

OFFICIAL COPY

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-100, SUB 124

FILED
JAN 29 2010
Clerk's Office
N.C. Utilities Commission

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. E-100, Sub 124)	
In the Matter of)	PETITION TO INTERVENE
)	BY
Investigation of Integrated Resource)	CPI USA NORTH CAROLINA LLC f/k/a
)	EPCOR USA NORTH CAROLINA LLC
Planning in North Carolina - 2009)	
)	

NOW COMES CPI USA North Carolina LLC¹, formerly known as EPCOR USA North Carolina LLC, and hereinafter referred to as "EUNC," by and through the undersigned counsel, and respectfully requests the North Carolina Utilities Commission ("the Commission") to allow its Petition to Intervene in this docket pursuant to Rules R1-5, R1-6, and R1-19 of its rules and regulations. In support of this Petition, EUNC respectfully shows the Commission as follows:

¹ EPCOR USA North Carolina LLC was renamed CPI USA North Carolina LLC effective November 16, 2009. The company's name was changed as part of a rebranding initiative following the transfer of EPCOR Utilities Inc.'s power generation assets to Capital Power Corporation in July 2009. To maintain consistency with previous filings in North Carolina, despite the name change, the acronym EUNC is being used in this filing.

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

2. EUNC owns two generating facilities in North Carolina (which together constitute substantially all of its assets): a) the "Southport Facility" located at 1281 Powerhouse Drive SE, Southport, North Carolina and b) the "Roxboro Facility" located at 331 Allie Clay Road, Roxboro, North Carolina. The Roxboro and Southport facilities are referred to individually as a "Facility" and together as the "Facilities."

3. The Roxboro Facility was originally a nominal 56 MW coal cogeneration facility. The Facility is undergoing modification to utilize a blend of biomass, tire-derived fuel ("TDF") and coal such that the facility can qualify for renewable energy credits ("RECs") under the North Carolina renewable energy portfolio standards ("REPS") contained in Senate Bill 3. Following the completion of the renovations, the nominal capacity of the Facility will be reduced to approximately 47 MWs. The Roxboro Facility is a qualifying small power-producing facility based on the percentage of biomass and alternative fuel utilized. Currently, output from the Facility is sold to Progress Energy Carolinas, Inc. ("Progress Energy") pursuant to a power purchase agreement that expired December 31, 2009, but whose terms remain in effect pursuant to the Commission's Order Providing Interim Relief and Scheduling Arbitration Proceedings, in Docket No. E-2, Sub 966, issued December 18, 2009.

4. The Southport Facility was originally a nominal 112 MW coal-fired cogeneration facility. The Facility is undergoing modifications to burn a blend of biomass, TDF and coal such that the facility can qualify for RECs. Following completion of the renovations, the nominal capacity of the Facility will be reduced to approximately 86 MWs.

The Facility sells steam to Archer Daniels Midland and is a qualifying cogeneration facility under PURPA. Currently, electric output from the Southport Facility is sold to Progress Energy pursuant to a power purchase agreement that expired December 31, 2009, but whose terms remain in effect pursuant to the Commission's Order Providing Interim Relief and Scheduling Arbitration Proceedings, in Docket No. E-2, Sub 966, issued December 18, 2009.

5. In response to the adoption of North Carolina Senate Bill 3, the North Carolina REPS, pending federal environmental regulations, and Progress Energy's continued need for the capacity from the Facilities, as evidenced by its 2008 Integrated Resource Plan ("IRP") that included extensions of the power purchase agreement for the Facilities' output, EUNC embarked on a project to upgrade the Facilities from traditional stoker coal boilers into state-of-the-art facilities which will utilize a mix of biomass and TDF along with significantly reduced amounts of coal. The aggregate development and construction costs to date exceed \$85,000,000, representing a capital outlay well in excess of both the acquisition costs and the fair market value of the Facilities prior to the modifications. While the Facilities continue to operate today in response to Progress Energy's dispatch instructions, without the modifications and execution of a long term power purchase agreements, the Facilities will not be able to operate economically.

6. Since commencement of commercial operations, the Roxboro and Southport Facilities have sold their electric output to Progress Energy. The current power purchase agreement for each Facility expired December 31, 2009. Between January 2008 and July 2009, EUNC had ongoing negotiations with Progress Energy regarding long-term power purchase agreements for the Facilities. The Facilities were part of Progress Energy's 2008 IRP filing.

7. Pursuant to Commission Rules R8-60 and R8-62(p), electric power suppliers in North Carolina are required to file annual IRPs with the Commission. The IRPs must comply with N.C. Gen. Stat. §62-110.1 with respect to least-cost integrated resource planning. Rule R8-60(a). In accordance with R8-67(b), the IRPs must include the electric power supplier's plan for complying with North Carolina's Renewable Energy Portfolio Standard, N.C. Gen. Stat. §62-133.8(b),(c),(d),(e), (f) and (g) (hereinafter "REPS Compliance Plan"). Moreover, "[a]s part of its Integrated Resource Planning Process, each utility shall assess on an on-going basis the potential benefits of reasonably available alternative supply-side energy resource options." Rule R8-60(e).

8. EUNC has information and insights about the Facilities and potential cost savings to the consuming public if Progress Energy entered into new power purchase agreements with EUNC for the output of the Facilities.

9. EUNC has already made substantial capital improvements to its Facilities to: a) reduce the amount of coal that is utilized; b) reduce NO_x, SO₂, and CO₂ emissions; and c) become a REC producer. The Facilities will be an in-state source of RECs helping Progress Energy to reach its requirements under the REPS.

10. EUNC has a real interest in this docket as (a) a current supplier of energy and capacity to Progress Energy pursuant to power purchase agreements, which expired on December 31, 2009, but continues in effect pending the outcome of the arbitration between EUNC and Progress Energy in Docket E-2, Sub 966, and (b) a future supplier of energy and capacity to Progress Energy pursuant to contracts resulting from the arbitration. The outcome of this docket could affect Progress Energy's supply portfolio and the priority of energy and capacity for the Facilities in that portfolio.

11. Any order or ruling of the Commission in this proceeding can directly affect the interest of EUNC – both as the current owner/operator/supplier of generation facilities in North Carolina with the ability to provide energy and capacity to Progress Energy and as owner/operator/supplier of other facilities in North Carolina in the future.

12. For the reasons set forth in paragraphs 10, and 11, EUNC respectfully petitions the Commission for leave to intervene in this proceeding and become a party in this action, and to generally have such rights and privileges afforded any party to proceedings before the Commission. No other party is able to adequately protect the interest of EUNC.

13. No party already a part of this action shall be adversely impacted or prejudiced by EUNC's proposed intervention and participation of this matter.

14. All notices, pleadings, and other documents related to this proceeding should be directed to the following:

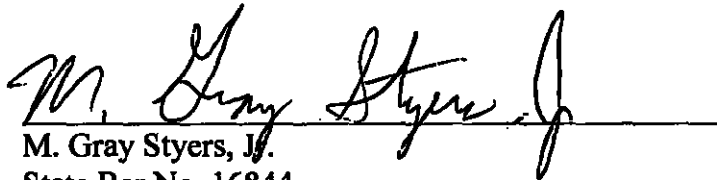
M. Gray Styers, Jr., Esq.
Blanchard, Miller, Lewis & Styers, P.A.
1117 Hillsborough Street
Raleigh, North Carolina 27603
Telephone: (919) 755-3993
E- mail: gstyers@bmlslaw.com

CPI USA North Carolina LLC
c/o Christopher L. Kopecky, Esq.
Associate General Counsel
2000 York Road, Suite 129
Oak Brook, Illinois 60523
Telephone: 630/413-5476
E-mail: ckopecky@capitalpowerusa.com

WHEREFORE, EUNC respectfully requests that the Commission enter an order allowing it to intervene, pre-file direct testimony of its witnesses, and cross-examine the other parties' witnesses, file briefs and/or proposed orders, and otherwise fully participate in this proceeding in all respects.

This the 29 day of January, 2010.

BLANCHARD, MILLER, LEWIS & STYERS, P.A.

A handwritten signature in cursive script, reading "M. Gray Styers, Jr.", written over a horizontal line.

M. Gray Styers, Jr.
State Bar No. 16844
1117 Hillsborough Street
Raleigh, North Carolina 27603
Telephone: (919) 755-3993
Facsimile: (919) 755-3994
E-mail: gstyers@bmlslaw.com

STATE OF ILLINOIS

COOK COUNTY

VERIFICATION

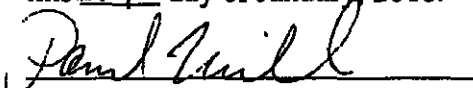
The undersigned, being first duly sworn, deposes and says that he is Vice President of Operations of Capital Power Operations (USA) Inc. He further states that he has read the foregoing Petition to Intervene, and that to his personal knowledge and belief, the matters and statements contained therein are true, except as to those matters or statements made upon information and belief, and as to those, he believes them to be true; and that he verifies the attached Petition to Intervene on behalf of Capital Power.

This the 29th day of January, 2010.

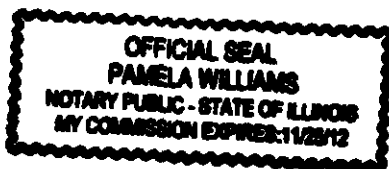


David J. Hermanson
Vice President of Operations
Capital Power Operations (USA) Inc.

Sworn to and subscribed before me
this 29 day of January, 2010.


Notary Public

My Commission Expires: 11/25/12



CERTIFICATE OF SERVICE

The undersigned certifies that he has served a copy of the foregoing Petition to Intervene upon the parties of record in this proceeding, or their attorneys, by hand delivery, electronically, facsimile, or by depositing a copy of the same in the United States Mail, postage prepaid and properly addressed as follows:

Progress Energy Carolinas, Inc.

Len S. Anthony
General Counsel
P.O. Box 1551, PEB 17A4
Raleigh, NC 27602
Telephone: 919/546-6367

Dwight W. Allen
The Allen Law Offices, PLLC
3737 Glenwood Ave, Suite 100
Raleigh, NC 27612

Attorney General of North Carolina

Leonard G. Green
Assistant Attorney General
NC Department of Justice
Post Office Box 629
Raleigh, NC 27602-0629
Telephone: 919/716-6054
E-mail: lgreen@ncdoj.com

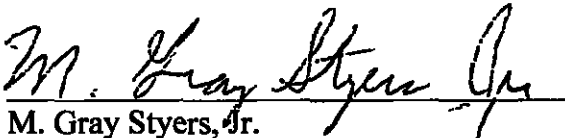
Public Staff – NC Utilities Commission

Robert P. Gruber
Executive Director
4326 Mail Service Center
Raleigh, North Carolina 27699-4326

CPI USA North Carolina LLC

Christopher L. Kopecky
Associate General Counsel
2000 York Road, Suite 129
Oak Brook, Illinois 60523
Telephone: 630/413-5476
E-mail: ckopecky@capitalpowerusa.com

This 29 day of January, 2010.


M. Gray Styers, Jr.