

1 BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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11 PROCEEDINGS

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

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18 VOLUME III

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1 Thursday Morning Session,
2 June 11, 2009.

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4 EXAMINER HUSSEY: On the record. The
5 Public Utilities Commission of Ohio has assigned for
6 hearing at this time and place Case
7 No. 09-119-EL-AEC, captioned In the Matter of the
8 Ormet Primary Aluminum Corporation for Approval of
9 the Unique Arrangement with Ohio Power Company and
10 Columbus Southern Power Company.

11 My name is Rebecca Hussey. I'm an
12 attorney-examiner with the Public Utilities
13 Commission of Ohio and together with Gregory Price we
14 are the attorney examiners assigned to this case and
15 we will be conducting this hearing.

16 At this time we would like to take
17 appearances of the parties. We will begin with the
18 applicant and make our way around the room.

19 MR. BONNER: Douglas Bonner with the firm
20 of Sonnenschein, Nath & Rosenthal of behalf of the
21 Applicant, Ormet Corporation.

22 MR. BARNOWSKI: Dan Barnowski, also on
23 behalf of Ormet.

24 MS. HAND: Emma Hand also on behalf of
25 Ormet.

1 MR. CLARK: Sam Randazzo, Lisa D.
2 McAlister, and Joseph M. Clark on behalf of the
3 Energy Users of Ohio, McNees, Wallace & Nurick, 21
4 East State Street, 17th Floor, Columbus, Ohio 43215.

5 MR. KURTZ: Mike Kurtz for the Ohio
6 Energy Group.

7 MR. POULOS: Good morning. Greg Poulos
8 and Maureen Grady on behalf of the Ohio Consumers'
9 Counsel representing the residential customers of AEP
10 in this case. We also have our representative from
11 OCC, Dr. Amr Ibrahim.

12 MR. NOURSE: Good morning, your Honor.
13 Steven T. Nourse, Marvin Resnik, on behalf of
14 AEP-Ohio, which is Columbus Southern Power and Ohio
15 Power Company.

16 MR. McNAMEE: On behalf of the staff of
17 the Public Utilities Commission of Ohio, Richard
18 Cordray, Attorney General of the state of Ohio, Duane
19 Luckey, chief of the Public Utilities Section, I am
20 Thomas McNamee, assistant attorney general. The
21 address is 180 East Broad Street, Columbus, Ohio,
22 43215.

23 EXAMINER PRICE: I believe we have one
24 pending motion before we take our first witness
25 today. Mr. Bonner.

1 MR. BONNER: Yes, your Honor, Ormet has
2 filed a motion for protective order to protect the
3 confidential financial forecasting contained in
4 Mr. Riley's supplemental direct testimony. Ormet is
5 a publicly traded company subject to the securities
6 law; therefore, any confidential financial
7 forecasting must be protected under the existing
8 securities law so we ask the Commission enter
9 the protective order.

10 I also add that counsel for all parties
11 have consented to the protective order or a form of
12 it in order to get access to the supplemental direct
13 testimony in advance of the hearing today

14 EXAMINER PRICE: What is the length of
15 time under the protective order?

16 MR. BONNER: I don't believe we specified
17 a particular length of time, your Honor.

18 EXAMINER PRICE: Under the Administrative
19 Code in the absence of a specific time it will be 18
20 months, so we grant the motion at this time.

21 MR. BONNER: Thank you, your Honor.

22 EXAMINER PRICE: Let's take our first
23 witness.

24 MR. BONNER: Ormet calls Mr. James Riley.
25

1 EXAMINER PRICE: Please state your name
2 and business address for the record.

3 THE WITNESS: My name is James Burns
4 Riley. I'm the CFO of Ormet Corporation. The
5 address is 43840 State Route 7, Hannibal, Ohio,
6 43931.

7 EXAMINER PRICE: Mr. Bonner.

8 MR. BONNER: Thank you, your Honor.

9 - - -

10 JAMES BURNS RILEY
11 being first duly sworn, as prescribed by law, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 By Mr. Bonner:

15 Q. Mr. Riley, you testified previously at
16 this hearing on April 30, 2009.

17 A. Yes.

18 (EXHIBITS MARKED FOR IDENTIFICATION.)

19 Q. And I'd like to hand you -- I'm going to
20 be handing you a copy of what is marked for
21 identification as Exhibit ORM 11, as well as exhibits
22 ORM 12, 13, 14, 15 and 16. Do you have a copy of
23 that, sir?

24 A. Yes, I do.

25 Q. Is this an accurate copy of your

1 Supplemental Direct Testimony dated May 29, 2009 on
2 behalf of Ormet Corporation providing further
3 information regarding the electricity rate that
4 Ormet is proposing for 2009?

5 A. Yes, it is.

6 Q. And was this supplemental direct
7 testimony prepared under your supervision and
8 direction, sir?

9 A. Yes, it was.

10 Q. Do you have any changes or corrections to
11 this testimony today, or additions?

12 A. The only issue would be an update on the
13 status of the litigation, which is an arbitration
14 proceeding with Glencore.

15 Q. And that would be with regard to what
16 page of your testimony?

17 A. Page 6, starting with it's an update of
18 the answer beginning on line 13.

19 Q. Okay. And what is that update?

20 A. The update is the hearing was actually
21 held on June 1 and 2 in New York City in front of a
22 tribunal where we requested the interim order to be
23 granted. It was later that week so granted to
24 provide us with alumina to bridge to the next
25 scheduled receipt which will allow us to run through

1 the merits hearing and hopefully the determination
2 thereof sometime this summer.

3 MR. BONNER: Thank you, sir.

4 Your Honor, subject to moving Mr. Riley's
5 Supplemental Direct Testimony into evidence, he's
6 available for cross-examination.

7 EXAMINER PRICE: Before we go on to
8 cross, why don't we mark the redacted version so we
9 have something in the docket for that. We will mark
10 it as ORM 11A.

11 MR. BONNER: That will be fine. We
12 brought copies of that as well.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 EXAMINER PRICE: OCC.

15 MR. POULOS: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Poulos:

19 Q. Good morning, Mr. Riley.

20 A. Good morning.

21 Q. For the record, my name is Greg Poulos
22 and I represent Ohio Consumers' Counsel, as stated in
23 our initial appearances.

24 I'd like to start by making sure your
25 supplemental testimony that was filed on May 29, that

1 only addresses the request -- support for the request
2 for the \$38/\$34 electricity rates.

3 A. That is correct.

4 Q. For 2009 only, right?

5 A. That's correct.

6 Q. And that request for those two numbers,
7 the \$38 and \$34, that is to allow Ormet to stay at
8 the minimum cash flow needed to refinance its debts
9 in 2010.

10 A. That is correct.

11 Q. Along with your supplemental testimony as
12 part of the record you also filed five exhibits,
13 correct?

14 A. I don't recall the exact number, but,
15 yes, there were supplemental exhibits.

16 Q. The first was Exhibit 12, and that was a
17 one-page summary of the debt financing requirements.

18 A. Yes.

19 Q. And that's just a summary, correct?

20 A. Correct.

21 Q. And the second one page was a summary of
22 the pro forma income statement.

23 A. Yes.

24 Q. And that's Exhibit 13. And 14 was a
25 one-page summary of the pro forma cash flow forecast.

1 A. That's correct.

2 Q. And Exhibit 15 is a one-page summary of
3 the pro forma balance sheet.

4 A. Yes.

5 Q. And Exhibit 16 is a borrowing base
6 certificate.

7 A. That is also correct.

8 Q. And those are the only documents that
9 you're supplementing in the record; is that correct?

10 A. On the record, yes.

11 Q. Now, you were not able to show any party
12 to this case, including the staff of the Public
13 Utilities Commission, any of these documents prior to
14 the filing your testimony on May 29.

15 A. I was not.

16 Q. And that was because of the Glencore
17 litigation; is that correct?

18 A. A combination of the Glencore litigation
19 and then therefore the publishing of our financial
20 results for the first quarter.

21 Q. Now, the Glencore litigation started in
22 the middle to late April; is that correct?

23 A. That sounds correct.

24 Q. And you filed this application in -- the
25 initial application for the \$38 rate in early to

1 mid-February; is that correct?

2 A. That is also correct.

3 Q. February 17, I believe.

4 A. The original, yes.

5 Q. So there was a period between February 17
6 and the start of the Glencore litigation where you
7 could have supplied this information; is that
8 correct?

9 A. No.

10 Q. Why is that?

11 A. Would have had to still have been under
12 an order from the judge to release confidential
13 information under the tolling agreement or naturally
14 at the end of our first quarter in publishing our
15 financial results one could impute the information
16 required to be able to release this information.

17 Q. Now, this information that you attached,
18 the five documents that we talked about, Exhibits
19 12 -- I guess it's four -- Exhibit 12 through 15 are
20 forecasted numbers, correct?

21 A. That is correct.

22 Q. There are no actual 2009 data included in
23 those figures.

24 A. There is actual data, but it was
25 forecasted, and the actual and forecast are the same

1 in some cases.

2 Q. And isn't it true that you chose not to
3 supplement with actual 2009 data because you felt
4 that the forecasted numbers were close enough?

5 A. The forecasted numbers for the first
6 three months of the year were within 1.7, 1.8 percent
7 of revenue. By the time we got to the fourth month
8 we were like 1/10 of a percent -- not 1.8, .18 or
9 .1 percent, so they were very close to the numbers we
10 had forecasted.

11 Q. So to answer the question, you chose not
12 to use the actual 2009 because you felt it was close
13 enough.

14 A. Close enough we didn't want other numbers
15 running around.

16 Q. Under your approach to the unique
17 arrangement there would be no true-up to the actual
18 2009 numbers.

19 A. That is correct.

20 Q. In developing Exhibits 12, 13, 14, and
21 15, the one-page summaries, the pro forma income
22 statement, the cash flow forecast, and the balance
23 sheet, those were based on the company's, Ormet's,
24 business plan that was developed in 2008; is that
25 correct?

1 A. Yes.

2 Q. And the only modification was to solve
3 for the electricity required; is that correct?

4 A. That is correct.

5 Q. And the people who developed the
6 application and those numbers are four people from
7 Ormet, is that correct, Mr. Tanchuk, who was the
8 president, Mr. Griffin, the VP of operations, and
9 yourself and the controller.

10 A. That is correct.

11 Q. And isn't it true that there was no
12 outside assistance that the company used to develop
13 those numbers?

14 A. Mr. Tanchuk in looking at what the
15 projected numbers were for revenues and pricing for
16 aluminum consulted with industry projections.

17 Q. And Mr. Tanchuk was mentioned, correct?

18 A. That's correct.

19 Q. One of the four. There was no auditing
20 of these numbers that were done, correct?

21 A. There was review done by the banks as the
22 they looked at, because we give them an annual plan.

23 Q. Did you get any feedback from the banks?

24 A. No.

25 Q. And three of the four people, yourself,

1 Mr. Tanchuk, and Mr. Griffin, are three of the
2 members discussed in your prior testimony who are
3 receiving 2.3 to .4, \$2.4 million in bonuses and
4 salary; is that correct?

5 A. Total compensation, yes.

6 Q. And all that money, that total
7 compensation, that's all part of the minimum cash
8 flow that would be needed for the end of 2009 to
9 refinance the debt in 2010, correct?

10 A. Yes.

11 MR. POULOS: Your Honor, if I can go off
12 the record for a moment.

13 (Discussion off the record.)

14 EXAMINER PRICE: Back on the record. At
15 this time it's my understanding that Consumers'
16 Counsel has questions that relate to the confidential
17 information so we will go off of the public
18 transcript, and we will now proceed with the
19 confidential transcript.

20 (Confidential portion.)

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5 EXAMINER PRICE: At this time we will go
6 back to the public transcript.

7 (Public transcript.)

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9 CROSS-EXAMINATION

10 By Mr. Kurtz:

11 Q. Good morning, Mr. Riley.

12 A. Good morning.

13 Q. Page 6 of your testimony I have some
14 follow-up for the questions from OCC counsel. As I
15 understand it, if you went down to four potlines
16 normally, you would lay off 290 employees.

17 A. That was the net effect. We currently
18 are running -- we were running when we started this
19 1,037. There has been some attrition, and we have
20 not backfilled it. That's why we had said we would
21 keep at least 900. So there would be -- what we
22 anticipate from the 900 level we would take it down
23 290 people.

24 Q. Okay. And as counsel went through with
25 you, the \$4 per megawatt-hour savings on your

1 electric bill equates to the direct payroll cost of
2 those 290 employees.

3 A. It's the incremental cost.

4 Q. You indicate that the direct hourly
5 payroll cost for the employee that would otherwise be
6 laid off would be \$20.73 per hour or work.

7 A. That's the difference, yes.

8 Q. That's the direct payroll cost?

9 A. For all intents and purposes, yes.

10 Q. Okay. And so if we just -- how many
11 hours a week should we assume that these employees
12 would have worked?

13 A. I use 173.3 per month.

14 Q. 173.3 times 20.73 times 290 people,
15 that's 1,041,000?

16 A. That sounds correct.

17 Q. That basically equates to the savings on
18 your electric bill from the additional \$4 per
19 megawatt-hour discount.

20 A. That was how it was designed, yes.

21 Q. Assuming you do go to four potlines if
22 the Commission grants the application, would the 290
23 people report to work?

24 A. Yes, they would.

25 Q. Are they going to do anything?

1 A. Yes. They would be preparing the lines
2 in anticipation hopefully of a quick restart at which
3 time as the aluminum market returns.

4 Q. So they will do maintenance?

5 A. Operational, supply, et cetera, making
6 sure the lines are ready. We got basically the six
7 lines. One of our lines is completely down and there
8 are pots down on the other lines.

9 Q. You will try to put them to productive
10 use?

11 A. Yes, absolutely.

12 Q. Now, if you laid them off and didn't get
13 the discount, you wouldn't have those 290 people to
14 do that, would you?

15 A. No, we would not.

16 Q. Under your proposal you would get the
17 million dollar per month cost of those 290 people
18 paid for through this reduction in the electric rate
19 and you get the 290 people there to do productive
20 work.

21 A. That is the request.

22 Q. Okay. On this direct payroll
23 calculation, \$20.73 per hour times 173.3 hours per
24 month on average times 12, that's an annual salary, I
25 think -- annual direct payroll cost of \$43,000 per

1 year.

2 A. Wages, yes.

3 Q. Wages. In your application you indicated
4 that the total wages at the smelter were 56 million.
5 Do you recall that?

6 A. I don't recall the number.

7 Q. The question I have, if it's \$43,000 per
8 direct payroll cost per employee, 1,000 employees is
9 \$43 million. Do you agree with that?

10 A. Remember what I said, this is the delta
11 to being laid off. There are still costs that would
12 be associated with them being laid off that would go
13 into their payroll cost. This is the incremental.

14 Q. In your testimony you said there was the
15 direct --

16 A. I said approximately. What I'm saying to
17 you is that it is the incremental to working versus
18 not working, which is approximately equal to the
19 direct. It's not 100 percent the same.

20 Q. Let me move quickly to OCC Exhibit 11.
21 Can I walk you through this just a little bit, sir?

22 A. Certainly.

23 Q. I think what I'd like to do is ask you
24 about on page 9 of that document, the risk factors.

25 A. Yes.

1 Q. Okay. Your supplemental testimony is
2 based upon a forecasted cash flow, forecasted income
3 statement, forecasted balance sheet, and, of course,
4 there's a risk that those forecasts may turn out to
5 be incorrect.

6 A. Yes, sir.

7 Q. And there's a number of factors that
8 influence whether those forecasts will be correct; is
9 that correct?

10 A. Yes, sir.

11 Q. Let me ask you some of these risks
12 factors you list starting on page 9 associated with
13 the operation of the Ormet smelter. The first risk
14 factor: "The Company is currently involved in a
15 dispute with Glencore, on whom it is currently
16 dependent for substantially all of its aluminum
17 production and revenue." You discussed that at
18 length with Mr. Poulos.

19 A. Yes, I have.

20 Q. Go to the next one, page 10. "Recent
21 declines in published aluminum prices on the London
22 Metals Exchange if sustained for the duration of 2009
23 could have an adverse impact on the Company's ability
24 to operate profitably." Is that still a risk factor?

25 A. Not for 2009 but beyond.

1 Q. Next risk factor: "The Hannibal, Ohio
2 collective bargaining agreement expires on
3 December 31, 2009." Why is that a risk?

4 A. Just there's not an agreement in place
5 that goes beyond December 31, 2009.

6 Q. You may not be able to operate -- you
7 wouldn't be able to operate unless you get a new
8 labor contract.

9 A. That's correct. That's why it's here.

10 Q. Have you started negotiations on that?

11 MR. BONNER: Objection, your Honor. This
12 is well beyond the scope of the supplemental direct
13 testimony, which was limited to establishing the
14 basis for the 2009 proposed rate.

15 MR. KURTZ: The reason I'm asking these
16 questions, his supplemental direct testimony is based
17 on a forecasted income statement, forecasted cash
18 flow, forecasted balance sheet, and these risk
19 factors in their financial filing gets into the
20 question of whether these projections will be
21 accurate.

22 EXAMINER PRICE: We're going to give
23 Mr. Kurtz a little bit of leeway here. It was
24 unusual to begin with to file supplement testimony so
25 we are giving you some leeway there so we will

1 reciprocate by allowing Mr. Kurtz to ask these
2 questions.

3 But not too far, Mr. Kurtz.

4 I think we had a pending question.

5 Q. The question, have you started
6 negotiations?

7 A. The answer, to the best of my knowledge,
8 not at the moment.

9 Q. I want to go through quickly the risk
10 factors. You list: "Prior to 2009, the Company has
11 a history of losses and negative cash flows from
12 operations." Does that history of negative cash
13 flows indicate that your forecast could be correct or
14 incorrect?

15 A. It has no bearing on it.

16 Q. What about the next risk factor "The
17 company has a substantial amount of debt." Does that
18 have any bearing on the accuracy of your forecast in
19 your supplemental testimony?

20 A. No.

21 Q. "The Company has substantial retiree
22 pension obligations." Those pension obligations are
23 in your cash flow statement.

24 A. That is correct.

25 Q. And your pension obligations involve

1 retirees from the Ohio smelter.

2 A. The majority of them, but, yes, there are
3 others.

4 Q. Don't you also have retiree pension
5 obligations for your Louisiana operations?

6 A. Yes.

7 Q. So if you were asking Ohio consumers to
8 pay a subsidy rate to Ormet based upon cash flow that
9 includes Louisiana pension obligations, Ohio
10 consumers would be funding that, wouldn't they?

11 A. It's one corporation, and it's all
12 included, yes.

13 Q. So if we want to keep this smelter in
14 operation, we have to fund these Louisiana pensions.

15 A. We are under obligation to the PPGC to
16 make our contributions to the pension plan.

17 Q. You had approximately 200 employees at
18 the Louisiana alumina facility before it closed.

19 A. I don't remember the exact numbers. It
20 was closed before I came.

21 Q. I found a press release that indicates
22 there were approximately 200 hourly employees at the
23 Burnside Louisiana facility that was closed July 17,
24 2006.

25 MR. BONNER: Object to the hearsay.

1 MR. KURTZ: It's an Ormet press release.
2 Would you like to look at it?

3 EXAMINER PRICE: I think we need to at
4 least mark it.

5 MR. BONNER: There's no foundation for
6 the witness to be able to testify to a press release.

7 EXAMINER PRICE: Mr. Kurtz can address
8 that. We will mark this OEG 101.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. Mr. Riley, do you recognize that as a
11 press release from Ormet Corporation?

12 A. I do not.

13 Q. Okay. Have you ever seen that before?

14 A. I have not.

15 Q. Thank you. You did sign off on OCC
16 Exhibit 11. Your signature is at the end of the
17 document so I assume you are familiar with that,
18 correct?

19 A. Yes, I am.

20 Q. Okay. These retiree pension obligations
21 listed on this document --

22 A. Which page, sir?

23 Q. Page 11, \$220.8 million as of
24 December 31, 2008, do you see that?

25 A. The underfunded liability, yes.

1 Q. Does that include pension costs
2 associated with your Louisiana workers?

3 A. Yes.

4 Q. And that is included in your cash flow
5 analysis for this Ohio electric contract?

6 A. Some portion of the pension payment is
7 for that, yes.

8 Q. And I recall from Professor Coomes's
9 testimony that 43 percent of the people that work at
10 the Ohio smelter live in West Virginia.

11 A. I believe he said that, yes.

12 Q. And their pension costs would be included
13 in that cash flow as well.

14 A. Yes, sir.

15 Q. Do you know why the Ohio consumers would
16 fund Louisiana pensions and West Virginia pensions?

17 MR. BONNER: Objection, Your Honor. It
18 is well beyond the scope.

19 MR. KURTZ: I withdraw that question.

20 EXAMINER PRICE: Thank you.

21 I have a question, Mr. Kurtz, if you
22 will. This is probably beyond the scope, but I get
23 to ask it. You indicate in the document on page 11
24 pension plan contributions for the next four years.

25 THE WITNESS: Yes.

1 EXAMINER PRICE: But those will -- will
2 comparable pension fund contributions continue beyond
3 those four years?

4 THE WITNESS: They will substantially
5 reduce. They are being affected by two things at the
6 moment. In 2006 the company had requested a waiver
7 from the PPGC of its 2006 payment, which,
8 unfortunately, wasn't granted all the way until
9 January of 2008. That has to be made up over a
10 period of about six years. So over beyond this
11 period of time that will go away.

12 In addition to, hopefully if the market
13 continues, a significant portion of what we are
14 funding here over a period of time, as most defined
15 benefit pensions, they incurred significant losses of
16 value.

17 EXAMINER PRICE: Like my retirement fund.

18 THE WITNESS: Exactly. I can tell you
19 for the first five months it went up almost 10
20 percent from what we were at year end. So I'm hoping
21 as we go forward, since it is recalculated every
22 year, we will see it go down.

23 EXAMINER PRICE: But is it fair to say
24 commencing in 1013 your pension obligations will be
25 significantly reduced.

1 THE WITNESS: They should be, yes.

2 MR. KURTZ: Along those lines I'd like to
3 have marked as OEG Exhibit 102, this is a data
4 response from Ormet to an OCC question about the
5 pension costs.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. Are you familiar with this at all? I
8 know this was answered by a different Ormet employee,
9 but are you familiar with the information on this?

10 A. Yes.

11 Q. The pensions costs that would be funded
12 under this power contract, the \$220.8 million, is
13 that the same dollar amount that we saw on this OCC
14 Exhibit 11?

15 A. No, it is not. The 220 is from an
16 accounting perspective under FAS 87 the underfunded
17 portion of the pension plans as of 12/31. It is an
18 actual determined number. What is shown in the other
19 exhibit is the cash funding anticipated or the cash
20 contributions to the pension plans over that period
21 of time.

22 Q. Let me ask you, on OCC Exhibit 11 on
23 page 11, it says: "The Company had a total
24 under-funded pension liability of approximately
25 \$220.8 million as of December 31, 2008." On this OEG

1 Exhibit 102, it says: "Pensions, Under Funded Status
2 as of 12/31/2008, 220.841."

3 A. I apologize, those are same numbers.

4 Q. OEG 102 indicates that: "Cash costs over
5 the next five years is estimated at \$241 million."
6 Is that the same question the judge asked?

7 A. Yes.

8 Q. Again, these include Ormet Corporation's
9 pension costs, which would include all of your former
10 operations, including this Louisiana facility as well
11 as the Ohio smelter.

12 A. That's correct.

13 Q. On page 12 of OCC Exhibit 11, there is
14 discussion at the top of the page about eligible
15 hourly retirees in Mississippi and Tennessee, cost of
16 \$900,000 in 2009.

17 A. That is for salaried and a few hourly
18 people.

19 Q. This \$900,000 cost in 2009 you indicate
20 the Company's intention, current intention, is to
21 continue funding that through 2018.

22 A. It is the Board's intention to continue
23 to fund the \$900,000, which predominantly the
24 salaried employees, through the period of time under
25 which the Hannibal VEBA is being funded.

1 Q. So that under this cash flow analysis,
2 the electric rates in Ohio would reflect the pension
3 contributions for the salaried employees in
4 Mississippi and Tennessee.

5 A. Please, let me clarify that. The
6 \$900,000 is predominantly the salaried employees.
7 The few hourly employees that were retired from those
8 other operations are in the same plan.

9 Q. So the small amount of money associated
10 with these Mississippi and Tennessee employees would
11 be included in the cash flow analysis for this Ohio
12 Power Company contract?

13 A. Yes, that is correct.

14 Q. Going down the line, there's discussion,
15 the next risk factor, moving down two, the company
16 continues to incur costs associated with curtailed
17 Burnside, Louisiana plant, and I take it the \$151,000
18 per quarter or about \$600,000 per year.

19 A. Is in the cash costs, yes.

20 Q. So the cash flow analysis for this Ohio
21 electric contract would include the \$600,000 a year
22 to -- with the curtailed Louisiana facility.

23 A. Yes.

24 Q. There's a discussion at the bottom about
25 the electric power contract. I want to skip that for

1 a second and ask you to comment on page 14 of this
2 exhibit, the top: "The Company is likely to require
3 significant capital expenditures going forward." Do
4 you see that as a risk factor discussed on page 14?

5 A. Yes.

6 Q. I understand from reading this they will
7 be significant capital expenditures -- under -- let
8 me ask you this. Under the cash flow analysis that
9 you've done for this electric power contract, if you
10 spent a million dollars on a capital item that has a
11 10- or 20-year useful life, would the entire cost of
12 that capital item be included in the cash flow for
13 that year, or would there be some sort of
14 amortization over its useful life?

15 A. In the income statement it is only the
16 depreciation charge, which is the amortization over
17 its life. For the cash flow it would be the absolute
18 cost of that. Most of the cash flow you see in the
19 forecasted cash flow statements are used for pot
20 relines.

21 Q. If the Commission were to approve a rate
22 that would keep Ormet's cash flow neutral and you had
23 a million dollar capital expenditure in 2009 or 10,
24 that would be essentially reflected in the discount
25 for that year rather than -- for that year. We would

1 pay for that along with capital asset in one year?

2 A. In lieu of paying for all prior years,
3 the answer is yes. If you're sustaining yourself,
4 the numbers should be approximately the same.

5 Q. Okay. But if it's a capital asset that
6 has a long useful life beyond the term of any power
7 contract, wouldn't Ohio electric consumers pay for it
8 now, and you would get the use of it and the benefit
9 of it over the entire useful life?

10 A. By definition capital expenditure extends
11 life more than a year. There's very little that's
12 going on very long. We do not have a lot of
13 buildings and other things that we are doing that
14 would have a long term life to it.

15 Q. The capital expenditure plan for 2009
16 includes annual costs of relining up to 17 percent of
17 the pots. Is that the normal amount of potline
18 relining that goes on in any given year, or is 2009 a
19 heavy or light year for relining?

20 A. It's probably more light because with the
21 restart, we relined a lot of pots.

22 Q. How long does a relined pot go for?

23 A. I'm not an expert in that area, but one
24 would anticipate from the things I heard maybe fives
25 or six years.

1 Q. Five to six -- well --

2 A. What I understood was we were a little
3 light on this year.

4 Q. It says here that the Hannibal smelters
5 are over 50 years old.

6 A. Yes, sir.

7 Q. How does that -- how does that rank in
8 terms of age of the US smelters; do you know?

9 A. I do not know.

10 Q. Let me circle back to your discussion of
11 the electric contract on page 12 through 13 of this
12 document. Do you see that, Mr. Riley?

13 A. Yes.

14 Q. As I understand it, in 2007 and 08 you
15 were operating under a Commission-approved special
16 contract that charged \$43 a megawatt-hour for
17 generation plus transmission and distribution.

18 A. Yes.

19 Q. And that yielded a rate of
20 approximately -- I have it in here -- \$50.60 per
21 megawatt-hour.

22 A. I believe that's correct.

23 Q. And so when -- then on January 1 of this
24 year, you went to the pre-ESP standard industrial
25 rate for AEP, which was the GS-4, 50 percent Ohio

1 Power, 50 percent Columbus Southern.

2 A. That is my understanding.

3 Q. And that yielded a rate, as you indicate
4 here, of \$38.43 per megawatt-hour.

5 A. Approximately yes.

6 Q. And that was a 24.5 percent reduction
7 from the expired special contract.

8 A. Yes, I believe that's correct.

9 Q. Now, that is approximately a \$50 million
10 a year rate reduction for Ormet.

11 A. From the very high rates we were paying,
12 yes.

13 Q. So we have this time line of 2008, you
14 were \$50.60 per megawatt-hour; is that correct?

15 A. Yes.

16 Q. January 1, 2009 you went to \$38.43 per
17 megawatt-hour.

18 A. Yes.

19 Q. And if your contract is approved now, or
20 this application, with a six line operation you would
21 only get a very small reduction from where you are
22 right now. You would go from 38.43 to 38.

23 A. That is the intent yes.

24 Q. Do you know that delta revenue is an
25 issue in this proceeding?

1 A. I've heard it mentioned yes.

2 Q. Do you understand from what you've
3 discussed here that AEP supports this as long as they
4 get their delta revenue? You have heard that before?

5 A. Yes.

6 MR. BONNER: Your Honor, I would object.
7 We are getting into delta revenues for AEP. This
8 witness was brought back solely for supporting the
9 cash flow rates for 2009.

10 EXAMINER PRICE: Sustained.

11 MR. KURTZ: Is the nature of the ruling I
12 should not get into delta revenue questions with this
13 witness?

14 EXAMINER PRICE: Unless you can tie the
15 delta revenue to his supplemental testimony, that's
16 correct.

17 Q. At the rates you propose in your
18 supplemental testimony of \$38 per megawatt-hour, do
19 you know how much delta revenue would be created that
20 other consumers would have to pay for?

21 A. I do not.

22 Q. Do you know how much delta revenue has
23 been created from the prior special contract with
24 Ormet for 2007-2008?

25 MR. BONNER: I object, your Honor. That

1 addresses a different proceeding, not at issue here.

2 (Record read.)

3 EXAMINER PRICE: Sustained.

4 MR. BONNER: Thank you.

5 MR. KURTZ: Those are all the questions I
6 have, your Honor. Thank you.

7 EXAMINER PRICE: Thank you, Mr. Kurtz.

8 Mr. Clark.

9 MR. CLARK: May I look over my questions
10 so I will not be duplicative of the other questions
11 asked?

12 EXAMINER PRICE: Sure. Let's take a
13 ten-minute recess.

14 (Recess taken.)

15 EXAMINER PRICE: Back on the record.

16 Mr. Clark.

17 MR. CLARK: Yes, sir.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Clark:

21 Q. Mr. Riley, if I can refer you to
22 page 52 of OCC Exhibit 11.

23 A. Yes.

24 Q. And there note 20 says "Management's
25 Plans" in that first paragraph, plus it says in the

1 last sentence: "Should the market price of aluminum
2 not significantly increase by the end of the 2009
3 third quarter, it is probable that the Company would
4 not be able to operate profitably in 2010."

5 Can you tell what market price the
6 company would need to have to be profitable?

7 A. It depends on the final outcome of the
8 electric contract discussions we're having, but it's
9 not all that much higher than where we currently sit
10 since the market has moved appreciably in the last
11 week.

12 Q. Assuming that the Commission would grant
13 your application as proposed, what market price?

14 A. I'm sorry?

15 Q. If the Commission were to grant your
16 application as proposed, do you have a market price
17 opinion?

18 A. The request is now a need based;
19 therefore, it would move with it.

20 Q. In your testimony filed on April 23,
21 2009 --

22 A. I'm sorry, I do not have that.

23 EXAMINER PRICE: Mr. Bonner, if you could
24 provide that.

25 THE WITNESS: Yes, I have it in front of

1 me.

2 Q. On page 3 of that testimony you state
3 that: Commission approval of the unique arrangement
4 will contribute to keep the Hannibal facility
5 operating, correct?

6 A. That is correct.

7 Q. During the first portion of this hearing
8 you spoke with Ms. McAlister about other factors
9 unrelated to Ormet's energy needs -- energy costs
10 that needed to happen to refinance the debt of the
11 Hannibal facility to keep operating. Do you recall
12 that discussion?

13 A. Yes.

14 Q. And specifically you had indicated based
15 on statements made in IEU Exhibit 1, which was the
16 year end 2008 data, that to have sufficient liquidity
17 Ormet needs to have successful implementation of a
18 number of things, including the lower raw material
19 pricing, continuation of the tolling agreement,
20 negotiation of a new tolling agreement similar to the
21 current agreement for 2010, and closure and sale of
22 the marine terminal. Is that a fair characterization
23 of your prior testimony?

24 A. Yes, approximately.

25 Q. Based on your first quarter 2009 data or

1 otherwise, have any of those four things occurred
2 yet?

3 A. Yes.

4 Q. Can you tell me what has and has not
5 occurred?

6 A. The lower anode prices are being achieved
7 on a daily basis currently; other raw material costs
8 and credit terms have been paying. The sale of the
9 terminal has not, as I've said. The tolling
10 agreement, we're in the discussions to put one in for
11 2010. It has not been concluded, nor would it be
12 until later this year, and I don't remember the last
13 point.

14 Q. The marine terminal.

15 A. I said it's not been concluded.

16 Q. You run Ormet's financials every day,
17 correct?

18 A. I'm sorry, I don't understand the
19 question.

20 Q. Do you run Ormet's financials each day to
21 approximate your cash flow and other?

22 A. I have responsibility for the financial
23 staff that the treasury portion of it on a daily
24 basis is managing the cash flow, yes.

25 Q. And when do you project Ormet will have a

1 sustained positive cash flow?

2 A. Actually, for 2009.

3 Q. And when in 2009?

4 A. My expectation is it will have it for the
5 year. I don't know exactly what month we would be
6 achieving it.

7 Q. The question about the application
8 itself, Ormet, you would pay your electric costs
9 residually, correct? You pay the electric bill last.

10 A. No. What we had anticipated was that we
11 would have normal terms, which I described as being
12 21 days in arrears.

13 MR. McNAMEE: Your Honor, I have a couple
14 questions briefly on the confidential testimony.

15 EXAMINER PRICE: We will now leave the
16 public transcript and go back to the confidential
17 transcript.

1
2
3
4 EXAMINER PRICE: We will now exit the
5 confidential portion of the confidential transcript
6 and return to the public portion.

7 (Public record.)

8 EXAMINER PRICE: Mr. Nourse.

9 MR. BONNER: No questions.

10 EXAMINER PRICE: Mr. McNamee.

11 MR. MCNAMEE: No questions.

12 EXAMINER PRICE: Redirect.

13 MR. BONNER: Thank you, your Honor.

14 - - -

15 REDIRECT EXAMINATION

16 By Mr. Bonner:

17 Q. Mr. Riley, just to clarify a few points
18 raised on cross-examination by the various parties,
19 could you clarify that the confidential information
20 that is the subject of your supplemental direct
21 testimony, was that governed by the confidentiality
22 clause in the Glencore agreement at the time this
23 application was filed in February of 2009?

24 A. Yes. When it was originally filed, that
25 was the driver.

1 Q. And what changed those circumstances to
2 enable you to file your supplemental direct testimony
3 discussing the basis for the proposed rate of 2009?

4 A. There were two items. Number one was
5 when the arbitration tribunal had agreed to hear on
6 an expedited basis for the interim relief, and the
7 federal judge then at our request released the case.
8 All of the information that was with the federal
9 judge then had been under seal. So that allowed us
10 to then on the day after Memorial Day when his final
11 order came down releasing the case, or whatever the
12 appropriate terminology is, we at the end of that day
13 then posted our 15c2-11 which provided the data to be
14 able to make an approximation of the tolling revenue,
15 which is the main driver to the revenue stream
16 without us releasing information that would have
17 otherwise been covered under the confidentiality
18 section of the tolling agreement with Glencore.

19 Q. Thank you, sir. And your supplemental
20 direct testimony included various exhibits, ORM 12
21 through ORM 16, which contained some of that
22 confidential information we're discussing.

23 A. That is correct.

24 Q. And you were also deposed a week ago, is
25 that correct, by OCC counsel --

1 A. Yes, sir.

2 Q. -- about your supplemental direct
3 testimony?

4 A. Yes, sir.

5 Q. And the notice of deposition asked you to
6 provide backup supplemental information explaining
7 those figures and supporting Exhibits ORM 12 through
8 ORM 16.

9 A. Yes, I was.

10 Q. And you provided workpapers supporting
11 your preparation of those forecasts at that
12 deposition.

13 A. Yes, I did.

14 Q. Now, you were also asked about the nature
15 of your projections. And were your projections
16 prepared using forecasted information or actual data
17 at the time you prepared them?

18 A. The procedure we use or I use in
19 preparing these is you look at the historical data of
20 actual results, and working with the operators and
21 the commercial people, in this case Mr. Griffin and
22 Mr. Tanchuk, you make determinations of whether
23 history is going to repeat it. So you would modify
24 the production if it is going to increase or
25 decrease, if the LME prices were going up or down

1 beyond 2009 where we have a fixed tolling rate, and
2 we would modify and that would be our forecast going
3 forward.

4 Q. At the time you prepared your application
5 in this proceeding in February 2009, was actual data
6 for 2009 available at that time for your use?

7 A. No, it was not.

8 Q. And how does the -- how did the
9 forecasted financial projections you prepared compare
10 to the actual data for 2009 to date?

11 A. We were looking at the first quarter
12 income statement, and we looked at net income from
13 the operations and had anticipated that we would have
14 approximately \$9.8 million, I believe was the number.
15 We came in within \$237,000.

16 MR. BONNER: Just for clarification, your
17 Honor, I apologize but if this -- these are
18 confidential numbers we should have the record
19 reflect that?

20 THE WITNESS: Given the fact it's after
21 the fact, the first quarter is over, I would not
22 consider at this moment to be confidential.

23 Q. Sorry to interrupt you.

24 A. So we missed it by \$237,000 what we said
25 was the actual versus what we had projected at the

1 net income level. As a percent of revenue numbers,
2 as I said, it was less than .2 percent so I had
3 assumed looking at it that way, even though there are
4 pluses and minuses in cash flow as we go through in
5 great detail, we approximate. As we went out through
6 the April, it is even closer. It's within
7 .1 percent.

8 Q. Would it be within a reasonable margin of
9 error for financial projections in your expert
10 opinion?

11 A. In my doing this for 30 plus years I
12 would say that that is exceedingly accurate.

13 Q. You were also asked some questions about
14 the pension obligation for the employees at the
15 Louisiana Burnside plant.

16 A. Yes.

17 Q. Can you tell us the approximate size of
18 those pension obligations? I don't think you were
19 asked.

20 A. I'm sorry, I do not have the information
21 in front of me. They are one combined plan that I
22 look at. I don't know how much one is contributing
23 versus the other.

24 Q. Is it your understanding that the amount
25 of pension obligations would be covered in OCC

1 Exhibit 11, which is the --

2 A. Yes, they are. They're all included.

3 Q. Do you have an understanding as to
4 whether or not those pension obligations are less
5 than or more than the anticipated asset sale value of
6 the Burnside plant?

7 A. I don't know. I have no knowledge of
8 that.

9 Q. Getting back to the 34 rate, you were
10 asked about the 290 people that might be -- might
11 have to be let go if you have to reduce production;
12 is that right?

13 A. Yes.

14 Q. What impact would letting the 290 people
15 go have on ramping back up operations once aluminum
16 prices rise versus keeping them?

17 A. I don't feel qualified to put an exact
18 time frame on it. It would accelerate the time, but
19 I don't know.

20 Q. And what impact would delaying ramping up
21 production have on company revenues?

22 A. It would have a material reduction
23 because we would not be able to produce metal,
24 assuming we are coming back at a higher market price,
25 and so that would string out the period of time which

1 we be able to recall people.

2 MR. BONNER: No other questions, your
3 Honor. Thank you.

4 EXAMINER PRICE: Thank you. Mr. Poulos,
5 recross?

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

7 EXAMINER PRICE: Mr. Kurtz.

8 MR. KURTZ: None, your Honor.

9 EXAMINER PRICE: Mr. Clark.

10 MR. CLARK: No, your Honor.

11 EXAMINER PRICE: Mr. Nourse.

12 MR. NOURSE: No, your Honor.

13 EXAMINER PRICE: Mr. McNamee.

14 MR. MCNAMEE: No, your Honor.

15 EXAMINER PRICE: I have one question.
16 OCC Exhibit 11, page 11 the fact that the pension
17 obligations were front loaded, so to speak.

18 THE WITNESS: Yes.

19 EXAMINER PRICE: And you had said that
20 there would be a significant reduction in pension
21 obligations, can you give me a round number how much
22 that reduction would be on a going-forward basis in
23 2013?

24 THE WITNESS: Based on my recollection,
25 it was down into the high teens.

1 EXAMINER PRICE: 10, 20 maybe?

2 THE WITNESS: And the next year 30 plus.

3 EXAMINER PRICE: Thank you. You're
4 excused. Thank you very much.

5 MR. BONNER: Your Honor, at this time
6 Ormet would move for the admission of Mr. Riley's
7 supplemental direct testimony, which has been marked
8 for identification as Exhibit Ormet 11, as well as
9 exhibits supporting, Exhibits ORM 12 through ORM 16.

10 EXAMINER PRICE: You are also moving 11A,
11 the redacted version?

12 MR. BONNER: Yes, and the redacted
13 version, which would be ORM 11A.

14 EXAMINER PRICE: Any objection to
15 admission of Exhibits ORM 11, 12, 13, 14, 15, 16 and
16 11A?

17 MR. POULOS: No your Honor.

18 EXAMINER PRICE: Those would be admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER PRICE: Mr. Poulos.

21 MR. POULOS: At this time we offer OCC
22 Exhibit 11.

23 EXAMINER PRICE: Any objections to
24 admission of OCC Exhibit 11?

25 MR. NOURSE: No, your Honor. Could OCC

1 provide a copy, though.

2 MR. BONNER: No, your Honor.

3 EXAMINER PRICE: It will be admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 MR. KURTZ: OEG will move in OEG 102, the
6 Ormet data response, but not 101 because the press
7 release he could not identify.

8 EXAMINER PRICE: Any objection to the
9 admission of OEG Exhibit 102?

10 Seeing none, it is admitted.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 (Discussion off record.)

13 EXAMINER PRICE: At this point based upon
14 our off-the-record discussions, staff will give
15 notice to parties as to whether it will do rebuttal
16 testimony on June 12. The staff will file its
17 testimony on June 15 and provide everybody the
18 electronic service, including the examiners.

19 The hearing, if one is to be held, will
20 go forward on June 17, and we will establish a
21 briefing schedule either by subsequent entry or at
22 the conclusion of the hearing on the 17th.

23 Any other issues we need to discuss?

24 Seeing none, we are adjourned.

25 (The hearing adjourned at 12:02 a.m.)

1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Thursday, June 11, 2009, and
5 carefully compared with my original stenographic
6 notes.

7 _s/Rosemary Foster Anderson_____
8 Rosemary Foster Anderson,
9 Professional Reporter and
Notary Public in and for
the State of Ohio.

10 My commission expires April 5, 2009.

11 (RFA-8298)

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Summary: Transcript Ohio Power 6/11/09 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Anderson, Rosemary Foster Mrs.