

um pipeline. In so doing, the Commission placed restrictions on the remaining capacity and ownership interest of the amended pipeline.

¶ 3 In case No. 4-15-0084, petitioners, Pliura Intervenors (Pliura) and Turner Intervenors (collectively, Intervenors) appeal, arguing that respondent, the Commission, erred by amending the July 2009 certification because (1) the Commission's findings were not supported by substantial evidence; (2) the certification had expired; and (3) respondent, the Illinois Extension Pipeline Company (IEPC), was not a common carrier by pipeline because of self-imposed limits that excluded the public.

¶ 4 In case No. 4-15-0101, petitioner, IEPC appeals, raising several challenges to the restrictions respondent, the Commission, placed on the remaining capacity and ownership interest of the amended pipeline.

¶ 5 For the reasons that follow, we affirm the Commission's judgment.

¶ 6 I. BACKGROUND

¶ 7 A. IEPC's Application for a Certificate in Good Standing

¶ 8 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)). Specifically, IEPC sought the Commission's authorization to construct, operate, and maintain an oil pipeline named the "Southern Access Extension" (SAX). IEPC described the SAX as a 36-inch diameter underground oil pipeline originating from its Flanagan terminal located near Pontiac, Illinois, and terminating approximately 170 miles south at its Patoka terminal located near Patoka, Illinois. In July 2009, the Commission issued an order in docket No. 07-0446, granting IEPC's application for a certificate in good standing.

¶ 9 Intervenors appealed the Commission's judgment, and this court affirmed. *Pliura*

Intervenors v. Illinois Commerce Comm'n, 405 Ill. App. 3d 199, 200, 942 N.E.2d 576, 578

(2010) (*Pliura I*). Specifically, we rejected *Pliura's* argument that the Commission erred by determining that (1) IEPC was fit, willing, and able to construct, operate, and maintain an oil pipeline and (2) a public need existed for the pipeline. *Id.* at 208-09, 942 N.E.2d at 584-85. The Supreme Court of Illinois later denied *Intervenors'* petition for leave to appeal. *Pliura Intervenors v. Illinois Commerce Comm'n*, 239 Ill. 2d 589, 943 N.E.2d 1108 (2011).

¶ 10 B. IEPC's Motion To Reopen

¶ 11 In May 2014, IEPC filed a "Motion to Reopen and Amend Order Concerning Diameter of the [SAX] Pipeline," requesting an amendment to the July 2009 certification the Commission authorized in docket No. 07-0446. IEPC's amendment sought only to reduce the diameter of the SAX pipeline from 36 to 24 inches.

¶ 12 In support of its motion, IEPC alleged that "the [SAX] pipeline was [originally] conceived to utilize a 36-inch pipe to move mainly *** 'heavy' crude per anticipated supply patterns." Since that time, shipper interest in moving heavy crude to the Patoka terminal had become uncertain due to economic conditions. Demand then shifted to light crude oil, and the Patoka terminal "became significant to shippers of light oil sought by refineries capable of processing it." As such, IEPC calculated that the capacity requirements of the SAX pipeline would be approximately 300,000 barrels per day (bpd) of liquid petroleum, which "can be readily accommodated by a 24-inch outside diameter pipeline." (In their August 2007 application for a certificate in good standing, IEPC determined that the capacity of the 36-inch pipeline was approximately 400,000 bpd.) With regard to its 300,000 bpd approximation, IEPC received long-term contractual commitments from Marathon Petroleum Company (Marathon) and another undisclosed oil shipper for a total volume of approximately 210,000 bpd. IEPC pledged that the

remaining 90,000 bpd capacity would be available to other shippers of light and heavy crude.

¶ 13 In June 2014, (1) Pliura filed a response in opposition to IEPC's motion to reopen and amend and (2) the Commission staff filed a response in which it did not oppose IEPC's motion to reopen and amend. Later that month, the Commission reopened docket No. 07-0446 to consider IEPC's amendment.

¶ 14 At an evidentiary hearing, which ended in October 2014, an Administrative Law Judge (ALJ) considered (1) written and oral direct testimony and (2) oral cross-examination testimony on IEPC's May 2014 motion to amend. Thereafter, the parties filed, in pertinent part, additional posthearing briefs. In its November 2014 posthearing reply brief, IEPC acknowledged that on July 1, 2014, Enbridge Energy Company, Inc. (IEPC's parent company), and Marathon had reached an agreement whereby Marathon agreed to purchase a 35% equity interest in the SAX pipeline.

¶ 15 C. The ALJ's Recommendation and the
Commission's Decision

¶ 16 In December 2014, the ALJ issued a written order, recommending that the Commission grant IEPC's motion to amend subject to certain conditions. Later that month, the Commission issued an order, in which it found, as follows:

"[T]he commission finds that a public need for the 24-inch pipeline exists ***. No changes in the other elements specified in the original certificate, such as pipeline route and easement width, are proposed or granted, and there is no indication a 24-inch pipeline will impose more burdens on landowners than a 36-inch [pipe]line.

The Commission finds that *** public convenience and necessity requires issuance of the certificate as amended to authorize a 24-

inch [pipe]line. The certificate granted in *** July *** 2009 should be amended accordingly."

In so concluding, however, the Commission placed the following restrictions on IEPC regarding the (1) 90,000 bpd remaining capacity and (2) ownership interest of the SAX pipeline:

"As a requirement of this order, however, [IEPC] shall not decrease the amount of capacity on the [pipe]line made available to shippers other than Marathon; and [IEPC] shall actively hold itself out to provide capacity to such shippers. Additionally, the 35% minority equity interest held by Marathon or its affiliate shall not be increased to a controlling interest of [IEPC]."

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. The Statutory Licensing Procedure

¶ 20 Section 15-401 of the Pipeline Law, which describes the pertinent certification requirements, provides, as follows:

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

(b) Requirements for issuance. The Commission, after a

hearing, shall grant an application for a certificate authorizing operations as a common carrier by pipeline, in whole or in part, to the extent that it finds that the application was properly filed; a public need for the service exists; the applicant is fit, willing, and able to provide the service in compliance with [the Public Utilities] Act [(220 ILCS 5/1-101 to 22-503 (West 2006))], Commission regulations, and orders; and the public convenience and necessity requires issuance of the certificate." 220 ILCS 5/15-401(a)(b) (West 2006).

¶ 21 B. The Standard of Review

¶ 22 In *Pliura I*, 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 [Pipeline Law], 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 con-

stitution 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." (Internal quotation marks omitted.)

¶ 23 C. Case No. 4-15-0084

¶ 24 Intervenors argue that the Commission erred by amending the July 2009 certification because (1) the Commission's findings were not supported by substantial evidence; (2) the certification had expired; and (3) IEPC was not a common carrier by pipeline because of self-imposed limits that excluded the public. We address Intervenors' arguments, in turn.

¶ 25 1. *The Intervenors' Sufficiency-of-the-Evidence Claim*

¶ 26 Intervenors argue that the Commission erred by amending the July 2009 certification because its findings were not supported by substantial evidence. We disagree.

¶ 27

a. The Pertinent Evidence

¶ 28 We first note that the direct testimony in this case was presented to the Commission in the form of (1) filed written statements that documented questions posed by the respective parties' counsel and the corresponding witnesses' answers absent the opposing party presence during the inquiry and (2) direct oral testimony at a September 2014 hearing before the Commission, in which the opposing party was afforded the opportunity to cross-examine witnesses' on their respective written and oral statements.

¶ 29 In his written direct testimony on behalf of the Commission staff, Mark Maple, a Senior Gas Engineer for the Energy Engineering Program of the Safety and Reliability Division of the Commission, opined that reducing that SAX pipeline diameter from 36 to 24 inches would not prohibit IEPC from satisfying the public-need criterion. Maple elaborated, as follows:

"[T]he product that will be shipped on the [SAX] pipeline is still liquid petroleum, as has always been the case ***. The route has not changed[.] [T]herefore, the regions being served by the pipeline have not changed. Additionally, [IEPC] has long-term shipper commitments for the proposed pipeline ***. Finally, the construction, operations, and maintenance of the new, smaller pipeline will be the same as the [36-inch] pipeline originally approved in *** docket [No. 07-0446]. Essentially nothing has changed other than the physical size of the pipe and that change does not effect [IEPC's] ability to meet the public need criterion."

¶ 30 During Pliura's cross-examination of Maple, the following exchange occurred:

"[PLIURA:] If this particular project doesn't ship 210,000

[bpd], would that have any bearing if it's 200,000 [bpd?] [W]ould that have any bearing on public need or public benefit?

[MAPLE:] I mean, in my mind, it's still a benefit to the public.

[PLIURA:] And what is that *** comment based on?

[MAPLE:] Well, several things in my original 2007 testimony. [I] said that the benefits were that [IEPC] would *** have redundancy of pipeline network. That if one of the pipelines went down that *** it's good to have backup or other means of moving oil throughout the country.

I also mention[ed] that this pipeline would bring in more sources of oil from friendly countries, be it Canada or the United States. That would help offset imports from potentially dangerous foreign countries."

¶ 31 b. The Commission's Decision

¶ 32 In its December 2014 written order—which granted IEPC's motion to amend—the Commission quoted and agreed with the following portions of Maple's testimony:

"With respect to public need, *** Maple testified on reopening, and the Commission agrees, that the SAX pipeline, as currently planned, will provide benefits to the public such as 'a redundancy of pipeline network' and the ability to 'bring in more sources of oil from friendly countries, be it Canada or the United States.' The Commission observes that such benefits are similar to those

relied upon in the Commission's conclusions in its 2009 order ***
in docket [No. 07-0446]."

The Commission then concluded that "a public need for the 24-inch [SAX] pipeline exists."

¶ 33 In so concluding, the Commission noted that consideration of the aforementioned factors was consistent with *Lakehead Pipeline Co. v. Illinois Commerce Comm'n*, 296 Ill. App. 3d 942, 955, 696 N.E.2d 345, 354 (1998), which held, as follows:

"In the context of public need, it is appropriate to look at the larger group of the general public to see if it requires the service, not whether some components of the public are in fact using the service. Only by looking to the public at large can one determine whether there is an actual existing or expected popular need for the proposed service which should not be denied. This broader understanding of 'public' has been consistently employed by our courts."

¶ 34 c. The Commission's Authorization

¶ 35 Intervenors urge this court to reverse the Commission's decision to amend the July 2009 certification granted to IEPC to construct, operate, and maintain a 36-inch oil pipeline because the Commission lacked economic evidence to support such a determination. Intervenors contend that economic evidence was required because the amendment requested by IEPC—that is, to change the SAX pipeline diameter from 36 to 24 inches—altered the economic benefit and by extension, the public-need criterion for the SAX pipeline.

¶ 36 In support of their argument, Intervenors direct our attention to written direct testimony provided by IEPC's retained economics expert in support of IEPC's August 2007 application for a certificate in good standing to construct, operate, and maintain the 36-inch SAX pipe-

line. The expert testified that based on the projected 400,000 bpd capacity of the 36-inch SAX pipeline, Illinois consumers would enjoy "a present-value savings of \$407 million based on the mitigating effects increased oil production would have on gasoline prices, distillate, and jet fuel." *Pliura I*, 405 Ill. App. 3d at 203, 942 N.E.2d at 580. Intervenors claim that on appeal in *Pliura I*, the sole "substantial evidence" this court relied on to affirm the Commission's approval of IEPC's August 2007 application for certification was this economic evidence, adding that without this testimony, "affirmance would not have been possible." We disagree.

¶ 37 We note that the expert testimony Intervenors rely upon appears in the background sections of this court's opinion in *Pliura I*, and thus, was a summary of the pertinent evidence presented, which was provided to place *Pliura*'s claims in their proper context. See *Id.* at 203-04, 942 N.E.2d at 580 (summarizing the pertinent testimony of IEPC's economics expert). Moreover, in *Pliura I*, this court considered and rejected *Pliura*'s argument that "the Commission did not have authority to consider evidence of regional, national, or global benefits when determining whether the public convenience and necessity required issuance of the certificate authorizing the pipeline extension." *Id.* at 208, 942 N.E.2d at 584. Specifically, we concluded, as follows:

"[W]e *** reject any notion that because the Commission's focus regarding public convenience and necessity was broad, the citizens of Illinois would not experience a discrete benefit once the pipeline extension was operational. Here, the evidence presented regarding public convenience and necessity concerned (1) the location of the pipeline extension, (2) the additional oil capacity that pipeline extension would transport, (3) the destination of the oil to a major

hub within Illinois for further travel throughout the United States, (4) current market factors affecting the stability of alternate sources of oil, (5) projections of increased oil demands, (6) increased revenues for local economies, and (7) increased market competition resulting in lower prices for petroleum-based products." *Id.* at 209, 942 N.E.2d at 585.

Thus, we reject Intervenors' claim that our affirmance of the Commission's judgment in *Pliura I* was based solely on expert economic testimony.

¶ 38 As noted earlier, our review of a claim that an administrative agency's determination was not supported by substantial evidence—as in this case—requires us to determine whether the agency based its decision on "more than a mere scintilla" of evidence. That is, did the Commission "state the facts essential to its ruling so that the court can properly review the basis for the decision." *Lakehead Pipeline Co.*, 296 Ill. App. 3d at 957, 696 N.E.2d at 355. In determining that a public need and benefit existed, the Commission found persuasive, and agreed with Maple's testimony regarding, the benefits of a redundant pipeline network and sourcing of liquid petroleum from friendly nations.

¶ 39 Accordingly, because the Commission's determination was appropriately based on substantial evidence, we reject Intervenors' claim to the contrary.

¶ 40 *2. The Intervenors' Expiration Claim*

¶ 41 Intervenors argue that the Commission erred by amending the July 2009 certification because that certification had expired. We disagree.

¶ 42 Because Intervenors' expiration claim is based on section 8-406 of the of the Public Utilities Act (Utilities Act) (220 ILCS 5/8-406 (West 2014)), we set forth the pertinent provi-

sions of that statute, as follows:

"(a) No public utility not owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State *** and not possessing a certificate of public convenience and necessity from the Illinois Commerce Commission, the State Public Utilities Commission or the Public Utilities Commission, *** shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.

(b) No public utility shall begin the construction of any new plant, equipment, property, or facility which is not in substitution of any existing plant, equipment, property, or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. ***

* * *

(f) *** *Unless exercised within a period of [two] years from the grant thereof authority conferred by a certificate of convenience and necessity issued by the Commission shall be null and void.*" (Emphasis added.) 220 ILCS 5/8-406(a), (b), (f) (West 2014).

¶ 43

As previously noted, the granting of a certificate in good standing under section

15-401(b) of the Pipeline Law requires the applicant to show that (1) the application was properly filed; (2) a public need for the service existed; (3) the applicant is fit, willing, and able to provide the service in compliance with the Utilities Act, the Commission regulations, and orders; and (4) the *public convenience and necessity* required issuance of the certificate. 220 ILCS 5/15-401(b) (West 2006).

¶ 44 Focusing on the "public convenience and necessity" requirement of section 15-401(b) of the Pipeline Law, Intervenor contend that when read in context with section 8-406 of the Utilities Act, which is entitled, "Certificate of public convenience and necessity," a certificate in good standing issued under section 15-401(b) necessarily incorporates a certificate of public convenience under section 8-406. Indeed, Intervenor assert that a certificate of public convenience and necessity under section 8-406 is "integral" to a certificate in good standing issued under section 15-401(b). From that premise, Intervenor then claim that because IEPC had not started construction on the SAX pipeline within two years of the Commission's July 2009 grant of a certificate in good standing, that certification expired (presumably in July 2011). We are not persuaded.

¶ 45 "The primary rule of statutory construction is to ascertain and give effect to the legislature's intent." *Plock v. Board of Education of Freeport School District*, 396 Ill. App. 3d 960, 966, 920 N.E.2d 1087, 1092 (2009). "The best evidence of the legislature's intent is the language of the statute itself, which must be given its plain and commonly understood meaning." *Id.* If the issue requires the administrative agency to interpret a statute, regulation, or rule connected with the administrative agency, the question is one of law, and our standard of review is *de novo*. *City of Saint Charles v. Illinois Labor Relations Board*, 395 Ill. App. 3d 507, 509, 916 N.E.2d 881, 883 (2009). "[T]he agency's interpretation is considered relevant but not bind-

ing on the reviewing court.' " *Id.* (quoting *Biekert v. Maram*, 388 Ill. App. 3d 1114, 1118, 905 N.E.2d 357, 362 (2009)).

¶ 46 In this case, Intervenors take exception with the Commission's determination that section 8-406(f) of the Utilities Act was not applicable to a certificate issued under section 15-401 of the Pipeline Law. However, if we were to agree with Intervenors' position, this court would be impermissibly grafting the timeliness provision of section 8-406(f) onto section 15-401(b), where no such limitation currently exists. See *Plock*, 396 Ill. App. 3d at 966, 920 N.E.2d at 1092 (quoting *People v. Roake*, 334 Ill. App. 3d 504, 510, 778 N.E.2d 272, 277 (2002) (" 'A court must not read into the plain language exceptions, limitations, or conditions that the legislature did not intend.' "). Moreover, as a practical matter, we find implausible that the legislature intended to enact such a limitation under section 15-401 of the Pipeline Law, when, as this case clearly illustrates, multiple years may pass before a common carrier can address the multitude of preliminary issues required—such as obtaining land rights—to begin construction of a pipeline.

¶ 47 Accordingly, we reject Intervenors' claim that the July 2009 certification the Commission granted IEPC had expired when IEPC filed its May 2014 motion to reopen.

¶ 48 3. *Intervenors' Private Pipeline Claim*

¶ 49 Intervenors argue that the Commission erred by amending the July 2009 certification because IEPC was not a common carrier by pipeline due to self-imposed limits that excluded the public. Underlying Intervenors' overarching claim are contentions that (1) IEPC lost its certification by selling a 35% interest in the SAX pipeline to Marathon and (2) Marathon's 35% interest in the SAX pipeline converts the SAX into a private pipeline, and (3) the amended SAX pipeline discriminates against the general public by not making pipeline capacity available on an equal basis. We disagree.

¶ 50 In addressing intervenors' claims, we find our decision in *Iowa RCO Ass'n v. Illinois Commerce Comm'n*, 86 Ill. App. 3d 1116, 409 N.E.2d 77 (1980), instructive. In *Iowa RCO, Northern Pipe Line Company of Delaware, Inc. (Northern)*, applied for a certification to construct a 200-mile liquid petroleum pipeline from Illinois to Missouri. *Id.* at 1117, 409 N.E.2d at 79. The following evidence was presented at the hearing on Northern's application:

"Companies affiliated with Northern owned and operated *** [a] Minnesota *** refinery having a capacity of 127,000 barrels per day. The proposed pipeline would be 24 inches in diameter and would extend across Illinois in essentially a straight line through farmland. The purpose of the pipeline would be to send crude oil to affiliated company's refinery and a nearby one owned by Ashland Oil [Company] with other refineries in that area renting excess capacity." *Id.*

¶ 51 Iowa RCO appealed the Commission's approval of Northern's application, arguing that the proposed pipeline was not for public use within the meaning of the Utilities Act because it would only transport crude oil for companies affiliated with Northern and because it would provide only for interstate shipments. *Id.* at 1118, 409 N.E.2d at 79.

¶ 52 In rejecting Iowa RCO's arguments and affirming the Commission's judgment, this court concluded, as follows:

"RCO relies upon *** cases stating that to be a public utility, an entity must be under a duty to serve the public, treating each user alike. Here[,] testimony was presented that several nonaffiliated companies wished to use the pipeline and that Northern would fur-

nish service to them. *** [U]nlike in the cited cases except [two], the entity whose status is in issue, claims to be a public utility. It would be operating in interstate commerce and would be required under the Interstate Commerce Act [citation] to furnish nondiscriminatory service to its nonaffiliated users and others wishing to do so. Because of its claim to be subject to the provisions of the *** Act it would be estopped to deny that, subject to preemptive Federal regulations, it was also required to furnish nondiscriminatory service pursuant to the provisions of section 38 of the *** Utilities Act [citation]. A sufficient showing was made that the pipeline would be for a public use." *Id.* at 1118-19, 409 N.E.2d at 80.

¶ 53 In this case, IEPC—as a common carrier by pipeline—was subject to the provisions of the Utilities Act, which included the Pipeline Law. Thus, IEPC was bound to provide nondiscriminatory services to shippers who wish to rent remaining available capacity on the SAX pipeline. IEPC has pledged its commitment to do so. As in *Iowa RCO*, we reject Intervenors' argument that IEPC discriminated against the general public by not making pipeline capacity available to the public on equal basis because a common carrier by pipeline certification does not require such a condition. In addition, for the reasons that follow, we agree with the Commission's determination that no evidence has been presented showing that Marathon's minority interest in the SAX conferred any control over the remaining capacity of that pipeline or that such an interest transformed the SAX into a private pipeline.

¶ 54

D. Case No. 4-15-0101

¶ 55 IEPC's appeal raises several challenges to the restrictions the Commission placed on the remaining capacity and ownership interest of the amended SAX pipeline. Specifically, IEPC argues that the Commission's capacity restriction (1) was federally preempted; (2) represented an unexplained departure from previous Commission rulings, which resulted in disparate treatment; and (3) was unsupported by substantial evidence. IEPC also argues that the Commission's restriction on ownership interest (1) represented an unexplained departure from prior Commission decisions, (2) was unsupported by substantial evidence, and (3) exceeded the Commission's authority. Prior to addressing IEPC's claims, we set forth the pertinent portion of the Commission's order to place IEPC's concerns in their proper context.

¶ 56

1. The Commission's Judgment

¶ 57 In rejecting Intervenors' argument that Marathon's involvement transformed the SAX pipeline from a public to a private entity, the Commission quoted the following paragraph from a July 2013 order issued by the Federal Energy Regulatory Commission (FERC) in another docket proceeding, which granted IEPC's motion for a declaratory order concerning "committed shippers" for the SAX pipeline:

"To minimize the risk that the [SAX pipeline] will not move forward, and to provide financial assurance to [IEPC], the [transportation service agreements] require shippers to commit to ship-or-pay contracts at premium rates for initial 10- or 15-year terms. In exchange for these commitments, [IEPC] will reserve 90[%] of the capacity for those shippers ***. Additionally, [IEPC] will provide an appropriate amount of capacity (10[%]) for un-

committed shippers that do not provide the financial assurances that committed shippers provide."

¶ 58 Relying on the "useful guidance" contained within FERC's July 2013 order, the Commission rejected Intervenors' argument that Marathon's involvement transformed the SAX pipeline from a public to private entity, as follows:

"With respect to [Pliura's] argument that 'the investment interest purchased by Marathon with its decision to lock-up 90% of the capacity of the line make it effectively a private line,' and that the remaining available capacity is of *de minimis* value, the Commission observes that there is not a commitment from Marathon entitling it to 90% of the capacity of the line. Marathon has committed to approximately two-thirds of the 300,000 bpd capacity of the line, not 90%; further, there is no indication that Marathon's minority equity interest *** enables it to control the remaining capacity or to control the operation of the line.

Including the small commitment from another shipper, committed volumes are 210,000 bpd. The remaining capacity of 90,000 bpd is available to other shippers. The 90% proposal that FERC approved was for 90% of the capacity to be available for committed volumes and is not limited to Marathon. It would also apply to the other currently committed shipper, and any other shippers who make commitments in the future.

Given the importance and prevalence of committed ship-

pers and volumes as explained and endorsed by FERC, it is difficult to see how relying primarily on committed shippers automatically means that a pipeline is operating as a private line rather than as a common carrier. To the extent Intervenor is arguing that all committed shipments are by definition private shipments, the Commission disagrees.

With respect to the 90,000 bpd that is available, it appears that [IEPC] is actively seeking commitments from shippers other than Marathon through open seasons, while also reserving 10% of the total capacity for uncommitted volumes. That is, [IEPC] is holding itself out to provide service to additional shippers.

With regard to the amount of capacity available to shippers other than Marathon, the Commission does not believe the record supports a finding that the availability of approximately one-third of the capacity in a 300,000 bpd line to shippers other than Marathon is too small to be meaningful or too small to qualify as common carriage. *As a requirement of this Order, however, [IEPC] shall not decrease the amount of capacity on the line made available to shippers other than Marathon; and Applicant shall actively hold itself out to provide capacity to such shippers. Additionally, the 35% minority equity interest held by Marathon or its affiliate shall not be increased to a controlling interest of Applicant.*

Although [IEPC] opposes these requirements, it is observed

that [IEPC] has elected to come before this Commission for relief in this proceeding, rather than simply relying on its options under federal law. In support of its position, [IEPC] has relied on the fact that '90,000 bpd' has been left available 'for other shippers' [citation] and that Marathon's 35% equity share make it only a 'minority, not a controlling, shareholder' [citation]. The Commission has taken all of this information into consideration in making its findings." (Emphasis added.)

¶ 59 *2. IEPC's Claims*

¶ 60 a. Preemption

¶ 61 IEPC argues that the Commission's restriction prohibiting IEPC from allowing Marathon to acquire additional shipping capacity on the SAX pipeline is preempted by federal law. IEPC elaborates that if it complied with the Commission's order and as a result, denied Marathon additional capacity beyond that which Marathon has already contractual committed to, such a denial would violate its duty of nondiscrimination under federal law. We decline to consider IEPC's claim because the issue is not properly before us.

¶ 62 In this instance, IEPC's preemption claim does not raise an actual controversy, but, instead, merely poses a possible, hypothetical scenario based on IEPC's interpretation of the Commission's mandate. If this court ruled on the merits of IEPC's preemption claim, we would be providing an advisory ruling. See *Benz v. Department of Children and Family Services*, 2015 IL App (1st) 130414, ¶ 31, 27 N.E.3d 187 (quoting *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74, 78 (2009) (" 'As a general rule, courts in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how

those issues are decided.' ")). Here, despite IEPC's preemption claim, Marathon has neither requested additional SAX pipeline capacity nor has IEPC approved or denied such a request. Under these circumstances, we will not consider IEPC's claim, " 'merely to establish a precedent or guide future litigation.' " *In re Marriage of Donald B. and Roberta B.*, 2014 IL 115463, ¶ 23, 10 N.E.3d 823 (quoting *Madison Park Bank v. Zagel*, 91 Ill. 2d 231, 235, 437 N.E.2d 638, 640 (1982)).

¶ 63 b. IEPC's Remaining Claims

¶ 64 The remainder of IEPC claims—which pertain to a purported lack of substantial evidence, prior Commission orders, and the Commission's authority—directly challenge the propriety of the Commission's implementation of pipeline-capacity and ownership-interest restrictions.

¶ 65 As previously noted, "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." *Pliura I*, 405 Ill. App. 3d at 207, 942 N.E.2d at 583.

¶ 66 To the extent IEPC argues that the capacity and ownership restrictions enacted by the Commission were not supported by substantial evidence, we reject that claim. As outlined above, in enacting the restriction IEPC now challenges, the Commission thoroughly detailed its reliance on (1) FERC's July 2013 order, which outlined the advantages of long-term contractual agreements between committed shippers and common carriers by pipeline, such as IEPC; and (2)

IEPC's direct representations to the Commission in support of its May 2014 motion to amend that "90,000 bpd" has been left available "for other shippers" and that Marathon's 35% equity share was a minority interest. Contrary to IEPC's stance, we conclude that the Commission sufficiently stated the facts essential to its ruling so that this court could properly review the basis for its decision. *Lakehead Pipeline Co.*, 296 Ill. App. 3d at 957, 696 N.E.2d at 355.

¶ 67 With regard to IEPC's claim that the Commission's determination represented an unexplained departure from prior Commission decisions, we need not concern ourselves with prior Commission decisions given our limited standard of review. See 220 ILCS 5/10-201(e)(iv)(A) (West 2014) (a reviewing court shall reverse if the Commission's determination is "not supported by substantial evidence based on the entire record of evidence presented to or before the Commission[.]").

¶ 68 As to IEPC's claim that the Commission lacked authority to implement the remaining capacity and ownership interest restrictions, we note—as did the Commission—that IEPC elected to pursue the construction, operation, and maintenance of the proposed SAX pipeline by petitioning the Commission for a certificate in good standing to operate as a common carrier by pipeline under the Pipeline Law, instead of pursuing its options under federal law. IEPC undoubtedly opted for this course of action because in building the SAX pipeline IEPC anticipated that it would need condemnation authority, which it would not have under the federal procedure. See *Lakehead Pipeline Company*, 296 Ill. App. 3d at 951, 696 N.E.2d at 351 ("Through section 15-401 [of the Pipeline Law], [the Commission] must determine whether the state deems the project worthy of certification so as to potentially permit condemnation authority."). In addressing whether the SAX was a private or public pipeline in its December 2014 order on IEPC's May 2014 motion to amend, the Commission—mindful of the aforementioned representations

