

SUBJECT: Allowing joint powers agency by Brownsville PUB and electric cooperative

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 Morriss, 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.

Currently, only two public entities may form a joint powers agency for the purpose of electric power generation, transmission, or sale. An electric cooperative, which is not a public entity, may not form a joint powers agency.

**DIGEST:** CSHB 1484 would allow the Brownsville Public Utility Board to form a joint powers agency with an electric cooperative in Cameron County.

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:**

The purpose of allowing joint powers agencies between two public entities to provide electric generation was to prevent the unnecessary duplication of services when the jurisdiction of two areas begins to overlap. When this occurs, the voters in an area are allowed to determine if they would like their public entities to join for the purpose of providing electric utility service. Under the statute authorizing joint powers agencies, art. 1435a sec. 4a, VACS, such agencies are given the same powers that the public entities already have. However, the statute never anticipated allowing a joint powers agency to be formed between a public entity and a private company.

Allowing such a combination would go well beyond the purposes of the statute and give the private company benefits that it should not be entitled to receive. Foremost among these benefits would be the ability to issue municipal bonds jointly with the public entity to finance itself at taxpayer expense. Even though such bonds would have to be approved by the voters, it is likely that most voters will not be able to get enough information to understand that they will be voting to support a private company as well as expand their own power capacity.

**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 committee substitute to HB 1484 would limit the ability of electric cooperatives to form joint powers agencies to only those cooperatives in Cameron County.

HB 1485 by Oliveira, which would allow an electric cooperative in Cameron county to sell power to the Brownsville PUB, is also on today's calendar.

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.