

APPELLATE COURT OF ILLINOIS, THIRD DISTRICT

Northern Illinois Gas Co. v. Illinois Commerce Commission and The People ex rel. Kwame Raoul, Attorney General of the State of Illinois

Northern Illinois Gas Co. v. Illinois Commerce Comm'n, 2025 IL App (3d) 240093 · No. 3-24-0093 · Decided December 1, 2025

SUMMARY

Northern Illinois Gas Company, doing business as Nicor Gas Company, appealed an Illinois Commerce Commission rate-case decision concerning Nicor's capital structure, pipeline investment costs, and a required long-term gas infrastructure plan. The Illinois Appellate Court, Third District, affirmed in part and vacated in part, including the Commission's imputed capital structure and disallowance of certain distribution investment costs. The provided text ends before the court's complete disposition of all issues.

CASE DETAILS

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| COURT                 | Appellate Court of Illinois, Third District                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Justice Hettel; Justice Peterson; Justice Bertani                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| JURISDICTION          | Illinois Appellate Court, Third District                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| DECIDED               | December 1, 2025                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| DOCKET                | 3-24-0093                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | Nicor petitioned for review of a final Illinois Commerce Commission rate-case order. The Commission denied or disallowed portions of Nicor's proposed rate recovery, adopted an imputed capital structure, and required Nicor to file a long-term gas infrastructure plan. After the Commission denied rehearing, Nicor appealed.                                                                                                                                                                                                                            |
| STANDARD OF REVIEW    | Commission orders are prima facie reasonable, and the appealing party bears the burden of proof. Factual findings are reviewed under the substantial-evidence or manifest-weight standard; questions of law, including statutory and regulatory interpretation, are reviewed de novo, with substantial weight and deference given to an agency's interpretation of an ambiguous statute it administers; mixed questions of law and fact are reviewed for clear error. The reviewing court determines whether the Commission acted within its authority, made |

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|                           | adequate findings, based its decision on substantial evidence, and violated constitutional rights.                                                                |
| <b>PRECEDENTIAL VALUE</b> | published                                                                                                                                                         |
| <b>PARTIES</b>            | Northern Illinois Gas Company, d/b/a Nicor Gas Company v. Illinois Commerce Commission, The People ex rel. Kwame Raoul, Attorney General of the State of Illinois |

## TOPICS

judicial review of agency action

administrative law

rulemaking

statutory interpretation

standard of review

## PRACTICE AREAS

administrative law

public utility regulation

energy law

appellate procedure

## QUESTIONS PRESENTED

1. Whether the Commission applied the proper statutory standard in rejecting Nicor's proposed actual capital structure and adopting an imputed 50% common-equity structure.
2. Whether substantial evidence supported the Commission's disallowance of \$55.1 million in distribution investment costs.
3. Whether substantial evidence supported the Commission's disallowance of \$43.3 million in MAOP-reconfirmation investment costs.
4. Whether substantial evidence supported the Commission's disallowance of approximately \$28.4 million in transmission-pipeline investment costs.
5. Whether the Commission had statutory authority to require Nicor to file a biennial long-term gas infrastructure plan and, if the requirement was a rule, whether it was invalid because the Commission did not use the Illinois Administrative Procedure Act's notice-and-comment process.

## HOLDINGS

1. The Commission applied the correct legal standard and substantial evidence supported its adoption of an imputed capital structure consisting of 50% common equity, 46.96% long-term debt, and 3.04% short-term debt.
2. The Commission properly disallowed \$55.1 million of Nicor's proposed distribution investment costs.
3. The Commission properly disallowed \$43.3 million of Nicor's proposed MAOP-reconfirmation investment costs and required Nicor to submit a compliance plan.
4. The Commission properly disallowed approximately \$28.4 million of Nicor's proposed transmission-pipeline investment costs.
5. The Commission lacked authority to impose the infrastructure-plan requirement, and the requirement was void because it constituted a rule adopted without the Illinois Administrative Procedure Act's notice-

and-comment process.

## KEY QUOTATIONS

*“Judicial review of final orders issued by the Commission “involves the exercise of special statutory jurisdiction and is constrained by the provisions of the [Act].”” (¶ 82)*

*“When reviewing a Commission order, courts are limited to determining the following four issues: “(1) whether the Commission acted within the scope of its authority, (2) whether the Commission made adequate findings in support of its decision, (3) whether the Commission’s decision was supported by substantial evidence in the record, and (4) whether constitutional rights have been violated.”” (¶ 83)*

*“Therefore, we similarly vacate the infrastructure plan in this case on the grounds that the Commission exceeded its authority by ordering it.” (¶ 133)*

*“Affirmed in part and vacated in part.” (¶ 136)*

## FACTUAL BACKGROUND

Nicor, a natural-gas public utility serving approximately 2.3 million northern Illinois customers, sought a general rate increase and recovery of substantial distribution, MAOP-reconfirmation, and transmission-pipeline investment costs. The Commission adopted a 50% common-equity capital structure rather than Nicor's proposed 54.520% ratio, disallowed specified portions of the proposed investment costs, and required a biennial long-term infrastructure plan. Nicor challenged those determinations, arguing that the Commission applied the wrong standards, lacked evidentiary support, exceeded its statutory authority, and improperly adopted a new rule without notice and comment.

## PROCEDURAL HISTORY

Nicor filed tariff sheets seeking a general rate increase on January 3, 2023. The Commission conducted an evidentiary hearing beginning July 18, 2023, issued its order on November 16, 2023, and denied Nicor's petition for rehearing. The Illinois Appellate Court affirmed the capital-structure determination and the disallowances of distribution, MAOP, and transmission pipeline investment costs, but vacated the infrastructure-plan requirement.

## DISPOSITION

other

## CASES CITED

- Citizens Utility Board v. Illinois Commerce Comm'n, 166 Ill. 2d 111, 121, 133 (1995)
- United Cities Gas Co. v. Illinois Commerce Comm'n, 163 Ill. 2d 1, 11 (1994)
- Business & Professional People for the Public Interest v. Illinois Commerce Comm'n, 146 Ill. 2d 175, 195, 208 (1991)
- Citizens Utility Co. of Illinois v. Illinois Commerce Comm'n, 124 Ill. 2d 195, 200-01 (1988)
- People ex rel. Madigan v. Illinois Commerce Comm'n, 2011 IL App (1st) 100654, ¶ 76

- Ameren Illinois Co. v. Illinois Commerce Comm'n, 2013 IL App (4th) 121008, ¶ 22
- Illinois Bell Telephone Co. v. Illinois Commerce Comm'n, 283 Ill. App. 3d 188, 204 (1996)
- Commonwealth Edison Co. v. Illinois Commerce Comm'n, 405 Ill. App. 3d 389, 394 (2010)
- Camelot Utilities, Inc. v. Illinois Commerce Comm'n, 51 Ill. App. 3d 5, 10 (1977)
- Illinois Power Co. v. Illinois Commerce Comm'n, 339 Ill. App. 3d 425, 428, 435 (2003)
- Commonwealth Edison Co. v. Illinois Commerce Comm'n, 2019 IL App (2d) 180504, ¶ 51
- Central Illinois Public Service Co. v. Illinois Commerce Comm'n, 268 Ill. App. 3d 471, 476-77, 479 (1994)
- Save Our Illinois Land v. Illinois Commerce Comm'n, 2022 IL App (4th) 210008, ¶¶ 37, 42
- People ex rel. Raoul v. Illinois Commerce Comm'n, 2025 IL App (4th) 230491, ¶ 54
- People ex rel. Madigan v. Illinois Commerce Comm'n, 2011 IL App (1st) 101776, ¶¶ 6, 8-9
- Ameren Illinois Co. v. Illinois Commerce Comm'n, 2025 IL App (5th) 240014
- GridLiance Heartland LLC v. Illinois Commerce Comm'n, 2023 IL App (5th) 230073, ¶ 53
- Citizens Utility Board v. Illinois Commerce Comm'n, 291 Ill. App. 3d 300, 304, 307 (1997)
- United Cities Gas Co. v. Illinois Commerce Comm'n, 225 Ill. App. 3d 771, 782 (1992)
- Abbott Laboratories, Inc. v. Illinois Commerce Comm'n, 289 Ill. App. 3d 705, 712, 715 (1997)
- City of Chicago v. Illinois Commerce Comm'n, 79 Ill. 2d 213, 217-18 (1980)
- Business & Professional People for the Public Interest v. Illinois Commerce Comm'n, 136 Ill. 2d 192, 243 (1989)
- Commonwealth Edison Co. v. Illinois Commerce Comm'n, 2016 IL 118129, ¶ 24