



**PNM 48-hour Responses to Staff Comments – February 2021**

**2020 IDO Annual Update**

**Environmental Planning Commission**

**Project #2018-001843**

In response to the February 18, 2021 Staff report:

January 2021

PNM submitted four recommended text amendments to the IDO as part of the 2020 Annual Update intended to address existing inconsistencies regarding:

- the status of the Facility Plan as a regulatory Rank 2 Plan
- allowing for more renewable generation in limited locations within the city limits
- safety concerns related to multi-story buildings developing too close to existing power lines

Planning staff expressed concerns about the originally submitted language, so PNM and Planning Department staff met on Wednesday January 13, 2021 to discuss compromise language that Planning staff might be more comfortable with supporting.

In attendance at the January 13, 2021 Zoom meeting:

- ZEO James Aranda
- Senior Planner Catalina Lehner
- Senior Planner Carrie Barkhurst
- Russell Brito from PNM

Planning staff concerns were discussed, and general, compromise language was agreed upon.

Revised verbiage was provided by PNM to Planning staff the evening of January 13, 2021 for review and inclusion in the EPC record.

The January 21, 2021 staff report includes clear staff support for two of the four proposed, compromise language changes and inclusion of the compromise language as staff recommended Condition number 5 (page 72):

5. Conditions from PNM:

A. 1-7(A)(3) Other City regulations or State or federal laws may apply [+, such as the National Electrical Safety Code (NESC)+], even if the IDO is silent on these other applicable laws or regulations. Violations of these other applicable laws or regulations are not considered violations of this IDO.

B. Use-specific standard 4-3(E)(8) Electric Utility

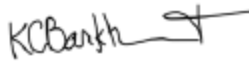
4-3(E)(8)(a) All uses and facilities shall be subject to those terms and conditions in the Facility Plan for Electric System Transmission and Generation, as amended.

4-3(E)(8)(b) Where this use includes geothermal or solar energy generation, the provisions of Subsections 14-16-4-3(E)(9) or 14-16-4-3(E)(10) apply.

4-3(E)(8)(c) Electric Generation Facilities, as identified in the Facility Plan for Electric System Transmission and Generation, are of a larger scale and more industrial in nature. This facility type is only allowed [+, as a primary use +]in the NR-GM zone district [+, except for solar energy generation and battery storage facilities, which can be primary uses in the NR- BP, NR- LM, and NR- GM zone districts+].

[+4-3(E)(8)(d) Solar Energy Generation, back-up generators, and battery storage are accessory uses in all zone districts where electric utility is allowed. +]

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*Catalina Lehner*  
*Senior Planner, Current Planning*

*Carrie Barkhurst*  
*Senior Planner, Long Range Planning*

At the EPC public hearing on Thursday January 21, 2021 Russell Brito of PNM provided public testimony that:

- Thanked Planning staff for meeting on January 13, 2021 to come up with compromise language.
- Thanked Planning staff for including two of the four proposed text changes as part of their January 21, 2021 recommendation to the EPC.
- Summarized PNM's 48-hour-rule comments explaining the existing inconsistencies related to the IDO status of the Facility Plan (see January 48-hour-rule comments).

At the January 21, 2021 EPC hearing, after hearing the Planning staff response, the EPC:

- Acknowledged Planning staff's agreement with two of the PNM amendments.
- Directed staff to work with PNM to continue to work on compromise language to address the two items that did receive Planning staff support.

February 2021

The staff report for the February 18, 2021 EPC hearing now completely discounts the proposed PNM compromise language changes that were discussed with Planning staff in January, including the two items of agreement that were clearly noted in the previous January 21, 2021 staff report:

**CITY OF ALBUQUERQUE  
PLANNING DEPARTMENT  
URBAN DESIGN & DEVELOPMENT DIVISION**

**ENVIRONMENTAL PLANNING COMMISSION  
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26. The PNM proposed amendments 1-4 would result in regulatory inconsistencies and are unnecessary for the reasons elaborated below. Other mechanisms, such as administrative checklists and updating the Electric Systems Plan, are the proper vehicles for achieving most of the issues expressed.
- A. Amendment 1 - Add NESC code to IDO introduction- The IDO should not be used as a vehicle to “advertise” one Code over the others, especially since they are all important and contain requirements that apply regardless of the IDO.
  - B. Amendments 2 and 4 - State that the Electric Systems Plan prevails over the IDO, which it does not. However, the Electric Systems plan’s standards remain valid pursuant to 1-10(A) because they were adopted/approved in February 2012, prior to adoption of the IDO in May 2018, and therefore constitute a prior approval so there is no conflict.
  - C. Amendment 3 - First, solar energy generation is already a permissive primary use in almost every zone (see Table 4-2-1, the use table). Second, battery storage and back-up generators fall under the “other use accessory to non-residential primary use” and are already allowed in the NR-BP, NR-LM, and NR-GM zones, and would be allowed as incidental to the primary electric utility use.

Planning staff did not contact, work with, nor inform PNM about any of its new analysis and recommendations against the four proposed items since the January 21, 2021 EPC hearing. This new staff recommendation is provided in direct contradiction to the EPC’s public hearing acknowledgements and its clear direction to staff to work with PNM on further compromise language. The new recommendation is based on a selective read of the IDO and its existing, inconsistent regulatory language.

PNM’s response is as follows with a response to each staff report section (sans serifs):

PNM proposed four amendments to the IDO via comments included with the original January 21, 2021 Staff report (see attachments). PNM’s letter pursuant to the 48 hour rule (see attachment) includes revised language regarding their proposed amendments 1, 2, and 4, though the rationale for each remains substantively similar. Amendment 3 was not included with the 48 hour materials, so there is no revised language pertaining to it.

1. 1-7(A) GENERAL

- 1-7(A)(3) Other City regulations or State or federal laws may apply [+, such as the National Electrical Safety Code (NESC)+], even if the IDO is silent on these other applicable laws or regulations. Violations of these other applicable laws or regulations are not considered violations of this IDO.



The proposed amendment would bring attention to the NESC. NESC requirements are part of the building permit, plan check, and inspections processes.

The proposed amendment is unnecessary. Any projects implemented contrary to NESC requirements can be addressed through enforcement, and perhaps legal, action. If applicants and/or designers are not paying as much attention to NESC requirements as they should, perhaps the Planning Department can assist by highlighting these requirements on, for example, building permit checklists. This can be done administratively.

The problem with calling out the NESC in the IDO is that, to be fair, all other important safety codes should be similarly called out- such as the International Building Code, the Fire Code, the Energy Code, etc. All of these codes are equally important, and the IDO should not be used as a vehicle to “advertise” one Code over the others, especially since they all contain requirements that apply regardless of the IDO.

The January 21, 2021 staff analysis and positive recommendation for this important notation of the National Electric Safe Code (NESC) was: “Staff finds this proposed amendment unnecessary, but relatively harmless.” The February 18, 2021 staff analysis now considers it a “problem” and a vehicle to “advertise” one Code over others. The IDO uses the term “advertise” only in relation to signs and lighting. The [dictionary.com](https://www.dictionary.com) definition of advertise is:

## advertise

or **ad·ver·tize** [ ad-ver-tahyz, ad-ver-tahyz ] [SHOW IPA](#)  

See synonyms for: [advertise](#) / [advertised](#) / [advertises](#) / [advertising](#) on [Thesaurus.com](https://www.thesaurus.com)

*verb (used with object), ad·ver·tised, ad·ver·tis·ing.*

- 1 to announce or praise (a product, service, etc.) in some public medium of communication in order to induce people to buy or use it:  
*to advertise a new brand of toothpaste.*
- 2 to give information to the public about; announce publicly in a newspaper, on radio or television, etc.:  
*to advertise a reward.*
- 3 to call attention to, in a boastful or ostentatious manner:  
*Stop advertising yourself!*
- 4 *Obsolete.* to give notice, advice, or information to; inform:  
*I advertised him of my intention.*

As described on the record, the NESC is a set of obligatory rules, regulations, and standards that are adopted by the State of NM and the vast majority of governments in the United States. Planning staff’s use of the phrase

“advertise” one code over the others

This appears to imply that there is a market-based choice afforded to architects, engineers, and regulating jurisdictions and that notation of the NESC in the IDO gives some kind of advantage to this Code “over the others” when they regulate markedly different safety and development subject matters.

As noted on the record, PNM has had to work with the DRB and site plan applicants on a case-by-case basis to address non-compliance with NESC requirements after applications are submitted and already under review (e.g. Fourth Street and Phoenix apartments). Because of the emerging prevalence of multi-story buildings adjacent to existing power lines, architects and engineers are not always aware of important safety issues that the NESC regulates and the recommended notation is to make IDO users aware of the NESC. The proposed NESC language is not to give it a market-based advantage of this “one code over the others”.

Planning staff’s February analysis notes that the NESC can be addressed through enforcement, legal action, and checklists, but discounts that the intent of the proposed language is to make architects and engineers aware of this important code and its applicable standards before they begin designing projects so that enforcement and legal is not necessary. Administrative checklists that reference specific ordinances, codes, and standards are effective if they are consistently maintained and do not change or drop important references to applicable regulations. But, as previously noted on the record, Administrations change and checklists change, whereas there is more stability and predictability in language that is actually in an ordinance. This regulatory reality does not weigh into the staff analysis.

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2. [+ 1-8(E) If any regulation in this IDO conflicts with any applicable regulations, standards, or processes of the City-adopted Rank 2 Facility Plan: Electric System Transmission & Generation (Facility Plan), the provisions in the Facility Plan shall prevail. +]

The Electric System Transmission & Generation Plan (2010-2020) contains standards for substation design. Other facility plans, such as the Open Space Facility Plan, also contain regulations. Making an exception for one Facility Plan is likely to be followed by requests from each “special” facility plan. All Facility Plans should be considered and all stakeholders involved- not just PNM.

However, the proposed amendment is problematic and unnecessary for a variety of reasons. First, it would elevate the Electric Systems Facility Plan above the IDO, which is a regulatory document. Generally, this is not good planning practice. If PNM has a need, perhaps regarding a particular project, Staff encourages them to begin a dialogue regarding ways to meet that need rather than a wholesale amendment to the IDO. Furthermore, Subsection 14-16-1-8(D) already states the following:

*1-8(D) If any regulation in this IDO conflicts with other applicable laws or regulations of the City, or conflicts with applicable State or federal law, the more restrictive provision shall prevail, unless the provisions of State or federal law, as interpreted by the courts, prevent that result.*

Subsection 14-16-1-8(D) already covers any instances of conflict. It would not be necessary for the ZEO to determine which requirement is more restrictive when PNM builds another substation, which is when the Facility Plan’s regulations regarding walls and landscaping apply. PNM designers know to follow the Facility Plan, which contains standards that PNM established to regulate itself- so there wouldn’t be a question or a conflict.

Second, even if there was a question or conflict, Subsection 14-16-1-10(A) already states the following:

*1-10(A) Any approvals granted prior to the effective date of this IDO shall remain valid....Any use standards or development standards associated with any pre-IDO approval...establish rights and limitations and are exclusive of, and prevail over, any other provision of this IDO.*

The current version of the Electric System Transmission and Generation Plan was adopted in February 2012 (R-11-311/R-2012-023) prior to the effective date of the IDO, May 17, 2018. Therefore, the development standards in the Electric System Plan remain in effect and there is no conflict with the more general standards in the IDO. Furthermore, amendment to the Rank II facility plan is the proper mechanism to address electric system standards and processes that need to be updated.

Planning staff provides a selective excerpt of IDO Section 1-10(A) above. PNM agrees with the selective citation that may give the Facility Plan's development standards prevalence over other provisions of the IDO. But the selective citation does not tell the whole story of 1-10(A). The full text of IDO Section 1-10(A) states:

- 1-10(A)(1) Any approvals granted prior to the effective date of this IDO shall remain valid, subject to expiration pursuant to Subsection 14-16-6-4(X) (Expiration of Approvals) and to amendment pursuant to Subsection 14-16-6-4(Y) (Amendments of Approvals) or 14-16-6-4(Z) (Amendments of Pre-IDO Approvals), as applicable. Any use standards or development standards associated with any pre-IDO approval or zoning designation establish rights and limitations and are exclusive of and prevail over any other provision of this IDO. **Notwithstanding the pre-IDO approval, development on such a site is exclusively subject to the procedures and decision criteria established in Part 14-16-6 (Administration and Enforcement).** Where those approvals are silent, provisions in this IDO shall apply, including but not limited to the following:
- 1-10(A)(1)(a) Subsection 14-16-4-1(E) (Previously Allowed Uses) for the continuity of conditional uses.
  - 1-10(A)(1)(b) Subsection 14-16-6-4(Z) (Amendments of Pre-IDO Approvals) for amending pre-IDO approvals.
  - 1-10(A)(1)(c) Section 14-16-6-8 (Nonconformities) for information about expansions when the use or structure is nonconforming under this IDO.

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Please note the yellow-highlighted section that requires that pre-IDO approvals are subject to the procedures and decision criteria of IDO Section 14-16-6. The intent of the proposed 1-8(E) language is to preserve the processes outlined in the Facility Plan (Table 1) because otherwise, new Electric Facility projects will generally be subject to Site Plan- Administrative processes or occasionally via Site Plan – DRB processes if the site is larger than 5 acres in size (e.g. substations have no building square footage). Based on the strict read of the entirety of IDO Section 1-10(A), the ZEO doesn't even have to make a determination about process. Amending the Facility Plan standards and processes would be a moot exercise because IDO Sections 1-8(D) and 1-10(A) would always require ZEO determinations and would not change the procedures and decision criteria of Section 14-6-6.

The above analysis from the February 2021 EPC staff report also does not acknowledge that “Electric Utility” is allowed in 95%+ of all IDO zoning districts and that there are different standards for walls, fences, and edge buffer landscaping depending on the abutting or adjacent type of development and that development’s underlying zoning. This could very well could require the ZEO to determine which provision, IDO vs Facility Plan, is more restrictive if reviewing staff (Code Enforcement or DRB) is not able to make such a determination.

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### 3. Use-specific standards, 4-3(E)(8) Electric Utility

4-3(E)(8)(a) All uses and facilities shall be subject to those terms and conditions in the Facility Plan for Electric System Transmission and Generation, as amended.

4-3(E)(8)(b) Where this use includes geothermal or solar energy generation, the provisions of Subsections 14-16-4-3(E)(9) or 14-16-4-3(E)(10) apply.

4-3(E)(8)(c) Electric Generation Facilities, as identified in the Facility Plan for Electric System Transmission and Generation, are of a larger scale and more industrial in nature. This facility type is only allowed [as a primary use + ]in the NR-GM zone district [except for solar energy generation and battery storage facilities, which can be primary uses in the NR- BP, NR-LM, and NR- GM zone districts].

[+4-3(E)(8)(d) Solar Energy Generation, back-up generators, and battery storage are accessory uses in all zone districts where electric utility is allowed. +]

The above, proposed language is problematic for several reasons and would convolute the existing use-specific standard. First, solar energy generation is already a permissive primary use in almost every zone (see Table 4-2-1, the use table). Second, the IDO does not call out battery storage and back-up generators in Table 4-2-1, so these would fall under the “other use accessory to non-residential primary use” and are already allowed in the NR-BP, NR-LM, and NR-GM zones. Both reasons render the proposed amendment unnecessary.

Electric utility, as a non-residential primary use, can have a variety of accessory uses already, and these could include back-up generators and battery storage. The IDO definition of Electric Utility is sufficiently broad, and it references the Electric Systems Transmission and Generation Plan, that these terms would be included—again, rendering the proposed amendment unnecessary.

Staff recommends a condition of approval to clarify the related energy generation uses.

The January 21, 2021 staff report analysis and recommendation was in agreement with the proposed change and stated that “the limitation to specific types of lower-impact generation technologies seems acceptable.” Now the February 18, 2021 calls the proposed change “problematic for several reasons” but only lists two. The analysis cites the Table 4-2-1 note of “other use accessory to non-residential primary use” as sufficient, making the proposed language unnecessary.

But this logic ignores the existing language of 4-3(E)(8)(a) that says Electric Utility uses and facilities are subject to the Facility Plan. This is another existing inconsistency where the ZEO will have to make a determination about what provision is more restrictive, the Table 4-2-1 note or the regulatory language of 4-3(E)(8)(a).

The intent is to address battery storage as a primary use, not an accessory use. Electric Facilities as described in the Facility Plan, such as substations, generation facilities, and battery storage, do not have back-up generators.

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#### 4. 6-3(B) RANK 2 FACILITY PLANS

Facility Plans provide policy guidance on a particular topic citywide to relevant implementing departments. They normally cover only one type of natural resource (such as Major Public Open Space) or one type of public facility or utility (such as electricity transmission). These plans are required to be consistent with the ABC Comp Plan, as amended, and to identify how they relate to its vision, goals, and policies. In case of conflict, policies in the ABC Comp Plan, as amended, shall prevail. [The Facility Plan: Electric System Transmission and Generation contains standards and processes that prevail over normally applicable IDO regulations (see also Section 14-16-1-8(E)). +]

Please refer to the explanation in 2, above. In short, Subsection 14-16-1-10(A) already states that “*any approvals granted prior to the effective date of this IDO shall remain valid*”. The Electric Systems Plan was adopted in 2012 and the IDO in 2018, so the prior approval of the design standards in the Electric Systems Plan remains valid and the proposed amendment is wholly unnecessary.

Planning staff again references a selective excerpt from 1-10(A) to analyze the proposed amendment. Again, the intent is to codify the standards and processes of the Facility Plan. By only relying on the existing language of IDO Sections 1-8(D) and 1-10(A), the processes of the Facility Plan are moot as the IDO process of 14-6-6 prevail over anything listed in Table 1 of the Facility Plan.

#### Conclusion

PNM respectfully requests that the EPC send the four proposed text amendments to City Council with a recommendation of approval. Planning staff’s analysis selectively cites portions of IDO regulations and does not fully consider outright does not acknowledge existing inconsistencies that the proposed language intends to address.

Being regulatory in nature, this Rank 2 Facility Plan, being City-wide, should have its status and implementation made predictable and consistent. This will help the City and the local electric utility company be more responsive to increased electric energy demands as the city grows and changes.

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