

DATE: July 14, 2015
CITY OF RIO COMMUNITIES
ORDINANCE NO. 2015-37

Chapter 16: Franchises

Article 1: PNM

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16-1-1 AN ORDINANCE GRANTING TO PUBLIC SERVICE COMPANY OF NEW MEXICO, A NEW MEXICO CORPORATION, A FRANCHISE TO FURNISH ELECTICITY WITHIN THE CITY OF RIO COMMUNITIES, NEW MEXICO, AND GRANTED TO PUBLIC SERVICE COMPANY OF NEW MEXICO (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 RIO COMMUNITIES

16-1-2 SHORT TITLE This Ordinance shall be known and may be cited as the PNM Electric Franchise Ordinance.

16-1-3 GRANT OF FRANCHISE

16-1-3-1 Grant of Franchise. The City of Rio Communities (“City”) 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 of Rio Communities, 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, operate and maintain electric plant, transmission and distribution system and facilities and all components thereof as may be necessary or reasonably convenient for the proper operation of such electric utility system.

16-1-3-2 Franchise Not Exclusive. Jurisdiction of Public Regulation Commission. The franchise rights and privileges extended by this grant shall never be construed or held to be exclusive. The City retains and shall ever be considered as having and retaining the right and power to allow and to grant to any other person, firm or corporation and other electrical companies, including the City itself, electric franchise rights and privileges to be exercised in and upon its streets, highways, alleys, roads and other public places. The New Mexico Public Regulation Commission has the sole authority in New Mexico to grant a company the right to provide electric service. The rates to be charged by PNM for furnishing electricity shall be those rates effective by tariffs filed with the New Mexico Public Regulation Commission, as the same may be amended from time to time, in accordance with the rules and regulations of the New Mexico Public Regulation Commission and the Statutes of the State of New Mexico.

16-1-4 TERM The rights, privileges and franchise herein granted shall continue in full force and effect for the period of twenty-five (25) years from and after the date this Ordinance becomes effective. This Ordinance shall be subject to any and all State or Federal legislative enactments.

16-1-5 FRANCHISE FEE.

16-1-5-1 Franchise fee: In consideration of the rights, privileges, and franchise hereby granted, PNM shall pay the City, from and after the date of the acceptance of this franchise, an amount equal to three percent (3%) of the gross receipts which PNM receives from the sale of electricity within the municipal boundaries of the City. Payments shall be made on a monthly basis, on or before the 30th day following the close of such month.

16-1-5-2 Franchise Fee in Lieu of Other Taxes. The franchise fee and payments made hereunder are and shall be in lieu of any and all other franchise, license, privilege, occupation, excise or revenue taxes upon the business, revenue or property of PNM, or any part thereof, situated in the City during the term of this franchise, provided that ad valorem property taxes and special assessments for local improvements as well as GRT shall remain applicable.

16-1-6 CONSTRUCTION ACTIVITIES

16-1-6-1 Excavations. PNM shall have the right to excavate any public highway, street, alley, avenue, thoroughfare, road, pavement, sidewalk and other public places and public rights-of-way now or hereafter dedicated, owned or controlled by the City within its municipal boundaries, as now existing or hereafter extended as necessary for the construction, operation and maintenance of the electric utility system and the facilities and components associated therewith.

Except as otherwise provided by state law or regulation, all construction activities of PNM within the municipal limits of the City shall be done in compliance with the then-

applicable applicable planning and zoning rules, regulations, ordinances or orders of the City and any other agency having jurisdiction, including the Road Cut Ordinance.

16-1-6-2 Restoration. There shall be no unreasonable delay in the backfilling of excavations by PNM under this Section 16-1-6, and all such excavations shall be restored by PNM in accordance with valid ordinances and regulations which may be adopted by the City to reasonably control and monitor such activities. If such ordinances and regulations are not adopted or effective, it shall then be the responsibility of PNM to restore such property, insofar as practicable, to the condition of such property immediately prior to the excavation.

16-1-6-3 Relocation. Nothing in the Ordinance shall be construed in any way to prevent the City from opening, grading, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City's public rights-of-way in which PNM has its facilities located. Prior to such activity and in the pre-design phase of any project, the City and PNM shall make a good faith effort to coordinate activities to avoid unnecessary cost for both parties. Except as otherwise provided by state regulation or law, PNM, at its expense, shall protect, support, temporarily disconnect, relocate or remove along under or over any street, alley or any other public place, PNM's equipment or facilities when notified in writing and reasonably required by the City for reasons of public safety, street or alley excavation, street or alley construction (including rerouting, improving and widening) or the change or establishment of street or alley grade. Notwithstanding the foregoing, this provision shall not apply to any move, regrading, rerouting, improvement or widening is undertaken for the benefit or convenience of or at the request of a third party, including a private developer or development or any other person who develops property within the City in a manner which necessitates such regrading, rerouting, improving or widening of any street, avenue, easement, right-of-way, alley, highway, sidewalk, bridge or other structure or public place or ground, or in a manner which necessitates such construction, reconstruction, removal or relocation of traffic signal systems or utility systems owned or operated by or on behalf of the City. This section shall also be subject to any applicable state regulation or legislation affecting payment by a state or local public agency or body for certain relocation costs, or any other agreements with the City affecting relocation.

16-1-6-4 No Interference with Other Authorized Uses. PNM shall make a good faith effort in the conduction of its activities so as not to interfere with the activities of other franchisees. The City shall, in the grant of other franchises, require that said franchisees similarly conduct their activities to avoid interference with those of PNM.

16-1-7 TREE TRIMMING, MAINTENANCE AND MOVING OF AERIALS

16-1-7-1 Tree Trimming and Obstructions. PNM shall have the right and authority to trim or remove trees or parts of trees overhanging or within any public way and to remove any obstruction within any public way in order to eliminate or minimize interferences with its lines, system, plant, equipment, service or facilities.

16-1-7-2 Moving Aerials. Whenever it becomes necessary to temporarily rearrange, remove, tower or raise any of PNM's aerial cables, wires, or other apparatus of PNM to permit the passage of any building, machinery or other object moved over the roads, streets, alleys, avenues, thoroughfares and public highways within the City, PNM will rearrange such aerial cables, wires, or other apparatus within a reasonable period after receiving written notice from the owner or contractor-mover who desires that said building, machinery or other objects be moved. All such notices must include the written approval of the City, must set forth in detail the route of movement of the building, machinery, or object, must state that the costs incurred by PNM for such activities will be borne by the contractor-mover and that the contractor-mover will indemnify and save both the City and PNM harmless from any and all damages of claims of whatsoever kind or nature caused directly or indirectly by such activities, and if required by PNM, must include a cash deposit or a good and sufficient bond in an amount reasonably acceptable to PNM to pay any and all such costs as estimated by PNM.

16-1-8 INSURANCE AND INDEMNITY

16-1-8-1 Commercial General Liability Insurance. Throughout the term of this Agreement, PNM shall, at its own cost and expense, maintain Commercial General Liability Insurance and provide the City certificates of insurance designating the city as additional insured and demonstrating that PNM has obtained the insurance required. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) for property damage resulting from any one accident.

16-1-8-2 Worker's Compensation Insurance. PNM shall maintain Worker's Compensation Insurance in such amounts as required by law.

16-1-8-3 Indemnification. PNM shall assume and pay for all judgments rendered against it for damages to persons or property resulting from the construction or cooperation of its electric business within the City, both present and as may be extended during the life of this PNM Electric Franchise Ordinance. PNM shall indemnify the City, its elected and appointed officers, employees and agents against all judgments against the City, its officers, agents and employees resulting from PNM's negligence in the construction, operation, maintenance or removal of PNM's electric facilities with the City.

16-1-9 MISCELLANEOUS PROVISIONS

16-1-9-1 Reservation of Rights. By accepting this Ordinance, the City and PNM reserve all rights under federal and state law and regulation.

16-1-9-2 Inspection of PNM's Books. PNM shall make available to the City, upon ten (10) days written notice, such information directly pertinent only to the payment of the franchise fees pursuant to the terms of this Ordinance in such form as PNM can reasonably make available. Subject to New Mexico public records laws, any information

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

16-1-9-3 The City shall notify PNM in writing of any changes in the municipal boundaries of the City within thirty (30) days of any extension or contraction of such municipal boundaries becoming effective. Such notice shall be delivered to:

Public Service Company of New Mexico
Attn: Tax Department
MS _____
414 Silver SW
Albuquerque, NM 87102

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

16-1-9-4 Amendment and Addendum. At any time during the term of this Ordinance, the City or PNM may propose an amendment or addendum to the Ordinance by giving thirty (30) days written notice to the other of the proposed amendment or addendum desired, and both shall negotiate in good faith in an effort to agree upon a mutually satisfactory amendment. Such amendment shall become effective on adoption and passage by the City in accordance with the requirements of local and state law.

16-1-10 ACCEPTANCE

16-1-10-1 PNM to Accept. PNM shall, within thirty (30) days after the passage and approval of this Ordinance, file in the office of the City clerk of the City of Rio Communities a written statement of acceptance duly signed and acknowledged by the proper officer of PNM authorized to execute such acceptance, and shall file a true copy of this Ordinance and the acceptance of PNM with the New Mexico Public Regulation Commission.

16-1-10-2 Failure to Accept. In the event such acceptance is not filed within said period, this Ordinance and the rights, privileges and franchise granted hereunder shall be terminated and void; provided, that the City may by resolution extend the time herein for the filing of such acceptance for an additional period.

16-1-10-3 Supersedes Prior Franchise. This Agreement, if accepted by PNM and hereinbefore provided, shall supersede, cancel and be in lieu of any and all other existing or prior grants of rights, permission and authority to PNM or any predecessor companies or assignors of PNM to construct, operate and maintain any system for the production, transmission, distribution and sale of electricity within the City.

16-1-11 EFFECTIVE DATE

16-1-11-1 Effective Date. This Ordinance shall, subject to the provisions of Section 8 herein, take effect August 1, 2015 in accordance with statute (NMSU 3-42-1 franchises; authorization).

PASSED, APPROVED AND ADOPTED this 14th day of July, 2015.

City of Rio Communities Governing Body

Mark Gwinn, Mayor

Mary Lee Serna, Councilor Mayor Pro-temp

Robert Chavez, Councilor

Margaret (Peggy) Gutjahr, Councilor

Frank Stasi, Councilor

ATTEST:

City Clerk

ACCEPTED THIS _____ day of _____, 2015.

Public Service Company of New Mexico

By: _____

Title: _____