 percent  
4 discount on their total rate may be a reasonable  
5 limit to that discount.

6 Q. What happens if AEP's rates go up in  
7 2011, which they're scheduled to do? Is the  
8 25 percent the overriding factor from staff's  
9 perspective, or is it the \$54 million cap?

10 A. My recommendation is that the \$54 million  
11 cap remain in place because later on I mention that  
12 the Commission might consider that in long-term  
13 contracts, as the years go on, that the percent of  
14 reduction be reduced until eventually at the end of  
15 the contract that customer would be at tariff rates  
16 so that's why I would stay with the \$54 million.

17 Q. Okay. Thank you. Also looking at what I  
18 call (b), as you point out there's no (b) there, it  
19 also talks about in the second part of it: "a  
20 reasonable maximum incentive to promote economic  
21 development which would be funded by other  
22 ratepayers." Economic development, could you explain  
23 how that fits into this situation with Ormet?

24 A. Well, economic development could  
25 certainly be new capital investment, new jobs, but I

1 also believe that it would pertain to retained jobs,  
2 retained benefits to Ohio from those retained jobs.

3 Q. So it's your position that -- would you  
4 agree that your position is that it would pertain to  
5 all reasonable arrangements?

6 A. The 25 percent discount?

7 Q. Yes.

8 A. Yes.

9 Q. For any reasonable arrangements, I guess.

10 A. Any reasonable arrangement the Commission  
11 would approve.

12 Q. Looking at (c): "AEP has approximately  
13 \$1.5 million customers. The \$54,000,000 represents  
14 \$36/year per customer." And you state that the  
15 maximum subsidy should be \$3 per month per customer,  
16 correct?

17 A. That's correct.

18 Q. Is that \$3 per month a hard cap for all  
19 reasonable arrangements, meaning is it your position  
20 there should be no other reasonable arrangements  
21 approved?

22 THE WITNESS: Can I have that reread?

23 (Record read.)

24 A. The \$3 cap was meant to be, since it  
25 represents the \$54 million, was meant to be for this

1 arrangement only and does not speak to any other  
2 arrangement.

3 Q. Do you foresee other reasonable  
4 arrangements being proposed this year?

5 MR. McNAMEE: Object.

6 EXAMINER PRICE: Sustained.

7 Q. Do you have a position on the combined  
8 reasonable maximum incentives to promote economic  
9 development which would be funded by the ratepayers?

10 A. It's a good question, certainly something  
11 we have thought of as staff. It was not something  
12 that was put into the rules. There was no delta  
13 revenue cap that was put into the reasonable  
14 arrangement rules. It was certainly considered at  
15 that time the rules were written, and I think it  
16 would be something that would be worthwhile to  
17 reconsider again, should there be a total cap,  
18 whether it be statewide, company-wide, but we have  
19 not had that discussion to determine whether that's  
20 the right thing to do or what that number would be.

21 Q. So at this point you don't have a  
22 position.

23 A. I don't have a position.

24 Q. Thank you. Looking down at the bottom of  
25 A10, you kind of mentioned this a little bit earlier,

1 about the Commission should consider a phase-in  
2 approach which the level of revenue is reduced in  
3 subsequent years.

4 A. Yes.

5 Q. Do you have an idea in mind how that  
6 would work?

7 A. Well, there, again, the intent would be  
8 that at the end of the arrangement that the customer  
9 would be at the tariff rate. So if it's a ten-year  
10 agreement, you know, they could reduce -- they might  
11 reduce that cap 10 percent per year. If it's a  
12 three-year agreement, they might reduce it 33 percent  
13 a year if that was something they wanted to order.

14 Q. That's something the Commission would  
15 order; is that your position?

16 A. I think ultimately that would be the  
17 Commission's decision, yes.

18 Q. Can I have you now look at your  
19 attachment which has been marked as Staff Exhibit 2A.

20 A. Yes.

21 Q. And this has nine examples on it,  
22 correct?

23 A. Yes.

24 Q. Would you agree with me that example 1 is  
25 in line with your recommended position for the

1 \$54 million cap?

2 A. Example 1 was my example of if there were  
3 a \$54 million cap and at the six full potlines, the  
4 price would be the 3.252 cents.

5 Q. And how did you calculate the tariff  
6 price?

7 A. Well, I think we discussed that in my  
8 initial testimony, and it was a document that was  
9 provided by Mr. Roush from AEP, and I think Mr. Kurtz  
10 may have even put that into the record, but it was  
11 very close to the number that Mr. Kurtz was using at  
12 that time. I think he was using 4.24,  
13 4.424 something, and 4.417 was simply an average of  
14 the CSP and Ohio Power Company rate that AEP  
15 indicated to me was the average GS-4 rate.

16 EXAMINER PRICE: Excuse me, that's an  
17 all-in rate, is it not?

18 THE WITNESS: That's an all-in rate, yes.

19 Q. Looking down to example 8, example 8 is  
20 if there is no price floor; is that correct?

21 A. Well, the price floor would be zero. I  
22 think in previous testimony Mr. Kurtz gave an example  
23 to Ormet where ratepayers would actually be paying  
24 Ormet to take the electricity. So there would be a  
25 negative price floor in that case, but this example



1 would indicate a price floor of zero.

2 Q. As opposed to a price floor that could go  
3 negative.

4 A. Correct.

5 Q. Do you have an understanding of what the  
6 LME prices are currently?

7 A. No, I don't.

8 Q. And as proposed now as a reasonable rate  
9 as you understand it, there could be a situation  
10 where there is \$204 million delta revenue for next  
11 year; is that correct?

12 A. As proposed in the application there  
13 could be a situation where the delta revenue is  
14 greater than \$204 million.

15 EXAMINER PRICE: Mr. Fortney, is it fair  
16 to say that example 8 would simply be the  
17 transferring the full cost of Ormet's load to the  
18 ratepayers, nothing more, nothing less?

19 THE WITNESS: The Ormet electricity bill  
20 would be paid by ratepayers.

21 EXAMINER PRICE: That's where the \$204  
22 million comes from.

23 THE WITNESS: That's correct.

24 Q. (By Mr. Poulos) And that's if the number  
25 is not negative, correct?

1           A.    If the number is not negative.

2           Q.    Going back up to example 1, which is  
3 \$54 million, if they reach the cap at some point  
4 during the year, is there a monthly true-up, or how  
5 would that work if they reach the cap, the  
6 \$54 million cap, earlier than the end of the year?

7           A.    I hadn't really thought that through.  
8 The cap was designed so that this would be at their  
9 full operations. But if for some reason the cap was  
10 reached before the end of the year, then, yeah, I  
11 think they would go back to tariff rates for the  
12 remainder of the year. I haven't thought that  
13 through, what the mechanism would be.

14          Q.    Mr. Fortney, are you familiar with the  
15 variable costs of production for Ormet?

16          A.    I know that actually once again in  
17 Mr. Kurtz's cross-examination of Mr. Fayne that  
18 number was example 7, the 2.402 cents.

19               MR. POULOS: I'm sorry, could I have that  
20 read back.

21               (Record read.)

22          Q.    So is it your understanding that example  
23 7, the .024 figure, that is the variable cost of  
24 production for the company?

25          A.    It was fuel related, which is by far the

1 biggest share of variable costs, so yeah, I think  
2 that's an approximation.

3 Q. Is it your position that the discount the  
4 company receives should never go below the variable  
5 cost of production -- the variable cost of fuel?

6 A. Well, certainly in this case what I  
7 recommended as a price floor is well above the  
8 variable cost. Had not considered it for all  
9 circumstances. I guess there are some circumstances  
10 where that might be true. But, yeah, I would say  
11 that the variable cost of production would be a  
12 reasonable floor in many cases.

13 EXAMINER PRICE: But not in this case.

14 THE WITNESS: Not in this case.

15 Q. And why not in this case?

16 A. Well, as I have explained in my  
17 testimony, there are two or three factors to  
18 consider. It's not a simple algebraic equation where  
19 there is one variable and you solve for it. There's  
20 a lot of variables: One being what Ormet needs to  
21 stay afloat; one being what Ormet's level of  
22 operations is; one being as to what the AEP rates  
23 are; one being as to what other customers should be  
24 asked to pay to subsidize the Ormet electric bill;  
25 one being what will aluminum prices be in the next

1 ten years; another being what will AEP's prices be in  
2 the next ten years.

3 So the \$54 million is a number that  
4 seemed to me to be a reasonable delta revenue cap and  
5 price floor.

6 Q. Thank you. Could you explain example  
7 2 for me?

8 A. Example 2, if I maintain the  
9 approximately \$54 million in delta revenue and Ormet  
10 was operating four of the potlines -- and, there,  
11 again, I'm not precisely sure that four potlines  
12 would equal 360 megawatts, but for example purposes,  
13 that's what I considered. If they were operating  
14 four potlines, to get to the \$54 million delta  
15 revenue cap the price floor would be the 2.669 cents.

16 Q. As part of your recommendation and answer  
17 to question 10 --

18 A. Yes.

19 Q. -- is it part of your recommendation that  
20 if Ormet were to reduce the number of potlines, that  
21 the \$54 million should be reduced as well?

22 A. My recommendation as written is no, that  
23 the \$54 million would still be the delta revenue cap  
24 which would generate the price floor. But that is  
25 one of the things that I have mentioned that the

1 Commission may want to consider, the level of Ormet's  
2 operations in setting the price, delta revenue cap.

3 Q. And that would be the same for your  
4 example 3, the 4.6 potlines at \$54 million.

5 A. Yes. Example 3 would once again maintain  
6 the \$54 million delta revenue cap, and I think that  
7 the Ormet witness testified that they were now at 4.6  
8 potlines. So this was just to give the Commission an  
9 example, some feeling as what the price floor would  
10 be if there were a \$54 million cap at the 4.6 potline  
11 operation.

12 Q. And looking at example 4, as I read it,  
13 it appears to me that example 4 is taking the  
14 \$54 million cap and reducing it to \$41 million,  
15 correct, or using the 25 percent as a maximum  
16 floor -- the maximum discount. Excuse me.

17 A. That was an example of if you notice the  
18 price floor was the 3.252, which is the same price  
19 floor that was in example 1 which resulted in the  
20 operations at full operations and the \$54 million  
21 cap. So if the Commission were to keep the 3.252  
22 cents as a price floor and Ormet operated the 4.6  
23 potlines, what would the delta revenue -- annual  
24 delta revenue be. It would be 41.5 million in that  
25 scenario.

1           Q.    Is that the 25 percent discount, taking  
2   that as the --

3           A.    That really has nothing to do with the  
4   25 percent discount.  That's just if you maintained  
5   the price floor that was established at full  
6   operations and the \$54 million total delta revenue  
7   cap.

8           Q.    Thank you for that clarification.  You  
9   talk in response to question No. 11, you talk about  
10  the meeting at the end of the year that will be set  
11  for each October to determine a reasonable cap.  What  
12  is your understanding what will happen at that  
13  meeting?

14          A.    Well, there again, that meeting would  
15  only have to take place if the Commission found  
16  that -- if that's how the Commission ruled.  And my  
17  impression at that meeting would be probably the  
18  parties that are in this room would sit down once  
19  again and go through all the facts and based on prior  
20  Commission decisions come to a reasonable agreement  
21  as to what the delta revenue cap should be and what  
22  the price floor should be, and I guess if not, then  
23  the Commission would probably need to reopen the  
24  hearing.

25          Q.    Let me take you now to your answer to

1 question 6 of your rebuttal testimony. And as part  
2 of two considerations of setting the price for floor  
3 2010 and beyond, one of those is the level of delta  
4 reviews that are produced, correct?

5 A. Correct.

6 Q. And part of the your answer for A7 you  
7 state that is -- you determine the delta revenues  
8 based upon the applicable rate schedule; is that  
9 correct?

10 A. I'm sorry, I missed that question.

11 MR. POULOS: Can I have that read back.

12 (Record read.)

13 A. Correct.

14 Q. For 2010 and beyond, that rate schedule  
15 would be the GS-4 that combines Ohio Power/Columbus  
16 Southern Power.

17 A. That's my understanding, yes.

18 Q. And part of that schedule includes a POLR  
19 charge, correct?

20 A. Part of the rates approved by the  
21 Commission in AEP's electricity security plan  
22 included a POLR segment, yes.

23 Q. And for 2010 and beyond, is it your  
24 opinion that Ormet should be able -- AEP should be  
25 able to recover a POLR charge?

1           A.    I really have no opinion on that, and  
2   that's not in my recommendation, that they not be  
3   able to recover.

4           Q.    Would you agree with me that -- is it  
5   your understanding under this agreement that Ormet is  
6   not able to shop?

7           A.    I believe that is one of the terms of the  
8   agreement, that Ormet would be a full requirements  
9   customer of AEP.

10          Q.    In addition as part of the GS-4 tariff  
11   requirement -- that also includes for 2010 and  
12   beyond -- that also includes a distribution charge,  
13   correct?

14                THE WITNESS:  I need that reread please.

15                (Record read.)

16          A.    Ormet is asking for an all-in rate and  
17   the AEP -- so the AEP rates would have to be an  
18   all-in rate for comparison purposes, so yes, it would  
19   include all charges, including distribution charges.

20          Q.    Would you agree that AEP receives  
21   benefits associated from having Ormet as a customer  
22   and receiving a distribution -- and collecting a  
23   distribution charge?

24                MR. NOURSE:  Your Honor, I object.  This  
25   is beyond the scope, and he already indicated he has



1 no opinion on the POLR charge.

2 EXAMINER PRICE: Sustained.

3 Q. Mr. Fortney, there has been no change in  
4 your opinion or your analysis of Ormet's proposal as  
5 it pertains to the 2009 figures, correct?

6 A. That is correct, yes. My rebuttal  
7 testimony pertains only for years 2010 through 2018.

8 MR. POULOS: May I have a moment your  
9 Honor? I may be done.

10 (Discussion off record.)

11 MR. POULOS: Thank you, your Honor.

12 EXAMINER PRICE: Mr. Kurtz.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Kurtz:

16 Q. Good morning, Mr. Fortney.

17 A. Good morning.

18 Q. I understood you to testify that Ormet  
19 had approximately 1,000 employees at the Ohio  
20 aluminum smelter.

21 A. I believe in their application it  
22 indicated that there were approximately 1,000  
23 employees and the annual payroll was \$56 million.

24 Q. So it would be \$56,000 per employee on  
25 average.

1           A.    Yes.

2           Q.    Okay.  Now, of that -- of the 54 million  
3   annual subsidy you're recommending if we assume  
4   hypothetically that there are 598 Ohio employees,  
5   would you agree that that comes out to \$90,301 per  
6   Ohio employee?

7           A.    Whatever the \$56 million divided by  
8   however many Ohio employees there are, I'll accept  
9   the \$90,000 is that number.

10          Q.    Actually, I divided the \$54 million  
11   maximum subsidy by the 598 Ohio employees to get  
12   \$90,300 per job.

13          A.    I'll accept that.

14          Q.    Is that a lot for consumers to pay per  
15   job?

16               MR. VINCE:  Objection, your Honor.

17               EXAMINER PRICE:  Grounds.

18               MR. VINCE:  First of all, I don't know  
19   the witness has been qualified in this area; and  
20   second, it's based upon speculation.

21               MR. KURTZ:  I'll rephrase, your Honor.

22               EXAMINER PRICE:  Thank you, Mr. Kurtz.

23          Q.    Would you agree that \$90,300 per job,  
24   which is the subsidy amount per job, is more than  
25   those people are actually earning at the smelter,

1 which is approximately \$56,000 a year?

2 A. Mr. Kurtz, I would agree that the \$90,000  
3 is more than \$56,000. I'm not sure that I agree with  
4 your rationale that tells us the revenue cap should  
5 be reduced based upon the number of Ohio employees or  
6 West Virginia employees or Pennsylvania employees. I  
7 think that's -- that may be a reasonable position for  
8 you to take. I have not considered that in my  
9 analysis.

10 Q. Let me ask you about the POLR amount for  
11 a moment. Do you know how much the POLR charge will  
12 be on a dollar per megawatt hour basis next year for  
13 CSP and Ohio Power Company, 50/50 average?

14 A. I'm sure I have heard that number, but I  
15 don't remember what it is.

16 Q. Will you accept \$2.4 per megawatt hour  
17 hypothetically, \$2.40 per megawatt hour?

18 A. I will accept it but I have no way of  
19 verifying that is an accurate number.

20 Q. We could just go to the tariffs and  
21 figure that out pretty easily, couldn't we?

22 A. You probably could, yes.

23 Q. At \$2.40 per megawatt hour  
24 hypothetically, that would be approximately  
25 \$11 million per year at Ormet's full load. Will you

1 accept that, subject to check?

2 A. I will accept that.

3 Q. Okay. If the Commission were to say that  
4 \$54 million is the maximum subsidy but that AEP should  
5 not collect \$11 million worth of POLR charges because  
6 it has less risk because this customer cannot shop,  
7 then the consumer share of that \$54 million would be  
8 reduced by \$11 million so that the consumers would  
9 end up paying \$43 million. Does that math make sense  
10 to you?

11 A. Maybe I misheard your question. I  
12 thought you said if they maintain the \$54 million cap  
13 but they did not allow recovery of the POLR charge, I  
14 mean, it seems to me under that circumstances that  
15 the price floor would just keep going down until it  
16 corresponded with the \$54 million cap.

17 Q. Well, I guess let me ask it this way. If  
18 the Commission said that \$54 million per year is the  
19 maximum annual subsidy but that essentially  
20 \$11 million of that should be funded by the reduced  
21 risk that the two utilities will have by having this  
22 customer not be able to shop during the term of the  
23 contract, wouldn't the consumer portion of the  
24 subsidy be reduced by that \$11 million?

25 A. Under those circumstances as you have

1 described, yes.

2 EXAMINER PRICE: Mr. Kurtz, I'm concerned  
3 about this \$11 million figure. I certainly will  
4 consider taking administrative notice of the tariffs  
5 if we had them or if you want to file them as a  
6 late-filed exhibit, but right now that \$11 million  
7 figure is entirely hypothetical and he's not  
8 supporting that whatsoever. He's simply saying  
9 hypothetically that might be true, and I'm not sure  
10 if you are going to argue this in your brief we are  
11 going to have a record.

12 MR. KURTZ: Your Honor, I understand.  
13 Those questions are hypothetical at this point. I  
14 don't think I would need to file the tariffs as an  
15 exhibit. The Commission could certainly take  
16 administrative notice of those.

17 EXAMINER PRICE: I agree. I agree we can  
18 take administrative notice of the tariffs. I'm not  
19 saying you need to file them, but we need to have  
20 something to point to in the record.

21 MR. KURTZ: I don't have the GS-4  
22 tariffs. Actually, the POLR charge is a separate  
23 rider and it's different by rate schedule, and it has  
24 a number for GS-4 Ohio Power and a number for GS-4  
25 for Columbus Southern and simply taking the

1 mathematical average.

2 EXAMINER PRICE: I understand that. It  
3 is just we're going to need to have something to  
4 point to in this record.

5 MR. KURTZ: I'm done with that line.

6 EXAMINER PRICE: Okay.

7 Q. (Mr. Kurtz) Mr. Fortney, one of your  
8 rationales is also that the Commission should not  
9 have to affirmatively reopen this contract if the  
10 discount is getting too big, and that's one reason  
11 you propose a hard floor \$54 million; is that  
12 correct?

13 A. That's correct.

14 Q. Why should the burden not be on the  
15 Commission to reopen the contract?

16 A. If there was a provision in the contract  
17 that automatically set that price floor, then it's  
18 obviously one less thing that the Commission has to  
19 do. And the other reason had to do with your  
20 conversation with Mr. Fayne and some of the questions  
21 that Examiner Price had asked Mr. Fayne about that  
22 timing mechanism, that if the Commission were to find  
23 that it's too high, that that rate could continue  
24 through -- until the end of the year, so that was a  
25 problem that staff saw in the price floor 50 percent

1 mechanism as proposed by Ormet.

2 Q. I want to ask you a question about the  
3 variable costs of power on the Columbus Southern  
4 Power and Ohio Power system. I think earlier you  
5 alluded to the assumption that it was \$24 a megawatt  
6 hour or 2.4 cents per kilowatt-hour.

7 A. I actually took that from your  
8 cross-examination of Mr. Fayne.

9 Q. That's where he said it was an  
10 approximation to say that half of the tariff  
11 approximated variable cost.

12 A. Well, there again, the number that you  
13 quoted, the 24, compared to the 44 divided by 2,  
14 which would be 22. So I guess it's an approximation,  
15 yes.

16 Q. We could actually look and see what the  
17 fuel adjustment clause charges are for each of the  
18 two utilities and determine what they're charging for  
19 fuel and the other elements at the FAC, could we not?

20 A. I believe you could, yes.

21 Q. If it was more than that \$24 a megawatt  
22 hour, would you agree that that approximation of  
23 variable cost would be too low? In other words, if  
24 the FAC rates themselves were higher than \$24 a  
25 megawatt hour, the variable cost is higher than \$24 a

1 megawatt hour.

2 A. Which approximation are you asking if it  
3 would be too low, the \$22?

4 Q. Let me ask it this way. If the FAC rates  
5 were 27 or 28 dollars a megawatt hour, then we would  
6 know the variable cost is not 24.

7 A. Correct.

8 Q. Let me ask you about this topic, if you  
9 have an opinion. You indicate that Ormet should pay  
10 the basic rates, including all riders, less whatever  
11 subsidy is approved. Is that fair?

12 A. That's fair, yes.

13 Q. Okay. Now, next year the Commission will  
14 examine the earnings of Columbus Southern and Ohio  
15 Power Company to determine if they were significantly  
16 excessive; is that correct?

17 A. I know there is an earnings test required  
18 in the electric security plan. I don't know what the  
19 timing of that test is.

20 Q. Whenever the Commission does that  
21 analysis, does the test if the result was that  
22 Columbus Southern Power, for example, had earnings  
23 that were significantly excessive and ordered a  
24 refund, would Ormet be entitled to a refund in  
25 addition to the maximum subsidy?



1           A.    I have no opinion.

2           Q.    Do you believe as a policy matter it is  
3 important for the Commission to spend ratepayer  
4 subsidy dollars wisely?

5           A.    It's my opinion that the Commission  
6 should approve reasonable rates for all customers,  
7 and, yes, I would agree that would -- that a subsidy  
8 that ratepayers are paying should be used wisely.

9           Q.    One reason that's true, there's not a  
10 bottomless pit of ratepayer subsidy dollars out  
11 there; eventually there won't be any economic dollars  
12 for the next needy project that comes down the pike;  
13 isn't that true?

14           MR. VINCE:  Objection, calls for  
15 speculation and almost argumentative.

16           EXAMINER PRICE:  I'll sustain on the  
17 basis of speculation.

18           Q.    Why should the Commission spend ratepayer  
19 money wisely when it approves these type of unique or  
20 reasonable arrangements?

21           A.    Because the Commission has to mandate  
22 reasonable rates, and it would be just like in a rate  
23 case where they look at the expenses and they exclude  
24 some expenses as not recoverable or perhaps  
25 imprudent.  So, I mean, it would be the same concept.

1           Q.    You've done a calculation that the  
2   \$54 million annual maximum subsidy would result in an  
3   rate increase for the two utilities of 3 plus  
4   percent?  I'll refer you to answer 10, line 11.

5           A.    On a per customer basis, which, by the  
6   way, is not exactly how AEP would apply the  
7   reasonable arrangement rider, but it's an  
8   approximation used to give, once again, the  
9   Commission some feeling as to what number we're  
10   talking about.

11                  I think I went to an Ohio Power Company  
12   typical bill for a residential customer using 1,000  
13   kilowatt-hours, and that number was right around  
14   \$100, and so that's where I got the three percent  
15   increase in an average residential customer's bill.

16           Q.    You are familiar with ESP orders issued  
17   in I guess March of this year.

18           A.    Yes, I am.

19           Q.    Okay.  And the first year increase for  
20   Ohio Power Company was 8 percent.

21           A.    That's correct.

22           Q.    Would it be correct an additional three  
23   percent would be 37-1/2 percent more than the first  
24   year ESP increase?

25           A.    3 divided by 8 is 37-1/2 percent, yes.

1 Q. And for Columbus Southern it was a  
2 7 percent first year increase.

3 A. I believe that's correct.

4 Q. Do you know what 3 divided by 7 is?

5 A. Without a calculator I can't even add  
6 1 plus 1 anymore.

7 Q. That would be an additional 42.8 percent  
8 rate increase over and above what the Commission  
9 ordered. Would you accept that?

10 A. Those numbers are correct, yes.

11 MR. KURTZ: Thank you, Your Honor.

12 EXAMINER PRICE: Thank you, Mr. Kurtz.

13 Ms. McAlister.

14 MS. McALISTER: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Ms. McAlister:

18 Q. Good morning, Mr. Fortney. You talked a  
19 little bit with Mr. Poulos about the maximum subsidy  
20 for other customers that were in answer No. 10. I  
21 just want to make sure I understand your position on  
22 that. You said that staff doesn't have a position on  
23 the total percent delta revenue reasonable for other  
24 customers to pay to subsidize other customers; is  
25 that correct?

1           A.    I said we did not have position on what a  
2 total delta revenue pot would be for all customers  
3 but that the 25 percent discount for individual  
4 customers seemed to be a reasonable maximum number.

5           Q.    Okay.  So, in other words, you are not  
6 saying that should there be other reasonable  
7 arrangements filed, it would be unreasonable for this  
8 Commission to approve them because it would increase  
9 the percentage that residential and other customers  
10 would have to pay to subsidize those.

11          A.    No, I'm not saying that at all.

12               MR. VINCE:  Objection as to form and lack  
13 of foundation.

14               EXAMINER PRICE:  Overruled.

15          A.    No, I'm not saying that at all.

16          Q.    Okay.  And in that same answer to  
17 question 10 you say that the \$54 million delta  
18 revenue cap represents \$36 per year per customer or  
19 \$3 a month, and that works out to roughly a 3 percent  
20 increase on average for a residential customer.  Is  
21 it staff's position that an additional 3 percent  
22 increase on top of the ESP increases to commercial  
23 and industrial customers bills is reasonable as well?

24          A.    Senate Bill 221 allows for reasonable  
25 arrangements.  It's very hard to say -- for me to say

1 what is a reasonable increase for any one customer.  
2 But, yes, in my testimony I have said that the 3  
3 percent increase appears to staff to be a reasonable  
4 increase.

5 To the degree that other reasonable  
6 arrangements are approved -- remember, this 3 percent  
7 is a cap. Hopefully it will never reach \$54 million.  
8 But to the degree that other reasonable arrangements  
9 come before the Commission and that they are  
10 approved, yes, that number will grow. Customers will  
11 be asked to pay more for -- to make up the delta  
12 revenue for other arrangements.

13 Q. Okay. Well, isn't it true if the  
14 \$54 million delta revenue recovery is allocated on an  
15 energy-only basis, it wouldn't be a 3 percent  
16 increase to all customers?

17 A. I don't know what it would be if it was  
18 allocated on an energy-only basis. And actually, as  
19 I said, Columbus Southern and Ohio Power Company's  
20 economic development cost recovery rider, which is  
21 meant to recover delta revenues, is on a percent of  
22 the customers' distribution charges under the  
23 company's schedules. So the \$3 is not an exact  
24 amount. It was meant to be an example.

25 Q. Okay. So it's not staff's position that

1 AEP should collect a delta revenue resulting from the  
2 discount to Ormet on a per customer basis.

3 A. No.

4 EXAMINER PRICE: Is it staff's position  
5 they should collect them in the manner they proposed  
6 in their ESP, based upon percent of distribution  
7 charge?

8 THE WITNESS: Yes.

9 EXAMINER PRICE: Thank you.

10 Q. And staff hasn't made any calculations of  
11 the impact of its recommendation by customer class?

12 A. No.

13 Q. I want to turn you now to attachment A  
14 you already talked quite a bit about. I believe you  
15 said, and I can't remember now, I think it was in  
16 response to a question by Mr. Poulos, that the  
17 \$54 million delta revenue cap should be the thing  
18 that stays, the variable that doesn't change; is that  
19 right?

20 A. Part of the examples show that what  
21 the -- at different levels of Ormet's operation what  
22 the price floor would be at the \$54 million cap.  
23 Some of the examples show other things.

24 Q. But the one thing you never adjusted for  
25 was the tariff price, right?

1           A.     Correct. I assumed that the tariff price  
2 was 4.417 for all the examples.

3           Q.     Okay. So I understand your proposal  
4 mechanically, in subsequent years as the ESP tariff  
5 rate goes up, the floor price would also have to  
6 increase; is that right?

7           A.     If you maintain the \$54 million cap, yes,  
8 the floor price would increase as rates went up.

9           Q.     And that's your recommendation.

10          A.     Yes.

11          Q.     Okay. I want to be clear, taking all of  
12 your testimony so far together, staff's position is  
13 that the Commission should approve Ormet's  
14 application without modification as it pertains to  
15 2009, right?

16          A.     I am not entirely sure when you say  
17 "without modification." I don't know if there are  
18 other provisions that the staff would need to modify.  
19 But, yes, essentially that's my recommendation.

20          Q.     Okay. And staff's position for 2010  
21 through 18 is that the Commission should approve the  
22 application with the only modifications being the  
23 floor price of either 3.25 cents per kilowatt-hour at  
24 6 potlines or 2.67 cents at 4 potlines and a  
25 resulting delta revenue cap of \$54 million per year,

1 with some consideration for phasing out the discount  
2 altogether. Is that a fair summarization?

3 A. Yes. But the 3.2 or the 2.7 could be  
4 modified depending on Ormet's level of operation.  
5 Could be something other than the 4 potlines or 4.6  
6 potlines or 6 potlines.

7 MS. McALISTER: That's all I have. Thank  
8 you, Mr. Fortney.

9 EXAMINER PRICE: Mr. Nourse.

10 MR. NOURSE: No questions, your Honor.

11 (Discussion off record.)

12 EXAMINER PRICE: Mr. Vince.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Vince:

16 Q. Good morning. My name is Clint Vince  
17 representing Ormet.

18 A. Good morning.

19 Q. A few moments ago you discussed the year  
20 2009 and stated that essentially staff is supporting  
21 Ormet's proposed application for a unique arrangement  
22 for the year 2009; is that true?

23 A. Especially in terms of the numbers, the  
24 38 cents or the 6 potlines, the 34 cents for the  
25 4 potlines, yes, that's correct.



1 Q. You mean dollars, \$38 and \$34.

2 A. Yes.

3 Q. Thank you. In your rebuttal testimony  
4 you recommend limiting delta revenues to \$54 million  
5 per year for 2010 through 2018; is that true?

6 A. That's correct.

7 Q. And, sir, at page 3 of your testimony, of  
8 your rebuttal testimony, you state that there is no  
9 clear-cut technical, fact-based rationale to make  
10 this determination; is that right?

11 A. As I described before, there are lots of  
12 subjective factors that go into making that  
13 determination, yes.

14 Q. And you're referring to the \$54 million  
15 delta revenue cap when you talk about that  
16 determination.

17 A. That's correct.

18 Q. And you state, in fact, that the  
19 \$54 million to a great degree is subjective; is that  
20 true?

21 A. Certainly subjective on my part, but I  
22 feel based upon some factors that indicate that that  
23 may be a reasonable number.

24 Q. Yes, sir. And your cap would be roughly  
25 a 25 percent discount; is that correct?

1           A.    Yes.  There again, if you look at  
2 attachment A at the zero floor, the delta revenue is  
3 204, so \$54 million is approximately one fourth of  
4 \$200 million.

5           Q.    And earlier in your response to questions  
6 from counsel you refer to the Ohio statute that  
7 established the opportunity for unique arrangement  
8 applications; is that correct?

9           A.    That's correct.

10          Q.    You're generally familiar with that  
11 statute.

12          A.    That's correct.

13          Q.    And the statute does not require  
14 imposition of a 25 percent maximum cap; is that  
15 correct?

16          A.    The statute does not require that, nor  
17 does the rules that have been adopted make that  
18 requirement.

19          Q.    And there's certainly no prohibition in  
20 the statute in the event that the cap went higher  
21 than 25 percent; is that true?

22               MR. McNAMEE:  Object.

23               EXAMINER PRICE:  Grounds.

24               MR. McNAMEE:  Asking the witness to  
25 interpret a statute.

1                   EXAMINER PRICE: He's expressed a  
2 familiarity with that particular statute, overruled.

3                   A. No, I don't believe that the statute sets  
4 any type of cap, delta revenue cap, nor any type of  
5 limit to the reasonable arrangement the Commission  
6 could approve.

7                   Q. Thank you, sir. Now, sir, you chose the  
8 \$54 million cap, at least partially, because you  
9 believe that \$54 million is roughly the amount of  
10 wages paid by Ormet each year. Is that a fair  
11 statement?

12                  A. As I testified, that was kind of a sanity  
13 check, and yes, that was an approximate number to the  
14 wages that Ormet claimed to have paid in their  
15 application.

16                  Q. And, sir, did you read the testimony of  
17 Dr. Coomes submitted by Ormet in this proceeding?

18                  A. Before the initial hearing, yes, I did.

19                  Q. And were you in the hearing room when  
20 Dr. Coomes testified?

21                  A. No, I was not.

22                  Q. You have been asked some questions about  
23 numbers presented by Dr. Coomes during your  
24 cross-examination today; is that correct?

25                  A. I don't remember exactly what questions

1 were asked.

2 Q. All right. Sir, are you aware that  
3 Dr. Coomes testified that the closing of the Ormet  
4 plant would cost Ohio much more than \$54 million in  
5 direct wages?

6 A. I am aware reading his testimony, yes,  
7 that was his position.

8 Q. Thank you, sir. So in limiting your  
9 \$54 million cap to the rough equivalent of wages paid  
10 each year you did not attempt to address nonwage  
11 benefits of Ormet's continued operation; is that  
12 true?

13 A. That's true. As my sanity check I looked  
14 only at the wages.

15 Q. Yes, sir. And so, for example, you do  
16 not specify in your rebuttal testimony the amount of  
17 pension and health care benefits received by Ormet's  
18 employees; is that correct?

19 A. That's correct.

20 Q. And you did not address in your rebuttal  
21 testimony the costs to Ohio of declining property  
22 values in the region if Ormet goes out of business.

23 A. That's correct.

24 Q. And, sir, you did not address in rebuttal  
25 testimony the impact on other Ohio businesses that

1 might be dependent on Ormet staying in operation.

2 A. That's correct.

3 Q. Nor did you address the impact on state  
4 tax revenue in Ohio if Ormet's plant goes out of  
5 business; is that true?

6 A. That's correct.

7 Q. And, sir, you did not address the impact  
8 on the state unemployment insurance fund; is that  
9 correct?

10 A. That's correct.

11 Q. Now, Mr. Fortney, you're employed in the  
12 rates and tariffs division of the utilities  
13 department of the PUCO; is that correct?

14 A. I'm trying to think of the exact name of  
15 my division. Energy and water --

16 EXAMINER PRICE: I believe it's on the  
17 front page of your testimony.

18 A. I have been here 24 years, and I have had  
19 about ten different names.

20 Q. Your experience is in the area of rates  
21 and tariffs; is that true?

22 A. Yes.

23 Q. You're not holding yourself out as a  
24 trained economic expert on the regional impact of  
25 business closures; is that a fair statement?

1           A.     That's correct.

2           EXAMINER PRICE:   I'm going to on my own  
3 motion strike that because he's rebutting Mr. Fayne's  
4 testimony, and I don't recall Mr. Fayne holding  
5 himself out as an economic development expert either.  
6 On my own motion I am going to strike the question  
7 and the answer.

8           MR. VINCE:   Your Honor, I'm referring to  
9 Dr. Coomes's testimony.

10          THE WITNESS:   I know, but he's offered  
11 his testimony in rebuttal to Mr. Fayne's testimony.

12          MR. VINCE:   Your Honor, he's  
13 addressing --

14          EXAMINER PRICE:   I've made my ruling.

15          MR. VINCE:   Yes, sir.

16          Q.     Mr. Fortney, you have not presented  
17 rebuttal testimony intended to contradict the studies  
18 submitted by Dr. Coomes in this proceeding; is that  
19 correct?

20          A.     That's correct.

21          Q.     And, sir, you did not provide any  
22 independent analysis of the economic impact of  
23 Ormet's operations on the Ohio economy; is that true?

24          A.     That's true.

25          Q.     Mr. Fortney, in your rebuttal testimony,

1 you did not present any analysis of the impact of  
2 your \$54 million cap on the ability of Ormet to stay  
3 in business for the years 12010 through 2018.

4 MR. POULOS: Objection, your Honor,  
5 beyond the scope.

6 EXAMINER PRICE: He's asked him what the  
7 scope of his testimony was. I'll allow it.

8 MR. VINCE: Thank you, your Honor.

9 A. That is correct.

10 Q. And, sir, your testimony did not present  
11 an analysis on what electric rate Ormet can afford to  
12 pay to remain in business based upon future London  
13 Metal Exchange pricing; is that correct?

14 A. That's correct.

15 Q. And, sir, Ormet's application for a  
16 unique arrangement ties the yearly discount to actual  
17 LME pricing, London Metal Exchange pricing; is that  
18 true?

19 A. That is true.

20 Q. And your \$54 million cap proposal is not  
21 tied to LME pricing at all; is that right?

22 A. My proposal is that they would use the  
23 LME pricing as the rate that Ormet would pay down to  
24 the price floor.

25 Q. Yes, sir. Mr. Fortney, assume that Ormet

1 needs a \$60 million discount to continue business  
2 operations for the year 2010. Would you still  
3 recommend a \$54 million cap if that meant shutting  
4 the plant down and putting employees out of work?

5 A. My recommendation was based not only on  
6 what Ormet might need but what other customers who  
7 expected to pay that number should be obligated to  
8 pay, so my recommendation of \$54 million is that, my  
9 recommendation.

10 Q. All right, sir. Have you read the  
11 testimony of Mr. Riley submitted in this proceeding?

12 A. I'm sure initially I read parts, if not  
13 all of it, yes.

14 Q. Are you aware of Mr. Riley's testimony  
15 regarding the need for Ormet to refinance all of its  
16 debt in early 2010?

17 MR. POULOS: Objection, Your Honor,  
18 beyond the scope.

19 EXAMINER PRICE: Sustained.

20 MR. VINCE: One moment, your Honor.

21 (Discussion off record.)

22 MR. VINCE: Your Honor, that concludes my  
23 examination.

24 EXAMINER PRICE: Mr. McNamee, redirect?

25 MR. MCNAMEE: I don't know. Let me take



1 a moment.

2 EXAMINER PRICE: Let's go off the record.

3 (Discussion off record.).

4 EXAMINER PRICE: Mr. McNamee.

5 MR. McNAMEE: No redirect.

6 EXAMINER PRICE: I have one question for  
7 Mr. Fortney. Your \$54 million figure was derived in  
8 considering the three factors that you express in  
9 your answer to question 10, (a), what should be (b),  
10 and (c); is that correct?

11 THE WITNESS: That's correct.

12 EXAMINER PRICE: And no one factor was  
13 dispositive, each factor contributed to that  
14 \$54 million; is that correct?

15 THE WITNESS: And it was mainly (b) and  
16 (c), with (a) being what I have termed a sanity  
17 check.

18 EXAMINER PRICE: Thank you. That's all I  
19 have.

20 MR. McNAMEE: Your Honor, staff moves for  
21 admission of staff Exhibits 2 and 2A.

22 EXAMINER PRICE: Any objection to 2 and  
23 2A?

24 MR. POULOS: No, your Honor.

25 MR. KURTZ: No, your Honor.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 EXAMINER PRICE: Let's go off the record.

3 (Discussion off record.)

4 EXAMINER PRICE: At this point we need to  
5 set our briefing schedules. I think the examiners  
6 are going to allow one round of briefs, given how  
7 extensive the record has developed. Those briefs  
8 would be due on July 1 at the close of business. I  
9 ask everyone to e-mail the briefs to other parties  
10 and to both examiners.

11 Do we have any other matters that need to  
12 be addressed before we adjourn?

13 Seeing none, once briefs are filed, the  
14 case will be submitted on the record to the  
15 Commission. Thank you all.

16 (The hearing adjourned at 11:14 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, June 17, 2009, and carefully compared with my original stenographic notes.

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Rosemary Foster Anderson,  
Professional Reporter and  
Notary Public in and for  
the State of Ohio.

My commission expires April 5, 2009.

(RFA-8299)

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Summary: Transcript Ohio Power Co. 6/17/090 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.