



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Brown, Carlson, Barofsky, McRae and Schlossberg
FROM: Jason Heuser, Public Policy and Government Affairs Director
DATE: November 22, 2023 (December 5, 2023, Board Meeting)
SUBJECT: EWEB's 2024 State Legislative Agenda
OBJECTIVE: Approval of Resolution No. 2326, EWEB's State Legislative Agenda

Issue

The Oregon Legislature convenes annually – for approximately six months in odd numbered years and almost two months in even numbered years – to enact laws and to set and adjust the biennial budget for the State of Oregon. EWEB has an active advocacy presence during legislative sessions to represent the interests of EWEB and its customers. The 2024 Oregon Legislative Session will begin Feb. 6, preceded by an orientation period and informational hearings in January.

Background

Prior to the start of each legislative session, the Board adopts general policy directives for advocacy at the Capitol. These directives are approved by a resolution, after a presentation and discussion with the Board. The adopted directives are approved by a resolution, after a presentation and discussion with the Board. The adopted directives guide the work of EWEB's lobbying activities. When political considerations test the applicability of these directives, the General Manager makes a determination as to whether a fundamental shift in direction is required. The Board may be asked to reaffirm their policy or direct staff to make necessary adjustments. This practice is derived from Board Policy GP-13 – Board Role in Legislative Session. EWEB staff will prepare monthly "legislative update" memos to the Board throughout the legislative session that will apprise the Board of the bills or issues that EWEB staff is devoting time and resources toward in support or opposition, the implications of these bills for the utility, and prognostications on the likelihood of these bills advancing in the legislative process.

Discussion

The agenda and length of the upcoming 2024 Oregon Legislative Session is still expected to be narrow and short. EWEB staff do however expect to be proactive in the 2024 session on two key issues:

Hydroelectric Water Rights Conversion Statute Clarification -- SUPPORT

In December of 2021, the Oregon Supreme Court issued a decision in *WaterWatch of Oregon v. the Water Resources Department (WRD) and Warm Springs Hydro LLC*. The key takeaway from the ruling is that water rights for hydroelectric projects, when not used for electric generation for longer than 5 years, could be at risk of being converted to permanent in-stream rights. Prior to this decision it was common for a hydroelectric project not in operation to temporarily lease hydroelectric water rights for another beneficial use, typically instream water rights, as an acceptable method of tolling the statute and avoid potential conversion of the water right (forfeiture). This once proven approach is no longer an option.

EWEB and other electric utilities that own and operate FERC-licensed hydroelectric projects in Oregon pursued legislative concepts in 2023 that would have clarified conversion timelines for hydroelectric facilities that are temporarily not generating. Most parties to the discussions agreed it is neither unusual nor inappropriate for hydroelectric project repairs to require several years for studies, design, and construction. However, agreement could not be reached on details and legislative language before time ran out in the 2023 legislative session.

The 2021 Oregon Supreme Court Decision does include a footnote describing an administrative process that a hydroelectric water rights holder could avail themselves to avoid conversion as a result of a period without electric generation. EWEB has initiated this administrative process with the Oregon Water Resources Department (OWRD) for the Leaburg Power Plant. Because this administrative process is a new method to prevent water rights conversion that is not yet tested and proven, EWEB believes it is prudent for the legislature to address any ambiguity and provide clear clarification and direction on timelines for conversion of hydroelectric water rights and/or codify an administrative solution. EWEB staff have initiated a request for the drafting of a legislative concept that would provide a remedy. If unsuccessful, EWEB expects to pursue a remedy again in the longer regular 2025 legislative session.

Organized Electricity Markets/Regional Transmission Organization Mandates – OPPOSE

Previously, EWEB staff have apprised the board that the legislature has been and will continue holding informational hearings on prospective Western organized electricity market proposals and potential formation of a Regional Transmission Organization (RTO).

EWEB staff have been made aware that the legislature could introduce legislation in the 2024 session that would require electric utilities to report to the legislature on a utility's progress towards joining organized markets or an RTO. Furthermore, the legislation would stipulate specific criteria an electric utility would need to demonstrate to the legislature having been satisfied for an electric utility to elect to join any RTO.

EWEB believes it is not appropriate for the legislature to dictate which criteria the EWEB Board should consider in a decision to participate in an RTO or not, nor is it appropriate or necessary for the legislature to enact a mandatory requirement on utilities to report efforts to join organized markets or an RTO. Such legislation is not necessary and does not have any discernible benefit to the progress of regional efforts towards the formation of organized markets or an RTO. As a practical matter, EWEB staff are unsure of what would be expected of EWEB under this legislation as EWEB is not an electricity balancing authority directly tasked with the responsibility to ensure that power system demand and supply are always balanced by controlling the generation and transmission of electricity in a region to maintain system reliability. EWEB's electric system is located within the balancing authority of the Bonneville Power Administration. As a federal entity, BPA is not subject to the mandates or directives of this legislation.

It is a positive step for the legislature to take an interest in educating themselves and staying engaged on the topic of organized markets and RTO's, but at this time EWEB staff recommend that it be communicated that no legislation is necessary at this time and that the best course of action is for the legislature to continue to regularly hold informational committee hearings on this topic – electric utilities and other sector stakeholders are willing to participate regularly in these hearings and update the legislature on regional progress.

Data Center/Crypto Mining Electric Load Growth -- MONITOR

The legislature unsuccessfully pursued legislation in the 2023 session to address significant electricity load growth fueled by new data centers and crypto-mining locating in consumer-owned utility territories that are not subject to the Clean Electricity Standard for investor-owned utilities that was approved in the 2021 session. This load growth has produced an increase in GHG emissions for Oregon's electric sector. The legislature now looks unlikely to pursue another legislative effort in 2024 to place direct or indirect GHG emission targets on these new load growth drivers. It remains possible the legislature could hold hearings to plan a process for proposed solutions in the 2025 session, including a possible interim task force to evaluate different approaches to this issue.

Recommendation and Requested Board Action

Management recommends that the Board adopt the accompanying resolution as provided.

If you have any questions prior to the Dec. 5 Board Meeting, please contact Jason Heuser at 503-269-5540 or jason.heuser@eweb.org.

**RESOLUTION NO. 2326
DECEMBER 2023**

**EUGENE WATER & ELECTRIC BOARD
2024 LEGISLATIVE SESSION**

WHEREAS, the 2024 Oregon Legislative Session will convene on February 5th, 2024;
and

WHEREAS, the Eugene Water & Electric Board (EWEB) will continue to participate in the legislative process on behalf of its customers; and

WHEREAS, the Board has traditionally adopted positions and guidelines which provide general direction for purposes of supporting or opposing specific legislation; and

WHEREAS, the Board again desires to set forth such legislative directives.

BE IT RESOLVED that the Eugene Water & Electric Board adopts the attached legislative agenda, which includes the following issues and goals:

1. Pursue legislation granting an exception to water right forfeiture statutes as it relates to a hydroelectric water right for a hydroelectric project that has not generated electricity for 5 years at the directive of the Federal Energy Regulatory Commission;
2. Oppose legislation that would preempt EWEB's local decision-making on participation in a Regional Transmission Organization (RTO) or create unnecessary reporting obligations on EWEB regarding efforts to join organized markets or an RTO.

WHEREAS, new and unanticipated legislation can emerge each legislative session.

BE IT FURTHER RESOLVED that the Eugene Water & Electric Board goes on record supporting legislation which generally:

1. Preserves and enhances local control;
2. Complements or improves programs that are cost-effective to our customers; and
3. Preserves, conserves, and restores our natural environment in an equitable and cost-effective manner.

BE IT FURTHER RESOLVED that the Eugene Water & Electric Board will oppose legislation which generally:

1. Withdraws the capability of the Board to best serve EWEB's customers;
2. Duplicates existing laws, therefore complicating the execution of the Board's duties by state or federal mandate;
3. Imposes fees, assessments or procedures that impede the Board's ability to provide high-quality and cost effective service.

DATED this 5th day of December 2023.

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 a true and exact copy of the Resolution adopted by the Board at its December 5th, 2023 Regular Board Meeting.

Assistant Secretary