

LUNA COUNTY
FRANCHISE
ORDINANCE NO. 18

AN ORDINANCE GRANTING TO EL PASO ELECTRIC COMPANY, A CORPORATION, ITS LEGAL REPRESENTATIVES, SUCCESSORS, LESSEES AND ASSIGNS, GRANTEE HEREIN, CERTAIN POWERS, LICENSES, RIGHTS-OF-WAY, PRIVILEGES AND FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN IN THE COUNTY OF LUNA, NEW MEXICO, AS NOW OR HEREAFTER CONSTITUTED, ITS PIPES, POLES, WIRES, CABLES, CONDUITS, TOWERS, TRANSFORMERS, STATIONS, AND OTHER FIXTURES, APPLIANCES AND STRUCTURES FOR THE SALE, PROVISION, FURNISHING AND DISTRIBUTION OF ELECTRIC POWER, OUT OF AND THROUGH SAID COUNTY, ITS INHABITANTS, AND OTHERS, INCLUDING CUSTOMERS INSIDE, BEYOND AND OUTSIDE THE LIMITS OF SAID COUNTY: AND TO USE THE PUBLIC STREETS, ALLEYS AND HIGHWAYS IN SAID COUNTY FOR A PERIOD OF TWENTY-FIVE (25) YEARS: AND PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS HEREIN MENTIONED.

BE IT ORDAINED BY THE GOVERNING BODY OF LUNA COUNTY,
NEW MEXICO:

WHEREAS, at a regular meeting of the Board of County Commissioners within and for Luna County, State of New Mexico, held on the 8th day of May, 1992, there was presented by the EL PASO ELECTRIC COMPANY of El Paso, Texas, a corporation organized and existing under and by virtue of the laws of the State of Texas, duly authorized to transact business in the State of New Mexico, hereinafter called the "Company", an application for a franchise authorizing the use of the public highways and streets and alleys of unincorporated towns within the County of Luna for its pipes, poles, wires, cables, conduits, towers, transformer stations and other fixtures, appliances and

STATE OF NEW MEXICO - COUNTY OF LUNA

RECEPTION NO. 92-02170

I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD AT 2:23 P. M.

May 8, 1992 AND RECORDED IN BOOK 21 PAGE 1184-1197. OF 176c.

NATALIE PACHECO, LUNA COUNTY CLERK

BY Andres Rodriguez DEPUTY CLERK

structures, under and by virtue of the provisions of the statutes of the State of New Mexico in such cases made and provided, for the period of twenty-five (25) years from and after the date hereof, and there having been submitted a draft of the proposed and desired franchise, and the board having read and carefully considered the contents thereof and it appearing to the satisfaction of the Board that the proposed franchise is based upon and in conformity with the statutes under the provisions of which the Board is authorized to act in the premises; and the Board being satisfied that the welfare of the citizens of Luna County will be properly served and safeguarded by the approval and granting of said application,

NOW, THEREFORE, BE IT ORDAINED:

1. That by the virtue of the power and authority in it vested by the provisions of Sec. 62-1-3, New Mexico Statutes 1978 Annotated, and in consideration of the sum of One Dollar (\$1.00), to be paid by the Company and payment for all necessary and incidental expenses incurred herewith by the Company, the Board of County Commissioners of Luna County, New Mexico, hereby grants, and there is hereby granted to the Company, its successors and assigns, for the period of twenty-five (25) years from date a franchise authorizing its use of the public highways and of the streets and alleys of unincorporated towns within the aforesaid County of Luna, as the same now exist or may be hereafter extended or such as may be hereafter created, for the installation and

maintenance of pipes, poles, wires, cables, conduits, towers, transformer stations and other necessary fixtures, appliances and structures, for the purpose of providing, furnishing, distributing and selling electricity at retail or wholesale for power, light, and other useful service and elements incidental to the use of same, to any individual, partnership, company, private or municipal corporation, federal or state bureau, agency, body or installation within Luna County, New Mexico.

2. That during the life of this Franchise, the Company shall have continuous access to and right-of-way over, across and upon all such highways and streets and alleys of unincorporated towns, both above and beneath the surface, for any and every lawful purpose incident to the exercise of its powers and privileges hereunder.

3. That the Company shall be, and hereby is, authorized to do and perform all things necessary and proper to be done and performed in the exercise of its powers and privileges hereunder, including the making of excavations, and to erect, maintain and operate its poles, wires, and other facilities, and including the privilege to extend the same as necessary.

4. That all installation work shall be performed with reasonable diligence, and that the Company shall within a reasonable time restore highways, streets and alleys whereon excavations are made, to their original condition, as nearly as possible, such work to be subject to supervision by the Board of its duly

authorized agent. In the event that any installation work to be placed along, across or under any public way is anticipated by the Company to obstruct vehicle traffic for any period of time in excess of one hour, the Company in non-emergency situations, shall notify the County at least twenty-four (24) hours in advance and shall exercise reasonable caution in warning motorists of the work in progress. The Company shall indemnify and save harmless the County, its governing body, officers, agents and employees from and against any and all claims or obligations caused by any acts of negligence of the Company, its officers, agents or employees, contractors or subcontractors in connection with the installation, repair, operation or maintenance of any of the Company's facilities or in any work done as authorized or required by this franchise. The County shall give prompt notice to the Company of any claim or suit arising under this indemnify agreement and the Company or its insurer shall have the option to compromise and defend the same to the extent of their own interest. Nothing in this indemnity agreement shall be construed to depart from the present or future law of New Mexico concerning contribution among or between joint tortfeasors.

5. That the Company shall have, and is hereby granted, the exclusive right to install, operate and control all poles, wires, meters, and other appliances, appurtenances and facilities installed, or structures erected and owned by it; and in case of failure or refusal by any customer to pay proper charges fixed by

the Company for electricity furnished to and consumed by any such customer, or if any such customer shall fail or refuse to observe the established rules and regulations of the Company, in either of such events, the Company shall be, and it hereby is, authorized and empowered to discontinue service and to disconnect and remove wires connecting with the premises of the customer, together with all meters and other materials, appliances and appurtenances furnished and owned by the Company, and to take any other action permitted or authorized by the rules and regulations of the New Mexico Public Service Commission.

6. That the Company shall also have, and is hereby granted, the right to trim branches from trees along its pole lines whenever same interfere with or impair the transmission and delivery of electric current.

7. That the acceptance of this Franchise, evidenced by the written acceptance of the Company within thirty (30) days of the passage of this ordinance, is hereby made an essential condition to the granting hereof, and such acceptance thus verified shall be and become the acceptance by the Company, its successors and assigns, of all conditions, reservations and restrictions herein set forth; and thereupon this Franchise shall be and become a contract by and between the County of Luna, State of New Mexico, acting by and through its Board of County Commissioners, thereunto duly authorized by statute, and the Company.

8. This Franchise shall be non-exclusive with and additional to any franchise heretofore granted and now existing with any other agency or company engaged in the distribution and sale of electrical energy and power in Luna County, New Mexico. The County of Luna in granting this franchise surrenders no privileges or rights that it may have of owning or installing any system of light, heat, power, or communication and furnishing the same to the County and the inhabitants thereof.

9. In the event of any change by the County in said public roads, streets, highways or alleys, or in the grades or drains thereof, all affected pipes, poles, wires, cables, conduits, towers, transformers, stations, fixtures, appliances, and other structures of the Company shall be reset, relocated or changed by the Company at its expense to a location mutually acceptable to the County and the Company. However, in the event that the County makes such a change affecting the same pipes, poles, wires, conduits, towers, transformers, stations, fixtures, appliances or other structures of the Company occurs twice in any one year period, the County shall pay the charges to reset, relocate or change the Company's equipment. It is specifically agreed and understood, however, that before the County shall authorize any such change requiring the resetting, relocation or changing of any of said improvements by the Company, notice at least 60 days in advance of the commencement of the contemplated changes shall be given to the Company in writing so that it may

have sufficient time within which to make recommendations intended to minimize its cost of resetting, relocating or changing its facilities. The County agrees that it will use its good faith and best efforts to cooperate with the Company in attempting to implement the Company's recommendations.

10. That this Franchise and all of its provisions, privileges, reservations and restrictions, shall inure, extend to, and be binding upon the successors and assigns of the Company.

11. That if any section, paragraph, subdivision, clause, phrase or provision of this Franchise shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise as a whole, or any part or provision thereof other than such part decided to be invalid or unconstitutional.

12. That this Franchise shall be duly filed and recorded as a part of the ordinance records of the Board of County Commissioners of Luna County, and in the records in the office of the County Clerk of said County.

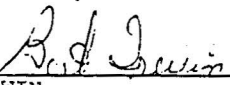
APPROVED at Deming, Luna County, New Mexico, this 8th day of May, 1992.



BOARD OF COUNTY COMMISSIONERS OF
LUNA COUNTY, NEW MEXICO

By Edward B. Kretek
EDWARD B. KRETEK, Chairman


VALENTIN M. BUSTAMANTE, Member


BERT IRWIN, Member

ATTEST:


Natalie Pacheco, County Clerk

I, Natalie Pacheco, Luna County Clerk, hereby certify that Ordinance No. 18, granting a 25-year franchise to El Paso Electric Company, was passed, adopted and approved after being heard at 10:00 AM, Friday, May 8, 1992, being proposed in the County Commission Meeting, Friday, April 10, 1992, and published in the Deming Headlight on Friday, April 17, 1992, all in accordance with Section 4-37-7, NMSA, 1978 Comp., and said Ordinance No. 18 was filed for record at _____ AM, on May 8, 1992 and recorded in Book 21, Pages 1184-1191 of Miscellaneous Papers and will be in full force and effect thirty days hence.


Natalie Pacheco, Luna County Clerk

