

# HB3643



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB3643

by Rep. Anna Moeller

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/3-105  
220 ILCS 5/15-401

from Ch. 111 2/3, par. 3-105

Amends the Public Utilities Act. Provides that the term "public utility" does not include pipeline companies that have a demonstrated history of not acting in the interest of public convenience and necessity in Illinois. Provides that in its determination of public convenience and necessity for a proposed pipeline or facility designed or intended to transport crude oil and any alternate locations for such proposed pipeline or facility, the Commission shall consider any evidence or externality presented by a party or other entity participating in the proceeding.

LRB100 10771 RJF 21002 b

A BILL FOR

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 Sections 3-105 and 15-401 as follows:

6 (220 ILCS 5/3-105) (from Ch. 111 2/3, par. 3-105)

7 Sec. 3-105. Public utility.

8 (a) "Public utility" means and includes, except where  
9 otherwise expressly provided in this Section, every  
10 corporation, company, limited liability company, association,  
11 joint stock company or association, firm, partnership or  
12 individual, their lessees, trustees, or receivers appointed by  
13 any court whatsoever that owns, controls, operates or manages,  
14 within this State, directly or indirectly, for public use, any  
15 plant, equipment or property used or to be used for or in  
16 connection with, or owns or controls any franchise, license,  
17 permit or right to engage in:

18 (1) the production, storage, transmission, sale,  
19 delivery or furnishing of heat, cold, power, electricity,  
20 water, or light, except when used solely for communications  
21 purposes;

22 (2) the disposal of sewerage; or

23 (3) the conveyance of oil or gas by pipe line.

1 (b) "Public utility" does not include, however:

2 (1) public utilities that are owned and operated by any  
3 political subdivision, public institution of higher  
4 education or municipal corporation of this State, or public  
5 utilities that are owned by such political subdivision,  
6 public institution of higher education, or municipal  
7 corporation and operated by any of its lessees or operating  
8 agents;

9 (2) water companies which are purely mutual concerns,  
10 having no rates or charges for services, but paying the  
11 operating expenses by assessment upon the members of such a  
12 company and no other person;

13 (3) electric cooperatives as defined in Section 3-119;

14 (4) the following natural gas cooperatives:

15 (A) residential natural gas cooperatives that are  
16 not-for-profit corporations established for the  
17 purpose of administering and operating, on a  
18 cooperative basis, the furnishing of natural gas to  
19 residences for the benefit of their members who are  
20 residential consumers of natural gas. For entities  
21 qualifying as residential natural gas cooperatives and  
22 recognized by the Illinois Commerce Commission as  
23 such, the State shall guarantee legally binding  
24 contracts entered into by residential natural gas  
25 cooperatives for the express purpose of acquiring  
26 natural gas supplies for their members. The Illinois

1 Commerce Commission shall establish rules and  
2 regulations providing for such guarantees. The total  
3 liability of the State in providing all such guarantees  
4 shall not at any time exceed \$1,000,000, nor shall the  
5 State provide such a guarantee to a residential natural  
6 gas cooperative for more than 3 consecutive years; and

7 (B) natural gas cooperatives that are  
8 not-for-profit corporations operated for the purpose  
9 of administering, on a cooperative basis, the  
10 furnishing of natural gas for the benefit of their  
11 members and that, prior to 90 days after the effective  
12 date of this amendatory Act of the 94th General  
13 Assembly, either had acquired or had entered into an  
14 asset purchase agreement to acquire all or  
15 substantially all of the operating assets of a public  
16 utility or natural gas cooperative with the intention  
17 of operating those assets as a natural gas cooperative;

18 (5) sewage disposal companies which provide sewage  
19 disposal services on a mutual basis without establishing  
20 rates or charges for services, but paying the operating  
21 expenses by assessment upon the members of the company and  
22 no others;

23 (6) (blank);

24 (7) cogeneration facilities, small power production  
25 facilities, and other qualifying facilities, as defined in  
26 the Public Utility Regulatory Policies Act and regulations

1 promulgated thereunder, except to the extent State  
2 regulatory jurisdiction and action is required or  
3 authorized by federal law, regulations, regulatory  
4 decisions or the decisions of federal or State courts of  
5 competent jurisdiction;

6 (8) the ownership or operation of a facility that sells  
7 compressed natural gas at retail to the public for use only  
8 as a motor vehicle fuel and the selling of compressed  
9 natural gas at retail to the public for use only as a motor  
10 vehicle fuel;

11 (9) alternative retail electric suppliers as defined  
12 in Article XVI; ~~and~~

13 (10) the Illinois Power Agency; ~~and~~

14 (11) pipeline companies that have a demonstrated  
15 history of not acting in the interest of public convenience  
16 and necessity in Illinois.

17 (c) An entity that furnishes the service of charging  
18 electric vehicles does not and shall not be deemed to sell  
19 electricity and is not and shall not be deemed a public utility  
20 notwithstanding the basis on which the service is provided or  
21 billed. If, however, the entity is otherwise deemed a public  
22 utility under this Act, or is otherwise subject to regulation  
23 under this Act, then that entity is not exempt from and remains  
24 subject to the otherwise applicable provisions of this Act. The  
25 installation, maintenance, and repair of an electric vehicle  
26 charging station shall comply with the requirements of

1 subsection (a) of Section 16-128 and Section 16-128A of this  
2 Act.

3 For purposes of this subsection, the term "electric  
4 vehicles" has the meaning ascribed to that term in Section 10  
5 of the Electric Vehicle Act.

6 (Source: P.A. 97-1128, eff. 8-28-12.)

7 (220 ILCS 5/15-401)

8 Sec. 15-401. Licensing.

9 (a) No person shall operate as a common carrier by pipeline  
10 unless the person possesses a certificate in good standing  
11 authorizing it to operate as a common carrier by pipeline. No  
12 person shall begin or continue construction of a pipeline or  
13 other facility, other than the repair or replacement of an  
14 existing pipeline or facility, for use in operations as a  
15 common carrier by pipeline unless the person possesses a  
16 certificate in good standing.

17 (b) Requirements for issuance. The Commission, after a  
18 hearing, shall grant an application for a certificate  
19 authorizing operations as a common carrier by pipeline, in  
20 whole or in part, to the extent that it finds that the  
21 application was properly filed; a public need for the service  
22 exists; the applicant is fit, willing, and able to provide the  
23 service in compliance with this Act, Commission regulations,  
24 and orders; and the public convenience and necessity requires  
25 issuance of the certificate. Evidence encompassing any of the

1 factors described in items (1) through (9) of this subsection  
2 (b) that is submitted by the applicant, any other party, or the  
3 Commission's staff shall also be considered by the Commission  
4 in determining whether a public need for the service exists  
5 under either current or expected conditions. The changes in  
6 this subsection (b) are intended to be confirmatory of existing  
7 law.

8 In its determination of public convenience and necessity  
9 for a proposed pipeline or facility designed or intended to  
10 transport crude oil and any alternate locations for such  
11 proposed pipeline or facility, the Commission shall consider,  
12 but not be limited to, the following:

13 (1) any evidence presented by the Illinois  
14 Environmental Protection Agency regarding the  
15 environmental impact of the proposed pipeline or other  
16 facility;

17 (2) any evidence presented by the Illinois Department  
18 of Transportation regarding the impact of the proposed  
19 pipeline or facility on traffic safety, road construction,  
20 or other transportation issues;

21 (3) any evidence presented by the Department of Natural  
22 Resources regarding the impact of the proposed pipeline or  
23 facility on any conservation areas, forest preserves,  
24 wildlife preserves, wetlands, or any other natural  
25 resource;

26 (4) any evidence of the effect of the pipeline upon the

1 economy, infrastructure, and public safety presented by  
2 local governmental units that will be affected by the  
3 proposed pipeline or facility;

4 (5) any evidence of the effect of the pipeline upon  
5 property values presented by property owners who will be  
6 affected by the proposed pipeline or facility, provided  
7 that the Commission need not hear evidence as to the actual  
8 valuation of property such as that as would be presented to  
9 and determined by the courts under the Eminent Domain Act;

10 (6) any evidence presented by the Department of  
11 Commerce and Economic Opportunity regarding the current  
12 and future local, State-wide, or regional economic effect,  
13 direct or indirect, of the proposed pipeline or facility  
14 including, but not limited to, property values, employment  
15 rates, and residential and business development;

16 (7) any evidence addressing the factors described in  
17 items (1) through (9) of this subsection (b) or other  
18 relevant factors that is presented by any other State  
19 agency, the applicant, a party, or other entity that  
20 participates in the proceeding, including evidence  
21 presented by the Commission's staff;

22 (8) any evidence presented by a State agency or unit of  
23 State or local government as to the current and future  
24 national, State-wide, or regional economic effects of the  
25 proposed pipeline, direct or indirect, as they affect  
26 residents or businesses in Illinois, including, but not



1 limited to, such impacts as the ability of manufacturers in  
2 Illinois to meet public demand for related services and  
3 products and to compete in the national and regional  
4 economies, improved access of suppliers to regional and  
5 national shipping grids, the ability of the State to access  
6 funds made available for energy infrastructure by the  
7 federal government, mitigation of foreseeable spikes in  
8 price affecting Illinois residents or businesses due to  
9 sudden changes in supply or transportation capacity, and  
10 the likelihood that the proposed construction will  
11 substantially encourage related investment in the State's  
12 energy infrastructure and the creation of energy related  
13 jobs; ~~and~~

14 (9) any evidence presented by any State or federal  
15 governmental entity as to how the proposed pipeline or  
16 facility will affect the security, stability, and  
17 reliability of energy in the State or in the region; ~~and~~

18 (10) any evidence or externality presented by a party  
19 or other entity participating in the proceeding.

20 In its written order, the Commission shall address all of  
21 the evidence presented, and if the order is contrary to any of  
22 the evidence, the Commission shall state the reasons for its  
23 determination with regard to that evidence.

24 (c) An application filed pursuant to this Section may  
25 request either that the Commission review and approve a  
26 specific route for a pipeline, or that the Commission review

1 and approve a project route width that identifies the areas in  
2 which the pipeline would be located, with such width ranging  
3 from the minimum width required for a pipeline right-of-way up  
4 to 500 feet in width. The purpose for allowing the option of  
5 review and approval of a project route width is to provide  
6 increased flexibility during the construction process to  
7 accommodate specific landowner requests, avoid environmentally  
8 sensitive areas, or address special environmental permitting  
9 requirements.

10 (d) A common carrier by pipeline may request any other  
11 approvals as may be needed from the Commission for completion  
12 of the pipeline under Article VIII or any other Article or  
13 Section of this Act at the same time, and as part of the same  
14 application, as its request for a certificate of good standing  
15 under this Section. The Commission's rules shall ensure that  
16 notice of such a consolidated application is provided within 30  
17 days after filing to the landowners along a proposed project  
18 route, or to the potentially affected landowners within a  
19 proposed project route width, using the notification  
20 procedures set forth in the Commission's rules. If a  
21 consolidated application is submitted, then the requests shall  
22 be heard on a consolidated basis and a decision on all issues  
23 shall be entered within the time frames stated in subsection  
24 (e) of this Section. In such a consolidated proceeding, the  
25 Commission may consider evidence relating to the same factors  
26 identified in items (1) through (9) of subsection (b) of this

1 Section in granting authority under Section 8-503 of this Act.  
2 If the Commission grants approval of a project route width as  
3 opposed to a specific project route, then the common carrier by  
4 pipeline must, as it finalizes the actual pipeline alignment  
5 within the project route width, file its final list of affected  
6 landowners with the Commission at least 14 days in advance of  
7 beginning construction on any tract within the project route  
8 width and also provide the Commission with at least 14 days  
9 notice before filing a complaint for eminent domain in the  
10 circuit court with regard to any tract within the project route  
11 width.

12 (e) The Commission shall make its determination on any  
13 application filed pursuant to this Section and issue its final  
14 order within one year after the date that the application is  
15 filed unless an extension is granted as provided in this  
16 subsection (e). The Commission may extend the one-year time  
17 period for issuing a final order on an application filed  
18 pursuant to this Section up to an additional 6 months if it  
19 finds, following the filing of initial testimony by the parties  
20 to the proceeding, that due to the number of affected  
21 landowners and other parties in the proceeding and the  
22 complexity of the contested issues before it, additional time  
23 is needed to ensure a complete review of the evidence. If an  
24 extension is granted, then the schedule for the proceeding  
25 shall not be further extended beyond this 6-month period, and  
26 the Commission shall issue its final order within the 6-month

1 extension period. The Commission shall also have the power to  
2 establish an expedited schedule for making its determination on  
3 an application filed pursuant to this Section in less than one  
4 year if it finds that the public interest requires the setting  
5 of such an expedited schedule.

6 (f) Within 6 months after the Commission's entry of an  
7 order approving either a specific route or a project route  
8 width under this Section, the common carrier by pipeline that  
9 receives such order may file supplemental applications for  
10 minor route deviations outside the approved project route  
11 width, allowing for additions or changes to the approved route  
12 to address environmental concerns encountered during  
13 construction or to accommodate landowner requests. Notice of a  
14 supplemental application shall be provided to any State agency  
15 that appeared in the original proceeding or immediately  
16 affected landowner at the time such supplemental application is  
17 filed. The route deviations shall be approved by the Commission  
18 within 45 days, unless a written objection is filed to the  
19 supplemental application within 20 days after the date such  
20 supplemental application is filed. Hearings on any such  
21 supplemental application shall be limited to the  
22 reasonableness of the specific variance proposed, and the  
23 issues of public need or public convenience or necessity for  
24 the project or fitness of the applicant shall not be reopened  
25 in the supplemental proceeding.

26 (g) The rules of the Commission may include additional

1 options for expediting the issuance of permits and certificates  
2 under this Section. Such rules may provide that, in the event  
3 that an applicant elects to use an option provided for in such  
4 rules; (1) the applicant must request the use of the expedited  
5 process at the time of filing its application for a license or  
6 permit with the Commission; (2) the Commission may engage  
7 experts and procure additional administrative resources that  
8 are reasonably necessary for implementing the expedited  
9 process; and (3) the applicant must bear any additional costs  
10 incurred by the Commission as a result of the applicant's use  
11 of such expedited process.

12 (h) Duties and obligations of common carriers by pipeline.  
13 Each common carrier by pipeline shall provide adequate service  
14 to the public at reasonable rates and without discrimination.  
15 (Source: P.A. 97-405, eff. 8-16-11.)