



**Fox Rothschild** LLP  
ATTORNEYS AT LAW

434 Fayetteville Street  
Suite 2800  
Raleigh, NC 27601  
Tel (919) 755-8700 Fax (919) 755-8800  
www.foxrothschild.com

M. GRAY STYERS, JR.  
Direct No: 919.755.8741  
Email: gstyers@foxrothschild.com

December 13, 2019

Ms. Kimberley A. Campbell  
Chief Clerk  
North Carolina Utilities Commission  
430 N. Salisbury Street  
Raleigh, NC 27603-5919

**Re: *In the Matter of Application of NTE Carolinas II, LLC for Certificate of Public Convenience and Necessity to Construct a Natural Gas-Fired Electric Generating Facility in Rockingham County, North Carolina***  
**NCUC Docket No: EMP-92, Sub 0**

Dear Ms. Campbell:

On behalf of NTE Carolinas II, LLC, I herewith electronically submit the attached RESPONSE TO DEC'S PETITION TO INTERVENE in the above referenced matter and docket.

If you should have any questions concerning this filing, please do not hesitate to contact me.

Thank you.

Sincerely,

/s/ *M. Gray Styers, Jr.*

M. Gray Styers, Jr.

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota  
Nevada New Jersey New York North Carolina Pennsylvania South Carolina Texas Washington

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

DOCKET NO. EMP-92, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of NTE  
Carolinas II, LLC, for Certificate of  
Public Convenience and Necessity to  
Construct a Natural Gas-Fired Electric  
Generating Facility in Rockingham  
County, North Carolina

RESPONSE TO DEC'S  
PETITION TO INTERVENE

NTE Carolinas II, LLC ("NTE"), through counsel, hereby responds to the Petition to Intervene by Duke Energy Carolinas, LLC ("DEC") to the North Carolina Utilities Commission ("Commission"), filed in the above-captioned docket. In response to the Petition, NTE states as follows:

1. Because DEC will be providing transmission interconnection to the Reidsville Energy Center ("REC Facility"), NTE does not object to DEC's intervention *per se*.
2. However, NTE disputes a number of allegations in DEC's Petition that are inaccurate, gratuitous, and not germane to NTE's Motion to Renew its CPCN for the REC Facility. Specifically, DEC alleges in its Petition (as if they were facts), and NTE denies, that NTE has defaulted under the Large Generator Interconnection Agreement ("LGIA") and that DEC has terminated the LGIA.
3. NTE has filed a 26-page Petition for Declaratory Order at the Federal Energy Regulatory Commission ("FERC"), Docket No. EL-20-8-000 ("FERC Petition"), seeking certain declarations that will remind DEC of its responsibilities under federal law

and explain to DEC the procedures that must be followed at FERC before an LGIA may be terminated..

4. In the federal court litigation referenced in DEC's Petition to Intervene, NTE has filed a Motion to Dismiss a number of DEC's claims, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

5. In addition, in that case, NTE has filed a 46-page Counterclaim against DEC alleging that DEC acted illegally to exclude NTE Energy and NTE Carolinas II as wholesale electric power competitors in violation, *inter alia*, of Section 2 of the Sherman Act and North Carolina's Unfair and Deceptive Trade Practices Act, and that DEC is, in fact, the party breaching the LGIA.

6. NTE is glad to share with the Commission a copy of its FERC Petition, as well as its filed claims for damages against DEC in federal court, but believes that, for reasons explained below, they should not be a part of this proceeding, unless the Commission rules otherwise.

7. The issues raised in DEC's Petition to Intervene are strongly disputed and squarely framed before other appropriate tribunals to determine the respective rights of the parties regarding interconnection and the LGIA. Litigating the same issues in different forums at the same time is both administratively inefficient and creates the inherent risk of inconsistent outcomes.

8. It is NTE's position that the LGIA remains in full force and effect (albeit temporarily suspended as allowed by its terms), notwithstanding Duke's statements to the contrary. The proceedings mentioned above will resolve the legal issues related to the

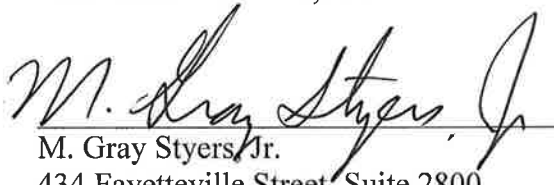
LGIA, the payments due under it, and any civil damages Duke may owe to NTE for its conduct related to the LGIA.

9. To maintain the status quo, the CPCN for the REC Facility should be renewed until the issues currently pending at FERC and in the federal courts are resolved. The CPCN renewal can be conditioned upon a successful resolution that affirms NTE's ongoing transmission interconnection rights under the LGIA necessary to construct and operate the REC Facility.

10. Therefore, the issues and scope of DEC's intervention and participation in this docket should be limited to whether NTE has satisfied the criteria for its CPCN to be renewed under Commission Rule R8-63(e)(3).

Respectfully submitted, this 13<sup>th</sup> day of December, 2019.

FOX ROTHSCHILD, LLP



M. Gray Styers, Jr.  
434 Fayetteville Street, Suite 2800  
Raleigh, North Carolina 27601  
Telephone: 919-755-8741  
E-mail: [gstyers@foxrothschild.com](mailto:gstyers@foxrothschild.com)

*Counsel for NTE Carolinas II, LLC*

**CERTIFICATE OF SERVICE**

It is hereby certified that the foregoing RESPONSE TO DEC'S PETITION TO INTERVENE has been served this \_\_\_\_ day of December, 2019, by hand delivery, electronic mail or by depositing copies of same in a depository under the exclusive care and custody of the United States Postal Service in postage prepaid envelopes and properly addressed as follows:

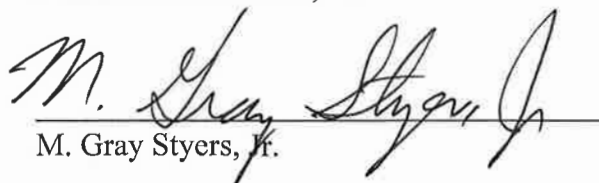
Christopher J. Ayers, Esq.  
Dianna Downey, Esq.  
David Drooze, Esq.  
North Carolina Public Staff  
430 N. Salisbury Street  
Raleigh, NC 27611

John Runkle, Esq.  
2121 Damascus Church Road  
Chapel Hill, North Carolina 27516

Lawrence B. Somers  
Deputy General Counsel  
Duke Energy Corporation  
Post Office Box 1551 / NCRH 20  
Raleigh, North Carolina 27602-1551  
[Bo.somer@duke-energy.com](mailto:Bo.somer@duke-energy.com)

Dwight W. Allen  
Allen Law Office, PLLC  
1514 Glenwood Ave. Suite 200  
Raleigh, North Carolina 27604  
[dallen@theallenlawoffices.com](mailto:dallen@theallenlawoffices.com)

FOX ROTHSCHILD, LLP

  
M. Gray Styers, Jr.