



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Jim Steffens, Acting Electric Utility Director

MEETING DATE: February 13, 2024

SUBJECT: Consideration of Resolution 2024-24, Approving the "Amended and Restated City of Banning Fee Agreement with Thompson Coburn LLP For Special Counsel Services" for an 8% Annual Increase in Hourly Legal Rates and to Update, Restate, and Amend Obsolete Provisions in the Agreement

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution 2024-24.

BACKGROUND:

Beginning in the early 1990's the City of Banning Electric Utility (Utility), along with the Cities of Anaheim, Azusa, Colton and Riverside began receiving services from Thompson Coburn through a contract with the Power Agency of California ("PAC") a joint powers agency created to facilitate procurement of utility related services for the five referenced cities. The cities agreed to allocate costs for this contract based on each utility's relative retail load. This was a very beneficial relationship, especially for the three small cities, which received the full benefit of legal representation, but for a very small percentage of the total cost, which for Banning was only 2.5%.

In 2001, PAC was placed into an "inactive" status and all contracts and services administered through PAC had to be processed directly through the individual cities. However, the cities agreed to continue with the established cost allocation methodology for the Thompson Coburn legal services agreement. In 2005, the City of Pasadena asked to join the five cities in receiving legal representation for the Federal Energy Regulatory Commission (FERC) and the California Independent System Operator (CAISO) matters from Thompson Coburn, and the cost allocation was updated to include Pasadena's retail load, which resulted in Banning's allocation being reduced from 2.5% to 2.38%. This group of cities is now referred to as the "Six Cities" in all related FERC and CAISO filings, as well as other pertinent group advocacy.

Thompson Coburn provides legal representation on FERC and CAISO related issues, which includes but is not limited to: Transmission, Generation, Wholesale Electricity Markets, and Reliability Standards Compliance. In Fiscal Year 2023, Banning's total Thompson Coburn expenses amounted to only \$40,243, but they have averaged about \$60,000 per year over the last ten years. If Banning were to obtain these services by itself, instead of through the joint Six Cities agreement, it would easily cost up to 20 times that amount. As previously noted, the Six Cities relationship is very beneficial for the City of Banning, and it is essential that the Utility retain legal services for matters pertaining to the FERC and the CAISO, in relation to the Utility's operation.

Occasionally Thompson Coburn provides services specifically for the Utility, in which case the Utility

pays for the full amount of the services. But these services are minimal, and do not occur very frequently.

Thompson Coburn's services also provide monetary value to the Utility. For example, Thompson Coburn participates and intervenes on behalf of the Six Cities in CAISO Transmission Rate Filing cases and has frequently been successful in reducing the rates that other transmission owners receive for turning their transmission facilities over to the operational control of the CAISO. These reduced transmission owner rates result in a reduced CAISO Transmission Access Charge (TAC). The TAC is a charge that the Utility must pay the CAISO for use of the CAISO grid. In Fiscal Year 2023 the Utility's TAC expense was \$2.5 million. If not for Thompson Coburn's successful intervention in CAISO Transmission Rate cases on behalf of the Six Cities over the last twenty years, the Utility's TAC expenses would be much higher.

Thompson Coburn has provided notice to the Utility of an increase to its hourly rates, effective January 1, 2024, which are reflected in the Amended Agreement. The rate increases average approximately 8% from the 2023 rates. While staff was reviewing the current agreement, it became clear that over the years the exhibits to the agreement had been updated, but that the body of the agreement hadn't been updated in a long time. For example, the introductory "Whereas" portion of the agreement stopped at when the group was the Five Cities, and did not mention the City of Pasadena joining the group in 2005. Since Pasadena and the Six Cities are mentioned in the exhibits, there was a disconnect on how the Five Cities became the Six Cities. Therefore, electric staff worked with Purchasing and with Thompson Coburn to update the agreement. The current agreement is attached for reference.

The Amended Agreement, similar to the current agreement, allows the Utility to discharge Thompson Coburn at any time. Alternatively, the Amended Agreement will terminate five years following completion of any matter referred to Thompson Coburn.

JUSTIFICATION:

Approval of Resolution 2024-24 would allow the Utility to continue to obtain legal services for matters pertaining to FERC and CAISO in relation to the Utility's operation, which includes: Transmission, Generation, Wholesale Electric Markets, and Reliability Standards Compliance. The cost-sharing agreement between the Six Cities is very beneficial to the Utility, as the Utility is responsible for only 2.38% of the legal services performed on behalf of the Six Cities.

FISCAL IMPACT:

Banning's share of the cost for services provided by Thompson Coburn in FY 2023 totaled \$40,243. However, Banning's cost for these legal services has averaged approximately \$60,000 per year over the last ten years. The proposed rate increase is estimated to raise the Utility's annual expense by approximately \$4,000. Funds are budgeted each year in account 670-7010-473-33.02 to cover this expense.

ALTERNATIVES:

1. Adopt Resolution 2024-24 as recommended.
2. Adopt Resolution 2024-24 with modifications.
3. Do not approve Resolution 2024-24, which would disqualify the Utility from being a member of the Six Cities and from receiving further FERC and CAISO legal representation from Thompson Coburn.

ATTACHMENTS:

1. [Resolution 2024-24, Thompson Coburn Agreement](#)
2. [Exhibit A - Special Counsel Amended Agreement.docx](#)
3. [Exhibit B - Thompson Coburn Current Agreement.pdf](#)