

EXHIBIT 4

TO COMPLAINT FOR SPECIAL ACTION

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



CITY OF
TUCSON

PLANNING AND
DEVELOPMENT
SERVICES
DEPARTMENT

ZONING
ADMINISTRATION
DIVISION

August 25, 2021

Ms. Renee Darling
Supervisor, Environmental & Land Use Planning, Land Resources
UNS/Tucson Electric Power Company
3950 E. Irvington Road
Tucson, AZ. 85714-2114

Sent via email to: RDarling@tep.com

SUBJECT: Zoning Administrator Determination
Tucson Electric Power - Kino to DMP 138kV Transmission Line
Project
Activity Number T21SA00285

Dear Ms. Darling,

I am in receipt of your letter, dated July 19, 2021, requesting a Zoning Administrator Determination ("ZAD"). In your letter of request you state that the City of Tucson's Unified Development Code ("UDC") requirements of projects within a Gateway Corridor Zone ("GCZ") do not apply to Tucson Electric Power Company's ("TEP") proposal for an 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. You specifically request a ZAD relating to the City's application of the undergrounding of utilities in the GCZ as required by the UDC at Section 5.5.4.B.1.a, which states "New utilities for development on private and on public right-of-way along Gateway Routes shall be underground." In your letter, you provide the following reasons¹ that Section 5.5.4.B.1.a of the UDC should not apply to this project:

- Planning and Development Services Department ("PDSD") had previously determined that the UDC did not require the utilities to be located underground;
- The regulations do not apply to the right-of-way because it only regulates uses that abut or are adjacent to a street;

¹ The City notes that TEP also asserts that Section 21(a) would require the City to bear the costs of undergrounding if UDC Section 5.5.4.B.3 applied in this circumstance. This is beyond the scope of this ZAD but the City disagrees as to the interpretation of this provision as it disregards the statement "not already required by...local law."

Planning and Development Services Department (PDSD) - 201 North Stone Avenue
P.O. Box 27210 - Tucson, AZ 85726-7210
Telephone: (520) 791-5550 - Fax: (520) 791-4340
Website: www.tucsonaz.gov/pdsd
Email: DSD_Zoning_Administration@tucsonaz.gov

- There is no new development being proposed and the project is only to increase reliability for existing development, therefore Section 5.5.4.B.1.a does not apply; and,
- This is an upgrade of existing equipment, not a new project, and therefore Section 5.5.4.B.c would be the only section to apply to this project.

The following is the analysis of the above items listed in the ZAD request letter submitted by TEP on July 19, 2021 related to the applicability of the UDC as it relates to the proposed project:

PDSD had previously determined that the UDC did not require the utilities to be located underground

While PDSD was included as part of the Project's Community Work Group, TEP never submitted documents for a formal review of the project and no formal comments were made. Furthermore, TEP did not request a formal determination until July 19, 2021, related to the requirement for undergrounding of utilities per the UDC. This ZAD letter will act as the formal determination on those requirements.

The regulations do not apply to the right-of-way because it only regulates uses that abut or are adjacent to a street

Section 1.4.2.G, Zoning of Right-of-Way states the following "Zoning is applicable on all property, except street rights-of-way. Use of street rights-of-way for other than public street purposes require approval by the Zoning Administrator and the Department of Transportation. The Zoning Administrator may allow, within the right-of-way, only those uses or structures that are permitted on the property immediately abutting the right-of-way."

The key portion of this section is the last sentence that states that "only those uses or structures that are permitted on the property immediately abutting the right-of-way." Through this portion of the regulation, it is determined that the right-of-way is subject to the same regulations related to uses or structures of the abutting property, including those of the GCZ overlay.

There is no new development being proposed and the project is only to increase reliability for existing development, therefore Section 5.5.4.B.1.a does not apply

The assertion that the regulation only applies to new development is incorrect. Section 5.5.4.B.1.a states "New utilities for development on private and on public right-of-way along Gateway Routes shall be underground." This section regulates development in general, not only new development.

The letter also appears to be conflating the term “development” with “development project.” Per Section 11.4.5 of the UDC, development is defined as “Any human alteration to the state of land, including its vegetation, soil, geology, or hydrology, for any residential, commercial, industrial, utility, or other use, such as, but not limited to, clearing, grubbing, or grading of land, and structural improvements, e.g., buildings, walls, fences, signs, and vehicular use areas” while a development project is defined as “Any residential, commercial, industrial or mixed use subdivision plat or site plan that is submitted to the City for approval or for permit.” Section 5.5.4.B.1.a clearly only references “development” and not a “development project” and per the above definition, this project would be defined as development.

The letter also asserts that because this is only to increase the reliability for existing development, Section 5.5.4.B.1.a does not apply. This statement is also incorrect. As noted in TEP’s own Project Description, the proposal is for *new* 138 kV lines along the Campbell Gateway Route to support the development of the new proposed UA North Substation next to Banner Health at the University of Arizona and not just to increase reliability of the existing system.

This is an upgrade of existing equipment, not a new project, and therefore Section 5.5.4.B.c would be the only section to apply to this project.

In general, when determining if something is an upgrade of existing equipment or new project, we look at the relative size, scale, and location of the existing development in comparison to the size, scale, and location of the new development. In this case, the size and scale of the proposed development is significantly larger and more impactful than the existing equipment. Additionally, the location of the poles has changed, many times changing from one side of the road to the other. A simple upgrade of existing equipment would result in similarly sized poles and equipment in the same location, which is not the case with this project. Furthermore, TEP has repeatedly asserted before the Arizona Corporation Commission (“ACC”) that this project involves new transmission lines, as opposed to an upgrade of the current distribution lines currently present.

Findings

Pursuant to the regulations in Section 1.4.2.G, which state that the regulations of the abutting private property apply to the uses or structures in the right-of-way; Section 11.4.5 which defines development as “Any human alteration to the state of land, including its vegetation, soil, geology, or hydrology, for any residential, commercial, industrial, utility, or other use, such as, but not limited to, clearing, grubbing, or grading of land, and structural improvements, e.g., buildings, walls, fences, signs, and vehicular use areas;” Section 5.5.4.B.1.a, which states “New utilities for development on private and on public right-of-way along Gateway Routes shall be underground;”

and the fact that these utilities, which represent a significantly larger size, scale and impact than the already existing development and, are being proposed as new transmission lines to support the new proposed UA North Substation next to Banner Health at the University of Arizona, it is my determination that the requirement to underground utilities within a Gateway Corridor Zone as indicated in Unified Development Code (UDC) Section 5.5.4.B.1.a, apply to the Kino to DMP 138kV Transmission Line Project as proposed in the Zoning Administrator Determination Letter request dated July 19, 2021.

Please feel free to contact me if you have questions. You may reach me via e-mail at Russlyn.Wells@tucsonaz.gov or by telephone at 520-837-4948.

This determination may be appealed to the Board of Adjustment per UDC Section 1.5.1.E. Please contact Mark Castro at 837-4979 or at Mark.Castro@tucsonaz.gov for questions about the Board of Adjustment appeal process.

Sincerely,

A handwritten signature in blue ink that reads "Russlyn Wells". The signature is written in a cursive, flowing style.

Russlyn Wells
Zoning Administrator

C: Scott Clark, Director Planning and Development Services
Mike Rankin, City Attorney
Piroschka Glinsky, Principal Assistant City Attorney

DB:S:\zoning administration\zoning\2021\T21SA00285