

## After Approving [Community Choice](#) Provisions in House and Senate Versions, New Jersey Legislature's "Reconciliation Bill" Removes It:



Trojan Horse Law A-16 Maintains Appearance of Local Rights, But Quietly Guts Them

After a [two year Community Choice campaign](#) by [Ratepayer Advocate Blossom Peretz](#) and a Winter mobilization by the [New Jersey League of Municipalities](#) for municipal aggregation rights that held up a deregulation bill in the legislature for the month of January, the New Jersey legislature has passed an electric restructuring bill which pretends to approve [Community Choice](#) but includes fatal elements that make it difficult, if not impossible for communities to aggregate.

A-16, sponsored by Majority Leader Paul DiGaetano and Assemblyman Richard H. Bagger (R-Union, Somerset, Morris, Middlesex), includes conflicting provisions: one which allows communities to choose an electricity supplier, and another provision that subsequently requires the chosen supplier to sign-up each individual consumer in the community: an "opt-in" form of aggregation that is anticipated to be costly and [has already failed in other states with "Weak Aggregation" restructuring laws](#).

There are two other provisions in A-16 which severely restrict municipal aggregation. If a community attempts to solicit bidders under the already hobbled "initial opt-out phase," a consumer segregation provision forbids the inclusion of commercial or industrial customers in the mix with residents. By "ghettoizing" residents in groups excluding the factories, stores and office buildings that use large amounts of power during the day -- when residents are not at home, leaving daytime capacity unused -- the "segregation" provision undermines the "load factor" of a community, making it less efficient, less desirable to supply, thus more costly, and less economically feasible.

Finally, the legislation severely restricts communities from investing in energy efficiency and renewable energy.

An effort similar to what the New Jersey law outlines recently [failed in Palm Springs, California](#), despite four years of effort and provisions that do allow inclusion of commercial and industrial customers. In an agreement with its chosen supplier (Enron) Palm Springs attempted to sign up 25 percent of the electric customers in the city on an opt-in basis ("Weak Aggregation"), but succeeded in signing up only 8 percent. Similar failure has attended a municipal aggregation effort under Pennsylvania's "Weak Aggregation" law, where the Philadelphia Gas Works closed shop and handed its customers over to its corporate partner, Edison Source, after a year's marketing effort.

The New Jersey provision is a product of last minute negotiations to "reconcile" bona fide Community Choice provisions that were included in separate House and Senate electric restructuring bills, the former requiring a city referendum to pursue Community Choice, the latter requiring only a 3/5 vote

of the city council.

The removal of Community Choice during reconciliation has surprised the many people who had [successfully organized to secure the Community Choice provisions](#). During the month of December, local municipal and county officials led by the [New Jersey League of Municipalities](#) and the County Association lobbied hard for "opt-out" local government aggregation powers, or Community Choice.

We convinced everyone we need some power to do opt-out aggregation," said John Moran of the New Jersey League of Municipalities. "We had full support in the Senate. The Assembly and Governor's office said they would support us on condition that voters approved it in a referendum."

After making Community Choice the central issue in New Jersey's restructuring debate, Peretz and the League of Municipalities appear to have been double-crossed in the last negotiations between House and Senate leaders. Somehow, both Community Choice provisions were removed during the "reconciliation" of the House and Senate bills, leaving many in the state confused about what the bill now means. Rather than finding a compromise between a referendum and a 3/5 city council vote to authorize Community Choice, the reconciliation language provides for an "initial opt out phase" followed by opt-in, or "Weak Aggregation" restrictions which totally undermine Community Choice.

The provision states that during the "initial opt-out phase" a city council can pass an ordinance by majority vote to invite power companies to bid for a whole city of residents as if they were included in the community's contract unless they opt-out ("Community Choice").

"A government aggregator that is a municipality or a county may...operate a limited government energy aggregation program that provides for the aggregation of residential electric generation service or gas supply service without the initial, affirmative, voluntary, written consent of residential customers for electric generation service or gas supply service, either separately or bundled..." A-16, Section 45

However, a separate section of the bill states that once a city chooses its winning bidder and the contract has survived a lengthy approval by state regulators and the state Ratepayer Advocate, a "second opt-in phase" begins in which the approved power supplier is required to secure the signature of each individual resident in the entire city.

"Upon approval of the proposed contract (by state regulators and the state Ratepayer Advocate) to be entered into by the selected licenced electric power supplier or licenced gas supplier, or both, with each residential customer who affirmatively consents to enter into a contract with the selected licenced electric power supplier or licenced gas supplier or both, the governing body shall authorize the selected licenced electric power supplier or licensed gas supplier, or both, to solicit the affirmative and voluntary written consent to participate in the government energy aggregation program of any residential customer within the municipality who did not initially affirmatively decline to be part of a government energy aggregation program." Section 45 b-2 of A16.

What is worse, this section of A-16 creates an illusion that cities are playing a role when in fact their power to play a role has been gutted. It is ridiculous to say (above) that the "governing body shall authorize the selected licensed electric power supplier...to solicit the affirmative and voluntary written consent to participate in the ...program" when any company that has a state licence is already authorized to solicit such consent whether or not city authorizes it.

This measure effectively removes Community Choice and replaces it with California-style ["Weak Aggregation."](#) because winning the local government's contract provides no tangible benefit to the winning company; either way, the company must still sign up each individual customer in the city individually, "affirmatively and voluntarily, as evidenced by a signature authorizing the customer's participation in a government aggregation program..." A-16, Section 44.

My first reaction is that this is a Trojan Horse," said Moran. "The idea is that the municipality goes

into negotiations with suppliers with the knowledge of how many residents and businesses have opted out of the pool; but if, after all is said and done, the supplier still has to go door to door to sign up each individual customer, where is there an incentive for a power company to negotiate with the municipality?"

Other restrictions on municipal aggregation annoint the New Jersey bill as perhaps the most anti-Community Choice bill yet passed in the nation. The bill's (already gutted) "opt-in" option provision is restricted to residential consumers, another measure that needlessly drains the market power out of communities. "Even though any business could opt-out of the community contract, certain lobbyists insisted that businesses not be included," said Peretz, who opposed the "reconciled" legislation.

The bill also severely limits the ability of communities to choose to invest in renewable energy and energy efficiency by requiring that the community's chosen contract have lower rates than the state mandated rate reductions:

"The (local) governing body shall only award a contract for service to residential customers where the rate is lower than that guaranteed by the State-mandated rate reductions...and the price of basic generation service..." A-16 Section 43, 11-b.

In contrast, Massachusetts exempted contracts containing renewable energy sources and energy efficiency from this requirement in order to encourage community investment in green energy development.

Finally, unlike the Massachusetts bill, which [gives local governments the opportunity to administer energy efficiency funds collected from their residents and businesses](#) the New Jersey bill quietly leaves these funds under utility control, despite the [conflict of interest](#) inherent in the fact that utilities lose revenue when consumers reduce their consumption of electricity.

In effect, the New Jersey legislature has eliminated Community Choice from the law, segregated residential consumers into electric ghettos, and actively prevented communities from investing in green power or energy efficiency, all while claiming to support municipal aggregation in their press releases.

"The New Jersey bill reduces the role of municipalities to that of a blessing-giver, depresses the market power of communities in the deregulated market, and then prohibits communities from seeking green power even if they are willing to pay for it. This is an object lesson in how not to get fooled by rhetoric when deregulation comes to your state," said Matthew Patrick of the Cape Light Compact in Massachusetts, which is currently undergoing competitive bidding with power supply and energy efficiency companies seeking to serve Cape Cod communities under that state's genuine Community Choice law. "It is insufficient to be given the 'right to aggregate;' communities need Community Choice, which is opt-out aggregation, pure and simple. Compromise on this element will totally undermine the result."

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