

SUBJECT: Allowing an electric cooperative to provide power to the Brownsville Public Utility Board

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Seidlits, S. Turner, Alvarado, Bosse, Craddick, Danburg, Hilbert, D. Jones, McCall, Ramsay

3 nays — Black, Carter, B. Hunter

2 absent — Hochberg, Wolens

WITNESSES: For — John W. Davidson, Brownsville Public Utility Board; Robert G. Merrett, Magic Valley Electric Association, Inc.; Don Ouchley; Mike Williams; Jim Morris, Texas Electric Cooperatives, Inc.

Against — R.H. Cory, Central and Southwest; Kent Caperton, Association of Electric Companies of Texas

On — Brent J. Slocum, Public Utility Commission

BACKGROUND: The Brownsville Public Utility Board (BPUB) is a municipal power agency providing power to the Brownsville area. The BPUB currently has a total generating capacity of approximately 170 megawatts and is currently using nearly 165 megawatts of that capacity. The Magic Valley Electric Cooperative operates in Cameron county. It is an electric cooperative, a private company that provides power to individual customers using its own transmission and distribution system. Magic Valley has an excess generating capacity.

A municipal power agency may purchase power under the Public Utility Regulatory Act (PURA) from an electric cooperative only if that municipal power agency has a generating capacity of greater than 500 megawatts.

DIGEST: CSHB 1485 would allow an electric cooperative in Cameron County to transmit, distribute, sell or furnish its electricity to the Brownsville Public Utility Board.

This bill would also repeal the ability of an electric cooperative to sell power to a political subdivision of the state with a generating capacity greater than 500 megawatts. *This change was not intended by the drafters of CSHB 1485, see Notes.*

This bill would take immediate effect if approved by two-thirds of the membership of each house.

**SUPPORTERS
SAY:**

The Brownsville PUB is near its maximum generating capacity, and the city continues to grow very rapidly. This growth will further escalate with more international trade due to NAFTA. BPUB must find some way to meet these possible future electricity demands.

There are three options available to BPUB. First, build a new power plant. This option is unacceptable because the new plant would not be finished in time to meet the escalating power demand. Second, BPUB could wait to see if the Legislature approves PURA changes that would allow for wholesale electric competition available to municipalities with less than 500 megawatts of generating capacity, essentially allowing BPUB to purchase power from any of the other power generators in the area. The problem with this option is that even if the legislation allowing wholesale competition is approved in its current form, it would not allow a municipality with less than 500 megawatts of generating capacity to purchase power wholesale. If such legislation did not pass, BPUB would have a power shortage before the next legislative session. The third option, and the one chosen by this legislation, is to allow the BPUB to join with the electric cooperative in the area (Magic Valley Electric Cooperative) in order to meet the greater power needs that Brownsville will experience soon.

If there were any way to rewrite the laws so that BPUB could purchase power from Magic Valley directly, that would solve the problem. However, without the major revisions to PURA that are now being considered by the Legislature, there is no way to allow BPUB to purchase power. These two entities must form a joint powers agency in order to use both of their capacities to provide power to the Brownsville municipal area.

The law of electric cooperatives is written to help Investor-Owned Utilities (IOUs), and not municipal power companies. An electric cooperative can sell to an IOU, and an IOU can sell to a municipality, but a cooperative cannot sell power to a municipality, unless that municipality has a large generating capacity. These restrictions were originally placed on small municipalities because those cities received other financial assistance. However, now such assistance is no longer available, but the restrictions are still hindering the municipalities.

The intent of this legislation is to find some way to alleviate the anticipated power shortage in the Brownsville area. There is no intention of using this legislation to issue municipal bonds on behalf of the joint powers agency formed by BPUB and Magic Valley.

Both this bill and HB 1485 are necessary in order to allow BPUB to use the generating capacity of Magic Valley to serve its customers.

OPPONENTS
SAY:

This legislation represents an attempt by the Brownsville PUB to circumvent the established system providing electricity to the Brownsville area. Currently, Brownsville is not at a power shortage because it is purchasing its power needs from Central Power and Light Company (CPL), an investor-owned utility. However, Brownsville believes that it could save on its price if it could purchase its power from a cooperative like Magic Valley. The problem is that this combination would be an unregulated one, not authorized by the PUC, but by legislation. Therefore, even if BPUB saves money by purchasing power from Magic Valley, it would not be required to lower its rates.

OTHER
OPPONENTS
SAY:

By allowing BPUB to join in a joint powers agency with Magic Valley, this legislation would create a monopoly for Magic Valley Electric Cooperative. This Legislature is currently considering a number of bills that would allow for wholesale electric power wheeling. Wholesale wheeling refers to allowing independent power producers (IPPs), such as cooperatives, cogenerators, and exempt wholesale generators (EWGs), to transmit and sell power to power companies that provide retail service. There are other IPPs in the Valley area that could provide power to BPUB, if legislation passed allowing wholesale power sales to political subdivisions with less than 500 megawatts of generating capacity. BPUB is

introducing this bill in the event if the other electric utility bills do not pass. But if those bills do pass, this bill would limit competition in the Brownsville area because BPUB would already be providing all the power to BPUB, and the other IPPs, who might have been able to sell power to BPUB at a lower cost, would be left without a market.

NOTES:

The original version of HB 1485 allowed any electric cooperative to sell power to political subdivisions of the state without regard to their generating capacity. The committee substitute to HB 1485 would allow cooperatives to sell power only to a political subdivision of the state located in Cameron County. This language, repealing the ability of electric cooperatives to sell power to municipalities with more than 500 megawatts of generating capacity, was apparently a drafting error and will be corrected by an amendment.

HB 1484 by Oliveira, also on today's calendar, would allow the Brownsville PUB to form a joint powers agency with the Magic Valley Electric Cooperative.

HB 3164 by Seidlits and a similar bill, SB 373 by Armbrister, would revise PURA to allow wholesale wheeling, the sale of power by independent power producers to power companies that provide retail service. HB 3164 is pending in the House Calendars Committee. SB 373 has been passed to engrossment by the Senate but has not been finally passed.