

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

June 8, 2004 Board Meeting

8-5

Subject

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

Description

The law firm of Duncan, Weinberg, Genzer & Pembroke (DWGP) is one of a handful of law firms in Washington, D.C., specializing in representation of public power utilities before the Federal Energy Regulatory Commission (FERC). Metropolitan has been represented by DWGP at FERC since California's investor-owned utilities submitted their initial FERC filings to implement restructuring of the electric utility industry in 1996. 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 continues to work very closely with DWGP attorneys in all pending matters at FERC and at federal courts of appeal. 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. 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. Metropolitan has also reduced its attorneys' fees by sharing the cost of representation on certain important matters with the State Water Contractors, where Metropolitan's interest in the proceeding derives from its State Water Project power cost exposure.

During the past year, DWGP's primary task involved the representation of Metropolitan and the State Water Contractors in the California Independent System Operator's (ISO) transmission access charge hearing held last fall at FERC. While the Presiding Administrative Law Judge found that Metropolitan and the State Water Contractors presented "strong arguments" in support of their proposed transmission pricing design, she concluded prior FERC orders prevented her from granting our requested relief. We have recently appealed her decision to FERC, where the Commission will review the matter *de novo*. Also, DWGP assisted in the negotiation of a favorable settlement of a transmission rate filing by Pacific Gas and Electric Company, which would have more than doubled State Water Project transmission costs. Unless the settlement is rejected by FERC, which is unlikely, the cost of SWP's transmission service will only increase slightly from the present rate, which is remarkable considering that it was last adjusted over 10 years ago.

In the upcoming year, Metropolitan will continue to need DWGP's expertise on the ISO transmission access charge matter. Also, once the California ISO refund proceeding is finally resolved later this year, the Ninth Circuit's stay of numerous appeals of this multi-billion dollar matter should be lifted, allowing them to proceed. Finally, the California ISO continues its market redesign efforts, where State Water Project interests require protection from multiple cost-shifting opportunities. Metropolitan's ability to represent its interests in each case will be compromised unless DWGP's contract is amended to provide additional funding.

The proposed amendment would increase the maximum amount payable by \$250,000 for the coming year, to a total of \$2,325,000 (since 1996), and would increase current hourly billing rates to an amount ranging from \$310/hr. for senior attorneys to \$100/hr. for paralegals. Metropolitan has periodically sought bids from other

firms for this work in order to ensure that the rates are competitive and DWGP has consistently provided the most competitive rates. 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


Jeffrey Kightlinger
General Counsel

5/17/2004

Date