

Oregon court validates City of Hermiston's formation of a natural gas utility

Up until now, the members of NWPPA have been focused on electric power. That could change in the future, however, if existing consumer-owned electricity utilities decide to branch out into natural gas service. A court in Eastern Oregon has paved the way for this diversification by ruling that cities in Oregon have authority to build, own, operate, and maintain a natural gas distribution utility. Cities in Oregon also have the power to “exclude or eject” an incumbent gas utility from part or all of the city’s public rights of way — thus overcoming an existing allocation of exclusive service rights.

The court’s ruling started with an industrial customer in the City of Hermiston. According to a story filed on May 12 by the Easton Oregonian newspaper, an existing industrial customer in the city’s Cook Industrial Site was informed by the incumbent gas utility that it would cost more than \$2.3 million to expand natural gas service to the facility. Moreover, the gas utility’s line extension policies required the industrial customer to pay the entire cost of the upgrade prior to initiating construction. This unforeseen capital investment for gas service halted the planned expansion of the industrial facility. The City says that a lack of sufficient natural gas service in the Cook Industrial Site also prevented another industrial facility from locating there and bringing 250 new jobs to the area.

City leaders recognized that any future industrial expansion in the city — and the associated job growth that comes with it — would require natural gas service that is sufficient to meet immediate needs and to accommodate future expansion. Unlike the incumbent natural gas provider that was restricted by its own line extension policies, the City was willing to extend service capacity without requiring customers to pay the entire cost up front. Instead, the City would be willing to recoup its initial investment over time in order to stimulate job growth in the city. On August 25, 2014, the city council adopted Resolution 1965, which establishes the Hermiston Gas Utility and authorizes city leaders to take such actions that may be necessary to form the gas utility.

The Hermiston City Council’s adoption of Resolution 1965 was a bold move given that there are currently no other consumer-owned natural gas distribution utilities in Oregon. The first step in the process, therefore, was to seek judicial validation of the City’s legal authority to form and operate a natural gas utility. The City took advantage of a process set forth in Oregon law that allows cities to test the validity of an action or the legality of a contract before the action is undertaken or the contract becomes binding.



In a judgment issued on March 26, 2015, the Umatilla County Court affirmed that the City does have the legal authority to form and operate a municipal natural gas utility. The court rejected the legal arguments filed in opposition by the incumbent natural gas company. The court concluded that “Resolution 1965, and the actions authorized therein, are legal, valid, and binding obligations of the City of Hermiston.” The court specifically found that “the City has authority under ORS 221.420 to exclude or eject [incumbent natural gas company] from part or all of the City’s public rights of way.” Finally, the court concluded that the “City also has the authority under ORS 221.410, its home rule authority, and its home rule charter to build, own, operate, and maintain a natural gas distribution system within the city’s boundaries for the benefit and use of its inhabitants.”

Although the City would create the first consumer-owned gas distribution system in Oregon, it is far from unprecedented outside of the state. In the state of Washington, for example, the City of Ellensburg (itself an NWPPA member) has operated a gas utility since 1957. The City of Ellensburg claims to be the first municipality west of the Mississippi River to have its own natural gas distribution system. Today, Ellensburg has over 115 miles of distribution mains and over 5,000 customers. The City of Ellensburg says that its gas system “has an enviable safety record,” and that it currently plans to expand the system to improve reliability and provide for future growth.

Consumer-owned gas utilities are even more common outside of the Pacific Northwest. According to the American Public Gas Association (APGA), there are over 1,000 consumer-owned gas systems nationwide. These systems include communities of all sizes, including Philadelphia, San Antonio, Memphis, Indianapolis, Omaha, Colorado Springs, and Long Beach. According to the APGA website, the benefits of owning a natural gas utility overlap with the benefits of owning an electric utility: local control, competitive costs, customer service, and economic development.

Looking forward, the future of public power in the Pacific Northwest may include both electricity and natural gas. As both Ellensburg and now Hermiston have shown, consumer-owned natural gas service is both legal and feasible.

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