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Email 2

DeSanty, Tricia

From: Jock Stender <jock.stender@gmail.com>
Sent: Monday, December 7, 2020 1:45 PM
To: Appel, Ross
Cc: clendeninrs@gmail.com; PSC_Commissioner.CWilliams; grantd@charleston-sc.gov; kronsbergj@charleston-sc.gov; tecklenburgj@charleston-sc.gov; deciantisf@charleston-sc.gov; bartelme; Robert Behre
Subject: [External] Re: Post and Courier contacts for "Dominion Energy unsupervised / lawless tree-cutting spree on Charleston Greenway"
Attachments: legal-case-1.pdf

Ross,

I've had a long, enlightening, productive chat with the City's very knowledgeable Tree Administrator / Arborist, David Grant, who with Mark Branham of Dominion Energy visited Robert Clendeni this morning to discuss last week's tree-trimming and -cutting at his house on the Charleston Greenway.

My call to David covered many issues including the difference between power "transmission" versus "distribution" lines, and for me, especially, the topic of "rights" that utilities have that are different from ordinary citizens.

I'm sensitive to the "rights" issue (in my case, admiralty and constitutional law) from my time as Commissioner of Pilotage and the navigation rights upon U.S. waterways of ocean-going vessels to, for instance, order / command bridges (e.g., Sullivans Island's Ben Sawyer Bridge) to open for passage.

I left you a voicemail a few hours ago and do want to talk with you but first want (you and me) to read the attached document David referred to me posted at http://www.stopdominion.com/ that attorney Billy Want apparently drafted.

David says that Mark Branham of Dominion testified before the Public Service Commission during its takeover of SCE&G about the very topic of tree cutting, and I want to find his statements in that transcript.

I'll get back in touch after I've tracked it down.

Meanwhile, David knows of no place on the web or elsewhere publicly filed describing specifically the land clearing / tree cutting rules, regulations, guidelines. It seems the public is generally in the dark.

An obvious takeaway right now is that zero communication has occurred between Dominion and citizens / property owners living along the Charleston Greenway surprised to behold not just branches but entire trees cut down on their property.

Perhaps you can determine if a South Carolina statute or PSC regulation exists requiring power companies to, at the minimum, prominently, clearly, and in a timely manner, notify property owners of planned or pending power "transmission" or "distribution" line vegetation / tree clearing.

If not, such "public notice" legislation or regulation is sorely needed, with wording to include notice on the Web and by mail to property owners and county, city and municipal government entities.

Thanks for your continued help.

Jock Stender

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copy to Rob Clendenin, Carolyn "Carolee" Williams (PSC Commissioner, District 1; see https://psc.sc.gov/about-us-0/commissioners), David Grant, Jason Kronsberg, John Tecklenberg, Clark DeCiantis, Tony Bartleme, Robert Behre

On Mon, Dec 7, 2020 at 8:01 AM Appel, Ross <appelr@charleston-sc.gov> wrote:
Thanks Jock. Great seeing you yesterday. Thanks for all you do for the butterflies.

Ross Appel, Esq.
City of Charleston Councilmember (District 11)
80 Broad St. | Charleston, SC 29401

appelr@charleston-sc.gov

City of Charleston

From: Jock Stender <jock.stender@gmail.com>
Sent: Sunday, December 6, 2020 11:38 PM
To: clendeninrs@gmail.com <clendeninrs@gmail.com>
Cc: Appel, Ross <appelr@charleston-sc.gov>; Tecklenburg, John <tecklenburgj@charleston-sc.gov>; Kronsberg, Jason <KRONSBERGJ@charleston-sc.gov>
Subject: Post and Courier contacts for "Dominion Energy unsupervised / lawless tree-cutting spree on Charleston Greenway"

CAUTION: This email originated outside of the City of Charleston. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Rob,

In response to your text message a short while ago, here are the Post & Courier reporters I recommend you contact about the (large) trees that Dominion Energy cut down to the ground on your property:

Tony Bartleme, Watchdog & Public Service Reporter, tbartleme@postandcourier.com
See ...

https://www.postandcourier.com/news/post-and-courier-staff-wins-97-sc-press-association-awards-presidents-cup-for-excellence/article_c9b90dd6-41ad-11e9-a978-9753f800941e.html

https://en.wikipedia.org/wiki/Tony_Bartelme

https://pulitzercenter.org/people/tony-bartelme

https://www.youtube.com/watch?v=cQ-vrAxOg0c

https://www.tonybartelme.com/

~~ and ~~

Robert Behre, Editorial Writer, rbehre@postandcourier.com

See...

https://www.postandcourier.com/users/profile/robertbehre/
"Robert Behre works as an editorial writer with a focus on local government, transportation and the built environment."

https://www.postandcourier.com/opinion/commentary/behre-preservation-efforts-help-tell-story-of-historic-african-american-home/article_f77c450a-0d92-11eb-84ae-17a03b309d95.html

I hadn't noticed that Robert had been promoted from the newsroom, where he has covered "historic Charleston," to the editorial page. Robert and Tony, who have been working together for decades, have a deep-seated sense of social conscience, what good local newspapers are known for.

Tomorrow I'll send you, Ross and others the Google Cloud photos of what I call the "Dominion Energy unsupervised / lawless tree-cutting spree on Charleston Greenway."

Jock Stender
Dr.
Charleston, SC 29407

copy to Ross Appel, John Tecklenberg, Jason Kronsberg
... with thanks to Ross for coming out on a Sunday afternoon

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THE LEGAL CASE:
Why Dominion is wrong that it can't cut more aesthetically

Electric utilities often resist pressure from citizens, city councils and mayors by claiming that they cannot alter their existing cutting criteria because it would violate federal and state laws. The utilities usually are able to convince the cities of this by way of their superior knowledge of electric utility regulation and the fact that the cities are busy with so many other priorities that they do not have the time and resources to independently get to the bottom of the issue. Also, the electric utility is able to put a lot of pressure on the city by falsely claiming that any narrowing of the clearance will cause blackouts: their familiar argument that you can't have pretty trees and safe and reliable electricity. Dominion Energy, like many other electric utilities, also claims they are restricted in cutting narrower clearances by various industry standards and best practices. Similarly, they claim that there is no need for any improvement in their cutting, including the size of the clearance, because they are following these industry standards and best practices.

We at Stop Dominion have undertaken exhaustive research of the question of whether federal or state law prevents Dominion Energy from doing its cutting more aesthetically and in particular whether it is prevented by any federal or state law from having a clearance of what Dominion has agreed to in the Tree Protection Agreement it entered into with the City of Charleston on April 4, 2019. Similarly, we have examined the industry standards and best practices that Dominion claims restrict it from having a narrower clearance and cutting more aesthetically. Below we present that information in four categories: federal law, state law, Public Service Commission regulation and industry standards and best practices.

Federal: *There is no federal requirement as to the clearance size Dominion must maintain for its distribution lines that run through neighborhoods, nor any federal regulation of the distribution lines whatsoever.* There is a federal requirement as to the clearance size Dominion must maintain for high voltage transmission lines like those that carry electricity from generating plants to substations and between towns. That requirement is contained in Reliability Standard FAC-003-4 and is enforced by the Federal Energy Regulatory Commission (FERC). It is found at https://www.nerc.com/pa/Stand/Reliability%20Standards/FAC-003-4.pdf. FAC-003-4 does in fact extensively regulate transmission line clearances, including not only minimum clearance distances, but also requires annual inspections, notifications, corrective actions and a good deal more. The reason for this extensive regulation is that high voltage lines by virtue of their high voltage can pose the problem of knocking out power to a whole region of the country through what is called a cascading effect. As stated in the purpose section of the federal regulation, it is to prevent "the risk of those vegetation- related outages that could lead to Cascading." It is interesting to note that with so much at stake with transmission lines, FAC-003-4 prescribes side distances for vegetation that must be maintained from the lines as low as two feet for the lower voltage of the high voltage transmission lines.

Specifically focusing on the distinction between FERC's regulation of transmission lines and the fact that it does not regulate distribution lines like those in Charleston, the regulation states:

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> This standard focuses on transmission lines to prevent those vegetation related outages that could lead to Cascading. It is not intended to prevent customer outages due to tree contact with lower voltage distribution system lines. For example, localized customer service might be disrupted if vegetation were to make contact with a 69kV transmission line supplying power to a 12kV distribution station. However, this standard is not written to address such isolated situations which have little impact on the overall electric transmission system. [A. Introduction, 6. Background].

Sometimes electric utility companies refer to being regulated by the North American Electric Reliability Corporation (NERC) or by the NERC regulation or standard. It was NERC that Congress empowered to develop and enforce the standards that are now in FAC-003-4. FERC makes it clear on its website that NERC does not apply to distribution lines, stating:

> **Not all power lines are subject to NERC national Reliability Standards**
> The nation's electric system is divided into two different domains for regulatory purposes, largely based on the voltage of the facilities: high voltage transmission lines and lower voltage distribution lines. [Emphasis in original]

FERC's website goes on to explain the difference between transmission lines that NERC applies to, and to distribution lines that NERC does not apply to. https://www.ferc.gov/industries/electric/indus-act/reliability/vegetation-mgt.aspinspections, notifications, corrective actions.

State: Utilities sometimes mention as a state law that regulates its tree trimming operations the National Electric Safety Code (NESC). It has been adopted in some form by most states and apparently has by South Carolina. Its purpose "is the practical safeguarding of persons, and utility facilities during the installation, operation, and maintenance of electric supply and communication facilities, under specified conditions." https://www.techstreet.com/ieee/standards/ieee-c2-2017?utm_source=bing&utm_medium=cpc&msclkid=55ae3cb92ec71f89db4c627791ba6461&utm_campaign=IEEE&utm_term=+national%20+electric%20+safety%20+code&utm_content=IEEE%20-%20NESC%20-%20National%20Electrical%20Safety%20Code%20-%20Variations&gateway_code=ieee&product_id=1914980.

NESC does mention vegetation management, but not with respect to outages or aesthetics. In its 2017 Edition appears the following general statement about the subject: "Vegetation management should be performed around supply and communication lines as experience has shown to be necessary. Vegetation that may damage ungrounded supply conductors should be pruned or removed." Rule 218.A.

The different clearances for different areas of a state is well illustrated by the fact that Con Edison cuts a clearance in New York City of 6 feet on either side, 6 feet below and10 feet above. In Westchester County those dimensions are 10-20-15.

It has been suggested that because it is so difficult for the cities to regulate tree trimming that the state should step in and do the job. It doesn't, however, make sense to address utility tree trimming for aesthetics on a statewide basis. Lots of towns aren't as concerned about

neighborhood trees as Charleston and won't want the wishes of Charleston to set a statewide mandate. It would be like requiring them all to have Boards of Architectural Review regulating as strictly as in Charleston. Charleston is likely in the minority of towns statewide that would want strict regulation of utility tree trimming and therefore would not succeed in attracting a sufficient number of legislators to a bill to enact it into law. The utility of allowing different clearances for different areas of a state is well illustrated by the fact that Con Edison cuts a clearance in New York City of 6 feet on the sides, 6 feet below and 10 feet above while in Westchester County its cutting dimensions are 10-10-15. https://www.coned.com/en/services-and-outages/preventing-recovering-from-outages/tree-trimming/tree-trimming-faq.

PSC: *The South Carolina Public Service Commission (PSC), at first blush, may seem like the logical entity to regulate utility tree trimming because its entire mandate pertains to utilities. Further examination of the question, however, shows the PSC is not available to play this role.* It has never regulated a utility for the aesthetics of tree trimming and does not consider management of electric utilities of that nature to be within its authority. People have filed complaints about vegetation management to the PSC, but none has ever succeeded in having the PSC undertake to regulate tree trimming for aesthetics. The PSC held a hearing on tree trimming on April 4, 2019, as a result of complaints from some Charleston residents living in neighborhoods west of the Ashley. No action was taken as a result of the hearing that is summarized in the next section. The PSC was simply responding to citizen complaints by holding a forum at which Dominion would explain its tree trimming policies.

An examination of some particular statutes on the PSC's authority that might be argued give it the authority to regulate utility tree trimming for aesthetics shows that the agency lacks such authority.

Section 58-27-1520. Ordering improvement of service.

Whenever the commission, after a hearing, finds that the service of any electrical utility is unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, the commission must determine the **reasonable, safe,** adequate, and sufficient service to be observed, furnished, enforced, or employed and must fix the service by its order, rule, or regulation. [Emphasis supplied].

Section 58-27-140. General powers of Commission.

The commission may, upon petition:

(1) ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed, and followed by any or all electrical utilities. . . .

Discussion: Certainly under these provisions, the PSC could take action if it found that a utility provided insufficient clearance for reasonable and safe delivery of electricity. However, it has never done so and the clearances Stop Dominion is seeking for Charleston would not violate a reasonable and safe standard because they are being implemented by some utilities in other states. In any case, this regulation provides no authority for the PSC to go outside its mandate regarding supply and price of electricity and take on the local issue of regulating for neighborhood beauty which is within the legal authority of cities and counties.

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Section 58-3-170. Commission empowered to fix agreements, contracts, and rates between common carriers and telephone and telegraph companies. . . .
Section 58-3-180. Promulgation of regulations to effectuate Section 58-3-170.
The commission must promulgate regulations as necessary to effectuate the provisions of Section 58-3-170.

Discussion: These provisions show the mandate of the PSC.

PSC Hearing on Tree Trimming: The PSC held a hearing on tree trimming on April 4, 2019, in response to complaints about SCE&G's cutting in Charleston neighborhoods west of the Ashley. A transcript of that hearing is found at https://dms.psc.sc.gov/Attachments/Matter/8dfd8a6c-196a-45e7-b126-979106a3dd08. Most of the four or five employees representing SCE&G at the hearing are now employed by Dominion, including Mark Branham who is mentioned further in this summary. *It is clear from the transcript of the hearing that the PSC does not consider it to be the entity to regulate electric utilities as to the aesthetics of trees, but rather this is done by local jurisdictions.* Commissioner Hamilton noted for instance that "one of our [PSC's] primary responsibilities is reliability," and then stated with respect to various cities concerned with the aesthetics of tree cutting, "So you're between a rock and a hard place a lot of times." P. 78.

SCE&G began the hearing with a great deal of discussion of the Northeast blackout of August, 2003. It noted, "Fifty-five million people were pretty much in the dark for about a week." SCE&G noted, "As a result of this, Congress enacted legislation in which they ordered FERC — the Federal Energy Regulatory Commission — to develop mandatory reliability standards for utilities." Further, SCE&G said that under the regulations, it gets audited on a regular basis and is subject to a fine for violations of "[u]p to a million dollars a day." The FERC law and regulations deal with very serious matters and violations of them have very serious consequences for utilities. *What SCE&G failed to disclose is that the FERC law and regulations apply to high voltage transmission lines and have no application to distribution lines like those in Charleston neighborhoods.* Indeed the FERC regulation states that distribution lines do not pose the potential problem of regional blackouts. Yet SCE&G at the hearing and like Dominion now fear mongers by using this problem that applies to transmission lines, not distribution lines.

That it was successful in getting the Commissioners to think FERC had a role in regulating distribution lines going through the neighborhoods of Charleston is shown by Commissioner Howard asking if SCE&G had the discretion to lessen the cutting in an area that has a historical or scenic highway designation. "[I]s the discretion yours? Is the discretion FERC or NERC?" P. 52. He believed after all of SCE&G's discussion of FERC and the Northeast blackout that there was a role for FERC and NERC in regulating the distribution lines.

Discussing its specifications for cutting a clearance for distribution lines, Mark Branham, then with SCE&G and now with Dominion, incorrectly stated:

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> So we have to have a minimum of 10 feet of clearance to the side of our outermost primary conductor. . . . So we have to have a minimum of 20 feet of clearance above our highest primary conductor and we have to have a minimum of 10 feet of clearance below our bottom primary conductor. [P.26 & 27]

ANSI A300: Dominion Energy states at various places that it complies with various industry standards and best practices with respect to the size of the clearance it cuts. It often says or indicates that cutting a corridor narrower is prohibited by these standards and practices. The industry standard that Dominion most frequently uses as a shield to cutting more aesthetically is ANSI A300, and states on its website that its trimming follows "the American National Standard for Tree Care Operations, ANSI A300. https://www.sceg.com/for-my-home/manage-my-service/landscaping-tree-trimming/tree-trimming-program#what-guidelines-does-sce-g-use-when-trimming-trees-. In a brochure about its tree trimming program, Dominion states: "Our program is in compliance with the guidelines of the: National Electric Safety Code; State Corporation Commission . . . and American National Standards Institute A300 for Tree Care Operations. https://www.dominionenergy.com/tree-trimming-brochure.

ANSI A300 standards are the generally accepted industry standards for tree care. https://www.tcia.org/TCIA/Build_Your_Business/A300_Standards/A300_Standards.aspx?hkey=96ef3b27-af56-4ada-8670-d848787d1e30&WebsiteKey=b9a41e1f-978d-4585-9172-c411c78c5c14. An examination of this voluminous document shows that it does not set specific pruning standards other than to specify how cuts are to be done. For the most part, it points out that the objectives and plans for trimming should be determined and specified before work is done. This includes things like "List and describe objective(s) of the work," and "describe the extend of pruning work to be done." There is nothing in ANSI A300 or other industry standard or best practices guide that requires the clearance distances that Dominion uses of 10 feet on the sides, 10 feet below and 20 feet above.

Further demonstration that ANSI A300 and other industry standards and best practices do not restrict Dominion from undertaking certain more aesthetic approaches to cutting is the fact that other utilities that follow ANSI A300 manage to cut more aesthetically than Dominion. For instance, PSEG that serves Long Island and Con Edison that serves New York City and other parts of New York say on their websites that that they comply with ANSI A300 and best practices, yet they have narrower clearances than Dominion with PSEG cutting 8 feet on the sides, 10 feet below and 12 feet above https://www.psegliny.com/safetyandreliability/minimizingoutages/treetrimming/howwetrim and *Con Edison cutting in New York City 6 feet on the sides, 6 feet below and 10 feet above.* https://www.coned.com/en/services-and-outages/preventing-recovering-from-outages/tree-trimming/tree-trimming-faq.

For more information contact: Billy Want, attorney and Stop Dominion spokesman 843[redacted] 0073, billywant15@gmail.com
Phil Noble, co-founder of Stop Dominion, [redacted]1490, phil@philnoble.com