

October 11, 2016

Ms. Paige Morris
Interim Chief Deputy Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

RE: NTE Carolinas II, LLC
Application for a Certificate of Public Convenience and Necessity
Docket No. EMP-92, Sub 0

Dear Ms. Morris:

We are herewith electronically submitting the attached **Motion for Reconsideration of Order Granting Intervention by NC WARN and Objection** in the above-referenced docket.

If you have any questions or comments regarding this filing, please do not hesitate to call me. Thank you in advance for your assistance.

Very truly yours,

/s/M. Gray Styers, Jr.

Cc: Chris Ayers, Esq.
Dianna Downey, Esq.
John Runkle, Esq.

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

**MOTION FOR RECONSIDERATION
OF ORDER GRANTING
INTERVENTION OF NC WARN
AND OBJECTION**

NOW COMES NTE Carolinas II, LLC (“NTE” or “Applicant”), through counsel and pursuant to Rules R1-7 of the Rules and Regulations of the North Carolina Utilities Commission (“Commission”), and moves the Commission to reconsider its Order granting NC WARN’s motion to intervene and respectfully asks the Commission to deny NC WARN’s motion because it has not shown “a real interest in the subject matter of the proceeding” as required by Commission Rule R1-19(d).

In support of this Motion and Objection, NTE shows the Commission the following.

PROCEDURAL BACKGROUND

On July 29, 2016, NTE filed an application pursuant to N.C.G.S. § 62-110.1 and Commission Rule R8-63 for a certificate of public convenience and necessity (“CPCN”) to construct a natural-gas fueled facility that will generate and sell electric power in North Carolina in the wholesale market.

On October 5, 2016, NC WARN filed a motion to intervene in this docket. In the motion NC WARN states that if allowed to intervene in this docket, it will advocate that the Commission fully investigate the need for the proposed plant, its impacts on

ratepayers, and its impacts on climate issues. The sole basis for NC WARN's motion is as follows:

Members of NC WARN are concerned about the economic and environmental costs of a natural gas future, and the impacts of those costs on themselves, their families, and their livelihood. Members of NC WARN are customers of electrical membership cooperatives and municipalities who may become wholesale customers of the proposed NTE merchant plant. Members of NC WARN live in the Winston-Salem and Reidsville areas of North Carolina who [sic] may be effected [sic] adversely by emissions from the proposed NTE merchant plant.

The day after receiving NC WARN's motion, on October 6, 2016, counsel for NTE left a voicemail message with the general counsel of the Commission informing him that NTE wished to respond to NC WARN's motion. As NTE's principal place of business is located in St. Augustine, Florida, its headquarters were closed on October 6-10, due to Hurricane Matthew. In light of the exceptional circumstances of Hurricane Matthew, NTE was not able to respond to NC WARN's motion until today.

Prior to receipt of NTE's response, the Commission issued an Order granting NC WARN's motion on October 7, 2016.

ARGUMENT

NTE asks the Commission to reconsider its granting of NC WARN's motion and deny the motion to intervene on the ground that NC WARN has no "real interest in the subject matter of the proceeding" as required by Commission Rule R1-19(d).

The purpose of this docket is for the Commission to determine whether to grant a CPCN for NTE's proposed merchant facility pursuant to the standards set forth in N.C.G.S. § 62-110.1 and Commission Rule R-63. It is not to debate or challenge the country's and the state's energy and environmental policies. In determining whether to grant a CPCN to NTE, the Commission will consider whether NTE has made a sufficient

showing of need for the proposed facility to prevent overbuilding. *See State ex rel. Utilities Commission v. High Rock Lake Ass'n, Inc.*, 37 N.C. App. 138, 245 S.E.2d 787, *disc. review denied*, 295 N.C. 646, 248 S.E.2d 257 (1978). The statutory and regulatory standards do not include consideration of such concerns as NC WARN states in its motion and will presumably raise in this proceeding, as such policy concerns are left to state and federal legislative bodies and other regulatory agencies. *Id.*

NC WARN's motion is based upon concerns that are irrelevant to the Commission's determination whether there is a need for the proposed facility, and evidence that it may try to present related to those concerns would be inadmissible. As evidenced by NC WARN's participation in Docket No. E-2, Sub 1089 (regarding the proposed combined cycle natural gas-fueled facility near Asheville, and in which docket there was no objection to NC WARN's intervention), and in Docket Nos. E-2, Sub 1095, E-7, Sub 1100, G-9, Sub 682 (regarding the business combination of Duke Energy Corporation and Piedmont Natural Gas Company), and as stated in the plain language of the Motion to Intervene itself, the reason that NC WARN wishes to intervene is to make general objections to the use of natural gas in North Carolina and argue about the alleged environmental impacts of natural-gas fueled facilities. NC WARN's objection to natural gas and its environmental concerns are broad, policy-based issues that are beyond the scope of the issues raised by NTE's application and, thus, are irrelevant in this docket. Not only is such information not relevant, but it is also beyond the scope of the Commission's jurisdiction in considering the issues in this proceeding. This docket is clearly not the appropriate forum for protracted testimony and arguments regarding such concerns.

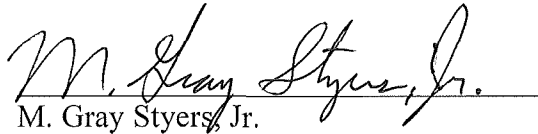
NC WARN's motion apparently recognizes that the NTE facility will not be part of a rate base of any retail electric service utility subject to ratemaking jurisdiction of the Commission. This is a significant distinction from electric generation facilities that will become part of rate base upon which a utility that is subject to the jurisdiction of the Commission may charge rates to its retail customers to generate a reasonable return on its investment. It also stands in contrast to the issues arising in NCUC Docket No. E-2, Sub 1089 regarding DEP's proposed Asheville facility. Electric power from the NTE facility will only be sold in North Carolina in the wholesale market. The Commission does not regulate the wholesale supply decisions of, or set the rates for, electrical membership cooperatives and municipalities. NC WARN's statement that "[m]embers of NC WARN are customers of electrical membership cooperatives and municipalities who may become wholesale customers of the proposed NTE merchant plant" is far too tenuous a nexus and in no way provides sufficient grounds to support intervention in this docket before the Commission.

The Commission has previously denied a petition to intervene by NC WARN in another docket because there was not good cause for granting the intervention. *See, e.g., Order Denying Motion to Intervene*, Docket No. E-7, Sub 1017 (July 13, 2012). While the application in that docket was an investigation following a merger application, the Commission's determination that the Public Staff will represent the interest of consumers affected by the Commission's investigation is applicable to NC WARN's request here. The Public Staff is a party in this docket and will represent the interest of the using and consuming public in its assessment of the need for the proposed facility – the issue that is the proper purpose and scope of this docket.

For all of the reasons stated above, NTE requests that the Commission reconsider its decision in light of information presented by NTE and deny NC WARN's Motion to Intervene.

Respectfully submitted, this 11th day of October, 2016.

SMITH MOORE LEATHERWOOD, LLP



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CERTIFICATE OF SERVICE

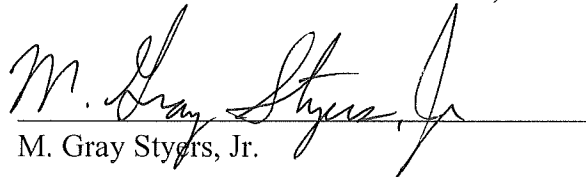
It is hereby certified that the foregoing MOTION FOR RECONSIDERATION OF ORDER GRANTING MOTION TO INTERVENE BY NC WARN AND OBJECTION has been served this 11th day of October, 2016, by hand delivery, electronic mail or by depositing copies of same in a depository under the exclusive care and custody of the United States Postal Service in postage prepaid envelopes and properly addressed as follows:

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