

**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 RE-SERVING
v.)	MOTION TO DISMISS
)	
Duke Energy Carolinas, LLC,)	
Defendant)	

BY THE COMMISSION: Notice is hereby given that on June 24, 2022, the attached Motion to Dismiss has been filed with the Commission by Duke Energy Carolinas, LLC (Defendant).

The Commission has reviewed Defendant's filing and finds that good cause exists to serve it on Complainant for a response, if any.

The Commission notes that an order was issued on June 30, 2022, serving Defendant's Motion to Dismiss upon Complainant by United States certified mail, return receipt requested, and providing Complainant an opportunity to file a response, if any. However, the order apparently was not received by Complainant as of the date of this Order and confirmation of delivery by the United States Post Office is unavailable. The Commission therefore finds good cause to issue this Order re-serving Defendant's Motion to Dismiss and allowing Complainant an extension of time to file a response, if any.

Complainant shall have until August 5, 2022, to make a filing in this matter. If no response is filed, the Commission will take action on Defendant's motion without protest from Complainant.

IT IS, THEREFORE, ORDERED as follows:

1. That Defendant's Motion to Dismiss filed with the Commission on June 24, 2022, is hereby re-served on Complainant. Complainant shall have until August 5, 2022, to file a response, if any, with the Commission.

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

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of July, 2022.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Joann R. Snyder". The signature is fluid and cursive, with the first name "Joann" being more prominent.

Joann R. Snyder, Deputy Clerk

LAW OFFICE OF
ROBERT W. KAYLOR, P.A.
353 EAST SIX FORKS ROAD, SUITE 260
RALEIGH, NORTH CAROLINA 27609
(919) 828-5250
FACSIMILE (919) 828-5240

June 24, 2022

VIA ELECTRONIC FILING

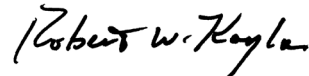
Ms. A. Shonta Dunston
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4300

**RE: Duke Energy Carolinas, LLC Motion to Dismiss Complaint
Docket No. E-7, Sub 1270**

Dear Ms. Dunston:

Enclosed for filing in the above-referenced docket, please find Duke Energy Carolinas, LLC's Motion to Dismiss Complaint.

Sincerely,



Robert W. Kaylor, P.A.

Enclosures

cc: Rhett Tabor

OFFICIAL COPY

JUN 24 2022

**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)	DUKE ENERGY CAROLINAS,
)	LLC’S MOTION TO DISMISS
)	COMPLAINT
v.)	
)	
Duke Energy Carolinas, LLC)	
)	
Respondent)	

NOW COMES Duke Energy Carolinas, LLC (hereinafter “Duke Energy Carolinas,” “DEC” or the “Company”) and respectfully moves the North Carolina Utilities Commission (“NCUC” or the “Commission”) to dismiss the Complaint of Rhett Tabor (“Complainant”) for the reasons as set forth below:

1. DEC moves the Commission to dismiss the Complaint on the grounds that Complainant has failed to state a claim upon which relief can be granted.

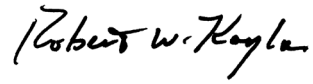
2. It is clear from the Complaint that Complainant’s issue is a property matter and not a complaint about DEC’s rates, tariffs, billing, or quality of service. The Commission ruled in *Gerringer v. Duke Energy Carolinas, LLC*, Docket No. E-7, Sub 907, that it had no jurisdiction over right-of-way agreements, and in *Root v. Duke Energy Carolinas, LLC*, Docket No. E-7, Sub 865, the Commission held that there was no indication that the Commission has jurisdiction over private agreements between a utility

and third parties such as right-of-way agreements. Also, in *Hardin v. Progress Energy, Inc.*, Docket No. E-2, Sub 984, the Commission ruled that it lacked subject matter jurisdiction over complaints made against public utilities that raise issues as to property rights.

3. Complainant alleges that “Duke Power and NCDOT trespassed on our property and ran the disputed power lines. Neither Duke nor NCDOT have an easement nor have paid us for this trespass.” Exhibit "A" attached hereto establishes that the North Carolina Department of Transportation (“NCDOT”) filed a Complaint and Declaration of Taking for condemnation under G.S. § 136-103 *et seq.* in Henderson County on July 16, 2019. Under G.S. § 136-104, the filing by NCDOT vested title in the area being condemned and is the property described by Complainant in this Complaint. Accordingly, DEC’s power lines and poles complained of by Complainant are not on property owned by Complainant but are on an easement provided to DEC by NCDOT for relocating DEC facilities due to NCDOT’s widening the Asheville Highway, also known as Interstate 26, in Henderson, North Carolina. The relocation work commenced on February 25, 2020. Exhibit “B” attached hereto establishes that the poles and lines installed by DEC are located on the NCDOT easement and not on any property owned by Complainant.

WHEREFORE, for the reasons set forth above, Respondent Duke Energy Carolinas, LLC moves the Commission to dismiss the Complaint with prejudice as it does not set forth a claim upon which relief can be granted, and requests such other relief as the Commission deems just, equitable, and proper.

Respectfully submitted, this the 24th day of June, 2022.



Robert W. Kaylor
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Raleigh, NC 27609
919.828.5250
bkaylor@rwkaylorlaw.com
State Bar No. 6237

ATTORNEY FOR RESPONDENT,
DUKE ENERGY CAROLINAS, LLC

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CIVIL ACTION
19-CVS-1258

DEPARTMENT OF TRANSPORTATION,
Plaintiff,

FILED

COMPLAINT

v.

2019 JUL 16 A 8:01
WILLIAM RHETT TABER, III and ANDREW PATTON TABER,
as Co-Trustees of the Trust under the Will of Anne E. Taber; and
WILLIAM RHETT TABER, JR.,
Defendants.
HENDERSON COUNTY, C.S.C.

BY JD

Now comes the Department of Transportation, plaintiff herein, and for its cause of action says and alleges:

1.

That the Department of Transportation is an agency of the State of North Carolina with its principal office in Raleigh, North Carolina; and that it possesses the powers, duties and authority, including the power of eminent domain, vested in it by the General Assembly of North Carolina.

2.

That pursuant to the authority vested in the plaintiff under the provisions of Chapter 136 of the General Statutes, and pursuant to a resolution of the Board of Transportation duly passed, it is necessary to condemn and appropriate certain property described in Exhibit "B", attached hereto, and made a part hereof, for public use in the construction of that certain highway project described in Exhibit "C" attached hereto and made a part hereof.

3.

That the plaintiff and the defendants have been unable to agree as to the purchase price of the property herein appropriated.

4.

That the property which is the subject of this action, the interest or estate acquired, and the area appropriated are all described in said Exhibit "B".

5.

That the plaintiff is informed and believes, and alleges upon information and belief, that those persons whose names and addresses are set forth in Exhibit "A", attached hereto and made a part hereof, are, insofar as the same can, by reasonable diligence, be ascertained, the only persons who may have or who claim to have an interest or estate in the property described in said Exhibit "B", and that said named persons are under no legal disability except as may be stated in said Exhibit "A".

6.

That the plaintiff is informed and believes, and alleges upon information and belief that said property is subject only to such liens and encumbrances as are set forth in Exhibit "A", attached hereto.

7.

That the plaintiff be granted a trial by jury on the issue of just compensation.

WHEREFORE, plaintiff prays that just compensation for the appropriation herein set forth be determined according to the provisions and procedures contained in Article 9 of Chapter 136 of the General Statutes and for such other relief as to the Court may seem just and proper.

JOSHUA H. STEIN
Attorney General

/s/ E. BURKE HAYWOOD
Special Deputy Attorney General

/s/ LISA B. FINKELSTEIN
Assistant Attorney General
North Carolina Department of Justice
1505 Mail Service Center
Raleigh, North Carolina 27699-1505
Telephone No. (919) 707-4480

Project No.
34232.2.5

Parcel No.
038

I.D. No.
I-4400C

A.G. FILE NO. TR-19-00357

RECEIVED
JUL 26 2019

RIGHT OF WAY BRANCH
DIVISION

OFFICIAL COPY

JUN 24 2022

906955



This document presented and filed:
07/15/2019 09:34:31 AM

WILLIAM LEE KING, Henderson COUNTY, NC

Prepared By/Return To: Lisa B. Finkelstein, Assistant Attorney General
N.C. Department of Transportation, Attorney General's Office
1505 Mail Service Center, Raleigh, N.C. 27699-1505 ←

NORTH CAROLINA
HENDERSON COUNTY

DEPARTMENT OF TRANSPORTATION,
Plaintiff,

v.

MEMORANDUM OF ACTION
(G.S. 136-104)

WILLIAM RHETT TABER, III and
ANDREW PATTON TABER, as Co-Trustees
of the Trust under the Will of Anne F. Taber;
and WILLIAM RHETT TABER, JR.
Defendants.

Take Notice:

1. That on or about the 15th day of July, 2019, the Department of Transportation, under the provisions of Article 9, Chapter 136 of the General Statutes, instituted the above-captioned civil action in the Superior Court of Henderson County by the filing of a Complaint and Declaration of Taking and by the issuance of summons; that pursuant to G.S. 136-104, the interest and area specified in said Complaint and Declaration of Taking vested in the Department of Transportation on said date.

2. That the above-named defendants are the persons who the Department is informed and believes may have or claim to have an interest in said lands.

Project No.: 34232.2.5
Parcel No.: 038
I.D. No.: I-4400C

A.G. FILE NO. TR-19-00357

OFFICIAL COPY

JUN 24 2022

3. That the property which is the subject of this action is described as follows:

Those certain lands lying and being in the Hoopers Creek Township, Henderson County, North Carolina, and being more particularly described as follows:

Being that land described in a Warranty Deed dated October 14, 2004 to *William Rhett Taber, III and Andrew Patton Taber, as Co-Trustees of the Trust under the Will of Anne F. Taber, deceased*, describing approximately 9.15 acres, and recorded November 8, 2004 in Book 1205, Page 131, Henderson County Registry. The property description contained in said deed is hereby incorporated by reference.

LESS AND EXCEPTING any and all out conveyances of record, if any.

Also, being that vacant land identified as Tax PIN No. 9651-57-5746 (REID No. 700725) containing approximately 9.810 acres as is shown in the Henderson County Tax Office.

More specifically, the tract of land affected by the taking in this condemnation action is a portion of the land identified as Tax PIN No. 9651-57-5746 and is an 8.00 acre piece of land situate on the north side of US 25 (Asheville Highway) to the southeast of its intersection with I-26 and just north of its intersection with Naples Road at the southern boundary of Fletcher, NC.

4. That the estate or interest acquired in or across said lands taken are described in Exhibit "B" of said Complaint and Declaration of Taking.

This the 11th day of July, 2019.

JOSHUA H. STEIN
Attorney General



E. Burke Haywood
Special Deputy Attorney General

Project No.: 34232.2.5
Parcel No.: 038
I.D. No.: I-4400C

A.G. FILE NO. TR-19-00357



USP: NAPLES RET 1205 65201205
 USP: NAPLES RET 4370
 USP: 158 CO RD. 1533 HENDERSONVILLE, NC 28791
 USP: NAPLES OCB
 USP:



Safety Reminders / Adverse Conditions

7: ***GIS PRIORITY POSTING***
 7: PHASING HAS NOT BEEN VERIFIED
 7: VERIFY PHASING BEFORE ENERGIZING



Work Zone General Comments:

FLAGGING REQUIRED DUE TO LANE CLOSURE

REMEMBER: Work zone area conditions may have changed for this job! Everyone is responsible for verifying the above safety information is correct prior to any work being performed each day.

*** ATTENTION ***
 THIS JOB CONTAINS GIS PRIORITY POSTINGS
 FOLLOW GIS PRIORITY POSTING PROCESSES FOR FIELD TECHS.
 RADIO THE DISPATCHER IMMEDIATELY AFTER NEW INSTALLATION,
 RELOCATION OR REMOVAL OF REGULATORS, RECLOSERS, CAPACITORS,
 SECTIONALIZERS OR ANY OTHER 3Ø SWITCHING DEVICES. CHANGE IN WIRE SIZE,
 PHASING OR LOAD TRANSFERS. UNDERGROUND PERMANENT LOAD
 SWITCHING.
 INSTALLATION, REMOVAL, ENERGIZING, DE-ENERGIZING OF BACKBONE
 FEEDERS.
 COMPLETION OF ANY SECTIONALIZATION PROJECT.
 ***PHASING HAS NOT BEEN VERIFIED ***

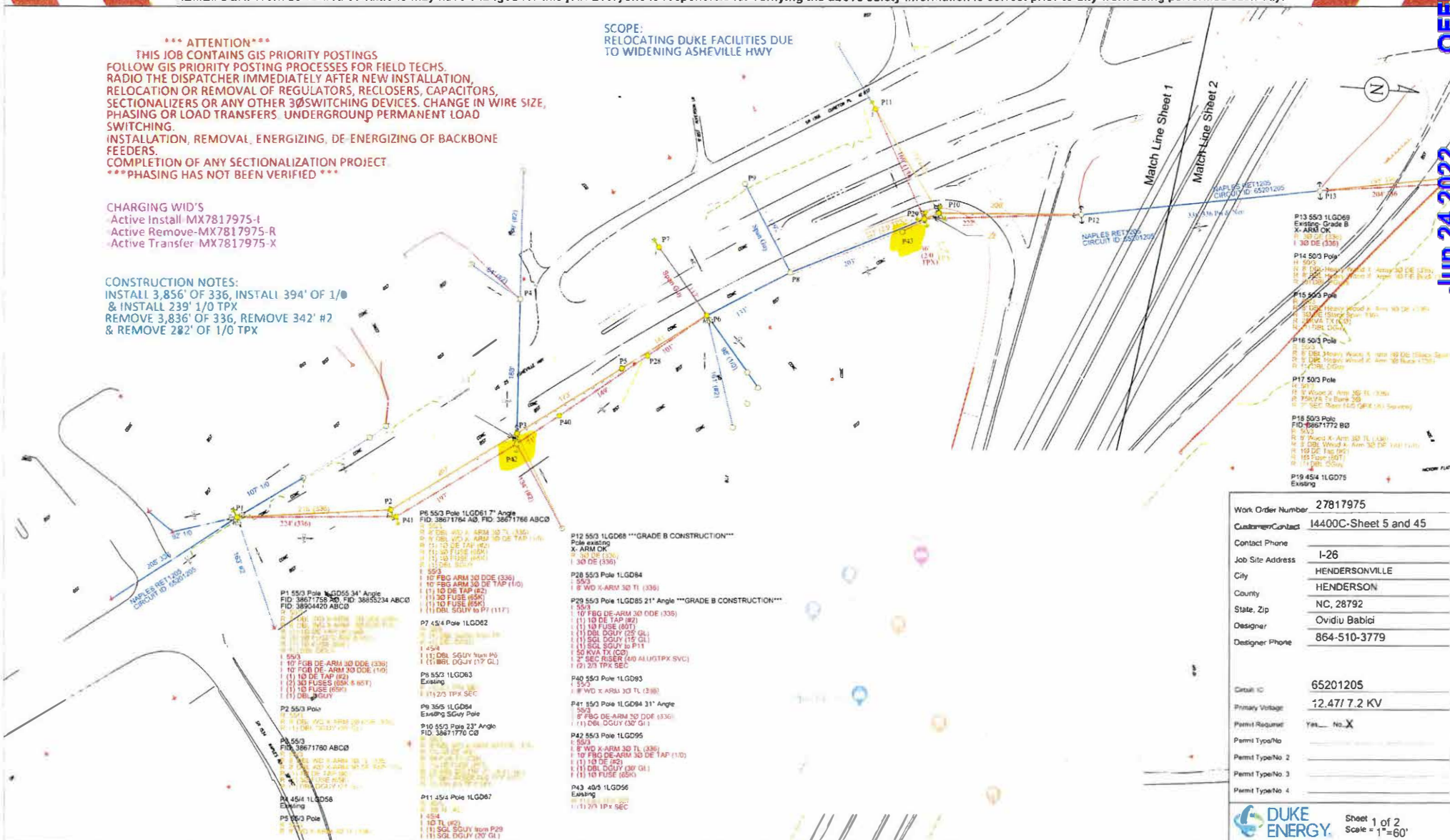
CHARGING WID'S

Active Install-MX7817975-1
 Active Remove-MX7817975-R
 Active Transfer-MX7817975-X

CONSTRUCTION NOTES:

INSTALL 3,856' OF 336, INSTALL 394' OF 1/0
 & INSTALL 239' 1/0 TPX
 REMOVE 3,836' OF 336, REMOVE 342' #2
 & REMOVE 282' OF 1/0 TPX

SCOPE:
 RELOCATING DUKE FACILITIES DUE
 TO WIDENING ASHEVILLE HWY



Work Order Number 27817975
 Customer/Contract 14400C-Sheet 5 and 45
 Contact Phone I-26
 Job Site Address HENDERSONVILLE
 City HENDERSONVILLE
 County HENDERSON
 State, Zip NC, 28792
 Designer Ovidiu Babici
 Designer Phone 864-510-3779

Circuit ID 65201205
 Primary Voltage 12.471 7.2 KV
 Permit Request Yes ☒ No ☐
 Permit TypeNo 1
 Permit TypeNo 2
 Permit TypeNo 3
 Permit TypeNo 4

DUKE ENERGY
 Sheet 1 of 2
 Scale = 1"=60'

OFFICIAL COPY
 Jun 24 2022

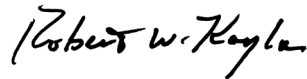
Docket No. E-7, Sub 1270

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Carolinas, LLC's Motion to Dismiss Complaint has been served by hand delivery or by depositing a copy in the United States Mail, first class postage prepaid, properly addressed to:

Rhett Tabor
2028 Fairview Road
Raleigh, NC 27608

This the 24th day of June, 2022.



Robert W. Kaylor
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353 E. Six Forks Road, Suite 260
Raleigh, NC 27609
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bkaylor@rwkaylorlaw.com
State Bar No. 6237

ATTORNEY FOR RESPONDENT,
DUKE ENERGY CAROLINAS, LLC