



● **Board of Directors**
Legal and Claims Committee

10/11/2011 Board Meeting

7-5

Subject

Authorize increase of \$100,000 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 the State Water Contractors (SWC) 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.

Currently, DWGP 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 filings with unjust and disproportionate impacts on Metropolitan. DWGP's representation has resulted in significant cost reductions in the State Water Project's (SWP) annual transmissions costs, of which Metropolitan pays the lion's share. DWGP also represents Metropolitan in a number of proceedings related to the California Independent System Operator's revised market design, referred to as Market Redesign and Technology Upgrade, which was recently implemented.

Staff assists DWGP attorneys with Metropolitan's pleadings, which enables Metropolitan to save considerable attorneys' fees in the preparation of such filings while preserving Metropolitan's ability to obtain expert advice as needed. 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. In particular, staff has recently developed a plan, in concert with the SWC and DWGP, under which SWC will assume Metropolitan's representation in most SWP-related FERC proceedings.

The proposed amendment would increase the maximum amount payable by \$100,000. This amount is estimated to cover legal fees and expenses for at least the next year. The last contract increase, in the amount of \$300,000, was approved in 2009. 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).

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

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 \$100,000 the maximum amount payable under the contract to a total of \$3.025 million in order to assist Metropolitan with electric utility legal services.

Fiscal Impact: Legal costs of up to \$100,000

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



Marcia L. Scully
Interim General Counsel

9/20/2011

Date