

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Ameren Illinois Company

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Docket No. EL25-105-000

**PROTEST OF
THE ELECTRICITY TRANSMISSION COMPETITION COALITION,
THE INDUSTRIAL ENERGY CONSUMERS OF AMERICA,
THE COALITION OF MISO TRANSMISSION CUSTOMERS, AND
THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS**

Pursuant to Rule 212 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure¹ and the Commission’s Combined Notice of Filings #1 issued on July 25, 2025 in the above-referenced proceeding, the Electricity Transmission Competition Coalition (“ETCC”),² the Industrial Energy Consumers of America (“IECA”), the Coalition of MISO Transmission Customers (“CMTC”), and the Illinois Industrial Energy Consumers (“IIEC”)³ hereby protest the Petition for Declaratory Order and Request for Expedited Action (“Petition”)⁴ filed on July 24, 2025 of Ameren Illinois Company (“Ameren”). The Petition asks that FERC preemptively declare that “judicial precedent in Illinois *enforcing* the ‘first in the field’ doctrine constitutes Applicable Law ‘granting a right of first refusal to’”⁵ Ameren under the Open Access Transmission, Energy and Operating Reserve Markets Tariff

¹ 18 C.F.R. § 385.212.

² A list of ETCC members and partners is available here:
<https://electricitytransmissioncompetitioncoalition.org/who-we-are/> (last accessed Aug. 25, 2025).

³ ETCC filed a formal Motion to Intervene on August 15, 2025. CMTC filed a doc-less intervention on August 1, 2025. IIEC filed a doc-less intervention on August 7, 2025. IECA filed a doc-less intervention on August 14, 2025.

⁴ “Petition For Declaratory Order And Request For Expedited Action Of Ameren Illinois Company,” *Ameren Illinois Company*, Docket No. EL25-105-000 (filed July 24, 2025) (hereinafter “Petition”).

⁵ Petition at 1 (emphasis added).

(“Tariff”) of the Midcontinent Independent System Operator, Inc. (“MISO”).⁶ ETCC, IECA, CMTC, and IIEC request that FERC deny Ameren’s self-serving Petition with prejudice because Ameren has failed to demonstrate the existence of a controversy or any legal uncertainty that warrants resolution by the Commission.

I. BACKGROUND

On December 12, 2024, MISO approved its 2024 annual transmission expansion plan (“MTEP24”), including a portfolio of Multi-Value Projects (“MVPs”) planned as a part of MISO’s Long-Range Transmission Planning (“LRTP”) initiative.⁷ MVPs identified through the LRTP in MTEP24 are known as LRTP Tranche 2.1 Projects. Two of the projects are located in Illinois (“Illinois Tranche 2.1 Projects”). The LRTP Tranche 2.1 Projects, including the two located in Illinois, are regionally allocated across MISO North/Central. After approving the LRTP Tranche 2.1 Projects, MISO determined which projects are eligible for its competitive transmission process. The default rule under MISO’s Tariff for regionally cost allocated transmission projects entails initiation of MISO’s Competitive Transmission Process; however, MISO’s Tariff currently excludes from competition projects located in states that grant incumbent transmission owners a right of first refusal.⁸ MISO has designated the Illinois Tranche 2.1 Projects as eligible for competition as none of the MISO Tariff’s exclusions from competition apply.⁹

⁶ See Tariff, Attach. FF, § VIII.A.2; Module A, -1 Definitions (Applicable Laws and Regulations).

⁷ MTEP24 is available on MISO’s website, <https://www.misoenergy.org/planning/transmissionplanning/mtep/#t=10&p=0&s=&sd=> (last accessed Aug. 25, 2025).

⁸ MISO Tariff, Attachment FF, Section VIII.A.1.

⁹ See <https://cdn.misoenergy.org/LRTP%20Tranche%202.1%20RFP%20Release%20Schedule671259.pdf> (last accessed Aug. 25, 2025).

Ameren filed its Petition because MISO does not recognize a right of first refusal in Illinois.¹⁰ MISO has never recognized a right of first refusal in Illinois because there is not a state right of first refusal law. When it became clear that Tranche 2.1 would likely include new transmission projects in Illinois that would be eligible for competition, Ameren advocated for the Illinois legislature to pass a right of first refusal law to ensure that Ameren would have a right to construct, own, and operate all transmission projects in its area of the state. The Illinois Governor used his power of amendatory veto under Section 9(e) of the Illinois Constitution to completely remove the right of first refusal part of the bill and the state legislature did not override that amendatory veto.¹¹ In his official amendatory veto statement explaining his decision to strike the right of first refusal provisions, the Illinois Governor stated:

House Bill 3445 contains many valuable provisions to advance energy policy in Illinois. However, the right of first refusal language inserted by Senate Amendment 4 will eliminate competition and raise costs for rate payers by giving incumbent utility providers in the MISO region a monopoly over new transmission lines. Raising costs for rate payers is particularly concerning in the MISO region, where there is currently over \$3.6 billion in planned transmission construction in the Ameren service territory. Without competition, Ameren ratepayers in downstate Illinois will see higher electricity bills to pay for the higher cost of these transmission projects. Competitively bidding transmission construction, instead of giving the utility a monopoly, has been proven to lower project costs significantly. . . . I cannot support the

¹⁰ MISO maintains a list of state right of first refusal laws on its website at this link [https://cdn.misoenergy.org/State or Local Rights of First Refusal514796.pdf? t_id=DVVba19VndwlZNxjYKmbJw%3d%3d& t_uuid=OieWTYbkTGyTxb-0EoBiEg& t_q=right+of+first+refusla& t_tags=language%3aen%20siteid%3a11c11b3a-39b8-4096-a233-c7daca09d9bf& t_hit.id=Optics_Models_Find_RemoteHostedContentItem/514796& t_hit.pos=9](https://cdn.misoenergy.org/State%20or%20Local%20Rights%20of%20First%20Refusal514796.pdf?%20id=DVVba19VndwlZNxjYKmbJw%3d%3d%20t%20uuid=OieWTYbkTGyTxb-0EoBiEg%20t%20q=right+of+first+refusla%20t%20tags=language%3aen%20siteid%3a11c11b3a-39b8-4096-a233-c7daca09d9bf%20t%20hit.id=Optics_Models_Find_RemoteHostedContentItem/514796%20t%20hit.pos=9) (last accessed Aug. 25, 2025).

¹¹ Veto Message on HB 3445 (103rd General Assembly) *available at*: [https://ilga.gov/legislation/billstatus/fulltext?LegDocId=185182&DocName=10300HB3445gms&GA=103&LegID=148612&SessionId=112&SpecSess=00&DocTypeId=HB&DocNum=3445&GAID=17&Session=](https://ilga.gov/legislation/billstatus/fulltext?LegDocId=185182&DocName=10300HB3445gms&GA=103&LegID=148612&SessionId=112&SpecSess=00&DocTypeId=HB&DocNum=3445&GAID=17&Session=103) (last accessed Aug. 25, 2025).

ROFR provision of this legislation that will unnecessarily put a higher cost burden on consumers¹²

Unable to protect its monopolistic interests by statute and desperate to avoid competition, Ameren now turns to the Commission and the Illinois court system. On July 14, 2025, Ameren filed a declaratory action in Illinois state court seeking a judicial determination that it has a right to construct, own, and operate regional transmission projects in Illinois under the first in the field doctrine.¹³ No responsive pleadings have been made in the state court proceeding, and such pleadings are not due until September 8, 2025. Ten days after initiating litigation in Illinois, Ameren filed the Petition asking the Commission to preemptively determine that yet to occur “judicial precedent in Illinois enforcing the ‘first in the field’ doctrine” provides Ameren with an exclusive federal tariff right to regional transmission additions in Illinois.¹⁴ Ameren has not sought a determination on the applicability of the first in the field doctrine from the Illinois Commerce Commission (“ICC”).

II. PROTEST

Petitions for declaratory orders are permitted by the Administrative Procedure Act “to terminate a controversy or remove uncertainty regarding a matter within the Commission’s jurisdiction.”¹⁵ Ameren’s Petition does not identify a specific controversy or uncertainty that is within the Commission’s power to terminate through a declaratory order. The alleged controversy is based entirely on the false premise that there is enforceable judicial precedent in Illinois granting incumbent transmission providers first in the field status for regional

¹² *Id.*

¹³ See *Ameren Ill. Co. v. Midcontinent Indep. Sys. Operator, Inc.*, Case No. 2025MR15 (Ill. 11th Cir. Ct. July 14, 2025).

¹⁴ Petition at 13.

¹⁵ *Obtaining Guidance on Regulatory Requirements*, 123 FERC 61,157 at 19 (2008); see also 5 U.S.C. 554(e).

transmission projects paid for broadly across the MISO north/central region. Ameren's claimed right is argued to be akin to a right of first refusal that MISO has ignored. There is no such judicial precedent establishing such a right in Illinois. Ameren presents only a small number of cases that apply the first in the field doctrine to cases that do not involve electric transmission. Further, the cases show that the first in the field doctrine is a case-by-case factual inquiry undertaken in the context of an Illinois-jurisdictional certificate of public convenience and necessity ("CPCN") approval proceeding, not blanket protection from competition.¹⁶ Accordingly, the Petition seeks to manufacture a state incumbent right of first refusal or preference for transmission development, ownership, and construction. Because the claimed judicial precedent does not permit the right of first refusal as Ameren claims, there is no controversy or uncertainty regarding MISO's actions for the Commission to resolve. The Petition should be dismissed.

A. There Is No Enforceable Judicial Precedent in Illinois Granting Illinois Incumbent Transmission Owners First in the Field Status for Regional Transmission Projects.

Ameren's requested declaration rests entirely on the false assertion that Illinois judicial precedent recognizes a first in the field doctrine for regional transmission projects, *i.e.*, projects that are regionally planned and regionally allocated. There is no such precedent. The Petition does not cite a single ICC or state court decision applying the first in the field doctrine to Commission-jurisdictional regional transmission projects with costs allocated beyond the relevant transmission owner. Instead, Ameren points to a small number of Illinois state court cases that it asserts "speak for themselves" on the applicability of the first in the field doctrine in

¹⁶ See Petition at 8-11.

Illinois.¹⁷ The cited cases establish that the first in the field doctrine has been applied, either by the ICC or Illinois courts in review of ICC determinations, in specific factual circumstances, mostly involving buses,¹⁸ telephone service,¹⁹ pagers,²⁰ movers,²¹ and water and sewer service.²² The only electric transmission cases Ameren cites merely mention the first in the field doctrine in *dicta*²³ or are otherwise not determinative.²⁴

Ameren also has not demonstrated that the cited cases, or any enforceable precedent, extends the archaic first in the field doctrine to FERC-jurisdictional regional transmission projects. The main cases applying the first in the field doctrine pre-date extensive changes in the electric utility industry in Illinois. For example, the cases were before the requirement that Ameren turn operational control of its transmission assets over to a FERC-jurisdictional planning authority.²⁵ Furthermore, no relevant state agency with jurisdiction has spoken to the viability, or continued viability, of the first in the field doctrine to interstate transmission addressing regional needs. Given the glaring holes in the judicial precedent cited by Ameren, there is no basis for the Commission (or MISO) to preemptively find that Illinois incumbent utilities have an

¹⁷ *Id.* at 15.

¹⁸ *Eagle Bus Lines, Inc. v. Ill. Com. Comm'n*, 3 Ill. 2d 66 (1954) (“*Eagle Bus*”).

¹⁹ *Illini St. Tel. Co. v. Ill. Commerce Comm'n*, 39 Ill. 2d 239 (1968) (“*Illini*”).

²⁰ *Ill. Consol. Tel. Co. v. Ill. Com. Comm'n*, 99 Ill. App. 3d 462 (Ill. App. Ct. 1981); *Danville Redipage, Inc. v. Ill. Com. Comm'n*, 87 Ill. App. 3d 787 (Ill. App. Ct. 1980) (“*Danville Redipage*”).

²¹ *Holland Motor Express, Inc. v. Ill. Commerce Comm'n*, 65 Ill. App. 3d 703 (Ill. App. Ct. 1987) (“*Holland*”).

²² *Citizens Valley View Co. v. Ill. Com. Comm'n*, 28 Ill. 2d 294 (1963) (“*Citizens*”).

²³ *Ill. Landowners All., NFP v. Ill. Com. Comm'n*, 2017 IL 121302 (rejecting a combined application for a CPCN and public utility status on the basis that the applicant did not qualify as a public utility, not on first in the field grounds).

²⁴ *Zahn v. N. Am. Power & Gas, LLC*, 72 N.E.3d 333, 338-39 (Ill. 2016) (addressing question of whether complaints against alternative retail electric suppliers are subject to exclusive ICC jurisdiction).

²⁵ Section 220 ILCS 5/16-126(a), effective July 1, 2001.

exclusive right to own, construct, and operate regionally planned and regionally allocated transmission projects in Illinois.

B. The First in the Field Doctrine in Illinois Is Applied on a Case-By-Case Basis In the Context of a CPCN Application.

The Petition wrongly presents the first in the field doctrine as giving Ameren an automatic right to preemptively claim priority to construct, own, and operate any regional transmission projects that connect to its existing transmission system.²⁶ Illinois courts have held that the Commission may grant CPCNs for overlapping territory.²⁷ As the cases cited by Ameren demonstrate, the first in the field doctrine is a factual inquiry undertaken by the relevant state regulators *as part of approval* of a CPCN application from a new entrant or an existing participant intending to expand its service territory CPCN.²⁸ It is not a preemptive blanket prohibition against competition akin to a state right of first refusal or incumbent preference law. The only outcome of the application of the first in the field doctrine has been a regulatory body's decision to grant or deny a CPCN.²⁹ Ameren cites no case where an affirmative right of first refusal – as opposed to denial of an applicant's CPCN – is relief granted by the ICC or any other regulatory body using the first in the field doctrine. Even more so, no Illinois court to date has usurped the ICC's jurisdiction to make the initial determination as to whether the first in the field

²⁶ Petition at 8-11.

²⁷ See, e.g., *Eagle Bus*, 3 Ill. 2d 66, 72 (“The Commerce Commission has ample power to decide whether one or several companies engaged in furnishing public utility service shall operate in the same locality”), *Northfield Woods Water & Util. Co. v. Ill. Commerce Comm’n*, 28 Ill. App. 3d 664, 666-667 (1st Dist. 1975) (“Accordingly, we begin our analysis by noting that the Commission had the authority to grant a certificate to Illinois Municipal for the territory already certificated to Northfield Woods, if the Commission intended for both companies to provide service in the western part of the Glenbrook Estates subdivision”).

²⁸ See, e.g., *Illini*, 39 Ill. 2d 239.

²⁹ See, e.g., *id.* at 240-243 (1968) (appeal from competing CPCN proceedings before the Commission); *Citizens*, 28 Ill. 2d 294, 295-296 (appeal from CPCN proceeding before the Commission); *Danville Redipage*, 87 Ill. App. 3d 787, 787 (same).

doctrine applies to an electric utility. At most, Illinois courts have remanded to the ICC to apply first in the field to a CPCN determination.

If the doctrine is applicable at all, if there is an existing utility in the field, then before the relevant state regulator grants a new entrant or competing existing utility a CPNC, it must make several factual findings. As a threshold issue, the ICC must determine factually whether there is a protectable interest at all from the alleged incumbent(s).³⁰ Even if such a protectable interest exists, extensive factual determinations are required, such as whether the existing utility is rendering satisfactory service.³¹ The regulator must determine that the existing utility is in fact first in the field and that priority is warranted.³² It must determine whether the existing utility is “rendering unsatisfactory service and is unable or unwilling to provide adequate facilities, or in the case of an expansion, whether the existing utility has the ability to give the required service.”³³ There may be other relevant questions as well, such as whether the services are the same and whether the new entrant’s service is needed or other factors that justify granting a CPCN to a new entrant.³⁴ None of these inquiries have been undertaken, in part because there is currently no party seeking a right of first refusal for a regional transmission project in what Ameren claims is territory covered by the first in the field doctrine.

³⁰ See, e.g., *McMann v. Ill. Commerce Comm’n*, 38 Ill. 2d 126, 128-129 (1967) (“*McMann*”).

³¹ See, e.g., *Illini*, 39 Ill. 2d 239.

³² *Holland*, 65 Ill. App. 3d 703.

³³ *Illini*, 39 Ill. 2d 239, 243 (Ill. 1968).

³⁴ See *McMann*, 38 Ill. 2d 126.

C. Because There Is No Directly Applicable Case Law, There Is No Controversy for the Commission to Resolve.

While the Commission has the discretion to issue a declaratory order, to do so, it must resolve a specific controversy and where there is a narrow question involving uncontested facts.³⁵ Ameren argues that the “controversy” for the Commission to resolve is MISO’s interpretation of its Tariff.³⁶ Ameren generally points to Section VIII.A.1 of Attachment FF,³⁷ but does not identify a particular word or phrase that MISO is misinterpreting or applying. Had Ameren been able to do so, it would have filed a complaint against MISO under Section 206³⁸ arguing that MISO is violating its Tariff. Ameren’s real issue is that Illinois state law has not applied the first in the field doctrine to regional transmission projects. Therefore, Ameren urges the Commission to “construe” Illinois state law and “recognize that the ‘first in the field’ doctrine is an Applicable Law in Illinois . . .”³⁹ before Illinois ever makes that determination for itself.

Ameren’s ask presupposes that Illinois state law applies the first in the field doctrine to regional transmission projects. As explained above, there is no case law supporting the conclusion that the first in the field doctrine applies to regional transmission projects. Without that case law, there is no controversy about MISO’s application of Section VIII.A.1 of Attachment FF and nothing for the Commission to decide. The lack of case law distinguishes Ameren’s petition from a recent case that Ameren cites.⁴⁰ In that case, there was a clear judicial

³⁵ See *Stowers Oil & Gas Co.*, 27 FERC ¶ 61,001, at 61,001 (1984) (“there is ample authority for the proposition that Commission action on petitions for declaratory order is discretionary with the agency”).

³⁶ Petition at 13-14.

³⁷ Id. at 13.

³⁸ 16 U.S.C. 824e.

³⁹ Petition at 15.

⁴⁰ Id. (citing *LSP Transmission Holdings II, LLC v. Midcontinent Indep. Sys. Operator, Inc.*, 191 FERC 61,222 (2025)).

order that MISO did not recognize and the question before the Commission was whether MISO's interpretation was correct. Here, there is no judicial order or directly applicable precedent. As such, there is no controversy or uncertainty that is within the Commission's jurisdiction to resolve, and the Petition should be dismissed.

D. It Is Improper for the Commission to Determine Issues of State Law or Prejudge the Implications of Potential ICC or Judicial Rulings on the Application of MISO's Tariff.

The Petition asks the Commission to jump ahead of proceedings in Illinois to pre-judge the applicability and implications of the first in the field doctrine on regional transmission projects, specifically, the two Illinois Tranche 2.1 Projects. There is no need for the Commission to act now. Contrary to Ameren's assertion, there is also nothing time-sensitive that requires the Commission to act now on an expedited basis.⁴¹ MISO moving forward with the competitive solicitation ultimately benefits consumers without Ameren losing its ability to make its first in the field arguments or to submit a proposal to establish that it is the more efficient or cost-effective developer. Ameren did the latter when it was unsuccessful in obtaining a Missouri right of first refusal law and was selected by MISO from among nine proposals. Consumers benefited as a result of that competitive process and Ameren's consumer focused rate concession. It appears that Ameren simply does not want to have to make such consumer-focused concessions again in order to be selected to develop over \$1 billion in regionally cost allocated projects.⁴²

⁴¹ Petition at 18-20.

⁴² Ameren argues that the time, effort, and proposal fee to participate in the competitive solicitation constitutes harm warranting the Commission prematurely addressing its claims. *Id.* But if Ameren firmly believes that it is legally entitled to the projects as it claims, Ameren can simply not participate and wait to make its arguments after a nonincumbent is selected and seeks a CPCN from the ICC. Consumers will still benefit from the competitive process because the process yields valuable information about alternatives and cost information.

Ameren also argues that it would be appropriate for the Commission to interpret Illinois state law – that the first in the field doctrine is a right of first refusal – and then direct MISO to treat the first in the field doctrine as an Applicable Law under Section VIII.A. of Attachment FF and to exclude the two Illinois LRTP Projects from competition.⁴³ It would also be premature for the Commission to rule or opine now on whether the first in the field doctrine applies and is a right of first refusal. Because Order No. 1000 clearly required removal of any right of first refusal based on a federal tariff,⁴⁴ questions as to whether Illinois case law creates a right of first refusal or incumbent preference are best resolved by an appropriate Illinois state authority with jurisdiction.

⁴³ Petition at 14.

⁴⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051, at P 313 (2011), *order on reh'g & clarification*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

III. CONCLUSION

For the reasons set forth above, ETCC, IECA, CMTC, and IIEC hereby request that the Commission dismiss the Petition. Respectfully submitted,

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Dated: August 25, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of August 2025 served or caused to serve the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

By: /s/ Kenneth R. Stark

Kenneth R. Stark
McNees Wallace & Nurick LLC