



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

7-4

May 19, 1997

**To:** Board of Directors (Electric Industry Restructuring Ad Hoc Committee--Action)  
(Legal and Claims Committee--Action)  
(Organization and Personnel Committee--Action)

**From:** General Counsel

**Subject:** Authorization to Amend the Duncan Weinberg Contract to Increase the Maximum Amount Payable from \$500,000 to \$900,000 for Representation in Electric Utility Industry Restructuring Proceedings

## **RECOMMENDATION(S)**

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It is recommended that the Board of Directors authorize an amendment to Agreement No. 6255 between Metropolitan and the law firm of Duncan, Weinberg, Miller & Pembroke to increase the maximum amount payable by an additional \$400,000 to \$900,000, for advice and representation in legal proceedings arising out of the restructuring of the electric utility industry.

## **EXECUTIVE SUMMARY**

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This letter seeks your Board's authorization to amend Agreement No. 6255 with the law firm of Duncan, Weinberg, Miller & Pembroke to increase the maximum amount payable by \$400,000 for continued advice and representation in various legal proceedings arising out of the restructuring of the electric utility industry. This increase will result in a total contract amount of \$900,000. The amendment amount is included within the consultant expense item in the Legal Department's Annual Budget for fiscal year 1997-98.

## **DETAILED REPORT**

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Your Board has previously approved the hiring of a law firm and a consultant to assist staff in protecting Metropolitan's power interests in light of the then-proposed restructuring of the electric utility industry. The General Counsel went through a competitive selection process, and selected the firm of Duncan, Weinberg, Miller & Pembroke to provide

representation for Metropolitan in electric industry restructuring proceedings. Duncan Weinberg is one of a handful of Washington, D.C. law firms specializing in the representation of public power before the Federal Energy Regulatory Commission (FERC) and appropriate courts and commissions. Duncan was selected on the basis of its expertise and its favorably competitive pricing for legal services. Currently, the maximum amount payable under Duncan's contract is \$500,000.

As discussed in prior Board letters, the proposals for restructuring of California's electric utility industry are now being realized in various proceedings before the California Public Utilities Commission and FERC. The Federal Energy Regulatory Commission has primary jurisdiction over the electric utility industry because interstate commerce is so significantly affected. As the proposals have moved forward, and as discussed in further detail in this month's Board letter regarding Metropolitan's technical consultant, Resource Management International, Metropolitan has continued to actively participate in meetings and proceedings regarding the restructuring of the California electric utility industry at both the state and federal level. Duncan Weinberg has been a significant factor in this participation, assisting in the preparation of (or preparing) motions to intervene and protest, comments, and memoranda analyzing FERC orders and other documents.

In addition to the California electric industry restructuring proposals, FERC has moved forward with its order requiring all utilities over which it has jurisdiction to file open access transmission tariff filings. Duncan Weinberg has prepared motions to intervene and protest, and participated in ensuing status and settlement conferences in Metropolitan's behalf in a number of such filings.

California's restructuring of its electrical utility industry is serving as the prototype for the rest of the nation. As the implementation date rapidly approaches, previously recognized and difficult problems remain, and it is anticipated that new ones will be revealed as details of restructuring continue to develop. It is not known how FERC will respond to the implementation proposals and stakeholder comments filed in response thereto. Additionally, many administrative and legal issues remain for resolution prior to implementation. Metropolitan has been well served by Duncan Weinberg, and continues to need their specialized expertise to protect its power interests, which represent approximately 15% of Metropolitan's annual budget.

Duncan Weinberg's estimated budget is attached hereto for your information. Your Board's approval for an amendment to Duncan Weinberg's contract in the amount of \$400,000 is respectfully requested. This amount is included in the Legal Department's budget for fiscal year 1997-98.

Attachment  
DM:duncn697.doc

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MEMORANDUM

February 27, 1997

TO: Diana Mahmud, Esq.

FROM: Wallace L. Duncan

SUBJECT: Budget Estimate for Legal Services - 7/1/97 through  
6/30/98

You have requested our budget estimate for the legal services which we anticipate providing to Metropolitan Water District during the period from July 1, 1997 through June 30, 1998. Our estimate, which is necessarily general and subject to change, is intended to cover all matters which will be active, or are likely to become active, in the budget period. These matters fall generally in four categories.

1. Proposed sale or disposition of the Federal Power Marketing Administrations.
2. California electric industry restructuring, including:
  - a) Development and implementation of Power Exchange (PX) and Independent System Operator (ISO) proposals (FERC and, as necessary, CPUC proceedings);
  - b) MWD interface with PX and ISO;
  - c) Elimination of market power of dominant ISO and PX participants;

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- d) Restructuring or renegotiating MWD's existing bilateral contracts to accommodate industry restructuring;
  - e) Participation in ISO governance and ratemaking activities.
3. Implementation of FERC Order Nos. 888 and 889, including:
- a) Examination and possible appeals from final rules on open-access and OASIS requirements;
  - b) Development and processing requests for waiver of reciprocity or other requirements of Order Nos. 888, 888A, 889 and 889A;
  - c) Possible development of MWD Open-Access Tariff.
4. Representation of MWD in Open-Access Dockets, including:
- a) Final development and implementation of non-rate terms and conditions;
  - b) Hearings and proceedings on rate and rate-related issues;
  - c) Participation in compliance filings required by the FERC's final order on Rehearing of Order Nos. 888, 888A, 889 and 889A.

During the period from July 1, 1997 through December 31, 1997, we anticipate intense activity in the FERC proceedings related to the implementation of the California restructuring proposal. As you know, the current schedule calls for the commencement of operations of both the PX and the ISO by January 1, 1998. Although I remain skeptical that this schedule can or will be met, we have assumed, for purposes of this budget estimate, that all hearings, technical conferences and related FERC proceedings related to Phase II will be completed during this period. We anticipate that the FERC will also address the rate-related issues in the Open-Access dockets during this same period.

During the period from January 1, 1998 through June 30, 1998, we must address the implementation issues which result from the Commission's initial decision in the PX and ISO proceedings and seek rehearing on all issues with which MWD has a continuing concern. Applications for rehearing and appeals related to the

Commission's decision on rate issues in the Open-Access dockets are also likely to occur during this period.

With respect to the proposed sale or disposition of the Federal Power Marketing Administrations, including the Western Area Power Administration, we understand that new legislative proposals will be made during the current Session and that this subject may become active during the budget time frame.

We also understand that there will be several federal electric industry restructuring bills introduced in this Session of Congress. Since we have not been authorized by MWD to provide legal service in connection with federal electric industry restructuring proposals, we have not provided any estimate of services to be provided by our Firm to MWD in connection with such proposals.


Based upon the foregoing facts and assumptions, we have arrived at the following estimate by using monthly averages for the budget period, as follows:

Monthly Average (fees only)		
July 1997 through		
January 31, 1998	<u>\$40,000</u>	
Total		\$280,000
February 1, 1998 through		
June 30, 1998	<u>20,000</u>	
Total		<u>100,000</u>
Total fees 7/2/97 - 6/30/98		\$380,000
Estimated expenses		<u>20,000</u>
Total (fees & expenses)		\$400,000

These estimates are based upon the further assumption that we will continue to perform work on the restructuring dockets for several clients and that much of the work in these cases may be pro-rated among the several clients we represent. These estimates include only the MWD portion of pro-rated work.

As I have pointed out on several occasions in the past, it is extremely difficult to estimate fees and expenses related to the current restructuring proceedings because the FERC has not adopted a comprehensive procedural schedule in any of the related Dockets and has addressed these matters in an unorthodox and ad hoc basis ever since the initial filing on April 29, 1996.

I hope this estimate meets your expectations and budget requirements. If necessary, I will attempt to provide a more particularized estimate on a month-by-month basis.



Wallace L. Duncan