



# ENVIRONMENTAL LAW & POLICY CENTER

March 19, 2024

**SUBMITTED VIA EMAIL**

[FOIA.resource@nrc.gov](mailto:FOIA.resource@nrc.gov)

U.S. Nuclear Regulatory Commission  
Freedom of Information Act Officer  
Mailstop: TWFN-6 A60M  
Washington, D.C. 20555-0001

Re: Freedom of Information Act Request

Dear FOIA Officer:

This is a request for information on behalf of the Environmental Law & Policy Center (ELPC), pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the U.S. Nuclear Energy Commission's (NRC) FOIA regulations, 10 C.F.R. Part 9. ELPC requests documents related to NRC's evaluation of the decommissioning funding assurance, and NRC minimum formula amount for Vistra Operations Company LLC and Energy Harbor Nuclear Corporation's Davis-Besse Nuclear Power Station, Unit No. 1 (Davis-Besse) and Perry Nuclear Power Plant, Unit No. 1 (Perry).

ELPC requests a fee waiver for this request.

## **I. Records Requested**

On September 28, 2023, NRC approved a license transfer from Energy Harbor Nuclear Corp. ("Energy Harbor") to Vistra Operations Company LLC ("Vistra" or "VistraOps"), including the Perry and Davis-Besse plants. This included a finding that "VistraOps satisfies NRC's decommissioning funding assurance requirements."<sup>1</sup> NRC has provided to the public a License Transfer Approval Package for this transfer (EPID L-2023-LLM-0000).<sup>2</sup> ELPC requests the following documentation related to this approval package:

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<sup>1</sup> NRC News, *NRC Approves License Transfers for Energy Harbor Nuclear Plants*, Office of Public Affairs (Sep. 29, 2023), <https://www.nrc.gov/cdn/doc-collection-news/2023/23-062.pdf>.

<sup>2</sup> Energy Harbor Nuclear Corp. – Vistra Operations Company LLC – License Transfer Approval Package (EPID L-2023-LLM-0000), United States Nuclear Regulatory Commission (Sep. 29, 2023), <https://www.nrc.gov/docs/ML2323/ML23237B448.html>.

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1. All NRC documents and correspondence that relate to or support the evaluation of the decommissioning funding assurance and NRC minimum formula amount for the Davis-Besse plant.
2. All submittals by Vistra and Energy Harbor, and any subsidiaries or parent companies thereof, to the NRC that relate to or support the evaluation of the decommissioning funding assurance and NRC minimum formula amount for the Davis-Besse plant.
3. All NRC documents and correspondence that relate to or support the evaluation of the decommissioning funding assurance and NRC minimum formula amount for the Perry plant.
4. All submittals by Vistra and Energy Harbor, and any subsidiaries or parent companies thereof, to the NRC that relate to or support the evaluation of the decommissioning funding assurance and NRC minimum formula amount for the Perry plant.

ELPC asks that you disclose this information as it becomes available to you without waiting until all of the responsive records have been assembled. We request that you send electronic copies of the records whenever possible.

If you have any questions regarding the scope of the above requests, please contact me at the email or phone number below.

## **II. Claims of Exemption from Disclosure**

If NRC regards any documents as exempt from required disclosure under the Freedom of Information Act, please identify each allegedly exempt record in writing, provide a brief description of that record, and explain the agency's justification for withholding it. This explanation should take the form of a Vaughn index, as described in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) and other related cases. If a document contains both exempt and nonexempt information, please provide those portions of the document that are not exempted from disclosure.

## **III. Fee Waiver**

Pursuant to 5 U.S.C. § 552(a)(4)(iii) and 10 C.F.R. § 9.41, ELPC requests that NRC waive all fees associated with responding to this request because ELPC seeks this information in the public interest and will not benefit commercially from this request. If NRC does not waive the fees entirely, ELPC requests that it reduces them to the extent possible. FOIA provides that fees shall be reduced "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

ELPC is a non-profit, non-partisan public interest law organization registered under sections 501(c)(3) and 501(c)(4) of the tax code. It has no commercial, trade, or profit interests in the requested information. ELPC focuses on Midwest environmental and energy issues, and has a history of involvement with nuclear energy decommissioning concerns. ELPC intends to use these records to better understand the financial planning for decommissioning of nuclear plants in Ohio, so that it can assess the impacts on taxpayers and potential consequences of the decommissioning plan on the environment. This information will inform ELPC's involvement with the future of these nuclear plants, and provide valuable information to interested taxpayers and residents in Ohio who will be affected by the decommissioning. Thus, ELPC has no relevant commercial interest here, and makes this request based entirely on reasons related to the public interest.

If this information is not sufficient to justify a fee waiver, please contact me for further documentation before deciding upon the waiver request.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca Lowy", is centered on the page. The signature is fluid and cursive.

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