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Via Email to:
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City of Boardman Planning Commission
c/o Barry Beyeler
Community Development Director
200 City Center Circle
P.O. Box 229
Boardman, OR 97818

RE: Appeal of ZP21-031: Appellants' Second Open Record Period Submittal –
Rebuttal to Applicant's First Open Record Submittal

Dear Members of the Planning Commission:

As you know, this firm represents 1st John 2:17, LLC and Jonathan Tallman (“the Tallmans”). This letter provides rebuttal to evidence and testimony submitted by the applicant in this matter, Umatilla Electric Cooperation (“UEC”), during the First Open Record Period that closed on September 15, 2021. Please include this letter in the record of this appeal proceeding.

UEC attempts to confuse the Planning Commission with its argument that UEC is a “private utility” as opposed to a “public utility” under ORS 757.006 for the purpose of state regulation of utilities. It does not matter whether UEC is a “public” or “private” utility under state statutes concerning how the state regulates utilities. This case is about how *you* want to interpret your City code. There is no state law that says that the City has to allow major high-voltage power lines to run through just about every zone in your City. Certainly, Portland does not allow that, Lake Oswego does not allow that, Pendleton does not allow that, Hermiston does not allow that and neither should you. Thus, the issue here is whether the City's definition of “private utilities” in its own code, which, remember, are allowed outright in the Commercial Service Center Subdistrict and in most other districts, under the City's code, can be interpreted to include UEC's proposed high-voltage transmission lines and 100' tall towers. It cannot. The City's definition of “private utilities” does not authorize such major transmission facilities, as is plain from the words used, the context of the standard that the entire City is a district that forbids such facilities unless they are underground, and the purpose and policy of the standard. Your code can and should only be interpreted to authorize only smaller scale utilities that serve a specific customer (e.g., natural gas, electricity, telephone, cable and similar facilities that serve residences or businesses). To interpret “private utilities” like UEC wants, is not only inconsistent with the text of your code, it is inconsistent with its context, purpose and policy, it sets a dangerous precedent for the City and invites utility companies to simply demand, not ask,

that they be allowed to construct endless high-voltage transmission lines and giant towers wherever in the City they please.

As explained in the Tallmans' September 15, 2021 letter in the record, interpreting UEC's proposed 230kV high-voltage transmission lines (that transmit nothing in fact) and 100' towers as the type of "private utilities" allowed outright in the Service Center Subdistrict, dooms all of its other zones, including its residential zone, to the blight of unsightly, noisy and unsafe overhead electric utility infrastructure.

The City Council has made the express determination that prohibiting overhead wires within the City is "highly desirable to beautify the city and to promote its orderly development" and that doing so is "necessary" "to protect and promote the public health, safety and welfare." BMC 13.12.010. To implement this important finding, the City's code prohibits overhead wires within the entire City of Boardman, except through a variance. BMC 13.12.030. UEC has not applied for any variance, nor has it submitted any evidence into the record that its proposal is for a "feeder line", which can be exempt from the City's ban on overhead wires and for which the City reserves the right to demand they be undergrounded. In any event, the proposal is not for a "feeder line" because that is defined as a "line that serves the system but not a specific customer." BMC 13.12.130(E). UEC's proposal cannot "serve" any system, because it is disconnected – it consists of two disparate segments that have no transmitting capability as proposed. And according to the record at least (upon which the City's decision must be based), it connects to nothing else beyond and for which there is no permanent approval elsewhere either. The City has strict rules about high-voltage transmission facilities. It made a legislative choice not to become known as an unlivable high-voltage electrical facility hub. The City recognized the issue of eager big power companies gobbling up valuable City land for energy transmission to distant places beyond, as an environmental justice issue for the City of the highest order. As a result, the City took the unprecedented step – a step taken nowhere else in all of Oregon – to declare the entire City to be a district where overhead transmission lines are forbidden except in the strictest of circumstances. Accordingly, if UEC does not meet those strict circumstances, its proposal must be denied. UEC is not above the law. And while UEC obviously does not like it, its only choice is to either align its disconnected high-voltage bits to locations that are outside of the City and not condemn the City to a death by a 1,000 cuts of high-voltage facilities, or be prepared to put those facilities underground. Period. That is what the City code says. The land use code must be interpreted in a way that is consistent with this clear and unmistakable command.

UEC's September 15, 2021 letter states that "the transmission line is part of UEC's entire system and carries power between substations." However, this statement cannot be true. There is no evidence in the record that UEC's proposed transmission lines connect to anything else in UEC's system. The record shows that the transmission lines will connect to the "planned Olson Road substation", however, there is no evidence in the record that shows the Olson Road substation exists or is approved by Morrow County or is little more than a UEC wish. Without such evidence in the record, there is no way the City can make the finding that UEC's proposal will serve the system.

Moreover, since UEC withdrew its application on the Tallmans' property, which is in the middle of its proposed transmission line, the proposal is for disconnected segments that cannot actually "carry" power anywhere. As such, UEC's proposal is not for a "transmission" line at all, because no electrical transmission can occur. Rather, UEC's proposal is an impermissible placeholder until the time, if and when, UEC succeeds in its efforts to take away from the Tallman family their property, the fruits of their hard work and their dreams through condemnation proceedings. It is not in the City's interest to bet on or support UEC's behavior which is contrary to the City's code. UEC's proposal should be denied.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Wendie L. Kellington". The signature is fluid and cursive, with a large initial "W" and "K".

Wendie L. Kellington

WLK:wlk
CC: Client