



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: JUNE 18, 2024
FROM: CITY ATTORNEY'S OFFICE WARDS: ALL

SUBJECT: APPROVE AN INCREASE TO THE FY 23/24 LEGAL BUDGET FOR LAW FIRM THOMPSON COBURN IN AN AMOUNT NOT TO EXCEED \$205,000 FOR A REVISED TOTAL BUDGET OF \$763,000; APPROVE THE ANNUAL LEGAL BUDGET FOR FY 24/25 IN AN AMOUNT NOT TO EXCEED \$720,000; AND APPROVE THE ENGAGEMENT OF SL ENVIRONMENTAL ON A CONTINGENCY FEE BASIS FOR A PERCHLORATE WATER CONTAMINATION LAWSUIT

ISSUE:

To consider approval of an increase to the annual legal budget for FY 2023/2024 for the law firm of Thompson Coburn in an amount not to exceed \$205,000 for a total revised budget of \$763,000; approve the FY 2024-2025 annual legal budget in an amount not to exceed \$720,000; and approve the engagement of SL Environmental on a contingency fee basis for a perchlorate water contamination lawsuit.

RECOMMENDATIONS:

That the City Council:

1. Approve an increase the annual legal budget for FY 2023-2024 for the law firm of Thompson Coburn in an amount not to exceed \$205,000 for a revised total budget of \$763,000;
2. Approve the annual legal budget for FY 2024-2025 for the law firm of Thompson Coburn in an amount not to exceed \$720,000;
3. Approve the engagement of SL Environmental on a contingency fee basis for a perchlorate water contamination lawsuit.

BOARD RECOMMENDATION:

This report is published on June 6, 2024, for the June 18, 2024, City Council meeting.

On June 10, 2024, the Board of Public Utilities will consider approval of an increase to the annual legal budget for FY 2023/2024 for the law firm of Thompson Coburn in an amount not to exceed \$205,000 for a total revised budget of \$763,000 and the FY 2024-2025 annual legal budget in an amount not to exceed \$720,000.

If the Board approves the expenditures, we respectfully request the City Council consider the item at the June 18, 2024, City Council meeting.

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."

Thompson Coburn

The City Council has previously approved the retention of Thompson Coburn. Thompson Coburn 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 Thompson Coburn and the City Attorney's Office is now seeking an increase to the FY 2023-2024 budget and approval of the annual budget for FY 2024-2025.

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.

The Thompson Coburn budget for FY 2023/24 was \$558,000. To date approximately \$460,000 of the budget has been expended with an estimate of an additional \$205,000 needed to complete legal services through the end of the fiscal year for a total budget of \$763,000. FY 2023/24 experienced higher than anticipated costs for FERC proceedings related to PG&E transmission revenue requirements, which impact Riverside's costs to import electricity. Riverside, through Thompson Coburn, participates in these proceedings to ensure the rates approved by FERC are fair and equitable.

For fiscal year 2024-2025, Thompson Coburn estimates a budget of \$720,000 and the City Attorney is asking for approval for that expenditure. This budget reflects an anticipated similar level of activity for FY 2024/25.

The City realizes 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 2014 through 2024, the City estimates that it has saved \$29,967,260 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 2024. During this same time frame (*i.e.*, from January 2014 through March 2024), the City expended the sum of \$2,890,813 on attorney fees and related consulting costs for such transmission issues and a total of \$4,948,670 across all matter types. Thompson Coburn also assisted the City in negotiations with the CAISO regarding maximum import capacity calculations for resource adequacy. The resulting changes helped save the City \$7,350,000 in projected 2024 resource adequacy costs.

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.

SL Environmental

The City Council has previously approved the addition of SL Environmental to the City's approved Attorney panel and is currently representing the City in a water contamination lawsuit for PFAS contaminants. In October of 2023, the City of Pomona prevailed in a perchlorate groundwater contamination lawsuit against a manufacturer of perchlorate-tainted fertilizer used for agriculture fertilization. SL Environmental represented City of Pomona. The City of Riverside has had some detections of perchlorate that could be related to similar perchlorate-tainted fertilizer. The City is committed to producing safe water from its wells. The City is also committed to identifying responsible parties and taking reasonable steps to avoid absorbing the costs of the treatment and remediation of contamination and wishes to retain SL Environmental, on a contingency fee basis, to assist the City in investigating the presence of the perchlorate contamination from agricultural sources throughout its water system, evaluate the potential to recover the costs associated with the contamination, provide advice, and represent the City in any legal action against parties potentially responsible for the contamination.

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. 5 High Performing Government, by supporting the following:

Goal No. 5.4 – Achieve and maintain financial health by addressing gaps between revenues and expenditures and aligning resources with strategic priorities to yield the greatest impact.

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 and water 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 and water contamination lawsuits 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, the cost of transmission infrastructure and the costs to remediate groundwater contamination.
4. **Innovation** – The retention of specialized legal counsel to support transmission and generation projects and specialized water contamination representation supports innovation projects because such legal representation will promote reliable electric and water 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 and to producing safe water from its wells. Use of outside counsel that specializes in areas of the law related to regulation of the City's electric utility and to water contamination laws will allow the City to accomplish that goal.

FISCAL IMPACT:

The approval of the budget increase for FY 2023-2024 and approval of the budget for FY 2024-2025 for Thompson Coburn will have a financial impact of \$925,000. For FY 2023/2024 sufficient funds are available in the Power Resources Account 6120000-421100 and New 230 KV Station-Reimb Account 6130000-470686. For FY 2024/2025 the funds will come from the following RPU accounts: Power Resources (\$670,000) Account 6120000-421100; Legislative & Regulatory Risk (\$25,000) Account 6025000-421100 and New 230 KV Station-Reimb (\$25,000) Account 6130000-470686.

There is no current fiscal impact for the retention of SL Environmental.

Prepared by: Phaedra A. Norton, City Attorney

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