



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

5/13/2014 Board Meeting

---

**8-3**

**Subject**

---

Authorize increase of maximum amount payable under contract with Duncan, Weinberg, Genzer & Pembroke, P.C. for legal services related to Federal Energy Regulatory Commission by \$150,000 to an amount not to exceed \$3,175,000

**Executive Summary**

---

This is a request from the General Counsel's Office to increase the maximum amount payable under a contract with outside counsel by \$150,000, for the purpose of assisting the General Counsel and staff in participating in proceedings before the Federal Energy Regulatory Commission.

**Details**

---

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). DWGP has represented Metropolitan 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 the State Water Contractors (SWC) and seven other public power agencies at FERC on California electric industry matters. This makes it possible for Metropolitan to tap into DWGP's expertise at a shared rate, as well as share the costs of FERC appearances.

Currently, DWGP represents Metropolitan and the SWC before FERC in monitoring and contesting applications for wholesale transmission rate increases by Southern California Edison Company, Pacific Gas & Electric Company, and San Diego Gas & Electric, as well as numerous merchant transmission providers. Metropolitan reviews and contests those filings that have inappropriate or disproportionate impacts on Metropolitan and the State Water Project (SWP). DWGP's representation has resulted in significant cost reductions in the SWP's annual transmissions costs, of which Metropolitan pays the lion's share. DWGP also represents Metropolitan in proceedings related to the California Independent System Operator's market operations and planning processes.

Staff assists DWGP attorneys with the pleadings of both Metropolitan and the SWCs, 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. As noted in the last request for an increase in the maximum amount payable under the contract with DWGP in 2011, the SWC has now assumed Metropolitan's representation in most SWP-related FERC proceedings. This arrangement was warranted by the common interests of Metropolitan and the SWC in FERC matters impacting the SWP, and it has resulted in significant cost savings to Metropolitan.

The proposed amendment would increase the maximum amount payable by \$150,000. Based on anticipated participation in FERC proceedings, this amount is estimated to cover legal fees and expenses for at least three years. The last contract increase, in the amount of \$100,000, was approved in 2011. 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 that the proposed action is not subject to CEQA and authorize the General Counsel to amend the agreement with Duncan, Weinberg, Genzer & Pembroke, P.C. to increase by \$150,000 the maximum amount payable under the contract to a total of \$3 .175 million in order to assist Metropolitan with legal services.

**Fiscal Impact:** Legal costs of up to \$150,000

**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.

### 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 Scully  
 General Counsel

4/21/2014

Date

  
 \_\_\_\_\_  
 Jeffrey Kightlinger  
 General Manager

4/28/2014

Date