


COMMITTEE / COUNCIL AGENDA

TO: John J. Tecklenburg, Mayor
FROM: Daniel S. ("Chip") McQueeney, Jr. DEPT. Legal
SUBJECT: Tree Protection Agreement between City and Dominion Energy South Carolina, Inc.
REQUEST: Request authorization for the Mayor to execute a tree protection agreement with Dominion Energy South Carolina, Inc. governing the protection and pruning of trees on private property, within City rights-of-way, and on City-owned property, by Dominion.

COMMITTEE OF COUNCIL: Public Works and Utilities **DATE:** June 14, 2019

COORDINATION: This request has been coordinated with: (attach all recommendations/reviews)

	Yes	N/A	Signature of Individual Contacted	Attachment
Corporate Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>
Cap. Proj. Cmte. Chair	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

FUNDING: Was funding previously approved? Yes No N/A

If yes, provide the following: Dept./Div.: N/A Account #: N/A

Balance in Account N/A Amount needed for this item N/A

Does this document need to be recorded at the RMC's Office? Yes No

NEED: Identify any critical time constraint(s).

CFO's Signature: _____

FISCAL IMPACT:

Mayor's Signature: _____
John J. Tecklenburg, Mayor

ORIGINATING OFFICE PLEASE NOTE: A FULLY STAFFED/APPROVED (except Mayor's Signature) PACKAGE IS DUE IN THE CLERK OF COUNCIL'S OFFICE NO LATER THAN 10:00AM THE DAY OF THE CLERK'S AGENDA MEETING.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TREE PROTECTION AGREEMENT

THIS TREE PROTECTION AGREEMENT (the "Agreement") is entered into on the Effective Date (as hereinafter defined), by and between the City of Charleston, a South Carolina municipality (the "City"), and Dominion Energy South Carolina, Inc., formerly known as South Carolina Electric & Gas Company (the "Company").

RECITALS

WHEREAS, the City and the Company agree that trees are an important natural, economic, and aesthetic resource;

WHEREAS, the City and the Company agree that Grand Trees, which are the most important trees, serve as an integral part of the City's historic fabric, significantly enhance the livability of the City's residential neighborhoods, and contribute to the enjoyment of the City's public places;

WHEREAS, the City has adopted tree protection ordinances (the "Ordinances") regulating the pruning, cutting down, damaging, planting, and replacement of trees, including Grand Trees, on private property, within City rights-of-way, and on property owned by the City, the purposes of which are to protect the health of trees, to preserve the aesthetics of the City and areas which benefit from these trees, and to balance modern infrastructure with natural resources;

WHEREAS, among other things, the Ordinances provide that utility companies and electric suppliers will be exempt from the tree protection requirements in Part 6 of Article 3 of Chapter 54 of the City Code ("Part 6") if they enter into a tree protection agreement addressing the specific criteria set forth in Sec. 54-326.g of the City Code;

WHEREAS, good pruning techniques are crucial for the health of trees, and this Agreement is intended to ensure that proper pruning techniques are utilized to maintain the aesthetics and the practical value of trees;

WHEREAS, the Company desires to provide, and does provide, electric and natural gas service in a timely, safe, efficient, economical, and reliable manner and must, therefore, prune, substantially alter, and/or remove trees; and

WHEREAS, pursuant to this Agreement, the City and Company acknowledge the benefits of providing safely-maintained electric and other utility services to the City's residents, while protecting and preserving the City's trees and other natural resources.

NOW, THEREFORE, BE IT RESOLVED, in consideration of foregoing recitals and the mutual promises contained herein, the City and the Company agree as follows:

ARTICLE I: DEFINITIONS

The following definitions shall apply to this Agreement:

1.1 “ANSI A300 Standards” means the most current version of the voluntary industry consensus standards for managing trees, shrubs, and woody plants, published by the American National Standards Institute (“ANSI”). ANSI A300 Standards are divided into multiple parts, each focusing on a specific aspect of woody plant management. ANSI requires that approved standards be developed according to accepted principles, and that such standards must be reviewed and, if necessary, revised, every five (5) years.

1.2 “City Code” means the Code of the City of Charleston, South Carolina.

1.3 “City Designee” means a representative of the City, who may be a City employee or third-party contractor, designated by the Director (as hereinafter defined). If no such person has been designated, the “City Designee” shall mean the Director. The City Designee shall be responsible for administering this Agreement on behalf of the City. Without limiting the foregoing, the Director, in the Director’s discretion, may designate a separate City Designee for each Project. Except for the Director, any City Designee shall be an ISA-certified arborist.

1.4 “Company Designee” means a designated representative of the Company who is available for coordination and communication with the City Designee at all times, as determined necessary by the City Designee, with respect to each Project. Without limiting the foregoing, the Company, in the Company’s discretion, may designate a separate Company Designee for each Project.

1.5 “Diameter Breast Height” or “DBH” means the total diameter, in inches, of a tree trunk or leaders, measured four and one-half feet (4½’) above existing grade. In instances where a tree splits into leaders below four and one-half feet (4½’) above existing grade and the leaders are physically attached above the ground and of the same species of tree, all leaders equal to or greater than six inches (6’) inches D.B.H. shall be measured separately and count as one tree.

1.6 “Director” means the City’s Director of the Department of Parks, as identified in Sec. 22-38 of the City Code, as may be amended.

1.7 “Grand Tree” means a tree twenty-four inches (24”) or greater D.B.H.

1.8 “ISA” means International Society of Arboriculture.

1.9 “Project” means activities involving the pruning of trees in and around Utility Lines and Facilities by the Company, with each such Project being identified by the Company as part of the procedures outlined in Article III of this Agreement.

1.10 “Pruning” or “pruning” means cutting, trimming, substantial alteration, and/or pruning of trees.

1.11 "Utility Lines and Facilities" means lands, structures, and other facilities used in the generation, transmission, or distribution of electricity or natural gas.

ARTICLE II: TREE PROTECTION REQUIREMENTS

2.1 **Generally.** The City and the Company recognize the need to minimize the pruning and removal of trees, especially Grand Trees, which do not frustrate or substantially interfere with the intended purpose of construction or maintenance of Utility Lines and Facilities. Grand Trees are the most important trees, and the Company shall protect Grand Trees when reasonably feasible, consistent with the Company's responsibility to maintain safe clearance around Utility Lines and Facilities. Pruning of trees shall comply with accepted arboricultural practices, including ANSI A300 Standards.

2.2 **Clearances.**

2.2.1 **Generally.** Unless otherwise provided by federal or state law, existing contracts between the Company and its contractors, or due to safety considerations, the Company agrees to use reasonable efforts to implement a standard side clearance of ten feet (10'), a standard top clearance of twenty feet (20'), and a standard bottom clearance of ten feet (10').

2.2.2 **Conditions and Limitations.** Notwithstanding the standard clearances identified in Section 2.2.1 of this Agreement, pruning cuts shall continue to be made at the closest parent limb in order to preserve the long-term health of the tree. Certain conditions may also exist which militate in favor of a lesser clearance area around trees, including the following:

a. When parent limbs/leaders are of such significant size, i.e., ten-inch (10") diameter or greater, that removal of such parent limbs/leaders would jeopardize the health of the tree or substantially change the tree's appearance, such parent limbs/leaders should be preserved.

b. When significant-sized limbs, i.e., ten-inch (10") diameter or greater, push the neutral down far enough that it may be more reasonable to relocate the neutral above such limb than to remove the limb, the neutral should be relocated to preserve such limbs.

c. Significantly large tree trunks which are less than ten feet (10') from the outermost primary conductor generally should be preserved.

d. When pruning Grand Trees, effort shall be made to maintain standard clearance whenever possible; however, cuts shall continue to be made at the closest parent limb in order to preserve the long-term health of the tree. The City Designee may elect to have an arborist working on behalf of the City to be present when pruning activities are taking place on Grand Trees and may require

twenty-four (24) hour notice for any work to be performed on trees, including Grand Trees, identified by the City Designee to be special in nature.

e. The Company will use reasonable efforts to cut no more of the canopy in one (1) growing season than is necessary to meet applicable ANSI A300 Standards.

2.3. Foreman. The Company shall have one (1) “top trimmer/foreman,” possessing appropriate qualifications, present at all times with each tree pruning crew for each Project. The Company shall make the qualifications of such “top trimmer/foreman” available to the City upon request.

2.4. Company Designee. The Company shall have at least one (1) Company Designee available to coordinate with the City Designee for each Project at all reasonable times, as determined necessary by the City Designee.

2.5. City Designee. The City shall have at least one (1) City Designee available to coordinate with the Company Designee for each Project at all reasonable times, as determined necessary by the Company Designee.

2.6. Rehabilitation of Damaged Trees. The City Designee may require the Company, at the Company’s sole cost and expense, to take appropriate action to rehabilitate any trees damaged due to improper pruning techniques under the ANSI A300 Standards.

2.7. Tree Removal. If the City Designee determines, following a Project, that a tree displays questionable viability, structural integrity, or that a tree may display grossly compromised aesthetics due to improper pruning techniques, the Company will coordinate with the City and, if the tree is located on private property, the property owner(s), regarding the possible removal of the tree. The party removing the tree will be responsible for removal of all resulting debris.

2.8. Conflicts. If the pruning of trees on a particular property is delayed due to a conflict involving the City, a property owner, or the Company, then a follow-up meeting will be scheduled within a reasonable time among the property owner, the City Designee, and the Company Designee.

2.9. Removal of Debris. The Company shall timely remove all debris resulting from the pruning of trees.

2.10. Procedures. The Company shall implement and follow the “Procedures for Contractor Pruning Communication,” set forth in Article III of this Agreement, within the requested timeframes.

2.11. Communication. For each Project, the Company shall post on its website a phone number and email address for concerned parties, including City residents, to use to communicate with the Company with respect to the Project.

2.12 Notice of Complaints. The Company shall use reasonable efforts to notify the City of any significant complaints received by the Company regarding the pruning or removal of trees within the City and to invite the City Designee and/or other City representative to attend any meetings with concerned residents.

ARTICLE III: PROCEDURES FOR CONTRACTOR PRUNING COMMUNICATION

3.1 Annual Procedures for Trimming in 2020 and Thereafter. For trimming during and after the year 2020, before the first of each year, and on a continuing basis thereafter with respect to any proposed changes, alterations, modifications, or amendments to the Company's planned tree pruning for such year, the Company shall provide to the Director the following information:

3.1.1 A map of pruning circuits for the next six (6) months to one (1) year.

3.1.2 A list of possible areas, locations, and target dates to commence and conclude pruning for each Project.

3.1.3 A list of possible contractors the Company may use.

3.1.4 Any changes in pruning standards.

3.1.5 A copy of pruning guidelines and contract specifications to be followed by each contractor.

3.1.6 The dates for any pre-pruning meetings with contractors.

3.2 Monthly Procedures. During the month prior to the commencement of a Project, and on a continuing basis thereafter with respect to any changes, alterations, modifications, or amendments to the Company's planned tree pruning for such month, the Company shall provide to the Director the following information:

3.2.1 The name and contact information of the Company Designee for each Project.

3.2.2 The dates on which the Company will provide or has provided notification to residents by postcards, including phone and email contact information.

3.2.3 The dates on which the Company will provide or has provided any press releases with respect to pruning.

3.2.4 A copy of all materials which will be sent or has been sent by the Company to residents regarding pruning.

3.2.5 A smaller map for pruning in specific locations with respect to each Project.

3.2.6 Approximate timeframes for the commencement and completion of each Project.

3.2.7 The dates of all public meetings with respect to each Project. The Company shall have a Company Designee attend each such meeting.

3.3 Procedures During Projects. During each Project, the Company shall provide the City Designee updates or other reasonable notification regarding pruning activities, timing of pruning, the location of pruning, prior notification of the pruning of any Grand Trees which the City has determined to be special in nature and for which the City has communicated that determination to the Company Designee, the timing for removal of debris, and other information the City Designee shall reasonably request regarding the Project.

3.4 Coordination.

3.4.1 City Designee. The Director shall provide the Company with the name and contact information of the City Designee for each Project within a reasonable time; provided, however, if the Director does not provide such information, the Director shall serve as the City Designee for the Project unless and until such information is provided to the Company.

3.4.2 Review. The City Designee shall coordinate and cooperate with the Company Designee in reviewing the information provided by the Company under this Article III, notifying the Company Designee of any objections or requests for additional information within a reasonable time, and meeting with the Company Designee in a timely manner to address and resolve any conflicts regarding the information provided.

ARTICLE IV: MITIGATION

Landscaping and other measures are recognized as valuable techniques to help mitigate the adverse impacts of removing trees for construction and maintenance. Mitigation may be required as a condition for approving the removal of Grand Trees. Mitigation is recognized to be especially important where planned Utility Lines and Facilities will cross, or run adjacent to, planned or existing public rights-of-way, or when the removal of a Grand Tree or Grand Trees will result in a substantial change in the appearance of landscaping along public rights-of-way or other public lands. Mitigation includes, but is not limited to, the planting of shrubs or understory trees to screen views or disrupt the uniformity along cleared utility rights-of-way, directional changes in the alignment of Utility Lines and Facilities at road crossings to disrupt straight views along cleared rights-of-way, and the bridging of lines over, or the tunneling of lines under, Grand Trees.

ARTICLE V: EMERGENCY PROVISIONS

In times of emergency, trees may be removed without prior approval of the City, consistent with the Company's responsibility to maintain safe clearance around Utility Lines and Facilities. The Company shall file a report with the City Designee indicating the number and location of trees removed and the nature of the emergency, within twenty-one (21) calendar days of the emergency.

In times of major emergencies, caused by disasters and acts of nature, the report filing period shall be extended.

ARTICLE VI: TERM

6.1 **Term.** The initial term of this Agreement (the “Initial Term”) shall commence on the Effective Date and conclude on July 31, 2021. Upon conclusion of the Initial Term, this Agreement shall continue in full force and effect from year to year thereafter, until properly terminated by either party. Either party may terminate this Agreement at the end of the Initial Term, or its anniversary date any year thereafter, by giving written notice of its intention to terminate no less than 60 days prior to the proposed termination date.

6.2 **Undergrounding Advisory Committee.**

6.2.1 **Creation.** On or before July 31, 2019, the City shall establish an Undergrounding Advisory Committee to evaluate and recommend improvements to the City’s current undergrounding program for electric lines in areas served by the Company, especially focusing on the adverse impact of overhead lines on Grand Trees within residential neighborhoods.

6.2.2 **Membership.** The committee shall be comprised of nine (9) voting members, consisting of (a) the Mayor or the Mayor’s Designee; (b) a member of City Council; (c) two (2) representatives appointed by the Company; (d) two (2) members of City staff; (e) and three (3) residents of the City. Except for the Company’s representatives, the members of the committee shall be appointed by the Mayor.

6.2.3 **Terms.** The committee shall continue to meet during the term of this Agreement; provided, however, the committee may continue to meet after the term of this Agreement, in the discretion of the Mayor. The Mayor shall serve *ex officio*. Any member of City Council who serves on the committee shall serve for the earlier of: (1) two years; or (2) until the member no longer serves on City Council; provided, however, the first member of City Council to serve on the committee shall serve from July 31, 2019, through January 31, 2020, after which the Mayor may appoint a different member of Council to serve for two (2) years or until such member no longer serves on City Council. Any members of City staff on the committee shall serve at the pleasure of the Mayor. The Company’s representatives shall serve at the pleasure of the Company. All other members of the committee shall serve for the earlier of: (1) two years; or (2) until the member no longer resides in the City. If the committee continues in existence past two (2) years, the Mayor shall have discretion to stagger the terms of the members who serve as residents; provided, however, no resident may serve for a single term of more than two (2) years.

6.2.4 **Authority.** The committee shall act as an advisory board to city council, and may submit proposals and recommend feasibility studies to City Council, as appropriate. The committee shall evaluate the City’s undergrounding program, as well as tree protection ordinances and agreements, including this Agreement, relating to the protection of trees, especially Grand Trees, during pruning and development activities by the Company. Any

proposals or recommendations shall be considered by the appropriate standing committee of City Council prior to consideration by City Council. City Council shall retain full discretion to approve, in whole or in part, or disapprove, any proposals or recommendations of the committee.

6.2.5 Officers. The committee shall annually appoint, by majority vote, the chairperson and vice-chairperson of the committee. The Mayor shall annually appoint the committee's secretary, who may be a member of the committee or a member of City staff. The secretary shall coordinate with the City's Office of Corporation Counsel and Clerk of Council with respect to Freedom of Information Act ("FOIA") requirements and the preparation, publication, and posting of the committee's agendas and minutes, as required. The secretary shall keep a record of the committee's proceedings, which the secretary shall deliver to the Clerk of Council in a timely manner for maintenance as a public record.

6.2.6 Rules of Order. The committee shall adopt its own rules of order, which shall comply with any City ordinances adopted or to be adopted specifically governing the committee or governing committees generally, and with FOIA. Except as otherwise provided in the rules of order adopted by the committee, the rules of parliamentary practice contained in the current edition of Robert's Rules of Order, as amended, shall govern the committee in all cases to which they are applicable.

6.3 Progress. Without limiting Section 6.2 of this Agreement, the parties agree to continue with good faith efforts on evaluating any proposed amendments to this Agreement and the feasibility of undergrounding.

ARTICLE VII: BREACH OF AGREEMENT

Upon the Company's breach of this Agreement, the Company shall lose its exemption from the requirements of Part 6 under Sec. 54-326.g of the City Code. Otherwise, the City's remedies for the Company's breach of this Agreement shall be limited to declaratory and/or injunctive relief or mitigation in accordance with Article IV or the City's other ordinances relating to tree protection. The City may reinstate the Company's exemption under Sec. 54-326.g of the City Code if the City Designee determines that acceptable mitigation or other measures have been taken to remedy the breach. The Company's remedies for the City's purported breach of this Agreement shall be limited to declaratory and/or injunctive relief. A non-breaching party may terminate this Agreement due to the material breach of this Agreement by the other party upon sixty (60) days written notice if the party in material breach of this Agreement fails to cure the breach within such notice period.

ARTICLE VIII: MISCELLANEOUS

8.1 No Waiver of Exemption. By entering into this Agreement, the Company does not waive any exemption to the Ordinances to which the Company may be entitled by operation of federal, state, or local laws.

8.2 Notices. All notices, demands and requests which may be given or which are required to be given by either party to the other under this Agreement, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective when either: (i) delivered in person to the address set forth below for the party to whom the notice was given; (ii) three (3) business days after having been sent, by certified mail, return receipt requested, addressed to the intended recipient at the address specified below; (iii) on the next business day with respect to any notification provided to the recipient by electronic mail to the electronic mail address specified below; or (iv) at noon of the business day next following after having been deposited into the custody of a nationally recognized overnight delivery service, addressed to such party at the address specified below. Any notice sent as required by this provision and refused by the recipient shall be deemed delivered as of the date of such refusal. For purposes of this provision, the addresses of the parties for all notices are as follows:

If to the Company: Dominion Energy South Carolina, Inc.
Attention: _____

Email: _____

With a copy to: Dominion Energy South Carolina

Attention: _____

E-mail: _____

If to the City: City of Charleston
Mayor's Office
80 Broad Street
Charleston, SC 29401
Email: _____

With a copy to: City of Charleston
Department of Parks
Attention: Director of Parks Department

Charleston, South Carolina _____
Email:

With a copy to: Office of Corporation Counsel
50 Broad Street
Charleston, SC 29401
Email: herdinas@charleston-sc.gov
Facsimile: 843-724-3706

Either party may, from time to time, by notice in compliance with this paragraph, designate a different name and/or address to which notices shall be sent.

8.3 Days; Dates. Unless other specified herein, all references to “day” or “days” in this Agreement shall mean a calendar day or calendar days. If any date set forth in this Agreement or computed pursuant to this Agreement falls on a Saturday, Sunday, or City holiday, such date shall be deemed automatically amended to be the first business day following such weekend day or City holiday.

8.4 Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of South Carolina.

8.5 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, except that Section 8.6 and Section 8.10 of this Agreement shall not be severable, and this Agreement shall be void and of no effect if Section 8.6 or Section 8.10 of this Agreement are declared to be ineffective or invalid under applicable law.

8.6 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the pruning and/or removal of trees by the Company under the Ordinances and supersedes all prior agreements and understandings, oral, written or otherwise, relating to thereto. Notwithstanding the foregoing, this Agreement shall not supersede any of the following: (1) the jurisdiction of the Federal Energy Regulatory Commission with respect to transmission vegetation management or otherwise; (2) the jurisdiction of the South Carolina Public Service Commission to regulate electric and gas utilities or suppliers; (3) the franchise agreements between the City and the Company, which are not changed, altered, amended, extended, superseded, or modified by this Agreement; (4) any easements, leases, licenses, or other agreements between the parties, whether or not recorded; and (5) any other provisions of the City Code which may apply to the Company. Nothing in this Agreement restricts the ability of the Company to maintain safe clearance around utility lines and facilities.

8.7 Amendment. This Agreement may be amended only by a written instrument executed by the parties. An implied amendment, modification, or repeal of this Agreement shall not be presumed by a merger or integration clause in a subsequent written agreement between the parties unless this Agreement is expressly referenced as being amended, modified or repealed in the subsequent written agreement or the pertinent provisions of the subsequent written agreement would be completely inconsistent with pertinent provisions of this Agreement, in which case the pertinent provisions of the subsequent written agreement shall control, but the remainder of this Agreement shall remain in full force and effect.

8.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

8.9 Recitals. The recitals are an integral part of this Agreement.

8.10 No Third Party Rights. Notwithstanding any other provision of this Agreement, this Agreement shall not be construed to create any rights enforceable by the general public or others who are not parties to this Agreement, and this Agreement shall not be construed to alter, limit, amend, abrogate, or eliminate any existing rights enforceable by the general public or others against the City or the Company under applicable laws. This Agreement does not confer any new right, title, or interest in private property, property owned by the City, City rights-of-way, or the property of the Company to the City or the Company.

8.11 Effective Date. This Agreement will become effective when all parties have signed it. The date of this Agreement (the "Effective Date") will be the date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[COMPANY'S SIGNATURE PAGE TO TREE PROTECTION AGREEMENT]

IN WITNESS WHEREOF, Dominion Energy South Carolina, Inc. has caused these presents to be executed as of the date set forth below.

Signed, Sealed and Delivered in the Presence of:

DOMINION ENERGY
SOUTH CAROLINA, INC.

First Witness

By: _____

Print Name: _____

Its: _____

Second Witness

Date: _____

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[CITY'S SIGNATURE PAGE TO TREE PROTECTION AGREEMENT]

IN WITNESS WHEREOF, the City of Charleston, a South Carolina municipality, has caused these presents to be executed as of the date set forth below.

Signed, Sealed and Delivered in the Presence of:

CITY OF CHARLESTON

First Witness

By: _____
Print Name: John J. Tecklenburg
Its: Mayor

Second Witness

Date: _____