



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD



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

FROM: Roger Gray, General Manager
Cathy Bloom, Finance Manager
Gail Murray, Purchasing/Risk Manager

DATE: December 19, 2012

SUBJECT: 2013 Board Appointed Consultants and Retained Professionals Ratification

Issue

The first Board meeting of the year the Board appoints professional consultants 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 has given staff direction that he would like to see these contracts competitively solicited to insure that EWEB is receiving the most competitive and best value for these contracts. Following is the tentative schedule for the solicitations (subject to change):

4Q 2012

- General Counsel – completed
- Financial Advisor – completed

1Q 2013

- Real Estate Consultant
- Land Real Estate Appraisal Services

2Q 2013

- Independent Actuary
- Renewable energy credits REC legal counsel
- Trustee Services

3Q 2013

- HR Counsel
- Special Counsel and Power Risk Counsel

4Q 2013

- Independent Auditor & CPA
- Special Counsel BPA Rate Review

3Q 2014

- Bond Counsel

Note: Independent and consulting Engineers was bid in 2012, so no need to rebid until 2017

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 to staff annually to assess the performance of the consultants. All of the consultants being ratified have had positive reviews.

Staff has no objection to ratification of any of these consultants and request the Board ratify all consultants for continued services in 2013.

A very brief overview of each consultant is provided herein:

RETAINED PROFESSIONALS - ATTORNEYS

Contract Information: Luvaas Cobb Law – Eric DeFreest: General Counsel

Tenure: Contract award January 2013, pending board approval.

Contract Information: The contract with Calkins & Calkins was reassigned to DeFreest Law in 2010, upon the retirement of the Calkins’. In 2011, DeFreest Law/Eric DeFreest joined the firm of Luvaas Cobb Law as a partner and the contract was reassigned. In 2012 an RFP was issued for General Counsel services. Luvaas Cobb was determined to be the highest ranked proposer. A new contract will be established with Luvaas Cobb Law in Jan 2013 for General Counsel, pending board approval.

Annual Expenditures (to date): (2011-12 is Luvaas Cobb, 2010 is DeFreest Law; all previous years are Calkins & Calkins)

2012	2011	2010	2009	2008
\$106,147	\$177,665	\$91,412	\$150,296	\$201,689

Luvaas Cobb, through Eric DeFreest maintains an historical perspective and broad range of expertise in municipal utility legal matters which continue to be very valuable to the utility. Eric DeFreest 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 2013

Cable Huston Benedict Haagensen & Lloyd: Special Counsel

Tenure: Retained in the early 1980s

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

Annual Expenditures (to date):

2012	2011	2010	2009	2008
\$401,860	\$445,146	\$432,726	\$557,819	\$1,050,625

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, generation and power contract issues.

Recommendation: Ratify as Special Counsel for 2013

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):

2012	2011	2010
\$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 (10 BPA power and 8 BPA transmission rate cases). Murphy & Buchal will assist in analyzing legal positions and preparing testimony in the BPA rate case.

Recommendation: Ratify as Special Counsel for 2013

Harrang, Long, Gary and Rudnick: Human Resources Counsel

Tenure: Retained in 1992

Contract Information: This contract is in its final year.

Annual Expenditures (to date):

2012	2011	2010	2009	2008
\$104,625	\$ 89,584	\$102,798	\$71,121	\$242,818

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 2013

Mersereau & Shannon: Bond Counsel

Tenure: Retained in 2009

Contract Information: The contract is in its second year and has 3 years remaining.

Annual Expenditures (to date):

2012	2011	2010	2009
\$ 85,000	\$230,000	\$75,000	\$55,000

In late 2009 staff solicited these services and selected Mersereau and Shannon to be EWEB’s Bond Counsel. Mersereau and Shannon have had a long history with EWEB. Staff values their knowledge, expertise and timely response to staff requests.

Recommendation: Ratify as Bond Counsel for 2013

BOARD APPOINTED CONSULTANTS:

Black & Veatch: Independent and Consulting Engineers

Tenure: Retained in 1991.

Contract Information: This contract was solicited in 2012 and is in its first year, with an option to renew for four additional years.

Annual Expenditures (to date):

2012	2011	2010	2009	2008
\$8,000	\$15,000	\$3,900	\$9,000	\$7,200

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 2013

Kenney Consulting: Independent Actuaries

Tenure: Retained over 20 years ago

Contract Information: The contract is in its final year and will be solicited in 2013.

Annual Expenditures (to date):

2012	2011	2010	2009	2008
\$33,500	\$20,000	\$10,000	\$19,650	\$69,200

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. Kenny Consulting is recognized as having a broad range of available expertise and knowledge of the pension reporting requirements.

Recommendation: Ratify as Independent Actuaries for 2013

Davis Wright Tremaine LLP: REC Legal counsel

Tenure: Retained in 2010

Contract Information: This contract is in its third year and has two years remaining.

Annual Expenditures (to date):

2012	2011	2010
\$12,608	\$19,189	\$32,641

Davis Wright Tremaine LLP will provide legal services related to the sales and marketing of Renewable Energy Credits (REC).

Recommendation: Ratify as REC legal counsel for 2013.

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.

Annual Expenditures (to date):

2012	2011	2010	2009	2008
\$114,521	\$128,727	\$93,670	\$116,682	\$116,837

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 seventh audit cycle as EWEB's Independent Auditor and Certified Public Accountant.

Recommendation: Ratify as Independent Auditor and Certified Public Accountant for 2013

Seattle Northwest Securities Corp: Financial Advisor

Tenure: Retained in 2013 (Pending Board approval)

Contract Information: This contract was solicited in late 2012. The contract will be in its first year January 2013.

Annual Expenditures to Date: \$0

The quality of the performance of the financial advisor consultant is often based on their experience with electric and water utilities, rating agency presentations, access to trading floor and current pricing experience. Seattle Northwest Securities Corp. has demonstrated in a recent solicitation process that they possess these qualifications and experience.

Recommendation: Ratify as Financial Advisor for 2013

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.

Recommendation and Requested Board Action

Management recommends ratification of the Board Appointed Consultants and Retained Professionals for 2013 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.