WORK SESSION AGENDA

Monday, February 10, 2025 at 1:00 PM

Council Chambers

Mayor
Eric Enriquez

Mayor Pro Tem
Johana Bencomo

Councilors
Cassie McClure
William Mattiace
Becki Graham
Becky Corran
Yvonne Flores

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CITY OF LAS CRUCES

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1. JOBS OF THE WEEK

2. PETS OF THE WEEK

3. AGENDA ITEM

3.1. REVIEW EL PASO ELECTRIC COMPANY FRANCHISE AGREEMENT. 2 - 12
WS #24-057 - Pdf

Council Work Session Summary

Meeting: Work Session - Feb 10 2025

TITLE: REVIEW EL PASO ELECTRIC COMPANY FRANCHISE AGREEMENT.

PURPOSE(S) OF DISCUSSION: ☒ **Inform/Update** ☐ **Direction/Guidance** ☐ **Legislative Development/Policy**

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
Review the draft Franchise Agreement for El Paso Electric.

SUPPORT INFORMATION:
Final Draft El Paso Electric Franchise Ordinance

COMMITTEE/BOARD REVIEW:
None

ORDINANCE _____; COUNCIL BILL 25_____

AN ORDINANCE GRANTING TO EL PASO ELECTRIC COMPANY, A TEXAS CORPORATION, ITS LEGAL REPRESENTATIVES, SUCCESSORS, LESSEES, AND ASSIGNS CERTAIN POWERS, LICENSES, RIGHTS-OF-WAY, PRIVILEGES, AND FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN IN THE CITY OF LAS CRUCES, NEW MEXICO, AS NOW OR HEREAFTER CONSTITUTED, ITS PIPES, POLES, WIRES, CABLES, CONDUITS, TOWERS, TRANSFORMER STATIONS, AND OTHER FIXTURES, APPLIANCES, AND STRUCTURES FOR THE SALE, PROVISION, FURNISHING, AND DISTRIBUTION OF ELECTRIC POWER OUT OF AND THROUGH THE CITY OF LAS CRUCES TO ITS INHABITANTS AND OTHERS, INCLUDING CUSTOMERS INSIDE, BEYOND, AND OUTSIDE THE LIMITS OF THE CITY OF LAS CRUCES; TO USE THE PUBLIC RIGHTS-OF-WAY, STREETS, ALLEYS, AND HIGHWAYS IN THE CITY OF LAS CRUCES FOR A PERIOD OF TWENTY (20) YEARS; AND PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS HEREIN MENTIONED.

WHEREAS, at a regular meeting of the City Council of the CITY OF LAS CRUCES, New Mexico, hereinafter called the "Council," held on the ___ day of _____, 2025, there was presented by EL PASO ELECTRIC COMPANY, 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 rights-of-way, highways, streets, and alleys within the City of Las Cruces, New Mexico, (the "City") for the Company's pipes, poles, wires, cables, conduits, towers, transformer stations, and other fixtures, appliances, and 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 (20) years from and after the date hereof, and there having been submitted a draft of the proposed and desired franchise, and the Council having read and carefully considered the contents thereof and it appearing to the satisfaction of the Council that the proposed franchise is based upon and in conformity with the statutes under the provisions of which the Council is authorized to act in the premises; and the Council being satisfied that the welfare of the citizens of the City will be properly served and safeguarded by the approval and granting of said application.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. Grant of Authority

a. That by the virtue of the power and authority in it vested by the provisions of New Mexico Statutes Annotated 1978 (NMSA 1978), § 3-42-1, and in consideration of the amounts listed in Section 8 of this Franchise, the Council hereby grants, and there is hereby granted to the Company, its successors, lessees, and assigns, for the period of

twenty (20) years from the later of thirty (30) days after its adoption by the City or acceptance of this franchise by the Company, authorizing its use of the public rights-of-way, highways, streets, alleys, sidewalks, bridges, parks, public utility easements, City-owned parcels, City-granted easements, and public places (collectively, "public places") within the City, as the same now exist or may be hereafter extended or such as may be hereafter created, for the construction, installation, extensions, reconstructions, repair, access, use, operation, and maintenance of electric power lines and facilities with all necessary or desirable appurtenances (including pipes, poles, wires, cables, underground conduits, towers, transformers, substations, and related telephone and communication lines) for the transmission and distribution of electric energy for the use of the City, its inhabitants thereof, and properties therein and persons, entities, and inhabitants beyond the limits thereof.

b. That during the life of this Franchise, the Company shall have continuous access to and right-of-way over, across, and upon all such public places of the City, both above and beneath the surface, for any and every lawful purpose incident to the exercise of its powers and privileges hereunder. If the City abandons any public places in which the Company has facilities, such abandonment shall be conditioned on the Company's right to maintain its use of the former public places and any easements needed for Company's access to and maintenance of those facilities, and on the obligation of the party to whom the public place is abandoned to reimburse the Company for all removal or relocation expenses if the Company agrees to the removal or relocation of its facilities following abandonment of the public place. Abandonment occurs when the City (by resolution, operation of law, or otherwise) relinquishes any interest(s) it had in property.

c. 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, including the privilege to extend the same as necessary.

Section 2. Police Power

Work done in connection with the construction, repair, maintenance, and operation of such facilities is subject to the continuing police power of the City, and the Company shall comply with all present and future laws, ordinances, and regulations, except such as conflicts with any provisions hereof lawfully surrendering the City's authority.

In the event of any change by the City in said public place or in the grades or drains thereof, all affected pipes, poles, wires, cables, conduits, towers, transformer stations, fixtures, appliances, and other structures ("Improvements") related to the distribution of electricity of the Company

shall be reset, relocated, or changed by the Company at its expense to a location mutually acceptable to the City and the Company. Provided, however, the Company shall be entitled to be paid for its costs and expense of any relocation of its Improvements (including the raising or lowering of its wires or cables) required by the City if (i) such expenses or costs are reimbursable or payable to the Company or to the City by the State of New Mexico, the United States, or any agency or subdivision of either, or by any other party, (ii) such relocation is for the benefit and convenience of or at the request of a third party, including a private developer or development; (iii) that the City makes such a change affecting the same Improvements twice in any one-year period; or (iv) the request for relocation relates to Improvements related to the transmission of electricity. Before the City shall authorize any such change requiring the resetting, relocation, or changing of any of said Improvements by the Company, notice at least sixty (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 City agrees that it will use its good faith and best efforts to cooperate with the Company in attempting to implement the Company's recommendations. Any relocation of Improvements is subject to the applicable laws and regulations (including but not limited to any laws or regulations that may or may not require an amendment to a certificate of convenience and necessity) and prudent utility practices as determined by the Company.

That all installation work shall be performed with reasonable diligence, to be completed within sixty (60) days if at all feasible as determined by Company's expertise in its sole discretion, subject to the proviso that for any project the Company determines in its sole discretion will extend beyond the sixty days, the Company shall provide a reasonable timeline to the City for completion, and that the Company shall within a reasonable time restore public places whereon excavations are made to their condition prior to the work as nearly as possible with such work subject to supervision by the Council or its duly authorized agent. In the event that any installation work to be placed along, across, or under any public place 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 endeavor to notify the City at least 24 hours in advance and shall exercise proper temporary work zones traffic control as per the Manual on Uniform Traffic Control Devises (MUTCD), latest edition. As requested by the City, the Company agrees to provide redline documents for underground structural improvements within any applicable City right of way within a reasonable time from completion of the permitted construction. Company shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses or other forms of approval or authorization necessary for any new underground construction through the City of Las Cruces Community Development Department. The Company shall encourage and promote the design and use of underground cables and facilities in new subdivisions where the differential costs of underground versus overhead distribution is agreeable to both the Company and the property owner. In all other cases, the Company may

utilize overhead utility lines. If an adjoining subdivision is served from underground facilities, every effort will be made to design, operate, and maintain these facilities for future expansion to other subdivisions in the immediate areas. With respect to any overhead utility lines, they shall comply with any and all vertical clearance requirements established by the City and other applicable laws and rules.

Section 3. Indemnification

Subject to the applicable laws and regulations of the State of New Mexico or customer rules of service, the Company shall indemnify and hold harmless the City, 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 City shall give prompt notice to the Company of any claim or suit arising under this Franchise 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 section shall be construed to depart from the present or future law of New Mexico concerning contribution among or between joint tortfeasors.

Section 4. Furnishing Service

a. The Company shall furnish service under approved rules and regulations to any person, firm, entity, or corporation that shall request service within the City, upon such terms and conditions as may be reasonably required by the Company, subject to regulation of Section 10 of this Franchise, and shall make connections therefore on demand, without unreasonable delay, provided that the extension of service demanded is not prohibited by state or federal law. In response to the City's interest in promoting alternate generation, the Company shall provide all relevant information required for interconnection with the Company's system by any person that desires to use alternate generation. The Company and the City will cooperate as to any power flow studies that may be conducted.

b. 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 Regulation Commission.

Section 5. Trimming Trees

That the Company shall also have, and is hereby granted, the right to trim branches from vegetation, including trees, along its pole lines or facilities whenever same interfere with or may potentially impair the transmission or distribution and delivery of electric current. All tree trimming shall be done under the supervision and direction of the Company and at the expense and, as to the City, liability of the Company.

Section 6. Acceptance

That the acceptance of this Franchise, evidenced by the written acceptance of the Company within 30 days of the this ordinance becoming effective in accordance with NMSA 1978, § 3-42-1, 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, lessees, 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 City, acting by and through its Council, thereunto duly authorized by statute, and the Company. The Company will make no transfer, assignment, lease, or other succession of or to the rights herein granted, without the approval of the City, which approval shall be granted as to any person or entity which provides information sufficient to demonstrate that it is financially sound and technically qualified to provide electric distribution service, and the regulatory agencies having jurisdiction over the Company's operations.

Section 7. Non-Exclusivity

a. Subject to the laws of the State of New Mexico, 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 the City. The City, 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 City and the inhabitants thereof.

b. The City reserves the right to install and permit to be installed, gas, water, wastewater, storm drain systems, reclaimed water systems, other utility lines, cable television lines, fiber optic lines, and facilities and permits to be done any work that may be deemed necessary or proper by the Council in, across, over, or under any public place occupied by the Company and to change any curb or sidewalk or the grade of any street. However, such installation shall not interfere with the operations or assets of the Company or violate safety standards and the City shall not require the Company to allow others use of

Company's assets without prior express written permission of the Company. In doing or permitting such reasonable work, the City shall not be liable to the Company for any damage so occasioned. However, the City shall not require the Company, except as provided in Section 2 of this Franchise, to move its line entirely from any public place. If the City shall require the Company to adapt or conform its lines or in any way or manner to alter, relocate, or change its property to enable any other corporation or person except the City to use with greater convenience such street, alley, or public place, the Company shall not be bound to make any such changes until such other corporation or person shall have undertaken with solvent bond to reimburse the Company for any loss and relocation of the Company property; provided, however, that the City shall not be liable for such reimbursement.

Section 8. Compensation

a. As full compensation for the rights herein granted, the Company will pay the City quarterly during the life of this Franchise, a sum of money equal to three (3) percent of the quarterly gross revenues, excluding revenues from the City or its departments, and all municipal, county, state, and Federal government agencies and institutions, including public school districts, received by the Company, its successors, lessees, and assigns, from the sale of electric energy within the limits of the City including any extension of those limits. Said payments shall be based on gross receipts from meter readings taken on or after the first billing cycle of the first calendar month following sixty (60) days after the date of Acceptance as described in Section 6 of this Franchise. Such sums shall be payable on the 15th day of February, 15th day of May, 15th Day of August, and 15th day of November each year or the following business day if the fifteenth 15th day is a weekend or legal holiday. Said payments shall be representative of the reasonable actual expenses incurred in the granting of this Franchise. A written report prepared by a representative of the Company showing the basis for the computation of the Franchise Fees paid during that period shall either accompany the franchise fee payment or be provided under separate cover. Company shall, within sixty (60) days after the end of each year, furnish to the City, a statement stating the total amount of gross revenues for the year and all payments, deductions, and computations for the period.

b. The consideration set forth above in this section shall be in lieu of any other tax, fee, or charge, by whatever name called, for the privileges granted in this Franchise. The City shall not assess against the Company any additional street rental charge, pole tax, inspection tax, or charge for the occupancy or use of the places to which this Franchise relates under Section 1, or tax on this Franchise as property. This does not bar the City from assessing against the Company or its property ad valorem taxes levied on property generally, fees charged generally to the public for the services of departments or agencies of the City that includes but is not limited to permit fees, excise taxes levied generally, or

other taxes, fees, and charges that are general and not compensation for the privileges herein granted.

c. Should the City not have the legal power to agree that payment of the foregoing consideration shall be in lieu of any of the additional taxes or charges as set forth above, the City will apply so much of such payments set forth in this section as may be necessary to the satisfaction of the Company's obligation to pay the additional tax charged here and agreed to be waived.

d. The provisions of this section shall not be construed to excuse the Company from collecting from its electric service customers and paying over to the City or the State of New Mexico for the benefit of the City additional applicable city sales tax levied in the event the City or the State of New Mexico shall, at any time during the term of this Franchise, shall have in force or enact such additional sales tax.

e. The City shall notify the Company (Attention: Tax Department) in writing of any changes in the boundaries of the City within thirty (30) days of any annexation, deannexation, extension, or contraction of boundaries becoming effective. The notice shall provide a description of the new and former boundaries and provide the Company copies of all relevant ordinances and maps. The Company shall have no obligation to calculate, collect, or pay the franchise fee attributable to any newly extended boundaries until at least sixty (60) days have elapsed from the Company's receipt of such notice.

Section 9. Dispute Resolution

a. Resolution of any dispute arising under this Franchise between the City and the Company shall first be attempted by submitting the dispute to mediation. The dispute shall be submitted to mediation upon the written demand of either the City or the Company. Within thirty (30) days following demand, the mediation shall be held in Doña Ana County, New Mexico, at the location designated by the party demanding the mediation. Mediation of any dispute shall be a condition precedent to filing a lawsuit, except that nothing herein shall preclude a party from seeking a mandatory or prohibitive injunction, or equitable relief from any court of competent jurisdiction to enforce or maintain the status quo pending mediation of any dispute. If mediation is unsuccessful, either party may bring suit to enforce the terms of this Ordinance in the courts of Doña Ana County, New Mexico.

b. Failure by the City or the Company to enforce rights under this Franchise does not constitute a waiver of the rights. Following unsuccessful resolution of the dispute under this section and after reasonable notice and opportunity to be heard, and a reasonable time for correcting any violation of this Franchise, the Council may forfeit this Franchise if the Company fails to perform its obligations under this Franchise.

c. If court proceedings are instituted to determine the legality of such forfeiture and the Company does not prevail, the Company will pay the reasonable expenses incurred by the City in connection with such litigation. If the Company does prevail, the City will pay the reasonable expenses incurred by the Company in connection with such litigation. In the absence of agreement between the City and the Company, the reasonableness of any litigation expenses pursuant to this section will be determined by an appropriate court of law.

Section 10. Regulation

It is recognized that the rates, operations, and services of the Company are regulated pursuant to the Public Utility Act ("Act"), Chapter 62, New Mexico Statutes Annotated, 1978 Compilation, as the same may be amended from time to time. In the event of any conflict between any of the provisions of this Franchise and the Act, the Act shall govern.

Section 11. Successors and Assigns

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

Section 12. Supersedes Previous Ordinances or Agreements

This Franchise shall supersede any and all other franchises granted by the City to the Company, its predecessors, and assigns.

Section 13. Invalidation Provisions

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.

Section 14. Applicable Laws

This Franchise is subject to and shall be governed by the applicable laws of the State of New Mexico.

Section 15. Recording

That this Franchise shall be duly filed and recorded as a part of the ordinance records of the Council, and in the records of the City Clerk of the City.

Section 16. Amendments

This Franchise shall not be altered, changed, or amended except by ordinance in writing and executed by the parties hereto, or by mutual written agreement by the parties. Every ten (10) years, the parties will review this Franchise and if one party wishes to change any provision of the Franchise, that party will send written notice to the other of that request. The parties will then confer in good faith within 30 days to address the proposed change.

DONE AND ADOPTED this ____ day of _____, 2025.

_____
Mayor

ATTEST:

_____
City Clerk

Moved by: _____

Seconded by: _____

AYES

NAYS

[*ACCEPTANCE ON THE NEXT PAGE*]

DRAFT

ACCEPTANCE

The Franchise granted by the City of Las Cruces is hereby accepted by the El Paso Electric Company on this _____ day of _____, 2025.

EL PASO ELECTRIC COMPANY

By: _____
Kelly Tomblin
President and Chief Executive Officer

STATE OF TEXAS §
COUNTY OF EL PASO §

This instrument was acknowledged before me this ____ day of _____, 2025, by Kelly Tomblin, President and Chief Executive Officer of El Paso Electric Company, a Texas corporation, on behalf of said corporation.

_____
Notary Public in and for the
State of Texas

DRAFT