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April 2, 2018

VIA ELECTRONIC FILING

M. Lynn Jarvis
Chief Clerk
North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, North Carolina 27699-4300

**RE: Duke Energy Progress, LLC's Response to Motion for Reconsideration
Docket No. E-2, Sub 1150**

Dear Ms. Jarvis:

Pursuant to the March 22, 2018 Commission *Order Allowing Responses and Reply to Motion for Reconsideration*, enclosed please find Duke Energy Progress, LLC's Response to Motion for Reconsideration, for filing in connection with the referenced matter.

Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads 'Kendrick C. Fentress'.

Kendrick C. Fentress

Enclosure

cc: Parties of Record

OFFICIAL COPY

Apr 02 2018

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 1150

In the Matter of)	
)	
Application of Duke Energy Progress, LLC For a Certificate of Environmental Compatibility and Public Convenience and Necessity Pursuant to <u>N.C. Gen. Stat. §§ 62-100 et seq.</u> to Construct Approximately 11.5 Miles of New 230kV Transmission Line in Cleveland area of Johnston County, North Carolina)	DUKE ENERGY PROGRESS, LLC'S RESPONSE TO MOTION FOR RECONSIDERATION

NOW COMES Duke Energy Progress, LLC (“DEP” or the “Company”), pursuant to the North Carolina Utilities Commission’s (the “Commission”) March 22, 2018 *Order Allowing Responses and Reply to Motion for Reconsideration*, and responds to the Motion for Reconsideration (“Motion”) of the Commission’s January 12, 2018 *Order Granting Certificate of Environmental Compatibility and Public Convenience and Necessity* (“CPCN Order”) filed by Intervenor Oliver L. Canaday (“Mr. Canaday”). As set forth below, Mr. Canaday’s Motion should be denied because it simply rehashes arguments already made and fails to raise any legitimate issue not already considered by the Commission in finding that it was in the public interest, reasonable and appropriate to grant DEP a certificate of environmental compatibility and public convenience and necessity (“CPCN”) to construct approximately 11.5 miles of new 230kV Transmission line (“Cleveland-Matthews Transmission Line”).

INTRODUCTION

Mr. Canaday appears to except to each and every one of the Commission's Findings of Fact as set forth in the Commission's CPCN Order. The CPCN Order, however, recounts the Commission's careful consideration of the evidence submitted and the entire record in this proceeding, including: (i) the statements of thirty affected residents or landowners, including Mr. Canaday; (ii) the testimony of eighteen witnesses at the October 30, 2017 public hearing; (iii) the filed recommendation of the Public Staff of the North Carolina Utilities Commission ("Public Staff") that the Commission grant DEP's application; (iv) DEP's November 14, 2017 verified responses updating information regarding the status of then on-going discussions with affected landowners; (v) DEP's verified application, pre-filed direct and rebuttal testimony and exhibits; and (vi) the additional evidence adduced at the evidentiary hearing. After full consideration of the above, the Commission concluded in Finding of Fact No. 6 that "DEP has carried the burden of proof under G. S. 62-105(a) through substantial, competent evidence showing that: (a) the proposed transmission line is necessary to satisfy the reasonable needs of the public for an adequate and reliable supply of electricity; (b) when compared with reasonable alternative courses of action, construction of the transmission line in the proposed location is reasonable, preferred and in the public interest; (c) the costs associated with the proposed transmission line are reasonable; (d) the impact that the proposed transmission line will have on the environment is justified considering the state of available technology, the nature and economics of the alternatives, and other material considerations; and the environmental compatibility, public convenience and necessity require the construction

of the transmission line.” (CPCN Order at 4) Mr. Canaday has set forth no justification for the Commission to depart from this well-considered finding and conclusion.

STANDARD OF REVIEW

Mr. Canaday’s Motion is subject to review under N.C. Gen. Stat. § 62-80, which provides as follows:

The Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions.

The Commission's decision to rescind, alter, or amend an order upon reconsideration under N.C. Gen. Stat. § 62-80 is within the Commission's discretion. *State ex rel. Utilities Comm’n v. MCI Telecommunications Corp.*, 132 N.C. App. 625, 630, 514 S.E.2d 276, 280 (1999). The Commission, however, cannot arbitrarily or capriciously rescind, alter, or amend a prior order. Rather, there must be some change in circumstances or a misapprehension or disregard of a fact that provides a basis for the Commission to rescind, alter, or amend a prior order. *Order on Clarification*, Docket No. E-100, Sub 148 (Feb. 15, 2018) at 2, citing *State ex rel. Utilities Comm’n v. North Carolina Gas Service*, 128 N.C. App. 288, 293-294, 494 S.E.2d 621, 626, rev. denied, 348 N.C. 78, 505 S.E.2d 886 (1998). As discussed in more detail below, Mr. Canaday has alleged no change in circumstance or misapprehension or disregard of fact that compels the Commission to rescind, alter or amend its CPCN Order.

ARGUMENT

- I. Mr. Canaday’s Motion Rehashes Previous Arguments and Presents No Grounds for the Commission to Reconsider the Findings and Conclusions in its CPCN Order on the Route Selection Process or DEP’s Proposed Route.

Notably, no party to this proceeding, including Mr. Canaday, disputes the need to build a new 230kV/23kV transmission to distribution substation or a new 230kV transmission line to provide power thereto in the Cleveland-Matthews area of Johnston County, North Carolina. (Motion at 14) Furthermore, Mr. Canaday indicates in his Motion that he does not object to the “start point” of the transmission line, but he does object to the termination point. (Motion at 5) Therefore, Mr. Canaday disagrees that DEP’s proposed route for the transmission line (“Route 31” or “Proposed Route”) satisfies environmental compatibility and public convenience and necessity requirements. Mr. Canaday’s mere disagreement with the Commission’s comprehensive findings and conclusions, however, is not sufficient to compel the Commission to rescind its CPCN Order.

In his Motion, Mr. Canaday rehashes his opposition to DEP’s proposed route, arguing that an alternative route, Route 4, is preferable. In a late-filed exhibit, however, DEP provided sufficient evidence for the Commission to conclude that the alternative routes proposed by Mr. Canaday were neither feasible nor cost-effective. Mr. Canaday both objects to the “untimely submission” of the late filed exhibit on the one hand, but then uses it to argue that Route 4 is the “best route” on the other. (Motion at 5) The Commission has already considered DEP’s Late Filed Exhibit No. 2 in its CPCN Order (CPCN Order at 9), however, and Mr. Canaday produces no substantive evidence and makes no new compelling argument to counter the Commission’s findings and conclusions in this regard. Instead Mr. Canaday essentially simply requests that the Commission revisit and reconsider its findings on the Proposed Route by taking a “*Hard Look*” at his suggested alternative routes and

agreeing that his view of the evidence should replace and supplement the findings and conclusions reached by the Commission. (*See e.g.*, Motion at 3, 5-14, 17, 20) In essence, Mr. Canaday rejects the Commission's expertise and ability to analyze the testimony and exhibits of witnesses at the hearing and to determine whether the party with the burden of proof has met its burden. Not only does Mr. Canaday reject the Commission's findings, he alleges that the Commission's discussion of "The Route Study and Selection Process," wherein after discussing DEP witness Same's testimony, the Study, and DEP Late-Filed Exhibit 2 (CPCN Order at 9), the Commission concludes that "No party to this proceeding presented evidence alleging that this estimated cost is unreasonable" was in fact "Fraud" or a fraudulent finding by the Commission. (Motion at 16)

Specifically, Mr. Canaday appears to repeat his claim that DEP did not give sufficient weight to farmland and forests in ranking the routes of the proposed transmission line. He indicates that he has recently "discovered" the Farmland Protection Policy Act ("FPPA"), and he contends this should have been considered by the Commission. (Motion at 3) The FPPA, however, is not relevant to this state proceeding; accordingly, it is not a basis to rescind, alter or amend the CPCN Order. Moreover, Mr. Canaday additionally rehashes his previous claim that the Routing Study gave insufficient weight to farmland and forests in the route siting process and that DEP had not properly considered the impact of electric and magnetic fields ("EMF") with respect to the Proposed Route. He finally re-argues that the Commission should have approved an alternative route, Route 4, for several reasons, including it has "less cost." (Motion at 5)

As the CPCN Order demonstrates, the Commission considered all of the evidence presented regarding both the Route Study and alternative routes. (CPCN Order at 7-13) The CPCN Order addressed the landowners appearing at the public hearing and the numerous letters of public interest filed by opponents of the proposed transmission line, which raised concerns with regard to the necessity for the new transmission line and its substation. With regard to the weight given in the siting process to farmland and forested land, the Commission recognized that DEP assigned a weighting of 2 for “cropland crossed” and a weighting of 3 for “upland forest crossed.” The intent of weighting is to differentiate between the levels of perceived impact of the underlying land uses and to help determine areas of higher constraint versus lower constraint when routing the line. “Cropland crossed” was given a lower weight than upland forest crossed because continued farming activity is allowed under DEP transmission lines, and only four routing factors were given a higher weight than “upland forest crossed”: “residential proximity” and “open space/green areas” had a weighting of 5, and “wetland crossing” and “stream sensitivity” had a weighting of 4. These ratings appropriately reflect the values and risks of land uses that could impact and ultimately prevent DEP from siting and eventually constructing the proposed line, and reflect input from past transmission line siting processes as well as feedback from the public. (CPCN Order at 9) Mr. Canaday has presented no new evidence or circumstances that require the Commission to revisit its CPCN Order on this issue.

With respect to his claims about the EMF impacts, Mr. Canaday likewise has presented no new evidence, and, in fact, he admits as much in his Motion. (Motion at

17) His Motion simply refers to the articles he has apparently previously submitted, and it questions the sufficiency of DEP's information. (Motion at 17-18) The Commission has already fully considered Mr. Canaday's "EMF" claims, and he presents no justification for the Commission to reconsider its determinations on this matter. (CPCN Order at 14)

With respect to Mr. Canaday's claims that the Commission should have approved an alternative route, DEP notes that its expert witness James Umbdenstock acknowledged that DEP had a 500kV transmission line at the far western edge of the study area and that there were also portions of three 230kV transmission lines in the study area. He further testified that tapping the existing 500kV transmission line instead of building the proposed 230kV Cleveland-Matthews transmission line would not be feasible because DEP's 500kV transmission network is reserved for the bulk transport of large amounts of electricity. A comprehensive study would be required to consider the connection of any load to the bulk system, and even if it were feasible to serve the 230kV retail transmission-to-distribution substation from the 500kV transmission system, it would take approximately 200 contiguous acres for a 500/230kV transmission-to-transmission substation in addition to the construction of a 230/23kV transmission-to-distribution substation. In addition, two separate 180-foot wide 500kV transmission line right-of-way corridors from the existing 500kV line to the new substation site would be required.

Further, in response to questions from the Commission with regard to whether there was a possibility to use the existing 500kV transmission line corridor for the construction of a parallel 230kV transmission line to serve the new proposed

substation, DEP filed Late-Filed Exhibit 1. DEP had asked Burns & McDonnell to revisit and further document options for paralleling the existing Cumberland-Wake 500kV transmission line as a route alternative for the proposed Cleveland-Matthews Road 230kV Transmission Line Tap Project. The existing 500kV transmission line is located within a 180-foot wide easement. To accommodate a new 230kV transmission line, an additional 82.5 feet of easement would be required, adjacent to the current easement. Finally, aerial photography was reviewed for route options that paralleled the 500kV corridor; homes, apartments and businesses were identified within the easement required for the 230kV transmission line. For the northern route, due to the density of development adjacent to the areas where these structures were identified, there are no feasible route variations that would easily avoid these constraint areas. For the southern routes, there are a few constraint areas that could potentially be avoided but would require the new transmission line to diverge from the existing corridor, which would add length, impacts to additional landowners, and require crossing under the existing 500kV transmission line multiple times. Crossing the 500kV line would require modifications to the existing 500kV structures, which would be an additional cost beyond the construction of the 230kV line. The route options would all be longer than the Cleveland-Matthews Road preferred option at 11.5 miles. Both the northern route options are approximately 2.5 miles longer, and the southern route options are approximately 8 miles longer than the preferred route. The late-filed exhibit demonstrated that, due to the significant number of homes, apartments and businesses that would be within the potential right-of-way and would require relocation to accommodate a new 230kV transmission line adjacent to the

existing 500kV transmission line, including the additional length of the transmission line, it would not be feasible to construct the 230kV transmission line parallel to an existing 500kV transmission line as an alternative to the proposed Cleveland-Matthews transmission line. Since a route alternative was not feasible, a cost estimate was not completed by DEP Engineering. Furthermore, based on the evidence submitted, the Commission correctly concluded that DEP Late-Filed Exhibit 2 demonstrates that the proposed costs associated with Route 31 are consistent with or lower than alternative routes reviewed in the siting process. (CPCN Order at 9) No party to this proceeding, including Mr. Canaday in his Motion, has submitted evidence indicating that the estimated cost is unreasonable. Thus, in contrast to testimony and the Motion offered by Mr. Canaday, DEP's comprehensive transmission line siting process identified Route 31 as the best and least impactful route to serve transmission needs in the Cleveland area in Johnston County. Moreover, in determining that DEP's selected route was appropriate, the Commission expressly credited DEP expert witness Umbdenstock's supporting testimony and his qualifications, including his degree in electrical engineering and his almost 30 years of relevant work experience. (CPCN Order at 13) "[I]t is for the administrative body, in an adjudicatory proceeding, to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting and circumstantial evidence if any." *Commission v. Duke Power Co.*, 305 N.C. 1, 21, 287 S.E.2d 786, 798 (1982). Based on the evidence submitted, Mr. Canaday has provided no compelling reason in his Motion for the Commission to

revisit its determination that Route 31 is the best and least impactful route for the Cleveland-Matthews transmission line.

II. Mr. Canaday's Argument that the Commission Erred because DEP State Environmental Review Clearinghouse Review Had Not Concluded When the Commission Issued its CPCN Order Is Without Merit.

Mr. Canaday also alleges in his Motion that the Commission's CPCN Order was erroneously issued prior to DEP completing requirements by the State Environmental Clearinghouse to provide supplemental documentation and information requested by the Department of Natural and Cultural Resources to include the results of an archaeological survey. (Motion at 4) Mr. Canaday's argument, however, ignores Ordering Paragraph 3 that expressly provides 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 Clearinghouse is required." (CPCN Order at 16, ¶ 3) Therefore, Mr. Canaday has presented no evidence demonstrating any sort of procedural deficiency with the CPCN Order, and reconsideration of the CPCN Order is not justified on this ground.

CONCLUSION

For all the foregoing reasons, Duke Energy Progress respectfully requests that the Commission deny Mr. Canaday's Motion for Reconsideration.

Respectfully submitted, this the 2nd day of April, 2018.



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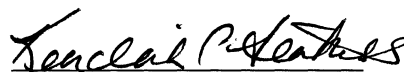
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ATTORNEYS FOR DUKE ENERGY
PROGRESS, LLC

CERTIFICATE OF SERVICE

I certify that a copy of Duke Energy Progress, LLC's Response to Motion for Reconsideration, in Docket No. E-2, Sub 1150, has been served by electronic mail, hand delivery or by depositing a copy in the United States mail, postage prepaid to the following parties:

This the 2nd day of April, 2018.



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