



● **Board of Directors**
Legal and Human Resources Committee

March 10, 2009 Board Meeting

7-6

Subject

Authorize increase of \$300,000 in the maximum amount payable under professional services contract with 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. This makes it possible for Metropolitan to tap into DWGP's expertise at an efficient, shared rate.

In the near term, Metropolitan will 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. DWGP is providing its advice regarding how the mandates of the EP Act will interplay with current renewable energy initiatives included in the federal stimulus bill and how these will affect Metropolitan. DWGP is also sharing with Metropolitan its expertise regarding FERC's approval of electric reliability standards prepared and enforced by the North American Electric Reliability Corporation (NERC). These standards apply to Metropolitan, imposing strict new operational standards and record-keeping requirements under NERC's audit oversight.

Additionally, the California Independent System Operator's (CAISO) revised market design, referred to as Market Redesign and Technology Upgrade (MRTU), will become effective on April 1, 2009. In anticipation of this deadline, CAISO is filing a number of compliance matters with FERC for its approval. DWGP expertise will improve Metropolitan's ability to monitor these filings and to protect its State Water Project and Colorado River Aqueduct costs from any shifts or increases under MRTU.

Also, DWGP currently represents Metropolitan before FERC in monitoring and contesting applications for wholesale transmission rate increases by Southern California Edison Company and Pacific Gas & Electric Company. Rate increases are being filed almost every year by the two companies. Metropolitan reviews and contests those with unjust and disproportionate impacts on Metropolitan.

Staff counsel continues to work very closely with DWGP attorneys in all wholesale electric utility matters at FERC. 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 saves on costs because 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.

The proposed amendment would increase the maximum amount payable by \$300,000. This amount is estimated to cover legal fees and expenses for at least the next year, taking into consideration increased work for the rate cases and MRTU implementation. The last contract increase, also in the amount of \$300,000, was approved in 2005. Metropolitan is able to control its outside legal fees by doing much of the work in-house, by being selective in deciding which proceedings to actively participate in, and by sharing costs with other DWGP clients wherever possible, as described above.

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). Also, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) 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 15061(b)(3), 15378(b)(2), and 15378(b)(4) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and authorize the General Counsel to amend the agreement with Duncan, Weinberg, Genzer & Pembroke, P.C. to increase by \$300,000 the maximum amount payable under the contract to a total of \$2.925 million in order to assist Metropolitan with electric utility legal services.

Fiscal Impact: Legal costs of up to \$300,000

Business Analysis: The additional resources provided by outside counsel with specialty in the field of public electric utility work assists the Legal Department staff to protect Metropolitan's power resources and control electrical costs. Additionally, having local counsel in Washington, D.C. avoids staff travel expenses.

Option #2

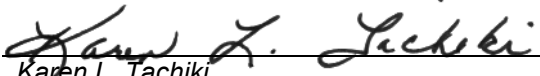
Do not authorize the General Counsel to amend the agreement and require all electric utility legal services to be provided by the Legal Department.

Fiscal Impact: Unknown

Business Analysis: Metropolitan's ability to handle FERC-related energy issues would be adversely affected.

Staff Recommendation

Option #1

 2/25/2009
Karen L. Tachiki Date
General Counsel

BLA #6644