

Subject: Continued Council Deliberation on Three Appeals of Ruston Undergrounding Notice for Electricity

Proposed Council Action:

On July 18, 2023, the Council held three public hearings on objections to move electrical lines underground. The Council will continue deliberations on whether to uphold, modify, or overturn the City's direction to certain residents to underground their power from their property line to their home.

Dept. Origin: City Attorney's Office

Prepared by: Jennifer Robertson
 City Attorney's Office

For Agenda of: August 15, 2023

Exhibits:

Concurred by Mayor:	_____	Initial & Date
Approved/form by City Atty:	<u>JSR/8-3-23</u>	
Approved by _____ Director:	_____	
Approved by Department Head:	_____	

INFORMATION / BACKGROUND

1. Undergrounding Conversion Project – Rust Way Phase 2.

The City of Ruston has long been engaged in a long-term effort to underground its utilities. As the electrical utility provider, Ruston has been working to move its distribution lines underground in order to increase security, electrical reliability, and preventative maintenance for the benefit of the residents and businesses in Ruston. By moving its electrical lines underground, the communications and cable providers in Ruston (Comcast and Century Link) are also triggered to move their lines underground which then allows Ruston to remove the utility poles. This then makes the City streets and rights of way safer.

The City previously completed the Rust Way, Phase 1 project in 2020. This year, the City completed the Rust Way, Phase 2 project to underground electricity and communications lines from N. Winnifred Place almost to N. Bennett Street. See the conversion area shown on the attached map. The cost of the project was approximately \$360,000, not including staff time. This was funded out of the electrical utility capital account. The other communications and cable providers have lines in that area which will be moved underground once the private property owners' line are moved underground from the private property line to the meter. This action will trigger Century Link and Comcast moving their lines underground followed by the City's removal of the utility poles. Therefore, the full conversion in this area cannot be completed until the residents in this area complete their private conversions to underground.

2. Undergrounding Notice to Residents.

State law provides authority to electrical utilities providers to underground lines and specifically finding that “conversion of overhead electric and communication facilities to underground facilities is substantially beneficial to the public safety and welfare, is in the public interest and is a public purpose”. RCW 35.96.010. The City also had the authority to charge the properties in the undergrounding area with the costs of the project using a Local Improvement District (“LID”) process. See RCW 35.43.190; RCW 35.96.030.

For this project, the City opted not to create an LID to force residents to pay for the project, but instead to have the utility pay for the conversion project. Although the project has been completed since February 2023, and the distribution lines are underground and are electrified, the lines that run from the electrical meters at the house to the edge of the City right of way still must be placed underground by each homeowner. This is the last step in fully undergrounding electrical infrastructure in this area. There are 15 properties who have been notified of the need to underground their distribution lines from the meter to their home.

The City’s electrical engineer estimates that this will cost each homeowner approximately \$5,000-\$10,000 to do the work (depending on how much trenching is involved). This also requires a permit from the City of Ruston as well as an L&I permit, inspection, and verification of L&I compliance. The City is waiving its permitting costs for the private portion of undergrounding in this area, but there will be permitting costs on the L&I side. The work involved in completing the undergrounding should take approximately one to three days once the permits are issued. The City has created Conversion Guidelines for overhead to underground service conversion which have been provided to all residents.

When the City has established an underground conversion area, it is permitted to require the private property owners to convert their service lines to underground. The procedure prescribed by state law is to send a notice to each property owner that states that:

- a. Service underground is available;
- b. All electrical lines from the existing overhead facilities within the area to any structure must be disconnected and removed within 90 days after the date of mailing of the notice;
- c. If the owner fails to convert to underground by the deadline, the City will order the utilities disconnected and will remove the lines; and
- d. The owner may file a written objection to the notice within 30 day of mailing.

See RCW 35.96.050.

In accordance with this statute, on March 2, 2023, the City of Ruston sent via certified mail notice letters to the 15 Ruston residents located in the conversion area which alerted these residents that they would be required to underground their lines. Instead of providing 90 days’ notice as allowed by State law, the City provided the residents with a full one-year’s notice, giving the residents until March 2, 2024 to complete the work.

In addition to the formal Notice, Ruston Special Project Manager, Kevin Moser, met with the residents and served as a resource to the residents and their contractors in order to help the residents/their contractors understand the project. This included in-person meetings and walking the project, explaining the process for conversion and the purpose of the project (to provide increased security and preventative maintenance to the City’s electrical system). Mr. Moser

attended the July 18th objection hearings via telephone and provided testimony as to his engagement with each of the objectors and on the project in general.

3. Objections to Undergrounding Notice.

During the 30 days following the mailing of the 15 letters, six property owners timely filed written objections to the order to underground their lines. The pending objections have been provided to the Council. Of the six objections, three have been withdrawn. The three pending objections which proceeded to public hearing are:

1. Terri Cole & Michael Gosciniak – 4908 N. Winnifred St.
2. John Hardin & Jessica Mitchell-Hardin – 5427 N 49th St.
3. Shawn and Jessie Kelley – 5433 N. 49th St.

Given that these written objections were timely, State law required the City’s legislative authority (the City Council) to conduct a hearing to determine whether the removal of all or any part of the service lines is in the public benefit. The City held these required hearings on July 18, 2023. For the three hearings, in addition to receiving reports from the staff (City Attorney Jennifer Robertson and Special Projects Manager Kevin Moser), the following people testified:

1. *Terri Cole & Michael Gosciniak Hearing.*

The objectors did not attend the hearing, and no one testified.

2. *John Hardin & Jessica Mitchell-Hardin Hearing.*

Dr. Jessica Mitchell-Hardin testified.

3. *Shawn and Jessie Kelley Hearing.*

Ms. Jessie Kelley testified.

The other 12 property owners who did not object (or who withdrew their objections) will be expected to complete the undergrounding no later than March 2, 2024. At least three of these property owners have already completed the work and another one is in the process of completing the work.

Conversion on these properties will likely be the typical process of creating a utility trench and installing conduit prior to placing the wires in the conduit. This will also include permits and inspections as required by law. Ruston has waived permit fees for any city permits for these conversions.

4. Policies Supporting Undergrounding in Ruston.

The City’s policies towards conversion to underground electrical and communications facilities and removal of power poles throughout the City stretch back over 40 years as the vision for Ruston. This section sets forth a list of policies found in City’s documents that demonstrate the City’s commitment to this vision.

The basis for undergrounding electrical and communications facilities is that such relocation improves reliability, makes the streets safer and less cluttered, and improves the aesthetics throughout the city. Some examples of these policies are found in the following documents:

- ROW Use Master Permits and Utility Relocation RMC 14.06.230 which request relocation of aerial facilities underground. (Adopted in 2012.)
- RMC 18.04.010 – “The installation of underground cable service from the transformer to the point of use shall be at the expense of the user of such service.” (Adopted in 1979.)
- RMC 18.04.020 – “The maintenance of underground cable service from the transformer to the point of use shall be at the expense of the user of the service.” (Adopted in 1979.)
- RMC 29.02.020 requires all electrical and telephone distribution systems to be placed underground in all subdivisions (In the code since at least 2004.)
- Importance of undergrounding is emphasized in all franchise agreements entered into by Ruston over the past 20+ years.
- Ruston Comprehensive Plan Policies also demonstrate City’s policy of undergrounding utilities:
 - Ch. 2 – Vision, Goals and Framework - Capital Facilities and Services Policy: “**FW-48** Aerial utilities should be located and relocated underground. Seek opportunities to achieve this.” (p. 22.)
 - Ch. 3 – Community Character – CC Policy: “**CC- 24** Enhance the scenic views and aesthetic quality of Ruston by placing overhead utilities underground.” (p. 27.)
 - Chapter 4 – Land Use Vision, Utility Services, includes: “In addition, Ruston also requires new development to underground aerial utilities and provide at a minimum, conduit for future telecommunication facilities.” (p. 31.)
 - Ch. 7, Transportation Vision, re: Alleys, says: “When the vehicle driving surface is less than 12’ wide, opportunities to place aerial utilities underground, (thus eliminating the need for utility poles which limit drive aisle width), should be considered.” (p. 91.)
 - Ch. 8 – Utilities – Utilities Goals in Comp Plan includes: “Pursue funding and other opportunities to place overhead utilities underground. All utilities related to new construction should be required to be placed underground.” (p. 154.)
 - Ch. 8 – Utilities - Comp Plan Policy UT-13 and UT-14:

“UT-13 All new electrical and telecommunication wires should be located underground. Existing overhead utilities should be placed underground when impacted by new development and whenever possible.” (p. 155.)

“UT-14 Support feasible co-location of new public and private utility distribution facilities **in shared trenches**. Promote coordination of construction timing to minimize construction-related disruptions to the public and reduce the cost to the public of utility delivery. Provision of an efficient, cost effective and reliable utility service is encouraged by ensuring land will be made available for the location of utility lines and utility facilities.”

The City estimates that over half of all developed properties in Ruston currently have underground electrical lines or underground “ready” conduit.

5. Council Authority.

Under state law, the City Council has the discretion to decide to convert lines to underground in a particular area. Ch. 35.96 RCW, *Citizens for Underground Equality v. City of Seattle*, 6 Wn. App. 339, 344 (1972). Council also has broad discretion on whether to uphold or reject the objections filed by the four property owners. The determination reached by the City Council on this matter is a final decision and can only be overturned for abuse of discretion. RCW 35.96.050.

6. Procedures.

Each of the three hearings was duly held on July 18th and each has been closed. At this point, the Council needs to go through the quasi-judicial disclosures and begin deliberations. However, since Councilmembers Syler and Kristovich were absent from the hearings, they have been provided access to the recordings as well as all information that the Council had available at that time. Councilmembers Syler and Kristovich may participate in the deliberations provided that they confirm they have had a chance to review the record and feel prepared to participate.

Assuming the Council is able to reach a decision, the staff will prepare a written decision which will come forward for adoption at the September 5th Council meeting.

7. Options.

In deliberating on this matter, the Council may do one of the following for each objection:

- a. Reject the objections and hold that the objectors must complete the conversion before March 2, 2024;
- b. Uphold the objections and excuse the objectors from complying with the notice of conversion if the City Council finds that the conversion does not substantially benefit the public safety and welfare, is not in the public interest and does not serve a public purpose;
- c. Delay the deadline for conversion to provide the objectors more time to comply with the notice of conversion; or
- d. Ask for additional information or time to deliberate and schedule another council session on this matter.

FISCAL CONSIDERATION

The City has spent \$360,000 on converting the electrical lines underground in the Rust Way Phase 2 project, not including staff costs. Completion of the project is contingent upon all of the residents converting the private portion of the lines to underground on their properties. Without the residents' completion of the conversion, the City cannot force Comcast or Century Link to underground their lines and thus the City would not be able to remove utility poles in the conversion area.

RECOMMENDATION / MOTION

Deliberate on whether to reject, uphold or delay the City's notice to the objectors to underground their power from their respective property lines to their electrical meters. Upon direction of Council, a written decision will be brought back for approval on September 5, 2023.

ATTACHMENTS

Map of Rust Way Phase 2 Conversion Area

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