



# MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

*Rely on us.*

TO: Commissioners Brown, Mital, Helgeson, Manning and Simpson  
FROM: Cathy Bloom, Finance Manager; Gail Murray, Purchasing/Risk Manager  
DATE: December 18, 2014  
SUBJECT: 2015 Board Appointed Consultants and Retained Professionals Ratification  
OBJECTIVE: Board Action–Ratification of Board Appointed Consultants & Retained Professionals

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## **Issue**

At the first Board meeting of the year, the Board appoints and ratifies certain professional consultants which are retained by the Board.

## **Background**

EWEB contracts with a group of consultants who are defined as being appointed or retained by the Board. The selection of these consultants is based on their technical knowledge, areas of expertise, and most importantly, their historical knowledge and perspective of EWEB and its work. The key attribute of each of these consultants is their independent advisory responsibility to the Board; a responsibility to provide professional direction and assessments to the Board, as determined by the consultant, without regard to staff's position or interpretation. These are long-term relationships that remain in effect through a Board adopted exemption from the requirements of Oregon Public Contracting law [EWEB Rule 6-0130: Board Appointed Consultants and Retained Professionals].

Although these contracts are exempt from public contracting law and do not require a competitive process, the General Manager directed staff to competitively solicit these contracts to be sure that EWEB is receiving the most competitive and best value in these areas. In late 2012 through 2014, staff issued solicitations and awarded new contracts for:

- General Counsel – Luvaas Cobb
- Financial Advisor – Piper Jaffray
- Independent Actuary – Kenney Consulting
- Trustee Services – US Bank Global Corporate Trust Services
- Real Estate Consultant – ECO Northwest
- Real Estate Broker Services – Evans, Elder & Brown; Windemere Real Estate
- HR Counsel – Harrang, Long, Gary and Rudnick
- Special Counsel and Power Risk Counsel-Cable Huston Benedict Haagensen & Lloyd
- Special Counsel and Power Risk Counsel Trading & Power Operations - Law Offices of Jeremy Weinstein

The following contracts are scheduled to be competitively solicited in 2015 or later. These are:

- Independent Auditor and Certified Public Accountant – Due to issues currently being worked with the Auditors and the ongoing work being performed by Moss Adams, the department thought it might be unwise to change auditing firms for the next few years. The current contract will expire in 2016, and will be re-solicited then.
- Bond Counsel – The current contract will expire in 2015 and will be re-solicited.

Each of these consultants' work continually supports and helps direct EWEB's business and policy decisions. All retained attorneys have an obligation to protect EWEB (and its Governing Body) and to independently advise the Board, if required, on legal matters. EWEB Bond Resolutions require certain actions by some of these independent consultants when issuing new bonds. EWEB's bond counsel, financial advisor, and independent auditor are appointed to act on behalf of the Governing Body to independently assess the utility's performance in these areas.

A survey is distributed annually to staff who utilizes these contracts to assess the performance of the consultants. Staff has no objection to ratification of any of these consultants.

A very brief overview of each consultant is provided herein:

## **RETAINED PROFESSIONALS – ATTORNEYS**

### **Contract Information**

#### **1. Luvaas, Cobb, Law – Eric DeFreest: General Counsel**

Tenure: Contract solicited and awarded in 2013

Contract Information: In 2012, a solicitation was issued and a new contract was established with Luvaas, Cobb, Law for General Counsel Services in Jan, 2013. This contract is for 5 years.

Annual Expenditures (to date):

2014	2013	2012	2011
\$163,500	\$251,114	\$106,147	\$177,665

Luvass Cobb, through Eric DeFreest maintains an historical perspective and a broad range of expertise in municipal utility legal matters which continue to be very valuable to the utility. Eric DeFreest and other attorneys from the firm are quick to respond to staff inquiries. They continue to maintain an excellent relationship with staff and consistently provide sound legal advice.

Recommendation: Ratify as General Counsel for 2015

#### **2. Cable Huston Benedict Haagensen & Lloyd: Special Counsel**

Tenure: Retained in the early 1980s

Contract Information: This contract was competitively solicited in 2014.

Annual Expenditures (to date):

2014	2013	2012	2011	2010
\$302,922	\$356,964	\$401,860	\$445,146	\$432,726

Cable Huston Benedict Haagensen & Lloyd is recognized as a preeminent law firm in the state dealing with energy issues. Their work on many utility projects is considered to be invaluable as they have considerable technical expertise. Staff greatly values their work on environmental,

generation and power contract issues.

Recommendation: Ratify as Special Counsel for 2015

**3. Law Offices of Jeremy Weinstein - for Special Counsel Legal Services**

Trading & Power Operations

Tenure: Retained in 2014

Contract information: This contract is in its first year of a potential five year period. It was competitively solicited in 2014.

Annual Expenditures (to date):

2014

\$ 0

**4. Murphy & Buchal LLP: Special Counsel (BPA Rate Review)**

Tenure: Retained in 2010

Contract Information: The contract is in its third year and has 2 years remaining.

Annual Expenditures (to date):

2014	2013	2012	2011	2010
\$57,727	\$31,018	\$54,880	\$160,230	\$32,019

Murphy & Buchal have represented major participants in every general power and every contested transmission rate case of BPA since 1984. Murphy & Buchal will assist in analyzing legal positions and preparing testimony in the BPA rate case.

Recommendation: Ratify as Special Counsel for 2015

**5. Harrang, Long, Gary and Rudnick: Human Resources Counsel**

Tenure: Retained in 1992

Contract Information: This contract was competitively solicited in 2014.

Annual Expenditures (to date):

2014	2013	2012	2011	2010
\$96,817	\$167,246	\$104,625	\$ 89,584	\$102,798

Harrang, Long, Gary and Rudnick has a long history of providing legal services related to HR issues to EWEB. This firm is very knowledgeable about EWEB's HR policies and related issues. They are generally very effective in their legal support for HR.

Recommendation: Ratify as Human Resources Counsel for 2015

**6. Mersereau & Shannon: Bond Counsel**

Tenure: Retained in 2009

Contract Information: The contract is in its fifth year and will be competitively solicited in 2015.

Annual Expenditures (to date):

2014	2013	2012	2011	2010
\$ 0	\$0	\$85,000	\$230,000	\$75,000

In late 2009 staff solicited these services and selected Mersereau and Shannon to be EWEB’s Bond Counsel. Mersereau and Shannon has had a long history with EWEB, is extremely knowledgeable, experienced, and responsive to EWEB requests in a timely manner.

Recommendation: Ratify as Bond Counsel for 2015

**BOARD APPOINTED CONSULTANTS:**

**1. Black & Veatch: Independent and Consulting Engineers**

Tenure: Retained in 1991.

Contract Information: The contract was solicited in 2012 and has three years remaining.

Annual Expenditures (to date):

2014	2013	2012	2011	2010	2009
\$0	\$0	\$8,000	\$15,000	\$3,900	\$9,000

Black & Veatch is considered to have demonstrated excellent technical knowledge and expertise in performance of its engineering work. Staff has very high confidence in this consultant’s expertise and greatly appreciates their timely response even when given very short notice.

Recommendation: Ratify as Independent and Consulting Engineers for 2015

**2. Kenney Consulting: Independent Actuaries**

Tenure: Retained over 20 years ago

Contract Information: This contract was competitively solicited in 2013. The contract is in its second year and has three years remaining.

Annual Expenditures (to date):

2014	2013	2012	2011	2010
\$7,000	\$0	\$33,500	\$20,000	\$10,000

The Independent Actuaries’ scope of work includes medical benefits, supplemental retirement plan evaluations, and PERS issues – all important and very visible issues for the utility. Staff has rated Kenney Consulting very high in past evaluations and continues to have confidence in their ability to meet EWEB needs. Kenney Consulting is recognized as having a broad range of available expertise and knowledge of pension reporting requirements.

Recommendation: Ratify as Independent Actuaries for 2015

**3. Moss Adams: Independent Auditor and Certified Public Accountant**

Tenure: Since 2005

Contract Information: In 2011 a new contract was negotiated for a potential five year term. This contract will be re-solicited in 2016.

Annual Expenditures (to date):

2014	2013	2012	2011	2010	2009
\$105,987	\$105,250	\$114,521	\$128,727	\$93,670	\$116,682

We are generally satisfied with Moss Adams’ performance as Independent Auditor and with their vast knowledge of utility auditing issues. This is Moss Adams’ eighth audit cycle as EWEB’s Independent Auditor and Certified Public Accountant.

Recommendation: Ratify as Independent Auditor and Certified Public Accountant for 2015

**4. Piper Jaffray: Financial Advisor**

Tenure: Retained in 2013

Contract Information: This contract was solicited in late 2012 and awarded in Jan 2013 for a potential 5 year term.

Annual Expenditures to Date:

2014	2013
\$ 0	\$5,532

The quality of the performance of the financial adviser consultant is often based on their experience with electric and water utilities, rating agency presentations, access to trading floor and current pricing experience. Piper Jaffray has demonstrated that they possess these qualifications and experience.

Recommendation: Ratify as Financial Advisor for 2015

**Discussion**

EWEB’s Board, through a Board adopted exemption that exempts Board Appointed Consultants and Retained Professionals from the requirements of Oregon Public Contracting law, has appointed independent consultants and retained professionals as advisors to the utility’s Governing Body. These consultants’ historical perspective and in-depth knowledge of the utility and its operations makes their expertise and advice extremely valuable and beneficial to EWEB.

Each year staff asks the Board to ratify the consultants to continue their work in the coming year. Staff has confidence in the very high quality of work, demonstrated technical knowledge and expertise, and high satisfaction with the service received.

**Recommendation**

Management recommends ratification of the Board Appointed Consultants and Retained Professionals for 2015.

**Requested Board Action**

Management requests ratification of the Board Appointed Consultants and Retained Professionals for 2015 as recommended above.

## References

### ***EWEB Contracting Rule 6-0130 Board Appointed Consultants and Retained Professionals***

*EWEB designates the following classes of contracts as personal services contracts which are not subject to competitive bidding and proposal requirements.*

*(1) Board Appointed Consultants, including Attorneys, Auditors, Board appointed Engineering, Architectural, Land Surveying and Related Services subject to Division 4 of these EWEB Rules, and other Consultants who may be appointed through a direct appointment by the Board.*

*(2) Non-Board Appointed Consultants providing Engineering, Architectural, Land Surveying and Related Services, to the extent provided for in Division 4 of these EWEB rules.*

*Stat. Auth: ORS 279A.065, 279A.070*

*Stat. Implemented: ORS 279A.055, 279A.065, 279B.085, 279C.100-.125*

*Statute Authority:*

*279A.025(2)(d)(q)(s) and (3)(j); 279A.055(2); 279A.060; 279A.065(5); 279A.070; 279A.075(1); and any and all applicable statutes, whether or not referenced herein, that support EWEB's actions.*

*EWEB Rule:*

*2-0150(3)(a), 6-0110, 6-0130, 6-0270, and any and all applicable rules, whether or not referenced herein, that support EWEB's actions.*