



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1201 NE Lloyd Boulevard, Suite 1100
PORTLAND, OR 97232-1274

October 17, 2023

VIA ELECTRONIC FILING

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Subject: Letter of National Marine Fisheries Service Concerning Noncompliance with
License for the Carmen-Smith Hydroelectric Project, FERC No. P-2422-130

Dear Secretary Bose:

We, the National Marine Fisheries Service (NOAA Fisheries), are writing to request the Federal Energy Regulatory Commission's urgent attention to matters concerning the Carmen-Smith Hydroelectric Project (FERC No. P-2422) in the central Oregon coastal area. NOAA Fisheries would appreciate the opportunity to discuss the contents of this letter with the Commission's regional or headquarters staff, as appropriate, at their earliest convenience. At this time, we wish to engage Commission staff in a discussion of potential actions to be taken by each of our agencies in response to the ongoing noncompliance at the Carmen-Smith project. Our specific concerns are as follows.

Lack of progress toward completion of the fish passage measures required by the license for the Project has reached the point where NOAA Fisheries cannot continue to stand by the plans offered by the project licensee, Eugene Water and Electric Board (EWEB) and their current direction for¹ fish passage, nor can NOAA Fisheries support the biological opinion on file for the project. We greatly appreciate the Commission's sincere concern with full and faithful implementation of project licenses generally and with the license issued to EWEB for the Carmen-Smith Project. However, we have no confidence that EWEB will implement the license as issued, particularly with respect to protections for Upper Willamette River (UWR) Chinook salmon, a species listed as "threatened" under the Endangered Species Act (ESA). Therefore, we are writing to the Commission to apprise you of our concerns and identify a way forward with respect to fish passage.

As the Commission is aware, in 2008, EWEB entered into a settlement agreement with interested parties, including NOAA, for settling relicensing terms and conditions. In January, 2016, with the license application still pending, EWEB submitted a revised economic analysis, which EWEB then used to seek changes to the settlement (resulting in the November 2016 revised

¹ This letter is not intended to represent NOAA Fisheries' complete or final opinions with respect to the ESA-listed species, the status of the project, or possible future actions under the Settlement Agreement or License. The purpose of this informal letter is to begin a conversation to address the noncompliance described in the letter. Any formal opinions or actions will be expressed in accordance with NOAA Fisheries' applicable authorities.



agreement), to reduce what they claimed was the burdensome cost associated with volitional fish passage structures.² The purpose of these structures was to pass salmon around Trail Bridge Dam and access approximately 8 miles of McKenzie River and tributary habitat blocked by the project. EWEB's original estimate of the value of the power produced by the project was nearly three times the actual value, \$35 per megawatt-hour, in 2016, and in realizing its alleged error EWEB turned to the Settlement Parties for changes to the license application. See Order Issuing New License, 167 FERC 61,152 (May 17, 2019), at FN 10. The settlement parties agreed to rely on a less expensive trap-and-haul fish passage system to reduce the costs, even though trap-and-haul systems are generally less effective for providing safe, timely and effective passage through dams for migrating fish. In exchange, EWEB agreed to complete passage within three years of license issuance, a provision which NOAA had emphasized was important given the 11 years that passed from the original settlement until license issuance, in part due to EWEB's request to renegotiate. EWEB also agreed to install volitional passage if trap-and-haul were unable to meet the applicable performance standards within ten migration seasons.

As we write today, the changes requested by EWEB to the settlement agreement have led to significant harm to ESA-listed salmon. Additionally, the economic justification for those changes have proven false.

The Commission's licensing order analyzed the revised settlement agreement and determined that it represented a reasonable balance of project commitments which would net a benefit to EWEB in excess of \$5 million annually. In reaching this estimate, the Commission relied on an average annual value of one megawatt-hour (mwh) of \$51.67.³ According to [Oregon Electricity Rates & Average Electricity Bills \(findenergy.com\)](https://www.oregon.gov/energy/eweb/Pages/default.aspx), accessed on September 18, 2023, EWEB had sold 785,875 megawatt-hours in 2023 for a total revenue of \$75,182,925, which would average out to \$95.66 per megawatt-hour. The Carmen Smith project can generate 259,429 mwh annually. Using the original estimate provided to FERC of operating costs just over \$8 million annually, EWEB has likely generated approximately \$25 million and seen a profit of \$17 million in 2023, more than three times the FERC-estimated \$5 million. Our calculations may not represent the most current or correct assessments of project economics, so we would appreciate the Commission's assistance in confirming or correcting these figures. However, EWEB's own 2023 budget published online appears to confirm these calculations. See <https://www.eweb.org/my-account/budget-and-rate-information>.⁴

In exchange for this reconfiguration of the project settlement provisions and the cost savings they provide, EWEB has delivered none of the fish passage facilities due to be completed in 2022, nor has EWEB made any progress on initial designs, and they have recently submitted a schedule (Enclosure 1) that pushes out completion of structures for fish passage to the year 2031 at the earliest. Throughout this pattern of delay, EWEB has unilaterally asserted that it cannot meet timelines, for reasons that are not apparent or acceptable to the settlement parties. Assertions by

² *Eugene Water & Electric Board* (Order Issuing New License), Project No. P-2242, 167 FERC ¶ 61,152 (May 17, 2019), at 3. *See also*, Eugene Water & Electric Board, Amended and Restated Offer of Settlement and Joint Explanatory Statement In Support of Settlement Agreement and Request for Technical Conference, Nov. 2016, at p.7.

³ *Id.*, p. 41-43.

⁴ EWEB's budget confirms a retail energy price of approximately \$95/mwh, and approximately \$75/mwh wholesale rate, well above the \$35 they claimed in 2016 or the \$51.67 used in the Commission's licensing order.

the settlement parties that EWEB is in noncompliance with its license have been met with a request from EWEB to enter into time-wasting dispute resolution, despite the facts of EWEB's noncompliance being beyond dispute.⁵ EWEB has blamed sinkholes in the vicinity of the project for further, extensive delays. During these delays, EWEB has not demonstrated any significant effort toward producing passage facility designs, nor have they shut down power production at the Trail Bridge powerhouse. They have not taken interim steps to replace the spillway gate to reroute flows. In sum, EWEB has gone from a 2008 commitment to provide first-class volitional passage within seven years, to a ten-year delay (and counting) to provide trap-and-haul, for the alleged purposes of balancing project economics, even though the present cost of power is now very close to EWEB's original 2008 estimate of \$100/megawatt-hour estimate.

Recently we became aware of a declaration sent to the Commission and other agencies (including NOAA) consisting of a signed statement by an EWEB employee who describes the ways that EWEB management instructed employees to delay implementing license requirements, including a pattern of false excuses for delay, as well as falsifying other information. While we find the allegations in the letter disturbing, they mostly pertain to EWEB's fitness to hold a FERC license and raise questions for the Commission to investigate as to their compliance, potential false statements, and other malfeasance. The letter is attached here (Enclosure 2).

However, while NOAA's role is to assure that a licensee implements adequate protections for fish species, notwithstanding the individual motives of the licensee's employees, it is impossible to overlook the allegations in the letter. First, they line up with verbal representations NOAA employees have heard from EWEB managers, essentially admitting that they wanted to delay fish passage implementation in order to avoid the costs. Secondly, these allegations of bad faith behavior resemble what we have observed throughout the implementation of the license. Even without the information in the letter, it has been plain to NOAA that EWEB does not intend to install fish passage facilities on any sort of acceptable timeline, if ever. To the extent these allegations are relevant to NOAA's role, they serve only to reinforce the conclusions NOAA has already reached: that we have no confidence in EWEB complying with its license; and that EWEB must be ordered to construct and operate fish passage facilities immediately, under threat of any and all appropriate sanctions which the Commission may issue.

⁵ There have already been several "dispute resolution" events, including the April 9, 2020 filing by NMFS notifying EWEB that its unilateral decision to delay passage by three years was out of compliance with the settlement. NMFS and other parties gave EWEB the opportunity to cure this noncompliance, but no effort was made to do so. At the dispute resolution meeting EWEB manager Michael McCann stated that the cost concerns which led to the revised settlement were the reason for EWEB choosing to *further* delay action on fish passage measures. While this reasoning is unclear, the intent expressed by EWEB in this meeting to unilaterally delay fish passage was not.

Impacts to UWR Chinook Salmon

The impacts of this delay to threatened UWR Chinook salmon have been and will continue to be extensive. Among the impacts to salmonids at the Trail Bridge Dam described by the NOAA biological opinion issued in 2018 for the Project are:

- Inability to utilize historic salmon spawning habitat in the McKenzie River above the Project due to blocking of adult and juvenile passage;
- Injury and mortality related to the failure to trap adult fish for upstream passage at the temporary trap due to inadequate conditions.
- Injury and mortality resulting from a deficient tailrace barrier where fish may pass upstream to a dead end at the powerhouse tailrace;
- Injury and mortality to juvenile salmonids attempting to migrate downstream through the Trail Bridge turbine or spillway;
- Stranding of juvenile salmonids in Trail Bridge Reservoir;
- Injury and mortality to juvenile salmonids due to excessive total dissolved gas resulting from the spillway operations.

The McKenzie River is both a core population and a genetic legacy population – unique within the Upper Willamette River Chinook Salmon ESU. Uppermost segments of the McKenzie River in the vicinity of the Project are designated “Wild & Scenic” in part for its fish populations and water quality. Nevertheless, the McKenzie River Chinook populations were cited in the most recent 2016 NOAA status review as suffering a 10-year decline, which was labeled as a “concern given that this population was previously seen as a stronghold of natural production in the ESU.” Though still well below recovery goals, the average natural-origin abundance in the McKenzie River has increased by 13%, to a five-year geomean of 1,664 since 2015 According to the 2022 Viability Assessment (Ford 2022). This improvement in abundance, accomplished with no contribution from improvements at Trail Bridge Dam, marks a reversal of the previous 10-year decline.

However, the long-term trend in abundance is still –2%, underscoring the urgent need for passage improvements at the project. The McKenzie River has been a bellwether for natural production in the upper Willamette River basin, with the majority of historical spawning habitat still accessible (Ford 2022). The McKenzie River population remains well below its recovery goal and climate change modeling predicts that in the absence of passage to colder headwater areas, some populations would be at a high risk of extinction by 2040 (Myers et al. 2018). In reaching its no jeopardy conclusion, NOAA’s 2018 biological opinion relied on faithful implementation of the mitigation measures as a way to drastically reduce the otherwise ongoing injury and mortality caused by the project, as well as its blockage of historic Chinook spawning habitat. Specifically, Table 6 of the Incidental Take Statement relied on a three-year window for completion of fish passage facilities, after which the interim impacts to threatened Chinook salmon of the present dam structure would largely cease. With no end in sight of these impacts, it is clear that the conclusions of the biological opinion are no longer accurate.

Path Forward

NOAA is willing to reinitiate consultation on the project license, but not without a concrete plan for completing fish passage measures. Under the status quo, NOAA must consider whether the project's continued operations would jeopardize the continued existence of UWR Chinook, and if so, whether the project must cease operations until a solution to its impacts to ESA-listed species can be implemented to the point where the project can be expected to reverse its devastating impacts to UWR Chinook. We would appreciate the opportunity to work with the Commission in exploring the appropriate next steps.

In NOAA's view, an appropriate solution is for EWEB to design and construct facilities to allow for the volitional upstream and downstream migration of ESA-listed salmonids to be completed on the fastest possible timeline, with no further excuses for delay. Volitional fish passage was the original plan as prescribed in our January 13, 2009 filing regarding Preliminary Fishway Prescriptions.⁶ The current project license also requires volitional fish passage facilities, upon a finding after ten migration seasons that the re-negotiated trap-and-haul system was inadequate. Moreover, volitional passage is the most appropriate path forward for a variety of reasons, including (but not limited to):


- The record of superior performance by volitional passage systems compared to trap-and-haul;
- The fact that EWEB has already studied volitional passage and produced initial designs for structures, which means that they could begin implementing this plan quickly;
- The changing project economics that now support volitional passage structures;
- The lesser obligations required to operate volitional passage structures to ensure safe, timely and effective passage, compared to a trap-and-haul system;
- Our lack of confidence in EWEB faithfully implementing any system, let alone a more onerous operation such as trap-and-haul that must continue indefinitely; and
- The need for the most robust action on passage, including best performing facilities and fastest possible implementation, to make up for the almost 15-year delay in passage facilities since the original settlement agreement was signed.

NOAA is prepared to take any necessary steps toward requiring EWEB to construct and maintain volitional passage at Trail Bridge Dam for juvenile and adult salmonids, as well as provisions for associated facilities such as screens, spillway facilities, minimum stream flows, etc. To advance this plan, NOAA is willing to work with the Commission on a long term resolution, and to implement steps already required by the license which can be taken immediately to reduce these ongoing impacts, such as replacing the spillway gate and ceasing operations at the Trail Bridge Powerhouse.

⁶ National Marine Fisheries Service's Comments, Recommended Terms and Conditions, and Preliminary Fishway Prescriptions for the Application for a Major License for the Carmen Smith Hydroelectric Project (FERC No. P-2242-078), January 13, 2009. See, e.g. Article 30: "(a) The Licensee shall design, construct, operate and maintain a fully volitional fish ladder in a manner designed to provide for the safe, timely, and effective passage of fish over Trail Bridge Dam as provided in this Article 30...."

Thank you for your prompt attention to this very important matter. NOAA staff are available to discuss this further with Commission staff. Please work with Kate Wells at kathleen.wells@noaa.gov or 503-230-5437 in arranging a follow-up discussion.

Sincerely,

A large black rectangular redaction box covering the signature and name of the sender.

Enclosure 1: EWEB schedule 2023 Spring MP Changes
Enclosure 2: Declaration of Scarlett Philibosian

cc: Doug Johnson, FERC
Service List

References:

- Ford, M. J., editor. 2022. Biological Viability Assessment Update for Pacific Salmon and Steelhead Listed Under the Endangered Species Act: Pacific Northwest. U.S. Department of Commerce, NOAA Technical Memorandum NMFS-NWFSC-171.
- Myers, J.M., J. Jorgensen, M. Sorel, M. Bond, T. Nodine, and R. Zabel. 2018. Upper Willamette River Life Cycle Modeling and the Potential Effects of Climate Change. Draft Report to the U.S. Army Corps of Engineers. Northwest Fisheries Science Center. 1 September 2018

Carmen-Smith Project Timeline Changes 2022-2023

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Revised February, 2023

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Fish Working Group 90% Plan Development Consultation

* EWEB will provide updates at 30%, 60%, 90% and 100%

Bold Italics = Projects that are progressing and likely to go to construction by 2024

DECLARATION OF SCARLETT PHILIBOSIAN

I, Scarlett Philibosian, state as follows:

1. I am over 18 years of age.
2. I am currently employed by the Eugene Water and Electric Board (EWEB) as a “Regulatory Compliance Specialist II.” One of my current job duties is listed as follows: “Ensures compliance with various federal laws and regulations affecting the Utility.” I report to Principal Project Manager Patty Boyle, who is in charge of implementing the 2016 Carmen-Smith Settlement Agreement and License. She reports to Generation Manager Lisa Krentz, who is also in charge of implementing the Carmen-Smith Agreement and License.
3. In 2019, I began to have concerns that Manager Boyle was not acting in good faith as to implementation of the Carmen-Smith License. At that time, she said in a meeting that she was intentionally delaying a request for funding for fish passage to gain leverage over settlement parties to pressure them to agree to a deadline extension. She also said she wanted to “control the media” if regulatory agencies protested what seemed to me like intentional delays.
4. In 2020, Manager Boyle instructed me to violate the Federal Energy Regulatory Commission (FERC) Carmen License and 2016 Settlement Agreement by failing to provide the settlement parties the 30-day “consultation process” required in the Settlement Agreement.¹ I believe this was intentional instruction to breach the Settlement Agreement.
5. Also in 2020, Manager Boyle instructed me not to communicate with FERC regarding FERC policies. This was directly contrary to FERC’s direction. I was afraid for my job and tried to reason with Manager Boyle, but she refused to listen.
6. Also in 2020, Manager Boyle told me she intended to falsely claim damage from COVID, and that she planned to state that COVID was causing delays to implementing the License, when really it was under-staffing that was creating delays. She told me she intended to “abuse” her ability to “take shelter” under COVID delays. When I reported this to EWEB’s Assistant General Manager Rod Price, he stated that he was “not surprised” that Manager Boyle would behave this way. This made me concerned that EWEB is aware that Manager Boyle makes false claims, and EWEB management has allowed this behavior to continue.

¹ Per 2016 Carmen-Smith Settlement Agreement, Section 4.2.2.

7. Also in 2020, Manager Boyle acknowledged that she intentionally did not plan to meet the License and Settlement Agreement requirement of constructing fish passage infrastructure within three years of License issuance, in violation of the Settlement Agreement and License.² She also said that she was “looking forward to legal action.” She said this in front of senior EWEB employees.
8. In Spring 2021, Manager Boyle directed me to create an exception to the Carmen License requirements, allowing managers to avoid required staging area plan reviews. I believe not developing a staging area plan in consultation with regulatory agencies and per the Roads, Waste Areas, and Staging Areas Management Plan criteria is a violation of the License and Settlement Agreement.³ Manager Boyle’s direction also led to an additional violation of regulations protecting wetlands near staging areas. I reported these violations to Generation Manager Lisa Krentz.
9. Also in Spring 2021, Manager Boyle told me that, in determining land that EWEB would manage for wildlife habitat, she was planning to make working groups compete against each other. Several weeks later, at a Wildlife Work Group meeting, a Forest Service representative asked Manager Boyle if EWEB would commit to help purchase lands for terrestrial wildlife habitat. EWEB purchasing land for terrestrial wildlife habitat is already a compliant use of the Wildlife Fund.⁴ However, Manager Boyle responded that if the disputing Settlement Parties do not approve the acquisition and restoration of the Quartz Creek riparian area to count as mitigation for fish passage delay, EWEB will spend less money on acquiring properties for terrestrial wildlife habitat. This appeared to violate the License’s requirement to collaborate and build consensus.⁵ I reported these violations to Manager Krentz.
10. In April 2021 and again in August 2022, Manager Krentz told me she believed it was a problem for my position to be housed under Manager Boyle, Manager Krentz, or anyone responsible for implementing the License. She described this conflict of interest as a “fox in the henhouse” situation. However, neither Manager Krentz nor EWEB has done anything to resolve this conflict of interest. In fact, EWEB has reinforced that it does not intend to have any compliance-specific roles.

² Exhibit A to the 2016 Carmen-Smith Settlement Agreement, Articles 29 and 33; and Carmen-Smith Aquatics Management Plan, Section 4.1.3.1 #1 and Section 4.1.2 #2.

³ Carmen-Smith Roads, Waste Areas, and Staging Areas Management Plan, Section 4.8 and subsections; and FERC License Order Article 26 and Article 29.

⁴ Carmen-Smith Wildlife Management Plan, Section 4.5.

⁵ 2016 Carmen-Smith Settlement Agreement, Section 4, including Section 4.2.1; Carmen-Smith License, Appendix G. “Article 1. Consultation and Approval Process.”

11. In May and June 2021, at internal EWEB planning meetings, Manager Boyle refused to ask resource agencies if they would like EWEB to include particular information in the fish passage quarterly progress report, and also refused to allow them to review the report and provide feedback prior to EWEB filing the report with FERC. This seemed to violate the FERC mandate to collaborate and work with the resource agencies regarding progress towards fish passage.⁶ I reported this violation to Manager Krentz.
12. Also in 2021, Manager Boyle instructed me to internally blame the Forest Service for the delay on producing the required Intergovernmental Agreement⁷ and Wood Management Agreement,⁸ when the delay was actually primarily caused by her own mismanagement. She also instructed me to report that delays on required take reports⁹ regarding ESA-listed species were caused by the “fish agencies,” when the delay was actually primarily caused by her own choice to understaff the biologists necessary for timely reports.
13. Around the same time, she instructed me to report to Settlement Parties and to FERC that EWEB was compliant with FERC directives to resolve formal disputes from Settlement Parties.¹⁰ This was not true at the time. I reported this to Manager Krentz.
14. In 2021, Manager Boyle directed me to state to FERC and our Settlement Parties that EWEB had not completed the required GIS natural resource database¹¹ because specialists were deciding how this should be built. This was false; the primary cause for the delay was Manager Boyle’s refusal to internally plan for the project in a timely manner.
15. In 2021, Manager Boyle pressured me to file a required progress report with FERC and the Settlement Parties stating we had fully developed the natural resource GIS database. This was false. I reported this to Manager Krentz.
16. Manager Boyle instructed me to report to FERC that all of EWEB’s Carmen License recreation areas were open. This was easily provable to be false as one area had been closed for five years, and most of the other areas were largely closed. I reported this to Manager Krentz.

⁶ FERC Letter Order to EWEB, “Letter Order Regarding Trail Bridge Dam Upstream and Downstream Fish Passage, Articles 29 and 33.” October 28, 2020.

⁷ Required per Exhibit A to the 2016 Carmen-Smith Settlement Agreement, Article 24 a).

⁸ Required per Exhibit A to the 2016 Carmen-Smith Settlement Agreement, Article 13; and per the Carmen-Smith Aquatics Management Plan.

⁹ Required per the NMFS Biological Opinion, sections 2.9.3 #8 and 2.9.4 #8b; and per the USFWS Biological Opinion, sections 11.0 #1 and 12.0 #1

¹⁰ Per FERC Order to EWEB, October 28, 2020.

¹¹ Required per Carmen-Smith Vegetation Management Plan sections 4.1.3, 4.2.3, 4.3.3, and 4.7.3; and per Transmission Line Management Plan sections 4.1 and 4.2.

17. In 2022, Manager Boyle struck out of EWEB's 2021 Annual Report to FERC¹² accurate information about her choices to understaff and failure to adequately plan to complete required projects on time. I reported this to Manager Krentz.
18. In 2022, Manager Boyle instructed me to report that construction was occurring in a campground at a time when no construction was planned to occur, in order to gain more time under false pretexts to complete an interpretive sign project required by our License.¹³ I reported this to Manager Krentz.
19. In September 2021 and August 2022, I reported to EWEB's Human Resources that I am being pressured to lie to federal agencies and that Manager Boyle and Manager Krentz are not acting in good faith regarding implementation of the Carmen-Smith License. After I reported this to EWEB, Manager Boyle instructed me to delay compliance reports and types of documents she had not previously reviewed, so that she could review and edit them. In doing so, she edits out references I have made to avoidable delays in implementation. EWEB has threatened to remove job duties or discipline me if I do not follow Manager Boyle's direction. My work quality is high, though, and I love my work. Manager Boyle has not found any legitimate reason to discipline me. I believe implementation of the Carmen-Smith license has big impacts on our community and environment, and so I feel I need to report these issues beyond EWEB.
20. FERC's official Policy Statement on Compliance¹⁴ provides, "Compliance official independence is an important hallmark of a strong commitment to compliance. For example, compliance officials should be able to bring compliance matters directly to the Board of Directors or a committee of the Board." The Statement also says that it requires organizations like EWEB to "[i]mplement a comprehensive compliance audit program, including the tracking and review of any incidents of noncompliance, with submission of the results to senior management and the Board." My understanding is that FERC policy in this case expects compliance to be independent from implementation and be able to communicate directly with the Board, but EWEB sees this differently.
21. On November 28, 2022, EWEB's Chief Operating Officer, Karen Kelley, emailed me that EWEB's position that FERC's Policy Statement in Paragraph 22 is a "recommendation and not a requirement," and that it is appropriate for Generation Manager Lisa Krentz, who also oversees implementation, to be the only person from my department who communicates compliance information directly with the EWEB Board.

¹² Required per Exhibit A to the 2016 Carmen-Smith Settlement Agreement, Article 15; and per most Carmen-Smith resource management plans.

¹³ Required per Carmen-Smith Recreation and Aesthetics Management Plan, Section 4.22.

¹⁴ 125 FERC ¶ 61,058, Federal Energy Regulatory Commission, *Policy Statement on Compliance* at ¶ I.8, II.15, Compliance with Statutes, Regulations, and Orders. Issued October 16, 2008.

22. As part of my job duties, I send regular compliance reports to internal EWEB management (Manager Boyle, Manager Krentz, COO Karen Kelly, and Assistant General Manager Rod Price), detailing the compliance status of Carmen projects and reasons for delays. However, since Spring 2022, internal EWEB management has repeatedly sent compliance information to the external EWEB Board, which I believe hides the extent of compliance issues and is inaccurate:
- a. In Q1 2022, 23% of EWEB’s capital License requirements were delayed, and I reported this to EWEB management.¹⁵ Management reported to the Board that only 3% of requirements were delayed.¹⁶
 - b. In Q1 2022, I reported to EWEB management that causes of delays included the management decision to delay planning for fish passage and lack of budget planning, both of which were avoidable delays.¹⁵ However, management reported to the Board that the delays were “due to a combination of dam safety and EWEB staffing issues” and removed my reported information that some delays were due to avoidable management decisions.¹⁶
 - c. During License Year 3, 29% of capital Carmen License requirements were delayed, and I reported this to EWEB management.¹⁷ EWEB management reported to the Board that only 14% of requirements were delayed.¹⁸
 - d. In Q3 2022, I reported to EWEB management that reasons other than dam safety concerns contributed to delays to six projects, which was over half of the 11 delayed requirements.¹⁹ However, EWEB management reported to the Board that “[d]elays are due primarily to dam safety reasons, with staffing and planning issues contributing in some areas.”²⁰
23. On November 29, 2022, EWEB’s Human Resources provided me its investigation conclusion into my reports that I was and continue to be pressured to lie and obfuscate information to FERC and to Settlement Parties. EWEB took the position that my role is “intended to support EWEB employees implementing the License with EWEB’s compliance obligation.” It said that my position description was written incorrectly and should not have said that my role includes “Ensures compliance with various federal laws and regulations affecting the Utility.” If this is true, it means EWEB’s position is that it has no department intended to ensure compliance with the Carmen-Smith Agreement and License.
24. I believe EWEB’s conclusion and compliance management violates FERC’s Policy Statement on Compliance, in that EWEB has not met factors FERC considers for compliance, including: “active support of senior management,...a process for auditing compliance,...the response of a company to misconduct by its employees” and “...disciplinary consequences for infractions of Commission requirements.” EWEB

¹⁵ Current Carmen License compliance report for Q1 2022. EWEB. Apr 4, 2022.

¹⁶ EWEB Strategic & Operational Quarterly Reports, Q1 2022. EWEB. May 3, 2022.

¹⁷ May 2021-May 2022 (License Year 3) Carmen-Smith Compliance Report. EWEB. Jun 13, 2022.

¹⁸ EWEB Strategic & Operational Quarterly Reports, Q2 2022. Aug 2, 2022.

¹⁹ Current Carmen License compliance report for Q3 2022. EWEB. Oct 11, 2022.

²⁰ EWEB Strategic & Operational Quarterly Report, Q3 2022. Nov 1, 2022.

instead seems to be stating it does not intend to have an independent compliance department or set disciplinary consequences for Manager Boyle or Manager Krentz's interference with execution of the Settlement Agreement and License.

25. Since that time, Manager Boyle has continued to take actions I am concerned may violate the law, the Settlement Agreement, and the License. For example, in January 2023, Manager Boyle told me she did not want to give authority to Oregon Department of Fish and Wildlife (ODFW, an agency with regulatory duties under the Carmen Wildlife Management Plan²¹) with respect to ensuring the wildlife protections as designated to ODFW through the Plan. I was concerned that this may violate state law, the Settlement Agreement, and the License, and so I asked her why. She would only tell me, "I don't want to be quoted," which I understood to mean she knew it would violate the law for her attempt to interfere with ODFW's regulatory duties, but she did not want me to report the violations.
26. At this same meeting, Manager Boyle told the EWEB wildlife biologist that she does not want the staff planning emergency work near peregrine falcon nest habitat to be required to notify the wildlife biologist about the work within a certain period of time. She also said that precise notification language "is not appropriate for a License commitment." These statements seem to violate the emergency work protocols in the Carmen Transmission Line Management Plan,²² and to disregard other requirements in the License, including License Article 26,²³ License Article 402,²⁴ and the Wildlife Management Plan.²⁵ Each of these requires providing notice to specific entities within precise periods of time.
27. Also in January 2023, Manager Boyle discouraged staff from notifying agencies about avian casualties by saying that this portion of the Wildlife Management Plan "does not necessarily apply to emergencies." Because the Plan does require notice, even during emergencies, I am concerned this is a violation of the Plan.¹⁸
28. I am very concerned that EWEB continues to act in bad faith regarding the Carmen-Smith Agreement and License. While I am fearful for my job in reporting this information, I care about this community and its environment, and I believe EWEB should be required to have a compliance department that is not coerced, silenced, or improperly motivated by the implementation department.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

²¹ Per sections 2.1 and 2.1.4 of the Carmen-Smith Wildlife Management Plan.

²² Per the Carmen-Smith Transmission Line Management Plan, such as Section 2.2.1 "procedures for restricted zones."

²³ Order Issuing New License (167 FERC ¶ 61,152), pursuant to Article 26 of Appendix G. Issued May 17, 2019.

²⁴ Order Issuing New License (167 FERC ¶ 61,152). Issued May 17, 2019.

²⁵ Carmen-Smith Wildlife Management Plan, Section 4.3.1 "Post-implementation monitoring."

Dated: __1/17/2023_____

A handwritten signature in cursive script, appearing to read "S. Philibosian".

SCARLETT PHILIBOSIAN