MEMORANDUM

Date: June 13, 2022

To: The Honorable Chair and Members
   Pima County Board of Supervisors

From: Jan Lesher
       County Administrator

Re: Response to Howard Baldwin Regarding Tucson Electric Power Work in the West Speedway Boulevard Right of Way

Members of the Board of Supervisors were copied on a May 5, 2022 letter from Howard Baldwin regarding Tucson Electric Power (TEP) work along West Speedway Boulevard. Attached is a response from former Transportation Director Ana Olivares (Attachment 1). This letter outlines certain authorities and rights afforded to TEP, as well as limitations imposed on Pima County, under Arizona Revised Statutes and Pima County Franchise Agreement.

On June 10, 2022, Mr. Baldwin sent another letter asking for further review of the matter (Attachment 2). The Department of Transportation will review the additional points provided by Mr. Baldwin, and will prepare a response. A copy of the reply will be provided to you when completed.

JKL/anc

Attachments

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works
   Francisco Garcia, MD, MPH, Deputy County Administrator & Chief Medical Officer, Health and Community Services
   Kathryn Skinner, Interim Director, Department of Transportation
June 3, 2022

Howard and Annette Baldwin
22 E. University Boulevard
Tucson, Arizona 85705-7737

Subject: Tucson Electric Power and Speedway Boulevard Right of Way (ROW) Damages

Dear Mr. and Ms. Baldwin,

We appreciate your continued interest in Pima County’s scenic rights of way and your patience waiting for a response. The following provides additional context regarding the regulation of utilities within scenic routes and specific issues associated with the West Speedway Boulevard right-of-way disturbance.

The Pima County Code sections related to the Tucson Electric Power (TEP) disturbance along West Speedway Boulevard are P.C.C. §§ 18.77.040 (Scenic routes) and 18.72.050 (Native Plant Preservation – Applicability and exceptions). The utilities requirements along scenic routes only apply to new subdivisions. They do not apply to existing distribution or to new power to individual residential lots not part of a subdivision plat. In terms of native plant preservation requirements, utility construction in public easements within rights of way is exempted. The reasons for these exemptions pertain in part to the rights afforded to public utilities and carriers under Arizona Revised Statutes Title 40.

Franchise Agreement

TEP operates in County rights of way under a franchise agreement (“Franchise Agreement”), which is regulated under Arizona Revised Statutes Title 40. The Franchise Agreement (Attachment 1) was made effective on March 3, 1930, and grants “…the right, privilege and franchise, and are hereby authorized and permitted to use the public highways and roads of the said County of Pima, State of Arizona, hereinafter set forth and designated, and to place, erect, construct, repair, replace and maintain their pipes, poles, wires, cables, conduits, towers, transformer stations and fixtures, structures, appliances, apparata and equipment upon, along, over or across said public highways or roads of said County of Pima, for the transmission and distribution of electricity throughout said County of Pima, and for the sale and furnishing of the same for light, heat and power, and for any all other purposes to which the same may now or hereafter be applied, to any all persons, bodies, firms, associations and corporations, both private and municipal, in said County of Pima.”

The Franchise Agreement includes a list of roadways by number and a final sentence stating, “And along, over and across such further and additional public roads and highways as may be expedient and for the convenience of the public.” Though TEP has authority to work in County rights of way when needed, they typically do obtain a County right of way permit before starting work, unless it is emergency work to restore power as occurred in summer 2021 along West Speedway Boulevard.

Ana M. Olivares, P.E., Director
201 N. Stone Avenue, 4th Floor, Tucson, Arizona 85701-1207 • Phone: 520-724-6410 • Fax: 520-724-6439
This agreement predates the scenic routes and native plant preservation sections of the Pima County Code.

**Summer/Fall 2021**

TEP completed emergency work along West Speedway Boulevard to restore power to customers in summer 2021. They did not notify the County or follow up with a permit. The County was not aware of the work TEP had performed until you brought it to our attention. Our staff then reached out to TEP and they obtained a permit in September 2021. Please see attached permit copy and picture showing locations of poles TEP worked on. (Attachment 2)

The permit picture shows the access roads utilized by TEP. Though it is unfortunate that falling poles and lines damaged the natural landscape during the monsoon storm, it appears TEP accessed the poles using previously disturbed access points. Please see attached aerial photographs from 2015, 2018, and current. (Attachment 3)

**October/December 2021**

TEP removed the damaged saguaros and vegetation, as well as provided stabilization at the access points and along the access roads to mitigate erosion. (Attachment 4)

**Summary**

TEP is authorized to have all infrastructure needed to provide service to the public in the County right of way. The County accepts TEP’s explanation that vegetation was damaged when the poles and lines were blown down during the monsoon storm and not by TEP vehicles accessing the poles to repair them. As indicated above, the County does not have authority to require enforcement of native plant preservation requirements along public utility easements. The County requested that TEP mitigate for erosion and TEP complied. Our staff will monitor how well this mitigation works during the upcoming monsoon season and will make any necessary adjustments.

Sincerely,

Ana M. Olivares, P.E.
Director

AMO:jh

c: Jan Lesher, County Administrator
Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Yves Khawam, Ph.D., Assistant County Administrator for Public Works
Kathryn Skinner, P.E., Deputy Director
Lauren Ortega, P.E., Deputy Director
FRANCHISE

IT IS ORDERED by the Board of Supervisors of Pima County, State of Arizona:

SECTION I.

That The Tucson Gas, Electric Light & Power Company, a corporation organized and acting under and by virtue of the laws of the State of Colorado, and duly qualified to transact business in the State of Arizona, and its successors and assigns be, and they are hereby granted the right, privilege and franchise, and are hereby authorized and permitted to use the public highways and roads of the said County of Pima, State of Arizona, hereinafter set forth and designated, and to place, erect, construct, repair, replace and maintain their pipes, poles, wires, cables, conduits, towers, transformer stations and fixtures, structures, appliances, apparatus and equipment upon, along, over or across said public highways or roads of said County of Pima, for the transmission and distribution of electricity throughout said County of Pima, and for the sale and furnishing of the same for light, heat and power, and for any and all other purposes to which the same may now or hereafter be applied, to any and all persons, bodies, firms, associations and corporations, both private and municipal, in said County of Pima.

That the roads and highways, the use of which as above set forth, is hereby granted by this franchise, are:
Road No. 1  Approx. \( \frac{1}{8} \) mi. west of the NE Cor. of Sec. 5, T. 14 S., R. 14 E., thence E. its entire length.

Road No. 2  Approx. \( \frac{1}{8} \) mi. S. of the NW Cor. of Sec. 4, T. 14 S., R. 14 E., thence N. approximately \( \frac{1}{4} \) mile from the SW Cor. of Sec. 33, T. 13 S., R. 14 E.

Roads No. 3  From the NE Cor. of Sec. 15, T. 15 S., R. 13 E., thence W. approx. 3/4 mile.

& 81

Road No. 4  Approx. \( \frac{1}{4} \) mi. N. of the SE Cor. of Sec. 8, T. 14 S., R. 14 E., thence N. approx. \( \frac{1}{4} \) mi.

Road No. 6  From the NW Cor. of Sec. 31, T. 13 S., R. 14 E., thence E. its entire length.

Road No. 9  From the NE Cor. of Sec. 35 T. 14 S., R. 13 E., thence W. approximately 1\( \frac{1}{2} \) mi.

Road No. 14  From the NW Cor. of Sec. 2, T. 14 S., R. 14 E., thence E. approx. 3/4 mi.

Road No. 15  From intersection with Road No. 13 on N. boundary of Sec. 14, T. 14 S., R. 13 E., thence south its entire length.

Road No. 18  From intersection with Tucson-Oracle Road, Sec. 24, T. 13 S., R. 13 E., thence E. approx. 1\( \frac{1}{2} \) mi.

Road No. 28  From the SE cor. of Sec. 27, T. 11 S., R. 11 E., thence N. approx. \( \frac{1}{2} \) mi.

Roads No. 29-66  From intersection with Road No. 40, Sec. 21, T. 13 S., R. 13 E., thence E. its entire length.

Road No. 40  From intersection with Roads Nos. 29-66, Sec. 16, T. 13 S., R. 13 E., thence N. its entire length.

Road No. 52  From the N. boundary of Sec. 12, T. 15 S., R. 13 E., thence S. approx. \( \frac{1}{2} \) mi.

Road No. 53  From the SE cor. of Sec. 3, T. 14 S., R. 13 E., thence W. approx. 1/8 mi.

Road No. 54  From intersection with Road No. 53, Sec. 11, T. 14 S., R. 13 E., thence S. its entire length.

Road No. 61  From intersection with Old Vail Road, Sec. 25, T. 14 S., R. 13 E., thence E. its entire length.

Road No. 64  From intersection with Tucson-Nogales State Road No. 25, Sec. 24, T. 15 S., R. 13 E., thence W. its entire length.

Road No. 72  From intersection with Tucson-Nogales State Road No. 25, Sec. 13, T. 15 S., R. 13 E., thence W. approx. \( \frac{1}{4} \) mi.

Road No. 74  From intersection with Tucson-Oracle Highway, Sec. 23, T. 13 S., R. 13 E., thence W. its entire length.

Road No. 75  From intersection with Roads Nos. 29-66, Sec. 22, T. 13 S., R. 13 E., thence S. approx. \( \frac{1}{4} \) mi.
Road No. 75 From the NE Cor. of Sec. 3, T. 14 S., R. 14 E., thence S. approx. 4 mi.

Road No. 84 From intersection with N. 1st Ave., Road No. 126, Sec. 36, T. 13 S., R. 13 E., thence W. approx. 3/4 mi.

Road No. 88 From intersection with Road No. 1, Sec. 34, T. 13 S., R. 14 E., thence N. approximately 4 mi.

Road No. 91 From City limits Sec. 6, T. 14 S., R. 14 E., thence N. its entire length.

Road No. 94 From intersection with Casa Grande State Road No. 8, Sec. 27, T. 13 S., R. 13 E., thence W. approx. 3/4 mi.

Road No. 95 From intersection with Tucson-Oracle Highway, Sec. 26, T. 13 S., R. 13 E., thence W. approx. 3/4 mi.

Road No. 99 From the NW Cor. Sec. 17, T. 14 S., R. 14 E., thence E. to the NW Cor. of Sec. 15, T. 14 S., R. 14 E., and from the intersection with Road No. 121, Sec. 13, T. 14 S., R. 14 E., thence W. approx. 1/2 mi.

Road No. 101 From intersection with N. Campbell Ave., Sec. 22, T. 13 S., R. 14 E., thence E. approx. 1/2 mi.

Road No. 104 From intersection with E. Broadway Road No. 95, Sec. 15, T. 14 S., R. 14 E., thence S. its entire length.

Road No. 109 From intersection with E. Broadway Road No. 95, Sec. 15, T. 14 S., R. 14 E., thence S. its entire length.

Road No. 112 At a point approx. 1 mi. W. of the NE cor. of Sec. 35, T. 11 S., R. 11 E., thence W. approx. 1 mi.

Road No. 121 From the intersection with E. Speedway, Sec. 12, T. 14 S., R. 14 E., thence S. to the intersection of E. Broadway.

Road No. 122 From intersection with Silver Lake Road and Road No. 50, Sec. 23, T. 14 S., R. 13 E., thence S. approx. 1/2 mi.

Road No. 126 From a point approx. 1/2 mi. S. of the NE cor. of Sec. 36, T. 13 S., R. 13 E., thence N. approx. 2 3/4 mi. to center of the E. boundary of Sec. 24, T. 13 S., R. 13 E.

Road No. 141 From the NE cor. of Sec. 27, T. 13 S., R. 13 E., thence E. approx. 1/2 mi. and from the NE cor. Sec. 25, T. 13 S., R. 13 E., thence W. approx. 1/8 mi.

Road No. 147 From intersection with Road No. 18, Sec. 19, T. 13 S., R. 13 E., thence N. approx. 1/2 mi.
And along, over and across such further and additional public roads and highways as may be expedient and for the convenience of the public.

Passed by the Board of Supervisors of said County of Pima, State of Arizona, this 3rd day of March, 1930.

[Signature]
Chairman
Board of Supervisors Pima County
State of Arizona.

[Signature]
J. T. Ryan
Clerk

STATE OF ARIZONA } SS
County of Pima

I, the undersigned Clerk of the Board of Supervisors in and for the County of Pima, State of Arizona, do hereby certify the foregoing to be a true and correct copy of the original franchise of The Tucson, Gas, Electric, Light & Power Company, a corporation, granted by the Board of Supervisors of Pima County, State of Arizona, in regular session March 3rd, 1930, filed for record in the office of said Board on said March 3rd, 1930, and duly recorded in the minutes of the meetings of said Board at page 57 of the records of 1930.

Witness my hand and seal of said Board at Tucson, Arizona, this 12th day of March, 1930.

[Signature]
J. T. Ryan
Clerk Board of Supervisors
Pima County, Arizona.

Subscribed and sworn to before me this 12th day of March, 1930.

[Signature]
Notary Public.

My Commission expires January 21, 1933.

My Commission expires
Right of Way Permit
Renewal Permit No: P21RW01675

Applicant Name: ADAM MYERS
Applicant Phone: (520)279-8436
Location: 3651 W SPEEDWAY BLVD
TRS: 141305
Issued Date: 09/24/2021
Expiration Date: 12/23/2021
Contractor Name: TBD
Contractor Phone: (999)999-9999
Type of Work: Utility
Description: WO 6360231 - After the fact permit for priority restoration. TEP replaced 3 poles on the south side of Speedway west of painted hills drive and changed equipment on three additional poles.

For and in consideration of the granting of the permit, the Applicant agrees to comply with all conditions and special conditions specified on the permit.

Work shall be completed within forty-five (45) days and subdivision work within one hundred eighty (180) days from the permit issued date. Utility work related to a county project shall be completed on or before the specified expiration date. Permit renewals are to be obtained at the Pima County Department of Transportation prior to the expiration date. An additional permit fee will be charged. Pima County accepts no responsibility for the engineering design for work covered by this permit. The applicant accepts all financial and/or legal liabilities or obligations which may result from work performed under this permit.

THE CONTRACTOR, PERSON OR FIRM DOING THE WORK MUST CALL PIMA COUNTY INSPECTION AT (520) 724-2650 AT LEAST FORTY-EIGHT (48) HOURS PRIOR TO STARTING WORK.

PERMIT CONDITIONS
Please note that the validity of this permits is contingent on the following conditions:

1: Contact inspector at 724-2650 prior to starting work.
2: Work on approved traffic control plans only.
3: Applicants to abide by all Pima County regulations regarding the Adopt-a-Roadway project.
4: Pedestrian traffic not to be detoured onto traveled roadway.


6: Any culture, vegetation, mailboxes, drives, pavement or other existing improvements within county right-of-way or easements or property dedicated to the County that are disturbed during installation of these utilities shall be restored.

7: If the work performed under this Permit fails to pass final inspection, the applicant will remove or replace the same within such time as specified by written notice from the County Engineer or his authorized Representative: or if any material used by the applicant in replacing or reconstructing any part of the work, material or workmanship performed under this Permit proves defective, the applicant will replace the same as specified by the County Engineer or his authorized Representative.

8: The applicant will not allow any condition to exist which would be a hazard or a source of danger to the traveling public. If the work presents or becomes a hazard to the traveling public, Pima County may take immediate corrective action and bill the applicant for the full cost incurred for such corrective action.

9: The applicant shall have the standard 45 day duration time for this Permit.

10: County may require permittee to remove, relocate or underground, at permittee's sole expense, any of permittee's facilities that present a potential hazard to the public, that interfere with the public's use of the public rights-of-way, or are determined by county to be aesthetically undesirable.

11: Any opening or obstruction in the public rights-of-way caused by permittee during the course of permittee's activities in the rights-of-way shall be guarded and protected at all times by safety barriers erected by permittee which shall be clearly designated by warning lights during periods of dusk and darkness. Any work performed by permittee in or adjacent to a public roadway open for travel shall be properly signed and marked by permittee with warning and directional devices in accordance with all applicable state and local traffic regulations and in accordance with the arizona department of transportation's traffic control manual for highway construction and maintenance.

 Permit Issued: 09/24/2021  Expiration: 12/23/2021
 Renewal: 12/14/2021  Expiration: 12/23/2021
Latest Ortho

Access points
# West Speedway 46kV Distribution Line Emergency Repair Stabilization

<table>
<thead>
<tr>
<th>Site Location:</th>
<th>Photographer:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>3651 West Speedway Blvd/Gates Pass Road</td>
<td>Brian Pugh</td>
<td>Oct/Dec 2021</td>
</tr>
</tbody>
</table>

## Photo No. 1

**Photo Description:**

Multi-armed saguaro that was blown down with the three poles including the communication lines and the electrical conductor.
After stabilization, Saguaro was removed from the access road as requested by the County ROW inspector.
**Photo No. 3**

**Photo Description:**
Central access road after emergency repair looking east.
Photo No. 4

Photo Description:
Central access road after stabilization looking east.
Photo No. 5

Photo Description: Central access road after emergency repair looking west.
**Photo No. 6**

**Photo Description:**
Central access road after stabilization looking west.
Photo No. 7

Photo Description:
East access road after emergency repair looking west.
Photo No. 8

Photo Description:

East access road after stabilization looking west.
<table>
<thead>
<tr>
<th>Photo No. 9</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Photo Description:</strong></td>
</tr>
<tr>
<td>East access road after access control looking east.</td>
</tr>
</tbody>
</table>
June 10, 2022

Ana M. Olivares, P.E., Director
Pima County Transportation Dept.
201 N. Stone Ave., 4th Fl.
Tucson, AZ 85701-1207

Re: TEP Speedway ROW Damages

Dear Ms. Olivares:

Thank you for your response to our May 5, 2002 letter. We appreciate the professional job you are doing as Director of the Pima County Department of Transportation and your diligence in attending to the many responsibilities.

However, you are misled when you are advised that TEP did not damage and destroy vegetation. We previously provided you with photos clearly showing multiple plants (mature Saguars, Palo Verdes, greasewood, Jojoba, prickly pear, barrel, cholla cactus) had actually been brutally bulldozed and destroyed by TEP expanding their new ingress to the poles and wires. To say otherwise is simply untrue. There are many other absolute untruths such as there simply was “no new access” created by TEP. Our previous photos show just the opposite.

It behooves the County’s Department to more closely observe what is happening in the ROWs. It is the County’s responsibility to not simply name a park, such as Richard Elias’s legacy, the Painted Hills Park, but to also protect it from rampant utility’s destruction.

Moreover, you excuse TEP because they say the “poles and lines were blown down during the monsoon storm”, as if it were not the fault of TEP. Every storm season, the same thing happens. This time wooden poles again, as they have been year after year, were snapped in two. The wires that were strung 10 ~ 12 ft above the ground knocked over and decapitated mature Saguars. TEP has a duty not to allow what can easily be avoided.
They are indeed at fault. They and the County have not admitted to the dangers of the above ground system because neither wishes to acknowledge the obvious solution which is to underground the lines which would protect them from nature’s elements and return the environment to its natural scenic state. They prefer the more troublesome method of annual monsoon destruction.

You are also being misled that the franchise acts as a preemption because it was given away to TEP’s predecessor corporation. There is nothing in the law or their franchise that exempts regulation of the Pima County Right of Ways by subsequent regulations as long as the regulations do not ban TEP entirely from using the ROWs.

The ultimate basis for the authority of the County is: *Arizona Pub. Serv. Co. vs. Paradise Valley, 125 Ariz. 447, 610 P.2d 449 (1980).* This Arizona Supreme Court case affirmed local governments and political subdivisions powers to require public utilities to underground their systems in public ROWs. In analyzing the underlying power of political subdivisions to control their ROWs, the Supreme Court stated as follows in relation to Title 40 regulation:

“We believe that, HN13 in the absence of a clear statewide preemptive policy not shown here, local governments can prescribe undergrounding within their boundaries.

(125 Ariz. At 453)

Thus, Title 40 A.R.S. is not an impediment to control of the ROWs by the County, in spite of the franchise.

You have also, for some reason, ignored our suspicion that TEP has failed in the past to secure ROW permits. It now appears that this is true and your Department has been lax in requiring TEP to obtain permits.

It is true that either by design or by ignorance the County has exempted TEP from the provisions of the Scenic Routes protections. It is a disrespectful shame. However, your Department still has substantial control over the County ROWs.

The section of the Code that involves your duties and authority is Section 10 of the PCC:

§ 10.50.030 provides that anyone must have a license or franchise just to apply for use. It also states any franchise may be updated, revised or modified by the Board of Supervisors at any time.
§ 10.50.020 states that the County’s authority remains superior to any franchise, and the County’s ability to control and regulate ROWs.

§ 10.50.100(A) allows your Department to add terms and conditions to any permit issued. Conditions could certainly be imposed to replace damaged plants and replant those damaged to the ROW. But of course if your Department does not properly police the ROW activity, TEP will continue to do work without a permit.

The ultimate control the County and your Department has is that, pursuant to § 10.50.070, it may require TEP to place its system underground to protect public safety. Certainly undergrounding the system on Speedway would promote public safety based upon the destruction of poles and wires during annual monsoons, and the concomitant loss of electric service that creates a public danger to the elderly, disabled, and the general population.

The unfortunate result is once again that Pima County listens to TEP and ignores Pima County residents. We understand that this does not come from you but it surely comes from the County Administrator. We are both saddened and angry about this because it is not what was expected of County government in the past. We are dismayed by the County’s reaction of listening only to TEP’s voice and unwillingness to listen to ours. The approaching and subsequent monsoons will likely cause an annual repeat of what has happened for the past 50+ years and then of listening to TEP’s lame explanation and ignoring those who live in the Tucson Mountains.

Sincerely,

Howard and Annette Baldwin

B:b
Emailed to:
Adelita Grijalva, District 5 BoS; Steve Christy, Dist. 4 BoS;
Sharon Bronson, Dist. 3 BoS; Dr. Matt Heinz, Dist. 2 BoS; Rex Scott, Dist. 1 BoS
Jan Lesher, County Administrator
Tucson Mtns. Assn.
Gates Pass Area Neighborhood Assn. (GPANA)