

Vistra Corp.'s Stakeholder Feedback to the Illinois Power Agency's Proposal for Adjusting the Indexed REC Procurement Process

I. Introduction

Vistra Corp. (Vistra) is providing feedback on the Illinois Power Agency's (IPA) "Draft Proposal for Adjusting the Indexed REC Procurement Process" released by the IPA on January 17, 2025 (IPA Draft Proposal). Vistra is engaged in the development of renewable energy projects in Illinois and has participated in IPA procurement events to acquire renewable energy credits (RECs) from utility-scale solar and brownfield photovoltaic generation projects Vistra has developed and is developing. Vistra anticipates it will participate in future Indexed REC procurement events. Vistra generally agrees with the proposed adoption of an inflation adjustment mechanism for the contracted strike price, but offers specific revisions to the IPA's proposed inflation adjustment mechanism, below. Vistra has no specific revisions or other comments on the IPA's proposed change to the delivery obligations section of the form Indexed REC contract to subsequently reduce the originally-contracted number of RECs to be delivered annually in the event of certain specified occurrences.

Because (as discussed below) IPA's proposed inflation adjustment mechanism does not include several necessary details, IPA proposes that these details be worked out in the development of IPA's upcoming Summer 2025 Indexed REC procurement event. Vistra submits that because (it appears) the proposal IPA submits to the ICC on February 19, 2025 as a compliance filing will not be complete and "shovel-ready," a subsequent date for stakeholder comment to the ICC on the IPA proposal when it is deemed complete should be added to the IPA's proposed timeline. Further, the final, complete IPA proposal for the post-contract award adjustment mechanism should be subject to approval by the ICC.

II. Feedback on the Proposed Inflation Adjustment Mechanism

Vistra generally supports IPA's Draft Proposal to provide for an optional inflation adjustment to a successful bidder's contracted Indexed REC strike price. Specifically, Vistra agrees that:

- (i) the inflation adjustment should be based on one or more published, publicly available inflation indices (e.g. by the U.S. Department of Labor Bureau of Labor Statistics) that are relevant to costs incurred in the development of a renewable energy project;
- (ii) the adjustment mechanism should be based, to the extent practicable, on a published inflation index or indices applicable to Illinois or a region that includes Illinois;
- (iii) the adjustment should be based on the change(s) in the inflation index or indices between bid selection date and the "start of construction" (to be defined) on a project; and
- (iv) there should be a minimum percentage increase in the inflation adjustment value between the date of contract award and "start of construction" in order for the

inflation adjustment to be applied. Vistra proposes that this minimum be a 5% increase in the inflation calculation between bid selection date and “start of construction.” Providing for such a “floor” is appropriate to reflect that bidders should be prepared (including by having sufficient capital and financing resources) to bear some degree of risk of increases in project costs.¹ Administratively, a “floor” will enable the IPA to avoid having to deal with increases in contracted strike prices based on relatively minor cost increases.²

Vistra also believes that, to the extent practicable, the inflation adjustment calculation should be the weighted result of changes in specified published inflation indices applicable to different typical project components. The weighting would be based on the percentage of total project costs each underlying component represents in a typical or model renewable generation project of each technology type. This level of detail to the inflation adjustment calculation is not yet reflected in the IPA Draft Proposal.

Vistra agrees there should be technology-specific inflation index-based adjustments for utility-scale wind projects, utility-scale solar projects, and hydropower projects. However, Vistra believes there should also be technology-specific inflation-index based adjustments specifically applicable to brownfield photovoltaic projects. Brownfield photovoltaic projects face unique development and cost challenges, even as compared to non-brownfield utility-scale solar projects. Chief among these unique challenges are site remediation and preparation costs, which are different in both type and cost from those encountered by other renewable generation projects and can be impacted by new or changing environmental requirements pertaining to site remediation that do not apply to other renewable energy projects including solar.

Additionally, Vistra believes separate, one-time post-contract award strike price adjustments should be allowed for (i) increases in interconnection facilities costs, (ii) increases in transmission upgrade costs that the project developer is responsible for (as those costs are determined by the applicable RTO or ISO), and (iii) for brownfield photovoltaic projects, increases in site remediation and preparation costs in response to requirements or directives of applicable environmental regulation authorities.³ Unlike cost increases due to general inflation which impacts costs for labor, materials, and technology incurred by all projects of a technology type, increases in interconnection facilities costs, transmission upgrades costs, and (for brownfield projects) site remediation and preparation costs due to new regulatory requirements, will likely be unique to each project, may vary widely among projects, and likely will not be fully captured by a general

¹ Adopting a “ceiling” on post-contract award price increases as well is not necessary because the statutory RPS rate cap effectively provides a ceiling – a contracted strike price cannot be increased beyond the amount that triggers the statutory rate cap.

² An alternative to having a minimum percentage increase in the strike price based on the inflation adjustment calculation would be to provide that any inflation-based strike price adjustment will be less than 100% of the calculated percentage increase in the inflation index (*e.g.* only 90%).

³ An example of (iii) would be adoption of a regulation or permit condition by the Illinois Environmental Protection Agency, subsequent to REC contract award, requiring increased site remediation activities and costs beyond those contemplated in a bidder’s original strike price bid.

inflation-based index or indices. Any proposed strike price adjustment based on one of these three causes would need to be demonstrated and supported by the requesting bidder by a showing of the actual increase in interconnection facilities costs, transmission upgrade costs, or site remediation and preparation costs, compared to the values the bidder used in developing its original strike price bid. Correspondingly, it would also be appropriate, to avoid double-counting, to reduce any strike price increase based on the inflation adjustment mechanism by the percentage of total project costs used by the bidder in developing its original bid that were for interconnection facilities, transmission upgrades, or brownfield site remediation and preparation costs.

III. Timeline for Adoption of the Final IPA Proposal

As noted above, the IPA's Draft Proposal leaves a number of important details of the inflation-adjustment mechanism undefined, apparently to be worked out in the process of implementing the IPA's Summer 2025 Indexed Rec procurement event.⁴ The outstanding details to be worked out include (i) the specific inflation index or indices to be used; (ii) the weighting to be assigned to each inflation index (if more than one are used) based on the percentage of the typical project costs represented by each index to typical total project costs; (iii) the criteria to be used to determine the date "start of construction" occurs for a project; and (iv) the minimum inflation-based percentage increase in the inflation index-based adjustment mechanism before a post-contract award increase in the contracted strike price is allowed.

The IPA's proposed timeline leading up to the posting, at the end of May 2025, of a "Final Indexed REC Contract and Inflation Adjustment Mechanism Formula" for IPA's Summer 2025 Indexed REC procurement event does not provide for a review and ruling by the ICC on whether the IPA's final proposal should be adopted. This is particularly noteworthy given that the Draft Proposal is not, and it appears the February 19 compliance filing will not be, a complete and final proposal. Accordingly, Vistra submits that the timeline should provide an opportunity to file comments on the proposal with the ICC when the proposal is final and complete; and for a ruling by the ICC approving, rejecting, or approving with modifications the IPA's final proposal.

IV. Applicability of the Proposed Adjustment Mechanism to Previously-Selected Projects

In terms of applicability of the post-contract award strike price adjustment, Vistra submits it should be available for both (i) projects that are selected to provide RECs in the Summer 2025 Indexed REC procurement event and subsequent Indexed REC procurements, and (ii) projects selected in previous Indexed REC procurement events that have not yet reached "start of construction." Vistra notes that if the post-contract award adjustment mechanism is not made available to previously-selected projects that have not started construction, many of those

⁴ The lack of these details in the Draft Proposal should not be taken as criticizing IPA's efforts in developing the Draft Proposal. The schedule imposed by the Commission's Order in Docket 23-0714 afforded the IPA a limited time to conduct stakeholder workshops (to include the procedures used in other states to address the problems of renewable projects not getting completed due to cost increases making contracted prices insufficient to cover costs), develop a proposal, and file that proposal with the Commission as a compliance filing by February 19, 2025.

developers may simply cancel their Indexed REC contracts and rebid their projects in the Summer 2025 or subsequent Indexed REC procurements, thereby ultimately delaying these projects in reaching commercial operation.

V. Need for Estimates of Impacts to Electricity Customer Bills and the RPS Rate Cap

Finally, Vistra continues to believe that the IPA (or the ICC) should prepare estimates of the impacts on electricity customer bills and on the statutory RPS rate cap of various potential levels of post-contract award strike price increases that could hypothetically result from implementation and activation of the IPA Draft Proposal. If modest increases in strike prices due to implementation of the proposed post-contract award adjustment mechanism trigger the statutory rate cap, then the post-award adjustment mechanism will accomplish little or nothing to alleviate or ameliorate the underlying concern, that is, the failure of renewable energy projects selected in IPA procurement events and awarded REC contracts to ever reach commercial operation (absent a further increase in the rate cap).

Questions concerning Vistra's feedback should be directed to:

Jeffrey Ferry
Sr. Director Government Affairs
217-519-4762
Jeffrey.ferry@vistracorp.com