



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Brown, Mital, Helgeson, Manning and Simpson
FROM: Roger Gray, General Manager; Jeannine Parisi, Community and Local Government Affairs Coordinator
DATE: July 28, 2014
SUBJECT: Memorandum of Understanding Supporting CILT Resolution
OBJECTIVE: Board Action

Issue

The EWEB Board of Commissioners is requested to endorse the attached Memorandum of Understanding which, when signed by both the City Manager and General Manager Gray, enacts Resolution No. 1410 regarding Contributions in Lieu of Taxes (CILT).

Background

At the July 22 meeting, the EWEB Board of Commissioners unanimously approved a resolution authorizing a revision to how CILT payments to the City of Eugene are calculated. This change was enacted via a series of negotiations to create mutual benefits to EWEB and the City, including more predictability and stability for budgeting CILT, and greater transparency and ease of administration. New CILT payments will go into effect in January 2015, replacing the volatility of wholesale and miscellaneous CILT with a structured fixed amount. The retail component remains unchanged.

Discussion

The more detailed mechanics of how CILT payments are to be structured over time, as well as specific administrative details like reporting and auditing, are contained in the attached Memorandum of Understanding (MOU). On July 14, the City Council authorized the City Manager to execute this MOU. The EWEB Board took similar action, but requested to see the MOU as well. Please see the attachment for the final version, recognizing that minor stylistic changes may be made prior to signature.

Recommendation

The MOU conforms to the terms and conditions approved by the Board on July 22 and the City Council on July 14. Management recommends that the Board endorse the final MOU. Consistent with City Charter, CILT payments may be renegotiated in the future upon agreement by both the City Council and the EWEB Board of Commissioners.

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 15th and February 1st, 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

Date: _____

Date: _____



COUNCIL RESOLUTION NO. 5110

**A RESOLUTION APPROVING A REVISED METHODOLOGY
FOR DETERMINING THE CONTRIBUTION IN LIEU OF TAX
PAYMENT ON ELECTRICITY SALES FROM THE EUGENE
WATER & ELECTRIC BOARD.**

PASSED: 8:0

REJECTED:

OPPOSED:

ABSENT:

CONSIDERED: July 14, 2014

RESOLUTION NO. 5110

A RESOLUTION APPROVING A REVISED METHODOLOGY FOR DETERMINING THE CONTRIBUTION IN LIEU OF TAX PAYMENT ON ELECTRICITY SALES FROM THE EUGENE WATER & ELECTRIC BOARD.

The City Council of the City of Eugene finds that:

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. In November 1976, voters approved a new City Charter. Section 44(4) of the Charter provides that the 1976 rates of CILT payment would not change unless approved by the EWEB Board and the City Council.

C. Since 1976, the City and EWEB have entered into a number of agreements revising and refining the amount of and methodology for CILT payments. Those revisions have included differentiating between retail and wholesale power sales, with the CILT payments for retail based on gross operating revenues and the CILT payments for wholesale based on net revenues. Other revisions have included specific arrangements for sales from EWEB's steam operation and certain large-scale power contracts to individual customers. Changes in the electric power market have made it challenging to determine net revenues for wholesale power sales from particular electric generating sources, as well as making it difficult to predict what the CILT payments might be, which in turn has made it increasingly difficult for the City and EWEB to reliably forecast those potential revenues as part of preparing the future budgets.

D. EWEB and the City now desire to revise the CILT agreements to create a predictable and stable payment stream and a more streamlined methodology for calculating CILT payments.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EUGENE, a municipal Corporation of the State of Oregon, as follows:

Section 1. Based on the above findings, which are hereby adopted, the City Council approves a change in the payments received from EWEB pursuant to Section 44(4) of the Eugene Charter of 2002. Beginning in January 2015, EWEB's CILT payments to the City will consist of two components: (a) a percentage of operating revenues from retail electric sales, as further defined in a Memorandum of Understanding between the City and EWEB, and (b) an annual payment of no less than \$825,000 which will replace the more volatile wholesale and other miscellaneous revenue based CILT payments.

Section 2. The retail sales percentage component shall be 6% except when, for economic development and/or job retention purposes, the City Manager and General Manager agree to a different percentage for those large retail customers which purchase electricity from EWEB under individually negotiated power sales contracts.

Section 3. The City Manager is authorized to enter into, and amend when appropriate, a Memorandum of Understanding (MOU) with the EWEB General Manager to define terms, establish appropriate inflationary factors for the annual payment component, and other terms the City Manager and General Manager determine are appropriate to implement this Resolution, provided however that all such terms are consistent with the terms of this Resolution and applicable law.

Section 4. Nothing in this Resolution is intended to affect any of EWEB's payments to the City for calendar year 2014. Beginning on January 1, 2015, the provisions of this Resolution shall replace all prior Resolutions and other agreements between the City and EWEB which otherwise would govern CILT payments on or after January 1, 2015.

Section 5. This Resolution shall become effective after (a) the EWEB Board approves a resolution containing the same changes in payments as in this Resolution, and (b) the City Manager and EWEB General Manager execute the MOU referenced in Section 2 of this Resolution.

The foregoing Resolution adopted this 14th day of July, 2014.

Beth Louest

City Recorder