

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1150

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Duke Energy Progress, LLC,)
for a Certificate of Environmental Compatibility)
and Public Convenience and Necessity to)
Construct Approximately 11.5 Miles of New)
230-kV Transmission Line in Johnston County,)
North Carolina)

ORDER DENYING
MOTION FOR
RECONSIDERATION

BEFORE: Commissioner Daniel G. Clodfelter, Presiding; Commissioner Lyons Gray¹

BY THE COMMISSION: On January 12, 2018, the Commission issued an Order Granting a Certificate of Environmental Compatibility and Public Convenience and Necessity (January 12, 2018 Order) to Duke Energy Progress, LLC (DEP) for the construction of approximately 11.5 miles of new 230-kilovolt (kV) transmission line to provide power to the Cleveland-Matthews area of Johnston County, North Carolina (Route 31)².

On March 13, 2018, Oliver Canaday, an intervening party to this proceeding, filed a Motion for Reconsideration of the Commission's January 12, 2018 Order. In that motion, Mr. Canaday, among other things, requests that the Commission rescind its Order granting DEP a Certificate of Environmental Compatibility and Public Convenience and Necessity (CPCN) to construct transmission line along Route 31, and modify its Order to require DEP instead to construct new transmission line along Route 4.³

On March 22, 2018, the Commission issued an Order Allowing Responses and Reply to Motion for Reconsideration, setting a schedule for DEP and the On April 2, 2018, DEP filed a response to Mr. Canaday's Motion for Reconsideration.

¹ The January 12, 2018 Order Granting Certificate of Environmental Compatibility and Public Convenience and Necessity was entered as a panel decision. The Commissioners who participated in the hearing and rendered the decision were Commissioner Daniel G. Clodfelter, Presiding; and Commissioners Lyons Gray and Bryan E. Beatty. Commissioner Beatty's term on the Commission subsequently expired. Therefore, Mr. Canaday's Motion for Reconsideration has been decided by the remaining two Commissioners who heard the evidence in this proceeding.

² Route 31 was one of 32 distinct routes considered by DEP as part of its routing study, which served as the basis for DEP's advancement of Route 31 as the preferred route. See DEP's Revised Exhibit A: Routing Study and Environmental Report, filed in this proceeding on July 24, 2017.

³ Route 4 also was one of the 32 distinct routes considered by DEP as part of its routing study. See id.

On April 2, 2018, DEP filed a response to Mr. Canaday's Motion for Reconsideration.

On April 9, 2018, Mr. Canaday filed a reply to DEP's response. No other filings have been received.

MR. CANADAY'S MOTION FOR RECONSIDERATION

Mr. Canaday, in his Motion for Reconsideration, argues that the Commission should rescind its Order granting DEP a CPCN to construct the transmission line along Route 31, and modify its Order to require DEP instead to construct this line along Route 4.

In support of his Motion, Mr. Canaday makes several allegations, primarily including the following: (1) that certain information contained in DEP's Late-Filed Exhibits 1 and 2 that Mr. Canaday contends he could have used to support his position was not available at the time of the hearings; (2) that Route 4 is preferable over Route 31 because, according to Mr. Canaday, Route 4 would be more reliable and less expensive to construct and maintain, require a shorter transmission line, and involve a lesser impact to cropland; (3) that the Commission erred by granting DEP a CPCN for Route 31 before first receiving confirmation from the State Clearinghouse that the requirements of the North Carolina Environmental Policy Act have been satisfied; (4) that the design of DEP's Routing Study was flawed and failed to give sufficient weight to farmland and forests pursuant to the Farmland Protection Policy Act; and (5) that the information DEP submitted about the potential health risks of electromagnetic fields (EMF) was insufficient, and DEP should have been required to file an EMF Pollution Study.

DEP'S RESPONSE TO MOTION FOR RECONSIDERATION

In its response to Mr. Canaday's Motion for Reconsideration, DEP notes that no party to this proceeding disputes that new transmission line is necessary to satisfy the reasonable needs of the public for an adequate and reliable supply of electric energy. DEP contends that the Commission's findings of fact and conclusions of law contained in its January 12, 2018 Order were comprehensive, and that Mr. Canaday's "mere disagreement" with them is insufficient to warrant the Commission's reconsideration of its order.

Turning now to the substance of Mr. Canaday's arguments, DEP makes the following arguments, listed here in the order in which they respond to Mr. Canaday's allegations: (1) the information contained in DEP's Late-Filed Exhibits 1 and 2 was considered by the Commission in its January 12, 2018 Order, and therefore, does not constitute new evidence or a new compelling argument; (2) the proposed costs associated with Route 31 are consistent with or lower than alternative routes reviewed during the Routing Study, Route 31 is the appropriate route because it is the "best and least impactful route to serve transmission needs" in the Cleveland-Matthews area of Johnston County, and DEP provided sufficient evidence for the Commission to conclude that the alternative routes proposed by Mr. Canaday were "neither feasible nor cost-

effective”; (3) Mr. Canaday provided no evidence of any procedural deficiency with regards to the Commission’s January 12, 2018 Order having been issued prior to final approval from the State Clearinghouse because the Commission expressly ordered that “prior to DEP’s construction of the transmission line, the Commission must first 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”; (4) the ratings and rankings used in the Routing Study “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; moreover, the Farmland Protection Policy Act is not relevant to this proceeding, and is not an appropriate basis to modify or reconsider the Commission’s January 12, 2018 Order; and (5) Mr. Canaday’s concerns regarding EMF merely reference back to prior articles he has previously filed with the Commission.

MR. CANADAY’S REPLY TO DEP’S RESPONSE

In his reply to DEP’s response, Mr. Canaday primarily restates the arguments he makes in his Motion for Reconsideration. Mr. Canaday also points out that DEP’s response was not timely filed because it was due on March 30, 2018, but was not filed until April 2, 2018. For this reason, Mr. Canaday “motions to dismiss DEP’s response.” Finally, Mr. Canaday reiterates his position that he was unable to meet his burden of proof at the time of the evidentiary hearing held on October 31, 2017, because DEP did not file cost information for the alternative routes until November 13, 2017.

DISCUSSION AND CONCLUSIONS

As an initial matter and in response to Mr. Canaday’s assertion that DEP failed to file timely its response, the Commission notes that DEP’s March 30, 2018 deadline fell on a State holiday, pursuant to G.S. 103-4(a)(8). Consequently, pursuant to Commission Rule R1-27, the computation of time for DEP to file its response included the next business day following the holiday on Friday, March 30, 2018, which was Monday, April 2, 2018. DEP filed its response on April 2, 2018. The Commission, therefore, accepts DEP’s April 2, 2018 response as timely.

Pursuant to G.S. 62-80, the Commission has the authority to rescind, alter, or amend any order or decision made by it under appropriate circumstances and with sufficient grounds. State ex rel. Utilities Comm. 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 requiring such modification or rescission for the public interest. State ex rel. Utilities Comm. v. Carolina Coach Co., 260 N.C. 43, 51-52 (1963); State ex rel. Utilities Comm. v. North Carolina Gas Service, 128 N.C. App. 288, 293-294, 494 S.E.2d 651, 626, rev. denied, 348 N.C. 78, 505 S.E.2d 886 (1998). In addition, the Commission has held that misapprehension of facts or improper weighing of evidence could also be circumstances which could justify reconsideration of a Commission

decision. Order Denying Joint Motion for Reconsideration, Docket No. E-7, Sub 790 (June 6, 2007).

For the following reasons, the Commission finds unpersuasive Mr. Canaday's contention that he was unable to meet his burden of proof, pursuant to G.S. 62-105, because DEP's Late-Filed Exhibits 1 and 2 were submitted after the date on which the evidentiary hearing was held. First, the Commission notes that DEP is correct in its assertion that the information contained in DEP's Late-Filed Exhibits 1 and 2 was considered by the Commission and properly weighed in its January 12, 2018 Order. Second, this information was submitted through Late-Filed Exhibits at the Commission's request in order to fully evaluate the feasibility of all potential alternatives to Route 31, including the possibility of a new 230-kV transmission line route parallel to an existing 500-kV transmission line route, as well as a cost comparison of the four best-scored routes (including Routes 4 and 31). Although Late-Filed Exhibits 1 and 2 did not result in a decision favorable to Mr. Canaday's position, the Commission did thoroughly review and consider both exhibits in its decision-making process. Third, Late-Filed Exhibits 1 and 2 were submitted prior to the close of evidence in this proceeding; thus, they do not constitute new evidence, changed circumstances, or any other basis warranting the Commission's reconsideration of its January 12, 2018 Order. Fourth, while Mr. Canaday is correct in his assessment that DEP's Late-Filed Exhibits were submitted on November 13, 2017, the Commission notes that DEP filed its Revised Routing Study on July 24, 2017, over three months in advance of the evidentiary hearing in this proceeding. The Revised Routing Study contains detailed quantitative and qualitative data assessing all 32 distinct routes considered by DEP in its Routing Study. Therefore, Mr. Canaday did have access to a significant amount of information comparing Routes 4 and 31 in advance of the evidentiary hearing.

The Commission similarly finds unpersuasive Mr. Canaday's contention that Route 4 is more preferable than Route 31. While Mr. Canaday focuses exclusively on the ways in which Route 4 could be considered a more preferable route, Mr. Canaday neglects to mention that Route 4 would pass within 500 feet of 73 residences, causing it to have a Residential Proximity Score of 102, the highest among the final four routes considered. By comparison, Route 31 will pass within 500 feet of only 45 residences and has a Residential Proximity Score of 60, which is the best score of all routes evaluated by DEP. In addition, Route 31 only involves seven medium-sensitive stream crossings, whereas Route 4 would involve 13. The Commission further notes that DEP's own justification for eliminating Route 4 from consideration is sufficient evidence to support the Commission's findings of fact and conclusions of law in its January 12, 2018 Order. DEP's justification for the elimination of Route 4, follows:

When considering the four route alternatives retained for further evaluation, both quantitative and qualitative data was used to differentiate the routes and to provide a rationale for the selection of a preferred route alignment. Environmental, social, and engineering data was collected and evaluated, as well as input from landowners and the community potentially impacted by the route alignment. Upon further investigation by the Project team, it

was discovered that the potential condemnation of open space/green space areas owned by a subdivision homeowner association could require the condemnation of all property owners within that subdivision, based on precedent from a previous legal case. This knowledge, along with the proximity to residences and subdivisions, potential environmental impacts to sensitive streams and floodplains, and construction and maintenance concerns associated with the western routes, resulted in the elimination of these two routes (Route 4 and Route 1) from further consideration.

DEP's Revised Exhibit A: Routing Study and Environmental Report, pp. 4-24, 4-25 (July 24, 2017). Moreover, Mr. Canaday's argument does not present any new evidence or any change in circumstances to justify the Commission's reconsideration.

The Commission agrees with DEP that Mr. Canaday's remaining arguments, which include references to the State Environmental Review Clearinghouse, the potential risks of EMF, and the Farmland Protection Policy Act do not constitute new evidence or changed circumstances, and, consequently, are not appropriate grounds upon which the Commission could grant Mr. Canaday's Motion for Reconsideration.

Based on the foregoing and the entire record in this proceeding, the Commission concludes that it must deny Mr. Canaday's motion for the following reasons. First, the Commission finds that Mr. Canaday has failed to show a change in circumstances since the order and decision in this proceeding were issued to justify a review by the Commission under G.S. 62-80. Second, the Commission finds that Mr. Canaday has failed to show that a misapprehension or disregard of the facts on which the Commission based its January 12, 2018 Order. Third, the Commission finds that Mr. Canaday has failed to show that evidence was improperly weighed such that reconsideration could be warranted. Therefore, the Commission concludes that Mr. Canaday has not shown good cause for the Commission to reconsider its Order Granting Certificate of Environmental Compatibility and Public Convenience and Necessity, and, consequently, Mr. Canaday's Motion for Reconsideration should be denied.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of May, 2018.

NORTH CAROLINA UTILITIES COMMISSION



Linnetta Threatt, Deputy Clerk