



# MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

*Rely on us.*

TO: Commissioners Schlossberg, Brown, Carlson, Barofsky and McRae  
FROM: Deborah Hart, Chief Financial Officer; Aaron Balmer, Accounting & Treasury  
Supervisor  
DATE: December 29, 2021  
SUBJECT: History of Contributions in Lieu of Taxes (CILT)  
OBJECTIVE: Information Only

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## **Issue**

In 1943, the State Legislature enacted ORS 225.270, which established for cities with municipal electric power systems to pay themselves not less than 3% of the system's gross operating revenue for the purposes of reducing general property taxes.

## **Background**

### *City of Eugene*

EWEB began making Contributions in Lieu of Taxes (CILT) payments to the City of Eugene at a 3% rate in 1943 in accordance with the enacted legislation. In 1955, EWEB increased CILT contributions to 6% of gross operating revenues at the request of the City Council.

In November 1976, Eugene voters approved a new City Charter including Section 44(4) stating that the 1976 rates of payment (6%) to the City for CILT shall continue until changed by agreement between the Board and City Council.

Over the years, the City and EWEB have entered into numerous agreements refining the methodology for calculating CILT payments consistent with the 1976 Charter language. Updates have reflected changing legislation, power contracts, market conditions, and power trading practices. Additionally, EWEB has made other business practice changes and accounting corrections that have impacted CILT payments over time. The most significant of these being a change in wholesale CILT from 14% of net revenues, to a fixed dollar annually. This was negotiated to manage and provide consistency from volatile wholesale power sales activity. The remainder of the changes had little impact on the overall CILT payment.

The current provisions for CILT payments to the City of Eugene consist of the following:

- 6% of operating revenues for electric retail sales
- A fixed component equal to \$825,000

### *City of Springfield*

Current CILT payments to the City of Springfield date back to 1971, following the City's annexation of the Weyerhaeuser complex. CILT payments to the City of Springfield are calculated at 3% of the

revenue from the International Paper facility and are factored into the contract pricing.

*School Districts*

Separately, ORS 307.090 permits for voluntary in-lieu-of tax payments to be made to school districts. EWEB was making payments under this framework, and in 1995, elected to discontinue payments to Eugene 4J, McKenzie, Springfield, and Bethel school districts in favor of a school grant program. Similarly, in 1998, in-lieu-of tax payments to Lane Community College (LCC) were replaced with a grant program designed to support base funding for an Energy Management Program at LCC. The grant program was modified to a scholarship program in 2018, and EWEB funding was discontinued in the 2020 budget due to pressures on prices and financial metrics as well as the program benefit being to a narrow group.

**Recommendation and Requested Board Action**

This item is provided as information only.

Attachment – Oregon Revised Statute references

Attachment – Current Memorandum of Understanding with City of Eugene

## Oregon Revised Statute references

### ORS 225.270 – Use of surplus revenue

- When any city which owns or operates a municipal electric power plant or system or distributing system, has paid principal and interest to date on all indebtedness incurred in connection therewith, and has created and accumulated an adequate depreciation and replacement reserve in the judgment of the officer having control of such plant or system, the city shall, for the purpose of reducing general property taxes within such city, pay to itself not less than three percent of the annual gross operating revenue of such plant or system, or a volumetric charge based upon the amounts of electricity delivered, transmitted or distributed to retail electricity consumers regardless of the source. The volumetric charge shall not be less than the equivalent of three percent of the gross operating revenues of the municipality utility in 1999. The city shall adjust a volumetric charge to end users such that charges established for different customer classes bear the same approximate relationship as the gross revenues per kilowatt hour paid by the classes in 1999.

### ORS 307.090 – Property of the state, counties, and other municipal corporations

- payments in lieu of taxes on city-owned electric utility property
  - (1)

Except as provided by law, all property of the state and all public or corporate property used or intended for corporate purposes of the several counties, cities, towns, school districts, irrigation districts, drainage districts, ports, water districts, housing authorities, public universities listed in [ORS 352.002 \(Public universities\)](#) and all other public or municipal corporations in this state, is exempt from taxation.
  - (2)

Any city may agree with any school district to make payments in lieu of taxes on all property of the city located in any such school district, and which is exempt from taxation under subsection (1) of this section when such property is outside the boundaries of the city and owned, used or operated for the production, transmission, distribution or furnishing of electric power or energy or electric service for or to the public.

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN:** The City of Eugene, a municipal corporation  
of the State of Oregon

**AND:** The Eugene Water & Electric Board, a municipal  
utility of the City of Eugene

**EFFECTIVE DATE:** January 1, 2015

**RECITALS**

- A. Since 1943, the Eugene Water & Electric Board (EWEB) has made contributions in lieu of tax (CILT) payments to the City. For more than 50 years, the amount of the CILT payments has generally equaled 6% of gross operating revenues of the electric utility.
- B. Business practices in the utility industry change over time, and circumstances outside of the control of EWEB can impact their ability to accommodate those changing business practices while maintaining the CILT payment structure with the City. Over time, the CILT payment methodologies have been altered by mutual agreement between the City and EWEB to accommodate changes in the electric power market.
- C. City and EWEB believe it is in their best interest to alter the payment terms for CILT payments to create a more stable and predictable payment stream and accommodate changing business practices.
- D. The City Council approved Resolution No. 5110 on July 14, 2014 and the EWEB Board approved Resolution No. 1410 on July 22, 2014 setting out a revised methodology for determining CILT payments. The Council and Board actions call for a Memorandum of Understanding to further define the terms of the payments.

**AGREEMENT**

- 1. EWEB and the City agree that beginning January 1, 2015, CILT payments to the City shall be based on a revised formula that consists the following components:
  - a. 6% of operating revenues for “electric retail sale revenues.” “Electric retail sale revenues” for purposes of this MOU are defined as revenues from the sale of electricity and related environmental attributes of renewable energy to EWEB’s residential, commercial and industrial customers. Electric retail sale revenues do not include:

- CILT payments collected from customers
- Sales of wholesale electricity or its environmental attributes
- Customer late charges
- Services to other utilities
- Miscellaneous revenue, which is any revenue that is not derived from the original retail sale of electricity and related environmental attributes of renewable energy.

- b. A fixed component equal to \$825,000 per year that is adjusted each calendar year with an inflationary factor, starting for calendar year 2016. For calendar years 2020 – 2024, the annual payment shall return to the base amount of \$825,000. Beginning in calendar year 2025, the annual inflationary adjustment will resume, with the payment in 2025 equal to \$950,000.

The annual inflationary factor on this fixed component will be effective starting on the first day of each calendar year. The factor will be equal to the annual average change in the Consumer Price Index for all urban consumers (CPI-U), U.S. City Average, all items, base period (1982-84=100), as published by the Bureau of Labor Statistics for the prior calendar year. In no case will the inflation factor be less than 0.5% or greater than 3.5%.

## 2. Timing for Payments

- a. EWEB shall remit the CILT payment to the City on a monthly basis with a detailed calculation report by the third Friday of each month for the prior month's activity. The calculation report shall show electric system revenue that is subject to CILT payments, including CILT on power sale contracts for large retail customers.
- b. The fixed component will be paid, to the extent possible, in 12 equal monthly installments. Because the annual average inflation factor will not be available prior to the first day of the calendar year, the inflation adjustment may be calculated and remitted in arrears early each fiscal year. Once the annual inflation adjustment is known, the monthly fixed payment factor can be reconciled and adjusted to ensure that the total fixed component plus inflationary factor is received during that calendar year period.
- c. If needed, any annual reconciliation of payments for the months of January through November shall be made the following month.

## 3. Reporting and Auditing

- a. EWEB shall prepare an annual reconciliation setting out the revenues subject to this MOU and the calculation of CILT payments on those revenues.

- b. The December reconciliation and the annual reconciliation will be provided within 30 days after the completion of the EWEB annual financial audit.
- c. The annual reconciliation will show the Electric System revenue that is subject to CILT payments and revenue that is outside of CILT payment formula, as well as CILT on large retail contracts. The Electric System revenues included in the annual report shall reconcile to the audited operating revenue totals included in the Statement of Revenues, Expenses and Changes in Net Position for the Electric System as set out in the Annual Financial Report

The City shall have access to EWEB accounting records and individual power sales contracts for large retail customers as required to verify the accuracy of payments for a period of one year from the date of the independent auditor's report included in the Annual Financial Report. Payments received shall not be subject to challenge after one year from the date of the independent auditor's report included in the Annual Financial Report.

#### 4. Revenue Forecasts

- a. EWEB will provide a CILT forecast, using the methodology incorporated in this MOU, as amended, to the City at least twice per year, no later than September 15<sup>th</sup> and February 1<sup>st</sup>, and at other times as reasonably requested.
- b. EWEB will notify the City of significant changes in business practices that could have a material impact on retail sales. It is understood that changes in business practices may be due to circumstances outside the control of EWEB. Such changes may increase or decrease the amount of CILT paid or expected to be paid.

#### 5. Amendments

- a. For large retail customers subject to separate power sales contracts the City Manager and EWEB General Manager may agree that an alternative CILT payment is justified due to significant economic development or job retention benefits that would occur with such a modification, and that would not occur absent the approval of the alternative CILT rate. Any such approval by the city manager and general manager must be occur in writing and is limited to individually negotiated power sales contracts for individual large retail customers. At the time of the signing of this MOU, there are three customers with individual power sales contracts in effect.
- b. Any amendments to this MOU must be consistent with the City Council Resolution No. 5110 and EWEB Board Resolution No. 1410 to the extent that

there is any conflict between the Resolution and this MOU, the Resolution shall control.

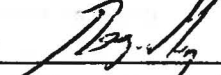
- c. Amendments to this MOU, including any changes to the CILT methodology used to remit payments to the City, must be made by executing an agreement signed by both the City Manager and EWEB General Manager.

This Memorandum of Understanding executed the date indicated below.

CITY OF EUGENE

EUGENE WATER & ELECTRIC BOARD

By:   
Jon R. Ruiz, City Manager

By:   
Roger Gray, General Manager

*Handwritten initials: NG*

Date: 9/5/14

Date: 9.11.14