

ATTACHMENT D

CONTINGENT RISKS

RISK ANALYSIS

Attached as Exhibit A is a table setting forth ABAG POWER's best reasonable effort at estimating the maximum reasonable liability (in total for the Electric Program) for each of the listed contingent liabilities. The table allocates total liability of the program to individual Members in accordance with the usage ratio, or CTC Reversal ratio, as appropriate. The allocation is for illustrative purposes only. ABAG POWER does not have sufficient information on which to base an estimate of how the entity imposing the liability would allocate the liabilities or how ABAG POWER and the Members ought to react to such allocation.

A. UNINVOICED ENERGY CHARGES

Description of Risk

ABAG POWER is distributing to each of its Electric Program Members a proportionate share of the Working Capital contributions made by Members in response to Working Capital calls by ABAG POWER and residual funds from operating costs paid by Members during the Electric Program (Balancing Account). These funds were held, in part, in reserve for payment of charges for electrical energy consumed by Members of the Electrical Program during a one-week period in August 2001 when ABAG POWER was not purchasing electricity on behalf of the Electric Program (Gap Period).

As of February 29, 2004, ABAG POWER has not been invoiced for electricity consumed during the Gap Period. Under the Wind Up Agreement, if ABAG POWER receives such a bill, each Member will be required to pay its proportionate share.

Background

Under normal operating conditions, ABAG POWER purchased on behalf of the Members of the Electric Program sufficient energy to meet their estimated needs. Purchases were made from a variety of electricity generators and energy remarketers, under various contractual formats (fixed price, indexed price, indexed price with "floors" and/or "ceilings," etc.), and at various prices. In all instances, one significant factor in the price of electricity is the hour in which it is consumed. Energy during certain "peak" periods was priced considerably higher than at other periods.

In the summer of 2000, the electric market became highly unstable. ABAG POWER was having a difficult time meeting credit requirements which our scheduling coordinator and electricity sellers were imposing on the marketplace. Consequently, on August 2, 2000 ABAG POWER notified PG&E in writing of its difficulties, and actions being taken to rectify the situation. PG&E acknowledged that it had received ABAG POWER's notice, and although it believed that ABAG POWER was in default of its ESP Agreement, PG&E would allow ABAG POWER until August 7, 2000 to resolve the situation. Prior to this deadline, ABAG POWER was able to secure scheduling coordination services and contract for electricity at a reasonable price, without the additional credit requirements imposed by other energy providers and remarketers.

Legal Analysis

From a legal perspective, the matter is a simple collection issue. Since ABAG POWER did not enter into a contract during the Gap Period, there is no "seller" to invoice ABAG POWER for any energy that was consumed. There are only two sources of electricity flowing into the California grid that could have serviced the Electric Program during the Gap Period: the ISO and PG&E.

The energy consumed by the Members could have been supplied through the ISO "imbalance energy." This is a reserve maintained by the ISO when contracted for energy supplies from PG&E and other electric service providers fall below the amount necessary to keep the grid operational. Electricity Program electricity consumption during the Gap Period could have come from this source.

Alternatively, PG&E supplies such a large amount of electricity over any period of time that it could have been supplying part of the power for the Electric Program during the Gap Period.

The risk of incurring the liability is wholly dependent on the ability either of the ISO or of PG&E to "prove" that electricity consumed by Members during this period was supplied by the party making the claim.

ABAG POWER is without sufficient information to evaluate the likelihood of this risk occurring.

ABAG POWER has reviewed the price of imbalance energy for the period in question. Imbalance energy prices tend to be the highest of all prices paid for electricity. Based on the price for imbalance energy an estimate of the amount of electricity that the Electric Program would have consumed during the Gap Period, the maximum exposure is estimated as One Million Four Hundred Twenty Thousand Dollars (\$1,420,000).

Finally, ABAG POWER notes that as time goes on the ability of either the ISO or PG&E to collect the data necessary to generate an invoice and prove a claim diminishes.

B. UDC CHARGES

Description of Risk

From information provided by the Program's billing agent (APS) we believe there may be UDC charges for which neither ABAG POWER nor its Members have been invoiced by PG&E. During the period July 2000 to June 2001 the amount of UDC charges billed to members (and collected by ABAG POWER) is greater than the amount invoiced from PG&E.

ABAG POWER is also aware of one instance in which UDC charges for the affected period were generated by PG&E in connection with an electric account for a Member's streetlight system. These accounts are unique in the PG&E billing system. Electricity consumed by a streetlight system is not metered and is charged on an estimated consumption basis. In the case of which ABAG POWER is aware, the Member had already paid PG&E for the asserted UDC charges.

Based on APS Billing information and information from ABAG POWER's review of the DA Credit's owed by PG&E, ABAG POWER has concluded that the likely total exposure is approximately One Million Six Hundred Thousand Dollars (\$1,600,000).

LEGAL ANALYSIS

PG&E applies UDC charges to individual accounts based on the amount of electricity consumed.

As noted above, streetlight accounts are uniquely billed by PG&E. In the case that has come to ABAG POWER's attention, we believe that the Member has been billed twice for the same UDC charges. Other Members with streetlight accounts may encounter the same situation.

C. ISO ESCROW DEPOSIT AND PX ESCROW DEPOSIT

Description of Risk

The PX Escrow Deposit and ISO Escrow Deposit held by NCPA on behalf of ABAG POWER are subject to reduction or nonrefund. In the case of PX Escrow Deposit, all of the funds may be consumed in the course of settling the PX's bankruptcy claims. The ISO Escrow Deposit is subject to adjustments based on FERC ordered energy price rollbacks (see detailed description in Section D below). The FERC ordered rollbacks can both increase and decrease the ISO Escrow Deposit.

ABAG POWER bought electricity for use by the Electric Program and sold excess capacity into the marketplace at various times. At those instances in which ABAG POWER was purchasing electricity, the FERC ordered price reductions will generate a refund and an increase in the ISO Escrow Deposit. In those instances in which ABAG POWER sold energy into the marketplace, the FERC ordered rollbacks can reduce the amount available from the ISO Escrow Deposit. Based on ABAG POWER's review of the total amount of power sold during the period under consideration by FERC for price reductions, we conclude that the likely reductions do not exceed the amounts currently in the ISO Escrow Deposit.

Under these circumstances, we believe the risk is nominal.

D. DIRECT ACCESS CREDITS

Description of Risk

ABAG POWER is distributing to each of its Electric Program Members a proportionate share of the funds received from PG&E as settlement of ABAG POWER's claim against PG&E for Direct Access Credits incurred during 2000 under the deregulated energy market in California. The Direct Access Credit is a result of the application of a rate formula adopted by the CPUC. The formula includes contemporaneous energy prices and the Direct Access Credit is a by-product of high electricity prices in 2000.¹

The FERC has been engaged in a proceeding to determine whether wholesale prices charged by electricity generators and marketers during 2000 in California were "just and reasonable." FERC has already found that at certain times such prices were not. The FERC

¹ For a detailed description of Direct Access Credits, see Appendix A, "Direct Access Credit."

proceeding is now trying to determine what “just and reasonable” rates should have been during specific times.² The outcome will be an order requiring generators and marketers who overcharged to refund money to purchasers.

In principle, the CPUC has the power to recalculate the Direct Access Credit based on the FERC ordered reduction in electricity prices. However, FERC has no jurisdiction over the CPUC and cannot compel such a recalculation. The result of such a recalculation would be a reduction in the amount of Direct Access Credit owed ABAG POWER.³ The CPUC can undertake a regulatory process referred to as ratemaking in which the ultimate result could be the imposition of a surcharge on Electric Program Member accounts to recoup overpaid Direct Access Credits over a specified time period, or immediately.

This risk exposure is punctuated by §4 of the Stipulation and Release under which PG&E and ABAG POWER are settling the Direct Access Credit claim (Stipulation and Release). §4 states:

“[ABAG POWER] and PG&E expressly agree that this Stipulation and Release is a compromise and settlement of all claims and matters that are disputed as between the parties involving the 1998 RAP for the period through and including June 30, 2001, all issues that were raised, or could have been raised, in the CPUC Complaint, and all issues that were raised, or could have been raised, in the Claim. *In the event that the CPUC issues any future ruling relating to the direct access credits at issue in the Claim, the CPUC Complaint or the 1998 RAP, the parties will use their best efforts to preserve the intent of this Stipulation and Release, consistent with applicable law.*”⁴ (emphasis added)

This provision was negotiated when PG&E declined to give ABAG POWER a full indemnity against the possibility that the CPUC will take an action to impose a surcharge to recover Direct Access Credits paid to ABAG POWER (or its electricity members). PG&E agreed that the exposure exists but asserts that it cannot, as an entity regulated by the CPUC, agree to make ABAG POWER whole in the event of an adverse CPUC action. PG&E asserts that an indemnity provision would be characterized as an illegal circumvention (by PG&E) of the CPUC. ABAG POWER acceded to PG&E’s argument and §4 is the negotiated compromise.

Background

On December 22, 2003, the U.S. Bankruptcy Court for Northern California, San Francisco Division confirmed a Plan of Reorganization for PG&E (Confirmed Plan). The Direct Access Credit was paid to ABAG POWER under the Stipulation and Release. The Stipulation and Release was approved by the court and is included in the Confirmed Plan as a Class 7 Claim.

During the bankruptcy proceedings, PG&E and the CPUC submitted competing plans for the reorganization of PG&E. Simultaneously, PG&E was pursuing claims challenging certain actions by the CPUC during deregulation (CPUC Proceedings). Further, PG&E filed suit in Federal District Court for Northern California against the CPUC challenging various aspects of the deregulated energy market created under CPUC regulations and guidance. The CPUC

² Pricing occurred on an hourly basis.

³ One estimate of the impact of known (in Spring 2003) FERC ordered reductions on ABAG POWER’s Direct Access Credit resulted in a reduction of \$4-5 million in Direct Access Credits owed. ABAG POWER believes the estimate to be reasonable.

⁴ The “1998 RAP” is the ratesetting proceeding described below under the same name. The “CPUC Complaint” is ABAG POWER’s initial complaint filed with the CPUC for payment of the Direct Access Credit.

and PG&E reached a Master Settlement Agreement on all pending disputes, including those before the Bankruptcy Court. The Master Settlement Agreement dismissed the lawsuits and the CPUC Proceedings with prejudice, and committed both parties to supporting and implementing what ultimately became the Confirmed Plan. The dismissed CPUC proceedings do not include the 1998 RAP or ABAG POWER's CPUC Complaint. The CPUC action to approve the Confirmed Plan and the Master Settlement Agreement is documented in the opinion issued for Investigation 02-04-026 (Settlement Opinion).

The Master Settlement Agreement between the CPUC and PG&E has the following relevant features:

1. The CPUC agreed to include certain cost components in the CPUC's future regulatory and ratemaking proceedings as they affect PG&E. Such cost components included the sum of \$2.2 billion designated the "regulatory asset." Rates established by the CPUC must be sufficient to (a) support all of the cost components necessary to PG&E's continued viability as an ongoing public utility and (b) amortize the regulatory asset over a period of ten (10) years.
2. Within the constraints of the Confirmed Plan and the Master Settlement Agreement, the CPUC retains its regulatory authority over PG&E.
3. The current CPUC and future CPUCs are bound by the Master Settlement Agreement.
4. The CPUC acknowledges the continuing jurisdiction of the Bankruptcy Court to enforce the Confirmed Plan.

Legal Analysis

The potential CPUC regulatory action on the Direct Access Credit can only be triggered by a FERC ordered reduction in wholesale electricity energy prices for 2000. Only PG&E and a Direct Access Credit recipient have standing to initiate an action to recalculate the Direct Access Credit. PG&E and ABAG POWER are estopped from so doing by §4 of the Stipulation and Release (see below). A recalculation of the Direct Access Credit can in theory be initiated by the CPUC. The impetus for a CPUC action is bureaucratic and triggered by FERC ordered price reductions.

The central question is whether the CPUC can legally do so in the face of ABAG POWER's objections. The issue of recalculating Direct Access Credits based on FERC ordered refunds was raised by PG&E in a ratemaking action before the CPUC (Application 98-07-003, the "1998 RAP" filed in 1998). The Administrative Law Judge (ALJ) issued a draft decision on April 3, 2003 but the CPUC has not taken any action on it and it is not currently on the CPUC agenda for consideration, public hearing or further action.⁵

The 1998 RAP - Draft Decision states in pertinent part:

"In our opinion it would be unreasonable to recompute the [Direct Access] credit should FERC order refunds. We are confronted, initially, with three unknown factors: whether FERC will order refunds: when FERC will order refunds (and when the order become[s] final), and the amount of those refunds.ⁱ As of this writing, FERC has the matter under consideration. Any order of refunds, if substantial, is expected to be appealed. It is impossible to predict the date of a final order. The period in question, December 28, 2000 to January 18, 2001, is two years old and counting. It is unfair for

⁵ No action can be taken without CPUC approval. Draft ALJ decisions on deregulation matters have had a mixed reception before the CPUC. Some have been adopted as presented. Others have been subject to substantial revision. The draft decision is Opinion Adopting a Post Power Exchange Direct Access Credit for Pacific Gas and Electric Company (1998 RAP - Draft Decision).

ratepayers who paid their utility bills two years ago to be subject to an unknown liability to be paid at an unknown future date. We need not elaborate on the intensive effort required by PG&E to recomputed individual bills nor the intensive efforts and spent resources of end users to verify those recomputed bills. Because we deny PG&E's proposal we do not reach the question of whether approval of the proposal would constitute retroactive ratemaking."

ⁱ When we speak of refunds in this context, we refer not to money going back to DA [direct access] customers, but to a recommendation of their credit. If a refund is ordered, the credit would have been less and the DA customer would have been overpaid by PG&E thereby causing a repayment to PG&E.

The same logistical objections raised by the ALJ to retroactive reductions in Direct Access Credits still stand and are amplified by the passage of yet another year since issuance of the 1998 RAP – Draft Decision and without further action by FERC.⁶ Further, the legal barriers to "retroactive ratemaking," which the draft decision avoids, become a live issue.

Independent of the arguments made in the 1998 RAP - Draft Decision, a strong legal argument can be made that the CPUC is estopped by the Settlement Opinion and Master Settlement Agreement from reducing the amount of the Direct Access Credit paid to ABAG POWER.

The Settlement Opinion makes the following policy finding: "It is in the public interest that PG&E emerge from bankruptcy promptly....To emerge from bankruptcy PG&E should pay its creditors. *All allowed claims should be paid in full.* (emphasis added)"⁷ On the date of the Settlement Decision, ABAG POWER's Stipulation and Release was an "allowed claim" and part of the record before the CPUC. It will be difficult for the CPUC to defeat the argument that it is estopped from taking any (otherwise permitted) action that effectively modifies the Stipulation and Release or reduces the payment required by the Stipulation and Release. In addition, the Master Settlement Agreement states: "[PG&E and the CPUC] agree not to contest the validity and enforceability of [the Master Settlement Agreement], the [Confirmed Plan] or any order entered by the [Bankruptcy Court] contemplated by or required to supplement [the Master Settlement Agreement and the Confirmed Plan]."⁸

Ancillary Analysis

In addition to the "logic" of a bureaucratic recalculation of the Direct Access Credits in response to the anticipated FERC ordered price reductions, there might be pressure on the CPUC to recover Direct Access Credits to reduce general utility rates. In response, one can raise the objection stated in the 1998 RAP – Draft Decision that the costs to recalculate and recover "overpaid" credits may well exceed the recovery. Finally, please note that the post-bankruptcy CPUC ratemaking structure for PG&E includes the "regulatory asset." Under the terms of the Confirmed Plan and the Master Settlement Agreement, the amount of the regulatory asset which must be amortized by ongoing electric rates will be reduced by any monies actually recovered by PG&E as a result of the same FERC price rollback.⁹ The direct

⁶ Although, the contested time period misses most of the times during which ABAG POWER's Direct Access Credit was generated. The same legal arguments apply and the FERC proceeding has expanded the timeframe for potential price rollbacks to include more of the period in which ABAG POWER's credits were "generated."

⁷ Settlement Decision, p. 78.

⁸ Master Settlement Agreement, p. 18, §21.

⁹ Master Settlement Agreement, pp. 8-9, §2.d.

effect of the FERC ordered rollback brings significant rate relief under the Confirmed Plan.¹⁰ In the context of generalized rate relief, it appears doubtful that the CPUC would be willing to undertake the ironic step of imposing a surcharge on certain classes of customers (including local government entities such as ABAG POWER's electricity members) in order to wring out the last bitter drop of savings generated by the FERC ordered refunds. Another impediment to such action by the CPUC is the specter of resurrecting the public debate about California's failed energy deregulation program.

Conclusion

The CPUC has the theoretical ability to reduce the Direct Access Credits paid to ABAG POWER. However, ABAG POWER can pose the following legal argument in position: (a) the CPUC is estopped from so doing by the CPUC's findings and actions in reaching the Master Settlement Agreement with PG&E, and the CPUC's support for the Confirmed Plan under which the credits were paid, and (b) the logistical and equity issues raised in the 1998 RAP – Draft Decision. In the absence of any motivation to undertake such a step other than bureaucratic purity of process, ABAG POWER's opinion is that the risk is nominal.

¹⁰ Master Settlement Agreement estimates a potential recovery by PG&E of _____ (\$_____) in FERC ordered price reductions.

EXHIBIT A TO ATTACHMENT D

Allocation of Estimated Contingent Liabilities.

This table illustrates the allocation of ABAG POWER's estimate of the Electric Program liability for the denoted charges among Electric Program members. Allocated amounts have been rounded to the nearest 10 dollars. Please see Attachment D for an explanation of the methodology and basis for this

Members	(A) Uninvoiced Energy Charges (2) \$1,420,000	(B) UDC Charges (3) \$1,600,000	(D) Direct Access Credits (4) \$4,676,000	Total
City of Albany	\$ 4,920	\$ 5,550	\$ 9,350	\$ 19,820
Town of Los Altos Hills	470	530	1,220	2,220
City of Antioch	74,030	83,420	164,090	321,540
City of Arcata	5,360	6,040	15,470	26,870
Town of Atherton	2,860	3,220	8,000	14,080
City of Benicia	18,160	20,470	50,600	89,230
City of Berkeley	4,060	4,570	55,190	63,820
County of Butte	28,680	32,310	107,610	168,600
City of Cloverdale	7,700	8,670	29,570	45,940
County of Monterey	78,860	88,860	151,450	319,170
County of Contra Costa	207,960	234,320	778,930	1,221,210
City of Cotati	3,960	4,460	10,690	19,110
City of Cupertino	20,620	23,230	49,040	92,890
City of Daly City	62,020	69,880	357,930	489,830
City of Davis	3,320	3,740	3,720	10,780
City of El Cerrito	5,130	5,780	16,530	27,440
City of Foster City	19,770	22,280	54,620	96,670
Golden Gate Bridge District	19,880	22,400	101,650	143,930
City of Gonzales	5,630	6,350	15,130	27,110
City of Half Moon Bay	2,840	3,200	7,180	13,220
H.A.R.D.	12,630	14,230	38,750	65,610
City of Hercules	7,890	8,890	22,280	39,060
Town of Hillsborough	11,460	12,910	30,760	55,130
Housing Auth. Co. of Alameda	1,880	2,120	6,690	10,690
City of Los Altos	7,760	8,740	20,970	37,470
Los Trancos Co. Water District	1,010	1,140	1,330	3,480
City of Menlo Park	17,380	19,590	56,130	93,100
City of Millbrae	7,890	8,890	12,770	29,550
City of Mill Valley	15,860	17,870	50,970	84,700
City of Milpitas	16,580	18,680	79,120	114,380
Town of Moraga	2,660	3,000	3,660	9,320
County of Napa	21,800	24,560	109,150	155,510
City of Newark	13,140	14,810	25,400	53,350
City of Orinda	2,410	2,720	5,150	10,280
City of Pacifica	12,260	13,820	28,160	54,240
City of Patterson	9,570	10,780	62,570	82,920
City of Petaluma	54,380	61,270	96,470	212,120
City of Pinole	14,220	16,020	72,080	102,320
City of Pleasanton	43,290	48,780	107,930	200,000
R.A.F.C.	17,870	20,130	64,580	102,580
City of Salinas	40,070	45,150	58,300	143,520

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This table illustrates the allocation of ABAG POWER's estimate of the Electric Program liability for the denoted charges among Electric Program members. Allocated amounts have been rounded to the nearest 10 dollars. Please see Attachment D for an explanation of the methodology and basis for this

Members	(A) Uninvoiced Energy Charges (2) \$1,420,000	(B) UDC Charges (3) \$1,600,000	(D) Direct Access Credits (4) \$4,676,000	Total
City of San Carlos	10,380	11,700	27,170	49,250
City of San Leandro	49,380	55,640	139,200	244,220
City of San Mateo	44,790	50,460	117,720	212,970
County of San Mateo	148,120	166,900	582,550	897,570
City of San Pablo	9,370	10,550	23,580	43,500
City of Santa Rosa	82,740	93,230	188,680	364,650
City of Saratoga	4,360	4,920	10,060	19,340
County of Sonoma	7,230	8,150	15,390	30,770
South Co. Fire Authority	910	1,020	3,800	5,730
City of Union City	2,880	3,240	17,130	23,250
City of Vacaville	7,770	8,760	26,690	43,220
City of Vallejo	91,810	103,450	346,500	541,760
West County Wastewater Dist.	20,620	23,240	131,420	175,280
Town of Windsor	24,810	27,950	93,390	146,150
City of Winters	6,570	7,410	11,540	25,520
Total	\$ 1,419,980	\$ 1,600,000	\$ 4,676,010	\$ 7,695,990

Notes:

(1) Includes streetlight correction, excludes interest on claim.

(2) Allocated by kWh usage

(3) Allocated by kWh usage

(4) Allocated on CTC Credit Reversals. Represents PG&E's estimate of the possible reduction in the CTC credits due to the FERC price mitigation hearings.