

- SUBJECT:** Allowing changes to municipal utility governance, transmission lines
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 10 ayes — Cook, Giddings, Farney, Farrar, Geren, Harless, Huberty, Kuempel, Minjarez, Smithee
- 0 nays
- 3 absent — Craddick, Oliveira, Sylvester Turner
- SENATE VOTE:** On final passage, April 9 — 31-0
- WITNESSES:** For — Katie Coleman, Texas Association of Manufacturers; Bob Kahn, Texas Municipal Power Agency; (*Registered, but did not testify:* Ray Schwertner, City of Garland; Tom “Smitty” Smith, Public Citizen; Michael Jewell and David Parquet, Southern Cross Transmission; Patrick Tarlton, Texas Chemical Council; Mark Zion, Texas Public Power Association; John W. Fainter, Jr., The Association of Electric Companies of Texas, Inc.)
- Against — None
- On — (*Registered, but did not testify:* Brian Lloyd, Public Utility Commission)
- BACKGROUND:** Utilities Code, ch. 163, subch. C governs municipal power agencies, which operate municipal power generators that serve multiple jurisdictions. The Texas Municipal Power Agency (TMPA), which serves the cities of Bryan, Denton, Garland, and Greenville, is the only entity that has been created under this subchapter. These cities share joint ownership of TMPA facilities and appoint its board of directors.
- As stipulated in subchapter C, the board of directors of TMPA are responsible for the management, operation, and control of the property of TMPA. TMPA may dispose of assets it considers to be unnecessary for

the efficient maintenance or operation of its facilities.

Municipal power agencies can issue debt for construction and improvements to electrical facilities.

Utilities Code, ch. 35 governs competition in power transmission services. Chapter 37, subch. B requires wholesale transmission providers to receive certificates of convenience and necessity from the Public Utility Commission.

DIGEST:

CSSB 776 would make changes to Utilities Code, ch. 37 and ch. 163 that would affect municipal power agencies and transmission lines constructed by municipal utilities.

Municipal power agencies. The bill would provide statutory authorization for an alternative governance structure for municipal power agencies, such as the Texas Municipal Power Agency (TMPA), and enable them to wind up some operations by selling property or dissolving it altogether. It would create a new subchapter under Utilities Code, ch. 163. Subchapter C-1 would replicate much of the standing law's language with some exceptions related to governance structure, ability to dispose of property, and ability to dissolve the organization.

For the bill to apply to a municipal power agency, ordinances with identical provisions would have to be passed by each participating municipality. The ordinances also would need to state that the municipality had elected that the agency would be governed under Subchapter C-1 on and after the date designated in the ordinance. If each of the constituent municipalities did not pass applicable ordinances, TMPA would continue to be governed under Utilities Code, ch. 163, subch. C.

Agencies governed under the bill would have all of the powers granted to municipally owned utilities and municipalities that own utilities, except for the ability to tax.

The bill would give municipal power agencies, such as TMPA, the ability to add or remove a participating entity, such as a municipal government, from participation in the agency's activities. Entities could not be added or removed if their addition or removal would impair the agency's obligations.

The bill would allow the board of directors of an agency to delegate managerial and operational control to employees of the agency. The board would not be able to delegate legislative functions, such as the purchase or sale of agency property, the exercise of eminent domain, adoption or amendment of budgets and rates, and the issuance of debt. Affirmative votes would be needed from a director from each of the participating municipalities, and, if there were more than six directors, a minimum of six affirmative votes would be needed to repeal a resolution delegating authority to employees.

A director would have to be a registered voter who resided in the area of the appointing municipality, an employee or member of the governing board of an appointing municipality, or a retail electric customer of the appointing municipality. Directors would be considered local public officials under Local Government Code, ch. 171. Directors would serve without compensation, although they would be able to continue receiving compensation from the appointing municipality if they were employees or members of the governing board of the municipality. The governing board of municipalities could remove directors at any time or without cause.

The bill would allow participating municipalities to create separate boards of directors — one to administer power generation and another to administer power transmission. To create separate boards of directors, participating municipalities would need to pass concurrent ordinances with identical provisions. There would be no minimum number of members of each board, and each participating municipality would not be entitled to appoint a director to each board.

A municipal power agency could sell, lease, convey, or otherwise dispose of its property, rights, and interests. If the value of one of these assets was

greater than \$10 million, the disposition would have to be approved by each participating municipality.

The bill would authorize these agencies to issue public securities for financing or improving electric facilities. These securities could include provisions that would allow third parties to use the agency's facilities, receive output from the facilities, or, in the case of the agency's dissolution, receive an ownership interest in the facilities. Participating municipalities could issue debt to finance their stakes in a municipal power agency.

Municipal power agencies could be dissolved under the bill. To dissolve an agency, each participating municipality would need to pass ordinances that had identical provisions, state the agency would be dissolved upon the winding up of agency affairs, direct the board or boards to wind up the agency's business, and state the date of the dissolution. An agency could not be dissolved if it would impair the rights or remedies of creditors. The agency would continue to exist to satisfy existing debts, liquidate its assets, and take other action needed to end its affairs.

Remaining assets that belonged to the dissolved agency would have to be distributed to the participating municipalities. These participants would decide how the assets were divided. Any agreements between municipalities and the agency created before the effective date of CSSB 776 would be enforceable under the terms of the agreement.

Municipal power agencies could engage in the provision of wholesale power transmission. Transmission services would be governed under Utilities Code, ch. 35.

Construction of transmission lines. The bill also would amend Utilities Code, ch. 37 to establish new requirements for transmission lines constructed by municipally owned utilities and municipal power agencies.

A municipally owned utility and municipal power agency would need a certificate of convenience and necessity (CCN) from the Public Utility

Commission (PUC) for the construction of a transmission facility outside the certificated service area of the municipality or participating municipalities. This provision would not apply to transmission facilities placed in service after September 1, 2015, that were developed to interconnect a new natural gas generation facility to the Electric Reliability Council of Texas (ERCOT) transmission grid and for which a municipality was contractually obligated to purchase at least 190 megawatts of capacity before January 1, 2015.

The bill would direct the PUC to provide exemptions from the CCN requirement, including exemptions for upgrades to existing transmission lines and transmission lines within 10 miles of the utility's certificated service area. It also would require the PUC to approve within 185 days of its filing an application for a facility to be constructed under an interconnection agreement between the ERCOT and the SERC Reliability Corporation that had been approved by order of the Federal Energy Regulatory Commission on or before December 31, 2014.

Any municipally owned utility or municipal power agency required to apply for a CCN would be entitled to recover payments in lieu of property taxes through its wholesale transmission fees if:

- the utility had a written agreement with the taxing entity;
- the payments in lieu of taxes were equivalent to the taxes it would have paid if it were a private entity;
- the governing body of the taxing entity was not the same as the governing body of the utility; and
- the utility provided the PUC with a copy of the written agreement and any other information the PUC deemed necessary.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSSB 776 would provide the Texas Municipal Power Agency (TMPA) with the flexibility and options needed for possible future restructuring, which are not explicitly available to TMPA under current statute. The agency has served its purpose, but the power sales contract between

TMPA and its member cities is set to expire on September 1, 2018. This forward-looking legislation considers the future of TMPA and would clean up the Utilities Code to address current circumstances.

Many of the options being considered by the cities participating in TMPA are of questionable validity under the current Utilities Code. These include winding up the organization, transferring assets such as the power plant and transmission lines to one or more of the member cities, or transferring operations and assets to a private operator. Current statute has no provisions for dissolution. CSSB 776 would provide a procedure for dissolution and allow TMPA to distribute its assets among participating cities upon dissolution. The bill would be needed for the cities to pursue these options.

None of the participating cities gets most or all of its electricity from TMPA. As a result, TMPA is a remnant of 1970s electrical needs. Ending local governments' participation in TMPA or dissolving the agency could reduce the administrative overhead for participating entities.

Current statute requires the board of directors to be engaged in the operational details of TMPA. This is burdensome, and the bill would give the board the legal authority to delegate responsibility to staff. More substantive issues, such as the disposition of assets, would remain with the board of directors under the bill.

The deregulation of electricity markets has created opportunities for separate generation and transmission businesses. Currently, TMPA faces barriers to participate in these opportunities by having only one board of directors. The bill would enable TMPA to split the generation and transmission operations so the agency or its successor organizations could participate in these opportunities.

Currently, only TMPA can issue debt to improve or expand its facilities. The bill would allow the participating cities to issue debt to finance their participation in the agency.

In its 2015 Scope of Competition Report to the Legislature, the Public Utility Commission (PUC) recommended that municipal utilities be required to receive a certificate of convenience and necessity (CCN) for constructing transmission lines outside of the municipality or municipal service area. The lack of a CCN requirement implies that municipal utilities could condemn land outside of its service area, affecting landowners who did not receive service from the utility. These landowners would have no recourse regarding the route or operation of transmission lines without a CCN requirement. Requiring municipal utilities to get a CCN from the PUC would match the CCN requirement for privately owned utilities.

Payments in lieu of taxes already are typical for municipal power utilities with operations outside their service area. The bill simply would codify a practice standard among these utilities.

OPPONENTS
SAY:

No apparent opposition.