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CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2019-13

AN ORDINANCE

GRANTING TO PUBLIC SERVICE COMPANY OF NEW MEXICO (“PNM”), A NEW MEXICO CORPORATION, A FRANCHISE TO FURNISH ELECTRICITY WITHIN THE CITY OF SANTA FE, SANTA FE COUNTY, NEW MEXICO, AND GRANTING TO PNM THE RIGHT TO USE ANY PUBLIC HIGHWAY, STREET, ALLEY, ROAD, OR OTHER PUBLIC PLACE WITHIN THE PRESENT OR FUTURE MUNICIPAL LIMITS OF THE CITY OF SANTA FE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Short Title.

This Ordinance shall be known and may be cited as the “PNM Electric Franchise Ordinance.”

Section 2. Grant of Franchise

2-1 Grant of Franchise. Subject to the provisions of Section 5-1 of this Ordinance,

the City of Santa Fe, New Mexico (the “City”), a municipal corporation organized under the laws of New Mexico, hereby grants to PNM, its successors and assigns (collectively referred to as “PNM”), the right and privilege to operate an electric utility and provide electric service within the municipal boundaries of the City, and to place, erect, lay, maintain and operate in, upon, over and under the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City, as existing now and hereafter extended, dedicated, annexed, owned or controlled by the City, including the right to construct, install, remove, change, expand, alter, improve,

1 operate and maintain electric plant, transmission and distribution system and facilities and all
2 components thereof as may be necessary or reasonably convenient for the proper operation of
3 such electric utility system.

4 **2-2 Franchise Not Exclusive.** The franchise rights and privileges extended by this
5 grant shall never be construed or held to be exclusive. The City retains and shall ever be
6 considered as having and retaining the right and power to allow and to grant to any other person,
7 firm or corporation and other electrical companies, including the City itself, electric franchise
8 rights and privileges to be exercised in and upon its streets, highways, alleys, roads and other
9 public places.

10 **2-3 Jurisdiction of Public Regulation Commission.** The New Mexico Public
11 Regulation Commission has the sole authority in New Mexico to grant a company the right to
12 provide electric service. The rates to be charged by PNM for furnishing electricity shall be those
13 rates effective by tariffs filed with the New Mexico Public Regulation Commission, as the same
14 may be amended from time to time, in accordance with the rules and regulations of the New
15 Mexico Public Regulation Commission and the Statutes of the State of New Mexico.

16 **Section 3. Term.**

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

20 **Section 4. Franchise Fee.**

21 **4-1 Franchise Fee:** In consideration of the rights, privileges, and franchise hereby
22 granted, PNM shall pay the City, from and after the date of the acceptance of this franchise, on a
23 monthly basis, a total aggregate sum of an amount equal to three percent (3%) of the gross
24 receipts which PNM receives from the sale of electricity within the municipal boundaries of the
25 City as such boundaries exist as of the Effective date [or as later expanded by the City pursuant to

1 applicable law, provided that in the event of such expansion, the City provides PNM with written
2 notice specifying such boundary expansion pursuant to Section 8-3 of this Agreement] for the
3 next preceding one (1) months' period to residential and commercial customers as classified by
4 PNM's rate schedules. PNM shall make payments on a monthly basis on or before the 30th day
5 following the close of such month.

6 **4-2 Franchise Fee in Lieu of Other Taxes.** The franchise fee and payments made
7 hereunder are and shall be in lieu of any and all other franchise, license, privilege, occupation,
8 excise or revenue taxes upon the business, revenue or property of PNM, or any part thereof,
9 situated In the City during the term of this franchise, provided that ad valorem property taxes and
10 special assessments for local improvements as well as gross receipt taxes shall remain applicable.
11 Without limiting the foregoing, the City does not waive the obligation of PNM to obtain all
12 applicable permits and to comply with codes, ordinances, and regulations governing the
13 operation, maintenance, and construction of its System.

14 **Section 5. Construction Activities.**

15 **5-1 Excavations.** PNM shall have the right to excavate any public highway, street,
16 alley, avenue, thoroughfare, road, pavement, sidewalk and other public places and public rights-
17 of-way now or hereafter dedicated, owned or controlled by the City within its municipal
18 boundaries, as now existing or hereafter extended as necessary for the construction, operation,
19 and maintenance of the electric utility system and the facilities and components associated
20 therewith.

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

25 **5-2 Restoration.** There shall be no unreasonable delay in the backfilling of

1 excavations by PNM under this Section 5, and all such excavations shall be restored by PNM in
2 accordance with valid ordinances and regulations which may be adopted by the City to
3 reasonably control and monitor such activities. If such ordinances and regulations are not adopted
4 or effective, it shall then be the responsibility of PNM to restore such property, insofar as
5 practicable, to the condition of such property immediately prior to the excavation.

6 **5-3 Relocation.** Any location or relocation of PNM's Facilities in the Public Rights-
7 of-way reasonably required, caused, or occasioned by any City project, including without
8 limitation, the installation of storm drainage, landscaping, traffic facilities, and road
9 reconstruction, shall be at the cost of PNM. Nothing in the Ordinance shall be construed in any
10 way to prevent the City from opening, grading, paving, repairing, altering, or improving any of
11 the streets, alleys, avenues, thoroughfares, and public highways, and places and grounds within
12 the City's public rights-of-way in which PNM has its facilities located. Prior to such activity and
13 in the pre-design phase of any project, the City and PNM shall make a good faith effort to
14 coordinate activities to avoid unnecessary cost for both parties. Except as otherwise provided by
15 State regulation or law, PNM, at its expense, shall protect, support, temporarily disconnect,
16 relocate, or remove along under or over any street, alley, or any other public place, PNM's
17 equipment or facilities when notified in writing and reasonably required by the City for reasons of
18 public safety, street or alley excavation, street or alley construction (including rerouting,
19 improving and widening), or the change or establishment of street or alley grade.
20 Notwithstanding the foregoing, this provision shall not apply to any move, regrading, rerouting,
21 improvement, or widening is undertaken for the benefit or convenience of or at the request of a
22 third party, including a private developer or development or any other person who develops
23 property within the City in a manner which necessitates such regrading, rerouting, improving or
24 widening of any street, avenue, easement, right-of-way, alley, highway, sidewalk, bridge or other
25 structure or public place or ground, or in a manner which necessitates such construction,

1 reconstruction, removal, or relocation of traffic signal systems or utility systems owned or
2 operated by or on behalf of the City. This section shall also be subject to any applicable State
3 regulation or legislation affecting payment by a state or local public agency or body for certain
4 relocation costs, or any other agreements with the City affecting relocation.

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

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

10 **6-1 Tree Trimming and Obstructions.** PNM shall have the right and authority to
11 trim or remove trees or parts of trees overhanging or within any public way and to remove any
12 obstruction within any public way in order to eliminate or minimize interferences with its lines,
13 system, plant, equipment, service, and facilities.

14 **6-2 Moving Aerials.** Whenever it becomes necessary to temporarily rearrange,
15 remove, tower, or raise any of PNM's aerial cables, wires, or other apparatus of PNM to permit
16 the passage of any building, machinery, or other object moved over the roads, streets, alleys,
17 avenues, thoroughfares, and public highways within the City, PNM will rearrange such aerial
18 cables, wires, or other apparatus within a reasonable period after receiving written notice from the
19 owner or contractor-mover who desires that said building, machinery, or other objects be moved.
20 All such notices must include the written approval of the City, must set forth in detail the route of
21 movement of the building, machinery, or object, must state that the costs incurred by PNM for
22 such activities will be borne by the contractor-mover and that the contractor-mover will
23 indemnify and save both the City and PNM harmless from any and all damages of claims of
24 whatsoever kind or nature caused directly or indirectly by such activities and, if required by
25 PNM, must include a cash deposit or a good and sufficient bond in an amount reasonably

1 acceptable to PNM to pay any and all such costs as estimated by PNM.

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

3 **7-1 Commercial General Liability Insurance.** Throughout the term of this
4 Agreement, PNM shall, at its own cost and expense, maintain Commercial General Liability
5 Insurance and provide the City certificates of insurance designating the City as an additional
6 insured and demonstrating that PNM has obtained the insurance required. Such policy or policies
7 shall be in the minimum amount of one million dollars (\$1,000,000.00) for bodily injury or death
8 to any one person and one million dollars (\$1,000,000.00) for property damage resulting from
9 any one accident.

10 **7-2 Worker's Compensation Insurance.** PNM shall maintain Worker's
11 Compensation Insurance in such amounts as required by law.

12 **7-3 Indemnification.** PNM shall assume and pay for all judgments rendered against
13 it for damages to persons or property resulting from the construction or cooperation of its electric
14 business within the City, both present and as may be extended during the life of this PNM
15 Electric Franchise Ordinance. PNM shall indemnify the City, its elected and appointed officers,
16 employees, and agents, against all judgments against the City, its officers, agents, and employees,
17 resulting from PNM's negligence in the construction, operation, maintenance, or removal of
18 PNM's electric facilities with the City.

19 **Section 8. Miscellaneous Provisions.**

20 **8-1 Reservation of Rights.** By accepting this Ordinance, the City and PNM reserve
21 all rights under federal law, state law, and regulation.

22 **8-2 Inspection of PNM's Books.** PNM shall make available to the City, upon ten
23 (10) days written notice, such information directly pertinent to the payment of the franchise fees
24 pursuant to the terms of this Ordinance, in such form as PNM can reasonably make available.
25 Subject to New Mexico public records laws, PNM considers any such information that PNM

1 provides to the City and/or that the City reviews in camera as confidential and proprietary and
2 shall the information not be disclosed or used for any purpose, other than verifying and/or
3 enforcing proper computation and payment of franchise fees in accordance with the terms of this
4 Ordinance.

5 **8-3 Changes in City's Municipal Boundaries.** The City shall notify PNM in
6 writing of any changes in the municipal boundaries of the City within thirty (30) days of any
7 extension or contraction of such municipal boundaries becoming effective. Such notice shall be
8 delivered to:

9 Public Service Company of New Mexico

10 Attn: Tax Department

11 MS 1025

12 414 Silver SW

13 Albuquerque, NM 87102

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

18 **8-4 Amendment and Addendum.** At any time during the term of this Ordinance, the
19 City or PNM may propose an amendment or addendum to the Ordinance by giving thirty (30)
20 days written notice to the other of the proposed amendment or addendum desired, and both shall
21 negotiate in good faith in an effort to agree upon a mutually satisfactory amendment. Such
22 amendment shall become effective upon adoption and passage of an amending Ordinance by the
23 City in accordance with the requirements of local and state law.

24 **8-5 Notices.**

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

1 City of Santa Fe
2 City Manager
3 200 Lincoln Avenue
4 Santa Fe, NM 87501

5 --

6 With a copy to:

7 City Attorney
8 200 Lincoln Avenue
9 Santa Fe, NM 87501

10 --

11 Notice to PNM will be to:

12 Public Service Company of New Mexico
13 Attn: Tax Department
14 MS 1025
15 414 Silver SW
16 Albuquerque, NM 87102

17 --

18 With a copy to:

19 PNM Resources Law Department
20 MS 0805
21 414 Silver SW
22 Albuquerque, NM 87102

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

25 **8-6 Severability.** If any section, paragraph, sentence, clause, word, or phrase of this

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

6 **Section 9. Acceptance.**

7 **9-1 PNM to Accept.** PNM shall, within thirty (30) days after the passage and
8 approval of this Ordinance, file in the office of the Clerk of the City of Santa Fe, New Mexico a
9 written statement of acceptance duly signed and acknowledged by the proper officer of PNM
10 authorized to execute such acceptance.

11 **9-2 Failure to Accept.** In the event such acceptance is not filed within said period,
12 this Ordinance and the rights, privileges and franchise granted hereunder shall be terminated and
13 void; provided, that the City may by resolution extend the time herein for the filing of such
14 acceptance for an additional period.

15 **9-3 Supersedes Prior Franchise.** This Agreement, if accepted by PNM and
16 hereinbefore provided, shall supersede, cancel, and be in lieu of any and all other existing or prior
17 grants of rights, permission, and authority to PNM or any predecessor companies or assignors of
18 PNM to construct, operate and maintain any system for the production, transmission, distribution
19 and sale of electricity within the City.

20 **Section 10. Effective Date.**

21 **10-1 Effective Date.** This Ordinance shall, subject to the provisions of Section 7
22 herein, take effect 30 days after its adoption in accordance with statute, NMSA 1978, § 3-42-
23 1(B).

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PASSED, APPROVED, and ADOPTED this 26th day of June, 2019

ALAN M. WEBBER, MAYOR

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

ERIN K. McSHERRY, CITY ATTORNEY

ACCEPTED THIS _____ day of _____, 2019.

Public Service Company of New Mexico

By: _____

Title: _____

Bill No. 2019-16

Legislation/2019/Ordinances/2019-13 PNM Franchise Agreement