



Legislation Details (With Text)

**File #:** 18-1847      **Version:** 1      **Name:** 11/19/18 Varnum amendment-PURPA case  
**Type:** Resolution      **Status:** Passed  
**File created:** 11/19/2018      **In control:** City Council  
**On agenda:** 11/19/2018      **Final action:** 11/19/2018  
**Enactment date:** 11/19/2018      **Enactment #:** R-18-453

**Title:** Resolution to Approve Amendment No. 1 to Professional Services Agreement with Varnum LLP, for Legal Services Relative to MPSC Case No. U-18091 (\$6,300.00) and to Appropriate Funds (\$6,300.00) (8 Votes Required)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Varnum Amendment 1

Date	Ver.	Action By	Action	Result
11/19/2018	1	City Council	Approved	Pass

Resolution to Approve Amendment No. 1 to Professional Services Agreement with Varnum LLP, for Legal Services Relative to MPSC Case No. U-18091 (\$6,300.00) and to Appropriate Funds (\$6,300.00) **(8 Votes Required)**

By contracts entered into with The Detroit Edison Company (DTE) in 1984, the City became and is the owner and operator of two hydroelectric plants at Barton and Superior Dams, committed to sell all the net electrical output to DTE, and DTE committed to purchase all net electrical output. The generation of electricity started in 1986, and the contracts run for 50 years, until 2036.

Under the federal Public Utility Regulatory Policy Act (PURPA) both plants are Qualifying Facilities (QFs), defined as qualifying cogeneration facilities or qualifying small power production facilities, that have a right to sell to the electric utility of the City's choosing at a cost that does not exceed "the incremental cost to the electric utility of alternate electric energy." This is also referred to as a "must purchase" obligation on the part of the electric utility. As background, PURPA was enacted to further energy independence at a national level, and to try to solve the country's energy crisis.

In Michigan Public Services Commission (MPSC) Case No. U-18091, DTE filed a proposal seeking, among other things, a change in how its incremental cost is calculated for purpose of its purchases of electricity from QFs, and possibly to avoid its obligation to purchase electricity from QFs such as the City notwithstanding the requirements of PURPA.

The City has made significant investments in the hydroelectric plants at both Barton and Superior Dams, starting with the \$3.2 million in hydroelectric bond funds approved to be issued by the voters in early 1983, and continuing since then. Funding for improvements at Bardon Dam not exclusive to power production are split between the Water Supply Fund and the General Fund; improvements solely related to power production are funded entirely from the General Fund. Improvements at Superior Dam are funded entirely from the General Fund. The City also is planning a ten year rebuild of the Barton turbine in 2017 and will be planning a similar rebuild of the Superior plant within the

next 5 years. The cost of these improvements is estimated to be about \$400,000 each. In addition, the Federal Energy Regulatory Commission (FERC) has identified some safety improvements that are required at Barton dam, which will need to be implemented within the next five years. The investment associated with these improvements is anticipated to be approximately \$2,000,000. The City also plans to repair deteriorated concrete and replace protective coatings for the structural steel at both dams within the next five years, at an estimated cost of approximately \$2,900,000.

The City relies on revenues from the City's two power purchase contracts with DTE to pay back the capital investments to the hydro facilities at both dams. Reduction of those payment amounts, or the possibility that DTE could avoid its purchase obligations, jeopardizes the financial viability of the hydro facilities. Revenues from DTE for power supplied from both hydro facilities is approximately \$500,000.00 per year. Although the City's contracts with DTE run until 2036, the City's concerns relative to MPSC Case No. U-18091 are with both what will happen after 2036, and possible impacts on DTE's exiting contractual obligations.

On December 19, 2016, City Council approved a professional services agreement with Varnum LLP based on its qualifications and expertise in matters such as MPSC Case No. U-18091 (R-16-483), and the City intervened in MPSC Case No. U-18091. The original contract amount was \$48,000.00, which included \$5,000.00 to cover the fees of Peter Richardson, who served as an expert witness in the proceedings on behalf of the City.

While MPSC Case No. U-18091 was proceeding, a case was filed by DTE (MPSC Case No. U-18419) that had the potential to impact the calculation of rates in MPSC Case No. U-18091. Because of the potential impact, the City intervened for limited purposes related to MPSC Case No. U-18091. Because of the additional legal services for work for the related case (MPSC Case No. U-18419), an amendment to add \$6,300.00 to cover legal services is needed. The cost of Varnum LLP's legal services is otherwise within the original estimate.

The MPSC has not yet issued a decision in MPSC Case No. U-18091.

#### Fiscal/budget impact

Funds in the amount of \$6,300.00 are available in General Fund Fund Balance, and need to be appropriated to the Water Treatment General Fund Hydro Power Operations and Maintenance Budget to fund this legal services agreement with Varnum LLP.

Varnum LLP complies with the City of Ann Arbor's Non-Discrimination and Living Wage Ordinances.

Approval of the professional services agreement with Varnum LLP in the amount of \$6,300.00 for legal services relative to MPSC Case No. U-18091 is recommended.

Prepared by: Abigail Elias, Chief Assistant City Attorney

Reviewed by: Stephen K. Postema, City Attorney

Approved by: Howard S. Lazarus, City Administrator

Whereas, On December 19, 2016, City Council approved a legal services contract with Varnum LLP for \$48,000.00, including \$5,000.00 for expert witness testimony, to provide legal services for the City's intervention in MPSC Case No. U-18091;

Whereas, To best protect its interests in MPSC Case No. U-18091, the City intervened for limited purposes in MPSC Case No. U-18419, which required additional legal services from Varnum LLP and depleted some of the contract funds originally estimated for legal services in MPSC Case No. U-

18091;

Whereas, An amendment of \$6,300.00 is needed to fully fund the remainder of Varnum LLP's legal services work in MPSC Case No. U-18091; and

Whereas, Varnum LLP, complies with the City of Ann Arbor's Non-Discrimination and Living Wage Ordinances;

RESOLVED, That an amendment to the agreement for legal services with Varnum LLP, be approved in the amount of \$6,300.00, increasing the total contract amount to \$54,300.00, of which \$49,300.00 is for legal services and \$5,000.00 is for expert witness services;

RESOLVED, That \$6,300.00 be appropriated from General Fund Fund Balance to the Water Treatment General Fund Hydro Power Operations and Maintenance Budget, to fund this agreement, and to be made available without regard to fiscal year;

RESOLVED, That the Mayor and City Clerk be authorized to execute the amendment to the professional services agreement with Varnum LLP, subject to approval as to form by the City Attorney; and

RESOLVED, That the City Attorney and City Administrator be authorized to take the necessary administrative actions to implement this resolution.