

13 Sept.2022 Motion to Compel – related to Docket No. E-2, Sub 1150

From: Oliver L. Canaday (O.L. Canaday), 713 Camellia Ave., Panama City, FL 32404
(In Accordance With (IAW), and Duke Energy Progress, LLC. (DPE);

→ To: Shonta Dunston, Chief Clerk of N.C. Utilities Commission, (Attn: Chair Charlotte A. Marshall, 4325 Mail Service Center, Raleigh, N.C. 27699, and/or 430 N. Salisbury St., Dobbs Building, Raleigh, N.C. 27603;

Robert W. Kaylor, P.A., 353 East Six Forks Road, Suite 260, Raleigh, N.C. 27609;

Ref: (a) G.S. 62-61. Witness; production of papers; contempt (compel);

(b) Commission Order of 18 Jul. 2017, Related to establishing Discovery and compel (Page 1, paragraph-3; -Page 2, paragraph-9);

(c) O.L. Canaday letter of 11 Oct, 2021, Subj: Enforce Disposition of Violations of Provisions of Chapter 62, *[see Encl: (18)], pages -10/16 thru 16/16 and Attention to page 14/16, lines 1 - 24; and specific attention to lines 11 – 24]; **[see Encl: (19)* -(Late Filed Exhibits of 13 Nov. 2017 of Docket No. E-2, Sub 1150); *pages 1/4 thru 3/4 ; page 2/4 is Exhibit No.1 (Letter of 8 Nov. 2017, To: Tim Same (DEP) -&- From: Tim Barton (Burns & McDonnell) and Subj: DEP...500kV Parallel Options, -Late Filed Exhibit No. 1 furnishes Evaluation of 230kV Line (minus o/a 28-pages of maps) paralleling existing 500kV Line as described in foregoing Encl: (18) – (this Exhibit No. 1 content mirrors what Commission authorized in Hearing); and, -Late Filed Exhibit No. 2 of 13 Nov. 2017 furnishes – A cost comparison of the four best alternative routes – see page 3/4 a matrix of some construction matters cost for: 31-Route; 4-Route; 32-Route; & 1-Route; and, (O.L. Canaday does not find authorization or instructions for ‘such’ Exhibit No. 2 -to be filed in Record having Closed date of 6 Nov. 2017; -***and- this is purpose of motion to compel ‘such’ authorization or instructions from DEP;

Encl: (1) PUBLIC UTILITIES, ARTICLE 1 General Provisions, (page 2, paragraph 4 having,,,,”Power of eminent domain is inherent to Certificate of public convenience and necessity”.;

Subj: O.L. Canaday Motions Commission to Compel DEP Furnish a Copy of Authorization or Instructions (of Commission) of Late File Exhibit No. 2 date of 13 Nov. 2017, Related to Docket No. E-2, Sub 1150 (Record) of 14 Jul. 2017;

1.- This Motion to compel is not frivolous. This factual Record of (Docket No. E-2,

Sub 1150); is DEP Application of 14 Jul. 2017 for requesting a Certificate to construct a

230kV transmission line o/a 11.5-miles. This line crosses O.L. Canaday property o/a 909 Parker Town Road, and eminent domain is inherent in 'such' Certificate of public convenience and necessity IAW Article 1, General Provisions, Note 4. Public Utilities generally, paragraph-4 (see Encl: (1)). DEP furnished Clerk of Court, Johnston County, N.C. (under Court No. 18 SP 591) the Commission Order and Certificate of 12 Jan. 2017 along with authority of N.C. G.S. 40A-3 and a CONSENT JUDGEMENT of 6 Aug. 2021 signed by Honorable Thomas H. Lock, Superior Court Judge Presiding. This proceeding started o/a 17 Dec. 2018 and having a cured date of 6 Aug. 2021, having taken 2-years and o/a eight-months.

2.- Background. That may assist DEP in finding authorization or instruction for Late Filing Exhibit No. 2 of 13 Nov. 2017; and

a. The Commission authorized Late Filed Exhibit No. 1 of 13 Nov. 2017, that was related to evaluation of running a 230kV line parallel to existing 500kV line, splitting off to run to the new sub-station. This authorization, having been done during Hearing of 31 Oct. 2017, See Ref: (c), Encl: (18) see pages and lines furnished; for example of Commission authorization of Late File Exhibit No. 1; and

b. During Hearing proceedings, Commission discovered DEP having not furnished cost analysis in Application, see Ref: (c), Encl: (18), pages 10/16 – 12/16 for the Q&A about cost analysis. (O.L. Canaday finds no authorization (in Hearing) for having a Late File Exhibit 2 of 13 Nov. 2017 (furnishing a matrix) of cost comparison of the four best-scored alternative routes. [DEP may have another source (other than Hearing O.L. Canaday is familiar); a copy from another source is fine for compel response.]

c. The transcript of 31 Oct. 2017 (of Hearing proceedings) is where Authorization for late filing Exhibit No. 1 is authorized, and that is where having searched for authorization of Late filing Exhibit No. 2, and have not (yet) discovered it; and

d. The 31 Oct. 2017 Hearing closed Docket No. E-2, Sub 1150 Record for (new information) and having closed - effective date of 6 Nov. 2017, IAW Hearing.

3.- IAW Ref: (a) and (b), O.L. Canaday motions Commission to Compel DEP furnish a copy of authorization or instruction for filing Late File Exhibit No. 2 of 13 Nov. 2017 into Record.

4.- When (or/if) DEP does not find (authorization or instruction) to file Late Filed Exhibit No. 2 of 13 Nov. 2017, -A negative reply is requested.

5.- Thank you for your assistance in this matter, of compel, and having DEP furnish a copy of (authorization or instruction) for filing of Late Filed Exhibit No. 2 Record of 13 Nov. 2017.

Sincerely,



Oliver L. Canaday, MSgt., USMC, Ret. CACw/3-brz star, PH, Air Medalw/#7, CAR,
NUC w/2-brz-stars, MUC, RVNSw/sil-star

PUBLIC UTILITIES

§ 62-
Note

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ARTICLE 1

General Provisions

Section

- 62-1. Short title.
- 62-2. Declaration of policy.
- 62-3. Definitions.
- 62-4. Applicability of Chapter.
- 62-5. Utilities; property affected by boundary certification.
- 62-6 to 62-9. Reserved.

§ 62-1. Short title

This Chapter shall be known and may be cited as the Public Utilities Act.

Added by Laws 1963, c. 1165, § 1.

Historical and Statutory Notes

Laws 1963, c. 1165 amended, revised and rewrote provisions of chapters 56, 60, and 62 that were recodified into chapters 62 and 74A. Chapter 74A, contained provisions of former §§ 60-82 through 60-87 that were subsequently repealed. Provisions of Chapter 74A, Company Police, may now be found at Chapter 74E. The provisions pertaining to railroad corporations were subsequently repealed or recodified to § 136-190 et seq.

Notes of Decisions

Commission generally 3

Construction and application 1

Public utilities generally 4

Purpose 2

1. Construction and application . . .

By enacting the Public Utilities Act, the General Assembly conferred broad powers upon North Carolina Utilities Commission to regulate public utilities and to compel their operation in accordance with the policy of the State. State ex rel. Utilities Com'n v. Carolina Water Service, Inc. of N.C., 2013, 225 N.C.App. 120, 738 S.E.2d 187. Public Utilities ⇐ 147

By enactment of statutory chapter governing public utilities, General Assembly conferred upon Utilities Commission broad powers to regulate public

Note 1

utilities and to compel their operation in accordance with policy of state as declared in statute. State ex rel. Utilities Com'n v. Public Staff-North Carolina Utilities Com'n, 1996, 123 N.C.App. 623, 473 S.E.2d 661. Public Utilities ⇐ 145.1

The several provisions of the public utilities statutes are to be construed together to accomplish primary purpose of assuring public of adequate service at reasonable charge. State ex rel. Utilities Commission v. General Tel. Co. of Southeast, 1974, 208 S.E.2d 681, 285 N.C. 671. Statutes ⇐ 1151

2. Purpose

Primary purpose of the Public Utilities Act is not to guarantee to stockholders of public utility constant growth in value of and in dividend yield from their investment, but is to assure public of adequate service at reasonable charge. State ex rel. Utilities Commission v. General Tel. Co. of Southeast, 1974, 208 S.E.2d 681, 285 N.C. 671. Public Utilities ⇐ 102

3. Commission generally

Utilities Commission, being an administrative agency created by statute, has no regulatory authority except such as is conferred upon it by statute. State ex rel. Utilities Com'n v. Mountain Elec. Co-op., Inc., 1992, 423 S.E.2d 516, 108 N.C.App. 283, affirmed 435 S.E.2d 71, 334 N.C. 681. Public Utilities ⇐ 147

Utilities Commission is statutory body possessing only authority conferred upon it by the General Assembly. State ex rel. Utilities Com'n v. Seaboard Coast Line R. Co., 1983, 303 S.E.2d 549, 62 N.C.App. 631, appeal dismissed, review denied 307 S.E.2d 168, 309 N.C. 324. Public Utilities ⇐ 147

The State Utilities Commission is a creation of the legislature and, in fixing rates to be charged by public utilities, exercises legislative function; it has no authority except that given to it by statute. State ex rel. Utilities Commission v. Edmisten, 1977, 232 S.E.2d 184, 291 N.C. 451. Public Utilities ⇐ 120; Public Utilities ⇐ 147 *Cont.*

ENCL. (1) P. 1/2

§ 62-1

PUBLIC UTILITIES

Cont. - A fortiori, the State Utilities Commission has no authority to permit that which is forbidden by statute or to extend a previously granted rate increase which statute has declared terminated. State ex rel. Utilities Commission v. Edmisten, 1977, 232 S.E.2d 184, 291 N.C. 451. Public Utilities ⇌ 120; Public Utilities ⇌ 147

Utilities Commission, being an administrative agency created by statute, has no regulatory authority except such as is conferred on it by statute. State ex rel. Utilities Commission v. National Merchandising Corp., 1975, 220 S.E.2d 304, 288 N.C. 715. Public Utilities ⇌ 147

Utilities Commission may not, by an order, require or authorize a rule or practice by a public utility company forbidden by statute or authorize such company to refuse to perform a duty imposed upon it by statute unless such authority has been conferred upon Commission by statute. State ex rel. Utilities Commission v. National Merchandising Corp., 1975, 220 S.E.2d 304, 288 N.C. 715. Public Utilities ⇌ 147

4. Public utilities generally

To grant a certificate of public convenience and necessity to conduct a business which is not a public utility, within definition of statute, would be both arbitrary and in excess of statutory authority of Utilities Commission. State ex rel. Utilities Commission v. Edmisten, 1979, 252 S.E.2d 516, 40 N.C.App. 109, affirmed in part, reversed in part 263 S.E.2d 583, 299 N.C. 432. Public Utilities ⇌ 113

A public service or public utility corporation having power of eminent domain makes such corporation amenable to state control through Utilities Commission. State ex rel. Utilities Commission v. Edmisten, 1979, 252 S.E.2d 516, 40 N.C.App. 109, affirmed in part, reversed in part 263 S.E.2d 583, 299 N.C. 432. Public Utilities ⇌ 113

One test to determine whether plant or system is a "public utility" within jurisdiction of Utilities Commission is whether public may enjoy it by right or by permission only. State ex rel. Utilities Commission v. Edmisten, 1979, 252 S.E.2d 516, 40 N.C.App. 109, affirmed in part, reversed in part 263 S.E.2d 583, 299 N.C. 432. Public Utilities ⇌ 113

Power of eminent domain is inherent in certificate of public convenience and necessity. State ex rel. Utilities Commission v. Edmisten, 1979, 252 S.E.2d 516, 40 N.C.App. 109, affirmed in part, reversed in part 263 S.E.2d 583, 299 N.C. 432. Eminent Domain ⇌ 10(1)

Having received benefits of its chartered privileges, including ownership of property obtained, at least in part, by power of eminent domain, electrical utility was charged with corresponding responsibilities in business affected with public interest. State ex rel. Utilities Commission v. Edmisten, 1979, 252 S.E.2d 516, 40 N.C.App. 109, affirmed in part, reversed in part 263 S.E.2d 583, 299 N.C. 432. Electricity ⇌ 8.1(1)

Fact that corporation has authority to, and does, engage in private business in addition to its public service does not deprive it of its status as a public service corporation. State ex rel. Utilities Commission v. Edmisten, 1979, 252 S.E.2d 516, 40 N.C.App. 109, affirmed in part, reversed in part 263 S.E.2d 583, 299 N.C. 432. Public Utilities ⇌ 112

ENC. (1) P. 2/2