

**Subject: Decision on Undergrounding  
 Objections  
 Resolution Nos. 772, 774, & 775**

**Dept. Origin:** City Attorney's Office

**Prepared by:** Jennifer Robertson  
 City Attorney's Office

**For Agenda of:** September 5, 2023

**Exhibits:**

**Proposed Council Action:**

Approve written decision in the three objection Hearings consistent with the City Council's votes on August 15, 2023.

	Initial & Date
<b>Concurred by Mayor:</b>	_____
<b>Approved/form by City Atty:</b>	<u>JSR/8-24-23</u>
<b>Approved by _____ Director:</b>	_____
<b>Approved by Department Head:</b>	_____

**INFORMATION / BACKGROUND**

On August 15, 2023, the City Council continued deliberations on the three objections to the City's notice requiring undergrounding of electrical lines. The Council voted 4-0 to deny each objection. These decisions were based on the substantial public benefits that are created by placing the power lines underground, including:

- Increased electrical reliability;
- Increased security of the electrical system;
- Reduced maintenance costs for the electrical lines;
- Safer roadways when the utility poles are removed;
- Reduced maintenance for the utility poles; and
- General benefits to the public at large, the traveling public, and residents.

The three Resolutions (772, 774 and 775) captured the Council's discussion and decision. If the Council agrees the Resolutions reflect the Council's rationale and decision, then each Resolution should be approved. Following approval and the Mayor's signature, the City Clerk will mail the decisions to the respective objecting parties.

**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**

Review and approve each resolution.

MOTION 1: I move to approve Resolution No. 772 Denying the Objection to Electrical Undergrounding filed by Terri Cole and Michael Gosciniak.

MOTION 2: I move to approve Resolution No. 774 Denying the Objection to Electrical Undergrounding filed by John Hardin and Jessica Mitchell-Hardin.

MOTION 3: I move to approve Resolution No. 775 Denying the Objection to Electrical Undergrounding filed by Shawn and Jessie Kelley.

**RESOLUTION NO. 775**

**A RESOLUTION OF THE CITY OF RUSTON,  
WASHINGTON, DENYING THE OBJECTION TO  
ELECTRICAL UNDERGROUNDING FILED BY SHAWN  
AND JESSIE KELLEY.**

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**WHEREAS**, the City of Ruston has been engaged in a long-term effort to underground its utilities. As the electrical utility provider, the City of Ruston (Ruston Power) has been working to move its distribution lines underground in order to increase security, increase electrical reliability, and reduce the costs of maintenance; and

**WHEREAS**, 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 and further reduces the City's maintenance costs; and

**WHEREAS**, the City previously completed the Rust Way, Phase 1 project in 2020; and

**WHEREAS**, in 2023, the City completed the Rust Way, Phase 2 project to underground electricity and communications lines from N. Winnifred Place almost to N. Bennett Street. The cost of the project was approximately \$360,000, not including staff time, and was funded out of the electrical utility capital account; and

**WHEREAS**, 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; and

**WHEREAS**, State law provides authority to electrical utilities providers, like Ruston Power, 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); and

**WHEREAS**, the Rust Way – Phase 2 undergrounding project was completed in 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; and

**WHEREAS**, there are 15 properties impacted within the Rust Way – Phase 2 undergrounding project 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; and

**WHEREAS**, 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; and

**WHEREAS**, when the City has established an underground conversion area under RCW 35.96.050, 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; and

**WHEREAS**, 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; and

**WHEREAS**, Shawn and Jessie Kelley own property at 5433 N 49th St., Ruston and timely filed a written objection to the order to underground their lines; and

**WHEREAS**, on June 6, 2023, the City Council adopted Ordinance No. 1568 to provide monetary grants from Ruston Power to residents who are low income (defined as making under 80 percent of the Area Median Income for Pierce County) to assist those homeowners with the costs of mandated undergrounding; and

**WHEREAS**, the City Council conducted a hearing on July 18, 2023 on this objection in accordance with State law to determine whether the removal of all or any part of the service lines is a substantial benefit the public safety and welfare, is in the public interest and serves a public purpose; and

**WHEREAS**, all objectors receive advanced written notice of the date and time for the hearing, and the hearing was advertised as part of the City Council's Agenda; and

**WHEREAS**, during the hearing, City Attorney Jennifer Robertson and Special Projects Manager Kevin Moser testified, Ms. Jessie Kelley attended the hearing and offered testimony to the City Council; and

**WHEREAS**, following the hearing, the Council began deliberations and voted to continue deliberations to the next scheduled City Council meeting; and

**WHEREAS**, on August 15, 2023, the City Council continued deliberations and voted unanimously to reject the objection and require Shawn and Jessie Kelley to complete the undergrounding by March 2, 2024; and

**WHEREAS**, the decision was based on the substantial public benefits that are created by placing the power lines underground, including:

- a. Increased electrical reliability;
- b. Increased security of the electrical system;
- c. Reduced maintenance costs for the electrical lines;
- d. Safer roadways when the utility poles are removed;
- e. Reduced maintenance for the utility poles; and
- f. General benefits to the public at large, the traveling public, and residents; and

**WHEREAS**, the Council found that the undergrounding serves an important public purpose; and

**WHEREAS**, the Council found that the undergrounding promotes the public safety and welfare and that the residents required to underground have many options for accomplishing the task, including applying for a grant from the City; and

**WHEREAS**, the Council found that providing a full one-years' notice is more than adequate for giving notice and time for the homeowners to complete the work; **NOW, THEREFORE,**

**THE CITY COUNCIL OF THE CITY OF RUSTON HEREBY RESOLVES AS FOLLOWS:**

**Section 1. Findings Adopted.** All of the recitals listed above are hereby adopted as the findings of the City Council.

**Section 2. Ruston Policies and Codes Supporting Undergrounding.** The policies, resolutions, and ordinances cited Section 4 of the Agenda Bill for the August 15, 2023 hearing are incorporated herein by this reference as if set forth in full and support the City Council’s decision to require the undergrounding and reject this Objection.

**Section 3. Objection Denied.** Based on the testimony, the documents provided, the laws and policies of the City, and the significant benefits to the public health and welfare created by undergrounding power in Ruston, the objection filed by Shawn and Jessie Kelley is hereby denied. Shawn and Jessie Kelley are required to comply with the undergrounding notice and to have their lines underground from the meter to their home by March 2, 2024.

**Section 4. Direction to Clerk.** The City Clerk is hereby directed to mail a copy of this Resolution to the Objector on the next business day after it has been approved and signed.

**RESOLVED** this 5th day of September, 2023.

**APPROVED:**

\_\_\_\_\_  
Bruce Hopkins, Mayor

**ATTEST/AUTHENTICATED:**

\_\_\_\_\_  
Judy Grams, City Clerk

FILED WITH THE CITY CLERK: \_\_\_\_\_  
PASSED BY THE CITY COUNCIL: \_\_\_\_\_  
RESOLUTION NO.: 775