



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB2802

Introduced 2/16/2023, by Rep. Lance Yednock

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-406

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

220 ILCS 5/8-406.3 new

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 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. Provides that the Commission shall only issue a certificate of public convenience and necessity to a public utility operating or located within the State or to a company with a fossil fuel-based power generator. Provides that the Commission shall adopt rules concerning the granting of certificates of public convenience and necessity for the construction, purchase, or lease of small modular nuclear reactors. Provides requirements for the Commission to follow when adopting rules for the granting of certificates of public convenience and necessity for small modular nuclear reactors. Provides that the Commission may adopt emergency rules for the granting of certificates of public convenience and necessity for small modular nuclear reactors.

LRB103 29470 AMQ 55864 b

1 AN ACT concerning 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 changing  
5 Section 8-406 and by adding Section 8-406.3 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  
26 least-cost ~~least-cost~~ means of satisfying those objectives;

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

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

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

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

26 Notwithstanding any other provision of this Act, a

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

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

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

13 (c) (Blank). ~~After September 11, 1987 (the effective date~~  
14 ~~of Public Act 85-377), no construction shall commence on any~~  
15 ~~new nuclear power plant to be located within this State, and no~~  
16 ~~certificate of public convenience and necessity or other~~  
17 ~~authorization shall be issued therefor by the Commission,~~  
18 ~~until the Director of the Illinois Environmental Protection~~  
19 ~~Agency finds that the United States Government, through its~~  
20 ~~authorized agency, has identified and approved a demonstrable~~  
21 ~~technology or means for the disposal of high level nuclear~~  
22 ~~waste, or until such construction has been specifically~~  
23 ~~approved by a statute 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 first~~  
26 ~~cycle of the solvent extraction system or equivalent and the~~

1 ~~concentrated wastes of the subsequent extraction cycles or~~  
2 ~~equivalent in a facility for reprocessing irradiated reactor~~  
3 ~~fuel and shall include spent fuel assemblies prior to fuel~~  
4 ~~reprocessing.~~

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

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

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

1 deemed to be, and shall have except as provided in that Act the  
2 same force and effect as, a certificate of public convenience  
3 and necessity issued pursuant to this Section.

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

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

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

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

1 purposes of this subsection (g), a public utility may do any of  
2 the following:

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

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

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

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

1 3 consecutive weeks, beginning no earlier than one month prior  
2 to the first public meeting. If the Project traverses 2  
3 contiguous counties and where in one county the transmission  
4 line mileage and number of landowners over whose property the  
5 proposed route traverses is one-fifth or less of the  
6 transmission line mileage and number of such landowners of the  
7 other county, then the utility may combine the 2 pre-filing  
8 meetings in the county with the greater transmission line  
9 mileage and affected landowners. All other requirements  
10 regarding pre-filing meetings shall apply in both counties.  
11 Notice of the public meeting, including a description of the  
12 Project, must be provided in writing to the clerk of each  
13 county where the Project is to be located. A representative of  
14 the Commission shall be invited to each pre-filing public  
15 meeting.

16 (i) For applications filed after August 18, 2015 (the  
17 effective date of Public Act 99-399), the Commission shall, by  
18 certified mail, notify each owner of record of land, as  
19 identified in the records of the relevant county tax assessor,  
20 included in the right-of-way over which the utility seeks in  
21 its application to construct a high-voltage electric line of  
22 the time and place scheduled for the initial hearing on the  
23 public 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 (j) The Commission shall only issue a certificate of

1 public convenience and necessity under this Section to a  
2 public utility operating or located within the State or to a  
3 company with a fossil fuel-based power generator.

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

6 (220 ILCS 5/8-406.3 new)

7 Sec. 8-406.3. Certificate of public convenience and  
8 necessity; small modular nuclear reactor.

9 (a) As used this Section, "small modular nuclear reactor"  
10 means a nuclear reactor that:

11 (1) has a rated electric generating capacity of not  
12 more than 350 megawatts;

13 (2) is capable of being constructed and operated,  
14 either alone or in combination with one or more similar  
15 reactors if additional reactors are, or become, necessary  
16 at a single site; and

17 (3) is required to be licensed by the United States  
18 Nuclear Regulatory Commission.

19 "Small modular nuclear reactor" includes a nuclear reactor  
20 that is described in this subsection and that uses a process to  
21 produce hydrogen that can be used for energy storage, as a  
22 fuel, or for other uses.

23 (b) No later than July 1, 2023, the Commission shall adopt  
24 rules concerning the granting of certificates of public  
25 convenience and necessity under this Section for the

1 construction, purchase, or lease of small modular nuclear  
2 reactors:

3 (1) in this State for the generation of electricity to  
4 be directly or indirectly used to furnish public utility  
5 service to customers in this State; or

6 (2) at the site of nuclear energy production or  
7 generation facility that supplies electricity to retail  
8 customers in this State.

9 (c) Rules adopted by the Commission under this Section  
10 must provide for the following:

11 (1) that in acting on a public utility's petition for  
12 the construction, purchase, or lease of one or more small  
13 modular nuclear reactors, as described in subsection (b),  
14 the Commission shall consider the following:

15 (A) whether, and to what extent, the one or more  
16 small modular nuclear reactors proposed by the public  
17 utility will replace a loss of generating capacity in  
18 the public utility's portfolio resulting from the  
19 retirement or planned retirement of one or more of the  
20 public utility's existing electric generating  
21 facilities that:

22 (i) are located in this State; and

23 (ii) use coal or natural gas as a fuel source;

24 and

25 (B) whether one or more of the small modular  
26 nuclear reactors that will replace an existing

1 facility will be located on the same site as or near  
2 the existing facility and, if so, potential  
3 opportunities for the public utility to:

4 (i) make use of any land and existing  
5 infrastructure or facilities already owned or  
6 under the control of the public utility; or

7 (ii) create new employment opportunities for  
8 workers who have been, or would be, displaced as a  
9 result of the retirement of the existing facility;

10 (2) that the Commission may grant a certificate under  
11 this Section under circumstances and for locations other  
12 than those described in paragraph (1);

13 (3) that the Commission may not grant a certificate  
14 under this Section unless the owner or operator of a  
15 proposed small modular nuclear reactor provides evidence  
16 of a plan to apply for all licenses or permits to construct  
17 or operate the proposed small modular nuclear reactor as  
18 may be required by:

19 (A) the United States Nuclear Regulatory  
20 Commission;

21 (B) the Department of Natural Resources or the  
22 Environmental Protection Agency; or

23 (C) any other relevant State or federal regulatory  
24 agency with jurisdiction over the construction or  
25 operation of nuclear generating facilities;

26 (4) that any reports, notices of violations, or other

1 notifications sent to or from the United States Nuclear  
2 Regulatory Commission by or to the owner or operator of a  
3 proposed small nuclear reactor must be submitted by the  
4 owner or operator to the Commission within such time as  
5 prescribed by the Commission, subject to the Commission's  
6 duty to treat as confidential and protect from public  
7 access and disclosure any information that is contained in  
8 a report or notice and that is considered confidential or  
9 exempt from public access and disclosure under State or  
10 federal law; and

11 (5) that any person that owns or operates a small  
12 modular nuclear reactor in this State may not store spent  
13 nuclear fuel as defined in the Illinois Nuclear Safety  
14 Preparedness Act or high level radioactive waste as also  
15 defined in that Act from the small modular nuclear reactor  
16 on the site of the small modular nuclear reactor without  
17 first meeting all applicable requirements of the United  
18 States Regulatory Commission.

19 (d) In adopting the rules required by this Section, the  
20 Commission may adopt emergency rules in the State.

21 (e) This Section shall not be construed to affect the  
22 authority of the United States Nuclear Regulatory Commission.