

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 03-087

Determining the Boundaries of a People's Utility District and Calling an Election on District Formation and Related Matters

The Multnomah County Board of Commissioners Finds:

- a. On February 12, 2003, an electors' petition was filed with Multnomah County Elections Division (Elections) for formation of a People's Utility District (PUD).
- b. ORS 261.161(2) requires the Board to determine the boundaries of the proposed PUD based on the evidence at hearing and the report of the Oregon Office of Energy.
- c. A hearing on the boundaries was held on May 15, 2003, at 10:00 a.m., and continued on May 15 at 6:00 p.m.; May 29 at 10:30 a.m., June 3 at 10:00 a.m., and the record was closed at 5:00 p.m. on June 5, 2003. The record contains the report from the Oregon Office of Energy dated April 18, 2003, and all written communications received by the Clerk of the Board on this matter. The Board has reviewed the entire record.
- d. The Oregon Office of Energy (OOE) is charged with preparing a concise report addressing the availability and cost of power or water resources, potential tax consequences and other relevant information. The report by the OOE makes no recommendations regarding whether the proposed PUD should be established. It reviews testimony received at its April 7, 2003 hearing, and concludes that the proposed PUD raises significant issues requiring more in depth analysis and information than was available within the OOE's timeframe.
- e. Issues identified but not answered in the OOE report include:
 - Whether the new PUD would have access to low cost power resources through the Bonneville Power Administration or other supplier;
 - The scope of the PUD's condemnation authority over PGE and PacifiCorp;
 - The value of their assets;
 - The availability of other energy resources in a "volatile" energy market;
 - The uncertainty of the costs of a PUD directly financing generating resources, and therefore the uncertainty of the bond and tax impacts on state and local government.

None of the issues identified in the OOE report have been further clarified by testimony received in the County hearings.

Public Testimony

- f. At the Multnomah County hearings, **proponents** of the PUD included original petitioners, representatives of other PUDs, both within Oregon and from other states, the American Public Power Association, numerous individual citizens, and several small businesses.
- g. The proponents argued that the establishment of a PUD would:
- increase public accountability and local control, lower costs and lower rates through public ownership;
 - improve reliability of power by eliminating a profit motive;
 - make available wholesale rates not available to private utilities;
 - encourage the use of alternative energy sources;
 - reflect community values through local control;
 - result in decisions based on best environmental practices, not profit motives;
 - increase public accountability;
 - improve the economy through lower rates and increased spending and community development;
 - improve labor conditions through local ownership;
 - improve job stability by eliminating corporate mergers; and
 - provide a stable source of tax revenue to local governments through franchise fees and property taxes, payroll taxes, unemployment contributions and transportation taxes.

A great deal of the proponents' testimony focused on harsh criticism of PGE and its parent corporation, Enron.

- h. The proponents' testimony is vague and lacking in specificity. Proponents have produced no data on actual costs of start up and operation, the effect on utility rates, or the effects on rates payers outside of Multnomah County currently served by PGE and PacifiCorp. From the data available today, we cannot conclude whether the proposed PUD could accomplish any of the objectives cited by its proponents. We cannot conclude whether the proposed PUD would improve energy reliability, reduce costs, or result in any other benefit to the citizens of Multnomah County or the State of Oregon.
- i. **Opponents** of the proposed PUD included representatives from PGE and PacifiCorp, representatives of numerous local jurisdictions, including the City of Maywood Park, the City of Gresham, the City of Molalla, the City of Hubbard, the City of Keizer, the City of Milwaukie, the City of Lake Oswego, Polk County, Marion County, Clackamas County, representatives from various businesses, business associations, Chambers of Commerce, representatives of local private non-profit organizations, a former secretary of state, and individual citizens and utility employees.
- j. Opponents argued that:
- Multnomah County already has reasonable and reliable utility service so that no change is needed;
 - Adequate financial data is not available about costs, rates, access to power, and funding;
 - PGE and PacifiCorp are both locally managed and responsive to local issues, as well as valued contributors to community programs and needs;

- A change in service system will result in greater risk and potentially higher costs and rates;
 - Condemnation of private businesses will involve extensive time and litigation with an uncertain outcome and a chilling effect on other businesses considering relocation to Multnomah County;
 - The district, as proposed, could result in a “Swiss cheese” service pattern that would be impractical or impossible to administer;
 - A change to a PUD would likely disrupt customer service;
 - Tax revenues would fall because PUD’s do not pay certain taxes (such as federal income tax and state “public purpose” fee);
 - A PUD would reduce the voice of smaller jurisdictions compared to the City of Portland;
 - Ratepayers outside of Multnomah County have no voice in the PUD election yet could be profoundly affected by it.
- k. Some of the arguments raised by opponents are compelling, especially those focused on the potentially fragmented service areas, both within and without Multnomah County, and the risk and uncertainty that a transition to a new system would entail. Much of the testimony, however, is vague and self-serving. Representatives from the utilities have painted dramatic pictures of what could go wrong, without hard data on costs. Similarly, many concerns about the impact of a Multnomah County PUD on other counties and the State of Oregon have been raised. We share these concerns, but the record offers no data on these impacts. Opponents have raised significant legal issues, such as the scope of a PUD’s condemnation authority, that are beyond this Board’s purview.

Staff Testimony

- l. The record includes presentations by Multnomah County staff regarding the possible configurations that the PUD might take after an election. ORS chapter 261 excludes from the PUD any municipality or separate parcel of land within the proposed boundary in which a majority of the electors do not vote for the district. There are eight municipalities or parcels that could be excluded by electoral vote; Portland, Gresham, Maywood Park, Wood Village; Troutdale, Fairview, and portions of Lake Oswego and Milwaukie.
- m. The proposed PUD boundaries create the potential for a highly fragmented service system within Multnomah County. The removal of Multnomah County from the larger territory served by PGE and PacifiCorp outside of Multnomah County would further increase the fragmented nature of utility service delivery in the region and in the state. We consider this possibility a matter of grave concern from a policy standpoint.

Boundary Corrections

- n. ORS 261.161(4) directs the Board to correct any deficiencies in the description of the boundaries of the proposed district.
- o. The Board did not receive any petitions for inclusion within the boundaries of the proposed PUD.
- p. The Board received testimony about five entities or areas that potentially were not permitted within a PUD’s boundaries. Of these five, three are excluded. Exhibit A is a description of the corrected boundaries. Exhibit B is a map showing the corrected boundaries. Two of

these exclusions are statutory exclusions required by ORS 261.110. The third is a “housekeeping” exclusion requested by the Director of Elections. The fourth, territory within Multnomah County served by the Columbia River PUD and the fifth, the City of Portland, remain within the proposed PUD boundaries.

q. The Board excludes the following:

1. Sections of townships with fewer electors than the statutory requirement under ORS 261.110(6).
2. Those residents in Multnomah County served by the Cascade Locks Southbanks System. ORS 261.110(5).
3. The identified portion of the City of Milwaukie that extends into Multnomah County on the County’s southern border pursuant to the request of the County Elections Director because the area has no voters. Leaving it in the proposed district would result in an area that could be considered neither in nor out after the election because there are no voters.

r. Residents of northwest Multnomah County served by the Columbia River PUD argue that they should be excluded from the district under ORS 261.110(7). Because they are served by, but not within the boundaries of the Columbia River PUD, they are not “territory which is part of another PUD,” and cannot be excluded under ORS 261.110(7).

s. Counsel for PacifiCorp asserted that the City of Portland should be excluded from the proposed district boundaries under ORS 261.110(5) because it owns two dams that generate hydroelectric power and a fuel cell power plant. The record indicates that PGE operates the dams and distributes the electricity generated. The record does not indicate if the energy generated is used in Portland or Multnomah County. The record indicates that the fuel cell power plant Portland owns converts methane gas to electricity. 16% of the electricity generated is sold to a nearby business; the remainder is used by the waste sewage treatment plant at which the fuel cell is located or flared off. The Board finds that Portland’s minimal generation of electricity, not necessarily utilized by residents of Portland or Multnomah County, does not make Portland a municipality that “owns or operates a publicly owned utility” as the legislature intended that phrase to be interpreted within the context of ORS chapter 261. Therefore, the Board is not excluding the City of Portland from the proposed district boundaries.

Referral to Voters

t. ORS chapter 261 requires the Board to hold a hearing, and based on that hearing and the OEE report, correct deficiencies in the boundaries and refer the initiative to establish a PUD to the voters. It provides no standards to use in evaluating policy concerns, yet requires that the initiative be referred to the voters.

u. ORS chapter 261 makes placement of the initiative on the ballot mandatory. It does not provide an adequate process for either this Board or the Oregon Office of Energy to make a well supported decision in a matter as complex as the one before the Board. Therefore, this Board will refer the PUD initiative, with the corrected boundaries, to the electors. The Board hopes that the election process will result in a more appropriate hearing of the issues than ORS chapter 261 permits.

- v. Based on testimony presented by the Multnomah County Director of Elections, November 4, 2003, is the earliest practical date to submit the question of district formation and special levy to the electors within the proposed district at a special election, as required by ORS 261.171.

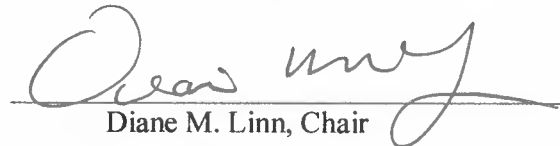
The Multnomah County Board of Commissioners Resolves:

1. The boundaries of the proposed Multnomah County People's Utility District shall be those presented in the petition, with the corrections described in Exhibit A and illustrated in Exhibit B.
2. Exhibits A and B are incorporated into this resolution.
3. The question of whether the district should be formed, the election of district directors, and the proposal for authorization of the district to impose a special levy of 3 mills per one thousand dollars of assessed valuation (equal to \$3 per million dollars of assessed valuation) shall be submitted to the voters at the November 4, 2003 election.
4. The Director of Elections shall publish the notices required by law and place the PUD proposal on the November 4, 2003 ballot.

ADOPTED this 12th day of June 2003.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Diane M. Linn, Chair

REVIEWED: 

AGNES SOWLE, ACTING COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Katie Gaetjens, Assistant County Attorney

EXHIBIT A

Multnomah County People's Utility District Boundaries

All of Multnomah County, excluding:

- A. Interlachen People's Utility District
- B. Rockwood Water People's Utility District
- C. Sections of townships with fewer electors than required under ORS 261.110(6) for inclusion or served by the City of Cascade Locks under ORS 261.110(5):
 - 1. Township 1 South Range 8 East Willamette Meridian
 - 2. Township 1 South Range 7 East Willamette Meridian
 - 3. Township 1 South Range 6 East Willamette Meridian
 - 4. Sections 1,10,11,12,13,14,15,22,23 and 24 in Township 1 South Range 5 East Willamette Meridian
 - 5. Township 1 North Range 7 East Willamette Meridian
 - 6. Township 1 North Range 6 East Willamette Meridian
 - 7. East half of section 21, NW corner of section 27, and NE corner of section 28 and all of Sections 12,13,14,15,22,23 24,25, and 36 in Township 1 North Range 5 East Willamette Meridian
 - 8. Township 2 North Range 7 East Willamette Meridian
 - 9. Township 2 North Range 6 East Willamette Meridian
- D. The identified portion of the City of Milwaukie that extends into Multnomah County on the County's southern border.

Multnomah County PUD Boundary

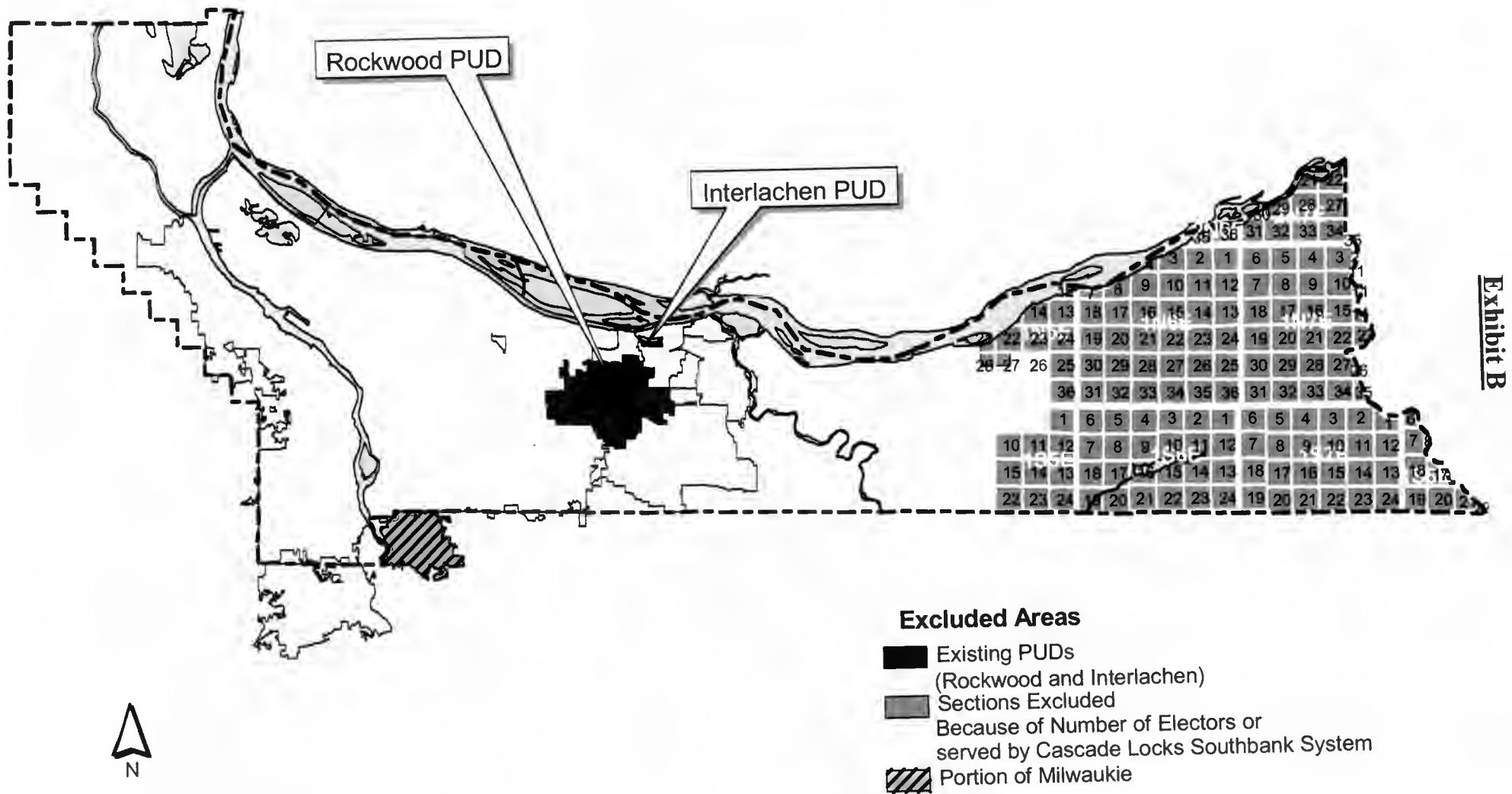


Exhibit B

6/11/2003