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March 9, 2010

FILED  
MAR 09 2010  
Clerk's Office  
N.C. Utilities Commission

**VIA COURIER**

Ms. Renne Vance, Chief Clerk  
North Carolina Utilities Commission  
430 North Salisbury Street  
Raleigh, North Carolina 27603-5918

Re: Docket Nos. E-100, Sub 113 and E-100, Sub 121

Dear Ms. Vance:

Please find enclosed for filing in the above-referenced docket the original plus 30 copies of the Petition to Intervene and the original plus 30 copies of the Request to File Out of Time and Initial Comments of CPI USA North Carolina LLC in response to the Commission's January 27, 2010 Order Proposing Rules and Requesting Comments. All parties to this proceeding have been served in accordance with the attached certificate of service.

Also enclosed is a copy to be file-stamped and returned with our courier. Should you have any questions please do not hesitate to contact me. Thank you for your assistance in this matter.

Sincerely,



Andrea R. Kells

Enclosures

(22)  
at  
7 Com.  
Brisak  
Hink  
Jablon  
Hagan  
Kelson  
Kish  
Cheson  
Janes  
Bryley  
Kegel  
Cott  
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**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 113  
DOCKET NO. E-100, SUB 121

**FILED**  
**MAR 09 2010**  
Clerk's Office  
N.C. Utilities Commission

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of )  
DOCKET NO. E-100, SUB 113 )  
Rulemaking Proceeding to Implement )  
Session Law 2007-397 )

And )  
DOCKET NO. E-100, SUB 121 )  
Implementing a Tracking System for )  
Renewable Energy Certificates Pursuant )  
To Session Law 2007-397 )

PETITION TO INTERVENE OF  
CPI USA NORTH CAROLINA LLC

NOW COMES CPI USA North Carolina LLC ("CPI-NC")<sup>1</sup> by and through the undersigned counsel and respectfully requests that the North Carolina Utilities Commission ("Commission") grant its Petition to Intervene in the above-captioned proceedings pursuant to Rule R1-19 of the Commission's Rules and Regulations. In support of this Petition, CPI-NC respectfully shows the Commission the following:

1. CPI-NC is a limited liability company organized under the laws of the State of Delaware, with its principal office located at 2000 York Road, Suite 129, Oak Brook, Illinois, 60523.

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<sup>1</sup> CPI-NC submitted a Request to Amend Certificates of Public Convenience and Necessity and Notification of Name Change to the Commission on February 22, 2010 in Docket No. SP-165, Sub 3. CPI-NC, previously known as EPCOR USA North Carolina LLC, underwent a corporate name change on November 16, 2009 as part of a corporate rebranding effort. The company received certificates of public convenience and necessity from the Commission in that proceeding regarding its Southport and Roxboro, North Carolina facilities on December 17, 2009. This Petition will refer to the company by its new name, CPI USA North Carolina LLC ("CPI-NC").

2. CPI-NC owns two generating facilities in North Carolina, which together constitute substantially all of its assets: the Southport Facility located at 1281 Powerhouse Drive SE, Southport, North Carolina; and the Roxboro Facility located at 331 Allie Clay Road, Roxboro, North Carolina (the “Facilities”).

3. The Facilities were originally coal-fired cogeneration facilities, and are undergoing modifications to burn a blend of biomass, tire-derived fuel and coal such that they can qualify for renewable energy credits (“RECs”) under the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard (“REPS”) contained in Senate Bill 3. The Commission accepted the Facilities’ registration as New Renewable Energy Facilities (“NREFs”) in its Order Issuing Amended Certificates, Accepting Registration Statement, and Issuing Declaratory Ruling of December 17, 2009 in Docket No. SP-165, Sub 3.

4. As the owner of NREFs producing renewable energy, the associated RECs of which will be purchased and sold for purposes of compliance with the REPS and tracked by the North Carolina Renewable Energy Tracking System (“NC-RETS”), CPI-NC has a direct interest in the establishment of the NC-RETS which is the subject of this docket.

6. For the reasons set forth above, CPI-NC respectfully requests that the Commission grant this Petition for leave to intervene in this proceeding and become a party thereto. No other party can adequately represent the interest of CPI-NC.

7. No party already participating in this proceeding shall be adversely impacted or prejudiced by CPI-NC’s proposed intervention and participation in this docket.

8. All correspondence related to this proceeding should be addressed to:

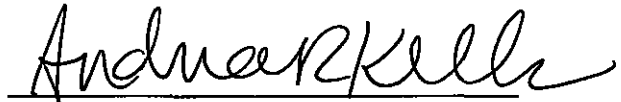
Chris Kopecky  
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WHEREFORE, CPI-NC respectfully requests that the Commission grant this Petition to Intervene in this proceeding and otherwise become a party to this proceeding in all respects.

Respectfully submitted this the 9th day of March, 2010.



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*Counsel for CPI USA North Carolina LLC*

Dated: March 9, 2010

**VERIFICATION**

Andrea R. Kells, being first duly sworn, deposes and says that she is the attorney for CPI USA North Carolina LLC. She further states that she has read the foregoing Petition to Intervene, and that to her personal knowledge and belief, the matters and statements contained therein are true, except as to those matters or statements made upon information and belief, and as to those, she believes them to be true; and that she is authorized to sign this verification on behalf of CPI USA North Carolina LLC.

This the 9<sup>th</sup> day of March, 2010.

Andrea R. Kells  
Andrea R. Kells

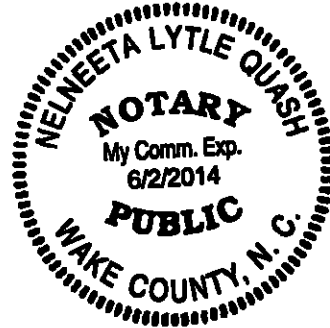
NORTH CAROLINA

WAKE COUNTY

Sworn to and subscribed before me  
This 9<sup>th</sup> day of March, 2010.

Nelneeta Lytle Quash  
Notary Public

Nelneeta Lytle Quash  
Print Notary Public Name



My Commission Expires: 6/2/2014

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 113  
DOCKET NO. E-100, SUB 121

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

|  |   |                             |
|--|---|-----------------------------|
| In the Matter of                       | ) |                             |
| DOCKET NO. E-100, SUB 113              | ) |                             |
| Rulemaking Proceeding to Implement     | ) |                             |
| Session Law 2007-397                   | ) |                             |
|  | ) | REQUEST TO FILE OUT OF TIME |
| And                                    | ) | AND INITIAL COMMENTS        |
|  | ) | REGARDING PROPOSED RULE     |
| DOCKET NO. E-100, SUB 121              | ) |                             |
| Implementing a Tracking System for     | ) |                             |
| Renewable Energy Certificates Pursuant | ) |                             |
| To Session Law 2007-397                | ) |                             |

NOW COMES CPI USA North Carolina LLC ("CPI-NC")<sup>1</sup> and hereby requests leave to file the following initial comments out of time. On January 27, 2010, the North Carolina Utilities Commission ("Commission") issued an Order Proposing Rules and Requesting Comments ("Order") that directed parties to file comments on the Commission's proposed rules regarding a renewable energy certificate ("REC") tracking system, including requirements for participating in and paying for a North Carolina Renewable Energy Tracking System ("NC-RETS"). A copy of the proposed rules was attached as Appendix A to the Order. Pursuant to the Order, CPI-NC hereby submits the following initial comments regarding the Commission's proposed rules.

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<sup>1</sup> CPI-NC submitted a Request to Amend Certificates of Public Convenience and Necessity and Notification of Name Change to the Commission on February 22, 2010 in Docket No. SP-165, Sub 3. CPI-NC, previously known as EPCOR USA North Carolina LLC, underwent a corporate name change on November 16, 2009 as part of a corporate rebranding effort. The company received certificates of public convenience and necessity from the Commission in that proceeding regarding its Southport and Roxboro, North Carolina facilities on December 17, 2009. These comments will refer to the company by its new name, CPI USA North Carolina LLC ("CPI-NC").

## **COMMENTS**

1. Proposed rule R8-67(h)(2) would require that multi-fuel facilities calculate on a monthly basis the percentage of their energy output that is attributable to qualifying fuels, and provide the results of the calculations to the REC tracking system on a monthly basis. CPI-NC requests clarification regarding what documentation will be required for RECs created before the NC RETS is functioning and when and in what form such documentation must be submitted. CPI-NC requests that monthly reports be required to be submitted no sooner than the 15<sup>th</sup> day of the following month.

2. In order to more clearly describe the type of data that REFs must submit as part of the NC RETS, CPI-NC agrees with the suggestion of the Public Staff that the term "production data" as used throughout proposed rule R8-67(h) be replaced with the term "energy output" or "electricity output."

3. Proposed rule R8-67(h)(2) would require that multi-fuel facilities submit calculations of "the percentage of their energy output that is attributable to qualifying fuel...." CPI-NC requests that the rule clarify that multi-fuel facilities that utilize more than one renewable energy resource must provide the percentage calculations for each type of renewable fuel. For instance, if a REF uses both wood biomass and natural rubber from tire-derived fuel, it would be required to submit separate calculations for wood and natural rubber.

4. Accuracy of the data provided under proposed rule R8-67(h) is important. When reporting net electricity output, CPI-NC suggests requiring a REF to report electricity (MWh) as metered by the public utility, transmission company or other in-state purchasing entity.

5. Proposed rule R8-67(h)(5) would require that REFs that produce thermal energy that qualifies for RECs report the facility's qualifying thermal output to the REC tracking system at least once annually. CPI-NC agrees with the suggestion of the Public Staff that the term "qualifying thermal output" as used in this proposed subsection be replaced with "qualifying thermal energy output." Furthermore, CPI-NC suggests that "qualifying thermal output" be specified as "useful thermal energy output." This term is used by the Federal Energy Regulatory Commission ("FERC") in its definition of a "qualifying facility." The FERC rules define "useful thermal energy" as:

“... the thermal energy: (1) That is made available to an industrial or commercial process (net of any heat contained in condensate return and/or makeup water); (2) That is used in a heating application (e.g., space heating, domestic hot water heating); or (3) That is used in a space cooling application (i.e., thermal energy used by an absorption chiller).” 18 C.F.R. § 292.202(h).

6. Proposed rule R8-67(h)(8) would require that “all energy production and fuel data provided to the tracking system, including underlying calculations and estimates, be retained by the facility's owner and made available to the Public Staff for audit for at least ten (10) years.” First, CPI-NC agrees with the suggestion of Public Staff to change “energy production” to “energy output” for purposes of consistency within this rule and specificity as to the type of data to be reported and retained. CPI-NC further suggests that “fuel data” be defined as “records reflecting the mass of each type of fuel burned (e.g. in tons) during periods of energy output and test data supporting the heating value of each type of fuel (Btu/lb).”

7. Proposed rule R8-67(h)(10) would require "Each participant" to pay the REC tracking system 1 cent per REC exported or retired for any reason other than compliance with North Carolina's REPS. CPI-NC requests clarification regarding whether the term “participant”

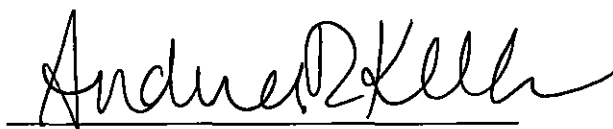


includes REFs and new renewable energy facilities ("NREF") in addition to electric power suppliers.

8. With regard to the Public Staff's suggestion that the administrator be authorized to "prescribe the *specific types* of and manner in which information shall be reported to NC-RETS," CPI-NC is concerned that this is an overly broad delegation of authority to a third party which could result in burdensome data-reporting obligations. CPI-NC requests that the Commission itself clarify the types of information required to be submitted, including clarification of the terms "production data" and "fuel data," rather than delegate this authority to a third party.

WHEREFORE, CPI-NC respectfully requests that the Commission consider these comments in its development of new rules establishing requirements for participating in and paying for the NC-RETS.

Respectfully submitted this the 9th day of March, 2010.



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*Counsel for CPI USA North Carolina LLC*

Dated: March 9, 2010

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Request to File Out of Time and Initial Comments and Petition to Intervene of CPI USA North Carolina LLC submitted in Docket Nos. E-100, Sub 113 and E-100, Sub 121 have been served by electronic mail or by United States first class mail, postage prepaid upon all parties of record in the above-captioned dockets.

This the 9<sup>th</sup> day of March, 2010.

A handwritten signature in black ink, appearing to read "Andrea R. Kells", written over a horizontal line.

Andrea R. Kells  
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Raleigh, North Carolina 27601  
Tel: (919) 755-6614