



ABAG POWER Executive Committee Meeting No. 2012-03
June 20, 2012 (12 Noon - 2:00 p.m.)
Association of Bay Area Governments
101 Eighth Street, Conference Room B
Oakland, CA 94607

AGENDA*

1. **Welcome and Introductions**
2. **Public Comments**
3. **Approve Summary Minutes of Executive Committee Meeting**
Action:
ATTACHMENT 3A – SUMMARY MINUTES OF APRIL 18, 2012
4. **Report on Natural Gas Program**
Information: Staff will review recent gas operations, including gas purchases; the program's long-term hedge position; gas imbalances; and other miscellaneous program items.
ATTACHMENT 4A – MONTHLY SUMMARY OF OPERATIONS FY 11-12
ATTACHMENT 4B – GAS HEDGE CHART
ATTACHMENT 4C – MARKET PRICE CHART (3 YR)
5. **FY2012-13 Budget**
Action: Staff will present the operating budget for FY2012-13.
ATTACHMENT 5A – OPERATING BUDGET
ATTACHMENT 5B – LEVELIZED CHARGE CALCULATION
6. **East Side Union High School District Letter (ESUHSD)**
Action: Staff will discuss the ramifications and potential actions related to ESUHSD's transfer of account and request to withdraw from the program.
ATTACHMENT 6A - MEMO RE: ESUHSD OPT-OUT NOTICE
ATTACHMENT 6B – ABAG'S LETTER TO ESUHSD
ATTACHMENT 6C – ESUHSD'S LETTER RECEIVED MAY 29TH, 2012
7. **Bay Area Regional Energy Network**
Information: Staff will provide information on a proposal to create a Bay Area Regional Energy Network.
8. **Other Business**
9. **Closed Session**
The following item will be discussed in closed session, pursuant to the requirements of the Ralph M. Brown Act. All reportable actions taken will be announced in open session prior to the adjournment of the meeting.
 - (a) Conference With Legal Counsel—Anticipated Litigation, Govt. C. Sec. 54956.9(c)
Initiation of litigation pursuant to subdivision (c) of Section 54956.9: One Case.
10. **Adjournment**

*The Committee may take action on any item on this agenda

MEMORANDUM

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area

Attachment 3A



SUMMARY MINUTES

ABAG Power Executive Committee

Regular Meeting 2012-02

April 18, 2012

Metro Center, ABAG's Conference Room B
101 8th Street, Oakland, CA 94607

WELCOME AND INTRODUCTIONS

Chairman Chris Schroeder opened the meeting with introductions at 12:00 Noon.

Committee Representatives

Mark Armstrong
Ron Popp
Angela Rush
Chris Schroeder (Chair)
Richard Sealana (Vice-Chair)

Jurisdictions

City of Santa Rosa
City of Millbrae
City of Richmond
City of Milpitas
City of Union City

Committee Representatives Absent

Laura Ryan

City of Pleasanton

Staff Present

Jerry Lahr
Vina Maharaj
Ken Moy
John Saelee

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PUBLIC COMMENTS & ANNOUNCEMENTS

There were no public comments.

APPROVAL OF SUMMARY MINUTES OF DECEMBER 14, 2011

Motion was made by Sealana/S/Rush/C/5:0:0 to approve the Summary Minutes of February 15, 2012 Executive Committee Meeting.

MEMORANDUM

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area

Attachment 3A



REPORT ON NATURAL GAS PROGRAM

Monthly Summary of Operations FY 11-12

Lahr provided the members with the Monthly Summary of Operations report for FY 2011-12. He updated the members on the percentage savings comparison with PG&E. The cumulative savings for February, 2012 is 3.9% in comparison with PG&E.

PG&E's procurement charge has dropped significantly from \$5.05 in February to \$3.74 in March. They added a hedging adjustment of a dollar in February which drops to almost zero in March.

Gas Hedge Chart

Lahr provided information on the various current long-term gas purchases (contracts which are greater than one month in length).

Market Price Chart 2000-Present

Lahr provided the members with a longer term look at the trend of gas prices, going back a decade. There were fairly big spike in prices throughout the decade, however, prices mainly remained at around \$6.00/Dth.

Market Price Chart (3-year)

Lahr provided a 3-year comparison of gas prices. He mentioned that the gas prices are significantly lower than what was budgeted for this current fiscal year, FY 2011-12.

Gas Scheduling Contract with Golden Valley Gas Services

The previously extended Gas Scheduling Services Agreement between Golden Valley Gas Services, Inc. (GVGS) and ABAG POWER expires on June 30, 2012. A recommendation was made by staff to extend the contract for an additional year.

Motion was made by Armstrong/S/Pope/C/5:0:0 to approve the contract extension with Golden Valley Gas Services for the period July 1, 2012 to June 30, 2013 for gas scheduling services.

PRELIMINARY FY2012-13 BUDGET

Lahr provided a preliminary operating budget for Fiscal Year 2012-13 to the Executive Committee. The budget line items were reviewed and discussed with intent for approval at the June 20, 2012 meeting.

ABAG ENERGY PROGRAMS UPDATE

The status, program goals, description and other particulars about each of ABAG's Energy Programs were provided to members as Agenda Item 8A.

Lahr mentioned that the Retrofit Bay Area program contract will officially terminate April 30, 2012.

MEMORANDUM

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area

Attachment 3A



CLOSED SESSION

Conference With Legal Counsel—Anticipated Litigation, Govt. C. Sec. 54956.9(c)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: One Case

There were no reportable action items from the closed session

ADJOURNMENT

Chairman Schroeder adjourned the meeting at 1:20 p.m.

/vm

*Example of a motion – [*Member No. 1/S/Member No. 2/roll call vote/C/8:0:0*] means Member No.1 motions, seconded by Member No.2, after roll call vote, motion carries, 8 = “yes” votes, 0 = “no” votes and 0 = abstention.

ABAG POWER Natural Gas Program

FY 2011-12 Monthly Summary of Operations

	days/mo.	<u>Jul</u> 31	<u>Aug</u> 31	<u>Sep</u> 30	<u>Oct</u> 31	<u>Nov</u> 30	<u>Dec</u> 31	<u>Jan</u> 31	<u>Feb</u> 29	<u>Mar</u> 31	<u>Apr</u> 30	<u>May</u> 31	<u>Jun</u> 30	<u>Total</u>
Gas Purchases⁽¹⁾														
Purchase 1	Qty	15,500	15,410	15,000	15,500	15,000	15,500	15,500	14,500	15,500	15,000	15,309	15,000	182,719
	Price	\$4.47	\$4.47	\$4.47	\$4.47	\$4.47	\$4.47	\$4.47	\$4.47	\$4.47	\$4.24	\$4.24	\$4.24	
Purchase 2	Qty	15,500	15,500	15,000	15,500	15,000	15,500	15,500	14,500	15,500	15,000	15,500	15,000	183,000
	Price	\$5.90	\$5.90	\$5.90	\$5.90	\$5.90	\$5.90	\$5.90	\$5.90	\$5.90	\$5.90	\$5.90	\$5.90	
Purchase 3	Qty	25,699	25,457	24,810	25,637	15,000	26,350	29,450	27,550	25,699	24,870	24,614		275,136
	Price	\$4.28	\$4.16	\$3.81	\$3.78	\$3.87	\$3.88	\$3.42	\$3.04	\$2.46	\$2.05	\$1.89		
Purchase 4	Qty	7,675	7,950	5,475	17,750	28,400	43,000	30,825	18,225	15,325	24,700	12,600		211,925
	Price	\$4.62	\$4.31	\$4.33	\$3.76	\$3.89	\$3.61	\$3.15	\$2.91	\$2.56	\$2.44	\$2.71		
Purchase 5	Qty													0
	Price													
Total Quantity Purchased		64,374	64,317	60,285	74,387	73,400	100,350	91,275	74,775	72,024	79,570	68,023	30,000	852,780
Total Purchase Cost		\$306,088	\$300,452	\$273,604	\$324,131	\$324,055	\$418,332	\$358,414	\$287,085	\$262,971	\$263,333	\$236,963	\$152,025	\$3,507,453
Backbone Shrinkage (Dths)		(341)	(350)	(330)	(341)	(150)	(155)	(155)	(145)	(434)	(420)	(430)		
Weighted Avg. Cost of Gas (WACOG) ⁽²⁾		\$4.78	\$4.70	\$4.56	\$4.38	\$4.42	\$4.18	\$3.93	\$3.85	\$3.67	\$3.33	\$3.51	\$5.07	\$4.11
Storage/Inventory														
Total Injections/ (Withdrawals)		9,300	9,288	9,000	9,188	(10,000)	(12,000)	(15,000)	(13,550)	(13,473)	9,000	9,300		(8,947)
Total Inventory Quantity (Dths)		51,547	60,835	69,835	79,023	69,023	57,023	42,023	28,473	15,000	24,000	33,300		
Total Inventory (\$)		\$256,474	\$300,100	\$341,167	\$381,382	\$334,912	\$279,148	\$209,443	\$146,477	\$83,895	\$113,838	\$146,443		
Avg. Inventory Rate (\$/Dth)		\$4.98	\$4.93	\$4.89	\$4.83	\$4.85	\$4.90	\$4.98	\$5.14	\$5.59	\$4.74	\$4.40		
Gas Program Monthly Expenses (from Financial Reports)														
Cost of Energy Used ⁽³⁾		\$ 277,804	\$ 272,898	\$ 248,568	\$ 300,019	\$ 380,990	\$ 484,662	\$ 438,658	\$ 360,458	\$ 341,576	\$ 249,073			\$ 3,354,707
Program Operating Expenses ⁽⁴⁾		24,857	30,825	33,509	31,786	26,620	29,912	17,716	27,889	27,681	28,850			279,645
Subtotal		\$ 302,662	\$ 303,723	\$ 282,077	\$ 331,805	\$ 407,610	\$ 514,574	\$ 456,374	\$ 388,347	\$ 369,257	\$ 277,923	\$ -	\$ -	\$ 3,634,351
Rate (\$/Dth)		\$5.46	\$5.16	\$5.05	\$5.09	\$4.91	\$4.70	\$4.37	\$4.37	\$3.99	\$3.75			\$4.61
PG&E Pass-through costs ⁽⁵⁾		141,345	132,446	161,639	128,089	285,042	255,878	375,059	339,782	294,584	282,718			2,396,583
Total ABAG POWER Cost		\$ 444,007	\$ 436,169	\$ 443,716	\$ 459,894	\$ 692,653	\$ 770,453	\$ 831,433	\$ 728,129	\$ 663,841	\$ 560,640			\$ 6,030,934
Actual (metered) Gas Usage														
Core ⁽⁶⁾		43,329	45,552	44,413	52,793	74,223	99,140	94,922	79,835	83,923	64,458			682,589
Non Core		12,061	13,362	11,480	12,429	8,726	10,279	9,566	8,961	8,679	9,687			105,230
Total Program Usage		55,391	58,914	55,892	65,222	82,949	109,419	104,489	88,796	92,602	74,144	0	0	787,819
ABAG POWER Total Core Rate		\$ 8.73	\$ 8.06	\$ 8.69	\$ 7.51	\$ 8.75	\$ 7.28	\$ 8.32	\$ 8.63	\$ 7.50	\$ 8.13			
PG&E Rate⁽⁷⁾														
Procurement Charge ⁽⁸⁾		6.20	5.66	5.59	5.15	4.89	5.00	4.75	5.05	3.74	3.22	3.29	4.27	
Transportation/Other Charge ⁽⁹⁾		3.26	2.91	3.64	2.43	3.84	2.58	3.95	4.26	3.51	4.39			
Total PG&E Rate		\$ 9.47	\$ 8.57	\$ 9.23	\$ 7.58	\$ 8.73	\$ 7.58	\$ 8.70	\$ 9.31	\$ 7.25	\$ 7.61	\$ 3.29	\$ 4.27	
Rate Comparison														
Monthly Rate Difference (\$/Dth)		(0.74)	(0.50)	(0.55)	(0.07)	0.02	(0.29)	(0.38)	(0.68)	0.25	0.52			
Monthly Savings (\$)		32,058	22,998	24,259	3,554	(1,766)	29,100	36,442	54,371	(21,197)	(33,821)			
Cumulative 'Savings' (\$)		32,058	55,056	79,315	82,868	81,103	110,203	146,645	201,015	179,818	145,997			
Cumulative 'Savings' (%)		7.8%	6.9%	6.6%	5.1%	3.6%	3.7%	3.8%	4.4%	3.5%	2.6%			

ABAG POWER Natural Gas Program

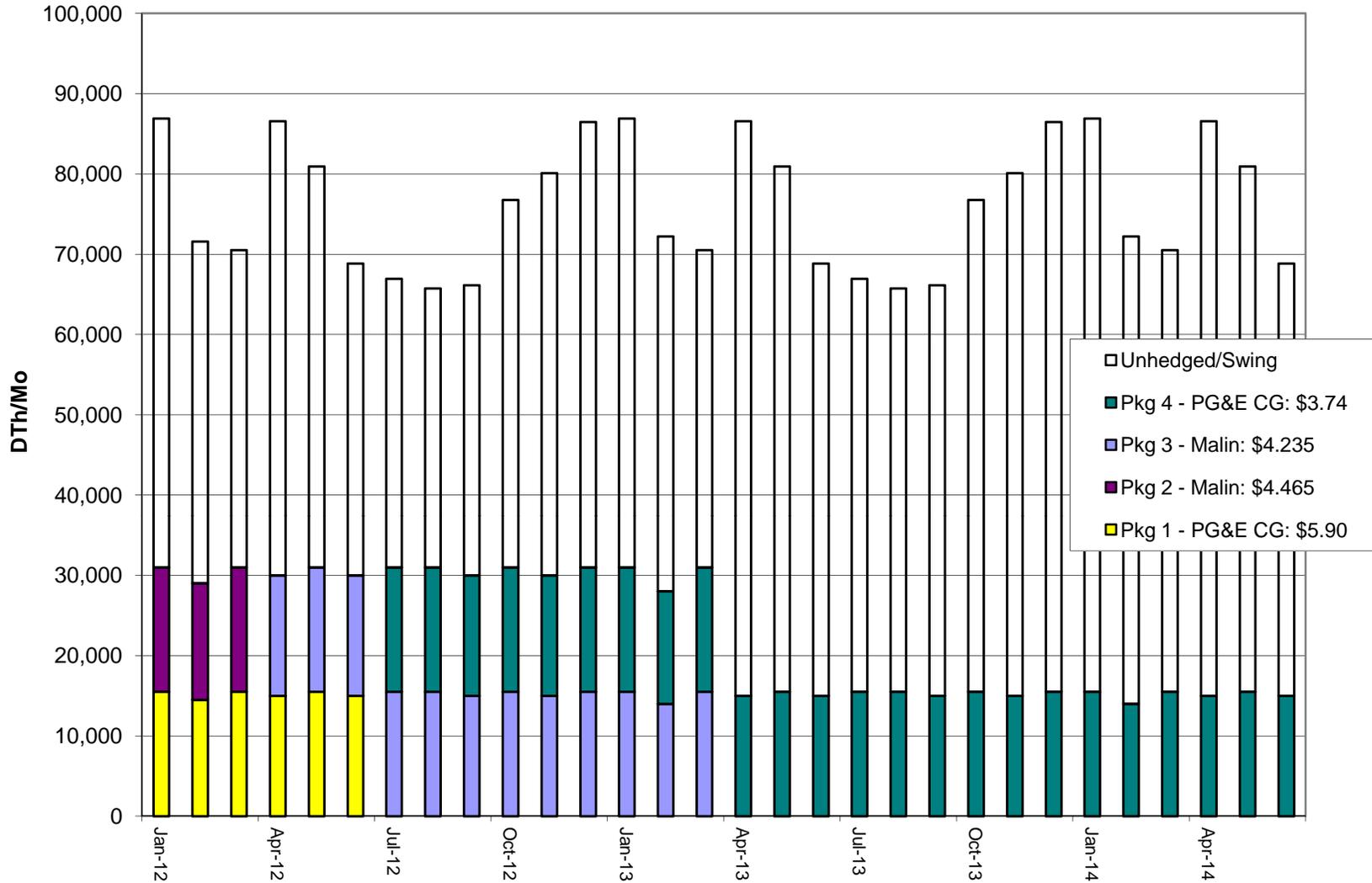
FY 2011-12 Monthly Summary of Operations

	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Total</u>
<u>Storage Gas Accounting</u>													
Beginning Quantity	42,247												
Average Price	\$5.02												
<u>Monthly Index Postings</u>													
NGI Bidweek for PG&E Citygate	\$4.60	\$4.54	\$4.19	\$4.15	\$3.86	\$3.87	\$3.41	\$3.03	\$2.83	\$2.50	\$2.33	\$2.81	
Gas Daily Avg. for PG&E Citygate	\$4.60	\$4.30	\$4.29	\$3.74	\$3.86	\$3.60	\$3.11	\$2.91	\$2.52	\$2.38	\$2.74		
NGI Bidweek for Malin	\$4.26	\$4.14	\$3.79	\$3.76	\$3.51	\$3.52	\$3.16	\$2.70	\$2.44	\$2.04	\$1.88	\$2.42	

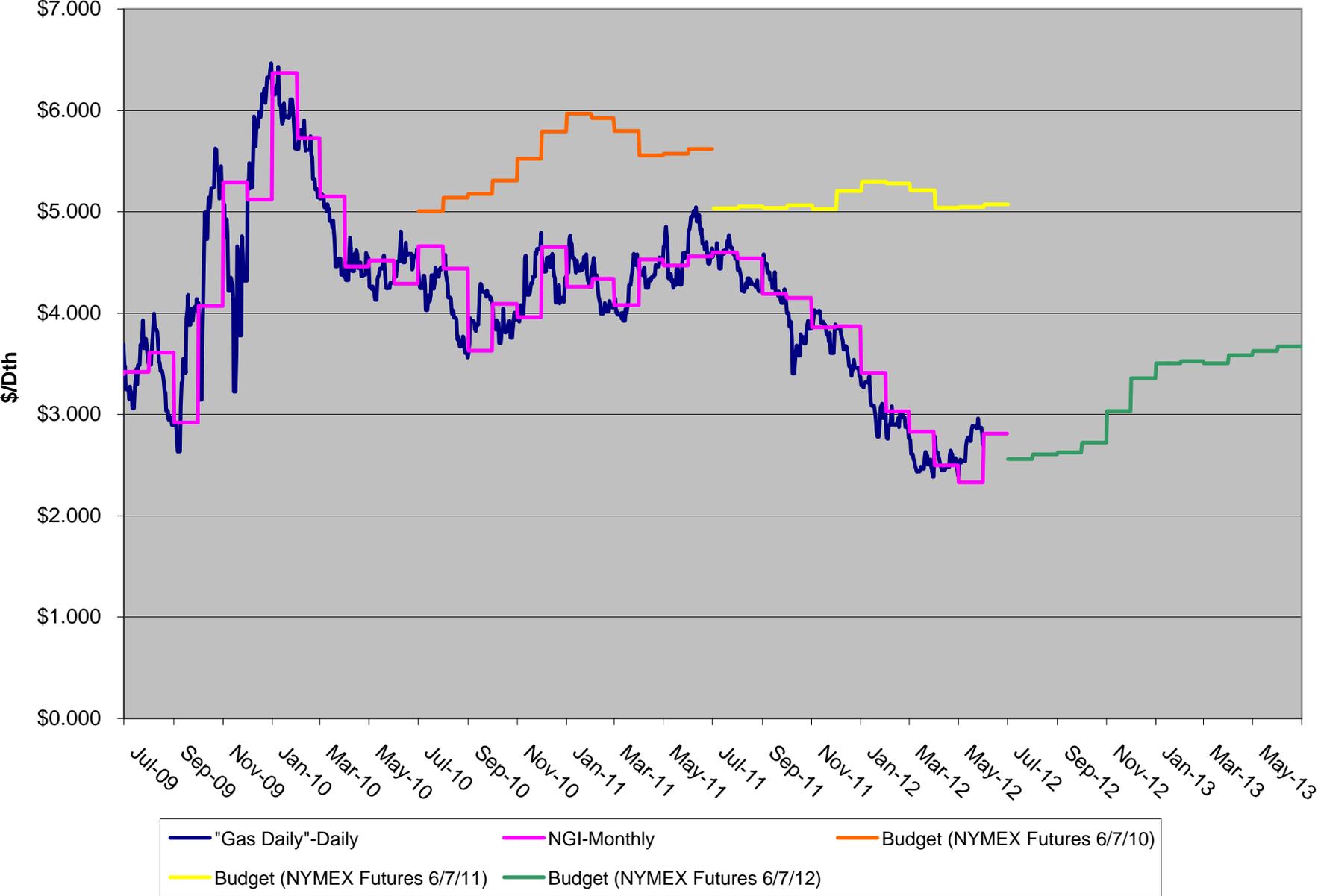
Notes:

- (1) All gas quantities in Dth and rates in \$/Dth. (Does not include imbalance purchases traded to storage.)
- (2) WACOG at PG&E Citygate
- (3) Includes costs to transport gas to PG&E Citygate from alternate delivery points, as well as physical storage costs.
- (4) Includes scheduling fees, billing fees, administrative costs and misc. expenses; less interest income.
- (5) PG&E charges billed to ABAG POWER via EDI process and passed through to customers. These costs do not necessarily tie directly to the actual gas usage shown above due to timing difference in reporting.
- (6) From billing data
- (7) Based on PG&E's G-NR1 rate schedule.
- (8) Includes: Procurement Charge, Capacity Charge, Brokerage Fee, Shrinkage, and Storage.
- (9) PG&E Transportation Charge; Customer Charge, and surcharge for Public Purpose Programs. Does not include Franchise Fees and City Taxes.

**ABAG POWER Long Term Gas Purchases
(Contracts > 1 month in length)**



Historical/Future Market Price Indices @ PG&E Citygate
Market Price Chart (3 Year)



ABAG POWER
Operating Budget
 Fiscal Year Ending June 30, 2013

	<u>Natural Gas</u>		
	<u>FY 2011-12</u> <u>Approved (1)</u>	<u>FY 2011-12</u> <u>Projected (2)</u>	<u>FY 2012-13</u> <u>Proposed</u>
Revenues			
Sale of Energy	\$ 8,612,907	\$ 8,660,809	\$ 7,156,938
Interest Income - Banks/LAIF	12,000	8,810	9,000
Total revenues	<u>8,624,907</u>	<u>8,669,618</u>	<u>7,165,938</u>
Cost of energy			
Cost of Energy Used (3)	5,288,563	3,854,707	3,628,511
PG&E Pass-Through Costs	<u>2,907,886</u>	<u>2,962,018</u>	<u>3,105,154</u>
Total cost of energy	8,196,449	6,816,724	6,733,665
Other Energy Costs			
Meter fees	-	-	-
Total Other Energy Costs	-	-	-
Program Expenses			
Billing Costs, external	10,200	(3,358)	10,200
Scheduling agent fees	38,167	37,800	38,745
ABAG fees	363,091	301,969	364,328
Interest Expense/Bank Charges	12,000	8,198	9,000
Legal Expenses (outside)	5,000	8,989	10,000
Other Expenses	-	-	-
Total Program Expenses	<u>428,457</u>	<u>353,598</u>	<u>432,273</u>
Total expenses	<u>8,624,907</u>	<u>7,170,322</u>	<u>7,165,938</u>
True-up Adjustment	-	1,499,296	-
Core Annual Usage (Dths):	793,966	779,589	793,814
Noncore Annual Usage (Dths):	125,370	125,230	126,649
Core Gas Commodity (4) (\$/Dth):	\$5.78	\$4.28	\$3.96
Noncore Gas Commodity (4) (\$/Dth):	\$5.59	\$4.16	\$3.80
PG&E Pass-through (\$/Dth):	\$3.66	\$3.80	\$3.91
Program Expenses (5) (\$/Dth):	\$0.45	\$0.38	\$0.46
Core Total Rate (\$/Dth):	\$9.89	\$8.46	\$8.34
Noncore Total Rate (\$/Dth):	\$6.04	\$4.54	\$4.26

Notes:

- (1) Approved budget June 2011
- (2) Actual April 2012 financials projected through June
- (3) Includes estimate for stranded pipeline capacity cost: \$18,000
- (4) Storage costs allocated to core accounts only
- (5) Program expenses minus interest income

ABAG POWER - Levelized Charges

Attachment 5B

Customer	Estimated Annual Usage	Gas Cost	Distribution Shrinkage	Storage Costs	PG&E Pass-through Costs (1)	Program Expenses (2)	Total Cost	FY2012-13 Monthly Levelized Charge	FY2011-12 Monthly Levelized Charge
rate (\$/th):		\$0.379	1.7%	\$0.011	\$0.391	\$423,273 \$0.046			
Core									
Alameda, City	188,344	\$71,414	\$1,214	\$2,048	\$73,674	\$8,661	\$157,010	\$13,090	\$16,060
Albany, City	13,344	\$5,060	\$86	\$145	\$5,220	\$614	\$11,124	\$930	\$950
Atherton, Town	5,836	\$2,213	\$38	\$63	\$2,283	\$268	\$4,865	\$410	\$530
Benicia, City	73,389	\$27,827	\$473	\$798	\$28,708	\$3,375	\$61,180	\$5,100	\$5,850
Contra Costa County GSD	1,523,128	\$577,519	\$9,818	\$16,558	\$595,801	\$70,041	\$1,269,737	\$105,820	\$124,000
Cupertino, City	45,375	\$17,205	\$292	\$493	\$17,749	\$2,087	\$37,826	\$3,160	\$4,110
Eastside Union H.S. District	77,729	\$29,472	\$501	\$845	\$30,405	\$3,574	\$64,798	\$5,400	\$6,390
Fremont, City	207,482	\$78,670	\$1,337	\$2,256	\$81,161	\$9,541	\$172,965	\$14,420	\$15,860
Gonzales, City	11,454	\$4,343	\$74	\$125	\$4,480	\$527	\$9,548	\$800	\$990
Golden Gate Bridge	79,547	\$30,162	\$513	\$865	\$31,116	\$3,658	\$66,314	\$5,530	\$6,620
Half Moon Bay, City	5,052	\$1,916	\$33	\$55	\$1,976	\$232	\$4,212	\$360	\$410
Hercules, City	59,189	\$22,442	\$382	\$643	\$23,153	\$2,722	\$49,342	\$4,120	\$4,050
Los Altos, City	21,892	\$8,301	\$141	\$238	\$8,564	\$1,007	\$18,250	\$1,530	\$2,430
Mill Valley, City	80,567	\$30,548	\$519	\$876	\$31,515	\$3,705	\$67,164	\$5,600	\$6,840
<u>Millbrae, City</u>									
Millbrae, City	34,166	\$12,955	\$220	\$371	\$13,365	\$1,571	\$28,482	\$2,380	\$2,730
Millbrae WWTP	120,675	\$45,756	\$778	\$1,312	\$47,204	\$5,549	\$100,599	\$8,390	\$9,700
Millbrae Total	154,841	\$58,710	\$998	\$1,683	\$60,569	\$7,120	\$129,081	\$10,770	\$12,430
Milpitas, City	186,108	\$70,566	\$1,200	\$2,023	\$72,800	\$8,558	\$155,146	\$12,930	\$14,360
Monte-Sereno, City	1,255	\$476	\$8	\$14	\$491	\$58	\$1,047	\$90	\$110
Moraga, Town	6,430	\$2,438	\$41	\$70	\$2,515	\$296	\$5,360	\$450	\$620
<u>Napa County</u>									
Napa County001	1,551	\$588	\$10	\$17	\$607	\$71	\$1,293	\$110	\$130
Napa County002	22,517	\$8,538	\$145	\$245	\$8,808	\$1,035	\$18,771	\$1,570	\$1,790
Napa County004	10,197	\$3,866	\$66	\$111	\$3,989	\$469	\$8,500	\$710	\$840
Napa County005	98,773	\$37,451	\$637	\$1,074	\$38,637	\$4,542	\$82,341	\$6,870	\$8,260
Napa County Total	133,038	\$50,443	\$858	\$1,446	\$52,040	\$6,118	\$110,905	\$9,260	\$11,020

ABAG POWER - Levelized Charges

Attachment 5B

Customer	Estimated Annual Usage	Gas Cost	Distribution Shrinkage	Storage Costs	PG&E Pass-through Costs (1)	Program Expenses (2)	Total Cost	FY2012-13 Monthly Levelized Charge	FY2011-12 Monthly Levelized Charge
						\$423,273			
rate (\$/th):		\$0.379	1.7%	\$0.011	\$0.391	\$0.046			
<u>Oakland, City</u>									
Oakland, City	805,759	\$305,517	\$5,194	\$8,760	\$315,188	\$37,053	\$671,711	\$55,980	\$65,840
Oakland Zoological	14,219	\$5,391	\$92	\$155	\$5,562	\$654	\$11,853	\$990	\$1,140
Oakland, City Total	819,978	\$310,908	\$5,285	\$8,914	\$320,750	\$37,707	\$683,564	\$56,970	\$66,980
Orinda, City	11,718	\$4,443	\$76	\$127	\$4,584	\$539	\$9,768	\$820	\$980
Pacifica, City	28,579	\$10,836	\$184	\$311	\$11,179	\$1,314	\$23,824	\$1,990	\$2,280
Petaluma, City	24,029	\$9,111	\$155	\$261	\$9,399	\$1,105	\$20,031	\$1,670	\$1,900
Pleasanton, City	178,722	\$67,765	\$1,152	\$1,943	\$69,910	\$8,218	\$148,989	\$12,420	\$14,360
Regional Admin. Facility	59,657	\$22,620	\$385	\$649	\$23,336	\$2,743	\$49,732	\$4,150	\$4,540
Richmond, City	359,560	\$136,333	\$2,318	\$3,909	\$140,649	\$16,534	\$299,743	\$24,980	\$23,740
Salinas, City	90,027	\$34,135	\$580	\$979	\$35,216	\$4,140	\$75,050	\$6,260	\$7,660
San Carlos, City	61,721	\$23,403	\$398	\$671	\$24,143	\$2,838	\$51,453	\$4,290	\$4,990
<u>San Mateo County</u>									
San Mateo County006	663,725	\$251,662	\$4,278	\$7,216	\$259,629	\$30,521	\$553,306	\$46,110	\$54,670
San Mateo County007	714,197	\$270,800	\$4,604	\$7,764	\$279,372	\$32,842	\$595,382	\$49,620	\$58,410
San Mateo County008	6,560	\$2,487	\$42	\$71	\$2,566	\$302	\$5,469	\$460	\$550
San Mateo County009	4,034	\$1,530	\$26	\$44	\$1,578	\$186	\$3,363	\$290	\$290
San Mateo County011	30,280	\$11,481	\$195	\$329	\$11,844	\$1,392	\$25,242	\$2,110	\$2,420
San Mateo County013	59,818	\$22,681	\$386	\$650	\$23,399	\$2,751	\$49,866	\$4,160	\$4,960
San Mateo County015	173,858	\$65,921	\$1,121	\$1,890	\$68,008	\$7,995	\$144,934	\$12,080	\$19,800
San Mateo County016	8,518	\$3,230	\$55	\$93	\$3,332	\$392	\$7,101	\$600	\$720
San Mateo County Total	1,660,990	\$629,791	\$10,706	\$18,057	\$649,728	\$76,380	\$1,384,663	\$115,430	\$141,820
San Rafael, City	67,904	\$25,747	\$438	\$738	\$26,562	\$3,123	\$56,607	\$4,720	\$5,510
Santa Clara County	848,048	\$321,551	\$5,466	\$9,219	\$331,730	\$38,997	\$706,965	\$58,920	\$74,100
Santa Rosa, City	278,095	\$105,444	\$1,793	\$3,023	\$108,782	\$12,788	\$231,831	\$19,320	\$22,930
Saratoga, City	13,823	\$5,241	\$89	\$150	\$5,407	\$636	\$11,523	\$970	\$1,180
Union City	17,383	\$6,591	\$112	\$189	\$6,800	\$799	\$14,491	\$1,210	\$1,650
Vallejo, City	343,042	\$130,070	\$2,211	\$3,729	\$134,188	\$15,775	\$285,973	\$23,840	\$30,830
Vallejo Sani.& Flood Control Dist	125,478	\$47,577	\$809	\$1,364	\$49,083	\$5,770	\$104,603	\$8,720	\$9,720
Watsonville, City	72,291	\$27,410	\$466	\$786	\$28,278	\$3,324	\$60,264	\$5,030	\$5,780
Winters, City	3,092	\$1,172	\$20	\$34	\$1,209	\$142	\$2,578	\$220	\$280

ABAG POWER - Levelized Charges

Attachment 5B

Customer	Estimated Annual Usage	Gas Cost	Distribution Shrinkage	Storage Costs	PG&E Pass-through Costs (1)	Program Expenses (2)	Total Cost	FY2012-13 Monthly Levelized Charge	FY2011-12 Monthly Levelized Charge
rate (\$/th):		\$0.379	1.7%	\$0.011	\$0.391	\$423,273 \$0.046			
TOTAL - Core	7,938,137	\$3,009,874	\$51,168	\$86,298	\$3,105,154	\$365,033	\$6,617,528	\$551,700	\$654,860
Rate (\$/th)		\$0.379	\$0.006	\$0.011	\$0.391	\$0.046	\$0.834		
	Total ABAG POWER Commodity Cost - Core:			\$0.396					
	Member Rate - Core:			\$0.442					
Non-Core			0.2%						
Contra Costa, County	0	\$0	\$0			\$0	\$0	\$0	\$0
San Mateo County	300,082	\$113,781	\$228			\$13,799	\$127,808	\$10,660	\$13,860
Santa Rosa, City (Co-gen)	772,679	\$292,974	\$586			\$35,531	\$329,091	\$27,430	\$39,470
Watsonville, City (Co-gen)	193,729	\$73,455	\$147			\$8,909	\$82,511	\$6,880	\$9,820
TOTAL - Non-core	1,266,490	\$480,210	\$960	\$0	\$0	\$58,239	\$539,410	\$44,970	\$63,150
Rate (\$/th)		\$0.379	\$0.001	\$0.000	\$0.000	\$0.046	\$0.426		
	Total ABAG POWER Commodity Cost - Non-core:			\$0.380					
	Member Rate - Non-core:			\$0.426					
GRAND TOTAL (Core + Non-core)	9,204,627	\$3,490,084	\$52,128	\$86,298	\$3,105,154	\$423,273	\$7,156,938	\$596,670	\$718,010
							% Change:	-16.9%	

Working Capital Deposits: \$ 2,020,437
Months: 3.39

Notes:

- (1) Includes estimates for: Customer Charge, Transportation Charge, Public Purpose Programs surcharge, and franchise fee.
- (2) Program expenses less interest income.

MEMORANDUM

ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area

Attachment 6A



DATE: June 11, 2012

TO: ABAG POWER Executive Committee

FROM: Gerald L. Lahr, Manager, ABAG POWER

RE: **East Side Union High School District Opt Out Notice**

In early May, ABAG POWER received a notice from PG&E that the sole East Side Union High School District (ESUHSD) account had been transferred to an alternate provider. After contact with the District staff it was determined that this transfer was made in error, and the District has since worked with ABAG and PG&E to return the account to the ABAG POWER program with approximately a one month gap in service.

During this time ABAG POWER also received a letter from ESUHSD notifying us of their intent to terminate the Core Aggregation agreement effective June 30th (attached).

Subsequently ABAG POWER staff have engaged the ESUHSD staff in discussions related to their termination notice and the requirements laid out in the Core Natural Gas Aggregation Agreement signed by the District. These discussions are on-going and will be discussed with the Executive Committee at its upcoming meeting.

/vm



May 21, 2012

Marcus Battle
Associate Superintendent of Business Services
East Side Union High School District
830 North Capitol Avenue
San Jose, CA 95133-1316

Re: ABAG POWER Natural Gas Aggregation Program

Dear Mr. Battle:

As you are aware, the East Side Union High School District (ESUHSD) is a member of the ABAG POWER Joint Powers Authority, and a participant in our natural gas aggregation program. As part of this program ESUHSD enrolled the following account:

Service Address: 1776 Educational Park Dr., San Jose, Ca 95133
PG&E Account: SA ID# 2316486005

ESUHSD has been a program participant since March 2001. The terms of service for the program are included in the Core Natural Gas Sales and Aggregation Agreement ('Agreement', attached).

Recently we received a notice from PG&E informing us that the ESUHSD account would be disconnected from the ABAG POWER Program effective May 3, 2012. PG&E indicated that another gas supplier had sent in an enrollment form to take over the account on April 11, 2012. To date, we have received no request that this account be withdrawn from the program.

The disconnection of this account from our program is considered a breach of the terms of the Agreement which requires ESUHSD provide a three year advance notice prior to termination of the Agreement (section 7). The reason for this advance notice requirement is to allow the program to make long term gas purchase commitments, and to ensure the program's ability to meet all of its gas scheduling commitments without being subject to penalties, or higher costs for the remaining participants.

It is our understanding based on recent discussions that the disconnection of this account may have been done in error. We ask that you notify us by June 1, 2012 of your intent to immediately return this account to the ABAG POWER program.



Please contact me at (510) 759-2724 at your earliest convenience if you would like to discuss this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jerry Lahr'.

Jerry Lahr
ABAG/POWER Program Manager

/vm

Attachment: Core Natural Gas Sales and Aggregation Agreement

COPY

**CORE NATURAL GAS SALES AND
AGGREGATION AGREEMENT**

By and Between

ABAG POWER

and

Eastside Union High School District
(Name of Public Agency)

For service within the territory of
Pacific Gas & Electric Company

CORE NATURAL GAS SALES AND AGGREGATION AGREEMENT

This Core Natural Gas Sales and Aggregation Agreement, hereinafter "Agreement", is made and entered into as of this 2nd day of June 2004, by and between the ABAG Publicly OWned Energy Resources, a California joint powers agency, hereinafter "ABAG POWER", and the Eastside Union High School District (name of public agency), a _____ (charter/general law city or county or special district), hereinafter "Public Agency".

The parties hereby agree as follows:

1. Eligibility: Public Agency is a member of ABAG POWER. ABAG POWER shall provide directly or, at its option, shall contract to provide coordination services for the purchase and management of a natural gas program for members of ABAG POWER participating in said program [Participant(s)].

2. Authorities: Public Agency is a customer of PG&E for core natural gas distribution services. ABAG POWER is a designated Core Transportation Agent (CTA) in accordance with PG&E's Rule 23 and Tariff G-CT ("Program"). Public Agency appoints ABAG POWER as its exclusive agent to coordinate its purchase and management of natural gas, on behalf of Public Agency for the facilities listed in Exhibit A, which is attached hereto and incorporated herein. All parties understand and agree that the authority for the Program is granted by and subject to the CPUC, as initially authorized by CPUC Decision No. 91-02-040 and as modified through various subsequent CPUC Decisions. This Agreement is pursuant to the Utility Aggregation Tariff Rate Schedule(s), Tariff Rules and terms and conditions set forth in such agreement. Public Agency represents and warrants that any prior aggregator authorizations which Public Agency may have executed will be terminated effective no later than the date of this authorization.

3. Services: ABAG POWER shall deliver, or cause to be delivered, the following services to Public Agency:

3.1 Analyze and evaluate natural gas supply and transportation strategies;

3.2 Negotiate and implement natural gas purchase, transportation and other similar gas services for Participants;

3.3 Perform nominations of gas purchased and transportation services on behalf of Public Agency's facilities as listed in Exhibit A;

3.4 Monitor gas account imbalances;

3.5 Generate invoices for all natural gas purchases and services for ABAG POWER to perform as required under the Agreement. Invoices will include the following information:

3.5.1 For each facility listed in Exhibit A, the monthly usage, and gas charges, including, but not limited to, ABAG POWER operational and administrative fees.

3.5.2 The status of the account identifying the prior account balance, any payments since the previous invoice, current charges plus any applicable late payment charges and credit balances as calculated pursuant to Paragraph 9.3(?); and

3.6 Provide general consultation services.

4. Enrollment Notification of Changes: Public Agency shall through the attached Exhibit A submit to ABAG POWER its list of accounts to be served hereunder. Public Agency represents and warrants that all facilities listed in Exhibit A distribute natural gas used by Public Agency and that none of the facilities will be serviced by another core transport agent as of the Start Date as defined in Paragraph 9.5. Public Agency shall also notify ABAG POWER forty-five (45) days in advance of changes in Public Agency's facilities or operations which are reasonably expected to increase or decrease the consumption of natural gas more than ten percent (10%) as compared to historical levels. Public Agency may add facilities to Exhibit A upon prior written notice to ABAG POWER. Public Agency may delete facilities from Exhibit A only upon written consent by ABAG POWER, which consent shall not be unreasonably withheld, except that Public Agency may delete facilities without ABAG POWER's consent if Public Agency abandons the facility or transfers the facility to another entity.

5. Agency Relationship: Public Agency authorizes ABAG POWER to act as its exclusive agent for the Program and does hereby constitute and appoint an authorized officer or agent of ABAG POWER to act on its behalf as its lawful agent for the implementation of the Program. This authorization shall include the right to do and perform all acts, with full power to execute all documents requisite and necessary to be done in all matters relating to the purchase, sale, and transportation of natural gas. Therefore, Public Agency authorizes ABAG POWER to take actions appropriate to establish and implement the Program, including, but not limited to:

5.1 Aggregating the gas supplies and services of Public Agency with those of other Participants in conjunction with providing such gas supplies and services to Public Agency and pursuant to the terms and conditions of the Program;

5.2 Executing local distribution company riders and other documentation on behalf of Public Agency;

5.3 Nominating gas supplies on behalf of Public Agency;

5.4 Handling gas imbalances, gas storage, and all other operational transactions with the Utility in order to deliver gas to the Utility for subsequent redelivery to Public Agency; and

5.5 Arranging for payment of Program bills for natural gas, transportation and other Utility charges. Public Agency understands and agrees that in the event of nonpayment by ABAG POWER, Public Agency will be responsible for payment of Public Agency's bills for gas and services, even if the Public Agency has already made payment to ABAG POWER for those gas quantities and services.

Public Agency understands that if ABAG POWER's contract with the Utility terminates for any reason, on Public Agency's receipt of notice from Utility, Public Agency will receive gas service for Exhibit A accounts under core procurement service from the Utility commencing on the first day of

Public Agency's next billing cycle pursuant to the terms and conditions of the applicable core procurement Tariff Rate Schedule for each Public Agency's accounts.

6. Title: All purchase, transportation and other gas service contracts shall be in the name of ABAG POWER.

7. Term: Subject to the provisions of Paragraphs 12 and 13 hereof, and receipt of timely notifications of alternative arrangements, this Agreement shall be in full force for a three (3) year term commencing July 1 of the year immediately following the execution date of this contract. Subject to Paragraph 13, the term of this Agreement shall be automatically extended for additional three-year periods on each July 1 provided that ABAG POWER is not in breach of this Agreement, and provided that Public Agency 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.

8. Fees: The operational fees for all services described in Paragraphs 3 and 5 shall be established by the ABAG POWER Board of Directors, hereinafter "Board".

9. Payment:

9.1 On a monthly basis, unless otherwise approved by Public Agency, ABAG POWER will provide, or cause to be provided, to Public Agency an invoice for the Public Agency's facilities serviced under this Agreement. Invoices will be directed to and payment is to be made directly by Public Agency to the escrow account designated pursuant to Paragraph 10 of this Agreement. Payment is due immediately upon receipt of the invoice. Late payment charges at the rate of one and a half percent (1.5%) per month calculated daily on the outstanding balance will be imposed commencing on the thirty-first (31st) day after the mailing date of the invoice. Late payment charges may, at ABAG POWER's sole discretion, be debited against Public Agency's Working Capital Account as defined in Paragraph 9.3.

9.2 ABAG POWER will invoice Public Agency, and Public Agency will pay, in monthly installments, sums representing payments for the natural gas and services provided under this Agreement (Invoiced Amounts). Initially, Invoiced Amounts will be based on ABAG POWER's estimate of Public Agency's consumption of natural gas for the month leveled to eliminate extreme consumption fluctuations but adjusted to reflect moderated seasonal fluctuations. Each invoice will also identify the costs, if any, of natural gas, including, but not limited to transportation charges and operational fees, and utility charges charged to Public Agency for the period identified in the invoice. Any disputes between the parties regarding the amount of any Actual Charges shall be resolved pursuant to Section H of Exhibit B to this Agreement, as defined in Paragraph 9.3, will be adjusted as soon as practicable to reflect the resolution of the dispute.

9.3 Upon approval of this Agreement by ABAG POWER, Public Agency shall pay a working capital deposit to ABAG POWER prior to transferring any accounts to the ABAG POWER program. This deposit is refundable when Public Agency leaves the program and all liabilities to ABAG POWER have been satisfied. The currently approved working capital deposit is calculated as follows:

[Two times the average load (therms) times the current applicable rate (\$/therm).]

9.4 After the end of each fiscal year, ABAG POWER will perform a “true-up” by calculating the difference between the Invoiced Amounts and the Actual Charges. Any difference in these amounts will be debited or credited (as appropriate) to the Public Agency in equal installments over the remaining program year’s invoices.

9.5 In accordance with the terms of Paragraph 10, ABAG POWER will first apply the Invoiced Amounts to the payment of Actual Charges. Public Agency acknowledges that during the term of this Agreement ABAG POWER has the right to use working capital deposits to pay Actual Charges incurred by other Participants in the Program as such Actual Charges become due. Such use of the monies will not be a debit against the working capital deposit and will not obviate, eliminate or modify ABAG POWER’s obligation to pay Public Agency the working capital deposit amount pursuant to Paragraph 13.3. ABAG POWER retains the right to modify Invoiced Amounts to increase the sum of working capital deposits in the Program in order to timely pay Actual Charges as they become due.

9.6 The initial invoice will be dated _____ and must be paid by _____ (Start Date), or this Agreement terminates on _____. Upon prior written notice to Public Agency, ABAG POWER may delay the Start Date to accommodate Program requirements.

9.7 In the event Public Agency fails to make timely payment consistent with the terms employed by ABAG POWER, in addition to any other remedy it may have hereunder and notwithstanding the existence of any late payment penalty, ABAG POWER may declare Public Agency to be in default and terminate the agreement. ABAG POWER is further authorized to bill Public Agency for reasonable charges associated with demands for payment on late accounts as well as reasonable charges associated with suspension and resumption of service hereunder.

10. Disbursement of Funds: Subject to the terms and conditions of this Agreement, ABAG POWER agrees to provide for sale and delivery, and Public Agency agrees to receive and to pay ABAG POWER for natural gas. Further, Public Agency agrees to pay for the Actual Charges.

10.1 An escrow account for the purposes of receiving payments by Participants and making payments to the Utilities, the gas supplier and other payees as authorized by ABAG POWER will be established.

10.2 The instructions for this escrow account have been approved by ABAG POWER, and shall include a list of the authorized recipients of payments from the account.

10.3 Only ABAG POWER may authorize release of funds from the escrow account, and such shall only be to those payees identified in the escrow instructions.

11. Gas Program Pricing:

11.1 Allocation. The gas charges to Participants will include (a) cost of the gas commodity (gas charges), (b) applicable utility transportation charges, and (c) administrative costs. Gas charges are the product of a Participant’s usage times the unit rate for gas for each month. The unit rate is the total monthly cost of natural gas purchased for all Participants at the supplier contract price divided by the

total monthly usage of Participants. Transportation and administrative charges will be allocated to each Participant based on gas usage.

11.2 Annual Report. Each year, ABAG POWER will provide each Participant with a report showing that Participant's total costs for natural gas, including transportation charges and administrative fees, and utility charges at a per therm cost for each category.

11.3 Gas Purchasing. Under the policy direction of the Board, ABAG staff will regularly canvas the natural gas market and enter into contracts to acquire natural gas for, among others, fixed price, indexed price and variable price with a minimum and/or maximum. ABAG staff, under the policy direction of the Board, has the power to execute all contracts reasonably necessary to deliver natural gas to each Participant.

12. Change of Regulations: Any future change in law, rule or regulation, or utility practice which prohibits or frustrates ABAG POWER or the Public Agency from carrying out the terms of this Agreement shall excuse both parties from their obligations, other than the obligation of Public Agency to make payments due for gas and services received.

13. Cancellation of Service:

13.1 Cancellation by Public Agency: Public Agency may cancel the Agreement by giving ABAG POWER written notice by June 1 of its intent to terminate on June 30 of the third year following the date notice was given.

13.2 Cancellation by ABAG POWER: Actions by the utilities and/or CPUC to develop rules which are in conflict with sound business practices, or impose unnecessary risk on either party to this Agreement, or substantially prevent ABAG POWER from performing its functions under this Agreement may result in the cancellation of this Agreement by ABAG POWER. ABAG POWER shall give Public Agency written notice ninety (90) days prior to such cancellation and both parties shall work diligently to minimize the negative effects on ABAG POWER and the Public Agency of such cancellation.

13.3 Working Capital Deposit: Within ninety (90) days after cancellation, ABAG POWER will pay to Public Agency the amount of its working capital as modified pursuant to Paragraph 9.2, less any debits imposed pursuant to Paragraph 9.1 and less any outstanding Actual Charges owed by Public Agency.

14. ABAG POWER Board of Directors: Mr. Alan Garofalo (Name of Public Agency Representative) shall be the Public Agency's representative to the Board. The Board shall provide policy direction for the Program. The Board's powers shall include admission of new Participants and the extension of any contracts for the purchase of natural gas and/or related services under rules and procedures adopted by the Board.

15. Approvals: The Public Agency Representative may grant any approval, or give any direction required by this Agreement, in writing or orally. Written approvals or directions may be transmitted physically, by facsimile or electronically. Oral approvals will be confirmed in writing by either party.

16. Attorneys' Fees: In the event either party invokes its right to arbitration under Section H of Exhibit B due to an alleged breach of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as determined by the arbitrator.

17. Ownership of Files, Reports, Photographs, and Related Documents: Upon termination of the Agreement, any and all files, reports, photographs, plans, specifications, drawings, data, maps, models and related documents respecting in any way the subject matter of this Agreement, whether prepared by ABAG POWER, the Public Agency or third parties and in whatever media they are stored shall remain or shall become the property of the Public Agency and the Public Agency shall acquire title to, and copyright ownership of, all such documents. The Public Agency hereby grants to ABAG POWER an irrevocable license to retain a copy of all records covered by this paragraph for ABAG POWER's files.

18. Indemnity: Public Agency shall indemnify and hold harmless ABAG, ABAG POWER and their respective directors, officers, member agencies, agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance or non-performance of the services required by this Agreement, unless such is caused by the negligence of ABAG, ABAG POWER or their respective directors, officers, member agencies, agents or employees.

19. Assignment/Security Arrangements: Public Agency hereby acknowledges that ABAG POWER may, in order to finance security deposit and cash flow deficits incurred in connection with the operation with this Program, incur short-term debt which may be secured by an assignment, encumbrance or hypothecation of this Agreement and/or payments due hereunder.

20. Notices: The following addresses for the giving of notices and billings shall be:

Public Agency Notices

Name: East Side Union High School District

Address: 830 N. Capitol Avenue

San Jose, CA 95133

Telephone No.: 408-347-5100

Facsimile No.: 408-347-5115

Email: garofaloe@esuhsd

Attn.: Mr. Alan Garofalo

Public Agency Billing Address

Name: Same As Above

Address: _____

Telephone No.: _____

Facsimile No.: _____

Email: _____

Attn.: _____

ABAG POWER Notices

ABAG
P. O. Box 2050
Oakland, CA 94604-2050
Gerald L. Lahr, Program Manager
Telephone No: 510-464-7908
Facsimile No: 510-464-5508
Email: JerryL@abag.ca.gov

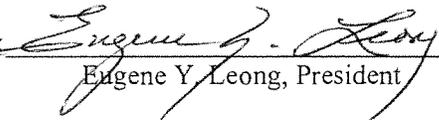
21. Severability: If any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable to any extent, the remaining provisions of this Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired, or invalidated.

22. Captions: The captions appearing in this Agreement are inserted as a matter of convenience and in no way define or limit the provisions of this Agreement.

23. Other Contract Provisions: This Agreement shall be subject to the other standard provisions which are set forth in the attached Exhibit B, which is incorporated by this reference.

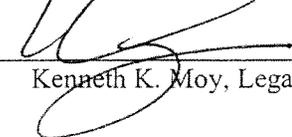
IN WITNESS WHEREOF, the parties have hereunto set their hands effective the date and year first above written.

ABAG PUBLICLY OWNED ENERGY RESOURCES

By: 
Eugene Y. Leong, President

Date: 9/16/04

Approved as to legal form and content:

By: 
Kenneth K. Moy, Legal Counsel

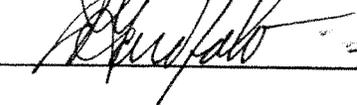
Date: 9/15/04

PUBLIC AGENCY

By: East Side Union High School District

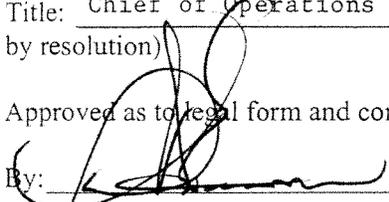
Date: 9-27-04

Name: Mr. Alan Garofalo

By: 

Title: Chief of Operations (City Manager, County Administrator or other as designated by resolution)

Approved as to legal form and content:

By: 

Date: 4/2/04

Name: Doug Earlerson

Title: Chief Financial Officer

EXHIBIT A

List of Facility Accounts

Name of Public Agency: East Side Union High School District

PG&E Account Number	Street Address	City
1. <u>HVPAB 01331</u>	<u>1776 Educational Park Drive</u>	<u>San Jose, CA</u>
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

EXHIBIT B
STANDARD CONTRACT PROVISIONS

- A. **Time of Essence.** Time is of the essence in this Agreement.
- B. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or a different provision of this Agreement.
- C. **Controlling Law.** This Agreement and all matters relating to it shall be governed by the laws of the State of California.
- D. **Binding on Successors, Etc.** This Agreement shall be binding upon the successors, assigns, or transferees of ABAG POWER or Public Agency as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate, or pledge this Agreement other than as provided above.
- E. **Records/Audit.** ABAG POWER shall keep complete and accurate books and records of all financial aspects of its relationship with Public Agency in accordance with generally-accepted accounting principles. ABAG POWER shall permit authorized representatives of Public Agency and/or any of Public Agency's governmental grantors to inspect, copy, and audit all data and records of ABAG POWER relating to its performance of services under this Agreement. ABAG POWER shall maintain all such data and records intact for a period of three (3) years after the date that services are completed hereunder or this Agreement is otherwise terminated.
- F. **Prohibited Interest.** Neither ABAG, ABAG POWER or their respective directors, officers, employees or agents shall solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts.
- G. **Insurance Requirements.**
- (1) ABAG shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following insurance:
 - (a) Workers' compensation insurance as required by law.
 - (b) Comprehensive general liability insurance coverage of One Million Dollars (\$1,000,000) in the aggregate for products and/or completed operations and One Million Dollars (\$1,000,000) per occurrence for automobiles.
 - (c) Professional liability insurance with minimum liability limits of Two Million Dollars (\$2,000,000) in the aggregate.
 - (2) All ABAG's insurance policies shall contain an endorsement providing that written notice shall be given to Public Agency at least thirty (30) days prior to termination, cancellation, or reduction of coverage in the policy or policies, and all policies shall be carried by an insurance company or companies acceptable to Public Agency.

(3) In addition, each policy or policies of insurance described in subparagraph (2) above shall contain an endorsement providing for inclusion of Public Agency and its directors, officers, agents, and employees as additional insureds with respect to the work or operations in connection with this Agreement and providing that such insurance is primary insurance and that no insurance of Public Agency will be called upon to contribute to a loss.

(4) Promptly upon execution of this Agreement, ABAG shall deliver to Public Agency certificates of insurance evidencing the above insurance coverages. Such certificates shall make reference to all provisions or endorsements required herein and shall be signed on behalf of the insurer by an authorized representative thereof. ABAG agrees that at any time upon written request by Public Agency to make available copies of such policies certified by an authorized representative of the insured.

(5) The foregoing requirements as to types and limits of insurance coverage to be maintained by ABAG and approval of policies by Public Agency are not intended to, and shall not, in any manner limit or qualify the liabilities and obligations otherwise assumed by ABAG pursuant to this Agreement, including, but not limited to, liability assumed pursuant to ABAG's insurance policies under Subsections (1)(b) of this section.

(6) ABAG shall require all subcontractors to comply with the insurance requirements described in Section G(1)(a)-(c), inclusive.

H. **Arbitration.** Any dispute between ABAG POWER and the Public Agency regarding the interpretation, effects, alleged breach of powers and duties arising out of this Agreement shall be submitted to binding arbitration. The arbitrator shall be selected by agreement between the parties by lot from a list of up to six (6) arbitrators with each party submitting up to three (3) arbitrators.



East Side Union High School District

830 North Capitol Avenue • San José, California 95133-1316 • 408-347-5000

Academic, personal and social success for each and every student.

Dan Moser, Superintendent

VIA FACSIMILE AND ELECTRONIC MAIL

ABAG
P.O. BOX 2050
Oakland, CA 94604-2050

Attn: Gerald L. Lahr, Program Manager (JerryL@abag.ca.gov)
Facsimile Nos.: 510-464-5508 and 510-464-8468

Re: East Side Union High School District/ABAG Joint Powers Agreement and Core Aggregation Agreement

Dear Mr. Lahr:

Thank you for your letter dated May 21, 2012, receipt of which is hereby confirmed. This will confirm that the District is working with PG&E to restore the 1776 Education Park site to the ABAG program. I will let you know as soon as we receive confirmation from PG&E.

In addressing these issues we have become concerned about some aspects of the Core Agreement program. I am sending this letter in the spirit of sharing these concerns in an effort to achieve a resolution that addresses the District's issues and ABAG Power's interests in a responsible and equitable manner.

Beginning in 2010 the District's contracting practices were the subject of an Extraordinary Audit commissioned by the Santa Clara County Office of Education (SCCOE) and performed by the Fiscal Crisis and Management Assistance Team ("FCMAT"). In particular, the Audit report reviewed the District's then-contracting practices and internal controls to ensure that the District's practices were consistent with the Education Code, Public Contract Code, Government Code and other applicable laws. The Audit report included more than twenty recommended changes to the District's contracting practices and Board oversight. Since then, the District has worked proactively with the SCCOE and FCMAT to ensure that the District successfully implemented the recommendations and that the District continues to monitor its practices and internal controls and to employ best practices to ensure compliance with state law.

The Core Aggregation Agreement ("Core Agreement") is dated June 2, 2004, but appears it was not fully executed by the parties until September 2004. Pursuant to the agreement, ABAG provides coordination services for the purchase and management of a natural gas program for members of the program. Section 7 of the Core Agreement provides that it shall be for an initial term of three years commencing July 1 of the year immediately following the execution date of the agreement. In this

BOARD OF TRUSTEES: Frank Biehl, J. Manuel Herrera, Van Ly, Lan Nguyen, Patricia Martinez-Roach.

It is the policy of the East Side Union High School District not to discriminate on the basis of sex, age, religion, race or national origin, sexual orientation, or handicapping condition in its educational programs and activities or in the recruitment and employment of personnel.

case, the Core Agreement commenced effective as of July 1, 2005. Section 7 also provides that, “the term of this Agreement shall be **automatically extended** for additional three-year periods on each July 1 provided that ABAG POWER is not in breach of this agreement, and provided the Public Agency 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.” (Emphasis added.)

Thus, by its own terms, the Core Agreement is a continuing agreement with automatic (so-called “evergreen”) 3 year renewals.

Education Code section 17596 provides:

“Continuing contracts for work to be done, services to be performed, or for apparatus or equipment to be furnished, sold, built, installed, or repaired for the district, or for materials or supplies to be furnished or sold to the district may be made with an accepted vendor as follows: for work or services, or for apparatus or equipment, not to exceed five years; for materials or supplies, not to exceed three years.”

Thus, based on Education Code section 17596, the term of the Core Agreement could not exceed or extend beyond June 30, 2010 (i.e., five years at most). Based on our review and analysis, we are concerned that the Core Agreement’s evergreen provision is violation of Education Code section 17596 as that Agreement has now been in place for nearly seven (7) years and potentially extended through June 30, 2015, as a result of the evergreen provision. As you can understand, this is an issue and area of heightened sensitivity to the District in light of the recent FCMAT Audit and the District’s efforts at ensuring compliance with state law.

In light of these and other issues, the District would like to propose and discuss with you and ABAG that the District’s facility that is the subject of the Core Agreement (1776 Education Park Drive) be withdrawn from the program in a prompt and equitable manner that conforms with the District’s obligations under state law. **In addition, and in light of our review of Education Code section 17596, this letter shall serve as the District’s notice of its intent to terminate the Core Agreement effective June 30.** While the Core Agreement (Section 7) provides that the termination shall be effective on June 30 three years immediately following such notice, it does not appear such a provision, as applied in this case, is consistent with state law or the District’s obligations under Education Code section 17596. On that basis, we propose and would like to discuss with you an immediate withdrawal from the program.

We understand that these issues may raise various operational and administrative issues with ABAG POWER. The District’s intention is not to evade its obligations under the Core Agreement or to cause ABAG Power any unnecessary or undue operational stress; after all, the District has been a party in good standing under the agreement since 2004. Nevertheless, the District is mindful of its obligations under state law. We hope you understand the District’s perspectives on this and that you are amenable to meeting with us immediately in an effort to resolve these important issues.

JPA and Core Aggregation Agreement
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I look forward to speaking with you about these issues.

Sincerely,

A handwritten signature in blue ink that reads "Marcus Battle". The signature is fluid and cursive, with a long horizontal stroke at the end.

Marcus Battle
Associate Superintendent