

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

July 8, 2003 Board Meeting

8-9

Subject

Approve amendment to professional services contract with the law firm of Duncan, Weinberg, Genzer & Pembroke in the amount of \$250,000 for electric industry restructuring legal services

Description

The law firm of Duncan, Weinberg, Genzer & Pembroke (DWGP) is one of a handful of boutique law firms in Washington, D.C., specializing in representation of public power utilities before the Federal Energy Regulatory Commission (FERC). Since California embarked on its ill-starred restructuring of the electric utility industry, Metropolitan has been represented by DWGP in the ensuing legal proceedings at FERC. The firm also actively represents five other public power agencies and occasionally the State Water Contractors at FERC on California electric industry matters.

Staff counsel has worked very closely with DWGP attorneys in preparing filings for Metropolitan and the State Water Contractors at FERC and at federal courts of appeal. Over the years, Metropolitan has filed hundreds of motions and comments on various filings by the California Independent System Operator, the California Power Exchange, Southern California Edison Company, Pacific Gas and Electric Company, new owners of generating facilities, and on proposed regulatory rulemaking. More recently, Metropolitan has prepared discovery and filed testimony in litigated proceedings. As a result of the numerous filings, Metropolitan staff has gained valuable knowledge in this specialized legal practice. Staff prepares most of Metropolitan's pleadings, and forwards them to DWGP for review and filing. This practice enables Metropolitan to save considerable attorneys' fees in the preparation of such filings, yet preserves Metropolitan's ability to obtain expert advice as needed. It also frees up valuable support staff time, since DWGP combines the copying and service of Metropolitan's documents with those of its other California clients. More often than not, the service lists for FERC proceedings contain many if not scores of entries. Additionally, Metropolitan shares the cost of FERC appearances by DWGP on procedural matters with its other clients. This practice saves staff travel time and expense, and reduces the cost of DWGP representation to Metropolitan. Finally, the availability of DWGP to represent Metropolitan at FERC on certain proceedings has enabled staff counsel to assist DWR legal staff on significant State Water Project power matters.

During the past year, DWGP has actively represented Metropolitan and the State Water Contractors in the California ISO refund proceeding and various other matters at FERC. The refund proceeding remains pending at FERC. Within the next few months the ISO's transmission access charge is set for hearing at FERC. If Metropolitan and DWR are successful, the State Water Project will save a minimum of several millions of dollars annually in transmission charges. In addition, Pacific Gas and Electric Company has recently submitted a filing at FERC wherein it seeks to increase DWR's transmission charges from \$9 million to \$21 million annually. Metropolitan's ability to represent its interests in each case will be compromised unless DWGP's contract is amended.

The proposed amendment would increase the maximum amount payable by \$250,000, to a total of \$2,075,000, and would maintain current hourly billing rates, which range from \$290/hr. for senior attorneys to \$100/hr. for paralegals. The amendment amount is estimated to cover approximately 12 months' worth of activity by DWGP. The Legal Department has budgeted the requested funds in this year's board-approved budget.

Policy

Metropolitan Water District Administrative Code § 6431: Employment of Special Counsel

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 (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 approve amendment to professional services contract with the law firm of Duncan, Weinberg, Genzer & Pembroke.

Fiscal Impact: \$250,000

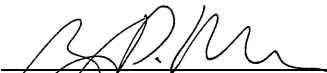
Option #2

Do not approve amendment to professional services contract, and require all legal services involving proceedings before FERC to be provided exclusively by the Legal Department.

Fiscal Impact: Unknown

Staff Recommendation

Option #1

 _____ Sidney Bennion for Jeffrey Kightlinger General Counsel	6/12/2003 _____ Date
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