



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

**HB4649**

Introduced 10/14/2009, by Rep. Dan Reitz

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/8-406	from Ch. 111 2/3, par. 8-406
220 ILCS 5/8-406.1 new	
220 ILCS 5/8-509	from Ch. 111 2/3, par. 8-509
220 ILCS 5/8-510	from Ch. 111 2/3, par. 8-510

Amends the Public Utilities Act. Provides that specified provisions concerning a certificate of public convenience and necessity do not apply to an electric utility providing transmission service connections located within its certified or service territory in the usual course of business or transmission system extensions approved pursuant to a specific provision. Adds a provision concerning an alternative procedure for obtaining a certificate of public convenience and necessity for specified transmission line extensions not in the usual course of business. Includes land use studies as an activity requiring a certificate of public convenience and necessity. Effective immediately.

LRB096 14943 MJR 29836 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 Sections 8-406, 8-509, and 8-510 and by adding Section 8-406.1  
6 as follows:

7 (220 ILCS 5/8-406) (from Ch. 111 2/3, par. 8-406)

8 Sec. 8-406. Certificate of public convenience and  
9 necessity.

10 (a) No public utility not owning any city or village  
11 franchise nor engaged in performing any public service or in  
12 furnishing any product or commodity within this State as of  
13 July 1, 1921 and not possessing a certificate of public  
14 convenience and necessity from the Illinois Commerce  
15 Commission, the State Public Utilities Commission or the Public  
16 Utilities Commission, at the time this amendatory Act of 1985  
17 goes into effect, shall transact any business in this State  
18 until it shall have obtained a certificate from the Commission  
19 that public convenience and necessity require the transaction  
20 of such business.

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

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

25 This Section does not apply to an electric utility  
26 providing transmission service connections located within its

1 certified or service territory in the usual course of business  
2 or transmission system extensions approved under Section  
3 8-406.1. Transmission service connections made in the usual  
4 course of business include any of the following:

5 (i) the replacement or upgrading of existing electric  
6 transmission line, notwithstanding its voltage level,  
7 capacity, or length;

8 (ii) the relocation of existing electric transmission  
9 line, notwithstanding its voltage level, capacity, or  
10 length, to accommodate construction or expansion of a  
11 roadway or other transportation infrastructure;

12 (iii) an electric transmission line that is  
13 constructed solely to serve a single customer's premises  
14 and that will pass under or over the premises owned by the  
15 customer to be served or under or over premises for which  
16 the customer has secured the necessary right of way; or

17 (iv) the construction of an electric transmission line  
18 having a capacity of 100 kilovolts or more and a length of  
19 not more than 5,280 feet.

20 (c) After the effective date of this amendatory Act of  
21 1987, no construction shall commence on any new nuclear power  
22 plant to be located within this State, and no certificate of  
23 public convenience and necessity or other authorization shall  
24 be issued therefor by the Commission, until the Director of the  
25 Illinois Environmental Protection Agency finds that the United  
26 States Government, through its authorized agency, has

1 identified and approved a demonstrable technology or means for  
2 the disposal of high level nuclear waste, or until such  
3 construction has been specifically approved by a statute  
4 enacted by the General Assembly.

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

12 (d) In making its determination, the Commission shall  
13 attach primary weight to the overall cost, cost of materials,  
14 or cost savings to the customers of the utility. The Commission  
15 may consider any or all factors which will or may affect such  
16 overall cost, cost of materials, or cost savings.

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

25 A public utility shall not be required to obtain but may  
26 apply for and obtain a certificate of public convenience and

1 necessity pursuant to this Section with respect to any matter  
2 as to which it has received the authorization or order of the  
3 Commission under the Electric Supplier Act, and any such  
4 authorization or order granted a public utility by the  
5 Commission under that Act shall as between public utilities be  
6 deemed to be, and shall have except as provided in that Act the  
7 same force and effect as, a certificate of public convenience  
8 and necessity issued pursuant to this Section.

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

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

21 No certificate of public convenience and necessity shall be  
22 construed as granting a monopoly or an exclusive privilege,  
23 immunity or franchise.

24 (Source: P.A. 95-700, eff. 11-9-07.)

1       Sec. 8-406.1. Certificate of public convenience and  
2 necessity; alternative procedure for specified transmission  
3 line extensions not in the usual course of business.

4       (a) An electric utility may seek an alternative certificate  
5 of public convenience and necessity for the construction of any  
6 new electric transmission lines having a capacity of 100  
7 kilovolts or more and a continuous length of more than 5,280  
8 feet.

9       (b) An application for a certificate of public convenience  
10 and necessity under this Section shall include all information  
11 related to the manner and time of construction and other  
12 information in support of the alternative treatment afforded by  
13 this Section. The application shall also provide information  
14 required under paragraphs (c), (e), (g), and (j) of 18 CFR  
15 50.7, as now in effect and as amended from time to time, and  
16 the application shall include an application fee of \$100,000 to  
17 be paid into the Public Utility Fund at the time the Chief  
18 Clerk of the Commission deems the application complete and  
19 accepts the filing. The electric utility shall publish notice  
20 of its application in the official State newspaper within 10  
21 days after the date of the application's filing.

22       (c) The Commission shall grant the application for a  
23 certificate of public convenience and necessity pursuant to  
24 this Section if, based upon the application filed with the  
25 Commission, it finds all of the following:

26       (i) That the transmission line is the least cost means

1 of satisfying the service needs of the electric utility's  
2 customers or that the electric utility's proposed  
3 construction of the line will promote the development of an  
4 effectively competitive electricity market that operates  
5 efficiently and is equitable to all customers.

6 (ii) That the electric utility is capable of  
7 efficiently managing and supervising the construction  
8 process and has taken sufficient action to ensure adequate  
9 and efficient construction and supervision.

10 (iii) That the electric utility is capable of financing  
11 the proposed construction without significant adverse  
12 financial consequences for the utility or its customers.

13 (d) The Commission shall issue its decision with findings  
14 of fact and conclusions of law granting or denying the  
15 application no later than 120 days after the application is  
16 filed.

17 (e) The electric utility shall pay a one-time construction  
18 fee to each county in which the transmission line is  
19 constructed pursuant to a certificate granted under this  
20 Section. The construction fee shall be \$20,000 per mile of  
21 transmission line constructed in that county, or proportionate  
22 fraction thereof, and it shall be paid to the county treasurer  
23 30 days after completion of the construction of the  
24 transmission line constructed in that county pursuant to the  
25 certificate of public convenience and necessity granted under  
26 this Section. Counties receiving a payment under this Section



1 from an electric utility may distribute all or portions of the  
2 fee to local taxing districts in that county who are contiguous  
3 to the transmission line.

4 (f) A decision denying the application under this Section  
5 shall not act as a bar to the electric utility's seeking a  
6 certificate pursuant to the provisions of Section 8-406 of this  
7 Act.

8 (g) Notwithstanding any other provisions of this Act, a  
9 decision granting a certificate under this Section shall  
10 include an order pursuant to Section 8-503 of this Act  
11 authorizing or directing the construction of the electric  
12 transmission line as approved by the Commission, in the manner  
13 and within the time specified in the order.

14 (220 ILCS 5/8-509) (from Ch. 111 2/3, par. 8-509)

15 Sec. 8-509. When necessary for the construction of any  
16 alterations, additions, extensions or improvements ordered or  
17 authorized under Section 8-406.1, 8-503, or 12-218 of this Act,  
18 any public utility may enter upon, take or damage private  
19 property in the manner provided for by the law of eminent  
20 domain.

21 This Section applies to the exercise of eminent domain  
22 powers by telephone companies or telecommunications carriers  
23 only when the facilities to be constructed are intended to be  
24 used in whole or in part for providing one or more intrastate  
25 telecommunications services classified as "noncompetitive"

1 under Section 13-502 in a tariff filed by the condemnor. The  
2 exercise of eminent domain powers by telephone companies or  
3 telecommunications carriers in all other cases shall be  
4 governed solely by "An Act relating to the powers, duties and  
5 property of telephone companies", approved May 16, 1903, as now  
6 or hereafter amended.

7 (Source: P.A. 86-221.)

8 (220 ILCS 5/8-510) (from Ch. 111 2/3, par. 8-510)

9 Sec. 8-510. Land surveys and land use studies. For the  
10 purpose of making land surveys and land use studies, any public  
11 utility that has been granted a certificate of public  
12 convenience and necessity by, or received an order under  
13 Section 8-503 or 8-406.1 of this Act from, the Commission may,  
14 30 days after providing written notice to the owner thereof by  
15 registered mail, enter upon the property of any owner who has  
16 refused permission for entrance upon that property, but subject  
17 to responsibility for all damages which may be inflicted  
18 thereby.

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

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law.