



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: SEPTEMBER 21, 2021

FROM: CITY ATTORNEY'S OFFICE WARDS: ALL

SUBJECT: APPROVE THE ANNUAL LEGAL BUDGET FOR LAW FIRM OF THOMPSON COBURN IN AN AMOUNT NOT TO EXCEED \$600,000 AND INCREASE TO THE BUCHALTER BUDGET IN AN AMOUNT NOT TO EXCEED \$20,000

ISSUE:

To consider approval of the annual legal budget for FY 2021-2022 for the law firm of Thompson Coburn in an amount not to exceed \$600,000 and approval of an increase to the legal budget for Buchalter in an amount not to exceed \$20,000.

RECOMMENDATION:

That the City Council:

1. Approve the annual legal budget for FY 2021-2022 for the law firm of Thompson Coburn in an amount not to exceed \$600,000; and
2. Approve an increase the legal budget for the law firm of Buchalter in an amount not to exceed \$20,000.

DISCUSSION:

City Charter section 702, "Eligibility, powers and duties of City Attorney," provides, in part, that "the City Council shall have control of all legal business and proceedings and may employ other attorneys to take charge of any litigation or matter or to assist the City Attorney therein."

The City Council has previously approved the retention of each law firm (Thompson Coburn and Buchalter). Each law firm has executed an Attorney Services Agreement with the City of Riverside for the provision of legal services. Through the annual budgeting process, the City has approved funds for the use of outside legal counsel. The City Council has previously approved budgets for each of these law firms and the City Attorney's Office is now seeking either the approval of an annual budget (Thompson Coburn) or an increase to an existing budget (Buchalter).

Thompson Coburn

Thompson Coburn is a law firm based in Washington DC that specializes in representing publicly

owned electric utilities. In general, their work for the City includes monitoring and assisting with nearly all aspects of federal regulatory activity within the purview of the Federal Energy Regulatory Commission ("FERC") that may affect the City's electric utility. Under the Federal Power Act ("FPA"), FERC regulates public utilities that engage in wholesale energy sales and/or provide interstate transmission services. Although the City's electric utility, as a department of a municipality, is not directly subject to FERC regulation under Part II of the FPA, FERC does regulate the California energy markets and transmission system administered by the California Independent System Operator Corporation (the "CAISO") and the activities of Southern California Edison Company ("SCE"), the utility with which the City's electric system is interconnected. Thus, FERC's regulations, policies, and adjudications can significantly impact the City's electric utility. These impacts may be direct or indirect financial impacts, or they may consist of impacts to the City's resource procurement, transmission and/or distribution system access, market participation, and/or compliance activities. For the same reasons, Thompson Coburn closely monitors and actively participates in stakeholder initiatives relating to the CAISO energy markets and transmission system.

For fiscal year 2021-2022, Thompson Coburn estimates a budget of \$600,000 and the City Attorney is asking for approval for that expenditure. The Thompson Coburn budget for FY 2020/21 was \$715,000, of which \$534,000 was expended.

The City realizes a cost savings from the retention of Thompson Coburn. For example, FERC's regulation of the transmission system administered by the CAISO includes approving the rates charged by the CAISO for use of the transmission lines. The City, when it uses the transmission lines administered by the CAISO, pays that rate. The rates are based upon the costs submitted to FERC by the transmission owners who have turned over operational control of their transmission lines to the CAISO. The City reviews all cost submissions from these transmission owners and submits objections to FERC, through Thompson Coburn, of any inappropriate costs.

Over a 10 year period, from 2010 through 2020, the City estimates that it has saved \$23,711,325 in reductions to the rates ultimately approved by FERC and paid by the City, as a result of the objections filed by Thompson Coburn on behalf of the City. This cost estimate does not include certain cases still pending before FERC in 2021. During this same time frame (*i.e.*, from January 2010 through August 2021), the City expended the sum of \$3,067,267 on attorney fees and related consulting costs for such transmission issues.

Additionally, the City is also eligible to propose, and has proposed, recovery of a portion of Thompson Coburn's legal fees and costs associated with transmission-related matters in its own FERC-approved transmission revenue requirement ("TRR") for use of the City's transmission entitlements. The City's TRR is included in the rates that the CAISO charges for use of the CAISO-controlled transmission system. Thus, this portion of the City's legal fees and costs is, in effect, recouped by the City from the TRR revenues it receives from the CAISO. For example, in the City's most recent TRR filing at FERC (submitted in July 2011), which ultimately was resolved through a negotiated settlement, it proposed to recover \$297,000 per year in transmission-related legal and regulatory costs. No party to that FERC proceeding challenged the City's recovery of those legal costs.

Buchalter

Riverside Transmission Reliability Project ("RTRP") is a joint project with Southern California Edison ("SCE") and will provide Riverside Public Utilities ("RPU") with a critical second

connection to the state electric transmission grid by connecting to the existing 230kV SCE Mira Loma – Vista line, to address long-term capacity and reliability needs of the City's electric utility system.

The RTRP Project includes construction of approximately nine miles of double circuit 230kV transmission lines, installation of approximately 10 miles of 69kV sub-transmission lines within the City of Riverside, construction of two new substations – Wildlife (SCE) and Wilderness (RPU), improvements to five existing RPU 69kV substations, reconfiguration of existing distribution lines and installation of new telecommunication lines.

As part of the approval process for RTRP, SCE submitted an application to the California Public Utilities Commission (“Commission”) for a Certificate of Public Convenience and Necessity. The Commission, which regulates investor-owned utilities like SCE, approves a transmission project by issuing a Certificate of Public Convenience and Necessity. The City is not regulated by the Commission and needed a law firm that specializes in practice before the Commission. To that end, the City retained the law firm of Buchalter to represent the City at the Commission, with an approved budget of \$450,000. To date, attorney's fees paid to Buchalter have been recovered from SCE in the amount of \$436,963.57. On March 12, 2020, SCE obtained the Commission’s approval of RTRP through the grant a Certificate of Public Convenience and Necessity for RTRP.

The City Attorney is asking for an increase to the Buchalter budget in the amount of \$20,000 to monitor the project as the SCE implements the requirements of the Certificate of Public Convenience and Necessity and constructs the RTRP project. Such monitoring will include participating in meetings with SCE, monitoring Commission, local and state proceedings, and meeting with Riverside staff and elected officials to provide legal advice through the construction of the RTRP project. The City Attorney will seek reimbursement of these fund, once expended, from SCE.

STRATEGIC PLAN ALIGNMENT:

The retention of experienced outside counsel to assist the City’s electric utility in the licensing of a new transmission line and monitoring Federal and State legal proceedings that could impact electric rates and the cost of infrastructure supports the priorities of the City of Riverside’s Envision Riverside 2025 Strategic Plan, by contributing to Strategic Priority No. 4 Environmental Stewardship, by supporting the following:

Goal 4.1– Rapidly decrease Riverside’s carbon footprint by acting urgently to reach a zero carbon electric grid with the goal of reaching 100% zero-carbon electricity production by 2040 while continuing to ensure safe, reliable and affordable energy for all residents.

Goal No. 4.6 –Implement the requisite measures to achieve citywide carbon neutrality no later than 2040.

This item aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – Riverside is transparent and makes decisions based on sound policy, inclusive community engagement, involvement of City Boards & Commissions, and timely and reliable information. Use of outside counsel that specialize in areas of the law related to regulation of the City’s electric utility will assist the City in providing safe, reliable and affordable energy for all residents while allowing the importation of 100%

zero-carbon electricity production by 2040.

2. **Equity** –Use of outside counsel that specialize in areas of the law related to regulation of the City's electric utility will support RPU as RPU provides equitable opportunities for all customers to become more sustainable which benefits the entire community.
3. **Fiscal Responsibility** – The City Attorney's Office is expending funds in a careful and judicious manner in order to achieve cost savings for the City through pro-active legal scrutiny of Federal and State proceedings that could impact electric rates and the cost of transmission infrastructure.
4. **Innovation** – The retention of specialized legal counsel to support transmission and generation projects supports innovation projects because such legal representation will promote reliable electric service at an affordable price.
5. **Sustainability & Resiliency** – Riverside is committed to providing safe, reliable and affordable energy for all residents while allowing the importation of 100% zero-carbon electricity production by 2040. Use of outside counsel that specialize in areas of the law related to regulation of the City's electric utility will allow the City to accomplish that goal.

FISCAL IMPACT:

The approval of the budget for FY 2021-2022 for Thompson Coburn will have a financial impact of \$600,000, and funds will come from the following RPU accounts: Power Resources (\$550,000) Account 6120000-421100; Legislative & Regulatory Risk (\$25,000) Account 6025000-421100 and RTRP/Jurupa (\$25,000) Account 6130000-470686. The increase in the budget for Buchalter will have a financial impact of \$20,000, and funds will come from RTRP/Jurupa 6130000-470686.

Prepared by: Phaedra A. Norton, City Attorney

Certified as to
availability of funds: Edward Enriquez, Chief Financial Officer/City Treasurer

Attachment: Estimates of Savings to Riverside as a result of participation in CAISO
Transmission Rate Filings