

**EXHIBIT 4 – CITY MOTION FOR ACC REHEARING**

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7 **BEFORE THE ARIZONA POWER PLANT AND**  
 8 **TRANSMISSION LINE SITING COMMITTEE**

9  
 10 IN THE MATTER OF THE APPLICATION  
 OF TUCSON ELECTRIC POWER  
 11 COMPANY, IN CONFORMANCE WITH  
 THE REQUIREMENTS OF A.R.S. § 40-360,  
 12 *ET. SEQ.*, FOR A CERTIFICATE OF  
 ENVIRONMENTAL COMPATIBILITY  
 13 AUTHORIZING THE MIDTOWN  
 RELIABILITY PROJECT, WHICH  
 14 INCLUDES THE CONSTRUCTION OF A  
 NEW 138 KV TRANSMISSION LINE  
 15 ORIGINATING AT THE EXISTING  
 DEMOSS-PETRIE SUBSTATION  
 16 (SECTION 35, TOWNSHIP 13 SOUTH,  
 RANGE 13 EAST), WITH AN  
 17 INTERCONNECTION AT THE PLANNED  
 VINE SUBSTATION (SECTION 06,  
 18 TOWNSHIP 14 SOUTH, RANGE 14 EAST),  
 AND TERMINATING AT THE EXISTING  
 19 KINO SUBSTATION (SECTION 30,  
 TOWNSHIP 14 SOUTH, RANGE 14 EAST),  
 20 EACH LOCATED WITHIN THE CITY OF  
 TUCSON, PIMA COUNTY, ARIZONA.  
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Docket No. L-00000C-24-0118-00232

Case No. 232

25 **CITY OF TUCSON'S**  
 26 **APPLICATION FOR REHEARING OF**  
 27 **DECISION NO. 79550**

28 The City of Tucson ("City"), pursuant to A.R.S. § 40-253(A) and A.A.C. R14-3-111, hereby submits this Application for Rehearing of Decision No. 79550 ("Decision"),

1 approved on September 13, 2024 as unjust, unwarranted and beyond the authority granted  
2 by A.R.S. § 40-360.06.

### 3 **PROCEDURAL BACKGROUND**

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5 On May 24, 2024, Tucson Electric Power Company (“Applicant”) filed an  
6 Application for a Certificate of Environmental Compatibility (“Certificate”) to allow for  
7 construction of a 138 kilovolt (“kV”) transmission line through central Tucson, Arizona in  
8 Pima County (“Project”). Sections of the preferred route and alternative routes selected by  
9 the Applicant pass through the City of Tucson’s Gateway Corridor overlay zone (GCZ),  
10 which requires utilities to be placed underground. A public hearing was held on the  
11 Certificate in Tucson on July 8-19, 2024 before the members of the Power Plant and Line  
12 Siting Committee (“Committee”), with the parties including the Applicant, the City of  
13 Tucson (“Tucson”), Pima County, University Medical Center/Banner Health, Pima County  
14 and Underground Arizona.

15  
16 At the conclusion of the public hearing, the Committee voted 9-0 to grant the  
17 Certificate and included the following “conditional finding” in Section 10 of the Findings  
18 of Fact and Conclusions of Law (the “Conditional Finding”):

19 However, *given the Commission's Policy Statement found in*  
20 *Decision No. 79140* (October 4, 2023), the Committee finds  
21 pursuant to A.R.S. § 40-360.06(D) that *any local ordinance or plan*  
22 *that requires TEP to incur an incremental cost to construct the*  
23 *Project below ground "is unreasonably restrictive and compliance*  
24 *therewith is not feasible in view of technology available."* This  
25 finding is conditioned on the City and TEP not finding a means to,  
26 within six (6) months of the date of the Commission's approval of  
27 this Certificate, either (a) fund the incremental cost to construct the  
28 Project below ground from a source other than through TEP's utility  
rates or from TEP, its affiliates, subsidiaries, or parent companies  
absent agreement between the parties, or (b) obtain the City's  
authorization to construct the Project above ground through the  
City's special exception or variance process, provided that TEP files  
a special exception or variance application for the route approved  
within ten (10) weeks of the Commission's approval of this  
Certificate

1 Given the use of an incorrect standard and the misuse of a policy statement as a *de facto*  
2 ban on undergrounding requirements in violation of settled Arizona law and without  
3 proper rulemaking, Tucson is compelled to request a rehearing at this time.

## 4 **DISCUSSION**

### 6 **A. The Committee Used an Incorrect Standard.**

7 A.R.S. § 40-360.06(D) requires the Certificate to be conditioned on the applicant's  
8 compliance with local ordinances, master plans and regulations except that the Committee  
9 may grant a certificate notwithstanding any such ordinance, master plan or regulation,  
10 exclusive of franchises, if it finds as a fact, that "compliance with any such ordinance,  
11 master plan or regulation is unreasonably restrictive and compliance therewith is not  
12 feasible in view of technology available." As an initial matter, the Certificate does not  
13 indicate any specific ordinance, master plan or regulation; it merely states that *any* local  
14 ordinance or plan that requires the Applicant to incur an *incremental* cost to construct the  
15 Project below ground is unreasonably restrictive and compliance therewith is not feasible  
16 in view of technology available. This amounts to a *de facto* ban on undergrounding  
17 requirements within Tucson rights-of-way based *solely* on any *additional* cost to the  
18 Applicant or to ratepayers, regardless of how small or appropriate. Not only is this beyond  
19 the authority of the Committee, as the Committee neither regulates rates nor  
20 undergrounding, but it clearly conflicts with the Arizona legislature's grant of authority to  
21 cities to manager their own rights-of-way (*see e.g.*, A.R.S. 9-462.01.A.3) and the Arizona  
22 Supreme Court's finding that "local governments can prescribe undergrounding within  
23 their boundaries." *Arizona Pub. Serv. Co. v. Town of Paradise Valley*, 125 Ariz. 447, 451  
24 (1980). More specifically, this finding reduces "unreasonably restrictive" and "not  
25 feasible in view of technology available" to simply *any* additional cost due to  
26 undergrounding. Moreover, the Committee reduced the meaning of feasibility even further  
27 by focusing not just on whether there is an additional cost for undergrounding, but *who*  
28 pays. The excerpt below illustrates this point:

1 TUCSON [through undersigned counsel]: ...We want to make sure that for  
2 the record everybody understands the City's position is that -- that the City's  
3 position is is that any local ordinance that may require a utility to incur a cost  
4 to comply with its law is not unreasonably restrictive or makes it -- does not  
5 make it technologically infeasible, and I'm fine with just stating that on the  
6 record.

6 CHMN STAFFORD: Okay. Yeah, because like, my understanding is **it's all  
7 about the incremental costs of undergrounding as opposed to overhead,  
8 and that's it. And it's not just -- it's the fact as to how that is paid for.** If  
9 there's -- that's the point, that's kind of the conditional finding we're talking  
10 about here. So that's -- everybody agrees on that; correct?

9 TUCSON: Well, and what our position is is that, again, that just stating it for  
10 the record that that is not the definition of feasibility.

11 CHMN STAFFORD: Okay. So --

12 MR. LUSK: So that's where our disagreement is and we understand that.<sup>1</sup>

13  
14 The plain language of the statute requires two elements: 1) that the ordinance,  
15 master plan or regulation be unreasonably restrictive; and 2) that compliance is not feasible  
16 in view of technology available. Again noting that no specific regulation or ordinance is  
17 indicated in the Certificate, the evidence presented at the hearing indicates that the  
18 regulations discussed at the hearing were neither unreasonably restrictive nor was  
19 compliance with them not feasible. The aforementioned GCZ does not apply citywide but  
20 on only two full north-south routes through Tucson and two half corridors and then east-  
21 west there are three full corridors. Only three intersections of the preferred route are  
22 impacted by the GCZ. Moreover, the evidence presented to the Committee was that there  
23 were at least three ways to get relief from the requirements of the GCZ, beyond using an  
24 alternative route; 1) the normal special exception process that allows relief from zoning  
25 restrictions through a decision by the Zoning Examiner<sup>2</sup> which the Applicant has used in

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27 <sup>1</sup> Transcript of Evidentiary Hearing before the Power Plant and Line Siting Committee,  
28 held July 8<sup>th</sup> through July 19<sup>th</sup>, 2024, Docket L-0000024-0118-00232 ("Transcript"), pgs  
2266-2267 (emphasis added)

<sup>2</sup> Transcript pgs 1349-1352; Tucson Unified Development Code (UDC) Section 3.4 *et seq.*

1 relation to its Vine substation, 2) a specific special exception process, developed with the  
2 applicant, to allow relief from the requirements of the GCZ<sup>3</sup>, and 3) a variance process,  
3 which the applicant had used previously to get relief from a similar undergrounding  
4 requirement in a different area of Tucson. <sup>4</sup> Thus, not only does the GCZ have minimal  
5 impact on the Project, there are multiple processes available and of which the Applicant is  
6 aware to grant relief. While evidence was presented that the University Area Plan has  
7 additional underground requirements in the area of the Project, it only impacts one of the  
8 three intersections on the preferred route. Thus, the specific regulations discussed are not  
9 unreasonably restrictive, nor did the evidence received by the Committee prove otherwise.

10 The second element required for the Committee to make the finding requested by  
11 the Applicant is that compliance with the ordinance, regulation or master plan is not  
12 feasible in view of technology available. Applicant urged the Committee to consider cost  
13 as a measure of feasibility by suggesting that because cost is a factor to be considered in  
14 granting the Certificate pursuant to A.R.S. § 40-360.06(A). However, the plain language  
15 of A.R.S. § 40-360.06(D) does not include cost as a factor in feasibility. Subsection A and  
16 subsection D are separate provisions and the fact that cost is not mentioned in subsection D  
17 points to its focus on available technology rather than cost. All parties to the hearing  
18 agreed that complying with the aforementioned regulations was both technically and  
19 physically possible, and multiple underground transmission projects in Arizona were  
20 discussed. As noted above, in making its decision, the Committee considered *only* the  
21 incremental cost of constructing the Project underground where required, rather than  
22 considering the available technology or even the Applicant's ability to pay the cost, either  
23 through bonding, shareholder participation, or financing. The Applicant itself offered  
24 several possible methods of paying the cost and for constructing the Project underground  
25 where required.<sup>5</sup> The evidence presented to the Committee showed that, under the proper  
26 measure of feasibility, the Project could comply with local regulations in multiple ways

27 <sup>3</sup> UDC Section 4.9.11; Transcript pg 19.

28 <sup>4</sup> Transcript, pgs 1394-1395, 1880.

<sup>5</sup> See e.g., *Cross Examination of Erik Bakken*, Transcript pg 326-351.

1           **B. The Committee Inappropriately Used the Policy Statement from**  
2           **Decision 79140 as a Rule.**

3           On October 4, 2023, the Arizona Corporation Commission (“Commission”) filed  
4           Decision 79140 in Docket No. ALS-00000A-22-0320 as a “substantive policy statement”  
5           regarding Practice and Procedure Before the Power Plant and Transmission Line Siting  
6           Committee including the following statement (“Undergrounding Statement”):

7           The Commission does not have jurisdiction over the undergrounding of  
8           electric transmission lines. A.R.S. § 40-360(10). Installing electric  
9           transmission lines underground is much more expensive than building them  
10          above ground. Underground transmission lines also can be more costly and  
11          challenging to maintain and repair. As a general matter, utilities under the  
12          Commission’s jurisdiction should avoid incurring these higher costs unless  
13          underground installation of a transmission line is necessary for reliability or  
14          safety purpose, or to satisfy other prudent operational needs. Installing a  
15          transmission line underground for other reasons, such as stakeholders’  
16          preferences, would add unnecessarily to costs recovered through rates. Third  
17          parties, including cities, customers, and neighborhood groups, seeking to  
18          fund the underground construction of a transmission line may do so, among  
19          other ways, by forming an improvement district for underground utilities as  
20          provided in A.R.S. § 48-620 *et seq.*

21          No rulemaking process occurred prior to the docketing of Decision 79140 as  
22          required by A.R.S. § 41-1001 *et seq.* The Committee does not have the authority to  
23          address ratepayer recovery or undergrounding under A.R.S. § 40-360 *et seq.* However, as  
24          noted above, the Committee adopted Decision 79140 as the basis for making the  
25          Conditional Finding in the Certificate, essentially treating it as a rule of general application  
26          in violation of the rulemaking statutes. Applicant’s witness Erik Bakken testified that one  
27          of Applicant’s chief concerns in undergrounding portions of the Project was that Applicant  
28          would not be able to recover from ratepayers the incremental cost of complying with  
Tucson’s regulations.<sup>6</sup>

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<sup>6</sup> See testimony of Erik Bakken Transcript, pg 302.

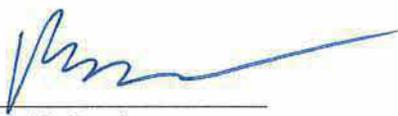
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**CONCLUSION**

As the Committee relied on an incorrect standard and definition of feasibility and overly relied on an unpromulgated rule from the Commission in making the Conditional Finding, Tucson respectfully requests that Commission rehear the Line Siting Case No. 232 to the extent necessary to amend the Certificate to remove the Conditional Finding.

RESPECTFULLY SUBMITTED this 3rd day of October, 2024.

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ORIGINAL filed this  
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