

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**

| | |
|---|----|
| <ul style="list-style-type: none"> • Respondent’s allegation in the first proffer that Exide’s { } are “inconsistent with past order patterns” is not accurate because Exide { }..... 31 | 31 |
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| <ul style="list-style-type: none"> • 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 { } | 41 |
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| C. Proffer #3 is not true | 53 |
| <ul style="list-style-type: none"> • Respondent’s allegation in the third proffer that Exide has decided not to purchase PE separators from Daramic in { } is not accurate because Exide { } | 53 |
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| D. Proffer #4 is not true | 69 |
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| <ul style="list-style-type: none"> • 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 { } | 72 |

| | |
|---|-----|
| <ul style="list-style-type: none"> • 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 { }..... | 76 |
| <ul style="list-style-type: none"> • 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 not offered a { } on motive, UPS, or deep-cycle separators | 83 |
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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:

Complaint Counsel's Finding No. 1255 is incomplete and misleading. 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. Further, Respondent incorporates its responses to Proposed Finding Nos. 1249-54. In addition, Respondent directs the Court to the evidence in the record showing that {

},

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

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

Additionally, {

}. (RFOF 1642, *in camera*).

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

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 {

} (RFOF 1552, *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:

