



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Mital, Simpson, Helgeson, Manning and Brown
FROM: Mike McCann, Generation Manager & Patty Boyle, Principal Project Manager
DATE: December 1, 2015
SUBJECT: Update on the Carmen Smith Settlement Agreement Renegotiation Effort
OBJECTIVE: Information Only

Issue

In July, the Board directed Management to engage the Parties of the Carmen-Smith Settlement Agreement in order to propose modifications to the agreement that would maintain EWEB's commitment to the environmental outcomes envisioned for the Project while avoiding large and expensive civil infrastructure. This memo provides an update on that effort.

Background

In July, EWEB formally requested that the FERC delay license issuance for six months so that Management could update the economic analysis of the Project due to significant changes in the energy sector. The FERC granted the request and EWEB's response is due by the end of January. In addition to modifying and updating the Project's economic analysis, Management has been meeting regularly with the Settlement Parties since early September to discuss possible modifications to the Agreement. The Parties have agreed to meet with EWEB through at least January when EWEB is due to report back to the FERC.

Discussion

EWEB continues to make progress both on the updated economic evaluation of the Project and on negotiating appropriate modifications to the 2008 Settlement Agreement with the Settlement Parties. Based on the August 28, 2015 letter from the FERC granting EWEB's request for a licensing delay, EWEB is due to respond to the FERC by the end of January 2016. At that time, Management plans to provide the FERC with updated economics based on the existing license application as modified by the 2008 Settlement Agreement, and with a progress report on the status of negotiations with the Settlement Parties to modify significant portions of the Settlement Agreement that would maintain the environmental investments while avoiding large civil infrastructure. Based on discussions with Settlement Parties so far, Management also expects to request, possibly with support from at least some of the Settlement Parties, additional time of up to one year to complete negotiations and amend the Settlement Agreement.

Preliminary results from the updated economic evaluation verify that the Project, as envisioned in 2008, continues to expose EWEB to unacceptable financial risk. Even with a significant reduction in planned infrastructure, including elimination of the fish screen, fish ladder and powerhouse bypass and other powerhouse reductions, the Project's overall economics will be uncertain and

highly dependent on future market prices.

The primary driver for the change in Project economics is clearly lower power prices. Power prices are currently 1/2 to 1/3 of what they were in 2008 and they are expected to stay relatively flat for the next ten years. Many believe that the combination of installed renewable resources and low gas prices have resulted a fundamental shift in the market that is keeping wholesale energy prices low.

What is clear from the economic analyses done to date is that for the Project to continue to make sense for EWEB, given market uncertainties, the expected costs of implementing the license and Settlement Agreement need to be significantly reduced. Due to the uncertainty inherent with any economic analysis of this nature, decisions regarding investments in the Project will largely be a reflection of the organization's tolerance of financial risk. This message has been conveyed to the Settlement Parties and they are aware of both the Project's financial outlook and EWEB's desire to renegotiate an outcome that restores the Project's economic viability at an acceptable risk tolerance while at the same time addressing critically important environmental and other objectives.

For instance, the Parties had previously agreed to remove the Trail Bridge fish screen from the Settlement Agreement in return for putting all water and out-migrating fish over the Trail Bridge spillway. While it appears that some spillway and power plant modifications will be necessary to make this work and it will cause EWEB to cease generating power at the Trail Bridge power plant, it will remove significant capital and future O&M costs from the agreement. Similarly, the Parties appear to be accepting of the concept to replace the proposed upstream fish ladder with a less costly capture / release (trap and haul) solution that will still meet federal and state fish passage requirements. Negotiations are continuing, however, and the total outcome, and potential benefit, of the renegotiation won't be known for some time. Management thinks that the time extension request to FERC will be necessary to complete negotiations in a manner that Settlement Parties can support.

In return for revising the 2008 Settlement Agreement and to obtain interim incidental take coverage under the Endangered Species Act¹, the Parties have asked for EWEB to agree to implement certain fish passage, fish habitat, and recreation-related measures in advance of a revised Settlement Agreement. Early implementation of some items would allow these environmental and recreational benefits to be realized sooner than if carried out following FERC action on the license. The interim measures advocated by the Parties are related to the existing Settlement Agreement or the agreement to eliminate the fish screen at the Trail Bridge facility. EWEB is not opposed to the concept of early implementation of some measures but have cautioned the Parties that EWEB's commitment to those measures depends on agreement on Settlement Agreement modifications. Whether EWEB can commit to or undertake costly interim measures until an overall deal is reached with the Parties is an important question. Ideally, EWEB and the Settlement Parties will find solution through continued negotiation and find something that FERC can act on more quickly to give all parties the outcomes and certainties they desire.

Management believes a modified Settlement Agreement that enables the fish passage and other

¹ EWEB was issued a Biological Opinion from NMFS in 2003 that provided ESA coverage until the expiration of the existing License (2008) and in the event of delay, coverage would extend until 2013. Given the delay in License issuance with no expected License earlier than 2018, NMFS is requesting that EWEB agree to certain interim measures in order to secure further ESA coverage.

environmental improvements to proceed as soon as practical is the right thing to do and the best course of action. In the event that EWEB is unsuccessful in reaching an agreement on revisions to the Settlement Agreement with the Parties, Management will return to the Board to discuss next steps and other potential options based on the "lay-of-the-land" at that time. Most likely, EWEB would first request a technical conference with the FERC to ensure that the FERC understands that EWEB is not "playing" the licensing process to unreasonably delay license issuance.

At the end of January 2016, Management plans to provide the FERC with updated economics based on current power price forecasts and the existing license application as modified by the 2008 Settlement Agreement. Management will also provide the FERC with a progress report on the status of negotiations with the Parties to modify portions of the Settlement Agreement in an effort to improve the Project economics. Based on this progress and a path forward to finalize the Settlement Agreement modifications, EWEB will ask the FERC for additional time to complete the revisions to the Settlement Agreement and for the Parties to take the other actions necessary for the FERC to issue EWEB a new license. EWEB will propose that the license be held in abeyance during that time. In order to show commitment and solidarity around the request, EWEB will seek letters of support from the parties, Oregon's federal congressional delegation, and, if appropriate, from other local leaders. A number of local leaders and the local staff of the Oregon delegation have already been briefed and voiced a willingness to write to the FERC in support of EWEB's request. Management has also met with the Editorial Board of the Register-Guard to share context for re-opening the Agreement.

Requested Board Action

No action is requested at this time. These materials are for information only. Questions may be directed to Mike McCann at 685-7379 or Patty Boyle 685-7406.