

**AGENDA**  
**ORO VALLEY TOWN COUNCIL**  
**STUDY SESSION**  
**January 9, 2013**  
**ORO VALLEY COUNCIL CHAMBERS**  
**11000 N. LA CAÑADA DRIVE**

**STUDY SESSION AT OR AFTER 6:00 PM**

**CALL TO ORDER**

**ROLL CALL**

1. DISCUSSION REGARDING AN UNDERGROUNDING AGREEMENT BETWEEN THE TOWN AND TUCSON ELECTRIC POWER COMPANY (TEP) FOR PAYMENT FOR INSTALLATION OF UNDERGROUND ELECTRIC FACILITIES ALONG ORACLE ROAD AND TANGERINE ROAD AND AUTHORIZING THE USE OF GENERAL FUND CONTINGENCY RESERVES FOR THIS PURPOSE
  
2. DISCUSSION REGARDING A 2013 ELECTION TO SEEK VOTER APPROVAL OF A FRANCHISE AGREEMENT WITH TUCSON ELECTRIC POWER (TEP)

**FUTURE AGENDA ITEMS** (The Council may bring forth general topics for future meeting agendas. Council may not discuss, deliberate or take any action on the topics presented pursuant to ARS 38-431.02H)

**ADJOURNMENT**

POSTED: 1/2/13 at 4:00 p.m. jkb

When possible, a packet of agenda materials as listed above is available for public inspection at least 24 hours prior to the Council meeting in the office of the Town Clerk between the hours of 8:00 a.m. – 5:00 p.m.

The Town of Oro Valley complies with the Americans with Disabilities Act (ADA). If any person with a disability needs any type of accommodation, please notify the Town Clerk's Office at least five days prior to the Council meeting at 229-4700.



CC-1088

Item # 1.

**Town Council Study Session**

**Meeting Date:** 01/09/2013

**Submitted By:** Kevin Burke, Town Manager's Office

**Department:** Town Manager's Office

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**Information**

**SUBJECT:**

DISCUSSION REGARDING AN UNDERGROUNDING AGREEMENT BETWEEN THE TOWN AND TUCSON ELECTRIC POWER COMPANY (TEP) FOR PAYMENT FOR INSTALLATION OF UNDERGROUND ELECTRIC FACILITIES ALONG ORACLE ROAD AND TANGERINE ROAD AND AUTHORIZING THE USE OF GENERAL FUND CONTINGENCY RESERVES FOR THIS PURPOSE

**RECOMMENDATION:**

This item is for discussion only.

**EXECUTIVE SUMMARY:**

TEP has requested a Memorandum of Understanding (MOU) between the Town and the utility, which is included as Attachment 1. Under the terms of the agreement TEP will install three electrical infrastructure projects underground, as shown in Attachment 2. Projects A and B are directly related to the long-standing issue of electric service adequacy in Oro Valley, while the third is a result of the ADOT Oracle Road widening project. The agreement states that the Town will pay TEP the differential cost between installing lines underground versus overhead. At this time the Town would pay the costs, with possible eventual repayment of these costs to the Town coming from a discussion and choice from a variety of options, such as through franchise fees, creating a special district, etc. The Town would be responsible for the full differential cost of Projects A and B, and one-half of the differential cost of Project C. The total estimated cost to the Town for these three projects is approximately \$2.1 million.

**Project A: Oracle Road feeder tie**

This project is intended to tie together two circuits in the Rancho Vistoso area, allowing TEP to accommodate electrical loads in this area without overloading any individual circuit. TEP proposes placing the feeder tie on above ground poles, along the west side of Oracle Road, between Rancho Vistoso Blvd. and Vistoso Commerce Loop.

**Project B: Tangerine Road feeder tie**

This project is intended to perform the same function as Project A. TEP proposes placing the feeder tie on above ground poles, along the south side of Tangerine Road, between La Canada and La Cholla. This project was the subject of the 2009 conditional use permit application.

**Project C: Oracle Road feeder tie relocation**

This project is intended to replace an existing underground line along Oracle Road. The differential cost of installing the existing underground line was paid by Rancho Vistoso developers. TEP proposes placing the new line on above ground poles, along the west side of Oracle Road, between Tangerine Road and the Pinal County line.

The Town was recently made aware of discussions between TEP and ADOT regarding potential conflicts with the installation of overhead facilities within the right-of-way along the west side of Oracle Road, and the possibility of relocating some portions of the existing underground facility to overhead poles along the east side of Oracle Road. The Town has also had ongoing discussions with ADOT representatives regarding the necessity of relocating some portions of the existing underground facilities. ADOT has confirmed that approximately 53% of the existing facilities may remain in place without coming into conflict with the ADOT widening project. Based on this understanding, it would appear that the remaining portions of the project could be relocated underground at a cost that is not substantially different from the estimate TEP provided for overhead relocation of the entire project. These issues are described in Attachment 3.

**BACKGROUND OR DETAILED INFORMATION:**

The Oro Valley Zoning Code Revised requires that all electric utility lines be located underground. Per OVZCR 25.1(N), "It is unlawful to erect, possess or maintain any utility poles or wires above the surface of the ground except after obtaining a Conditional Use Permit." The full text of section 25.2(N) is included as Attachment 4.

The Town considers the zoning code, adopted by Ordinance, to be legally valid and binding on TEP. To date, TEP has been unwilling to locate lines underground without up-front payment for the differential cost of above ground versus underground installation. Typically, the developers of new commercial and residential projects are responsible for the provision of infrastructure needed to support those projects, and the developer pays to install new electrical facilities underground. For infrastructure improvements not associated with any particular development, TEP has placed the burden of paying the differential cost on the Town. A full explanation of TEP's position can be found in the document, "Frequently Asked Questions about Underground Electrical Facilities," included as Attachment 5.

The Town Council has previously discussed the issue of electric service adequacy and the Town's underground utility requirements with TEP. In 2006 and 2008 the Town Council convened study sessions to discuss electrical infrastructure issues, including undergrounding and the adequacy and reliability of TEP service within the Town. These Council Communications are included as Attachment 6. In 2009, TEP applied for, and later withdrew, an application for a conditional use permit for installation of above ground facilities along Tangerine Road; a project substantially the same as Project B, above.

**FISCAL IMPACT:**

Under the terms of the MOU, Oro Valley will pay TEP for the differential cost of the Rancho Vistoso Project, an amount currently estimated at \$1,350,000, plus one-half of the underground differential cost of the Oro Valley portion of the ADOT project, an amount currently estimated at \$750,000, for a total cost of \$2.1 million.

Should Council wish to approve this agreement, authorization for the use of contingency reserves in the amount of \$2.1 million is required. The current General Fund contingency reserve balance is \$11.0 million. Expenditure of \$2.1 million for underground electric facilities would reduce the balance to \$8.9 million. The minimum balance required by policy is \$6.7 million, or 25% of FY 2012/13 General Fund expenditures of \$26.8 million.

**SUGGESTED MOTION:**

N/A

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**Attachments**

Attachment 1 - Memorandum of Understanding

Attachment 2 - Project map

Attachment 3 - TEP Memo 12.28.12

Attachment 4 - OVZCR 25.1(N)

Attachment 5 - TEP FAQ

Attachment 6 - Previous Council Communications

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**AGREEMENT BETWEEN  
THE TOWN OF ORO VALLEY  
AND  
TUCSON ELECTRIC POWER COMPANY**

**Oracle Road and Tangerine Road Undergrounding Projects**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and between The Town of Oro Valley, (hereinafter “ORO VALLEY”), a political subdivision of the State of Arizona, and Tucson Electric Power Company (“TEP”), an Arizona public service corporation.

**RECITALS**

**WHEREAS:**

- A. The Arizona Department of Transportation (ADOT) intends to construct roadway improvements along Oracle Road/State Route 77 (SR77) from Tangerine to the Pinal County Line as described in its Stage III, 60% plans dated February 2012, hereinafter referred to as the “ADOT Project” (Project C on Exhibit A).
- B. TEP owns and maintains overhead and underground facilities within the ADOT Project limits along SR77.
- C. TEP owns and maintains overhead and underground facilities within the ADOT Right-of-Way along Tangerine Road. TEP, in the public interest to improve reliability, intends to construct additional electrical improvements along SR77 and along Tangerine Road as described in TEP Engineering Final Planning Memo 09-20 dated March 31, 2011, with revisions dated August 12, 2012, hereinafter referred to as the “TEP Rancho Vistoso Project” (Projects A&B on Exhibit A).
- D. ORO VALLEY, in its interest, is requesting the underground relocation and installation of all 13.8kV distribution facilities within the Oro Valley Town limits portion of the ADOT Project and the TEP Rancho Vistoso Project (the “Undergrounding”).

NOW THEREFORE, based on the foregoing recitals, and for and in consideration of the mutual covenants, stipulations and conditions hereinafter contained, ORO VALLEY and TEP agree as follows:

- 1.
  - a. TEP and its subcontractors, shall furnish civil design and install the pads and bases for transformers and associated equipment, conduit, risers, pull boxes, and perform other civil system work related to structures and substructures, including but not limited to breaking of pavement, trenching, bedding, shading, backfilling and concreting, according to the applicable Town of Oro Valley’s and/or ADOT’s and TEP’s construction specifications.
  - b. ORO VALLEY shall provide TEP with appropriate and necessary easement rights along the limits of the Undergrounding.

- c. TEP shall provide and install all new underground cable and associated aboveground appurtenances, including all associated labor and materials, to complete the new underground systems.
  - d. ORO VALLEY will pay TEP for the underground differential cost of the TEP Rancho Vistoso Project, an amount currently estimated at \$1,350,000, plus one-half of the underground differential cost of the Oro Valley portion of the ADOT Project, an amount currently estimated at \$750,000. The sum of these two estimates, \$2,100,000, represents ORO VALLEY's "Estimated Total Cost Share." ORO VALLEY's "Final Total Cost Share" will reflect the differential costs actually incurred by TEP to complete underground construction of both projects and may vary from the estimated amount.
  - e. ORO VALLEY will pay one-half of its Estimated Total Cost Share, or \$1,050,000, upon execution of this agreement and prior to commencement of design and construction. ORO VALLEY will pay the remaining balance of the Final Total Cost Share upon completion of construction.
2. Indemnification. TEP shall indemnify, defend and hold harmless ORO VALLEY, its agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of this Agreement, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of TEP, its Contractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not is caused in part by a party indemnified hereunder.

ORO VALLEY shall indemnify, defend and hold harmless TEP, its agents and employees from and against all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from the performance of this Agreement, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of ORO VALLEY, its Agents, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not is caused in part by a party indemnified hereunder.

3. Termination. ORO VALLEY reserves the right to terminate this agreement for cause or no cause at any time, with 30 days written notice to TEP. Upon termination TEP shall submit documentation of all work completed up to that time, and ORO VALLEY shall reimburse TEP for those costs actually incurred and reimbursable to TEP under the terms of this agreement, including but not limited to any delay claims incurred as a result of the termination of this agreement.

4. Paragraph Headings. Paragraph headings are for convenience only and are not intended to affect the meaning of any provision of this agreement.
5. Entire Agreement. This instrument contains the entire agreement between the parties, and shall not be amended, altered or changed except by written agreement signed by the parties.
6. Notices. Any notice, request, demand, consent, approval or other communication required or permitted under this agreement or law shall be given, in writing as follows:

Tucson Electric Power Company  
Attention: Legal Department  
88 East Broadway Boulevard  
P.O. Box 711  
Tucson, Arizona 85702

Town of Oro Valley  
Attention: Town Manager  
11000 North La Canada Drive  
Oro Valley, Arizona 85737

All notices shall be hand delivered, mailed with postage prepaid, Return Receipt Requested or sent by established overnight delivery service (e.g. Federal Express, UPS, DHL). Either party may change the location for receipt of notices by written notice to the other party. The sender of any notice bears and accepts the risk of non-delivery by the means chosen.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of the day and year first above written.

**Tucson Electric Power Company**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Town of Oro Valley**

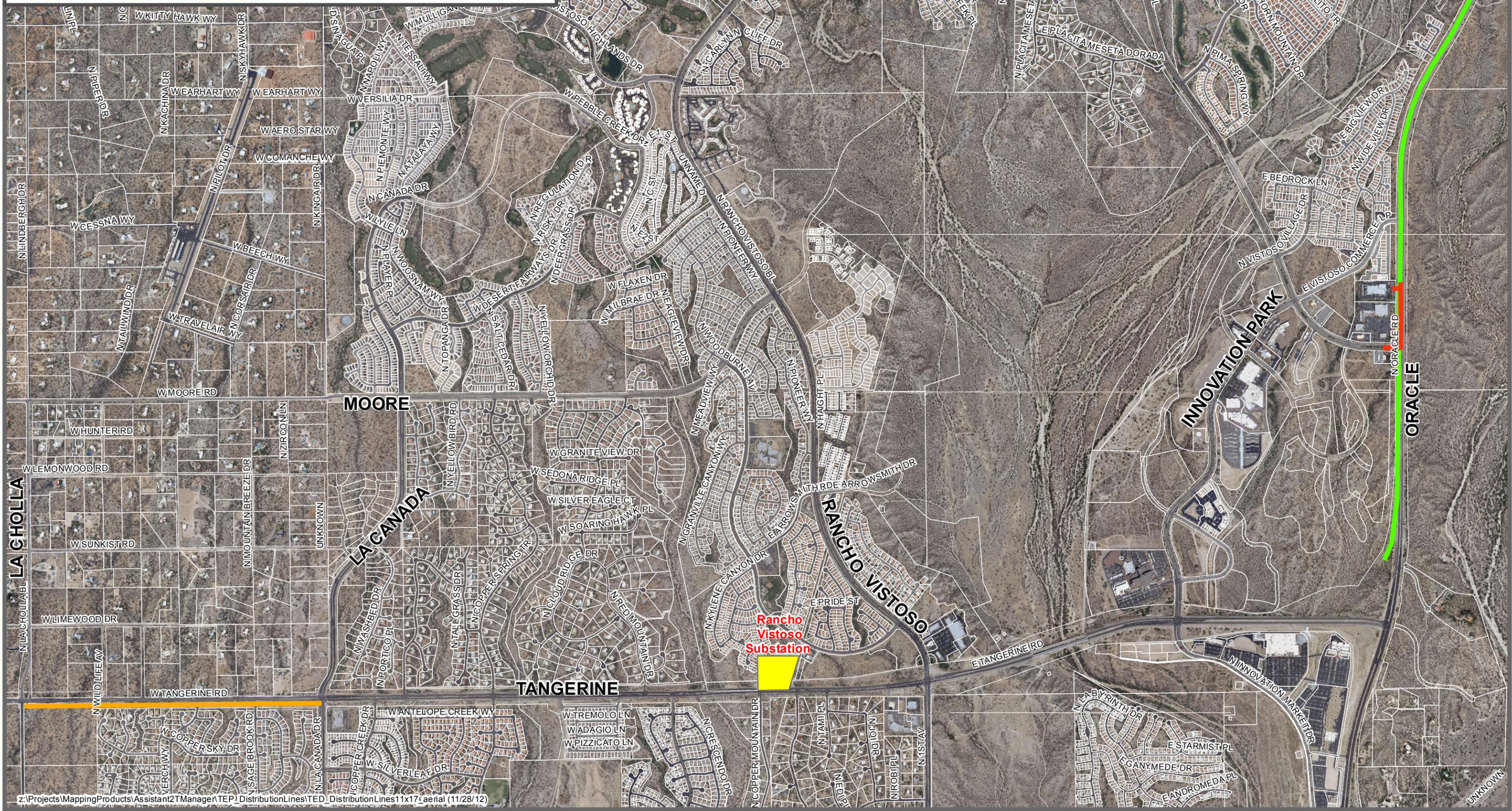
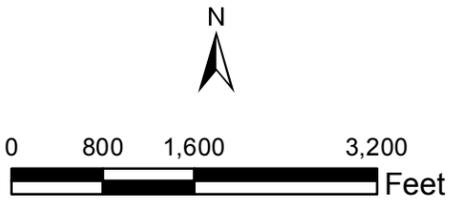
By: \_\_\_\_\_

Title: \_\_\_\_\_

**TEP Distribution Lines**

- Project A
- Project B
- Project C

**Draft Working Map**





## Memorandum

To: Greg Caton, Town Manager  
From: Paul Keesler, DIS Director  
Re: TEP utility relocation for the ADOT Oracle Road project  
Date: December 27, 2012

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This memorandum provides an update on two discussions with the Arizona Department of Transportation (ADOT) regarding the relocation of existing Tucson Electric Power (TEP) facilities associated with the Oracle Road widening project. The first point is that ADOT has advised TEP that it may not be possible to relocate the existing underground facilities to overhead poles within the ADOT right-of-way along portions of the west side of Oracle Road. Second, ADOT has confirmed the Town's position that certain portions of the existing underground facilities do not need to be relocated as a result of the widening project.

In summary, recent information obtained from ADOT indicates that overhead relocation of existing underground facilities would have to occur within ADOT right-of-way along the east side of Oracle Road. Alternatively, significant portions of the existing underground facilities do not conflict with the ADOT widening project and may remain in place. As a result, the total cost to relocate the remaining portions of the existing underground facilities may be substantially the same as the cost of relocating in the entire facility overhead. TEP has repeatedly stated that the differential cost of underground installation is the responsibility of the Town; however, in this scenario, the differential cost would be zero.

### **1. ADOT right-of-way conflicts on the west side of Oracle Road**

ADOT project engineers recently advised TEP that many of the proposed pole locations for overhead relocation of the existing underground facilities along the west side of Oracle Road are in conflict with planned retaining or noise walls or will block required access for ADOT and TEP maintenance. Additionally, other underground utilities are, or will be, located in the areas behind the walls, further complicating overhead pole placement.

At the most recent ADOT utility coordination meeting, TEP noted that they are exploring the possibility of moving to the eastside and do not yet have a design. An ADOT project engineer noted that the area south of Rancho Vistoso Blvd. would probably not have any of the above mentioned conflicts, so the movement to the eastside would probably happen north of Rancho Vistoso Blvd. and continue to approximately Golder Ranch Road.

### **2. ADOT acceptance of portions of the existing underground facilities**

The following is a technical and financial analysis of undergrounding the existing TEP power line identified as their "Project C: Relocation of existing feeder tie along Oracle Road.

- a. Total affected length of the existing power line from project station 731+50 to 856+00 = 12,450 ft. (from Tangerine Road north to the Oro Valley town boundary)

- b. Existing underground electric power line south of the project limits will remain in place – as is. This means that the line will continue to operate in its existing 5” conduits originally installed when the line was placed underground.
- c. ADOT will allow a relaxation of their standard that requires all underground utilities to be offset from the pavement a minimum of 9ft. The existing facility will be able to remain in its existing location and within the new roadway base as long as TEP can provide ADOT with written assurance that the new paved surface will not be damaged should TEP need to repair or maintain their lines.
- d. Rich Montgomery of URS, the ADOT project design engineer, provided an evaluation of the existing TEP facilities within the project area. This evaluation has been modified by staff based on revised calculations of the total project length.

1) 2,000 ft = Areas that may need to be raised, lowered or capped to protect, based on cover after construction.

2) 6,600 ft = Areas that can remain in place based on proximity to the edge of pavement.

3) 3,850 ft = Areas that must be relocated due to being under proposed pavement.

The estimate of 6,600 ft represents approximately 53% of the project length that would not have to be relocated.

- e. TEP has offered the following cost estimates for installation of new overhead and new underground facilities along Oracle Road:

1) New overhead power line ~ \$1,500,000 or \$120.50/ft

2) New underground power line ~ \$3,000,000 or \$241.00/ft

- f. Using the above lengths described in section d, with the assumption that condition 1) Areas that may need raised/lowered or capped to protect, based on cover after construction, are the same cost as installing a new underground line, the cost would be:

1) Areas that may need to be raised, lowered or capped to protect, based on cover after construction: 2,000 ft x \$241.00/ft = \$482,000

2) Areas that can remain in place based on proximity to the edge of pavement: 6,600 ft = \$60,000 (No cost for the line, but there will be transitions and appurtenances required to connect to the new underground line segments. Assume \$3,000 per instance for an estimated total of 20 transition points).

3) Areas that must be relocated due to being under proposed pavement: 3,850 ft x \$241.00/ft = \$927,850

4) Total Project Cost = **\$1,496,850**

In conclusion, should the existing facilities remain underground in the locations preliminarily agreed to by ADOT, the underground project cost would be substantially the same as the estimated cost to install a new overhead power line.

# Oro Valley Zoning Code Revised

## Chapter 25 USE REGULATIONS

### Section 25.1 Requirements for Specific Uses

#### N. New Utility Poles and Wires

##### 1. Applicability

- a. It is unlawful to erect, possess or maintain any utility poles or wires above the surface of the ground except after obtaining a Conditional Use Permit therefor.
- b. Exceptions
  - i. Utility poles and wires erected prior to December 31, 1983.
  - ii. New utility poles and wires erected for temporary use for periods not in excess of 4 months for purely temporary purposes such as for providing temporary building construction power or for emergency power or telephone service, or for the furnishing of power to temporary outdoor activities. This 4-month period may be extended by the Town Council if good cause is shown.
  - iii. Replacements involving less than 600 feet of continuous poles and wires on any transmission or distribution line in any 12 month period where the remainder of such transmission or distribution line is not also being replaced within said period; such replacement excluded from being new utility poles under the latter clause must be poles of the same or less size, diameter, height and in the same location as the pole or poles being replaced, and in addition, must be of the same classification as to strength and purpose within the utility industry as pole or poles being replaced.
  - iv. Erection on the ground surface and flush to the ground of transformers, pullboxes, service terminals, pedestal type telephone facilities normally used with and as a part of an underground distribution system. The size, type and design of these are to be approved by the Town Engineer.
  - v. Erection on the ground surface and flush to the ground of wires in encased concrete or conduit where underground wire installation is not feasible due to special features of the terrain.

##### 2. Approval Criteria

- a. A Conditional Use Permit for the erection of new utility poles and wires will be granted in accordance with [Section 22.5](#).
- b. In addition, the primary consideration shall be aesthetics with the following factors also considered:
  - i. The location and height of such poles and wires and the relation to the present or potential roads;
  - ii. The crossing of such lines over much traveled highways and streets;
  - iii. Proximity of such lines to schools, religious institutions and other places where people may congregate;

- iv. Fire or other accidental hazards from the presence of such poles and wires and the effect, if any, of the same upon the effectiveness of fire fighting equipment;
  - v. The availability of a suitable right-of-way for the installation;
  - vi. Future conditions which may be reasonably anticipated in the area in view of a normal course of development;
  - vii. The type of terrain;
  - viii. The practicality and feasibility of underground installation of such poles and wires with due regard for the comparative costs between underground and overground installations (provided, however, that a mere showing that an underground installation shall cost more than an overground installation shall not, in itself, necessarily require issuance of a permit).
- c. In the event such poles and wires are for the sole purpose of carrying electricity or power or for transmitting of telephone, telegraph, or television communication through or beyond the Town's boundaries or from one major facility to another, the practicality or feasibility of alternative or other routes shall also be considered.

((O)07-33, Amended, 9/19/07)

<http://www.codepublishing.com/az/orovalley/>



## Frequently Asked Questions about Underground Electrical Facilities

Tucson Electric Power typically installs transmission and distribution equipment above ground. Lower-voltage distribution facilities can be installed underground if customers, developers or other parties agree to pay the higher cost associated with such installations.

**Q: Why does it cost more to install facilities underground?**

**A:** The higher cost typically reflects civil engineering expenses, right-of-way acquisition, additional labor and materials such as conduit and pull-boxes that are not required for overhead projects. These costs vary by project, though, and underground installations may sometimes prove cost-effective in certain circumstances.

**Q: When will TEP pay to place facilities underground?**

**A:** Engineering and safety concerns sometimes justify the additional cost of installing facilities underground. For example, the lower voltage "feeder" lines that emerge from TEP's distribution substations are typically installed underground until these "getaways" reach a point where they can be safely brought above ground. In most cases, though, engineering concerns can be satisfied more cost-effectively through an overhead installation.

**Q: What if customers, developers or others want facilities to be installed underground?**

**A:** Unless the expense is justified by engineering or safety concerns, TEP will not install facilities underground unless a customer, developer or other party agrees to pay the additional cost. These costs are typically paid through a process defined in TEP's rules and regulations for new line extensions, or through a special contract with developers or municipalities.

**Q: Why does TEP insist that the additional cost of underground facilities be borne by those who request such installations?**

**A:** This practice avoids passing along unnecessary costs to customers through our rates. It also ensures that all of our customers are not asked to subsidize a discretionary expenditure that primarily benefits residents of one small area of our service territory. The Arizona Corporation Commission (ACC) has supported this practice by approving rules that allow for recovery of costs from those who request underground facilities. By enforcing those rules and allowing only prudently incurred costs to be recovered through rates, the ACC has ensured that TEP is not billing customers for unnecessary undergrounding expenses they did not themselves request.

**Q. What if TEP must relocate an underground line due to a road project or for some other reason?**

**A.** Relocated lines must be rebuilt in compliance with TEP's current engineering standards, which accommodate current system needs and safety concerns. As such, they represent new projects that, in most cases, will be developed overhead unless an interested party pays the additional underground costs. This is true even if the additional cost of placing the original line underground was borne by a third party.

COUNCIL COMMUNICATION

MEETING DATE: December 10, 2008

**TO:** HONORABLE MAYOR AND COUNCIL

**FROM:** Sarah S. More, Planning and Zoning Director

**SUBJECT:** Study Session – Discussion of Electrical Undergrounding and Tucson Electric Power's (TEP) Service Adequacy and Reliability

**SUMMARY:**

Over the past two years, the Town has discussed the issue of electric service adequacy and the Town's undergrounding requirement with TEP. On October 25, 2006, the Town Council held a study session to meet with TEP and on July 11, 2007, the Town Council discussed utility franchise agreements in study session (see ~~attached reports~~). ~~Since that time, on several occasions, TEP has indicated that they are unable to assure service to new developments in Town, most recently the technological park development at La Cañada and Tangerine Road and a subdivision plat in Rancho Vistoso.~~

**DISCUSSION OF ISSUE:**

The Town of Oro Valley's Zoning Code requires that new utility lines be located underground. Further, a conditional use permit is required for new and replacement utility lines. TEP maintains that they will share the cost of undergrounding with the Town, in the amount an aboveground placement would cost. No agreement between the Town and TEP has been reached.

Our initial discussion was focused on an existing situation with overloaded circuits at Tangerine and La Cholla and Tangerine and La Cañada. TEP indicated that these circuits were overloaded, and to remedy the situation, TEP intends to run a new line to connect these two circuits to provide backup. There are existing aboveground power poles on the south side of the Tangerine right-of-way, that TEP indicates will remain aboveground. The TEP proposal was to build a new aboveground line, on the south side of Tangerine Road for that one mile length. This Conditional Use Permit was not granted, but a request to replace the line on existing aboveground poles on La Cholla was approved by the Town Council. That line work has been completed.

The Town of Oro Valley does collect a utility tax (see attached report for details). TEP has indicated that their rate structure does not accommodate the cost of undergrounding in one part of their service area. They have indicated support for continuing the collection of the utility tax and dedicating some portion of those funds to the cost of undergrounding.

TEP works in cooperation with the Public Works department to coordinate roadway improvements and utility relocations. Those type of projects are most likely to provide some cost savings. Tangerine Road is scheduled for widening, as an RTA project, but not for several years.

COUNCIL COMMUNICATION

MEETING DATE: December 10, 2008

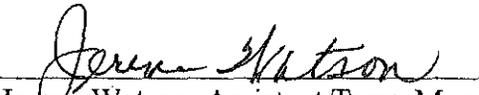
The issue of service availability and reliability remains unchanged. This issue may affect both current customers as well as proposed new developments. TEP has short-term and long-range plans to address service to Oro Valley and nearby customers. They include new transmission and distribution lines, upgrades of existing lines and new substations.

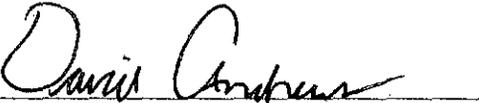
ATTACHMENTS:

1. Town Council Communication, Electric Infrastructure Issues, dated October 25, 2006
2. Town Council Communication, Public Utility Franchise Agreements, dated July 11, 2007

C: Larry Lucero, TEP  
F:/INDIV/SarahM/TEP TC ss 121008.doc

  
Sarah S. More, Planning and Zoning Director

  
Jerene Watson, Assistant Town Manager

  
David Andrews, Town Manager

## TOWN OF ORO VALLEY

COUNCIL COMMUNICATION

MEETING DATE: October 25, 2006

**TO:** HONORABLE MAYOR & COUNCIL

**FROM:** Sarah S. More, FAICP, Planning and Zoning Administrator

**SUBJECT:** Study Session – Electric Infrastructure Issues

**BACKGROUND:**

Staff recently met with Tucson Electric Power (TEP) representatives to discuss issues related to electric infrastructure needs within the Town. Both TEP and staff agree that it is in the best interest of the Town to plan together for the future to assure reliable service for the Town residents and businesses. The Town Manager suggested that all parties discuss the issues in a study session with Town Council. TEP representatives will make a presentation at the study session.

**DISCUSSION OF ISSUES:****1. Immediate Need to Update Circuits**

Our initial discussion has focused on an existing situation with overloaded circuits at Tangerine and La Cholla and Tangerine and La Cañada. TEP indicates that these circuits were overloaded the past two summers. In order to address this issue, TEP intends to run a new line to connect these two circuits to provide backup. There are existing above-ground power poles on the south side of the Tangerine right-of-way. According to TEP, the original plan to use the existing poles for the new lines will not work. The current TEP proposal, not formally submitted, is to build a new above-ground line, on the south side of Tangerine Road for that one mile length. Previous Conditional Use Permits to allow above ground lines have not been approved by the Town Council.

Part of that discussion concerned the Town's code requirement for locating new utility lines underground. The Oro Valley Zoning Code requires a conditional use permit for new utility poles and above ground wires (see Attachment). Another issue is coordinating with the future roadway widening of Tangerine Road (in the adopted Regional Transportation Plan) and avoiding duplicative work. One option might be to allow TEP to construct the above ground line on an interim basis pending the Tangerine Road widening and requiring that it be placed underground at that time, as a condition of a Conditional Use Permit. At this time, staff does not know whether the RTA funds will cover any of the cost of utility line relocation and undergrounding. Another option might be to require that the new line be placed underground, hopefully in a location that will not be disturbed by future roadway widening. Neither the Town nor TEP has identified funding for utility line undergrounding. TEP estimates the cost of undergrounding over that of putting in a new above ground line, for this one project is approximately \$433,500.

In addition, there is a current need to upgrade the wires along four existing routes within the Town that TEP has delayed due to the Town ordinance requiring that new wires be placed underground. According to TEP, upgrading old wires will increase capacity without increasing voltage, thus providing better service to Town residents. For example, lines on La Cholla are 40 years old and in serious need of replacement. As TEP replaces lines they are upgrading to steel poles that are weathered to appear the same color as the older wooden poles. Steel poles last longer and are less susceptible to storm damage.

## TOWN OF ORO VALLEY

### TOWN COUNCIL STAFF REPORT Electric Infrastructure Issues

Meeting Date: October 25, 2006  
Page 2

#### 2. Addressing Growth and Development Issues Related to TEP Service

Typically, all new development – subdivisions, shopping centers, etc. – is responsible for all infrastructure needs generated by the new development. The developer pays to underground the new utilities. TEP reviews all new development proposals in the Town and provides comments regarding electric service and easements. The following is a quote from a recent TEP comment on a subdivision plat:

*"A conditional approval is being given because of the uncertainty that TEP will be able to make necessary modifications to its electrical system in order to provide service to this project. The Town of Oro Valley has established an ordinance which restricts the upgrading of any overhead electrical power facilities within the town limits. Such restrictions may prohibit TEP from rendering service under its filed rules and regulations."*

TEP advises that the utility rate structure approved by the Arizona Corporation Commission does not include an allowance to cover the cost of undergrounding utilities. TEP has indicated that they do not have the capacity to cover such costs.

When the Town makes roadway widening improvements that necessitate utility relocation, the Town is responsible for extra costs related to undergrounding the utilities. In the recent case of Town improvements at Tangerine and 1<sup>st</sup> Avenue, the Town chose not to underground utilities due to the lack of funding to cover such costs.

Given the amount of planned and approved development that will be occurring over the next few years in Oro Valley, TEP and Town staff believe that we must work together to address service needs before the issue becomes critical. Both interruption of service to existing Town residents and business as well as the potential of lack of service to new developments is of concern to us all.

#### 3. Planning for the Future

Cities and towns in Arizona are given exclusive control over all rights-of-way dedicated to the municipality. This exclusive control enables the municipality to grant franchise agreements to utilities using the city or town's streets in the distribution of utility services. As an example, many cities and towns have granted franchises to electric companies to place power lines within the public right-of-way. In conjunction with this franchise, a franchise tax can be charged by the municipality to the utility users. While there is no specific amount or limitation in State law, the traditional amount for a franchise tax is usually between 2% and 5% of the gross proceeds from the sale of utility services within the city or town. The Town of Oro Valley does not currently have a franchise agreement with our electric provider, TEP. To grant a franchise, the municipality must place the question before the voters of the community for approval. This can be done at any one of the four primary/general election dates designated.

TEP estimates that the cost to underground one mile of 48 kV line is \$1,000,000 and \$500,000 for a lower voltage line. Establishing a franchise tax could fund that portion of the cost of new or replaced electricity lines not covered by TEP, i.e. the difference between the cost to relocate an above ground line and placing the line underground. Franchise taxes can also fund other utility costs over and above normal service – for example, providing new solar power to the Town.

TOWN OF ORO VALLEY

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Looking ahead even further, TEP plans a new transmission substation just outside of the current Town limits to the north, located on state trust land. This substation will help address current service issues as well as future development to the north. It will take about 3 years to bring the substation on line.

**CONCLUSION**

Staff and TEP agree that there are both immediate and long-term issues related to growth and development and the provision of reliable electric service that must be addressed for the Town. Staff suggests that the Town Council discuss this matter with TEP and provide direction to staff regarding:

1. Options for an above ground line along Tangerine Road between La Cañada and La Cholla, including a possible temporary CUP.
2. Whether the Town should work with TEP to develop a franchise agreement.
3. And, whether to pursue a franchise tax to fund projects unique to the Town, such as undergrounding.
4. Alternatively, identifying another funding source for utility undergrounding.
5. Other mechanisms for planning for future growth and development with TEP to assure adequate service.

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Planning and Zoning Administrator

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Community Development Director

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Acting Assistant Town Manager

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Town Manager

**Attachments:**

1. OV Zoning Code Section 25.1.N
2. TEP Handout



CC-1089

Item # **2.**

**Town Council Study Session**

**Meeting Date:** 01/09/2013

**Submitted By:** Kevin Burke, Town Manager's Office

**Department:** Town Manager's Office

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**Information**

**SUBJECT:**

DISCUSSION REGARDING A 2013 ELECTION TO SEEK VOTER APPROVAL OF A FRANCHISE AGREEMENT WITH TUCSON ELECTRIC POWER (TEP)

**RECOMMENDATION:**

This item is for discussion only.

**EXECUTIVE SUMMARY:**

Pursuant to A.R.S. §§ 9-501 and 9-502, Arizona municipalities are authorized to grant a franchise to a public utility for use of municipal rights-of-way for utility location. Franchise agreements are negotiated between a municipality and a public utility, and adopted by a resolution of the governing body. The franchise agreement and resolution are then presented to the voters at the following regular election, or a special election called for that purpose.

**BACKGROUND OR DETAILED INFORMATION:**

The two significant topics that are typically addressed by a franchise agreement are: (1) regulation by the municipality of the use of public rights-of-way by the utility; and (2) payment made by the utility to the municipality for such use, referred to as a franchise fee.

**Right-of-Way Regulation**

The franchise agreement will spell out the rights of both the municipality and utility with regard to use of public rights-of-way. Such an agreement is mutually beneficial in that the utility favors a consistent regulatory environment in which to conduct business, while the municipality endeavors to protect the health, safety, and welfare of the community. Regulatory issues typically addressed by a franchise agreement include, but are not limited to, the following:

- Authorization to construct and operate relevant infrastructure in compliance with municipal codes, standards, and permitting procedures
- Relocation procedures and responsibility for relocation expense
- Indemnification, to hold the municipality harmless from liability resulting from the actions of the utility
- Due diligence and regard for the expeditious completion of work that disturbs the public right-of-way

**Franchise Fee**

The franchise agreement will also prescribe a franchise fee to be paid by the utility to the municipality in return for access to public rights-of-way. This provides a sustainable source of revenue for the municipality and is generally agreeable to the utility because, regardless of how the fee is structured,

when a franchise fee is levied on a utility the fee is passed on directly to the customer and itemized on their bill as a municipal fee.

Franchise fee revenues may be placed in the municipal general fund, or may be dedicated for a specific purpose, such as underground installation of electrical facilities. A utility may request that the municipality to set up a retainer account in order to reimburse the utility for certain expenditures as defined by the franchise agreement.

Voter Approval

A franchise agreement must be adopted by a resolution of the Council and then ratified by the voters. This item may be presented to the voters at the November 5, 2013 regular election, or the Council may call for a special election to be held on August 27, 2013.

The Town is required to notify the County Recorder of any ballot items no later than 120 days prior to the election date. The cost for the Town's 2012 primary election was \$73,264.49. Because the franchise agreement is a tax related question, the Town would be required to print and mail a publicity pamphlet to all registered electors. In the 2010 home rule election the associated cost was approximately \$15,000. State statute also requires that the franchise agreement be published in full for at least thirty consecutive days prior to the election. The newspaper charges \$1.75 per column inch for this type of publication. For an agreement 15 to 20 pages in length, the cost to publish for 30 days would be approximately \$17,000 - \$22,000.

**FISCAL IMPACT:**

As detailed in the Town Council Report dated December 28, 2012, the Town's existing 4% utility tax generates total estimated annual revenue of \$2,700,000. Of this amount, \$1,700,000 is collected on behalf of the Town by Tucson Electric Power. The total estimated annual revenue generated by a standard 5% franchise fee is \$2,130,000.

The estimated fiscal impact of an election to ratify a franchise agreement is \$110,265.

**SUGGESTED MOTION:**

N/A

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