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LATHAM & WATKINS LLP

April 30, 2024

Honorable Debbie-Anne A. Reese
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Re: Notice of Non-Material Change in Status:

Ambit Northeast, LLC, Docket No. ER19-158-____
Calumet Energy Team, LLC, Docket No. ER10-2674-____
Connecticut Gas & Electric, Inc., Docket No. ER11-2449-____
Dicks Creek Power Company LLC, Docket No. ER15-1598-____
Dynegy Energy Services (East), LLC, Docket No. ER15-1599-____
Dynegy Energy Services, LLC, Docket No. ER14-1569-____
Dynegy Marketing and Trade, LLC, Docket No. ER10-2616-____
Dynegy Power Marketing, LLC, Docket No. ER11-4400-____
Energy Harbor LLC, Docket No. ER20-1436-____
Energy Harbor Nuclear Generation LLC, Docket No. ER20-1438-____
Energy Rewards, LLC, Docket No. ER19-2807-____
Energy Services Providers, LLC, Docket No. ER10-2421-____
Everyday Energy, LLC, Docket No. ER12-1769-____
Everyday Energy NJ, LLC, Docket No. ER12-2250-____
Fayette Power Company LLC, Docket No. ER15-1600-____
Hanging Rock Power Company LLC, Docket No. ER15-1602-____
Hopewell Power Generation, LLC, Docket No. ER10-1547-____
Illinois Power Marketing Company, LLC, Docket No. ER14-883-____
Kendall Power Company, LLC, Docket No. ER10-2619-____
Kincaid Generation, L.L.C., Docket No. ER13-2475-____
Liberty Electric Power, LLC, Docket No. ER12-192-____
Luminant Commercial Asset Management LLC, Docket No. ER15-1596-____
Luminant Energy Company LLC, Docket No. ER19-102-____
Massachusetts Gas & Electric, LLC, Docket No. ER11-2457-____
Miami Fort Power Company LLC, Docket No. ER15-1605-____
Moss Landing Energy Storage 1, LLC, Docket No. ER20-2414-____
Moss Landing Energy Storage 2, LLC, Docket No. ER20-2415-____
Moss Landing Energy Storage 3, LLC, Docket No. ER22-2736-____
Ontelaunee Power Operating Company, LLC, Docket No. ER10-2617-____
Pleasants Energy, LLC, Docket No. ER10-2677-____

Public Power & Utility of Maryland, LLC, Docket No. ER12-2253-____
Public Power & Utility of NY, LLC, Docket No. ER12-2251-____
Public Power, LLC, Docket No. ER12-75-____
Public Power (PA), LLC, Docket No. ER12-2252-____
Sayreville Power Generation LP, Docket No. ER10-1975-____
TriEagle Energy, LP, Docket No. ER14-2245-____
Viridian Energy NY, LLC, Docket No. ER19-2809-____
Viridian Energy Ohio LLC, Docket No. ER19-2803-____
Viridian Energy PA, LLC, Docket No. ER19-2810-____
Viridian Energy, LLC, Docket No. ER19-2811-____
Washington Power Generation LLC, Docket No. ER15-1607-____

Dear Acting Secretary Reese:

Pursuant to section 35.42 of the regulations of the Federal Energy Regulatory Commission (“Commission”),¹ the above captioned sellers (collectively, the “Vistra Sellers”), each of which is an indirect subsidiary of Vistra Corp. (“Vistra”), hereby submit for filing this notice of non-material change in status (“Notice”). The Vistra Sellers hereby submit this Notice to inform the Commission of certain developments that occurred during the first quarter of 2024, all of which are the result of a transaction that was approved by the Commission on February 16, 2024² and that was consummated on March 1, 2024 (the “Vistra-EH Transaction”).³ In particular, (i) Energy Harbor LLC (“EH LLC”) and Energy Harbor Nuclear Generation LLC (“EHNG” and together with EH LLC, the “EH Sellers”) report certain new affiliations resulting from the Vistra-EH Transaction, (ii) all of the Vistra Sellers report their new affiliation with entities that own or control more than 100 MW of net generation capacity within the PJM Interconnection, L.L.C. (“PJM”) balancing authority area (“BAA”) as a result of the Vistra-EH Transaction, and finally, (iii) certain of the Vistra Sellers report their new affiliation with an indirect, passive upstream owner as a result of the Vistra-EH Transaction. As demonstrated herein, these changes do not materially alter the facts and circumstances that the Commission relied upon in granting market-based rate authority to the Vistra Sellers.

¹ 18 C.F.R. § 35.42 (2024).

² *Energy Harbor Corp.*, 186 FERC ¶ 61,129 (2024).

³ *Energy Harbor Corp.*, Notice of Consummation, Docket No. EC23-74-000 (filed Mar. 7, 2024).

I. COMMUNICATIONS

All correspondence and communications regarding this filing should be directed to the following persons:

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II. DESCRIPTION OF THE VISTRA SELLERS

Each Vistra Seller is an indirect subsidiary of Vistra, a corporation organized under the laws of the State of Delaware that is publicly traded on the New York Stock Exchange under the symbol VST. Other than institutional investors whose interests do not result in affiliation under the Commission's regulations,⁴ to the best of the Vistra Sellers' knowledge, no entity holds an interest of 10% or more in Vistra.

Consistent with the Commission's Order No. 860⁵ and Section 35.42(d) of the Commission's regulations,⁶ an asset appendix has been generated in the relational database for

⁴ Based on its most recent quarterly compliance filing, The Vanguard Group, Inc. ("Vanguard") currently holds approximately 11.90% of Vistra's stock. The Vanguard Group, Inc., Quarterly Compliance Filing for Q1 2024 Docket No. EC19-57-002 (filed February 6, 2024). Vanguard holds Vistra's stock pursuant to its FPA Section 203(a)(2) blanket authorization to acquire up to 20% of the voting securities of individual publicly traded U.S. utilities, subject to certain conditions. *The Vanguard Grp., Inc.*, 180 FERC ¶ 62,065 (2022). The Commission has found that the conditions imposed in Section 203(a)(2) blanket authorization orders prevent institutional investors from exercising control over the utilities whose voting securities they acquire. *NextEra Energy, Inc.*, 174 FERC ¶ 61,213, at P 42 (2021). Therefore, utilities whose securities are held by a common institutional investor are not under common control and, as a result, are not considered to be affiliates of each other. *Id.* Therefore, Vistra and the Vistra Sellers are not affiliates of any of Vanguard's other public utility holdings. To the best of the Vistra Seller's knowledge, there is no entity that holds 10% or more of the outstanding voting securities, or other upstream affiliate, of Vanguard.

⁵ *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes*, Order No. 860, 168 FERC ¶ 61,039, at P 56 (2019), *order on reh'g*, Order No. 860-A, 170 FERC ¶ 61,129 (2020).

⁶ 18 C.F.R. § 35.42(d).

the Vistra Sellers.⁷ A description of each Vistra Seller and its upstream ownership is detailed further below.

A. Sellers Affiliated with Vistra Vision

As a result of the Vistra-EH Transaction, the following entities (the “Vistra Vision Sellers”) are now each indirectly and wholly-owned by Vistra Preferred LLC (“Vistra Preferred”), which is directly and wholly-owned by Vistra Vision Holdings II LLC, which in turn is directly and wholly-owned by Vistra Vision LLC (“Vistra Vision”). There are two classes of shares in Vistra Vision: the Class A controlling equity interests, which account for approximately 85% of the overall interests in Vistra Vision; and the Class B passive equity interests, which account for the remaining 15% of overall interests in Vistra Vision. The Class A controlling equity interests in Vistra Vision, which account for the entirety of the voting equity interests in the Vistra Vision Sellers is directly held by Vistra Vision Holdings I LLC (“Vision Holdings”). Vision Holdings is directly and wholly-owned by Vistra Operations Company LLC, (“Vistra Operations”). Vistra Operations is directly and wholly-owned by Vistra Intermediate Company LLC, which is directly and wholly-owned by Vistra.

The Class B equity interests of Vistra Vision are passive interests consistent with the Commission’s holdings in *AES Creative Resources* and its progeny.⁸ The only entity that holds Class B equity interests that has 10% or more of the interests in Vistra Vision is Nuveen Asset Management (“Nuveen”).⁹ Consistent with the requirements of Order No. 860, the Vistra Sellers affirm that Nuveen’s ownership interests consist solely of passive rights that are necessary to protect its investments and do not confer control, consistent with the Commission’s precedent in *AES Creative*.¹⁰

⁷ Vistra Sellers represent that asset appendix serial number 16184 (1) contains a complete list of the assets with which the Vistra Sellers are affiliated; (2) does not contain any assets with which the Vistra Sellers are not affiliated; and (3) was generated fewer than 15 days before the filing date of the instant filing. *See Blue Harvest Solar Park LLC*, 181 FERC ¶ 61,158 at P 33 (2022) (clarifying that applicants need not submit distinct asset appendix serial numbers for all captioned applicants to a filing, so long as one asset appendix is submitted that, for all covered sellers, (1) contains a complete list of the assets with which the seller is affiliated; (2) does not contain any assets with which the seller is not affiliated; and (3) was generated fewer than 15 days before the filing date of the filing in which it is referenced). The asset appendix with serial number 16184 was generated on April 24, 2024.

⁸ *AES Creative Resources, L.P.*, 129 FERC ¶ 61,239 (2009) (“*AES Creative*”).

⁹ The rights held by Nuveen are consistent with those that the Vision Sellers have previously demonstrated to be passive consistent with the Commission’s precedent in *AES Creative*. *See Energy Harbor Corp et al.*, 186 FERC ¶ 61,129 at P 63 (2024).

¹⁰ Order No. 860 at PP 137-38.

I. EH Sellers

The EH Sellers are now newly affiliated with Vistra as a result of the Vistra-EH Transaction.

- EH LLC (f/k/a FirstEnergy Solutions Corp.) is a market-regulated public utility that owns and operates electric generating facilities and markets power in competitive wholesale and retail markets. EH LLC has market-based rate authorization and is not a franchised public utility with captive customers.¹¹ In accordance with Schedule 2 of the PJM Open Access Transmission Tariff (“PJM Tariff”), EH LLC also receives cost-based revenue requirements under its Rate Schedule FERC No. 1 and Rate Schedule FERC No. 2 for the provision of reactive supply and voltage control service (“Reactive Service”) from the three EHNG nuclear facilities (described below).¹² In addition, EH LLC is a party to the Inter-Company Power Agreement (“ICPA”) pursuant to which certain entities that are party to the agreement have the right to take power generated by the Ohio Valley Electric Corporation’s (“OVEC”) Kyger Creek and Clifty Creek generation facilities. Under the ICPA, EH LLC has a 4.85% “Power Participation Ratio” and is entitled to approximately 116 MW of OVEC capacity.¹³ EH LLC is a direct, wholly-owned subsidiary of Energy Harbor Holdings LLC (f/k/a/ Energy Harbor Corp. LLC) (“Energy Harbor Holdings”), which is a direct, wholly-owned subsidiary of Vistra Preferred. The upstream ownership structure of Vistra Preferred is described above.
- EHNG owns three nuclear generating facilities: (i) the Beaver Valley Power Station in Shippingport, Pennsylvania (1,969 MW nameplate); (ii) the Davis-Besse Nuclear Power Station in Oak Harbor, Ohio (962 MW nameplate); and (iii) the Perry Nuclear Power Plant in Perry, Ohio (1,302 MW nameplate). EHNG is an EWG¹⁴ that has market-based

¹¹ *FirstEnergy Services, Inc.*, 94 FERC ¶ 61,052 (2001); *FirstEnergy Solutions Corp.*, Docket Nos. ER01-2968-001, *et al.* (Oct. 24, 2001) (letter order) (accepting notice of succession and tariff revisions to implement name change); *Energy Harbor LLC*, Docket Nos. ER20-1436-000, *et al.* (May 21, 2020) (letter order) (accepting most recent tariff revisions and notice of succession to implement name change).

¹² *Energy Harbor LLC*, Docket No. ER20-1435-000 (May 21, 2020) (letter order).

¹³ *See Notification of Change in Status of the Energy Harbor Public Utilities*, Docket Nos. ER20-1436, *et al.* (filed June 29, 2020); *Alabama Electric Marketing, LLC.*, Docket Nos. ER10-1585 *et al.* (Mar. 5, 2021) (letter order).

¹⁴ *FirstEnergy Nuclear Generation, LLC*, Notice of Self-Certification of Exempt Wholesale Generator Status, Docket No. EG20-77-000 (filed Feb. 4, 2020); *FirstEnergy Nuclear Generation, LLC*, Docket Nos. EG20-77-000, *et al.* (May 14, 2020) (notice of effectiveness of EWG status).

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