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Upfront: Runaway grand jury?

Clean energy proponents hear voice of PG&E in scathing grand jury report

by [Peter Seidman](#)

The title of the recent grand jury report about Marin Clean Energy leaves little doubt as to the intentions of the grand jurors. The title: "Pull the Plug."

Far from being a rational piece of reasoned investigation, the report is neither accurate nor fair, say Marin Clean Energy proponents. County Supervisor Charles McGlashan, who also is chairman of the Marin Energy Authority board, puts it bluntly: "I'm not surprised at all. I could tell from the orientation of the members and the types of questions raised that it was going to end up being a hit job."

Ed Mainland, a member of Sustainable Novato and a longtime participant in Marin's sustainability movement, says he sees the fingerprint of PG&E. "The grand jury report is sort of a mini-scrapbook cut and paste job from PG&E talking points." Novato, Corte Madera and Larkspur are the only cities that have declined to become members of the Marin Energy Authority, a joint powers agency.

PG&E has spent serious time and money trying to quash attempts across the state to form local power agencies under a state program that allows what's called community choice aggregation. The Marin Energy Authority formed in December 2008. It isn't the first of its kind in the state.

The San Joaquin Valley Power Authority paved a trail for other entities in the state interested in creating public power agencies. When news broke that San Joaquin was suspending its efforts to break away from PG&E, opponents of public power said the experience should be a cautionary tale for Marin.

But, say Marin Clean Energy proponents, rather than act as a cautionary tale about energy markets and public power, the San Joaquin story actually is a cautionary tale about the tactics PG&E has been using to block public power plans.

After the state law passed in 2002 that allows cities and counties to form their own public power agencies, the San Joaquin agency, which comprises 12 jurisdictions in the Central Valley, was out in front of the pack.

"San Joaquin started the request for proposals process in November of 2007," says Dawn Weisz, a Marin County sustainability planner and interim director of the Marin Energy Authority, "and they had locked in a deal with one supplier in January 2008." But before it could start to provide power, PG&E pressured the agency to sign an agreement that would have allowed the cities and towns in the agency to be responsible for any debts and liabilities of the authority's programs. And that, says Weisz, "is contrary to state law."

The utility raised the issue before the California Public Utilities Commission, which resulted in a six-month delay in implementing the public power contract with an energy supplier. The utilities commission ruled in favor of the San Joaquin agency. PG&E filed an appeal, which caused another delay. By the end of that process, the energy market "had changed dramatically," says Weisz. San Joaquin, however, is taking another crack at local energy.

That kind of blocking tactic was seen in Marin when PG&E offered Novato a special deal if the city would turn its back on the Marin Clean Energy proposal and stick with PG&E. That violates state law, and PG&E had to back away from the proposal.

Those kinds of shenanigans fall in stark contrast to the grand jury report, which says the effort to pursue Marin Clean Energy should be abandoned in an attempt to work with "local foundations, federal, state and local agencies and PG&E to foster cooperation."

That seems odd to proponents of Marin Clean Energy, who tried for months to work with PG&E to arrive at a plan that would meet the clean energy requirements of the new local power agency. "We worked very closely in many meetings with PG&E to

find a way that they could meet the local goals around renewable energy," says Weisz, "and they ultimately cut off those discussions in April of this year, after we had spent a lot of time trying to craft something. They were unwilling to put anything on paper that we had worked on over a four-month period. And after that, they were reprimanded by the California Public Utilities Commission for the [special] offer they had put on paper" in Novato.

The suggestion that PG&E would be willing to engage in a cooperative effort with local power agencies seems even stranger in light of the ballot measure the utility company is working on.

PG&E is behind a measure aimed at the June 2010 ballot that some say would kill public power in the state if voters approve it. Originally called "The Taxpayers Right to Vote Act," it is a constitutional amendment that mandates a two-thirds vote in any jurisdiction that seeks to create a public power agency and break away from an existing utility power grid.

It also would require an agency like Marin Clean Energy to garner a two-thirds vote in a proposed new expansion area, as well as hold a separate election in the existing service area. In other words, before expanding, a public power agency would need a two-thirds vote from its entire customer base. Proponents of community choice power agencies say it is a blatant attempt to use the almost insurmountable two-thirds rule to effectively block local power.

The timing of the grand jury report comes as the Marin Energy Authority is nearing a Feb. 4 vote that will decide whether it accepts a contract with an energy wholesaler. McGlashan and others say the report was the subject of a suspicious leak. It seems PG&E had a copy of the report before the grand jury released the document.

An e-mail from a Mill Valley resident to members of the Mill Valley City Council says the resident received the report Dec. 4 from David Rubin, PG&E's director of service analysis. The report was released to the public Dec. 7, although it's dated Dec. 2. That early release by the PG&E representative is illegal. McGlashan filed a formal complaint with the county district attorney.

The allegation that the grand jury report is slanted in favor of PG&E also rests on a serious omission. Among the findings in the report is the assumption that the business plan for Marin Clean Energy, which was formulated in 2008, "is outdated and lacks sufficient detail, including current pro-forma data, updated market analysis, load projections, customer exit fees and the specified quantitative analysis."

The grand jury publishes a list of documents that it uses in analyzing an issue. A key document is missing from the list in this report. In a preliminary response to the report, the Marin Energy Authority board asserts that, contrary to the allegation in the report, the business plan "is an extremely detailed document, prepared in cooperation with energy industry experts."

The response continues by saying the business plan underwent two independent peer reviews, both of which found it to be comprehensive and containing "no fatal flaws." In addition, a draft version of the implementation plan for Marin Clean Energy "was made available to the grand jury as requested and provides an even higher level of specificity and detail, as it is more current." That implementation plan was not included in the documents the grand jury perused for the report. The board of the Marin Energy Authority approved the implementation plan Dec. 3 and submitted it to the state public utilities commission Dec. 4. "The implementation plan," states the response, "is, in effect, an update to the business plan."

That kind of omission, say clean energy proponents, calls the report into serious question. In addition, the report suggests that many questions remain unanswered concerning the Marin Clean Energy proposal, questions that have been asked and answered numerous times as proponents have made the rounds of city councils and public meetings. At each step along the way, and in letters to the editor, a curious similarity in criticism crops up, which suggests PG&E talking points. And those same talking points seem to be embedded in the grand jury report.

One of the criticisms of the energy plan that turns up repeatedly, including an allegation in the grand jury report, is the assumption that the proposal will put taxpayers at serious risk in a program that's never been tried in California. In addition, the report cites a *New York Times* story about a power entity in Florida that promised to deliver solar power, but much of the money raised went to administrative costs. That kind of anecdotal evidence does a disservice to the grand jury because the fact that one energy agency was mismanaged in Florida proves nothing about the overall efficacy of community choice and local power.

What the report fails to give adequate attention to are the successful community choice local power agencies that already operate in Massachusetts and Ohio. The report also fails to note the fact that one in four Californians already receives electricity from local municipal utilities, not from monolithic monopoly power utilities like PG&E. And, notes the Marin Energy Authority's preliminary response to the report, those municipal utilities "generally charge their ratepayers 20 percent less than the investor-owned utilities and are governed by elected boards."

Under the Marin Clean Energy program, customers who choose not to opt out would automatically receive electricity generated from sources that are 25 percent greenhouse-gas-free. Customers who choose to pay a relatively small surcharge would

receive 100 percent clean energy. The clean-energy proposal will give current PG&E customers multiple opportunities to opt out of the green program and stick with PG&E, which will continue to transmit electricity to all customers.

PG&E currently provides about 15 percent clean energy to its customers and is under state mandate to increase that to 20 percent in 2010. But the utility already has filed for and received a waiver from the state because it will not meet that target until after the deadline.

Marin Clean Energy would, out of the gate, supply its customers with a minimum of 25 percent clean energy and, notes Mainland, that the goal is to be 100 percent renewable, leapfrogging the PG&E state-mandated target.

The grand jury suggests that the county and its cities seek to improve current clean energy programs rather than embark on Marin Clean Energy. But, says Weisz, those programs cost taxpayer money that comes out of general funds. Ratepayers fund Marin Clean Energy.

In addition, the grand jury's recommendation that the county should work with PG&E to create clean energy programs rather than launch local initiatives is belied by a new report. The UCLA Environmental Law Center and the Center for Law, Energy and the Environment at the University of California this month released a report titled "In Our Backyard: How to Increase Renewable Energy Production on Big Buildings and Other Local Spaces."

Although Marin may not have a plethora of big buildings, and the open space it does have may pose challenges for renewable energy production, the county still has ample opportunity to promote local clean energy production by local companies. The number of solar installers currently working in the county proves the possibilities. Not to mention other forms of production.

A key finding in the UC report: "Decentralized renewable energy generation represents the single most immediate and feasible means to produce renewable energy at a broad scale without reliance on long-distance transmission lines, some of which have yet to be built."

That's what sustainability and clean energy proponents in Marin have been saying for years.

==I Contact the writer at peter@pseudman.com.==

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