

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-100, SUB 158

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Biennial Determination of Avoided Cost	)	ORDER DISMISSING
Rates for Electric Utility Purchases from	)	NOTICE OF APPEAL
Qualifying Facilities – 2018	)	

BY THE COMMISSION: On April 15, 2020, in the above-captioned docket the Commission issued its Order Establishing Standard Rates and Contract Terms for Qualifying Facilities in its 2018 biennial avoided cost proceeding pursuant to the provisions of Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and N.C. Gen. Stat. § 62-156 (April 15 Order).

On May 8, 2020, the North Carolina Sustainable Energy Association and the North Carolina Clean Energy Business Alliance (together, Appellants), each parties to this proceeding, jointly filed a motion for an extension of time to file notice of appeal and exceptions pursuant to N.C.G.S. § 62-90(a) seeking an additional 30 days within which to appeal the Commission’s April 15 Order.

On May 13, 2020, the Commission issued an order granting Appellants’ joint motion, allowing all parties an additional 30 days within which to file a notice of appeal and exceptions in this proceeding as provided in N.C.G.S. § 62-90(a).

On Monday, June 15, 2020, 61 days after issuance of the April 15 Order, Appellants jointly filed a motion for reconsideration.

On July 21, 2020, 36 days after Appellants’ filing, the Commission issued an order denying Appellants’ motion for reconsideration (July 21 Order).

On August 20, 2020, 30 days after issuance of the July 21 Order and 127 days after issuance of the April 15 Order, Appellants jointly filed notice of appeal with one exception, that to Findings of Fact Nos. 49-51 in the April 15 Order and the corresponding Evidence and Conclusions for Findings of Fact Nos. 49-52 (Notice of Appeal).

On September 10, 2020, Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC (together, Duke), filed a motion to dismiss Appellants’ appeal as untimely pursuant to N.C.G.S. § 62-90(a) and the North Carolina Court of Appeals decision in *State ex rel. Utilities Commission v. MCI Telecommunications Corp.*, 132 N.C. App. 625, 514 S.E.2d 276 (1999) (*MCI*). Pursuant to N.C.G.S. § 62-90(a) parties must file notice of appeal from an order of the Commission within 30 days after entry of the order unless such time period

is extended by the Commission. Duke notes that the Commission granted such an extension of time in this case, resulting in a 60-day period for parties to file notice of appeal. Duke further states that if a motion for reconsideration is filed, as was the case here, under *MCI* the time for filing notice of appeal is tolled from the date of the filing of the motion for reconsideration until the date that the Commission enters an order deciding the motion for reconsideration. Based on *MCI*, however, Duke concludes that when accounting for this tolling period, 90 days elapsed before Appellants filed their notice of appeal, which is in excess of the statutory maximum 60-day period after the April 15 Order was issued, and the notice of appeal was, thus, untimely. Therefore, Duke requests that the Commission enter an order dismissing Appellants' appeal.

On September 21, 2020, Appellants jointly filed a response in opposition to Duke's motion to dismiss, advancing two arguments: first, that Duke's position is contrary to statutory authority and caselaw and, second, that Duke's position is "completely unworkable from a procedural standpoint." Appellants Response at 5. In support of their first argument Appellants state that Duke has failed to cite or acknowledge relevant precedential authority in *State ex rel. Utilities Commission v. Norfolk Southern Railway Co.*, 224 N.C. 762, 765, 32 S.E.2d 346, 348 (1944) (*Norfolk*) ("where a petition for rehearing is filed before the time for appeal has expired, it tolls the running of the time and appeal may be taken within the statutory time for appeal from the date of denial of the petition for rehearing"), and that Duke has inappropriately relied upon dicta in *MCI*. The holding in *Norfolk*, they argue, is consistent with Rule 3(c) of the North Carolina Rules of Appellate Procedure, which provides that upon a timely motion for post-judgment relief, "the thirty-day period for taking appeal is tolled as to all parties until entry of an order disposing of the motion and then runs as to each party from the date of entry of the order . . . ." Appellants Response at 7 (quoting Rule 3(c)(3)). This Rule, they note, "reflects the 'common sense notion that certain post-judgment motions should be resolved before appeal, as the disposition of those motions may alter the substantive contours of the appeal or even obviate the need for appeal altogether.'" *Id.* at 8 (quoting Scherer & Leerberg, *North Carolina Appellate Practice and Procedure* § 5.04[4][a] (2019)).

Appellants acknowledge that the Commission's order of May 13, 2020, granting an extension of time established June 15, 2020, as the deadline for the filing of a notice of appeal — that is, 60 days from the date that the April 15 Order was issued. They further acknowledge that "long-standing North Carolina caselaw" provides that the timely filing of a motion for reconsideration pursuant to N.C.G.S. § 62-80 tolls the time for a party to file notice of appeal until the Commission issues an order on the motion for reconsideration. They argue, however, that the intervening consideration of Appellants' motion for reconsideration and the Commission's denial of that motion provided new and additional discussion and conclusions:

Consistent with North Carolina law, the Appellants' Notice of Appeal is timely, as it was filed within thirty days of issuance of the Reconsideration Order. . . . Appellants filed their Motion for Reconsideration before the time for seeking appellate review of the Avoided Cost Order expired. However, the Commission's decision in the Reconsideration Order about material

alterations to existing QF contracts did not resolve that issue or prevent the need for an appeal. In fact, the Commission's new and additional Discussion and Conclusions in the Reconsideration Order about material alterations to existing contracts made it clear that appeal of that issue is necessary.

*Id.* at 5-6. In short, based on *Norfolk* and Appellate Rule 3(c), Appellants argue that the current law provides that if a motion for reconsideration is filed with the Commission before the appeal period expires, then the 30-day appeal period "starts over" and begins to run upon entry of the order denying reconsideration. Appellants further argue that Duke's reliance on *MCI* is misplaced. They argue that the holding in *MCI* was that the days that pass while a motion for reconsideration is pending do not count toward the running of an appeal period.

The *MCI* Court did not consider or need to decide, however, whether the appeal period begins anew once a reconsideration order is entered. Consequently, *MCI* did *not* rule that an appellant does not have the full thirty-day appeal period once a reconsideration order is entered — a ruling that would be inconsistent with *Norfolk* and incongruous with the U.S. Supreme Court precedent it relied upon. Duke's argument — when counting days for an appeal period, the appealing party must *continue* counting following an order on a motion for reconsideration, rather than *starting over* — relies on *MCI* for a holding that it did not make, while ignoring controlling North Carolina Supreme Court precedent and Appellate Rule 3.

*Id.* at 9.

In support of their second argument that a 30-day appeal period after entry of a reconsideration order is necessary from a procedural standpoint, Appellants argue that not allowing the full 30-day appeal period after a reconsideration order "would be completely unworkable and in conflict with important policy objectives." *Id.* They first reiterate that the Commission's order denying reconsideration included new and additional discussion and conclusions, and, therefore, the appeal period properly commences from entry of this decision. Further, Appellants argue that Duke's position is unworkable because it would have required Appellants to file their notice of appeal and detailed exceptions the day after they received the Commission's order denying reconsideration. This result they argue, would frustrate the policy objective of allowing meaningful consideration of whether an appeal is necessary and what issues should be raised on appeal. Finally, Appellants argue that Duke's position is inconsistent with the plain language of N.C.G.S. § 62-80, which provides, in part, that "any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions." Appellants' argue that the Commission's order denying reconsideration did not leave its original judgment unaltered; rather, it altered and amended the Commission's April 15 Order, meaning that the July 21 Order denying the motion for reconsideration constituted a "new" final order or decision of the Commission that is appealable within 30 days of the

date of its entry. In conclusion, Appellants argue that North Carolina law is clear that they have 30 days from the date of the July 21 Order denying reconsideration within which to file their notice of appeal, that they filed their notice of appeal within that time period, and that Duke's motion should be denied.

On September 30, 2020, Duke filed a reply in support of its motion to dismiss Appellants' notice of appeal. Duke advances five arguments in support of its position that Appellants' notice of appeal should be dismissed: first, that N.C.G.S. § 62-90(a), as interpreted by *MCI*, clearly requires dismissal of the notice of appeal; second, that Appellants' attempt to analogize to Rule 3(c)(3) of the North Carolina Rules of Appellate Procedure should be disregarded, as that Rule does not apply; third, that Appellants' policy argument that applying N.C.G.S. § 62-90(a) as drafted is unworkable should be disregarded; fourth, that Appellants' commentary on the discussion in the July 21 Order denying the motion for reconsideration should also be disregarded; and fifth, that Appellants do not dispute that the Commission has the procedural authority to dismiss the notice of appeal as untimely. Based on these arguments, Duke requests that the Commission enter an order dismissing Appellants' appeal.

In support of its first argument, Duke states that the question for Commission decision is one of timing under N.C.G.S. § 62-90(a). Citing *MCI*, Duke argues that N.C.G.S. § 62-90(a) affords a party to a Commission proceeding a maximum of 60 days to appeal a final order of the Commission, setting aside any period during which a motion for reconsideration is pending. Further, Duke states that it recognizes that a motion for reconsideration "tolls the period for appealing a final order issued by the Commission 'from the date of the filing of the petition for rehearing to the date of the denial of that petition.'" Duke Reply at 2 (quoting *MCI*, 132 N.C. App. at 630, 514 S.E.2d at 280). Duke argues that Appellants' position is that a party can wait until the 60th day to request reconsideration and then "tack on" an additional 30 days to file a notice of appeal after the Commission issues an order denying reconsideration. Duke concludes that Appellants' position is incorrect as a matter of law and recounts the timing of the relevant filings in this proceeding to demonstrate that, in total, 90 days elapsed between the Commission issuing the April 15 Order and the date that Appellants filed their notice of appeal. In response to Appellants' arguments relying on *Norfolk*, Duke states that this decision interpreted a prior, fundamentally different statute in that prior to 1949, former N.C.G.S. § 62-20 governed appeals of Commission Orders. Duke cites to *Norfolk* in arguing that the prior statute provided for rehearing on exceptions, which was mandatory prior to taking appeal from a Commission order or decision, in lieu of an express authority to grant a rehearing. This old approach, Duke argues, is fundamentally different than the current procedure for rehearing pursuant to N.C.G.S. § 62-80 and for taking appeal pursuant to N.C.G.S. § 62-90, noting that Appellants have not cited a single case in the past 70 years that has applied the tolling concept in the manner that Appellants have suggested here. In summary, Duke argues that the former law has been repealed, that case law interpreting such prior law is inapplicable, that there is no basis to read N.C.G.S. § 62-90(a) as providing that the statutory time for appeal "starts over" after the Commission issues an order denying reconsideration, and that *MCI* appropriately applied

the plain language of the current statute in the same manner that Duke has done here to conclude that the appeal is untimely and should be dismissed.

In its second argument that Appellants attempt to analogize Rule 3(c)(3) of the North Carolina Rules of Appellate Procedure should be disregarded, Duke states that the words used in that rule are quite different than the controlling language in N.C.G.S. § 62-90(a). Duke argues that while Rule 3(c)(3) shows clear intent in civil trials to allow a full 30 days for parties to appeal after the entry of an order disposing of a post-hearing motion, N.C.G.S. § 62-90(a) does not include similar language, and that statute has been clearly interpreted by the court in *MCI* as providing for the time for appeal of a Commission order to run from the date of the original order. Duke further argues that Rule 3(c) has no applicability or relevance to the question at issue here, and it cites to Appellate Rule 18(b) as providing that “the times and methods for taking appeals from an administrative tribunal shall be as provided in Rule 18 *unless the General Statutes provide otherwise, in which case the General Statutes shall control.*” *Id.* at 7 (quoting Rule 18(b)). Duke therefore concludes that the procedure established by the General Assembly in N.C.G.S. § 62-90(a) controls, and Appellate Rule 3(c) is not relevant to appeal of the Commission’s order in this case.

In support of its third argument urging that the Commission disregard Appellants’ policy arguments, Duke states that if Appellants wanted more time to consider the Commission’s April 15 Order on their request for reconsideration, it was incumbent on them to more timely submit their petition for reconsideration. Duke argues that the statutory provisions are clearly set forth in N.C.G.S. § 62-90(a), and the Commission cannot disregard these statutory requirements due to purported hardship. In further support, Duke notes instances where parties to Commission proceedings have been able to overcome the challenges of timely filing a notice of appeal within a single day of the Commission’s ruling on a request for reconsideration.

In support of its fourth argument, Duke states that Appellants’ commentary on the discussion in the July 21 Order denying reconsideration should also be disregarded. Noting that Appellants have argued that the July 21 Order altered or amended the April 15 Order, Duke argues to the contrary that the Commission’s July 21 Order was a good faith effort to explain its April 15 Order in greater detail which cannot now be used to “end-run the statutory period for appeal.” *Id.* at 8. Duke concludes that the July 21 Order does not alter or amend the April 15 Order, and Appellants’ attempt to introduce such novel arguments at this stage should be rejected.

In its fifth and final argument, Duke states that Appellants do not dispute the Commission’s authority to dismiss their appeal as untimely. Duke notes that as stated in its motion to dismiss, the Commission has jurisdiction to dismiss Appellants’ appeal until the appeal has been docketed in the appellate court, and Duke references several cases where the Commission has exercised this authority. Further, Duke argues that the appellate courts have no jurisdiction to hear an appeal of a final order of the Commission where the notice of appeal has not been timely filed. In light of this and the foregoing arguments, Duke requests that the Commission enter an order dismissing Appellants’ appeal.

## DISCUSSION AND CONCLUSIONS

Based upon the foregoing and the entire record herein, the Commission concludes that Appellants' notice of appeal was untimely filed and should be dismissed. The Commission has carefully considered the parties' arguments and determines that this matter is resolved by reference to the plain language of the Public Utilities Act and the court's decision in *MCI*. Appellants' arguments to the contrary are unpersuasive as they rely on a misapplication of the relevant statutory provisions and a misapprehension of the relevant case law. Therefore, the Commission will dismiss Appellants' notice of appeal.

The statutes relevant to this decision are N.C.G.S. § 62-90(a), related to appeal of Commission orders, and N.C.G.S. § 62-80, related to rehearing or reconsideration of a Commission order. First, pursuant to N.C.G.S. § 62-90(a):

Any party to a proceeding before the Commission may appeal from any final order or decision of the Commission within 30 days after the entry of such final order or decision, or within such time thereafter as may be fixed by the Commission, not to exceed 30 additional days, and by order made within 30 days, if the party aggrieved by such decision or order shall file with the Commission notice of appeal and exceptions which shall set forth specifically the ground or grounds on which the aggrieved party considers said decisions or order to be unlawful, unjust, unreasonable or unwarranted, and including errors alleged to have been committed by the Commission.

Second, N.C.G.S. § 62-80 provides as follows:

The Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions.

The case primarily relied upon by Duke, and which the Commission finds to be dispositive, is *MCI*. In that case a group of competitive local providers (CLP) of telecommunication service filed notice of appeal from an order of the Commission requiring CLPs to file monthly access line reports. Similar to the procedural posture of the instant case, the appellants first petitioned for reconsideration, which was subsequently denied by the Commission. The CLPs then filed notice of appeal. The threshold question before the court in *MCI*, and not mere dicta, was the timeliness of the notice of appeal. As the court stated in *MCI*:

Pursuant to section 62-80, the Commission has the authority, upon its own motion or upon motion by any party, "to reconsider its previously issued order, upon notice and hearing" and "upon the record already compiled, without requiring the institution of a new and independent proceeding by

complaint or otherwise.” *Utilities Comm. v. Edmisten*, 291 N.C. 575, 582, 232 S.E.2d 177, 181 (1977); N.C.G.S. § 62-80 (1989). At this rehearing, the Commission may rescind, alter, amend, or refuse to make any change to its earlier order. *Id.* An application for rehearing pursuant to section 62-80 “is addressed to and rests in the discretion of the [Commission].” *Utilities Comm. v. Services Unlimited, Inc.*, 9 N.C. App. 590, 591, 176 S.E.2d 870, 871 (1970). An appeal does not lie from the *denial* of a petition to rehear, as the appeal is from the original order, and the time for appealing the original order is tolled from the date of the filing of the petition for rehearing to the date of the denial of that petition. *Utilities Comm. v. [Norfolk Southern] R.R.*, 224 N.C. 762, 765, 32 S.E.2d 346, 348 (1944).

*MCI*, 132 N.C. App. at 630, 514 S.E.2d at 280 (first alteration in original). The court found the appeal in that case to be timely as follows:

Appellants, the first parties to appeal in this case, filed their appeal 112 days after the entry of the Original Order. Eighty-four of those days, however, are not considered in computing whether the appeal is timely, as those days represent the time between the filing of the petition for reconsideration and the order denying that motion, and thus the running of the time for appeal was tolled during that period. The appeal by Appellants therefore was filed twenty-eight days after the entry of the Original Order.

*Id.* at 630-31, 514 S.E.2d at 280.<sup>1</sup>

In this case, as explicitly stated by Appellants, they appropriately filed a motion for reconsideration of the April 15 Order. Notice of Appeal at 1. Appellants filed their notice of appeal on August 20, 2020, 127 days after the entry of the April 15 Order. Thirty-six of those days, however, are not considered in computing whether the appeal is timely, as those days represent the time between the filing of the motion for reconsideration and the order denying that motion, and thus the running of the time for appeal was tolled during

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<sup>1</sup> In *Services Unlimited*, cited by the court in *MCI*, appellants’ motion for rehearing was filed almost three months after the time for filing exceptions and for giving notice of appeal had expired. Citing N.C.G.S. § 62-80, the court concluded that the Commission’s authority to reconsider its orders is “obviously discretionary,” and “[an] appeal does not lie from the denial of a petition to rehear.” *Services Unlimited* 9 N.C. App. at 591, 176 S.E.2d at 871 (quoting *Norfolk*, 224 N.C. at 765, 32 S.E.2d at 348). Further, the court held:

[Appellants] remedy was to appeal from the original order. They failed to do so, and consequently they may not now present, through an attempt to appeal from the denial of their motion to reopen the matter, the exact question which could have been presented by a timely appeal from the original order. “A court, having power to grant a rehearing, may entertain a petition for rehearing, filed after the time for appeal from its original order has expired, but in considering whether or not to grant the rehearing, such consideration will not enlarge the time for appeal from the original order.”

*Id.* at 592 (quoting *Norfolk*, 224 N.C. at 765, 32 S.E.2d at 348).

that period.<sup>2</sup> The appeal by Appellants, therefore, was filed 91 days after the entry of the April 15 Order, well beyond the 60-day statutory maximum allowed by N.C.G.S. § 62-90(a) and granted in this case by the Commission. Thus, the appeal was untimely and must be dismissed.

The result in the present case is consistent with the Commission's prior orders and decisions. These orders and decisions have consistently cited and applied *Services Unlimited* and *MCI* (and the Supreme Court decisions on which those cases are based) for the basic principles that remain relevant here: (1) the Commission's original order is "the final order" for purposes of N.C.G.S. § 62-90(a) unless the original order is rescinded, altered, or amended by the Commission pursuant to N.C.G.S. § 62-80; (2) the decision to grant or deny rehearing or reconsideration is within the Commission's discretion; and (3) the Commission's decision to deny a rehearing or reconsideration is non-appealable.<sup>3</sup> Applied here, the Commission concludes that the April 15 Order is the original order for purposes of taking appeal, that the July 21 Order denying reconsideration was within the Commission's discretion, and that no appeal lies from the July 21 Order.

For reasons articulated in Duke's reply, the Commission finds Appellants' analogy to Appellate Rule 3(c) and Appellants' policy arguments unpersuasive. The Commission agrees with Duke that Appellate Rule 3(c) is inapplicable here because that Rule applies in "civil actions and special proceedings" and not to "appeals of right from administrative agencies, boards, or commissions . . . directly to the appellate division under N.C.G.S. § 7A-29." Compare N.C.R. App. P. 3(c) and N.C.R. App. P. 18(a). The Commission is an administrative agency, board, or commission for purposes of Appellate Rule 18. See N.C.G.S. § 7A-29(a) (appeal as of right lies directly to the Court of Appeals from any final order or decision of the Commission other than in a general rate case). Further, as Duke notes, "[t]he times and methods for taking appeals from an administrative tribunal shall be as provided in . . . Rule 18 unless the General Statutes provide otherwise . . ." N.C.R. App. P. 18(b)(1) (emphasis added). For the appeal of Commission orders, the General Statutes do provide otherwise in the plain language of N.C.G.S. § 62-90(a). Moreover, despite Appellants' argument that the Commission's discussion in the July 21 Order allowed the time for appeal to start over, Appellants unambiguously state in their notice of appeal that appeal is from the April 15 Order, not the July 21 Order. Therefore, the Commission agrees with Duke that the specific procedure established pursuant to

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<sup>2</sup> To "toll" means to stop the running of; to abate (a time period, esp. a statutory one). *Toll*, *Black's Law Dictionary* (10th ed. 2014).

<sup>3</sup> See, e.g., Order Denying Petition for Reconsideration and Stay of Enforcement, *Petition for Declaratory Ruling by The Villages of Bishops Ridge Association*, No. W-1309, Sub 0, at 5-6 (Dec. 15, 2017); Order Granting Motion to Dismiss Appeal of Order Denying Reconsideration, *Application of Duke Energy Corporation and Progress Energy, Inc., to Engage in a Business Combination Transaction and to Address Regulatory Conditions and Codes of Conduct*, Nos. E-2, Sub 998, and E-7, Sub 986, at 9-12 (Apr. 29, 2013); Order Denying dPi's November 19, 2017 Motion to Reconsider, *Complaint of dPi Teleconnect, L.L.C. Against BellSouth Telecommunications, Inc. Regarding Credit for Resale of Services Subject to Promotional Discounts*, No. P-55, Sub 1577, at 4-5 (July 18, 2008).

N.C.G.S. § 62-90(a) as applied in *MCI* controls in this case, and the provisions of Rule 3(c)(3) are not applicable or analogous to the present case.

Appellants' "policy arguments" are equally unavailing. Duke aptly observes that the timing of the motion for reconsideration was entirely within Appellants' control and that other parties to Commission proceedings have been able to successfully navigate the procedure that Appellants describe as "unworkable." Moreover, the Commission cannot rely on policy arguments to ignore the plain language of the Public Utilities Act.<sup>4</sup> Lastly, as Duke notes in its reply, the right to appeal an administrative agency ruling is granted by statute, and compliance with the statutory provisions is necessary to sustain the appeal. *Lewis v. N.C. Dept. of Human Resources*, 92 N.C. App. 737, 739, 375 S.E.2d 712, 714 (1989) (citing *Smith v. Daniels Int'l*, 64 N.C. App. 381, 383, 307 S.E.2d 434, 435 (1983) (notice of appeal filed two days after statutory deadline; appeal properly dismissed)).<sup>5</sup>

Finally, regarding Appellants' arguments that rely on *Norfolk* and the U.S. Supreme Court cases cited therein, the Commission agrees with Duke that *Norfolk* was considered under a prior statute — former N.C.G.S. § 62-20 — a statute that provides a fundamentally different procedure than the current statutes for rehearing or reconsideration, N.C.G.S. § 62-80, and for giving notice of appeal, N.C.G.S. § 62-90. The Commission acknowledges that *MCI* and *Services Unlimited* cite *Norfolk* for the authority that an appeal does not lie from the denial of a petition to rehearing and that a court authorized to grant rehearing may entertain a petition for rehearing after the time for appeal from its original order has expired, but consideration of the petition will not enlarge the time for appeal from the original order. *MCI*, 132 N.C. App. at 630, 514 S.E.2d at 280; *Services Unlimited*, 9 N.C. App. at 591-92, 176 S.E.2d at 871. Both concepts remain valid law and constitute binding precedent for the Commission. The Commission disagrees with Appellants that *Norfolk* and the cases cited therein can be relied upon to alter the procedure provided in N.C.G.S. § 62-90(a) as interpreted and applied in *MCI*. Thus, the Commission agrees with Duke that there is no basis to read N.C.G.S. § 62-90(a) and *MCI* as providing that the 30-day period for filing a notice of appeal "starts over" after the Commission issues an order denying reconsideration. Therefore, the Commission concludes that the proper calculation of time for the filing of a notice of appeal in this proceeding is as described above in this Order and that consistent with *MCI*, Appellants' notice of appeal, even after subtracting the number of days during which the motion for reconsideration was being considered, was untimely filed after this period of time had expired.

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<sup>4</sup> The Commission is an administrative agency created by statute and has no regulatory authority except such as is conferred upon it by statute. *State ex rel. Utils. Comm'n. v. Edmisten*, 291 N.C. 451, 232 S.E.2d 184 (1977). Except as otherwise provided in Chapter 62, the Commission is authorized to make and promulgate rules of practice and procedure for the Commission hearings. N.C.G.S. § 62-72.

<sup>5</sup> This point is underscored by the difference in the language of N.C.G.S. § 62-80, which provides no time limit within which to file a motion for reconsideration, and the language of N.C.G.S. § 62-90, which provides the 30-day deadline, subject to enlargement by 30 days by order of the Commission, for filing a notice of appeal and exceptions.

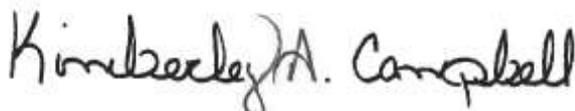
Having carefully considered the foregoing and the entire record herein, the Commission concludes that Appellants' notice of appeal was not filed within the time period established pursuant to N.C.G.S. § 62-90(a) and the Commission's Order granting an additional 30 days. Appellants' views to the contrary lack support in the plain language of the Public Utilities Act and are contrary to the relevant decisions of the state's appellate courts. Therefore, the Commission determines that Appellants' notice of appeal and exceptions must be dismissed.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of October, 2020.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink that reads "Kimberley A. Campbell". The signature is written in a cursive, slightly slanted style.

Kimberley A. Campbell, Chief Clerk

Commissioners Kimberly W. Duffley, Jeffrey A. Hughes, and Floyd B. McKissick, Jr., did not participate.