



City of Charleston South Carolina

JOHN J. TECKLENBURG
MAYOR

Undergrounding Utilities Advisory Committee

2021.03.04
VIRTUAL MEETING

A meeting of the Undergrounding Utilities Advisory Committee will be held Thursday, March 4, 2021, at 10:30 a.m., virtually via Zoom Webinar. Use the following link to attend:

<https://us02web.zoom.us/j/84209831666?pwd=WDhicVQ2V2dUZVpLeEhWM2ZLRVZydz09>

To access this meeting via phone, dial 1-312-626-6799. When prompted, enter webinar ID# 842 0983 1666 and the passcode 378801. This meeting may be recorded.

AGENDA:

- Welcome, Troy Miller, Committee Chairman
- Review and recommend for council consideration an ordinance TO AMEND ARTICLE VIII OF CHAPTER 30 OF THE CODE OF THE CITY OF CHARLESTON TO ESTABLISH A NEW PROCEDURE FOR ESTABLISHING NON-STANDARD SERVICE DISTRICTS WITHIN THE CITY OF CHARLESTON AND TO AMEND THE ELECTRICAL FRANCHISE AGREEMENT WITH DOMINION ENERGY SOUTH CAROLINA, INC., FORMERLY KNOWN AS SOUTH CAROLINA ELECTRIC & GAS COMPANY, TO PROVIDE FOR AN ADDITIONAL METHOD FOR FUNDING NON-STANDARD SERVICES, Chip McQueeney, Assistant Corporation Counsel
- Open Discussion

In accordance with the Americans with Disabilities Act, people who need alternative formats, ASL (American Sign Language) Interpretation or other accommodation please contact Janet Schumacher at (843) 577-1389 or email to schumacherj@charlestonsc.gov three business days prior to the meeting.

AN ORDINANCE

TO AMEND ARTICLE VIII OF CHAPTER 30 OF THE CODE OF THE CITY OF CHARLESTON TO ESTABLISH A NEW PROCEDURE FOR ESTABLISHING NON-STANDARD SERVICE DISTRICTS WITHIN THE CITY OF CHARLESTON AND TO AMEND THE ELECTRICAL FRANCHISE AGREEMENT WITH DOMINION ENERGY SOUTH CAROLINA, INC., FORMERLY KNOWN AS SOUTH CAROLINA ELECTRIC & GAS COMPANY, TO PROVIDE FOR AN ADDITIONAL METHOD FOR FUNDING NON-STANDARD SERVICES.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. That Division 1 (Generally) of Article VIII (Underground Utility Districts) of Chapter 30 (Utilities) of the Code of the City of Charleston, South Carolina, is hereby amended to read as follows:

ARTICLE VIII. – NON-STANDARD SERVICES

DIVISION 1. – GENERALLY.

Sec. 30-171. – Designation of non-standard service districts.

City Council may from time to time by ordinance designate and extend non-standard service districts and/or provide for non-standard services within the City in accordance with the provisions of this Article.

Sec. 30-172. – Definitions.

“Company” means Dominion Energy South Carolina, Inc., formerly known as South Carolina Electric & Gas Company, as well as the successors and assigns of the Company.

“District” means (1) a specific neighborhood or project within the municipal limits of the City that has been designated by City Council as a non-standard service district according to the provisions of this Article; or (2) a specific neighborhood or project, a portion of which lies within the municipal limits of the City, that has been designated by City Council as a non-standard service district according to the provisions of this Article and for which all other local governments with jurisdiction over properties in the neighborhood or project have entered into an agreement with the City, under which each local government will contribute its pro rata share to the non-standard service. ~~The one thing missing in a multi-jurisdictional project with service to premises is the authority to order disconnection by the non-City entity. This should be part of the “agreement” but is there a way to clearly integrate that into the language so that it isn’t left out. Riverland Terrace would be an example. Non-city entities could refuse to convert over and that could leave two systems in place with no legal means to get to full conversion. This is happened in the City on the peninsula.~~ and order the disconnection of existing overhead utilities.

“Franchise Ordinance” means Ordinance No. 1996-113, adopted by City Council on July 16, 1996, as amended.

“Fund” means the non-standard service fund established by Section 10 of the Franchise Ordinance, under which the Company and the City each agree to contribute to the fund. The amounts so designated to the fund are to be used exclusively to cover the costs of planning, designing, engineering and constructing non-standard service projects, or otherwise providing non-standard service, within the City. The Company is obligated to undertake the planning, designing, engineering and construction of non-standard service projects only to the extent monies designated to the fund are reasonably projected to be adequate to cover the costs of the projects as they are incurred.

“Non-Standard Service” means the provision of electrical service to existing or new customers of the Company by the use of underground distribution and service lines, the cost of which exceeds the Company’s standard cost of electric distribution service, and where such costs can be recovered through the fund. “Non-Standard Service” also means the use of special equipment, facilities, special landscaping, or the screening of electrical facilities within the municipal limits of the City. “Non-Standard Service” does not include (1) the cost of installation of underground electric distribution lines in new residential subdivisions of the City under terms and conditions customarily applicable with respect to aid to construction payments; or (2) any other service which the Company agrees to provide under the Franchise Ordinance (other than in Section 10 of the Franchise Ordinance).

“Owner” means any person eighteen (18) years of age or older, or the proper legal representative for any person younger than eighteen (18) years of age, and any firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholders, easements, equitable interests, inchoate rights, dower rights, and future interests) and who or which owns, at the date of a petition, at least an undivided one-tenth (1/10) interest in a single parcel of real estate and whose name appears on the county tax records as an owner of such single parcel of real estate.

“Priority List” means the list established and updated by City Council, as described in Sec. 30-173.

“Proposed District” means a neighborhood or area proposed to be designated as a non-standard service district by means of a petition to the City by the owners within the neighborhood or area as described and defined in Sec. 30-174.

“Non-Standard Service Fee” means an amount equal to fifteen percent (15%) percent of the total cost of a non-standard service project within a district that is assessed against all property owners collectively within the district and collected by the City or its agent on an annual basis for a period not exceeding ten (10) years. The non-standard service fee shall not include any costs that each owner might incur to connect the owner’s facilities to any underground facilities and equipment. The Non-Standard Service Fee shall not be assessed against the City or any other governmental entity owning property within the district.

Sec. 30-173. – Priority list.

- (a) Subject to Sec. 30-173(c), City Council shall, by ordinance, establish, update, and amend a priority list for non-standard service projects and non-standard services, utilizing the ~~following weighted criteria: manual approved by the Underground Advisory prepared and updated by the Mayor or the Mayor's designee~~
- (b) Subject to Sec. 30-173(c), in furtherance of the foregoing, City Council may, by resolution, require that the Company undertake the planning, design, engineering, and cost estimating for a specific area or areas, with the costs of such planning, design, engineering, and cost estimating to be payable from the fund. Within a reasonable time after a resolution from the City, or as soon thereafter as reasonably practicable, the Company shall undertake the planning, design, engineering and cost estimating for the specified area or areas. Notwithstanding the foregoing, the Company shall not be obligated to undertake the planning, design, engineering and cost estimating for a non-standard service project unless the monies then obligated to the fund are reasonably projected to be adequate to cover such costs as they are incurred. ~~This creates the alternate path for the more defined group of projects, but it is only limited by the account value. Council could approve ten projects at the same time in the order addressed by the weighed criteria. The criteria by nature should support very defined linear projects, but in order to keep the queuing process efficient for design and construction I suggest that this be limited to no more than four projects at a time unless the parties mutually agree to expand design service for economic efficiency. If you undertake more additional design the project estimates get stale and the costs are no longer accurate as easements are acquired. You have no time restriction on the prior approved projects, but I would strongly suggest that for these projects you require executed easements to lock down the cost and insure constructability. Orange Street would be the example if it went through this path to a project. We provide a design and one location exists for equipment, but there is an unwilling party to the easement. You would be asking DESC to hold the design and the cost estimated on a required easement that may not ever get executed. I think of this as an expedited project and the weighted criteria should provide projects that are deliverable, but let's don't create a process that fails to define when a project hasn't met the bare minimum to move on.~~ and the Company shall not be obligated to undertake the planning, design, engineering and cost estimating for more than four (4) projects. For purposes of this definition, the four (4) project limitation shall apply to projects which have not received construction approval by City Council.
- (c) The provisions of this Sec. 30-173(c) shall apply notwithstanding any other provision of this Article. The City has received initial petitions for non-standard service projects designated as (1) Ansonborough; (2) Country Club II; (3) Wappoo Heights; (4) South Battery, Tradd Street and a portion of Legare Street; (5) Old Windermere; (6) South Windermere; and (7) a section of Clifford Street (the "Existing Proposed Districts"). With respect to the Existing Proposed Districts, the provisions of Article VIII of Chapter 30 of the City Code, as they existed prior to the effective date of this ordinance, shall continue

to apply. The Company shall undertake the planning, design, engineering, and cost estimating for the Existing Proposed Districts in the order in which the City received a petition in compliance with Sec. 30-172(b) of the City Code, as it existed prior to the effective date of this ordinance; provided, however, the Company shall not be obligated to undertake the planning, design, engineering, and cost estimating for more than two (2) Existing Proposed Districts at any given time. The Existing Proposed Districts shall be prioritized for construction purposes in the order in which the City receives a petition in compliance with Sec. 30-172(e) of the City Code, as it existed prior to the effective date of this ordinance.

Sec. 30-174. – Petition method for proposed districts.

- (a) Without limiting the authority of City Council to establish, update, and amend a priority list for districts, City Council shall include on the priority list as proposed districts any project which complies with the petition method set forth in this Sec. 30-174. Nothing in this Sec. 30-174 shall limit City Council's authority to prioritize a non-standard service project or preclude City Council from re-prioritizing a non-standard service project after it has been included on the priority list.
- (b) Prior to an area being designated as a proposed district under this method, a written petition, signed by sixty-six and two-thirds percent (66 2/3%) or more in number of the owners owning at least sixty-six and two-thirds percent (66 2/3%) percent of the assessed value of the real property in the area requesting a proposed district, including those owners that are exempt from ad valorem taxation as provided by law, shall be filed with the Clerk of Council and approved by resolution of City Council. The petition shall describe the area to be included within the proposed district and shall include a list of all owners within the proposed district, identified as either exempt or non-exempt from ad valorem taxation as provided by law; the property addresses; mailing addresses of the owners within the proposed district if the owners receive mail at a different address; and the tax map numbers assigned to each parcel of property in the proposed district. The petition shall further provide that the responsibility of securing the necessary easements within the proposed district that shall be necessary to support the non-standard service and equipment for the non-standard service shall be borne by the owners within the proposed district at no cost to the City or the Company. If streetlights are to be placed within a proposed district, the City and the Company will execute a separate contract that provides that the City will pay the monthly charges for all the streetlights within the proposed district. A proposed district must include at least twenty-five (25) existing customers.
- (c) Upon receipt and approval of the petition as provided in Sec. 30-174(b), City Council shall submit the petition to the Company for the purpose of undertaking the planning, designing, engineering and cost estimating for the non-standard service project; provided, however, the Company shall not undertake the planning, design, engineering and cost estimating for the non-standard service project unless and until City Council adopts a resolution requiring such undertaking as set forth in Sec. 30-173.

- (d) Upon the completion of the planning, designing, engineering and cost estimating for the non-standard service project in the proposed district, the Company shall submit to the City the plans and cost estimate for the project, the easement locations for the aboveground and underground facilities and equipment for non-standard service and the cost associated with each parcel within the proposed district connecting to the non-standard service facilities and equipment (the “plans”). Such plans shall include a site plan depicting all trees to be impacted by the non-standard service process and identifying significant trees as defined in the City’s Zoning Ordinance.
- (e) The City shall review the plans and, upon completion of the City’s review, shall submit the plans and the estimated amount of the annual non-standard service fee to the owners within the proposed district.
- (f) Prior to the City designating a proposed district as a district and including the district on the priority list, the City shall receive a second petition signed by sixty-six and two-thirds percent (66 2/3%) or more of the owners owning at least sixty-six and two-thirds percent (66 2/3%) of the assessed value of the real property within the proposed district. The petition shall provide that the owners agree to the plans, agree to pay the cost to connect to the non-standard service facilities and equipment upon completion of construction of the project and agree to be responsible for fifteen percent (15%) of the total cost of the non-standard service project by the payment of the non-standard service fee. The non-standard service fee shall not include any costs that each owner might incur to connect the owner’s facilities to the non-standard service facilities and equipment. The petition shall include all necessary easements from the owners on whose land the non-standard service facilities and equipment shall be placed.
- (g) Upon receipt of the second petition as provided in Sec. 30-174(f), City Council may, by ordinance, designate the area described in the petition as a district, add the district to the priority list, and prioritize the project; provided, however, nothing herein shall prevent or limit City Council from re-prioritizing the project or amending the project list after the district is included on the priority list.
- (h) After a district has been designated under this Sec. 30-174, and prior to commencement of construction, the City shall authorize the collection of a non-standard service fee from the owners of each parcel within the district, by ordinance, pursuant to section 6-1-330 of the South Carolina Code, as amended. The non-standard service fee shall be based on a combination of fifty percent (50%) of the assessed value and fifty percent (50%) of the front footage of all real property located within the district, with the exception of marshes, wetlands, or retention or detention ponds that cannot be developed under applicable federal, state or local law. The non-standard service fee shall be collected by the City or its agent on an annual basis for a period not exceeding ten (10) years until fifteen percent (15%) of the total cost of the non-standard service project within the district is collected. The Non-Standard Service Fee shall not be assessed against the City or any other governmental entity owning property within the district. I read this as applying to only projects that come in under 30-174. The remaining participants just pick up their share of the cost. Under the 50/50 model this would not apply.

Sec. 30-175. – Construction.

By ordinance, City Council shall authorize the Company to commence construction of non-standard service projects according to the priority list, as amended or updated by City Council from time-to-time. The Company shall be required to commence construction of non-standard service projects within a district within twelve (12) months of City Council's adoption of an ordinance authorizing such construction, subject to the Company's ability to construct more than one (1) project at a time and subject to the amounts present or anticipated in the fund that are reasonably projected to be adequate to cover the costs of the non-standard service projects as they are incurred. Such projects shall be undertaken in advance of amounts being designated to the fund, if monies to be obligated to the fund over the next successive ten-year period are reasonably projected by the Company to be adequate to cover any negative balances and associated finance and federal and state income tax charges plus a contingency of twenty-five percent (25%). Once commenced, the Company shall carry non-standard service projects to completion.

Sec. 30-176. – Removal of overhead structures or poles; limitations on new installations; adaptation of existing service facilities.

- (a) When any street or portion thereof within the City is designated as a district, any person, firm, company or corporation owning or maintaining overhead wires or equipment, associated overhead structures or poles serving the same in such street or portion thereof shall remove such wires and equipment, associated structures and poles prior to or concurrently with the underground placement of non-standard service utilities in the district and shall install same underground concurrently with the underground placement of non-standard service utilities in the district, with the exception of such poles as are necessary to support street lighting, traffic signals and transmission lines above forty-three thousand (43,000) volts.
- (b) It shall be unlawful for any person to erect, construct, maintain or use any pole, overhead wires or associated structure within a district, excepting such poles as are necessary to support street lighting, traffic signals, and transmission lines above forty-three thousand (43,000) volts, after the date when such utilities are required to have been removed, or after a reasonable period of time after the designation by City Council of a district or the extension of a district.
- (c) All conduits, conductors and associated equipment necessary to receive utility service between service conductors or underground pipe or conduit of the supplying utility and the service facilities to the structure being served shall be provided by the person owning such property. Such required construction shall be accomplished within one hundred eighty (180) days after the installation of the utility's facilities.

Sec. 30-177. – Notice to utility companies and owners.

Within sixty (60) days after the passage of an ordinance authorizing the Company to commence construction of a non-standard service project within a district, the Clerk of Council

shall mail a notice of such action to all affected utilities and all persons owning real estate in the affected area. Such notice shall be directed to the last known address of such utility or owner, as shown on the records of the county assessor. Such notice shall advise owners that overhead wires, poles and associated structures are to be removed, and if such owners or their tenants desire to continue to receive utility service or services, such owners shall at their expense make the necessary modifications to facilities on their property in order to receive such underground service from the utilities' specified terminal point. If no other changes are made in owner's facilities, then only that portion being modified to receive underground service shall be upgraded to conform to the City's electrical code.

Sec. 30-178. – Discontinuance of service to premises for noncompliance.

If the owner does not comply with Sec. 30-176(c) within the time specified therein, the Department of Public Service shall have authority to order disconnection and removal of any and all poles, overhead wires or associated overhead structures supplying utility service to such property, and the Company shall not be required thereafter to provide service to such premises, until the owner makes the necessary changes.

Sec. 30-179. – Penalty.

Any person violating any provision of this article or failing to comply with any order issued pursuant hereto shall be subject to the penalty provided in section 1-16 of this Code.

Section 2. That Section 10 of Ordinance Number 1996-113, as previously amended, is hereby amended to include a new Section 10.I, to read as follows:

I. Pursuant to Ordinance No. 2021-____, adopted by City Council on _____, 2021, notwithstanding Section 10.D or other provisions hereof, City Council and the Company may agree to provide non-standard services and/or establish a district without assessing a non-standard service fee. When City Council and the Company approve non-standard services and/or establish a district without assessing a non-standard service fee, the City shall pay fifty percent (50%) of the costs of the non-standard services and/or the costs of the project within the district from the fund. The Company shall pay the remaining fifty percent (50%) of the costs of the non-standard services and/or the costs of the project from its accrued obligation under Section 10.B. No portion of any non-standard service fee collected by the City shall be used for such services or projects.

Section 3. This ordinance shall become effective upon ratification, with the exception of Section 2, which shall not become effective unless and until accepted, in writing, by the Company within thirty (30) days from the date on which this ordinance is ratified by City Council.

Ratified in City Council this _____ day of
_____, in the Year of Our Lord, 2021,
and in the 245th Year of the Independence of
the United States of America

BY:

John J. Tecklenburg, Mayor

ATTEST:

Jennifer Cook
Clerk of Council