

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-7, SUB 1270

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rhett Tabor, 2028 Fairview Road, Raleigh,)	
North Carolina 27608,)	
Complainant)	ORDER GRANTING MOTION TO
)	DISMISS, IN PART, DENYING
v.)	MOTION TO DISMISS, IN PART,
)	AND SCHEDULING HEARING
Duke Energy Carolinas, LLC,)	
Defendant)	

BY THE CHAIR: On June 13, 2022, Rhett Tabor (Complainant) filed a complaint against Duke Energy Carolinas, LLC (Duke or Defendant), in the above-captioned docket, alleging trespass, taking of property, and unethical and unprofessional conduct. On June 15, 2022, the Commission issued its Order Serving Complaint on Defendant.

Complainant alleges that his family owns a small piece of land in Naples, North Carolina, that has been the subject of numerous takings by Defendant, the North Carolina Department of Transportation (NCDOT), and other utilities. According to Complainant, NCDOT contacted his family in 2019, informing them that Defendant wanted to run an additional electric transmission line across his property. Complainant requested that Duke site the transmission line and two poles away from Complainant's property, on the opposite side of the highway where transmission lines already existed. Complainant alleges that Duke indicated that the transmission line could not be located on the opposite side of the highway. Complainant contends that Defendant and NCDOT trespassed on Complainant's property and ran the disputed transmission lines. Complainant further states that neither Defendant nor NCDOT have an easement. Complainant alleges that Defendant took the property without compensation while falsely representing that it would contact Complainant to resolve the issue.

Complainant states that after the transmission line was placed on his property, he spoke with an engineer employed by Defendant who assured Complainant that Duke would correct the problem and have the transmission line and poles relocated. Complainant alleges that Defendant later proposed moving one of the two poles on his property. However, Complainant was not satisfied with this proposal. Complainant alleges that Defendant informed him that Duke would follow up with Complainant within two weeks. According to Complainant, six weeks passed, and Defendant eventually stopped accepting or returning his calls and emails. Complainant states that he was later informed that Defendant would move the two poles to the opposite side of the highway if

Complainant paid Defendant \$100,000 to do so. Complainant seeks an order requiring Duke to move the two transmission line poles to the opposite side of the highway.

On June 24, 2022, Defendant filed its Motion to Dismiss the Complaint. The Commission served Defendant's Motion to Dismiss on Complainant on June 30, 2022. On July 26, 2022, the Commission re-served Defendant's Motion to Dismiss on Complainant.

In its Motion to Dismiss, Duke contends that the issue complained of is essentially a property dispute over which the Commission has no jurisdiction. Defendant argues that according to *Gerringer v. Duke Energy Carolinas, LLC*, Docket No. E-7, Sub 907, the Commission has no jurisdiction over right-of-way agreements. Defendant further states that in *Root v. Duke Energy Carolinas, LLC*, Docket No. E-7, Sub 865, the Commission held that there was no indication that the Commission had jurisdiction over private agreements between a utility and third parties such as right-of-way agreements. In addition, Defendant cites to *Hardin v. Progress Energy, Inc.*, Docket No. E-2, Sub 984, for the proposition that the Commission lacks subject matter jurisdiction over complaints made against public utilities that raise property rights issues.

Defendant attached two exhibits to its motion to dismiss. Defendant's first exhibit establishes that NCDOT filed a Complaint and Declaration of Taking for condemnation of Complainant's property on July 16, 2019. Defendant asserts that this filing by NCDOT vested title in the property being condemned. Defendant alleges that the transmission lines and poles complained of by Complainant are on an easement provided to Defendant by NCDOT. Defendant asserts that its second exhibit establishes that the poles and lines installed by Defendant are located within the NCDOT easement. Accordingly, Defendant moves the Commission to dismiss the Complaint on the grounds that Complainant has failed to state a claim upon which relief can be granted.

On August 1, 2022, Complainant made an oral motion for an extension of time to respond to Defendant's Motion to Dismiss, which was granted by the Commission on August 2, 2022. On August 9, 2022, Complainant filed his response. In his response, Complainant alleges that he was deceived into believing that Duke was proceeding in good faith. Complainant asserts that Duke originally stated that it could not place the transmission line poles on the opposite side of the highway but later offered to move the poles to that exact location if Complainant paid Duke \$100,000.

DISCUSSION AND CONCLUSIONS

This proceeding involves allegations of trespass and taking of property, as well as unreasonable conduct by a public utility. The proper forum for considering arbitrary or unreasonable acts by a utility may be either this Commission or the General Court of Justice, depending upon the nature of the complaint and the relief sought. Order Allowing Duke's Motion to Dismiss for Lack of Jurisdiction, *Martin v. Duke Power*, No. E-7, Subs 729 and 732, at 3 (N.C.U.C. Feb. 2, 2004). The Chair has, therefore, carefully examined

the complaint in this docket to decide Defendant's Motion to Dismiss for failure to state a claim upon which relief can be granted.

The Commission has general power to supervise public utilities and address complaints concerning rates, tariffs, billing, or quality of service. However, the Commission lacks jurisdiction over complaints made against public utilities that raise issues as to property rights. Order Denying Motions to Dismiss, Denying Motions for Judgment on Pleadings, and Scheduling Hearing, *Hardin v. Progress Energy Carolinas, Inc.*, No. E-2, Sub 984 (N.C.U.C. Mar. 21, 2011). In the case at hand, Complainant disputes the easement provided to Duke by NCDOT and alleges that Duke trespassed and took his property when it placed a transmission line and two poles there. Complainant requests that the Commission order Duke to remove the poles from his property and relocate them to the opposite side of the highway. To grant the relief sought, the Commission would have to determine the validity of the easement in question. The Chair agrees with Duke that these are not claims over which the Commission has jurisdiction, and the Commission cannot grant the relief sought.

The question then becomes whether Complainant asserted any other claims over which the Commission has jurisdiction. Reading the pleadings in the light most favorable to Complainant, Complainant has asserted additional claims that Defendant acted in an unjust or unreasonable manner when it assured Complainant that Duke would have the transmission line and poles relocated, failed to follow up with Complainant in a timely manner, and later provided contradicting information to Complainant. Jurisdiction to consider such claims vests in the Commission pursuant to N.C. Gen. Stat. § 62-73.

The Chair, therefore, concludes that Defendant's Motion to Dismiss should be granted regarding Complainant's property claims, including allegations related to the validity of Duke's easement, trespass, and taking of property. The Commission takes no position on Complainant's property rights; Complainant may pursue such claims in the General Court of Justice if he chooses to do so.

The Chair denies the Motion to Dismiss regarding allegations that Duke acted in an unjust or unreasonable manner in its communication with Complainant to resolve the dispute. The Chair will schedule an evidentiary hearing to allow Complainant to proceed on his claims that Duke acted in an unreasonable manner when it assured Complainant that Duke would have the transmission line and poles relocated, failed to follow up with Complainant in a timely manner, and later provided contradicting information to Complainant.

IT IS, THEREFORE, ORDERED as follows:

1. That Defendant's Motion to Dismiss is granted, in part, regarding Complainant's real property claims;

2. That Defendant's Motion to Dismiss is denied, in part, regarding whether Defendant acted in an unjust and unreasonable manner in its dealings and communication with Complainant;

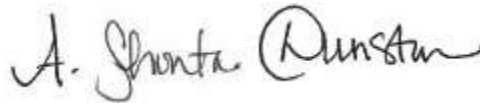
3. That an evidentiary hearing shall be, and hereby is, scheduled for Thursday, November 10, 2022, at 2:00 p.m., Dobbs Building, Hearing Room 2115, 430 North Salisbury Street, Raleigh, North Carolina; and

4. That this Order shall be served on Complainant by United States certified mail, return receipt requested, and on Defendant by electronic mail.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of October, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, reading "A. Shonta Dunston". The signature is fluid and cursive, with the first name "A." and last name "Dunston" clearly legible.

A. Shonta Dunston, Chief Clerk