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Municipalities seek alternative to public utilities

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After nearly a decade, a law allowing municipal governments to compete with public utilities and develop their own power purchase agreements to provide electricity to residents is experiencing renewed interest.

If more counties exploit that option, it could alter the clean power generation landscape in California, creating a middle market apart from the present dichotomy of rate-hiking utility scale renewables projects and small-scale residential solar installations.

A 2002 law allows local governments to buy electricity for customers within their jurisdictions, while still using investor-owned utilities' transmission infrastructure. Proponents say this system, called "community choice aggregation," allows for price competition with utilities and the ability of community aggregators to offer greener energy to customers faster than utilities working to provide 33 percent renewable energy to customers by 2020.

Community choice aggregation could also promote distributed generation of renewable energy by creating local projects and rewarding small-scale generators with better compensation for their production.

Community choice aggregation also offers an alternative to investor-owned utilities like PG&E, which are the principal actors in defining the market for renewable energy projects and have long favored mammoth, often remote power plants to achieve economies of scale in their purchasing.

Community choice aggregation has so far been enacted by only two municipalities in the state - the Marin Energy Authority, a joint powers authority in Marin, and CleanPowerSF in San Francisco. Of the two, only Marin currently provides power to customers, roughly 27 percent of it from renewable sources. CleanPowerSF is slated to begin deliveries in summer 2012. Other counties, such as Sonoma and Monterey, are also taking a look at the prospect of forming community choice aggregation programs to buy energy for their residents, and build or buy renewable projects.

Paul Fenn, founder and president of Oakland-based community choice aggregation consulting company Local Power Inc., has been involved in crafting legislation around the effort for well over a decade, and wrote California's 2002 law, AB 117.

California doesn't lead in community choice aggregation, according to Fenn, who said Ohio appeared to be the most active state. But it has taken an "intellectual leadership position" in focusing on renewable energy as a reason for pursuing community aggregation, he said.

Soon after the passage of AB 117, Fenn said the state had shown significant interest in community choice aggregation. But the California Energy Commission co-funded studies around 2006 to find out whether the local systems could supply residents in various communities 40 percent renewable energy and be competitive with utilities. The results were discouraging, indicating community aggregation wouldn't be feasible in many instances, he said.

Another setback occurred when PG&E began actively working against a community choice aggregation startup in the city of San Joaquin in Fresno County. The issue was settled before the CPUC, but not before the city of Fresno decided against joining the system, followed by others.

"I think it definitely caused a big siege mentality, a feeling that if you stick your neck out, you become a declared enemy of PG&E," Fenn said.

Community choice aggregation got a new lease on life when Marin County formed the Marin Energy Authority in 2008 and became the first in California to deliver power to residents. According to Jamie Tuckey, a spokesperson for the Marin Energy Authority, the joint powers authority is preparing to finish phasing in all of its approximately 95,000 customers by next year, and has been recently joined by three additional municipalities.

CleanPowerSF is preparing to begin selling an all-green product to customers within the city by August, according to Charles Sheehan, a spokesman with the San Francisco Public Utilities Commission. San Francisco is also set to build and operate its own power assets - some 360 megawatts of renewable assets funded by a bond measure.

San Francisco and Marin may be joined by others in a few years. For example, Sonoma is considering creating a community choice aggregation system, and reviewing an option to pursue "aggressive" local green energy generation, according to Cordell Stillman with the Sonoma County Water Agency.

"With Sonoma, San Francisco, Marin, [California's community aggregation programs] could be easily bigger than Ohio in terms of load, and impact on utilities," Fenn said. "I expect CCA in California to double and triple in the next couple of years."

Marin's present success in delivering energy at rates comparable to PG&E's has lent credibility to community choice aggregation, Fenn said. Also, Marin showed local programs could survive against investor-owned utility opposition. PG&E had sought to dissuade cities from joining the Marin Energy Authority, and also funded an unsuccessful ballot measure in 2010 that would have required a two-thirds majority vote for community aggregation programs in California. "Regarding their ability to fight community choice aggregation - I think they're massively weakened," Fenn said. "They've harmed their reputation."

Also important is a recently passed piece of legislation, SB 790, which was signed into law in October. The bill requires investor-owned utilities to cooperate with community choice aggregation startups, according to Jim Metropulos, a lobbyist with Sierra Club California.

"It helps by telling the CPUC [which is partially involved in vetting new community aggregation programs] that they have to come up with a code of conduct by which utilities would work with a local government that wants to [form] a CCA," he said.

Joseph Molica, a representative with PG&E, said the utility had voiced its concerns with community choice aggregation, but had and would continue to cooperate with their formation.

"We've been working with [Marin] and the CPUC to resolve any issues, and we'll continue to cooperate and assist local governments," he said. "We respect the energy choices that are available to our customers."

If more community choice aggregation startups begin supplying entire municipalities with renewable energy, that could significantly alter what types of renewable projects are built, Fenn said.

"For solar, you build a big project and you have a limited number of people you can sell to," Fenn said. "With CCAs, you have a livelier market."

Emphasis by community choice aggregation programs on municipalities building their own power generating assets could also increase local, medium-scale projects. Fenn said municipalities could also potentially build projects faster than utilities, which are subject to layers of scrutiny by the CPUC before they can get final approval. That could sustain medium-sized renewable energy companies, rather than the current extremes of micro and large-scale projects.

Jerry Bloom, an attorney with Winston & Strawn LLP who works in renewable energy, agreed that community choice aggregation startups have the potential to grow significantly in California. He said that for larger projects, that likely wouldn't have a major impact on legal work.

"If a CCA is buying 20 megawatts from my project, and the utility lost those customers, we're just selling those 20 megawatts to a different customer so it's not more legal work, just different [work]," Bloom said.

But the development of multiple, medium-sized projects, like those Marin and San Francisco intend to build, could alter the landscape in unexpected ways. While more projects might sound like more work, they could generate less, he said.

"People don't spend the same kind of money on legal fees for a small transaction," Bloom said. "So lots of distributed generation doesn't necessarily create a lot more legal fees. It may create more transactions, but not necessarily create more work ... Many [mid to small-scale projects' legal work] will be done in-house under small companies or under extraordinary pressure where there can't be a lot of money."

Nonetheless, Bloom said he felt the rise of community choice aggregation startups is a good thing for the state.

"There's a huge pent up supply of people who are very anxious, who want to build renewable energy projects ... But the utilities' control over the market suppress that supply and demand link between the people who want to build," he said.