

**ABAG Publicly Owned Energy Resources (ABAG POWER)****Executive Committee**

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**February 18, 2021****Agenda Item 6.a.**

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**Natural Gas Program Membership**

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**Subject:** Request for approval of framework for evaluating damages caused by membership withdrawals breaching the Natural Gas Sales and Aggregation Agreement's three-year opt-out term

**Background:** At ABAG POWER's Executive Committee meeting on December 8, 2020, staff informed the Committee of the intended withdrawal of the Regional Administrative Facility Corporation (RAFC). Staff requested input to determine whether an evaluation of damages should be conducted for breach of the three-year opt-out term required by the Natural Gas Sales and Aggregation Agreement (NGSAA). The Committee directed staff to:

- Prepare a methodology to allocate annual costs to each account in the portfolio as part of a larger framework to establish consistency in responding to requests for withdrawal
- Determine whether the NGSAA should be amended to incorporate the proposed framework
- Consider conducting an "exit risk" analysis with GPT, Inc. as part of the program's upcoming program design discussions

**Discussion Items:** Staff proposes the following framework apply to members seeking to withdraw from membership sooner than the three-year term specified in the NGSAA. The proposed framework balances the need to facilitate prompt and equitable program withdrawals while also encouraging adherence to the terms of the NGSAA.

**1. The evaluation of damages related to the early withdrawal of a member agency should be considered within a three-year time horizon.**

The three-year opt-out term provides certainty regarding the membership and apportionment of costs. Damages incurred by the program for a three-year period should be considered.

Given the current gas purchasing strategy, it is unlikely that high-cost variable expense obligations extend beyond the current fiscal year. When possible, the effective date of termination should attempt to minimize stranded variable costs.

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Unlike variable expenses, various fixed expenses – primarily staff cost and multi-year consultant contracts – are impacted by, and benefit from, long-term commitments. Fixed expenses also typically do not have a significant degree of change over a three-year period.

The adopted fiscal year budget will determine the costs for the first year. Years two and three should incorporate known contract changes and a cost of living adjustment.

**2. The amount of damages related to the early withdrawal of a member agency should not be limited to the agency's working capital deposit held by ABAG POWER.**

Section 9.3 of the NGSAA requires each member agency to pay a working capital deposit (deposit) to ABAG POWER when joining the program. The deposit is an assessment intended to represent two months of expenses and is calculated as two times the member's average monthly load multiplied by the rate per therm (\$/therm). Staff annually review the deposits to ensure that in aggregate, they meet or exceed the stated goal of at least three months of working capital.

It is possible that the damages sustained by ABAG POWER over a three-year horizon may exceed a member's deposit. This recommendation acknowledges the fact that a member's obligation to provide notification of intended withdrawal is three years, and that the program commits resources within that timeframe under the assumption that the membership is constant. If the damages sustained by ABAG POWER exceed a member's deposit, the program should seek reimbursement.

**3. The NGSAA should not be amended to formally incorporate a framework to evaluate damages.**

The NGSAA requires a three-year opt-out term but does not specify a process for evaluating damages for non-compliance.

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It is reasonable to assume that most requests for withdrawal will be initiated under unique circumstances and, therefore, should be considered on a case-by-case basis. As such, amending the NGSAA to include this framework would have little value.

**4. The Board of Directors or Executive Committee should not impose an additional financial penalty beyond actual damages to POWER or its members.**


The impact of a member's withdrawal will vary based on the load profile for the account(s) to be withdrawn. Any withdrawal, however, creates a negative impact for the remaining members since fixed costs are spread amongst a smaller usage pool, resulting in a higher rate per therm.

Recognizing that withdrawals will occur for varying reasons, the damages sought by ABAG POWER for an early termination should consist only of actual and reasonably expected stranded costs.

**Recommended Action:** The ABAG POWER Executive Committee is requested to approve the proposed framework for evaluating damages caused by early membership withdrawals in breach of the Natural Gas Sales and Aggregation Agreement's three-year opt-out term.

**Attachment:** None.

**Reviewed:**

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Brad Paul

2/9/2021