San Diego County Taxpayers Association

Targeting Waste • Promoting Efficiency
110 West C Street, Suite 714, San Diego, CA 92101
P: (619) 234-6423 • F: (619) 234-7403 • www.sdcta.org

***Proposition 16: N*ew two-thirds voter approval requirement for local public electricity providers**

March 2010

Board Recommendation: **OPPOSE**

Rationale:

Requiring local governments to obtain a 2/3 majority vote of citizens prior to expending any public funds on the establishment or expansion of electric utility districts or community choice aggregates is unnecessarily restrictive.

Background:

In California, electricity is most commonly provided through one of three sources: investor-owned utilities (IOU), publicly owned utilities (POU), or electricity service providers (ESP). These three providers account for 68%, 24% and 8%, respectively, of total retail electricity consumed in California.[1] While investor-owned utilities are regulated by the California Public Utilities Commission, the other two types of service providers are not.

Title: Proposition 16: "Imposes new two-thirds voter approval requirement for local public electricity providers"
Description: Requires local governments to obtain 2/3 majority vote prior to establishing or expanding a public utility or community choice aggregate.
Jurisdiction: State
Type: Constitutional Initiative
Vote: Simple Majority
Fiscal Impact: Minor fiscal effects limited to possible changes in revenue for public utilities ran by city governments

Investor-owned Utilities: An investor-owned utility is a privately owned, for profit electricity provider. Investor-owned utilities are regulated by the California Public Utilities Commission. The investor-owned utilities currently operating in California are Bear Valley Electric Service, Mountain Utilities, Pacific Gas and Electric, PacifiCorp, San Diego Gas and Electric, and Southern California Edison.

Publicly Owned Utilities: A publicly-owned utility is a nonprofit electricity provider that is owned by a local government or public agency. Publicly owned utilities include utility departments within cities or counties, municipal utility districts[2], and public utility districts[3]. Operations are managed by a governing body of locally elected officials, which has the authority to set rates, charge levies and taxes, and issue bonds in order to cover the costs related to operations and infrastructure.

Under current law, establishment of a municipal or public utility district requires simple majority support of a popular vote of those citizens within the proposed jurisdiction.[4] Similarly, the expansion of a municipal or public utility district requires simple majority support of a popular vote of those citizens to be annexed to the jurisdiction. Municipal utility districts must obtain 2/3 majority support of citizens prior to incurring indebtedness in excess of "ordinary annual income and revenue of the district".[5] The same restriction does not apply to public utility districts. However, public utility districts are banned from incurring indebtedness in excess of "20 percent of the assessed

[1] Legislatives Analyst's Office
[2] A municipal utility district refers to a cooperative of public agencies, municipal governments, or unincorporated areas created to supply associated citizens with electricity.
[3] A public utility district refers to a cooperative of unincorporated areas or citizens created to supply associated citizens with electricity.
[4] California Public Utilities Code, Sections 11641-11656 and Sections 15761-15765
[5] California Public Utilities Code, Section 12841

valuation of all real and personal property situated within the district".[6] Examples of publicly owned utilities are Los Angeles Department of Water and Power, Sacramento Municipal Utility District, and Anaheim Public Utilities.

Electric Service Providers: All other business entities that provide electricity service to end-use retail customers, but do not fall into one of the above classifications are defined as electric service providers. Examples of ESPs are Pilot Power Group, Coral Power, and Sempra Energy Solutions.

Community Choice Aggregation

Assembly Bill 117 (2002) established another potential means by which electricity can be provided to California consumers known as Community Choice Aggregation (CCA). The stated intention of CCA is to aggregate the buying power of a municipality's residents for the purpose of achieving better service and/or lower electricity rates. A CCA allows a local municipality to provide electricity to its residents by contracting on their behalf for electricity service from ESPs. The electricity would then be distributed using the existing investor-owned utility's transmission lines and billing system. Residents are given the ability to opt out of the CCA, in which case they would continue to receive service from the investor-owned utility. Currently, municipalities do not need consent of popular vote to establish a CCA.

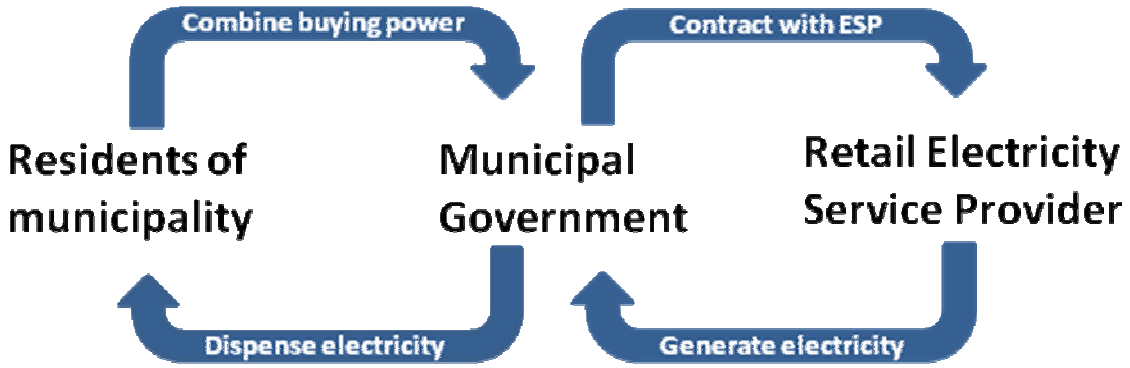

Figure 1: Community Choice Aggregation Process

A municipality interested in forming a CCA must submit an implementation plan to the Public Utilities Commission for approval. The implementation plan would include a description of the planned organizational structure, rate-setting policies and disclosure provisions, provisions of agreements with third parties, and a course of action to terminate the program. The Public Utilities Commission will use a potential CCA plan "in order for the commission to determine a cost-recovery mechanism to be imposed on the community choice aggregator to prevent shifting of costs to an electrical corporation's bundled customers."[7]

To date, Marin County, City-County of San Francisco, and the Kings River Conservation District have enacted community choice aggregation implementation plans that have been approved by the Public Utilities Commission. Four other states (Massachusetts, Ohio, New Jersey, and Rhode Island) have passed laws allowing municipalities to organize into a CCA. Similar to California, three of these states (Massachusetts, New Jersey, and Rhode Island) do

[6] California Public Utilities Code, Section 16573
[7] CA AB 117 (2002), Legislative Counsel's Digest

not require consent of popular vote to establish a CCA.[8] However, Ohio requires both the majority of popular vote and a minimum of two public hearing prior to establishment of a CCA.[9]

Proposal:

Proposition 16 or the "new two-thirds voter approval requirement for local public electricity providers" is a voter-generated Constitutional amendment initiative that would place additional restrictions on the establishment and expansion of local publicly owned utilities and CCAs by requiring two-thirds majority support of popular vote of citizens in the proposed jurisdiction, and additionally, in the case of expansion, two-thirds majority support in a utility's current jurisdiction. The initiative reads,

"no local government shall, at any time, incur any bonded or other indebtedness or liability in any manner or use any public funds for the construction or acquisition of facilities, works, goods, commodities, products or services to establish or expand electric delivery service, or to implement a plan to become an aggregate electricity provider, without the assent of two-thirds of the voters within the jurisdiction of the local government and two-thirds of the voters within the territory to be served…"

Section (h) states that these restrictions do not apply to use of public funds that (1) has previously been approved by voters within the local government's jurisdiction or (2) is for the purpose of purchasing or supplying renewable electricity[10] or electricity for a local government's own end use.

Definitions

Local Government: "A municipality or municipal corporation, a municipal utility district, a public utility district, an irrigation district, a city, including a charter city, a county, a city and county, a district, a special district, an agency, or a joint powers authority that includes one or more of these entities."

Public Funds: "Any taxes, funds, cash, income, equity, assets, proceeds of bonds or other financing or borrowing, or rates paid by ratepayers."

Electric Delivery Service: "(1) Transmission of electric power directly to retail end-use customers, (2) distribution of electric power to customers for resale or directly to retail end-use customers, or (3) sale of electric power to retail end-use customers."

Expand Electric Delivery Service: Is not to include "(1) electric delivery service within the existing jurisdictional boundaries of a local government that is the sole electric delivery service provider within those boundaries, or (2) continuing to provide electric delivery service to customers already receiving electric delivery service from the local government prior to the enactment of this section."

[8] MA: Chapter 164 of the Acts of 1997, NJ: P.L.2003, c.24, RI: P.L. 2002, c.144
[9] Ohio law allows municipalities to also create a CCA that is "opt-in" in which citizens are only a member upon their affirmative consent. This form of CCA does not require a majority of popular vote. Source: Public Utility Commission of Ohio
[10] Electricity from biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts of less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current.

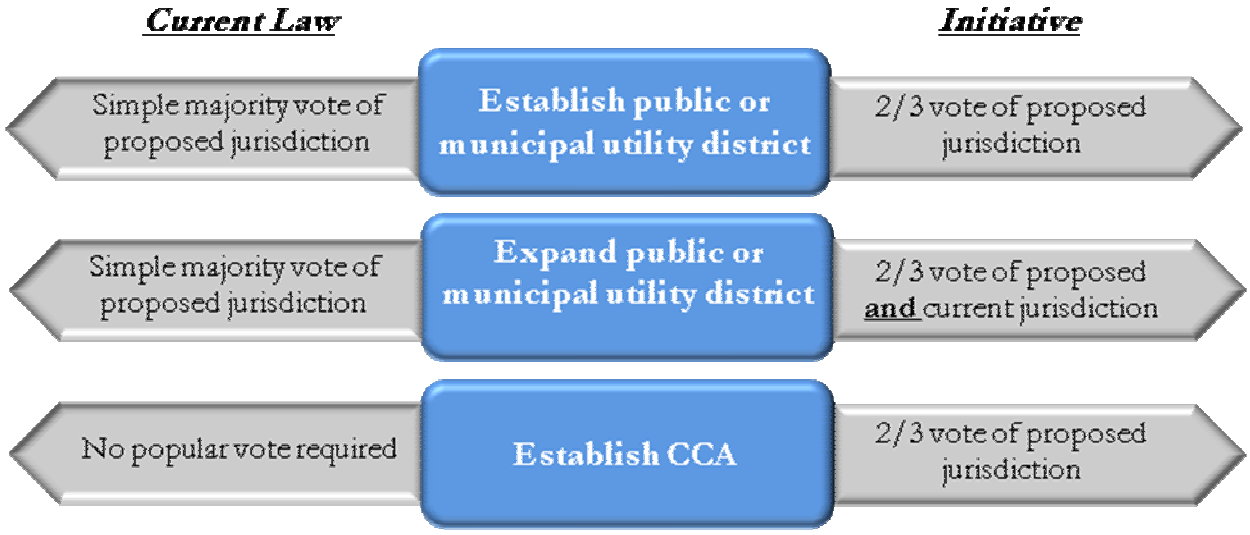

Figure 2: Comparison of current and proposed legal requirements

Policy Implications:

Provides competitive advantage to investor-owned utilities

Several publicly owned utilities, such as Surprise Valley Cooperative, Lassen Municipal Utility District, and Modesto Irrigation District, have overlapping jurisdictions with investor-owned utilities and are therefore not the sole electricity provider within their jurisdiction[11]. Provided the initiative's definition of expanded electric delivery service, these publicly owned utilities would need the consent of a 2/3 majority vote in order to add a new customer within their current jurisdiction. This would make it prohibitively difficult for publicly owned utilities to compete with investor-owned utilities in overlapping jurisdictions.

Discourages formation of CCAs

AB 117 currently mandates a collection of requirements a local government must follow prior to establishing a CCA, including establishing a cost-recovery structure that does not shift costs to non-participating citizens and providing all citizens sufficient opportunity to opt out of a proposed CCA. The Kings River Conservation District's bid to adopt a CCA implementation plan lasted 3 years, beginning with initial study in April of 2004 and ending with final approval from the Public Utilities Commission in April 2007.[12]

An additional requirement of 2/3 support of a popular vote would increase the time and administrative costs associated with establishing a CCA. Increased costs could discourage a local government from pursuing formation of CCA, even if it may be beneficial to citizens.

New legal standard for restriction of CCAs

Of the five states that have created a legal structure for the formation of a CCA, only one, Ohio, requires a popular vote prior to the establishment of a CCA. Ohio legislation requires a simple majority of popular vote prior to the

[11] California Energy Commission
[12] http://www.communitychoice.info/status_timeline/, San Joaquin Valley Power Authority CCA Status and Timeline, Accessed 3/10/2010, Last Updated 3/2/2010

formation of a CCA. If passed, this initiative would make California's CCA requirements more restrictive than any other state that has legalized CCAs.

Proponent Arguments:

The major supporters for Prop 16 are PG&E and the California Chamber of Commerce. PG&E is the largest donor to the pro Prop 16 campaign. The proponents' main arguments are:

1. Californians must currently provide two-thirds approval of tax increases within local municipalities, therefore local governments should be held to the same standard before using public funds to finance the establishment or expansion of electric delivery services.
2. In most cases California law does not require local governments to obtain voters approval before establishing a publicly-owned utility.
3. Potentially decreasing the market share of investor-owned utilities will shrink the industry's tax base and result in lost tax revenue for state and local governments.

Examining Proponent Arguments:

1. Californians must currently provide two-thirds approval of tax increases within local municipalities, therefore local governments should be held to the same standard before using public funds to finance the establishment or expansion of electric delivery services.
    - Article 13C of the California Constitution requires 2/3 voter approval for establishment of special taxes (those designated for a specific purpose) and simple majority approval for establishment of general taxes. Article 16, Section 18 further requires 2/3 voter approval for any local municipal government to incur any indebtedness in excess of regular annual revenue.
2. In most cases California law does not require local governments to obtain voters approval before establishing a publicly-owned utility or incurring indebtedness to do so.
    - California Public Utilities Code (see footnote 4) currently requires a municipal government to obtain simple majority voter approval prior to establishing or expanding a publicly-owned utility. Additionally, a municipal utility district is required to obtain 2/3 voter approval before incurring any indebtedness in excess of regular annual revenue. Current law does not require voter approval for the formation of a CCA or the use of public funds to do so. However, AB 117 does require the CCA implementation plan to demonstrate full cost-recovery through ratepayers.
3. Allowing municipal governments to establish public utilities will decrease the market share of investor-owned utilities and shrink the industry's tax base. This will result in lost tax revenue for state and local governments.
    - Investor-owned utilities are subject to taxation (such as Corporate Tax) that publicly owned utilities are not subject to.

Opponent Arguments:

1. Two-thirds requirement will make establishment of CCAs prohibitively difficult thus discouraging municipalities from pursuing establishment of a CCA.
2. The costs associated with the CCA are financed in full by the rates paid by participating residents, and residents are given a minimum of four opportunities to opt out of a CCA prior to its establishment.
3. Proposition will unduly increase the market power of investor-owned utilities, leading to increase electricity rates, and decreased use of renewable technology.

110 West C Street, Suite 714, San Diego, CA 92101
P: (619) 234-6423 • F: (619) 234-7403 • www.sdcta.org

Examining Opponent Arguments:

1. Two-thirds requirement will make establishment of CCAs prohibitively difficult thus discouraging municipalities from pursuing establishment of a CCA.
    - A requirement of 2/3 support of a popular vote would increase the time and administrative costs associated with establishing a CCA. However, it is unclear whether or not these added costs would make forming a CCA "prohibitively difficult".
2. The costs associated with the CCA are financed in full by the rates paid by participating residents, and residents are given a minimum of four opportunities to opt out of a CCA prior to its establishment.
    - AB 117 requires a municipality to file a CCA implementation plan as to "prevent a shifting of costs to an electrical corporation's bundled customers", in other words, those who have opted out of the CCA. AB 117 also requires a municipality to inform every resident of their right to opt out of the CCA, and give them an opportunity to do so. Specifically, a CCA must notify residents at least twice with 60 days before commencing service, and again twice during the first two billing cycles.
3. Proposition will unduly increase the market power of investor-owned utilities leading to increase electricity rates, and decreased use of renewable technology.
    - There is no clear evidence that electricity rates will increase as a result of this proposition. Additionally, there is no clear evidence to support the claim that the proposition will discourage the use of renewable energy.