



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

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

FROM: Mike McCann, Generation and Electric Operations Manager, and Patty Boyle, Principal Project Manager

DATE: November 8, 2016

SUBJECT: Resolution to authorize the General Manager to enter in to certain agreements regarding the Carmen-Smith license application

OBJECTIVE: Board Action on the Authorization of the General Manager to enter into the Carmen Smith Amended and Revised Offer of Settlement and Joint Explanatory Statement and the Amended and Restated Settlement Agreement

Issue

This item requests Board action to approve Resolution 1629 that authorizes the General Manager to enter into the Carmen-Smith Amended and Revised Offer of Settlement and Joint Explanatory Statement and the Amended and Restated Settlement Agreement by November 30, 2016.

Background

Since EWEB and 16 other parties signed the Settlement Agreement for the relicensing of the Carmen-Smith Hydroelectric Project in October 2008, the economics of the relicensing project had deteriorated to the point that reassessment was necessary. In July 2015, the Board reviewed several alternatives to accepting a new FERC operating license and supported Management's recommendation to pursue strategies to renegotiate the Settlement Agreement with the goal of improving the likelihood the project would remain economic over the license term. On August 28, 2015, the FERC granted EWEB's request for a stay of license issuance until at least January 31, 2016, and requested that EWEB inform them of EWEB's intentions for the Project at that time.

In January 2016, EWEB reported to the FERC that the parties had made significant progress toward agreement on a Revised Settlement Agreement and requested a one year extension of time to complete the revisions and the assistance of FERC staff to help consult on both the content and procedure for resubmission. In February, the FERC responded to our request by granting both an extension to August 2016, and assignment of two separated staff members. Given the complexity of the renegotiation and the demonstrated progress toward agreement, the FERC further granted an extension for submission of materials to November 30, 2016.

Discussion

Thanks to the flexibility and creativity of all the Settlement Parties, we are proposing an agreement that, if approved, will allow EWEB to retain our largest, carbon-free generating resource while preserving the environmental and social benefits as the original project envisioned but at a lower

cost. The overall project economics are significantly improved, but still near break-even given market conditions.

Staff have been meeting regularly with the Settlement Parties since August 2016 to redraft the following documents:

- Joint Explanatory Statement – updated to reflect the changes to the underlying agreements
- Proposed License Articles – amended and restated to reflect changes to upstream and downstream passage and to remove actions located in the Wild and Scenic River Corridor.
- Settlement Agreement and associated Aquatics Management Plan and Recreation and Aesthetics Management Plan – major revisions to reflect changes to fish passage and items located in the Wild and Scenic River Corridor.
- Other Management Plans – minor revisions to reflect changes associated with items located in the Wild and Scenic River Corridor.

Key Terms of the Revised Agreements

License Term – 40 years. In response to Board direction at the October 4, 2016 meeting, EWEB proposed a longer license term in response to some requested language regarding future operational or infrastructure changes related to potential impacts of climate change. The parties agreed to a minor revision in the explanatory text but left all terms, including license length, as they were previously agreed.

Interim Measures – EWEB has agreed to implement a few high impact items ahead of license issuance. These are primarily recreation improvements, limited fish passage for salmon and bull trout, and aquatic habitat improvements. There has been no material change in this item since the October meeting.

Environmental Improvements – All Environmental improvements remain as reported in October. EWEB will be constructing a trap and haul system for upstream passage and will modify the existing spillway and gate and hoist system to achieve downstream passage.

It continues to be important to note that the proposed Settlement Agreement establishes fish passage using an adaptive management approach rather than facilities that are constructed to meet specific criteria established by the Federal Agencies. Using an adaptive management approach will require EWEB to design, construct and operate passage facilities in consultation with, and approval by, the Federal Fish Agencies and USDA Forest Service along with the FERC. Additionally, if EWEB is unable to show that those facilities are operating in a manner that meet the fish passage standards required in the Settlement Agreement, EWEB may be required to modify the passage facilities or operations to improve passage. Ultimately, if after 10 years EWEB cannot meet the established fish passage requirements, EWEB will be required to file a plan with the FERC to alter the fish passage, which may include building a fish ladder and screen system, other passage techniques or, while quite unlikely, could require dam removal and decommissioning. Although fish passage via trap and haul is a relatively common configuration, it is not risk free and EWEB staff will be working closely with our regulatory partners to ensure the facilities work as intended.

Recreational Improvements – All recreational improvements remain as reported in October. Actions located in the Wild and Scenic River Corridor will be authorized and enforced by the USDA

Forest Service rather than FERC.

Public Outreach

Public Affairs staff have continued to deploy the communications plan to inform the community on the efforts to revise the settlement agreement. This communications plan includes one on one meetings with interested parties, a presentation to the McKenzie Watershed Council, messaging via the General Manager at community meet and greets, a meeting with the Register Guard Editorial Board, and a Guest Viewpoint in advance of Board action in November. To date there has been no significant constituent feedback regarding the proposed changes.

Requested Board Action

Management recommends that the Board approve Resolution 1629 authorizing the General Manager to enter into the Carmen-Smith Amended and Revised Offer of Settlement and Joint Explanatory Statement and the Amended and Restated Settlement Agreement by November 30, 2016.

For additional information regarding the Amended and Restated Settlement Agreement or other aspects of the Carmen Smith License please contact Mike McCann or Patty Boyle.

**RESOLUTION NO. 1629
NOVEMBER 2016**

**EUGENE WATER & ELECTRIC BOARD
AUTHORIZING THE GENERAL MANAGER TO ENTER INTO THE CARMEN-SMITH
AMENDED AND REVISED OFFER OF SETTLEMENT AND JOINT EXPLANATORY
STATEMENT AND THE AMENDED AND RESTATED SETTLEMENT AGREEMENT**

WHEREAS, EWEB owns and operates the Carmen Smith Hydroelectric Project under a 50-year license issued December 1, 1958, by the Federal Power Commission (now the Federal Energy Regulatory Commission). The original license expired November 30, 2008, and EWEB has been operating the Project since that time pursuant to annual licenses issued by the Commission pending issuance of a new license.

WHEREAS, on October 23, 2008, EWEB on behalf of itself and the Settlement Parties filed with the Commission an Offer of Settlement and Joint Explanatory Statement, including the October 2008 Settlement Agreement, as a supplement to EWEB's final license application.

WHEREAS, on July 15, 2014, the Commission requested reinitiation of formal consultation with USFWS to update the USFWS' analysis to address new construction actions, modifications to previously identified actions, and effects on recently designated critical habitat units. In its request, the Commission excluded from the Commission's proposed action certain measures that would occur within the McKenzie Wild and Scenic River corridor. On June 4, 2015, the USFWS issued a no-jeopardy biological opinion and incidental take statement that responded to FERC's request for reinitiation of formal consultation. The USFWS' biological opinion included the measures that would occur within the McKenzie Wild and Scenic River because they are interdependent and/or interrelated actions that are reasonably likely to occur and will be subject to authorization by the US Department of Agriculture Forest Service ("USDA Forest Service").

WHEREAS, On July 27, 2015, EWEB requested that the Commission delay issuance of the new license to allow EWEB to complete an updated economic analysis of Carmen-Smith as reflected in the final license application and the October 2008 Settlement Agreement.

WHEREAS, On January 29, 2016, EWEB filed with the Commission a revised project economic analysis and Exhibit D to the final license application for Carmen-Smith, and requested that the Commission continue to delay issuing the new license so EWEB and the Settlement Parties could continue discussions on amending the October 2008 Settlement Agreement.

WHEREAS, On August 3, 2016, EWEB advised the Commission that EWEB and the Settlement Parties reached agreement on all substantive issues and requested the Commission continue to delay issuance of the new license through November 2016 to allow the Parties to make final the Settlement Agreement.

WHEREAS, the Board has discussed with EWEB staff the settlement agreement and the substantive commitments provided for in the settlement agreement.

NOW, THEREFORE, BE IT RESOLVED, that the Eugene Water & Electric Board authorizes the General Manager or designee to enter into the Amended and Restated Offer of Settlement and Joint Explanatory statement and the Amended and Restated Settlement Agreement consistent with the following terms:

- (i) License term of 40 years.
- (ii) Upstream fish passage via a trap and haul system at Trail Bridge Dam
- (iii) Downstream fish passage by modifying the existing Trail Bridge Spillway and gate and hoist system.
- (iv) Project operations are subject fish passage standards established in the Amended and Restated Settlement Agreement.
- (v) Operation of the Trail Bridge Powerhouse will cease to operate as a power generation facility when upstream and downstream fish passage is complete.
- (vi) Actions in the Wild and Scenic River Corridor are authorized and enforced by the United States Department of Agriculture -Forest Service.

and to take any such other actions as needed to implement the Settlement Agreement.

DATED this 1st day of November, 2016.

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 true and exact copy of the Resolution adopted by the Board in its November 1st, 2016 Regular Board Meeting.

Assistant Secretary