

## **SECTION III OVERVIEW & LESSONS LEARNED MULTI-JURISDICTIONAL CCE AGENCIES**

### **Structure & Governance**

Per statute, CCE programs may be initiated and administered by a single municipality (i.e. city or county) or a group of them on a cooperative, inter-jurisdictional basis. Like similar municipally sponsored services, such as municipal power or water agencies, program governance typically remains in the public domain whether through elected or appointed representation of the communities served. This section will focus on governance, financing and program phasing options and best practices for a potentially large regional program that could eventually include all 21 of the Monterey Bay Community Power county and city partners.

#### Legal Structure:

AB 117 does not specify a required legal structure for multi-jurisdictional CCE programs. However, established CCE programs and many of those currently in progress are operating under California's Joint Powers Authority (JPA) Act, which allows for inter-agency cooperation and the provision of common services while maintaining legal and financial separation between the operations, assets and liabilities of the JPA and its county and city members. This latter issue of financial and legal separation has been especially important to cities and counties interested in offering the benefits and choice inherent in a CCE program without burdening municipal staff with program administration or in any way putting their government's general funds at risk through program participation.

It should be noted that there is a new, as yet untested, operational structure for CCEs that relies on commercially outsourced services offered to multiple jurisdictions under private contract. This commercially outsourced model does not use the JPA structure and it is unclear to what extent program operations, revenues, and governance remain within local, municipal control. It is also unknown how the "legal and financial firewall" protections afforded by the JPA structure are offered in privately managed models, and how those are supported (or not) by existing case law. Still, it is a model that is garnering some interest, especially in areas that are remote, financially burdened or lacking in available professional talent to run a local or regional CCE program.

Joint Powers Agencies in California are established by a joint powers agreement (“the constitution”) that defines, codifies and governs the way the JPA will operate on behalf of its member jurisdictions (or agencies). The JPA Agreement is passed by resolution of its member agencies and may also be augmented by operating guidelines, bylaws and/or program policies if the Board of the JPA so chooses. While the JPA as a legal structure has many different applications in the State of California (transportation, housing, planning, public policy, etc.), CCEs serve a utility function and are considered “load serving entities.” Thus, they are more similar to a municipal utility providing a commodity service rather than a regional planning or policy setting association – think “Solid Waste Management Authority” rather than an “Association of Local Governments”, for example. This utility business and customer-serving focus will be an important consideration in both the staffing and leadership composition of the MBCP CCE agency.

The Project Development Advisory Committee (PDAC) reviewed several governance options including those of current CCE programs, large regional JPAs operating in California and existing JPAs currently serving the Monterey Bay region. Three models were identified:

1. Traditional CCE- JPA Approach:
  - 1 Board seat per member jurisdiction (primary plus alternate).
  - All elected representatives.
  - Alternate can be elected or appointee.
  - Meetings are monthly.
  - Examples include the two well-established CCEs in California, Marin Clean Energy and Sonoma Clean Power.
2. Multi-County/Regional Approach:
  - Combines elected officials with appointed representatives with technical/functional industry expertise.
  - Allocates a certain number of seats by category: county, cities and “at large” technical/function experts.
  - Assumes a primary and alternate for each seat.
  - County and city reps assumed to be elected representatives; their alternates can be municipal staff or technical/functional experts without a conflict of interest.

- At large technical/functional expert seats are selected by application per criteria established by the governing Board.
- Meetings are usually monthly, but can also be every-other-month or even quarterly if there is a robust committee structure.
- Examples include Metropolitan Transportation Commission, Golden Gate Bridge District, CalTrain, Monterey Bay Unified Air Pollution Control District, Central CA Alliance for Health, and the recently formed Santa Cruz Mid-County Groundwater Management Agency.

3. Existing JPA Approach:

- Adopt/use an existing JPA's governance structure and administrative capacity, either one within the Monterey Bay region or an established CCE outside the Monterey region.
- Joining an existing JPA within the region means that the CCE program would not be the primary focus of the agency as it would be a business line within a broader scope and mission. The complexity of running the business of a CCE program does not make this the best option.
- Joining an existing CCE-JPA outside the region is a simple path, but it significantly dilutes the economic benefits of keeping the program local. Local decision-making and interaction with the region's ratepayers would also be greatly diminished. This is the least attractive option.

After extensive discussion, the PDAC recommends option two – forming a multi-county JPA as a stand alone agency- as the governance structure that makes the most sense for the MBCP partnership.

CCE JPA Agreements:

The CCE programs that include multiple jurisdictions and operate under a JPA structure are governed by intergovernmental agreements that have evolved over the last few years. New CCEs in the process of formation in San Mateo and Santa Clara counties have been the most recent to draft these agreements, (see APPENDIX 6 for examples.)

In addition to standard JPA language, there are several elements that need to be considered by the MBCP partners. These elements are outlined on the following pages, 19 and 20, with a description of current practices from successfully established CCEs within California and the PDAC's recommendations. On page 21 is the specific board and technical advisory committee structure recommended by the PDAC.

| <b>Governance Element</b> | <b>Currently practices of CCEs</b>   | <b>PDAC Recommendation</b>   |
|---------------------------|--|--|
| Agency Purpose            | CCE and energy related programs only.  | CCE and energy related programs only.  |
| Municipal Membership      | Municipalities as full members.<br>(Marin Clean Energy-MCE)<br><br>Municipalities as participants.<br>(Sonoma Clean Power-SCP)   | Investigate further the pros and cons of each approach.  |
| Board Composition         | 1 member per jurisdiction.<br>(MCE & SCP)<br><br>Primary Board member is an elected official.<br>(MCE & SCP)<br><br>Alternate is elected (MCE) or may be appointed (SCP).                            | Board of 11 to 15 members that combines elected officials and/or “at large” technical/functional experts <i>with no conflict of interest</i> .<br><br>Recommended structure on page 21 is automatically “scalable” to accommodate county & city members who do not initially join the CCE/JPA. |
| Board Voting              | Majority vote with an option to call for a weighted vote (SCP).<br><br>Majority and weighted vote combined (MCE).  | Majority vote.<br>Recommended structure is already weighted based on load size and population.   |
| Joint Powers              | Power to contract, employ, acquire and maintain public works, incur debt and issue bonds, invoke eminent domain under certain conditions, adopt rules and regulations.                               | Power to contract, employ, acquire and maintain public works, incur debt and issue bonds, invoke eminent domain under certain conditions, adopt rules and regulations.   |
| Withdrawal of Membership  | MCE – Municipal accounts only; may be a fee for departing load due to stranded costs.<br><br>SCP- Option to remove all accounts with negotiated timing and payout agreement to cover stranded costs. | Option to remove all accounts with negotiated timing and payout agreement to cover stranded costs.   |

|   |  |   |
|---|--|---|
| JPA Administration:<br>Self-administered or outsourced?                                     | MCP & SCP: Self-administered with option to contract for certain JPA functions.  | Self-administered with outsourcing for certain “turn key” administrative functions that are readily available within the industry.  |
| New county/city members joining the JPA after initial launch                                | Modest cost or no cost at the discretion of the JPA Board.   | Modest cost or no cost at the discretion of the JPA Board.  |
| JPA Committees:<br>Permissive or Required?<br><br>Technical Advisory Committee to the Board | MCE- Permissive at discretion of the Board.<br><br>SCP – Operations and Rate Setting Committees included in JPA agreement. | Permissive at the discretion of the Board after the need is identified and each committee’s function is defined. <i>Do not specify committee structure in the JPA agreement.</i><br><br><i>However, a technical advisory committee of experts with no conflict of interest to assist the Board is highly recommended. Possible technical expert categories: energy procurement/industry experience; utility background; finance; environmental, clean tech or related policy and/or operational experience.</i> |
| Cost Recovery for Advanced Start-Up Funds   | Full cost recovery of start-up costs.  | Full cost recovery of start-up costs, including all <i>unfunded</i> remaining Phase 1 activities as well as all Phase 2 formation work.   |
| Board meeting frequency and location  | Monthly meetings in one central location.  | At the discretion of the governing board.   |

**Recommended Governing Board Structure & Technical Advisory Committee Structure**

| <b>Local Government Entity</b> | <b># Members*</b> | <b>Appointed By</b>        |
|--------------------------------|-------------------|----------------------------|
| Monterey County                | 3                 | Monterey County Board      |
| City of Salinas                | 1                 | Salinas City Council       |
| Monterey Peninsula Cities      | 2                 | Monterey City Select Com   |
| Salinas Valley Cities          | 1                 | Monterey City Select Com   |
| Santa Cruz County              | 2                 | Santa Cruz County          |
| Santa Cruz County Cities       | 2                 | Santa Cruz City Select Com |
| San Benito County Supervisors  | 1                 | San Benito Board           |
| San Benito County Cities       | 1                 | San Benito City Select Com |
| <b>Total:</b>                  | <b>13</b>         |                            |

\* Each primary member should have an appointed alternate\*

**Weighted Representation:**

|                    | <u>Votes</u> | <u>Population (2015)</u> | <u>Loads (year 3)</u> |
|--------------------|--------------|--------------------------|-----------------------|
| Monterey County:   | 7 (53.8%)    | 433,898 (56.6%)          | 1,998 MWh (62.0%)     |
| Santa Cruz County: | 4 (30.8%)    | 274,146 (35.8%)          | 941 MWh (29.2%)       |
| San Benito County: | 2 (15.4%)    | 58,792 ( 7.7%)           | 283 MWh ( 8.8%)       |
| <b>Totals:</b>     | <b>13</b>    | <b>766,836</b>           | <b>3,222 MWh</b>      |

**Technical Advisory Committee Structure:**

- Comprised of technical and industry experts without a conflict of interest.
- One appointment per each County and City CCE-JPA member.
- Advises on all aspects of the agency operations.
- Criteria for membership to be developed by the Governing Board.
- Possible representative expertise: energy procurement & industry experience; utility background; finance; environmental, clean tech or related policy and/or operational experience.

## Financing

Financing for multi-jurisdictional CCEs generally falls into three categories that cover initial planning and implementation (seed capital), program launch/initial energy contract (short term working capital), and longer-term agency operations (term debt/line of credit). To date, financing for CCE programs has come from a variety of sources including grants, private investors, municipalities and banks. More recent offerings have included vendor financing and deferred compensation in exchange for multi-year contracts that typically carry a five-year term. Types of capital required are:

Start-Up/Seed Capital: Seed capital covers early start-up costs prior to program revenue, (i.e. before paying customers.) The amount of seed capital needed to launch a new CCE program will be influenced by the size and complexity of the program. However, there are a number of fixed costs associated with program implementation as well. Seed capital requirements for existing and soon-to-launch CCE programs have ranged from \$1.5M -\$2.5M and cover the period from initial planning and study to program design, implementation and launch. Depending on how much seed capital is available, it may also cover initial JPA staffing and the utility bond requirement, although these expenses are often covered through the initial working capital loan. (See Section IV- Technical Study Executive Summary for a more detailed estimate of start-up costs for the MBCP CCE-JPA.)

To date, start-up capital has come from a combination of grants and municipal loans. Banks have traditionally not provided seed capital as it is considered high-risk capital until JPA commitments are made, ordinances are passed, and the program is closer to having revenue-generating customers. The exception to this rule is a loan that has a credit backing from a municipality, or vendor sponsored financing that will carry minimum contract terms in exchange for the credit.

A few notes regarding seed capital:

- All start up costs may be repaid through the early operating customer revenues of the CCE program.
- A municipality may lend funds to cover start-up, as a zero-interest loan or for a small fee.
- Seed capital may also be privately funded through grants or private investors. The key is to use the least cost financing available so as not to burden the JPA with high debt at launch.

Working Capital: CCE's will typically require working capital approximately six months prior to program launch, depending on how much seed capital remains in the coffers. This type of credit covers negative cash flow in the early stages of program launch and is intended to get the CCE "over the hump" from pre-launch to early operations until it reaches more stable revenues and operations. The amount of early working capital

needed is entirely dependent on the CCE's phasing plans, early staffing/operations expenses, and the size and cost of the energy contract. It can range from a low of \$2M to a high of \$15M or more depending on the program size at initial launch. This debt is usually short term and is often provided by a lender, although it can be municipally or vendor financed as well. It also requires a credit guaranty, which is usually provided by the sponsoring municipality(s) of the CCE program. The guaranty is released soon after revenues begin flowing (usually within 12-24 months) and the CCE-JPA is ready for longer-term debt and larger lines of credit.

Some notes regarding early working capital:

- This type of finance requires a guaranty that will be released when the CCE is stable and generating solid revenues.
- This debt will provide the credit backing required for the initial energy supply contract and early operating expenses.
- During the time the CCE is seeking working capital, it will also want to consider other banking services such as deposit accounts, lockbox services and the like. Generally, these services are provided by the lender as a bundled package with the loan.

Longer Term Debt/Lines of Credit: Once the program is launched and revenues have commenced, the CCE will want to consider longer-term debt and lines of credit to support agency operations and an expanded portfolio of energy contracts. Typically, this debt is used to refinance early working capital and pay off any start-up loans. It often carries a stable, fixed rate that can be repaid over time and may be accompanied by a separate line of credit to serve as backing for power contracts.

When it comes to a CCE banking partner, size matters. Make sure the bank is large enough to finance your program over the long term. CCE's can be very large with significant capital requirements, especially as the program matures. Banks need to live within their loan-deposit caps so make sure it has enough credit capacity for long-term needs of the CCE-JPA.

Underwriting Considerations: When a bank considers lending to a new CCE, it will consider a number of factors including the management team. Examples:

- Does the Chairman, CEO, and other management team members demonstrate political savvy?
- Does the team have a combination of experience and entrepreneurship?
- Does it have knowledge of energy markets and energy contracting?
- Does it have a robust marketing program?
- Does the team understand the complexities of operating a customer-service focused utility service along with the complimentary energy programs?



The bank will also consider the program’s financial modeling which provides a detailed forecast of program expenses and revenues over a period of years. The knowledge and credibility of the author of the financial proforma will be important as well. Finally, the bank will also consider community support, level of local government commitments, and Board/governance structure.

## **Program Phasing**

In the world of CCE, program phasing is part of the program planning process and is influenced by a number of factors including availability of credit and capital, seasonal economics, and level of operational capacity to run the program. There are generally three elements to the phasing discussion, all of which will need to be reviewed with the governing Board and articulated in the CCE’s implementation plan that must be certified by the California Public Utilities Commission:

- Program size (energy usage and customer count)
- Municipal/geographic representation
- Customer classes (e.g. residential, municipal, commercial)

Program Size: The first element that will be considered is the overall program size in terms of energy usage, load size/shape, and number of customer accounts. To date, the operational CCE’s have all started service with only a small portion of their load and customer base (as little as 10-20%), enrolling customers and adding load over a period of time (~ 8 months – 2 years). A few things influence the size of initial enrollment:

- Organizational capacity and level of readiness to enroll customers;
- Utility capacity to switch customers over in batches; and
- Availability of credit to cover the cost of the initial energy contract and staffing to service the initial customers.

### Municipal and Geographic Representation:

This element of phasing has to do with which municipalities join the JPA as founding members and those that choose to join later. In order to commence service, local governments must pass a CCE ordinance and in the case of MBCP, pass a JPA resolution to approve their participation in the agency. Once the CCE knows “who’s in” it will be able to better ascertain overall program size, credit needs and appropriate phasing strategy. It should be noted that second and third round cities that join later are subject to the approval of the JPA Board and may have to wait until all initial customers are enrolled before joining the agency. This could be a year or even two after the initial program launch.

Customer Classes: This element of phasing refers to the types of customers that will be enrolled at each phase. Although there are hundreds of rate classes and corresponding tariffs, typical customer classes include residential, small and large commercial, municipal and agricultural. Large commercial customers served by Direct Access will not be enrolled in a CCE program unless they choose to do so.

Phasing Strategy: Once the size, municipal representation and credit needs are known, the technical team can design a phasing strategy that will best serve the MBCP program. As noted above, the phasing strategy will be articulated in the Implementation Plan that must be submitted and certified by the CPUC prior to launch. Phasing in of customers can occur in several phases (usually three) over a period of 12-24 months depending on the desire of the CCE Board to build up slowly or quickly.

To date, it has been a common practice among CCEs to launch with their commercial load sometime in the summer tariff season with a small percentage of residential accounts if desired. This is because of the strong economics and lower customer count that allows the agency to build revenues and stabilize operations before rolling out to the larger customer base of municipal and residential customers. While this strategy is not required, it is now considered a best practice relative to program launch.

In conclusion, there are a number of steps and factors to be considered prior to determining the program phasing strategy. The first is to understand which counties and cities want to participate as initial JPA members and the size of their load and number of accounts. Once that is determined, a clearer sense of credit needs will emerge and more precise modeling can be done to inform customer phasing.