

**Board of Directors
Legal and Claims Committee**December 13, 2005 Board Meeting

7-2

Subject

Authorize increase of \$300,000 in maximum amount payable under professional services contract with the law firm of Duncan, Weinberg, Genzer & Pembroke, P.C. 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 seven other public power agencies and occasionally the State Water Contractors at FERC on California electric industry matters, and represents a significant number of publicly owned electric utilities across the country.

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.

In the near term, Metropolitan will especially benefit from DWGP's analysis, on behalf of its clients nationwide, of numerous pending FERC initiatives mandated under the Energy Policy Act of 2005 (EP Act). The EP Act addressed a number of issues of concern to Metropolitan, including a limited expansion of FERC's jurisdiction over publicly owned electric utilities, establishment of FERC authority over electric reliability, and enhancement of FERC's enforcement authority to remedy violations of the Federal Power Act. Also, the EP Act granted FERC exclusive jurisdiction over Enron's claims for termination payments arising under contracts entered into during California's energy crisis. Thus, the contract giving rise to almost 90 percent of Enron's termination payment claim against Metropolitan will be resolved at FERC, rather than bankruptcy court. In addition, the California Independent System Operator (CAISO) is expected to file its tariff reflecting a wholly revised market design at FERC this month, which filing will likely trigger further litigation. Any new tariff necessarily presents multiple cost-shifting opportunities. DWGP expertise will improve Metropolitan's ability to protect the State Water Project and Colorado River Aqueduct from any such cost-shifts.

During the past year, DWGP represented Metropolitan in preparation of the joint municipal utility appellate briefs of FERC's order directing such utilities to provide refunds for their sales to the CAISO. The Ninth Circuit recently reversed the FERC orders, which has resulted in multi-million dollar savings for the State Water Project. In addition, DWGP has represented Metropolitan in the pending Order to Show Cause why Enron should not be required to disgorge earned profits, in light of egregious misconduct and violations of the Federal Power Act. This matter is currently stayed, but will likely be heard in the spring of 2006. DWGP will also provide assistance in the Metropolitan/State Water Contractor appeal of FERC's denial of time-sensitive transmission charges, currently pending before the D.C. Court of Appeals; no briefing dates have yet been established.

The proposed amendment would increase the maximum amount payable by \$300,000. This projected annual amount of \$300,000 is quite low in comparison to the level of legal fees paid by other publicly owned electric utilities. Metropolitan is able to control its outside legal fees by doing much of the work in-house, by being very selective in deciding which proceedings to actively participate in, and by sharing costs with other DWGP clients wherever possible. The amendment amount is estimated to cover approximately 12 months' worth of activity by DWGP, and is included in this year's Legal Department board-approved budget.

Policy

Metropolitan Water District Administrative Code Section 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 (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, P.C.

Fiscal Impact: \$300,000

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

11/9/2005
Date