



RIVERSIDE PUBLIC UTILITIES

Board Memorandum

BOARD OF PUBLIC UTILITIES

DATE: JUNE 10, 2024

SUBJECT: LEGAL BUDGET FOR AN INCREASE TO THE FISCAL YEAR 2023/24 LEGAL BUDGET FOR LAW FIRM THOMPSON COBURN IN AN AMOUNT NOT-TO-EXCEED \$205,000, FOR A REVISED TOTAL BUDGET OF \$763,000

ISSUE:

Consider approving an increase to the annual legal budget for Fiscal Year 2023/24 for the law firm of Thompson Coburn in an amount not-to-exceed \$205,000, for a revised total budget of \$763,000.

RECOMMENDATION:

That the Board of Public Utilities recommend that the City Council approve an increase to the annual legal budget for Fiscal Year 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.

BACKGROUND:

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." However, City Charter section 1202(b) requires Board of Public Utilities approval for utilities expenditures over \$50,000.

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 Board of Public Utilities has approved the expenditures. The City Attorney's Office is now seeking an increase to the Fiscal Year 2023/24 budget.

DISCUSSION:

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 Fiscal Year 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. Fiscal Year 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.

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 ten-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 approximately \$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.

STRATEGIC PLAN ALIGNMENT:

The retention of experienced outside counsel to assist the City's electric utility in 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 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 total budget increase for Fiscal Year 2023/24 is \$205,000, for a revised total of \$763,000. Sufficient funds are available in the Power Supply Outside Legal Services Account No. 6120000-421100 (\$190,000) and the New 230 KV Station-Reimbursement Account No. 6130000-470686 (\$15,000).

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