ABAG Publicly Owned Energy Resources (ABAG POWER)

Executive Committee

December 8, 2020 **Agenda Item 7.a.**

Report on Natural Gas Program

Subject: Intended Withdrawal of the Regional Administration Facility Corporation (RAFC) from the Natural Gas Aggregation Program

Background: The ABAG POWER natural gas aggregation program (program) is currently comprised of 38 participants. Membership is governed by the Joint Powers Agreement (JPA) and the Natural Gas Sales and Aggregation Agreement (NGSAA). The NGSAA provides that the term of agreement is automatically extended for additional three-year periods on each July 1, provided that:

- ABAG POWER is not in breach of the agreement, and
- that the public agency member has not submitted on or before June 1, written notice of its decision to terminate the agreement effective the July 1 three (3) years after said notice

Thus, by its own terms, the NGSAA is a continuing agreement with "evergreen" three-year renewals.

RAFC, a non-profit, public benefit corporation, was formed by the Association of Bay Area Governments (ABAG), the Metropolitan Transportation Commission (MTC), and the San Francisco Bay Area Rapid Transit District (BART), to establish respective ownership interests in the building located at 101 Eighth Street in the City of Oakland. RAFC has been a member of ABAG POWER since 1998. The account only contains the Eighth Street facility, which until 2017 jointly housed ABAG, MTC, and BART staff.

In June 2017, ABAG and MTC moved to a San Francisco-based office and sold their Oakland condominium unit interests to BART. Thereafter, ABAG and MTC exited RAFC, leaving BART as the sole participant. In July 2018, the RAFC Board of Directors voted to dissolve RAFC; however, the account remains enrolled and in good standing. ABAG POWER also maintains a working capital deposit in the amount of $12,326 on behalf of RAFC.

Recent Developments: In September 2020, BART staff communicated an informal intent to withdraw from the program in advance of the required three-year noticing period. ABAG POWER staff notified BART of the NGSAA's termination clause, RAFC's working capital deposit, and that staff would defer to the Executive Committee's decision whether to assess damages for breach of agreement.

In October, staff of ABAG POWER and BART met to confirm the aforementioned events and timeline, and to initiate discussions in an effort to reach a prompt and equitable outcome. No specific timelines or potential costs were discussed. Discussions are ongoing to develop a desired timeline for the withdrawal, and staff is currently developing methodology to allocate stranded costs that may be considered in assessing damages. Staff will incorporate feedback from this discussion into dialogue with BART and aim to provide a mutual recommendation at the ABAG POWER Executive Committee meeting scheduled for February 17, 2021.

Comparable Incidents:

The most recent change to the program's membership was the exit of the Eastside Union High School District (ESUHD) in June 2012. In May 2012, ESUHD provided formal intent to exit the program effective June 30, 2012.

At its June 20, 2012 Executive Committee meeting, the Committee authorized two options for assessing damages due to breach of contract. The options were:

- Assessing a higher amount of damages for an effective date of exit within the desired timeframe (FY 2011-12), and
- A lower amount of damages for an effective date of exit within the following fiscal year (FY 2012-13)

ESUHD was ultimately assessed damages of $12,699 representing stranded costs comprised of gas purchase contracts, pipeline capacity, and administrative program expenses.

Discussion Items:

Potential Precedent

A significant aspect of this decision is the potential for precedent among other members in the program. Of the 38 current program participants, 13 agencies have 5 or fewer accounts, with the majority of those each representing 0.1 - 0.5% of the portfolio's annual load. While this situation is unique given the dissolution of RAFC, its outcome may inform similar decisions.

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Stranded Costs

Until 2018, the three-year opt-out term aligned with the general natural gas purchasing strategy, which provides authority to enter into natural gas purchase contracts in amounts that are not bounded and for durations up to three years. It was common for the program to enter into fixed-price purchase contracts for a year or more.

In 2018, the Executive Committee modified the general gas purchasing strategy to move exclusively into the short-term, index-based market. Since then, staff have not entered into any long-term, fixed-price purchase contracts. Gas purchases and accompanying pipeline capacity are entered into tri-annually in four-month increments. Given this change, stranded costs associated with gas purchase and pipeline contracts would be minimal because of the account's load profile and the program's condensed contracting periods.[1]

Administrative Impacts

From a financial perspective, implementing a withdrawal effective July 1 avoids a mid-year adjustment to the levelized charges and true-up processes. This timing also enables staff to incorporate anticipated budget impacts in usage, revenue, and cost.

Recommended Action: The ABAG POWER Executive Committee is requested to review and comment on the discussion items

Attachment: Amendment No. 1 to Declaration of CC&Rs of the RAFC
RAFC July 3, 2018 Meeting Minutes

DocuSigned by:
Brad Paul
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Reviewed: Brad Paul

[1] As of October 1, 2020, the 101 Eighth Street facility represents 0.6% of ABAG POWER's annual portfolio load.