



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
AND THE OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
RELATED TO THE VISTRA OPERATIONS COMPANY LLC AND
ENERGY HARBOR NUCLEAR CORP. REQUEST FOR
DIRECT AND INDIRECT TRANSFER OF CONTROL OF
RENEWED FACILITY OPERATING LICENSE NOS. DPR-66, NPF-73, AND NPF-3;
FACILITY OPERATING LICENSE NOS. NPF-87, NPF-89, AND NPF-58;
AND THE GENERAL LICENSES FOR
THE ASSOCIATED INDEPENDENT SPENT FUEL STORAGE INSTALLATIONS
COMANCHE PEAK NUCLEAR POWER PLANT, UNIT NOS. 1 AND 2
BEAVER VALLEY POWER STATION, UNIT NOS. 1 AND 2
DAVIS-BESSE NUCLEAR POWER STATION, UNIT NO. 1
PERRY NUCLEAR POWER PLANT, UNIT NO. 1
DOCKET NOS. 50-445, 50-446, 72-74, 50-334, 50-412, 72-1043,
50-346, 72-14, 50-440, 72-69

1.0 INTRODUCTION

By application dated April 14, 2023 (Agencywide Documents Access and Management System Accession No. ML23104A422), as supplemented by letters dated April 20, 2023 (ML23110A788), August 7, 2023 (ML23219A106), and September 12, 2023 (ML23255A061), Vistra Operations Company LLC (VistraOps), on behalf of itself, Comanche Peak Power Company LLC (CPPC) and certain other affiliates, and Energy Harbor Nuclear Corp. (EHNC), acting on behalf of itself and Energy Harbor Nuclear Generation LLC (EHNG) (collectively, the Applicants), requested, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (the Act), and Title 10 of the *Code of Federal Regulations* (10 CFR) Sections 50.80, "Transfer of licenses," and 72.50, "Transfer of license," that the U.S. Nuclear Regulatory Commission (NRC, the Commission) consent to the indirect transfer of control of Facility Operating License Nos. NPF-87 and NPF-89 for Comanche Peak Nuclear Power Plant (Comanche Peak), Unit Nos. 1 and 2, respectively, and its generally licensed independent spent fuel storage installation

(ISFSI), and the direct and indirect transfer of control of the following licenses and their respective generally licensed ISFSIs (collectively, the Licenses):

- Renewed Facility Operating License Nos. DPR-66 and NPF-73 for Beaver Valley Power Station (Beaver Valley), Unit Nos. 1 and 2, respectively;
- Renewed Facility Operating License No. NPF-3 for Davis-Besse Nuclear Power Station, Unit No. 1 (Davis-Besse); and
- Facility Operating License No. NPF-58 for Perry Nuclear Power Plant, Unit No. 1 (Perry).

Specifically, the application requests that the NRC consent to the license transfers resulting from a proposed transaction, as further described in a Transaction Agreement, pursuant to which VistraOps will indirectly acquire Energy Harbor Corp. (EHC) and its subsidiaries and will restructure the upstream ownership of Comanche Peak. As part of the proposed transaction, EHNC's and EHNG's parent, EHC, will become an indirect subsidiary of VistraOps via merger (such indirect subsidiary that will survive the merger is referred to herein as VOC Sub). Following such merger, VOC Sub's indirect parent company, tentatively referred to as Special Purpose Entity 2 LLC (Vistra Vision), will be indirectly owned and controlled by VistraOps, which will have an 85 percent ownership interest in Vistra Vision, and the remaining 15 percent ownership interest will be held by certain former shareholders of EHC, accounts managed by Avenue Capital Management II, L.P. (Avenue) and Nuveen Asset Management, LLC (Nuveen), and potentially certain other investors. As a result of the proposed transaction, EHNC and EHNG will become indirect subsidiaries of VistraOps. For business and tax purposes, the proposed transaction will also create three new indirect subsidiaries of VistraOps between VistraOps and CPPC, resulting in an indirect transfer of control of the Comanche Peak licenses.

Pursuant to 10 CFR 50.90, "Application for amendment of license, construction permit, or early site permit," the application also requests conforming amendments to the Licenses to reflect the proposed transfer.

2.0 BACKGROUND

Comanche Peak is a two-unit nuclear power plant located in Glen Rose, Texas (40 miles southwest of Fort Worth, Texas). The operating license for Comanche Peak, Unit No. 1 was issued in 1990 and currently expires in 2030, and the operating license for Comanche Peak, Unit No. 2 was issued in 1993 and currently expires in 2033. On October 3, 2022, VistraOps submitted an application to renew these licenses until 2050 and 2053, respectively (ML22276A082). On November 23, 2022, the NRC determined that this license renewal application contained sufficient information for the agency to formally docket the application and begin its safety and environmental reviews (87 FR 73798). The Comanche Peak license renewal application remains under review by the NRC staff. Both units are Westinghouse four-loop pressurized-water reactors that are licensed to operate at 3,612 megawatts-thermal (MWt).

Beaver Valley is a two-unit nuclear power plant located in Shippingport, Pennsylvania (17 miles west of McCandless, Pennsylvania). The operating license for Beaver Valley, Unit No. 1 was issued in 1976 and renewed in 2009, and the operating license for Beaver Valley, Unit No. 2 was issued in 1987 and renewed in 2009. The units are licensed to operate under the renewed licenses until 2036 and 2047, respectively. Both units are Westinghouse three-loop pressurized-water reactors that are licensed to operate at 2,900 MWt.

Davis-Besse is a single-unit nuclear power plant located in Oak Harbor, Ohio (21 miles east/southeast of Toledo, Ohio). The operating license was issued in 1977 and renewed in 2015. Davis-Besse is licensed to operate under the renewed license until 2037. The unit is a Babcock & Wilcox raised-loop pressurized-water reactor that is licensed to operate at 2,817 MWt.

Perry is a single-unit nuclear power plant located in Perry, Ohio (approximately 35 miles northeast of Cleveland, Ohio). The operating license was issued in 1986. Perry is currently licensed to operate until 2026. On July 3, 2023, EHNC submitted an application to renew the license until 2046 (ML23184A081) and that application is currently undergoing NRC staff acceptance review. The unit is a General Electric boiling-water reactor, type BWR/6, that is licensed to operate at 3,758 MWt.

3.0 REGULATORY EVALUATION

As described in the application, the proposed transaction constitutes a direct and indirect transfer of control of the Licenses, which requires prior NRC approval. The NRC regulations for the transfer of control of reactor and ISFSI licenses are provided in 10 CFR 50.80 and 72.50, respectively. In addition, pursuant to 10 CFR 2.1315, "Generic determination regarding license amendments to reflect transfers," where administrative license amendments are necessary to reflect an approved license transfer, such amendments will be included in the order that approves the license transfer.

3.1 Reactor Licenses

The NRC regulation in 10 CFR 50.80(a) states, in part, that:

No license for a ... utilization facility ... or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

The regulation at 10 CFR 50.80(b) states, in part, that an application for a license transfer shall include as much of the information described in 10 CFR 50.33, "Contents of applications; general information," and 10 CFR 50.34, "Contents of applications; technical information," "with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license."

Section 50.80(c) of 10 CFR states, in part, that:

[T]he Commission will approve an application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

In 10 CFR 50.33(a) through (c), the NRC requires applicants to provide the name, address, and a description of the business or occupation of the applicant. The application must also provide the following information in accordance with 10 CFR 50.33(d):

- (1) If applicant is an individual, state citizenship.

- (2) If applicant is a partnership, state name, citizenship and address of each partner and the principal location where the partnership does business.
- (3) If applicant is a corporation or an unincorporated association, state: (i) The State where it is incorporated or organized and the principal location where it does business; (ii) The names, addresses and citizenship of its directors and of its principal officers; (iii) Whether it is owned, controlled, or dominated by an alien, a foreign corporation, or foreign government, and if so, give details.
- (4) If the applicant is acting as agent or representative of another person in filing the application, identify the principal and furnish information required under this paragraph with respect to such principal.

Except for an electric utility applicant for a license to operate a utilization facility of the type described in 10 CFR 50.21(b) or 50.22, 10 CFR 50.33(f) requires each application to provide "information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought." An electric utility is defined in 10 CFR 50.2, "Definitions," as "any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority."

In addition, 10 CFR 50.33(k)(1) requires that applicants provide the information described in 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

The regulation under 10 CFR 50.75 specifies how a licensee will provide reasonable assurance that funds will be available for the decommissioning process. Specifically, 10 CFR 50.75(b) requires that decommissioning financial assurance be provided in an amount not less than the minimum formula amount in 10 CFR 50.75(c). The methods acceptable to the NRC for providing this decommissioning financial assurance, which includes using nuclear decommissioning trust (NDT) funds, are provided in 10 CFR 50.75(e). Additional requirements for the reporting and management of NDT funds are provided in 10 CFR 50.75(f) and (h). In accordance with 10 CFR 50.2, "*Decommissioning* means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) release of the property for unrestricted use and termination of the license; or (2) release of the property under restricted conditions and termination of the license."

The NRC staff applies the guidance in NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," dated December 2001 (ML013330264), to evaluate the financial qualifications and methods of providing decommissioning funding assurance of applicants affected by proposed license transfers.

In addressing foreign ownership, control, or domination (FOCD) issues, Sections 103d and 104d of the Act provide, in relevant part, that no license may be issued to the following:

[A]ny corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

The FOCD provisions of the Act are implemented in 10 CFR 50.38, "Ineligibility of certain applicants." The NRC staff evaluates license transfer applications using the guidance provided in the NRC "Final Standard Review Plan on Foreign Ownership, Control, or Domination" published in the *Federal Register* on September 28, 1999 (64 FR 52355) (SRP on FOCD), to determine whether the proposed transferee is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

In 10 CFR 50.34(b)(6), the NRC requires applicants to provide certain information on facility operation, including: (i) the applicant's organizational structure, allocations or responsibilities and authorities, and personnel qualifications requirements; and (ii) managerial and administrative controls to be used to assure safe operation. In 10 CFR 50.34(b)(7), the NRC also requires applicants to provide "[t]he technical qualifications of the applicant to engage in the proposed activities in accordance with the regulations in this chapter."

NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR [Light-Water Reactor] Edition," Chapter 13, "Conduct of Operations," provides the NRC staff guidance for reviewing the technical qualifications of the applicant for a license transfer. The following sections in NUREG-0800 are applicable to this review:

- Section 13.1.1, "Management and Technical Support Organization," Revision 6, dated August 2016 (ML15005A449). The management and technical support organizations established by the applicant to oversee the design and construction of a nuclear power plant provide valuable insights into the corporate management's understanding of its safety role in the operation and maintenance of the facility as well as its design and construction. The NRC staff used this guidance to review the acceptability of the potential changes to the corporate-level management and technical support organization as a result of the proposed license transfer.
- Section 13.1.2-13.1.3, "Operating Organization," Revision 7, dated August 2016 (ML15007A296). For license transfers, the operating organization was found to be acceptable as part of the initial licensing review. The operating organization established by the applicant to oversee the operation of a nuclear power plant provides insights into management's understanding of its safety role in the operation and maintenance of the facility. The key positions for ensuring the safe operation of the plant are in the operating organization. The NRC staff used this guidance to determine whether the applicant is technically qualified by ensuring that the applicant addresses appropriate considerations in establishing general qualification requirements and staffing levels for all key positions on which the safety of the facility depends.

The NRC staff also reviews information that relates to nuclear onsite property damage insurance requirements under 10 CFR 50.54(w) and the Price-Anderson insurance and indemnity requirements under Section 170 of the Act and 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements."

In accordance with 10 CFR 50.90, the application requests conforming amendments to the power reactor licenses to reflect the proposed license transfer. The regulation in 10 CFR 50.90 requires, in part, an application for a license amendment to fully describe the changes desired, and follow as far as applicable, the form prescribed for original applications.

3.2 Independent Spent Fuel Storage Installation Licenses

The regulation at 10 CFR 72.6(a) states, in part, that:

Licenses for the receipt, handling, storage, and transfer of spent fuel or high-level radioactive waste are of two types: general and specific.... Any general license provided in [10 CFR Part 72] is effective without the filing of an application with the Commission or the issuance of a licensing document to a particular person. A specific license is issued to a named person upon application filed pursuant to regulations in this part.

The ISFSIs at Comanche Peak, Beaver Valley, Davis-Besse, and Perry are all generally licensed in accordance with 10 CFR 72.210, "General license issued." The regulations in 10 CFR 72.13(c) identify the sections of 10 CFR Part 72 that apply to activities associated with a general license.

The requirements for the transfer of an ISFSI license are provided in 10 CFR 72.50. This regulation states, in part, that:

No license or any part included in a license issued under [10 CFR Part 72] for an ISFSI ... shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

4.0 FINANCIAL QUALIFICATIONS

The information provided in accordance with 10 CFR 50.33(f) must show that the applicant possesses, or has reasonable assurance of obtaining, the funds necessary to cover estimated operating costs for the period of the license. In making this showing, the applicant must submit estimated total annual operating costs for each of the first 5 years of facility operations and indicate the sources of funds to cover these costs. For license transfers, the relevant 5-year period is that time immediately following the proposed transfer.

The application states that the proposed transaction will not change the role of CPPC as the licensed owner of Comanche Peak and will not change the role of EHNG as the licensed owner of Beaver Valley, Davis-Besse, and Perry and will not result in any adverse changes to their financial qualifications or decommissioning funding assurance.

The NRC staff determined that CPPC and EHNG must meet the financial qualifications requirements for a non-electric utility pursuant to 10 CFR 50.33(f). In the Application, the applicants noted that the facility owners will have the benefit of the power output of the plants. In the proprietary sections of the Application, the Applicants provided 5-year *pro forma* financial statements (projected income statement, balance sheet, and statement of cash flow) for each plant (Comanche Peak, Beaver Valley, Davis-Besse, and Perry). The projected income statement for Comanche Peak for CPPC is summarized in Table 1. The projected income statement for Beaver Valley, Davis-Besse, and Perry for EHNG is summarized in Table 2.

Table 1: Summary of Projected Income Statement for CPPC (\$ in millions)

Year	2024	2025	2026	2027	2028
Total Revenues	[[
Operating Expenses					
Other Income/(Expenses)					
Income Before Taxes					
Net Income]]

Table 2: Summary of Projected Income Statement for EHNG (\$ in millions)

Year	2024	2025	2026	2027	2028
Total Revenues	[[
Operating Expenses					
Other Income/(Expenses)					
Income Before Taxes					
Net Income]]

The NRC staff determined that the projected income statements for CPPC and EHNG provide the information necessary to evaluate financial qualifications with respect to the proposed transaction. This information includes revenue, expense, and net income for operations and maintenance with respect to the facilities that will be indirectly owned by VistraOps through its subsidiaries. The projection shows [[

]]. The NRC staff determined that this projection demonstrates that CPPC and EHNG have reasonable assurance of obtaining the funds necessary, through revenues generated from the sale of electricity, to cover estimated operating costs for the remaining periods of the Licenses.

The financial data also included two additional sets of financial statements for CPPC and EHNG, one using a 10-percent reduction in the market prices for energy and the other using a 10-percent reduction in capacity (for the nuclear generating units only) as a sensitivity analysis. The projections show [[]]. The NRC staff determined that this analysis provides additional assurance of CPPC and EHNG obtaining the funds necessary to cover estimated operating costs for the remaining periods of the Licenses.

Additionally, VistraOps currently provides, as required by the Comanche Peak licenses, and upon the closing of the proposed transaction will continue to provide, a financial support agreement in favor of CPPC. Pursuant to this financial support agreement, VistraOps provides a backup source of funding in the amount of \$300 million. EHC currently provides, as required by the Beaver Valley, Davis-Besse, and Perry licenses, a \$400 million financial support agreement for EHNG's benefit. Upon the closing of the proposed transaction, VistraOps will replace EHC as obligor on this financial support agreement to ensure that EHNG will continue to be able to call upon funds pursuant to the support agreement. This provides further assurance of financial qualifications in that CPPC and EHNG will have access to significant funds to pay fixed operating and maintenance costs in the event of an unanticipated station outage.

As discussed in NUREG-1577, the NRC practice has been to condition licenses subject to transfers involving holding company structures with a requirement restricting the transfer of significant assets to an affiliate without first notifying the NRC because of concerns regarding

the potential for the diminution of assets necessary to fund the safe operating and decommissioning of the nuclear power plants. This requirement provides additional assurance that a licensee will continue to maintain adequate resources to contribute to the safe operation and decommissioning of its facilities. Thus, the following is made a condition of the Beaver Valley, Davis-Besse, and Perry licenses:

Vistra Operations Company LLC shall provide to the Director of the Office of Nuclear Reactor Regulation or the Director of the Office of Nuclear Material Safety and Safeguards, as applicable, a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Vistra Operations Company LLC to its direct or indirect parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Vistra Operations Company LLC's consolidated net utility plant, as recorded on Vistra Operations Company LLC's books of account.

The Comanche Peak licenses already contain a substantively similar condition and, therefore, no additional condition is required.

Financial Qualifications Conclusion

Based on the above, the NRC staff finds that CPPC and EHNG have demonstrated reasonable assurance of obtaining the funds necessary to cover estimated operation costs of the facilities for the remaining period of the Licenses. Therefore, the NRC staff concludes that CPPC and EHNG will continue to be financially qualified, in accordance with 10 CFR 50.33(f), to carry out the activities authorized under the Licenses and, thus, that the proposed transfer of the Licenses satisfies 10 CFR 50.80 with respect to financial qualifications. This finding is contingent upon the aforementioned condition.

5.0 DECOMMISSIONING FUNDING

Pursuant to 10 CFR 50.33(k), an applicant for an operating license for a utilization facility must demonstrate how reasonable assurance will be provided that funds will be available to decommission the facility, as described in 10 CFR 50.75. The regulation at 10 CFR 50.75(b) requires a power reactor licensee to provide decommissioning funding assurance by one or more of the methods described in 10 CFR 50.75(e). Furthermore, 10 CFR 50.75(c) provides the "Table of minimum amounts (January 1986 dollars) required to demonstrate reasonable assurance of funds for decommissioning by reactor type and power level, P (in MWt); adjustment factor." Under 10 CFR 72.30(b), an ISFSI licensee is required to provide decommissioning funding assurance by one or more of the methods described in 10 CFR 72.30(e), including 10 CFR 72.30(e)(5), which allows the use of the methods of 10 CFR 50.75(e) for licensees who are issued a power reactor license under 10 CFR Part 50.

The application states that the proposed transaction will not change the role of CPPC as the licensed owner of Comanche Peak and will not change the role of EHNG as the licensed owner of Beaver Valley, Davis-Besse, and Perry and will not result in any adverse changes to their financial qualifications or decommissioning funding assurance.

Decommissioning Funding Assurance for the Facilities

CPPC

Per the application, CPPC will continue to provide decommissioning funding assurance through the use of an external sinking fund with access to non-bypassable charges to retail electric customers. CPPC will continue to maintain decommissioning trust funds that have been established to provide funding for decontamination and decommissioning for Comanche Peak and its ISFSI. In addition, CPPC will continue to receive contributions to those trust funds pursuant to a non-bypassable charge (within the meaning of 10 CFR 50.75(e)(1)(ii)(B)). The existing decommissioning funding arrangements were specifically approved by the Public Utilities Commission of Texas. The arrangements will ensure that CPPC will have the total amount of funds estimated to be needed for decommissioning pursuant to 10 CFR 50.75 and 10 CFR 72.30.

The amounts of Comanche Peak NDT funds available as of December 31, 2022, are set forth in VistraOps' most recent 10 CFR 50.75(f)(1) and 10 CFR 72.30(c) report filed on March 30, 2023 (ML23089A250). As reflected in that report, the amounts in the NDT are more than the NRC minimum formula amount in 10 CFR 50.75(c). Therefore, CPPC has demonstrated that it possesses adequate decommissioning funding assurance for Comanche Peak.

EHNG

Per the application, EHNG currently provides decommissioning funding assurance for its facilities using the prepayment method set forth in 10 CFR 50.75(e)(1)(i) and, for Beaver Valley, Unit No. 1 only, has procured a surety bond to provide the remaining decommissioning funding assurance. EHNG relies on site-specific decommissioning cost estimates (DCEs) for Beaver Valley, Unit No. 1 and Perry to demonstrate decommissioning funding assurance, and on the NRC minimum formula amount for Beaver Valley, Unit No. 2 and Davis-Besse.

The amounts of Beaver Valley, Davis-Besse, and Perry NDT funds available as of December 31, 2022, are set forth in EHNG's most recent 10 CFR 50.75(f)(1) report filed on March 31, 2023 (ML23090A233). As reflected in that report, for Perry, the amount in the NDT exceeds the estimated cost to complete decommissioning in the site-specific DCE and, therefore, EHNG has demonstrated that it possesses adequate decommissioning funding assurance for that unit. For Davis-Besse and Beaver Valley, Unit No. 2, the amounts in their NDTs are more than the NRC minimum formula amount in 10 CFR 50.75(c) and, therefore, EHNG has demonstrated that it possesses adequate decommissioning funding assurance for those units. For Beaver Valley, Unit No. 1, the amount in the NDT is less than the site-specific DCE. However, EHNG has a surety bond in place worth \$61 million to cover the shortfall between the amount of funds within the Beaver Valley, Unit No. 1 NDT and the amount estimated as necessary in the site-specific DCE. Providing decommissioning funding assurance through the use of a surety bond is specifically contemplated by 10 CFR 50.75(e)(1)(iii). Therefore, EHNG has demonstrated that it possesses adequate decommissioning funding assurance for Beaver Valley, Unit No. 1.

ISFSI Facilities

For the Comanche Peak ISFSI, VistraOps' most recent 10 CFR 50.75(f)(1) and 10 CFR 72.30(c) report filed on March 30, 2023 demonstrates that there are adequate funds for decommissioning and decontamination of the ISFSI in the Comanche Peak NDTs. Given that the combined amounts of estimated costs to decommission Comanche Peak and its ISFSI are

covered by the NDTs, there is reasonable assurance that the NDTs maintained by CPPC will be sufficient to also decommission the ISFSI.

Per the application, for the ISFSIs at Beaver Valley, Davis-Besse, and Perry, EHNG uses the prepayment method of assuring funds for ISFSI decommissioning. In 2016, EHNG established a Provisional Trust to provide funding to decommission the Beaver Valley, Davis-Besse, and Perry ISFSIs. On December 14, 2021, EHNC, on behalf of EHNG, provided the Triennial ISFSI Decommissioning Funding Plans update for the ISFSIs located at each of these facilities as required by 10 CFR 72.30(c) (ML21349A710). In this filing, EHNG demonstrated that the amounts in the Provisional Trust exceed the site-specific DCEs for the ISFSIs and, therefore, that EHNG has sufficient funds to decommission the ISFSIs.

Decommissioning Funding Conclusion

Based on the above, the NRC staff finds that the proposed transaction will not materially affect the decommissioning funding arrangements currently in place for the facilities. Therefore, the NRC staff concludes that CPPC and EHNG will continue to provide reasonable assurance that funds will be available to decommission the facilities in accordance with 10 CFR 50.75 and 72.30, as applicable, and, thus, that the proposed transfer of the Licenses satisfies 10 CFR 50.80 and 72.50, as applicable, with respect to decommissioning funding.

6.0 ANTITRUST REVIEW

The Act does not require or authorize antitrust reviews of post-operating license transfer applications.¹ The application here postdates the issuance of the operating licenses for the reactor units; therefore, no antitrust review is required or authorized. Existing antitrust conditions are only changed by changing the name of the licensee to reflect the proposed transfer of the Licenses, where necessary. Therefore, there are no antitrust issues to be considered in connection with the conforming license amendments.

7.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Sections 103d and 104d of the Act prohibit the NRC from issuing a license for a nuclear power plant to any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. As stated, FOCD provisions of the Act are implemented in 10 CFR 50.38. The NRC staff evaluated the application pursuant to the guidance provided in the SRP on FOCD to determine whether, after the proposed transfer, the licensees would be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. The NRC's position on FOCD, outlined in the SRP on FOCD, states that "the foreign control limitation should be given an orientation toward safeguarding the national defense and security." Further, the SRP on FOCD outlines how the effects of foreign ownership may be mitigated through implementation of a "negation action plan" to ensure that any foreign interest is effectively denied control or domination over the licensee.

¹ Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999).

Section III.D, "No Foreign Ownership, Control or Domination," of the application states, in part, that:

Following consummation of the Transaction, shares of Vistra Corp. will continue to be widely held and publicly traded on the New York Stock Exchange.... Consistent with information provided to NRC during Luminant Generation's bankruptcy and accompanying license transfer proceeding, entities associated with Brookfield Asset Management, a Canadian company, continue to hold approximately 10% of Vistra Corp.'s common stock. Based on SEC filings, Applicants are aware of one additional alien, foreign corporation, or foreign government that holds or may hold more than 5% of the common stock of Vistra Corp. As of March 23, 2023, based on its reported ownership of shares as disclosed in its most recent Schedule 13G SEC report filed on February 25, 2022, Qatar Investment Authority held approximately 6.03% of the common stock of Vistra Corp. Qatar Investment Authority does not have any representation on the Vistra Corp. Board of Directors and its Schedule 13G filing represents that they did not acquire these Vistra Corp. shares for the purpose of or with the effect of changing or influencing the control of Vistra Corp.

Per the application, all the directors and managers of Vistra Corp., VistraOps, and CPPC are, and are expected to continue to be, U.S. Citizens. Pursuant to the Comanche Peak operating license, "all of the directors of [CPPC] and [VistraOps] who can vote on activities governed by the [Comanche Peak] license and all of the officers of [CPPC] and [VistraOps] with direct responsibility for activities governed by the [Comanche Peak] license shall (1) be U.S. citizens and not appointed by a foreign entity and (2) have exclusive authority to ensure and shall ensure that the business and activities of [VistraOps] and [CPPC] with respect to the [Comanche Peak] license is at all times conducted in a manner consistent with the public health and safety and common defense and security of the United States." Accordingly, the small percentage of Vistra Corp.'s shares that are passively held by foreign entities does not constitute foreign ownership, control, or domination over the licenses which are the subject of the application within the meaning of Section 103d of the Act.

Also, per the application, Avenue, Nuveen, and potentially certain other investors will receive a combined total of 15 percent of the equity in Vistra Vision in the form of Class B interests. Such equity interests will be in the form of Class B substantially passive interests that do not confer the right to appoint any board members to any Vistra Vision board of directors and will not have any rights to appoint managers or officers of Vistra Vision.

Foreign Ownership, Control, or Domination Conclusion

Based on the above, and the additional condition discussed in Section 10.0, the NRC staff concludes that it does not know or have reason to believe that any of the licensees or their respective owners will be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government as a result of the proposed license transfer.

8.0 TECHNICAL QUALIFICATIONS

8.1 Management and Technical Support Organization

In accordance with NUREG-0800, Section 13.1.1, the NRC staff review of management and technical support organization for a license transfer examines the acceptability of any changes

to the technical organization or personnel qualifications proposed as a result of the license transfer. The objective of this review is to ensure that the corporate management is involved with, informed of, and dedicated to the safe design, construction, testing, and operation of the nuclear power plant. The review ensures that sufficient technical resources have been, are being, and will continue to be provided to adequately accomplish these objectives.

Section III.E, "Technical Qualifications," of the application states, in part, that:

The establishment of VistraOps as the licensed operator for the entire Vistra nuclear fleet will provide assurance that VistraOps corporate management is involved with, informed of, and dedicated to the safe design, construction, testing and operation of each plant under its control, consistent with NUREG 0800, section 13.1.1. The technical qualifications of VistraOps to operate [Comanche Peak] will not be affected by the proposed indirect change of control. VistraOps will continue to contract with Luminant Generation to provide management and technical personnel to support the day-to-day operation of [Comanche Peak]. Similarly, VistraOps will contract with EHNG to operate [Beaver Valley, Davis-Besse, and Perry] under an Operating Agreement that is expected to be substantially identical to VistraOps Operating Agreement with CPPC.

The NRC staff reviewed the application and determined that the management and technical support organizations at the facilities will not undergo any significant changes as a result of the proposed transaction.

Management and Technical Support Organization Conclusion

The NRC staff finds that the proposed license transfer is acceptable because corporate management will continue to be involved with, informed of, and dedicated to the safe design, construction, testing, and operation of the nuclear power plants and sufficient technical resources will continue to be provided to adequately accomplish these objectives. Therefore, the NRC staff concludes that the proposed transfer of the Licenses satisfies 10 CFR 50.80 with respect to the management and technical support organization.

8.2 Operating Organization

In accordance with NUREG-0800, Sections 13.1.2-13.1.3, the NRC review of operating organization focuses on evaluating changes to the operating organization proposed as a result of the license transfer and ensures that the proposed changes result in an organization that will continue to meet the relevant review criteria.

Section III.E of the application states that the operating organization for Comanche Peak will not be affected by the proposed transaction. Section III.E of the application also states, in part, that:

VistraOps is technically qualified to operate [Beaver Valley, Davis-Besse, and Perry] and will contract with EHNC to provide services including licensed operators, maintenance, site management and technical personnel, all of whom will report ultimately to the VistraOps [Chief Nuclear Officer], to support the day-to-day operation of [these] Facilities. These personnel are expected to include the majority of personnel currently working in the ... Facilities.... The operation of the ... Facilities will not be adversely affected by the proposed indirect transfer of control and should achieve efficiencies and a unified safety

culture over time as a result of common management of the entire fleet, including [Comanche Peak], by VistraOps.

Operating Organization Conclusion

The NRC staff reviewed the application and determined that there is reasonable assurance that the proposed transaction will not have any significant impact on the operating organizations at the facilities. The proposed transaction does not involve any significant changes to the operating organizations for the facilities. Therefore, the NRC staff concludes that the proposed transfer of the Licenses satisfies 10 CFR 50.80 with respect to operating organization.

Technical Qualifications Conclusion

Based on the above, the NRC staff determined that there will be no substantial change to the management, technical support, and operating organizations affecting the technical qualifications of VistraOps and the facilities under the proposed transaction. Therefore, the NRC staff concludes that VistraOps is technically qualified to perform the activities authorized by the Licenses and that there is no change to the information outlined in 10 CFR 50.33 and 50.34 and, thus, that the proposed transfer of the Licenses satisfies 10 CFR 50.80 with respect to technical qualifications.

9.0 NUCLEAR INSURANCE AND INDEMNITY

Pursuant to the requirements of the Price-Anderson Act (Section 170 of the Act) and the NRC's implementing regulations at 10 CFR Part 140, the current indemnity agreements must be modified to reflect the transfer from EHNC to VistraOps, as applicable.

Consistent with NRC practice, the NRC staff will require VistraOps to provide evidence that it has obtained the appropriate amount of insurance pursuant to 10 CFR Part 140 and 10 CFR 50.54(w), and that the insurance is effective concurrent with the date of the license transfers and amended indemnity agreements. Because the issuance of the amended licenses is directly tied to the completion of the proposed license transfers, the order approving the transfers will be conditioned as follows:

VistraOps shall provide satisfactory documentary evidence to the Director of the Office of Nuclear Reactor Regulation that, as of the date of the license transfer, the licensees reflected in the amended licenses have obtained the appropriate amount of insurance required of a licensee under 10 CFR Part 140 and 10 CFR 50.54(w).

Nuclear Insurance and Indemnity Conclusion

As required by 10 CFR 140.21, "Licensee guarantees of payment of deferred premiums," each reactor licensee should be able to demonstrate its financial capacity to pay into the secondary tier of financial protection for each reactor it is licensed to operate and insure pursuant to 10 CFR 140.11(a)(4) at \$131,056,000 per incident and up to \$20,496,000 per year. In the application, the Applicants submitted financial documents demonstrating a balance sheet that showed sufficient cash and cash equivalents that would be available for payment of retrospective premiums. The application also demonstrates the financial capacity to provide secondary financial protection for the facilities. Based on its review of this information, the NRC

staff concludes that the proposed license transfer, as conditioned, satisfies the nuclear insurance and indemnity requirements of 10 CFR Part 140 and 10 CFR Part 50.

10.0 ADDITIONAL CONDITION

The application does not provide some of the general corporate information required by 10 CFR 50.33. This information is necessary for the NRC staff to verify certain information provided in the application. Therefore, the order approving the proposed license transfer will include the following condition:

At least 5 business days before the closing of the proposed transaction, the Applicants shall submit, under oath or affirmation, the following information to the NRC in accordance with 10 CFR Part 50: the names, addresses, and citizenship of the directors and principal officers of Special Purpose Entity 1 LLC, Special Purpose Entity 2 LLC, Special Purpose Entity 3 LLC, and Special Purpose Entity 2 LLC Managing Member LLC.

11.0 LICENSE TRANSFER EVALUATION SUMMARY

Based on its review of the information provided in the application and with the aforementioned conditions of the order and the Licenses, the NRC staff finds that the licensees are financially qualified to conduct the authorized activities at the facilities, have satisfied the NRC's decommissioning funding assurance requirements, have met the applicable nuclear insurance and indemnity requirements, and are not owned, controlled, or dominated by a foreign entity. The NRC staff also finds that the transfer of the Licenses will not result in any physical changes to the facilities nor changes in the day-to-day operation of the facilities, and that there will be no substantial changes to the operations, management, and technical support organizations. Furthermore, the NRC staff finds that VistraOps is technically qualified to perform the activities authorized by the Licenses and the NRC's regulations.

Therefore, the NRC staff concludes that the licensees are qualified to hold the Licenses and that transfer of the Licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

12.0 CONFORMING LICENSE AMENDMENTS

12.1 Conforming Amendments

The application requests conforming amendments to the Beaver Valley, Davis-Besse, and Perry licenses to reflect the proposed license transfer. No conforming amendments are required for the Comanche Peak licenses. A markup of the proposed changes to the Licenses was provided in the Applicants' April 14, 2023, letter. By letters dated August 7, 2023, and September 12, 2023, additional revisions to the proposed license changes were submitted by the Applicants.

The NRC staff has prepared draft conforming license amendments to reflect the proposed license transfer. The draft conforming license amendments are consistent with the Applicant's proposed license changes, as modified by the NRC staff to reflect the proposed license transfer. The additional conforming changes to the Licenses include the incorporation of the license condition discussed in this SE.

The NRC staff determined that the changes to the Licenses, as reflected in the draft conforming amendments, involve no safety questions, are administrative in nature, and are necessary to reflect the approved license transfer. Accordingly, the NRC staff concludes that the draft conforming amendments are acceptable. The conforming license amendments will be issued and made effective at the time of the completion of the license transfer.

12.2 No Significant Hazards Consideration

Under the Act and the NRC's regulations, the NRC staff may issue and make an amendment immediately effective, notwithstanding the pendency before the Commission of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has made a determination that "no significant hazards consideration" or "no genuine issue as to whether the health and safety of the public will be significantly affected" is involved.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or the license of an ISFSI, which does no more than conform the license to reflect the transfer action, involves respectively, "no significant hazards consideration" or "no genuine issue as to whether the health and safety of the public will be significantly affected." No contrary determination has been made by the Commission regarding this specific application.

12.3 Conforming License Amendments Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) there is reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

13.0 HEARING REQUESTS AND PUBLIC COMMENTS

On May 22, 2023, the NRC published a notice of consideration of approval of the application in the *Federal Register* (88 FR 32807). This notice provided an opportunity to comment, request a hearing, and petition for leave to intervene on the application. No requests for hearing or public comments were received.

14.0 STATE CONSULTATION

In accordance with the Commission's regulations, officials for the Commonwealth of Pennsylvania and the State of Ohio were notified of the proposed license transfer and draft conforming amendments on August 21, 2023. The official for the State of Ohio had no comments. The official for the Commonwealth of Pennsylvania provided a comment that every three years, the Commonwealth is obligated to evaluate its off-site agency fees with each nuclear power plant utilities and that the Commonwealth has proposed to increase these annual fees by 25 to 30 percent per site. The comment states that the Commonwealth would like to make sure that VistraOps is aware of this fee and that it may increase. The NRC staff considered this comment and determined that it does not affect the staff's findings in this SE.

15.0 ENVIRONMENTAL CONSIDERATION

The application is for approval of a transfer of the Licenses issued by the NRC and for approval of associated amendments to the Licenses required to reflect the approval of the transfer. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of the application and conforming license amendments.

16.0 CONCLUSION

The Commission has concluded, based on the considerations discussed above, that (1) the proposed transferees are qualified to be the holders of the Licenses and (2) transfer of the Licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) there is reasonable assurance that such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

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