

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of</b>	)	
<b>Ormet Primary Aluminum Corporation</b>	)	
<b>for Approval of a Unique Arrangement</b>	)	<b>Case No. 09-119-EL-AEC</b>
<b>with Ohio Power Company</b>	)	

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**MOTION TO INTERVENE  
OF AEP RETAIL ENERGY PARTNERS LLC AND COMMENTS**

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Pursuant to Ohio Revised Code § 4903.221 and Rule 4901-1-11, Ohio Admin. Code, AEP Retail Energy Partners LLC d/b/a AEP Energy, on behalf of itself and its affiliated competitive retail electric service provider, AEP Energy, Inc. (collectively, “AEP Energy”) hereby moves to intervene in these proceedings. AEP Energy has a real and substantial interest in these proceedings that is not adequately represented by existing parties and is so situated that the disposition of these proceedings may impair or impede its ability to protect that interest. Accordingly, and as more fully explained in the accompanying memorandum in support, AEP Energy respectfully requests that the Public Utilities Commission of Ohio (“Commission”) grant this timely request to intervene. AEP Energy also briefly submits initial comments in the attached memorandum in support.

Respectfully submitted,

/s/ Jay E. Jadwin

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**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE  
OF AEP RETAIL ENERGY PARTNERS LLC AND COMMENTS**

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Ormet Primary Aluminum Corporation (Ormet) has an existing unique arrangement with Ohio Power Company (AEP Ohio) that was approved by the Public Utilities Commission of Ohio (Commission). On June 14, 2013, Ormet filed a motion to amend the 2009 unique arrangement and request for emergency relief. As part of the filing, Ormet requests permission to shop for generation service from a CRES provider. The disposition of this and other issues in these proceedings may adversely affect AEP Energy's financial and business interests.

Revised Code § 4903.221 provides, in pertinent part, that any person "who may be adversely affected" by a Commission proceeding is entitled to seek intervention in that proceeding. Subsection (B) of R.C. §4903.221 requires the Commission to consider the following criteria in ruling on motions to intervene:

1. The nature and extent of the prospective intervenor's interest;
2. The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
3. Whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding; and

4. Whether the prospective intervenor will significantly contribute to the full development and equitable resolution of the factual issues.<sup>1</sup>

In addition to requiring consideration of the above criteria, the Commission's rules also require consideration of "[t]he extent to which the person's interest is represented by existing parties" in deciding whether to permit intervention.<sup>2</sup> Further, the Supreme Court of Ohio has found that "intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the PUCO."<sup>3</sup> In considering AEP Energy's prospective intervention in light of the above criteria and precedent, the Commission should find that AEP Energy's intervention in these proceedings is appropriate.

AEP Energy is a competitive retail electric service provider certified to provide retail generation, aggregation, power marketer, and power broker services within the state of Ohio. AEP Energy is currently providing retail electric services to customers in AEP Ohio's service territory. It is critical to the ongoing business of AEP Energy (and for that matter, all other CRES Providers) that it or they be able to compete fairly and on a level playing field for business in this state, including within AEP Ohio's service territory. Allowing Ormet to shop without providing a level playing field for interested CRES providers, including AEP Energy, could adversely affect AEP Energy's ability to provide competitive retail electric services to customers within AEP Ohio's service territory. As such, AEP Energy has a real and substantial interest in this proceeding and its interest

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<sup>1</sup> Ohio Rev. Code Ann. § 4903.221(B)(1)-(4)

<sup>2</sup> See O.A.C. 4901-1-11(B)(1)-(5).

<sup>3</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 384, 387, 2006-Ohio-5853, ¶20 (2006).

cannot be represented by any other party to this proceeding. As an intervenor in these proceedings, AEP Energy will advocate positions related to these interests.

AEP Energy's intervention will not unduly prolong or delay these proceedings. This motion to intervene is timely filed on the deadline established by the attorney examiner's entry. Moreover, no discovery deadline or hearing date has yet been set. Lastly, given its experience in the marketplace and understanding of the competitive issues these proceedings raise, AEP Energy will be able to significantly contribute to the full development and equitable resolution of the factual issues in these proceedings.

For the foregoing reasons, AEP Energy respectfully requests that the Commission grant this motion to intervene and that AEP Energy be made a party of record to these proceedings.

#### **INITIAL COMMENTS**

AEP Energy takes no position as to whether Ormet should be permitted to shop for generation service notwithstanding the terms of its existing unique arrangement. If Ormet is permitted to shop, however, there should be a competitive process for ensuring a level playing field for CRES providers interested in serving the load. According to the existing agreement and Commission decisions related to the existing agreement that are publicly available, Ormet is not permitted to shop until 2018. So it is not likely that Ormet has experienced robust solicitations from CRES providers. Moreover, Ormet's financial status may have further discouraged any such efforts. But since Ormet now has substantial financial backing from the proposed purchaser, it should be able to support any credit and collateral requirements associated with a CRES contract. As reflected in the Ormet filing, it appears as though Ormet is asking ratepayers to pick up the tab for a

subsidy of the competitive generation service. As such, a special competitive process should be employed with disclosure of the subsidy to be provided. This would level the playing field for AEP Energy and other competing CRES offers, and should provide the best way to maximize competing offers for Ormet to consider and at the same time minimize and mitigate the amount of the required subsidy, should the the Commission is going to permit Ormet to shop.

Respectfully submitted,

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**Counsel for AEP Energy**

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served upon the counsel for parties of record via electronic mail this 5<sup>th</sup> day of July, 2013.

/s/ Jay E. Jadwin

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/5/2013 1:37:11 PM**

**in**

**Case No(s). 09-0119-EL-AEC**

Summary: Motion (Corrected Version) Motion to Intervene electronically filed by Mr. Jay E  
Jadwin on behalf of AEP Retail Energy Partners LLC