Board Decision
Changing the Timing of Incentive Payments for EBD Hydro, LLC 45 Mile Hydroelectric Project

March 7, 2012

Summary

Authorize a change in the payment schedule of a $2 million incentive for the 45-Mile Hydroelectric Project. Currently, Energy Trust would make five equal payments of $400,000. The proposal is to pay $1,000,000 upon Commercial Operation, with the remaining $1 million paid annually in equal amounts over no less than three years. The new payment structure would be secured to keep Energy Trust's position risk-neutral. The total incentive payment would not change.

Energy Trust Goals

- The 45 Mile project supports Goal 2 of the 2010-2014 Strategic Plan: to accelerate the rate at which renewable energy resources are acquired, helping to achieve Oregon's 2025 goal of meeting at least eight percent of retail electrical load from small scale renewable energy projects.
- This project supports the Other Renewables program goal of developing hydroelectric facilities located outside federal and state protected areas.

Background

- The 45 Mile project is a 3.5 megawatt (MW) hydroelectric facility that would be located on the North Unit Irrigation District main canal near Madras, OR. The project would be owned and operated by EBD Hydro, LLC ("EBD" is short for Earth by Design).
- The project's headworks are in the final stages of approval from the Bureau of Reclamation and construction is expected to begin shortly. The project is expected to reach commercial operation this fall.
- In September 2010 the board approved a $2,000,000 incentive for the project, to be paid in equal amounts ($400,000) over five years.
- In 2011, EBD engaged Skanska as construction contractor for the project. Skanska is one of the world's largest construction firms.
- Skanska wants to be repaid within 45 days of commercial operation. EBD anticipated making part of Skanska's payment with funds from a US Treasury grant in lieu of an investment tax credit. The Treasury says grants may take up to 60 days to be paid, which would not enable EBD to pay Skanska within 45 days.
- To meet Skanska's concern, EBD has asked Energy Trust to increase the first installment on our incentive to $1,000,000 upon commercial operation.

- Staff supports EBD's request if EBD provides security insuring that there is no increase in Energy Trust's risk in the transaction.
- By paying more earlier, Energy Trust will be providing a greater share of the above-market costs. As a consequence, Energy Trust will get an increased share of the Renewable Energy Credits (RECs, which are environmental attributes of renewable energy generation, which can be sold separately and/or used to satisfy renewable energy portfolio requirements).
- Staff presented the proposed change to the Board Policy Committee. The committee agreed that the incentive payment restructuring as proposed does not present additional risk to Energy Trust and recommended that this item should be placed on the Consent Agenda for the March 7 board meeting.

Proposed Incentive Structure Change and Risk Evaluation

The table below shows the difference between the existing authorization and the proposed change.

	Existing Authorization	**Proposed Change**
At Commercial Operation	$400,000	$1,000,000
Number of Additional Annual Payments	4	At least 3
Amount of Additional Annual Payments	$400,000	No More than $333,333
Total Incentive	$2,000,000	$2,000,000

- As shown in the table, the total incentive does not change, but $600,000 is moved forward to be paid at commercial operation. It is this $600,000 that must be secured for the change to remain risk neutral for Energy Trust.

- The number of yearly payments after the first payment will be at least 3 years and up to five years. If the board approves the proposed change this will be settled in the next two months when Energy Trust and EBD amend the existing contract.

- Energy Trust has paid $1,000,000 upon commercial operation for other hydro projects of this scale: $1,000,000 for the Central Oregon Irrigation District's hydro project and $916,000 for the Swalley project payment.

- However, because this payment is being made to a limited-liability company as opposed to a quasi-municipal entity like an irrigation district, additional security is prudent.

- EBD Hydro has agreed to provide security for the $600,000 in a form acceptable to Energy Trust. EBD Hydro would choose from the forms of security listed below:
    1. Cash in a reserve account,
    2. A letter of credit, or
    3. A payment guarantee from a credit-worthy party (using credit-worthiness as defined in a typical utility power purchase agreement).

- In addition, Energy Trust would also take a second position lien on all the assets of EBD Hydro, LLC.

- Energy Trust could benefit from this change in two ways:
    1. By securing $600,000 we would gain security for part of the incentive. We do not have any security for the existing incentive structure.
    2. By shifting funds forward we increase the net present value of Energy Trust's incentive. Because the incentive has more value to EBD, we ask for more Renewable Energy Certificates (RECs) in return (see below).

- Provided that the incentive is secured and the additional annual payments are equally spread over at least three years, Energy Trust is agnostic as to the number of additional annual payments, and would negotiate that with EBD Hydro. All additional annual payments would be contingent upon the project meeting generation goals.

- Under the current payment structure Energy Trust provided 48% of the above market costs and would receive 48% of the project's RECs. Under the proposed structure Energy Trust would receive 51- 53% of the RECs (51% if additional payments are made over five years, 53% if payments are over three years).

Recommendation

Staff recommends changing the incentive payment structure for the 45 Mile Hydroelectric project, by adopting resolution 621, below, authorizing the executive director to sign contracts consistent with the resolution.

RESOLUTION 621

APPROVING A CHANGE IN THE INCENTIVE PAYMENT STRUCTURE FOR THE EBD HYDRO LLC GENERATION PROJECT

WHEREAS:

1. **EBD Hydro LLC proposes to develop at 3.5 megawatt hydropower facility expected to generate 11,750 megawatt hours annually.**
2. **In September 2010 Energy Trust's Board of Directors approved Resolution 563, authorizing a $2,000,000 incentive to be paid in equal amounts ($400,000) over the course of five years to EBD Hydro, LLC to offset the above-market costs of the hydroelectric plant.**
3. **EBD Hydro, LLC has requested a change in the structure of the incentive payment schedule to meet the needs of their contractor.**
4. **Staff proposes to change the incentive payment structure as follows: $1,000,000 to be paid upon commercial operation and the remainder ($1,000,000) to be paid annually in equal increments over no less than three years.**
5. **EBD Hydro, LLC will make this change risk-neutral to Energy Trust by providing $600,000 security in the form of either: 1) Cash in a reserve account, 2) a Letter of Credit, 3) a repayment guarantee from a credit-worthy party, or 4) another form of security acceptable to Energy Trust.**
6. **Energy Trust will further secure this change by taking a second position lien on all of the assets of EBD Hydro, LLC.**
7. **Resolution 563 authorized Energy Trust to take ownership of 48% of the Renewable Energy Certificates (RECs) generated by the project.**
8. **The new payment structure increases the net present value of Energy Trust's incentive and therefore Energy Trust will take ownership of a larger percentage of the RECs generated by the project.**

It is therefore RESOLVED, that the board of directors of Energy Trust of Oregon, Inc. authorizes:

1. **Payment of up to $2,000,000 to be paid to EBD, LLC to offset the above-market costs of the hydroelectric plant, with an initial payment of $1 million on commercial operation and subsequent payments over no less than three years;**
2. **Energy Trust to take ownership of at least 51% of the Renewable Energy Certificates produced by the project; and**
3. **The executive director to enter into a contract(s) consistent with this resolution.**

Moved by: Seconded by:

Vote: In favor: Abstained:

Opposed: [list name(s) and, if requested, reason for "no" vote]