



MEMORANDUM

Eugene Water & Electric Board
Corporate Services Division

Rely on us.

TO: Commissioners Farmer, Brown, Cassidy, Cunningham, and Ernst

FROM: Ed Case

DATE: December 30, 2009

SUBJECT: 2010 Board Appointed Consultant and Retained Professionals Ratification

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].

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, disclosure council, and independent auditor are appointed to act on behalf of the Governing Body to independently assess the utility's performance in these areas.

Staff generally has no issues with the consultants or the performance of their contractual obligations. If staff did have concerns, the Board would be notified herein.

Firms may change for financial consultants (in order to retain key individuals intimately familiar with EWEB operations), but most contracts remain in place without change due to the sensitive nature of the services and staffs' confidence in the consultant and expertise.

Staff has no objection to ratification of any of these consultants and request the Board ratify all consultants for continued services in 2010, except Nixon Peabody. Staff is establishing a new contract (see consent item) with Mersereau and Shannon to act as EWEB's Bond Counsel.

A very brief overview of each consultant is provided herein:

RETAINED PROFESSIONAL - ATTORNEYS

Calkins & Calkins Attorneys at Law: General Counsel

Tenure: Retained in the early to mid 1940's¹.

Contract Information: The contract is in its Fifth year; a new Calkins contract will be established in 2010.

Annual Expenditures (to date):

2009	2008	2007	2006	2005	2004	2003
\$150,296	\$201,689	199,156	132,000	144,300	217,500	137,000

Calkins' historical perspective and their broad range of expertise in municipal utility legal matters continue to be very valuable to the utility. Calkins often responds to inquiries on a moment's notice. They continue to maintain an excellent relationship with staff and consistently provide sound legal advice.

Recommendation: Ratify as General Counsel for 2010

Cable Huston Benedict Haagensen & Lloyd: Special Counsel

Tenure: Retained in the early 1980s²

Contract Information: The contract is in its First year and has 4 years remaining.

Annual Expenditures (to date):

2009	2008	2007	2006	2005	2004	2003
\$557,819	\$1,050,625	\$1,422,759	\$939,000	\$816,525	\$867,000	\$470,000

Cable Huston is recognized as the preeminent law firm in the state dealing with energy issues. Their work on many utility projects is considered to be invaluable. They have considerable technical expertise and stay current with the industry and EWEB's business needs. Staff greatly value Cable et al's work on environmental and generation issues.

Recommendation: Ratify as Special Counsel for 2010

Jim Deason, Attorney at Law: Power Risk Counsel

Tenure: Retained in the mid 2005

Contract Information: The contract is in its fourth year and has 1 years remaining.

Annual Expenditures (to date):

2009	2008	2007	2006	2005
\$14,794	\$29,500	100,281	\$39,311	\$0.00

Mr. Deason has provided legal services related to Power Risk and Telecommunications for many years. Previously part of the Cable Huston firm, Mr. Deason started his own firm 2006; staff retained his services as Power Risk Counsel. Mr. Deason is intimately familiar with ISDA and WSPP power contract language and the potential impacts that language could have on EWEB.

Recommendation: Ratify as Power Risk Counsel for 2010

¹ Prior to retaining Calkins as general counsel, the utility was represented by the City Attorney's Office. Records show that as far back as 1931, the City Attorney was S.M. Calkins. Calkins has represented EWEB since that time.

² Cable et al replaced Schwabe, William; Gailannre; and Vannes in early 1980s

RETAIN PROFESSIONALS OVERVIEWS *(continued)*:

Harrang, Long, Gary and Rudnick: Human Resources Counsel

Tenure: Retained in 1992

Contract Information: This contract is in its Second year and has 3 years remaining.

Annual Expenditures (to date):

2009	2008	2007	2006	2005	2004	2003
\$63,555	\$242,818	\$118,292	\$466,573	\$220,764	\$474,000	\$48,708

Harrang, Long et al is EWEB's retained HR Counsel. Harrang has a long history of providing HR legal services and 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 2010

Mersereau and Shannon³: Bond Disclosure Counsel

Tenure: Retained in 2005

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

Annual Expenditures (to date):

2009	2008	2007	2006	2005	2003	2004
\$55,000	\$65,000	\$0.00	\$25,000	\$50,000	\$0.00	\$0.00

Mersereau and Shannon have provided legal services related to EWEB bond disclosure matters for several years. Staff values their knowledge, expertise, and timely response to EWEB requests. These services are not required every year; nevertheless, Mersereau and Shannon's historical knowledge of EWEB and its bonding issues has been invaluable to staff.

Recommendation: Ratify as Bond Disclosure Counsel for 2010

BOARD APPOINTED CONSULTANTS

Black & Veatch: Independent and Consulting Engineers

Tenure: Retained in 1991.

Contract Information: The current contract is in its fifth year and has 0 year remaining.

Annual Expenditures (to date):

2009	2008	2007	2006	2005	2004	2003
\$9,000	\$7,200	\$0.00	\$3,500	\$3,000	\$6,500	\$4,051

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 2010

CONSULTANT OVERVIEWS *(continued)*:

Holland & Knight:⁴ Bond Counsel

Tenure: Retained in 2004

Contract Information: The contract is in its fifth year and has 0 years remaining.

Annual Expenditures (to date):

2009	2008	2007	2006	2005	2004
\$1,984	\$207,638	\$50,216	\$100,704	\$150,538	\$19,121

Nixon Peabody became EWEB's Bond Counsel in 2004. During that time, the assigned attorney became a key figure in the utility's bonding activities. When EWEB's attorney moved to another firm, the contract was reassigned to Holland & Knight to retain that expertise.

However, this year staff solicited these services and selected Mersereau and Shannon to be EWEB's Bond Counsel. As provided above (see Bond Disclosure Counsel), Mersereau and Shannon has had a long history with EWEB, is extremely knowledgeable, experienced, and responses to EWEB requests in a timely manner.

Recommendation: Holland & Knight are not included in the Board's ratification process for 2010. The information provided herein is to identify the services of this Bond Counsel in 2009. A consent calendar item has been prepared for the Board's initial contract approval of Mersereau and Shannon. Mersereau and Shannon will be listed as Bond Counsel in the 2011 ratification process.

Kenney Consulting: Independent Actuaries

Tenure: Retained over 20 years ago

Contract Information: The contract is in its fifth year and has 0 years remaining.

Annual Expenditures (to date):

2009	2008	2007	2006	2005	2004	2003
\$19,650	\$69,200	\$25,000	\$42,931	\$136,345	\$127,948	\$146,548

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 the GASB-45 requirements.

Recommendation: Ratify as Independent Actuaries for 2010

⁴ *The difference between bond disclosure counsel and bond counsel is that Bond Counsel specializes in law relating to bond financing. Bond Disclosure Counsel actually puts the bond-offering documents together that sells the bonds. Bond Counsel issues an opinion on the bonds and their sale. Confusion is warranted because Bond Counsel has performed both of the required tasks in the past and Mersereau and Shannon will perform both functions in the future. Staff has found that Shannon can prepare the bond documents more efficiently and effectively at a more competitive price and is confident in their abilities to act as Bond Counsel as well.

CONSULTANT OVERVIEWS *(continued)*:

Moss Adams⁵: Independent Auditor and Certified Public Accountant

Tenure: Since 2005

Contract Information: The contract is in its fifth year and a new contract with Moss Adams will be established in 2010.

Annual Expenditures (to date):

2009	2008	2007	2006	2005
\$85,821	\$116,837	\$130,642	\$128,974	\$78,432

Staff is very satisfied and impressed with Moss Adams' performance as Independent Auditor and with their vast knowledge of utility auditing issues. This is Moss Adams fifth audit cycle as EWEB's Independent Auditor and Certified Public Accountant.

Recommendation: Ratify as Independent Auditor and Certified Public Accountant for 2010

JP Morgan⁶: Financial Advisor

Tenure: Retained in 1997

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

Annual Expenditures to Date:

2009	2008	2007	2006	2005	2004	2003
\$70,000	\$142,145	\$50,000	\$53,435	\$122,349	\$22,500	\$54,762

The quality of the performance of some consultants is often based on the key personnel assigned to the account. An individual's historical knowledge and familiarity with EWEB is often most advantageous to the utility, such is the case with Christine Pihl. Staff has been extremely satisfied with the services provided by Ms. Pihl over the years and recommend continued use of her services.

Recommendation: Ratify as Financial Advisor for 2010

⁵ Contract awarded to Moss Adams in 2005 as a result of an RFP process.

⁶ ORS 279A.025 Application of Public Contracting Code (q) exempts contracts, agreements or other documents entered into, issued or established in connection with: (A) The incurring of debt, bonds, investments, loans, and various other financial contracts of a public body. This exemption is also reflected in EWEB Rule: 6-0110 Application of Public Contracting Code.

Summary

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.

Requested Action

Therefore, staff recommends ratification of the Board Appointed Consultants and Retained Professionals for 2010 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.