



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB5589

Introduced 1/31/2022, by Rep. Mark L. Walker

SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-406

from Ch. 111 2/3, par. 8-406

Amends the Public Utilities Act. Deletes language that provides that no construction shall commence on any new nuclear power plant to be located within the State, and no certificate of public convenience and necessity or other authorization shall be issued therefor by the Illinois Commerce Commission, until the Director of the Environmental Protection Agency finds that the United States Government, through its authorized agency, has identified and approved a demonstrable technology or means for the disposal of high level nuclear waste, or until such construction has been specifically approved by a statute enacted by the General Assembly. Effective immediately.

LRB102 25437 AMQ 34723 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing
5 Section 8-406 as follows:

6 (220 ILCS 5/8-406) (from Ch. 111 2/3, par. 8-406)

7 Sec. 8-406. Certificate of public convenience and
8 necessity.

9 (a) No public utility not owning any city or village
10 franchise nor engaged in performing any public service or in
11 furnishing any product or commodity within this State as of
12 July 1, 1921 and not possessing a certificate of public
13 convenience and necessity from the Illinois Commerce
14 Commission, the State Public Utilities Commission, or the
15 Public Utilities Commission, at the time Public Act 84-617
16 ~~this amendatory Act of 1985~~ goes into effect (January 1,
17 1986), shall transact any business in this State until it
18 shall have obtained a certificate from the Commission that
19 public convenience and necessity require the transaction of
20 such business. A certificate of public convenience and
21 necessity requiring the transaction of public utility business
22 in any area of this State shall include authorization to the
23 public utility receiving the certificate of public convenience

1 and necessity to construct such plant, equipment, property, or
2 facility as is provided for under the terms and conditions of
3 its tariff and as is necessary to provide utility service and
4 carry out the transaction of public utility business by the
5 public utility in the designated area.

6 (b) No public utility shall begin the construction of any
7 new plant, equipment, property, or facility which is not in
8 substitution of any existing plant, equipment, property, or
9 facility, or any extension or alteration thereof or in
10 addition thereto, unless and until it shall have obtained from
11 the Commission a certificate that public convenience and
12 necessity require such construction. Whenever after a hearing
13 the Commission determines that any new construction or the
14 transaction of any business by a public utility will promote
15 the public convenience and is necessary thereto, it shall have
16 the power to issue certificates of public convenience and
17 necessity. The Commission shall determine that proposed
18 construction will promote the public convenience and necessity
19 only if the utility demonstrates: (1) that the proposed
20 construction is necessary to provide adequate, reliable, and
21 efficient service to its customers and is the least-cost means
22 of satisfying the service needs of its customers or that the
23 proposed construction will promote the development of an
24 effectively competitive electricity market that operates
25 efficiently, is equitable to all customers, and is the least
26 cost means of satisfying those objectives; (2) that the

1 utility is capable of efficiently managing and supervising the
2 construction process and has taken sufficient action to ensure
3 adequate and efficient construction and supervision thereof;
4 and (3) that the utility is capable of financing the proposed
5 construction without significant adverse financial
6 consequences for the utility or its customers.

7 (b-5) As used in this subsection (b-5):

8 "Qualifying direct current applicant" means an entity that
9 seeks to provide direct current bulk transmission service for
10 the purpose of transporting electric energy in interstate
11 commerce.

12 "Qualifying direct current project" means a high voltage
13 direct current electric service line that crosses at least one
14 Illinois border, the Illinois portion of which is physically
15 located within the region of the Midcontinent Independent
16 System Operator, Inc., or its successor organization, and runs
17 through the counties of Pike, Scott, Greene, Macoupin,
18 Montgomery, Christian, Shelby, Cumberland, and Clark, is
19 capable of transmitting electricity at voltages of 345
20 kilovolts ~~345kv~~ or above, and may also include associated
21 interconnected alternating current interconnection facilities
22 in this State that are part of the proposed project and
23 reasonably necessary to connect the project with other
24 portions of the grid.

25 Notwithstanding any other provision of this Act, a
26 qualifying direct current applicant that does not own,

1 control, operate, or manage, within this State, any plant,
2 equipment, or property used or to be used for the transmission
3 of electricity at the time of its application or of the
4 Commission's order may file an application on or before
5 December 31, 2023 with the Commission pursuant to this Section
6 or Section 8-406.1 for, and the Commission may grant, a
7 certificate of public convenience and necessity to construct,
8 operate, and maintain a qualifying direct current project. The
9 qualifying direct current applicant may also include in the
10 application requests for authority under Section 8-503. The
11 Commission shall grant the application for a certificate of
12 public convenience and necessity and requests for authority
13 under Section 8-503 if it finds that the qualifying direct
14 current applicant and the proposed qualifying direct current
15 project satisfy the requirements of this subsection and
16 otherwise satisfy the criteria of this Section or Section
17 8-406.1 and the criteria of Section 8-503, as applicable to
18 the application and to the extent such criteria are not
19 superseded by the provisions of this subsection. The
20 Commission's order on the application for the certificate of
21 public convenience and necessity shall also include the
22 Commission's findings and determinations on the request or
23 requests for authority pursuant to Section 8-503. Prior to
24 filing its application under either this Section or Section
25 8-406.1, the qualifying direct current applicant shall conduct
26 3 public meetings in accordance with subsection (h) of this

1 Section. If the qualifying direct current applicant
2 demonstrates in its application that the proposed qualifying
3 direct current project is designed to deliver electricity to a
4 point or points on the electric transmission grid in either or
5 both the PJM Interconnection, LLC or the Midcontinent
6 Independent System Operator, Inc., or their respective
7 successor organizations, the proposed qualifying direct
8 current project shall be deemed to be, and the Commission
9 shall find it to be, for public use. If the qualifying direct
10 current applicant further demonstrates in its application that
11 the proposed transmission project has a capacity of 1,000
12 megawatts or larger and a voltage level of 345 kilovolts or
13 greater, the proposed transmission project shall be deemed to
14 satisfy, and the Commission shall find that it satisfies, the
15 criteria stated in item (1) of subsection (b) of this Section
16 or in paragraph (1) of subsection (f) of Section 8-406.1, as
17 applicable to the application, without the taking of
18 additional evidence on these criteria. Prior to the transfer
19 of functional control of any transmission assets to a regional
20 transmission organization, a qualifying direct current
21 applicant shall request Commission approval to join a regional
22 transmission organization in an application filed pursuant to
23 this subsection (b-5) or separately pursuant to Section 7-102
24 of this Act. The Commission may grant permission to a
25 qualifying direct current applicant to join a regional
26 transmission organization if it finds that the membership, and

1 associated transfer of functional control of transmission
2 assets, benefits Illinois customers in light of the attendant
3 costs and is otherwise in the public interest. Nothing in this
4 subsection (b-5) requires a qualifying direct current
5 applicant to join a regional transmission organization.
6 Nothing in this subsection (b-5) requires the owner or
7 operator of a high voltage direct current transmission line
8 that is not a qualifying direct current project to obtain a
9 certificate of public convenience and necessity to the extent
10 it is not otherwise required by this Section 8-406 or any other
11 provision of this Act.

12 (c) (Blank). ~~After the effective date of this amendatory~~
13 ~~Act of 1987, no construction shall commence on any new nuclear~~
14 ~~power plant to be located within this State, and no~~
15 ~~certificate of public convenience and necessity or other~~
16 ~~authorization shall be issued therefor by the Commission,~~
17 ~~until the Director of the Illinois Environmental Protection~~
18 ~~Agency finds that the United States Government, through its~~
19 ~~authorized agency, has identified and approved a demonstrable~~
20 ~~technology or means for the disposal of high level nuclear~~
21 ~~waste, or until such construction has been specifically~~
22 ~~approved by a statute enacted by the General Assembly.~~

23 As used in this Section, "high level nuclear waste" means
24 those aqueous wastes resulting from the operation of the first
25 cycle of the solvent extraction system or equivalent and the
26 concentrated wastes of the subsequent extraction cycles or

1 equivalent in a facility for reprocessing irradiated reactor
2 fuel and shall include spent fuel assemblies prior to fuel
3 reprocessing.

4 (d) In making its determination under subsection (b) of
5 this Section, the Commission shall attach primary weight to
6 the cost or cost savings to the customers of the utility. The
7 Commission may consider any or all factors which will or may
8 affect such cost or cost savings, including the public
9 utility's engineering judgment regarding the materials used
10 for construction.

11 (e) The Commission may issue a temporary certificate which
12 shall remain in force not to exceed one year in cases of
13 emergency, to assure maintenance of adequate service or to
14 serve particular customers, without notice or hearing, pending
15 the determination of an application for a certificate, and may
16 by regulation exempt from the requirements of this Section
17 temporary acts or operations for which the issuance of a
18 certificate will not be required in the public interest.

19 A public utility shall not be required to obtain but may
20 apply for and obtain a certificate of public convenience and
21 necessity pursuant to this Section with respect to any matter
22 as to which it has received the authorization or order of the
23 Commission under the Electric Supplier Act, and any such
24 authorization or order granted a public utility by the
25 Commission under that Act shall as between public utilities be
26 deemed to be, and shall have except as provided in that Act the

1 same force and effect as, a certificate of public convenience
2 and necessity issued pursuant to this Section.

3 No electric cooperative shall be made or shall become a
4 party to or shall be entitled to be heard or to otherwise
5 appear or participate in any proceeding initiated under this
6 Section for authorization of power plant construction and as
7 to matters as to which a remedy is available under the Electric
8 Supplier Act.

9 (f) Such certificates may be altered or modified by the
10 Commission, upon its own motion or upon application by the
11 person or corporation affected. Unless exercised within a
12 period of 2 years from the grant thereof, authority conferred
13 by a certificate of convenience and necessity issued by the
14 Commission shall be null and void.

15 No certificate of public convenience and necessity shall
16 be construed as granting a monopoly or an exclusive privilege,
17 immunity or franchise.

18 (g) A public utility that undertakes any of the actions
19 described in items (1) through (3) of this subsection (g) or
20 that has obtained approval pursuant to Section 8-406.1 of this
21 Act shall not be required to comply with the requirements of
22 this Section to the extent such requirements otherwise would
23 apply. For purposes of this Section and Section 8-406.1 of
24 this Act, "high voltage electric service line" means an
25 electric line having a design voltage of 100,000 or more. For
26 purposes of this subsection (g), a public utility may do any of

1 the following:

2 (1) replace or upgrade any existing high voltage
3 electric service line and related facilities,
4 notwithstanding its length;

5 (2) relocate any existing high voltage electric
6 service line and related facilities, notwithstanding its
7 length, to accommodate construction or expansion of a
8 roadway or other transportation infrastructure; or

9 (3) construct a high voltage electric service line and
10 related facilities that is constructed solely to serve a
11 single customer's premises or to provide a generator
12 interconnection to the public utility's transmission
13 system and that will pass under or over the premises owned
14 by the customer or generator to be served or under or over
15 premises for which the customer or generator has secured
16 the necessary right of way.

17 (h) A public utility seeking to construct a high-voltage
18 electric service line and related facilities (Project) must
19 show that the utility has held a minimum of 2 pre-filing public
20 meetings to receive public comment concerning the Project in
21 each county where the Project is to be located, no earlier than
22 6 months prior to filing an application for a certificate of
23 public convenience and necessity from the Commission. Notice
24 of the public meeting shall be published in a newspaper of
25 general circulation within the affected county once a week for
26 3 consecutive weeks, beginning no earlier than one month prior

1 to the first public meeting. If the Project traverses 2
2 contiguous counties and where in one county the transmission
3 line mileage and number of landowners over whose property the
4 proposed route traverses is one-fifth or less of the
5 transmission line mileage and number of such landowners of the
6 other county, then the utility may combine the 2 pre-filing
7 meetings in the county with the greater transmission line
8 mileage and affected landowners. All other requirements
9 regarding pre-filing meetings shall apply in both counties.
10 Notice of the public meeting, including a description of the
11 Project, must be provided in writing to the clerk of each
12 county where the Project is to be located. A representative of
13 the Commission shall be invited to each pre-filing public
14 meeting.

15 (i) For applications filed after August 18, 2015 (the
16 effective date of Public Act 99-399) ~~this amendatory Act of~~
17 ~~the 99th General Assembly~~, the Commission shall by registered
18 mail notify each owner of record of land, as identified in the
19 records of the relevant county tax assessor, included in the
20 right-of-way over which the utility seeks in its application
21 to construct a high-voltage electric line of the time and
22 place scheduled for the initial hearing on the public
23 utility's application. The utility shall reimburse the
24 Commission for the cost of the postage and supplies incurred
25 for mailing the notice.

26 (Source: P.A. 102-609, eff. 8-27-21; 102-662, eff. 9-15-21;

1 revised 10-21-21.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.