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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

PROCEEDINGS

before Mr. Gregory Price, Hearing Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-F, Columbus, Ohio, called at 9:00
a.m. on Thursday, April 30, 2009.

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VOLUME I

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1 APPEARANCES:

2 Sonnenschein Nath & Rosenthal, LLP
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4 Mr. Daniel Barnowski
5 Mr. Douglas G. Bonner
6 Ms. Emma F. Hand
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10 On behalf of Ormet.

11 Mr. Marvin I. Resnik
12 Mr. Steven T. Nourse
13 American Electric Power Service Corporation
14 One Riverside Plaza
15 Columbus, Ohio 43215-2373

16 On behalf of Ohio Power Company and
17 Columbus and Southern Power Company.

18 Chester, Willcox & Saxbe, LLP
19 By Mr. Matthew White
20 Mr. John W. Bentine
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24 On behalf of Kroger Company.

25 McNees, Wallace & Nurick, LLC
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On behalf of IEU-Ohio.

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On behalf of Ohio Energy Group.

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APPEARANCES (continued):

Janine L. Migden-Ostrander
Ohio Consumers' Counsel
By Ms. Maureen Grady
Mr. Gregory Poulos
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Ten West Broad Street, Suite 1800
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On behalf of the Residential Customers
of American Electric Power.

Nancy H. Rogers, Ohio Attorney General
Duane W. Luckey, Section Chief
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Assistant Attorney General
180 East Broad Street
Columbus, Ohio 43215

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

- - -

1 Thursday Morning Session,
2 April 30, 2009.

3 - - -

4 EXAMINER PRICE: Let's go on the record.
5 Good morning, the Public Utilities
6 Commission has set for hearing at this time and this
7 place Case No. 09-119-EL-AEC being in the matter of
8 the Application of Ormet Primary Aluminum Corporation
9 for Approval of a Unique Arrangement with Ohio Power
10 and Columbus Southern Power Company.

11 My name is Gregory Price, I'm the
12 attorney-examiner assigned to preside over today's
13 hearing.

14 Let's begin by taking appearances
15 starting with the applicant.

16 MR. VINCE: Good morning, your Honor, my
17 name is Clint Vince representing Ormet. I'm with the
18 law firm of Sonnenschein, Nath & Rosenthal, LLP, our
19 business address is 1301 K Street Northwest,
20 Washington, DC 20005.

21 I'm joined today by co-counsel Doug
22 Bonner, Dan Barnowski, and Emma Hand, and as I
23 mentioned off the record, with us today are our
24 witnesses Michael Tanchuk who's the president and CEO
25 of Ormet Corporation, James Burns Riley, who's the

1 chief financial officer of Ormet Corporation, Henry
2 Fayne, who is a consultant who will testify as to
3 terms of the proposed unique agreement, and Paul
4 Coomes, who's a member of the faculty of the
5 University of Louisville, who is not yet in the
6 courtroom but will be arriving hopefully shortly, and
7 has prepared an economic study for Ormet.

8 EXAMINER PRICE: Thank you.

9 Mr. Resnik.

10 MR. RESNIK: Thank you, your Honor.

11 Appearing on behalf of Columbus Southern Power
12 Company and Ohio Company, I am Marvin I. Resnik.
13 Also appearing is Steven T. Nourse. We're with the
14 American Electric Power Service Corporation, One
15 Riverside Plaza, Columbus, Ohio 43215.

16 EXAMINER PRICE: Thank you.

17 Mr. White.

18 MR. WHITE: Your Honor, appearing on
19 behalf of the Kroger Company I'm Matt White. I'm
20 also appearing for John Bentine and Mark Yurick, of
21 Chester, Willcox & Saxbe, 65 East State Street,
22 Columbus, Ohio 43215.

23 EXAMINER PRICE: Thank you.

24 Ms. McAlister.

25 MS. McALISTER: Thank you, your Honor.

1 On behalf of Industrial Energy Users-Ohio, McNees,
2 Wallace & Nurick, by Lisa McAlister and Sam Randazzo,
3 21 East State Street, Columbus, Ohio 43215.

4 EXAMINER PRICE: Mr. Kurtz.

5 MR. KURTZ: Your Honor, Mike Kurtz for
6 the Ohio Energy Group, Boehm, Kurtz & Lowry, 1510 URS
7 Center, Cincinnati, Ohio.

8 EXAMINER PRICE: Consumers' Counsel.

9 MR. POULOS: Thank you, your Honor,
10 Gregory Poulos and Maureen Grady on behalf of the
11 Ohio Consumers' Counsel, Janine Midgen-Ostrander,
12 Consumers' Counsel, 10 West Broad Street, Columbus,
13 Ohio 43215, we are here on behalf of AEP's
14 residential customers.

15 EXAMINER PRICE: Thank you.

16 Staff?

17 MR. McNAMEE: Representing the staff of
18 the Public Utilities Commission of Ohio, Richard
19 Cordray, Attorney General of the State of Ohio, Duane
20 Luckey, Chief, Public Utilities Section, and I am
21 Thomas McNamee, Assistant Attorney General. The
22 address is 180 East Broad Street, Columbus, Ohio.

23 EXAMINER PRICE: Thank you.

24 I believe we have two outstanding
25 motions, one is I think there's an outstanding motion

1 for pro hac vice; is that correct?

2 MR. BONNER: Yes.

3 EXAMINER PRICE: And that motion will be
4 granted at this time.

5 MR. BONNER: Thank you, your Honor.

6 EXAMINER PRICE: Second, at the time we
7 were granting interventions we inadvertently
8 considered the comments filed by IEU-Ohio as a motion
9 to intervene. Subsequently IEU-Ohio did, in fact,
10 file the motion to intervene and, just to clarify,
11 that motion has been granted.

12 Do we have any other preliminary motions
13 or preliminary matters or motions we need to deal
14 with before we take our first witness?

15 Mr. Poulos.

16 MR. POULOS: Yes, your Honor, OCC has a
17 preliminary matter we'd like to bring to the Bench's
18 attention. We have a motion to compel that we are
19 asking for right now.

20 We had depositions yesterday and
21 completed discovery and in the course of doing those
22 depositions we asked a number of questions regarding
23 the flat rate that Ormet is asking for in 2009 for
24 the remainder of 2009, even retroactively in 2009,
25 and that rate would be \$38 per megawatt-hour and in

1 some situations \$34 per megawatt-hour.

2 And we asked the question at the
3 deposition what's the basis for those numbers, a
4 fundamental part of this hearing. And the applicant
5 could not or would not tell us their specific basis
6 and calculations for those two figures.

7 That, it is our understanding, because of
8 a protective agreement they have with another
9 company, those are figures that we do not have but --
10 the PUCO has not been able to get or any of the other
11 intervenors have been able to get.

12 In accordance with 4903.082 we believe we
13 have a fundamental right to discovery and to access
14 that information.

15 EXAMINER PRICE: Ormet?

16 MS. HAND: Your Honor, the reason that
17 information has not been provided to date is that the
18 basis for those calculations are very heavily based
19 on the Glencore tolling agreement.

20 There is a strict confidentiality
21 provision in that agreement, and Ormet is also
22 currently attempting to enforce that agreement in the
23 eastern district of the, oh, it's the Federal
24 District Court for Ohio, Eastern Division Court, and
25 that court has put the case under seal at the request

1 of Glencore.

2 So Ormet is very cautious about revealing
3 any information that would violate the order putting
4 that case under seal, and potentially expose it to
5 further litigation under that contract by breaching
6 the confidentiality agreement in that contract.

7 EXAMINER PRICE: Mr. Poulos.

8 MR. POULOS: One thing I forgot to
9 mention before is we tried to work this out last
10 night. I called or I e-mailed and asked if we could
11 get that information, so I did make a second attempt.

12 That information is fundamental to this
13 case and to the application. And without that
14 information, we couldn't review it to make a basis of
15 whether it was a reasonable application and a
16 reasonable request for those two figures as a
17 fundamental part of the application.

18 We would ask that this hearing be
19 continued until they can give us that information or
20 that the information be stricken from their
21 application.

22 EXAMINER PRICE: Ms. Hand.

23 MS. HAND: Your Honor, we would note that
24 the contract does provide for an independent auditor
25 at Ormet's expense to audit Ormet's cash-flow

1 calculations with full access to the books and
2 records and to report back to the Commission.

3 Ormet would be willing to have the 2009
4 numbers subject to the same scrutiny and have an
5 independent auditor evaluate that and report back to
6 the Commission.

7 EXAMINER PRICE: I'm not sure if I
8 understand how the auditor would address OCC's
9 concern about how you came up with the \$38 and the
10 \$34 per megawatt-hour.

11 I don't think OCC's questioning the
12 accuracy of your figures. I think they're
13 questioning the basis for your figures.

14 Is that correct, Mr. Poulos?

15 MR. POULOS: Yes, your Honor. Actually
16 the auditor, as we understand, is not to look at the
17 \$38 --

18 EXAMINER PRICE: She just said she was
19 willing for them to do that.

20 MR. POULOS: But we can't do that today.
21 So even if it was acceptable, which we would like to
22 review them and we think we have a basis to review
23 those numbers, we couldn't do that at this point.

24 EXAMINER PRICE: And that is not
25 something Ormet believes can be addressed with the

1 confidentiality agreement with OCC; is that correct?

2 MS. HAND: Correct, your Honor. Because
3 that would require Ormet to enter into that
4 confidentiality agreement voluntary which could cause
5 them to breach the clause in the Glencore contract.

6 EXAMINER PRICE: Okay. We're going to
7 defer ruling on the motion to compel. I would like
8 Ormet to produce a copy of the confidentiality
9 agreement with Glencore.

10 Is that something that you can produce
11 today? By lunch perhaps? I'd be happy to look at it
12 in camera.

13 MR. VINCE: We can provide the clause to
14 you in camera, your Honor.

15 EXAMINER PRICE: By lunch today?

16 MR. VINCE: Yes. Yes, your Honor.

17 EXAMINER PRICE: Thank you.

18 As to OCC's request for continuance, that
19 will be denied.

20 MR. POULOS: Thank you, your Honor.

21 EXAMINER PRICE: Thank you.

22 Any other motions or preliminary matters?

23 Let's go ahead and take our first
24 witness.

25 Mr. Poulos.

1 MR. POULOS: Your Honor, per agreement
2 the applicant has allowed OCC to call its first
3 witness that we subpoenaed, and we call Mr. Baker to
4 the stand from AEP.

5 (Witness sworn.)

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

8 THE WITNESS: My name is John Craig
9 Baker. I work for AEP Service Corporation. The
10 business address is One Riverside Plaza, Columbus,
11 Ohio 43215.

12 EXAMINER PRICE: Please proceed,
13 Mr. Poulos.

14 MR. POULOS: Thank you, your Honor.

15 - - -

16 J. CRAIG BAKER

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

19 DIRECT EXAMINATION

20 By Mr. Poulos:

21 Q. Good morning, Mr. Baker.

22 A. Good morning.

23 Q. My name is Greg Poulos from the Ohio
24 Consumers' Counsel, and I just have a few questions
25 for you. I appreciate you coming today.

1 Are you familiar with the application
2 filed by the applicant in this case?

3 A. Yes, I have read it.

4 Q. Have you done any negotiations regarding
5 it?

6 A. I would not consider what we --
7 discussions we had with the company to be
8 negotiations. We had an original set of meetings
9 with them which I would probably characterize as
10 negotiations, they later came forward with a
11 structure that they were going to bring forward to
12 the Commission, and we advised them on some of the
13 sections as to the acceptance or -- to AEP or whether
14 we would have to oppose it.

15 Q. What were the acceptances, if you recall?

16 A. I'd have to go through, I can't remember
17 the specifics.

18 Q. Would it help you if I gave you a copy of
19 the application?

20 A. Sure.

21 MR. POULOS: Your Honor, may I approach
22 the witness?

23 EXAMINER PRICE: You may.

24 Let's go off the record for one minute

25 (Discussion off the record.)

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

3 We're going to go ahead and mark the
4 amended application pursuant to our off-the-record
5 discussion as Ormet Exhibit 8.

6 You may proceed, Mr. Poulos.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 EXAMINER PRICE: I believe Mr. Resnik was
9 asking if the transmittal letter was part of the
10 exhibit.

11 MS. HAND: Sure.

12 EXAMINER PRICE: Yes.

13 MR. RESNIK: Thank you.

14 Q. (By Mr. Poulos) Mr. Resnik, are there --

15 MR. RESNIK: Mr. Baker.

16 MR. POULOS: Mr. Baker. Thank you.

17 Q. Mr. Baker, excuse me, let me start by
18 asking you to look at page 5 of the amended
19 application which has been marked as Ormet Exhibit 8.

20 A. That's fine, I would be happy to do that.
21 I would make one clarification, we did not have any
22 discussions around the amended application, it was to
23 the original application.

24 Q. Thank you. Thank you for that
25 clarification.

1 I believe most of the terms are the same,
2 but if you see differences, please let me know that.

3 A. I will.

4 Q. Page 5, paragraph 9, and I can see
5 already in this paragraph there's a \$34 figure that
6 is part of their amended application, so you probably
7 weren't part of those negotiations. Or there may not
8 have been negotiations.

9 A. As I said earlier, I would not
10 characterize anything that dealt with the original
11 filing or the amended as negotiations. We had
12 discussions.

13 Q. As part of those discussions did you
14 discuss the \$38 megawatt-hour rate that is in the
15 middle of paragraph 9?

16 A. We were told that that was going to be
17 the dollar figure that Ormet was going to request.

18 Q. Was there any discussion back and forth
19 or negotiation of what that figure would be?

20 A. No.

21 Q. And in those discussions -- is it your
22 understanding the \$38 per megawatt-hour is the
23 proposed rate that Ormet would pay?

24 A. We understood that that was what Ormet
25 was going to ask the Commission to approve as part of

1 their filing.

2 Q. Did you have the opportunity to review
3 the numbers, the figures behind that \$38
4 megawatt-hour rate?

5 A. No, we did not.

6 Q. Was that a concern of yours to review
7 that number?

8 A. The Senate Bill 221, as we understand it,
9 provides the ability for customers to come forward
10 and ask for special arrangements in front of the
11 Commission.

12 We think that the number that the
13 customer asked for in this case is their decision and
14 it's for the Commission to determine whether that's
15 an appropriate number or not.

16 Q. The company doesn't care what that number
17 is; is that correct?

18 A. I don't know that I would use the term
19 "the company doesn't care." We don't think we have a
20 lot of say in this. We think it's a decision that
21 the Commission will make based on an application by
22 Ormet.

23 Q. Are there any provisions of this you
24 recall specifically negotiating, of the application
25 itself, looking through the document?

1 A. I would take you back to an earlier
2 statement that we did not negotiate this arrangement.

3 Q. I would like you to look at page 12,
4 please. Page 11 and 12 of the amended application.

5 MR. RESNIK: Just to clarify, that's page
6 11 and 12 of Attachment A to the application?

7 MR. POULOS: The agreement itself, yes.
8 Let's put it this way, the pages numbered 11 and 12
9 on the bottom.

10 Q. This relates to the Article Five
11 Compensation.

12 A. Yes, I see it.

13 Q. Specifically I wanted to point you to
14 Section 5.03 and 5.04. Are you familiar with Ormet's
15 proposal in this application regarding using the LME
16 price as an indexing rate?

17 A. Yes, they explained that proposal to us.

18 Q. In your discussions with them did you
19 have any input on what those numbers would be for the
20 indexing?

21 A. No.

22 Q. And looking at 5.01 right under Article
23 Five, Compensation, on page 11 of the attachment to
24 this exhibit, it talks about, the second line "shall
25 equal the lesser of AEP-Ohio tariff rate or \$38 per

1 megawatt-hour."

2 Were there any discussions with Ormet
3 about using AEP-Ohio tariff rate or the 38
4 megawatt-hour?

5 A. There was some discussion on that, yes.

6 Q. And what was the discussion?

7 A. The discussion, as I remember it, was a
8 desire on Ormet's part that if -- as a result of our
9 ESP application, if the rate came down below 38, that
10 they would like to get the lower of the tariff rate
11 or 38.

12 Q. And did AEP take any position on that
13 request?

14 A. Once again, we thought it was the right
15 of the customer to come forward and make a proposal
16 to the Commission.

17 Q. Mr. Baker, are you aware of what the
18 AEP-Ohio tariff rate is currently?

19 A. I know about what it is, yes.

20 Q. And what is that?

21 A. It would be in the range of \$45 a
22 megawatt-hour.

23 Q. So at this point if this were to be
24 approved right now, it would be a \$38 per
25 megawatt-hour rate?

1 A. That would be the rate at the time it was
2 made effective, yes.

3 Q. And that AEP-Ohio tariff rate that you
4 just mentioned, that was part of the ESP case?

5 A. Yes.

6 Q. I'll have you turn to page 14 of the
7 attachment to Ormet's Exhibit 8. Specifically
8 section 6.03, Payment.

9 A. Yes.

10 Q. As part of this payment section two of
11 the concepts embedded in this section are the waiver
12 of a deposit and the waiver of paying in advance. Do
13 you see those?

14 A. Yes, I do.

15 Q. Do you recall those coming up in your
16 discussions with Ormet?

17 A. Yes.

18 Q. And what were those discussions?

19 A. My recollection of those discussions were
20 that Ormet was interested in allowing a good cash
21 flow in 2009 for them to be able to effectively pay a
22 higher rate. And so the question came about as to
23 our concern about security, and having appropriate
24 deposits, and it became clear that with the delta
25 revenue concept the customers likely would be better

1 off under this arrangement whereby if the company, in
2 effect, later was able to close down and pay their
3 bills, that the customer would have taken the
4 advantage of having a lower delta revenue in 2009 and
5 just make up that amount in a later period in the
6 event that Ormet went out of business.

7 If Ormet didn't go out of business, the
8 customer would have -- the rest of the customers
9 would have gotten the benefit of a lower delta
10 revenue in the early period.

11 Q. And you did address your security
12 concerns regarding this by having the payments
13 conditioned upon a Commission order that provides
14 AEP-Ohio recovery of delta revenues, correct?

15 THE WITNESS: Can I have that question
16 read back?

17 (Record read.)

18 A. Again, let me go back to the advisory
19 kind of discussion that we talked about earlier.

20 We told them that if this were -- if it
21 were done in this method, then this would not be
22 something that we needed to oppose, that is the lack
23 of a deposit and a prepayment.

24 Q. Maybe I can characterize it a little
25 differently.

1 It does address your security concerns to
2 have the -- an event of default covered for the
3 deposit or for the advance payment by having recovery
4 mechanism through the delta revenues for AEP.

5 A. It does address it. We didn't address
6 it.

7 Q. Now, as it covers your security concerns,
8 doesn't it pass those costs on to customers? Pass
9 the delta revenues on to customers.

10 A. As I tried to explain, and I must not
11 have been very articulate, I think that if this
12 provision weren't there, the delta revenues, if this
13 were approved in the first year, would just be
14 greater by that same amount.

15 So it's just a timing issue. And not
16 only a timing issue, but actually something that
17 makes it more likely that the other customers won't
18 have to pick that value up.

19 Q. And I think you did explain that. I
20 wanted to go a little further with that, though.

21 One of the concerns and why you need
22 security is in case the company does go out of
23 business, correct?

24 A. That is why we would be looking for
25 security, yes.

1 Q. For the deposit and the payment advance,
2 and those would be defaulted or come due immediately
3 if there was -- the business closed, but they
4 wouldn't be able to pay them, correct?

5 MR. RESNIK: I'm sorry, could I have that
6 question read back, your Honor?

7 EXAMINER PRICE: Please.

8 MR. POULOS: Let me strike that. Let me
9 try and clarify it a little bit.

10 Q. In the event that Ormet goes into -- goes
11 out of business, that is a security concern that is
12 addressed by passing the delta revenues from AEP to
13 customers; is that correct?

14 A. Any payments that were due to AEP from
15 Ormet would be included in the delta revenues.

16 Q. Any payments. Not just the deposits or
17 the payments in advance?

18 A. It would be that which the -- Ormet owed
19 us which was to be covered historically by a
20 prepayment and a deposit. Or a prepayment and a -- a
21 prepayment and a deposit.

22 EXAMINER PRICE: If I can ask a question
23 to clarify.

24 THE WITNESS: Sure.

25 EXAMINER PRICE: This provision places

1 the payment risk of Ormet on the rate base rather
2 than upon AEP; is that correct? The risk of
3 nonpayment by Ormet is shifted from AEP to the rate
4 base. To the customers.

5 THE WITNESS: Yes, it is, just with the
6 understanding that, or our understanding of what
7 Ormet was saying was without this kind of treatment,
8 there would have been a lower number asked for than
9 the \$38.

10 EXAMINER PRICE: Exactly. Thank you.

11 Q. (By Mr. Poulos) It goes to the
12 ratepayers, right?

13 A. Yes.

14 Q. And, as you were addressing earlier,
15 explaining that kind of shifts the concern of paying
16 right away or paying a higher rate right now for
17 customers, and in lieu of that then there may be a
18 time later down the road where if the company goes
19 out of business, that they would have to pay those
20 delta revenues; is that a fair --

21 THE WITNESS: Can I have the question
22 read back? I'm not sure it works that way.

23 (Record read.)

24 A. I think that they pay lower now. That
25 the -- not higher. The other customers have less

1 delta revenues to pay in the short run so their cost
2 is lower if this is approved than it otherwise would
3 be.

4 Q. Mr. Baker, do you know how much the
5 deposit would have been if it's not waived?

6 A. I believe that we are holding
7 approximately \$7 million of deposit.

8 Q. And do you know how much the payment in
9 advance would be?

10 A. It would be based on whatever their
11 forecasted usage was for that next period.

12 Q. Do you have an approximate?

13 A. I don't have that in front of me.

14 Q. Mr. Baker, if -- are you aware that the
15 company, Ormet, is currently in bankruptcy -- not
16 bankruptcy, it's in a lawsuit with one of its
17 providers?

18 A. I have seen newsflashes in that regard,
19 yes.

20 Q. And are you aware that there's a
21 preliminary injunction hearing that was filed by
22 Ormet against its provider Glencore on May 11th?

23 MR. RESNIK: I'm sorry, could I have that
24 question read back?

25 (Record read.)

1 A. I believe I read about a hearing coming
2 up, but I don't know the date and I don't know what
3 its title is.

4 Q. Are you aware of press releases by Ormet
5 stating their concerns that if they do not win a
6 preliminary injunction, that they may go out of
7 business?

8 A. I don't think I have seen that press
9 release.

10 Q. If it is the fact of the case that there
11 are press releases or that the company goes out of
12 business because of this -- strike that.

13 If it is in fact true that the company
14 may go out of business as a result of this lawsuit,
15 would those -- would that deposit become due
16 immediately, the delta revenue?

17 A. It's hard for me to answer that question
18 because we're on a continuum here, we'd have to
19 determine when they went out of business relative to
20 this new contract. We'd have to build a little more
21 foundation to get there.

22 Q. Thank you. I appreciate that.

23 So if the Commission were to approve this
24 contract with this provision 6.03 about payments and
25 then Ormet were to go out of business because of this

1 lawsuit or any other reason, then the deposit would
2 then become a delta revenue that customers would pay
3 for, correct?

4 A. If the Commission approves this contract
5 and it went into force and we were to give back at
6 that point, which I would expect we would under some,
7 you know, as soon as possible the deposit, what would
8 go under the delta revenue would be any consumption
9 that hadn't already been paid for.

10 It would not be the deposit. It would
11 not be the prepayment. It would be usage times
12 whatever the rate was.

13 Q. And what is the usage? Do you know what
14 that is approximately?

15 A. I think it's in the order of 120,000
16 megawatt-hours a month at full production.

17 Q. Do you know what that is in dollars?

18 A. I haven't done that calculation.

19 Q. What are some of the other termination
20 provisions or items that would be included in the
21 termination that would end up being in delta revenue
22 if the company went out of business?

23 A. The only one that I have thought about is
24 the outstanding billet amount. I don't know if there
25 would be any others, but nothing is coming to my mind

1 right at the moment.

2 MR. POULOS: I'm sorry, could you read
3 that back, please.

4 (Record read.)

5 MR. POULOS: Your Honor, if I can have
6 just a moment, I'm almost done.

7 EXAMINER PRICE: Yes.

8 MR. POULOS: Thank you.

9 (Off the record.)

10 MR. POULOS: Thank you, your Honor, I'm
11 ready to go back on the record.

12 Q. Mr. Baker, if the -- are you familiar
13 with your testimony in the 05-1057-EL-CSS case which
14 was the Ormet application -- complaint for South
15 Central Power Company?

16 A. Oh, I certainly was when I filed it, but
17 I have not read it since.

18 Q. It has been quite a while, hasn't it?

19 Do you recall your testimony regarding
20 the fact that if the company were to go under, that
21 there would be --

22 MR. BONNER: Excuse me, Counsel, can you
23 give us a page cite, page and line.

24 MR. POULOS: Page 10, the question's on
25 line 9, and the answer starts on line 13.

1 MR. BONNER: Thank you.

2 Q. Do you recall -- you have a statement
3 that there would be purchase incremental capacity
4 credits of about 4 million would be something that
5 would be due if the company went out of business?

6 A. I said I don't remember what was in the
7 testimony from four or five years ago. If you want
8 to show it to me, I'd be happy to look at it.

9 Q. Let me ask you first if those kind of
10 expense, incremental capacity credits would be --
11 would occur in this type of case.

12 A. I don't know until I look at it because I
13 don't know what the context of that statement is.

14 MR. POULOS: Your Honor, may I approach?

15 EXAMINER PRICE: You may.

16 A. This question deals with not charges that
17 AEP would incur. This is around what South Central
18 Power would incur. So what I was talking about there
19 was something that South Central's Mr. Pilcher
20 asserted.

21 Q. Would those also be charges that would
22 be -- that's something that AEP would incur, I mean
23 not in that context, but -- in that case specifically
24 or your testimony, but would they be costs that would
25 be incurred by AEP at today's failure by Ormet?

1 A. You know, I'm sorry, but I really would
2 have to say Mr. Pilcher's testimony -- because I
3 don't know whether this was related to a contract
4 that they had with a supplier, I don't know whether
5 it's a PJM charge, I don't know what the specific is.

6
7 MR. POULOS: Your Honor, may I approach
8 the witness?

9 EXAMINER PRICE: You may.

10 Q. Mr. Baker, are you familiar with the
11 transmission demand charges that would become due if
12 Ormet went out of business?

13 A. Transmission demand charges from who?
14 From PJM?

15 Q. Yes.

16 A. There would not -- the transmission
17 demand charges I don't believe would become due.
18 What would happen would be that that load would
19 continue to be included in AEP's load for a period
20 until we had a new LCP as it's called, that's one
21 coincident peak in PJM, so we would continue to have
22 that as a charge.

23 Q. And that load would continue, and who
24 would pay for that load?

25 MR. RESNIK: I'm sorry, who would pay

1 for?

2 Q. So that load would continue and Ormet
3 would not be using it, correct?

4 A. The load goes away.

5 Q. So wouldn't you lose revenue for that?

6 A. Would we lose revenue? What I said was
7 that we would continue to pay for the peak load of
8 AEP until the next time the rate was adjusted for the
9 previous year's coincident peak when the load was no
10 longer there.

11 Q. AEP would continue to pay for the peak
12 load.

13 A. We would continue to pay a transmission
14 charge based on the last year's peak load.

15 Q. And in my scenario where Ormet were to
16 have to close its doors, that would be a charge
17 incurred by AEP that would be, in turn, considered a
18 delta revenue.

19 A. I haven't thought that through as to
20 whether that would be a delta revenue or it gets just
21 treated in the transmission cost recovery rider.

22 Q. Mr. Baker, are you familiar with any of
23 the distribution costs for having Ormet as a
24 customer?

25 A. I have some familiarity, but I don't know

1 how much it is or how much they're charged
2 specifically for distribution.

3 Q. If Ormet were to close its doors, would
4 there be a loss of revenue to AEP because of that,
5 because of the lack of recovery of the distribution
6 charge?

7 A. Yes.

8 Q. And do you know how much that is?

9 A. No. I said that I didn't know what the
10 rate was.

11 Q. Are you aware of any other
12 distribution -- strike that.

13 MR. POULOS: If I may, just very briefly.

14 EXAMINER PRICE: You may.

15 Q. Mr. Baker, do you know what the -- under
16 the AEP-Ohio tariff right now, what rate schedule
17 they would be under?

18 MR. RESNIK: I'm sorry, could I have the
19 question read back?

20 (Record read.)

21 A. First of all, it would be -- it's split
22 50/50 between Ohio Power and Columbus & Southern. I
23 believe the classification for Ohio Power is GS-4.
24 I'm not sure what the classification is for Columbus
25 & Southern.

1 Q. Going forward as proposed in this
2 agreement, would that be the rate that would be the
3 base for calculating delta revenues?

4 A. The delta revenues, as I understand it,
5 would be the difference between the rate that Ormet
6 pays and the rate that they otherwise would pay under
7 tariff.

8 Q. And that would be the GS-4?

9 A. In the case of Ohio Power I believe it's
10 the GS-4.

11 Q. And that's the one that, that GS-4 figure
12 was the one approved in the AEP ESP case?

13 A. It is the one that we have put in, then
14 the Commission has approved our tariffs subject to
15 whatever comes out of rehearing.

16 MR. POULOS: Thank you. I have no
17 further questions.

18 EXAMINER PRICE: Thank you.

19 Mr. Kurtz?

20 MR. KURTZ: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Kurtz:

24 Q. Good morning, Mr. Baker.

25 A. Good morning, Mr. Kurtz.

1 Q. My understanding is AEP supports this
2 unique arrangement provided you get a delta revenue
3 recovery; is that correct?

4 A. I think that, Mr. Kurtz, if I can point
5 you to our motion to intervene, we said our support
6 is conditioned upon satisfactory outcomes in Case
7 No. 08-917-EL-SSO and 08-918-EL-SSO. That's what our
8 support is conditioned on.

9 Q. And you have that, the ESP cases are on
10 rehearing; is that correct?

11 A. Yes, that's correct.

12 Q. So whether or not AEP supports this
13 unique application, unique arrangement, is still up
14 in the air?

15 A. I would say that's true.

16 Q. Okay. Even with the conditional support
17 that AEP has expressed for this unique arrangement,
18 why did you express conditional support without
19 knowing how much the delta revenue would be?

20 A. In my view, that's what this hearing is
21 for and that is for the Commission to determine what
22 the delta revenue they think is a valid amount in
23 approving or disapproving or modifying this contract
24 that Ormet has proposed.

25 Q. And I know you didn't characterize it as

1 negotiations, but in your discussions with Ormet
2 didn't you view your part of your responsibility, in
3 addition to your shareholders, as a responsibility to
4 your ratepayers to make sure that the delta revenue
5 would be appropriate?

6 A. In the current situation, Mr. Kurtz, I
7 believe that the customer has the right to do this
8 under Senate Bill 221. That's why I would not term
9 it a negotiation. We were not in the position of
10 negotiating on behalf of the other customers, because
11 that isn't the way this Senate Bill 221 is
12 structured.

13 Q. During your discussions with Ormet about
14 this unique arrangement, were you aware that at times
15 Ormet would be paying nothing for electricity?

16 A. During our discussions at no time was I
17 expecting that Ormet would be paying zero for
18 electricity.

19 Q. At any time during your discussions were
20 you aware that under the formula in the unique
21 arrangement Ormet might have a negative rate for
22 electricity? In other words, they would get a credit
23 on their bill for using electricity.

24 A. I had not gone to that level. The
25 expectations of what the LME prices may be didn't

1 indicate that that would happen.

2 Q. If Ormet could get electricity for free
3 or even more extreme, get a credit on their bill for
4 using electricity, a negative cost for electricity,
5 would that change -- if that were true, would that
6 change AEP's position on its conditional support?

7 A. Our conditional support is not set on
8 that. It's set based on the outcome of the ESP.

9 Q. AEP has also, used to serve I guess
10 another aluminum smelter in West Virginia, the
11 Century Ravenswood facility?

12 A. Yes.

13 Q. Okay. And that facility closed a few
14 months ago?

15 A. They closed down their production.

16 Q. Okay. A couple months ago, a few months
17 ago, in that time frame?

18 A. I believe that's true.

19 Q. They had, with Appalachian Power, the AEP
20 West Virginia operating company, a variable rate
21 aluminum contract that was also tied to LME pricing;
22 is that correct?

23 A. That's correct.

24 Q. Do you remember how that contract worked?

25 A. I was involved in setting it up, but I

1 haven't looked at it for a while. I do know that
2 there was discounts when the LME price was reduced
3 and the potential for the company to, in my
4 recollection, to pay more in the event that LME
5 prices exceeded a certain amount.

6 Q. That contract is a matter of public
7 record, is it not? It was filed with the Commission
8 and approved.

9 A. Yes.

10 MR. KURTZ: Could you provide, after the
11 hearing, AEP's copy of that contract as a posthearing
12 data request -- your Honor?

13 MR. RESNIK: Your Honor, we've been --
14 Mr. Baker's been subpoenaed here. We are not a
15 movant in this proceeding. If it's a public
16 document, I think that anyone can get it and can
17 submit it as a late-filed exhibit.

18 If Mr. Kurtz wants to do that, that's
19 certainly up to him.

20 MR. KURTZ: I have it, and that would be
21 fine, I just thought it would be more convenient if
22 the company provided it to the parties.

23 EXAMINER PRICE: I think Mr. Resnik is
24 saying that if you show him, that he'll stipulate to
25 its admission and its authenticity as a late-filed

1 exhibit.

2 MR. KURTZ: Thank you, your Honor.

3 MR. RESNIK: Sure.

4 Q. (Mr. Kurtz) Is it your understanding,
5 Mr. Baker, that during the term of the unique
6 arrangement, if it's approved, that Ormet would not
7 be able to shop and that Ohio Power-CSP would be the
8 exclusive electricity supplier to the Hannibal
9 facility?

10 A. Subject to the contract staying in place
11 I believe that that's the case. I'm not confident,
12 though, that the contract will always be in place.
13 There are provisions in here if the delta revenues
14 were to change, that it could be terminated.

15 There are a few ways that this could be
16 terminated, so I don't know that it will always be in
17 place.

18 Further, we have some history here of the
19 Commission making decisions or pushing, maybe not
20 making decisions, but pushing special treatment for
21 Ormet based on market conditions. So I can't have
22 assurances that it will always be in place.

23 Q. Yeah, let me rephrase.

24 During the term -- during the period of
25 time where the contract is in place and is effective,

1 Ormet is not allowed to shop; isn't that correct?

2 A. While the contract is in place, I believe
3 what Ormet has laid out here is the commitment to buy
4 from AEP-Ohio.

5 MR. KURTZ: Thank you, Mr. Baker.

6 Thank you, your Honor.

7 EXAMINER PRICE: Ms. McAlister.

8 MS. McALISTER: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Ms. McAlister:

12 Q. Good morning, Mr. Baker.

13 A. Good morning.

14 Q. Is it your understanding that any delta
15 revenues would be recovered as a nonbypassable rider
16 on distribution rates?

17 A. It would be a nonbypassable rider, I'm
18 not sure whether it classifies as distribution rates
19 or not. It is a nonbypassable rider under the
20 economic development rider.

21 Q. Is it AEP's position that distribution
22 rate increases are not included in the total rate
23 increase caps that were identified by the Commission
24 in AEP's electric security plan or ESP case which you
25 referenced earlier as Case No. 08-917-EL-SSO?

1 A. I believe we asked in rehearing
2 effectively for clarification that distribution
3 increases would not be included under the caps.

4 Q. If the Commission holds on rehearing that
5 there is a hard percent cap on the total bill, and
6 inclusion of the delta revenue recovery would exceed
7 that percent, the delta revenues would become part of
8 a deferral for future recovery; is that correct?

9 THE WITNESS: I'm sorry, could I have
10 that question read back?

11 (Record read.)

12 A. Based on all of the assumptions in your
13 question, I believe that's true.

14 Q. Just for clarification, you talked a
15 little bit about the \$7 million deposit that you
16 currently hold on behalf of Ormet, and I believe you
17 said that AEP would return that deposit subject to
18 the Commission approval of this agreement; is that
19 correct?

20 A. That's what I understand that Ormet has
21 asked for here. If the Commission approved it,
22 that's what we would do.

23 MS. McALISTER: I have no further
24 questions, your Honor.

25 Thank you, Mr. Baker.

1 EXAMINER PRICE: Mr. White?

2 MR. WHITE: I have no questions, your
3 Honor.

4 EXAMINER PRICE: Ormet?

5 - - -

6 CROSS-EXAMINATION

7 By Mr Vince:

8 Q. Good morning, Mr. Baker.

9 A. Good morning.

10 Q. You've received questions regarding the
11 deposit that would be returned to Ormet; is that
12 right?

13 A. Yes, we just had some questions on that.

14 Q. And is it your testimony that if that
15 deposit is returned now, it's Ormet's intention that
16 that would benefit your customers?

17 MR. RESNIK: I'll object to the question
18 to the extent that it's asking for what Ormet's
19 intention is.

20 EXAMINER PRICE: Sustained.

21 MR. VINCE: I'll rephrase.

22 EXAMINER PRICE: Thank you.

23 Q. Is it your understanding that if the
24 deposit is returned, was it your testimony that it
25 would be your expectation that customers would

1 benefit?

2 MR. POULOS: Your Honor, I'll object.
3 This is friendly cross.

4 EXAMINER PRICE: Overruled.

5 MR. VINCE: Thank you, your Honor.

6 A. It is my understanding that without this
7 provision for the deposit to be returned to Ormet,
8 that Ormet would have needed to have a lower number
9 in the first year than the 38, thereby increasing the
10 delta revenues to the rest of the customers if it
11 were approved by the Commission.

12 Q. Thank you, sir.

13 And if Ormet does not go into default,
14 that amount would not have to -- that \$7 million
15 amount would not be paid by the customers; is that
16 true?

17 A. That is correct.

18 Q. Thank you, sir.

19 EXAMINER PRICE: That's it?

20 MR. VINCE: Yes, your Honor.

21 EXAMINER PRICE: Mr. Resnik.

22 MR. RESNIK: Could I just have one
23 moment, your Honor?

24 EXAMINER PRICE: You may.

25 MR. RESNIK: I have no questions, your

1 Honor, thank you.

2 EXAMINER PRICE: Thank you.

3 Mr. McNamee.

4 MR. McNAMEE: No questions.

5 EXAMINER PRICE: Redirect?

6 MR. POULOS: No, your Honor, thank you.

7 EXAMINER PRICE: Mr. Baker, I have a
8 couple questions for you and if you are not the
9 proper witness, feel free to defer to the next AEP
10 witness.

11 - - -

12 EXAMINATION

13 By Examiner Price:

14 Q. It's my understanding that Ormet and AEP
15 filed an interim agreement in January or so that
16 provided for a rate and the recovery of delta revenue
17 for the period beginning in January until a permanent
18 solution was developed; is that correct?

19 A. That's correct.

20 Q. And that is the rate that Ormet is
21 currently paying, and you're presently collecting
22 delta revenue for that; is that correct?

23 A. That is the rate we're collecting. I
24 don't think we have implemented --

25 Q. The delta revenue.

1 A. -- a delta revenue rider, yet but it
2 would be.

3 Q. Can you tell me the approximate amount of
4 delta revenue collected thus far under the interim
5 arrangement for 2009?

6 A. I don't know the number precisely. I
7 believe it's in the -- no, I'm sorry, I don't know
8 that number.

9 Q. And it's my understanding that under the
10 amended agreement or the amended application --

11 A. Your Honor.

12 Q. Yes.

13 A. We'd be happy to supply that number. I
14 could go back to the office and get it and supply it
15 to you, the number collected for this period of time.

16 Q. My concern is then nobody else would have
17 a chance to question that number. Maybe I'll get it
18 from some other witness at some point.

19 A. Okay.

20 Q. And it's my understanding that under the
21 amended application the 38 -- the lesser of the
22 charge of the current tariff rates or \$38 would take
23 the place of the interim agreement; is that correct?
24 You essentially go back and rebill Ormet.

25 A. No, I don't know that that's necessarily

1 the case, your Honor. That's not how I would expect
2 this to happen. When I think of this, the interim
3 agreement stays in place until two things happen:
4 One is we have new tariffs that are approved by the
5 Commission, which happened at the end of March.

6 Q. Okay.

7 A. And then the second provision is that the
8 contract is approved and implemented by the
9 Commission, okay, both of those things have to
10 happen.

11 Q. And until that time, then, there will be
12 no adjustment of the bill for prior months in 2009,
13 only on a going-forward basis.

14 A. I believe that's the case with the
15 possible exception that if the Commission were to
16 approve this contract to a time before that March
17 date, I think you might have to go back to that March
18 date.

19 Q. Okay.

20 A. But I would expect that the new contract
21 would go in at a time when approved and there would
22 be no back billing.

23 EXAMINER PRICE: Thank you. That's all I
24 have. Thank you very much. You may step down.

25 (Witness excused.)

1 EXAMINER PRICE: Mr. Poulos, next
2 witness.

3 MR. POULOS: Your Honor, OCC calls
4 Mr. Roush who we also subpoenaed from AEP.

5 (Witness sworn.)

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

8 THE WITNESS: My name is David M. Roush.
9 My business address is One Riverside Plaza, Columbus,
10 Ohio 43215.

11 EXAMINER PRICE: Mr. Poulos.

12 MR. POULOS: Thank you, your Honor.

13 - - -

14 DAVID M. ROUSH

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

17 DIRECT EXAMINATION

18 By Mr. Poulos:

19 Q. Good morning, Mr. Roush.

20 A. Good morning.

21 Q. My name is Greg Poulos from the Ohio
22 Consumers' Counsel and I have very brief questions
23 for you.

24 Are you aware of the amount of delta
25 revenues that have been collected for AEP from Ormet

1 to date in 2009?

2 MR. RESNIK: I'll object, your Honor.
3 Mr. Baker's already testified that no delta revenues
4 have been collected.

5 EXAMINER PRICE: Sustained.

6 Please rephrase your question.

7 MR. POULOS: Thank you.

8 Q. Mr. Roush, are you aware or are you
9 familiar with the amount of delta revenues that have
10 been deferred as a part of the contract or as part of
11 the payment from Ormet?

12 A. Yes. My understanding under the interim
13 agreement is that the difference between the market
14 price and what Ormet is paying under the interim
15 agreement, that difference is being deferred as part
16 of FAC deferrals since the ESP order came out, and
17 that amount is -- for the months of January through
18 March I believe is approximately \$25 million.

19 Q. \$25 million?

20 EXAMINER PRICE: Can you tell me what the
21 carrying charge is on the FAC accrual?

22 THE WITNESS: No, I can't.

23 EXAMINER PRICE: Thank you.

24 Q. And your calculation of the delta
25 revenue, that you said was based on a market price?

1 A. My understanding of the interim agreement
2 and the Commission's order was that the deferral
3 under the interim agreement was the difference
4 between market price and the rate in the interim
5 agreement.

6 Q. What is the current rate that Ormet is
7 paying for electricity?

8 A. They're still paying the rate under the
9 interim agreement at this time. I believe it's
10 around 30.50, \$38.50 a megawatt-hour, somewhere in
11 that range.

12 Q. And that has been from January through
13 present?

14 A. That's correct. That's a total rate,
15 generation, transmission, and distribution.

16 Q. Where did you get the basis that the
17 delta revenues would be based off of market rate?

18 A. From my reading of the filing of the
19 interim agreement and the Commission's order.

20 Q. And that rate would continue, the current
21 rate AEP is charging Ormet would continue until
22 there's a new order, a new unique arrangement?

23 A. Until the Commission approves a new
24 unique arrangement my understanding is the interim
25 agreement will continue to be billed.

1 MR. POULOS: Thank you. I have no
2 further questions.

3 EXAMINER PRICE: Mr. Kurtz.

4 MR. KURTZ: Thank you, your Honor.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Kurtz:

8 Q. Let me belabor this point a little bit,
9 Mr. Roush. The interim order has Ormet paying the
10 50 percent CSP/50 percent Ohio Power GS-4 rate which
11 you say is approximately \$34.50 a megawatt-hour.
12 That's what Ormet is paying?

13 A. Everything you said is correct,
14 Mr. Kurtz, what's troubling me now is whether I got
15 the decimal wrong, whether it's 34.50 or 38.50,
16 that's where my memory might be failing me.

17 Q. I think it's 34 -- I have it exactly.
18 It's 34.43 probably. That's pretty close to 34.50.

19 A. That sounds about right.

20 Q. And then that's what Ormet paid in
21 January, February, and March; is that correct?

22 A. Yes, roughly. Obviously the realization
23 changes a little bit by month.

24 Q. Right. But beginning April 1 for usage
25 during April and they'll get a bill in May, why would

1 they not be charged the increased rates under the ESP
2 order like everyone else?

3 A. My understanding is the interim agreement
4 doesn't provide for that.

5 Q. Okay. So they'll continue to pay the old
6 tariff rate, not the new ESP tariff rate.

7 A. That's correct.

8 Q. And then what you're doing is you're
9 booking the difference between the old tariff rate,
10 34.43 or 35.50 per megawatt-hour and the market rate
11 that was established for 2008 under the case, well,
12 case 2007-1317.

13 The interim agreement extends the 2008
14 market rate for the calculation of delta revenue; is
15 that right?

16 A. Yes, my understanding of the interim
17 agreement is the 2008 administratively-established
18 market rate was extended to use to calculate delta
19 revenue.

20 Q. And the administratively-established
21 market rate for delta revenue purposes, is it
22 correct, \$53.03 per megawatt-hour?

23 A. Yes, that's correct.

24 Q. And I guess the appropriateness of
25 booking delta revenue against market beginning

1 January 1 is subject to rehearing at the Commission
2 still; is that your understanding?

3 A. There may be rehearing outstanding, I'm
4 not sure.

5 Q. In any event, at least for purposes of
6 the booking of your deferral, you took the difference
7 between 53.03 and \$34.50 approximately for 2009 and
8 that's how you get, what did you say, 25 million to
9 date approximately?

10 A. Close. The one distinction is the 34.43
11 rate or 34.50 rate we were talking about is a total
12 rate. The calculation of the deferral is the
13 difference between market generation and tariff
14 generation.

15 Q. Right. So it's actually -- okay, it's a
16 bigger differential when you take out the
17 transmission and distribution from the 34.50 rate.

18 A. Yes, that's correct.

19 Q. Okay. What is your understanding of how
20 delta revenue would be calculated if Ormet's amended
21 application is granted where they pay \$38 retroactive
22 to January 1, or \$34 per megawatt-hour retroactive to
23 January 1 depending on 4 or 6 potlines?

24 MR. RESNIK: Your Honor, I'm going to, I
25 suppose just a point of clarification, I believe

1 Mr. Baker testified that that's not how the company
2 would understand an approved long-term contract to
3 get applied. He went through that I think in
4 response to your questions.

5 So to the extent that this question
6 assumes that either the 34 or the 38 dollars is just
7 going to go all the way back to January 1 and replace
8 everything --

9 EXAMINER PRICE: Perhaps Mr. Kurtz could
10 phrase this as a hypothetical.

11 MR. KURTZ: Thank you, your Honor.

12 Q. Assuming that hypothetically the rate
13 going back to January 1 was 38 or 34, how would delta
14 revenue be calculated? Would you still base it off
15 of the administratively-determined market rate, or
16 would you base it off of the otherwise applicable
17 tariff?

18 A. I don't know that I've ever thought about
19 it that way. If Mr. Kurtz will indulge me, I'll
20 change your hypothetical a little.

21 Let's assume that this agreement, the new
22 unique agreement, again it's a hypothetical, was
23 approved and made effective June 1. The way I would
24 do that calculation would be the unique arrangement
25 rate, the difference between that and the billing

1 under the Ohio Power and CSP GS-4 tariffs.

2 Going backwards in time, I have to agree
3 with Mr. Baker, I'm not sure I can contemplate this
4 agreement going in effect in the January through
5 March period. So I don't know how to answer that
6 part.

7 Q. I guess the Commission will figure it
8 out.

9 MR. KURTZ: Thank you, your Honor.

10 EXAMINER PRICE: Ms. McAlister?

11 MS. McALISTER: No questions, your Honor.

12 EXAMINER PRICE: Mr. White?

13 MR. WHITE: No questions, your Honor.

14 EXAMINER PRICE: Mr. Vince?

15 MR. VINCE: No questions, thank you.

16 EXAMINER PRICE: Mr. Resnik?

17 MR. RESNIK: Can I have a moment?

18 EXAMINER PRICE: You may.

19 (Discussion off the record.)

20 MR. RESNIK: Just a couple questions,
21 your Honor.

22 EXAMINER PRICE: Certainly.

23 - - -

24 CROSS-EXAMINATION

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By Mr. Resnik:

Q. Mr. Roush, you were asked some questions I believe by Mr. Kurtz, an assumption that the all-in rate was \$34 and some change, do you recall that?

A. (Witness nods head.)

Q. Regardless of what that number is, whether it's 34-something, 36-something, 38-something, the theory of your answers would remain unchanged; is that right?

A. Yes, that's correct.

Q. And are you, as you're sitting here today, able to definitely say that the number, the all-in rate that Ormet currently is paying under the interim agreement is, in fact, 34 and some change as opposed to maybe something higher and some change?

A. I think I answered to Mr. Kurtz as well my memory's getting a little fuzzy on whether it's 34 or whatnot, but my answers would be the same.

MR. RESNIK: Thank you.

EXAMINER PRICE: Thank you.

Redirect?

MR. POULOS: No, your Honor, thank you.

- - -

EXAMINATION

1 By Examiner Price:

2 Q. Mr. Roush, have you performed any
3 calculations with respect to delta revenue for the
4 remainder of 2009 assuming any date you would care to
5 choose? June 1st, May 1st. Have you performed
6 any calculations as to what the delta revenue would
7 be for the balance of 2009 at \$38 per megawatt-hour?

8 A. Yes, I have.

9 Q. And how much would that be?

10 A. Assuming the \$38 per megawatt-hour, which
11 would be consistent with Ormet continuing to operate
12 at full load --

13 Q. Yes.

14 A. -- the delta revenue for June through
15 December of '09 would be between 16 and 17 million
16 dollars.

17 Q. And have you performed any calculations
18 at the lower \$34 number with the lower usage?

19 A. Yes, I have.

20 Q. And what was that result?

21 A. For that same June to December period,
22 and that would be under the assumption that four
23 potlines were operating during that period, the
24 numbers I calculated were between 18 and 19 million
25 dollars.

1 Q. If one wanted to extrapolate how much
2 delta revenue would be for May if it were to go into
3 effect tomorrow by some miracle, Ormet's load is
4 fairly constant, they run 24/7, so you would just
5 take the numbers you had given and just add an
6 additional month; isn't that correct?

7 A. Yeah, that's fair.

8 EXAMINER PRICE: Okay. Thank you very
9 much. You may step down.

10 THE WITNESS: You're welcome.

11 (Witness excused.)

12 MR. KURTZ: Your Honor, one quick
13 statement for the record. Mr. Roush's calculations
14 were provided in a supplemental data response that
15 we've attached as -- attached one to our objections,
16 so those numbers are --

17 EXAMINER PRICE: I wasn't making this up,
18 I was just trying to get them on the record. I'm not
19 that smart.

20 Thank you, Mr. Roush.

21 THE WITNESS: Thank you.

22 EXAMINER PRICE: Mr. Kurtz, are you going
23 to admit that, are you going to move to admit that
24 data request at any point in time?

25 MR. KURTZ: Well, we've attached it to

1 our objections, so to the extent, your Honor, that we
2 need to move the admission of our objections and all
3 the attachments, I'll do so at this time.

4 EXAMINER PRICE: I don't want to take the
5 comments as evidence, but if there's facts behind the
6 comments like the data request, I think that that
7 would be helpful.

8 MR. KURTZ: And all of the attachments,
9 certainly Attachment 1 is a supplemental data
10 response from the company; Attachment 2 is an LME
11 official aluminum pricing document; Attachment 3 is a
12 workpaper; Attachment 4 is an AEP produced document,
13 they gave it to staff in the ESP case with
14 distribution, transmission, generation revenues, so
15 that is a factual matter I don't think there will be
16 a problem with; and Attachment 5 is an Ormet data
17 response about legacy costs.

18 So I would move the admission of those
19 attachments.

20 EXAMINER PRICE: How do you want to mark
21 them?

22 MR. KURTZ: I guess OEG 1, 2, 3, 4, and
23 5.

24 EXAMINER PRICE: Okay.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)

1 EXAMINER PRICE: Do we have any
2 objections to the admission of OEG Exhibits 1 through
3 5?

4 MR. RESNIK: Your Honor, may have lost
5 track a little bit. I certainly don't have any
6 problem with data responses that we gave in this
7 proceeding being marked as an exhibit. If objections
8 that were filed in the record, if that's being
9 marked, I mean --

10 EXAMINER PRICE: That's what I'm saying,
11 we're not marking the objections.

12 MR. RESNIK: Any other documents, whether
13 they be data responses from Ormet or materials that
14 we may have submitted in some other proceeding, our
15 witnesses were on the stand, people had an
16 opportunity to cross-examine, and I think just
17 putting those items into the record would be
18 inappropriate.

19 So I've lost track as to which documents
20 were which number. I don't object to the exhibit
21 numbers that were the data responses we provided in
22 this proceeding, otherwise I do object.

23 MR. VINCE: Your Honor, if the data
24 regarding LME future price is to be admitted into
25 evidence, we would ask for the opportunity to address

1 that with additional documents during our direct of
2 the witnesses or at some point during their
3 examination.

4 EXAMINER PRICE: Mr. Kurtz.

5 MR. KURTZ: Your Honor, OEG would have no
6 objection to that, to Ormet doing that. The LME
7 document that is attached as OEG No. 2 is just an
8 official LME website snapshot of what aluminum prices
9 were as of April 27th, 2009. And the other
10 documents were data responses from either --

11 EXAMINER PRICE: Can you go over those
12 again? What was OEG 1?

13 MR. KURTZ: OEG 1 was the delta revenue
14 for 2009, and that was supplemental data response
15 RPD-4 of Mr. Roush for AEP.

16 EXAMINER PRICE: Right.

17 MR. KURTZ: OEG No. 2 is the LME pricing
18 snapshot. What would be No. 3 is a workpaper.

19 EXAMINER PRICE: Who authored the
20 workpaper?

21 MR. KURTZ: That was authored by counsel.
22 It was taking the attachment that Ormet filed to
23 their application and putting in different numbers to
24 reflect the current aluminum pricing is what it is.

25 EXAMINER PRICE: Okay.

1 MR. KURTZ: Attachment 4 is an AEP data
2 response to staff in the ESP case showing just
3 billing information. And Attachment 5 is an Ormet
4 data response to OCC about legacy costs.

5 EXAMINER PRICE: Just to clarify,
6 Mr. Resnik, then you're objecting to the admission of
7 2 and 3; is that correct? You're not objecting to
8 the data request responses which would be 1, 4, and
9 5.

10 MR. RESNIK: I'm not sure, is this -- I
11 wish I could read this better.

12 The only one that I'm not objecting to is
13 our response, the supplemental response to RPD-4. I
14 think that's Exhibit 1. The rest of it is -- and I
15 know people love the internet, but, you know, it's
16 something off the internet.

17 Another one is some page of figures that
18 as I understand Mr. Kurtz put together from
19 information, and so that would be 2 and 3. And then
20 if 4 was information we provided in another
21 proceeding, I would object to that because as I say,
22 the witnesses were on the stand, your Honor.

23 EXAMINER PRICE: Right. What we're going
24 to do is we're going to admit Exhibit 1 at this time
25 and Mr. Kurtz will have an opportunity through the

1 remainder of the witnesses if he can lay a proper
2 foundation for 2, 3, 4, and 5.

3 MR. KURTZ: Your Honor, the only question
4 I would have is the other AEP data response, which is
5 the billing information from the ESP case, I don't
6 know why that would be problematic at all. It was
7 already taken into evidence by the Commission and
8 produced by the company.

9 EXAMINER PRICE: But there's two possible
10 situations, one is it was a data response that was
11 admitted into evidence, in which case I'd be happy to
12 take administrative notice of that over Mr. Resnik's
13 objection. On the other hand, if it was a data
14 response that never was admitted into evidence in the
15 proceeding, then I think his response and his
16 objection is legitimate.

17 MR. KURTZ: Well, I would say this, staff
18 relied on this document heavily in their testimony in
19 the ESP case. It shows the billing determinants by
20 transmission, distribution, generation by company.
21 It's really just -- there's no original work in the
22 document, just facts and figures that were provided
23 by AEP.

24 To the extent that AEP objects to their
25 own document being used in this case where they

1 haven't even taken a position on the unique
2 arrangement, I find a little bit troubling, but I
3 think you should just attach -- the Commission should
4 accept this information in the record and attach to
5 it whatever weight you deem appropriate rather than
6 not admitting something that has probative value for
7 the Commissioners.

8 Mr. Roush, I'm sure, could identify this
9 document if he is still on the stand; I could simply
10 do that.

11 EXAMINER PRICE: Mr. Resnik.

12 MR. RESNIK: Well, we're not inclined to
13 have Mr. Roush come back on. He was on -- my
14 recollection, and this is foggy, but I don't think
15 that that data response was an exhibit in the ESP
16 case. I just don't know for certain.

17 But Mr. Fortney's going to be a witness,
18 if you want to ask him about it, if he's able to
19 answer questions about it.

20 EXAMINER PRICE: If Mr. Fortney can lay
21 the foundation, then the exhibit will come in.

22 At this time we're going to admit OEG
23 Exhibit 1.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 EXAMINER PRICE: Let's go off the record

1 and take a ten-minute break. Be back at 10:40.

2 (Recess taken.)

3 EXAMINER PRICE: Let's go back on the
4 record.

5 I guess now we have our first Ormet
6 witness; is that correct?

7 MR. VINCE: Yes, your Honor. With your
8 permission we'll call Michael Tanchuk to the stand
9 and have him sworn in.

10 EXAMINER PRICE: Thank you.

11 (Witness sworn.)

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

14 THE WITNESS: Michael Tanchuk, address,
15 Ormet Corporation, 43840 State Route 7, Hannibal,
16 Ohio 43931.

17 EXAMINER PRICE: Please proceed.

18 - - -

19 MICHAEL TANCHUK

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

22 DIRECT EXAMINATION

23 By Mr. Vince:

24 Q. Mr. Tanchuk, please state your position
25 with Ormet.

1 A. President and CEO, Ormet Corporation.

2 Q. And as part of your responsibilities to
3 Ormet did you instruct counsel to file an application
4 with the Public Utility Commission of Ohio seeking a
5 unique arrangement?

6 A. Yes, I did.

7 Q. Did you further instruct counsel to file
8 an amended application in this proceeding on April
9 10th, 2009?

10 A. Yes, I did.

11 MR. VINCE: Your Honor, I'd like to have
12 the, I guess the amended application has been marked
13 Ormet Exhibit 8 for identification purposes. I'd
14 like to show the witness a copy of that document.

15 EXAMINER PRICE: Please proceed.

16 Q. Mr. Tanchuk, is that the amended
17 application that you caused to be filed before the
18 Public Utility Commission of Ohio?

19 A. Yes, it is.

20 Q. And was that application prepared under
21 your supervision and direction?

22 A. Yes.

23 Q. And to the best of your knowledge is it a
24 true and accurate copy?

25 A. It is.

1 Q. Are the representations contained in that
2 application true and correct to the best of your
3 knowledge?

4 A. They are.

5 Q. Mr. Tanchuk, as part of your further
6 responsibilities for Ormet you filed written
7 testimony in this proceeding; is that true?

8 A. That's true.

9 MR. VINCE: Your Honor, we will hand the
10 witness a copy of his prefiled written direct
11 testimony in this case which was marked for
12 identification purposes as Ormet Exhibit No. 1.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Tanchuk, is this the direct written
15 testimony you caused to be filed before the Public
16 Utility Commission of Ohio?

17 A. It is.

18 Q. And this testimony was prepared by you;
19 is that correct?

20 A. That's correct.

21 Q. Do you have any corrections to it?

22 A. No.

23 Q. And are the representations contained in
24 the testimony true and correct to the best of your
25 knowledge?

1 A. They are.

2 MR. VINCE: Your Honor, I now tender
3 Mr. Tanchuk available for questions any party may
4 have.

5 EXAMINER PRICE: Thank you. Let's go off
6 the record for one moment.

7 (Discussion off the record.)

8 EXAMINER PRICE: Let's go back on the
9 record.

10 Mr. Poulos.

11 MR. POULOS: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Poulos:

15 Q. Good morning, Mr. Tanchuk.

16 A. Good morning.

17 Q. As you are aware from our deposition
18 yesterday, I'm Greg Poulos from the Ohio Consumers'
19 Counsel. I have a few questions for you about your
20 testimony. If you'll turn to page 5 of your
21 testimony which is ORM Exhibit 1. Are you there?

22 A. Yes, what line?

23 Q. I'm looking at line 8, "What was the
24 outcome of those negotiations?" and the answer "Late
25 last year and early this year, Ormet negotiated a

1 power agreement with AEP Ohio."

2 Do you see that?

3 A. Uh-huh.

4 Q. As part of that power agreement that you
5 had negotiated with AEP did you talk about -- did
6 that include the \$38 megawatt per hour rate?

7 A. Yes, it did.

8 Q. Isn't it true that you did not show AEP
9 any specific data on how you calculated the
10 \$38-megawatt rate?

11 A. That's true. The basis of the discussion
12 was with the statutory -- the rules that were in
13 place for us that we could review the provisions that
14 were allowed for under the statute and the
15 regulations, but it was not a negotiation of a
16 \$38 rate.

17 Q. So it was a discussion.

18 A. Yeah.

19 Q. All right. Isn't it also true that you
20 have not provided the data behind the \$38 megawatt
21 per hour rate to OCC?

22 A. That's true. The reason behind that is
23 the pending litigation with Glencore and the severe
24 nature of the impact of the outcome of that
25 litigation on Ormet and the specific provisions,

1 confidentiality provisions, in the tolling agreement
2 which prohibit us from giving some of the specific
3 revenue numbers for 2009 unless they are compelled --
4 we are compelled to by a court.

5 Q. Isn't it also true that Ormet has not
6 provided the data behind the \$38 megawatt per hour
7 rate to PUCO?

8 A. Yes, for the same reason.

9 Q. Is there anyone that you provided that
10 rate to that is a part of this case?

11 A. No.

12 MR. POULOS: Your Honor, I move to strike
13 Ormet's proposed \$38 megawatt per hour rate that is
14 page 11 of the amended application, section 5.01, as
15 something that they have not provided any basis for
16 that to any party in this case.

17 MR. VINCE: Your Honor, my understanding
18 is that we're going to have an opportunity to show
19 you in camera the provisions of the document that
20 constrain us and you can make a determination at that
21 time as to whether this information must be revealed
22 or not.

23 Further, we are prepared to have
24 Mr. Riley, when he takes the stand, explain all of
25 the components that he used in the -- the ingredients

1 he used in calculating this number.

2 When you see the terms of the tolling
3 agreement, you will see there is a very strict
4 confidentiality provision in it. We have explained
5 this to OCC counsel, and if that is voluntarily
6 revealed, that Ormet is placed in the impossible
7 position with or the unacceptable position of
8 breaching a key confidentiality provision of that
9 contract.

10 We'll show you that document. We now
11 have it available if you would like to see it before
12 Mr. Riley goes on the stand, we can take a moment and
13 give it to you in camera at that time.

14 We can also -- we've also made
15 arrangements, if you wish, to speak with the legal
16 counsel handling that case on behalf of Ormet, they
17 can explain it more carefully than I just have.

18 But I think the confidentiality agreement
19 itself will be self-explanatory.

20 EXAMINER PRICE: We will deal with the in
21 camera review during the lunch break as I previously
22 indicated. We are going to overrule the motion to --
23 not overruling, denying the motion to strike, but I
24 will point out that Ormet bears the burden of proof
25 in this proceeding and OCC's free to argue that they

1 have not demonstrated why they need \$38 at the end of
2 this proceeding, not right this moment, but you're
3 certainly free to argue that they have not met their
4 burden of proof.

5 MR. VINCE: Thank you, your Honor.

6 EXAMINER PRICE: Please proceed.

7 MR. POULOS: Your Honor, I also would
8 include with that a motion to strike his testimony on
9 the subject.

10 EXAMINER PRICE: And not surprisingly
11 your motion's denied based upon my prior reasoning.

12 MR. POULOS: Thank you, your Honor.

13 Also we have not seen the provisions of
14 this tolling agreement that do not allow them to show
15 this information; we would like to see that as well.

16 EXAMINER PRICE: Is the tolling
17 agreement, just the tolling agreement -- well, let me
18 rephrase that.

19 Are you able to show OCC the
20 confidentiality portions of the tolling agreement?

21 MR. VINCE: I'm not certain about that,
22 your Honor. I can show it to you in camera and let
23 you -- we'll go from there.

24 EXAMINER PRICE: That will be fine.

25 Q. (By Mr. Poulos) Mr. Tanchuk, I am aware

1 that you did not negotiate or discuss, using your
2 terms, discuss the \$34 megawatt-hour rate that's
3 proposed if the situation comes that Ormet must
4 reduce its two potlines, correct?

5 A. Right.

6 Q. You have not negotiated that with AEP or
7 discussed that with them.

8 A. We have not.

9 Q. Have you discussed the reasons for that
10 \$34 megawatt per hour rate with OCC?

11 A. Yesterday during the deposition we
12 attempted to describe the reasoning for that. Again,
13 and I'll reiterate, the reasoning for the \$34, if we
14 were to reduce potlines beyond -- we have six
15 potlines in the facility. If we would reduce to four
16 or below, we would request a \$34 rate from that time
17 forward.

18 There were statements made previously
19 that's retroactive, and the way this contract is
20 written is at the point of the curtailment it is not
21 retroactive for the entire facility for the entire
22 year.

23 EXAMINER PRICE: Have you reached the
24 point of curtailment yet?

25 THE WITNESS: We have shut down half a

1 potline in the plant this week but obviously that's
2 not the two potlines, your Honor, that would trigger
3 this number.

4 EXAMINER PRICE: So it's when two
5 potlines are completely shut down would trigger the
6 change in rate.

7 THE WITNESS: Right. The reason for the
8 rate was a discussion we had with the United Steel
9 Workers to attempt to do our best to limit the impact
10 on the community during this time frame so that we
11 would be able to maintain 900 job positions through
12 this time frame and prepare the plant for restart
13 when the market resumes.

14 And one thing I wanted to -- we really
15 didn't caveat yesterday, I wanted to point out and
16 introduce is there's been a lot of discussion
17 about --

18 EXAMINER PRICE: Mr. Tanchuk, I think
19 you're verging on the point of being nonresponsive.

20 THE WITNESS: Okay.

21 EXAMINER PRICE: I think you should let
22 Mr. Poulos ask the questions. If you have any
23 additional information you would like to put on the
24 record, your counsel can ask you about it.

25 MR. POULOS: A foundational question.

1 Thank you, your Honor.

2 Q. Thank you for the reasons behind it but I
3 would like to know the specific data, OCC asked this
4 question yesterday, the specific data behind the
5 \$34 per megawatt-hour calculation. Isn't it true you
6 did not provide that to OCC?

7 A. It's true, and we said we would,
8 Mr. Riley would provide the review of how that was
9 done and with the -- we would provide with our
10 counsel the provisions of the tolling agreement.

11 Q. Isn't it true that the offer to even have
12 the Hearing Examiner review that was made just this
13 morning?

14 A. Yes.

15 Q. And isn't it true that nobody from the
16 PUCO, to your knowledge, has seen the calculations of
17 how Ormet arrived at \$34 megawatt per hour rate?

18 A. That is true.

19 Q. And none of the other parties to this
20 case have seen the data behind that.

21 A. Correct.

22 MR. POULOS: Your Honor, at this time OCC
23 moves to strike the testimony and the provisions in
24 the amended application which would be in section
25 5.01 regarding \$34 per hour megawatt -- megawatt per

1 hour rate as something that the company is unwilling
2 to provide us with the specific data.

3 EXAMINER PRICE: As I pointed out before,
4 the company bears the burden of proof in this
5 proceeding. You will be free to argue on your brief
6 that they have not supported their prices. Your
7 motion is denied.

8 MR. POULOS: Thank you, your Honor.

9 Q. Mr. Tanchuk, around the discussions about
10 why these figures haven't been provided to OCC and
11 the PUCO and the other parties has been this Glencore
12 preliminary injunction case, correct?

13 A. Correct.

14 Q. And this Glencore preliminary injunction
15 case is currently in the situation where the company
16 is seeking a force majeure; is that correct?

17 A. The company being?

18 Q. The company being Glencore.

19 A. The basis of the case is Glencore is
20 seeking a force majeure for the shutdown of some
21 alumina capacity in Jamaica. We have reviewed this
22 in case with counsel. Our counsel's indicated that
23 their case is frivolous and that we have a very
24 strong possibility of success. The hearing date has
25 been set for May 11th.

1 MR. POULOS: Your Honor, at this point
2 I'm going to object as hearsay and as nonresponsive
3 and move to strike the last part about --

4 EXAMINER PRICE: Can I have his original
5 question, please?

6 (Record read.)

7 EXAMINER PRICE: Okay. We are going to
8 grant the motion to strike. Next time I'd appreciate
9 if you let the witness finish his answer before you
10 make your motion to strike. Please proceed.

11 MR. POULOS: Thank you, your Honor.

12 Q. And I apologize to the witness and your
13 Honor.

14 So the force majeure that Glencore has
15 made -- to Ormet, correct?

16 A. Correct.

17 Q. And there is a preliminary injunction on
18 that on May 11th, correct?

19 A. There is a hearing for a preliminary
20 injunction on May 11th.

21 Q. And at that hearing -- strike that.

22 The force majeure event is Glencore
23 stating that they will not be providing Ormet with
24 the appropriate amount of alumina, right?

25 A. That is correct.

1 Q. And that is basically that Glencore
2 provides a number of shipments based on the schedule
3 to Ormet throughout the year, correct?

4 A. Correct.

5 MR. RESNIK: Your Honor, excuse me, can I
6 have the prior question and answer read back?

7 EXAMINER PRICE: You may.

8 MR. RESNIK: About the force majeure
9 event.

10 EXAMINER PRICE: You may.

11 (Record read.)

12 MR. RESNIK: Thank you.

13 Q. And isn't it true that Glencore is the
14 sole provider of alumina to Ormet?

15 A. That's correct.

16 Q. And alumina is a key ingredient in the
17 smelter process at Ormet.

18 A. Yes.

19 Q. Isn't it true that if the preliminary
20 injunction is not granted in Ormet's favor, that the
21 amount of shipments sent -- of alumina sent by
22 Glencore to Ormet will be reduced?

23 A. No.

24 Q. Isn't it true that there will only be
25 three shipments to Glencore -- from Glencore over the

1 course of the year if you do not win preliminary
2 injunction?

3 A. That's not true.

4 Q. How many shipments will be sent?

5 A. What this process is, if I can, the
6 preliminary injunction is a step in the process of
7 hearing the dispute. Even if the preliminary
8 injunction is not granted, there's an arbitration
9 process for the contract. That arbitration process
10 is the ultimate resolution of the dispute.

11 So even if the preliminary injunction is
12 not granted on May 11th, the arbitrating tribunal
13 could decide to make Ormet whole in this whole
14 processes. So I just wanted to be clear.

15 Q. Yes. And I thank you for that.

16 Isn't it true that the force majeure that
17 has been requested by Glencore would result, if it
18 goes through as they requested it, would result in
19 only three scheduled deliveries being sent to Ormet?

20 A. I guess you don't request a force
21 majeure, they have claimed a force majeure, and if
22 the force majeure stood without any changes there
23 would be a reduction in the alumina shipments this
24 year.

25 Q. Currently there are ten more shipments

1 for the rest of the year?

2 A. Approximately.

3 Q. From Glencore to Ormet, right?

4 A. (Witness nods head.)

5 Q. And if that force majeure was -- went
6 through and they were able to not deliver the rest of
7 the shipments, you would only get three more
8 shipments, correct?

9 A. Based on that extreme hypothetical case.

10 MR. VINCE: Objection, your Honor, it
11 calls for speculation regarding what may happen in
12 litigation that has not yet occurred.

13 EXAMINER PRICE: Sustained.

14 Q. Is it, as you are going forward, there is
15 a potential -- strike that.

16 Can you tell me what Glencore is seeking
17 with its force majeure?

18 A. Understand that the force majeure
19 doesn't -- that they requested in the way the
20 contract is written doesn't completely change the
21 responsibilities. It changes the timing. It's
22 related to a specific facility in Jamaica.

23 As the market is improving, which it is
24 improving, and that facility is restarted, the
25 contract would restart. So if that was next month,

1 the contract would restart next month.

2 So it's not a change that is for the
3 life -- that suspends the agreement. It's really
4 timing.

5 Q. So as we're looking at the timing, and as
6 you speculate that things could get better in the
7 next couple months, if they don't get better in the
8 next couple months, would Ormet potentially have to
9 shut down?

10 MR. VINCE: Objection. Calls for
11 speculation as to the outcome of this case.

12 EXAMINER PRICE: Please rephrase your
13 question, Mr. Poulos.

14 MR. POULOS: Thank you, your Honor.

15 Q. Mr. Tanchuk, based on the force majeure
16 request --

17 MR. POULOS: Your Honor, if I could just
18 have one second.

19 EXAMINER PRICE: You may.

20 MR. POULOS: Your Honor, may I approach?

21 EXAMINER PRICE: You may.

22 MR. POULOS: I only have one copy of
23 this, I will make more at the break if that is
24 acceptable.

25 Q. (By Mr. Poulos) Mr. Tanchuk, I'm handing

1 you what's going to be marked as OCC Exhibit 1 for
2 purposes of identification.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. Do you recognize this document?

5 A. Yes.

6 Q. Isn't it true that this document can be
7 found on Ormet's website?

8 A. Correct.

9 Q. And isn't it true that as part of this --
10 what is this document?

11 A. It's simply a press release announcing
12 the legal action against Glencore.

13 Q. And isn't it true as part of this press
14 release Ormet, or the statement here, that Ormet is
15 arguing that the failure to prevent Glencore from
16 breaking its contractual obligations to deliver the
17 alumina could result in the loss of approximately a
18 thousand active jobs?

19 A. Yes, that's what is stated.

20 Q. And also as a result of this losing a
21 thousand jobs, is there a time frame?

22 A. I might also point out it says --

23 MR. POULOS: Your Honor, that's not
24 responsive.

25 EXAMINER PRICE: Mr. Tanchuk, please

1 answer his question directly.

2 A. Ask your question again, please.

3 MR. POULOS: Could I ask the question be
4 read back, please?

5 EXAMINER PRICE: He probably needs the
6 exhibit though.

7 MR. POULOS: Honestly, I won't ask him
8 any questions unless -- I'll leave it here.

9 (Record read.)

10 A. There's no specific time frame that was
11 given in this press release.

12 Q. Do you have a specific time frame for
13 when --

14 A. No.

15 Q. -- that could happen?

16 A. No. It's very dependent on the outcome
17 of the case and what we do with production levels in
18 the interim.

19 Q. Have you informed the OCC in response to
20 questions in deposition about what the time frame may
21 be?

22 A. We stated that there were several options
23 or possibilities out there. If we were to reduce
24 production capacity to half the plant, the alumina
25 could be extended out, I believe we said till

1 approximately August. It depends on the production
2 levels.

3 And we tried to explain to OCC yesterday
4 the complexity of these objections and the scenarios
5 and that no specific scenario has been indicated.

6 Q. Isn't it true that you don't know when
7 that would happen?

8 A. Pardon?

9 Q. Isn't it true that you couldn't tell us
10 when it may happen?

11 A. No, because it's pending the outcome of
12 the litigation.

13 Q. Isn't it true that if Ormet were to have
14 to close its doors because of this litigation, as per
15 the press release, that event -- it would be an event
16 of default under the proposed agreement?

17 A. I don't know if I'm qualified to answer
18 that question.

19 MR. VINCE: Objection; legal conclusion.

20 EXAMINER PRICE: Sustained.

21 Q. I'd like you to turn now to page 8 of
22 your testimony.

23 A. I'm sorry, I didn't hear.

24 Q. Page 8.

25 EXAMINER PRICE: Let's go off the record

1 real fast.

2 (Discussion off the record.)

3 EXAMINER PRICE: Let's go back on the
4 record.

5 Q. Mr. Tanchuk, in your testimony on page 8
6 I'm referring to lines 3 through 10 and your question
7 regarding AEP's support of the unique arrangement.

8 Looking at line 3, does AEP-Ohio support
9 the unique arrangement? Isn't it true that your
10 answer there that yes, they do support it is based
11 simply on their comments in this case?

12 A. Pardon?

13 Q. Simply on their filed comments in this
14 case?

15 A. Yeah, and again, we say subject to the
16 recovered revenue from other customers to arrive at
17 all revenues lost by entering into this unique
18 arrangement, and I think that's what was in their
19 intervention.

20 Q. Looking at question 7, "Does Ormet
21 support AEP's Ohio recovery of lost revenues?" You
22 state in your answer that AEP-Ohio must remain
23 financially strong.

24 Isn't it true that your statement that
25 AEP-Ohio must remain financially strong is just a

1 general statement?

2 A. It is.

3 Q. And that you couldn't specifically say
4 how much the delta revenues, what percent that
5 AEP-Ohio would have to get to remain financially
6 strong?

7 A. No, I could not.

8 Q. Because you haven't done any financial
9 or -- haven't looked at any data to determine what
10 would make AEP-Ohio financially strong.

11 A. No, I have not.

12 Q. I want to turn your attention now to the
13 bottom of page 8. This is regarding your working
14 with the United Steel Workers of America regarding
15 the issues critical to the economic survival of the
16 facility. And this basically states that you worked
17 with United Steel Workers of America. Is there
18 anyone else you've worked with?

19 A. Can you define what you mean by "worked
20 with"?

21 Q. Yes. Is there anyone else that you
22 worked with on the issues critical to economic
23 survival?

24 A. We worked with the -- besides the Steel
25 Workers, obviously the Governor's Office has been --

1 through various representatives and the Governor
2 himself has been very much involved in the process.

3 But that's the . . .

4 Q. Isn't it true that you have not contacted
5 West Virginia to work on these issues critical to the
6 economic survival?

7 A. We did not. We relied on Governor
8 Strickland's office to determine how that would be
9 done. We did not contact West Virginia directly.

10 Q. Isn't it true you also have not contacted
11 the state of Pennsylvania?

12 A. That is correct.

13 Q. Isn't it true that you also have not
14 filed any request for federal stimulus money?

15 A. You asked that yesterday. I'm not sure I
16 understand what kind of request a company can file
17 for stimulus money, but the answer is no.

18 MR. POULOS: I have no further questions
19 of this witness, your Honor, thank you.

20 EXAMINER PRICE: Thank you.

21 MR. POULOS: I would like to at this time
22 admit Exhibit OCC 1.

23 EXAMINER PRICE: We'll deal with the
24 admission of OCC 1 at the end of this witness.

25 MR. POULOS: Thank you.

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EXAMINER PRICE: Mr. Kurtz.

MR. KURTZ: Thank you, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Kurtz:

Q. Morning, Mr. Tanchuk.

A. Good morning, Mr. Kurtz.

Q. Would you turn to page 5 of your testimony, please?

A. Okay.

Q. You were asked the question on line 5 of "In 2008, did Ormet and AEP enter into negotiations for a new unique arrangement?" Your answer is "Yes"; is that correct?

A. That's correct.

Q. Were you here when Mr. Baker testified?

A. Uh-huh.

Q. Do you understand why AEP doesn't feel that they negotiated yet you feel that you did negotiate?

A. I can't speak for AEP. We discussed the various provisions of the proposal. We got feedback from them. And we developed our approach for submitting the application.

Q. How many times did you meet to negotiate

1 with AEP?

2 MR. VINCE: Objection as to the form of
3 the question. I think witnesses have testified that
4 there wasn't a formal negotiation.

5 MR. KURTZ: I'm using the word
6 "negotiation" as he's using it in his testimony, but
7 that they did enter into negotiations.

8 MR. VINCE: Objection.

9 EXAMINER PRICE: Overruled.

10 Q. About how many times, do you recall?

11 A. Personally I was involved I think in two
12 meetings and there were probably four or five
13 meetings all together.

14 Q. Who was involved for Ormet, do you
15 recall?

16 A. From the operations, Mike Griffin, Jim
17 Riley, Tommy Temple, and Henry Fayne were normally
18 the people that were involved.

19 Q. Do you recall who was there for AEP in
20 the two meetings you attended?

21 A. The ones I recall is Marv Resnik, Craig
22 Baker, and Marv wasn't at every meeting but Craig was
23 at the meetings I was at. And I believe the
24 president of Ohio AEP was also, Joe was also there,
25 Hamrock.

1 Q. Mr. Tanchuk, at the beginning of your
2 testimony you indicate that you managed nine aluminum
3 smelters in the U.S. and Iceland?

4 A. Can you tell me where?

5 Q. Line 14, page 1.

6 A. Okay.

7 Q. To test your memory, do you remember the
8 nine, the names of them?

9 A. Yeah, you're going to get me, but it's --
10 I didn't count the ones I was at twice so I was there
11 more than once. So I had Reynolds Massena, Reynolds
12 Longview, Alcoa Massena, then a second time at the
13 same time Reynolds Massena, then I had the facility
14 in Portland, Oregon, for Alcoa, Trout Daily. I had
15 Windalco, Wenatchee, then I had the facility for
16 Century Aluminum in Kentucky, then I had the facility
17 for Century Aluminum in Iceland, and the construction
18 of the new facility in Helguvik, Iceland, before
19 coming to the facility in Ohio. I think that's nine.

20 Q. And you are familiar with the power cost
21 arrangements for those nine smelters?

22 A. Yes.

23 Q. Did any of those aluminum smelters
24 receive free electricity for any period of time that
25 you are aware of?

1 A. The facilities had LME-based contracts,
2 several of them did. At the time they did not --
3 they had LME floors and their LME ceilings were
4 defined as part of the contract.

5 So none of them had a zero electricity,
6 but there was pretty significant discounts on
7 electricity depending on the LME.

8 Q. And then there was significant premiums
9 depending on the LME if it went above a target also;
10 no?

11 A. No. Huh-uh. No.

12 Q. Just a one-way ratchet, essentially?

13 A. It's normally a curve that's issued
14 around a certain band of LME and anything above a
15 certain band of LME had no provision for payback to
16 the energy supplier.

17 Q. Did the utilities recover delta revenue
18 from their consumers?

19 A. No.

20 Q. They did not.

21 A. It was part of the -- I guess if I please
22 could correct that. I don't know the answer to that.
23 I know that there were discounts from market and
24 discounts from tariff rates. How they handled the
25 difference I'm not sure, Mr. Kurtz.

1 Q. Will you turn to page 6 of your
2 testimony, footnote 2, you refer to a report from CRU
3 International.

4 A. All right.

5 Q. Do you have a copy of that report?

6 A. I do here.

7 Q. What is the nature of this report?

8 A. It is a -- the title is Aluminum Smelter
9 Power Tariffs to 2011, 2009 Edition, it's created by
10 CRU Analysis, they're in London, England. They're
11 one of the research groups in this area.

12 It is a document that's copyrighted, your
13 Honor, that we had to purchase to help us in this
14 process.

15 Q. Now, on page 6, line 3, you quote a
16 forecasted 2009 global average power tariff of \$30.70
17 per megawatt-hour.

18 A. Yes, that's correct.

19 Q. Did that come from that CRU report?

20 A. Yeah, that was the estimate. Yes.

21 Q. Did the Africa smelter rate of \$15.40 per
22 megawatt-hour and the Russia smelter rate of \$18.10
23 per megawatt-hour also come from the CRU report?

24 A. Yes.

25 Q. Does the CRU report also tell U.S.

1 smelter prices in addition to Africa and Russia?

2 A. Yes.

3 Q. Do you have in front of you what the
4 numbers were for the U.S. smelters on average for
5 purchase, not for smelters that owned their own
6 generation but for purchased electricity for the
7 years 2007, '8, '9, '10, and '11, from the same CRU
8 report?

9 A. Yeah, these are, again, these are
10 averages. Yes, I do have them.

11 Q. Can you give us the averages for '7, '8,
12 '9, '10, and '11?

13 A. We had 37.1 for 2007; 38.5 for 2008; 32.9
14 for 2009, which is obviously a projection; 34.8 for
15 2010, which is a projection; and 35.9 for 2011, which
16 is a projection. And those are purchase versus
17 self-generated.

18 Q. How many U.S. aluminum smelters do you
19 believe are covered under that CRU summary of U.S.
20 smelter prices?

21 A. I did not go back and double check the
22 basis of it. I would believe it would be the
23 operating smelters.

24 Q. How many are there in the U.S. still?

25 A. About ten.

1 Q. What type of technology -- does the
2 Hannibal facility have smelter technology?

3 A. It's an older, prebaked center bar
4 breaker pot.

5 Q. How old is the -- are the potlines
6 themselves?

7 A. They're in the late-1950s construction.

8 Q. Do you know the kilowatt-hours per ton of
9 aluminum produced at your Hannibal facility?

10 A. I think it was in one of our data
11 requests but I think it's about 15, I believe it was
12 megawatt-hours per ton.

13 Q. How does that compare to the, for
14 example, the Century Kentucky aluminum smelter you
15 managed?

16 A. It's probably slightly higher but not
17 significantly higher.

18 Q. What about the Iceland smelter?

19 A. The Iceland was a newer facility built in
20 1998, so the facility there would be slightly more
21 energy efficient but it's not significant.

22 EXAMINER PRICE: You're going to have to
23 quantify for the Bench "slightly" versus
24 "significant."

25 THE WITNESS: It's probably, if I had to

1 estimate the energy consumptions, they're probably
2 all within maybe 5 percent of each other. That would
3 be an estimate.

4 EXAMINER PRICE: Okay.

5 Q. Let me move you back to the U.S. average
6 smelter pricing projected for 2010 of \$34.80. Assume
7 hypothetically that the Commission set a floor on the
8 price that Ormet would pay at the fuel adjustment
9 charge of CSP and Ohio Power of \$24 per
10 megawatt-hour, wouldn't that give you a significant
11 power advantage versus the remaining U.S. smelters on
12 average?

13 A. It would be lower than the average, but
14 obviously with the -- depending on what the LME is at
15 the time, it still may mean that Ormet can't stay in
16 business.

17 Q. But wouldn't those other remaining U.S.
18 smelters, the ten you referred to, they face the same
19 LME pricing that Ormet faces?

20 A. That's correct.

21 Q. So if you had a \$10 per megawatt-hour
22 price advantage by paying 24 instead of 38 -- or,
23 34.8, wouldn't that, all else equal, put Ormet in a
24 good competitive position?

25 A. It is certainly an advantage, but again,

1 depending on where the LME is still doesn't mean that
2 the company can stay in business.

3 Q. Well, what is it about Ormet, since you
4 all face the same LME pricing, if you have a power
5 advantage of 28.7 percent paying 24 instead of 34.8,
6 if you had a power advantage of that magnitude, why
7 would you not be able to compete with the other U.S.
8 smelters?

9 A. Because, you know, right now where the
10 LME is I would estimate probably 50 to 75 percent of
11 all the plants in the world are losing cash. So
12 that, you know, you would be part of a group that all
13 went out of business.

14 Q. So it's really the inherent financial
15 weakness of Ormet that would not allow you to weather
16 the storm; is that --

17 A. No, I don't think I would term it as
18 financial weakness. Essentially the LME eventually
19 will impact all companies. As a matter of fact, with
20 what Ormet has done with the tolling agreement in '08
21 and '09, we're way ahead of the process with the
22 other smelters and that's why we're here today.

23 Q. But if all the smelters in the world face
24 the same LME pricing and you have an electric
25 advantage of 28.7 percent on the U.S. smelters, why

1 would Ormet not be able to survive and the other U.S.
2 smelters would?

3 A. I can't really -- I can't really
4 speculate on that. Again, it's LME dependent. The
5 power price is a significant piece of it, but
6 depending on where the LME is, the company may not be
7 able to weather some short-term storms that we see.

8 Q. Ormet actually has a negative equity at
9 this point.

10 A. Yeah, I believe that's the case -- but
11 Mr. Riley is best equipped to answer those questions.

12 Q. Does that mean, if you know, and I'll ask
13 him, but Ormet is technically insolvent?

14 A. No.

15 Q. With a negative equity that's not --

16 A. Not at all. Mr. Riley can go through
17 that in detail, any level of detail you'd like.

18 Q. One last question.

19 Is it your understanding if the
20 Commission approves the unique arrangement, that
21 during the effective term of the unique arrangement
22 Ormet would not be able to shop for electricity?

23 A. That is correct.

24 MR. KURTZ: Thank you, your Honor.

25 EXAMINER PRICE: Ms. McAlister?

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MS. McALISTER: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. McAlister:

Q. Morning, Mr. Tanchuk.

A. Morning.

Q. My name is Lisa McAlister and I'm here for IEU-Ohio. I just want to follow up with one discussion you had with Mr. Poulos where you talked a little bit about the shipments of alumina from Glencore.

I believe, and correct me if I get this wrong, you said if you reduced the production levels to half, you could stretch the current alumina you have to August; is that right?

A. That's approximate.

Q. And how long could Ormet maintain operations at current levels without alumina deliveries?

A. If you were to stay at where we are now, which is about five and a half lines, you could only maintain with the shipments we know that are coming probably till mid-June.

Q. And by saying that you mean that you would have to shut down operations altogether?

1 A. Yeah, and realizing that the outcome of
2 the May 11th hearing will indicate a lot of what
3 happens.

4 MS. McALISTER: I have no further
5 questions, your Honor.

6 Thank you, Mr. Tanchuk.

7 EXAMINER PRICE: Mr. White?

8 MR. WHITE: Just a few questions or
9 probably one follow-up question.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. White:

13 Q. Mr. Tanchuk, I'm Matt White and I'm
14 asking questions on behalf of Kroger Company.

15 You had mentioned that you had met with
16 Governor Strickland regarding this unique arrangement
17 application. During your meeting with Governor
18 Strickland or his staff had you brought up the topic
19 of possibly pursuing other avenues of funding for
20 assistance for Ormet other than a unique arrangement
21 with AEP?

22 A. Yeah, we met with Governor Strickland and
23 we met with the Lieutenant Governor also to try to
24 find additional ways to try to address the situation,
25 and unfortunately through the economic development

1 sites the Lieutenant Governor -- we couldn't come up
2 with anything that would be helpful.

3 Q. What were those other ways that you --

4 A. I mean there's grants, loans, there's
5 other possibilities that the State of Ohio has, but
6 the focus always came back to the power contract and
7 the provisions of the power contract.

8 MR. WHITE: No further questions.

9 EXAMINER PRICE: True that the big inputs
10 going into the cost of producing aluminum is labor,
11 alumina and power? Aren't those three the biggest
12 inputs?

13 THE WITNESS: There's a material, your
14 Honor, called carbon which is what -- used in the
15 production process which would be electricity,
16 alumina, carbon, labor is I think around 16 percent
17 so it's a -- the labor is down, the --

18 EXAMINER PRICE: What is the electricity
19 as a percentage of the cost?

20 THE WITNESS: For our total -- for the
21 total company I believe it was in Mr. Riley's
22 testimony, do you mind if I look?

23 EXAMINER PRICE: I'll ask him when he
24 comes up.

25 THE WITNESS: Okay.

1 EXAMINER PRICE: Thank you, Mr. White.

2 Are you done, Mr. White, I'm sorry?

3 MR. WHITE: Yes, I'm done, your Honor.

4 EXAMINER PRICE: Mr. Resnik.

5 MR. RESNIK: No questions.

6 EXAMINER PRICE: Redirect?

7 MR. VINCE: Your Honor, I'd like to ask
8 your guidance. We have three exhibits that were
9 marked for identification by the OCC during their
10 deposition of Mr. Tanchuk yesterday. We're not
11 certain what the status is of counsel's request to
12 have LME pricing put into evidence here.

13 I would like to ask the Court's
14 permission to have Mr. Tanchuk address these three
15 exhibits very briefly and explain their significance
16 with respect to LME pricing.

17 EXAMINER PRICE: Let's go off the record
18 for one minute.

19 (Discussion off the record.)

20 EXAMINER PRICE: Let's go back on the
21 record.

22 Any questions for redirect?

23 MR. VINCE: No, your Honor.

24 EXAMINER PRICE: Mr. Tanchuk, you may
25 step down.

1 THE WITNESS: Thank you, sir.

2 (Witness excused.)

3 MR. POULOS: Your Honor, at this point we
4 renew our motions to strike, and just to make it
5 clear on the record, it's not just based on the fact
6 that we haven't had adequate time to see those and
7 see if they're reasonable or not, but it's also the
8 fact we haven't received them in discovery and we do
9 have discovery rights under 4903 that we have not
10 been provided with that information. Both grounds.

11 EXAMINER PRICE: Your renewed motions to
12 strike are still denied.

13 MR. POULOS: Thank you.

14 EXAMINER PRICE: You may step down,
15 Mr. Tanchuk.

16 MR. VINCE: Your Honor, our next witness
17 is James Burns Riley.

18 (Witness sworn.)

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

21 THE WITNESS: My name is James Burns
22 Riley. My address is 43840 State Route 7, Hannibal,
23 Ohio 43931.

24 EXAMINER PRICE: Please proceed.

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JAMES B. RILEY

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

DIRECT EXAMINATION

By Mr. Vince:

Q. Mr. Riley, as part of your responsibility -- what is your position with Ormet?

A. My responsibilities are as the chief financial officer of the corporation and its subsidiaries.

Q. And as part of your responsibilities did you submit direct written testimony on your behalf in this proceeding?

A. Yes, I did.

MR. VINCE: Your Honor, we'd like to have marked --

EXAMINER PRICE: We'll note for the record it was previously marked.

MR. VINCE: Okay, great. We're handing the witness a copy of his prefiled written testimony which has been marked for identification purposes as Ormet Exhibit No. 7.

Q. Mr. Riley, is this the direct written testimony you filed before the Commission?

A. Yes, it is.

1 Q. Was that testimony prepared by you?

2 A. Yes, it was.

3 Q. Do you have any corrections to it?

4 A. None.

5 Q. And are the representations contained in
6 that testimony true and correct to the best of your
7 knowledge?

8 A. Yes, they are.

9 MR. VINCE: Your Honor, we now make
10 Mr. Riley available for questions.

11 EXAMINER PRICE: OCC?

12 MS. GRADY: Yes, your Honor --

13 MR. VINCE: I'm sorry, one housekeeping
14 question. Do you wish us to move the exhibits into
15 evidence after each witness or at the close of our
16 direct?

17 EXAMINER PRICE: It's really up to you,
18 I've done it both ways in hearings, so if you want to
19 wait till the end, we've already skipped Mr. Tanchuk,
20 so we can do them all at the same time.

21 MR. VINCE: Thank you.

22 EXAMINER PRICE: Ms. Grady.

23 MS. GRADY: Yes, your Honor. At this
24 time, your Honor, consistent with OCC's previous
25 motions with respect to the objections it maintains

1 on the \$38 per megawatt-hour price and the \$34 per
2 megawatt price, we would move to strike those
3 portions of Mr. Riley's testimony that address that.

4 EXAMINER PRICE: Tell me where it is
5 before I deny it.

6 MS. GRADY: I'm not sure you needed to
7 know because I was expecting a ruling denying, but I
8 can try to find that in here.

9 Well, we have a \$38 per megawatt rate
10 cited on page 9 of his testimony, line 8. And I
11 think that might be the extent, although it really
12 does underlie his testimony.

13 EXAMINER PRICE: Okay. The motion's
14 denied.

15 MS. GRADY: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Grady:

19 Q. Good morning, Mr. Riley.

20 A. Good morning.

21 Q. Now, let's begin with page 1 of your
22 testimony. You indicate that you are the chief
23 financial officer of Ormet Corporation. Do you see
24 that?

25 A. Yes.

1 Q. And Ormet Corporation is the parent
2 corporation of Ormet Primary Aluminum Corporation.

3 A. That is also correct.

4 Q. And today you're appearing on behalf of
5 Ormet Corporation as well as Ormet Primary Aluminum
6 Corporation.

7 A. That is correct.

8 Q. Now, Mr. Riley, throughout your testimony
9 when you refer to Ormet, you're using that reference
10 in terms of Ormet Corporation as well as Ormet
11 Primary Aluminum Corporation; is that correct?

12 A. Correct.

13 Q. And, Mr. Riley, there are other entities,
14 are there not, that exist under Ormet Corporation
15 besides Ormet Primary Aluminum, correct?

16 A. That is correct.

17 Q. And could you tell me what those entities
18 are that are under Ormet Corporation?

19 A. There are several shells that exist where
20 there used to be operations but the assets were sold
21 and the corporate entity still exists such as, there
22 was one called Blanks, there was a railroad which --
23 it does actually have an asset, it has about seven
24 miles of track, and there were several other
25 companies that were sold subsequent to my arrival to

1 the corporation.

2 Q. There was a Specialty Banks Holding
3 Company?

4 A. Blanks, yes.

5 Q. And there was Ormet Aluminum Mills
6 Products?

7 A. Correct.

8 Q. And Ormet Primary would be the operating
9 company underneath?

10 A. Ormet Primary is the operating company
11 currently with the sale of the other assets.

12 Q. Now, Mr. Riley, the primary purpose of
13 your testimony is to present the underlying basis for
14 the unique arrangement in this proceeding; is that
15 true?

16 A. That is correct.

17 Q. And the underlying basis of the unique
18 arrangement is based upon your determination of the
19 minimum cash requirements needed by Ormet to stay
20 financially alive; is that correct?

21 A. Yes.

22 Q. Now, in determining the minimum cash
23 requirements associated with keeping Ormet
24 financially alive, are part of those cash
25 requirements related to the salary that you would

1 draw from Ormet?

2 A. Yes, it is.

3 Q. And, Mr. Riley, in determining the
4 minimum cash requirements associated with keeping
5 Ormet financially alive, part of the cash
6 requirements would be related to the salaries of the
7 other executives of Ormet, correct?

8 A. That's correct.

9 Q. Mr. Riley, what is the salary that you
10 currently earn as CFO for Ormet that would be
11 included in the minimum cash requirements calculated
12 under your proposed unique arrangement?

13 MR. VINCE: Your Honor, we object on the
14 basis that this is confidential information. We have
15 provided the aggregate amount of salaries and also
16 testimony the factory represents .5 of 1 percent of
17 the costs.

18 We have been told by the management that
19 this is proprietary information, so our hope was by
20 providing the aggregate amount, that that would
21 satisfy the concerns.

22 EXAMINER PRICE: Ms. Grady.

23 MS. GRADY: Well, your Honor, it would
24 seem to me that if customers are paying in this
25 unique arrangement for the salaries being meted out

1 to the executives of Ormet, that customers would have
2 an interest in knowing what those salaries are.

3 EXAMINER PRICE: I think the specific
4 salaries of specific executives is a limited or of no
5 probative value in this proceeding. The objection is
6 sustained.

7 MR. VINCE: Thank you, your Honor.

8 Q. Mr. Riley, of that minimum cash
9 requirements associated with keeping Ormet
10 financially alive, can you tell me in terms of
11 dollars what the cash requirements are related to the
12 salaries of the executives of Ormet?

13 A. Between 2.3 and 2.4 million, which
14 includes all benefits in addition to salaries.

15 Q. And that, Mr. Riley, is a yearly figure;
16 is it not?

17 A. That is correct.

18 Q. And that would represent three
19 executives, to your knowledge?

20 A. That is correct.

21 Q. Now, Mr. Riley, in determining the
22 minimum cash requirements associated with keeping
23 Ormet financially alive, is part of the cash
24 requirements associated with bonuses that the
25 executives would draw off of Ormet?

1 A. Those were in those numbers.

2 Q. So the 2.4 million would include bonuses
3 for executives.

4 A. If they were so paid, yes.

5 Q. So you are saying that there are bonuses
6 being calculated as part of the cash requirements
7 related to the -- as part of the cash requirements,
8 the minimum cash requirements, that you are
9 calculating for purposes of your unique arrangement.

10 A. On the forecasted basis, yes.

11 Q. And those bonuses would be contained on a
12 yearly basis?

13 A. That's correct.

14 Q. And for the 2009 minimum cash
15 requirement, are there bonuses included in that
16 minimum cash requirement as well?

17 A. Yes, I said it was within the
18 2.3 million.

19 Q. Do you know how much of the 2.3 million
20 represents bonuses paid to executives?

21 A. No, not off the top of my head.

22 Q. Mr. Riley, what were the bonuses included
23 as part of the cash requirements associated with the
24 unique arrangement for 2009?

25 A. I do not know the absolute number. I

1 believe they were based at target bonus.

2 Q. And what would the target bonus have
3 been, if you know?

4 A. A hundred percent of cash comp.

5 Q. Can you explain to me what a hundred
6 percent of cash call is.

7 A. Cash comp.

8 Q. Cash?

9 A. Compensation.

10 Q. Compensation.

11 A. Excluding benefits.

12 Q. So what, in dollars, what does the
13 hundred percent of cash comp. mean in terms of the
14 bonuses?

15 A. I just said I do not recall the number.

16 Q. Is that information that you could
17 obtain?

18 A. It's obtainable.

19 MS. GRADY: Your Honor, OCC would request
20 that the company be ordered to provide to OCC as well
21 as other parties in this proceeding the exact bonuses
22 contained within the minimum cash requirements
23 associated with this unique arrangement.

24 MR. VINCE: Your Honor, we have a
25 continuing objection to that. We have provided the

1 total amount, the aggregate amount.

2 EXAMINER PRICE: This is a discovery
3 matter. Your time for bringing discovery matters to
4 the Bench has come and gone, Ms. Grady. If you
5 needed that in discovery, you should have asked for
6 it. If they didn't respond to it, you should have
7 filed a motion to compel.

8 MS. GRADY: Your Honor, we did receive
9 the discovery responses yesterday.

10 EXAMINER PRICE: When did you make the --
11 when did you make the request?

12 MS. GRADY: Within the appropriate and
13 open discovery time period.

14 MR. VINCE: Your Honor, we objected to
15 the initial request as overbroad and we also
16 mentioned the confidentiality. Ms. O'Grady --

17 EXAMINER PRICE: Ms. Grady, no O.

18 MR. VINCE: I apologize, Counsel.

19 MS. GRADY: That's all right.

20 MR. VINCE: We then contacted Ms. Grady
21 or we were contacted by Ms. Grady the night before
22 last night as we were flying in and we brought that
23 information to the deposition pursuant to an
24 agreement with counsel where we attempted to narrow
25 our discovery differences, and we thought we had

1 succeeded.

2 MS. GRADY: To the extent, just for
3 clarification, counsel for Ormet somewhat misstates
4 in that the discovery we were able to work out had
5 nothing to do with the bonuses and nothing to do with
6 the executive compensation, that was a different
7 matter altogether.

8 MS. HAND: Your Honor, I believe, without
9 having the request in front of me, that it was sent
10 last Friday evening.

11 Is that correct?

12 MR. POULOS: Thursday, I think.

13 MS. HAND: Thursday, in which case we
14 responded within the deadline for responding,
15 seven-day deadline for responding to such discovery.

16 EXAMINER PRICE: Now I'm not sure what
17 the dispute is.

18 MS. GRADY: I don't think there's a
19 dispute. I'm asking for the discovery to be
20 produced. If you wanted to take this as a motion to
21 compel based upon a discovery response we received
22 yesterday, I guess that's what we can make this.

23 I don't believe, your Honor, that it's an
24 inappropriate or late discovery motion to compel
25 because we did receive the response yesterday, in all

1 fairness.

2 EXAMINER PRICE: I'll grant a motion to
3 compel. You'll provide that information to OCC on
4 the next break.

5 MR. VINCE: And --

6 EXAMINER PRICE: However, just remember,
7 I'm not ruling on the admissibility of that
8 information. I'm ruling that it is an appropriate
9 discovery response.

10 MR. VINCE: Thank you, your Honor.

11 EXAMINER PRICE: You might want to take
12 note of my last ruling on specific numbers for
13 specific executives and whether it was of probative
14 value.

15 MS. GRADY: Thank you, your Honor.

16 Q. (By Ms. Grady) Mr. Riley, who are the
17 three executives, by the way? What are the names of
18 those gentlemen?

19 A. Mr. Michael Tanchuk, Mr. Michael Griffin,
20 and myself.

21 Q. Now, Mr. Riley, let's turn to your
22 testimony, and if you forgive me, I'm trying to read
23 through a deposition transcript received at 2:30 a.m.
24 yesterday morning, so if you'll bear with me, I'm
25 trying to get a cite here, I'd appreciate it.

1 EXAMINER PRICE: Ms. Grady, what's the
2 relevance of the 2 a.m.?

3 MS. GRADY: I don't know, your Honor.
4 I'm just mentioning it.

5 EXAMINER PRICE: Let's try to keep things
6 on an even keel here.

7 MS. GRADY: Understood. We are trying to
8 keep it on an even keel.

9 Q. You have a tolling agreement, do you not,
10 with Glencore?

11 A. That is correct.

12 Q. And you're familiar with that tolling
13 agreement, correct?

14 A. Familiar.

15 Q. The tolling agreement extends, does it
16 not, through the end of 2009?

17 A. That is correct.

18 Q. Now, all of Ormet's aluminum production
19 capacity is currently dedicated to the production of
20 aluminum for Glencore under that tolling agreement?

21 A. Substantially all.

22 Q. Would you say 98 percent?

23 A. Or higher.

24 Q. And, Mr. Riley, would you say
25 primarily -- let me strike that.

1 Would you say that the majority of your
2 sales to Glencore last year -- let me strike that.

3 Mr. Riley, would you agree with me that
4 there were significant sales to Glencore during 2008?

5 A. Yes.

6 Q. Somewhere in the neighborhood of
7 \$520 million worth of sales?

8 A. No. I don't know the exact number. The
9 total sales were in the neighborhood of 540,
10 '50 million. Glencore was a significant portion
11 thereof, but I do not know the exact number.

12 Q. And significant portion, would you say
13 98, 99 percent?

14 A. No. No, I don't believe that high.

15 Q. Can you tell me what you mean by
16 "significant portion"?

17 A. Greater than 50 percent.

18 Q. Now, in your testimony you indicate that
19 if Glencore does not continue shipping alumina and
20 purchasing under the tolling agreement, that Ormet's
21 operations will be seriously affected. Do you recall
22 that portion of your testimony?

23 A. Yes, I do.

24 Q. And right now that reference would be
25 page 8, lines 15 through 17. Can you tell me what

1 you mean by "seriously" -- or, "detrimentally
2 affected"?

3 A. It would reduce the amount of cash flow
4 coming in to Ormet.

5 Q. And if Glencore, let's say, provides only
6 three of ten shipments of alumina to you during 2009,
7 how would that affect the operations of Ormet?

8 A. Depends on when they're received.

9 Q. Assuming that the shipments came in
10 relatively equal fashion, how would that affect the
11 operations?

12 A. I believe that that question is more
13 appropriately answered by Mr. Tanchuk, but it would
14 affect the reduction in the operations to something
15 below the full capacity of six lines, as we've said.

16 Q. Would you agree with me that if you
17 received three of the ten shipments of alumina during
18 2009, assuming they were in relatively equal fashion,
19 that you would continue to operate three lines?

20 A. That would be speculation on my part.

21 MS. GRADY: May I approach the witness?

22 EXAMINER PRICE: You may.

23 Q. Do you recall, Mr. Riley, being deposed
24 yesterday?

25 A. Yes.

1 Q. Mr. Riley, I'm going to direct your
2 attention to the deposition transcript at page 16 and
3 I would like you to -- I'm going to read the question
4 and answer into the record and I just -- my question
5 is am I reading it correctly.

6 Question: If Glencore, let's say, only
7 provides three of ten shipments of alumina to you
8 during 2009, how would that affect the operations of
9 Ormet?

10 Answer: Again, I'm not an operator, but
11 assuming they came in a relatively equal fashion, we
12 would continue to operate three lines through the
13 majority of the year.

14 Did I read that correctly?

15 A. I believe you did.

16 Q. Thank you.

17 Now, going to page 2 of your testimony,
18 I'm looking at line 15, and there you testify that
19 the effective rate of the tolling agreement was above
20 the equivalent market rate for aluminum during the
21 fourth quarter of 2008 and continuing into 2009. Do
22 you see that reference?

23 A. Yes, I do.

24 Q. Can you tell me at the period of time
25 that you're referencing what the approximate

1 equivalent market price was?

2 A. It varied through that period. Between
3 the fourth quarter, and I don't remember the exact
4 numbers, it dropped down and hit the bottom I believe
5 in January or February of 2009, and I think it hit
6 the bottom at 1,250 and then has come up to back over
7 \$1,400 per metric ton.

8 Q. So your testimony is that the approximate
9 equivalent market price that you referenced is
10 between 14 and 12?

11 A. No. I said it hit a bottom of 1,250 I
12 believe. Came back up to 1,400. I do not remember
13 what it was in October but overall in the fourth
14 quarter the tolling revenues we received were greater
15 than the market price of the aluminum.

16 Q. Thank you. Now, Mr. Riley, would you
17 agree with me that in a continued decline in aluminum
18 prices or even sustaining the current and the forward
19 current pricing would adversely affect the ability of
20 Ormet to operate profitably?

21 A. Depending on what is agreed to as far as
22 the electric rates. If they're based on the LME,
23 then it could in fact allow it to continue to operate
24 six lines.

25 Q. Would you agree with me that the company

1 may not be able to be profitable after the expiration
2 of the tolling agreement if the current pricing
3 conditions remain in effect?

4 MR. VINCE: Objection; calls for
5 speculation.

6 EXAMINER PRICE: Would you phrase it as a
7 hypothetical, Ms. Grady?

8 MS. GRADY: Yes.

9 EXAMINER PRICE: Try again.

10 Q. Would you agree with me, Mr. Riley that
11 the company may not be able to be profitable if,
12 hypothetically, after the expiration of the tolling
13 agreement the current pricing conditions remain in
14 effect?

15 A. From a hypothetical standpoint, assuming
16 that the electric contract is LME-based, and assuming
17 that that LME-based contract is based on the ability
18 to generate zero free cash flow, the answer is we
19 would continue to operate.

20 Q. Taking out the LME pricing and assuming
21 that we go with the \$38 per megawatt-hour pricing for
22 2009, would you agree with me that the company may
23 not be able to be profitable -- let me strike that.

24 Mr. Reilly, is there a point at which if
25 you're not receiving assistance in electric pricing,

1 that you as a company would determine not to produce?

2 A. If we were not receiving assistance?

3 Yes.

4 Q. Yes.

5 A. Yes.

6 Q. And what is that point? Can you define
7 that point for me?

8 A. That would be at the point, depending if
9 it was perceived to be a long-term or short-term
10 situation under which we would not be able to
11 generate adequate cash flow to continue.

12 Q. Would you agree with me, then, in the
13 long-term you would have to cover at least your
14 variable costs?

15 A. Definitely.

16 Q. So if you're not covering your variable
17 costs in the long-term, then from a business decision
18 that would be the time to not produce.

19 A. It may be earlier than that. But I mean
20 certainly if you're not covering your variable costs.

21 Q. Let's turn to your testimony on page 5,
22 and there on lines 4 through 11 you're talking about
23 the ability -- Ormet's fixed obligations and
24 significant costs that Ormet incurs. Do you see that
25 discussion in general?

1 A. Yes.

2 Q. And you list there the -- or, you talk
3 about on lines 12 and 13 that Ormet has very limited,
4 or actually on lines 4 through 6 that Ormet has
5 limited ability to adjust other costs. Do you see
6 that reference?

7 A. I see the reference to LME fluctuations
8 and adjustments, yes.

9 Q. And you list -- or, in your testimony,
10 and I'm failing to find the spot, you talk about the
11 fact that your costs of production include the cost
12 of alumina, the cost of anodes, and the cost of power
13 and how those are significant determinants of your
14 costs.

15 A. That is correct.

16 Q. Where in your testimony is that?

17 A. Just below what you were reading from
18 before.

19 Q. Are there other costs of production for
20 Ormet besides those ones you list?

21 A. I'm sorry, in the aggregate of everything
22 that's included under that question?

23 Q. Yes.

24 A. Yes, there are other costs, but they pale
25 by comparison from a numbers standpoint.

1 Q. And what would those other costs of
2 production be for Ormet?

3 A. The cost of leased equipment. The cost
4 of environmental control. The insurance. Our
5 insurance is fixed. Interest. Those are the
6 big ones. Then you get into other things that are in
7 the overhead category, audit fees, legal fees,
8 et cetera.

9 Q. Would raw material supplies be a cost as
10 well?

11 A. They're in there. They're in the number
12 relating -- the major raw materials to a smelter are
13 aluminum, which is being supplied currently under a
14 tolling agreement, baked anodes, electricity, are the
15 primary raw materials that go in. There's much
16 smaller ones.

17 Q. When you say "baked anodes," are you
18 talking about carbon anodes?

19 A. Yes, that's correct.

20 Q. You'd agree with me, Mr. Riley, that
21 carbon anode prices are affected by the petroleum
22 coke prices and changes in the market conditions?

23 A. Yes.

24 Q. And in the past half year or so the
25 carbon anode prices have been highly volatile, would

1 you agree with that?

2 A. No, they've actually -- they've been
3 reducing in the last half year.

4 Q. But in the manner they're reducing
5 they've been volatile.

6 A. I'm sorry, I guess I don't understand
7 that.

8 Q. The price has been very static within
9 that market.

10 A. No. They've been reducing.

11 Q. Have there been drastic reductions in --

12 A. Significant, yes.

13 Q. So would you call that volatile?

14 A. No, I wouldn't.

15 Q. How would you define volatile?

16 A. Volatility means to me in the finance
17 field as moving up and down, and they've not been
18 doing that, they have been continually since they hit
19 their peaks dropping.

20 Q. Thank you.

21 Now, Mr. Riley, were you here during the
22 discussion of deposits with Mr. Baker on the record?

23 A. I'm not sure I was here for the whole
24 time.

25 Q. You're familiar, are you not, with the

1 concept of a deposit associated with a unique
2 arrangement?

3 A. I'm familiar with deposits.

4 Q. And are you familiar with the past
5 contract or the past arrangement between AEP and
6 Ormet?

7 A. Yes, I am.

8 Q. And are you familiar with the nature of
9 the deposit that was in place prior to the current
10 proposal?

11 A. I know the amount.

12 Q. And would you agree with me that the
13 initial amount was \$22 million worth of deposit that
14 Ormet was required to pay AEP?

15 A. No. It was the peak amount that we were
16 required. And one could argue that that was not the
17 peak because they had the opportunity when we start
18 up the sixth line to actually increase it and did not
19 as part of our agreement.

20 MS. GRADY: Can I have that answer
21 reread, please?

22 (Record read.)

23 Q. Would you agree with me that the deposits
24 went up to 22 billion with AEP having the opportunity
25 to increase it when they put in the sixth line?

1 MR. RESNIK: Could we have that reread,
2 please?

3 (Record read.)

4 Q. 22 million, although you said billion at
5 the depo.

6 A. I apologize because I certainly didn't
7 have billions.

8 Q. And you're asking for an economic
9 arrangement, are you?

10 A. If we had billions, we would not be here.
11 I apologize. I'm sorry. Please, now I forget the
12 question.

13 Q. Yeah, the question was that the deposits
14 under the prior arrangement went up to 22 million
15 with AEP having the opportunity to increase it when
16 they put in the --

17 A. That is correct.

18 Q. -- the sixth line.

19 A. That is what I said.

20 Q. And that was as recently as July or
21 August of '08.

22 A. That is correct.

23 Q. And under the unique arrangement you're
24 proposing there is no longer a deposit required,
25 correct?

1 A. That is correct.

2 Q. Mr. Riley, are you aware of any smelters
3 within the United States that have contracts with no
4 deposits?

5 A. As I said, I have no knowledge.

6 Q. And are you aware of any smelters within
7 the United States that have contracts where there is
8 no prepayment of the bills?

9 A. I have no knowledge.

10 Q. And just for background, when I say
11 there's no prepayment of the bills, under the
12 proposed unique arrangement that you have put before
13 the Commission you have 21 days to pay your bill; is
14 that correct?

15 A. Standard terms; yes.

16 Q. In the prior arrangement with AEP you had
17 to pay your bill ahead of time twice a month,
18 correct?

19 A. That is also correct.

20 Q. Would you agree with me, Mr. Riley, that
21 while you may compete with companies in the United
22 States, you're never going to be a lower price
23 producer outside the United States, for instance, in
24 relation to Europe and China?

25 MR. VINCE: I'll object to that.

1 A. No.

2 MR. VINCE: I'm sorry, I'll object to the
3 form of that question, it calls for speculation and
4 there's really no foundation for it.

5 EXAMINER PRICE: Sustained.

6 Q. Let's go to your testimony where you talk
7 about competing globally. On the bottom of page 3
8 you say: The proposed Unique Arrangement will
9 provide Ormet the price, terms and conditions of
10 service it needs to continue to compete globally with
11 other aluminum producers.

12 Do you see that?

13 A. Yes, I do.

14 Q. When you're referring to competing
15 globally with other aluminum producers, are you
16 referring to competing with aluminum producers in the
17 United States or are you referring there competing
18 with companies in Europe and China?

19 A. Competing globally.

20 Q. Within Europe and China.

21 A. Yes.

22 Q. Would you agree with me, Mr. Riley, that
23 although you may compete with companies in the United
24 States such as Century's facilities and some Alcoa
25 facilities, that you're not going to ever be a lower

1 price producer in Europe and China?

2 MR. VINCE: Objection, your Honor. No
3 foundation, and highly speculative.

4 EXAMINER PRICE: Sustained. Or you can
5 narrow -- break the question down a little bit.

6 MS. GRADY: Your Honor, I'm really trying
7 here, I mean his testimony --

8 EXAMINER PRICE: I understand that. I
9 understand that.

10 I think you're running into trouble when
11 you use terms like "you will never," which is kind of
12 a sweeping term.

13 MR. VINCE: Thank you, your Honor.

14 MS. GRADY: Your Honor, may I approach
15 the witness?

16 EXAMINER PRICE: You may.

17 Q. (By Ms. Grady) Mr. Riley, I'm going to
18 show you the deposition transcript from yesterday and
19 I'm going to read the question and answer, and my
20 question to you is did I read it correctly.

21 Here I go. Question: I was wondering
22 who you were --

23 A. Where are you?

24 Q. I'm sorry, down here. Line 24.

25 I was wondering who you were referring to

1 there as the other aluminum producers who you would
2 be able to compete -- it says "complete" but
3 that's --

4 Answer: Companies in the United States
5 such as Century's facilities, some of Alcoa's
6 facilities, heading into people with higher prices,
7 we're not going to ever be a lower price producer in
8 Europe and China.

9 Did I read that correctly?

10 A. You read it correctly.

11 Q. Thank you.

12 Now, on page 4, lines 3 through 4 you
13 talk about the proposed unique arrangement to help
14 Ormet bridge a potentially turbulent economic
15 situation over the next few years. Do you see that
16 reference?

17 A. Yes.

18 Q. And when you use the "turbulent economic
19 situation," are you referring to the LME price?

20 A. Basic economics, which includes the LME.

21 Q. Is it your understanding that the
22 turbulent economic situation will continue over the
23 next few years?

24 A. It's my belief that it will continue
25 longer than the next three months.

1 Q. The potential exists for it to continue
2 over the next few years; is that correct?

3 A. That's my personal belief.

4 Q. And when you say over the next few years,
5 are you defining that as a short-term issue or a
6 long-term issue?

7 A. The answer is the next few years could be
8 three years, could be as much as seven or eight
9 years, could be two years.

10 Q. On page 5 of your testimony you indicate
11 there are legacy cash costs that are included in the
12 cash cost that Ormet must provide for in order to
13 keep the facilities in operation. Do you see that?

14 A. I do.

15 Q. Just to put this in context, those legacy
16 costs would be included in the cash costs that go
17 into your calculations of the minimum cash
18 required --

19 A. That is correct.

20 Q. -- under this unique arrangement.

21 A. That is correct.

22 Q. By legacy costs there you mean historical
23 costs that the company cannot get out from under?

24 A. Historical obligations that the company
25 is funding in the future.

1 Q. And those historical obligations would
2 relate to Ormet Corporation as well as Ormet Aluminum
3 Primary?

4 A. Yes.

5 Q. So there are other legacy costs, are
6 there not, Mr. Riley, that could extend beyond the
7 Ormet aluminum smelting facilities that would be
8 picked up under the minimum cash costs being funded
9 under the unique arrangement?

10 A. Small numbers, yes.

11 Q. And one --

12 A. For example, the 28.9 in pension
13 calculation this year, 300,000 is associated with
14 operations that were sold.

15 Q. Do you know how much of the
16 51.6 million --

17 A. No.

18 Q. -- in 2010 would be related --

19 A. I do not know that.

20 Q. But there were legacy costs associated
21 with the Burnside facility?

22 A. Burnside is part of the Primary Aluminum
23 Company.

24 Q. And Burnside facility is idled, it was
25 idled in 2007?

1 A. It is idle, correct.

2 Q. And included within the legacy costs,
3 Mr. Riley, are there VEBA contributions that are not
4 fixed or not mandatory?

5 A. Yes. Well --

6 Q. And in fact --

7 A. I apologize. The word "mandatory." They
8 are under our labor agreement. So they are
9 contractual obligations.

10 Q. Perhaps we're not connecting here. I
11 believe that you testified yesterday that there are
12 some VEBA contributions that are not -- that are
13 voluntary contributions and not fixed costs, to the
14 salary, VEBA salary contributions.

15 A. VEBA salary is not a contractual
16 obligation, that's correct.

17 Q. And those VEBA salary contributions would
18 be included in the minimum cash requirements
19 calculated under the unique arrangement proposal.

20 A. That is correct.

21 Q. And in fact, with respect to the
22 voluntary VEBA contributions, the company can
23 terminate those monthly contributions, can it not, at
24 any time?

25 A. That's the board's decision.

1 Q. Now, Mr. Riley, you talk -- and forgive
2 me for not knowing the reference -- about the labor
3 contract in the collective bargaining agreement.
4 I've got lines 10 through 11, but for the life of me
5 I don't know what page that is. Do you recall that
6 in your testimony?

7 A. Ten through 11.

8 MR. RESNIK: Maureen, 5.

9 THE WITNESS: I'm sorry, I need more
10 clarification.

11 Q. Page 5.

12 A. Page 5.

13 Q. Do you see the reference to the
14 collective bargaining contract?

15 A. Yes. I'm sorry, yes.

16 Q. Was that a copy of the collective
17 bargaining contract that you provided to us
18 yesterday?

19 A. Yes, it was.

20 Q. Now, that collective bargaining agreement
21 expires December 31st, 2009?

22 A. That is correct.

23 Q. So would you be negotiating, currently
24 negotiating for the next year's contract at this
25 point in time?

1 A. We'll start later in the year.

2 Q. So toward the end of this year you'll
3 have a better feel for what minimum cash requirements
4 would be associated with that labor contract and be
5 included in the unique arrangement proposed?

6 A. That would be our intent.

7 Q. Can you tell me the legacy costs that we
8 referred to on page 5, line 15, those include CERCLA
9 costs, environmental liability?

10 A. Not in the costs that are listed here.

11 Q. But they are legacy costs that would be
12 included?

13 A. They are legacy costs that are relatively
14 small.

15 Q. And they would be included in the cash
16 costs that would be -- go into your calculations
17 for --

18 A. Yes.

19 Q. Now, on page 6, lines 12 through 14, you
20 indicate there that the proposed unique arrangement
21 is designed only to assure that Ormet has a minimum
22 cash flow necessary to keep the Hannibal facilities
23 in operation and to allow Ormet to survive
24 financially. Do you see that reference?

25 A. Yes, I do.

1 Q. And you are the one, are you not, that
2 determines how much cash Ormet needs to survive
3 financially; correct?

4 A. I will be the sponsor of that
5 information, yes.

6 Q. And have you provided a formula for
7 determining how much minimum cash flow is necessary
8 to keep the Hannibal facilities in operation and
9 incorporated that into the contract?

10 A. We said it was zero.

11 Q. Perhaps you misunderstood my question.
12 The formula or methodology that you used to determine
13 the minimum cash flow necessary under this unique
14 arrangement, is that contained within the confines of
15 the contract that you're proposing for approval
16 before the Commission?

17 A. My other answer still stands.

18 Q. And I guess I didn't understand your
19 answer, then.

20 A. The projection would be that -- what we
21 came up with for October would include the number for
22 the electricity that would be required to allow us to
23 make zero free cash flow assuming that the LME were
24 at a level below the ability to generate above that.

25 Q. Let me try it again.

1 Is the formula to determine what the
2 minimum cash requirements that are needed for Ormet
3 to keep Hannibal facilities in operation contained in
4 the contract that you are proposing that the
5 Commission approve in this proceeding?

6 A. I guess I'd have to sit down and look at
7 the contract again, and proposal. I think it says
8 it's zero free cash flow.

9 Q. Would you like to take some time, perhaps
10 over lunch to peruse the contract and see if you can
11 find that for me?

12 A. I would be pleased to.

13 MS. GRADY: Your Honor, if now would be
14 an appropriate time, we could take a break, but if it
15 is your pleasure, we can move on.

16 EXAMINER PRICE: Mr. Kurtz, approximately
17 how much cross do you have?

18 MR. KURTZ: I would say 20 minutes.

19 EXAMINER PRICE: Ms. McAlister?

20 MS. McALISTER: About the same, your
21 Honor.

22 EXAMINER PRICE: Mr. White?

23 MR. WHITE: I don't have any cross.

24 EXAMINER PRICE: Mr. Resnik?

25 MR. RESNIK: (Shakes head.)

1 EXAMINER PRICE: Let's forge on and
2 finish this witness.

3 MS. GRADY: Your Honor, may I approach
4 the witness?

5 EXAMINER PRICE: You may.

6 Q. (By Ms. Grady) Mr. Riley, I'm going to
7 hand you the amended application filed in this
8 proceeding and ask you to find in that application,
9 and I'll also hand you the original in case that
10 helps, ask you to find where in that contract the
11 formula for determining the minimum cash requirements
12 of Ormet can be found.

13 Believe it's in item 9.

14 EXAMINER PRICE: Nine?

15 THE WITNESS: Whatever it is, point 9.

16 MS. GRADY: What we're looking at is the
17 amended application filed April 10th, 2009, and it
18 would appear to be not the contract itself, but part
19 of the application. Is that what you're saying?

20 A. Whatever this is.

21 Q. Okay. Did you find it as well in the
22 contract?

23 A. I just looked at what you gave me.

24 Q. So can you show me exactly how, in this
25 paragraph 9, the minimum cash requirements are

1 calculated?

2 A. It explains their rate will ensure that
3 Ormet has enough cash to run its day-to-day
4 operations in 2009 and pursue refinancing for the
5 subsequent years of 2010 through '18 Ormet's rates
6 will be determined on schedules filed each with the
7 Commission.

8 Each schedule we file no later than
9 October 1st for the year prior to which the subject
10 rate will be in effect and which set forth the
11 indexed rate and the target rate. The indexed rate
12 would be the rate schedule in dollars per megawatt
13 that Ormet could pay that would produce the minimum
14 cash flow necessary to sustain operation and pay its
15 required legacy pension costs depending on the LME
16 price of aluminum.

17 Q. Okay. Would you agree with me,
18 Mr. Riley, that that paragraph that you referenced,
19 although it does say "Minimum cash flow," does not
20 contain any formula or any methodology used to
21 determine how you calculate minimum cash flow?

22 A. I believe that does explain it.

23 Q. Is it understood how you calculated
24 minimum cash flow? Could someone read this and
25 determine that when you reference minimum cash flow,

1 you must decide it by a certain formula?

2 A. When you say "formula," are we hunting
3 for an algorithm? This is the cash required to be
4 based on generation and usage to pay the bills and
5 come down to zero. That's what that says to me.

6 Q. Would you agree with me that how you
7 determine the minimum cash requirements associated
8 with Ormet could be a subject of discussion among
9 different parties?

10 A. I would hope that it wouldn't, and the
11 reason that I felt comfortable is we've allowed for
12 an independent evaluation to be done to review it and
13 determine if it's prudent.

14 Q. So are you suggesting that the minimum
15 cash flow study that -- or, the minimum cash flow
16 analysis that you do, though it's not defined in the
17 contract, it's fine as long as we have a third party
18 independent evaluator looking at it?

19 A. I believe that it is defined. I also
20 believe that the third party, alls it will be doing
21 is an attestation because it will be done right.

22 Q. Okay. Let's talk about the third-party
23 independent evaluation. Under the contract is it
24 your understanding that if the third-party
25 independent evaluator makes a determination that the

1 schedule that you submit is inappropriate, what
2 happens?

3 MR. McNAMEE: Objection, your Honor.
4 Speculative and calls for a legal conclusion.

5 EXAMINER PRICE: Let's have the question
6 back again.

7 (Record read.)

8 EXAMINER PRICE: I'll allow this
9 question.

10 A. My specification would be is that the two
11 parties would meet to try to agree, if they couldn't
12 agree, it would be handed to the PUCO to make a final
13 determination.

14 Q. When you say "two parties," what two
15 parties are you talking about?

16 A. The company and this independent person
17 that's doing the audit.

18 EXAMINER PRICE: Are you saying the
19 Commission would then resolve the dispute by setting
20 the proper indexed rate?

21 THE WITNESS: Yes, sir.

22 Q. So if the Commission sets a different --
23 let me ask you this, is it your understanding of the
24 contract that the Commission can set a different
25 index rate prior to 2016?

1 A. I'm not an attorney, I -- I just said
2 what I believed would happen if the two parties would
3 agree as I was requested to answer.

4 MS. GRADY: May I approach the witness,
5 your Honor?

6 MR. McNAMEE: You may.

7 Q. Now, Mr. Riley, and I don't want to read
8 over your shoulder but my eyesight's not that good,
9 I'm going to direct your attention to 5.02 and we've
10 been talking about an independent third-party review.
11 Is that the portion of the contract that, if you
12 understand it, refers to the independent third-party
13 review that we've been discussing?

14 A. I'll have to look at it. Let me look at
15 it for a second.

16 Yes.

17 Q. Mr. Riley, is it your understanding --
18 let me strike that.

19 Is it your understanding that under that
20 provision of the contract, if the independent
21 third-party reviews the schedule, that if the
22 proposed schedule is not satisfactory, that the
23 existing schedules remain in effect until a new
24 schedule is approved?

25 A. Yes.

1 Q. And then on Commission approval the new
2 schedule goes into effect retroactively to the
3 proposed effective date of the schedule?

4 A. I believe that's correct.

5 Q. Are you familiar with the provisions of
6 the contract that speak to the Commission not being
7 able to modify or change the terms of the unique
8 arrangement until 2016?

9 A. Am I familiar with it? Yes, I've read
10 it.

11 Q. Would it be your understanding that that
12 provision doesn't apply to the Commission changing or
13 taking a position on the inappropriateness of filing
14 a schedule?

15 MR. VINCE: I'll object to the form of
16 the question and also that the document speaks for
17 itself.

18 EXAMINER PRICE: Can I have the question
19 back again?

20 (Record read.)

21 EXAMINER PRICE: She asked for his
22 understanding, overruled.

23 A. That's my understanding.

24 Q. So your understanding would be that the
25 Commission could determine the schedule is

1 inappropriate and then could modify the unique
2 arrangement before 2016.

3 A. I don't believe that's what it said.

4 Q. Can you explain to me then --

5 A. The unique arrangement to me is the
6 period 2010 through 2018, that there would be a rate
7 established with an index rate based on -- within
8 that horizon of the agreement they could, if there
9 was a disagreement between the auditor and the
10 company on what that number is, certainly within the
11 boundaries of the agreement they could determine a
12 different rate to be used or a different schedule.

13 Q. Now, is it your understanding that in
14 October of each year of the arrangement that the
15 schedule -- a schedule would be -- or, would be
16 submitted to the Commission that would contain the
17 upcoming year's target price and --

18 A. There were two years originally submitted
19 with it. And if it was changing, it would be --
20 there would be a new one updated.

21 Q. And you would assume it would be
22 changing, would you not, based upon the LME price of
23 aluminum?

24 A. My expectations is that everything will
25 be moving. Those are indicative of what we believe

1 will be there at the time.

2 Q. Now, is it your assumption, Mr. Riley,
3 that the annual plan that is provided to the
4 Commission would only be provided to an independent
5 third-party auditor as opposed to individual parties
6 or intervenors?

7 A. Yes.

8 Q. And that is because it is -- you would
9 consider it in the nature of proprietary information?

10 A. Absolutely.

11 Q. To the extent that individual parties or
12 intervenors were willing to sign a protective
13 agreement, would that alleviate the concerns you
14 would have on the proprietariness of the information?

15 A. In a normal case I would say yes, it
16 depends on where the tolling arrangements are,
17 et cetera.

18 Q. Well, if there's no tolling arrangement
19 in place come 2010 --

20 A. Assuming a normal operation, the answer
21 is yes. It's primarily driven -- we are a public
22 company but not full compliant SEC reporting because
23 of shareholders.

24 If we were to give a forecast out to the
25 public domain, we would have to publish that forecast

1 to the whole world, and that, in my opinion, is not a
2 prudent thing to do.

3 Q. Now, the independent third party auditor
4 under the contract, that third party auditor would be
5 funded by the company, isn't that your proposal?

6 A. That is correct.

7 Q. And wouldn't the cost of that independent
8 third party be one of the costs or the minimum cash
9 flow -- one of the cash costs under your cash-flow
10 study?

11 A. As I said, I have not thought about it,
12 but the answer is yes, it's a total cash cost.

13 Q. Would depreciation be in the cash flow?

14 A. No. It's added back.

15 Q. Because it's not -- it's considered a
16 noncash item.

17 A. It's a noncash expense.

18 Q. Now, Mr. Riley, your analysis of the
19 minimum cash flow needed for Hannibal to financially
20 operate -- or, for the smelting facilities at
21 Hannibal to operate, that -- let me strike that.

22 The minimum cash flow that you calculate
23 for Hannibal smelting facilities, Ormet's Hannibal
24 smelting facilities to continue to operate would
25 produce for the Commission estimated costs related to

1 all aspects of Ormet; is that correct?

2 A. Yes, it would.

3 Q. And so when you came in with your filing
4 that would be subject to a third party auditor, the
5 auditor would be looking at projected expenses of
6 Ormet; is that correct?

7 A. Projected and historical.

8 Q. And under the proposed unique arrangement
9 here there would be no trueup of actual expenses to
10 the estimated expenses that went into setting the
11 market or setting the price under the unique
12 arrangement.

13 A. No trueup up or down.

14 MS. GRADY: Your Honor, if I could have
15 five minutes, I might be able to just quickly check
16 through my notes and determine if that's it.

17 EXAMINER PRICE: Go off the record until
18 12:45.

19 MS. GRADY: Thank you.

20 (Recess taken.)

21 EXAMINER PRICE: Let's go back on the
22 record.

23 MS. GRADY: Mr. Riley, I just have a
24 couple more questions. We were talking before about
25 the minimum cash calculation under the unique

1 arrangement, and we talked about the fact that the
2 analysis is based solely on estimates. Do you recall
3 that line of questioning?

4 A. Yes.

5 Q. Now, in that minimum cash calculation we
6 would be looking at expected revenues and expected
7 production costs?

8 A. That's correct.

9 Q. And based upon those expected revenues
10 and expected production costs you would then
11 calculate the cash flow generated?

12 A. In addition to non-P&L items such as the
13 pension costs, et cetera.

14 Q. And then that, in turn, would drive the
15 rate that Ormet would pay for electricity; is that
16 correct?

17 A. No. That would determine if the free
18 cash flow, which is an accounting term, if it were
19 above zero and could pay the full GS-4 tariff beyond,
20 as we said in there, there would be a premium and two
21 levels of premium off of that based on where the LME
22 was.

23 If there was below, that there would be a
24 deficit, shall we say, at the full GS-4 tariff, then
25 there would be a reduction to the rate to allow the

1 free cash flow to remain at zero.

2 Q. So the results of your minimum cash-flow
3 calculation would then determine the rate that Ormet
4 would pay for electricity under the unique
5 arrangement.

6 A. That is correct.

7 MS. GRADY: That's all the questions I
8 have, thank you, Mr. Riley.

9 EXAMINER PRICE: I have a question.

10 THE WITNESS: Yes, sir.

11 EXAMINER PRICE: I think I know the
12 answer to this, but let's say hypothetically in 2011
13 aluminum prices are down and so you get a discounted
14 electric rate, in 2012 same situation, the delta
15 revenue is \$50 million over the course of those two
16 years. In that third year aluminum prices go up, in
17 2013. There's no paying back by Ormet the delta
18 revenue except to the extent that you might pay --

19 THE WITNESS: The premium.

20 EXAMINER PRICE: -- the 105 percent of
21 the --

22 THE WITNESS: That's correct, sir.

23 EXAMINER PRICE: Thank you.

24 Mr. Kurtz.

25 MR. KURTZ: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Kurtz:

Q. Good afternoon, Mr. Riley.

A. Yes, sir.

Q. Would you turn to schedule A, page 1 of Ormet Exhibit 8, which is the April 10, 2009, amended application?

A. Someone's going to have to provide that. I do not have it.

Schedule A?

Q. Yes.

A. I have it.

Q. Page 16?

A. Correct.

Q. Just by way of background so I understand. This calculation is based upon the AEP tariff rates in effect as of February 1st, 2009, of \$38.43 per megawatt-hour?

A. That is correct.

Q. And the gist of this document, Exhibit -- I believe, is if the AEP tariff rate was 38.43 and if you actually sold your aluminum in 2010 for the target price of 27.25, you would be in equilibrium in the sense that you would have the zero free cash flow and there would be no delta revenue.

1 A. Could you please repeat that?

2 Q. If the AEP tariff rate was 38.43 --

3 A. Oh, I'm sorry.

4 Q. -- and you sold your aluminum for the
5 target price, you'd be in that zero cash flow
6 position.

7 A. That is correct.

8 Q. And there would be no delta revenue.

9 A. No delta revenue.

10 Q. Would be sort of an equilibrium.

11 A. Yes.

12 Q. Footnote 2 to this schedule says that if
13 the tariff rate is modified prior to 2010, the
14 schedule shall be modified as follows. And you're
15 aware that in April, late-April the Commission issued
16 the ESP order raising the rates.

17 A. Yes, I am familiar with that.

18 Q. Now, OEG Exhibit 1 identifies, well, OEG
19 Exhibit 1 is AEP's calculation of delta revenue in
20 2009 using the ESP rates for Ormet. Do you remember
21 that?

22 A. Yes.

23 Q. Okay. The company shows, for the last
24 seven months of 2009 Ormet would pay 44.24 under the
25 new revised tariffs.

1 A. I don't recall, but --

2 Q. Okay. Well, go ahead and assume that.

3 A. Uh-huh.

4 Q. And under footnote 2 the rate has been
5 revised and you've got a formula here to calculate a
6 new target price. Will you go through that formula
7 under the new revised tariff price of \$44.24 per
8 megawatt-hour and let us know what the new target is?

9 A. The 44.24 would be equivalent to TR
10 subscript 1. The TR subscript zero would be the
11 38.43. You would take those two, the delta, divide
12 it by .049 and add to the original target price of
13 27.25.

14 Q. 44.24 minus 38.43 equals \$5.81 a
15 megawatt-hour.

16 A. Sounds correct.

17 Q. Okay. Then I divide by .049?

18 A. Uh-huh.

19 Q. Okay. That yields 118.57, so we would
20 add that to the target price of 27.25?

21 A. Right.

22 Q. That would yield a new target price of
23 28.43. Is that correct?

24 A. Correct.

25 Q. Do you want to check the math, please?

1 A. I don't have a -- it sounds approximately
2 correct.

3 Q. Okay. So now we have a new LME target
4 price of 28.43. So if in 2010 you actually sold your
5 aluminum for 28.43, you would be in a break-even
6 equilibrium position as well because the electricity
7 price went up, you have to sell your aluminum for
8 more --

9 A. That's what this is -- yes.

10 Q. Is that right?

11 A. That's correct.

12 Q. And you're familiar with the LME pricing.

13 A. I see it every day. I wouldn't say I'm
14 familiar with it.

15 Q. Let me ask you if you can identify this
16 exhibit that Ms. McAlister was kind enough to let me
17 borrow, which is the London Metal Exchange. Are you
18 familiar with that type of report?

19 A. I've seen them, yes. Not this one in
20 specific.

21 MR. KURTZ: Can we have this marked, your
22 Honor, as, to make it easier, OEG No. 6.

23 EXAMINER PRICE: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. Now, I'd like for you to, Mr. Riley, to

1 assume that metal prices stay low and you sell below
2 the target price, and we can use sort of any number
3 of these prices on LME, but do you have a preference
4 as to which do you think would be the most accurate
5 for purposes of what you might sell in 2010?

6 A. None of the above.

7 Q. None of the above.

8 A. Not even close.

9 Q. Well, let's use, for hypothetical
10 purposes, the LME forward price, 15 months forward
11 which would take us into 2010, wouldn't it?

12 A. Uh-huh.

13 Q. Okay. Of \$1,602 per ton.

14 A. Okay.

15 Q. Will you walk through the -- so now we're
16 in a situation where you actually sell, we'll assume
17 hypothetically, for \$1,602 a ton which is less than
18 the new target of 28.43, so now you're going to get a
19 discount from the tariff; is that how that would
20 work?

21 A. That's correct.

22 Q. Will you calculate what the rate Ormet
23 would pay using the new target and using, for this
24 example, \$1,602 per ton as the amount you actually
25 sell for?

1 A. In your hypothetical example you would
2 take the new number, which I don't remember exactly
3 what you said it was calculated, subtract the 1,602,
4 and for every one dollar difference you would
5 subtract .049 from the tariff rate.

6 Q. Well, wouldn't we do it this way,
7 wouldn't we take the new target rate of 28.43 minus
8 the actual LME price assumed to be 1,602, we would
9 get \$1,241 a ton, and then multiply that by the 0.49.

10 A. That's what I said.

11 Q. Okay, times 0.49 equals \$60.08 per
12 megawatt-hour; is that correct?

13 A. I believe your mathematics is correct.

14 Q. So then we would take \$60.80 per
15 megawatt-hour and subtract it -- excuse me, back up.

16 We would take the new AEP tariff rate,
17 44.24, minus \$60.80 a megawatt-hour to get the rate
18 you would pay; is that correct?

19 A. That's how the mathematics work.

20 Q. So that would result in a negative
21 number.

22 A. That's correct.

23 Q. Okay. And the negative number would be
24 \$16.56 per megawatt-hour negative; is that correct.

25 A. I believe that's correct.

1 Q. So that would mean that you would -- that
2 Ormet -- because the tariff rate has gone up so much
3 and in this assumption the metal price is so low, you
4 would not simply pay zero for electricity, you would
5 actually get a credit on your bill for the
6 electricity?

7 A. That is how it's drafted, yes.

8 Q. Is that correct?

9 EXAMINER PRICE: You would get a credit?

10 THE WITNESS: That's how it's submitted,
11 yes.

12 Q. So \$16.56 times your usage of
13 6 million -- excuse me, 4,659,444 megawatt-hours,
14 that is your usage, right, at --

15 A. Approximately.

16 Q. Okay. That would yield a negative
17 77 million, 77,160,392; is that correct?

18 A. I don't have a calculator. I would
19 assume you did it correctly.

20 Q. So the delta revenue would be the \$44.24
21 you didn't pay times your usage, which is
22 \$206.1 million, plus the negative of \$77.1 million.

23 A. The answer to the question that you're
24 asking at these hypothetically low levels, and
25 assuming they stay there which could be the demise of

1 the entire aluminum industry, is the way this
2 agreement is written that once cumulatively there's
3 more than a 50 percent, the Commission has the
4 ability to come back here and reopen. So you'd never
5 get to that point.

6 Q. Well, the Commission may reexamine, but
7 they're not required to.

8 A. That is correct.

9 Q. Okay.

10 A. It's the Commission's discretion.

11 Q. But in this first year we would then have
12 a delta revenue of 206.1 million plus 77.1 million,
13 we would have a delta revenue of \$283 million,
14 approximately.

15 THE WITNESS: Your Honor, I'm not sitting
16 here with a calculator.

17 Q. 77 million plus 206 million.

18 A. It's significant, I will agree with you.

19 Q. Would you agree with the math of
20 206 million plus 77 million is --

21 A. It sounds right.

22 Q. Okay. This is just the way the
23 mathematics would work. So you would get a credit on
24 your bill, AEP would pay you to use the electricity
25 essentially?

1 MR. VINCE: Objection as to the form of
2 the question. My understanding is this is a
3 hypothetical; is that correct?

4 MR. KURTZ: Yes.

5 EXAMINER PRICE: Yes.

6 MR. KURTZ: Hypothetical based upon AEP's
7 actual tariff rates.

8 MR. VINCE: It's being phrased as though
9 it's a correct statement and I want to make sure it's
10 a hypothetical.

11 Q. (By Mr. Kurtz) Hypothetically, if AEP's
12 tariff rate is \$44.24 and if the aluminum price that
13 you sell for is \$1,602 per ton, and the Commission
14 doesn't modify the contract, then you would get a
15 credit on your bill for using electricity.

16 A. I assume that's the way it will work. I
17 have no idea how that would work at this point.

18 EXAMINER PRICE: That's your
19 understanding of the way the contract has been
20 submitted to the Commission.

21 THE WITNESS: As submitted, yes, sir.

22 Q. In your deposition yesterday you provided
23 to OCC counsel a forecast of 2010 revenues and
24 expenses, the backup workpaper for this schedule A,
25 page 1.

1 A. What it was was the forecast of the costs
2 and then backed into what the LME number would be to
3 get the zero free cash flow with the 38.43 power.

4 Q. Could I ask you some questions about it?

5 A. Certainly.

6 MR. KURTZ: Your Honor, I guess I would
7 have this marked as OEG No. 7.

8 EXAMINER PRICE: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. And there are some handwritten notes
11 which is OCC's counsel which I would ask you to
12 ignore.

13 MS. GRADY: Actually those are not my
14 notes.

15 THE WITNESS: Those are my notes.

16 MR. KURTZ: I'm sorry; don't ignore them.

17 THE WITNESS: But if OCC counsel
18 understands and accepts those as her notes, that's
19 fine.

20 MS. GRADY: Believe me, I would not make
21 notes on that schedule. I don't like schedules.

22 MR. RESNIK: Mike, are there copies
23 coming around?

24 EXAMINER PRICE: Are there more copies?

25 MR. RESNIK: It didn't seem to get over

1 to this end.

2 EXAMINER PRICE: We're going to have to
3 ask Ormet's counsel to give up a couple.

4 MS. GRADY: Who needs one?

5 MR. RESNIK: Matt and I do.

6 EXAMINER PRICE: Thank you.

7 Q. (By Mr. Kurtz) Now, this is a financial
8 forecast for 2010, correct?

9 A. Correct.

10 Q. And this is the calculation that if the
11 tariff rate was at 38.43, which was schedule A, page
12 1, right?

13 A. Right.

14 Q. Okay. Then in order to have the
15 break-even cash flow, the equilibrium, you would
16 actually need to sell your metal for \$2,725 a ton
17 which then is the target price.

18 A. That is correct.

19 Q. Okay. The net sales, the very first
20 line, what is that?

21 A. That is the sales of aluminum during the
22 period, there's some miscellaneous but then that's
23 the requirements of it.

24 Q. So it's the number of tons sold times
25 2,725?

1 A. Basically, yes.

2 Q. Is that right? So this is assuming you
3 get \$551,156,000 from the sale of aluminum; is that
4 right?

5 A. That's correct.

6 Q. And divided by 2,725 tons, excuse me,
7 divided by \$2,725 per ton would yield
8 202,259,000 tons of production?

9 A. No. The assumption in here is that we're
10 tolling. So it's assuming you're getting your
11 alumina, it's a reduction. The 2,725 is the LME.

12 We are subtracting off of that a market
13 value of alumina and so that the tolling rate is then
14 determined, and what you just calculated was the
15 tolling rate that was an imputed number.

16 Q. Help me out. The net sales is the number
17 of tons sold times --

18 A. The tolling rate.

19 Q. Times the --

20 A. Imputed. The 2,725, because that was the
21 index number we could get something in the public
22 domain, and when you toll, somebody's bringing you
23 the aluminum. So it's not in your cost. So what we
24 did is we subtracted out to come up with these
25 numbers the value, and I believe it was 13 percent of

1 the LME plus \$21 in freight and the consumption that
2 we use of approximately 1.93 tons of alumina to make
3 tons of aluminum. In doing that, that then
4 calculates the amount that you would receive in
5 revenues.

6 Q. Because you actually produced more tons
7 than what my division --

8 A. No; it's because you're not dividing by
9 2,725, you're dividing by a lower number because,
10 again, alumina is in that number.

11 Q. Mr. Tanchuk gave the production at all
12 six potlines at a number significantly higher than
13 what my math came up with and that's because of
14 this --

15 A. Alumina. It's approximately 263,000, I
16 believe, or --

17 Q. Right.

18 A. -- somewhere approximately around there.

19 Q. That's full --

20 A. That's full capacity. This is six lines
21 running full.

22 Q. Okay. A couple questions on this
23 exhibit, then. The page 2, the balance sheet.

24 A. Yes.

25 Q. Shareholder equity is negative.

1 A. Yes.

2 Q. Does that mean technically that Ormet is
3 insolvent?

4 A. No.

5 Q. No, okay.

6 A. The definition of solvency is the ability
7 to pay the bills over the next 12 months.

8 Q. Is there more than one?

9 A. That's an accounting definition.

10 MR. RESNIK: Could we go off the record
11 for a minute?

12 EXAMINER PRICE: Yes.

13 (Discussion off the record.)

14 EXAMINER PRICE: Let's go back on the
15 record.

16 Q. Mr. Riley, page 3 of 4 of this exhibit,
17 you've got in the middle of the page you're adding or
18 you're subtracting from cash flow an item called All
19 Other Operating 48.085 million for the year.

20 A. Yes.

21 Q. What is that?

22 A. Majority of that is off the balance sheet
23 and it's dealing with pension expense, it's dealing
24 with VEBA expense for the majority of those numbers.

25 Q. Those are the legacy costs, the majority?

1 A. Yes, sir.

2 Q. Who makes the decision whether you
3 capitalize or expense particular items?

4 A. I'm responsible for the accounting
5 decisions.

6 Q. And if you expense it, would it be
7 included as a cash cost item for the year?

8 A. Well, in the free cash-flow calculation
9 it is in fact CAPEX. That's by definition free cash
10 flow. So whether I expense it or capitalize it it
11 will make no difference.

12 Q. I see. That's page 3 in the middle
13 there.

14 A. Correct.

15 Q. You add the CAPEX, okay.

16 MR. KURTZ: Thank you, Mr. Riley.

17 Thank you, your Honor.

18 EXAMINER PRICE: Thank you.

19 Ms. McAlister.

20 MS. McALISTER: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Ms. McAlister:

24 Q. Good afternoon, Mr. Riley.

25 A. Good afternoon.

1 Q. My name is Lisa McAlister and I'm here on
2 behalf of Industrial Energy Users-Ohio. I'd like to
3 follow up on a discussion that you had with Ms. Grady
4 about the tolling agreement because I'm not sure I
5 understood what it is you said.

6 A. Okay.

7 Q. I thought you said that either 2 percent
8 or about 50 percent of the production is not
9 committed to Glencore.

10 A. It's approximately 1.5 percent, I
11 believe, at the end. And it's off-grade material
12 that we then sell to others.

13 Q. And the purpose of your testimony is to
14 explain Ormet's current financial situation; is that
15 right?

16 A. That is correct.

17 Q. That's what I'd like to focus on. Page 2
18 of your testimony you state that Ormet's highly
19 leveraged, right?

20 A. That's correct.

21 Q. What's Ormet's current cash on hand?

22 A. Cash on hand is very small. Less than 2
23 or 3 million dollars because our accounts are swept
24 on a daily basis and they pay out down a revolving
25 credit facility.

1 Q. And does Ormet have any available credit
2 that isn't already being drawn on?

3 A. Yes. Depending on a daily basis, there's
4 20, 25 million dollars.

5 Q. Okay. At page 3 of your testimony you
6 state that the Commission approval of the proposed
7 agreement will contribute to keeping the Hannibal
8 facility operating, correct?

9 A. Yes.

10 Q. But there are several other things that
11 are unrelated to the energy costs that are critical
12 and must be -- must happen in order for the Hannibal
13 facility to keep operating, right?

14 A. That's correct.

15 Q. We talked about a number of them already.

16 A. Yes.

17 MS. McALISTER: Your Honor, may I
18 approach?

19 EXAMINER PRICE: You may.

20 MS. McALISTER: I'd like to have marked
21 as IEU-Ohio Exhibit 1 an information and disclosure
22 statement for the fiscal year and ended December
23 31st, 2008.

24 EXAMINER PRICE: So marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. Mr. Riley, are you familiar with this
2 document?

3 A. Yes, ma'am.

4 Q. And, in fact, you signed it, didn't you?

5 A. That is correct.

6 Q. And the SEC rule that's listed on the
7 front of the document, that governs the publication
8 of quotations for securities that are traded and a
9 quotation medium that's other than the National
10 Securities Exchange or the NASDAQ; is that right?

11 A. That's correct.

12 Q. What exchange does Ormet trade on?

13 A. What they call Pinks. It's an
14 over-the-counter exchange.

15 Q. And over-the-counter? And if you know,
16 what was the 52-week high for Ormet stock?

17 A. I think probably \$8.

18 Q. Do you know what the 52-week low was?

19 A. Probably where it's been recently, 20
20 cents.

21 Q. I'd like you to turn to page 39 of
22 Exhibit A to the IEU-Ohio Exhibit 1 which I'm going
23 to call it the information and disclosure statement,
24 if that's okay with you.

25 A. I'm sorry, okay. I thought I had to go

1 somewhere else.

2 MR. RESNIK: Twenty-nine?

3 MS. McALISTER: Thirty-nine of Exhibit A.
4 If it helps, it's the second-to-last page.

5 A. Yes.

6 Q. There I'd like to direct your attention
7 to the last sentence of the first paragraph in note
8 21 which is titled Management's Plans.

9 It states "Should the market price of
10 aluminum not significantly increase by the end of
11 2009 third quarter, it's probable that the company
12 would not be able to operate profitably in 2010."

13 Have I read that correctly?

14 A. Yes.

15 Q. And now I'd actually like to direct your
16 attention to what has been marked as OEG Exhibit 6
17 which is the LME exchange.

18 A. Uh-huh.

19 Q. What does the chart there indicate that
20 the cash settlement price on April 24th, 2009, was?

21 A. \$1,416.

22 Q. And what does it indicate that the
23 forward price of aluminum in three months is?

24 A. \$1,454.

25 Q. Now I'm going to turn you back to

1 IEU-Ohio Exhibit 1, the same page, 39, of Exhibit A.

2 A. Right.

3 Q. And there at the bottom there's a list of
4 main assumptions for Ormet's plans for 2009 and '10,
5 right?

6 A. Uh-huh.

7 Q. I'd like to go through those with you by
8 starting with the last paragraph on the following
9 page, page 40, and there it states that to provide
10 sufficient liquidity Ormet needs to have a successful
11 implementation of those plans listed on the previous
12 page and lower raw material pricing, right?

13 A. Correct.

14 Q. Okay. Now, first on the tolling
15 agreement, that's the first thing that you have
16 listed there.

17 A. Yes.

18 Q. You state on page 3 of your testimony
19 that Ormet's currently involved in the litigation
20 with Glencore; is that correct?

21 A. That's correct.

22 Q. We've already talked a bit about that.
23 And Glencore is the exclusive provider of alumina to
24 Ormet; is that correct?

25 A. Currently, yes.

1 Q. And you were here when Mr. Tanchuk said
2 that depending on the level of production, Ormet
3 could stretch the alumina through either June or
4 August of this year, at which point Ormet would have
5 to shut down, right?

6 A. I believe he said that the alumina we
7 had, that could take us through that period of time
8 without some other intervention.

9 Q. Now, the second item that's on the list
10 is negotiation of a new tolling agreement similar to
11 the current agreement for 2010, right?

12 A. Uh-huh.

13 Q. And isn't it true that under the current
14 tolling agreement the selling price of aluminum to
15 Glencore is above the equivalent market price for
16 aluminum?

17 A. Yes, we've said that.

18 Q. I'm sorry?

19 A. We've said that, yes.

20 Q. Yes. And what's the current price at
21 which Ormet's selling aluminum to Glencore under the
22 tolling agreement?

23 A. That is confidential information.

24 MR. VINCE: Objection.

25 EXAMINER PRICE: We'll still accept the

1 answer.

2 Q. Okay. Now let's assume hypothetically
3 that the LME curves remain consistent with those that
4 are in OEG Exhibit 6. Is it likely that a buyer or
5 any buyer would enter into a tolling agreement that's
6 similar to the current agreement?

7 A. In your hypothetical example? No.

8 Q. Because it wouldn't be profitable; is
9 that right?

10 A. No.

11 Q. Okay. I want to skip to No. 4 on the
12 list which is the closure of the sale of the marine
13 terminal in Burnside.

14 A. Correct.

15 Q. Where does that currently stand?

16 A. We have a letter of intent and they're
17 going through their due diligence.

18 Q. And the property and equipment has a net
19 book value of just over 3 million; is that right?

20 A. Correct.

21 Q. Isn't it true that in 2008 Ormet had an
22 operating loss of approximately 11.4 million?

23 A. In '08?

24 Q. Yes.

25 A. The overall it was 5 million net income.

1 I don't remember the operating income level, exactly
2 what the number is.

3 Q. I'll point you to page 3 of Exhibit A
4 that I believe you have in front of you.

5 A. We had an operating income of 11 million.

6 Q. Okay.

7 A. Not a loss.

8 Q. Okay. And in 2007 Ormet had to sell real
9 property at the Hannibal rolling mill at a loss of
10 about \$237,000; is that right?

11 A. Yes.

12 MS. McALISTER: I have no further
13 questions, your Honor.

14 Thank you, Mr. Riley.

15 EXAMINER PRICE: Mr. White?

16 MR. WHITE: I have no questions.

17 EXAMINER PRICE: Mr. Resnik?

18 MR. RESNIK: No questions.

19 EXAMINER PRICE: Redirect?

20 MR. VINCE: Thank you, your Honor.

21 - - -

22 REDIRECT EXAMINATION

23 By Mr. Vince:

24 Q. Mr. Riley, you stated -- you were asked
25 questions regarding OEG Exhibit No. 6; is that

1 correct?

2 A. I've got to figure which one that is.

3 Q. Exhibit No. 6 is a projection of LME
4 prices.

5 A. Thank you.

6 Q. Do you believe -- what is your perception
7 of the accuracy of those projections?

8 A. I believe they're, as I said, not
9 correct.

10 Q. Please explain.

11 A. In July of last year these numbers would
12 have been in the 32 to 3,400-dollar range with a
13 contango, which means they were going up so that we
14 would have been looking at prices in 2010 in the 35,
15 3,600-dollar range.

16 We have Mr. Tanchuk that received from
17 Harbor a forecast for 2010 that their most recent, in
18 April, which had come up from the March forecast,
19 which demonstrated numbers not quite to the 2725, but
20 in I believe they were 2620 on a weighted average
21 basis.

22 EXAMINER PRICE: Mr. Riley, I'm sorry, I
23 just want to clarify what this is. Your counsel
24 referred to this as a projection. Is this a
25 projection or is this a report of futures contract

1 prices?

2 THE WITNESS: It's a report of futures
3 contract prices today.

4 EXAMINER PRICE: And you agree that this
5 is an accurate reflection.

6 THE WITNESS: I believe that's what the
7 market is doing today.

8 EXAMINER PRICE: On April 24, 2009.

9 THE WITNESS: On that date specifically,
10 yes.

11 EXAMINER PRICE: But just to clarify,
12 these are not projections, these are actually traded
13 futures contracts.

14 THE WITNESS: They are being quoted. I
15 cannot say in each one of these they're being traded
16 at these prices. I don't know that anybody's
17 actually contracting at those levels.

18 EXAMINER PRICE: Okay. Thank you.

19 Thank you.

20 MR. VINCE: Thank you, your Honor.

21 Q. (By Mr. Vince) And you were stating what
22 you felt would a more accurate projection -- what
23 would be an accurate projection?

24 A. The current forecast, I believe it's
25 going to come up, as I said the market price dropped

1 so precipitously on the LME that it forced, as
2 Mr. Tanchuk testified, a significant amount of the
3 world production, selling at prices below their cash
4 costs.

5 To that end operations are shutting down
6 or, you know, temporary idling, significant ones
7 including our sister, former sister operation over in
8 West Virginia, it's completely idle at this time.
9 But that's happened around the world. Significant
10 reductions in China.

11 I believe that, hopefully the stimuli
12 packages around the world are going to take effect
13 and that we'll see a turnaround. Because of this
14 deep V I think that Harbor's forecast for next year,
15 which is really a consolidation of a number of
16 analysts and their own thought process on top of it,
17 is going to be more accurate than this and it could,
18 in fact, be back to where we saw numbers only seven,
19 eight months ago.

20 Q. You're referring to a Harbor report now?

21 A. Yes.

22 MR. VINCE: Your Honor, can we have this
23 marked as an exhibit for identification?

24 EXAMINER PRICE: You may. Where are we
25 at? Ormet 9? Is that correct?

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Showing the witness Ormet Exhibit 9 for
3 identification. Is that the report you have just
4 referred to, sir?

5 A. That is correct.

6 Q. And can you explain your understanding of
7 that report?

8 MR. RESNIK: Could we just wait a second
9 until we get the exhibit?

10 MR. McNAMEE: What was the number?

11 EXAMINER PRICE: Nine.

12 MR. McNAMEE: Nine.

13 MR. RESNIK: Thanks.

14 Q. Is this the authority that you mentioned
15 that you would consult?

16 A. This is the referenced report, yes.

17 Q. And do you consult this type of resource
18 regularly in your course of responsibility with Ormet
19 as chief financial officer?

20 MS. GRADY: Objection.

21 EXAMINER PRICE: Grounds?

22 MS. GRADY: Form.

23 EXAMINER PRICE: Can you specify what you
24 mean?

25 MS. GRADY: It's leading.

1 EXAMINER PRICE: Overruled.

2 A. The management team gets the reports that
3 we look at in trying to determine future steps and
4 actions for the company to take on a routine basis.

5 Q. And do you believe this is a reliable
6 report?

7 A. I believe it is more reliable than what
8 the forward contract index is in the LME, and the
9 reason why is the LME is a commodity exchange market
10 and it is truly that. And it will depend on how many
11 people are investing in the LME.

12 There actually is index funds to invest
13 in. And when they're investing more, you'll see the
14 prices go up. When they back out, you'll see them
15 come down.

16 This is looking at a number of analysts
17 and looking at the drivers that affect the price of
18 commodities and with aluminum specifically. And I
19 think that they've hit it pretty right from a
20 standpoint that the biggest thing that's keeping
21 aluminum from rebounding like other commodities is
22 purely the fact if the inventory had continued to
23 grow, their expectation was is that in May, it was
24 going to cross over, we would no longer be -- the
25 demand would exceed the supply.

1 Demand actually started increasing I
2 believe early this year, small, but still increasing
3 over where it had been on consumption. So I think it
4 is more indicative, whether the timing's exactly
5 right, again, who knows, but I think given the fact
6 that people cannot continue to operate and lose cash
7 cost, it's going to have to change.

8 EXAMINER PRICE: Mr. Riley --

9 THE WITNESS: Yes, sir.

10 EXAMINER PRICE: -- based on the concerns
11 about the LME that you've just expressed, why does
12 the contract rely upon the LME to set the target for
13 the target price?

14 THE WITNESS: It's the only thing that's
15 published, purely published where anybody can go out
16 and see the number.

17 EXAMINER PRICE: Okay. Thank you.

18 THE WITNESS: And I think in the
19 short-term, your Honor, it is indicative if you look
20 at the 30, 60 days. I think longer term if you
21 watch, it's moved \$130 in the last 30 days, and the
22 whole curve has moved \$130 which I don't believe is
23 accurate to what the market's really doing.

24 Q. (By Mr. Vince) Thank you. And you were
25 shown OEG Exhibit No. 7. Do you have a copy of that?

1 A. I'm sorry, which exhibit was it?

2 Q. OEG Exhibit No. 7.

3 A. Ah, yes. I'm sorry, I just don't have
4 numbers on mine.

5 Q. Okay. Are you familiar with this
6 document?

7 A. Yes.

8 Q. Can you explain what it is?

9 A. It was the forecast that we used in
10 developing what it would take from an LME price to
11 put into our application to break even on a free
12 cash-flow basis at \$38.43 electricity given the
13 assumptions that we had on anodes, labor, et cetera.

14 Q. What's your understanding of the term
15 "free cash-flow basis"?

16 A. Free cash flow is a financial term and
17 it's basically operating cash flow minus CAPEX.

18 Q. What's your understanding of the term
19 "minimal cash flow"?

20 A. We define minimum cash flow as zero. You
21 have to pay your bills.

22 Q. Coming back to OEG Exhibit No. 7, was
23 this prepared under your direction?

24 A. OEG No. 7.

25 Q. This is the --

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A. This?

Q. -- chart we've been referring to.

A. This was prepared -- yes.

Q. And are the contents true and accurate to the best of your knowledge?

A. Best knowledge that I have.

MR. VINCE: Thank you. Your Honor, we will seek to have this moved into evidence, I just need your guidance as to when you want us to do it.

EXAMINER PRICE: At the end of this witness.

MR. VINCE: Beg your pardon?

EXAMINER PRICE: At the end of this witness.

MS. GRADY: That's OEG Exhibit No. 7 you're moving into evidence?

MR. VINCE: Yes.

EXAMINER PRICE: Sounds like everyone's going to be willing to stipulate the admission of OEG 7.

Q. (By Mr. Vince) Sir, you agreed with Mr. Kurtz that the Commission could but would not be required to review the contract if a 50 percent threshold were met?

A. That is correct.

1 Q. And can we show you section 2.03 of the
2 contract. Would you read that provision, please?

3 A. Section 2.02 notwithstanding, the Parties
4 agree the Commission may, upon petition -- I'm sorry
5 on my Latin -- sua sponte, require modification of
6 this Power Agreement upon a finding that the rates
7 produced under the Power Agreement are no longer just
8 and reasonable.

9 Q. You can stop there.

10 Is it your understanding that any party
11 can also petition the Commission to review the
12 contract if a 50 percent threshold is met?

13 A. I don't know.

14 Q. Okay. Thank you.

15 Sir, within the constraints of
16 limitations on your ability to discuss the Glencore
17 tolling agreement, can you explain how you calculated
18 the differentials between \$34 and \$38 in your
19 testimony?

20 A. I think that is reflected in the -- what
21 was done between the 38 and the 34 was Mr. Tanchuk
22 and United Steel Workers discussed, assuming this is
23 a temporary idle, what could we do to be break-even
24 on cash.

25 In other words, there would be no

1 increased cash of going in the analysis that was
2 done, go down a couple lines, versus keeping the
3 people employed.

4 And assuming on that basis we went down,
5 it covered approximately half of what the additional
6 or what the labor costs would be for the personnel
7 because we were under our contract, we had benefits
8 that would continue to accrue, we had subpay,
9 et cetera, so it was about approximately 50 percent
10 of what the labor cost of retaining those people
11 would be.

12 We then calculated that into a cost per
13 kilowatt-hour assuming we were operating at the lower
14 rate to cover the cash flow.

15 MR. VINCE: Thank you, that concludes my
16 examination, your Honor.

17 EXAMINER PRICE: Thank you.

18 Recross, Ms. Grady?

19 MS. GRADY: Thank you, your Honor.

20 - - -

21 REXCROSS-EXAMINATION

22 By Ms. Grady:

23 Q. Mr. Riley, you were directed by your
24 counsel to section 2.03 of the contract which at
25 least the first portion of that, and you read into

1 the record what the first portion of that is, and
2 essentially you were saying that you read that to say
3 that parties as well as the Commission can modify --
4 can upon petition modify the power agreement. Is
5 that a --

6 A. I did not say that.

7 Q. Well, can you explain to me what 2.03 is
8 in your understanding?

9 A. As I said, I'm not an expert in Latin but
10 I thought it was the Commission could modify it, but
11 I'm not the expert. I'm not a legal expert.

12 Q. Is it your understanding that the
13 modification analysis you testified to can analysis
14 be done -- or, can only be done no earlier than
15 January 2016 under the second analysis third sentence
16 of that section you were directed to?

17 A. Reading this in isolation, this
18 addresses, to me, not the ability of the Commission
19 to modify a rate that we would submit, but deals with
20 modification of the entire agreement.

21 Q. But is it your understanding that 2.03
22 speaks to the rates produced under analysis
23 agreement?

24 A. I don't know.

25 Q. Does analysis 2.02 say "Section 2.02

1 notwithstanding, the Parties agree that the
2 Commission may, upon petition or sua sponte, require
3 modification of this Power Agreement upon finding
4 that the rates produced under this Power Agreement
5 are no longer just and reasonable"?

6 A. That's what it says.

7 Q. And my question, then, is it your
8 understanding as you further read section 2.03 that
9 that modification -- that modification can only be
10 effective no sooner than January 1st, 2016, unless
11 the discount exceeds 50 percent?

12 A. To my understanding was to do a major
13 modification of the agreement it couldn't be done
14 before January 1st of 2016 or that the reduction to
15 the tariff rate exceed 50 percent on a cumulative
16 basis.

17 Q. And is it also a provision -- is it your
18 understanding as part of that section 2.03 that even
19 if analysis Commission determines that, upon a
20 finding that the rates produced under the power
21 agreement are no longer just and reasonable, that a
22 new rate that would be formulated by the Commission
23 could not go into effect until the later of the
24 beginning of the next calendar year or 120 days?

25 A. Yes.

1 MS. GRADY: That's all the questions I
2 have, your Honor.

3 EXAMINER PRICE: Thank you.

4 Mr. Kurtz?

5 MR. KURTZ: No questions, your Honor.

6 EXAMINER PRICE: Ms. McAlister.

7 MS. McALISTER: Thank you, your Honor.

8 - - -

9 RE-CROSS-EXAMINATION

10 By Ms. McAlister:

11 Q. Mr. Riley, having just received Ormet
12 No. 9 I'm trying to understand it and hopefully you
13 can help. On page 1 which is the summary page it
14 says that the "Consensus expects prices to average
15 around 1,737 per ton in the fourth quarter of 2009
16 while its '10 prices forecast increased in April to
17 2,490." Is that correct?

18 A. That's what it said, yes.

19 Q. If I followed Mr. Kurtz's math correctly,
20 and yours, you said that under the AEP rate of 3843
21 per megawatt hour the zero cash flow point would have
22 you selling at 2735; is that right?

23 A. That's correct.

24 Q. And Mr. Kurtz I think adjusted the AEP
25 rate and came up with 2843 as the zero cash flow

1 point; is that right?

2 A. I believe that's correct.

3 Q. To the best of your recollection. So
4 even under these updated forecasts it doesn't look
5 like we would hit the zero cash-flow point; is that
6 correct?

7 A. No. It's much closer than today's.

8 Q. Then if we could turn to page 15 of that
9 same exhibit --

10 A. Uh-huh.

11 Q. -- Ormet No. 9, it's titled Aluminum LME
12 cash annual price forecasts by analysts, and I'm
13 looking almost at the bottom where it says Harbor's
14 realistic for 2009, it has listed 1656. 2010 it has
15 2700. 2011 it has 2800. And then 2012 it goes back
16 down to 2700. So under the math that we just talked
17 about the only point that we would be at the zero
18 cash-flow or above actually would be 2011.

19 A. If you assume those numbers, yes.

20 MS. McALISTER: I have no further
21 questions, your Honor.

22 - - -

23 EXAMINATION

24 By Examiner Price:

25 Q. Staying with that page, page 15, you're

1 stating that you believe Harbor to be authoritative
2 and something the Commission should rely upon; is
3 that correct?

4 A. I think it's more indicative, yes.

5 Q. Okay. So then you would agree that that
6 30 percent chance, that there is a 30 percent chance
7 that their downside price projections of 1415 for
8 '09, 2300 for '10, 2100 for '11, and 2000 for '12 is
9 accurate.

10 A. I believe at this point in time that
11 their downside, which I used more weighted, I used
12 the 10 percent, the 30 and the 60, but they also say
13 to you on the first page, say to all of us, that they
14 had significantly increased between March and April.

15 Q. Right.

16 A. And what I am saying is I think this is
17 more indicative than the LME numbers people are
18 looking at, but again, LME's the only thing that's
19 published in the public domain. This is all
20 proprietary priced information.

21 I believe that we will see this continue
22 to move up as the supply-demand curve adjusts, and
23 it's not unreasonable given what we've seen in the
24 past that -- and what's happening in some of the
25 BRICK countries, Brazil, Russia, and China,

1 specifically China, that we could in fact see a
2 significant bump up at some point in the LME.

3 EXAMINER PRICE: Thank you.

4 Mr. White?

5 MR. WHITE: No questions, your Honor.

6 EXAMINER PRICE: Mr. Resnik.

7 MR. RESNIK: No thank you.

8 EXAMINER PRICE: I have one more
9 question, I think.

10 - - -

11 EXAMINATION (continued)

12 By Examiner Price:

13 Q. Have you looked at OEG's objections --

14 A. Yes.

15 Q. -- they previously filed?

16 A. Yes.

17 Q. Are you familiar with their proposal that
18 a floor be presented of I think it's -- the fuel
19 adjustment clause for AEP which is I think 24 or 28
20 dollars is the minimum price you would pay?

21 A. I'm familiar in general, but not
22 specifically as far as what the numbers are with
23 that.

24 Q. Is that number, 24 or 28, whatever number
25 it is, is that consistent with what your

1 understanding of the aluminum prices would be in
2 2010?

3 I guess what I'm asking is if you paid
4 the 28 or 24, would you be near or at the breakeven
5 point on cash flow?

6 A. I would have to calculate, your Honor. I
7 mean, depending on, again, if the LME is closer to
8 the numbers that Harbor's saying, probably wouldn't
9 even be that low.

10 EXAMINER PRICE: Thank you. You're
11 excused.

12 (Witness excused.)

13 EXAMINER PRICE: Before we break for
14 lunch let's take up the question of the admission of
15 OEG 7 that I think everybody has indicated that they
16 were going to move -- well, let me restate that,
17 Ormet indicated they're going to move to admit it and
18 the other parties didn't rely upon the
19 cross-examination.

20 MR. KURTZ: Your Honor, we move to admit
21 OEG 6 and 7.

22 EXAMINER PRICE: Let's take them one at a
23 time. OEG 7, any objections to the admission of OEG
24 7?

25 Hearing none, that will be admitted.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER PRICE: OEG 6, any objections?

3 MR. VINCE: Yes, we object to the
4 admission of OEG 6 because the witness has stated
5 that in his opinion it's not an accurate indicator of
6 LME prices going forward which was the purpose for
7 which it was used with reference to hypothetical
8 questions. There is no other witness to authenticate
9 this --

10 EXAMINER PRICE: Mr. Kurtz, go ahead.

11 MR. KURTZ: Your Honor, the fact that the
12 witness thinks that one forecast, a forecast is more
13 accurate than the actual forward prices is his
14 opinion.

15 It goes to the weight of the evidence,
16 not to the admissibility of OEG 6, which are the
17 actual LME forward prices consistent with this
18 contract structure.

19 EXAMINER PRICE: He certainly
20 authenticated the document. He didn't dispute its
21 accuracy, he just didn't like the result, so we're
22 going to admit OEG 6.

23 (EXHIBIT ADMITTED INTO EVIDENCE.)

24 EXAMINER PRICE: Ms. McAlister.

25 MS. McALISTER: Your Honor, I'd like to

1 move for the admission of IEU-Ohio Exhibit 1.

2 EXAMINER PRICE: Any objections? IEU 1?

3 MR. BONNER: Is that the Rule 15c2-11
4 report?

5 EXAMINER PRICE: Yes.

6 MR. VINCE: No objection.

7 EXAMINER PRICE: That will be admitted.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER PRICE: And we'll take up the
10 Ormet exhibits all at the end of their witnesses.

11 MS. GRADY: I'm sorry, at the end of the
12 witnesses?

13 EXAMINER PRICE: At the end of the
14 witnesses.

15 MS. GRADY: At the end of Ormet's
16 witnesses?

17 EXAMINER PRICE: Yes.

18 MS. GRADY: Thank you.

19 EXAMINER PRICE: I suppose this is past
20 an opportune time to break for lunch --

21 MR. VINCE: Excuse me, your Honor, was
22 the Harbor report, is that what you'll take up --

23 EXAMINER PRICE: Yes, we'll take up along
24 with the testimony.

25 Why don't we return in one hour at 2:45.

1 Thank you all.

2 (At 1:45 p.m. a lunch recess was taken
3 until 2:45 p.m.)

4 - - -

5 Thursday Afternoon Session,
6 April 30, 2009.

7 - - -

8 EXAMINER PRICE: Let's go back on the
9 record.

10 There is one outstanding motion that I
11 took under advisement. OCC had filed and made a
12 motion to compel discovery with respect to a number
13 of information related to the basis for the \$38 and
14 the \$34 numbers. We're going to go ahead and deny
15 the motion to compel discovery and enter a protective
16 order pursuant to Rule 4901-1-24 ordering that
17 discovery not be had of that matter.

18 MR. VINCE: Thank you, your Honor.

19 Your Honor, on that subject, I don't know
20 if this is helpful to the parties, but I will just
21 mention it. We have spoken during the lunch break
22 with the law firm that's handling the Glencore
23 lawsuit and we have received permission, if it's
24 beneficial at all, to put Mr. Riley on the stand
25 tomorrow morning to answer questions as to how, what

1 the data points are that he used in calculating his
2 number.

3 He will not be able to disclose
4 confidentiality portions such as what the amount is,
5 but he analysis explain, subject to cross, what the
6 data points are.

7 It would take him tonight to assemble
8 that information, if it is beneficial.

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

10 (Discussion off the record.)

11 EXAMINER PRICE: Let's go back on the
12 record.

13 Thank you for your offer, but I believe
14 the parties have indicated that will not be necessary
15 at this time and we'll simply take the record as it
16 stands on this issue. Thank you for your offer.

17 MR. VINCE: Thank you, your Honor.

18 EXAMINER PRICE: Our next witness.

19 MR. BONNER: Ormet calls Dr. Paul Coomes.

20 MS. GRADY: Your Honor, I'm sorry,
21 Mr. Poulos is the one who will be cross-examining
22 Mr. Coomes. It's not my responsibility nor am I
23 prepared to cross-examine Mr. Coomes, so I would ask
24 the Bench's indulgence while we retrieve Mr. Poulos
25 from the deposition of Mr. Ibrahim.

1 EXAMINER PRICE: Okay. Luckily it's just
2 next door.

3 MS. GRADY: Excuse me for interrupting.

4 EXAMINER PRICE: Okay. I'll swear you in
5 anyways.

6 (Witness sworn.)

7 EXAMINER PRICE: Please be seated. State
8 your name and business address for the record.

9 THE WITNESS: I'm Paul Coomes,
10 C-o-o-m-e-s. And my address is 3604 Trail Ridge
11 Road, Louisville, Kentucky 40241.

12 EXAMINER PRICE: Please proceed.

13 MR. BONNER: Thank your Honor.

14 - - -

15 PAUL COOMES

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

18 DIRECT EXAMINATION

19 By Mr. Bonner:

20 Q. Please state how you're employed, sir.

21 A. My day job is as a university professor,
22 professor of economics at the University of
23 Louisville.

24 Q. You're on the faculty at the University
25 of Louisville?

1 A. I am.

2 MR. BONNER: Your Honor, I'm going to be
3 handing Dr. Coomes a copy of his prefiled direct
4 testimony marked Ormet 2 with Exhibits Ormet 3
5 through 5.

6 EXAMINER PRICE: Thank you.

7 (EXHIBITS MARKED FOR IDENTIFICATION.)

8 MR. BARNOWSKI: Your Honor.

9 EXAMINER PRICE: Yes.

10 MR. BARNOWSKI: I apologize, we have a
11 procedural matter that we need to, I don't think it
12 will take more than three minutes, but what's
13 happened --

14 EXAMINER PRICE: If Dr. Coomes will just
15 wait one minute, we'll go ahead and deal with this
16 procedural issue.

17 MR. BARNOWSKI: What happened is if you
18 remember, there was a debate about when their expert
19 was going to be deposed. They couldn't provide him
20 Tuesday, I can't remember why, they wouldn't provide
21 him yesterday, the agreement was they would provide
22 him today at noon.

23 They have just stopped his
24 cross-examination and won't let us continue because
25 they say they both need to be in here for this

1 cross-examination. It's 3 o'clock the day before
2 he's supposed to take the stand. I need to finish
3 his deposition. Might I ask that you order them to
4 put the witness back on.

5 EXAMINER PRICE: I thought we had this
6 all worked out.

7 MR. BARNOWSKI: I thought we did too,
8 your Honor.

9 EXAMINER PRICE: Ms. Grady, Mr. Poulos, I
10 thought the arrangement was that your witness would
11 go on at noon and would continue until they were
12 completed.

13 MS. GRADY: Well, your Honor --

14 EXAMINER PRICE: What has happened that
15 has caused this to no longer work?

16 MS. GRADY: Well, your Honor, Mr. Ibrahim
17 is Mr. Poulos's witness, he is vastly more familiar
18 with Mr. Ibrahim's testimony than I. It is his role
19 to defend Mr. Ibrahim.

20 If Mr. Coomes would go on and off which
21 should be very short as far as we understand, then
22 the deposition analysis continue. We never
23 anticipated that we would have to switch off counsel
24 in the midst of deposition. That was never our
25 understanding. We have been going strong on the

1 deposition for three hours now, your Honor.

2 EXAMINER PRICE: And depositions
3 frequently go a long time. How long was the total
4 deposition time of Ormet's witnesses yesterday?

5 MS. GRADY: Your Honor, there were four
6 Ormet witnesses.

7 EXAMINER PRICE: That was not the
8 question I asked, Ms. Grady. I said what was the
9 total Ormet deposition time yesterday?

10 MS. GRADY: We began at 9, your Honor.

11 EXAMINER PRICE: And concluded at what
12 time?

13 MS. GRADY: It was completed at
14 approximately 5:30, with a half hour lunch with
15 several breaks during the day, approximately
16 two-and-a-half hours for each witness.

17 EXAMINER PRICE: This is in the same
18 general ballpark, we're at three hours as opposed to
19 two-and-a-half. Your obligation is to continue with
20 the deposition.

21 Whether or not you have any questions for
22 this witness, this was the arrangement we made. You
23 were offered the opportunity to do simultaneous
24 depositions on Wednesday and you refused to do that.
25 You were offered the opportunity to do depositions on

1 Tuesday, you declined to do that. It was clear when
2 we discussed this that they were going to go until
3 they were completed.

4 How much longer do you have,
5 approximately?

6 MR. BARNOWSKI: I would say approximately
7 an hour, your Honor.

8 MS. GRADY: Your Honor, it would just be
9 our suggestion that Mr. Poulos finish up with
10 Mr. Coomes, which should be very shortly, and then
11 Mr. Poulos -- and we continue on with Mr. Ibrahim's
12 testimony. What would happen, your Honor, is that
13 Mr. Poulos will be done with Mr. Coomes, then
14 Mr. Fayne will come on and Ms. Grady will have to be
15 pulled over here.

16 EXAMINER PRICE: Whose witness is
17 Mr. Fayne?

18 MS. GRADY: That is my witness, your
19 Honor.

20 EXAMINER PRICE: Well then let's go ahead
21 and take Mr. Fayne now and Mr. Poulos analysis return
22 to the deposition.

23 Is that going to pose a travel problem
24 for you, Dr. Coomes?

25 THE WITNESS: I'm here to serve.

1 EXAMINER PRICE: Thank you.

2 MS. GRADY: I appreciate that, your
3 Honor.

4 MR. POULOS: Thank you, your Honor.

5 EXAMINER PRICE: And the next time let's
6 discuss this while we're off the record and not
7 result in an unnecessary confrontation.

8 MR. POULOS: Thank you, your Honor.

9 MR. BARNOWSKI: Thank you, your Honor.

10 EXAMINER PRICE: Thank you.

11 Thank you, Dr. Coomes, for your patience.

12 Mr. Fayne.

13 (Witness sworn.)

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

16 THE WITNESS: My name is Henry Fayne. My
17 business address is 1980 Hillside Drive, Columbus,
18 Ohio 43221.

19 EXAMINER PRICE: Thank you.

20 Please proceed.

21 - - -

22 HENRY FAYNE

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

25 DIRECT EXAMINATION

1 By Mr. Vince:

2 Q. Mr. Fayne, what is your status with
3 reference to Ormet Corporation?

4 A. I am a consultant to Ormet.

5 Q. And I'm going to hand you a copy of your
6 prefiled direct testimony in this case which was
7 marked for purposes of identification as Ormet ORM 6.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Now, Mr. Fayne, is this a copy of the
10 direct written testimony that you caused to be filed
11 with the Public Utility Commission of Ohio?

12 A. Yes, it is.

13 Q. And did you prepare the testimony?

14 A. Yes, I did.

15 Q. Do you have any corrections?

16 A. No, I don't.

17 Q. Are the representations contained in the
18 testimony true and correct to the best of your
19 knowledge?

20 A. Yes, they are.

21 MR. VINCE: Your Honor, we now make
22 Mr. Fayne available for questions.

23 EXAMINER PRICE: Thank you.

24 Ms. Grady.

25 MS. GRADY: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Grady:

Q. Good afternoon, Mr. Fayne.

A. Good afternoon.

Q. Mr. Fayne, you indicate on your testimony on page 1 that you worked for AEP; is that correct?

A. Correct.

Q. And when you worked for AEP, Mr. Fayne, you were responsible for negotiating contractual arrangements between AEP and Ormet, were you not?

A. Yes, I was.

Q. And when I said that you had responsibility for negotiations between AEP and Ormet, would it be correct to say that you were the senior executive at AEP that was responsible for reaching closure on the contractual arrangements?

A. That would be fair, yes.

Q. Now, when you were with AEP as well, Mr. Fayne, you also had responsibility or indirect responsibility for other economic development or special arrangements contracts, did you not?

A. For some, yes.

Q. And you would have had responsibilities for economic development contracts including the

1 Ravenswood plant which is now Century Aluminum; is
2 that correct?

3 A. There was no economic development rate
4 for Ravenswood Aluminum.

5 Q. You were responsible, nonetheless, for
6 negotiating a contract between AEP and Ravenswood?

7 A. There were some moderate contract
8 amendments, yes.

9 Q. Now, on page 2 of your testimony you
10 indicate there that Ormet Primary Corporation has
11 retained you to facilitate contract negotiations. Do
12 you see that reference?

13 A. Yes, I do.

14 Q. And were you retained by Ormet Primary
15 Aluminum Corporation or was it Ormet Corporation?

16 A. Quite frankly, I am not sure I know which
17 it was.

18 Q. Now, on page 2 of your testimony, lines
19 17 through 22, you indicate there that the proposed
20 unique arrangement is intended to set a price for
21 electricity that Ormet analysis afford to pay that
22 would produce the minimum cash flow necessary. Do
23 you see that reference?

24 A. Yes, I do.

25 Q. And are you talking there about Ormet

1 Aluminum or Ormet Corporation?

2 A. This is related to Ormet Primary
3 aluminum, I believe.

4 Q. Now, the analysis of determining what the
5 minimum cash flow was necessary to sustain operations
6 and pay pensions cost, that was the analysis that
7 Mr. Riley did; is that correct?

8 A. That is correct.

9 Q. And it's safe to assume that you didn't
10 take part in that analysis, correct?

11 A. That is correct.

12 Q. And neither are you familiar with the
13 analysis.

14 A. I did not see the specific analysis. I'm
15 familiar with the general approach.

16 Q. And for purposes of your testimony you
17 merely accepted the analysis.

18 A. Absolutely.

19 Q. Now, on page 2 of your testimony at the
20 very bottom you state that in simple terms, and
21 you're talking about the unique arrangement, that
22 it's designed to avert a shutdown and the resulting
23 loss of jobs and severe economic penalty. Do you see
24 that reference?

25 A. I do.

1 Q. There you're referring, are you not, to
2 the impacts described in Dr. Coomes' report?

3 A. I am.

4 Q. And for purposes of the testimony you've
5 merely accepted the economic impact calculated by
6 Dr. Coomes?

7 A. I probably wouldn't use the word
8 "merely," but yes.

9 Q. And you've not done any independent
10 analysis; is that correct?

11 A. I have not.

12 Q. And the term "severe economic penalty,"
13 is that your term or Mr. Coomes' term?

14 A. It is my characterization of the impact
15 that Dr. Coomes described.

16 Q. Let's go to page 3 of your testimony,
17 we're at page 3, lines 18 to 19, you indicate on
18 those lines that the target price will be set
19 annually and submitted to the Commission. Do you see
20 that?

21 A. I do.

22 Q. When you used the term "submitted to the
23 Commission," what do you mean?

24 A. It would be submitted to the Commission.
25 I'm not sure how to describe that. My assumption is,

1 is that Ormet would file the schedule with the
2 Commission.

3 Whether the Commission treated it as an
4 administrative proceeding or whether they opened a
5 docket and had a hearing, I don't know those details.

6 Q. So when you say "file with the
7 Commission," you're suggesting something other than a
8 docket filing; is that right?

9 A. I am suggesting that we would create the
10 piece of paper and make it available to the
11 Commission and how the Commission chose to treat it
12 would be up to the Commission.

13 Q. And when you say "piece of paper," is
14 that the schedule?

15 A. I believe I said "schedule," but yes.

16 Q. And you're envisioning a single-page
17 document?

18 A. I'm envisioning the single-page document
19 with whatever supporting detail might be required.

20 Q. Now, on lines 2 and 3 -- carrying over
21 onto page 4 you say the index rate schedule will be
22 submitted to the Commission. Is this similar to the
23 submission to the Commission for the target price?

24 A. It is one and the same.

25 Q. Now, Mr. Fayne, if the Commission in its

1 review of the indexed rate schedule or its review of
2 the target price, if it determines that it will not
3 accept either of those, what happens in your
4 understanding under the contract?

5 A. My understanding is the rate that was
6 then in effect remains in effect until it is
7 resolved.

8 Q. Would you agree with me that the intent
9 of the contract is for the Commission to review the
10 schedule to confirm that it meets the criteria of
11 producing necessary cash flow and then it would, on
12 that basis, approve it?

13 A. Yes.

14 Q. Can you tell me whether the contract
15 contemplates the circumstance where the Commission
16 would reject the files -- the schedules that were
17 filed?

18 A. Apparently it does.

19 Q. It does. And what's the basis of that?

20 A. We just discussed the existing rate stays
21 in effect until the Commission approves a new rate.

22 Q. Do you recall at your deposition your
23 testimony that, quote, you "do not believe that the
24 contract contemplates explicitly that circumstance"?

25 A. I do.

1 Q. Do you also recall your testimony that
2 says "the contract does not provide a set of
3 processes to deal with that situation"?

4 A. Apparently I was not recalling correctly
5 yesterday.

6 Q. Now, on page 4, lines 16 through 17, you
7 sought that Ormet proposes to share the upside with
8 AEP-Ohio's other customers. Do you see that
9 reference?

10 A. I do.

11 Q. Can you tell me how Ormet proposes to
12 share the upside with AEP-Ohio's customers?

13 A. The proposal as it was intended is
14 intended to provide AEP with delta revenues. On the
15 premise that delta revenues are provided, that would
16 include both the shortfall and the premium, though I
17 do recognize that the language here is a little
18 confusing because it refers to revenue foregone.

19 But the underlying premise was that to
20 the degree there was a shortfall, AEP would collect
21 that shortfall from other customers. To the degree
22 that there was a premium paid, they would credit that
23 premium back to other customers through whatever
24 mechanism they are using for delta revenue.

25 Q. When you say "upside" you're talking

1 about anything above the tariff rate, the GS-4 tariff
2 rate?

3 A. That is correct.

4 Q. Now, are you saying that the contract
5 contemplates that or that there's a specific
6 provision that provides for that?

7 A. There is no provision here that provides
8 for how delta revenue is treated between AEP and its
9 customers. There was simply the presumption.

10 Q. Now, you talk, do you not, Mr. Fayne,
11 about the third-party review of the contract?

12 A. I do.

13 Q. Can you tell me what the objective of the
14 third-party -- independent third-party review is?

15 A. I believe it's stated on lines 3 through
16 6 of my testimony on page 5, but in summary it would
17 be an independent expert who would be able to review
18 the analysis to determine, number one, that the
19 objective was achieved, that is that the price of
20 electricity at various LME rates, in fact, did
21 produce the free cash flow that Mr. Riley talked
22 about, and at the same time to verify or to express
23 an opinion on the reasonableness of the expenses
24 reflected in that analysis.

25 Q. Let's deal with the second prong of your

1 answer where you said that the independent party
2 review is expected to look at the reasonableness of
3 the estimated expenses.

4 Is that a fair characterization of
5 your -- of one of the prongs that is expected out of
6 the third-party independent review?

7 A. Yes, it is.

8 Q. And how would the third-party independent
9 auditor determine the reasonableness of estimated
10 expenses, for instance, estimated carbon anode
11 expenses?

12 A. Well, let me give you an analogy instead.
13 When I was at AEP and worked significantly with
14 projections and forecasts of performance of a
15 utility, I clearly had the expertise to go to any
16 other utility and evaluate with that experience
17 whether or not their expense levels and spending were
18 appropriate or not.

19 I believe that an expert in the aluminum
20 smelting area would have that same capability.

21 MS. GRADY: Could I have that answer
22 reread, please?

23 (Record read.)

24 Q. You're talking about evaluating expense
25 levels and spending on an estimated or future basis;

1 is that correct?

2 A. I'm not sure what distinction you're
3 trying to make. There is no way to do that without
4 having an understanding of what happens in the real
5 world.

6 Q. So would it be your conclusion that a
7 third-party independent auditor hired by the
8 Commission would have the ability to determine the
9 reasonableness of all the expenses and the production
10 costs associated with the free flow cash analysis?

11 A. If you removed the word "auditor," the
12 answer is yes.

13 Q. Why would we remove the word "auditor"?

14 A. I'm talking about an expert, not an
15 auditor.

16 Q. Doesn't the contract call for an auditor,
17 not an expert?

18 A. I believe it provides for an independent
19 third-party review.

20 Q. So this independent third party would
21 have to be someone who is an expert in the smelting
22 business who would have to understand the estimated
23 expenses and revenues associated with production at a
24 smelting facility?

25 A. I do not know how one could propose

1 something other than that.

2 EXAMINER PRICE: Given the limited number
3 of smelting operations in the country, do you think
4 experts like that are available?

5 THE WITNESS: Yes.

6 EXAMINER PRICE: Thank you.

7 Q. Now, if the third party, we're not going
8 to call them an auditor because I understand your
9 point, if the third party, whoever it is, determines
10 that the expenses are unreasonable and that the
11 proposed prices are unreasonable, what happens under
12 the contract?

13 A. There is no explicit process prescribed
14 in the contract, but the logical outcome would be
15 that that expert would share those conclusions with
16 Ormet and they would have to come to some agreement.

17 The other alternative would be that Ormet
18 would submit a proposal and the expert would
19 basically reject that proposal and the Commission
20 could then decide however they decide in cases.

21 This is no different than when a company
22 in a utility proceeding files a cost of capital
23 proposal and 47 other people with an equal number of
24 approaches recommend different numbers and the
25 Commission ultimately reaches a conclusion.

1 Q. But, Mr. Fayne, when a utility does that,
2 do they not file it in an open docket in a record
3 where independent parties and intervenors will have a
4 chance to look at the information?

5 A. That may be the case. I'm not sure the
6 relevance of that, but that may be true.

7 Q. Is that what you're proposing in terms of
8 this agreement, that the schedules and the
9 information that will be filed in these yearly
10 filings will be subject to disclosure to intervenors
11 and interested parties so that they can challenge the
12 reasonableness of the expenses and the reasonableness
13 of the revenues and production costs?

14 A. I believe when you raised that same issue
15 with Mr. Riley earlier he did indicate that except
16 for the confidentiality issues associated with the
17 Glencore circumstance, that he would be prepared to
18 do that under protective orders.

19 Q. But that is not contemplated in the
20 contract as currently structured?

21 A. Contract doesn't contemplate it one way
22 or the other. Does not preclude it. Does not
23 suggest it.

24 Q. Now, in your testimony you talk about the
25 cumulative net discount provision of the contract.

1 A. The floor, yes.

2 Q. Now, can you tell me what information
3 under the contract do you give the Commission that
4 will show them what the cumulative net discount from
5 the tariff rate is at any particular point in time?

6 A. Whatever they want.

7 Q. Would you agree with me that the specific
8 mechanics of how the information would flow to the
9 Commission has been -- not been identified in the
10 contract?

11 A. Typically contracts would not identify
12 that procedure.

13 Q. And it's not been identified outside the
14 contract or explicitly discussed, has it?

15 A. No, it has not.

16 Q. Now, under your proposed arrangement,
17 Mr. Fayne, it's possible that the price of
18 electricity for Ormet can go as low as zero; is that
19 right?

20 A. In some very brief period of time, yes.

21 Q. And when you say "some very brief period
22 of time," how are you defining that, and on what
23 basis are you defining that?

24 A. I'm defining it on the premise that we
25 have established a floor here which says that on a

1 contract-to-date basis Ormet must pay at least
2 50 percent of the tariff at which point the
3 Commission, or I believe any intervenor, could raise
4 the issue about whether the contract should continue
5 or not.

6 On that basis, by definition it would be
7 pretty brief because if you are paying zero, you are
8 going to hit that 50 percent floor fairly quickly.

9 Q. Have you done an analysis of how long it
10 would take to hit the 50 percent if you were offering
11 an zero cost of electricity? Could it take a year?
12 Two years? Three years?

13 A. If depends -- if I was paying zero.
14 Well, if I was paying zero from the start it would
15 take me less than six months.

16 Q. And is there a mechanism in the contract
17 that after those six months parties could come in and
18 claim that the provision and the trigger provisions
19 in the contract had been met?

20 A. I believe that section of, is it 5.03 or
21 2.03 of the contract?

22 Q. I believe it's one of those two.

23 A. I remember that part.

24 Q. In the ballpark there.

25 A. It's actually 2.03.

1 Q. I'm not sure that I understood. Were you
2 responding to my question?

3 A. I thought so.

4 MS. GRADY: Can I have my question
5 reread?

6 (Record read.)

7 Q. And your answer was it's in 5.02?

8 A. 2.03.

9 Q. Sorry, 2.03.

10 MR. VINCE: Page 9.

11 MS. GRADY: Thank you.

12 EXAMINER PRICE: Mr. Fayne, that section,
13 if I remember correctly, refers to parties, but in
14 that sense parties is defined as AEP or Ormet; is it
15 not? Not parties to this proceeding, which are
16 intervenors.

17 THE WITNESS: Well, the parties agree
18 that the Commission may upon petition. I'm
19 interpreting the word "petition" meaning anyone could
20 petition.

21 EXAMINER PRICE: Okay. So you believe
22 the contract implies that any interested party could
23 file such a petition.

24 THE WITNESS: Yes.

25 EXAMINER PRICE: Thank you.

1 Q. (By Ms. Grady) And in that event let's
2 say, I'll use your scenario, you said maybe six
3 months that the cost of electricity could be free to
4 Ormet and you think, then, maybe the 50 percent
5 provision would be triggered at that point?

6 A. It unquestionably would be triggered at
7 that point.

8 Q. So then under -- further under 2.03 of
9 that agreement, that zero price would stay in effect
10 until the later of the beginning of the next calendar
11 year or 120 days, right?

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

13 Q. So you could have a zero rate for
14 electricity for longer than six months, probably ten
15 months, 12 months, a year?

16 A. As a hypothetical, yes. An unlikely
17 hypothetical, but it is possible.

18 Q. And even if you hit the 50 percent
19 discount, under the contract the Commission need not
20 modify that; is that correct?

21 A. The Commission is the vehicle for
22 determining what is just and reasonable, and if they
23 conclude that continuing it is just and reasonable,
24 by definition it is just and reasonable.

25 EXAMINER PRICE: If only that were true.

1 THE WITNESS: I've been told that for so
2 many years, what can I say?

3 Q. Now, Mr. Fayne, it's also your
4 understanding, is it not, that under the terms of the
5 agreement that the price of electricity could be
6 negative for a period of time; correct?

7 A. As a technical matter. I think the issue
8 here is the perspective whereas your question implies
9 looking at the price of electricity that's paid in
10 snapshots in a month or a period of time. The
11 contract views this -- the underlying concept of the
12 contract is looking at it on a contract-to-date.

13 So it's not so much that the price of
14 electricity, in my view, goes negative, though
15 technically it does in a given month, it is more that
16 Ormet is receiving a credit for amounts it paid
17 prior.

18 Q. Yeah, if you want to say it in that term,
19 I understand. You're saying that there's a
20 possibility that under this contract, that Ormet
21 could receive credits for using electricity and those
22 credits would be picked up through the delta revenue
23 calculation and passed along to other customers,
24 correct?

25 A. Well, it was credits for amounts that

1 they actually paid in prior periods because this
2 contract is looking at a stable pricing mechanism
3 over time trying to, you know, avoid affecting the
4 Ormet operation because of what might be short-term
5 cyclical elevated price rates.

6 Q. How would the credits made apply to prior
7 periods? Can you explain to me how that would
8 happen?

9 A. All I'm saying is eventually it's not
10 that Ormet is being paid for the electricity in the
11 current period, they are simply getting money back
12 that they previously paid for electricity in prior
13 periods. It is purely a matter of characterization.

14 Q. As many things are; aren't they?

15 A. I can't respond to that.

16 Q. Now, would you agree with me, Mr. Fayne,
17 that the LME price swing has been extraordinary over
18 the past six or eight months ranging from 3,500 a
19 metric ton down to 1,300 a metric ton?

20 A. I would agree with that.

21 Q. Now, on page 6 of your testimony, lines
22 10 through 11, you indicate that the equivalent of
23 50 percent of the AEP-Ohio tariff rate is a fair
24 approximation of variable costs. Do you see that
25 reference?

1 A. I do.

2 Q. And, Mr. Fayne, that's a rough estimate,
3 is it not, based on the primary variable cost being
4 fuel purchased power?

5 A. That is a rough estimate, correct.

6 Q. And you're just guessing there what the
7 fuel costs were?

8 A. If you call it an educated guess, I'll
9 accept that.

10 Q. It's not really based on a study or
11 analysis that you know of associated with AEP-Ohio's
12 tariff rate; is that correct?

13 A. That is correct.

14 Q. Have you ever done a variable cost
15 analysis officially, Mr. Fayne?

16 A. No. But as I explained yesterday, I
17 worked with this for 30 years.

18 Q. Do you know, Mr. Fayne, whether Ormet has
19 looked to the other governments, state governments
20 like West Virginia or Pennsylvania to assist it in
21 maintaining the jobs at its smelting facility?

22 A. I don't know.

23 Q. Mr. Fayne, on page 6 of your testimony,
24 lines 15 through 18, you discuss there the duration
25 of the contract being ten years. You say that it is

1 intended to be retroactive to January 1st, 2009,
2 and continue through December 31st, 2018. Do you
3 see that?

4 A. Yes, I do.

5 Q. Can you explain to me how that
6 retroactivity works?

7 A. Well, on the premise that the Commission
8 makes it retroactive it would mean that the prices
9 would be -- the billings would be recalculated
10 beginning from January 1st on, based on, let's say
11 for argument sake, the \$38 a megawatt-hour compared
12 to whatever was actually billed. And to the degree
13 there was an overpayment, it would be credited on
14 future bills, to the degree there was an
15 underpayment, it would be charged against future
16 bills.

17 EXAMINER PRICE: Were you here for
18 Mr. Baker's testimony earlier today?

19 THE WITNESS: I was.

20 EXAMINER PRICE: He does not share your
21 understanding of that provision, does he?

22 THE WITNESS: Well, he believes -- the
23 issue got very complicated given the way that the
24 Commission ordered in the ESP because, as I recall,
25 the way the Commission ordered in the ESP, rates

1 became effective -- April, was it? I can't recall
2 when rates became --

3 EXAMINER PRICE: You're not allowed to
4 ask Mr. Resnik questions.

5 MS. GRADY: No lip-syncing over there.

6 THE WITNESS: I was just hoping for a
7 smile. But rates became effective sometime
8 subsequent to January, I think it was April but maybe
9 not. And -- but there was a retroactivity in the way
10 that that rate was designed for the balance of the
11 remaining period.

12 Whether or not we bifurcate this and look
13 at one period then the other is not the issue. The
14 \$38 is designed with two things in mind, one is that
15 effectively, the effective \$38 is in effect -- too
16 many effects -- for the year, and the new payment
17 terms are in place because it's only under those two
18 sets of criteria that the cash flow requirements are
19 met.

20 So if it's not retroactive and there is a
21 discrepancy, somehow we have to make sure that the
22 numbers produce the right cash flow again for the
23 year. So this is designed as if it is retroactive
24 with an understanding that if it's not done that way,
25 that we just may need to tweak it a little bit to

1 make sure that it produces the right answer.

2 EXAMINER PRICE: Okay. Thank you.

3 Q. (By Ms. Grady) Now, you have January
4 1st, 2009. Was that keyed to the term of the ESP
5 rate approved in the AEP ESP proceeding?

6 A. This was keyed purely on a premise that
7 for Ormet's study, they look at a calendar year, and
8 to produce the cash flow they require they needed to
9 pay the equivalent of \$38 every month for that
10 12-month period. Independent of where the AEP rates
11 were and independent of how this is treated.

12 Obviously, you can produce that same
13 outcome by breaking the year and using different
14 numbers, but this is done on a pure calendar-year
15 basis.

16 Q. I guess that's my next question, is if
17 we're just talking about for purposes of 2009;
18 correct? We're talking about what rate will be in
19 effect for 2009, and couldn't we choose a date after
20 the Commission approved the unique arrangement and
21 use 12 months of data forward instead of trying to
22 reach back to January with the rates when rates were
23 already in effect?

24 A. No. We have, as I said, we can, as an
25 example, adjust this to be -- let's for argument sake

1 say the rates went into effect on April 1, I'm not
2 sure what the date was, you may know. You won't tell
3 me either.

4 Anyway, we can look and see what that
5 nine-month period requires to make up whatever might
6 not have been achieved in the first three, but we're
7 still talking about a calendar year because we need
8 to produce -- we need to cover the cash requirements
9 for this calendar year. So it's not a 12-month
10 rolling. A calendar year snapshot is the way this is
11 put together.

12 Q. But it could be a 12-month rolling is my
13 point.

14 A. I don't think so. I shouldn't say that.
15 We have not designed it on that basis.

16 Q. So what you've designed is a year period
17 of time -- or, what you've designed is a 9-month
18 period of time to collect 12 months of reduced rates,
19 essentially.

20 A. No, no, we designed this for calendar
21 year 2009 and the subsequent years are calendar years
22 2010, '11, et cetera. If because of the timing of
23 the ESP someone suggests that we should adjust that,
24 it can be done that way, but it has not been
25 contemplated or designed on that basis.

1 Q. Thank you.

2 Now, in January and February 2009, in
3 fact, in January, February, March, today is -- in
4 April, there have been approved rates for Ormet,
5 correct?

6 MR. RESNIK: I'm sorry, can I have that
7 question read back?

8 EXAMINER PRICE: Please.

9 MS. GRADY: Maybe I can be a little bit
10 more precise.

11 Q. January 1st, 2009, through the present,
12 there are currently in effect approved rates between
13 Ormet and AEP for electric service.

14 A. That is correct.

15 Q. And so your proposal would take new rates
16 and apply the new rates on a going-forward basis to
17 cover rates that began in January.

18 A. I have no idea what you just said. I'm
19 sorry, but -- may I just explain what will happen?

20 Q. Yes. That would be helpful. I'm trying
21 to get at what actually happens in the billing when
22 you have this rate proposal that you've got.

23 A. The approach we have described in the
24 contract, because we didn't know when the AEP rates
25 would be approved or when this would be approved, was

1 to try to make it simple, which apparently we failed,
2 but nonetheless, trying to make it simple and to deal
3 with the calendar year.

4 So we explained Ormet requires \$38 for
5 the entire calendar year with the revised payment
6 provisions. And if that occurred, we believe they
7 would have adequate cash flow to sustain operations.

8 Q. Yes, I'm following you so far.

9 A. That's fine.

10 If that is approved exactly as filed,
11 which is possible though perhaps not desirable, but
12 possible, then it would mean that one would have to
13 go back to the beginning of the year and recalculate
14 the bills that were actually paid to determine
15 whether they were -- there was an overpayment or an
16 underpayment and that adjustment would be reflected
17 in future periods.

18 EXAMINER PRICE: Mr. Fayne, we would
19 also, though, need to recalculate the delta revenue
20 that AEP has already booked because the delta revenue
21 calculation would be entirely different; would it
22 not?

23 THE WITNESS: Well, discretion suggests I
24 should let that be an AEP PUCO issue.

25 EXAMINER PRICE: No. No. These are my

1 questions, I'm afraid.

2 THE WITNESS: In effect, yes, and the
3 issue in that case, which is a Commission issue, is
4 whether you use market or tariff as the basis for
5 that calculation.

6 EXAMINER PRICE: Well, but either the
7 contract's retroactive as a whole, in which case we
8 have to recalculate the delta revenue, or it's not.
9 I mean, it would be very difficult to interpret the
10 contract to say this provision, the billing rate
11 takes effect January 1st, but the delta revenue
12 provision takes effect May 1st.

13 THE WITNESS: I understand the
14 complexity. And the way of dealing with the
15 complexity, perhaps, is to make this effective on
16 some date so that it is prospective, but under that
17 circumstance -- so that if it was effective June 1,
18 as an argument, okay, it would just have to
19 basically, that \$38 would have to be modified.

20 And the \$38 would have to be just a
21 number going forward for the remaining seven months
22 so that the average payment over the course of the
23 year was 38.

24 EXAMINER PRICE: The \$34 number.

25 THE WITNESS: If it were 34, what you

1 would get -- the way this contract works is it would
2 be -- as proposed it would be 38 from January 1 until
3 such time, when and if, there is a reduction in
4 production, and 34, so you get a weighted average
5 number, whatever that turned out to be, and that's
6 how it would have to be determined.

7 EXAMINER PRICE: Thank you.

8 MS. GRADY: Thank you, your Honor.

9 THE WITNESS: Does that help, a little?

10 Q. That does help, I -- that does help.

11 Now, you mentioned, Mr. Fayne, the issue
12 of whether you create a delta based on market rate or
13 some other rate like a tariff rate. Do you recall
14 that?

15 A. I mentioned that in the interim
16 agreement, as I understand it, the delta revenue was
17 between what was paid in the market. What is
18 proposed here, I believe, is whatever we pay here
19 compared to the tariff. So it depends on which
20 agreement you're talking about.

21 Q. So it's your understanding under this
22 agreement that you're seeking approval of that the
23 delta is created between the market rate -- between
24 the tariff rate, the new AEP ESP approved tariff
25 rate, and the rate you're paid under this unique

1 arrangement.

2 A. Yes. I think if you refer to the
3 definition, it's probably clearest, which is on page
4 6 of the contract, section 1.07 which describes
5 precisely the definition of delta revenue.

6 Q. I'm sorry, section 1 --

7 A. It's 1.07.

8 Q. Thank you.

9 And by the AEP-Ohio tariff rate, you're
10 understanding that under the contract to be the
11 current rate that's in effect when this unique
12 arrangement is approved.

13 A. It's defined in section 1.01, so
14 initially it is the 50 percent of the Ohio GS-4
15 tariff and 50 percent of the Columbus & Southern GS-4
16 tariff, but this provides that if over time the rate
17 structure changes, it would be whatever the
18 applicable tariffs would be.

19 Q. Now, you reference in that section --

20 A. Which section are you in now?

21 Q. I'm sorry, 1.01, seventh revised sheet as
22 the sheet and the fourth revised sheet and the
23 seventh revised sheet related to the GS-4 service
24 rate.

25 Is that -- are those the sheets that were

1 approved under the AEP ESP order or were those the
2 ESP -- or, were those pre-ESP approved tariffs, if
3 you know?

4 A. I do not know for sure.

5 Q. Now, Mr. Fayne, you talk in your
6 testimony, do you not, about terms of the contract
7 which are necessary in order to make this unique
8 arrangement work, and specifically I'm referring to
9 page 7 of your testimony, lines 22 through 23.

10 Let me strike that. Let me start over.
11 My pagination is off.

12 You talk on the top of page 27 about --

13 A. I'm sorry, what page?

14 Q. I'm sorry, it's been a long day. You
15 talk at the top of page 7, lines 1 through 8, about,
16 you say these are provisions that you wish to
17 highlight.

18 A. Yes.

19 Q. And I want to talk about those
20 provisions. And you indicate there that under the
21 current arrangement with AEP, Ormet is required to
22 maintain a deposit and pay in advance for energy use,
23 and then your testimony I believe, Mr. Fayne, is that
24 under the new section 6.03 of this contract, Ormet
25 would not be required to provide a deposit or to pay

1 in advance; is that right?

2 A. That is correct.

3 Q. And would you agree with me that the
4 terms that Ormet has here are unusual in the terms of
5 deposit and prepayment?

6 A. Which terms are you referring to as
7 unusual?

8 Q. The term that they do not have to provide
9 a deposit and nor do they have to prepay.

10 A. Not providing a deposit and not prepaying
11 are the standard terms and conditions.

12 MS. GRADY: May I approach the witness?

13 EXAMINER PRICE: You may.

14 Q. Do you recall your deposition yesterday,
15 Mr. Fayne?

16 A. I recall spending time with you, I don't
17 recall the specifics.

18 Q. I'm sure you spent time with me at the
19 deposition.

20 MR. BONNER: What page, Counsel?

21 MS. GRADY: That would be page -- my
22 pagination's a little off, it's either 63 at the top
23 or 58 at the bottom.

24 MR. BONNER: Thank you.

25 EXAMINER PRICE: That's quite a

1 pagination difference.

2 MS. GRADY: I kind of like to keep them
3 on their toes, that way they have to read and follow.

4 A. Yes, ma'am.

5 Q. Yes, you do recall that. And what I'm
6 going to do, Mr. Fayne, is I'm going to read the
7 question and the answer posed in the transcript and
8 I'm going to ask you if I read it correctly.

9 A. Okay.

10 Q. Question -- well, I guess we probably
11 have to go up a few. On line 14 I began: As an
12 executive of AEP you would have had these provisions,
13 a deposit provision or a payment in advance
14 provision, and you would have seen that in AEP
15 contracts with special arrangements, wouldn't you?

16 Your answer was: From time to time.

17 The follow-up question was: Would it be
18 unusual to see an arrangement without these
19 provisions?

20 And there was an interjection posed or an
21 objection posed and then your answer was: The terms
22 that Ormet has here are unusual in terms of the
23 deposit and the prepayment.

24 Did I read that correctly?

25 A. You did, and I believe that's how I just

1 answered the question.

2 MS. GRADY: I would object -- or, I would
3 move to strike that, your Honor. I don't think it's
4 true and I think it's argumentative.

5 MR. VINCE: Your Honor, I believe it's an
6 exactly accurate statement, do we need to have it
7 read back? We're also having a lot of trouble
8 finding in the deposition transcript that reference,
9 I'm sorry, it's not on page 58.

10 MS. GRADY: Sixty-three? I've got 63 at
11 the top, sir. I'm sorry, I'm working off a copy
12 instead of the original.

13 MR. VINCE: I understand.

14 MR. BONNER: I understand, we just had
15 trouble following.

16 MS. GRADY: I'm sorry, I should have
17 waited.

18 MR VINCE: Okay, we have it.

19 EXAMINER PRICE: Read back the answer
20 again, please.

21 THE WITNESS: If I may, can you ask her
22 to read back the question as well?

23 EXAMINER PRICE: Read back the question
24 and the answer.

25 (Record read.)

1 EXAMINER PRICE: We are simply going to
2 deny the motion to strike and move on.

3 MR. VINCE: Thank you, your Honor.

4 EXAMINER PRICE: Let's go off the record
5 one moment.

6 (Discussion off the record.)

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

9 Please continue, Ms. Grady.

10 MS. GRADY: Thank you.

11 Q. (By Ms. Grady) Now, Mr. Fayne, I want to
12 direct your attention to your testimony on page 7
13 with respect to the question posed on lines 9 through
14 10 where you say -- where you ask yourself "Does the
15 proposed contract address energy efficiency and
16 demand response opportunities?" Do you see that
17 reference?

18 A. I do.

19 Q. In this testimony, Mr. Fayne, you are not
20 making the statement about whether Senate Bill 221
21 would allow AEP to include Ormet's energy efficiency
22 measures in its energy efficient targets under the
23 statute, are you?

24 A. The only thing this is saying is what it
25 literally says which to the degree that Ormet

1 achieves energy efficiency in its natural course, and
2 to the extent that AEP can use that efficiency
3 benefits as part of its obligations, they are free to
4 do so.

5 MS. GRADY: Mr. Fayne, that's all the
6 questions I have. Thank you very much.

7 THE WITNESS: Thank you.

8 EXAMINER PRICE: Mr. Kurtz.

9 MR. KURTZ: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Kurtz:

13 Q. Good afternoon, Mr. Fayne.

14 A. Good afternoon, sir.

15 Q. You were here earlier when there was
16 testimony, a hypothetical example that if the actual
17 LME price received by Ormet in 2010 was \$1,602 per
18 ton, that there would be a negative rate for
19 electricity or a credit on the bill.

20 A. And I believe, yes, I was here.

21 Q. Okay. Assume that that happens January
22 1, 2010, that there is a negative rate, a credit on
23 the bill for one month. Do you have that assumption?

24 A. Yes.

25 Q. Under paragraph 1.07 of the contract, the

1 delta revenue, which is defined as the difference
2 between what would be recoverable from Ormet under
3 the AEP-Ohio tariff but for this agreement, would the
4 delta revenue be negative? Would it include the
5 negative or would it just go down to zero?

6 A. Two comments: One, as a mechanical
7 approach it would be the difference between what AEP
8 was entitled to receive under the tariff versus what
9 it did receive, and if it was a negative number as
10 you suggest, or a credit, it would be that full
11 differential.

12 But delta revenues over time could never
13 exceed 50 percent.

14 Q. Okay. Let's play that out, then. It
15 remains negative for month one of 2010, two, three,
16 four, five, six, and it stays negative. At what
17 point -- really from day one it's less than
18 50 percent and you do a cumulative; isn't that right?

19 A. No. I think the contract starts in 2009.
20 Your hypothetical was 2010.

21 Q. That's correct, okay. So when you refer
22 to contract-to-date discount trigger, you're starting
23 from 1/1/09.

24 A. Starting from the beginning of the
25 contract, yes.

1 Q. Okay. So they could, then, pay a --
2 because the request is for \$38 for 2009, that's
3 substantially more than half of the tariff so they're
4 building in a credit essentially?

5 A. There is some cushion if one wants to
6 describe it that way, yes.

7 Q. So the rate could go negative for a
8 period of time in 2010 before the 50 percent
9 threshold was hit.

10 A. Conceptually.

11 EXAMINER PRICE: Mr. Fayne, it's not a
12 threshold. It is a provision which would allow the
13 Commission to reopen the contract; is that not right?

14 THE WITNESS: That's how it's been set
15 up, yes.

16 EXAMINER PRICE: And in any event, the
17 contract -- the Commission, assuming Mr. Kurtz's
18 hypothetical, in any event the contract could not be
19 changed until January 1st, 2011, because that would
20 be the next calendar year. Is that not correct?

21 THE WITNESS: That is how it is defined,
22 yes.

23 EXAMINER PRICE: So it is possible that
24 Ormet including the hypothetical, however likely one
25 would regard it, Ormet could receive a credit for 12

1 months and be well below the 50 percent threshold
2 before the Commission could actually change the
3 contract.

4 THE WITNESS: That is correct.

5 EXAMINER PRICE: Thank you.

6 Q. (By Mr. Kurtz) Along those same lines,
7 page 6 of your testimony, line 8 where you're talking
8 about the contract floor, let me just read this, it
9 says "By establishing a contract-to-date discount
10 trigger, the provisions allow Ormet to weather
11 savings -- excuse me, weather swings in the aluminum
12 price cycle, ensure that Ormet will pay at least the
13 equivalent of 50 percent of the AEP-Ohio tariff rate
14 (a fair approximation of variable cost)" and then it
15 goes on.

16 Isn't it the intent of the report to
17 ensure that Ormet will pay at least 50 percent of the
18 AEP tariff?

19 A. This is designed to permit Ormet to
20 continue in operation if the discount required over
21 time were as much as 50 percent.

22 Q. But is it the intent of the contract to
23 ensure that Ormet will pay at least the equivalent of
24 50 percent?

25 A. That was the expectation because it

1 presumed, and I must admit it did not take in the
2 added detail that was just suggested in terms of the
3 limitation in timing, but it was basically
4 designed -- presumed that the Commission would act
5 and would act promptly, and if, in fact, it was
6 approved, it could be a discount larger than
7 50 percent, the Commission had the option to do that.

8 Q. So if that was the intent and the
9 Commission felt that the language did not effectuate
10 that intent, then the solution would be for the
11 Commission to modify the language.

12 A. That would be certainly within their
13 prerogative.

14 Q. Were you here when it was discussed that
15 the AEP Ohio tariff rate for Ormet right now is
16 \$44.24?

17 A. I was.

18 Q. Okay. And half of that mathematically,
19 pretty simple, 22.12.

20 A. I'll take your word for it.

21 Q. Do you know that the fuel adjustment
22 charge being levied on Ormet right now is \$24.02 a
23 megawatt-hour?

24 A. I don't, but I'll take your word for it.

25 Q. \$24.02 a megawatt-hour is pretty close to

1 half of the tariff rate.

2 A. Indeed it is.

3 Q. So if that were established as a floor,
4 that would be approximately half of the tariff rate.

5 A. Technically, yes. I'm not sure it
6 accomplishes the same outcome, but it is technically
7 correct.

8 Q. You're familiar with the mechanical
9 working of the formula, the index rate and target and
10 so forth.

11 A. Yes.

12 Q. Okay. I'd like for you to just go
13 through an example. Do you have a calculator?

14 A. I have one in my briefcase if you'd like
15 me to get one. Would you like me to get one?

16 MR. KURTZ: If it's okay.

17 EXAMINER PRICE: Absolutely.

18 THE WITNESS: Yes.

19 A. Yes, sir.

20 Q. Were you here when Mr. Riley walked
21 through the math of what the new AEP-Ohio tariff rate
22 would yield in terms of LME target price, the tariff
23 rate went up for electricity so the LME would have to
24 go up?

25 A. Yes, I remember that discussion.

1 Q. And that was 2,843 as the new LME target.

2 A. Okay. Yes, sir.

3 Q. Okay. Counsel for Ormet on redirect
4 introduced this Harbor forecast. Were you here for
5 that?

6 A. I was.

7 Q. Okay. What I'd like for you to take a --
8 take the Harbor forecast for 2010, this is the
9 consensus forecast on page 1 of the summary and page
10 14, I believe, of the document, yes, of an LME in
11 2010 of \$2,490 per metric ton.

12 A. 2,490?

13 Q. Yes. And walk through what the discount
14 would be and what the effective rate Ormet would pay.

15 A. Well, I don't have the correct -- the
16 adjustment you made but I'll just work off schedule
17 A, page 1 appended to the contract.

18 Q. Let me see if I'm doing the math right,
19 can I do it that way?

20 A. Or I can do the math.

21 Q. I thought you said you couldn't.

22 A. No. I don't have the adjustments you
23 walked through with Jim Riley, but I don't need them.

24 Q. Okay.

25 A. So it's okay. I just wanted you to -- so

1 I'm working off schedule A, page 1, if anybody wants
2 to turn to that page of the contract. And in that
3 case I would take the 2,725 which was the target
4 price under the current rate, it doesn't really
5 matter, you get to the same place, compared to the
6 2,490 which would say that there was a \$235 lower
7 LME, I'll get to the exact place you would on your
8 schedule.

9 Compare to that, if I then -- I've got to
10 remember whether I multiply or divide, but I think I
11 multiply by the .049 which would say I pay \$11.52
12 less than the target rate which would mean I would be
13 paying a number approximately 26.92, something in
14 that ballpark.

15 Q. Okay. That's the math I got. I did it I
16 guess algebraically differently.

17 A. It doesn't matter where you start, the
18 formula works from any point.

19 Q. So 26.92 would be what Ormet was paying
20 and so that would be a discount -- 44.24 was the
21 tariff rate, minus 26.92 would equal a discount of
22 \$17.32 a megawatt-hour.

23 A. Right. They would be paying 60 percent
24 of the rate.

25 Q. Okay. And that would yield a delta

1 revenue of approximately \$80 million?

2 A. What was your differential?

3 Q. Multiplied by Ormet's usage.

4 A. I understand, but I can't recall what
5 your differential was.

6 Q. \$17.32.

7 A. It sounds a wee bit high but it might be
8 close.

9 Q. And if the effective rate that Ormet was
10 paying under this example using Ormet's or
11 Mr. Riley's or the forecast of Harbor, they would be
12 paying -- Ormet would pay 26.92 for electricity in
13 2010.

14 A. Correct.

15 Q. Again, just by simple comparison, that's
16 pretty close to the fuel adjustment charge of 24.02.

17 A. Pure coincidence.

18 Q. Pure coincidence.

19 MR. KURTZ: Mr. Fayne, I believe that's
20 all I have.

21 THE WITNESS: Thank you, sir.

22 EXAMINER PRICE: Ms. McAlister.

23 MS. McALISTER: No questions, your Honor.

24 EXAMINER PRICE: Mr. White?

25 MR. WHITE: No questions your Honor.

1 EXAMINER PRICE: Mr. Resnik.

2 MR. RESNIK: A couple, your Honor, thank
3 you.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Resnik:

7 Q. Mr. Fayne, you were asked some questions
8 actually from the Bench about how this contract, if
9 the Commission were to approve its terms and if AEP
10 decided to enter into those terms, how that would get
11 applied for a full year's worth of \$38 I think was
12 what you were saying. Do you recall that?

13 A. I do.

14 Q. And there was a question, as I also
15 recall, about the deferral that is occurring under
16 the interim agreement. Do you remember that?

17 I think the Bench was asking whether you
18 could have the \$38 back to January 1st but not have
19 the deferral provisions back to that date.

20 A. I don't recall quite that specifically,
21 but the topic was generally covered, yes.

22 Q. Okay. And I know a question that was in
23 your mind, you were looking for help, I'll ask you to
24 assume that the company's electric security plan
25 rates became effective on March 30th, 2009.

1 A. Pretty close. Good.

2 Q. Okay. Now, are you familiar with the
3 interim agreement that is currently in effect between
4 Ormet and AEP-Ohio?

5 A. Generally, yes.

6 Q. And do you know under the terms of that
7 provision, that agreement, when that expires?

8 A. That agreement expires when two events
9 occur: One, that the ESP rates are approved, and
10 two, that a succeeding agreement for Ormet is
11 approved as well.

12 Q. Okay. So let's assume that what I told
13 you is correct, that the ESP rates became effective
14 on March 30th, and either this new agreement that's
15 being presented to the Commission now is applied
16 either before March 30 or after March 30. If it
17 became effective, the new agreement became effective
18 before March 30th, the interim agreement would
19 remain in effect until March 30th; is that right,
20 given your understanding?

21 A. Can you try that one one more time?

22 Q. Yes. If this new what I'll call the
23 long-term agreement, the one that is currently
24 pending in this proceeding became effective prior to
25 March 30th either because it actually got approved

1 then or because the Commission decided to make it
2 retroactive back to January 1, whatever reason, the
3 interim agreement would still remain in effect until
4 March 30th, is that right, under its terms?

5 A. I understand the confusion. Under its
6 terms I would agree with you.

7 Q. Okay.

8 MR. RESNIK: I'll quit there. Thank you.

9 EXAMINER PRICE: Thank you.

10 Redirect?

11 MR. VINCE: No redirect, your Honor.

12 EXAMINER PRICE: Thank you. You're
13 excused, thank you, sir.

14 (Witness excused.)

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

16 (Recess taken.)

17 EXAMINER PRICE: Go back on the record.

18 At this time we will take the testimony
19 of Dr. Coomes.

20 Dr. Coomes, I will remind you you've
21 already been previously sworn in.

22 THE WITNESS: Yes, sir.

23 MR. BONNER: Thank you, your Honor.

24 - - -

25 PAUL COOMES

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

3 DIRECT EXAMINATION (continued)

4 By Mr. Bonner:

5 Q. Dr. Coomes, could you please explain your
6 relationship to my client Ormet Corporation?

7 A. Yes, sir. About a year ago actually,
8 last spring, I was called by Tommy Temple I believe,
9 who is the vice president of Ormet, and told me that
10 he was interested in having an economic impact study
11 done on the Ormet plant, and we discussed the
12 dimensions of it, and I've done many of these, and we
13 came to terms and proceeded, and over the next month
14 or two I composed the study that everyone has.

15 Q. And you've been handed what's been
16 labeled Exhibit ORM-2 with attached Exhibits ORM-3,
17 ORM-4, and ORM-5; is that correct?

18 A. Yes, sir.

19 Q. Can you briefly just identify what the
20 attached exhibits are. Beginning with ORM-3? The
21 one page.

22 A. Yes. Looks like ORM-3 is a one-page
23 bio that I have.

24 Q. Okay.

25 A. ORM-4 is a several page vitae which lists

1 everything I've done in my professional life. Sorry
2 for the length.

3 And then ORM-5 is the study that I've put
4 together for Ormet. It's about 12 pages.

5 Q. Okay. Was your direct testimony which is
6 Exhibit ORM-2 consisting of four pages prepared at
7 your direction and under your supervision and
8 control?

9 A. Yes, sir.

10 Q. Do you have any corrections to make to
11 that testimony?

12 A. It looks like there's a typo on the
13 second page, line 12. It says "like," it should say
14 "likely," it's not material but it's a typo.

15 Q. Any other corrections?

16 A. No, sir.

17 Q. Are the representations made in your four
18 pages of direct testimony dated April 23, 2009, true
19 and correct to the best of your knowledge?

20 A. Yes, sir.

21 Q. And if I were to ask you the same
22 questions today in your prefiled direct testimony,
23 would your answers be the same?

24 A. Yes, sir.

25 MR. BONNER: Your Honor, I would move for

1 admission into the record Dr. Coomes' direct
2 testimony which is ORM-2 as well as the Exhibits
3 ORM-3, 4, and 5.

4 EXAMINER PRICE: We'll take those up when
5 we take up the rest of the Ormet exhibits.

6 MR. BONNER: And Ormet tenders the
7 witness for cross-examination.

8 EXAMINER PRICE: Mr. Poulos.

9 MR. POULOS: Thank you, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Poulos:

13 Q. Good afternoon, Dr. Coomes. My name is
14 Greg Poulos, as we met yesterday, and I'm from the
15 Ohio Consumers' Counsel representing AEP's
16 residential customers.

17 Your testimony, your four-page prefiled
18 testimony, focuses on the research report that you
19 completed for Ormet, correct?

20 A. Yes, sir.

21 Q. And going to that report, Exhibit 5,
22 right? Ormet Exhibit 5.

23 A. Yes.

24 Q. That was completed August 15th,
25 correct?

1 A. Yes, sir.

2 Q. And you haven't done any updates to that
3 report since then.

4 A. I have not.

5 Q. Okay. Now, you focused -- your work for
6 Ormet in this case has been focused on this report,
7 and your understanding of what this case is about is
8 very limited; is that correct?

9 MR. BONNER: Object to the form of the
10 question and the characterization of his testimony
11 being very limited. It's not clear what's being --

12 MR. POULOS: Sure, I'll strike it and
13 attempt it again.

14 EXAMINER PRICE: Thank you.

15 Q. Other than reviewing the estimated
16 economic fiscal impacts of the Ormet Aluminum smelter
17 operation and the region around it, your
18 understanding of the issues that are in this case are
19 very -- is very limited; is that correct?

20 A. That's certainly true. I didn't know
21 about any of the rate issues until this week.

22 Q. When you say the "rate issues," you
23 mean --

24 A. That we've been discussing today.

25 Q. The electricity rates.

1 A. Yes, sir.

2 Q. And you didn't know the application had
3 been recently amended?

4 A. No, sir.

5 Q. And isn't it true that you don't have a
6 good understanding of what Ormet's current
7 electricity rates are?

8 A. I have no idea except based on what I've
9 learned today.

10 Q. Now, your extensive background, which is
11 in Ormet Exhibit 4, in economic impact studies, this
12 is your whole background, isn't it? You said earlier
13 this is basically everything you could remember,
14 right?

15 A. Oh, are you talking about my vitae which
16 is --

17 Q. Yes.

18 A. Yes.

19 Q. Exhibit 4.

20 A. Of course there's a lot in there beyond
21 economic impact studies, but that is a pretty good
22 listing of the projects that I've performed over the
23 last 20 years, yes, sir.

24 Q. Yes, it is. And is it true that the vast
25 majority of your work that you completed as outlined

1 in Exhibit 4 is from the state of Kentucky?

2 A. I would say the majority, certainly.
3 Maybe you could say the vast majority, yes. I've
4 specialized in economic development in the region and
5 that's kept me pretty busy the last 20 years
6 responding to needs around -- within, say, 200 miles
7 of Louisville.

8 Q. And when you refer to the region, you're
9 referring to the Kentucky region.

10 A. I've done work in Indiana communities,
11 Illinois, I have done work in Tennessee, I had one
12 big project in Los Angeles a few years ago, but that
13 statement I think is correct that most of my work has
14 been, I would say within 200 miles of Louisville.

15 Q. Isn't it true that 80 to 90 percent of
16 your work has been conducted in the Kentucky area?

17 A. Probably.

18 Q. And most of the time you do economic
19 impact studies you go and visit the site; is that
20 correct?

21 A. Most of the time, either that or I have
22 visited them and know something about them, yes.

23 Q. And isn't it true that you can't say that
24 you've done a study of a region that you haven't
25 visited before?

1 A. You asked me that yesterday, and I said I
2 couldn't remember one. I think is what I said in the
3 deposition. This morning I remembered one, so sorry
4 if there's a contradiction, I just didn't remember it
5 yesterday.

6 When I did some work evaluating the
7 impact of the smelter closings in western Kentucky, I
8 believe it was about a year and a half ago, I
9 actually did the work in my office and my home
10 without going to Hallsville, which is in western
11 Kentucky, and in Henderson, which is where the, I
12 think it was Alcan smelter's located.

13 I did the project, wrote the report and
14 it was filed as testimony at the Kentucky Public
15 Service Commission, but I never visited the region
16 because I felt I had enough institutional knowledge
17 of that area, so I didn't mean to mislead you
18 yesterday, I just didn't remember that I had not gone
19 there.

20 Q. So you've never been to western Kentucky?

21 A. I grew up there, so I know the region
22 fairly well, and maybe that's one of the reasons why
23 I didn't see a need to visit.

24 Q. So you've been to that region before --

25 A. Yes.

1 Q. You grew up there.

2 A. Yes.

3 Q. Okay. Isn't it true that you did not
4 make a specific trip to see Ormet?

5 A. That's true.

6 Q. And you didn't make a trip to see the
7 Ormet region.

8 A. That's true.

9 Q. And, in fact, you can't recall doing an
10 economic impact study in the state of West Virginia
11 before.

12 A. That's true.

13 Q. And you can't recall one in Ohio; I
14 believe in your deposition you say you may have but
15 it's been so long that you can't recall.

16 A. Yes, I have done studies, economic
17 development studies, what we call peer city or
18 competitor city studies for Louisville and I've done
19 many, and we actually compare Louisville to Columbus,
20 Ohio, Cincinnati, Ohio, and Dayton, those are three
21 of our peers.

22 And I certainly conducted those studies
23 several times and there's many published reports,
24 even though I've not visited the cities, but they
25 were not economic impact studies, so you're

1 technically correct, yes.

2 Q. And to be fair, you said you have passed
3 through the region around Ormet, but only in driving
4 places or in a plane overhead on a flight to
5 somewhere else.

6 A. That's true.

7 Q. Now, to conduct your study you used a
8 regional economic can tool called IMPLAN,
9 I-M-P-L-A-N; is that correct?

10 A. Yes, sir.

11 Q. And isn't it true you consider this to be
12 the most widely used input/output tool for regional
13 economic analysis?

14 A. I believe that.

15 Q. And you could have used other tools in
16 comparison to do side-by-side with IMPLAN, but you
17 chose not to; is that true?

18 A. That's true.

19 Q. And this tool, the IMPLAN tool, provides
20 a good representation of the linkages among all
21 industries in the region, correct?

22 A. I believe so, yes.

23 Q. And one of the nice features that you
24 like about this tool is that you can mix and match
25 counties to fit a certain regional economy, right?

1 A. That's one of its advantages, although
2 other vendors' products have similar capabilities to
3 mix and match counties.

4 Q. Now, the purpose of the report that you
5 did as Ormet Exhibit 5 was to make estimates of the
6 economic and physical impacts on the region were the
7 Ormet smelter to close; is that correct?

8 A. Yes, sir.

9 Q. And when we talk about the region that
10 was impacted, that area would include counties in
11 both Ohio and West Virginia, correct?

12 A. Yes, sir.

13 Q. In fact, if you take a look at your
14 report, on page 5, excuse me, on page 6, it outlines
15 the different regions that you include in your
16 report.

17 A. Yes, sir.

18 Q. And you base this decision to use the
19 seven regions, the seven counties as your defined
20 region based on where the employees resided, correct?

21 A. Yes.

22 Q. The employees of Ormet.

23 A. Yes.

24 Q. And approximately 96 percent of the
25 employees resided in those seven counties that you

1 used.

2 A. Yes, sir.

3 Q. Now, of those seven counties that you
4 used, they all seem to be very -- the closest
5 counties to Ormet, would you agree with that?

6 A. Yes. And that stands to reason since
7 workers are more likely to travel nearby to work than
8 three or four counties away.

9 Q. Now, of those seven counties that you
10 used, four of them are in West Virginia, correct?

11 A. That's true.

12 Q. And the other three are obviously in
13 Ohio.

14 A. That's true.

15 Q. Dr. Coomes, are you aware that AEP-Ohio
16 does not have any customers in the four West Virginia
17 counties that you used as part of your research?

18 A. I have no basis of knowing either way.

19 Q. Isn't it true that your research does not
20 include a review of the economic or physical impact
21 to anticipate customers as a result of higher or
22 lower rates necessary to keep the facility running?

23 A. Yes, I did not investigate that.

24 Q. I want to have you take a look at your
25 chart on page 9 of Exhibit 5, Ormet Exhibit 5. As

1 you look at this chart, on the right side it lists
2 the Linked through household spending, correct?

3 A. That's right.

4 Q. And this is using your IMPLAN tool?

5 A. Yes, sir.

6 Q. And the numbers, for example food service
7 and drink places, and then there's a number of jobs,
8 it says 144.5, that number is a number that is
9 addressing the regional jobs, correct?

10 A. That's true, this applies to the
11 seven-county regional economy that I defined.

12 Q. Yes. And you did not look at, as part of
13 your report, the jobs in Ohio only, correct?

14 A. I did not. As we discussed in the
15 deposition yesterday, I have the tools to do that,
16 but I didn't see that it was of relevance at the time
17 I did the study to try to break out West Virginia and
18 Ohio. To me it was a regional economy and I left it
19 at that.

20 Q. And the same looking to the left side,
21 the left side of the chart, titled Linked through
22 inter-industry purchases, and this is that same page,
23 Exhibit 5, page 9, and using your IMPLAN model,
24 correct?

25 A. Exactly.

1 Q. And these same numbers on the calculated
2 numbers of jobs that are estimated are based on the
3 seven-county region, correct?

4 A. Yes, sir.

5 Q. And those include West Virginia as part
6 of the --

7 A. Yes. They do.

8 Q. -- region. And you could have done this
9 for Ohio but you didn't, correct?

10 A. I didn't. And I still could if it was
11 important to know. It's not -- it's only a few
12 hours' work.

13 Q. Thank you.

14 Going to page 5 of the exhibit Ormet 5,
15 this is a chart on page 5, it's titled Ormet's
16 Hannibal Reduction Plant County of Residence of
17 Employees. Was this the chart you used to base the
18 decision to use the seven counties as your region?

19 A. Yes, sir.

20 Q. And as you're looking at this chart are
21 you able to tell -- excuse me.

22 This doesn't take -- this chart and your
23 decision to use the seven counties didn't take into
24 account the salaries of the different employees, did
25 it?

1 A. I do not know the salary differential by
2 places of residence of the workers. I only know the
3 county of residence of the workers, not their
4 differential pay.

5 Q. And does it take into account the
6 situation of the plant being downsized?

7 A. No, this was as a snapshot as of I
8 believe end of 2007, these thousand or so employees.

9 Q. I want to have you take a look at page 10
10 of your report. Excuse me, page 11. Are you there?

11 A. (Witness nods head.)

12 Q. Looking at line 3, other employee
13 compensation labor costs, the 51,905,000 number.

14 A. Yes, sir.

15 Q. That's on this page. Does this take into
16 consideration Ohio versus West Virginia split?

17 A. No. Well, all of these dollars that you
18 see on row 2 and row 3, so you have about \$56 million
19 in wages and salaries for workers at the plant and
20 about \$52 million in fringe benefits to workers at
21 the plant.

22 Of course, all of that is paid in Monroe
23 County to employees there. Then they take those
24 payrolls to their homes and purchase retail things
25 all over the region.

1 So all we know is something like
2 60 percent of the employees reside in Ohio and maybe
3 38 percent or so of employees reside in West
4 Virginia, but I don't know the payroll differential
5 among employees by where they live.

6 Q. And based on your chart also there are a
7 couple of employees in Pennsylvania as well, correct?

8 A. Yeah, there were a few. Yeah.

9 Q. Looking at lines 6 and 7, and this has a
10 title of other Regional Multipliers for Primary
11 Aluminum, and that regional multiplier includes West
12 Virginia and Ohio counties, correct?

13 A. Yes, sir. These multipliers were derived
14 from this custom IMPLAN model that I built for the
15 seven-county regional economy, that's true.

16 Q. And it could have been done for just
17 Ohio, couldn't it?

18 A. It could be done that way. The
19 multipliers would get smaller, and so you would have
20 smaller predicted impacts when you zoom into a
21 smaller region because there are less support
22 services available in a smaller region than in a
23 bigger region.

24 Q. And it's, when I refer to it, 6 and 7 the
25 jobs/total 3.5-1 that index could have been done just

1 by Ohio region and I understand it could have been
2 smaller but that's something you decided not to do?

3 A. It really never came up. It's not hard
4 to do and I'd be happy to do it, but no one asked me
5 to do it and I didn't understand maybe at the time
6 the contention about which side of the border that
7 the benefits accrued to. It was just not an issue.

8 I was asked to do a regional economic
9 impact study, and generally when I do these, I look
10 at what is the sort of footprint of the work force
11 and start from there, and that's the same method that
12 I used for the study of the Hallsville, Kentucky,
13 smelter and the Hendersonville, Kentucky, smelter,
14 both of which have a lot of employees who live in
15 Indiana instead of Kentucky where the smelters were,
16 so to me it was just consistent methodology with my
17 previous studies.

18 Q. Looking at line 7 employee
19 compensation-total, 1.806, that is a region number,
20 not an Ohio state-specific number.

21 A. Exactly.

22 Q. But you could have made it a
23 state-specific number.

24 A. I could, and I still could, and it would
25 be smaller.

1 Q. And it would be smaller?

2 A. Yes.

3 Q. And your total, as part of your analysis
4 you came up with a total employee compensation in the
5 region of approximately \$195 million, correct?

6 A. Yes, sir.

7 Q. And that's outlined on line No. 9 --

8 A. Yes.

9 Q. -- of the chart, correct?

10 And this number could have been split up
11 to an Ohio-only number if the company gave you all
12 the figures, correct?

13 MR. BONNER: Objection, the question
14 assumes that the company did not provide all the
15 figures. I don't think the witness testified to
16 that.

17 EXAMINER PRICE: Please rephrase your
18 question.

19 Q. This number, you could have made this
20 number, the 195, the employee compensation could have
21 been done on a state basis, not a region basis,
22 correct?

23 A. It could be. And it could have. There's
24 actually sort of two parts implicitly to your
25 question. One is the split of payrolls around the

1 region of company employees, which I didn't have that
2 information, I didn't know I needed that information,
3 and that would be reflected in lines 2 and 3.

4 The regional multiplier would stay the
5 same, but what would be interesting following your
6 line of questioning would be to find out about the
7 linkages of plant operations on the Ohio side versus
8 the West Virginia side.

9 And to do that I would have to construct
10 at least one other model, one of Ohio only and then
11 sort of contrast or subtract that answer from this
12 answer to get at the total compensation impact that
13 you're addressing on page 9 and to try to parse that
14 between the two states.

15 And it would depend upon the degree to
16 which the supplier networks for Ormet were on one
17 side of the river or not, and it would also depend
18 upon the relative distribution of retail operations
19 on each side of the river, West Virginia and Ohio,
20 and possibly Pennsylvania if we wanted to go that
21 far.

22 So I haven't done it, I could do it, but
23 I don't know the answer. It would certainly be --
24 well, we don't know what the answer would be. We
25 know that 60 percent of the employees live in Ohio,

1 so you can assume it's going to be at least half or
2 more of the employee compensation will end up in
3 Ohio. How much more I can't say without doing some
4 analysis.

5 Q. I think similar to your other answers
6 would you agree that it would be a smaller number?

7 MR. BONNER: Objection; asked and
8 answered.

9 A. Well, the amount captured in Ohio would
10 certainly be less than 195 million, if that's your
11 question, because 195 million is the complete
12 regional total employee compensation impact and we
13 know that 35 to 40 percent of employees live in West
14 Virginia where they're obviously going to spend their
15 payrolls closer to home and there are cities there
16 and retail opportunities there.

17 So the Ohio impact will not be
18 195 million, it will be somewhere between --
19 somewhere between a hundred and 195. Where, I can't
20 say without doing more work.

21 Q. But you would agree a good place to start
22 to look at that analysis would be to take the
23 approximately 60 percent, you have 60 percent Ohio
24 residents that are workers and taking 60 percent of
25 the 195 million would be a good place to start.

1 A. It would be a good place to start.

2 Q. Looking at the 3,400 jobs on line 8, jobs
3 in the region that will be created.

4 A. Yes.

5 Q. And that's a seven-county region
6 including the four West Virginia counties, correct?

7 A. As far as where they live, correct. We
8 know that a thousand of the jobs are obviously in
9 Ohio because those are the direct jobs. So the
10 question is where do the other 2,400 jobs fall
11 spatially, in which state, and so we don't know.

12 Q. And this report doesn't include whether
13 those are Ohio jobs or West Virginia jobs.

14 A. I've not attempted to estimate that yet.

15 Q. It would be fair to take, to start as a
16 number or try and take a number to take 60 percent of
17 the -- 60 percent times the 3,441 number to get a
18 ballpark estimate?

19 A. Well, let me just make a technical point.
20 Economists typically, when you measure jobs, you
21 measure them on a place of work basis as opposed to a
22 place of residence basis.

23 So all of the 1,000 jobs at the plant are
24 Ohio jobs, right? Because they're in Monroe County.
25 So the question is where are the other 2,400 jobs,

1 the spin-off jobs. So it might be fair to start with
2 a reasonable assumption that maybe 60 percent of the
3 additional, the spin-off jobs, would be in Ohio.
4 Start with that number and try to tighten it up.

5 So in other words, I don't think it's
6 fair to apply 60 percent to the 3,400, it might be
7 fair to apply 60 percent to the 2,400 spin-off jobs
8 counting the thousand direct jobs at the -- obviously
9 they're in Ohio.

10 Q. Thank you.

11 Dr. Coomes, did you do any analysis on
12 the cost to the region or to AEP customers for the
13 discount that would be provided to Ormet's
14 electricity as part of the application?

15 A. No, sir.

16 MR. POULOS: That's all I have, your
17 Honor, thank you.

18 Thank you, Dr. Coomes.

19 EXAMINER PRICE: Thank you.

20 Mr. Kurtz.

21 MR. KURTZ: Thank you, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Kurtz:

25 Q. Very quickly, Dr. Coomes. You've heard

1 about the delta revenue and the magnitude of the
2 subsidy to Ormet under various scenarios here today?

3 A. Here today.

4 Q. Okay. Now, when, pick a number, a
5 million or a hundred million dollars is added to
6 Ohio's electric bill, that will have a negative
7 impact on the economy, will it not, all else equal?

8 A. In a qualitative sense you're probably
9 right, but I have no idea about magnitudes.

10 Q. Because people have less money to spend
11 on goods and services, less money to pay off their
12 credit cards, less money to invest, less money to do
13 everything, anything.

14 MR. BONNER: Objection. I think there's
15 really a lack of foundation for that question.
16 There's no indication in the question as to how much
17 the per ratepayer cost would be involved for the
18 witness to be able to respond to that question.

19 MR. KURTZ: I think it's conceptually,
20 and he has responded, it's conceptually true that as
21 you raise electric rates it's going to have an
22 adverse effect on the economy.

23 EXAMINER PRICE: It seems well within the
24 witness's area of expertise. Overruled.

25 A. But the point is does it have a 1 percent

1 impact or a 60 percent impact? That's what's
2 important is the magnitude of it. And I have not
3 studied it at all.

4 Q. Based upon your general understanding as
5 a professor in this area the higher the rate increase
6 to keep the Ormet jobs, the -- let me start again.

7 The rate increase to keep the Ormet jobs
8 will tend to have a negative economic effect on Ohio,
9 correct? Is that correct?

10 A. Raising electricity rates would have
11 negative impacts on industry, certainly, yes.

12 Q. And so the higher the rate increase to
13 keep the Ormet jobs, the bigger the negative impact.

14 A. Again, is it .001 percent or is it
15 60 percent? I mean, the issue is the magnitude, and
16 I don't know whether it's material or not.

17 Q. That's my point. You did not really try
18 to model --

19 A. No.

20 Q. -- the rate increase associated to offset
21 the value of the jobs retained.

22 A. Until this week I didn't even know you
23 were discussing rate discounts and rate increases.

24 Q. One other very simple question. On page
25 3 of your testimony at the very bottom, line 22, you

1 indicate that there's a 1.806 multiplier for every
2 dollar of payroll created at an aluminum smelter. Is
3 payroll the right term?

4 And let me refer to you also your study
5 on page 8 where you say similarly, the employee
6 compensation multiplier for the industry, there is a
7 1.806, meaning that for every dollar of payroll
8 created, that the aluminum smelter and other -- so
9 forth is created.

10 A. Yeah, sorry for the confusion. And it's
11 shorthand here in the testimony so that I didn't have
12 to get real geeky and explain all the differences
13 between payroll and compensation.

14 This comes about by the nature of the
15 IMPLAN modeling system and it has different types of
16 multipliers that we generate when we build one of
17 these custom input/output models.

18 For example it has output multipliers,
19 value-added multipliers, job multipliers, and then it
20 has this thing called employee compensation
21 multiplier. It's the closest thing in the model to
22 a, what we think of as a payroll multiplier.

23 Unfortunately, employee compensation,
24 according to IMPLAN and some other federal agencies,
25 includes fringe benefits. It's not just wages and

1 salaries. So sorry for the confusion.

2 Technically, everywhere it says "employee
3 compensation multiplier," it should be referring to
4 the full pay package to employees.

5 Q. Payroll plus fringe benefits.

6 A. Yes, sir.

7 Q. Okay.

8 MR. KURTZ: Thank you, Dr. Coomes.

9 EXAMINER PRICE: Mr. Resnik?

10 MR. RESNIK: No questions.

11 EXAMINER PRICE: Redirect?

12 - - -

13 REDIRECT EXAMINATION

14 By Mr. Bonner:

15 Q. Dr. Coomes, just a few follow-up
16 questions. You mentioned the other aluminum smelter
17 economic impact studies. When did you do those, sir?

18 A. I believe the first time I looked at the
19 Century and the Alcan smelters in western Kentucky
20 was in maybe 2005. And then a few years passed and I
21 was asked to look at it again perhaps, I think
22 because of a rate case before the Public Service
23 Commission, so I did the study basically twice over
24 the course of three years. And the last time was I
25 think about a year and a half ago.

1 Q. And if you could indulge this easterner,
2 can you describe the general geographic region of
3 those aluminum smelters as compared to the aluminum
4 smelter in this case?

5 A. Well, actually very similar, at least
6 what I can gather statistically and from maps. These
7 smelter operations, of course, tend to be along the
8 Ohio River for access to barges, access to
9 inexpensive electricity which we tend to have up and
10 down the Ohio River Valley, and the smelters don't
11 typically get sited in major cities, they tend to get
12 sited between major cities.

13 So the area around the Century smelter
14 is, that town is called Hallsville and it's about
15 20 miles from Owenboro, which is not a very large
16 city and I think the population of that county is
17 about 7 or 8,000, probably very similar to Monroe
18 County, Ohio, as far as the population size, and so
19 most of their workers actually commute in, just like
20 in this case.

21 I think only 1/3 of the workers at Ormet
22 plant are from Monroe County because you just don't
23 have the population base there to support that many
24 highly skilled manufacturing jobs, and that's very --
25 that's exactly the case in Hallsville where the

1 Century Aluminum facility is.

2 The other one, the Alcan facility, is in,
3 I can't remember the name of the town outside of
4 Henderson, I think Sebring maybe, it's along -- it's
5 close to the Ohio River also, and that's another
6 county with a population of only maybe 40,000 people,
7 and they get workers from the whole region, including
8 southern Indiana.

9 So I think, you know, in a rough sense
10 they're very similar communities and locations of
11 wooded hillsides and mixed farmland and -- along the
12 Ohio River far from a major city.

13 Q. And what's the average wage of the Ormet
14 employees involved?

15 A. According to the data that the company
16 gave me, it works out to about 55,000 a job in terms
17 of wages and salaries, plus a lot of fringes.

18 Q. Are you aware of any other large
19 employers or other significant industry in Monroe
20 County that could hire these employees if that plant
21 were to shut down?

22 MR. POULOS: Objection, your Honor.
23 Beyond the scope of cross.

24 EXAMINER PRICE: Sustained.

25 Q. What other data were you provided by the

1 company, Ormet?

2 A. Let's see, they provided me with this job
3 data that we discussed earlier, county of residence
4 of employees and counts, and they also supplied me
5 with total wages and salaries, total fringe benefits
6 I believe for the year 2007, and also they gave me
7 their tax payments, their major tax payments out of
8 their accounting system to show the income tax
9 withholdings for Ohio, West Virginia, Pennsylvania,
10 the real estate taxes that they paid, the property
11 taxes on the plant and equipment, there's some sales
12 tax numbers in there direct from the company to state
13 and local government.

14 I believe these VEBA payments that were
15 discussed here earlier, which I don't totally
16 understand, but I had the number. I didn't use it
17 but I had the number. And then there were some
18 electricity taxes which evidently Ohio has a tax on
19 electricity usage, and so I think that's the extent
20 of what they supplied me.

21 Q. You were asked about Ohio-specific data
22 by OCC counsel. Did the data you provided enable you
23 to estimate lost income tax revenues to the state of
24 Ohio were the Ormet plant to shut down?

25 A. I certainly made estimates and they're in

1 the last table of the report. If you like, I can go
2 into it.

3 Q. Could you just summarize what you found?

4 A. Yeah, I estimated that through income,
5 individual income taxes, not corporate income taxes,
6 but individual income taxes, the direct property
7 taxes and sales taxes, general sales taxes by
8 individuals, would amount to about 6.77, 6.8 million
9 dollars a year because of the company's operations.

10 So -- and that implies if the company
11 went out of operation, shut down, whatever, that the
12 state of Ohio would lose about \$6.8 million per year
13 from those sources. Obviously there are other
14 sources that are harder to measure.

15 I did not get into estimates of, for
16 example, some of the surrounding counties like
17 Belmont and Washington County have local income
18 taxes, I didn't try to estimate those. It's probably
19 in the nature of 50,000 or a hundred thousand
20 dollars, I just didn't get that fine in my research.

21 Q. Did you do any calculations as to any
22 increased unemployment compensation insurance costs
23 that the state of Ohio would incur if the Ormet plant
24 were to shut down?

25 A. I did. It's hard to do this real

1 precisely because there are union contracts where
2 laid-off workers can receive compensation from the
3 union funds and you have to make assumptions about
4 how long the unemployment insurance benefits would
5 last, how many employees would find other jobs in the
6 community, so, you know, it's hard to know exactly.

7 But you can look back at the recent
8 history of the plant. Once Ormet explained to me the
9 history, I did not know it, of the idling I guess in
10 2004, 2005, 2006, it was shut down for, what, two
11 years and came back in 2007. That got me curious
12 about whether I could see that impact on the region
13 by looking at federal data from the Bureau of Labor
14 Statistics on Wages and Salaries.

15 There's also nice data that I get from
16 the federal government on unemployment insurance
17 payments to individuals that are residents of
18 counties by year and also the unemployment rate.

19 So I looked into all three of those
20 federal databases and it's just obvious that it's
21 very clear, as soon as you put a chart together, that
22 all of these things happen simultaneously with the
23 idling and shutdown of the plant in '05, and '06, and
24 that when the plant was restarted in '07, you see all
25 of the numbers reverse.

1 So, for example, Monroe County itself had
2 about \$144 million I believe in payroll, wages and
3 salaries, before the idling in 2004. That dropped to
4 about 90, 91 million, I believe, by 2006, and it's
5 almost exactly equal to Ormet's payroll.

6 It was about \$54 million in payroll
7 reduction at the plant and you see it reflected point
8 for point in the wages and salaries reported by the
9 federal government going to all workers in that
10 county.

11 Q. Is that payroll reduction during the
12 idling of the Ormet plant reflected on the chart in
13 your report, sir?

14 MR. KURTZ: Your Honor, can I object
15 before the witness starts answering? We have been
16 sort of indulgent. There's been a lot of redirect
17 that was not the subject of cross-examination.

18 All this information is in his report,
19 but I think it's just -- this wasn't -- this isn't --
20 these items weren't addressed in the
21 cross-examination.

22 MR. BONNER: Well, to respond to that, I
23 understand the objection, your Honor, but there was a
24 lot of I think questioning about the Ohio-specific --
25 the lack of Ohio-specific data in Dr. Coomes'

1 research and the focus of my question is to respond
2 to that criticism from OCC counsel which is likely to
3 be, I'm sure, briefed later as well.

4 EXAMINER PRICE: Well, I don't think that
5 he opened the door that wide. Objection sustained.

6 Q. (By Mr. Bonner) Did you also calculate
7 the rate of employment during the shutdown in 2004 to
8 2006 in Monroe County, Dr. Coomes?

9 MR. POULOS: Objection, your Honor,
10 beyond the --

11 EXAMINER PRICE: Sustained. They never
12 got into the shutdown. I mean, the shutdown is not
13 really a valid topic on redirect.

14 MR. BONNER: No further questions, your
15 Honor. Thank you.

16 EXAMINER PRICE: Thank you.

17 Mr. Poulos?

18 MR. POULOS: No, your Honor, thank you.

19 EXAMINER PRICE: Mr. Kurtz.

20 MR. KURTZ: No questions, your Honor.

21 EXAMINER PRICE: Mr. Resnik.

22 MR. RESNIK: No, thank you.

23 EXAMINER PRICE: Thank you, you're
24 excused.

25 THE WITNESS: Thank you.

1 (Witness excused.)

2 EXAMINER PRICE: Let's go off the record
3 for a minute.

4 (Discussion off the record.)

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

7 Mr. Vince.

8 MR. VINCE: We would at this time like to
9 move into evidence Ormet's Exhibits 1 through 9, your
10 Honor.

11 EXAMINER PRICE: Any objections to Ormet
12 Exhibits 1 through 9?

13 MR. POULOS: Your Honor, we object to all
14 the testimony and the amended application where it
15 refers to the \$34 and the 38 per megawatt --

16 EXAMINER PRICE: Overruled, thank you.

17 MR. POULOS: And the further reasons that
18 we stated before.

19 EXAMINER PRICE: Thank you.

20 Any further objections?

21 Seeing none, Ormet Exhibits 1 through 9
22 will be admitted at this time.

23 MR. VINCE: Thank you, your Honor.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 EXAMINER PRICE: Ms. Grady.

1 MS. GRADY: Your Honor, I believe that we
2 had marked and for the life of me I'm not sure we
3 moved it in, I'm not sure there was a ruling, we
4 marked as OCC Exhibit No. 1 the press release issued
5 by Ormet.

6 EXAMINER PRICE: Yes, we did, and we have
7 not ruled on it yet, nor have you moved it yet.

8 MS. GRADY: Yes, that's what we'd like to
9 do now. We'd like to move for the admission of OCC
10 Exhibit No. 1, the press release.

11 MR. RESNIK: Do we have a copy of it?

12 MS. GRADY: That was where we gave to the
13 court reporter our only copy. Let me see if I have
14 another copy.

15 MR. RESNIK: I don't imagine that we'd
16 have an objection but I'd just like to see --

17 EXAMINER PRICE: Was it attached to your
18 objections?

19 MS. GRADY: It was attached to our
20 comments.

21 EXAMINER PRICE: Your comments that were
22 filed yesterday.

23 MS. GRADY: I've got it. Here's an
24 additional copy.

25 EXAMINER PRICE: We'll give Mr. Resnik

1 one moment.

2 MR. RESNIK: And my recollection is that
3 Mr. Tanchuk, when he was on the stand, said this was
4 the company's press release.

5 MR. TANCHUK: Correct.

6 MR. RESNIK: We have no objection.

7 MS. GRADY: Thank you, your Honor.

8 EXAMINER PRICE: Seeing no objections,
9 OCC Exhibit 1 will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 MS. GRADY: Your Honor, at this time I
12 would like marked for identification purposes as OCC
13 Exhibit 2 and OCC Exhibit 3 the information that was
14 provided on the total compensation, cash, and
15 benefits for executives of Ormet, it's two
16 single-page sheets that Ormet was kind enough to
17 produce for us at the end of this morning or early
18 afternoon.

19 MR. VINCE: Your Honor, we renew our
20 objection on the basis of confidentiality. We have
21 provided the aggregate figures and we have complied
22 with your Honor's --

23 EXAMINER PRICE: Let's go ahead and mark
24 those exhibits.

25 MS. GRADY: Yes, as the first one, we've

1 got two of them, they're not labeled. The first one
2 it says of the 2.3 to 2.4 million total
3 compensation --

4 EXAMINER PRICE: Let's not read it into
5 the record just yet.

6 MS. GRADY: Oh, I thought I'd get that
7 through.

8 EXAMINER PRICE: Let's go ahead and mark
9 whichever one is in your left hand as OCC Exhibit 2
10 and then the other as OCC Exhibit 3.

11 MS. GRADY: And how do you want to handle
12 this, your Honor, in terms of -- I'm sure everyone
13 has copies of it. Two starts off --

14 EXAMINER PRICE: Can I see them? It
15 would help me in rulings on this to actually see what
16 these are.

17 MS. GRADY: Those are my only copies,
18 see. I'll kind of stand here.

19 EXAMINER PRICE: Okay. So why don't we
20 take them one at a time. Let's start with OCC
21 Exhibit 2. Are you going to move the admission of
22 OCC Exhibit 2 at this time?

23 MS. GRADY: Yes, your Honor, I am.

24 EXAMINER PRICE: Does Ormet have an
25 objection to the admission of OCC Exhibit 2.

1 MR. VINCE: Yes, sir.

2 EXAMINER PRICE: And your basis would be?

3 MR. VINCE: The basis is it's proprietary
4 information and confidential and we have provided the
5 aggregate amount of compensation to the Ormet
6 officials. We do not feel it's of great probative
7 value in this case. And it is also total
8 compensation is less than .5 percent of 1 percent of
9 the costs.

10 EXAMINER PRICE: I think the problem I'm
11 having is your witness already basically testified in
12 generalities as to what that number was. So you, I
13 mean, he gave kind of a ballpark figure, frankly the
14 number is less than one would have thought from the
15 ballpark figure. So I think that we will go ahead
16 and admit OCC Exhibit 2 at this time.

17 MS. GRADY: Thank you, your Honor.

18 OCC at this time moves for the admission
19 of OCC Exhibit 3.

20 EXAMINER PRICE: OCC-3, Exhibit 3,
21 relates to specific bonuses for specific individuals
22 and consistent with my prior ruling I don't think
23 specific amounts for specific individuals has any
24 probative value in this proceeding and we will not
25 admit OCC Exhibit 3.

1 MS. GRADY: Your Honor, I would note the
2 objection to that ruling.

3 EXAMINER PRICE: Noted. Thank you.

4 MR. VINCE: Thank you, your Honor. We
5 appreciate your consideration.

6 MR. KURTZ: Your Honor, very quickly.

7 EXAMINER PRICE: Mr. Kurtz.

8 MR. KURTZ: I think OEG Exhibit 1 has
9 already been admitted.

10 EXAMINER PRICE: Yes, it has.

11 MR. KURTZ: And OEG Exhibits 6 and 7 have
12 also been admitted.

13 EXAMINER PRICE: Yes, they have.

14 MR. KURTZ: Can we discuss 2, 3, 4, and 5
15 at this point, or --

16 EXAMINER PRICE: You had a chance to lay
17 more foundation for those exhibits. But if you want
18 to take a shot at it.

19 MR. KURTZ: Well, let me just say this,
20 OEG Exhibit 2 is the same as 6 except one is April
21 24th and one is April 27th, it's the exact same
22 sheet so I guess the foundation would be the same.

23 EXAMINER PRICE: Is everybody willing to
24 stipulate OEG 2?

25 MR. VINCE: First of all, we don't have

1 copies.

2 MR. KURTZ: They were attached to OEG's
3 objections. This is the LME report.

4 MR. VINCE: We object on the basis of no
5 foundation.

6 EXAMINER PRICE: Okay. You're not going
7 to get them in yet.

8 MR. KURTZ: That's fine. Actually, I'm
9 not going to actually move in Exhibit 3, and No. 4
10 I'll ask Mr. Fortney some questions about.

11 Is there any objection to No. 5, which is
12 the Ormet data response?

13 I'm sorry, I should have directed that to
14 you.

15 MR. VINCE: No objection.

16 MS. HAND: No objection.

17 EXAMINER PRICE: Mr. Resnik previously
18 had an objection.

19 MR. RESNIK: Yeah, by "no objection" I
20 assume you're saying this is your response and you
21 stand by it.

22 MR. VINCE: Yes.

23 MR. RESNIK: We have no objection.

24 EXAMINER PRICE: Okay. OEG 5 will come
25 in at this time.

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MR. KURTZ: Thank your Honor.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Anything further?

See you all tomorrow morning at 9:30,
Hearing Room 11C, thank you.

(The deposition concluded at 5:07 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, April 30, 2009, and carefully compared with my original stenographic notes.

s/Maria DiPaolo Jones
Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2011.

(MDJ-3387)

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in

Case No(s). 09-0119-EL-AEC

Summary: Transcript Ormet 4/30/09 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.