

ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
Polypore International, Inc.,)
a corporation)
)

Docket No. 9327

PUBLIC

RESPONDENT'S RESPONSES TO COMPLAINT COUNSEL'S POST-TRIAL
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON
REOPENED HEARING

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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

DOCKET NO. 9327

**IN THE MATTER OF
POLYPORE, INTERNATIONAL, INC.**

**COMPLAINT COUNSEL'S POST-TRIAL
PROPOSED FINDINGS OF FACT
ON REOPENED HEARING**

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I. Complaint Counsel has Proven that Respondent's Proffers Are Not True

A. Proffer #1 is not true

- Respondent's allegation in the first proffer that "after the close of the record" Exide decided to { _____ } is not accurate because Exide has been { _____ }

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel's statement is incorrect for the reasons stated below.

1249. Exide decided to { _____ } (Gillespie, Tr. 5826-5827, *in camera*). { _____ } (Gillespie, Tr. 2966, *in camera*; *see also* Bregman, Tr. 2899-2901, *in camera*; CCFOF605). Mr. Seibert, who has only been in position at Daramic since late 2008, admitted that { _____ } (Seibert, Tr. 5730, *in camera*; PX5076 (Seibert, Dep. at 48), *in camera*).

Response to Finding No. 1249:

Complaint Counsel's Finding No. 1249 is incomplete and misleading. First, to the extent Complaint Counsel cites Gillespie's testimony to support its proposed finding, such support should be disregarded. Gillespie has proven not to be credible and his testimony should be given no weight. Moreover, it is telling that Complaint Counsel offers no documentation to attempt to support this finding. In addition, {

} (Gillespie, Tr. 2965, *in camera*). {

}"

(Gillespie, Tr. 2965, *in camera*).

Moreover, {

} (RFOF

1501, *in camera*). {

} (RFOF 1602, *in camera*; Gillespie, Tr. 5851, *in camera*).

Instead, {

} (RFOF

1540-43, *in camera*). Not surprisingly, {

} (Gillespie, Tr. 5870, *in camera*; RX01693 at 002 (“{

}.”), *in*

camera). Instead, as Gillespie himself even testified, {

} (Gillespie, Tr. 5838-39, *in camera*).

1250. Exide’s decision to {

}

(Gillespie, Tr. 5826-5827, *in camera*). {

} (Gillespie, Tr. 5826, 2977, 3049, *in camera*).

Response to Finding No. 1250:

Complaint Counsel’s Finding No. 1250 is inaccurate, incomplete and misleading. First, Complaint Counsel cites only Gillespie’s testimony to support its proposed finding. Gillespie has proven not to be credible and his testimony should be given no weight. Moreover, it is telling that Complaint Counsel offers no credible evidence to attempt to support this assertion.

Complaint Counsel introduced no exhibits to support this proposed finding even though it had ample opportunity to do so. Complaint Counsel fails to support this proposed finding with any credible evidence.

First and foremost, Complaint Counsel arrives at Finding No. 1250 by manipulating Gillespie's hearing testimony. During the re-opened hearing, Complaint Counsel {

} (Gillespie, Tr. 5826, *in camera*)(emphasis added). {

} (Gillespie, Tr. 5826-27, *in camera*). This testimony {

} This is further evidenced when looking at Gillespie's actual testimony in May. Only one of the pages of initial hearing testimony that Complaint Counsel cites is relevant to their proposed finding, and there {

} (Gillespie, Tr. 3049, *in camera*). Complaint Counsel ignores {

} (Gillespie, Tr. 3021, *in camera*). At the time of the initial hearing {

} It was only on cross-examination at the November 12, 2009 hearing that Gillespie, for the first time, admitted (albeit reluctantly) that {
}. (Gillespie, Tr. 5838-39, *in camera*).

This finding further ignores that fact that after the record was closed on June 22, 2009,

{

}). (RFOF 1529, *in camera*; RX01676, *in camera*; Seibert, Tr. 5674, *in camera*; Gillespie, Tr. 5845, *in camera*). {

}. (RFOF 1529, *in camera*; Seibert, Tr. 5673-74, 5676-77, *in camera*; Gillespie, Tr. 5845-46, *in camera*; RX01676, *in camera*). {

}. (RFOF 1540, *in camera*; Seibert, Tr. 5677-78, *in camera*). {

}, (RFOF 1209, 1212, *in camera*), {

}. (RFOF 1641, *in camera*). None of this information was disclosed by Gillespie when he testified in May 2009, as Exide chose to withhold its strategy from this Court.

1251. While Exide has been {

} (Gillespie, Tr. 5829, *in camera*).

Response to Finding No. 1251:

Complaint Counsel's Finding No. 1251 is incomplete and misleading, and draws a false conclusion. For its response to this finding, Respondent incorporates by reference its responses

to Finding Nos. 1249 and 1250. First, it is telling that Complaint Counsel relies solely on the testimony of Gillespie to support its finding. Gillespie's testimony is not credible and should be given no weight. Complaint Counsel introduced no exhibits to support this proposed finding even though it had ample opportunity to do so. Complaint Counsel fails to support this proposed finding with any credible evidence. In addition, this finding completely ignores the undisputed evidence that {

}. (RFOF 1552, *in camera*;

RX01687 at 002, *in camera*). {

}. (RFOF 1552, *in camera*).

- Respondent's allegation in the first proffer that "Exide decided to move { _____ } of its PE separator purchases for { _____ } to another supplier" is not accurate because Exide has { _____ } business to another supplier

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel's statement is incorrect for the reasons stated below.

1252. Exide has { _____ } (Gillespie, Tr. 5826, *in camera*).

Response to Finding No. 1252:

Complaint Counsel's Finding No. 1252 is incomplete, incorrect and misleading. First, Complaint Counsel cites only Gillespie's testimony to support its proposed finding. Gillespie has proven not to be credible and his testimony should be given no weight. Moreover, it is

telling that Complaint Counsel offers no credible evidence to attempt to support this assertion. Complaint Counsel introduced no exhibits to support this proposed finding even though it had ample opportunity to do so. Complaint Counsel fails to support this proposed finding with any credible evidence.

Significantly, Complaint Counsel's proposed finding ignores the clear evidence that { }. (RFOF 1539-1542, *in camera*). {

}. (RFOF 1541, *in camera*). As a result, { }. (RFOF 1539-1542, *in camera*). {

}. (RFOF 1549, *in camera*; RX01704, *in camera*; Gillespie, Tr. 5838, *in camera*). {

}. (RFOF 1549, *in camera*; Gillespie, Tr. 5838, *in camera*). { }. (RFOF 1549, *in camera*; Toth, Tr. 5750-51, *in camera*; RX01704, *in camera*). {

}. (RFOF 1549, *in camera*; Gillespie, Tr. 5838-39, *in camera*). Accordingly, { }. (RFOF 1549, *in camera*). {

Moreover, this finding ignores testimony by Seibert which provides: {

} (PX5076 (Seibert, Dep. at 49), *in camera*). In addition,

{

} (Seibert, Tr. 5723 (“{

}.”), *in camera*; 5691 (“{

}”), *in camera*). {

} (RFOF 1553, *in camera*).

1253. When asked if Exide had ever informed him that it intended to {

} (PX5076 (Seibert, Dep. at 48-49), *in camera*). Mr. Seibert admitted that

{

} PX5076

(Seibert, Dep. at 48-49), *in camera*). What Mr. Seibert does know is that {

}.

(PX5076 (Seibert, Dep. at 74), *in camera*).

Response to Finding No. 1253:

Complaint Counsel’s Finding No. 1253 is incomplete and misleading, and it should be disregarded in its entirety. Complaint Counsel ignores Seibert’s uncontradicted testimony that,

“{

}.” (Seibert, Tr. 5723,

in camera). This finding also completely ignores further testimony by Seibert which provides: {

} (PX5076 (Seibert, Dep. at 49), *in camera*).

{

}. (RFOF 1501, 1602, *in camera*; Gillespie, Tr. 5851, *in camera*). Instead, {

}. (RFOF 1540-43, *in camera*). Not

surprisingly, {

}.

(Gillespie, Tr. 5870, *in camera*; RX01693 at 002 (“{

}.”), *in camera*). Instead, as

Gillespie himself even testified, {

}. (Gillespie, Tr. 5838-39, *in camera*). {

}. (RFOF 1594, *in camera*). As a further response to

this finding, Respondent incorporates by reference its response to Finding No. 1252.

1254. Mr. Gillespie testified that while Exide intends on purchasing {

} (Gillespie, Tr. 5826, 5838, *in camera*). Moreover, Exide has

{

} (Gillespie, Tr. 5868, *in camera*). Additionally, Exide would not {

} (Gillespie, Tr. 5826-5828, *in camera*).

Response to Finding No. 1254:

Complaint Counsel’s Finding No. 1254 is incomplete and misleading. For its response to this finding, Respondent incorporates by reference its responses to Finding Nos. 1252 and 1253. First, it is telling that Complaint Counsel relies solely on Gillespie’s testimony to support this

proposed finding. Gillespie has proven not to be credible and his testimony should be given no weight, and this finding should be disregarded in its entirety. Complaint Counsel introduced no exhibits to support this proposed finding even though it had ample opportunity to do so. Nor did Complaint Counsel depose, subpoena, or call to testify at the November 12, 2009 hearing a single witness from Entek – instead choosing to rely entirely on the rehearsed and not credible testimony of Gillespie. As a result, Complaint Counsel has failed to support this proposed finding with any credible evidence.

Significantly, this finding completely ignores Seibert's testimony which provides:

{

} (PX5076 (Seibert, Dep. at 49), *in camera*).

Moreover, {

} (RX01668 at 002, *in camera*;

Seibert, Tr. 5659-60, *in camera*; Gillespie, Tr. 5839, *in camera*). Further, the evidence in the record stands in stark contrast to Complaint Counsel's proposed finding – {

} (See Respondent's Response to Findings Nos. 1249-53).

1255. Because today Exide has {

} (Gillespie, Tr. 5823, 5833, *in camera*;

CCFOF1254).

Response to Finding No. 1255:

accurate because Exide has {
_____}.
_____}.

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel's statement is incorrect for the reasons stated below.

1256. Exide {
products. (Gillespie, Tr. 5829, *in camera*). } for such

Response to Finding No. 1256:

Complaint Counsel's Finding No. 1256 is incomplete and misleading, and draws a false conclusion. First, it is telling that Complaint Counsel relies solely on the testimony of Gillespie to support its finding. Gillespie's testimony is not credible and should be given no weight. Complaint Counsel introduced no exhibits to support this proposed finding even though it had ample opportunity to do so. Complaint Counsel fails to support this proposed finding with any credible evidence. Second, this finding completely ignores the undisputed evidence that {

} (RFOF 1552, *in camera*; RX01687 at 002, *in camera*). Based on this evidence, it is clear that {

in camera).

1257. Exide has informed Daramic that it intends to {
Tr. 5810, *in camera*, 5864-5865, *in camera*). In fact, Mr. Gillespie testified that } (Gillespie,

Exide expects to {
5825-5826, *in camera*). } (Gillespie, Tr.

Response to Finding No. 1257:

Complaint Counsel's Finding No. 1257 is incomplete and misleading. First, Complaint Counsel cites only Gillespie's testimony to support its proposed finding. Gillespie has proven not to be credible and his testimony should be given no weight. Moreover, it is telling that Complaint Counsel offers no credible evidence to attempt to support this assertion. Complaint Counsel introduced no exhibits to support this proposed finding even though it had ample opportunity to do so. Complaint Counsel fails to support this proposed finding with any credible evidence.

Second, this finding ignores several key pieces of evidence which shows that {

},

(RFOF 1209, 1212, *in camera*), {

}. (RFOF 1641, *in camera*). In fact,

{

} (PX5076 (Seibert, Dep. at 49), *in camera*).

{

}. (RFOF

1552, *in camera*; RX01687 at 002, *in camera*). It is clear from this evidence that {

} (RFOF 1552, *in camera*). Extensive evidence was put forth during the first hearing regarding {

} (RFOF 201, 589; RX00303, *in camera*, RX00304; RX00305; RX00306; RX00307; RX00147, *in camera*; RFOFCOL 926-76).

- Respondent's allegation in the first proffer that Exide's purchase orders of {
_____} of PE separators "amounts to approximately {
_____} worth of PE
separators" is not accurate because Exide's {
_____}
_____}.

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel's statement is incorrect for the reasons stated below.

1258. Exide has not placed any {¹
_____. (Gillespie, Tr. 5798, *in camera*). Mr. Seibert admitted that {
_____. (Seibert, Tr. 5701, *in*
camera). With respect to his conversations with Mr. Gillespie prior to Mr. Seibert's
testimony in June, Mr. Seibert admits that {
_____. (PX5076 (Seibert, Dep. at
12), *in camera*).

Response to Finding No. 1258

Complaint Counsel's Finding No. 1258 is false and misleading. {

_____. While {

_____, Complaint Counsel distorts Mr. Seibert's

¹ {

_____. Complaint Counsel's Findings of Fact use the term incremental orders in all instances for the sake of consistency.

statement to imply that {

}. In fact, {

}. (Gillespie, Tr. 5836-37, *in camera*; RX01723 at 002, *in camera*). {

}. (Gillespie, Tr. 5843; RX01726). {

}, long after Mr. Seibert's June trial testimony and the referenced conversation with Gillespie. (PX5076 (Seibert, Dep. at 12), *in camera*).

1259. Neither is Exide in any way {
}. (Gillespie, Tr. 5800, 5832, *in camera*).

Response to Finding No 1259:

Complaint Counsel's Finding No. 1259 is inaccurate, unreliable and should therefore be disregarded by this Court. First, Complaint Counsel cites only Gillespie's testimony to support its proposed finding. Gillespie has proven not to be credible and his testimony is given no weight. Moreover, it is telling that Complaint Counsel offers no credible evidence to attempt to support this assertion. Complaint Counsel introduced no exhibits to support this proposed finding even though it had ample opportunity to do so. Complaint Counsel fails to support this proposed finding with any credible evidence.

Second, the evidence shows that {

}. (Gillespie, Tr. 5836-37, 5843, *in camera*; RX01723 at 002, *in camera*; RX01726). {

}.
}

- Respondent's allegation in the first proffer that Exide's purchase orders of { } of PE separators "amounts to approximately { } worth of PE separators" is not accurate even as to Exide's { } separator needs because it is not based on a { } needs

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel's statement is incorrect for the reasons stated below.

1260. { } (Gillespie, Tr. 5862, *in camera*). It is unrealistic to use Exide's {

{ } (Gillespie, Tr. 5862, *in camera*). { } (Gillespie, Tr. 5862, *in camera*).

Response to Finding No. 1260:

Complaint Counsel's Finding No. 1260 is incorrect, inaccurate, unreliable and misleading. First, Complaint Counsel cites only Gillespie's testimony to support its proposed finding. Gillespie has proven not to be credible and his testimony is given no weight. Moreover, it is telling that Complaint Counsel offers no credible evidence to attempt to support this assertion. Complaint Counsel introduced no exhibits to support this proposed finding even though it had ample opportunity to do so. Complaint Counsel fails to support this proposed finding with any credible evidence.

Second, Gillespie, not Respondent, determined that { } (RFOF 1540, *in camera*).

When confronted about {

Response to Finding No. 1261:

Complaint Counsel's Finding No. 1261 is incomplete, inaccurate and misleading to the extent the Complaint Counsel suggests that {

} First, Complaint

Counsel ignores that {

} (Seibert, Tr. 5682-83, *in camera*; RX01724, *in camera*).

{

}, (Seibert, Tr. 5674, *in camera*),

{

} (Seibert, Tr. 5683, *in*

camera). In fact, {

} (RX01699, *in camera*; Seibert, Tr. 5672-74, *in camera*).

Second, {

} (Seibert, Tr. 5682, *in camera*). In particular, {

} (Seibert, Tr. 5681-82, *in camera*). In addition,

{

} (Seibert, Tr. 5682-83, *in camera*; RX01724, *in*

camera). {

}.

(Gillespie, Tr. 5849-50, *in camera*). {

} (RX01724, *in camera*;

Seibert, Tr. 5683, *in camera*). For example, {

} (RX01724, *in camera*). Similarly, {

} (RX01724, *in camera*).

Accordingly, {

} (Seibert, Tr. 5682, *in camera*). Respondent

feared that {

} (Seibert,

Tr. 5682, *in camera*). {

}.”

(RX01717, *in camera*; Gillespie, Tr. 5848-49, *in camera*; Seibert, Tr. 5683-84, *in camera*).

{

}

1262. Exide’s {

} (Gillespie, Tr. 5792, 5860,

in camera). Thus, Exide informed Daramic {

} (RX01715, *in*

camera ({

))). Mr. Seibert admitted that {

} (Seibert, Tr. 5697, *in camera*).

Response to Finding No. 1262:

Complaint Counsel’s Finding No. 1262 is inaccurate and misleading. For its response to this finding, Respondent incorporates its response to Finding No. 1261. In addition, this finding ignores the reality that {

} (Seibert, Tr. 5681-82, *in camera*). Based on the evidence, this Court should find that {
}

1263. Exide's {
} (PX5076 (Seibert, Dep. at 6, 9), *in camera*).

Response to Finding No. 1263:

Complaint Counsel's Finding No. 1263 is misleading to the extent that {
}. For its response to
this finding, Respondent incorporates its response to Finding Nos. 1261-62.

1264. Mr. Seibert wrote a letter to Mr. Gillespie on June 2, 2009, two days before he testified in the previous hearing, acknowledging that Daramic {
} (PX5076 (Seibert, Dep. at 10, *in camera*)).² Mr. Seibert confirmed that {
} (PX5076 (Seibert, Dep. at 10-11), *in camera*).

Response to Finding No. 1264:

Complaint Counsel's Finding No. 1264 is inaccurate, misleading and should be disregarded to the extent that Complaint Counsel attempts to use deposition testimony to submit the content of a document not in evidence. Under Rule 1003 of the Federal Rules of Evidence "[t]o prove up the content of a writing ... the original is required, except as otherwise provided in

² Mr. Seibert attempted to evade this question at trial, insisting that he "would have to see a communication." (Seibert, Tr. 5699, *in camera*). Complaint Counsel was forced to impeach him with his deposition testimony. (Seibert, Tr. 5699-5701, *in camera*).

these rules or Acts of Congress.” While Complaint Counsel possessed the June 2nd letter at Mr. Seibert’s deposition, they introduced no exhibits despite ample opportunity to do so. Mr. Seibert’s deposition testimony is not the best evidence of the content of the June 2nd letter, and this Court should disregard this finding. Further, when Complaint Counsel asked Mr. Seibert about this June 2nd letter at trial, Mr. Seibert stated that he “would have to see a communication.” (Seibert, Tr. 5699, *in camera*). Complaint Counsel refused to show Mr. Seibert the requested communication.

To the extent that this finding is admissible, Respondent incorporates its responses to Finding Nos. 1261-1263. Respondent states that {

} . It is uncontroverted that {

} . (RFOF 1529, *in camera*). In fact, {

} .” (RX01717, *in camera*;

Gillespie, Tr. 5848-49, *in camera*; Seibert, Tr. 5683-84, *in camera*). Only days later, {

} . (RFOF 1529, *in camera*).

{

} . (RX01717, *in camera*; Gillespie, Tr. 5848-49, *in camera*;

Seibert, Tr. 5683-84, *in camera*). Also, {

} . Accordingly, {

}.
}

1265. Exide began {

}. (Gillespie, Tr. 5795, 5845-5846, *in camera*).

Response to Finding No. 1265:

Complaint Counsel's Finding No. 1265 is incorrect and misleading to the extent that {

}. For its

response to this finding, Respondent incorporates its response to Finding Nos. 1261-63.

Respondent further states that {

}. (RFOF 1529, 1531, *in camera*; RX01724, *in camera*).

Additionally, {

}. (RFOF 1529, *in camera*). {

}. In addition, {

}. (Seibert, Tr. 5682-83, *in camera*; RX01724, *in camera*). {

}. (Gillespie, Tr. 5849-50, *in camera*).

{

}. (RX01724, *in camera*; Seibert, Tr. 5683, *in camera*). For

example, {

}.
}

(RX01724, *in camera*). Similarly, {

} (RX01724, *in camera*). {

}.

1266. Exide placed {

(Gillespie, Tr. 5844-5845, 5860, *in camera*).

}.

Response to Finding No. 1266:

Complaint Counsel's Finding No. 1266 is inaccurate and misleading to the extent that {

} For its

response to this finding, Respondent incorporates its response to Finding Nos. 1261-63 and 1265.

Respondent further states that {

} (Seibert, Tr. 5681-82, *in camera*). In addition, {

} (Seibert, Tr. 5682-83, *in camera*; RX01724, *in camera*).

Moreover, {

} (RX01717, *in camera*; Gillespie, Tr. 5848-49,

in camera; Seibert, Tr. 5683-84, *in camera*). {

}.

industrial batteries are down 29% and 26%, respectively. (Gillespie, Tr. 5843-44; RX01726).
Moreover, Exide's free cash has declined 129% from last year, which Gillespie does not dispute.
(Gillespie, Tr. 5844). {

}. (Gillespie, Tr. 5862, *in camera*).

Based on the foregoing, including specifically {

Seibert, Tr. 5680-81, *in camera*). {

}. (JX-9, *in camera*;

in camera). {

}. (RFOF 1549, 1552,

}. {

Additionally, Complaint Counsel mischaracterizes {

}. {

} (RX00976, *in camera*, PX0728, *in camera*). {

} (RX00976, *in camera*). {

} (PX0728, *in camera*).

1268. Moreover, Mr. Gillespie informed Mr. Seibert and Mr. Roe that {
}. (Gillespie, Tr.
5796, *in camera*). Indeed, Daramic admitted that it {

} (RX01679 at 002, *in camera*).

Response to Finding No. 1268:

Complaint Counsel's Finding No. 1268 is unreliable, incorrect, misleading and inaccurate. For its response to this finding, Respondent incorporates its response to Finding No.

1267. Respondent further states that {

}. (RX01679, *in camera*). {

}.” (RX01720 at 005, *in camera*). {

}. (RX01685, *in*

camera).

1269. {

}. (Gillespie, Tr. 5789-5790, 5859, *in camera*; see also RX01720 at 19-20, *in camera* ({

}. (Gillespie, Tr.

5791, *in camera*). {

} (Gillespie, Tr. 5793, *in camera*).

Response to Finding No. 1269:

Complaint Counsel’s Finding No. 1269 is incorrect and misleading. For its response to this finding, Respondent incorporates its responses to Finding Nos. 1267-68. Respondent further states that {

}.” (RX01720 at 005, *in camera*).

{

} (RFOF 1534, *in camera*). {
} (RX01723, *in camera*;
Gillespie, Tr. 5837, *in camera*). {
}

1270. Exide's concern about a potential {
5831, *in camera*). } (Gillespie, Tr. 5793,

Response to Finding No. 1270:

Complaint Counsel's Finding No. 1270 is incorrect and misleading. For its response to this finding, Respondent incorporates its responses to Finding Nos. 1267-69. Further, Complaint Counsel cites only Gillespie's testimony to support its proposed finding. Gillespie has proven not to be credible and his testimony is given no weight. Moreover, it is telling that Complaint Counsel offers no credible evidence to attempt to support this assertion. Complaint Counsel introduced no exhibits to support this proposed finding even though it had ample opportunity to do so. Complaint Counsel fails to support this proposed finding with any credible evidence.

Complaint Counsel also mischaracterizes {

} (RX00976, *in camera*, PX0728, *in camera*). {

} (RX00976, *in camera*). {

} (PX0728, *in camera*). {

}.
}

1271. {

} (Gillespie, Tr. 5798, 5837, *in camera*; RX01720 at 019, *in camera*). Mr. Seibert agreed that all of Exide's {

}. (Seibert, Tr. 5699, *in camera*). Despite this, Daramic is {

}. (Gillespie, 5803-5805, *in camera*).

Response to Finding No. 1271:

Complaint Counsel's Finding No. 1271 is misleading. For its further response to this finding Respondent incorporates its response to Findings Nos. 1267-70. Also, to the extent that Complaint Counsel cites to Gillespie's testimony to support its proposed finding, Gillespie has proven not to be credible and his testimony is given no weight. Moreover, it is telling that Complaint Counsel offers no credible evidence to attempt to support this assertion. Complaint Counsel introduced no exhibits to support Gillespie's testimony even though it had ample opportunity to do so. Complaint Counsel fails to support Gillespie's testimony with any credible evidence.

{

}. (Seibert, Tr. 5684, 5707, 5715, 5723, *in camera*; RX01685, *in*

camera). {

}. (Seibert, Tr. 5681, 5722, *in camera*). {

}.” (RX01681, *in camera*).

Additionally, {

}. For example, {

}. (RX01693, *in camera*; RX01680, *in camera*; RX01685, *in camera*; Seibert, Tr. 5681, 5684, *in camera*). And {

}. (Toth, Tr. 5752, *in camera*).

1272. Mr. Gillespie testified that Exide is not {
}. (Gillespie, Tr. 5832, *in camera*). Mr. Gillespie testified that if
Exide was {

} separators. (Gillespie, Tr.
5832, *in camera*).

Response to Finding No. 1272:

Complaint Counsel's Finding No. 1272 is inaccurate and contradicted by the weight of the evidence on the record. First, Complaint Counsel cites only Gillespie's testimony to support its proposed finding. Gillespie has proven not to be credible and his testimony is given no weight. Moreover, it is telling that Complaint Counsel offers no credible evidence to attempt to support this assertion. Complaint Counsel introduced no exhibits to support this proposed finding even though it had ample opportunity to do so. Complaint Counsel fails to support this proposed finding with any credible evidence.

The facts, however, speak much louder and more truthfully than Mr. Gillespie's words:

{

}. (RFOF 1538, *in camera*). {

}. (RFOF 1539, *in camera*).

{

}. (RFOF 1549, 1552, *in camera*). {

}.

{
}. (Gillespie, Tr. 5836-37, *in camera*; RX01723 at 002, *in camera*). {

}. (Gillespie, Tr. 5843; RX01726).

Moreover, {

}. (RX01687 at 002, *in camera*).

{

}.
}

- Respondent's allegation in the first proffer that Exide's { } are "inconsistent with past order patterns" is not accurate because Exide { }

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel's statement is incorrect for the reasons stated below.

1273. 2009 was not the first year that Exide { }.
(Gillespie, Tr. 5806, 5833, *in camera*). In 2008, Exide { }.
(Gillespie, Tr. 5806, *in camera*). The reasoning for Exide's { }.
(Gillespie, Tr. 5806, 5833, *in camera*). Just as Exide { }

}. (Gillespie, Tr. 5806, *in camera*).

Response to Finding No. 1273:

Complaint Counsel's Finding No. 1273 is incorrect and misleading. First, Complaint Counsel cites only Gillespie's testimony to support its proposed finding. Gillespie has proven not to be credible and his testimony is given no weight. Moreover, it is telling that Complaint Counsel offers no credible evidence to attempt to support this assertion. Complaint Counsel introduced no exhibits to support this proposed finding even though it had ample opportunity to do so. Complaint Counsel fails to support this proposed finding with any credible evidence.

{

}. (Seibert, Tr. 5734-35, *in camera*). The Court finds that {

}.

Additionally, Complaint Counsel mischaracterizes {

}. {

} (RX00976, *in camera*, PX0728, *in camera*). {

} (RX00976, *in camera*). {

} (PX0728, *in camera*).

1274. Mr. Seibert admitted that Exide's {

} (Seibert, Tr. 5734, *in camera*).

Response to Finding No. 1274:

Complaint Counsel's Finding No. 1274 is incorrect, misleading and unreliable. Mr. Seibert never admitted that {

} as claimed by Complaint Counsel. Instead, Mr. Seibert testified to quite the opposite. Mr. Seibert testified that {

} (Seibert, Tr. 5734, *in camera*).

In fact, {

} (RX01698, *in camera*; Seibert, Tr. 5672, *in camera*). {

} (RX01699, *in camera*; Seibert, Tr. 5672-73, *in camera*). {

} (Seibert, Tr. 5674, *in camera*).

Accordingly, {

} (RX01679, *in camera*; RX01693, *in camera*). {

}.” (RX01720 at

005, *in camera*).

1275. As the findings above show, Exide’s decision to { } was adopted long before the close of the record on June 22, 2009. (CCFOF 1249 - 1251). {

} (CCFOF 1252 - 1255). Exide will also {

}. (CCFOF 1256 - 1257).

Response to Finding No. 1275:

Complaint Counsel’s Finding No. 1275, which unnecessarily and inappropriately summarizes and rehashes Complaint Counsel’s previous proposed findings, is inaccurate and misleading, and draws false conclusions for the reasons set forth in Respondent’s responses to Finding Nos. 1249-57, which Respondent incorporates herein. Such a “summary” finding should be disregarded in its entirety.

1276. Exide has not placed orders for { } worth of PE separators from Daramic because { } (CCFOF 1258 - 1259). Nor has it placed orders for { } separators from Daramic because Daramic’s {

}. (CCFOF 1260).

Moreover, Exide’s placement of {

} before the close of the record on June 22, 2009. (CCFOF 1261 - 1266).

Response to Finding No. 1276:

Complaint Counsel's Finding No. 1276 is incorrect, misleading and repetitive, and such a "summary" finding is inappropriate and should be disregarded in its entirety. For its response to this finding, Respondent incorporates its responses to Finding Nos. 1258-1266. Further, Respondent states that it consistently represented that {

}. In fact, Mr. Rikard, counsel for Respondent, during the opening statements explicitly stated {

}

Complaint Counsel relies on mere semantics to confuse the issues before this Court and evade the truth of the matter – {

}. (RFOF 1538, *in camera*).

{

}. (Gillespie, Tr. 5836-37, 5843, *in camera*; RX01726; RX01723 at 002, *in camera*). {

}.

1277. Exide's decision to place {

}. (CCFOF 1267 - 1272). Exide told Daramic {

(CCFOF 1268). {

}.

} (CCFOF 1273-1274).

Response to Finding No. 1277:

Complaint Counsel's Finding No. 1277 is incorrect, unreliable, misleading, and repetitive. For its response to this finding, Respondent incorporates its responses to Finding Nos.

1267-1272, 1268, and 1273-1274. Complaint Counsel's "summary" finding is not appropriate and should be disregarded in its entirety.

B. Proffer #2 is not true

- Respondent's allegation in the second proffer that "Exide does not intend to and will not purchase any additional separators from Daramic in either { _____ }" is not accurate because Exide intends on purchasing separators from Daramic in { _____ }

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel's statement is incorrect for the reasons stated below.

1278. Exide has informed Daramic that it intends to { _____ } (Gillespie, Tr. 5810, *in camera*). In fact, Mr. Gillespie testified that Exide expects to { _____ } (Gillespie, Tr. 5825-5826, *in camera*).

Response to Finding No. 1278:

Complaint Counsel's Finding No. 1278 is incomplete, repetitive, and misleading. For its response to this finding, Respondent incorporates by reference its responses to Finding Nos. 1257 and 1275 which fully responded to the same inaccuracies of Complaint Counsel.

1279. Exide has consistently informed Daramic that it { _____ } (Gillespie, Tr. 5864-5865, *in camera*). Between July and October 2009, Mr. Gillespie { _____ } (Gillespie, Tr. 5864, *in camera*; RX01669 at 002, *in camera* { _____ }); RX01687 at 002, *in camera*). Moreover, on September 30, 2009, Exide's CEO, Mr. Gordon Ulsh, informed Mr. Toth that { _____ } (RX01704 at 001, *in camera*).

Response to Finding No. 1279:

Complaint Counsel Finding No. 1279 is inaccurate and misleading. In Finding No. 1279, Complaint Counsel relies heavily on the testimony of Gillespie. Gillespie has proven not to be credible and his testimony is given no weight. Further, as has often been the case, Complaint Counsel's rendition of Gillespie's testimony is manipulated. Gillespie stated that {

(Gillespie, Tr. 5864, *in camera*) (emphasis added). {

}.

Furthermore, {

}.” (Gillespie, Tr. 2965, *in camera*). {

} (Gillespie, Tr. 3011, *in camera*; PX1028, *in camera*). {

}. (Hauswald, Tr. 1117, *in camera*; Roe, Tr. 1719-20, *in camera*).

{

}. First, Daramic is aware that {

} (Seibert, Tr. 5661, *in camera*; Gillespie, Tr. 3022-23, 3122-27, *in camera*; Weerts, Tr. 4486, 4521-23, *in camera*; RX00303 at 002, *in camera*; RX00303, *in camera*; RX00304; RX00305; RX00306; RX00307).

{

} (PX5076 at 17; RX01668, *in camera*). Now, {

}.

Second, the idea that {

} (Seibert, Tr.

5646-48, *in camera*; RX01721, *in camera*). {

} (RX01721 at 002, *in camera*; Seibert, Tr. 5648, 5651, *in*

camera). Following this, {

} (Seibert, Tr. 5650, *in camera*).

{

} (RX01665 at 002-

003, *in camera*). In response, Daramic {

} (RX01713 at 003, *in camera*; Seibert,

Tr. 5657, *in camera*).

{

} (Seibert, Tr. 5652, *in camera*). {

} (RX01668, *in camera*; RX01669, *in camera*, Seibert, Tr. 5659-

60, *in camera*; Gillespie, Tr. 5839, *in camera*). {

} (Seibert, Tr. 5662-

63, 5666, *in camera*; Toth, Tr. 5749-50, *in camera*; RX01714 at 002, *in camera*; RX01718 at 002, *in camera*). This included {

} (Seibert, Tr. 5662-63, 5666, *in camera*; Toth, Tr. 5749-50, *in camera*; RX01714 at 002, *in camera*; RX01718 at 002, *in camera*). {

{

} (Toth, Tr. 5749-

50, 5756, 5758-59, *in camera*) (emphasis added). {

} (RX01714, *in camera*; Toth, Tr. 5761-62,

in camera). {

} (RX01687 at 002, *in camera*; Toth, Tr.

5760-61, *in camera*; PX5075 at 007, *in camera*). {

}

(Seibert, Tr. 5690-91, *in camera*). {

} (Toth, Tr. 5762-

63, *in camera*; RX01693, *in camera*; RX01712, *in camera*; Seibert, Tr. 5691, *in camera*;

Gillespie, Tr. 5854-55, *in camera*). {

} (Toth, Tr. 5762-63, *in camera*; RX01693, *in camera*; RX01712, *in camera*; Seibert, Tr. 5691, *in camera*; Gillespie, Tr. 5854-55, *in camera*).

{

} (RX01704, *in camera*; Gillespie, Tr. 5838, *in camera*; Toth, Tr. 5749-51, 5756, 5758-59, *in camera*; PX5076 at 17; RX01668, *in camera*). {

}.

1280. {

at 002, *in camera*; Gillespie, Tr. 5812-5813, *in camera*). } (RX01687

Response to Finding No. 1280:

Complaint Counsel Finding No. 1280 is false and misleading. Again, Complaint Counsel attempts to show { } when no such thing exists. {

.} (RX01687, *in camera*). {

} (RX01687 at 002, *in camera*; Seibert, Tr. 5686, *in camera*; Gillespie, Tr. 5852-53, *in camera*). {

}, Gillespie has proven not to be credible and his testimony is given no weight.

{

} (Seibert, Tr. 5687, *in camera*; RX01687, *in camera*). {

} (RX01678 at 003, *in*

camera). {

.} (PX5076 at 29, *in camera*). This is, by no means, an even trade.

{

} (Toth, Tr. 5756-59,5761-

62, *in camera*, RX01678, *in camera*). {

} (RX01687, *in camera*; RX01714, *in camera*; Toth, Tr. 5761-62, *in camera*).

{

} (RX01687, *in camera*).

- Respondent’s allegation in the second proffer that “Exide does not intend to and will not purchase any additional separators from Daramic in either { _____ }” is not accurate because Exide offered { _____ }

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel’s statement is incorrect for the reasons stated below.

1281. In October 2009, after Daramic {

} (Gillespie, Tr. 5815, *in camera*). A purchase order is a “firm commitment” and “by definition” is also a contract. (Gillespie, Tr. 5815, 5865-5866, *in camera*). Mr. Gillespie testified that Exide {

} (Gillespie, Tr. 5815-5816, *in camera*). According to Mr. Gillespie, Daramic’s immediate response was that it {

(Gillespie, Tr. 5865-5866, *in camera*). }

Response to Finding No. 1281:

Complaint Counsel Finding No. 1281 is inaccurate and misleading. First, Complaint Counsel cites only Gillespie’s testimony to support its proposed finding. Gillespie has proven not to be credible and his testimony is given no weight. Moreover, it is telling that Complaint Counsel offers no credible evidence to attempt to support this assertion. Complaint Counsel introduced no exhibits to support this proposed finding even though it had ample opportunity to do so. Complaint Counsel fails to support this proposed finding with any credible evidence.

Second, {

(RX01687, *in camera*). {

} (RX01678 at 003, *in camera*). {

} (Seibert, Tr. 5690-91, *in camera*; Toth, Tr. 5762-63, *in camera*; RX01693, *in camera*; RX01712, *in camera*; Gillespie, Tr. 5854-55, *in camera*; see also Response to Finding No. 1280).

{

} (Gillespie, Tr. 5870, *in camera*). {

(RX01693, *in camera*)(emphasis added).

}

{

} (RX01693, *in camera*; see also

RX001685 (“{

}.”), *in camera*). {

} (Seibert, Tr. 5645, *in*

camera). {

} (Seibert, Tr. 5652, 5720, *in camera*;

RFOF1576, 1584, *in camera*).

1282. Mr. Seibert later wrote to Mr. Gillespie on October 20, 2009, that {

} (RX01693 at 002, *in camera*). Mr. Seibert confirmed that
Mr. Gillespie had {

} (Seibert, Tr. 5712, *in camera*). Mr.
Seibert’s letter to Mr. Gillespie {

} (Gillespie, Tr. 5870-5871, *in camera*; RX01693 at
002, *in camera*).

Response to Finding No. 1282:

Complaint Counsel Finding No. 1282 is inaccurate, incomplete and misleading. In response to this Finding, Respondent incorporates its response to Finding No. 1281. Additionally, Complaint Counsel heavily relies on only Gillespie's testimony to support its proposed finding. Gillespie has proven not to be credible and his testimony is given no weight.

{

} (Toth, Tr. 5737-40, *in camera*, 5747-48, *in camera*; Seibert, Tr. 5645, *in camera*). {

} (Toth, Tr. 5737-40, *in camera*, 5747-48, *in camera*; Seibert, Tr. 5645, *in camera*). {

} (Seibert, Tr. 5660, *in camera*; RX01119, *in camera*; Hauswald, Tr. 1118; Gillespie, Tr. 3126, *in camera*; RX01120, *in camera*).

{

} (Seibert, Tr. 5711, *in camera*). {

} (RFOF 1519, *in camera*). {

} (Seibert, Tr. 5652, 5720, *in camera*, RFOF 1576, 1584, *in camera*). {

} (Gillespie, Tr. 3017, *in camera*).

{

(RX01693 at 002, *in camera*). {

}

(RX01693 at 002, *in camera*). {

}. (RX01693 at 002, *in camera*). {

}

- Respondent's allegation in the second proffer that Exide will have { _____ } of separators is not accurate because Daramic { _____ } to Exide

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel's statement is incorrect for the reasons stated below.

1283. Exide will not have { _____ } (Gillespie, Tr. 5860, *in camera*). Daramic has not agreed to { _____ } (Gillespie, Tr. 5799, 5860, *in camera*). Daramic has not even { _____ } (Seibert, Tr. 5707, *in camera*). To date, Exide has { _____ }

{ _____ } (Seibert Tr. 5707-5708, *in camera*; PX5076 (Seibert, Dep. at 51), *in camera*; Gillespie, Tr. 5799, *in camera*).

Response to Finding No. 1283:

Complaint Counsel's Finding No. 1283 is incorrect, misleading and repetitive. For its further response to this finding Respondent incorporates its response to Findings Nos. 1267-1271. Respondent also states that {

}. (Seibert, Tr. 5681, 5722, *in camera*).

1284. The total amount of {

}. (Gillespie, Tr. 5799, *in camera*).

Response to Finding No. 1284:

Complaint Counsel's Finding No. 1284 is incorrect and misleading. For its further response to this finding Respondent incorporates its response to Finding Nos. 1267-1271 and 1283. Respondent also states that {

}. (Seibert, Tr. 5681, 5722, *in camera*).

Moreover, Gillespie, not Respondent, determined that {

}. (RFOF 1540, *in camera*).

When confronted about {

}. (Gillespie, Tr. 5849, *in camera*).

1285. Mr. Seibert testified that it would be {

} (Seibert, Tr. 5714-5715, *in camera*; RX01685 at 001, *in camera*). Mr. Seibert confirmed at his deposition that it would be {
}. (PX5076 (Seibert, Dep. at 38), *in camera*).

Response to Finding No. 1285:

Complaint Counsel's Finding No. 1285 is misleading and irrelevant. Complaint Counsel focuses on semantics debating whether {

}. (RFOF 1547, *in camera*). {

}. (Seibert, Tr. 5681, 5722, *in camera*).

1286. Mr. Seibert did not know whether or not Daramic would {
}. (Seibert, Tr. 5720, 5722, *in camera*). When asked at his deposition whether {
} (PX5076 (Seibert, Dep. at 53), *in camera*).

Response to Finding No. 1286:

Complaint Counsel's Finding No. 1286 is misleading and clearly misstates Mr. Seibert's testimony. Daramic has made {

}. (Seibert, Tr. 5681, 5722, *in camera*). The sole reason Mr. Seibert does not know {

} (Seibert, Tr. 5720, *in camera*). When asked these same questions at his deposition,

Mr. Seibert testified {

} (PX5076 (Seibert, Dep. at 94), *in camera*).

Moreover, Complaint Counsel completely misconstrues Mr. Seibert's deposition testimony implying that {

}. In fact, Mr. Seibert's complete testimony states that {

} (PX5076

(Seibert, Dep. at 53), *in camera*). This statement is consistent with {

}. (See Respondent's

Response to Finding Nos. 1267-1271 and 1283-1284).

1287. On October 20, 2009, Daramic reiterated that it {

} (RX01693 at 001-002, *in camera*).

Response to Finding No. 1287:

Complaint Counsel's Finding No. 1287 is incorrect. {

}. (Seibert, Tr. 5681, 5722, *in camera*). {

}.” (RX01720 at 005, *in camera*). {

}. (Seibert, Tr. 5674, *in camera*). {

}. (RFOF

1545-46, *in camera*).

1288. {

} (Seibert, Tr. 5672-5673, 5707, *in camera*).

Response to Finding No. 1288:

Complaint Counsel’s Finding No. 1288 is misleading. Complaint Counsel ignores that

{

}. (RFOF 1529, *in*

camera). {

}. (FOF 1541, *in camera*). {

}.

(RFOF 1529, 1541, *in camera*; Seibert, Tr. 5672-73, *in camera*). In addition, {

}

(RFOF 1541-1542, *in camera*).

1289. As the findings above show, Exide has told Daramic it intends to {

}

(CCFOF 1254 – 1257, 1278-1280). Exide also {

1282). {

} (CCFOF 1281 - 1282).

}. (CCFOF 1281 -

Response to Finding No. 1289:

Complaint Counsel’s Finding No. 1289, which unnecessarily and inappropriately summarizes and rehashes Complaint Counsel’s previous proposed findings, is inaccurate and misleading, and draws false conclusions for the reasons set forth in Respondent’s responses to Finding Nos. 1254-57, 1278-1282, which Respondent incorporates herein. Such a “summary” finding should be disregarded in its entirety. Further, Complaint Counsel’s proposed findings, summarized in its Finding No. 1289, are contradicted by the clear evidence in the record. {

} (RX01687 at 002, *in camera*; Seibert, Tr. 5686, *in camera*;

Gillespie, Tr. 5852-53, *in camera*). {

} (Seibert,

Tr. 5687, *in camera*; RX01687, *in camera*). {

} (RX01678 at 003, *in camera*). {

} Contrary to Complaint Counsel's

assertion, {

}

{

} (RX01704, *in camera*; Gillespie, Tr. 5838, *in camera*; Toth, Tr. 5749-51, 5756, 5758-59, *in camera*; PX5076 at 17; RX01668, *in camera*). Tellingly, however, {

}. (RFOF

1540-43, 1553, 1601-02). {

}

Complaint Counsel's assertion regarding {

} is without basis in fact and demonstrates

Exide's gamesmanship. The reality surrounding {

} (Gillespie, Tr. 5870, *in camera*). In response to {

}

(RX01693, *in camera*).

Despite Daramic's {

} (RX01693, *in*

camera; see also RX001685 (“{

}.”), *in camera*). {

}

(Seibert, Tr. 5645, *in camera*). In fact, {

.} (Seibert, Tr. 5690-91, *in camera*).

1290. Exide will not receive {

}. (CCFOF 1283 - 1287). Daramic has agreed to {

}. (CCFOF 1283, 1286-1288). The {

}. (CCFOF 1284). {

} (CCFOF 1288).

Response to Finding No. 1290:

Complaint Counsel's Finding No. 1290 is misleading, incorrect, repetitive, and unreliable. Such a "summary" finding is inappropriate and should be disregarded in its entirety. For its further response to this finding, Respondent incorporates its responses to Finding Nos. 1283-1288.

C. Proffer #3 is not true

- Respondent's allegation in the third proffer that Exide has decided not to purchase PE separators from Daramic in { _____ } is not accurate because Exide { _____ }

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel's statement is incorrect for the reasons stated below.

1291. { _____ } (See
CCFOF 1252 – 1257).

Response to Finding No. 1291:

Complaint Counsel's Finding No. 1291, which unnecessarily and inappropriately summarizes and rehashes Complaint Counsel's previous proposed findings, is inaccurate and misleading, and draws false conclusions for the reasons set forth in Respondent's responses to Finding Nos. 1252-57, which Respondent incorporates herein. Such a "summary" finding should be disregarded in its entirety.

- Respondent's allegation in the third proffer that Daramic's decision to { _____ } is based on Exide's "apparent decision not to purchase PE separators from Daramic in { _____ }" is not accurate because Daramic has been { _____ }

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel's statement is incorrect for the reasons stated below.

1292. Polypore, through its corporate finance personnel and its Daramic business unit, has been {
}. (PX5075 (Toth, Dep. at 8-9), *in camera*;
Toth, Tr. 5775-5777, *in camera*). Mr. Toth, Polypore's CEO recalled discussing that
with Complaint Counsel a year and a half earlier. (PX5075 (Toth, Dep. at 9), *in*
camera; Toth, Tr. 5775-5777, *in camera*).

Response to Finding No. 1292:

Complaint Counsel's finding number 1292 is inaccurate, misleading, and contrary to the
credible testimony of Bob Toth, Polypore's President and Chief Executive Officer. While Toth
admits {

}, (Toth, Tr. 5776, *in camera*; PX5075 (Toth, Dep. at 8-9), *in*
camera), Toth's uncontradicted testimony makes it clear that {

}. (Toth, Tr. 5776, 5737-38, *in*
camera; RFOF 1555, *in camera*). At that time, {

}. (Toth, Tr. 5776, *in camera*; RFOF 1555, 1611, *in*
camera). {

}. (RFOF 1555, 1611, *in camera*; Seibert, Tr. 5692-94, *in camera*).

Complaint Counsel has proffered no contrary evidence and Toth's testimony at the hearing on
November 12, 2009 went uncontradicted by Complaint Counsel. (RFOF 1554).

1293. Daramic is {
}. (Seibert, Tr. 5692-5693, *in camera*). {

} (Seibert, Tr. 5693, *in camera*).

Response to Finding No. 1293:

Complaint Counsel’s finding number 1293 is incomplete and misleading. Complaint Counsel fails to mention that {

} (RFOF 1613, 1616, *in camera*). The evidence shows that {

}

(RFOF 1608, 1597-1605, 1549-1550, 1622, 1627, *in camera*; Seibert, Tr. 5723 (“{

}.”), *in camera*). {

} (RFOF 1610, *in camera*).

1294. Polypore was always {
options {
Tr. 5693, *in camera*). } (RX01692 at 001-002, *in camera*). In analyzing its
} (Seibert,

Response to Finding No. 1294:

Complaint Counsel’s finding number 1294 is inaccurate and misleading, and takes testimony out of its proper context to serve the specific needs of Complaint Counsel. As previously stated, {

} (See Respondent’s Response to Finding No. 1292). {

} (RFOF 1616, *in*

camera). {

},

(RFOF 1558, *in camera*), Complaint Counsel speculates that {

}: (RX01692 at 001-002, *in camera*). Complaint Counsel overlooks the fact that {

} (RFOF 1558, *in camera*; see also RX01692 at 002 ({ }), *in camera*; Seibert Tr. 5693 ({

}), *in camera*). More significantly, Complaint Counsel's speculation ignores the fact that {

} (RX01692 at 005, *in camera*; Toth, Tr. 5765-66, *in camera*). The evidence is clear that {

} (RFOF 1617, *in camera*) – {

} (RFOF 1601-03, *in camera*). Complaint Counsel's proposed finding is mere speculation.

1295. The assessment of {
} (Toth, Tr. 5777, *in camera*). Daramic has two large North American separator plants – Corydon and Owensboro – {
} (Toth, Tr. 5737, *in camera*). {
} (Toth, Tr. 5737, *in camera*).

Response to Finding No. 1295:

Complaint Counsel's finding number 1295 is incomplete and misleading. Complaint Counsel fails to mention that {

}. (RFOF 1613, 1616, *in camera*). As Toth explained at the November 12, 2009 hearing, "{

}" (Toth, Tr. 5737, *in camera*).

1296. With regard to the former Microporous facility located in Piney Flats, TN, Daramic's third North American separator facility, that plant is operating {
}. (Toth, Tr. 5777-5778, *in camera*). Mr. Toth had {
}. (Toth, Tr. 5777, *in camera*).

Response to Finding No. 1296:

Complaint Counsel's finding number 1296 is incomplete and misleading. {
}. (Seibert, Tr. 5693, *in camera*; PX5075 (Toth, Dep. at 40), *in camera*).

1297. Neither Mr. Toth nor Mr. Seibert ever testified that the reason {
(
}. (See generally, Toth, Tr. 5737-5782, *in camera*; Seibert Tr. 5643-5735, *in camera*). {
} (Toth, Tr. 5748, *in*

camera; see also Polypore Opening Statement, Tr. 5610 {

}

Response to Finding No. 1297:

Complaint Counsel's finding number 1297 is false and takes testimony out of its proper context to serve the specific needs of Complaint Counsel. {

}. (RFOF 1556, *in*

camera). The evidence is clear that {

}. (RFOF

1558, *in camera*). In fact, the evidence shows that {

}. (RFOF 1613, *in camera*). For this reason, {

}. (Toth Tr, 5737-39,

5741, *in camera*; RFOF 1557-58, 1560, 1567, 1569-70, 1576-84, *in camera*). For example,

{

}. (Toth, Tr. 5739, *in camera; see also* RFOF 1610, *in camera*). Further,

{

} (Toth, Tr. 5743-44, 5747-49, *in camera*; see generally RFOF

1554-1595). {

5718-19, *in camera*).

} (Seibert, Tr.

Finally, {

} (RFOF 1610, *in*

camera). Thus, the evidence and uncontradicted testimony of both Toth and Seibert make clear that {

} (RFOF 1616, *in camera*).

1298. {

} (Toth, Tr. 5747-5748, *in camera*). {

} (Toth, Tr. 5748, *in camera*). {

} (Toth, Tr. 5748-5749, *in camera*).

Response to Finding No. 1298:

Complaint Counsel's finding number 1298 is inaccurate. Moreover, Complaint Counsel has improperly added language in support of its incorrect interpretation of Toth's testimony in order to serve the specific needs of Complaint Counsel. Toth's complete testimony is as follows:

“{

}.” (Toth, Tr. 5748, *in camera*). Toth's testimony is

consistent with the evidence in the record showing that {

}.

(See Respondent's Response to Finding No. 1297). Quite simply, the record is clear that {

}.

(RFOF 1606-1610, *in camera*).

1299. Mr. Seibert testified that Daramic {
} (Seibert, Tr. 5694, *in camera*). {

} (Seibert, Tr. 5645, *in camera*). {

}³ (Seibert, Tr. 5694, *in camera*). This is, as Mr. Seibert confirmed on the stand, because Daramic needed to {
(Seibert, Tr. 5718-5719, *in camera*).⁴ }

Response to Finding No. 1299:

Complaint Counsel's finding number 1299 is inaccurate, misleading and speculative. Complaint Counsel again mischaracterizes testimony and takes testimony out of context in order

³ That Mr. Seibert singles out Daramic's {

}

⁴ Mr. Seibert evaded this question at trial and had to be impeached with his deposition testimony, which he finally adopted. (Seibert, Tr. 5717-5719, *in camera*).

to create a “fact”. In this instance, Complaint Counsel ignores Seibert’s testimony that {

} (Seibert, Tr. 5718-19, *in camera*). Far from being impeached as Complaint Counsel suggests, the record fully supports Seibert’s testimony. {

} (RFOF 1611, *in camera*). {

} (RFOF 1612, *in camera*).

{

} (RFOF 1613, *in camera*). {

} (RX01692 at 005, *in*

camera; RFOF 1562, *in camera*; Toth Tr. 5765-66, *in camera*). The evidence is clear that {

}, (RFOF 1617, *in*

camera) – {

} (RFOF 1601-03, *in camera*). In fact, {

} (RFOF 1517-19, 1525, 1557-59, 1563-67, 1569-71, 1582-83, *in camera*). {

}. (RFOF 1512-1515, 1522-23, 1528, 1539-40, 1585-88, 1594-95, 1597-99, 1601-1602, 1621-22, *in camera*). Thus contrary to Complaint Counsel's incorrect assertion, {

}. (RFOF 1610, 1589, 1616-17, *in camera*).

Finally, Complaint Counsel's hollow attempt to suggest that {

}. (*See, e.g.*, RFOF 151-159, 178-180, 939-940, 1066, 1093, 1098, *in camera*). Contrary to Complaint Counsel's contention, {

}. (Toth, Tr. 5765-66, *in camera*; RFOF 151-159, 178-180, 939-940, 1066, 1093, 1098, *in camera*). Instead, {

} (Toth, Tr. 5765-66, *in camera*). {

} (Toth, Tr. 5765-66, *in camera*).

1300. Regardless of Exide's {
(Seibert, Tr. 5718-5719, *in camera*). When asked what the {

}
(PX5076, Seibert Dep. at 84-85, *in camera*).

Response to Finding No. 1300:

Complaint Counsel's finding number 1300 is inaccurate, misleading, speculative, and mischaracterizes the trial and deposition testimony of Harry Seibert. {

} and Complaint Counsel improperly cites his testimony for this inaccurate premise. (*See* Seibert, Tr. 5718-5719, *in camera*). Seibert has consistently testified, both at the November 12, 2009 hearing and during his October 27, 2009 deposition, {

} (Seibert, Tr. 5718-5719, *in camera*; PX5076 (Seibert Dep. at 81, 84-85), *in camera*). Instead, {

} (Seibert, Tr. 5716-17, *in camera*; PX5076 (Seibert Dep. at 81, 84-85), *in camera*; *see also* RFOF 1610, *in camera*; Respondent's Response to Finding No. 1299).

1301. When asked at his deposition whether Daramic might decide not to {

(PX5076 (Seibert, Dep. at 81), *in camera*). }

Response to Finding No. 1301:

Complaint Counsel's finding number 1301 is inaccurate, misleading, speculative, and mischaracterizes the deposition testimony of Harry Seibert. As Complaint Counsel's proposed finding illustrates, Mr. Seibert testified that at the time of his deposition, {

}.”

(PX5076 (Seibert, Dep. at 81), *in camera*). {

}. (RFOF 1610, *in camera*; see

also Respondent's Response to Finding Nos. 1299-1300).

1302. Mr. Toth confirmed that even if {

}. (PX5075 (Toth, Dep. at 58-59), *in camera*).

Response to Finding No. 1302:

Complaint Counsel's finding number 1302 is inaccurate, misleading, and calls for speculation. As Toth himself pointed out, {

}.
}

(PX5075 (Toth, Dep. at 58-59), *in camera*; Toth, Tr. 5778-79, *in camera*). Setting aside
Complaint Counsel's irrelevant speculation, the record is clear that {

}. (RFOF 1596-1605,

in camera).

1303. Moreover, Daramic refused to even consider {

}. (RX01693 at 002, *in camera*; Seibert, Tr. 5712, *in camera*).

Response to Finding No. 1303:

Complaint Counsel's finding number 1303 is inaccurate and misleading. The evidence in
the record is clear that {

}. (Gillespie, Tr. 5870, *in camera*; RX01693 at 002 (“{

}.”), *in camera*;

RX01685 (“{

}.”), *in camera*). In fact, {

}.” (Seibert, Tr.

5645, *in camera*).

1304. Polypore's internal documents reiterate that {

}. (RX01692 at 001-002, *in camera*).

Response to Finding No. 1304:

Complaint Counsel's finding number 1304 is false and misleading. Moreover, Complaint Counsel's proposed finding is not supported by the evidence cited. {

}. (RX01692 at 001-002, *in camera*; RFOF 1558, *in camera*).

{

}. (RFOF 1558 ({

}), *in camera*; RX01692 at 002 ({

}), *in camera*; Seibert, Tr. 5693 ({

}), *in camera*). Complaint Counsel's proposed finding is mere speculation.

1305. Polypore anticipated a {
there is {
002, *in camera*). Yet, under all scenarios, {
}. (RX01692 at 002, *in camera*). Polypore believes that
}. (RX01692 at
}. (RX01692 at 002, *in camera*).

Response to Finding No. 1305:

Complaint Counsel's finding number 1305 is misleading and speculative. In its response to Complaint Counsel's finding, Respondent incorporates by reference its response to Finding Nos. 1294 and 1304. First, this finding completely ignores the testimony of Seibert which provides: "{

}. (PX5076 (Seibert, Dep. at 49), *in*

camera). Furthermore, there is ample evidence in the record showing that {

95, *in camera*). { } (RFOF 1594-

} (RFOF 1597-98, *in camera*). {

} (RFOF 1599, *in camera*). Finally, {

} (RFOF 1600-01, *in camera*). Thus regardless of Complaint Counsel's speculation, the facts are clear that {

} (RFOF 1603, 1610, *in camera*).

1306. In fact, even under the {

} (RX01692 at 002, *in camera*).

Response to Finding No. 1306:

Complaint Counsel's finding number 1306 is misleading and speculative. In its response to Complaint Counsel's finding, Respondent incorporates by reference its response to Finding Nos. 1294 and 1304-05. Moreover, Complaint Counsel's own witness makes clear that {

} (Gillespie, Tr. 5826-27, 5839, *in camera*). Complaint Counsel's proposed finding is mere speculation and should be disregarded.

1307. As the findings above make clear, Exide's PE separator purchasing decision for {
(CCFOF 1292 – 1295, 1297 - 1306). { }.
} (CCFOF 1292). The reasons Polypore decided to {
} (Toth, Tr. 5737; 5747-5748, *in camera*).

Response to Finding No. 1307:

Complaint Counsel's finding number 1307 is inaccurate, misleading, speculative, and takes testimony out of its proper context to serve the specific needs of Complaint Counsel. In its response to Complaint Counsel's finding, Respondent incorporates by reference its response to Finding Nos. 1292-1295 and 1297-1306. The record is replete with evidence demonstrating that {

} (RFOF 1613, 1616, 1610 *in camera*). Moreover, Toth's uncontradicted testimony makes it clear that {

} (Toth, Tr. 5776, 5737-38, *in camera*; RFOF 1555, *in camera*). Complaint Counsel's Proposed Findings 1292 – 1295 and 1297 – 1306 are without evidentiary support and are pure conjecture.

1308. {
 1306, 1309-1311). {
 - 1305). {
 1306).

} (CCFOF 1253 – 1255, 1305 –
 } (CCFOF 1304
 } (CCFOF 1304 -

Response to Finding No. 1308:

Complaint Counsel’s Finding No. 1308 is incomplete and misleading, and as a repetitive, irrelevant “summary” finding it should be disregarded in its entirety. In its response to Complaint Counsel’s finding, Respondent incorporates by reference its response to Finding Nos. 1292-1295 and 1297-1306. Complaint Counsel’s finding ignores the fact that {

} (RFOF 1602-04, *in camera*). In stark opposition to Complaint Counsel’s claim {

} (RFOF 1599, *in camera*). In addition, {

} (RFOF 1604, *in camera*). Thus, {

} (RFOF 1602, *in camera*; Gillespie, Tr. 5851, *in camera*). {

} (RFOF 1613, 1616, 1610 *in camera*).

D. Proffer #4 is not true

- Respondent’s allegation in the fourth proffer that it “appears unlikely” that Daramic will “retain any small amount of business from Exide in { }, or thereafter” is not accurate because Daramic anticipates supplying Exide in { } with or without a contract

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel’s statement is incorrect for the reasons stated below.

1309. Polypore expects that Exide will continue purchasing PE separators from Daramic in 2010, after the NASA expired. {

} Rather, Mr.

Toth, reported to Polypore’s investors, to whom he has a duty to be truthful, that Daramic anticipates maintaining a supply position with Exide with or without a contract. (Toth, Tr. 5769, *in camera*; Seibert, Tr. 5724). When confronted with the statement, Mr. Toth testified that it “sounds like something I would have said.” (Toth, Tr. 5769, *in camera*).

Response to Finding No. 1309:

Complaint Counsel’s Finding No. 1309 is inaccurate and misleading. {

} (RFOF 1603,

in camera). {

}.
}

(RFOF 1604, *in camera*). Although Complaint Counsel again attempts to mischaracterize Toth’s testimony, Toth’s uncontradicted testimony makes clear that {

} (Toth, Tr. 5768-69, *in*

camera; RFOF 1567, 1571-75, *in camera*). {

} (Seibert, Tr. 5724, *in camera*). {

} (RFOF 1596-1605, *in camera*).

1310. {

} (Seibert, Tr. 5729-5730, *in camera*). {

} (RX01692 at 002, *in camera*). {

camera).

} (RX01692 at 002, *in*

Response to Finding No. 1310:

Complaint Counsel's Finding No. 1310 is incomplete, misleading, speculative and it should be disregarded in its entirety. In its response to Complaint Counsel's finding, Respondent incorporates by reference its response to Finding Nos. 1304-1308. As previously indicated,

{

} (PX5076 (Seibert, Dep. at 49), *in camera*). Additionally,

{

} The evidence in the record makes clear that {

} (RFOF 1603, 1610, *in camera*; Seibert,

Tr. 5723 (“{

}.”), *in*

camera).

1311. Moreover, Exide has informed Daramic that they intend on {
}. (Gillespie, Tr. 5810,
in camera; see also PX5076 (Seibert, Dep. at 74), *in camera*).

Response to Finding No. 1311:

Complaint Counsel's Finding No. 1311 is incomplete, repetitive and misleading. For its response to this finding, Respondent incorporates by reference its responses to Finding Nos. 1257 and 1275.

- Respondent's allegation in the fourth proffer that for Daramic to "retain any small amount of business from Exide in { }, or thereafter" it "will only be able to obtain such sales through a { }" is not accurate because Daramic has never offered Exide { }

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel's statement is incorrect for the reasons stated below.

1312. {

generally, CCFOF 1069-1078). } (See

Response to Finding No. 1312:

Complaint Counsel finding 1312 is incorrect, incomplete and misleading. Again, Complaint Counsel ignores the clear evidence that has been presented at trial, and opts to disregard the facts that are in contrast to their version of events. {

}. {

} (Gillespie, Tr. 3011, *in camera*; PX1028, *in camera*). {

}.” (Gillespie, Tr. 2965, *in camera*). At the time, {

} (Gillespie, Tr. 3017, *in camera*). Furthermore, {

}. (Roe, Tr. 1718, *in camera*; Hauswald, Tr. 1170-71, *in camera*).

Additionally, {

}. (See

Respondent's Response to Finding No. 1069). {

. (Roe, Tr. 1718-19, *in camera*).

{

} (RX01713, *in camera*;

RX01714, *in camera*). It has been made unequivocally clear {

} (Toth, 5742-43, *in*

camera; RX0172 at 001, *in camera*). Most importantly, {

} (RX01668 at 002, *in camera*; Seibert, Tr. 5734, *in camera*).

1313. Mr. Seibert was unable to testify as to {

}. (Seibert, Tr. 5722, *in camera*). Mr. Seibert could

not testify as to {

} (PX5076 (Seibert, Dep. at 101), *in camera*). Mr.

Seibert confirmed at trial that he did not know what {

} (Seibert, Tr. 5726, *in camera*).⁵ Mr. Seibert was
unable to even confirm that Daramic would {
}. (Seibert, Tr. 5725, *in camera*). Mr. Seibert
could not testify about anything less than {
} (Seibert, Tr. 5725, *in camera*).

Response to Finding No. 1313:

Complaint Counsel Finding No. 1313 mischaracterizes the record. In this response
Respondent incorporates its response to Finding No. 1327. Seibert's testimony referenced by
Complaint Counsel in Finding No. 1313 {

} (Seibert, Tr. 5725 – 26, *in camera*). {

} (Seibert, Tr. 5726, *in camera*;
PX5076 (Seibert, Dep. at 101), *in camera*). {

} (Seibert, Tr. 5726, *in camera*;
PX5076 (Seibert, Dep. at 101), *in camera*).

Furthermore, it is unrefuted that Daramic {

} (RFOF 1521, *in camera*). {

} (RX01668 at 002, *in camera*; Seibert, Tr.

⁵ Mr. Seibert evaded this question at trial and had to be impeached with his deposition testimony, which he finally adopted. (Seibert, Tr. 5725-5726, *in camera*).

5734, *in camera*). {

} (RFOF 1523; Seibert,

Tr. 5733-34, *in camera*).

1314. Mr. Seibert testified that Daramic had not even resolved whether it would {

} (PX5076 (Seibert, Dep. at 101), *in camera*).

Response to Finding No. 1314:

Complaint Counsel Finding No. 1314 mischaracterizes the record as Respondent has illustrated in its response to Finding No. 1313.

1315. Daramic has not considered what

} (Seibert, Tr. 5723, *in*

camera). If Exide does not {

} (PX5076 (Seibert, Dep. at 96),

in camera). Mr. Seibert testified that the possibility that Exide would {

} (PX5076 (Seibert, Dep. at 96), *in camera*). While Mr.

Seibert testified that {

} (Gillespie, Tr. 5814-5815, *in camera*).

Response to Finding No. 1315:

Complaint Counsel Finding No. 1315 is misleading and mischaracterizes the record. *See* Response to Finding No. 1313, incorporated herein. {

} (Seibert, Tr. 5722-23, *in camera*).

{

} (Seibert, Tr. 5723, *in camera*). {

} (Seibert, Tr. 5723, *in camera*). {

} (Gillespie, Tr. 5814 – 15, *in camera*). Gillespie has proven not to be credible and his testimony is given no weight.

{

}.” (Seibert, Tr. 5645, *in camera*).

- Respondent’s allegation in the fourth proffer that for Daramic to “retain any small amount of business from Exide in { _____ }, or thereafter” it “will only be able to obtain such sales through a { _____ }” is not accurate because Daramic _____

The foregoing is not a proposed finding of fact and as such no reply is necessary. To the extent a reply is warranted, Respondent states that Complaint Counsel’s statement is incorrect for the reasons stated below.

1316. {

} (See e.g., RX01713-003, *in camera*

{

}; see also
RX01666 at 002, *in camera*; RX01667 at 002, *in camera*; RX1668 at 02, *in camera*;
RX01683 at 001, *in camera*; RX01718 at 002, *in camera*; RX01714 at 002, *in camera*).

Response to Finding No. 1316:

Complaint Counsel Finding No. 1316 is incorrect, inaccurate and incomplete. {

} (See Respondent’s Response to Finding

No. 1279). {

(RFOF 1505-1510, *in camera*). {

} (Seibert, Tr. 5650, *in camera*; RX01665, *in camera*).

{

} (RFOF

1513, *in camera*). {

} (RX01713 at 002, *in camera*).

{

} (RX01667 at 002, *in camera*; Seibert, Tr.

5670, *in camera*). {

} (RFOF 1523, *in*

camera; Seibert, Tr. 5733-34, *in camera*). {

} (RX01668 at 002, *in camera*; Seibert, Tr. 5659-60, *in*

camera; Gillespie, Tr. 5839, *in camera*).

Moreover, {

} (Toth, Tr. 5750-51, *in camera*). {

} (RFOF 1586-92, *in*

camera). {

} (RX01714, *in camera*; Toth,

Tr. 5761-62, *in camera*).{

} (RX01687 at 002, *in camera*; Toth, Tr. 5761-62, *in*

camera). {

}. (RFOF 1565-66,

in camera). {

} (Toth, Tr. 5746-47, in camera). {

} (RFOF 1528, in

camera).

1317. As recently as October 1, 2009, Daramic understood that {

} (Toth, Tr.

5749-5750, in camera). Despite that understanding, Daramic, {

}. (Toth, Tr. 5750-5751, in camera; Seibert,

Tr. 5663-5664, in camera; see also RX01714 at 001-003, in camera ({

))).

Response to Finding No. 1317:

Complaint Counsel Finding No. 1317 is incomplete, inaccurate, misleading and misrepresents the evidence. (See Respondent's Response to Finding No. 1316). Again, Complaint Counsel ignores the facts that are in contrast to their position and, instead, paints an inaccurate and incomplete picture. {

} (Toth, Tr. 5749-50, in camera). {

}. (Toth, Tr. 5749-50,

in camera). {

} (Toth, Tr. 5750-51, *in camera*). Toth's testimony remains unrefuted on this fact.

{

} (RFOF 1591, *in camera*). {

} (RFOF 1592, *in camera*). {

} (RFOF 1596, *in camera*; RX01714, *in*

}

(RX01714 at 001, *in camera*). {

} (RX01714, *in camera*; Toth, Tr. 5761-

62, *in camera*). Despite Complaint Counsel's assertion, {

} (RX01714, *in camera*; Toth, Tr. 5761-62, *in camera*). Furthermore,

{

}.

(Seibert, Tr. 5649, 5658, *in camera*; RX01667 at 002, *in camera*; RX01668 at 002, *in camera*;

RX01669 at 002, *in camera*; RX01713, *in camera*; RX01718, *in camera*; RX01714 at 001). {

} (RX01714, *in camera*).

