

- **Board of Directors**
Legal, Claims and Personnel Committee

June 10, 2003 Board Meeting

9-8

Subject

Approve amendment to increase by \$75,000 the contract for expert witness services with Whitfield Russell Associates in *California Independent System Operator Corporation*, FERC Docket No. ER00-2019-000
[Any discussion of litigation to be heard in closed session. Conference with legal counsel—existing litigation; to be heard in closed session pursuant to Gov. Code § 54956.9(a)]

Description

The California Independent System Operator Corporation (ISO) is seeking the Federal Energy Regulatory Commission's (FERC) acceptance of its proposed transmission access charge design, which currently features hourly transmission pricing. The Department of Water Resources (DWR), State Water Contractors (SWC) and Metropolitan have protested the ISO's design because it does not feature on-peak/off-peak transmission pricing and does not adopt the country's predominant transmission rate design whereby each customer pays for transmission service based upon its use of the transmission system at system peak (12-CP pricing). Since DWR's State Water Project uses the transmission system to a far greater extent during off-peak periods, its transmission costs will be substantially decreased, by millions of dollars a year, if FERC can be persuaded to order the ISO to implement either off-peak or 12-CP transmission pricing.

Whitfield Russell of Whitfield Russell Associates is an engineer with a law degree and has provided expert testimony in various proceedings at FERC for over 20 years. Under the firm's agreement with Metropolitan, Mr. Russell and his associates have expended time reviewing the ISO's case, developing discovery, reviewing discovery received and developing an initial draft of testimony. FERC has scheduled the ISO transmission access charge proceeding for hearing in late September 2003. The firm's services will continue to be needed to assist Metropolitan and the SWC in discovery, review of testimony, reply testimony and cross-examination. Metropolitan and the SWC are coordinating this work with that of DWR and its expert witness, who is an economist.

The maximum amount payable under the current contract is \$95,000, which will soon be exhausted. Staff estimates that up to an additional \$75,000 may be needed for expert testimony and assistance in preparation for the FERC hearing. The firm's rates range from \$250/hr. for the services of Mr. Russell, to \$40/hr. for support staff services. Metropolitan and the SWC are sharing the cost of outside counsel for this matter.

Policy

Metropolitan Water District Administrative Code § 6431: Authority to Obtain Expert Assistance

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, the proposed action is not subject to CEQA because it involves other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378(b)(4) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options/Fiscal Impacts

Option #1

Adopt the CEQA determination and authorize the amendment of the contract with the law firm of Whitfield Russell Associates to increase the maximum compensation payable by \$75,000 to complete testimony and appear at hearing before the Federal Energy Regulation Commission.

Fiscal Impact: Maximum of an additional \$75,000


Option #2

Terminate contract with Whitfield Russell Associates and have no expert witness for upcoming hearings before the Federal Energy Regulatory Commission.

Fiscal Impact: Unquantifiable impacts from loss of key expert; staff time considerations

Staff Recommendation

Option #1


Jeffrey Kightlinger
General Counsel

5/16/2003

Date