

NORTH CAROLINA UTILITIES COMMISSION

NOTICE TO PARTIES

Docket No. E-22, SUB 602

Exceptions Due on or Before February 24, 2023

Parties to the above proceeding may file exceptions to the report and Recommended Order hereto attached on or before the day above shown as provided in N.C. Gen. Stat. § 62-78. Exceptions, if any, must be filed with the North Carolina Utilities Commission, Raleigh, North Carolina, and a copy thereof mailed or delivered to each party of record, or to the attorney for such party, as shown by appearances noted. Each exception must be numbered and clearly and specifically stated in one paragraph without argument. The grounds for each exception must be stated in one or more paragraphs, immediately following the statement of the exception, and may include any argument, explanation, or citations the party filing same desires to make. In the event exceptions are filed, as herein provided, a time will be fixed for oral argument before the Commission upon the exceptions so filed, and due notice given to all parties of the time so fixed; provided, oral argument will be deemed waived unless written request is made therefore at the time exceptions are filed. If exceptions are not filed, as herein provided, the attached report and recommended decision will become final and effective on February 25, 2023, unless the Commission, upon its own initiative, with notice to parties of record modifies or changes said Order or decision or postpones the effective date thereof.

The report and Recommended Order attached shall be construed as tentative only until the same becomes final in the manner hereinabove set out.

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-22, SUB 602

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Donald H. Hills, 903 Faulcon Road, Littleton,)	
North Carolina 27850,)	
Complainant)	
)	
v.)	RECOMMENDED ORDER
)	DISMISSING COMPLAINT
Virginia Electric & Power Company, d/b/a,)	
Dominion North Carolina Power,)	
Defendant)	

HEARD: Friday, November 18, 2022, at 10:00 a.m., in Courtroom 1, 357 Ferrell Lane,
Halifax, North Carolina 27389

BEFORE: Hearing Examiner John Gajda

APPEARANCES:

For Complainant:

Donald H. Hills (Pro Se), 903 Faulcon Road, Littleton, North Carolina 27850

For Virginia Electric and Power Company d/b/a Dominion Energy North Carolina:

Kristin M. Athens, McGuireWoods LLP, 501 Fayetteville Street, Suite 500,
Raleigh, North Carolina 27601

BY THE HEARING EXAMINER: On July 21, 2021, Donald H. Hills (Complainant) filed a complaint against Virginia Electric and Power Company d/b/a Dominion Energy North Carolina (the Company or Defendant) with the Commission relating to the construction of certain electric distribution facilities.

The formal complaint was served on Defendant by Commission order issued July 22, 2021.

On August 2, 2021, Defendant filed an Answer and Motion to Dismiss, which was served on Complainant by Commission order issued August 6, 2021.

Complainant filed a request for hearing on August 16, 2021.

On August 19, 2022, the Commission issued an Order Scheduling Hearing. The hearing was scheduled for and conducted on Friday, November 18, 2022, at 10:00 a.m., in the Halifax County Courthouse. Complainant testified on his own behalf, and the Company presented the testimony of Seth Wright, a Project Designer III with Dominion Energy.

Based upon a consideration of the pleadings, testimony, and exhibits received into evidence at the hearing, and the record as a whole, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Defendant is a public utility providing electric utility service to customers in North Carolina and is subject to the jurisdiction of the Commission.
2. Complainant resides at 903 Faulcon Road, Littleton, North Carolina 27850, where electric service is provided by the Company.
3. On January 28, 2021, Complainant contacted Defendant requesting that Defendant move certain electric distribution facilities on Complainant's property. On that same day, Defendant initiated a work request in Complainant's name and issued a work order to contact Complainant regarding movement of the subject electric distribution facilities.
4. On January 29, 2021, Company witness Wright met with Complainant at Complainant's residence to discuss movement of Defendant's electric distribution facilities per Complainant's request. Defendant was made aware during this meeting that Complainant had begun construction of a building within Defendant's existing easement and that Complainant's construction was causing Defendant's electric distribution facilities to violate National Electric Safety Code (NESC) clearance.
5. On February 3, 2021, Defendant completed the project design for the work order established on Complainant's behalf.
6. On February 8, 2021, Defendant calculated the costs to complete Complainant's work order and provided a construction payment invoice in the amount of \$5,266.79 to Complainant.
7. On February 9, 2021, Complainant paid the construction payment invoice amount of \$5,266.79 in full.
8. On February 26, 2021, Defendant performed the work to relocate the electric distribution facilities so Complainant could construct his new building.

9. Also on February 26, 2021, while completing work to relocate lines so that Complainant could construct his new building, Defendant performed additional betterment work on-site at Defendant's cost (i.e., at no cost to Complainant).

10. On July 21, 2021, Complainant filed a formal complaint with the Commission against Defendant alleging that he was overcharged by Defendant for the movement of Defendant's electric distribution facilities and requesting that Defendant refund him \$3,766.79.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The evidence in support of these findings of fact is found in the testimony of Complainant and the testimony of Company witness Wright, as well as other matters of record in this proceeding.

It is uncontested that the Defendant is a public utility subject to the jurisdiction of the Commission. It is also uncontested that Complainant resides at 903 Faulcon Road, Littleton, North Carolina 27850.

Section 62-75 of the North Carolina General Statutes, in relevant part, provides that the burden of proof in complaint proceedings is upon the complainant to show that the action of the utility with regard to its rates, services, classification, rules, regulations, or practices is unjust and unreasonable. The complainant may meet this burden of proof with the submission of evidence, including testimony and exhibits that would be admissible in a court of law, in support of the complaint at an evidentiary hearing.

During the hearing on direct examination, Complainant explained that he contacted Defendant for the purpose of resolving a "conflict" between Defendant's electric distribution facilities and his already "under-construction building" in late January 2021. Tr., 20. He further explained that Defendant sent Company witness Wright to his address to evaluate the work to be performed and to provide a "preliminary estimate" for such work. *Id.* Complainant testified that witness Wright provided him with an invoice prior to any work being performed and that he and witness Wright specifically "had discussions" regarding the cost. *Id.* at 21. Although Complainant stated that he was "not happy" with the cost for the project, he testified that he did "pay the bill" so as to not "delay construction" prior to any work having been completed. *Id.*

Regarding the quality of the work performed, Complainant testified that Defendant completed the work "very fast, which [he was] happy for." *Id.* at 25. He further testified that he believed Defendant "could have used less guy wires on the pole at [his] house" and that "the pole [Defendant] set" "is not level." *Id.* However, Complainant stated that he did not want Defendant "to come and do anything with that pole" and that the pole is "just fine," but that "for paying as much as [he] did [he] could have probably gotten a little bit better service than that." *Id.* at 26. Complainant concluded his direct testimony by stating that "as far as [Defendant's] time showing up and the time it took [Defendant] to do the job, [it was] top shelf, professional." *Id.*

During his direct examination, Company witness Wright explained in detail the origination of the work to be performed on Complainant's property, the work actually performed, and the work charged to Complainant. He began his testimony by explaining the conditions of Complainant's property and Defendant's electric distribution facilities prior to any work being completed. *Id.* at 29-30. He testified that Complainant's building was being constructed in Defendant's right-of-way and that such construction was creating a safety concern. *Id.* at 30.

Witness Wright then provided further detail on the work performed. Referring to DENC Wright Direct Exhibit 1, he explained that Complainant was not charged at all for work at Work Location 1, marked as WL1 on the left side of the vicinity map, as this was "betterment" work performed by the Company to bring older electric distribution facilities up to current NESC and Company standards. *Id.* at 34-35.

Witness Wright further explained that Complainant was charged for all work at Work Location 2, marked as WL2 near the center of the vicinity map, since all work there was necessary to accommodate Complainant's structure. *Id.* at 35-36.

Witness Wright additionally explained that Complainant was charged for part of the work at Work Location 3, marked as WL3 on the right side of the vicinity map — specifically the work required in conjunction with the pole installation at Work Location 2. Witness Wright explained that the balance of the work performed at Work Location 3 was further "betterment" work, similar in nature to that performed at Work Location 1. Of the costs incurred at Work Location 3, only the costs required in conjunction with the pole installation at Work Location 2 were charged to Complainant. *Id.* at 33-38.

Regarding the quality of the work, witness Wright explained that the pole Defendant had to set at Work Location 2 was designed to create a 13-degree angle, specifically so that Complainant could continue construction of his building. *Id.* at 35. In response to questions from the Hearing Examiner, he testified that guy wires are necessary where a line has a current angle larger than a certain degree. *Id.* at 47. He further testified that all primary and secondary conductors constructed pursuant to the work order meet or exceed NESC and Company standards for overhead clearance. *Id.*

Witness Wright also explained that some, but not all, work was completed "hot," or with wires energized, because other customers would have been without electric service if the work was completed with the circuit de-energized. *Id.* at 38-40. In response to questions from the Hearing Examiner, he testified that it was the Company's policy to not perform any work de-energized, where possible, to keep customers' power on. *Id.* at 48.

In total, witness Wright testified that the cost of work performed was \$8,024.60, but that Complainant was only charged \$5,266.79, specifically for the work required for Complainant to finish construction of his building. *Id.* at 41. Witness Wright testified that all work was performed in compliance with all applicable laws, regulations, and industry standards. *Id.* at 42.

After considering the law, Commission rules, testimony of the witnesses, and exhibits submitted to the record, the Hearing Examiner finds and concludes that Complainant has failed to meet his burden of proof. Specifically, Complainant has failed to show that the work performed, and costs charged, by Defendant were unreasonable and inappropriate, and that a refund is therefore necessary.

Testimony provided by witness Wright shows that Complainant was only charged for work specifically completed for the purpose of allowing Complainant to finish constructing his building. Furthermore, the testimony of both Complainant and witness Wright illustrates that Complainant was made aware of all work needing to be completed, and the charges for such work, prior to any work being performed and any payment being required.

Complainant has also not submitted any evidence that the work performed by Defendant was not in compliance with any applicable laws, regulations, or industry standards. Witness Wright testified that the work performed was reasonable, necessary, and in compliance with the NESC as well as Company standards and policies.

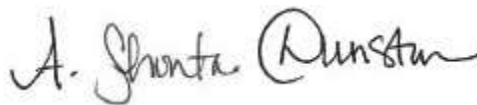
In conclusion, and after careful consideration of the evidence presented and the entire record in this proceeding, the Hearing Examiner finds and concludes that Complainant has failed to prove by the greater weight of evidence his claim that Defendant owes him a refund, and that therefore, his complaint should be dismissed with prejudice.

IT IS, THEREFORE, ORDERED that the complaint filed in this docket by Donald H. Hills is dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of February, 2023.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "A. Shonta Dunston". The signature is fluid and cursive, with the first name "A." and last name "Dunston" clearly distinguishable.

A. Shonta Dunston, Chief Clerk