

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

Bill No. 2019-16

PNM Franchise Agreement

SPONSOR(S): Mayor Webber

SUMMARY: The proposed Bill grants PNM a franchise to provide electricity within the municipal boundaries.

PREPARED BY: Jesse Guillen, Legislative Liaison

FISCAL IMPACT: \$2.27M revenue from franchise fees in FY20; \$36-60k in increases to the City's electric bill.

DATE: May 20, 2019

ATTACHMENTS: Bill
FIR

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1 electric utility and provide electric service within the municipal boundaries of the City, and to
2 place, erect, lay, maintain and operate in, upon, over and under the streets, alleys, avenues,
3 thoroughfares, and public highways, places and grounds within the City, as existing now and
4 hereafter extended, dedicated, annexed, owned or controlled by the City, including the right to
5 construct, install, remove, change, expand, alter, improve, operate and maintain electric plant,
6 transmission and distribution system and facilities and all components thereof as may be
7 necessary or reasonably convenient for the proper operation of such electric utility system.

8 **2-2 Franchise Not Exclusive.** The franchise rights and privileges extended by this
9 grant shall never be construed or held to be exclusive. The City retains and shall ever be
10 considered as having and retaining the right and power to allow and to grant to any other person,
11 firm or corporation and other electrical companies, including the City itself, electric franchise
12 rights and privileges to be exercised in and upon its streets, highways, alleys, roads and other
13 public places.

14 **2-3 Jurisdiction of Public Regulation Commission.** The New Mexico Public
15 Regulation Commission has the sole authority in New Mexico to grant a company the right to
16 provide electric service. The rates to be charged by PNM for furnishing electricity shall be those
17 rates effective by tariffs filed with the New Mexico Public Regulation Commission, as the same
18 may be amended from time to time, in accordance with the rules and regulations of the New
19 Mexico Public Regulation Commission and the Statutes of the State of New Mexico.

20 **Section 3. Term.**

21 The rights, privileges, and franchise herein granted shall continue in full force and effect
22 for the period of fifteen (15) years from and after the date this Ordinance becomes effective. This
23 Ordinance shall be subject to any and all State and Federal legislative enactments.

24 **Section 4. Franchise Fee.**

25 **4-1 Franchise Fee:** In consideration of the rights, privileges, and franchise hereby

1 granted, PNM shall pay the City, from and after the date of the acceptance of this franchise,
2 during January, April, July and October of each year during all the time these provisions shall
3 remain in full force and effect, a total aggregate sum of an amount equal to three percent (3%) of
4 the gross receipts which PNM receives from the sale of electricity within the municipal
5 boundaries of the City as such boundaries exist as of the Effective date [or as later expanded by
6 the City pursuant to applicable law, provided that in the event of such expansion, the City
7 provides PNM with written notice specifying such boundary expansion pursuant to Section 8-3 of
8 this Agreement] for the next preceding three (3) months' period to residential and commercial
9 customers as classified by PNM's rate schedules. PNM shall make payments on a quarterly basis
10 on or before the 30th day following the close of each quarter.

11 **4-2 Franchise Fee in Lieu of Other Taxes.** The franchise fee and payments made
12 hereunder are and shall be in lieu of any and all other franchise, license, privilege, occupation,
13 excise or revenue taxes upon the business, revenue or property of PNM, or any part thereof,
14 situated In the City during the term of this franchise, provided that ad valorem property taxes and
15 special assessments for local improvements as well as gross receipt taxes shall remain applicable.
16 Without limiting the foregoing, the City does not waive the obligation of PNM to obtain all
17 applicable permits and to comply with codes, ordinances, and regulations governing the
18 operation, maintenance, and construction of its System.

19 **Section 5. Construction Activities.**

20 **5-1 Excavations.** PNM shall have the right to excavate any public highway, street,
21 alley, avenue, thoroughfare, road, pavement, sidewalk and other public places and public rights-
22 of-way now or hereafter dedicated, owned or controlled by the City within its municipal
23 boundaries, as now existing or hereafter extended as necessary for the construction, operation,
24 and maintenance of the electric utility system and the facilities and components associated
25 therewith.

1 Except as otherwise provided by state law or regulation, all construction activities of
2 PNM within the municipal limits of the City shall be done in compliance with the then-applicable
3 planning and zoning rules, regulations, ordinances, or orders of the City and any other agency
4 having jurisdiction.

5 **5-2 Restoration.** There shall be no unreasonable delay in the backfilling of
6 excavations by PNM under this Section 5, and all such excavations shall be restored by PNM in
7 accordance with valid ordinances and regulations which may be adopted by the City to
8 reasonably control and monitor such activities. If such ordinances and regulations are not adopted
9 or effective, it shall then be the responsibility of PNM to restore such property, insofar as
10 practicable, to the condition of such property immediately prior to the excavation.

11 **5-3 Relocation.** Any location or relocation of PNM's Facilities in the Public Rights-
12 of-way reasonably required, caused, or occasioned by any City project, including without
13 limitation, the installation of storm drainage, landscaping, traffic facilities, and road
14 reconstruction, shall be at the cost of PNM. Nothing in the Ordinance shall be construed in any
15 way to prevent the City from opening, grading, paving, repairing, altering, or improving any of
16 the streets, alleys, avenues, thoroughfares, and public highways, and places and grounds within
17 the City's public rights-of-way in which PNM has its facilities located. Prior to such activity and
18 in the pre-design phase of any project, the City and PNM shall make a good faith effort to
19 coordinate activities to avoid unnecessary cost for both parties. Except as otherwise provided by
20 State regulation or law, PNM, at its expense, shall protect, support, temporarily disconnect,
21 relocate, or remove along under or over any street, alley, or any other public place, PNM's
22 equipment or facilities when notified in writing and reasonably required by the City for reasons of
23 public safety, street or alley excavation, street or alley construction (including rerouting,
24 improving and widening), or the change or establishment of street or alley grade.
25 Notwithstanding the foregoing, this provision shall not apply to any move, regrading, rerouting,

1 improvement, or widening is undertaken for the benefit or convenience of or at the request of a
2 third party, including a private developer or development or any other person who develops
3 property within the City in a manner which necessitates such regrading, rerouting, improving or
4 widening of any street, avenue, easement, right-of-way, alley, highway, sidewalk, bridge or other
5 structure or public place or ground, or in a manner which necessitates such construction,
6 reconstruction, removal, or relocation of traffic signal systems or utility systems owned or
7 operated by or on behalf of the City. This section shall also be subject to any applicable State
8 regulation or legislation affecting payment by a state or local public agency or body for certain
9 relocation costs, or any other agreements with the City affecting relocation.

10 **5-4 No Interference with Other Authorized Uses.** PNM shall make a good faith
11 effort in the conduction of its activities so as not to interfere with the activities of other
12 franchisees. The City shall, in the grant of other franchises, require that said franchisees similarly
13 conduct their activities to avoid interference with those of PNM.

14 **Section 6. Tree Trimming, Maintenance, and Moving of Aerials.**

15 **6-1 Tree Trimming and Obstructions.** PNM shall have the right and authority to
16 trim or remove trees or parts of trees overhanging or within any public way and to remove any
17 obstruction within any public way in order to eliminate or minimize interferences with its lines,
18 system, plant, equipment, service, and facilities.

19 **6-2 Moving Aerials.** Whenever it becomes necessary to temporarily rearrange,
20 remove, tower, or raise any of PNM's aerial cables, wires, or other apparatus of PNM to permit
21 the passage of any building, machinery, or other object moved over the roads, streets, alleys,
22 avenues, thoroughfares, and public highways within the City, PNM will rearrange such aerial
23 cables, wires, or other apparatus within a reasonable period after receiving written notice from the
24 owner or contractor-mover who desires that said building, machinery, or other objects be moved.
25 All such notices must include the written approval of the City, must set forth in detail the route of

1 movement of the building, machinery, or object, must state that the costs incurred by PNM for
2 such activities will be borne by the contractor-mover and that the contractor-mover will
3 indemnify and save both the City and PNM harmless from any and all damages of claims of
4 whatsoever kind or nature caused directly or indirectly by such activities and, if required by
5 PNM, must include a cash deposit or a good and sufficient bond in an amount reasonably
6 acceptable to PNM to pay any and all such costs as estimated by PNM.

7 **Section 7. Insurance and Indemnity.**

8 **7-1 Commercial General Liability Insurance.** Throughout the term of this
9 Agreement, PNM shall, at its own cost and expense, maintain Commercial General Liability
10 Insurance and provide the City certificates of insurance designating the City as an additional
11 insured and demonstrating that PNM has obtained the insurance required. Such policy or policies
12 shall be in the minimum amount of one million dollars (\$1,000,000.00) for bodily injury or death
13 to any one person and one million dollars (\$1,000,000.00) for property damage resulting from
14 any one accident.

15 **7-2 Worker's Compensation Insurance.** PNM shall maintain Worker's
16 Compensation Insurance in such amounts as required by law.

17 **7-3 Indemnification.** PNM shall assume and pay for all judgments rendered against
18 it for damages to persons or property resulting from the construction or cooperation of its electric
19 business within the City, both present and as may be extended during the life of this PNM
20 Electric Franchise Ordinance. PNM shall indemnify the City, its elected and appointed officers,
21 employees, and agents, against all judgments against the City, its officers, agents, and employees,
22 resulting from PNM's negligence in the construction, operation, maintenance, or removal of
23 PNM's electric facilities with the City.

24 **Section 8. Miscellaneous Provisions.**

25 **8-1 Reservation of Rights.** By accepting this Ordinance, the City and PNM reserve

1 all rights under federal law, state law, and regulation.

2 **8-2 Inspection of PNM's Books.** PNM shall make available to the City, upon ten
3 (10) days written notice, such information directly pertinent to the payment of the franchise fees
4 pursuant to the terms of this Ordinance, in such form as PNM can reasonably make available.
5 Subject to New Mexico public records laws, PNM considers any such information that PNM
6 provides to the City and/or that the City reviews in camera as confidential and proprietary and
7 shall the information not be disclosed or used for any purpose, other than verifying and/or
8 enforcing proper computation and payment of franchise fees in accordance with the terms of this
9 Ordinance.

10 **8-3 Changes in City's Municipal Boundaries.** The City shall notify PNM in
11 writing of any changes in the municipal boundaries of the City within thirty (30) days of any
12 extension or contraction of such municipal boundaries becoming effective. Such notice shall be
13 delivered to:

14 Public Service Company of New Mexico

15 Attn: Tax Department

16 MS 1025

17 414 Silver SW

18 Albuquerque, NM 87102

19 The notice shall provide a description of the new and former municipal boundaries. PNM
20 shall have no obligation to calculate, collect, or pay the franchise fee attributable to any newly
21 extended municipal boundaries until thirty (30) days have elapsed from PNM's receipt of such
22 notice.

23 **8-4 Amendment and Addendum.** At any time during the term of this Ordinance, the
24 City or PNM may propose an amendment or addendum to the Ordinance by giving thirty (30)
25 days written notice to the other of the proposed amendment or addendum desired, and both shall

1 negotiate in good faith in an effort to agree upon a mutually satisfactory amendment. Such
2 amendment shall become effective upon adoption and passage of an amending Ordinance by the
3 City in accordance with the requirements of local and state law.

4 **8-5 Notices.**

5 For the purpose of this ordinance, notice to the City will be to:

6 City of Santa Fe
7 City Manager
8 200 Lincoln Avenue
9 Santa Fe, NM 87501

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11 With a copy to:

12 City Attorney
13 200 Lincoln Avenue
14 Santa Fe, NM 87501

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16 Notice to PNM will be to:

17 Public Service Company of New Mexico
18 Attn: Tax Department
19 MS 1025
20 414 Silver SW
21 Albuquerque, NM 87102

22 --

23 With a copy to:

24 PNM Resources Law Department
25 MS 0805

1 414 Silver SW

2 Albuquerque, NM 87102

3 Notice will be effective upon delivery at the above addresses until the City or PNM
4 notifies the other, in writing, of a change in the address.

5 **8-6 Severability.** If any section, paragraph, sentence, clause, word, or phrase of this
6 ordinance is for any reason held to be invalid or unenforceable by any court of competent
7 jurisdiction, such decision shall not affect the validity of the remaining provisions of this
8 ordinance. The Council hereby declares that it would have passed this ordinance and each
9 section, paragraph, sentence, clause, word, or phrase thereof irrespective of any provision being
10 declared unconstitutional or otherwise invalid.

11 **Section 9. Acceptance.**

12 **9-1 PNM to Accept.** PNM shall, within thirty (30) days after the passage and
13 approval of this Ordinance, file in the office of the Clerk of the City of Santa Fe, New Mexico a
14 written statement of acceptance duly signed and acknowledged by the proper officer of PNM
15 authorized to execute such acceptance.

16 **9-2 Failure to Accept.** In the event such acceptance is not filed within said period,
17 this Ordinance and the rights, privileges and franchise granted hereunder shall be terminated and
18 void; provided, that the City may by resolution extend the time herein for the filing of such
19 acceptance for an additional period.

20 **9-3 Supersedes Prior Franchise.** This Agreement, if accepted by PNM and
21 hereinbefore provided, shall supersede, cancel, and be in lieu of any and all other existing or prior
22 grants of rights, permission, and authority to PNM or any predecessor companies or assignors of
23 PNM to construct, operate and maintain any system for the production, transmission, distribution
24 and sale of electricity within the City.

25 **Section 10. Effective Date.**

1 **10-1 Effective Date.** This Ordinance shall, subject to the provisions of Section 7
2 herein, take effect 30 days after its adoption in accordance with statute, NMSA 1978, § 3-42-
3 1(B).

4 APPROVED AS TO FORM:

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6 _____
7 ERIN K. McSHERRY, CITY ATTORNEY

8 ACCEPTED THIS _____ day of _____, 2019.

9 Public Service Company of New Mexico

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11 By: _____

12 Title: _____

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25 *Legislation/2019/Bills/PNM Franchise Agreement*