

ORDINANCE #92-2

Roosevelt County Commissioners

Roosevelt County Courthouse

Portales, New Mexico 88130

ROOSEVELT COUNTY

GAS FRANCHISE AND RIGHT-OF-WAY

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ROOSEVELT COUNTY NEW MEXICO, herein called the County:

Section 1. There is hereby granted to Eastern New Mexico Natural Gas Association, herein called the Association, a New Mexico Corporation, duly qualified to do business in the State of New Mexico, the right, license, privilege, right-of-way and franchise, for a period of twenty-five (25) years from the date hereof, to lay, re-lay, construct, maintain, operate and remove pipes, systems, works, appliances and other structures and facilities, whether heretofore or hereafter installed, for the purpose of transporting, carrying, treating, producing, manufacturing, distributing or delivering gas for light, heat power, manufacturing and all other useful purposes along, across, over under, in, on and about the public highways, roads, waters, bridges and other property belonging to or within the jurisdiction of the County, and the streets, roads, highways, alleys, waters, bridges and other public places of any and all unincorporated towns and villages within the County and other public places thereof, subject to the following conditions:

Section 2. All pipes, systems, works and other facilities constructed or maintained hereunder shall be so constructed and maintained that public travel shall not be unnecessarily obstructed.

The right to maintain and operate the above mentioned facilities shall include the right to erect and maintain telephone, telegraph and other wire lines for use in connection with such maintenance and operation.

Section 3. All reasonable safety precautions shall be taken by the Association during the period of construction laying, relaying, repairing and removing of any of its facilities hereunder, and all excavations made in the course thereof shall be refilled and all property on which such work is done shall be restored with reasonable dispatch and as nearly as may be to a condition at least as good as its previous condition.

**Section 4.** In the event of any change in said public roads, streets or highways or in the grades or drains thereof, said pipes, systems, works, structures and other facilities of the Association shall be reset or changed by the Association so as to conform thereto, and in the event any bridge shall be rebuilt or repaired, the Association shall make any and all reasonable changes in its facilities as may be required by the County. It is specifically agreed and understood, however, that before the County shall authorize any such change requiring the resetting or changing of any of said lines, systems, works, structures or other facilities by the Association, notice of at least sixty (60) days in advance of the commencement of the contemplated changes shall be given to the Association in writing so that it may have sufficient time within which to make recommendations intended to minimize its cost of resetting or changing its facilities.

**Section 5.** The Association shall, as between it and the County, assume all liability to other persons which may be occasioned by negligence or misconduct of the Association, its agents or employees in its construction, laying, re-laying, maintaining or removal of any of its facilities in the County under and pursuant to this grant.

**Section 6.** The Association shall have the right and privilege of transferring this grant and all rights and privileges hereunder, and whenever the "Association" appears herein, it shall be construed as applying to its successors and assigns.

**Section 7.** The rights, privileges and franchises herein granted are not exclusive, and nothing herein contained shall prevent the County from granting, where proper under the law, like, similar or different rights, privileges and franchises to any other person, firm or corporation.

**Section 8.** Roosevelt County its agents and employees shall be held harmless and indemnified for any damage to persons, real and/or personal property, growing out of the Association's gas lines save instances where the claimed damage results from Roosevelt County's negligence or misconduct with regards to said lines.

**Section 9.** Installation of all lines after April 15, 1992 shall be at a minimum depth of 3 feet, (36") below ground surface level, except in instances where installation at such a depth causes undue hardship. In these instances, installation shall be at 2 feet, (24") below ground surface level.

**Section 10.** This grant shall be accepted by the Association in writing, which acceptance shall be filed with the County within sixty (60) days after the date hereof, and when so accepted shall constitute a contract duly executed by and between the County and

Association.

**IN WITNESS WHEREOF,** THE Board of County Commissioners of Roosevelt County, New Mexico, this 14th day of February, 1992, duly adopted and executed on this 14th day of February, 1992.

BOARD OF COUNTY COMMISSIONERS OF  
ROOSEVELT COUNTY, NEW MEXICO

(SEAL)

By

Herschel Caviness  
Chairman

ATTEST:

Maudene Haragan  
Maudene Haragan, County Clerk

PASSED AND ADOPTED by the Board of County Commissioners of  
Roosevelt County, New Mexico, on this 14th day of February, 1992.

(SEAL)

Herschel Caviness  
Chairman

David Sanders  
David Sanders, Commissioner

Blonnie Rea  
Blonnie Rea, Commissioner

Jimmy Parrish  
Jimmy Parrish, Commissioner

Jake Lopez  
Jake Lopez, Commissioner

Herschel Caviness  
Herschel Caviness, Commissioner



## ARTICLE 42

### Franchises to Public Utilities

Sec.

3-42-1. Franchises; authorization.

3-42-2. New municipality required to grant

franchise when right-of-way granted by county commissioners.

#### 3-42-1. Franchises; authorization.

A. A municipality may grant, by ordinance, a franchise to any person, firm or corporation for the construction and operation of any public utility.

B. No franchise ordinance shall become effective until at least thirty days after its adoption, during which time the franchise ordinance shall be twice published in full, not less than seven days apart.

C. If, during the thirty-day period, a petition signed by bona fide adult residents of the municipality equal in number to twenty percent of the number of those who voted at the last regular municipal election, and objection to the granting of the franchise is presented to the governing body of the municipality, the governing body of the municipality shall submit the question of granting the franchise to a vote of the qualified electors at a regular or special municipal election. If the date for the next regular municipal election is not more than ninety days after the date the petition is filed, the question shall be submitted at the regular municipal election; otherwise, a special municipal election shall be held.

D. If a majority of the qualified electors voting on the question favor the granting of a franchise, the franchise ordinance becomes effective. If a majority of the qualified electors voting on the question do not favor granting the franchise, the ordinance is repealed and the applicant for the franchise acquires no rights or privileges.

E. The expense of publishing the franchise ordinance and of holding a special election shall be paid by the applicant for the franchise.

F. No franchise ordinance shall be in effect for more than twenty-five years. The municipality may contract with the public utility for such services as are necessary for the health and safety of the municipality and may pay a sum agreed upon by the contracting parties for such services.

**History:** 1953 Comp., § 14-43-1, enacted by Laws 1965, ch. 300.

**Cross-references.** — As to constitutional restriction on grant of elective franchise, see N.M. Const., art. IV, § 26. As to definition of "publish" or "publication," see 3-1-2 NMSA 1978. As to continuation of franchises in combined city-county municipal corporations, see 3-16-15 NMSA 1978. As to municipal utilities, see 3-23-1 NMSA 1978 et seq. As to power of municipality to regulate opening or repair of streets, see 3-49-1 NMSA 1978. As to limitation of actions in suit to question franchises, see 37-1-26 NMSA 1978.

**Statute prevails over charter.** — Where provisions of statute were inconsistent with provisions in city charter, statute prevailed. *Albuquerque Bus Co. v. Everly*, 53 N.M. 460, 211 P.2d 127 (1949).

**Public utility franchise may be viewed as a contract** between the utility and the county. Such contracts may provide for the payment of expenses incident to the granting of the franchise; and charges may be imposed on utilities which constitute reasonable expenses incurred in the granting and exercise of the franchise. 1978 Op. Att'y Gen. No. 78-3.

**Franchise ordinance in municipality not having newspaper published therein** must be published in a newspaper of general circulation in said municipality which may be printed elsewhere. 1955-56 Op. Att'y Gen. No. 6322.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 36 Am. Jur. 2d Franchises § 10; 64 Am. Jur. 2d Public Utilities § 233.

Duration of franchise granted to public service corporation, 2 A.L.R. 1105.

Estoppel of municipality to deny that it gave its consent to street franchise, 7 A.L.R. 1248; 89 A.L.R. 619.

Franchise provisions for free or reduced rates of public service corporations as within constitutional or statutory provisions prohibiting discrimination, 10 A.L.R. 504; 15 A.L.R. 1200.

Voluntary character of payment of tax or assessment made to secure, or to avoid loss of, franchise, 64 A.L.R. 123; 84 A.L.R. 294.

Duration of street franchise without fixed term, beyond the life of the grantee, 71 A.L.R. 121.

Tax on franchise as a property or an excise tax, 103 A.L.R. 61.

Expiration by limitation of street franchise, right and duty of city and public utility upon, 112 A.L.R. 625.

Competition by grantor of nonexclusive franchise as violation of constitutional rights of franchise holder, 114 A.L.R. 192.

Ordinances, inclusion of different franchise rights or purposes in same ordinance, 127 A.L.R. 1049.

Cooperative utility, use of streets and highways by, 172 A.L.R. 1020.

The Board of Directors of Eastern New Mexico Natural Gas Association met in regular session at its regular meeting place in the Association Office in Fort Sumner, De Baca County, New Mexico, at 7:30 p.m. on the 26th day of March, 1992, with the following members of the Board of Directors present or absent, as noted, to-wit:

Darrel Bostwick, President	<u>Present</u>
R. Wesley Barnes, Vice-President	<u>Present</u>
J. Kim Morgan, Secretary	<u>Absent</u>
Eddie Duckworth	<u>Present</u>
Hendrik J. Roozemon	<u>Present</u>
Wiley G. Russell	<u>Present</u>
Donald E. Sweet	<u>Present</u>
James B. Payne	<u>Present</u>
	<u>n/a</u>

After the meeting had been duly called to order, a motion made by HENDRIK J. ROOZEMON and seconded by JAMES B. PAYNE to accept the conditions as written in the Roosevelt County Ordinance No. 92-2 granting a gas franchise and right-of-way, was adopted by the following vote, in witness whereof:

For:

<u>Darrel Bostwick</u>	<u>Ed Duckworth</u>
<u>Wesley Barnes</u>	<u>Wiley G. Russell</u>
<u>James B. Payne</u>	<u>N/A</u>
<u>Donald E. Sweet</u>	<u>N/A</u>

Against: N/A, N/A

Being so accepted, the aforementioned ordinance shall constitute a contract duly executed by and between the County and the Association.

STATE OF NEW MEXICO  
COUNTY OF DE BACA

The foregoing instrument was acknowledged before me this 26th day of March, 1992, by DARREL BOSTWICK, WESLEY BARNES, JAMES B. PAYNE, HENDRIK J. ROOZEMON, DONALD E. SWEET, ED DUCKWORTH, WILEY G. RUSSELL

Terry L. Best  
TERRY L. BEST, NOTARY PUBLIC

My commission expires April 11, 1994.

