193 FERC ¶ 61,151
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

Ameren Illinois Company — Docket No. EL25-105-000

ORDER DISMISSING PETITION FOR DECLARATORY ORDER

(Issued November 24, 2025)

1. On July 24, 2025, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,[1] Ameren Illinois Company (Ameren) filed a petition for declaratory order (Petition) requesting that the Commission find that the "first in the field" Illinois judicial doctrine grants a right of first refusal (ROFR) to construct certain transmission facilities in its service territory within the meaning of section VIII.A.1 of Attachment FF to the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).[2] As discussed below, we dismiss the Petition.

I. Background

2. Ameren states that it is a direct, wholly owned subsidiary of Ameren Corporation that is engaged in the transmission and wholesale sale of electric energy subject to the Commission's jurisdiction and the provision of retail electric service in central and southern Illinois subject to the jurisdiction of the Illinois Commerce Commission (Illinois Commission). Ameren states that it has been providing electric services to Illinois customers for more than a century, both individually and through mergers with certain predecessor utilities. Ameren states that its wholesale and retail service territory covers

---

[1] 18 C.F.R. § 385.207 (2025).

[2] Capitalized terms not defined herein have the meanings ascribed to them in the Tariff.

approximately three-quarters of the state and that its delivery system includes approximately 4,500 miles of electric transmission lines and 46,000 miles of distribution lines.[3]

3. Ameren states that MISO is responsible for planning and for directing or arranging necessary transmission expansions, additions, and upgrades that will enable MISO to provide efficient, reliable, and non-discriminatory transmission service within its geographic footprint, including most of Illinois.[4] Ameren further states that MISO has been engaging in Long Range Transmission Planning (LRTP) to develop regional transmission projects to help ensure the transmission system remains reliable in light of utility and state goals and policies, projected conditions, and industry trends. Ameren explains that MISO implements LRTP in structured phases called “tranches,” and that the MISO Board of Directors approved the Tranche 2.1 portfolio in December 2024. Ameren further explains that, as relevant to this proceeding, MISO selected two transmission projects in Tranche 2.1, substantial portions of which are located within Ameren’s service territory: (1) the Woodford County – Illinois/Indiana State Line (WIIL) project; and (2) the Sub T – Iowa/Illinois State Line – Woodford County (STIW) project.[5]

4. Ameren states that the WIIL and STIW projects will interconnect with Ameren’s existing transmission facilities and will provide electric services to and otherwise significantly affect Ameren’s existing wholesale and retail customers. In particular, Ameren states that the WIIL and STIW projects will have a variety of effects on Ameren’s service territory, including lowering prices for electric services, reducing overloads, enabling generation, increasing exports, and alleviating congestion.[6]

---

[3] Petition at 2-3.

[4] *Id.* at 3-4 (citing 18 C.F.R. § 35.34(k)(7)).

[5] *Id.* at 4. The WIIL and STIW projects are components of the Sub T – Woodford County – Collins & Woodford County - Reynolds 765 kV project, as approved by the MISO Board of Directors as part of the Tranche 2.1 portfolio of Multi-Value Projects within the 2024 MISO Transmission Expansion Plan (MTEP24). Description of the WIIL and STIW projects are included in Appendix A of MISO’s MTEP24 Report. *See* MTEP24 Appendix A - Tranche 2.1 at rows 299-301 (description of WIIL project facilities); MTEP24 Appendix A – Tranche 2.1 at rows 295, 298 (description of STIW project facilities).

[6] Petition at 6.

5. Ameren states that MISO designates an existing utility to construct transmission facilities within its existing service territory when that utility's right to do so is established under state law, and in particular that the Tariff provides:

> The Transmission Provider shall comply with any Applicable Laws and Regulations granting a [ROFR] to a Transmission Owner. The Transmission Owner will be assigned any transmission project within the scope, and in accordance with the terms, of any Applicable Laws and Regulations granting such a [ROFR]. These Applicable Laws and Regulations include, but are not limited to, those granting a [ROFR] to the incumbent Transmission Owner(s) or governing the use of existing developed and undeveloped right of way held by an incumbent utility.[7]

Ameren further states that, if a transmission project does not fall within this exception or another under the Tariff, then MISO will designate the transmission facilities included in an Eligible Project as subject to the Competitive Developer Selection Process, which Ameren states is a bidding process conducted pursuant to MISO's procedures.[8]

II. Petition for Declaratory Order

6. Ameren requests that the Commission issue a declaratory order finding that Illinois judicial precedent enforcing the "first in the field" doctrine is among the Applicable Laws and Regulations that the Tariff recognizes as granting a ROFR to incumbent Transmission Owners. Ameren argues that MISO "incorrectly identified" the WIIL and STIW projects as being eligible for the Competitive Developer Selection Process in light of uncertainty over the status of the first in the field doctrine.[9]

---

[7] *Id.* at 6-7 (quoting MISO, FERC Elec. Tariff, attach. FF, § VIII.A.1 (93.0.0)). The Tariff defines Applicable Laws and Regulations as "[a]ll duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties, their respective facilities and/or the respective services they provide." MISO, FERC Elec. Tariff, § II, Module A, § II (General Provisions), § 1.A (71.0.0).

[8] Petition at 7. The Tariff defines Eligible Projects as "any Market Efficiency Projects . . . and Multi-Value Projects . . . approved by [MISO's] Board after December 1, 2015 . . . ." MISO, FERC Elec. Tariff, Module A, § 1.E (94.0.0).

[9] Petition at 1.

7. Ameren claims that the first in the field doctrine grants Ameren a ROFR. According to Ameren, when additional or extended utility service is required in Illinois and an existing utility is willing and able to provide that service, the first in the field doctrine bars the issuance of a certificate of public convenience and necessity (CPCN) to a competing utility until the existing utility has the opportunity to demonstrate its ability to provide the service.[10] Further, Ameren argues that, before one utility is permitted to take business from another utility in the field, "it must be shown that the existing [utility] is rendering unsatisfactory service and is unable or unwilling to provide adequate facilities."[11] Therefore, Ameren contends that an existing utility must be allowed the opportunity to demonstrate that it could provide new or additional services in the area it serves and, if it can, the first in the field doctrine would bar entry to a competing utility in that area.[12] Ameren argues that the first in the field doctrine arises from Illinois' method for regulating public utilities, which is based on the theory of regulated monopoly rather than competition.[13] Ameren contends that retail competition in Illinois does not affect the application of the first in the field doctrine because even customers choosing an alternative energy supplier take transmission and distribution service over Ameren's facilities.[14]

8. Ameren therefore argues that the first in the field doctrine is a three-part test under which: (1) there must be an existing public utility in the relevant field providing service; (2) the existing utility must make known its willingness and ability to provide the required additional or extended service; and (3) there must not be a showing that the existing utility is rendering unsatisfactory service and is unwilling or unable to provide adequate facilities.[15] Ameren contends that it meets this test. First, Ameren argues that it is a public utility that has been providing electric services within its service territory for more than a century. Second, Ameren argues that MISO has determined the WIIL and STIW projects are required and that Ameren is willing and able to construct these projects to provide electric service to its wholesale and retail customers. Third, Ameren

---

[10] *Id.* at 8-9 (citing *Illini State Tel. Co. v. Ill. Com. Comm'n*, 234 N.E.2d 769, 771 (Ill. 1968)).

[11] *Id.* at 9 (quoting *Illini State Tel. Co.*, 234 N.E.2d at 771).

[12] *Id.* at 9-10 (citing *Ill. Consol. Tel. Co. v. Ill. Com. Comm'n*, 425 N.E.2d 535, 539 (Ill. App. Ct. 1981), *rev'd on other grounds*, *Ill. Consol. Tel. Co. v. Ill. Com. Comm'n*, 447 N.E.2d 295, 297, 301 (Ill. 1983)).

[13] *Id.* at 9 (citing *Illini State Tel. Co.*, 234 N.E.2d at 771).

[14] *Id.* at 16 n.39.

[15] *Id.* at 10.

argues that there has been no showing that Ameren is providing unsatisfactory service or that it is unable to provide adequate facilities.[16]

9. Ameren explains that the Tariff defines Applicable Laws and Regulations in a way that includes state judgments or judicial orders.[17] Ameren argues that MISO nonetheless included the WIIL and STIW projects in the Competitive Developer Selection Process because the first in the field doctrine is recognized by Illinois judicial precedent rather than in codified statute and because MISO has not been presented with a "definitive determination" that Ameren has the right to construct, own, and operate these projects.[18] Ameren argues that MISO's "error" in applying its Tariff will compel Ameren to spend time and resources participating in the Competitive Developer Selection Process, which will delay the construction and increase the costs of the WIIL and STIW projects.[19]

10. Ameren argues that only the Commission has the authority to issue a binding interpretation of MISO's Tariff and to compel MISO to remove the WIIL and STIW projects from the Competitive Developer Selection Process.[20] Ameren also states that it has filed a declaratory action in Illinois state court (State Action) to confirm Ameren's rights because the Commission does not regulate transmission line facility siting.[21]

11. According to Ameren, the Commission need not construe state law in order to grant the Petition because the judicial decisions enforcing the first in the field doctrine speak for themselves. To the extent that the Commission finds it necessary to do so, Ameren claims that the Petition satisfies all three *Arkla* factors used by the Commission to determine whether to assert jurisdiction over issues arising under state law.[22] First, Ameren argues that the Commission has special expertise regarding ROFRs, and that it is not seeking an interpretation of state law but confirmation that the first in the field doctrine is among the Applicable Laws and Regulations that grant a ROFR. Second, Ameren argues that there is

---

[16] *Id.* at 10-11.

[17] *Id.* at 7-8.

[18] *Id.* at 13.

[19] *Id.* at 13-14.

[20] *Id.* at 14-15.

[21] *Id.* at 1 n.3 (citing *Ameren Ill. Co. v. Midcontinent Indep. Sys. Operator, Inc.*, Case No. 2025MR15 (Ill. 11th Cir. Ct. July 14, 2025)).

[22] *Id.* at 15-17 (citing *Ark. La. Gas Co. v. Hall*, 7 FERC ¶ 61,175, at 61,322 (*Arkla*), *reh'g denied*, 8 FERC ¶ 61,031 (1979)).

a need for uniform interpretation of MISO's Tariff such that all ROFRs are recognized, even those granted by judicial precedent rather than by statute, and that Illinois law should be applied uniformly both in MISO and in PJM Interconnection, L.L.C. (PJM).[23] Third, Ameren argues that this dispute is important to the regulatory responsibilities of the Commission because the Commission is the only regulatory body that can enforce MISO's Tariff and make sure that MISO applies it fairly.[24]

III. Notice and Responsive Pleadings

12. Notice of the Petition was published in the *Federal Register*, 90 Fed. Reg. 35856 (July 30, 2025), with interventions and comments due on or before August 25, 2025. The Illinois Commission and the Organization of MISO States, Inc. filed notices of intervention. Timely motions to intervene were filed by: American Electric Power Service Corporation, on behalf of its affiliates AEP Indiana Michigan Transmission Company, Inc., AEP Energy Partners, Inc., and AEP Retail Energy Partners LLC; Coalition of MISO Transmission Customers (MISO Customer Coalition); Cooperative Energy; Edison Electric Institute; Electricity Transmission Competition Coalition (Competition Coalition); Exelon Corporation (Exelon); Illinois Industrial Energy Consumers (Illinois Industrials); Illinois Municipal Electric Agency; Industrial Energy Consumers of America (IECA); Invenergy Transmission LLC (Invenergy); LS Power Midcontinent, LLC; Midcontinent Grid Solutions, LLC, Midcontinent Grid Solutions Illinois and Wisconsin, LLC, Midcontinent Grid Solutions Iowa, LLC, and Midcontinent Grid Solutions Wisconsin, LLC; MISO; MISO Transmission Owners (MISO TO);[25]

---

[23] Ameren argues that, because MISO and PJM are both regional transmission organizations operating in Illinois, the Commission must ensure that ROFR provisions in both the MISO Tariff and PJM tariff are interpreted uniformly. *Id.* at 17-18.

[24] *Id.* at 18.

[25] MISO TOs include: American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; Citizens Electric Corporation; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; GridLiance Heartland LLC; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company d/b/a AES Indiana; International Transmission Company d/b/a ITCTransmission; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power

Office of the Illinois Attorney General; Prairie Power, Inc.; Public Citizen, Inc.; Resale Power Group of Iowa; Transource Energy, LLC; and Wabash Valley Power Association, Inc.

13. Timely comments or protests were submitted by: Competition Coalition, IECA, Illinois Industrials, and MISO Customer Coalition (collectively, Competition Advocates); Exelon; Illinois Commission; Invenergy; and MISO. On September 9, 2025, Ameren filed an answer to the comments and protests.

A. Comments and Protests

14. MISO argues that it properly applied its Tariff when it designated the WIIL and STIW projects as eligible for the Competitive Developer Selection Process because Illinois does not have an existing statute or regulation providing for a state ROFR.[26] MISO agrees that judicial determinations could be among the Applicable Laws and Regulations granting or denying a ROFR in certain circumstances, such as the issuance of a judicial decision in a proceeding to which MISO is a party or a final judicial order finding that a state ROFR law is unconstitutional, but MISO contends that these circumstances are not present here.[27] MISO also argues that the Tariff's definition of Applicable Laws and Regulations requires the relevant Governmental Authority to have jurisdiction over a party or its service or facilities and, because MISO was not a party to the judicial decisions cited by Ameren, these decisions do not come within the definition of Applicable Laws and Regulations.[28]

15. MISO argues that, in the absence of a binding determination by a competent tribunal in the specific context presented in this case, the first in the field doctrine cannot be among the Applicable Laws and Regulations granting a ROFR for several reasons. First, MISO contends that application of the first in the field doctrine appears to be conditioned on certain factual determinations and that it is not clear that an appropriate factual record can be assumed in the absence of a determination by the Illinois

---

Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a CenterPoint Energy Indiana South); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

[26] MISO Comments at 7-8.

[27] *Id.* at 8.

[28] *Id.* at 9.

Commission or the Illinois courts.[29] Second, MISO claims that the Illinois courts have recognized that the first in the field doctrine is not unconditional and "is not to be employed to totally prevent another from entering a contiguous area, or for that matter, even the same territory."[30] Third, MISO argues that it is not clear how the first in the field doctrine fits within Illinois' existing policies with respect to ROFRs and the relevant legislative history.[31] Fourth, MISO contends that Illinois' electric retail choice law may be relevant to any application of the first in the field doctrine because the latter arose prior to the passage of the former.[32] For these reasons, MISO argues that the question of whether the first in the field doctrine is among the Applicable Laws and Regulations granting a ROFR is not a simple case of Tariff application and that MISO should not be placed in the position of making the relevant determinations.[33]

16. MISO argues that its Variance Analysis process as set forth in the Tariff provides a Commission-approved mechanism that could provide redress to Ameren should it prevail in any first in the field action in Illinois.[34] According to MISO, one of the Tariff-enumerated grounds on which MISO may initiate a Variance Analysis is the inability of a Selected Developer to obtain necessary approvals, permits, certificates, etc. MISO argues that one resolution to a Variance Analysis in such a circumstance could be to re-assign the relevant transmission facility to the incumbent Transmission Owner.[35] MISO contends that a Variance Analysis could be used in this case to protect Ameren's rights in the event that the Illinois courts or the Illinois Commission were to recognize that the

---

[29] *Id.* at 9-10 (citing *Illini State Tel. Co.*, 234 N.E.2d at 771).

[30] *Id.* (quoting *Citizens Valley View Co. v. Ill. Com. Comm'n*, 192 N.E.2d 392, 396 (Ill. 1963)). *See also* Illinois Commission Protest at 5 (same); Invenergy Protest at 10 (contending that, in some circumstances, the Illinois Commission may permit multiple public utilities to engage in the same business).

[31] MISO Comments at 10. *See also* Invenergy Protest at 4 (describing Illinois Governor's veto of legislation that would have provided Ameren with a statutory ROFR).

[32] MISO Comments at 10-11.

[33] *Id.* at 11.

[34] *Id.* (citing MISO, FERC Elec. Tariff, attach. FF, § IX).

[35] *Id.* at 12.

first in the field doctrine precludes issuance of a CPCN to a party other than Ameren, though MISO acknowledges that this would take place later in the process.[36]

17. Competition Advocates claim that Ameren wrongly asserts that the first in the field doctrine gives Ameren an automatic and preemptive right to construct, own, and operate any regional transmission projects that connect to its existing transmission system, and that Ameren cites no case where an affirmative right of first refusal is granted by the Illinois Commission under the first in the field doctrine. Instead, Competition Advocates contend that the doctrine is applied through a multipart factual inquiry undertaken by state regulators in connection with a CPCN application.[37] Similarly, Invenergy argues that the first in the field doctrine is decided on a case-by-case basis supported by substantial evidence and that it cannot be determined to apply wholesale without any fact development.[38]

18. Illinois Commission, Competition Advocates, and Invenergy argue that there is no Illinois court decision that applies in this specific circumstance.[39] Competition Advocates and Invenergy claim in effect that the relevant "field" for purposes of the first in the field analysis is regionally planned transmission facilities addressing regional needs whose costs are allocated regionally rather than to a utility's own customers.[40] Exelon and Competition Advocates assert that Ameren is not asking the Commission to clarify uncertainty about MISO's Tariff but instead to create a definitive interpretation of Illinois law, and that this interpretation instead should come from the Illinois Commission and Illinois courts.[41] Given the parallel State Action filed in Illinois state court, several commenters also argue that there is a risk of conflicting interpretations of state law should the Commission grant Ameren's Petition.[42]

---

[36] *Id.* at 12-13.

[37] Competition Advocates Protest at 7-8. *See also* Illinois Commission Protest at 5 ("[A]pplication of the [first in the field] doctrine is an exercise that requires the [Illinois Commission] to make factual findings.").

[38] Invenergy Protest at 10.

[39] Illinois Commission Protest at 3-4; Competition Advocates Protest at 5-6; Invenergy Protest at 6-7.

[40] Competition Advocates Protest at 5-7; Invenergy Protest at 5-6, 11-12.

[41] Exelon Comments at 3; Competition Advocates Protest at 10-11.

[42] Illinois Commission Protest at 3; Invenergy Protest at 8-9; Exelon Comments at 5.

19. Commenters generally agree that the *Arkla* factors weigh against an assertion of jurisdiction by the Commission. As an initial matter, however, Invenergy argues that the Commission altogether lacks jurisdiction to grant Ameren's Petition because it would require the Commission to resolve a question of first impression under Illinois law and because the states rather than the Commission are the "final arbiter of what is state law."[43] As to the first *Arkla* factor, the Illinois Commission, Invenergy, and Exelon each argue that the Commission does not possess special expertise to interpret how Illinois state law should be applied in this case.[44] As to the second factor, the Illinois Commission argues that the necessity of making factual determinations precludes the uniform application of the first in the field doctrine, while Exelon contends that there is no question of interstate uniformity, but of what Illinois law means.[45] As to the third factor, Invenergy argues that resolution of this case is not important to the Commission's regulatory responsibilities because whether an individual state provides for a ROFR is committed to that state's discretion, while the Illinois Commission contends that making a first in the field determination is independent of MISO's Tariff and its definition of Applicable Laws and Regulations.[46]

B. <u>Ameren Answer</u>

20. Ameren contends that the Tariff's definition of Applicable Laws and Regulations and section VIII.A.1 of Attachment FF do not require a binding determination regarding the specific facts at issue; rather, it requires only that a ROFR is granted by an entity having jurisdiction over the parties and/or their respective facilities or services.[47] Ameren claims that no interpretation of Illinois law is required because it is clear that the first in the field doctrine is existing law that applies to electric transmission.[48]

21. Ameren rejects claims that a hearing before the Illinois Commission is required to determine whether the first in the field doctrine applies. In response, Ameren argues that

---

[43] Invenergy Protest at 7 (quoting *West v. Am. Tel. & Tel. Co.*, 311 U.S. 223, 236 (1940)).

[44] Illinois Commission Protest at 7-8; Invenergy Protest at 8; Exelon Comments at 4.

[45] Illinois Commission Protest at 8-9; Exelon Comments at 4.

[46] Invenergy Protest at 8-9; Illinois Commission Protest at 9.

[47] Ameren Answer at 5-6.

[48] *Id.* at 7 (citing *Ill. Power & Light Corp. v. Com. Comm'n*, 151 N.E. 236, 237 (Ill. 1926)).

it is not seeking a CPCN in the Petition, but rather an interpretation of the relevant Tariff provision, the latter of which is within the Commission's jurisdiction. Ameren contends that it is undisputed that Ameren meets the three-part test that it identifies for the first in the field doctrine.[49]

IV. Discussion

1. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2025), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2025), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Ameren's answer because it has provided information that assisted us in our decision-making process.

2. Substantive Matters

24. Declaratory orders to terminate a controversy or remove uncertainty are discretionary.[50] For the reasons set forth below, we exercise our discretion to decline to address Ameren's Petition at this time.

25. Ameren's State Action and Petition present two related questions. In the first, Ameren asks the Illinois court to declare that, under Illinois' first in the field doctrine, Ameren has the right to construct, own, and operate the WIIL and STIW projects without the requirement to participate in MISO's Competitive Developer Selection Process.[51] In the second, Ameren asks that we find that the first in the field doctrine is among the Applicable Laws and Regulations that grant Ameren a ROFR under section VIII.A.1 of Attachment FF of the Tariff. While distinct questions, resolution of either in Ameren's favor effectively would have the same outcome, i.e., granting Ameren the right to

---

[49] *Id.* at 9-10.

[50] *See, e.g.*, *New Eng. Ratepayers Ass'n*, 172 FERC ¶ 61,042, at P 35 (2020) (citing 5 U.S.C. § 554(e); *Cont'l Oil Co. v. FPC*, 285 F.2d 527, 527 (5th Cir. 1961) (per curiam); *Stowers Oil & Gas Co.*, 27 FERC ¶ 61,001, at 61,001 (1984); *Morgan Stanley Cap. Grp., Inc.*, 119 FERC ¶ 61,298, at P 17 (2007); *Ark. Power & Light Co.*, 35 FERC ¶ 61,358, at 61,818 (1986)).

[51] *Ameren Ill. Co. v. Midcontinent Indep. Sys. Operator, Inc.*, Complaint for Declaratory Judgment, Case No. 2025MR15, at 23 (Ill. 11th Cir. Ct. filed July 14, 2025).

construct, own, and operate the WIIL and STIW projects without participating in MISO's Competitive Developer Selection Process. We believe that the interpretation of Illinois' first in the field doctrine is a matter of state law, properly addressed in the first instance through the State Action. We are concerned that issuance of a merits order on the Petition at this time could conflict with subsequent Illinois court decisions or inappropriately interfere with the Illinois courts' consideration of Ameren's arguments in the State Action.[52]

26. Moreover, we interpret Ameren's Petition as seeking a finding that the first in the field doctrine provides Ameren with a ROFR not only for the WIIL and STIW projects, but also all subsequent transmission projects in Ameren's Illinois service territory that otherwise would be eligible to be included in MISO's Competitive Developer Selection Process. In this sense, Ameren appears to request a categorical finding from the Commission that the first in the field doctrine will always result in a finding that the doctrine applies. But in each of the cases cited by Ameren in setting forth the doctrine, first in the field determinations appear to have been made on the basis of a contemporaneous record.[53] Even assuming *arguendo* that Ameren's factual showing in the Petition were sufficient to find that the first in the field doctrine applies to the WIIL and STIW projects, the record with respect to future projects is not before us. Further, Ameren points to no case law in which the Illinois Commission or Illinois courts have applied the first in the field doctrine in this manner. Therefore, we believe that Ameren's request implicates a question of first impression under Illinois law, and we are not the correct forum for such a novel application of state law.[54]

27. For these reasons, we dismiss the Petition.

---

[52] *See S. Md. Elec. Coop., Inc.*, 157 FERC ¶ 61,118, at P 27 (2016).

[53] *See, e.g.*, *Illini State Tel. Co.*, 234 N.E.2d at 770-71 (summarizing facts found by the Illinois Commission); *Cont'l Air Transp. Co. v. Ill. Com. Comm'n*, 232 N.E.2d 728, 730-31 (Ill. 1967) (same); *Citizens Valley View Co.*, 192 N.E.2d at 395 (same); *Eagle Bus Lines v. Ill. Com. Comm'n*, 119 N.E.2d 915, 918-22 (Ill. 1954) (same); *Ill. Highway Transp. Co. v. Com. Comm'n*, 90 N.E.2d 86, 88-92 (Ill. 1950) (same); *Holland Motor Express, Inc. v. Ill. Com. Comm'n*, 520 N.E.2d 682, 683-86 (Ill. App. Ct. 1987) (same); *Danville Redipage, Inc. v. Ill. Com. Comm'n*, 410 N.E.2d 328, 329 (Ill. App. Ct. 1980) (same).

[54] *Cf. PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,254, at P 18 (2014) (stating that an issue of first impression on specific matters of tax law should be resolved by seeking a private letter ruling from the Internal Revenue Service).

<u>The Commission orders</u>:

Ameren's Petition is hereby dismissed, as discussed in the body of this order.

By the Commission. Chairman Swett is not participating.

(S E A L)

Debbie-Anne A. Reese,
Secretary.