



On July 13, 2020, the Public Staff filed a Motion for Reconsideration requesting that the Commission exercise its authority pursuant to N.C. Gen. Stat. § 62-80 to reopen the record for the receipt of additional evidence on the issue of affected system costs and to amend, as necessary, its Findings of Fact and Conclusions of Law from its June 11, 2020 Order granting the Applicant a CPCN for construction of the Facility.

On July 29, 2020, the Commission issued an Order requiring the Applicant to file a response to the Public Staff's motion on or before August 3, 2020.

On August 3, 2020, the Applicant filed a brief in opposition to the Public Staff's motion and the supporting affidavit of Christopher Killenberg, who previously testified on the Applicant's behalf in this proceeding.

Pursuant to N.C.G.S. § 62-80:

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 herein provided for original orders or decisions.

The Commission's decision to rescind, alter, or amend an order upon reconsideration under N.C.G.S. § 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). However, the Commission 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. *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).

Based upon the foregoing and the entire record herein the Commission determines that it is in the public interest to reopen the record to receive additional evidence regarding the current information on affected system costs that has been brought to the Commission's attention by the Applicant and the Public Staff since the Commission issued its order granting the CPCN to the Applicant. The Commission, therefore, will grant the Public Staff's motion and reopen the record in this proceeding for the purpose of admitting into the record the verified affidavit of Christopher Killenburg attached to the Applicant's August 3, 2020 brief. Moreover, in light of the Public Staff's recommendation and supplemental testimony filed in Docket No. EMP-108, Sub 0 regarding the CPCN application of American Beech Solar LLC, another merchant plant alleged to be similarly situated to Applicant with respect to transmission costs associated with the same DEP Network Upgrade at issue in this docket,<sup>1</sup> the Commission further requests the Public Staff to file a recommendation in this docket, and any supplemental supporting

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<sup>1</sup> Supplemental Testimony of Jay B. Lucas at 3-16, *Application of American Beech Solar LLC for a Certificate of Public Convenience and Necessity to Construct a 110-MW Solar Facility in Halifax County, North Carolina*, No. EMP-108, Sub 0 (N.C.U.C. July 22, 2020).

testimony, addressing the Applicant's allegation of similarities between the DEP Network Upgrade transmission costs potentially applicable to it and American Beech. The Commission will require the Public Staff to file its recommendation and supporting testimony, if any, on or before five business days after the date of this Order. Upon filing, the Public Staff's recommendation and any supporting testimony will be admitted into the record.

Further, recognizing the significant adverse consequences that a protracted reconsideration of the decision to grant the CPCN could have on the Applicant and its business planning, the Commission endeavors to mitigate the potential for such consequences by hereby providing notice of its intent to issue a final order on reconsideration in this docket within one week of the filing of the Public Staff's recommendation.

Finally, the facts and circumstances in this proceeding are unique. Therefore, the Commission determines that this Order should not be cited by the Applicant or any other party as precedent in support of a request for future Commission action in any proceeding.

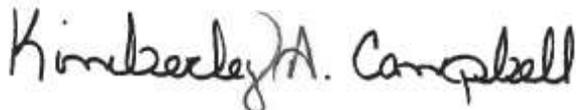
IT IS, THEREFORE, ORDERED as follows:

1. That the record in this proceeding shall be, and the same is hereby, reopened;
2. That the verified affidavit of Christopher Killenberg filed in this docket on August 3, 2020, shall be, and is hereby, admitted into the record;
3. That on or before August 20, 2020, the Public Staff shall file its recommendation and any supporting testimony in light of its recommendation and supplemental testimony filed in Docket No. EMP-108, Sub 0; and
4. That this Order is based on the unique facts and circumstances involved in this docket and shall not be cited by the Applicant or any other party as precedent in support of a request for future Commission action in any proceeding.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of August, 2020.

NORTH CAROLINA UTILITIES COMMISSION



Kimberley A. Campbell, Chief Clerk