

January 19, 2023

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Ms. Antonia Dunston, Interim Chief Clerk
North Carolina Utilities Commission
Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27603

Re: *DENC Proposed Order Dismissing Complaint*
Docket No. E-22, Sub 602

Dear Ms. Dunston:

On behalf of Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina, enclosed for filing in the above-referenced proceeding please find the *Proposed Order Dismissing Complaint*.

Please do not hesitate to contact me should you have any questions. Thank you for your assistance with this matter.

Very truly yours,

/s/ Kristin M. Athens

KMA/tll

Enclosures

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-22, SUB 602

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

Complaint of Donald H. Hills, 903)
Faulcon Road, Littleton, North Carolina)
27850)

Complainant)

v.)

Virginia Electric and Power Company)
d/b/a Dominion Energy North Carolina)
Defendant)

**PROPOSED ORDER
DISMISSING COMPLAINT**

HEARD: 10:00 a.m., Halifax County Courthouse, Courtroom 1, 357 Ferrell
Lane, Halifax, North Carolina 27839

BEFORE: Hearing Examiner John Gadja

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 COMMISSION: 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 North Carolina Utilities Commission

(“Commission”) relating to the construction of certain electric distribution facilities (“Complaint”).

The formal Complaint was served on the Defendant by Commission Order issued July 22, 2021.

On August 2, 2021, the 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, 357 Ferrell Lane, Courtroom 1, Halifax, North Carolina 27312.

Based upon consideration of the pleadings, testimony, and exhibits received into evidence at the hearing, and the record as a whole, the Commission states as follows:

FINDINGS OF FACT AND CONCLUSIONS

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, the 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 Seth 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 legally held existing easement, and that Complainant's construction was causing Defendant's electric distribution facilities to violate National Electric Safety Code clearance requirements and Company policy.

5. On February 3, 2021, the Defendant completed the project design for the work order established on Complainant's behalf.

6. On February 8, 2021, the Defendant calculated the costs to complete Complainant's workorder 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, the Defendant performed the work to relocate the subject electric distribution facilities so Complainant could construct his new building. This work was completed in a timely and sufficient manner, adhered to all applicable laws, regulations, and industry standards, and was also reasonable and appropriate in response to Complainant's January 28, 2021, request. Additionally, the \$5,266.79 cost for the work was reasonable and appropriate, as well as reasonably and appropriately charged to, and paid for by, Complainant.

9. Also on February 26, 2021, while completing work to relocate lines so Complainant could construct his new building, Defendant performed additional

betterment work on-site at Defendant's cost (*i.e.*, at no cost to Complainant).

Defendant's performance of this additional betterment work was reasonable and appropriate. Furthermore, this additional betterment work was reasonably and appropriately not charged 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 Defendant refund him \$3,766.79.

11. Complainant has failed to meet his burden of proof that any refund is necessary.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The evidence in support of these findings is found in the testimony of Complainant and the testimony of Company Witness Wright at hearing, 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.

N.C. Gen. Stat. § 62-75, in relevant part, indicates 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. Vol. 1 at 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 Company Witness Wright provided him with an invoice prior to any work being performed, and that Company Witness Wright specifically “had discussions” with Complainant regarding cost. (*Id.* at 21). Although Complainant stated 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 didn’t 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. Company Witness Wright 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 legally held right-of-way, and that such construction was creating a safety concern. (*Id.* at 30).

Company Witness Wright then provided further detail on the work performed. He explained that out of the three locations where Defendant completed work, Complainant was only charged for work completed at work locations 2 and 3, because work at those locations was for the specific purpose of allowing Complainant to safely construct his building. (*Id.* at 33-37). Company Witness Wright explained that additional work performed on-site was considered "betterment" work, or work to bring older electric distribution facilities up to current National Electric Safety Code and Company standards, but that such betterment work was not charged to Complainant. (*Id.* at 47).

Regarding the quality of the work, Company 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 also 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 National Electric Safety Code and Company standards for overhead clearance. (*Id.*).

Company Witness Wright also explained that some, but not all work completed, was completed "hot" or with wires energized, because other customers would have been without electric service if the work was not completed "hot." (*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, in order to keep customers' power on. (*Id.* at 48).

In total, Company Witness Wright testified that the cost of work performed was \$8,024.60, but that Complainant was only charged \$5,266.79, or for work required specifically for Complainant to finish construction of his building. (*Id.* at 41). He further testified that the amounts charged to Complainant were not inflated. (*Id.*) Last, Company Witness Wright testified that all work completed was done so in compliance with all applicable laws, regulations, and industry standards. (*Id.* at 42).

After considering the law, Commission Rules, testimony of the witnesses and the exhibits submitted to the record, the Hearing Examiner finds and concludes that the 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.

Despite Complainant's claims, he has not submitted any evidence that supports a finding that he was overcharged for any work performed by Defendant. To the contrary, testimony provided by Company 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 Company 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 substandard or in non-compliance with any applicable laws, regulations, or industry standards. Testimony provided by Company Witness Wright exemplifies that the work performed was reasonable, necessary, and in compliance with the National Electrical Safety Code as well as Company standards and policies. Additionally, Complainant has not illustrated that he is an electrical engineer or that he can otherwise credibly evaluate the work performed by Defendant. Complainant also did not engage a third-party expert to review the work performed or costs charged by Defendant. Regardless, the testimony of Company Witness Wright supports the conclusion that the work performed by Defendant was reasonable and appropriate, and in compliance with all applicable laws, regulations, and industry standards.

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 AS FOLLOWS:

1. That the Complaint filed in this docket by Complainant Donald H. Hills is hereby dismissed with prejudice.

ISSUED BY ORDER OF THE COMMISSION.

This the ____ day of _____, 2023.

NORTH CAROLINA UTILITIES COMMISSION

Shonta Dunston, Chief Clerk

Respectfully submitted, this the 19th day of January, 2023.

/s/Kristin M. Athens

Kristin M. Athens

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*Attorney for Virginia Electric and Power
Company, d/b/a Dominion Energy North
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Proposed Order Dismissing Complaint*, filed in Docket No. E-22, Sub 602, was served upon all parties of record electronically or via U.S. mail, first-class postage prepaid.

This the 19th day of January, 2023.

/s/Kristin M. Athens

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