

EXHIBIT 3

TO COMPLAINT FOR SPECIAL ACTION

FRANTI III HOLDINGS, LLC, ET AL V. CITY OF TUCSON



3950 East Irvington Road
Mail Stop RC131
Tucson, AZ 85714

July 19, 2021

Russlyn Wells
Zoning Administrator
City of Tucson
Planning and Development Services Department
201 N. Stone Avenue
P.O. Box 27210
Tucson, AZ 85726-7210

RE: Formal Zoning Determination Request pursuant to UDC Section 1.5 of UDC 5.5.4(B) for the Kino to DMP 138kV Transmission Line Project

Dear Russlyn:

Tucson Electric Power Company ("TEP" or "Company") is preparing an application for a Certificate of Environmental Compatibility ("CEC") for submittal in early August to the Arizona Power Plant and Transmission Line Siting Committee ("Committee") for a proposed overhead 138 kilovolt ("kV") transmission line from TEP's Kino Substation located at 36th Street and South Kino Parkway to TEP's DeMoss-Petrie ("DMP") Substation located at Fairview and Grant. The transmission line will also interconnect with the planned Vine Substation, to be located directly west of the parking garage for Banner – University Medical Center (the "Project").¹ The preferred route for the Project is located along South Kino Parkway and North Campbell Avenue, both of which are designated Gateway Routes in the City of Tucson's ("City") Major Streets and Routes Map ("MS&RP").

TEP representatives have met several times with the Tucson Department of Transportation and Mobility ("DTM") and the City's Planning and Development Services Department ("PDSD") has participated in the Project's Community Working Group ("CWG") as part of its public and stakeholder outreach process for the Project. In these meetings, DTM's position has been that the "City of Tucson does not have an ordinance precluding specific items due to the Gateway designation and that in general, the parties must follow the Franchise"² for anything located in the affected Gateway Routes. In

¹Project website: <https://www.tep.com/kino-to-demoss-petrie/>

² The following response was provided by Robin Raine, DTM Deputy Director to TEP's March 31, 2020 questions to COT DTM:

Q1. Does the Kino/Campbell link designation as a Major Gateway route preclude its use for the transmission line placement by ordinance? If not, would any special design considerations for the transmission line apply?

A1. City does not have an ordinance precluding specific items due to the Gateway designation. In general, anything in right of way must follow what's in the franchise agreement. We currently show this route as a possible future streetcar, so this project needs to be compatible with that possibility. The City is moving to

September 2020, after routes were identified, the PDSD's CWG representative John Beall indicated that he didn't have any comments/concerns from a Planning and Development Services' perspective since all is within the right-of-way. As such, TEP relied upon the determinations provided by DTM and PDSD in developing its plans for overhead construction of the Project along the Gateway Route and did not include the undergrounding of transmission facilities.

In addition to the meetings discussed above, DTM and PDSD representatives have attended multiple Stakeholder and CWG meetings where representatives of TEP presented information on the Project including the routes under consideration and that the Project would be constructed as an overhead transmission line. In those CWG meetings, TEP explained that the Project is needed to replace aging substation infrastructure, strengthen reliability for homes and businesses, and increase electrical capacity especially during summer months when the need for power is at its highest. In those CWG meetings, TEP also explained that the 138kV system will replace the existing 46kV system and allow TEP to ultimately remove those facilities while at the same time allowing TEP to underground much of the 4kV distribution system that is located along the proposed routes, including Gateway Routes. At no time in any of the CWG or other meetings attended by DTM or PDSD did either agency indicate that the Project was subject to an undergrounding requirement due to any City code.

Notwithstanding these various meetings and communications between TEP and the City regarding the Project, certain City representatives have commented that the portion of the Project located within the Gateway Route must be undergrounded under the City's Unified Development Code ("UDC"). These comments regarding undergrounding have since been reported in newspaper articles and other media outlets, prompting area residents to question whether the UDC does indeed require undergrounding portions of the Project within the Gateway Route. To eliminate any confusion regarding the undergrounding of the Project as TEP proceeds towards hearings with the Committee, TEP is requesting a formal zoning interpretation pursuant to UDC Section 1.5 concerning the applicability of Section 5.5.4(B) of the UDC as to the need to underground portions of the Project along the Gateway Route.

Therefore, notwithstanding the prior determinations provided to TEP by PDSD and DTM TEP finds it necessary to request (i) a formal zoning interpretation from PDSD that the UDC does not require the Project be undergrounded, or (ii) if the Department has changed its earlier position and now contends that portions of the Project must be placed underground, please provide the references and analysis of those sections of the UDC that require undergrounding.

Analysis

Section 5.5. of the City's UDC contains provisions related to occupancy of a Gateway Corridor Zone ("GCZ"). Section 5.5.2 of the UDC provides that "the GCZ standards apply to the following uses on all property, any portion of which abuts or is adjacent to a street designated on the City's or county's MS&R Plan." TEP notes that this section confirms that the GCZ does not apply to the street itself, but only to property that abuts or is adjacent to the street right-of-way. The poles and lines included within TEP's Project are almost entirely located within the street right-of-way and not within property that is adjacent to or abuts the right-of-way. Accordingly, for these facilities, the GCZ does not apply. For those few facilities that might be placed outside the boundaries of the street right-of-way and within a GCZ, there are no applicable provisions within Section 5.5.4 that require undergrounding.

Installation of utility facilities within a GCZ along a Gateway Route is governed by Section 5.5.4.B of the UDC. Therefore, in order to impose the requirements of the GCZ to this Project, one of the three

determine more specific information through MoveTucson but that information will not be available before December 2020.

subsections of 5.5.4.B must be applicable. As shown below, the provisions of Section 5.5.4.B.1 through 3 either do not apply to the Project, based upon the express language of the UDC or, if they do apply, authorize the construction of overhead facilities.

UDC 5.5.4.B.1 New Utilities

Section 5.5.4.B.1 contains three subsections governing installation of *new* utilities within a Gateway Route. Each subsection is discussed below.

Subsection (B)(1)(a)

Subsection (a) provides: “New utilities ***for development on private and on public right-of-way along Gateway Routes*** shall be underground.” (emphasis added). Here, however, the Project does not involve the installation of new utilities for a development along a Gateway Route. Rather, the Project is intended to replace the existing 46kV electric distribution system to augment overall system integrity for the benefit of residents and businesses in the central business district while improving reliability for over 40,000 residents within the Project study area.³ In short, there is no portion of the Project that involves new utilities being installed to serve the needs of a new development along a Gateway Route. Accordingly, subsection (a) is inapplicable to the Project.

Subsection (B)(1)(b)

Subsection (b) provides “Existing poles shall be used to provide the required transition to underground service to new development adjacent to Gateway Routes. When necessary to serve new development, a new pole set in line with, but not extending, an existing overhead system used to serve new development is not considered a new utility.” As with subsection (a), subsection (b) is inapplicable because the Project does not involve providing service to new developments adjacent to Gateway Routes and there are no existing 138kV poles from which to transition.

Subsection (B)(1)(c)

Subsection (c) provides: “Upgrades and reinforcements of existing overhead facilities are allowed to the extent that the total number of electrical circuits or communication cables is not increased.” Because the Project involves upgrading and replacing an existing distribution system with a new 138 kV transmission system, the number of electrical circuits and communication cables will not increase. In fact, the number of circuits and communication cables will be decreased because the existing 4kV distribution facilities that are located along the Gateway Route will be placed underground.

Accordingly, to the extent that the Project is considered an upgrade to TEP’s existing system, this subsection (c) could apply and expressly authorizes overhead construction.

³ The Project ultimately reduces the quantity of overhead power lines and substations by relocating and replacing portions of the existing 46kV system with the planned 138kV Vine Substation and planned 138kV Kino – DMP transmission line, replacing up to eight existing substations and their associated 46kV lines over a period of 3-5 years.

UDC 5.5.4.B.2 Existing Utilities

Section 5.5.4.B.2. provides: “**Where an existing development is expanded in floor area or land area to any degree**, new and existing utilities to all portions of the development shall be located underground. Additions to single-family dwellings are exempt from this provision.” (emphasis added). As stated above, there is no existing development that is being expanded for which new utilities are being installed to serve that development as part of this Project, nor does the Project involve new utilities to such a development. Accordingly, this provision of the UDC is inapplicable to the Project.

UDC 5.5.4.B.3 Relocation of Utilities

Section 5.5.4.B.3. provides: “Relocation of overhead utility **facilities required by public improvement districts** along Gateway Routes shall conform with existing franchise requirements.” (emphasis added). This Project does not involve relocation of overhead utilities required by any public improvement district, and thus this section does not apply to the Project.

Moreover, even if it did apply, the section directs the City and TEP to comply with existing franchise requirements. Section 21(a) of the City-TEP Electric Distribution and Transmission Franchise (“Franchise”) provides that if TEP is “not already required, pursuant to federal, State, or local law or agreement, to place its transmission or distribution lines underground...the City may require the Company to place such lines **underground if the City pays the difference between the cost of placing such lines underground and the cost of placing them aerially.**”(emphasis added). Because there is no federal, State or local law or agreement that mandates the placement of the Project underground, the Franchise allows the City to require an underground installation along the Gateway Route provided that the City pays the differential cost of doing so. Accordingly, although TEP asserts that Section 5.5.4.B.3 does not apply to the Project, if it did, the requirement and incremental cost of undergrounding would be borne by the City and not by TEP’s ratepayers.

Conclusion

For the reasons stated above, there is no portion of Section 5.5.4.B of the UDC that applies to the Project that would require underground installation of those portions of the Project located within the Gateway Route. This conclusion is also consistent with other TEP transmission line projects, that have been through the same line siting process in which portions of those transmission lines were located in Gateway Routes and were not required to be undergrounded by the City.

TEP seeks confirmation that Section 5.5.4.B of the UDC does not require underground installation of those portions of the Project located within or adjacent to a Gateway Route and that construction of the Project as an overhead facility is in compliance with the requirements of the UDC. Please confirm by signing below.

Again, in the event that the City now believes that the UDC does require underground construction, TEP respectfully requests that the City provide it’s legal analysis detailing the portions of the UDC upon which it bases its conclusion.

Thank you in advance for your careful consideration of this matter. This is a critical Project necessary for TEP to continue to provide safe and reliable service that will benefit the City and its residents by, among other things, furthering planning objectives embodied in the City’s General & Sustainability Plan (Plan Tucson).

Please do not hesitate to contact me if you have any questions or require any additional information.

Sincerely,



Renee Darling
Supervisor, Environmental & Land Use Planning, Land Resources
UNS/Tucson Electric Power Company
(520) 330-0973

AGREED TO BY: _____

Russlyn Wells
Zoning Administrator
City of Tucson

_____ Date

cc: Ms. Renee Darling (via email)
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Tucson, AZ. 85714-2114