

Assembly Bill 2145: Opt-In Provision for Community Choice Aggregate Formation

June 2014

SDCTA Position:

SUPPORT

Rationale for Position:

The proposed legislation adjusts current law to ensure newly formed Community Choice Aggregation (CCA) utilities provide a better product to ratepayers in order to succeed. Current law allows CCAs access to customers by automatically enrolling ratepayers within Community Choice Aggregation (CCA) boundaries into the government-run utility. AB 2145 also requires increased transparency ensuring ratepayers have access to the information they need to make informed decisions.

Title: Electricity: community choice aggregation.

Jurisdiction: California

Type: Statute

Vote: Majority

Status: Passed Assembly

Issue: Electricity procurement options

Description: Increase transparency requirements for newly created Community Choice Aggregation (CCA) electricity providers. Reverse current rule in which all ratepayers within the CCAs boundaries are automatically enrolled into the CCA.

Fiscal Impact: AB 2145 has minor known direct fiscal impacts including \$250,000 to expand the oversight operations at the Public Utilities Commission.

Background:

Community Choice Aggregation (CCA) is a system in which a public government agency may aggregate the buying power of residents, businesses and public facilities within a defined jurisdiction in order to obtain alternative energy supply contracts in a competitive market. Individuals within the jurisdiction of a CCA may continue to receive energy from their previous electricity provider. The first CCA formed in Massachusetts in 1997 with the formation of the Cape Light Compact. CCA legislation currently exists in six states, Massachusetts, Ohio, New Jersey, Rhode Island, Illinois and California.

Creating a CCA shifts control from the private sector to local government. After the adoption of a CCA, control shifts to the aggregators themselves where it previously rested in large part with investor-owned utilities (IOUs).

Competition

CCA legislation allows government entities to compete with private industry. At their very core, that is the distinction between CCAs and IOU – CCAs are government entities, not highly-regulated private businesses. According to a 2009 California Energy Commission

report, this is in-part why CCAs “can use tax-exempt bonds to finance its acquisition of electric resources,” resulting in a cost of capital that can be substantially less than that of an IOU.¹

In addition, CCA’s do not pay state or federal taxes. These competitive advantages provide CCAs the potential to undercut the rates of IOUs. This has been seen in other states where CCAs are present. In Massachusetts there exists a CCA known as the Cape Light Compact, which is composed of 21 towns in the southeastern portion of the state. Members of the Cape Light Compact rates between 11 and 22 percent lower than the private utility (between \$3.50 and \$7.00 per month for the average customer).² The California Energy Commission report estimated that for 12 communities examined in California, average electric bill discounts would be between one and ten percent.³ A separate study exploring initiating a CCA within Humboldt County estimated rates about six percent lower than the private utility.⁴

Renewable Energy

Although existing CCAs are largely used as vehicles to provide cleaner energy, or provide renewable energy credits, CCAs do not inherently provide that benefit. CCAs can choose to select a higher percentage of renewable energy in their portfolio.

The current renewable portfolio standards are that by the year 2020 electricity generators should procure at least 33 percent of their energy from renewable sources. CCAs can seek out a more renewable-based portfolio than the IOU.

Initial and Ongoing Costs Associated with Community Choice Aggregation

There are also significant known and unknown costs associated with CCAs. First, there are substantial start-up costs involved in establishing a CCA. Feasibility analyses must be created along with implementation plans, both of which can be expensive. There are also necessary workshops to educate residents about the differences between CCAs and IOUs, the costs and benefits of both, as well as opt-out options in the current CCA enabling legislation. Paperwork must be filed in order to properly begin dialogue with surrounding cities and communities to form a CCA.⁵ All of these start-up costs are incurred before a CCA receives any revenue from ratepayers. The San Francisco Public Utilities Commission estimate of start-up costs for a CCA in San Francisco was about \$5 million.⁶

¹ Stoner, G. Patrick. California Energy Commission, Public Interest Energy Research (PIER) Renewable Energy Technologies Program. “[Community Choice Aggregation Pilot Project Final Report](#).” February, 2009.

² Whitcomb, Robert. Providence Journal-Bulletin. “Bundling Municipal Electricity.” April 25, 2002.

³ Stoner, G. Patrick. California Energy Commission, Public Interest Energy Research (PIER) Renewable Energy Technologies Program. “[Community Choice Aggregation Pilot Project Final Report](#).” February, 2009.

⁴ Landau, Michael. Humboldt State University. “[Community Choice Aggregation: Assessing the Financial and Political Viability in Humboldt County](#).” May, 2011.

⁵ Ibid

⁶ San Francisco Public Utilities Commission. “[Community Choice Aggregation Draft Implementation Plan](#).” April 7, 2005.

In addition to the set-up costs, a CCA must also act as its own administrator. CCAs are responsible for communication with other communities, prospective energy providers, IOUs, and consumers alike.

A further cost involved with CCAs is the cost recovery surcharge (CRS). A CRS is an exit fee to be paid by CCA customers.⁷ This fee serves to cover costs associated with contracts that were entered into after the 2000-2001 energy crisis in California. Additionally, these costs cover stranded assets and liabilities occurring from CCA customer migration.⁸ Because these costs vary and are unknown until after-the-fact it is similarly the case that the CRS is unknown when entering into a CCA. Furthermore, the CRS can vary year-to-year.

CRS charges are expected to decline over time, but may still vary from year-to-year. As IOUs plan for CCA customers and their effects on the energy load stranded assets can be accommodated for. This, in turn, reduces CCA customer's CRS.⁹ However, this process is not entirely predictable as can be seen in the CCA feasibility report for the City of Chula Vista. The authors find that the CRS and transaction fees have the potential to "make the program uneconomical."¹⁰

California Assembly Bill 117

California passed Assembly Bill 117 (AB 117) into law in September of 2002 enabling the formation of CCAs. The bill authorized community choice aggregators to file an implementation plan with the Public Utilities Commission allowing the commission to evaluate and approve the formation of a CCA.

When forming a CCA those individuals that fall within the jurisdiction of a CCA are required to be:

- Informed of the CCAs formation
- Given the option to opt-out of the CCA and continue to receive service provided by IOU.
- Informed at least twice within two calendar months, or 60 days, before the beginning of automatic enrollment due to lack of response.
- Informed of their ability to opt-out for no less than two consecutive billing cycles. Each of these notifications must include a mechanism by which customers, or potential customers, may opt out of the CCA.

⁷ Burke, Garance; Finn, Chris; Murphy, Andrea. The Goldman School of Public Policy University of California, Berkeley. "[Community Choice Aggregation: The Viability of AB 117 and its Role in California's Energy Markets](#)." June 13, 2005.

⁸ Ibid.

⁹ Ibid.

¹⁰ Duncan Weinberg, Genzer & Pembroke, P.C.; McCarthy & Berlin, L.L.P.; and Navigant Consulting. "[City of Chula Vista Municipal Energy Utility Feasibility Analysis](#)." March 19, 2004.

A CCA may also become the administrator of energy efficiency and conservation programs available to its customers. Even if a CCA does not take the administrative role behind these programs, the administrator of such programs must direct a proportional share of program activity to the CCA.

Marin County

In May of 2010 California's first CCA began in Marin County. Currently the CCA in Marin County, Marin Clean Energy (MCE), covers thirteen jurisdictions including:¹¹

- City of Belvedere,
- Town of Corte Madera,
- Town of Fairfax,
- City of Larkspur,
- County of Marin,
- City of Mill Valley,
- City of Novato,
- City of Richmond,
- Town of Ross,
- Town of San Anselmo,
- City of San Rafael,
- City of Sausalito, and the
- Town of Tiburon.

There were significant start-up costs involved in starting Marin County's CCA. CCAs need to begin purchasing energy and establishing the infrastructure involved in coordinating energy for thousands of residents almost immediately. Furthermore, CCAs must inform the public of its opt-out option, explaining what an individual's energy options are and how they go about choosing them, if they choose to opt-out. In acquiring funds for this the Marin Energy Authority (MEA) received loans.

MCE offers two energy options based on the percentage of renewable energy used. Their first option, "Light Green," is the standard option for MCE and offers approximately 50 percent renewable energy. The second option, "Deep Green," is an option that offers 100 percent renewable energy. Residents within the CCA are automatically signed up for the "Light Green" option and may choose to be enrolled in the "Deep Green" option, or opt-out of the CCA entirely and receive their energy from Pacific Gas and Electric (PG&E).

¹¹ Marin Clean Energy. "[Our Work](#)." Accessed May 28, 2014.

Figure 1: Comparison of Power Source for PG&E and MCE Available Options (2012).

Percent of Total Retail Sales (kWh)			
	PG&E	MCE "Light Green"	MCE "Deep Green"
Renewable	19%	53%	100%
Biomass & Biowaste	4%	12%	0%
Geothermal	5%	0%	0%
Eligible hydroelectric	4%	2%	0%
Solar electric	0%	1%	0%
Wind	6%	38%	100%
Large Hydroelectric	18%	7%	0%
Natural Gas	25%	0%	0%
Nuclear	22%	0%	0%
Other	1%	0%	0%
Unspecified	15%	40%	0%

Source: Annual Report to the California Energy Commission: Power Source Disclosure Program

Figure 1 shows the difference in the sources of power credited to MCE and PG&E. For MCE’s “Light Green” option, more than half of the energy produced comes is attributed to renewable sources with the majority of that energy coming from wind power. Wind is also credited with powering the entirety of MCE’s “Deep Green” option. The final line, “Unspecified Power” refers to energy that is taken off the grid without full knowledge of the source.

The cost of electrical generation is higher for electricity provided by PG&E when compared to rates provided by MCE. Residents using 508 kWh in a month, the average, could expect to pay \$46.74 for PG&E’s electrical generation according to MCE.¹² This price does not include any added fees or the cost of electrical delivery. For residents, this is over \$6 per month more expensive than MCE’s “Light Green” option and is about \$1.50 more expensive than MCE’s “Deep Green” option.

However, consumers using MCE as their energy provider are subject to fees that PG&E users are not. For residential purposes, these fees are \$5.89 per month and for commercial purposes the fee is \$12.19 per month. In both cases these additional fees more or less equalize the price between PG&E and MCE’s “Light Green” option. After the fees are applied MCE’s “Light Green” option is still the least expensive available, but is only \$0.72 per month less expensive for the average resident.

A MCE customer must pay an additional \$0.01 per kWh if they elect to have their energy provided under the “Deep Green” option.¹³ This translates to an addition \$5 per month for the average residential user. This translates to an additional \$12.25 per month for the average commercial user. These charges are in addition to the MCE “Light Green” rate. The extra cost involved makes MCE’s “Deep Green” option the most expensive option available to

¹² Marin Clean Energy. “[Sample Residential Cost Comparison.](#)” Accessed May 28, 2014.

¹³ Ibid.

residents. For commercial purposes, MCE's "Deep Green" option is still less expensive than the rate provided by PG&E.

San Francisco

While Marin County has the only functioning CCA in California, there have been other attempts to start CCAs in California. Most notably, San Francisco has been attempting to form a CCA for more than a decade and has yet to have its plans come to fruition.

San Francisco's CCA, CleanPower SF, was formed so that San Francisco could acquire cheaper, greener energy for its residents.¹⁴ It plans on bringing in 100 percent renewable energy to San Francisco in an effort to lower green house gas emissions and decrease the cities overall carbon footprint.

Initially, proposed rates for CleanPower SF were lower than PG&E's, but this has since been revised.¹⁵ As of now, there are no official rates offered by CleanPower SF as it has yet to serve any customers, but predictions show that they will be higher than rates offered by PG&E.¹⁶ One set of proposed rates sets CleanPower SF's maximum rate at 11.5 cents per kWh compared to PG&E's approximate 9 cents per kWh. "For the PG&E customer paying \$36.22 a month, under CleanPower SF, that bill would be \$41.52" according to an article in the San Francisco Examiner.¹⁷

There are also some questions regarding the environmental impacts involved with CleanPower SF's energy procurement methods. CleanPower SF makes the claim that 100 percent of the energy it provided is from "California-certified renewable sources [including] solar, wind, small-hydro and more."¹⁸ However, CleanPower SF has entered into a contract with Shell Energy North America (SENA) and some have called into question the degree to which the energy delivered by CleanPower SF comes from truly renewable energy sources. Much of the energy acquired through Shell is through renewable energy credits, which are bought and sold on the open market.¹⁹ Rather than actually procuring energy from renewable sources, companies, like Shell, can purchase renewable energy credits without having to create renewable energy. These credits allow one to claim energy as renewable even when it is not directly from a renewable source.

In CleanPower SF's contract with SENA there are no set requirement for use, or lack of use, of renewable energy credits. It is estimated that between 45 percent and 85 percent of CleanPower SF's energy is anticipated to come from renewable energy credits.²⁰

¹⁴ San Francisco Public Utilities Commission. "[About CleanPowerSF](#)." Accessed June 2, 2014.

¹⁵ Matier, Phillip and Ross, Andrew. San Francisco Chronicle. "[SF Clean-Energy Program May Profit Shell](#)" September 12, 2012.

¹⁶ San Francisco Public Utilities Commission. "[About CleanPowerSF](#)." Accessed June 2, 2014.

¹⁷ Sabatini, Joshua. The San Francisco Examiner. "[10 Years on, CleanPower SF Still Flickering](#)." March 3, 2014.

¹⁸ San Francisco Public Utilities Commission. "[About CleanPowerSF](#)." Accessed June 2, 2014.

¹⁹ Roberts, Chris. The San Francisco Examiner. "[CleanPowerSF to Rely on Green Credits, not Actual Renewable Energy Sources](#)." June 4, 2013.

²⁰ Ibid.

While the energy provided might be considered “green” due to the use of renewable energy credits, the actual energy used is not necessarily from renewable sources.

The five-year contract between CleanPower SF and SENA does not take into account the potential opting-out of large numbers of residents and does not account for potential failure. According to a San Francisco Chronicle article, “If San Francisco’s program can’t compete or goes sideways, the city would be on the hook for Shell’s losses, which could total \$15 million or more.”²¹

Local Efforts

San Diego began its connection with the potential formation of a CCA in 2005 when it was part of a Navigant Consulting feasibility study.²² This study found four expected benefits if San Diego were to form a CCA:

- Achieve nominal electricity cost savings averaging approximately \$25.3 million per year over the next 20 years
- Increase renewable energy utilization to 40 percent by 2017
- Provide a higher level of rate stability
- Improve statewide and local reliability by increasing capital investment in generation plants

However, there are number of factors that could inhibit a CCA’s effectiveness in San Diego. According to the Navigant Consulting report, it would take five years of implantation before ratepayer benefits could begin to accrue.²³ This is partly because of high CRS costs that were examined at the time of the study. However, this may be less applicable now as CRS costs may have changed.

Recently there has been some new interest surrounding the potential for a San Diego CCA resulting in the formation of the San Diego Energy District Foundation by Lane Sharman and Bill Powers. Included within a comprehensive renewable energy strategy, the San Diego County Board of Supervisors approved funding for an initial feasibility study for creating a CCA.

SDCTA Past Positions

None known.

²¹ Matier, Phillip and Ross, Andrew. San Francisco Chronicle. “[SF Clean-Energy Program May Profit Shell](#)” September 12, 2012.

²² Navigant Consulting, Inc. “[Community Choice Aggregation: Base Case Feasibility Evaluation County of San Diego](#).” May 2005.

²³ Ibid.

Proposal:

Assembly Bill 2145 (AB 2145) would require residents living in areas where a CCA is formed to opt-in in order to be served by a CCA, rather than opt-out of the CCA after it has begun.

Under the current law, AB 117, all residents within an area are automatically signed up to receive energy from a CCA upon its beginning of service. The residents have an option to opt-out of service provided by a CCA in favor of continued use of a resident's IOU. If no response is received a resident automatically becomes part of a CCA. Residents must be informed at least twice within two calendar months, or 60 days, before the beginning of automatic enrollment due to lack of response. Further, following enrollment, a CCA must inform participating customers for not less than two consecutive billing cycles. Each of these notifications must include a mechanism by which customers, or potential customers, may opt-out of the CCA.

Additionally, AB 2145 includes new requirements for the information that must be distributed by a CCA for it is to begin providing service. If AB 2145 takes effect, CCA's will have to include three additional pieces of information when sending opt-in forms to potential customers.

- The rate for a customer if that customer were to stay with their IOU
- The annual greenhouse gas emissions rate for electricity actually delivered to customers for the past two years
- The projected greenhouse gas emissions rate for electricity to be actually delivered in the next five years of service

Policy Implications:

Opt-Out vs. Opt-In

AB 2145 primarily changes the way in which residents that fall within the jurisdiction of a CCA become customers of that CCA.

Opt-out enrollment is primarily beneficial in that it makes a CCA less costly to start and more likely to succeed. It is considerably more expensive to convince residents to opt-in to a new provider.

In the formation of a CCA, an opt-out provision yields more customers than an opt-in provision. An opt-out system allows for customer indifference to work in favor of a CCA.²⁴ If a customer is uninterested in the potential effects of the formation of a CCA or generally unaware of its formation they are automatically enrolled with a CCA under an opt-out provision where they would continue service with their previous provider if an opt-in

²⁴ Burke, Garance; Finn, Chris; Murphy, Andrea. The Goldman School of Public Policy University of California, Berkeley. "[Community Choice Aggregation: The Viability of AB 117 and its Role in California's Energy Markets.](#)" June 13, 2005.

provision was present. This leads to a greater percentage of people participating as opt-out rates tend to be low.²⁵

A community must have a desirable load size in order to attract energy service providers to an area.²⁶ If a load size is too small, or the load itself is not patterned in a desirable way energy providers will show little interest in providing energy. Alternatively, energy providers might show interest, but only offer expensive rates of service driving prices up for consumers. When prices are driven up, IOUs become more appealing because of the lower rates they can offer.

By automatically enrolling every individual a CCA becomes the default option for consumers. As such, a potential consumer perceives opting out of a CCA as a change. When prompted with the potential for change people, generally speaking, will stick to the status quo through the sheer force of inertia.²⁷

In actuality, a CCA is a change from the current system; however current law sets up CCA's in such a way that it is not perceived as such. By automatically enrolling every individual, the CCA becomes the status quo as soon as it is formed. As such, individuals are anticipated to treat the CCA as the norm when they should be seen as a change.

San Francisco Supervisor Sean Elsbernd argued that:

“power users all over the city are going to be sent a little card that says, ‘You’re in CCA unless you fill this out and send it back. Well if you’re anything like me, that card goes straight to the recycling bin. I think the supporters of CCA realize that they need to dupe people. They need people to throw those cards away so they have a customer base.’”²⁸

Demand for Green Energy

CCAs are typically linked to renewable energy by proponents however there is nothing in AB 117 to ensure that CCAs outperform IOUs in terms of the use of renewable energy. Under current law, it is only the case that CCAs must meet Renewable Portfolio Standard (RPS). Currently, the RPS demands that 33 percent of total energy procurement must come from renewable energy sources by 2020. This demand applies equally to IOUs, CCAs and electric service providers.

AB 2145 helps make CCAs more accountable for their renewable energy portfolio. When informing customers, CCAs would have to provide information about both their previous

²⁵ Burke, Garance; Finn, Chris; Murphy, Andrea. The Goldman School of Public Policy University of California, Berkeley. “[Community Choice Aggregation: The Viability of AB 117 and its Role in California’s Energy Markets.](#)” June 13, 2005.

²⁶ Burke, Garance; Finn, Chris; Murphy, Andrea. The Goldman School of Public Policy University of California, Berkeley. “[Community Choice Aggregation: The Viability of AB 117 and its Role in California’s Energy Markets.](#)” June 13, 2005.

²⁷ Kahneman, D., Knetsch, J., & Thaler R. Journal of Economic Perspectives. “Anomalies: The Endowment Effect, Loss Aversion, and Status Quo Bias.” 1991.

²⁸ Jamison, Peter. San Francisco Weekly. “[Green Scheme.](#)” January 14, 2009.

record regarding greenhouse gas emissions as well as their expected greenhouse gas emissions.

The information that AB 2145 transparency requirements will increase start-up costs including the requirement to inform potential customers of projected greenhouse gas emissions rate for the next five years.

Renewable Energy Credits

AB 2145 does not do anything to change the current law in regards to where CCAs choose to procure their green sources of energy. There are two distinct ways that renewable energy can be provided by an energy service provider; it can come from a renewable energy source, or it can come from renewable energy credits. Renewable energy sources are entities that actually create renewable energy, like solar plants or wind farms. These are desirable as they ensure that renewable energy is actually being provided to customers.

Renewable energy credits are bought and sold on the open market.²⁹ While the energy is officially renewable, it does not necessarily have to come directly from a renewable energy source.

State and/or Local Government

If passed, AB 2145 would increase the cost for local governments to create CCAs by requiring increased transparency with respect to greenhouse gas emissions, and by requiring CCAs to accept the burden of convincing ratepayers to switch to the new service provider.

Local Ratepayers

Because no ratepayers are currently receiving electricity through CCAs in San Diego, local ratepayers will not be immediately directly affected. The additional transparency requirements of AB 2145 may impact local ratepayers by making CCA formation more difficult.

Fiscal Impact:

AB 2145 has minor known direct fiscal impacts including \$250,000 to expand the oversight operations at the Public Utilities Commission.

If fewer CCAs are created as a result of AB 2145, less energy will be provided by tax-exempt government agencies potentially lowering tax revenues.

²⁹ Roberts, Chris. The San Francisco Examiner. "[CleanPowerSF to Rely on Green Credits, not Actual Renewable Energy Sources.](#)" June 4, 2013.

List of Proponents:

- Central Labor Federation
- State Building and Construction Trades Council
- The Coalition of California Utility Employees (CCUE)
- Pacific Gas and Electric (PG&E)
- San Diego Gas and Electric (SDG&E)
- San Diego Regional Economic Development Corporation
- San Diego Regional Chamber of Commerce

Proponent Arguments:

- CCAs routinely promise to build local renewable energy supplies to create local jobs but the promise of jobs has not materialized.

List of Opponents:

- Environmental Health Coalition (EHC)
- League of California Cities
- Local Clean Energy Alliance of the San Francisco Bay Area
- Marin Clean Energy (MCE)
- Marin County Board of Supervisors
- Office of Ratepayer Advocates (ORA)
- San Francisco Clean Energy Advocates Alliance
- Shell Energy North America
- Sierra Club California
- Solar Energy Industries Association (SEIA)
- Local government agencies
- Environmental groups
- Civic organizations,
- Community choice advocacy organizations

Opponent Arguments:

- IOUs are trying to protect their monopoly status by destroying any opportunity for competition.
- This bill will prevent new CCAs from forming and offering consumer choice by placing the default status with the IOUs.