

14 Sept. 2020

From: Oliver L. Canaday, 713 Camellia Ave., Panama City, FL. 32404 -[a person having interest (in complaint); & Intervener for Docket No. E-2, Sub 1150]

→ To: -Kimberley A. Campbell (Chief Clerk N.C. Utility Commission), -(Attn: Commissioner Daniel G. Clodfelter) -4325 Mail Service Center, Raleigh, N.C. 27699-4325; N. Salisbury St., Dobbs Building, Raleigh, N.C. 27699

- Lawrence B. Somers (DEP's Dep. Gen. Counsel), NCRH 20 / P.O. Box 1551, Raleigh, N.C. 27602

-N. Lorrin Freeman, District Attorney (DA) of Wake County Superior Court, P.O. Box 31, Raleigh, N.C. -27601; -[300 S. Salisbury St., Raleigh, N.C., Ph. (919) 722-5000]; also, see Cc: note for DA;

Ref: (a) G.S. 62-73. Complaints against public utilities;

(b) N.C. Utility Commission Order of 12 Jan. 2018; in matter of Application of Duke Energy Progress, (DEP) LLC, for a Certificate of Environmental Compatibility and Public Convenience (CPCN);

(c) N.C. Utility Commission Docket No. E-2, Sub 1150 (records)

(d) G.S.-62-310. Public Utilities violating any provision of Chapter, rules, or Orders; penalty: enforcement by injunction;

(e) G.S. 62-312. Action to recover penalties;

Encl: (1) G.S. 62-73.;

(2) G.S. 62-310, (a).;

(3) G.S. 62-312.;

(4) 'Order' excerpts: -Page 1; -Page 16 - see paragraph no. - 5.; and, Page 17 - Appendix A (CPCN – page 1 of 1)), -demonstrates DEP's **requirement for written notice** to landowners for **option to designate their land as a “no-spray area”** prior to DEP starting construction of the new 230kV transmission line, my interest matters is caused by line construction on land o/a 909 Parker Town Road, Four Oaks, N.C.

(5) Picture of ROW Construction o/a 909 Parker Town Road, Four Oaks, N.C.; (picture of o/a mid Sept. 2020), [picture demonstrates construction started];

Subj: Motion of Formal Complaint -Against DEP for Starting Right of Way (ROW) Construction -Prior To Sending Written Notice to Land Owners of Option -To Designate Their Land as a “No-Spray Area”

1.- This is not a frivolous complaint against DEP for starting ROW construction prior to me receiving written notice as a landowner (on ROW, Route 31) for option to designate my land as a “No-Spray Area”.

2.- In Accordance With (IAW) reference (a) and (b), I (motion) file written complaint against DEP, for starting ROW construction prior to my receiving written notice of option to designate my land as a “No-Spray-Area. [A side note, previous of this date, I have spoken to several land owners (via phone) of property in ROW; none of them had received written notice of option to designate land as a “No-Spray Area”.]

a. -Enclosure (4) demonstrates N.C. Utility Commission’s ‘Order’ and CPCN (certificate) requirements of: 1)- written notice to land owners for option; 2)- to designate their land as a “No-Spray Area”; 3)- prior to starting construction on transmission line ROW.

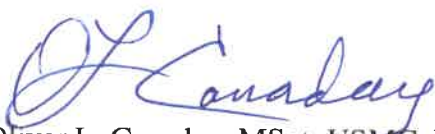
b. -Enclosures (1), (2), (3), (4) are forwarded for review of violation and penalties to Commission’s ‘Order’; -to read complete ‘Order’ (17-pages) go to reference (c). Enclosure (5), a snapshot (picture) demonstrates ROW construction start; and, -I have not received a written notice of option to designate my land as a “No-Spray Area” this date.

3.- I authorize you visual inspection of land, “Taken” for transmission line ROW and Danger Tree Rights on/about (a/o) 909 Parker Town Road, Four Oaks, N.C.

4.- My records (from DEP) does not contain a written notice from DEP with option to designate my land as a “No-Spray Area”, as required via reference (b).

5.- This complaint information, is true and correct, on matters concerning DEP starting construction on my property, prior to my receiving written notice to designate property as a "No-Spray Area"; in ROW and Danger Tree Rights Area. The construction of ROW on my property causes me to be an injured person via property damage.

Sincerely,



Oliver L. Canaday, MSgt, USMC, Ret, CACw/3-brz-stars, PH, Air Medal w/#-7, CAR,
NUCw/2-brz-stars, MUC, RVNSw/sil-star

Cc: Note for: -N. Lorrin Freeman (District Attorney of Wake County Superior Court)
***Info is forwarded to your office for action to recover penalties stated IAW N.C. G.S. 62-310. IAW N.C. G.S. 62-312 - - - "action for recovery of any penalty under this Chapter shall be instituted in Wake County, and shall be instituted in the name of the State of North Carolina"- - -. -[DEP is aware of Commission's 'Order' requirements, as DEP used authority of this 'Order' to condemn my property for ROW and used 'Order' to initiate eminent domain action]. The "Just Compensation" is pending via Case No. 18 SP 591, N.C. Superior Court, Johnston County, Smithfield, N.C. The 'Record' demonstrates: 1)- DEP knowingly starts construction of ROW, not complying with (requirements) of 'Order' and Certificate (CPCN) via Commission; 2)- a visual inspection demonstrates ROW construction o/a 909 Parker Town Road, Four Oaks, N.C.; 3)- enclosure (5) is undisputed evidence that DEP knowingly violated N.C. G.S. 62-310 (Commission 'Order' and CPCN); and, 4)- Warrants enforcement by injunction, and with penalties of sum of \$1,000.00 for each offense (80 parcels of land). IAW reference (c), -[DEP's Application of 14 Jul. 2017, -page 60/179, -Table 5-1, -80 parcels crossed on Route 31. (Must be written notice for each parcel for "No-Spray Area"). -[I used DEPs' number of 80 parcels (each offense) for baseline X \$1,000.00 a day = \$80,000.00 @ day. DEP started ROW construction o/a mid-May 2019 thru day of 8 Sept. 2020, demonstrates a total of o/a 482+ days X \$80,000.00 = penalties prescribed in this Chapter, forfeit and pay sum of o/a (your office can do the math). - -[[Exact date of Construction start must be furnished by DEP, for exact date of starting penalty; -the date of written notice to land owners To Be Determined (TBD) when DEP furnishes written notice to land owners for option of "No-Spray Area"]].

§ 62-73. Complaints against public utilities.

Complaints may be made by the Commission on its own motion or by any person having an interest, either direct or as a representative of any persons having a direct interest in the subject matter of such complaint by petition or complaint in writing setting forth any act or thing done or omitted to be done by any public utility, including any rule, regulation or rate heretofore established or fixed by or for any public utility in violation of any provision of law or of any order or rule of the Commission, or that any rate, service, classification, rule, regulation or practice is unjust and unreasonable. Upon good cause shown and in compliance with the rules of the Commission, the Commission shall also allow any such person authorized to file a complaint, to intervene in any pending proceeding. The Commission, by rule, may prescribe the form of complaints filed under this section, and may in its discretion order two or more complaints dealing with the same subject matter to be joined in one hearing. Unless the Commission shall determine, upon consideration of the complaint or otherwise, and after notice to the complainant and opportunity to be heard, that no reasonable ground exists for an investigation of such complaint, the Commission shall fix a time and place for hearing, after reasonable notice to the complainant and the utility complained of, which notice shall be not less than 10 days before the time set for such hearing. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

ENCL. (1)

Article 15.

Penalties and Actions.

§ 62-310. Public utility violating any provision of Chapter, rules or orders; penalty; enforcement by injunction.

(a) Any public utility which violates any of the provisions of this Chapter or refuses to conform to or obey any rule, order or regulation of the Commission shall, in addition to the other penalties prescribed in this Chapter forfeit and pay a sum up to one thousand dollars (\$1,000) for each offense, to be recovered in an action to be instituted in the Superior Court of Wake County, in the name of the State of North Carolina on the relation of the Utilities Commission; and each day such public utility continues to violate any provision of this Chapter or continues to refuse to obey or perform any rule, order or regulation prescribed by the Commission shall be a separate offense.

(b) If any person or corporation shall furnish water or sewer utility service in violation of any provision of this Chapter applicable to water or sewer utilities, except as to the reasonableness of rates or charges and the discriminatory character thereof, or shall provide such service in violation of any rule, regulation or order of the Commission, the Commission shall apply to a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in the district or set of districts as defined in G.S. 7A-41.1 in which the person or corporation so operates, for the enforcement of any provision of this Chapter or of any rule, regulation or order of the Commission. The court shall have jurisdiction to enforce obedience to this Chapter or to any rule, regulation or order of the Commission by appropriate writ, order or other process restraining such person, corporation, or their representatives from further violation of this Chapter or of any rule, regulation or order of the Commission. (1899, c. 164, s. 23; Rev., s. 1087; C.S., s. 1106; 1933, c. 134, s. 8; c. 307, ss. 36, 37; 1941, c. 97; 1963, c. 1165, s. 1; 1973, c. 1073; 1987 (Reg. Sess., 1988), c. 1037, s. 96.)

Encl. (2)

§ 62-312. Actions to recover penalties.

Except as otherwise provided in this Chapter, an action for the recovery of any penalty under this Chapter shall be instituted in Wake County, and shall be instituted in the name of the State of North Carolina on the relation of the Utilities Commission against the person incurring such penalty; or whenever such action is upon the complaint of any injured person, it shall be instituted in the name of the State of North Carolina on the relation of the Utilities Commission upon the complaint of such injured person against the person incurring such penalty. Such action may be instituted and prosecuted by the Attorney General, the district attorney of the Wake County Superior Court, or the injured person. The procedure in such actions, the right of appeal and the rules regulating appeals shall be the same as provided by law in other civil actions. (Code, s. 1976; 1885, c. 221; 1899, c. 164, ss. 8, 15; Rev., ss. 1092, 1113, 2647; C.S., ss. 1062, 1111, 3415; 1933, c. 134, s. 8; c. 307, s. 30; 1941, c. 97; 1963, c. 1165, s. 1; 1973, c. 47, s. 2.)

Encl. (3)

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1150

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Duke Energy Progress, LLC,)
for a Certificate of Environmental Compatibility)
and Public Convenience and Necessity to)
Construct Approximately 11.5 Miles of New)
230-kV Transmission Line in Johnston County,)
North Carolina)

**ORDER GRANTING CERTIFICATE
OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC
CONVENIENCE AND NECESSITY**

HEARD ON: Monday, October 30, 2017, at 6:30 p.m., in Courtroom No. 4, Johnston County Courthouse, 2017 E. Johnston Street, Smithfield, North Carolina

Tuesday, October 31, 2017, at 10:00 a.m., in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Daniel G. Clodfelter, Presiding; Commissioners Bryan E. Beatty and Lyons Gray

APPEARANCES:

For Duke Energy Progress, LLC:

Lawrence B. Somers, Deputy General Counsel, Duke Energy Corporation,
NCRH 20/Post Office Box 1551, Raleigh, North Carolina 27602-1551

Robert W. Kaylor, Law Office of Robert W. Kaylor, P.A., 353 E. Six Forks
Road, Suite 260, Raleigh, North Carolina 27609

For Intervenor Oliver L. Canaday:

Oliver L. Canaday, 713 Camellia Avenue, Panama City, Florida 32404

For the Using and Consuming Public:

Heather Fennell, Staff Attorney, Public Staff - North Carolina Utilities
Commission, 4325 Mail Service Center, Raleigh, North Carolina 27699-4300

P. 1/17

Encl. (4) P. 1/3

Having carefully reviewed the application, and based upon all the evidence of record and the recommendation of the Public Staff that the CPCN be issued, the Commission finds and concludes that the proposed transmission line satisfies the environmental compatibility and public convenience and necessity requirements of G.S. 62-100 et seq., and, therefore, a certificate of environmental compatibility and public convenience and necessity should be issued for the proposed transmission line construction.

IT IS, THEREFORE, ORDERED as follows:

1. That Mr. Canaday's motion requesting that the Commission issue against DEP a cease and desist order to preclude construction of the proposed transmission line is denied.

2. That pursuant to G.S. 62-102, a certificate of environmental compatibility and public convenience and necessity to construct approximately 11.5 miles of new 230-kV transmission line in Johnston County and Wake County, North Carolina, as described in DEP's application, is hereby issued to DEP, and the same is attached hereto as Appendix A, subject to the conditions set forth herein and therein.

3. That, prior to DEP's construction of the transmission line, the Commission first must receive confirmation from the State Environmental Review Clearinghouse that the Department of Natural and Cultural Resources concurs with DEP's application and that no further review by the State Environmental Review Clearinghouse is required. The Commission reserves the right to reconsider its decision in the event that further review, not known as of the date of this Order, is subsequently required by the State Environmental Review Clearinghouse.

4. That DEP is required to notify the Commission of any proposed shift to the centerline of the approved transmission line route for the Commission's review and determination of whether DEP will be subject to the public notice and hearing requirements set forth in Article 5A of Chapter 62 of the General Statutes.

5. That, prior to DEP's construction of the transmission line, DEP is required to provide written notice to affected landowners of their option to designate their land as a "no-spray area," consistent with DEP's Revised Vegetation Management Plan and Policies.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of January, 2018.

NORTH CAROLINA UTILITIES COMMISSION

Linnetta Threatt

Linnetta Threatt, Deputy Clerk

P. 16/17

ENCL. (4) P. 2/3

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1150

KNOW ALL PERSONS BY THESE PRESENTS THAT

DUKE ENERGY PROGRESS, LLC
410 South Wilmington Street
Raleigh, North Carolina 27601

is hereby issued this

**CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC CONVENIENCE
AND NECESSITY PURSUANT TO G.S. 62-102**

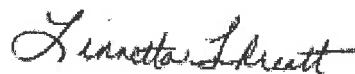
to construct approximately 11.5 miles of new 230-kV Transmission Line, located in Johnston County and a small portion of Wake County, North Carolina, which will originate at the site of a new Cleveland-Matthews Road Substation, located at the southeast corner of Polenta Road and Matthews Road, and which will terminate at the tap point along the existing Erwin-Selma 230-kV Transmission Line

subject to receipt of all federal and state permits as required by existing and future regulations prior to beginning construction and further **subject to all other orders**, rules, regulations, and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of January, 2018.

NORTH CAROLINA UTILITIES COMMISSION



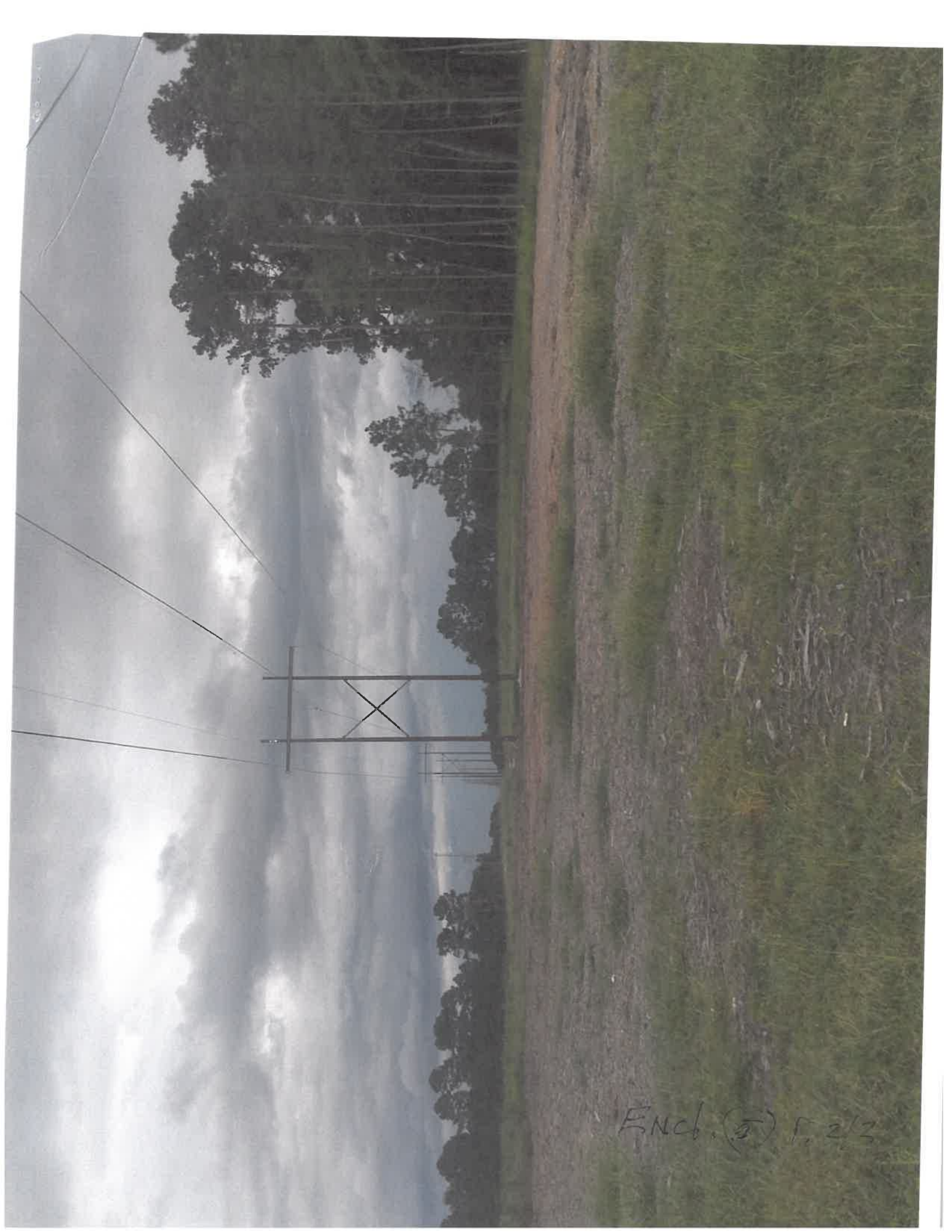
Linnetta Threatt, Deputy Clerk

Appendix A.
P. 12/17

ENCL. (4) p. 3/3



ENCLOSURE (5) P. 1/2



ENCLOSURE (5) P. 2/3