



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Insert DIVISION

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TO: Commissioners Simpson, Brown, Mital, Carlson and Helgeson

FROM: Jason Heuser, Policy/Government Affairs Program Manager

DATE: December 4, 2018

SUBJECT: EWEB's 2019 State Legislative Agenda

OBJECTIVE: Approval of Resolution No. 1827, EWEB's 2019 Legislative Agenda

Issue Statement:

The Oregon Legislature convenes annually – for approximately six months in odd numbered years and almost two months in even numbered years – to enact laws and to set and adjust the biennial budget for the State of Oregon. EWEB has an active advocacy presence during legislative sessions to protect the interests of EWEB and its customers. The 2019 Oregon Legislative Session will begin Feb. 4, preceded by an orientation period and informational hearings in January.

Background:

Prior to the start of each legislative session, the Board adopts general policy directives for advocacy at the Capitol. These directives are approved by a resolution, after a presentation and discussion with the Board. The adopted directives are approved by a resolution, after a presentation and discussion with the Board. The adopted directives guide the work of EWEB's lobbying activities. When political considerations test the applicability of these directives, the General Manager makes a determination as to whether a fundamental shift in direction is required. The Board may be asked to reaffirm their policy or direct staff to make necessary adjustments. This practice is derived from Board Policy GP-13 – Board Role in Legislative Session. EWEB staff will prepare monthly "legislative update" memos to the Board throughout the legislative session that will apprise the Board of the bills or issues that EWEB staff is devoting time and resources toward in support or opposition, the implications of these bills for the utility, and prognostications on the likelihood of these bills advancing in the legislative process.

Discussion:

The accompanying resolution provides high level direction and principles for EWEB's advocacy efforts on the variety of legislative proposals that typically emerge over the course of the session. At this time, a tentative picture is developing of what stands a good chance of occupying the bulk of bill reviewing and advocacy for EWEB staff. However, it is very early in the process, and staff has not yet seen actual legislative language or details on most of these issues. These legislative issues may look very different in February, or they may not materialize at all. At the time of this memo, EWEB staff is tracking the following issues:

State Cap and Trade Legislation

Since 2013, EWEB has had in place a Board resolution supporting carbon pricing that is 1) direct; 2) efficient; 3) economy-wide; 4) technology-neutral; and 5) market-based. In that 2013 resolution, EWEB staff and the Board, hypothesized that carbon pricing would be the best “triple-bottom-line” approach to achieving Oregon’s greenhouse gas (GHG) reduction goals. Since then EWEB has identified and in one case sponsored multiple analyses supporting the conclusion that a state carbon cap and trade program (or tax) is the policy that can reduce GHG emissions in the electric sector by Oregon’s statutory GHG target – a reduction of 80 percent from 1990 levels by 2050 – at the least cost to Oregonians and Oregon businesses.

EWEB advocated in the February 2018 legislative session for cap and trade legislation as the best policy approach to decarbonize the electric sector and EWEB staff have continued to engage throughout 2018 in proactively monitoring and directly influencing key design elements of cap-and-trade legislation, with tangible results. EWEB staff recommend that EWEB continue to engage in monitoring and influencing the following elements of 2019 carbon cap and trade legislation:

1) Regional Considerations:

a) Linkage to other programs:

Connecting cap and trade markets across multiple states and Canadian provinces would likely provide a broader and more diverse trading program than a stand-alone Oregon program. Regional linkage would offer broader possibilities to find the most cost effective emission reductions, increase liquidity in a cap and trade program while reducing volatility, and provide opportunity to lower Oregon’s costs to administer a carbon reduction program and utilize the best protocols for emissions measurement and verification as well as protections from market manipulation. EWEB supports efforts to evaluate and pursue linkage opportunities with cap and trade programs in other jurisdictions such as California’s existing program and a possible program in Washington State. The Canadian province of Ontario conducted an evaluation of multiple cap-and-trade options and concluded that linking with existing programs in California and Quebec would result in a lower and more stable carbon price. Linkage could also provide momentum that might eventually lead to a federal cap and trade program.

b) Consistency between jurisdictions:

To the extent possible, EWEB will recommend not only linkage to other jurisdictions, but also recommend achieving as much consistency and compatibility as possible with carbon reduction policies in other states and provinces, with or without linkage. Maintaining healthy, efficient, and stable power markets in the West should be an important priority. If states and provinces enact policies that differ greatly, this may result in inconsistent carbon prices across different jurisdictions, instead of a common carbon price. In turn, multiple carbon prices could impact the regional power markets resulting in multiple “products” in power markets instead of one or two, which could reduce power market liquidity.

2) Point of Regulation:

a) Source Based Preference:

EWEB will recommend regulating emissions attributed to electric generation as close to the source

as possible, in order for Oregon's program to transmit a carbon price signal most effectively. An approach of regulating in-state electric generating units at the source combined with a "first jurisdictional deliverer" approach using NERC e-tags for electricity imported into Oregon would be the most optimal way to regulate electric sector emissions closest to the source. However, EWEB acknowledges this may not be feasible across the board in the electric sector, at least initially. EWEB may recommend that legislation to enact a cap and trade bill could codify a general directive to regulate emissions in the electric sector as far upstream as possible, but delegate the exact mechanics, such as a hybrid variant of the "first jurisdictional deliverer" approach that might be necessary for a segment of imported electricity, to a state agency rulemaking process.

b) Role of the Bonneville Power Administration (BPA):

It has been averred in preliminary legislative hearings on cap and trade legislation that BPA cannot play an upstream role as a "first jurisdictional deliverer" due to its federal status that precludes it from being compelled by a state program to incur the costs of procuring carbon allowances to cover emissions. EWEB does not see BPA's status as static or insurmountable, if it is agreed that there is a broad benefit to use a point of regulation upstream in the electric sector. First, there is precedent for a federal power marketing agency to obtain a waiver from Congress in order to incur costs to comply with a state cap and trade program, as the Western Area Power Administration (WAPA) did for the California program. EWEB believes that once Oregon signals its firm intent through legislation to regulate GHG emissions, a similar waiver could be obtained for BPA. Second, BPA does not have any carbon emitting sources in its generation fleet. The emissions in BPA's energy mix emanate from a small amount of unspecified wholesale power market purchases BPA makes when customer demand for electricity is greater than the federal power system's output. Even with these market purchases blended into BPA's energy mix, BPA's system mix emission factor is on average only 5 percent of the regional average. BPA's emissions are less than 1 percent of the total emissions in Oregon's electric sector, and only a fraction of a percent of Oregon's economy wide emissions. Given how miniscule the emissions are for BPA system energy, EWEB believes a workaround can be found if necessary to achieve the most optimal point of regulation in the electric sector.

3) Allowance Allocations:

EWEB will recommend that any free allocation of carbon allowances that is made to individual load serving utilities should allocate to all utilities that will be subject to a compliance obligation in Oregon (likely EWEB will have a compliance obligation). EWEB is cognizant that not all utilities are in the same starting point in emission levels (i.e. investor owned utilities compared to consumer-owned utilities). EWEB is mindful that the purpose of freely allocated allowances is to mitigate increased costs and adverse impacts due to carbon pricing and any allocation method should not create "windfalls" of more allowances than needed to cover a utilities emissions. EWEB will recommend that some consideration be made, in an allocation method or in some other way, to provide credit for early GHG reduction efforts by utilities, if a reasonable mechanism can be found to do so.

4) Addressing Hydropower Variability:

EWEB will request that Oregon's program should allow some combination of allowance banking and/or multi-year averaging of GHG accounting to give utilities flexibility to work with variance in hydropower generation conditions and other variations such as weather.

5) Revenue Recycling

EWEB supports returning revenues raised by the state under a carbon pricing policy to the electric sector to mitigate higher costs to Oregon ratepayers. This helps ensure that electricity ratepayers are not required to pay a carbon price twice: first for the cost of investments in GHG reduction measures and second for the emissions that remain. Revenue recycling is a common feature of carbon pricing programs adopted in other jurisdictions.

Public Employee Retirement System (PERS)

Due to continued upward pressure in PERS employer rates and state budget deficits there is ongoing interest in changes to PERS to better manage system costs. To date, a lengthy list of individual PERS measures have been proposed and the possibility exists again that the legislature could take up some package of PERS reforms. EWEB will be closely monitoring proposed PERS changes, and any staff recommendations on EWEB's position will be formulated on the basis of whether proposals are: 1) legally defensible; and 2) able to demonstrate reliable short and long term savings.

Qualifications Based Selection (QBS) Contracting Flexibility

EWEB staff recommend partnering with other local governments to advocate for legislation authorizing an optional QBS variant that EWEB and other local government contracting agencies could utilize for the procurement of architectural, engineering, photogrammetric, land surveying and transportation planning services. Under current QBS law, contracting agencies may request qualifications only from potential firms, and are required to rank those firms from most-qualified to least-qualified. Once a ranked list is established, the contracting agency may only negotiate further with the top-ranked firm. Only after making that selection, based solely on qualifications, can the contracting agency take cost into consideration. If the contracting agency and firm are unable to come to an agreement on price or other factors, the contracting agency can terminate the negotiation and move on to the next firm on the ranked list. For that contract, the contracting agency is prohibited from reconsideration of any firm with which it has previously terminated negotiations. The contracting agency can continue to work through the list of firms, in a linear fashion, until they find one with which they can successfully negotiate a final deal.

EWEB supports legislative changes to QBS to address our experience, and that of other local governments, that the current QBS process is time consuming, lacks transparency, and does not lend itself to the best overall value in the use of public funds. Under proposed changes to QBS, EWEB and other public contracting agencies could engage in an initial qualifications-only screening process. After completing that first step of the process, the contracting agency would select up to three qualified firms with which to negotiate. The city could then ask those firms for pricing information, including the number of hours proposed for the service required, expenses, hourly rates and estimated overhead costs.

Residential Energy Tax Credit (RETC) Reauthorization

The Residential Energy Tax Credit, utilized by Oregonians for three decades to add energy efficiency measures or distributed generation to their homes, expired at the end of 2017 and the legislature declined to extend the program. EWEB testified in support of scaling down and preserving the RETC by focusing scarce state resources on energy efficiency and culling the amount of measures through a more strategic measurement of effectiveness. Other advocates of the RETC

insisted on an extension of the RETC at its current funding level and suggested changes to the program should be made after an extension, an approach that proved unsuccessful. Legislation will be introduced to reauthorize a successor to RETC at a more modest funding level, and focusing on the most cost effective energy efficiency measures. EWEB staff recommends that EWEB support this reauthorization of a program that has benefited many EWEB customers.

ODOE Reorganization

EWEB staff have not learned of any legislation introduced at this time that would restructure the Oregon Department of Energy (ODOE). However given the many legislative hearings assessing the necessity of ODOE's various programs, and past failures in the management of energy loan and incentive programs, it is expected there could be interest again in discussing the agency's future.

To date, EWEB has testified in legislative hearings and filed comments averring that the department needed to be right-sized, phasing out activities that were redundant compared to planning and work already conducted by the Public Utility Commission, the Northwest Power and Conservation Planning Council, BPA, the Energy Trust of Oregon and the Northwest Energy Efficiency Alliance. EWEB further averred that the Department could be downsized to an Office of Energy and merged into another existing state agency, with any continuing tax credit programs transferred to Business Oregon. Finally, EWEB has on several occasions recommended a fundamental change in funding the Department by reducing the use of the Energy Supplier Assessment paid by EWEB and other electric utilities and increasing the use of the State General Fund to pay for programs with little nexus to consumer-owned utilities.

EWEB was a plaintiff along with 9 other consumer-owned utilities in a lawsuit against ODOE and the Energy Supplier Assessment (ESA) used to fund the agency, arguing: 1) ODOE had failed to comply with a law requiring it to explain to utilities why they were being assessed and how the money collected would be used; and 2) the ESA was a tax, and subject to a 3/5th majority approval of any increase to the ESA rate, instead of a simple majority approval. In 2017 the Marion County Circuit Court ruled that ODOE had not complied with the legal process to assess and collect the ESA in 2016 and ordered a refund, and also that the ESA was indeed a tax. This ruling and additional legal challenges to the 2017 and 2018 ESA collection are under appeal.

In any case, the possibility exists for EWEB and the other plaintiffs to discuss settlement options with the state, which could include permanent changes in statute to the ESA that would ensure acceptable cost-containment and transparency.

Willamette Basin Review

Municipal water providers in the Willamette Basin have been seeking access to the stored water in the federal Willamette Valley Project (WVP) reservoirs since the late 1980's, recognizing that traditional surface water rights in the basin would eventually be fully appropriated. The stored water in the WVP constitutes the overwhelming majority of remaining water supply available to water providers in the Willamette basin to meet future demands.

A process began in the 1990's to allocate federal stored water for authorized uses, including municipal water supply, industrial use, and irrigation. That process was interrupted by the ESA listing of several fish species. Subsequent recovery plans for these species call for the allocation and

release of federal stored water to benefit fish and wildlife. In the past few years, The U.S. Army Corps of Engineers (USACE) has undertaken a review and study of the water allocation necessary to implement the Biological Opinion completed by the National Oceanic and Atmospheric Administration (NOAA) for species recovery in the Willamette Basin. USACE is in parallel evaluating current and future water demands in the Willamette Basin and will consider allocating federal stored water for use by irrigators and municipal water providers.

While most of the activity on this topic is addressing matters of federal policy, the Oregon Water Resources Department (OWRD) will be bringing forward legislation clarifying their ability to transfer state water rights in the Willamette basin in a manner consistent with the proposed changes in the future allocation of federal stored water in the basin. EWEB staff recommend supporting OWRD's clarification effort.

Community Choice Aggregation Authority

Community Choice Aggregation (CCA) is an alternative to the investor owned utility energy supply system in which local entities, such as cities and counties, aggregate the buying power of individual customers within a defined jurisdiction in order to secure alternative energy supply contracts

The CCA chooses the power generation source on behalf of the consumers. By aggregating purchasing power, they are able to create large contracts with generators, something individual buyers may be unable to do. The main goals of CCAs have been to either lower costs for consumers or to allow consumers greater control of their energy mix, mainly by offering cleaner generation portfolios than local utilities. Currently CCAs are possible in Massachusetts, Ohio, California, Illinois, New Jersey, New York, and Rhode Island.

In a white paper released in May 2017, the California Public Utilities Commission estimated that as much as 25 percent of the retail electric load of investor-owned utilities in California will shift to another source by the end of the year, and as much as 85 percent within the next decade.

In California, CCAs can operate only in the service areas of investor-owned utilities. The investor-owned utility still provides transmission and distribution services and all the metering, billing, collection, and customer service to retail customers. But the energy delivered to customers is based on what the CCA purchases — and for the most part, CCAs are focused on delivering more carbon-free energy.

EWEB staff will be closely monitoring the development of CCA authority in Oregon.

Oregon Health Authority- Drinking Water Services Funding Gap/Fee Proposal

Oregon's Drinking Water Program has seen its staffing reduced by 35 percent over the last decade and concerns have been raised that the program now has limited capacity to respond to emergency events and that Oregon's primacy to operate the program in lieu of the U.S. Environmental Protection Agency (EPA) is trending towards being in jeopardy in the future.

EWEB staff will be participating in stakeholder meetings on various funding proposals to address future staffing and resources for the program. Any proposed solutions will be scrutinized by EWEB staff for costs/benefits to the utility and customers, cost controls, transparency, oversight, and nexus

or redundancy relative to services EWEB provides internally now or plans to in the future.

STREAMLINE Small Cell Deployment Act (S. 3157)

The STREAMLINE Small Cell Deployment Act, also known as the “Thune-Schatz bill” in the United States Senate, would revise section 332 of the Communications Act to require mandatory access for attachments to a “facility in a right-of-way (ROW) owned or managed by the state or local government.” Currently, Section 332 gives the FCC authority over the provision of “wireless services,” and it does not provide for FCC jurisdiction over electric utility poles.

Several times since 2010, the Federal Communications Commission (FCC or Commission) has recommended that Congress eliminate the exemption public power utilities and rural electric cooperatives have from FCC regulation of pole attachments under the guise of facilitating broadband deployment. Since 2016, the FCC has opened four dockets that reflect its desire to regulate, either explicitly or implicitly, public power utility poles even though the Commission is barred from doing so under section 224 of the Communications Act. Most recently, Senate Commerce Committee Chairman John Thune (R-SD) and Senator Brian Schatz (D-HI) introduced legislation that would effectively gut the exemption for public power and weaken states’ ability to reverse preempt federal pole attachment regulations.

EWEB staff recommend opposing any efforts by Congress to weaken or eliminate the municipal exemption public power utilities have from federal pole attachment regulations and any efforts by the FCC to circumvent well-established federal law that precludes it from regulating public power utility poles. In addition, EWEB should oppose any attempts by the FCC or Congress to impose a one-size-fits-all approach to the make-ready process for attaching to poles.

Recommendation and Requested Board Action

Management recommends that the Board adopt the accompanying resolution as provided.

If you have any questions prior to the Dec. 4 Board Meeting, please contact Jason Heuser at 541-685-7425 or jason.heuser@eweb.org.

**RESOLUTION NO. 1827
DECEMBER 2018**

**EUGENE WATER & ELECTRIC BOARD
2019 LEGISLATIVE SESSION**

WHEREAS, the 2019 Oregon Legislative Session will convene on February 4th, 2019;
and

WHEREAS, the Eugene Water & Electric Board (EWEB) will continue to participate in the legislative process on behalf of its customers; and

WHEREAS, the Board has traditionally adopted positions and guidelines which provide general direction for purposes of supporting or opposing specific legislation; and

WHEREAS, the Board again desires to set forth such legislative directives.

BE IT RESOLVED that the Eugene Water & Electric Board adopts the attached legislative agenda, which includes the following issue and goal:

1. Support a Carbon Pricing Policy to meet Oregon's adopted greenhouse gas reduction goals that is direct, efficient, economy-wide; technology-neutral; market-based, upstream, and regionally-linked/consistent.

WHEREAS, new and unanticipated legislation can emerge each legislative session.

BE IT FURTHER RESOLVED that the Eugene Water & Electric Board goes on record supporting legislation which generally:

1. Preserves and enhances local control;
2. Complements or improves programs that are cost-effective to our customers; and
3. Preserves, conserves, and restores our natural environment in an equitable and cost-effective manner.

BE IT FURTHER RESOLVED that the Eugene Water & Electric Board will oppose legislation which generally:

1. Withdraws the capability of the Board to best serve EWEB's customers;
2. Duplicates existing laws, therefore complicating the execution of the Board's duties by state or federal mandate;
3. Imposes fees, assessments or procedures that impede the Board's ability to provide high-quality and cost effective service.

DATED this 4th day of December 2018.

THE CITY OF EUGENE, OREGON
Acting by and through the
Eugene Water & Electric Board

President

I, ANNE M. KAH, the duly appointed, qualified, and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the Resolution adopted by the Board at its December 4th, 2018 Regular Board Meeting.

Assistant Secretary