

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

Improvements to Generator Interconnection Procedures and Agreements))))	Docket No. RM22-14-000
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COMMENTS OF VISTRA CORP.

Vistra Corp. (“Vistra”) welcomes the opportunity to provide comments to the Federal Energy Regulatory Commission (“FERC” or “Commission”) in response to the Commission’s Notice of Proposed Rulemaking on Improvements to Generator Interconnection Procedures and Agreements.¹ Vistra provides these comments from its perspective as a developer and owner of non-utility generation facilities. Our comments reflect our experience and investment in finding solutions that will support a transition of our generation fleet in line with Vistra’s carbon emission reduction goals. To accomplish these goals, we need interconnection policies that facilitate timely interconnections while maintaining a level playing field among all potential participants in a competitive solicitation.

I. EXECUTIVE SUMMARY

Vistra highlights the following key comments and recommendations:

- The majority of the proposed reforms address concrete problems with the current interconnection procedures.
 - In particular, Vistra supports the proposals that would provide additional information about potential interconnection points. Vistra also supports the proposal to allow sharing of upgrade costs across clusters.

¹ *Improvements to Generator Interconnection Procedures and Agreements, Notice of Proposed Rulemaking*, 179 FERC ¶ 61,194 (2022) (“NOPR”).

- However, the proposal to require a demonstration of commercial readiness to proceed in the interconnection process ignores the reality of competitive solicitations and unduly discriminates in favor of self-build options.
 - Our experience in California highlights the difficulty of basing interconnection priority on the ability of a third-party merchant project to execute a term sheet² prior to entering the interconnection queue.
 - The site control proposal is sound and accomplishes all that the Commission is attempting to accomplish with additional commercial readiness requirements.
 - To the extent the Commission wants additional criteria to establish that a project is not speculative, it should expand commercial readiness to include evidence of a pending permit application with meaningful progress to completion instead of relying on third-party PPAs.
- The proposed optional solicitation study has the potential to reduce transparency into competitive solicitations and prevent third-party merchant projects from offering to accept some risk related to interconnection costs.
 - The optional competitive solicitation process appears duplicative of the Informational Interconnection Study process that will provide project developers information about potential development locations.
 - Third-party merchant projects will decide how to reflect expected interconnection costs and associated uncertainty into competitive solicitation offers. Competitive solicitation decisions should not be based on the resource planning entity's assumption about how project developers will reflect expected interconnection costs and associated uncertainty in competitive solicitation offers.
 - Providing a vehicle for planning entities to gain information about possible interconnection costs could reduce transparency regarding solicitation decisions.
- The network upgrade cost allocation proposal is too vague to constitute sufficient notice. The Commission should provide an opportunity for comments once it has a more concrete proposal.
- In response to the Commission's encouragement for comments, Vistra supports allowing the transmission provider to use:
 - Sub-regional cluster studies when the sub-regions are sufficiently electrically independent.
 - Independent study processes for individual interconnection requests when the interconnection request is sufficiently electrically independent.

² The NOPR uses the phrase “executed term sheet (or comparable evidence).” We use the phrase “executed term sheet” throughout these comments for brevity.

II. VISTRA

Vistra owns and operates approximately 39,000 MW of generation and storage resources with a diverse portfolio of technologies, including natural gas, coal, nuclear, solar and battery storage facilities selling into the Electric Reliability Council of Texas, Inc. and five of the six FERC-jurisdictional organized markets (PJM Interconnection, L.L.C. (“PJM”), California Independent System Operator (“California ISO”), New York Independent System Operator, Inc., ISO New England Inc., and the Midcontinent Independent System Operator, Inc. (“MISO”)). We have announced a corporate initiative to reduce our carbon footprint by 60 percent by 2030 and achieve net-zero carbon emissions by 2050.³ We have retired since 2010 or announced plans to retire nearly 20,000 MW of fossil-fueled plants.

Through our Vistra Zero initiative, we currently have approximately 3,300 MW of zero carbon generation in operation, which we plan to grow to 7,300 MW by 2026. One element of this program is utilization of existing generation sites to develop zero carbon resources. For example, Vistra has co-located lithium-ion storage resources at our existing Moss Landing generation facility in California. Entering the third phase of this development, we will soon have 750 MW (3,000 MWh) of storage at Moss Landing, which is the largest storage facility of its kind in the world. At several sites of retired fossil-fueled plants in Illinois, in the MISO footprint, Vistra has announced plans to install solar and battery storage resources as part of the state’s coal-to-solar program. Through these, and other efforts, we have first-hand experience developing projects that reach commercial operation.

³ See Vistra Corp., 2021 Sustainability Report at 5, available at <https://vistracorp.com/wp-content/uploads/2022/05/VST-sustainability-report-2021.pdf>.

III. COMMENTS

A. **Vistra Generally Supports the Proposed Rule as Addressing Concrete Problems with the Existing Interconnection Procedures.**

Vistra generally supports the reforms proposed in the NOPR and believes that the reforms represent a balanced approach to speeding up the interconnection process.

1. The Proposal to Provide Additional Information Should Reduce the Number of Speculative Projects in the Interconnection Queue.

Vistra strongly supports the revisions⁴ aimed to provide additional information to prospective interconnection customers. We believe these reforms will complement the exclusive site control⁵ proposed reforms to provide an avenue for information for prospective interconnection customers who will now need to obtain exclusive rights to develop a location prior to entering the interconnection queue. Obtaining exclusive development rights is time-consuming, costly, and potentially disruptive to the local community and should thus only be done when there is a realistic chance the project will reach commercial operation. The information provided through the proposed information access reforms should allow project developers to focus on the most viable interconnection sites.

2. The Proposal to Facilitate Sharing of Upgrade Cost Among Clusters is Fair and Should Reduce the Competitive Disadvantage for Early Movers.

Vistra also supports the proposal⁶ to allow the sharing of upgrade costs among clusters. This proposal has the potential to mitigate the first mover disadvantage for the early developers in a previously undeveloped area.⁷ Given the lumpiness of transmission infrastructure

⁴ Informational Interconnection Study at NOPR PP 42-48 and Public Interconnection Information at NOPR PP 49-52.

⁵ NOPR at PP 115-123.

⁶ NOPR at PP 98-101.

⁷ The transmission planning reforms proposed in RM21-17-000, with the modifications outlined in Vistra's comments in that docket, could also mitigate the first mover disadvantage. However, the benefits from the transmission planning reforms will likely take considerable time to be realized.

investments, early movers are sometimes required to pay for upgrades that benefit later-in-time interconnection requests. Under the proposal, those costs can be shared with later clusters, which can help ensure that cost allocation is roughly commensurate with benefits.

In the Final Rule, the Commission should clarify how this proposal will work in areas like the California ISO where select network upgrade costs are initially financed by the interconnection customer but then reimbursed through transmission service credits, typically over 5 years in the California ISO.⁸ Vistra believes the proposed upgrade cost sharing reform will be beneficial in such areas as it will speed reimbursement relative to the status quo. That said, there is some potential that the timing of reimbursement under existing rules will overlap with reimbursement based on the network upgrade cost sharing proposal. When such an overlap exists, Vistra believes the proposed reform will appropriately charge later-in-time interconnection customers; but it may be more administratively efficient to allow reimbursement of upgrade costs to come from transmission customers rather than later-in-time interconnection customers.

B. The Proposed Commercial Readiness Requirements Ignore the Commercial Reality of Competitive Solicitations and Are Thus Unduly Discriminatory in Favor of Self-Build Options.

Vistra does not support the proposed requirement to demonstrate commercial readiness in order to enter the interconnection queue.⁹ Specifically, Vistra does not support the provision that would require a third-party merchant project to have an executed term sheet or executed contract “binding upon the parties to the contract, for sale of (1) the constructed generating facility, (2) the generating facility’s energy or capacity, or (3) the generating facility’s ancillary services;

⁸ CAISO Tariff, Appendix DD, Section 14.3.2.

⁹ NOPR at PP 128-137.

where the term of sale is not less than five years to proceed in the interconnection process.”¹⁰

This element of the demonstration of commercial readiness proposal is likely the only avenue a third-party merchant project seeking sell to a load serving entity or end-use customer will be able to use to demonstrate commercial readiness. The NOPR proposes to allow demonstration of commercial readiness by showing that a project has been selected for a load serving entity’s resource plan or is being developed for purposes of a sale to a commercial, industrial, or other large end-use customer. However, the vast majority of load serving entities and large end-use customers will not contract with an unaffiliated third party without a term sheet or contract procured through some form of a competitive solicitation.

The increased study deposit, withdrawal penalties, and exclusive site control requirements that are also proposed in the NOPR, and which Vistra supports, should significantly reduce the number of speculative projects entering the interconnection queue. The commercial readiness proposal is thus largely redundant. Further, the commercial readiness proposal ignores the commercial reality of the competitive solicitation process. While the Commission has already accepted requirements to demonstrate commercial readiness, it has done so based on fact-specific showings. As the Commission recognized,¹¹ a generic requirement to demonstrate commercial readiness will create an undue preference for self-build options in areas that rely on competitive solicitations.

The opportunity to provide a deposit in lieu of the demonstration of commercial readiness does not cure the potential for undue discrimination. The deposit, particularly in light of the increased withdrawal penalties,¹² will make merchant projects less competitive by raising up-

¹⁰ NOPR at PP 129 & 130.

¹¹ NOPR at P 132.

¹² NOPR at P 143.

front costs and increasing risk. If the Commission believes it needs additional requirements to avoid speculative projects, it should allow an interconnection customer to demonstrate commercial readiness through a pending permit application with meaningful progress.

1. The Study Deposit, Withdrawal Penalty, and Exclusive Site Control Proposals are Sound and Accomplish Everything the Commission is Attempting to Accomplish Through the Demonstration of Commercial Readiness Proposal.

The proposed requirement to demonstrate commercial readiness in order to enter the interconnection queue is premised on the need to prevent speculative projects from entering the interconnection queue.¹³ The other proposed reforms in the NOPR will reduce the potential for speculative projects. In particular, the requirement to demonstrate exclusive site control in order to enter the interconnection queue will create a barrier for projects that do not have a significant chance to reach commercial operation. As noted above, obtaining exclusive site control is time-consuming and costly, in part because it often requires outreach with local communities to gain support for new commercial development. The exclusive site control proposal alone will create a significant disincentive to seek to interconnect a speculative project.

In addition, the proposed increase in study deposits and the introduction of significant withdrawal penalties will encourage developers to pursue interconnection for only those projects they expect will reach commercial operation. Taken together, the other proposals in the NOPR will accomplish all that the Commission seeks to accomplish through the demonstration of commercial readiness proposal.

¹³ NOPR at P 127 (“we believe that the existing *pro forma* LGIP requirements may be insufficient because they do not require customers to demonstrate commercial readiness early enough in the study process to deter interconnection customers from submitting interconnection requests for, and continuing in the interconnection queue, speculative proposed generating facilities.”)

Considering the other reforms in the NOPR, the Commission has not shown that a demonstration of commercial readiness is necessary to make the interconnection process just and reasonable and not unduly discriminatory or preferential. It is notable that the NOPR's need for reform discussion related to the demonstration of commercial readiness proposal is limited to noting that some transmission providers have requested the inclusion of a demonstration of commercial readiness proposal in their own interconnection procedures.¹⁴ The fact that the Commission has accepted a transmission provider's revised LGIP under section 205 does not establish that the *pro forma* LGIP is unjust and unreasonable without the commercial readiness proposal.

2. Basing Interconnection Eligibility on Selection in a Competitive Solicitation Process Creates a Chicken-and-Egg Problem and Provides an Undue Preference for Utility Self-Build Proposals.

Based on our experience in California, the commercial readiness proposal ignores the commercial reality of the competitive solicitation process. The timing and evaluation criteria of competitive procurements in California is such that an interconnection customer with a third-party merchant project may need to enter the interconnection queue well before it has an executed term sheet. Similarly, the timing and evaluation criteria of competitive procurements is such that a third-party merchant project is very unlikely to have an executed qualifying contract prior to entering the facilities study. This disconnect is particularly difficult to manage in markets, like California, that are short resources and need to do near-term procurements to become resource sufficient. In these markets, the competitive solicitation and interconnection processes need to proceed in parallel. For solicitations that require commercial operation further out in time, having a clear line of sight to a signed interconnection agreement gives a project a

¹⁴ NOPR at PP 125.

competitive advantage in the solicitation. In this circumstance, a project will have a strong incentive to enter the interconnection queue prior to entering a competitive solicitation.

The Commission's proposal to allow an optional Resource Solicitation Study seems to recognize this reality by allowing a qualifying resource planning entity to "play a facilitation role in helping group together and organize interconnection requests associated with the resource planning entity's qualifying resource solicitation process or qualifying resource plan."¹⁵ Under the Commission's proposed requirement to demonstrate commercial readiness, the only way for the interconnection requests that would be studied in the optional Resource Solicitation Study to enter the interconnection queue in the first place would be to pay a deposit in lieu.

Beyond simple timing concerns, procurement decisions and eligibility to enter the interconnection queue are inter-related in a way that creates a chicken-and-egg problem. It is difficult for a project to be shortlisted for procurement without line of sight to obtaining a signed interconnection agreement as the signed interconnection agreement brings more certainty to the project's commercial operation date. Further, it is exceedingly rare for a generator to reach commercial operation without an executed power purchase agreement. Vistra is concerned that the Commission's proposal to require an executed term sheet to enter the interconnection queue and an executed contract to enter the facilities study process will simply shift the burden of this chicken-and-egg problem to the procurement process. We believe the status quo appropriately balances the inherent difficulty of coordinating procurement and interconnection.

The proposal could also increase transaction costs. Under the Commission's proposal, projects will have an incentive to execute term sheets with a specified commercial operations date prior to entering the interconnection process only to discover the cost of interconnection

¹⁵ NOPR at P 224.

later or learn that the commercial operations date exceeds what they committed to in their executed term sheet. Term sheets will need to include this risk of higher-than-expected interconnection costs or infeasible commercial operation dates,¹⁶ likely increasing the costs to consumers.¹⁷ In extreme cases, one could imagine a developer choosing to withdraw from the interconnection process after learning the cost of interconnecting or infeasible commercial operations date and needing to terminate an executed term sheet or contract. In that case, the purchaser will need to start the procurement process over or choose to over-procure as insurance against potential contract termination to the detriment of reliability and cost. In this sense, terminating a term sheet or executed contract is substantially more disruptive than dropping out of a competitive solicitation.

Given this commercial reality, a generic requirement to demonstrate commercial readiness via an executed term sheet or executed contract will create an undue preference for self-build options as the Commission recognized in the NOPR.¹⁸ A project by the load serving entity or large end-use customer will be able to demonstrate commercial readiness where essentially no third-party merchant project participating in a competitive solicitation will be able to do so. At the very least, this requirement will discourage the use of competitive solicitations due to the unintended consequences outlined above to the significant detriment of consumers.¹⁹

The opportunity to provide a deposit in lieu of the demonstration of commercial readiness does not cure the potential for undue discrimination. The deposit, particularly in combination

¹⁶ An infeasible commercial operations date in the executed term sheet in this context is one where the Interconnection Agreements commercial operations date is beyond the date or any allowed delays in the executed term sheet.

¹⁷ Vistra acknowledges that the Interconnection Information Access reforms will mitigate some of this concern.

¹⁸ NOPR at P 132.

¹⁹ John D. Wilson, Mike O’Boyle, Ron Lehr, and Mark Detsky, “Making the Most of the Power Plant Market: Best Practices for All-Source Electric Generation Procurement,” April 2020 available at <https://energyinnovation.org/wp-content/uploads/2020/04/All-Source-Utility-Electricity-Generation-Procurement-Best-Practices.pdf>

with the increased withdrawal penalties,²⁰ will make merchant projects less competitive than a self-build option as it raises up-front costs and increases risk. At the very least the Commission should decline to impose higher withdrawal penalties for interconnection requests that use a deposit in lieu of a demonstration of commercial readiness.

3. To the Extent the Commission Wants Additional Criteria to Establish That a Project Is Not Speculative, It Should Expand Commercial Readiness to Include Evidence of a Pending Permit with Meaningful Progress.

In response to the Commission request for comments,²¹ we urge the Commission to allow additional demonstrations of commercial readiness if it chooses to retain the requirement to demonstrate commercial readiness. Projects must apply for a variety of permits. In the course of developing the project, a resource owner needs to commit significant financial resources (often in the millions of dollars) to proceed through the permit process. The Commission should allow a project to show commercial readiness by providing evidence that it has applied for relevant permits and is making meaningful progress, with the attendant financial commitment, to completing the permit process.

C. The Proposed Optional Resource Solicitation Study Has the Potential to Reduce Transparency into Competitive Solicitations and Prevent Third-party Projects from Offering to Accept Some Risk Related to Interconnection Costs.

As noted above, the optional Resource Solicitation Process appears to conflict with the requirement to demonstrate commercial readiness based on an executed term sheet or contract. Given the requirement to demonstrate commercial readiness, there will likely be few projects capable of entering the interconnection queue and thus able to be included in the optional Resource Solicitation Study.

²⁰ NOPR at P 143.

²¹ NOPR at P 137.

Further, the optional Resource Solicitation Study appears largely duplicative of the Interconnection Information Access reforms. The information access reforms provide a welcome addition to allow prospective interconnection customers to gain information about interconnection costs. Developers should be allowed to gather the information they deem necessary prior to offering into a competitive solicitation.

In that vein, Vistra is concerned that the optional Resource Solicitation Study will reduce transparency into competitive solicitations and may interfere with commercial decisions project developers make when offering into competitive solicitations. It is not clear why the Resource Solicitation Study will provide better information about an individual project than the Informational Interconnection study. Further, it will not be transparent how a resource planning entity will incorporate into the solicitation selection process the expected interconnection costs and the associated uncertainty around the expected costs that come out of the Resource Solicitation Study. Resource developers use commercial judgment to manage a variety of risks. It would be more efficient and transparent to allow the resource owner to decide how to reflect expected interconnection costs and associated cost uncertainty in competitive solicitation offers and then allow competitive solicitations to clear based on those offers.

D. The Network Upgrade Cost Allocation Proposal is Too Vague to Constitute Sufficient Notice and the Commission Should Provide an Opportunity for Additional Comments Once it Has a More Concrete Proposal.

The Commission should not move forward with the network upgrade cost allocation proposal²² until it offers a more concrete proposal which entities can review and provide additional comments. At this point, the proposal is simply too vague to constitute sufficient notice that affords entities such opportunity. The Commission has provided limited specificity

²² NOPR at PP 88-89.

about how proportional impact will be measured. As evidenced by the variety of methods described in the relevant background section,²³ a proportional impact method could take a variety of forms, none of which are articulated in the NOPR. At a minimum, the Commission should offer high-level parameters that will inform entities of the nature of the proposal, and allow the opportunity to comment before issuing the Final Rule. Without this opportunity, the Commission will have not provided sufficient notice.

Further, adopting a Final Rule that contains only the very high-level requirement to allocate costs based on proportional impact simply defers the Commission's determination on important implementation details to litigation over the individual compliance filings that will be submitted. Moreover, without sufficient detail, the Commission will arguably need to accept any set of technical details as in compliance with the requirement to allocate network upgrade costs based on proportional impact. For all of these reasons, Vistra encourages the Commission to develop a specific proposal on how network upgrade costs should be allocated, and allow an opportunity to comment, before proceeding to a Final Rule on this issue.

E. Response to the Commission's Encouragement for Comments

The Commission should continue to provide flexibility to transmission providers to study a subset of interconnection requests in a sub-regional cluster study or an individual interconnection request that is sufficiently electrically independent of the requests in the current cluster.

1. The Commission Should Allow Sub-regional Cluster Studies when the Sub-regions are Sufficiently Electrically Independent.

Vistra supports giving transmission providers the flexibility to conduct sub-regional cluster studies when the sub-regions are sufficiently electrically independent. Doing so may

²³ NOPR at P 85 and P 87.

allow a relatively less constrained region's study to proceed quickly even if the studies for more constrained regions proceed based on the newly proposed binding study timeline.

2. *The Commission Should Continue to Allow Independent Study Processes for Individual Interconnection Requests When the Interconnection Request is Sufficiently Electrically Independent.*

Vistra supports giving transmission providers the flexibility to conduct independent studies for individual interconnection requests that are sufficiently electrically independent. Based on our experience in California ISO, the electrical independence standard is difficult to establish. Nonetheless, the opportunity for a more timely interconnection is valuable in the rare instance when an interconnection request is able to establish electrical independence.

IV. CONCLUSION

With the changes discussed within these comments the NOPR would represent a balanced approach to speeding the interconnection process. Without the changes discussed, the NOPR could significantly undermine competitive procurement processes that are capable of delivering significant value to consumers.

Respectfully submitted,

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