



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB1299

Introduced 2/9/2007, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-406
220 ILCS 5/8-503

from Ch. 111 2/3, par. 8-406
from Ch. 111 2/3, par. 8-503

Amends the Public Utilities Act. Includes in the criteria for a utility to obtain a certificate of public conveyance and necessity that it may demonstrate to the Illinois Commerce Commission that the proposed construction is required to promote the development of an effectively competitive electricity market. Includes the promotion of the development of an effectively competitive electricity market within the criteria for authorizing additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any 2 or more public utilities.

LRB095 03672 MJR 23699 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 Sections 8-406 and 8-503 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 Public
15 Utilities Commission, at the time this amendatory Act of 1985
16 goes into effect, shall transact any business in this State
17 until it shall have obtained a certificate from the Commission
18 that public convenience and necessity require the transaction
19 of such business.

20 (b) No public utility shall begin the construction of any
21 new plant, equipment, property or facility which is not in
22 substitution of any existing plant, equipment, property or
23 facility or any extension or alteration thereof or in addition

1 thereto, unless and until it shall have obtained from the
2 Commission a certificate that public convenience and necessity
3 require such construction. Whenever after a hearing the
4 Commission determines that any new construction or the
5 transaction of any business by a public utility will promote
6 the public convenience and is necessary thereto, it shall have
7 the power to issue certificates of public convenience and
8 necessity. The Commission shall determine that proposed
9 construction will promote the public convenience and necessity
10 only if the utility demonstrates: (1) that the proposed
11 construction is necessary to provide adequate, reliable, and
12 efficient service to its customers and is the least-cost means
13 of satisfying the service needs of its customers or that the
14 proposed construction will promote the development of an
15 effectively competitive electricity market that operates
16 efficiently, is equitable to all customers, and is the least
17 cost means of satisfying those objectives; (2) that the utility
18 is capable of efficiently managing and supervising the
19 construction process and has taken sufficient action to ensure
20 adequate and efficient construction and supervision thereof;
21 and (3) that the utility is capable of financing the proposed
22 construction without significant adverse financial
23 consequences for the utility or its customers.

24 (c) After the effective date of this amendatory Act of
25 1987, no construction shall commence on any new nuclear power
26 plant to be located within this State, and no certificate of

1 public convenience and necessity or other authorization shall
2 be issued therefor by the Commission, until the Director of the
3 Illinois Environmental Protection Agency finds that the United
4 States Government, through its authorized agency, has
5 identified and approved a demonstrable technology or means for
6 the disposal of high level nuclear waste, or until such
7 construction has been specifically approved by a statute
8 enacted by the General Assembly.

9 As used in this Section, "high level nuclear waste" means
10 those aqueous wastes resulting from the operation of the first
11 cycle of the solvent extraction system or equivalent and the
12 concentrated wastes of the subsequent extraction cycles or
13 equivalent in a facility for reprocessing irradiated reactor
14 fuel and shall include spent fuel assemblies prior to fuel
15 reprocessing.

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

20 (e) The Commission may issue a temporary certificate which
21 shall remain in force not to exceed one year in cases of
22 emergency, to assure maintenance of adequate service or to
23 serve particular customers, without notice or hearing, pending
24 the determination of an application for a certificate, and may
25 by regulation exempt from the requirements of this Section
26 temporary acts or operations for which the issuance of a

1 certificate will not be required in the public interest.

2 A public utility shall not be required to obtain but may
3 apply for and obtain a certificate of public convenience and
4 necessity pursuant to this Section with respect to any matter
5 as to which it has received the authorization or order of the
6 Commission under the Electric Supplier Act, and any such
7 authorization or order granted a public utility by the
8 Commission under that Act shall as between public utilities be
9 deemed to be, and shall have except as provided in that Act the
10 same force and effect as, a certificate of public convenience
11 and necessity issued pursuant to this Section.

12 No electric cooperative shall be made or shall become a
13 party to or shall be entitled to be heard or to otherwise
14 appear or participate in any proceeding initiated under this
15 Section for authorization of power plant construction and as to
16 matters as to which a remedy is available under The Electric
17 Supplier Act.

18 (f) Such certificates may be altered or modified by the
19 Commission, upon its own motion or upon application by the
20 person or corporation affected. Unless exercised within a
21 period of 2 years from the grant thereof authority conferred by
22 a certificate of convenience and necessity issued by the
23 Commission shall be null and void.

24 No certificate of public convenience and necessity shall be
25 construed as granting a monopoly or an exclusive privilege,
26 immunity or franchise.

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

2 (220 ILCS 5/8-503) (from Ch. 111 2/3, par. 8-503)

3 Sec. 8-503. Whenever the Commission, after a hearing, shall
4 find that additions, extensions, repairs or improvements to, or
5 changes in, the existing plant, equipment, apparatus,
6 facilities or other physical property of any public utility or
7 of any 2 or more public utilities are necessary and ought
8 reasonably to be made or that a new structure or structures is
9 or are necessary and should be erected, to promote the security
10 or convenience of its employees or the public or promote the
11 development of an effectively competitive electricity market,
12 or in any other way to secure adequate service or facilities,
13 the Commission shall make and serve an order authorizing or
14 directing that such additions, extensions, repairs,
15 improvements or changes be made, or such structure or
16 structures be erected at the location, in the manner and within
17 the time specified in said order; provided, however, that the
18 Commission shall have no authority to order the construction,
19 addition or extension of any electric generating plant unless
20 the public utility requests a certificate for the construction
21 of the plant pursuant to Section 8-406 and in conjunction with
22 such request also requests the entry of an order under this
23 Section. If any additions, extensions, repairs, improvements
24 or changes, or any new structure or structures, which the
25 Commission has authorized or ordered to be erected, require

1 joint action by 2 or more public utilities, the Commission
2 shall notify the said public utilities that such additions,
3 extensions, repairs, improvements or changes or new structure
4 or structures have been authorized or ordered and that the same
5 shall be made at the joint cost whereupon the said public
6 utilities shall have such reasonable time as the Commission may
7 grant within which to agree upon the apportionment or division
8 of cost of such additions, extensions, repairs, improvements or
9 changes or new structure or structures, which each shall bear.
10 If at the expiration of such time such public utilities shall
11 fail to file with the Commission a statement that an agreement
12 has been made for a division or apportionment of the cost or
13 expense of such additions, extensions, repairs, improvements
14 or changes, or new structure or structures, the Commission
15 shall have authority, after further hearing, to make an order
16 fixing the proportion of such cost or expense to be borne by
17 each public utility and the manner in which the same shall be
18 paid or secured.

19 Nothing in this Act shall prevent the Commission, upon its
20 own motion or upon petition, from ordering, after a hearing,
21 the extension, construction, connection or interconnection of
22 plant, equipment, pipe, line, facilities or other physical
23 property of a public utility in whatever configuration the
24 Commission finds necessary to ensure that natural gas is made
25 available to consumers at no increased cost to the customers of
26 the utility supplying the gas.

1 Whenever the Commission finds, after a hearing, that the
2 public convenience or necessity requires it, the Commission may
3 order public utilities subject to its jurisdiction to work
4 jointly (1) for the purpose of purchasing and distributing
5 natural gas or gas substitutes, provided it shall not increase
6 the cost of gas to the customers of the participating
7 utilities, or (2) for any other reasonable purpose.

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