



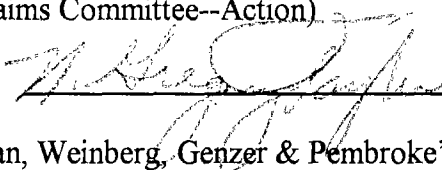
MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

7-8

August 19, 1998

To: Board of Directors (Legal and Claims Committee--Action)

From: General Counsel 

Subject: Authorization to Amend the Duncan, Weinberg, Genzer & Pembroke's Contract to Increase the Maximum Amount Payable for Representation in Electric Utility Industry Restructuring Proceedings

Reference: Appropriation No. 11002

RECOMMENDATION(S)

It is recommended that your Board authorize an amendment to Agreement No. 6255 between The Metropolitan Water District of Southern California (Metropolitan) and the law firm of Duncan, Weinberg, Genzer & Pembroke (Duncan Weinberg) to increase the maximum amount payable by an additional \$475,000 to \$1,375,000, for advice and representation in legal proceedings arising out of the restructuring of the electric utility industry.

EXECUTIVE SUMMARY

This letter seeks your Board's authorization to amend Agreement No. 6255 with the law firm of Duncan Weinberg to increase the maximum amount payable by \$475,000 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 \$1,375,000. The amendment amount is included within the consultant expense item in the Legal Department's Annual Budget for fiscal year 1998-99.

DETAILED REPORT

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 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. Duncan Weinberg was selected on the basis of its expertise and its favorably competitive pricing for legal services. Currently, the maximum amount payable under Duncan Weinberg's contract is \$900,000.

As your Board is aware, the California Independent System Operator Corporation (ISO) and California Power Exchange Corporation (PX) commenced operations on March 31, 1998. There has been a flurry of activity at FERC regarding California electric industry restructuring both prior

and subsequent to the commencement of operations. Numerous ISO and PX agreements have been filed; ISO, PX and investor-owned utility rate cases are being litigated; and numerous changes to the ISO and PX Tariffs continue to be proposed to correct operating problems, or to implement various aspects of ISO or PX operations previously delayed because of software constraints. Indeed, Metropolitan submitted over 70 filings during the last fiscal year in the above-referenced matters. Duncan Weinberg has either prepared or assisted in the preparation of Metropolitan's motions to intervene and protest, comments, and memoranda analyzing FERC orders and other documents, and has represented Metropolitan in settlement discussion with the ISO, PX, FERC and other intervenors.

California's restructuring of its electrical utility industry is serving as the prototype for the rest of the nation. Now that California's electric utility industry has commenced operations under a restructured environment, previously recognized and difficult problems remain, and new ones continue to become manifest as the nascent market evolves. Complex issues remain for resolution in the near future, including the commencement of negotiations regarding the successor ISO transmission access charge which could significantly adversely affect Metropolitan and the California Department of Water Resources.

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 also provided representation in these matters, and kept Metropolitan informed of other industry developments at FERC.

Metropolitan continues to need Duncan Weinberg's specialized expertise to protect its power interests, which represents 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 \$475,000 is respectfully requested. This amount is included in the Legal Department's budget for fiscal year 1998-99.

ACTIONS AND MILESTONES

- Under the General Counsel's authority, Metropolitan entered into a contract to retain the law firm of Duncan Weinberg for advice and representation in legal proceedings arising out of the restructuring of the electric utility industry and assist staff in protecting Metropolitan's power interests. Amendments to this contract have been approved previously by the Board.

CEQA COMPLIANCE / ENVIRONMENTAL DOCUMENTATION

This action is not a project under CEQA, and no environmental review or documentation is necessary for your Board to act on this request.

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MEMORANDUM

February 2, 1998

ADMITTED IN WA ONLY

To: Diana Mahmud, Esq.
The Metropolitan Water District of Southern California

From: Wallace L. Duncan
Duncan, Weinberg, Miller & Pembroke, P.C.

Subject: Budget Estimates for Legal Services to be Provided by DWM&P for MWD during
Fiscal 1998 and 1999

You have requested that we review our previous budget estimates for the remainder of Fiscal 1998 and to prepare and provide a budget estimate for legal services for Fiscal Year 1999 in light of recent filings, rulings and procedural orders in the ISO, PX and related proceedings.

As you know, we are now representing Metropolitan in 42 proceedings before the FERC. Of these, 25 relate to the California electric industry restructuring, and the related Dockets filed by the ISO, PX and the California IOUs.

On January 14, 1998, we provided you with a list of the active ISO and PX Dockets along with our recommendation as to the level of Metropolitan's participation in each of these matters. After some discussion, we reached agreement on the matter of Metropolitan's activity level in each pending Docket, ranging from "no involvement" to "full participation." We have used this list of priorities in structuring the attached budget estimates.

For the most part, the attached budget estimates are based on pending cases which have been noticed by the Commission and for which a procedural schedule has been adopted. We have not attempted to anticipate and provide estimates for the future filings of the ISO and PX which are included in the ISO/PX Staging Plans. We will provide you with supplemental budget estimates as future filings are made and as Metropolitan determines the level of involvement it will have in new cases or Dockets.

To summarize the attached budget estimates, it is our belief that the current Fiscal 1998 budget provided to you on February 27, 1997 will be sufficient to cover the work required in pending Dockets through June 30, 1998. This is not to say that the fees paid between now and June 30, 1998 will be in accordance with the February 27, 1997 budget estimate. There are a number of new Dockets which have developed since our last budget estimates. At the same time, however, several important cases for which we estimated considerable time and expense in the last budget estimate have been (or will be) settled without hearings (e.g., the PG&E and Edison OATs cases) and others have been deferred (e.g., the ISO/PX Compliance Filings of the ISO Tariff, the PX Tariff and the Transmission Control Agreement). Moreover, the Commission's favorable orders of June 30, 1997, October 30, 1997 and, most importantly, December 17, 1997, have considerably narrowed the issues left for litigation. If, through unforeseen circumstances, the workload is greater than now anticipated, we will let you know if we need to supplement the remaining FY 1998 budget.

With respect to our budget estimate for Fiscal 1999 (July 1, 1998 through June 30, 1999), we are comfortable with the estimates provided below for the first six months of the 1999 Fiscal Year inasmuch as the procedural schedule calls for the completion of the hearings in all Dockets before the end of 1998. Briefing and post-hearing procedures will extend into the first quarter of 1999. Beyond that, it is very difficult to budget for the first six months of 1999, and particularly for the second quarter of 1999. With this caveat, we project a 1999 fiscal budget for our services at \$475,000, including expenses and a \$15,000 contingency.

The foregoing estimate covers all matters which will be active, or are likely to become active, in the budget period. These matters fall generally in four categories as follows:

1. Proposed sale or disposition of the Federal Power Marketing Administrations and Federal Electric Industry Restructuring Legislation

These matters are largely dormant or inactive at this time, although new proposals for disposition of the assets of the Federal Power Marketing Administrations are still under consideration and may surface during the current or next session of Congress. Federal Electric Industry Restructuring legislation is currently under active consideration in Congress. We are monitoring these matters for Metropolitan to ensure that Metropolitan is timely advised of any proposal which may affect its interests. For budget purposes, we have budgeted \$500/month for FY 1989 to cover these matters.

2. California Electric Industry Restructuring Proceedings, including:

- a) All dockets involving the development and implementation of the California ISO and PX, including the implementation of the ISO and PX Tariffs and the Transmission Control Agreement, implementation of all ISO and PX protocols and Operating Agreements, and the rate cases involving the ISO Grid Management Charge and the PX Administration Charge.
- b) All dockets filed by the California IOU's (principally PG&E and Edison) involving ISO-related agreements or tariffs including Transmission Owner Tariffs, Must-Run Agreements, Scheduling Coordinating Agreements and Responsible Transmission Owner Agreements.
- c) The PG&E and Edison "Pass-Through" dockets in which PG&E and Edison seek to pass-through the ISO Grid Management Charge and PX Administration Charge to transmission customers of PG&E and Edison.
- d) Compliance filings to be made by the ISO, PX or IOUs to conform tariffs, agreements or protocols to the December 11, 1997 Order of the FERC.
- e) ISO development of alternative firm transmission arrangements, stakeholder review of the ISO's 6/30/98 proposal, and participation in new transmission rate schedule docket to be filed on or before 1/1/99.
- f) Metropolitan's interface with the PX, ISO or Participating Transmission Owners.
- g) Elimination of market power of dominant ISO and PX Participants (note: this issue has been largely resolved in prior orders of the FERC. The issue may resurface in the context of IOU divestiture of facilities, administration of Must-Run Agreements, or as a result of operating experience under the ISO/PX regime).
- h) Participation in ISO governance and ratemaking activities, including stakeholder input to ISO development of new pricing methodology for use of ISO Controlled Grid and services.

3. Implementation of FERC Order Nos. 888, 888-A, 889, and 889-A, including:

- a) Review and advice respecting the outcome of appeals now pending in the U.S. Court of Appeals;
- b) Development and processing of requests for waiver of reciprocity and other requirements of Order Nos. 888, 888-A, 889 and 889-A; and

- c) Possible Development of Open-Access tariff for Metropolitan or review and advice respecting Open Access tariffs filed by other entities.

4. Representation of Metropolitan in Sixteen Pending Open Access Dockets.

(Note: Several OA Dockets are now in final settlement stage, including OA Tariff proceedings initiated by PG&E and Edison. Metropolitan's participation in other OA Dockets will be nominal).

During the period from July 1, 1998 through January 31, 1999, we anticipate intense activity in the FERC proceedings related to the implementation of the California restructuring proposal. By orders of the Commission, the Chief Administrative Law Judge and the Presiding Administrative Law Judges in various dockets, hearings have been scheduled in dockets related to the IOU TO Tariffs, PX Administration Charge, ISO Grid Management Charge, Must-Run Agreements and Rates, and PG&E and Edison pass-through dockets. These hearings and prehearing procedures (discovery, motions and submission of testimony) will be in progress at various stages during FY 1999. Hearings should be concluded in the first half of FY 1999 and briefing, post-hearing procedures, decisions and appeals will occur in the last half of FY 1999.

Metropolitan has committed to various levels of participation in these proceedings as reflected on the attached listing. The level of participation in these proceedings have been factored into these estimates.

Based upon the foregoing facts and assumptions, we have arrived at the following estimate by using monthly averages for the budget period (July 1, 1998 through June 30, 1999), as follows:

Monthly Average (fees only)	
July 1, 1998 through January 31, 1999	\$ <u>40,000</u>
subtotal	\$280,000
February 1, 1999 through June 30, 1999	\$ <u>25,000</u>
subtotal	\$ <u>150,000</u>
Total Fees 7/1/98 - 6/30/99	\$430,000
Estimated Expenses	\$ <u>30,000</u>
Total (fees and expenses)	\$460,000
Contingency	\$ <u>15,000</u>
Total	\$475,000

If you have any questions concerning our budget estimate for either FY 1998 or FY 1999, or other assumptions on which our estimates are based, please give me a call.



Wallace L. Duncan

Attachment

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

FERC PROCEEDING SUBJECT	LEVEL OF METROPOLITAN PARTICIPATION
Proceedings with a Procedural Schedule	
ISO/PX Rates Phase I: ISO Cost of Service and PX Rates	Monitor for cost allocation between ISO and PX; moderate for PX rates
ISO Rates Phase II: ISO Rates	Full
PG&E Pass-Through of ISO and PX Rates	Full
SCE Pass-Through of ISO and PX Rates	Full
PG&E Transmission Owner Tariff	Full
SCE Transmission Owner Tariff	Full
SDG&E Transmission Owner Tariff and Must-Run Agreements and Rates	(possible ignore)
PG&E Must-Run Agreements and Rates	Intervene/monitor only
SCE Must-Run Agreements and Rates	Intervene/monitor only
Proceedings with No Current Procedural Schedule	
ISO Tariff and ISO Protocols Refiling	Full
PX Tariff and PX Protocols Refiling	Moderate
Transmission Control Agreement	Full
PG&E, SCE and SDG&E UDC Agreements	Monitor
Service Level Agreement with PG&E, SCE and SDG&E	Intervene, but monitor only
PG&E Responsible PARTICIPATING TRANSMISSION OWNERS Agreement	Full
SCE Responsible PARTICIPATING TRANSMISSION OWNERS Agreement	Full
ISO Must-Run Unit Selection	Monitor
ISO Revised Staging Plans	Monitor
ISO filing of a plan to implement firm transmission rights and/or transmission congestion contracts by June 30, 1998	Full or moderate
BPA Interconnected Control Area Operating Agreements	Monitor
Other Interconnected Control Area Operating Agreements	Monitor/moderate
PG&E Scheduling Coordinator Agreement	Intervene/monitor only
Other Scheduling Coordinator Agreements	None (except Edison-Intervene/monitor only)
Existing Operating Agreements	Intervene/monitor only
Meter Service Agreements	Intervene/monitor only
Participating Generator Agreements	Intervene/monitor only
Interim Black Start Agreements	Intervene/monitor only