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December 6, 2019

VIA ELECTRONIC FILING

Ms. Kimberley A. Campbell
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

**Re: Duke Energy Carolinas, LLC's Petition to Intervene
Docket No. EMP-92, Sub 0**

Dear Ms. Campbell:

I enclose Duke Energy Carolinas, LLC's Petition to Intervene, for filing in connection with this matter.

Thank you for your attention to this matter. If you have any questions, please let me know.

Sincerely,
A handwritten signature in black ink, appearing to read 'Lawrence B. Somers', written over the word 'Sincerely,'.

Lawrence B. Somers

Enclosure

cc: Parties of Record

OFFICIAL COPY

Dec 06 2019

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. EMP-92, SUB 0

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

NOW COMES Duke Energy Carolinas, LLC (“DEC” or “Petitioner”), pursuant to North Carolina Utilities Commission (“Commission”) Rules R1-5 and R1-19, by and through the undersigned counsel, and petitions the Commission to enter an order permitting DEC to intervene and fully participate in the above-referenced docket. In support of this Petition, DEC shows the following:

1. DEC is an electric utility organized, existing and operating under the laws of the State of North Carolina for the purposes of generating, transmitting, and distributing electric power in its assigned service territory in North and South Carolina. Its principal office is located at 550 S. Tryon Street, Charlotte, North Carolina 28202.
2. The attorneys for DEC, to whom all communications and pleadings should be addressed, are:

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3. On November 26, 2019, NTE Carolinas II, LLC (“NTE”) filed a motion (“Motion”) to renew for three years the certificate of public convenience and necessity (“CPCN”) issued by the Commission in its January 19, 2017 *Order Granting Certificate with Conditions* (the “CPCN Order”). The CPCN Order granted NTE a CPCN for construction of a 500-MW natural gas-fueled combined cycle merchant plant generating facility located in Rockingham County, North Carolina (the “Proposed Facility”). The CPCN Order imposed several conditions, including the requirement that construction must begin within three years after the date that the Commission issued the CPCN.

4. In its Motion, NTE has represented that it cannot comply with the CPCN condition to begin construction by January 19, 2020, apparently due to a lack of financing and insufficient wholesale customers to justify the need for the Proposed Facility. See Motion at ¶¶3, 16.

5. DEC has a real and substantial interest in this proceeding. At the time of its original filing for a CPCN, NTE proposed to interconnect the Proposed Facility to the DEC grid. Because the Proposed Facility is a FERC-jurisdictional interconnection project, NTE is required to fund the construction of necessary network upgrades, and DEC is obligated to subsequently refund such network upgrade costs to the NTE after the Proposed Facility achieves commercial operation. Thereafter, the Open Access Transmission Tariff determines the share of the transmission costs that will be allocated to DEC wholesale transmission customers. The remainder of the costs are then allocated to DEC’s retail customers and DEC will seek to recover the North Carolina-allocable retail share in a future ratemaking proceeding before this Commission.

6. As NTE represents in its Motion at ¶4, NTE and DEC executed a standard Large Generator Interconnection Agreement (“LGIA”) dated November 8, 2017. What NTE failed to disclose to the Commission, however, is that NTE subsequently defaulted under the LGIA, resulting in termination by DEC according to the LGIA’s own terms for NTE’s nonpayment and failure to cure. In addition, DEC was forced to sue NTE in an effort to recover its damages for outstanding network upgrade costs for the Proposed Facility.

7. Prior to NTE’s defaults and at NTE’s request, DEC twice agreed to amend the LGIA to push NTE’s payment milestones out further into the future. The date of first amendment was October 10, 2018, and the date of second amendment was February 14, 2019.

8. NTE and DEC ultimately agreed to six (6) milestone payments that NTE would pay to DEC to perform the network upgrades to DEC’s transmission system that would be necessary to accommodate the Proposed Facility’s interconnection. The total cost of network upgrades needed was \$58.9 million; NTE made the first two payments (\$500,000 and \$1,100,000) to DEC and thereafter failed to timely pay the following three payments by their due dates (\$2.5 million by March 1, 2019, \$4.5 million by May 1, 2019, and \$23.7 million by July 1, 2019).¹ DEC sent NTE two notices of breach under the LGIA for its failure to make the March 1, 2019 and May 1, 2019 payments, and NTE did not cure within the 30-day cure period under the contract. After breaching the agreement on March 2nd (for missing the March 1st payment date) and on May 2nd (for missing the May 1st payment date), NTE sent DEC a letter dated May 15, 2019 requesting that DEC suspend

¹ DEC suspended work prior to reaching subsequent milestone dates.

its work on constructing the network upgrades required for the project for one (1) year due to lack of financing. DEC has suspended such work.

9. DEC gave NTE several opportunities to cure and to resolve the significant arrears, both by letter and through an in-person meeting. DEC terminated the LGIA on September 6, 2019 based on NTE's failure to cure non-payment breaches.

10. To date, DEC has incurred \$8,289,180 million on network upgrade work it has already performed or is unable to cancel for the Proposed Facility. NTE only made payments of \$1.6 million prior to defaulting, which leaves NTE owing DEC \$6,689,180 million for the network upgrades for the Proposed Facility.

11. On September 6, 2019, DEC filed suit against NTE, certain NTE affiliates, and NTE employees, in the Superior Court of Mecklenburg County, Civil Action No. 19-CVS-17434, to recover its damages. NTE removed the case to the United States District Court for the Western District of North Carolina, Case No. 3:19-cv-00515-KDB-DSC and this litigation remains pending.

12. On November 8, 2019, NTE filed a Petition for Declaratory Order with the Federal Energy Regulatory Commission ("FERC"), which alleges that DEC improperly terminated the LGIA. DEC plans to timely file a response with the FERC by December 9, 2019 in opposition to NTE's petition.

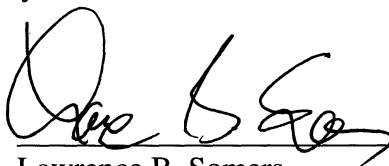
13. The Commission's determination as to NTE's motion not only directly impacts the viability of its Proposed Facility, but the general subject matter of this docket also affects DEC and its retail customers. DEC cannot speak directly to NTE's lack of financing for the proposed facility or their lack of wholesale customers to justify a need for the facility. However, DEC submits that the uncertainty surrounding the Proposed Facility

also exposes DEC to considerable risks, which could have additional adverse consequences for the Company and its customers. DEC's interests cannot be adequately represented by any other party.

14. Pursuant to Commission Rule R1-39, DEC agrees to accept electronic service of all filings in the docket.

WHEREFORE, for the reasons set forth above, DEC petitions the Commission to enter an order granting the right to intervene in this matter and exercise all rights provided to intervenors under the Commission's Rules and North Carolina law.

Respectfully submitted, this the 6th day of December, 2019.



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*ATTORNEYS FOR DUKE ENERGY
CAROLINAS, LLC*

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC's Petition to Intervene, in Docket No. EMP-92, Sub 0, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to the following parties:

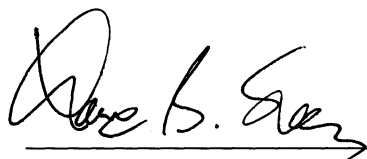
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This the 6th day of December, 2019.



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