BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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PROCEEDINGS

before Mr. Gregory Price, Hearing Examiner, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-C, Columbus, Ohio, called at 9:30 a.m. on Friday, May 1, 2009.

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VOLUME II

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Friday Morning Session,
May 1, 2009.

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EXAMINER PRICE: Let's go on the record.

Good morning. The Public Utilities Commission has set for hearing at this time and this place Case No. 09-119-EL-AEC, being in the Matter of ithe Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Company.

My name is Gregory Price, I'm the hearing examiner to preside over today's hearing. This is our second day of hearing in this proceeding.

Do we have any preliminary matters we need to discuss before we take our first witness?

Seeing none, I believe it's OCC's turn to call their witness.

MR. POULOS: Thank you, your Honor. OCC calls Dr. Amr Ibrahim.

(Witness sworn.)

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

THE WITNESS: Thank you very much.

My name is Amr Ibrahim. My business address is 10 West Broad Street, Columbus, Ohio, zip

code 43215. And I work for OCC.

EXAMINER PRICE: Let's go off the record.

(Off the record.)

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

Please proceed, Mr. Poulos.

MR. POULOS: Thank you, your Honor. Your Honor, I'd also like to ask that Mr. Ibrahim's, Dr. Ibrahim's testimony be marked as OCC Exhibit 3.

EXAMINER PRICE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

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AMR IBRAHIM

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

DIRECT EXAMINATION

By Mr. Poulos:

Q. Dr. Ibrahim, please state your full name and business address for the record.

A. My name is Amr Ibrahim, and my business address is 10 West Broad Street, Columbus, Ohio, zip code 43215.

Q. And by whom are you regularly employed?

A. I am employed by the Office of Ohio Consumers' Counsel.

Q. Thank you.

Are you the Dr. Ibrahim who prepared testimony that was filed on April 27th in this case?

A. Yes, I am.

Q. On whose behalf do you appear today?

A. It is on behalf of OCC.

Q. Do you have your prepared testimony with you on the stand?

A. Yes, I do.

Q. Did you prepare the testimony or have it prepared at your direction?

A. Yes, I have prepared the testimony.

Q. Do you have any amendments to this testimony?

A. Yes, I do.

Q. And could you describe the amendment?

A. It is a minor change in Exhibit AAI-1 in which I added two lines, a red line and a blue line, and I have provided copies in color for filing in order to aid understanding of the graph.

Q. And do you have that chart before you?

A. Yes, I do.

MR. POULOS: Your Honor, may I have that marked as OCC Exhibit 4?

EXAMINER PRICE: You certainly may.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. POULOS: May I approach the Bench?

EXAMINER PRICE: You may.

MR. NOURSE: It was amended AAI-1, you're changing it to 4?

MR. POULOS: Yes.

Q. Dr. Ibrahim, can you just describe the changes on this document?

A. I added two lines, one of them at the price level of 1,941 which was completed in my testimony to be a point below which an index in a given point of time could be below zero. And the other one is at level $2,725 per ton, which is the price that -- it is a target rate in the application.

Q. Thank you.

A. Thank you.

Q. If I asked you the same questions found in your prepared testimony, would your answers be the same?

A. Yes.

Q. And that would include the amendment, correct?

A. Yes.

MR. POULOS: Your Honor, the OCC moves

for the admission of OCC Exhibits 3 and 4 and tenders the witness for cross-examination.

EXAMINER PRICE: Thank you. We'll defer ruling on OCC Exhibits 3 and 4 until the conclusion of cross-examination.

Ms. McAlister.

MS. McALISTER: No questions, your Honor.

EXAMINER PRICE: Mr. Kurtz.

MR. KURTZ: I would, your Honor, just about this new amended chart.

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CROSS-EXAMINATION

By Mr. Kurtz:

Q. Good morning.

A. Good morning, sir.

Q. Now, this chart is the testimony reference that ties back into the chart on page 10 of your testimony? I'm looking at Footnote No. 19, for example.

A. It is tied to several areas, but including line 7 of my testimony at page 10.

Q. Okay.

A. As well as to line 2 that describes $2,725 per ton.

Q. Okay. The Footnote No. 19 where you

calculate the rate or, excuse me, the LME price below which there would be no charge for electricity; do you see that?

A. Yes, I do.

Q. You refer to Attachment A, Schedule 1, page 1; that's to the application?

A. Correct.

Q. This Schedule A, page 1 has an AEP tariff rate of $38.43, I think you cite in your testimony at Footnote No. 19.

A. Correct.

Q. Now, were you here yesterday or do you know that the new AEP tariff rate is actually higher for Ormet and that it is, according to the company's supplemental data response, which is OEG No. 1, $44.24 for one hour, I believe?

MR. BARNOWSKI: Your Honor, we would object on two grounds, first of all, this is friendly cross. Secondly, if it's not friendly cross, he's leading the witness, which is definitely not adverse to his position.

MR. KURTZ: Well, it's not friendly, your Honor, I just want to understand the nature of this chart. If I'm leading him, I'll stop doing that.

EXAMINER PRICE: We're going to -- as to

the friendly cross, I attempted to address that by having Mr. Kurtz do his cross first so he's not in any sense rehabilitating the witness after you had your shot at cross-examining him. And Mr. Kurtz pledges that he will attempt to not lead from this point on.

MR. BARNOWSKI: Thank you, your Honor.

Q. (By Mr. Kurtz) My question is, this amended chart used the application which had the old tariff rate, but now we know the tariff rate Ormet would otherwise pay is actually higher.

A. This amended chart responds exactly to what has been filed with the Commission as an exhibit.

Q. Okay. Mathematically is it your understanding that if the price for electricity goes up, that the LME price at which Ormet will need to get for its aluminum for it to either be in the equilibrium break-even cash-flow position, the LME price will have to also go up -- excuse me.

If the price of power goes up, and the LME stays the same, then your red line on here will actually be reduced?

MR. BARNOWSKI: Objection, your Honor, he's continuing to lead the witness.

Q. What will happen to the red line if you used the current AEP tariff rate of $44.24?

A. To be fair and confident, I need to do the calculation in order to answer this question.

Q. Can you do that calculation, really your Footnote No. 19 using the current tariff rate of $44.24 and derive what, instead of 1,941, what the red line would be?

A. I think that that would require three, four minutes of calculation to be sure that I am accurate and fair, and this could be done perhaps at a later point. So subject to confirmation, this confirmation could be done.

MR. KURTZ: That's my last question. I'd just like to get what the red line would be at the current tariff rate.

EXAMINER PRICE: We can take five minutes and he can do the calculation. Let's go off the record. Why don't you go ahead and do the calculation.

(Recess taken.)

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

Mr. Kurtz.

Q. (By Mr. Kurtz) Dr. Ibrahim, do you have

the calculation?

A. An approximation would be around $2,200.

Q. So if the LME price that Ormet received for its electricity is $2,200 per ton or less, they will pay zero for electricity under the variable rate.

A. No. If the price is around $2,200, the price would be zero. If it is less than $2,200, mechanically at least the price could be negative.

MR. KURTZ: Thank you, your Honor.

EXAMINER PRICE: Thank you.

Mr. Nourse?

MR. NOURSE: No questions.

EXAMINER PRICE: Mr. Barnowski.

MR. BARNOWSKI: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Barnowski:

Q. Good morning, Mr. Ibrahim, how are you?

A. Very well, and you?

Q. Very good.

I just want to clarify a couple things to start with. You are employed by the OCC?

A. That's correct, sir.

Q. Your salary is paid by the OCC?

A. This is correct, sir.

Q. Since you've been employed by the OCC have you ever taken a position in a litigation that was contrary to the position that the OCC was taking?

A. No, sir.

Q. In your written testimony you attempted, and I'm going to quote it, "to provide an estimate for the magnitude of delta revenues based upon the use of LME future pricing," correct?

A. Can you point me exactly where I said that, please, sir?

Q. You don't remember saying that?

A. Would you please direct me exactly where I say that, because you are quoting me word for word.

Q. I am. You don't remember saying that.

MR. POULOS: Your Honor, I'd like a cite to this, please.

EXAMINER PRICE: Can you direct us to where he says this in his testimony?

MR. BARNOWSKI: Sure.

Q. Look at page 9 of your testimony, please.

MR. POULOS: Your Honor, I also object to the argumentative tone of the question.

EXAMINER PRICE: He'll try to not have an argumentative tone from this point forward.

Q. Line 16, "Is it possible to provide an estimate for the magnitude of delta revenues that would result from the requested unique arrangement?"

Did I read that correctly?

A. Yes.

Q. And then if you flip the page to 11, line 17 going through page 12, line 2, you used the LME future pricing to conduct that estimate, correct?

A. For 2010, yes, sir.

Q. Thank you.

And one of the main reasons you are recommending the rejection of the amended application is that based on your calculations, you believe the delta revenues are just too high, correct?

A. Yes.

Q. Just to be clear, you are not an expert in the aluminum industry.

A. No, sir, I am not.

MR. POULOS: Objection, your Honor. Asks for a legal conclusion.

EXAMINER PRICE: Overruled.

Q. You've never been employed by an aluminum company before?

A. No, sir, I was not.

Q. You're not an expert in aluminum price

forecasting.

MR. POULOS: Objection, your Honor. Asks for a legal conclusion.

EXAMINER PRICE: Overruled.

A. No, I'm not.

Q. You've never worked before with aluminum price forecasting, to your knowledge.

A. No, sir, I did not.

Q. You don't know how the LME works.

MR. POULOS: Objection, your Honor, the question's vague.

THE WITNESS: Can you --

EXAMINER PRICE: One second. Your counsel's made an objection.

THE WITNESS: I'm sorry, your Honor, please accept my apology.

EXAMINER PRICE: If you could ask the question more specifically.

MR. BARNOWSKI: Sure.

Q. (By Mr. Barnowski) You've never worked with the London Market Exchange before until this case, correct?

A. This is correct, sir.

Q. And you have no idea, sitting here today, what industry insiders or experts use or consider to

be the most accurate predictors of future pricing in the aluminum industry, correct?

A. This is correct.

Q. Since you used the LME future pricing models I'd like to take a look at how accurate they've been in the past, okay?

A. Please.

MR. BARNOWSKI: Your Honor, may we approach the witness?

EXAMINER PRICE: You may.

MR. BARNOWSKI: For the record, what I'm handing to the witness is the Aluminum Morning Market Report price sheet from July 11th, 2008.

EXAMINER PRICE: You'd like that marked as Ormet 10?

MR. BARNOWSKI: Yes, please, your Honor.

EXAMINER PRICE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. GRADY: Counsel, can I have a copy as well?

MS. HAND: I don't know if we have another one. I made one for each party.

MR. POULOS: What exhibit is this, number?

EXAMINER PRICE: Ten.

Q. (By Mr. Barnowski) Could you identify -- just to identify it for the record, Dr. Ibrahim, do you see the date in the upper left next to Price Sheet 4, Friday, July 11th, 2008?

A. Yes, sir, I do.

Q. That's less than ten months ago, correct?

A. Correct.

Q. Look on the right, if you would, upper right, it has the LME official 15-month number. Do you see that?

It says "Value Date, LME official," then it has a 3-month number and a 15-month number, it's in the second-to-the-top box on the right.

A. Yes, that's "Value Date" 7/08, am I right?

Q. Yes, can you read into the record what the value LME official pricing was as of July 11, 2008?

MR. POULOS: Objection, your Honor.

EXAMINER PRICE: Grounds?

MR. POULOS: Hearsay.

EXAMINER PRICE: Overruled.

A. $3,429.50.

Q. What is the price today, do you know?

A. As we speak?

Q. Yeah.

MR. POULOS: Objection, your Honor to these questions. Lack of foundation. This witness has testified that he has not had experience in the past with working with the LME though he's worked with it in this case.

MR. BARNOWSKI: Your Honor, he has put into his report what the LME is as of the day of his report. I think I'm entitled to explore the accuracy of the reliability of using numbers like that to write an expert report.

MR. POULOS: Counsel.

EXAMINER PRICE: Overruled.

A. The last time I looked into the LME prices, the average, was around April 21st or 22nd, and at that price, and I'm speaking from memory, that at that date was approximately 1,400, 1,425, '29 of this particular one, and I'm speaking from memory. And that was for April, and that date I also took the averages for the months of January, February, March, and I used them in my testimony.

Q. Look, if you would, there's a box in the middle of the page that has LME future pricing predictors for the various months and quarters, and there's actually a date prediction or market number

for April of 2009. It's about ten lines down in the box under the word "cash."

EXAMINER PRICE: I can't allow that question, because you said the word "prediction" and --

MR. BARNOWSKI: I'm sorry.

EXAMINER PRICE: It's my understanding we're talking about futures contracts and those are not updates.

Can I clarify the question?

EXAMINER PRICE: Please.

Q. Doctor, if you look in the left-hand column, there's a market number for April of 2009, April 15th, actually.

MR. POULOS: Your Honor, may I have a clarification? I can't find where you're at, sir.

A. Would you be kind enough to point it to me, sir?

MR. POULOS: Okay.

A. First quarter '09?

Q. Yes.

A. Yes, sir.

Q. There's a number for April, there's a number for May, there's a number for June, correct?

A. I do see that, sir.

Q. Read into the record what the LME future pricing number is for April 15th, 2009, 16 days ago.

A. The bid price is going to be $3,398.

Q. So this is more than 200 percent wrong, off, correct?

MR. POULOS: Objection. Excuse me, Counsel. Sorry, I thought you were done.

Objection.

EXAMINER PRICE: Grounds?

MR. POULOS: Objection to relevance.

EXAMINER PRICE: Overruled.

A. That question again, please, sir?

Q. This is more than 200 percent wrong.

A. The calculation is off, yes.

Q. And as your counsel pointed out, this is not a prediction. The LME --

EXAMINER PRICE: I pointed that out.

MR. BARNOWSKI: I'm sorry.

MR. POULOS: I'll take it.

Q. As your Honor pointed out, this is not -- these LME numbers, the 15-month numbers are not predictions of future pricing, correct?

A. If I'm understanding correctly, these are the forward curves.

Q. So it would be wrong to suggest these are predictions of future pricing.

A. These are the forward curves that people were willing to put money on and if people had made decisions at that particular time, they would be out of money. And this is part of the nature of the business of the forward prices.

Q. Can you and I agree that a 200 percent margin of error is not particularly reliable?

A. This is what the markets show at that particular time. Some people live by what the market sees, some people die by it. It's the nature of the things to be done in forward markets.

Q. Did you understand my question?

A. I believe I did.

Q. Can you and I agree that a 200 percent margin of error is not a particularly reliable one?

A. This is what the market at that time was willing to take and people took position based on that price. The question should be whether it was in the money or out of the money, it's clear.

Q. Do you know what Harbor Aluminum is?

A. No, sir, I don't.

Q. Have you ever looked at a Harbor Aluminum report?

A. No, sir, I did not.

Q. Can I direct your attention to Ormet Exhibit 9.

EXAMINER PRICE: Do you have a copy of Ormet Exhibit 9?

THE WITNESS: No, sir.

MR. BARNOWSKI: We can bring him a copy.

EXAMINER PRICE: Supply him a copy.

MR. POULOS: Your Honor, may I see a copy of this?

MR. BARNOWSKI: We can give you another copy if you'd like.

Q. Ready?

A. Please go ahead, sir.

Q. What I've handed you is the April 2009 Harbor Intelligence Aluminum Price Outlook, which I believe when you were out of the courtroom yesterday there was some testimony that this is what industry insiders actually rely on for future pricing.

MR. POULOS: Objection, your Honor, to the characterization.

EXAMINER PRICE: Sustained.

Q. What I've handed you is the Harbor Aluminum April 2009 Market Analysis and Price Outlook Intelligence. What's the headline, the very middle

of the cover page?

Let me read it to you, you tell me if I read it correctly; "Aluminum Technical in Bullish Mode, We see prices closing at $2,000 by year end."

Did I read that correctly?

A. Can you direct me again where in the page?

Q. I'm on the cover page, I'm sorry.

A. On the cover page, please accept my -- can you start from the beginning again because I was looking into the wrong page.

Q. Sure. The middle of the cover page, tell me if I've read the title of this document correctly; "Aluminum Technical in Bullish Mode, We see prices closing at $2,000 by year end."

Did I read that correctly?

A. Yes.

MR. POULOS: Objection. Wait. Objection to hearsay. This is not an admitted exhibit into this case yet.

EXAMINER PRICE: This most certainly is. Overruled.

MR. POULOS: It's been admitted?

EXAMINER PRICE: Yes.

Q. Go to page 14 now, Dr. Ibrahim, if you

would. Do you see there's a box on the right-hand side of the page?

A. Yes.

Q. That has numbers for 2002 through 2011?

A. Yes.

Q. And in the middle of the box it has the consensus view; do you see that?

A. Yes.

Q. Read into the record what the consensus view of what the price will be in 2010.

A. Based on this particular table as submitted by you, the value on the column of consensus through the year 2010 is $2,490 per ton.

Q. $2,490?

A. $2,490 for 2010.

Q. Can you tell us what the delta revenue would be for 2010 if the price for aluminum is $2,490 as this report predicts?

A. We can calculate that, I suppose, and that would take some time.

Q. Do you have a calculator in front of you?

A. Yes, I still have the calculator in front of me.

Q. Can you pull it out for me?

A. Yes, I can.

Q. Okay. If I get any step in this process wrong, just stop me and tell me, okay?

A. Okay. Sure, go ahead.

Q. The target price is $2,725, correct? For 2010.

A. Yes.

Q. You subtract the actual which is 2,490, correct?

A. Correct.

Q. What's that equal?

A. 275 from 245 is 300.

Q. No, no, no, 2,725 minus 2,490.

THE WITNESS: Do I have your permission to use the calculator, your Honor?

EXAMINER PRICE: Yes, absolutely.

A. $235.

Q. Okay. And then you multiply $235 by .049, correct?

A. Correct.

Q. What does that give us?

A. $11.51 reduction.

Q. And now you multiply that by, it's a big number, 4,659,444, which are the megawatts. What does that give us?

A. 53 million.

Q. 53 million. Can we agree that --

EXAMINER PRICE: Mr. Kurtz, do you have an objection?

MR. KURTZ: Yeah, I do. I don't know how to phrase this. This exact calculation was done yesterday by one of the Ormet witnesses, either Mr. Fayne or Mr. Riley, and I'm going to object for I guess lack of proper foundation because, or just a clarification that the 2,725 target number from Schedule A, page 1 assumed the old outdated AEP tariff rate of 38.43 and that the calculation on the record yesterday did the exact same thing using the current tariff rate of 44.24, and I guess I'm just making that objection in the sense so that the record is clear on that point.

EXAMINER PRICE: Well, I think he can, you know, we've allowed people to run numbers based upon hypothetical numbers. I don't think as an evidentiary matter there's anything wrong with that. You certainly are entitled in your brief to criticize the use of that number because you think it's inaccurate. Overruled.

MR. BARNOWSKI: Thank you, your Honor.

EXAMINER PRICE: You may proceed.

Q. (By Mr. Barnowski) 53 million. Can we

agree, Dr. Ibrahim, that 53 million is significantly less than the $195 million in annual wages that Dr. Coomes found in his report would be lost if the plant were to close?

MR. POULOS: Objection to foundation, Dr. Coomes's number.

EXAMINER PRICE: I don't understand.

MR. POULOS: There's no foundation of Dr. Coomes's number of 190 and this witness being able to testify to that.

EXAMINER PRICE: Can you --

MR. POULOS: More to the point, what is the number that they're comparing it to?

EXAMINER PRICE: I think that his point is the witness was not in the hearing room yesterday during Dr. Coomes's testimony so he can't tie together the 53 million to the 195 million that we heard Dr. Coomes testify to yesterday.

Q. (By Mr. Barnowski) Dr. Ibrahim, you at least glanced at Dr. Coomes's report, correct?

A. Indeed, sir.

MR. BARNOWSKI: Can I proceed?

EXAMINER PRICE: His report's in the record. You can show him the report and then he would have a proper foundation, but asking him to

just do it from memory is probably going to be objectionable.

Dr. Coomes's exhibit is in the record.

MR. BARNOWSKI: Your Honor, I'm sorry, I don't need to present this.

EXAMINER PRICE: Okay.

Q. Read into the record what the consensus price is for 2011, Dr. Ibrahim.

MR. POULOS: Objection, your Honor, to hearsay again.

EXAMINER PRICE: Overruled. This exhibit's been admitted.

MR. POULOS: This witness is testifying.

EXAMINER PRICE: He's testifying as to what's on the exhibit that's been admitted. Overruled.

A. The line for year 2011 has the value of 2,100 for the most bearish, 3,900 the most bullish, and the consensus is 2,825.

Q. $2,825?

A. This is correct.

Q. Can we agree that that would lead to Ormet paying a premium on its electricity bill?

A. I am afraid that I did not do the calculation for 2011 and I need to go to the

schedules in order to answer you accurately.

Q. Well, if the target price is $2,725, can you and I agree that a $2,825 market number would lead to a premium being paid by Ormet?

A. May I have your permission and the permission of your Honor to open the amended application and be sure that what I am hearing is correct in order to do the calculation?

MR. POULOS: Your Honor, I object to the facts not in evidence as to target rate for 2011 hasn't been established.

MR. BARNOWSKI: Your Honor, I'm asking him to just, hypothetically speaking, if a target rate is the same in 2011, and I can clear that up if you would like on the record.

EXAMINER PRICE: Do the hypothetical.

MR. BARNOWSKI: Pardon me?

EXAMINER PRICE: Do it as a hypothetical question.

Q. (By Mr. Barnowski) Dr. Ibrahim, if the target rate is the same in 2011 as 2010, $2,725 --

A. Okay.

Q. -- can you and I agree that a $2,825 LME number would lead to Ormet paying a premium on its electricity bill?

A. If my memory serves me correct, they would pay 2 percent over the price if the increase is equal or less than $300. And in this case compared to the 2,725, the difference is a hundred, which is less than 300, and therefore they would pay a premium of 2 percent.

Q. Can you tell me any other companies in Ohio that right now are paying 2 percent premium on their electricity bills?

MR. POULOS: Objection; lack of foundation.

MR. BARNOWSKI: I'm asking him if he knows. He's testified that this is unfair, that it's asymmetrical.

MR. POULOS: To any company in the state of Ohio.

MR. BARNOWSKI: If he knows. He's an expert.

EXAMINER PRICE: Yeah, I think you're going to have to lay a better foundation than that.

Q. (By Mr. Barnowski) Dr. Ibrahim, you've given testimony -- this is just a "yes" or "no" answer -- in your written submitted testimony that you view the application, the amended application, to be asymmetrical, correct?

A. A specific aspect of what has been asked by Ormet is asymmetrical, yes.

Q. And the reason you view it as asymmetrical is because you believe that the potential delta revenues outweigh the potential premium that would be paid, correct?

A. This is based on a look where the prices of aluminum were from the year 2000 to today and seeing that the probability of the price exceeding a certain level at least using a graph, which is a visual method, and using the LME future prices, which is the same source used by Ormet, to arrive at the price for aluminum, and accordingly I conclude that this what you have said is the case.

MR. BARNOWSKI: Your Honor, I would move to strike the entire answer except for the last three words as nonresponsive. I asked him a "yes" or "no" question.

EXAMINER PRICE: Sustained. Granted, sorry.

Q. You don't have any idea, do you, for why the LME market rate was below $2,500 in the year 2000 through the end of 2005, correct?

A. This is correct, I don't have any idea.

Q. And you have no idea what happened to the

market in the year 2006 to cause the market rate to go up significantly, correct?

A. This is correct.

Q. In your written testimony, Dr. Ibrahim, you repeatedly compared these delta revenues that you had calculated to the Ohio wages that would be lost if the plant were to be shut down, correct?

A. No.

Q. No?

A. In one case -- please let me continue. In one case I used what to pay by Ormet of wage rate of 56 million and I calculated in one point, perhaps in two points, that if we arithmetically arrive of what will be paid to the portion of the employees paid in Ohio, it would be such and such percent, which is approximately 36 million.

Q. Can you pull your written testimony out, please?

A. Certainly.

Q. Turn to page 8, line 14, and tell me if I've read the following lines correctly.

A. Page 8, line?

Q. Line 14 through 18.

A. Go ahead, sir.

Q. "The application did not acknowledge the

huge and completely asymmetrical risks that the customer classes will see as a result of the cost of the requested unique arrangement --"

A. Just a second, sir, page 8, line?

Q. Page 8, line 14 to the end.

A. Go ahead, sir.

Q. The application, Ormet's application.

A. Yes.

Q. "...did not acknowledge the huge and completely asymmetrical risks that the customer classes will see as a result of the cost of the requested unique arrangement when LME aluminum prices are lower than the target price. This is likely to exceed by a lot, a hundred percent of the total wages Ormet pays to its Ohio, West Virginia, and Pennsylvania employees of $56 million."

Did I read that correctly?

A. Correct.

Q. Turn to page 9, line 7.

A. Yes.

Q. Tell me if I've read this correctly: "As an indication of the historical cost of the arrangement with Ormet, AEP-Ohio stated in its response to OCC interrogatory 5 that the delta revenue was $44.4 million in 2008. This delta

revenue in 2008 is 79.2 percent of the total wages paid by Ormet to its employees."

A. Correct.

Q. Turn to page 10, line 14, if you would. Tell me if I've read this correctly: "This delta revenue to be paid is 3.2 times the annual wage bill paid by Ormet to its thousand employees (of whom 40 percent are residents in other states)."

A. Correct.

Q. Turn to page 15 -- I'm sorry, page 14, if you would.

A. Yes.

Q. Line 4: "This delta revenue is 160 percent of the wages paid by Ormet of $56 million."

Did I read that correctly?

A. Correct.

Q. Turn to page 15, line 18, if you would. "The upside to AEP-Ohio customer classes resulting from a 10 percent increase in the aluminum prices of $3.6 million is dwarfed by the downside of $62.2 million of delta revenue from an identical 10 percent decrease in aluminum price. Again, this downside is more than Ormet's current wage bill of $56 million."

Did I read that correctly?

A. Correct. Can you --

Q. I just asked you a simple question.

A. Go ahead, sir.

Q. Can you and I agree that you did not compare the delta revenues that you calculated to all of the costs associated with the shutdown of the Hannibal plant?

A. This is correct.

Q. So, for instance, you didn't compare it to -- you did not compare your estimate of possible delta revenues to the nonwage benefits, like pension and health-care benefits, that the plant provides every year to its employees, correct?

A. This is true.

Q. And you didn't compare it to the costs incurred due to declining property values in the region caused by the plant going out of business, did you?

A. This is correct.

Q. Or the negative effects on other businesses or the effect on state tax revenue or the effect on socioeconomic indicators, like crime and unemployment rates, correct?

A. This is correct.

Q. And you didn't even take into account that Monroe County is considered an economically distressed region in Ohio, correct?

A. This is correct, sir.

Q. And you've made no effort to analyze all of the costs that will be incurred due to the Hannibal plant closedown, have you?

MR. POULOS: Objection; asked and answered.

EXAMINER PRICE: Overruled.

A. This is correct.

Q. Sitting here today you're not in a position to disagree with Dr. Coomes's conclusion in his report that closing the plant will cause the loss of $195 million, are you, annually?

A. I glanced over Dr. Coomes's report and I observed some points that would make me doubt the estimate of the number you mentioned which is the 190 million.

Q. Just to be clear on what you said, you glanced over Dr. Coomes's report. The word was "glanced"?

A. I glanced over Dr. Coomes's report.

Q. Have you ever even visited the Ormet plant?

A. I didn't have the pleasure.

Q. Have you ever been to Monroe County?

A. I didn't have the pleasure.

Q. You work for the Ohio Consumers' Counsel, correct?

A. Correct, sir.

Q. The Counsel is supposed to represent the interests of Ohio consumers, correct?

A. Residential --

MR. POULOS: Objection, your Honor.

A. Residential ratepayers, sir, yes.

Q. Have you spoken --

EXAMINER PRICE: Wait a minute, we have a pending objection.

Grounds?

MR. POULOS: Relevance of OCC and what they do and how this witness's testimony pertains to that.

EXAMINER PRICE: He is testifying on behalf of OCC; overruled.

Q. To be clear, Dr. Ibrahim, you have not spoken to a single plant employee, a single resident of Monroe County, or even a single resident of Ohio, except for the people in this room, about whether they support this application or whether they think

it's a good thing, correct?

A. This is correct.

MR. BARNOWSKI: No further questions, your Honor.

EXAMINER PRICE: Thank you.

Mr. McNamee?

MR. McNAMEE: Nothing.

EXAMINER PRICE: Redirect?

MR. POULOS: Yes, your Honor, if we can have a couple minutes.

EXAMINER PRICE: Certainly. Let's take a break until 10:30. Off the record.

(Recess taken.)

EXAMINER PRICE: Back on the record.

Mr. Poulos.

MR. POULOS: Thank you, your Honor.

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REDIRECT EXAMINATION

By Mr. Poulos:

Q. Dr. Ibrahim, you were asked questions on cross-examination regarding the LME, the accuracy of the LME future market in July of 2008.

A. Correct, sir.

Q. Have any events happened since July of 2008 that would have had substantial affect on the

futures market?

A. I think that it's common knowledge that the meltdown that took place has a very, very, very serious repercussion not only in North America but worldwide, that we are all familiar with and we all know.

MR. BARNOWSKI: Your Honor, we would object to any questions that seek to have this man explain why the LME has dropped, gone up, or anything like that. He's testified he has no idea how the LME works and has never worked with it, he's not qualified to explain what affects it.

MR. POULOS: I did not ask that question. Any general events is what I asked.

MR. BARNOWSKI: The question was --

EXAMINER PRICE: Can you just clarify that you're asking general economic conditions, that would be more helpful and less objectionable.

MR. POULOS: Thank you, your Honor.

Q. (By Mr. Poulos) Since July of 2008, Dr. Ibrahim --

A. Say that again, please.

Q. Since July of 2008, have there been any unexpected economic events in the world that you're aware of?

A. I would like to mention the financial meltdown as an event.

Q. Are you aware as an economist of any other future markets -- generally are you aware of any futures markets since July 2008 that were wrong?

MR. BARNOWSKI: Objection, your Honor, the clear implication of this line of questioning will be that the LME has suffered a similar fate and he's not capable of giving such testimony.

If it's just meant to bring out how other future markets have been affected by the market, that's irrelevant and not in the scope of --

EXAMINER PRICE: But you can make that argument in your brief. Overruled.

A. Similar effect on the future markets of gas and electric.

Q. What do you mean by "similar"?

A. Mean that the estimates of the futures markets in the premeltdown period are considered to be different than the estimates -- of the prices today. And the reduction could be considerable as well.

Q. Dr. Ibrahim --

A. Yes, sir.

Q. -- you were asked questions on

cross-examination whether you talked to Ohio or AEP customers regarding this Ormet application.

A. Yes, I was asked this particular question.

Q. And are you familiar with -- are you aware that AEP customers testified as part of the AEP ESP public hearings to the rates and how the increases in rates to customers would be a major detriment to their lifestyles?

MR. BARNOWSKI: Object to form.

EXAMINER PRICE: Mr. Poulos, don't you think that was a tad leading?

MR. POULOS: That was very leading, I'm sorry, your Honor.

EXAMINER PRICE: Sustained. Why don't you rephrase your question.

MR. POULOS: I apologize. May I start over, your Honor?

EXAMINER PRICE: Please.

MR. POULOS: Thank you.

Q. (By Mr. Poulos) Dr. Ibrahim, are you familiar with public testimony that was given as part of the AEP ESP public hearings?

A. No.

MR. POULOS: I have no further questions,

your Honor. Thank you.

EXAMINER PRICE: Ms. McAlister, recross?

MS. McALISTER: No, your Honor.

EXAMINER PRICE: Mr. Kurtz?

MR. KURTZ: No questions, your Honor.

EXAMINER PRICE: Mr. Nourse?

MR. NOURSE: No, thank you.

EXAMINER PRICE: Mr. Barnowski?

MR. BARNOWSKI: No, your Honor.

EXAMINER PRICE: I've got two questions.

THE WITNESS: Your Honor.

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EXAMINATION

By Examiner Price:

Q. You mentioned the general economic financial meltdown, I believe is the word you used.

A. Correct, sir.

Q. Would you consider that to be an extraordinary event?

A. Very.

Q. Very. So it's not likely to be replicated in the future? Or it has not happened with similar repetitiveness in the past.

A. This is correct, the magnitude is huge and I would like to think that this is not going to

happen again soon.

Q. But once we recover from this, do you expect the futures markets that you follow to return to what you would consider to be the more normal levels absent an extraordinary meltdown?

A. This is a fair assumption, sir, the mean reversion, yes.

Q. I have one more question.

A. Go ahead, sir.

Q. Exhibit Ormet 10, you were asked some questions about that. Do you still have that in front of you?

A. Is this the exhibit in question, sir?

Q. Yes. What's the date on this?

A. It is Friday, July 11th, 2008.

Q. And then Ormet Exhibit 9, do you see the date on that?

A. It is -- this is the exhibit in question, sir?

Q. Yes.

A. It is April '09.

Q. Do you have any idea if they had given you a Harbor Intelligence report dated July 2008, whether its results would have -- forecasts would have been any more accurate than the forward curve

was?

A. Can I ask for the question to be repeated again, if you don't mind, sir?

EXAMINER PRICE: Sure, repeat, the question, because I'm not sure I can do it again.

(Record read.)

A. In fairness, I would have included the Harbor report in the calculation as a possible source of future prices if I felt that they were equal. I didn't have an opportunity to look into one set of future prices vis-a-vis the other, because that was not done at that time.

EXAMINER PRICE: Thank you. I have no further questions.

THE WITNESS: My pleasure, sir.

EXAMINER PRICE: You may step down.

(Witness excuse.)

EXAMINER PRICE: Mr. Poulos.

MR. POULOS: No further questions.

EXAMINER PRICE: No. I was prompting you to move your --

MR. POULOS: Your Honor, we'd like to admit at this time as requested when he first came to the stand, Exhibits OCC 3 and 4.

EXAMINER PRICE: Any objections to the

admission of OCC Exhibits 3 and 4?

Seeing none, they will be admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: No, I'm saying are you going to move to admit 10?

MR. BARNOWSKI: Yes, your Honor, we would like to move to admit Ormet Exhibit 10.

EXAMINER PRICE: Any objections to Ormet Exhibit 10?

MR. POULOS: No, your Honor.

EXAMINER PRICE: Hearing none, it will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

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

Mr. McNamee.

MR. McNAMEE: Thank you, your Honor. Staff would call Robert B. Fortney.

EXAMINER PRICE: Mr. McNamee, I think I skipped you on recross, I apologize.

MR. McNAMEE: I didn't have any questions, that's fine.

(Witness sworn.)

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

THE WITNESS: My name is Robert B. Fortney, F-o-r-t-n-e-y, my business address is 180 East Broad Street, Columbus, Ohio 43215.

EXAMINER PRICE: Thank you.

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ROBERT B. FORTNEY

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

DIRECT EXAMINATION

By Mr. McNamee:

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

A. I'm employed by the Public Utilities Commission of Ohio as a public utility administrator 3.

MR. McNAMEE: Your Honor, at this time I would ask to have marked for identification as Staff Exhibit 1 a multipage document filed in this case on April 29 denominated Prepared Testimony of Robert B. Fortney, Rates and Tariffs Division.

EXAMINER PRICE: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Fortney, do you have before you

what's just been marked for identification Staff Exhibit 1?

A. Yes, I do.

Q. What is it?

A. It's my prepared written testimony.

Q. Was it prepared by you or under your direction?

A. Prepared by me.

Q. Do you have any additions or corrections to make to that document this morning?

A. I did find one minor typo on page 4, line 4, "significantly based of" should be "significantly based on." So "of" should be "on." That's the only correction I have.

Q. Okay. With that correction noted would the contents of what's been marked for identification as Staff Exhibit 1 be true to the best of your knowledge and belief?

A. Yes.

Q. If I were to ask you the questions contained within what's been marked for identification as Staff Exhibit 1 here again this morning, would your answers be as presented therein?

A. Yes.

Q. Do you adopt what's been marked for

identification as Staff Exhibit 1 as your direct testimony in this case?

A. I do.

MR. McNAMEE: The witness is available.

EXAMINER PRICE: OCC.

MS. GRADY: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Grady:

Q. Good morning, Mr. Fortney.

A. Good morning.

Q. Mr. Fortney, have you had occasion during the past 23 years of your service to the Public Utilities Commission to work on any matters pertaining to the Ormet Corporation?

A. Yeah, I think during the time I have been here there were Ormet contracts and renewals to contracts and other cases more recently which I have been involved to one degree or another in the analysis.

Q. Let's focus on, even though I'm sure it's quite interesting, let's focus on your more recent work on Ormet matters. Would you have been involved at all in the recent application for an interim agreement filed between Ormet and AEP?

A. I was not.

Q. What was the most recent matter that you worked on pertaining to Ormet?

A. I'm sure at some point when the discussions were going on regarding charging Ormet a fixed rate and deferring the difference between that fixed rate and a market rate, there were probably some questions to me on what would Ormet's bill look like at that time, and I'm sure I would have provided that information.

Q. And that was not within the context of the interim agreement, or are you talking about in the context of perhaps the AEP ESP proceeding?

A. No. I guess that was -- maybe I misunderstood what the interim agreement was, but if the interim agreement was the agreement that charged Ormet a fixed price and the company deferred the difference between that fixed price and a market price, then I was involved to some degree in that in providing the information.

EXAMINER PRICE: Mr. Fortney, can you give an approximate date of the agreement you're talking about? I mean, are you talking about this January or two years ago?

THE WITNESS: I thought the initial one

was probably two or three years ago, and then that was extended for another year.

EXAMINER PRICE: Okay.

Q. Are you familiar with the fact that Ormet and AEP filed for approval of an interim agreement sometime in December of 2008?

MR. BONNER: Objection, your Honor. I don't believe the interim agreement is at issue here, and it's certainly not addressed in the direct testimony of this witness. So I'm wonder where counsel is going with this line of questioning about an interim agreement.

EXAMINER PRICE: Well, we'll give her a little bit of leeway to see where she's going with this.

MS. GRADY: Thank you, your Honor.

Q. Did you respond? I'm sorry.

A. I'm not really familiar with it. My understanding was that the market rate concept was continued for a brief period of time; three months.

Q. And what is your understanding of that based on?

A. Mostly discussions on this case on what would be the delta revenue for the first three months of this year in conjunction with this application for

an arrangement.

Q. Now, we're going to get back to that because I think it flows nicely into your discussion of the delta revenues and what this agreement means in terms of the delta revenues, but I want to focus on -- more broadly on what your experience has been or whether you've had occasion to work at the PUCO addressing other unique arrangements or special arrangements.

A. I have no experience in drafting unique arrangements.

Q. Do you have experience working with unique arrangements or as a staff member reviewing unique arrangements?

A. Yes. That was, through the years that has been one of my primary jobs, and prior to the ESP plans, prior to 2001, there were numerous applications for contracts submitted to the Commission in which I would have been involved in the analysis.

Q. And when you say that was one of your primary jobs, can you explain to me what your responsibilities would have been with respect to looking at these unique arrangements or these special arrangements?

MR. BONNER: Objection, can we have some more clarity as to what's being referred to "unique arrangements" since the recent statute or special contract arrangements --

MS. GRADY: I'm sorry, you're right to point that out, there are differences now.

Q. When I use the term "reasonable arrangement," if I used the term "reasonable arrangement" as it's defined under the Commission's recently adopted rules, what do you understand that to mean?

A. Well, under Senate Bill 221 and under the recently adopted rules, they are normally referred to now as reasonable arrangements. Prior to that they were always referred to as contracts.

Q. Special contracts?

A. Special contracts, or simply contracts.

Q. Thank you for that clarification.

And now I'm trying to figure out, yes, what we were discussing was what has been your role in the past with respect to, you said that was one of your primary jobs was working with these special arrangements or the special contracts. What would your role have been in these special contract arrangement cases?

A. Generally to find out the background for the need of the contract, look at each provision of the contract to see if it is reasonable, how it might impact other customers and not just the company or the customer entering the contract.

We would look at the rates that are being charged and generally we would do some analysis of what the delta revenue would amount to.

Q. Now, were you involved -- let me strike that.

Does the staff have a position on special arrangements or special contracts?

A. A position regarding what?

Q. For instance, with regard to what matters should be considered in determining whether the Commission -- let me strike that.

Does the staff have a position with respect to what matters should be considered by the Commission prior to the Commission approving a special contract?

MR. BONNER: Objection, your Honor. Again, special contracts are not at issue here. This is a case involving a unique arrangement relating to the new Ohio statute. We're not dealing with a special contract arrangement.

EXAMINER PRICE: Are you asking as to whether the staff had a position previously to the statutory change?

MS. GRADY: Yes.

EXAMINER PRICE: Are you asking if the staff has a position on the current statute?

MS. GRADY: I'm actually going prior to SB 221.

EXAMINER PRICE: I'll allow the question.

A. Well, as I said, one of the things we looked at was the basis for the contract, why the contract was needed, and we would also look at what benefits may flow to other ratepayers from -- or the state from that contract being approved.

And that would include such things as are in the new rules for economic development, new jobs, incremental revenues, new capital investment, retained jobs, as well as our analysis would include, as I said before, would include the pricing and we would determine some -- what the forecasted level of delta revenues.

Q. Would you also, in reviewing special contracts, look at the benefits to the utilities associated with those special contract arrangements?

A. I think we actually used to have a

standard data request that that would have been one of the questions "What are the benefits to the customer? What are the benefits to the utility? What are the benefits to other ratepayers? What are the benefits to the state or the community, local community?"

MS. GRADY: Your Honor, may I approach the witness?

EXAMINER PRICE: You may.

MS. GRADY: At this time, your Honor, I would ask to be marked for identification purposes as OCC Exhibit No. 5 a multipage document which I am distributing and to the witness as well as the Bench.

THE EXAMINER: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Fortney, that's a multipage document so I'll give you a moment to review that.

MR. BONNER: Your Honor, can I ask counsel for the OCC if this is a complete document. It looks like we have excerpts of a document here, 6 through 11, judging from the top of page 1.

MS. GRADY: Your Honor, I understand that. We can provide the entire copy. I think it was not -- I think this was the only portion that presented the economic recovery initiatives policy,

but we can provide that for you. This was presented in our comments as part of our comments. Attached to our comments.

EXAMINER PRICE: Well, when can you provide that?

MR. POULOS: If you give me a minute, I'll find out.

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

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

MS. GRADY: Thank you, your Honor.

Q. (By Ms. Grady) Now, on page 2 of your testimony, Mr. Fortney, you state that the purpose of your testimony is to provide the Commission the staff's perspective on the application. Do you see that?

A. Yes.

Q. Can you explain exactly to me what analysis you did on the application in order to provide the Commission with your perspective on the application?

A. Read the application, I read the testimonies that were submitted, I read the comments that were submitted. I did some calculations of my

own to support what I put in my testimony.

Q. Now, when you said you read the application, then you would have read the contract, that was part of the application?

A. Sure.

Q. And you are aware that the application was amended as well?

A. Yes, I am.

Q. So you reviewed the amended application as well.

A. Yes.

Q. Thank you.

Now, on page 2 of your testimony you define delta revenues. You've got a question posed on line 11 asking what are delta revenues. Do you see that reference?

A. Yes, I do.

Q. And there you say that the delta revenue is the deviation resulting from the difference in rate levels between otherwise applicable rate schedules and the results of the reasonable arrangement. Do you see that?

A. Reasonable arrangement approved by the Commission, and I believe I quoted 4901, 1-3801. At least I meant to.

Q. Going back for a second, were you involved in the rules, the recently enacted rules with respect to reasonable arrangements?

A. I was part of the staff team that did some draft rules which were, over time, developed, yes, I was part of that team.

Q. Now, by "rate levels" there do you mean the rate charged? Is that what you mean?

A. It would mean the revenue produced by charging whatever rates are applicable as compared to the revenues received according to the terms of the special arrangement.

Q. Now, here, Mr. Fortney, you define delta as related to a rate schedule; is that correct?

A. The otherwise applicable rate schedule, yes.

Q. Can deltas be connected to a market price?

MR. NOURSE: Could I have the question reread, please?

EXAMINER PRICE: Please.

(Record read.)

Q. Perhaps I should be more precise and say can delta revenue reflect the deviation between the rate level and a market rate?

A. I would think so, yes. But I can't say that specifically.

Q. Was that contemplated in developing the definition of delta revenues in 4901, 1-3801, do you know?

A. It probably was not contemplated because if it was it would have been worded differently.

Q. Is it your understanding, Mr. Fortney, that under the interim arrangement between AEP and Ormet that's currently in effect, that the delta's being calculated on the basis of a market price instead of a tariff rate?

A. It's probably being calculated on the difference between the market price and whatever set price Ormet was paying.

Q. Were you present during Mr. Roush's testimony yesterday at the beginning of the day?

A. I was. At least for part of it.

Q. And do you recall his testimony and response to questions from the Bench that there was, according to his calculations, that there's 25 million in delta revenues that is tied to the market price?

A. I was present for that, yes.

Q. And is it your understanding that that

$25 million worth of delta revenue is booked and being deferred as a part of the interim agreement between Ormet and AEP?

A. That was my understanding, yes.

Q. Do you know, Mr. Fortney, how the current proposal of Ormet -- or, let me strike that.

What impact does the current proposal put forward by Ormet and AEP have upon that deferred $25 million?

A. First of all, I don't know that it's a proposal by AEP, but I'm confused as to what the $25 million you're referring to.

Q. I'm sorry.

A. Maybe just repeat the question.

Q. Yes. And maybe I can rephrase it.

Mr. Roush testified yesterday that $25 million in delta revenues is being -- has been booked to date associated with allowing delta revenues to be calculated on the basis of a market price. Is that your understanding of the testimony?

A. Yes, I believe the $25 million Mr. Roush referred to was based upon that calculation.

Q. And the ability to defer the $25 million came about, to your understanding, as a result of an interim arrangement between AEP and Ormet; is that

correct?

A. That's correct.

Q. And so --

A. I --

Q. I'm sorry. Go ahead.

A. Part of the original interim agreement had that money being deducted from a regulatory liability. I don't know whether that regulatory liability has been used up and they are now into deferring it or not. I don't know the accounting.

Q. I understand. And what you are talking about, the original interim agreement, you're talking about something that occurred prior to January 1st, 2009.

A. Two or three years ago.

Q. Yes. My question, Mr. Fortney, is how does the deferral of the market delta during the first couple months of 2009 impact the proposed unique arrangement that is being sought to be approved by Ormet in this proceeding, if you know?

A. I do not know the answer to that question. At some point in time the company will apply for delta revenues and --

EXAMINER PRICE: Will apply for recovery of delta revenues?

A. Will apply for recovery of delta revenues, how they will apply -- and I'm assuming they will apply for the delta revenues that are for the term that the interim agreement is in place for the difference between the market price and the price that Ormet is paying.

Q. Is it your understanding under the unique arrangement proposed in this proceeding that the rates under the unique arrangement would go back to January 1st, 2009?

A. I am not sure of that. I think there was some confusion over that, when the rates would become effective.

Q. For purposes of your analysis in this proceeding and your analysis, again, focusing on the delta revenue produced under the unique arrangement, did you go back to January 1, 2009, to calculate your $28.5 million delta revenue figure?

A. I guess in effect I did because I simply took the difference between the average CSP/Ohio Power generation rate and the $38 and multiplied that by 540,000 kilowatt-hours times 365 days times 24 hours a day times 98 percent load factor.

Q. I think I followed you.

A. So that is a 12-month estimate at the

difference between -- which reflects the difference between the average AEP-Ohio price and the $38.

Q. And I'm going to take your answer piece by piece if I could.

When you say you applied the average CSP/Ohio Power rate, were you using the newly approved AEP Ohio Power/CSP rate?

A. Yes, I believe I was.

Q. And do you know what that rate is?

A. The number that I used for Columbus Southern was 5.12 cents, for Ohio Power was 4.44 cents, that totals 9.56 cents, divided that by 2 to get the average, came out to 4.78 cents. Then I subtracted out the kilowatt-hour rider, since Ormet is a self-assessor, and that came to 4.417 cents, which I believe is pretty close to the figure that Mr. Kurtz has been using. Mr. Kurtz has been using a figure of 4.424, so very close to Mr. Kurtz's calculation.

MR. NOURSE: I'm sorry, your Honor, could I have the answer reread? I didn't catch all those numbers.

MR. BONNER: You too, huh?

A. 5.12 plus 4 --

EXAMINER PRICE: No, let her read back

the answer.

(Record read.)

MR. NOURSE: Thank you.

Q. Now, Mr. Fortney, you indicated that in your calculation, and I think it's several answers ago, that you used a figure of 540,000 kilowatt-hours.

A. 540,000 megawatts.

Q. I'm sorry, megawatt-hours. Megawatt, kilowatt, what's the difference.

You used 540,000 megawatt-hours --

A. Which is the load of Ormet at full operation.

Q. And that's where I was going. That is full operation, is it not?

A. Yes. That includes all six --

Q. All six potlines.

A. Potlines, whatever a potline is.

Q. Now, if --

EXAMINER PRICE: Mr. Fortney, could you repeat that again?

THE WITNESS: 540 megawatts is 540,000 kilowatts.

EXAMINER PRICE: Okay, thank you. I thought it was me.

Q. 540 megawatts. If you could keep me in line, that would be great. So the delta revenue figure that you came up with, the 28,500,000, that is for a year of the 2009 Ormet unique arrangement, assuming Ormet does not curtail.

A. Assuming Ormet does not curtail and at the $38.

Q. Now, did you do any calculations as to the delta revenue that would be created if Ormet curtails, let's say goes down to four potlines?

A. I did do that calculation, yes.

Q. And is that calculation in your testimony?

A. No, it is not. The problem being is I'm not sure that if all -- all the potlines are exactly the same load. You can do the calculation and take 2/3 of -- if you assume they're all the same load, you can do the same calculations and take 2/3 of 540, which is 360, and do whatever calculation you want with that. But I don't know if that's entirely accurate.

Q. When you did the delta revenue calculation at the four-potline level --

A. Yes.

Q. -- what result did you arrive at?

MR. BONNER: Objection, your Honor. This is beyond his testimony. It's not in the direct testimony. It's beyond the scope of the direct. And it's not relevant to the case.

EXAMINER PRICE: Ms. Grady.

MS. GRADY: Well, your Honor, I think there's been quite a bit of testimony in this proceeding about what happens if curtailment occurs, and I think the curtailment issue is one that's really quite relevant to this case.

EXAMINER PRICE: But I think that Mr. Fortney expressed a lot of uncertainty about the different variables as to how that would work, which is why I get the impression he left it out of his testimony.

MS. GRADY: Perhaps I could rephrase.

MR. BONNER: He also indicated he didn't have an accurate, as you indicated, your Honor, an accurate number.

EXAMINER PRICE: Try to rephrase and we'll go from there.

MS. GRADY: Thank you.

Q. (By Ms. Grady) Would it be your understanding that if Ormet curtailed its operations from the current six-potline level down to the

four-potline level, that there would be delta revenues created to be collected under this unique arrangement?

A. Yes.

Q. And would it be your understanding that those delta revenues would be greater than the $28 million that you indicate is applicable under a full operation?

MR. BONNER: Objection, your Honor. No foundation as to the witness being able to make that determination.

EXAMINER PRICE: Sustained.

THE WITNESS: I might add --

EXAMINER PRICE: No, there's no question pending, Mr. Fortney.

Q. How about if I say: Do continue, Mr. Fortney.

EXAMINER PRICE: You would be continuing a question that I already sustained the objection to, so you would likely get an objection.

MS. GRADY: Your Honor, Mr. Poulos was kind enough, now I think we've got the entire document which we had earlier had just an excerpt, so I can -- if parties would be indulgent --

EXAMINER PRICE: Actually just to keep

the record straight, because I've already marked this, so let's mark the new document 5A and then the record will be clear.

MS. GRADY: Thank you, your Honor.

EXAMINER PRICE: Thank you.

MS. GRADY: At this time let the record reflect that I am distributing copies of the OCC exhibit that we will have marked as 5A.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. And if you want to take some time to look at that, that would be great, thank you, Mr. Fortney.

EXAMINER PRICE: Let's go off the record for 10 minutes till 25 after 11 so that people can have a chance to look at this.

MS. GRADY: Thank you, your Honor.

MR. BARNOWSKI: Thank you, your Honor.

(Recess taken.)

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

MS. GRADY: Thank you, your Honor.

Q. Mr. Fortney, did you have occasion over the break to review the document that's been marked as OCC Exhibit 5A?

A. Yes, I have looked it over. I did not read it word for word, but I have looked at it, yes.

Q. And do you know what that document is?

A. Well, it's called the policy precedent file and it was evidently either written or approved by John Borrows, who was in 1983, John Borrows was the director of the Utilities Department, and Doug Maag, who was the chief of Rates and Tariffs.

Q. Did you work under Mr. Borrows or Mr. Maag? In your 23 years did you work under them?

A. Worked directly for Mr. Maag for several years and indirectly for Mr. Borrows.

Q. So they would have been your, the head of the division that you worked for?

A. I have always worked in the Rates and Tariffs Division, which has been called various things through the years, but yes.

EXAMINER PRICE: Do you have a specific recollection of ever seeing this document before?

THE WITNESS: I am sure when I started in 1985 it was included in a group of literature which I was to read. But I don't recall it specifically.

EXAMINER PRICE: You have no specific recollection of seeing this document.

THE WITNESS: I have -- no.

EXAMINER PRICE: You have not consulted this document in 23 years.

THE WITNESS: Pardon?

EXAMINER PRICE: You have not consulted this document in 23 years.

THE WITNESS: Correct.

MR. BONNER: On that basis, your Honor, we would object to any questioning of this witness about this document.

EXAMINER PRICE: You can keep trying to lay a foundation.

MS. GRADY: I will try, your Honor.

Q. (By Ms. Grady) Is it your understanding, Mr. Fortney, that the staff develops policies on different issues and would present those policies in a policy precedent file?

MR. BONNER: Objection, your Honor. During what time frame are we talking about?

MS. GRADY: We'll start with currently.

EXAMINER PRICE: Rephrase. Thank you.

THE WITNESS: Could I have the question reread?

EXAMINER PRICE: Why don't you rephrase it adding the "currently" in the question.

MS. GRADY: I'm sorry.

Q. Mr. Fortney, is it your understanding that currently the staff might describe their

policies on particular issues through a policy precedent file?

A. Evidently that is what this is, but I have never seen anything like it since then.

Q. With respect to the policy of the staff currently on economic development -- let me strike that.

Are you aware of the staff's policy currently with respect to reasonable arrangements?

MR. NOURSE: Objection; vague.

EXAMINER PRICE: Please rephrase.

Q. You indicated, Mr. Fortney, that one of your primary jobs is to review and analyze special contracts, we referred to them pre-221, after 221 we'll call them reasonable arrangements. Is that a correct characterization of your testimony today?

A. Yes.

MR. BONNER: Objection to the form of the question. It's unique arrangements after 221, not reasonable arrangements. We want to have a clear record here, your Honor.

MS. GRADY: This is a unique arrangement that you asked for. Are you going to change the nature of your agreement?

EXAMINER PRICE: No, you said "reasonable

arrangements."

MR. BONNER: You said "reasonable arrangements."

Q. Mr. Fortney, what does 221 call these things?

A. 221 calls them "reasonable arrangements," and the rules I believe are entitled "reasonable arrangements." And unique arrangements are a subset of the reasonable arrangements.

Q. Understood. So let me rephrase my question.

Mr. Fortney, you've worked on reasonable arrangements as well as special contracts; is that correct?

A. Correct.

Q. And in your work on reasonable arrangements as well as special contracts are you aware of any particular staff position on various issues that are raised by these applications?

A. Any issues?

Q. Yes, any issues.

A. I believe the only staff policy would be that they would comply with the reasonable arrangement rules.

Q. The current rules.

A. Correct.

Q. Prior to the current rules being in place, was there -- are you aware of any staff policy that was developed with respect to special contracts?

MR. BONNER: Objection, your Honor.

MR. NOURSE: Your Honor, I object.

MR. BONNER: It's not relevant to this case. The current rules are what are at issue in this proceeding, not the prior rules.

EXAMINER PRICE: Mr. Nourse.

MR. NOURSE: Your Honor, Mr. Fortney's indicated he is the staff witness today in this proceeding representing staff's position. He already represented the rules apply. He's not aware of the prior policy. He's never looked at it in all his 23 years with the Commission. I don't think it has any place in the record in this case.

EXAMINER PRICE: I think she was asking generally, not just on this document.

MR. NOURSE: Well, I thought it was already established, she was trying to establish foundation leading back to this document.

EXAMINER PRICE: I think that is true, but --

MS. GRADY: Yes, that's true.

EXAMINER PRICE: Nonetheless, the objection is sustained.

Q. (By Ms. Grady) Now, Mr. Fortney, let's talk about the current rules applying to reasonable arrangements. You indicated that you had some responsibility or some input into the current rules; is that correct?

A. Correct.

Q. Do the current rules on reasonable arrangements establish any particular provision for the sharing of delta revenues?

A. If I remember correctly, the current rules on reasonable arrangements say that the utility can apply for them, and I believe they -- either semiannually or quarterly, at which time the Commission would set a proceeding and may set a hearing for the determination of those delta revenues.

Q. So you're not aware that the current rules would address any percentage of sharing that would be recommended for delta revenues.

A. I believe that the rules say that it will be the determination of the Commission.

Q. And is it your understanding that parties, then, could come to those specific cases or

hearings and make recommendations as to the sharing of delta revenues?

MR. BONNER: Objection as to form of the question, as to what is being referred to as "parties."

EXAMINER PRICE: I think technically you're correct.

Please rephrase. They're not parties until they've intervened in the proceeding.

MS. GRADY: I'm sorry, could I have my question reread so I understand my error.

(Record read.)

Q. Let me rephrase. Mr. Fortney, is it your understanding that under the rules in the specific cases where the application -- reasonable arrangement applications are made, that parties who have been recognized for intervention may then address the issue of delta revenues and the sharing of delta revenues, for instance?

A. I believe the rules provide for that, but they don't necessarily require that.

Q. Now, is it your understanding, Mr. Fortney, that -- and now we're stepping outside the rules. We're going to go back to 221.

Is it your understanding that under

Senate Bill 221 as amended and adopted, that reasonable arrangements were addressed?

A. Were addressed?

Q. By the law; yes.

A. Yes, there is a provision in Senate Bill 221 that requires -- provides for reasonable arrangements and requires the Commission to set rules regarding them, that's why the rules were set.

Q. And in the SB 221 as amended and adopted was there any provision in the law which addressed the sharing of delta revenues created by reasonable arrangements?

A. I believe the utilities will say there is. In our determination in writing the rules we concluded that there was not. There is some reference that delta revenues can be collected from the ratepayers of the utility. I don't believe there is any reference to a percent in there, in Senate Bill 221.

Q. And, Mr. Fortney, is it your understanding that with respect to the collection of delta revenues, that SB 221 doesn't change anything before this Commission?

MR. BONNER: Objection; asks for a legal conclusion from the witness as to Senate Bill 221.

EXAMINER PRICE: Well, having begun giving opinions as to the contents of Senate Bill 221, he's opened the door wide open.

Mr. McNamee.

MR. McNAMEE: I object. Previously he was asked about his understanding. This asks rather directly, I think, rather directly what the legal implication is.

MS. GRADY: And, Mr. McNamee, I'm willing to modify my question.

Q. Is it your understanding --

EXAMINER PRICE: Rephrase the question, Ms. Grady.

Q. Is it your understanding, Mr. Fortney, that SB 221 does not change anything with respect to the collection of delta revenues from customers associated with reasonable arrangements?

A. It does not change anything because there was nothing there previously in Senate Bill 3 or prior to Senate Bill 3.

Q. So any policy that the staff might have developed over the years with respect to delta revenues would not be changed by the language found in 221 on reasonable arrangements.

MR. BONNER: Objection, your Honor.

Counsel is again trying to get in through the back door --

EXAMINER PRICE: The objection is sustained. I really think that we've spent a great deal of time on background and foundational matters and if you've got questions to ask the witness as to the staff's policy and their position in this case, that the time is now.

Q. Mr. Fortney, if a utility receives a hundred percent of its delta revenue recovery in a reasonable arrangement, what incentive is there for the utility to negotiate a reasonable rate in the contract?

A. Unless there are circumstances outside of the recovery of delta revenues, they have no -- they are probably indifferent.

Q. And, Mr. Fortney, with respect to this particular unique arrangement, was there any incentive, to your knowledge, to AEP to negotiate a reasonable rate with Ormet?

MR. BONNER: Objection, your Honor. It asks the witness to speculate what the state of mind of AEP was when discussing, I think was the term.

EXAMINER PRICE: I was going to say I think it was actually worse than that because I

recall the AEP witness specifically saying that they did not negotiate with Ormet on this. So sustained.

MR. NOURSE: Thank you, your Honor.

Q. Was there any incentive -- in your understanding would there have been any incentive to AEP in this unique arrangement to establish a reasonable rate?

MR. NOURSE: Objection, your Honor. It lacks any foundation. He said earlier he wasn't involved in any discussions of any kind.

MR. BONNER: Object to the speculation, it's simply asking this witness --

EXAMINER PRICE: Sustained.

Q. Are you aware of any efforts -- are you familiar with the efforts of AEP in discussing this arrangement with Ormet?

A. Only what I heard from Mr. Baker yesterday.

Q. Would it be your understanding that there was no negotiation of a reasonable rate between Ormet and AEP based upon what you heard from Mr. Baker?

A. What I heard from Mr. Baker was there were no negotiations.

Q. Now in the work that you did in your analysis that you have done in this case did you look

at the benefits of the unique arrangements to AEP at all?

A. No.

Q. Now, let's focus on the 38 megawatt-hour rate for a moment. You're familiar with the 38 megawatt-hour rate, are you?

A. I'm familiar with the proposal, yes.

Q. Do you know how the 38 megawatt-hour rate was derived at under the unique arrangements?

A. No, I do not.

EXAMINER PRICE: Ms. Grady, are you referring to the 2009 --

MS. GRADY: I'm sorry.

EXAMINER PRICE: -- rate?

MS. GRADY: Yes, your Honor.

EXAMINER PRICE: The rate for 2009 that was proposed in the amended application?

MS. GRADY: Yes, I'm sorry. I believe the amended application proposed a $34 rate and a $38 rate. But thank you for the clarification.

A. I do not know how the $38 rate was derived, nor the $34 rate.

Q. So for purposes of your analysis you merely accepted the $38 rate proposed and the $34 rate proposed.

A. Correct.

Q. Do you know if the $38 megawatt-hour rate or the 34 megawatt-hour rate is reasonable?

MR. BONNER: Object to the foundation. He just testified that he didn't know how they were developed.

EXAMINER PRICE: Sustained.

Q. Now, on page 4 of your testimony, lines 3 through 4.

A. Which line?

Q. I guess it's lines 3 through 4, you're talking about the $28 million delta revenue and then you make the statement on 3 and 4 "Obviously, the delta revenue number could change significantly based on the price-of-aluminum approach." Do you see that reference?

A. Yes, I do.

Q. Are you speaking about the period of time after 2009?

A. The price-of-aluminum approach is for 2010 through 2018, so yes.

Q. Now, your recommendation on page 4, lines 8 through 9 is that the Commission bifurcate the application between the 2009 proposal and the proposal for the remaining nine years. Is that a

correct characterization?

A. Yes.

Q. Are you recommending that the Commission approve the current application with the 2009 proposal or are you taking no position on that?

A. Probably depends on how long I want to be on here, doesn't it? But yes, I recommend that the Commission approve the 2009 proposal.

Q. Now, you indicate in your testimony that the Commission could set a procedural schedule for a later date to revisit the application for subsequent years. Do you see that?

A. Yes.

Q. What's the basis of that recommendation?

A. Hopefully that at a later date the uncertainties will be more certain and the Commission could make a better informed decision.

Q. Mr. Fortney, is tying the -- strike that.

The uncertainties that you are speaking of, what uncertainties would those be?

A. The uncertainties of what was talked about earlier this morning, the price of aluminum. Based upon the price of aluminum, ratepayers could have to make up anywhere from the company providing Ormet free aluminum plus paying them to take it, or

up to the 5 percent premium, that's a pretty big range.

MR. McNAMEE: Could we have that answer reread, please?

(Record read.)

THE WITNESS: If I said "free aluminum," I meant to say "free energy."

EXAMINER PRICE: You did say "free aluminum."

THE WITNESS: I meant to say "free energy."

Q. Is also your understanding that under the proposal that the company could even receive credits for aluminum or, I'm sorry, credits -- now you got me doing it -- credits for electricity consumed?

A. It's my understanding that that's a possibility, yes.

Q. And is it your recommendation that those are acceptable provisions of the contract?

A. No, that's why I recommended that the contract be bifurcated and not -- for the Commission to consider that at some other time.

Q. When I said that -- when I posed my question about credits for electricity, did you understand me to mean that customers would actually

be paying Ormet to use the electricity?

A. The company would be paying Ormet to use the energy and if customers were paying delta revenues, they would, in effect, be paying Ormet.

Q. And by "company," you mean AEP.

A. Yes.

Q. Now, you indicate on lines 14 through 16 that "At such a time," and we're talking about into the future, "the Commission could better consider the then-current economic circumstances of the company, the aluminum industry, and the State of Ohio."

By "company" there are you referring to Ormet or --

A. By "company" there I meant Ormet, yes.

Q. And can you tell me why it is important for the Commission to consider the economic circumstances of the company, the aluminum industry, and the State of Ohio in reviewing the unique arrangement?

A. At some point in time you still have to compare the delta revenue that other customers would be paying to the benefits of Ormet staying in business.

Q. And when you say "State of Ohio," would you be including the consumers?

A. The impacts on consumers would be, certainly, a consideration that would have to be made, yes.

Q. And in looking at the impact on consumers would it be reasonable for the Commission to consider recent ESP rate increases imposed on the customers?

MR. BONNER: Objection, your Honor, the ESP case is well beyond the scope of this witness's testimony.

EXAMINER PRICE: Ms. Grady.

MS. GRADY: Well, your Honor, his testimony was that the Commission should consider the impacts on customers and I'm just trying to explore with the witness what that impact would be.

EXAMINER PRICE: I'll allow it.

A. Certainly. To the degree that prices rise, it would have an impact on the delta revenue that other customers would have to pay, and so yeah, the price -- the current price of the tariff rate for AEP-Ohio, which was part of the ESP proceeding, would have to be taken into consideration to make those calculations.

MS. GRADY: If I may have a moment, your Honor, I may be finished.

EXAMINER PRICE: You may.

MS. GRADY: Thank you.

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

EXAMINER PRICE: Go back on the record.

MS. GRADY: Thank you, your Honor, I have just one or two more questions for Mr. Fortney. I appreciate your fortitude in putting up with me.

Q. (By Ms. Grady) In your testimony we discussed this morning you talked about the uncertainties associated with the 2010 through 2018 period, and I believe your testimony was because there is so much uncertainty, that you are recommending that the Commission take another look at the unique arrangement into the future, correct?

A. Correct.

Q. And when you discuss the uncertainties, one of the -- or, the item that you discussed was I believe the aluminum prices?

A. That is the greatest uncertainty because that affects what price Ormet will pay.

Q. Are there any other uncertainties that you would consider as a reason for pushing off the approval of a longer-term contract?

A. I don't know if they are considered uncertainties, but at that time when I talk about

looking at the other circumstances for the company and the state and the economy in general, certainly those things -- any changes to those things will have to be looked at in context with reviewing the application.

Q. Would you agree with me that if you -- in the longer-term period if you're relying on estimates, that that creates a problem with uncertainties?

A. Sure.

Q. And is it your understanding that the application for the longer term, that is 2010 through 2008 is solely based on estimates by the company, the company meaning Ormet?

MS. McALISTER: Your Honor, just for clarification I think she said 2010 through '8 and I think she meant '18.

MS. GRADY: Thank you.

Q. 2010 through 2018.

A. I don't know what else a projection of the future can be based on other than forecasts and estimates.

Q. Is it also your understanding that the estimates are not trued up under the unique arrangement proposed by Ormet and AEP?

A. I don't know what you mean by "trued up."

Q. Is there any adjustment to rates based upon comparing the estimates with what actually occurs for Ormet under the unique arrangement?

A. I'm not exactly sure what you mean, but the delta revenue will be a result of some price of aluminum, and if we -- I believe that will be the price for an annual -- for a year, so yeah, to the degree that the price fluctuates during that year, I don't believe that there's any reconciliation.

MS. GRADY: That's all the questions I have, Mr. Fortney. Thank you very much.

Thank you, your Honor.

EXAMINER PRICE: Ms. McAlister.

MS. McALISTER: No questions, your Honor.

EXAMINER PRICE: Mr. Kurtz.

MR. KURTZ: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Kurtz:

Q. Mr. Fortney, do you recall answering questions about how you calculated the rate Ormet would pay post-ESP of $44.17 per megawatt-hour? Do you recall those questions?

A. Yes.

Q. What document were you relying on to make that calculation, or set of documents or information?

A. After the Commission order in the AEP ESP, AEP filed tariffs in compliance with the order. There were intra-Commission questions regarding some of those rates, and I asked Mr. Roush to give me some further information, and he sent to me a document which -- from which I took those numbers.

Q. Do you have a copy of the document with you?

A. Yes, I do.

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

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

Mr. McNamee is passing out to counsel the document that Mr. Fortney was relying upon which we agreed while we were off the record we would mark as OEG 8.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER PRICE: Back on the record.

Mr. Kurtz.

Q. (By Mr. Kurtz) Mr. Fortney, these are the billing determinants that you relied on in preparing your testimony?

A. The only two numbers I relied on in preparing my testimony were, for example, Columbus Southern Power 2009 GS-4 total rate, which is in the last column, 5.12.

Q. Okay.

A. The same thing on CSP.

Q. Okay. So you relied on some elements of this document for your testimony?

A. I relied on those two numbers to get the average current all-in price for GS-4 customers.

Q. Thank you.

MR. KURTZ: Those are all my questions, your Honor.

EXAMINER PRICE: Thank you.

Mr. Nourse?

MR. NOURSE: No questions, your Honor, thank you.

EXAMINER PRICE: Ormet?

MR. BONNER: Thank you, your Honor.

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CROSS-EXAMINATION

By Mr. Bonner:

Q. Mr. Fortney, do you know how AEP's rates compared to those of FirstEnergy in Ohio?

MS. GRADY: Objection.

EXAMINER PRICE: Grounds?

MS. GRADY: Relevance.

MR. BONNER: He was asked about rates and impact on Ohio consumers so I think it's fair to understand the context of AEP's rates relative to other consumers in the state.

MS. GRADY: Your Honor, he was asked directly about AEP's rate impacts on customers, not about any other rate impacts generally in the state of Ohio.

EXAMINER PRICE: Sustained.

Q. Mr. Fortney, have you done any examination of Ormet's current financial situation to determine the effect of a significant delay in approval of a unique arrangement for the remaining years of 2010 to 2018 on the company's ability to refinance its debt?

MS. GRADY: Objection.

EXAMINER PRICE: Grounds?

MS. GRADY: Characterization of -- mischaracterization, "significant delay." Not laid a foundation for it.

EXAMINER PRICE: Overruled.

A. No, I have not.

MR. BONNER: Thank you. No other

questions.

EXAMINER PRICE: Mr. McNamee?

MR. McNAMEE: Let me see. I doubt it.

No questions, your Honor.

Staff would move for the admission of Staff Exhibit 1.

EXAMINER PRICE: I'm thinking about whether I have any questions, I'm not thinking about whether your exhibit should be admitted.

I don't have any questions. You may step down.

(Witness excused.)

THE EXAMINER: Any objections to the admission of Staff Exhibit 1?

Seeing none, that will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MR. KURTZ: Your Honor, I guess at this time I move the admission of OEG Exhibit 8.

EXAMINER PRICE: Any objections to the admission of OEG Exhibit 8?

MR. NOURSE: Your Honor, I think Mr. Fortney just indicated he used two rate numbers off this sheet, and he already addressed them and said they were there from the company. I don't see the need to enter this entire exhibit into the

record. I think there's a lot of other information --

EXAMINER PRICE: I understand that, but I think he did say he obtained all these numbers from the company so he authenticated the document.

MR. NOURSE: He used two numbers obtained from the company mentioned in the record, so I would -- to the extent they use something out of this on brief I'm going to object to preserve that.

EXAMINER PRICE: I understand. Your objection's overruled, the document will be admitted.

(EXHIBIT ADMITTED INTO EVIDENCE.)

MS. GRADY: Your Honor, at this time I would move for the admission of OCC Exhibit, I believe it was 5.

EXAMINER PRICE: Five or 5A?

MS. GRADY: I'm sorry, 5A, I'm sorry, because that's the complete copy.

EXAMINER PRICE: Thank you. OCC Exhibit 5A will not be admitted as the witness was not able to authenticate that document.

MR. BONNER: Thank you, your Honor.

EXAMINER PRICE: Any other exhibits?

Let's go off the record.

(Discussion off the record.)

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

Do you have a motion for us?

MR. BONNER: Yes. Your Honor, thank you. Ormet would move for a continuance of the hearing at this time so that we can introduce additional witness testimony concerning the determinant, all the components of the proposed rate for 2009 in the unique arrangement and, obviously, our witnesses would be available for cross-examination at that time and the Commission would then have a full record on which to rule on the application.

EXAMINER PRICE: Are you asking for a specific hearing date or are you going to come back and report back and request a hearing date at that point?

MR. BONNER: We would prefer to report back with you within a period of about two weeks.

EXAMINER PRICE: Objections?

MS. GRADY: Just, your Honor, a question for clarification.

Are you suggesting that you're coming up with a different 2009 rate? Is that your intention? Or are you coming up with more evidence to support the already presented rate?

MR. BONNER: No, we're not amending our application. We are simply coming back with additional evidence to support the rate requested in the application -- amended application.

MS. GRADY: I guess then we would object, your Honor, because I think that's not within the scope of -- if the motion really essentially is trying to get rebuttal testimony on that rate, it really falls outside the scope of rebuttal testimony. It is something that could have been submitted earlier and was not, should have been submitted earlier, and on that basis we would believe it's not appropriate rebuttal.

And so if that means we go against the motion, I guess we go against the motion.

MR. KURTZ: Your Honor, OEG would support OCC. If the company wants to take two weeks to put on rebuttal witnesses to Mr. Fortney and Dr. Ibrahim, then I guess we wouldn't object to that, but to take two weeks to do additional direct testimony I think would prejudice the other parties.

MR. BONNER: Your Honor, just to briefly respond, as we made clear yesterday at trial, the reason for this request and the reason -- the sole reason for the request is because of the pending

litigation in the Glencore case which is filed and under seal, and we are -- our client, as much as it wanted to, was precluded by the circumstances of that Federal Court litigation pending in the Southern District of Ohio from coming forward with that evidence.

There will be no prejudice to any other party in this case by a short continuance.

EXAMINER PRICE: I think that -- I've heard enough, Mr. Kurtz.

I think that the OCC and OEG's objections are well-taken and in a normal proceeding I would agree with them, but in this case I'm going to exercise my authority and overrule your objection.

This entire issue didn't come up in your -- that I can recall -- in the objections filed by the parties. This issue really came up as a result of at hearing OCC questioning the foundation for these rates and it was no small part of my own discovery rulings that precluded this information coming in before this, so I think in the interest of having a full and complete record, we're just going to go ahead and grant the motion by Ormet.

MR. BONNER: Thank you, your Honor.

MR. KURTZ: Your Honor, one point of

clarification. I should have -- is this just on the Glencore litigation matter?

EXAMINER PRICE: It is my understanding that the sole purpose of this testimony will be to support the $38 and $34 proposed 2009 rates. Is that correct?

MR. BONNER: That's my understanding, your Honor, yes.

EXAMINER PRICE: And it is my understanding, actually -- I am assuming Ormet will prefile the testimony one week prior to the hearing, whatever hearing date we ultimately result in.

MR. BONNER: That's acceptable to Ormet, certainly.

EXAMINER PRICE: And you'll make your witness available for -- although we don't typically do depositions on rebuttal testimony, since we're considering this to be in the nature of supplementing the record you'll make your witness available to be deposed by any of the parties that so wish to do so.

MS. GRADY: Thank you, your Honor.

MR. BONNER: And if there's any countervailing testimony, we would -- a similar rule would apply?

EXAMINER PRICE: Well, I guess the

question is whether any of the other parties are going to put on what we have called true rebuttal testimony.

Generally, rebuttal testimony, although it's prefiled, there's not a second opportunity for new depositions, and so to the extent that they were doing true rebuttal testimony, no, I would not give you an opportunity for that.

MR. BONNER: Okay. Thank you, your Honor.

EXAMINER PRICE: With that, then, granting Ormet's motion for a continuance, the new hearing date will be set by a subsequent entry. Thank you all.

(The hearing adjourned at 12:15 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 Friday, May 1, 2009, and carefully compared with my original stenographic notes.

_____
Maria DiPaolo Jones, Registered Diplomate Reporter and CRR and Notary Public in and for the State of Ohio.

My commission expires June 19, 2011.

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