

ONE J

Oil and Gas, Natural Resources, and Energy Journal

VOLUME 8

NUMBER 2

ILLINOIS



*Joseph Negaard**

Table of Contents

I. Introduction	352
II. Legislative and Regulatory Developments.....	352
A. Legislative Developments	352
1. The Climate and Equitable Jobs Act	352
B. Regulatory Updates.....	353
III. Judicial Developments	353

* Joseph Negaard is an associate at Steptoe & Johnson PLLC and practices in the firm's Bridgeport, West Virginia office. Joseph is licensed in Pennsylvania and West Virginia and concentrates his practice in the area of energy law.

A. Illinois Commerce Commission should consider a pipeline operator’s record in other states and the impact of pipelines on the public of the United States..... 353

I. Introduction

The following is an update on Illinois’ legislative activity and case law relating to oil and gas and mineral law from August 1, 2021, to July 31, 2022 (“Update Period”).

II. Legislative and Regulatory Developments

A. Legislative Developments

1. The Climate and Equitable Jobs Act

On September 15, 2021, the Climate and Equitable Jobs Act was signed into law. The Act has the goal of transitioning Illinois to 100 percent clean renewable energy by 2045.¹ The Act sets a number of benchmarks to achieve this goal, including the following:

1. By 2030, all private coal-fired power plants, with a capacity of 25 megawatts or greater, must reduce their greenhouse gas emissions to zero.
2. By 2030, 40 percent of Illinois electricity will be produced from wind and solar.
3. By 2030, Illinois will have at least one million electric vehicles on the road.
4. By 2045, all natural gas-fired power plants must have zero greenhouse gas emissions.

The Act provides new job placement assistance for workers who are displaced by the closure of coal mines and power plants. The Act also promises to increase funding for clean energy, investing and providing funds for nuclear reactors. Additionally, the Act will provide low-interest loans that incentivize renewable energy projects in low-income communities.

Providers will face new compliance enforcement mechanisms under the Act, including making profits contingent on achieving clean energy goals.

1. IL LEGIS 102-662 (2021), 2021 Ill. Legis. Serv. P.A. 102-662 (S.B. 2408).

B. Regulatory Updates

There were no notable regulatory changes during the Update Period.

III. Judicial Developments

A. Illinois Commerce Commission should consider a pipeline operator's record in other states and the impact of pipelines on the public of the United States

On January 12, 2022, the Forth District Appellate Court of Illinois vacated and remanded a petition grant by the Illinois Commerce Commission (Commission) for crude-oil pipeline owners to add more pumping stations to an existing pipeline.²

On June 14, 2019, the pipeline owners petitioned the Commission for permission to add more pumping stations to the pipeline under section 8-503 of the Public Utilities Act.³ Two groups intervened. One group opposed the petition, the other group advocated for the petition. On October 14, 2020, after evidentiary hearings, the Commission authorized the construction of the additional pumping stations. The objectors appealed. In their appeal, they made seven arguments:

1. The owners failed to obtain a new certificate of good standing prior to construction, as required by section 15-401(a) of the Public Utilities Act.⁴
2. The Commission did not provide sufficient factual findings and reasons for their decision.
3. The Commission misapplied case law and failed to consider evidence regarding “public need.”
4. The Commission incorrectly assumed that it was federally preempted from addressing pipeline safety.
5. The Commission wrongly ignored evidence of the owner's discrimination of certain shippers in violation of state and federal law.⁵

2. *Save Our Illinois Land v. Ill. Com. Comm'n*, 2022 IL App (4th) 210008, 2022 WL 110229 (Ill. App. Ct. 4th Dist. Jan. 12, 2022).

3. 220 ILCS 5/8-503 (2020).

4. 220 ILCS 5/15-401(a) (2020).

5. 220 ILCS 5/8-101, 15-401(h) (2020); 49 U.S.C. § 101 et seq. (2018).

6. The Commission wrongly prohibited inquiry into the owner's record in other states.
7. The Commission incorrectly did not consider the decline in oil demand due to COVID-19.

The court found enough merit in the objectors' third and sixth arguments to make a remand necessary. It did not find the other five arguments persuasive.

As to the first argument, the court held that section 15-401(a) of the Public Utilities Act⁶ only requires that the pipeline owners have certificates in good standing, not that they obtain new or amended certificates in good standing. With regards to the objectors' second argument, the court held that the Commission's single-spaced 80-page decision was more than adequate to explain their conclusions and allow the court to make an informed judicial review. The court also rejected the objectors' fourth argument, agreeing that the Commission was federally preempted from denying the petition based on pipeline safety because the Pipeline Safety Improvement Act of 2002⁷ forbids states from adopting "safety standards for interstate pipeline facilities or interstate pipeline transportation."⁸ As to the fifth argument, the court found it unpersuasive because the objectors failed to argue that the allegedly discriminatory contractual provisions in question were essential and inseverable.⁹ The court also found the objector's seventh argument unpersuasive because the Commission reasonably assumed that the pandemic would be temporary and that the demand for oil would recover.

As to the third argument, the court agreed that the Commission misinterpreted the word "public" by equating it to everyone in the world. Rather, the court held that the Commission should consider the public need of the United States, not the world, when considering proposed improvements under section 503 of the Public Utilities Act.¹⁰ However, the court disagreed with the objectors' argument that the Commission failed to consider the objectors' evidence related to public need and climate change. Instead, the court found that the Commission did consider the evidence and

6. 220 ILCS 5/15-401(a) (2020).

7. 49 U.S.C. § 60104(c) (2018).

8. *Id.*

9. *See Save Our Illinois Land v. Ill. Com. Comm'n*, 2022 IL App (4th) 210008, ¶ 8, 2022 WL 110229 (Ill. App. Ct. 4th Dist. Jan. 12, 2022).

10. 220 ILCS 5/8-503 (2020).

simply did not give it the same weight that the objectors believed it deserved.

Finally, the court agreed with the objectors' sixth argument, finding that the Commission abused its discretion by rejecting evidence of one owner's regulatory violations as pipeline operator in Pennsylvania. Even though the violations occurred in another state, the court reasoned that the conduct of the pipeline operator in Pennsylvania is relevant to the security of the public and should be taken into consideration. Additionally, although the court agreed that the safeness of the Pipeline was federally preempted, the safeness of the pipeline operator was not federally preempted.

Although the court vacated and remanded the Commission's decision, it expressly stated that it had no opinion on whether permission to construct the pumping stations should be granted. Rather, the court directed that, in making its new decision, the Commission must regard the "public" as being, at its broadest, the people of the United States, not the world and that the Commission take into consideration Sunoco's regulatory violations in Pennsylvania.