



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB1079

Introduced 1/12/2023, 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.

LRB103 05251 AMQ 50269 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 goes into effect (January 1, 1986), shall transact any  
17 business in this State until it shall have obtained a  
18 certificate from the Commission that public convenience and  
19 necessity require the transaction of such business. A  
20 certificate of public convenience and necessity requiring the  
21 transaction of public utility business in any area of this  
22 State shall include authorization to the public utility  
23 receiving the certificate of public convenience and necessity

1 to construct such plant, equipment, property, or facility as  
2 is provided for under the terms and conditions of its tariff  
3 and as is necessary to provide utility service and carry out  
4 the transaction of public utility business by the public  
5 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 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 September 11, 1987 (the effective date~~  
13 ~~of Public Act 85-377), no construction shall commence on any~~  
14 ~~new nuclear 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), the Commission shall, by  
17 certified mail, notify each owner of record of land, as  
18 identified in the records of the relevant county tax assessor,  
19 included in the right-of-way over which the utility seeks in  
20 its application to construct a high-voltage electric line of  
21 the time and place scheduled for the initial hearing on the  
22 public utility's application. The utility shall reimburse the  
23 Commission for the cost of the postage and supplies incurred  
24 for mailing the notice.

25 (Source: P.A. 102-609, eff. 8-27-21; 102-662, eff. 9-15-21;  
26 102-813, eff. 5-13-22; 102-931, eff. 5-27-22.)

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