

NOTICE

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2015 IL App (4th) 140592-U

NO. 4-14-0592

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 19, 2015
Carla Bender
4th District Appellate
Court, IL

PLIURA INTERVENORS,)	Direct Administrative Review of
Petitioner,)	the Illinois Commerce Commission
v.)	No. 13-0446
THE ILLINOIS COMMERCE COMMISSION;)	
ILLINOIS EXTENSION PIPELINE COMPANY,)	
LLC, f/n/a ENBRIDGE PIPELINES (ILLINOIS),)	
LLC; and Other Parties of Record: CAROL K.)	
HOLSTINE; CARLA S. TEMPLE; CRAIG)	
ARMSTRONG, as Trustee of the James J. Armstrong)	
Trust, Successor in Interest to the Nina S. Armstrong)	
Trust; and MERCER TURNER, as Trustee,)	
Respondents.)	

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the Illinois Commerce Commission's ruling that granted Illinois Extension Pipeline Company, LLC, eminent-domain authority to acquire easements from specific landowners to construct and operate a petroleum pipeline.

¶ 2 In July 2013, respondent, Illinois Extension Pipeline Company, LLC (IEPC), f/n/a Enbridge Pipelines (Illinois) LLC, filed a petition for eminent-domain authority under section 8-509 of the Public Utilities Act (220 ILCS 5/8-509 (West 2012)). In April 2014, respondent, the Illinois Commerce Commission (Commission), approved IEPC's petition, which permitted IEPC to acquire easements from specific landowners to construct and operate a petroleum pipeline that spanned 170 miles.

¶ 3 Petitioner, Pliura Intervenors (Intervenors), appeals, raising several arguments that challenge the Commission's approval. For the reasons that follow, we consider only Intervenors' argument that the Commission erred by granting IEPC eminent-domain authority for the pipeline project at issue because the Commission's decision was not supported by substantial evidence that IEPC engaged in good-faith negotiations. As to that claim, we disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Pipeline Project at Issue

¶ 6 In August 2007, IEPC filed an application for a certificate in good standing and other relief pursuant to section 15-401 of the Common Carrier by Pipeline Law (Pipeline Law) (220 ILCS 5/15-401 (West 2006)). IEPC's application sought approval from the Commission to construct and operate a liquid petroleum pipeline project named the "Southern Access Extension" (SAX). IEPC described the proposed extension as a 36-inch diameter underground pipeline that would originate from its Flanagan terminal located near Pontiac, Illinois, and terminate approximately 170 miles south at its Patoka terminal located near Patoka, Illinois. IEPC's application also sought to acquire, when necessary, easements on private property to construct the SAX pipeline pursuant to eminent domain, as authorized by section 8-509 of the Act.

¶ 7 In July 2009, the Commission issued an order in docket No. 07-0446, granting IEPC's application for a certificate in good standing, which effectively authorized construction of the SAX pipeline. The Commission, however, denied IEPC's request for eminent-domain authority, urging instead that IEPC continue negotiations with landowners who declined the compensation IEPC offered in exchange for an easement on the landowners' properties. Despite its denial, the Commission stated that "in the event [IEPC] is still unable to obtain the necessary easement rights through the negotiation process, it can renew its request for authority to exercise

eminent[-]domain authority by *** demonstrating that it has made reasonable attempts to obtain easements, through good-faith negotiations."

¶ 8 Intervenor's appealed the Commission's order granting IEPC a certificate in good standing, and this court affirmed. *Pliura Intervenors v. Illinois Commerce Comm'n*, 405 Ill. App. 3d 199, 200, 942 N.E.2d 576, 578 (2010). In January 2011, the Supreme Court of Illinois denied Intervenor's petition for leave to appeal. *Pliura Intervenors v. Illinois Commerce Comm'n*, 239 Ill. 2d 589, 943 N.E.2d 1108 (2011).

¶ 9 B. IEPC's Renewed Petition for Eminent-Domain Authority

¶ 10 In July 2013, IEPC filed a petition, renewing its request for eminent-domain authority under section 8-509 of the Act. IEPC sought to apply that authority to 148 of the 679 tracts of land comprising the SAX pipeline project route, claiming that further negotiations with the owners of those respective properties would be futile.

¶ 11 1. *The December 2013 Hearing on IEPC's Petition*

¶ 12 We first note that at the December 2013 administrative proceeding on IEPC's renewed petition for eminent-domain authority, the evidence presented to the administrative law judge (ALJ) occurred in two parts. A party would first call its witness to the stand and, after asking preliminary questions, would move to admit that witness's direct written testimony, which documented the questions counsel posed and the witness's corresponding answer absent any opposing party's presence during that examination. The opposing party was then afforded the opportunity to cross-examine that witness on his or her direct written testimony.

¶ 13 a. Evidence Presented by the Commission Staff

¶ 14 Mark Maple, a senior gas engineer employed by the Commission, testified that his primary duties involved analyzing short- and long-term planning of gas utility operations in Illi-

nois. Maple confirmed that he had testified in several pipeline cases involving the requested use of eminent-domain authority under section 8-509 of the Act.

¶ 15 Maple explained that to obtain Commission approval to exercise eminent-domain authority, a petitioner must show that (1) reasonable attempts were made to acquire the outstanding land rights through negotiation and (2) further attempts to acquire the necessary land rights would not have been successful. In determining whether a petitioner satisfied that burden, the Commission considers a variety of factors, which include—but are not limited to—the following: (1) the number and extent of the petitioner's contacts with the landowner, (2) whether the petitioner explained its compensation offer to the landowner, (3) whether the compensation the petitioner offered was comparable to offers made to similarly situated landowners, (4) petitioner's efforts to address landowner concerns, and (5) the likelihood that further negotiations would be successful.

¶ 16 With regard to the first factor, Maple found that by August 2007—when IEPC applied for a certificate in good standing in docket No. 07-0446—IEPC had averaged three contacts per landowner. Specifically, IEPC called the landowners, mailed informational packets, or met with landowners. From 2007 to 2009, IEPC continued to make further contacts and participated in public meetings. In July 2012, IEPC resumed negotiations with the remaining uncommitted landowners. In February 2013, IEPC conducted four informational "open house" meetings at different locations along the pipeline route. By July 2013, IEPC documented approximately 921 contacts with the 148 uncommitted landowners. IEPC estimated that it had contacted the majority of the uncommitted landowners approximately five to eight times. Actual contacts with specific landowners ranged between 2 to 32 times.

¶ 17 As to the second factor, Maple explained that IEPC presented project descriptions

and offers in written and verbal form during its contacts with the affected landowners. In July 2012, IEPC sent a letter to each uncommitted landowner that included a sketch showing the location of the easement on the particular property. Accompanying the sketch was the following offer: (1) 100% of the fee value of the entire property, even though IEPC was seeking a pipeline easement that would traverse only a portion of the property; or (2) 30% of the fee value in exchange for a temporary workspace easement. In April 2013, IEPC increased its initial offer to (1) 125% of the fee value of the entire property for a pipeline easement or (2) 50% of the fee value for a temporary workspace easement.

¶ 18 Maple noted that with respect to the third factor, IEPC commissioned a land-market study performed by a retained real-estate appraiser. That study, which Maple reviewed, concluded that IEPC's easement offers were "calculated based on land[-]market values that [were] fully supported by factual market data." Maple also noted that IEPC applied the April 2013 increased offer it made to uncommitted landowners to all affected landowners.

¶ 19 When considering the fourth factor, Maple recalled that during his testimony in docket No. 07-0446, he recommended that IEPC meet with specific governmental entities and utilities "to resolve some potential issues and alleviate concerns." Thereafter, IEPC conducted meetings to address those issues, which resulted in IEPC's commitment to specific concessions. Maple compared the SAX pipeline project route proposed in docket No. 07-0446 with the current proposed route in docket No. 13-0446—the instant case—and noted that IEPC had rerouted the pipeline to "avoid certain structures, land features, or wooded areas, sometimes at the request of landowners." IEPC also entered into an agreement with the Illinois Department of Agriculture, outlining certain procedures related to (1) depth of soil coverage, (2) preservation of topsoil, (3) repairing drain lines, and (4) other common landowner concerns.

¶ 20 As to the final factor, Maple acknowledged that he could not be certain whether further negotiations would prove beneficial, noting that IEPC had been negotiating with some of the landowners since 2007. Maple opined as follows:

"Clearly, these landowners have been presented with offers and have had ample time to consider these offers. Since July [2013], IEPC has managed to acquire 13 more tracts[.] However, it is apparent that, for whatever reason, the remaining landowners do not appear to be interested in the offers that IEPC has made. According to IEPC, some of the landowners have refused to even respond to the offers or enter into negotiations. [Citation.] Given the large number of holdouts and the length of time that has elapsed during the negotiation phase, I believe the situation is unlikely to change on a large scale absent the Commission granting IEPC the right to exercise eminent domain."

Maple recommended that the Commission approve IEPC's petition for eminent-domain authority as permitted by section 8-509 of the Act.

¶ 21 Maple acknowledged that he did not specifically speak with any of the uncommitted landowners but explained his belief that the offers IEPC made to landowners were fair and reasonable based on (1) IEPC's use of certified appraisers to determine the fee values of the properties, (2) IEPC's compensation offers of (a) 125% of the fee value for pipeline easements and (b) 50% of the fee value for temporary workspace grants, and (3) the absence of any complaints from landowners that IEPC's offers were unfair. Although his review revealed that some landowners expressed concern regarding oil spills, Maple characterized those as "an in-passing

¶ 25 In May 2013, IEPC sent a letter to the uncommitted landowners, reiterating its revised offer. Included in that offer was the following statement:

"[G]iven the schedule referenced above, IEPC needs to move expeditiously as time is critical to us. Absent your acceptance of the proposal made herein, or agreement with you on some variation ***, IEPC will assume that our good faith and reasonable negotiations with you have not succeeded. We will then assess other options, which may include petitioning *** the [Commission] for eminent[-]domain authority[.]"

IEPC received "little response" to its May 2013 correspondence. In addition to three rejection letters, McKay stated that the replies ranged from simple acknowledgements of receipt of IEPC's May 2013 letter to requests by landowners that IEPC stop contacting them. McKay noted that the rejections and responses received "made clear that IEPC *** and these landowners are at an impasse in the negotiations." McKay confirmed that as of December 2013, 127 of the initial 148 landowners remained uncommitted.

¶ 26 McKay acknowledged that he was not aware of any studies showing that a project similar to the SAX pipeline can cause crop-yield reduction and, to his knowledge, IEPC had not performed any land-market studies addressing that topic. McKay also confirmed that the land-market study IEPC commissioned did not consider (1) soil compaction, (2) recharge issues (the absence of freezing or thawing because of the pipeline's existence), or (3) compensation for damages to the remainder of the untouched property. McKay opined that in his experience, remainder damages are nonexistent on IEPC projects.

¶ 27 Joseph Batis testified that he is the owner of Edward J. Batis & Associates, Inc.,

which provides comprehensive real-estate valuation and counseling services. Batis prepared a land-market study for IEPC on real estate located within the eight counties traversed by the SAX pipeline, which he noted is different than a real-estate appraisal. Batis explained that a real-estate appraisal provides a valuation on a specific property, whereas a land-market study seeks to "acquire market data pertaining to a specific issue or property type in a given market area." A land-market study could be used to determine the general prevailing prices of similar land in the studied market, but it could not provide the value of any specific parcel of land. In the case of the SAX pipeline project, Batis' land-market studies considered sales of agricultural property and rural residential property that occurred from 2010 to 2013. IEPC could then use the appropriate land-market study to make offers to landowners that were "based on land-market values that were fully supported by factual market data." Batis opined that the land values IEPC used as the basis for its negotiations for permanent and temporary easements for the SAX pipeline project were consistent with the land-market studies his company prepared.

¶ 28 Batis explained that the "fee value" of land is based on a comparison—or market study—of values being paid for similar or comparable property. Once that fee is determined, the value of any easement is a percentage of that fee value. Batis asserted that determining the proper percentage of fee value attributable to an easement must be accomplished "in compliance with professional standards, the Uniform Standards of Professional Appraisal Practice, the Appraisal of real estate, and any other applicable standards and code of ethics in our industry."

¶ 29 Batis estimated that the IEPC land-market study took 18 months to complete and included information garnered through (1) public-record searches, (2) information obtained from other appraisal firms, (3) public and private subscription services, and (4) Internet searches. Batis acknowledged that his land-market study did not include consideration of the concept of

"damage to the remainder," explaining that such an assessment would require an actual appraisal of the specific parcels directly on the SAX pipeline project route. Batis noted that such an analysis would have been irrelevant to his land-market study, which dealt only with land sales occurring near to, but not on, the proposed pipeline route. Batis suggested that as a general rule, the value of the agricultural and rural properties located in the geographical areas along the SAX pipeline route were not affected by the presence of an underground pipeline. Batis also confirmed that his land-market study did not consider the effect that the SAX pipeline project would have on (1) crop yield, (2) soil compaction, or (3) ground recharge. Batis acknowledged that fear and stigma caused by the existence of a pipeline may impact property values but noted that such a determination must be based on "factual market data, not speculation or guesswork."

¶ 30 c. Evidence Presented by Intervenors

¶ 31 (We note that of the 148 tracts of land for which IEPC sought eminent-domain authority in its July 2013 petition, 19 landowners filed petitions to intervene. Five of those 19 Intervenors, who collectively own nine tracts of land, filed direct testimony opposing IEPC's petition. We summarize their written testimony, which was not subject to cross-examination.)

¶ 32 Each of the five testifying landowners expressed their concern that the compensation IEPC was offering for an easement on their respective properties was inadequate based on either (1) higher offers made to other landowners or (2) the belief that IEPC's offer did not reflect the fair-market value of the property at issue. Each landowner also expressed environmental concerns based on previous IEPC oil pipeline spills that occurred in Romeoville, Illinois, and Kalamazoo, Michigan. Specifically, each owner testified that IEPC failed to adequately inform them of IEPC's plan to prevent such spills with the SAX pipeline project.

¶ 33 d. IEPC's Rebuttal

¶ 34 McKay asserted that although each testifying landowner complained about the compensation IEPC offered, they had not provided any objective evidence that (1) disputed the validity of the land-market study IEPC relied on to devise the compensation offers tendered or (2) showed that IEPC treated similarly situated landowners differently.

¶ 35 McKay stated that whenever a landowner raised a concern, IEPC made a good-faith attempt to resolve the issue. In addressing the environmental concerns raised, McKay noted that a recent National Transportation and Safety Board (NTSB) report on the Romeoville oil spill found that IEPC was not responsible for the release. McKay also noted that as to the Kalamazoo spill, the Commission had previously determined—in another docketed case—that IEPC had incorporated or was implementing new procedures the NTSB recommended to prevent such a recurrence. McKay confirmed that these same practices would be applied to the SAX pipeline as well as all future IEPC projects. McKay also noted that in addressing some of the landowners' concerns regarding contamination of water wells, IEPC offered to (1) replace the well at issue or (2) connect the landowner to the county water system at no cost to the landowner.

¶ 36 *2. The ALJ's Recommendation*

¶ 37 In April 2014, the ALJ issued a written order, recommending that the Commission grant IEPC eminent-domain authority to acquire easement rights as to the identified tracts of land IEPC required to construct the SAX pipeline project.

¶ 38 *3. The Commission's Determination*

¶ 39 Later that month, the Commission issued its order, granting IEPC's petition for eminent-domain authority under section 8-509 of the Act subject to the following conditions: (1) the eminent-domain authority granted did not authorize IEPC to construct more than one pipeline, (2) IEPC must incorporate the practices and procedures recommended by the NTSB after

the Kalamazoo spill into the SAX pipeline project, and (3) IEPC must maintain its offer regarding the relocation of water wells or connection with the county water supply. In so concluding, the Commission relied on (1) Maple's testimony and recommendation that the Commission should grant the petition based on IEPC's compliance with the five relevant factors and (2) McKay's testimony regarding IEPC's efforts to obtain the required easements by negotiating in good faith with the respective landowners. Specifically, the Commission stated as follows:

"The Commission observes that negotiations have been going on for several years, and the Commission agrees with [Maple] that the situation is unlikely to change on a large scale unless IEPC is granted the right to exercise eminent domain. While some additional easements were obtained between the time the petition was filed and the date the hearing was held, the Commission finds that such a pace—even assuming it were sustainable[,] which the testimony suggests is unlikely—it would take approximately two and a half years before IEPC would have all the necessary easements, which would unduly delay the project."

¶ 40 C. Intervenors' Application for Rehearing

¶ 41 On May 27, 2014, Intervenors filed an application for rehearing in docket No. 13-0446. Appended to its application was IEPC's May 19, 2014, "motion to reopen and amend order concerning diameter of the [SAX] pipeline" in docket No. 07-0446. IEPC's motion sought to amend the July 2009 certificate in good standing the Commission granted IEPC under section 15-401 of the Pipeline Law by changing the diameter of the SAX pipeline from 36 to 24 inches.

¶ 42 Intervenors took exception with IEPC's application, characterizing it as an "unau-

thorized, post-application modification." Intervenors claimed that IEPC "intentionally, knowingly, willfully, and fraudulently" failed to inform the Commission that it no longer intended to build the certified 36-inch pipeline. Intervenors also claimed that the Commission "improperly restricted them from offering evidence or argument on any matter" addressed in docket No. 07-0446. Specifically, Intervenors outlined that the Commission prevented the introduction of evidence and argument about IEPC's failure to timely proceed with the construction of the SAX pipeline authorized by docket No. 07-0446. Intervenors also raised a due-process argument, claiming because IEPC changed the route of the proposed pipeline, "landowners who are *now presently* in the path of the [SAX] pipeline[,] but were not in the path back in 2007[,] have had no opportunity to oppose the project on necessity or fitness grounds." (Emphasis in original.) Intervenors urged the Commission to reconsider its April 2014 order and deny IEPC's application for eminent-domain authority as moot because of IEPC's pipeline-diameter modification.

¶ 43 In June 2014, the ALJ issued a memorandum, recommending that the Commission deny Intervenors' application for rehearing. Specifically, the ALJ stated, as follows:

"In [its] rehearing request, [Intervenors] *** also [relies] in part on IEPC's 'Motion to Reopen and Amend Order Concerning Diameter of the ... Pipeline' filed in docket 07-0446. ***

Whether docket 07-0446 will be reopened is not known at this time. [Intervenors] ha[s] stated [its] intention to file a response 'in opposition' to the motion.

If the proceeding in docket 07-0446 is reopened, it is possible that a party in docket 13-0446 will in turn file a motion seeking a corresponding reopening of docket 13-0446. If such a motion to

reopen docket 13-0446 is filed, it will be put before the Commission for action."

Later that month, the Commission denied Intervenors' application for rehearing.

¶ 44 This appeal followed.

¶ 45 II. ANALYSIS

¶ 46 Intervenors argues that the Commission erred by granting IEPC eminent-domain authority for the SAX pipeline project because (1) the underlying certificate in good standing that the Commission approved in July 2009 in docket No. 07-0446, which granted IEPC authority to construct the SAX pipeline project, had since expired; (2) IEPC's decision to reduce the diameter of the SAX pipeline from 36 to 24 inches in docket No. 07-0446 should have precluded the Commission's consideration of IEPC's petition for eminent-domain authority in docket No. 13-0446; (3) Intervenors was denied due process when the Commission limited the scope of the inquiry in docket No. 13-0446 by declining to consider IEPC's "egregious safety record" during the period between the Commission's order in docket No. 07-0446 and the Commission's final order in docket No. 13-0446; and (4) the Commission's decision was not supported by substantial evidence that IEPC engaged in good-faith negotiations. For the reasons that follow, we consider only Intervenors' final argument regarding the sufficiency of the evidence IEPC presented.

¶ 47 A. The Proper Scope of This Court's Analysis

¶ 48 As a threshold matter, we first consider IEPC's November 2014 motion to strike Intervenors' amended brief, which this court ordered taken with the case. IEPC urges this court, in part, to strike Intervenors' first three arguments because, as IEPC claims, they are based on issues related to docket No. 07-0446, which is not properly before this court. Prior to addressing IEPC's motion to strike, we first provide a brief historical synopsis of the orders this court has

issued during the pendency of this appeal.

¶ 49 As we have already noted, in August 2007, IEPC filed an application for a certificate in good standing, which the Commission docketed as No. 07-0446. In July 2009, the Commission granted IEPC's application, which effectively authorized construction of the SAX pipeline. At that time, the Commission denied IEPC's initial request for eminent-domain authority but left open the possibility that IEPC could renew that request by demonstrating that it has made reasonable attempts to obtain easements from landowners through good-faith negotiations.

Intervenors appealed the Commission's order that granted IEPC a certificate in good standing, and this court affirmed. *Pliura*, 405 Ill. App. 3d at 200, 942 N.E.2d at 578.

¶ 50 In July 2013, IEPC renewed its request for eminent-domain authority, which the Commission docketed as No. 13-0446. In April 2014, the Commission granted IEPC's petition based on (1) evidence presented at a subsequent hearing and (2) the ALJ's recommendation that the Commission grant IEPC eminent-domain authority to acquire the necessary easement rights.

¶ 51 In May 27, 2014, Intervenors filed an application for rehearing, appending IEPC's May 19, 2014, "motion to reopen and amend order concerning diameter of the [SAX] pipeline" in docket No. 07-0446. Intervenors took exception with IEPC's application to reopen docket No. 07-0446 and urged the Commission in docket No. 13-0446 to deny IEPC's application for eminent-domain authority as moot because of IEPC's pipeline-diameter modification. In June 2014, the Commission denied Intervenors' application for rehearing, relying on the ALJ's recommendation that any claims regarding docket No. 07-0446 were not properly before the Commission in docket No. 13-0446. Intervenors timely appealed the Commission's grant of eminent-domain authority to this court.

¶ 52 On September 9, 2014, Intervenors filed a motion to supplement the record in this

appeal, claiming that although the final order in docket No. 07-0446 was not part of the record in docket No. 13-0446, it was "integrally related" and "necessary to present fully and fairly the question involved herein." On September 16, 2014, this court denied Intervenors' motion to supplement.

¶ 53 On September 23, 2014, Intervenors filed a second motion to supplement the record and a motion to remand the matter to the Commission. In that filing, Intervenors sought to supplement the record with "*ex parte* e[-]mail communication" Intervenors discovered in the reopened proceeding in docket No. 07-0446. Intervenors claimed the e-mail communications were necessary to present fully and fairly the question involved in the instant petition regarding whether the Commission erred by denying Intervenors' motion for rehearing. Intervenors claimed that IEPC's "unilateral decision" to abandon the 36-inch SAX pipeline project without altering its petition seeking eminent-domain authority "so muddled these proceedings that vacature of the final order in [docket No.] 13-0446 and remand to the [Commission] for further proceedings is the only path with any hope of resolving the tangled web the [Commission] and IEPC have created." On October 22, 2014, this court denied both motions.

¶ 54 On October 6, 2014—prior to this court's denial of Intervenors' second motion to supplement the record—IEPC filed a motion to strike Intervenors' brief to this court. IEPC claimed that despite our September 16, 2014, order denying Intervenors' request to supplement the record with docket No. 07-0446, Intervenors' brief contained a two-page quote and vague references throughout the brief from docket No. 07-0446. On October 22, 2014, this court granted (1) IEPC's motion to strike Intervenors' brief and (2) Intervenors leave to file a revised brief.

¶ 55 On October 30, 2014, Intervenors filed a "third motion to supplement the record and/or motion to remand matter" to the Commission, essentially expounding upon the *ex parte*

communication issue raised in its second motion to supplement the record. In November 2014, this court again denied both motions.

¶ 56 In February 2015, Intervenors filed a motion to consolidate matters for oral argument. Intervenors explained that in December 2014, the Commission had entered a final order in reopened docket No. 07-0446, authorizing IEPC to modify the SAX pipeline from 36 inches to 24 inches. Intervenors timely appealed that decision, which this court has since docketed as case No. 4-15-0084. See *People v. Eubanks*, 283 Ill. App. 3d 12, 24, 669 N.E.2d 678, 686 (1996) (the appellate court may take judicial notice of its own records). Intervenors claimed that the final orders in docket Nos. 07-0446 and 13-0446 were "so intrinsically intertwined that only through consolidation can the interconnected issues be fully argued, understood, and reviewed." Later that month, this court denied Intervenors' motion to consolidate.

¶ 57 It is within this historical context that we now turn to IEPC's second motion to strike Intervenors' amended brief.

¶ 58 We note that the sole issue presented in this appeal concerns the Commission's decision to grant IEPC eminent-domain authority under section 8-509 of the Act in docket No. 13-0446. Despite Intervenors' persistent undertaking to persuade this court otherwise, we have consistently denied Intervenors' repeated attempts to conflate the issue presented in the instant appeal with issues properly confined to the certification proceedings the Commission reopened in docket No. 07-0446, which is now before this court in a separate appeal. We agree with IEPC that Intervenors' first three arguments to this court discuss, cite, or are related substantively to docket No. 07-0446.

¶ 59 Accordingly, because we conclude that Intervenors' first three arguments to this court present challenges not relevant to the narrow issue before us—that is, the propriety of the

Commission's decision to grant IEPC eminent-domain authority under section 8-509 of the Act in docket No. 13-0446—we grant IEPC's motion to strike. Specifically, we decline to consider whether (1) the underlying certificate in good standing that the Commission approved in July 2009 in docket No. 07-0446, which granted IEPC authority to construct the SAX pipeline project, had since expired; (2) IEPC's decision to reduce the diameter of the SAX pipeline from 36 to 24 inches in docket No. 07-0446 should have precluded the Commission's consideration of IEPC's petition for eminent-domain authority in docket No. 13-0446; or (3) Intervenor was denied due process when the Commission limited the scope of the inquiry in docket No. 13-0446 by declining to consider IEPC's "egregious safety record" during the period between the Commission's order in docket No. 07-0446 and the Commission's final order in docket No. 13-0446.

¶ 60 B. The Commission's Grant of Eminent-Domain Authority

¶ 61 1. *The Applicable Statute*

¶ 62 Section 8-509 of the Act provides as follows:

"When necessary for the construction of any alterations, additions, extensions or improvements ordered or authorized under section 8-406.1, 8-503, or 12-218 of this Act, any public utility may enter upon, take or damage private property in the manner provided for by the law of eminent domain." 220 ILCS 5/8-509 (West 2012).

¶ 63 2. *The Standard of Review*

¶ 64 In *Pliura*, 405 Ill. App. 3d at 206-07, 942 N.E.2d 582-83, this court explained the following standard governing our review of administrative agency decisions:

"A reviewing court generally gives substantial deference to the decisions of an administrative agency because of its experience

and expertise. [Citation.] With regard to such decisions, a reviewing court's powers are limited because it exercises a statutory jurisdiction pursuant to the Act, rather than general appellate jurisdiction. [Citation.] Under this strict statutory standard, a reviewing court's reversal, in whole or in part, of a Commission's rule, regulation, order, or decision is limited to the following circumstances: (1) the Commission's findings were not supported by substantial evidence, (2) the Commission lacked jurisdiction, (3) the Commission's determination violated the state or federal constitution or laws, or (4) the proceedings or manner in which the Commission arrived at its determination infringed on the appellant's state or federal constitutional rights. [Citations.] Substantial evidence means more than a mere scintilla but does not have to rise to the level of a preponderance of the evidence. [Citation.]

[O]n appeal from an order of the Commission, its findings of fact are to be considered *prima facie* true; its orders are considered *prima facie* reasonable; and the burden of proof on all issues raised in an appeal is on the appellant. [Citation.] Thus, the Commission's findings and conclusions on questions of fact will not be disturbed unless they are against the manifest weight of the evidence. [Citation.] To warrant reversal, the appellant must show that the opposite conclusion is clearly evident." [Citation.] (Internal quotation marks omitted.)

¶ 65

3. Intervenor's Sufficiency-of-the-Evidence Claim

¶ 66

Intervenor argues that the Commission erred by granting IEPC eminent-domain authority for the SAX pipeline project. Although Intervenor acknowledges the appropriateness of the aforementioned five factors the Commission evaluated, Intervenor "vehemently" disputes that IEPC provided substantial evidence as to each factor. We disagree.

¶ 67

In support of its argument, Intervenor contends that (1) IEPC failed to provide substantive evidence regarding its contacts with landowners, (2) IEPC failed to provide landowners a basis upon which their offer was computed, (3) IEPC's land-market analysis did not consider "damages to the remainder" of a landowner's property or the "stigma" associated with the presence of a proposed pipeline, (4) IEPC failed to address landowners nonmonetary concerns, (5) the Commission "overstepped its bounds" by addressing landowners' concerns for IEPC, and (6) the Commission "grossly exaggerated" the time frame to acquire the remaining outstanding easements. We do not agree with Intervenor's (1) characterization of the evidence presented or (2) criticism of the Commission's impartiality in these proceedings.

¶ 68

In this case, Maple explained that to obtain Commission approval to exercise eminent-domain authority, IEPC was required to demonstrate that (1) reasonable attempts were made to acquire the outstanding land rights through negotiation and (2) further attempts to acquire the necessary land rights would not have been successful. In determining whether IEPC satisfied that burden, the Commission considered the five aforementioned factors, which the parties acknowledge are appropriate considerations. In its 37-page April 2014, order, the Commission meticulously summarized the direct written testimony and the corresponding cross-examination testimony provided at the December 2013 hearing on IEPC's petition for eminent-domain authority.

¶ 69 Given our limited standard of review, our careful consideration of the record in this administrative proceeding shows overwhelming support for the Commission's determination to grant IEPC eminent-domain authority to acquire the remaining 127 outstanding easements required to complete the previously approved construction of the SAX pipeline project. See *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 398 Ill. App. 3d 510, 514, 924 N.E.2d 1065, 1075 (2009) (a reviewing court can neither reevaluate the credibility or weight of the evidence nor substitute its judgment for that of the Commission). Simply put, Intervenors has failed to satisfy its burden that denial of IEPC's petition for eminent-domain authority was "clearly evident." Accordingly, we conclude that the Commission's determination granting IEPC eminent domain-authority was not against the manifest weight of the evidence.

¶ 70

III. CONCLUSION

¶ 71

For the reasons stated, we affirm the Commission's judgment.

¶ 72

Affirmed.