

1 AN ACT relating to public utilities.

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
5 changing 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 this amendatory Act
16 of 1985 goes into effect, shall transact any business in this
17 State until it shall have obtained a certificate from the
18 Commission that public convenience and necessity require the
19 transaction of such business.

20 (b) No public utility shall begin the construction of
21 any new plant, equipment, property or facility which is not
22 in substitution of any existing plant, equipment, property or
23 facility or any extension or alteration thereof or in
24 addition thereto, unless and until it shall have obtained
25 from the Commission a certificate that public convenience and
26 necessity require such construction. Whenever after a hearing
27 the Commission determines that any new construction or the
28 transaction of any business by a public utility will promote
29 the public convenience and is necessary thereto, it shall
30 have the power to issue certificates of public convenience
31 and necessity. The Commission shall determine that proposed

1 construction will promote the public convenience and
2 necessity only if the utility demonstrates: (1) that the
3 proposed construction is necessary to provide adequate,
4 reliable, and efficient service to its customers and is the
5 least-cost means of satisfying the service needs of its
6 customers; (2) that the utility is capable of efficiently
7 managing and supervising the construction process and has
8 taken sufficient action to ensure adequate and efficient
9 construction and supervision thereof; and (3) that the
10 utility is capable of financing the proposed construction
11 without significant adverse financial consequences for the
12 utility or its customers.

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

24 As used in this Section, "high level nuclear waste" means
25 those aqueous wastes resulting from the operation of the
26 first cycle of the solvent extraction system or equivalent
27 and the concentrated wastes of the subsequent extraction
28 cycles or equivalent in a facility for reprocessing
29 irradiated reactor fuel and shall include spent fuel
30 assemblies prior to fuel reprocessing.

31 (d) In making its determination, the Commission shall
32 attach primary weight to the cost or cost savings to the
33 customers of the utility. The Commission may consider any or
34 all factors which will or may affect such cost or cost

1 savings.

2 (e) The Commission may issue a temporary certificate
3 which shall remain in force not to exceed one year in cases
4 of emergency, to assure maintenance of adequate service or to
5 serve particular customers, without notice or hearing,
6 pending the determination of an application for a
7 certificate, and may by regulation exempt from the
8 requirements of this Section temporary acts or operations for
9 which the issuance of a certificate will not be required in
10 the public interest.

11 A public utility shall not be required to obtain but may
12 apply for and obtain a certificate of public convenience and
13 necessity pursuant to this Section with respect to any matter
14 as to which it has received the authorization or order of the
15 Commission under the Electric Supplier Act, and any such
16 authorization or order granted a public utility by the
17 Commission under that Act shall as between public utilities
18 be deemed to be, and shall have except as provided in that
19 Act the same force and effect as, a certificate of public
20 convenience and necessity issued pursuant to this Section.

21 No electric cooperative shall be made or shall become a
22 party to or shall be entitled to be heard or to otherwise
23 appear or participate in any proceeding initiated under this
24 Section for authorization of power plant construction and as
25 to matters as to which a remedy is available under The
26 Electric Supplier Act.

27 (f) Such certificates may be altered or modified by the
28 Commission, upon its own motion or upon application by the
29 person or corporation affected. Unless exercised within a
30 period of 2 years from the grant thereof authority conferred
31 by a certificate of convenience and necessity issued by the
32 Commission shall be null and void.

33 No certificate of public convenience and necessity shall
34 be construed as granting a monopoly or an exclusive

1 privilege, immunity or franchise.

2 (g) The construction and operation of any facility by a
3 public utility shall be subject to and comply with all local
4 regulations of the units of local government in which it is
5 located, including, but not limited to, zoning and building
6 codes, to the extent the facility or matters are not under
7 the jurisdiction of the Commission. In particular, and
8 without limitation to the foregoing, nothing in this
9 subsection relieves a public utility from obtaining site
10 approval from a municipality if the site is located within
11 the municipality or within the municipality's planning
12 jurisdiction, or from the county if not within a municipality
13 or within a municipal planning jurisdiction, regarding the
14 design and impact of the facility upon surrounding
15 properties. The local jurisdiction, however, shall not
16 impose or require restrictions that effectively prevent the
17 construction of a facility under the jurisdiction of the
18 Commission. It is expressly the intent of this subsection
19 that a local jurisdiction shall have the ability to regulate
20 the means and methods of construction including, but not
21 limited to, requiring reasonable landscaping and berming,
22 dedications, and other restrictions related to the operation
23 of a public utility facility including, but not limited to,
24 lighting, setbacks, height, and construction materials.

25 (Source: P.A. 90-561, eff. 12-16-97.)

26 Section 99. Effective date. This Act takes effect upon
27 becoming law.