

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Duke Energy Florida, LLC to
Approve Transaction with Accelerated
Decommissioning Partners, LLC for Accelerated
Decommissioning Services at the CR3 Facility,
Transfer of Title to Spent Fuel, and Assumption of
Operations of the CR3 Facility Pursuant to the
NRC License, and Request for Waiver From
Future Application of Rule 25-6.04365, F.A.C. for
Nuclear Decommissioning Study

DOCKET NO.: 20190140-EI
Dated: July 2, 2020

DUKE ENERGY FLORIDA, LLC
CROSS-EXAMINATION
EXHIBIT

DEF-3C (Polich Confidential Deposition Transcript)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to approve transaction for accelerated decommissioning services at CR3 facility, transfer of title to spent fuel and associated assets, and assumption of operations of CR3 facility pursuant to the NRC license, and request for waiver from future application of Rule 25-6.04365, F.A.C. for nuclear decommissioning study, by Duke Energy Florida, LLC.

DOCKET NO.: 20190140-EI

DEPOSITION OF RICHARD A. POLICH, P.E.

Appearing remotely via video-teleconference from
Fulton County, Georgia

Friday, June 12, 2020
9:35 a.m. - 3:56 p.m.

Stenographically Reported By:
Allison Howell, RPR, CCR 5192-1118-5078-2720

This transcript has been declared confidential.
CONFIDENTIAL TRANSCRIPT

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***Exhibits 1, 2, 3, 4, 5, 6, 7, and 8 provided
electronically to court reporter***

Exhibits 9 and 10 to be late filed

1 THE COURT REPORTER: The attorneys
2 participating in this deposition acknowledge
3 that I am not physically present in the
4 deposition room and that I will be reporting
5 this deposition remotely.

6 They further acknowledge that, in lieu
7 of an oath administered in person, I will
8 administer the oath remotely.

9 The parties and their counsel consent to
10 this arrangement and waive any objections to
11 this manner of reporting.

12 Please indicate your agreement by
13 stating your name and your agreement on the
14 record.

15 MR. HERNANDEZ: Daniel Hernandez, I
16 agree.

17 MR. REHWINKEL: Charles Rehwinkel, I
18 agree.

19 MR. BREW: James Brew, I agree.

20 MS. PUTNAL: Karen Putnal, I agree.

21 MS. BROWNLESS: Suzanne Brownless, I
22 agree.

23 RICHARD A. POLICH, P.E.,
24 having been produced and first duly sworn remotely as a
25 witness, then testified as follows:

1 DIRECT EXAMINATION

2 BY MR. HERNANDEZ:

3 Q Mr. Polich, good morning. My name is Daniel
4 Hernandez. I'm an attorney with the law firm of Shutts
5 & Bowen and I represent Duke Energy of Florida in this
6 matter.

7 I know you've had your deposition taken a
8 number of times. But I do want to go over just a few
9 basic rules, particularly since this deposition is
10 being taken remotely.

11 If you can't hear me at any point or if you
12 don't understand a question that I'm asking, please let
13 me know. If you respond to my question I'm going to
14 assume that you've heard the question and that you
15 understand it.

16 We should both try not to talk over one
17 another. I know that's difficult to do in normal
18 conversation. It's going to be especially hard since
19 we can't really see each other very well. I can see
20 you and you can see me, but it's hard to tell when
21 you're going to begin to talk or stop talking,
22 especially since I think there's a lag on your end of
23 the line.

24 But we're going to do our best. It's going
25 to help our court reporter take our -- take down what

1 we say more accurately.

2 If you need a break at any time, please let
3 me know. I'm anticipating stopping for lunch at some
4 point and then we can have an agreement as to when that
5 will be, but I'm assuming twelve o'clock is going to
6 work for everybody. And we'll discuss whether we need
7 to get off the line and sign back on once we do that.

8 I'm going to be asking you questions from a
9 number of exhibits, so far I believe it's just eight.
10 And before we get started, I wanted to make sure that
11 you have the same exhibits with you that I have with me
12 and there is no inconsistency.

13 So Exhibit No. 1, as we've identified it, is
14 the notice of your deposition.

15 Do you have that?

16 (Exhibit No. 1 was remotely produced and
17 provided electronically to the court
18 reporter.)

19 A Yes.

20 Q Okay. Exhibit No. 2 is a series of tables
21 that begins with a page that's Bates labeled Polich DEP
22 DT 1.

23 Do you see that?

24 (Exhibit No. 2 was remotely produced and
25 provided electronically to the court

1 reporter.)

2 A Give me a second here. I need to open that
3 up.

4 Q And you will see the Bates number at the top
5 of the page on that document.

6 A Yeah.

7 Q Exhibit No. 3 is going to be an NRC Standard
8 Review Plan that begins with a page that's Bates
9 labeled Polich DEP DT 5.

10 Do you have that?

11 (Exhibit No. 3 was remotely produced and
12 provided electronically to the court
13 reporter.)

14 A Yes.

15 Q And Exhibit 6 is titled "Financial Accounting
16 Series FASB Accounting Standards Update."

17 Do you have that? And this just went out
18 this morning, Mr. Polich, so I don't know if you have
19 it electronically or hard copy.

20 (Exhibit No. 6 was remotely produced and
21 provided electronically to the court
22 reporter.)

23 A I'm just verifying. Yes, I do.

24 Q Exhibit No. 7 is going to be a document that
25 has at the top of it C-h-u-g-h, Chugh Related Parties

1 Practice Areas.

2 Do you see that?

3 (Exhibit No. 7 was remotely produced and
4 provided electronically to the court
5 reporter.)

6 A Yes.

7 Q And the last exhibit that we're going to be
8 looking at today -- I'm sorry. I may have skipped over
9 some but No. 8 is going to be a document that is titled
10 "Related Party Transactions: A Brief Overview."

11 Do you have that?

12 (Exhibit No. 8 was remotely produced and
13 provided electronically to the court
14 reporter.)

15 A Yes.

16 Q And the final exhibit that we're going to be
17 looking at today is your direct testimony, which is
18 Exhibit 4, which I assume you have that.

19 (Exhibit No. 4 was remotely produced and
20 provided electronically to the court
21 reporter.)

22 A I don't have that one.

23 Q You don't have your direct testimony?

24 A Just teasing; yes, I do.

25 Q All right. I'm going to in a minute get into

1 your background and education. Before I do that, I
2 want to ask some preliminary questions.

3 Can you tell us when you were retained in
4 connection with the testimony that you provided in this
5 matter?

6 A The exact date?

7 Q An approximate date.

8 A I would have to go back and double check the
9 contract. I can't recall offhand.

10 Q Do you recall the month?

11 A My guess is it's sometime in April.

12 Q April of 2020?

13 A Yes.

14 Q And you were retained by the Office of Public
15 Counsel?

16 A That is correct.

17 Q And did OPC -- and when I refer to OPC, I'm
18 referring to the Office of Public Counsel.

19 Did OPC retain you individually or did they
20 retain GDS Associates?

21 A They retained GDS Associates.

22 Q Did Dr. William Jacobs also participate in
23 the work in this matter on behalf of GDS?

24 A Yes, he did.

25 Q Can you tell me what his role was in the work

1 that was performed by GDS in this matter?

2 A Yes. Dr. Jacobs assisted the development of
3 my testimony with review, provided some advice and
4 guidance on how to approach issues in regards to the
5 nuclear decommissioning, as well as issues associated
6 with the history of nuclear projects struggling with
7 completion in accordance with the cost and schedule.

8 Q Were there particular issues within those
9 broader issues that he assisted you with?

10 A It was -- I couldn't really point to anything
11 specifically.

12 Mr. Jacobs has a lot more experience in terms
13 of what has happened at the Vogtle nuclear power plant
14 in Georgia that I did not have. And we had some
15 discussions about what that means in terms of general
16 nuclear projects and construction projects.

17 Q And Mr. Jacobs also worked on the Vermont
18 Yankee matter that GDS was retained to work on,
19 correct?

20 A Yes. Him and I worked on that together.

21 Q Did you request that Mr. Jacobs participate
22 in this assessment, the CR3 assessment?

23 A Did I personally request?

24 Q Yes.

25 A No.

1 Q Did OPC request that Mr. Jacobs participate?

2 A OPC originally contacted Mr. Jacobs in terms
3 of this effort.

4 Q If they contacted Mr. Jacobs originally, why
5 is it that you are providing testimony instead of
6 Mr. Jacobs?

7 A Because it was decided I was in a better
8 position to provide the testimony.

9 Q Can you tell me why it is that you are in a
10 better position to provide testimony in this case
11 instead of Dr. Jacobs?

12 A Because of some of my experience in terms of
13 the financial backgrounds, I also have equal experience
14 in terms of nuclear plant construction and in terms of
15 nuclear information.

16 Q Let's focus on the financial component of
17 that.

18 What greater level of experience do you have
19 in finances versus Dr. Jacobs?

20 A I cannot specifically point out where that
21 degree of expertise was. But it was decided by
22 Mr. Jacobs that it would be more prudent for me to
23 perform the work than him.

24 Q Is it Mr. Jacobs or Dr. Jacobs? I want to
25 make sure I'm not --

1 A It is Dr. Jacobs.

2 Q And I apologize. I started out by saying
3 mister.

4 Is Dr. Jacobs still with GDS Associates?

5 A Yes, he is.

6 Q Is he still employed by GDS Associates?

7 A Yes, he is.

8 Q And Dr. Jacobs provided testimony in the
9 Vermont Yankee matter; is that correct?

10 A That is not correct.

11 Q He did not?

12 A He did not. And let me ask this question.
13 In regard to what Vermont Yankee issue?

14 Q Well, you tell me. GDS was retained in
15 connection with the Vermont Yankee decommissioning
16 project, wasn't that correct?

17 A That is correct.

18 Q And what was GDS retained to do with respect
19 to the Vermont Yankee matter?

20 A We were retained to provide direct consulting
21 services to the Vermont Yankee Public Service
22 Commission.

23 Q Okay. So GDS Associates did not provide any
24 testimony in connection with the Vermont Yankee
25 decommissioning matter, correct?

1 A That is correct.

2 Q Did GDS Associates author any sort of report
3 or recommendations to the Vermont commission?

4 A We did.

5 Q Were you the author of that report or
6 recommendation to the commission?

7 A Yes.

8 Q Did Dr. Jacobs participate in that
9 preparation of a report or recommendations?

10 A He reviewed my report and recommendations.

11 Q Were you involved in the settlement
12 negotiations that occurred in connection with the
13 Vermont Yankee decommissioning contract?

14 A What negotiations are you referring to?

15 Q There were discussions concerning the
16 decommissioning contracts, discussions in particular
17 between the commission and the entity that was going to
18 conduct the decommissioning in that case, correct?

19 A I was not part of that.

20 Q Was Dr. Jacobs a part of that?

21 A No.

22 Q Was anyone from GDS a part of it?

23 A Not directly.

24 Q When you say not directly, can you tell me
25 how they were indirectly involved?

1 A We were asked questions by the public service
2 commission and asked our view on issues associated with
3 the transaction.

4 Q So you consulted with the commission, you
5 provided your views to the commission regarding what
6 particular aspects of the decommissioning contract?

7 A I cannot divulge that information. I'm under
8 confidentiality on it.

9 Q Okay. That's fine. I want to turn now to
10 your résumé and that is attached to Exhibit 4, which is
11 your direct testimony. And that should be RAP-1 --
12 Exhibit RAP-1 to your direct testimony. I'll give you
13 a chance to find that.

14 Do you have that in front of you, Mr. Polich?

15 A Yes, I do.

16 Q Is the résumé that's attached to your
17 testimony current as of today?

18 A Is it current in regards to this particular
19 proceeding.

20 Q Is there any information that's not reflected
21 on this résumé that would make it more current?

22 A Yes; for example, you will notice that there
23 is no discussion here of my participation in the -- in
24 a recent proceeding regarding Duke Energy regarding the
25 Bartow project.

1 Q Is there anything else that's missing from
2 this?

3 A Yes. This résumé is a sample of my
4 experience. It does not include all of my experience
5 in my career.

6 Q Okay. Is there -- I want to focus on
7 decommissioning of nuclear power plants.

8 Is there any information regarding
9 decommissioning of nuclear power plants that is not
10 reflected on your résumé?

11 A No.

12 Q Is there any information regarding the
13 auditing or financial assessment of business entities
14 of any kind that is not reflected on this résumé?

15 A Yes.

16 Q And what is that information?

17 A Through the course of my career I have had
18 opportunities to work on various projects that involve
19 financial assessment. Some of that stuff is just
20 course of business.

21 For example, when I was in the wind power
22 development industry we routinely were developing pro
23 formas, projects assessments trying to figure out how
24 to finance projects, purchasing projects which were
25 typically set up as independent LLCs. That type of

1 stuff would require financial analysis, evaluation of
2 corporate wherewithal, and various other types of
3 financial information.

4 When I was at Consumers Energy, we commonly
5 would review various types of financial information out
6 of the utilities in that as part of looking at
7 regulatory proceedings.

8 When I did work as an independent consultant
9 with Energy Options & Solutions, I was involved in
10 various regulatory proceedings and part of that in
11 terms of looking at rates, returns, and things like
12 that required review of utility financial statements.

13 When I was at Nordic Energy, we oftentimes
14 looked at acquisitions and project development with
15 different projects. That would require review of
16 financial statements, financial review, development of
17 pro formas, development of financial terms and
18 conditions, variety of other types of financial stuff.

19 Q Okay. You went through several different
20 projects there.

21 Were any of those projects -- did any of
22 those projects involve the assessment of a company that
23 was going to perform a decommissioning of a nuclear
24 power plant?

25 A No.

1 Q All right. You are not a -- you are a
2 professional engineer by training; is that correct?

3 A I am a professional engineer due to the
4 license that I have with the state of Michigan.

5 Q Okay. Are you licensed in any other
6 jurisdiction besides Michigan?

7 A No, I am not.

8 Q You are not a certified public accountant; is
9 that correct?

10 A I am not a CPA.

11 Q And you don't hold an accounting degree; is
12 that correct?

13 A I hold a master's of business administration.

14 Q Is that the equivalent of an accounting
15 degree?

16 A It is -- it has a hefty amount of accounting
17 training.

18 Q You would agree with me it's not an
19 accounting degree?

20 A That is true.

21 Q And you don't hold any sort of finance
22 degree, do you?

23 A I would say that my MBA is equivalent to a
24 finance degree.

25 Q All right. Have you ever served as a chief

1 financial officer of a company?

2 A I have not.

3 Q Have you ever served as a financial auditor?

4 A I have not.

5 Q Do you have any specialized training in the
6 performance of financial audits?

7 A I do not have any specific outside of work
8 experience training in assessing financial situations.

9 Q And that work experience training did any of
10 that relate to decommissioning -- companies that were
11 going to decommission a nuclear power plant?

12 A Let me go back for a second on that previous
13 statement.

14 As a part of my MBA course, in the accounting
15 courses that I took we did review various things in
16 terms of audit requirements. So from that perspective,
17 I do have some formalized training.

18 Q Okay. And when did you undergo those
19 courses?

20 A Prior to 1990.

21 Q And I think you indicated that you had some
22 specialized training with respect to work experience or
23 maybe not specialized training but work experience
24 related to financial analysis.

25 Is that what you said?

1 A Yes.

2 Q And did any of that work experience relate or
3 pertain to a company decommissioning a nuclear power
4 plant?

5 A No.

6 Q Have you ever served as a credit analyst?

7 A No.

8 Q Do you have any specialized training in the
9 performance of credit analysis?

10 A Please define what you mean by credit
11 analysis.

12 Q What is your understanding of credit
13 analysis?

14 A I'm asking for your definition if I may
15 answer the question.

16 Q And I just want to understand what you know
17 or what you interpret credit analysis -- what that term
18 means to you?

19 A I don't have a definition for that term.

20 Q Okay. Well, then we'll just skip that
21 question.

22 Do you have any training in the valuation of
23 businesses generally?

24 A Yes.

25 Q Can you tell us what that is, please?

1 A In the course of my MBA program, we were
2 required in several courses to evaluate the asset
3 values and wherewithal of businesses.

4 Q And that training went back to the 1990s; is
5 that correct?

6 A It was completed in 1990.

7 Q When did you start your MBA?

8 A 1985.

9 Q Okay. Thank you. Do you have any experience
10 negotiating a nuclear decommissioning contract?

11 A No, I do not.

12 Q Have you ever given testimony regarding
13 nuclear decommissioning?

14 A No, I have not.

15 Q I want you to turn to Exhibit No. 1 please,
16 which is the notice of deposition duces tecum.

17 A Okay.

18 Q Do you have that in front of you, Mr. Polich?

19 A I do.

20 Q Have you seen this before today?

21 A Yes, I have.

22 Q The Schedule A to the notice asked for you to
23 produce certain documents, and counsel for OPC has
24 provided us with the documents that we reviewed
25 earlier.

1 Are there any other documents that you have
2 in your possession that would be responsive to the
3 documents requested in this notice of deposition?

4 A I believe, to the best of my knowledge, at
5 this point in time we provided you those documents.

6 Q Okay, great. So I want to briefly go through
7 these documents. And I'm going to ask you a few pretty
8 broad questions about each document and later on I'll
9 have some more detailed questions.

10 But let's start with Exhibit No. 2, which is
11 the document that at the top has the Bates number of
12 Polich DEP DT 1. Let me know when you have that in
13 front of you.

14 A I do.

15 Q Can you identify this document for us,
16 please.

17 A Yes. This appears to be, subject to check,
18 the work papers and my Exhibit RAP-7 that was submitted
19 as part of my testimony.

20 Q Did you prepare the documents contained
21 within Exhibit No. 2?

22 A Subject to check, yes.

23 Q And where did you obtain the information
24 that's reflected in Exhibit No. 2?

25 A Which portion of Exhibit No. 2?

1 Q Let's start with page No. 1 of Exhibit No. 2.
2 Where did the information reflected on page No. 1 come
3 from?

4 A This information came from documents provided
5 in discovery from Duke Energy.

6 Q Let's turn to page No. 2. Where did you
7 obtain this information?

8 A Page No. 2 are calculations that I developed.

9 Q Okay. And they were based upon what
10 information?

11 A The information on page No. 1.

12 Q And page No. 3, where did this information
13 come from?

14 A That was provided by -- that came from
15 information provided in discovery from Duke Energy.

16 Q And the last page, where did the information
17 reflected on this page come from?

18 A Page No. 4 is a combination of information
19 provided by Duke Energy as well as information that I
20 calculated.

21 Q And can you tell me generally whether you
22 relied upon the document contained in Exhibit No. 2 for
23 your testimony?

24 A I did.

25 Q Can you tell me generally what portion of

1 your testimony you utilized this document for?

2 A I would say my testimony starting on page 14
3 to page 36.

4 Q And we'll get into that in a little more
5 detail later on. But why don't we move on to Exhibit
6 No. 3 please, and once you find that exhibit I'll ask
7 you to identify it for me, please.

8 A Exhibit No. 3 starts with Bates No. 05?

9 Q Yes, sir.

10 A This is the Revision 1 to Nuclear Reg 1577.

11 Q And is this the latest revision to that
12 nuclear reg if you know?

13 If you don't know, that's okay.

14 A Let me just double check something, please.

15 Q Sure.

16 A I believe it is.

17 Q Did you rely upon this document reflected in
18 Exhibit No. 3 for your testimony?

19 A I did review this document and it was
20 something that I did take a look at.

21 Q Are there particular portions of your
22 testimony that you relied upon this document for?

23 A No.

24 Q And did you obtain this document from the NRC
25 website or was there another source?

1 A I did obtain it from the NRC website.

2 Q Let's take a look at Exhibit No. 5 please,
3 and this is the Vermont Public Utility Commission order
4 in the Vermont Yankee matter.

5 Do you have that front in of you, Mr. Polich?

6 (Exhibit No. 5 was remotely produced and
7 provided electronically to the court
8 reporter.)

9 A I'm just checking.

10 Q Okay.

11 A I'm trying to locate it. I don't have a copy
12 that I can put my fingers on right away.

13 MR. HERNANDEZ: Charles, is this
14 something that you could e-mail to
15 Mr. Polich?

16 MR. REHWINKEL: Yeah, I'll send him the
17 exhibit e-mail. I'll get it to him right
18 now.

19 MR. HERNANDEZ: Okay. Thank you.

20 BY MR. HERNANDEZ:

21 Q Why don't we -- Mr. Polich, why don't we move
22 on to Exhibit No. 6.

23 Do you have that in front of you? And this
24 is the Financial Accounting Series FASB Accounting
25 Standards Update.

1 A Yes, I do.

2 Q And can you generally identify this? I know
3 I just gave you the title of it but can you tell us
4 what it is?

5 A It discusses intangibles, goodwills, and
6 other issues and how they are treated from an
7 accounting perspective.

8 Q And it's got a date of January 2017. Do you
9 know if this is the most recent iteration of this
10 update?

11 A I believe there may be a new update that's
12 currently working through the system. Let me just
13 double check and see.

14 Yes, I believe there's another version that
15 is currently being reviewed by FASB, the Financial
16 Accounting Standards Board.

17 Q Has that one been published yet?

18 A There is a proposed revision to this that's
19 currently in the review process if I'm correct.

20 Q Do you have access to that?

21 A I believe I have a copy somewhere.

22 Q Have you reviewed that?

23 A I glanced through it, yes.

24 Q Did you review it prior to preparing your
25 testimony in this matter?

1 A Yes.

2 Q And how did you obtain this particular
3 iteration, the January 2017 iteration, of this
4 document, which is Exhibit 6?

5 A Through a Google search.

6 Q And is there any reason why you didn't rely
7 upon the most recent iteration for purposes of your
8 testimony?

9 A The most recent one has not been officially
10 adopted.

11 Q Did you rely upon Exhibit 6, the 2017
12 iteration, for your testimony?

13 A It was a reference piece that I used in
14 performing some of my assessment.

15 Q Can you tell us what portions of your
16 assessment you relied upon Exhibit 6 for?

17 A It was in reference to goodwill and
18 intangible assessments on NorthStar's balance sheets.

19 Q Okay. Let's turn to Exhibit 7, please. This
20 is the document that has the Chugh heading at the top.

21 Do you see that?

22 A Yes, I do.

23 Q And can you tell us generally what this is?

24 A This is a document that talks about how
25 interactions between related parties work and what can

1 be done.

2 Q Did you rely upon this document, Exhibit 7,
3 for your testimony?

4 A I reviewed it in preparation of my testimony.

5 Q Are there particular aspects of your
6 testimony that you reviewed this particular document
7 for?

8 A This was used for general information and
9 preparation of my testimony. There is no specific
10 points in my testimony that specifically utilized this
11 document.

12 Q Let's look at Exhibit No. 8 and I'll ask you
13 -- and the title of this is "Related Party
14 Transactions: A Brief Overview."

15 Can you tell us generally what this is?

16 A It's again discussing related party
17 transactions and how they function.

18 Q And where did you obtain this particular
19 document?

20 A Again, it was done with an internet search.

21 Q And who is Rachel Klein?

22 A I am not certain on that.

23 Q Do you know what kind of background,
24 training, education she has?

25 A No, I do not.

1 Q Is this a document that you relied upon for
2 any portions of your testimony?

3 A Again, it was for general information.

4 Q Okay. Let me go back to Exhibit No. 7. This
5 is that Chugh document. I neglected to ask you where
6 you got this.

7 A That was an internet search.

8 Q Do you know who Judith Terre, T-e-r-r-e, is
9 that appears to be the author of this?

10 Do you know who she is?

11 A My guess is she works for Chugh.

12 Q Do you what her education background is or
13 what her work background is?

14 A No.

15 Q I want to turn to now -- and let me know --
16 once you receive Exhibit No. 5 from Charles, please let
17 me know and we'll address Exhibit No. 5.

18 A I have Exhibit 5.

19 Q Oh, you do, perfect. Can you tell us
20 generally what Exhibit No. 5 is?

21 A This appears to be the order in the Vermont
22 Yankee case by the Vermont Public Utility Commission
23 regarding the transfer of Vermont Yankee nuclear power
24 plant from Entergy to NorthStar Group Holdings, LLC, et
25 al.

1 Q And did you rely upon Exhibit 5 for any
2 portion of your testimony?

3 A Yes, I did.

4 Q Can you tell us generally what parts of your
5 testimony you relied upon Exhibit 5 for?

6 A It was in regards to the DSA between Duke and
7 ADP CR3, ADP SF1, et al.

8 Q Any particular aspect of the DSA that you
9 relied upon or rather -- let me restate the question.

10 Are there any particular aspects of your
11 testimony concerning the DSA for which you relied upon
12 Exhibit No. 5?

13 A In general, this was an information piece I
14 used throughout my assessment in review of the DSA.

15 Q Okay, fair enough. We'll come back to this
16 document.

17 But I want to turn now to Exhibit No. 4,
18 which is your direct testimony.

19 A Okay.

20 Q Do you have that in front of you?

21 A I do.

22 Q Is your direct testimony as reflected in
23 Exhibit No. 4 complete at this point?

24 A There are a couple of corrections.

25 Q Why don't we go over those corrections if you

1 don't mind and maybe we can -- you will see at the
2 bottom there is a Bates label that has a number on it.
3 And you don't have to read out the entire thing. Just
4 go to the last sequence of numbers and tell us which
5 page you're looking at and paragraph and we'll go
6 through each of the corrections or deletions that
7 you're going to tell us about.

8 A Okay. You'll have to bear with me. I've got
9 my own version that I have the corrections on.

10 Q Okay.

11 A Okay. Starting with Bates No. 14, which is
12 page 10 of my testimony, line 21, there's a term in the
13 middle of that sentence spelled S-A-F-E-S-T-O-R. That
14 should be changed to S-A-F-S-T-O-R.

15 Q Got it.

16 A Bates No. 24, which is page 20 of my
17 testimony, line 13, after the word "projects" there
18 should be a comma and the parentheses before the word
19 "such" needs to be deleted. That was an open paren.

20 Moving to line 14, at the end of that line
21 there is the word "of" that needs to be deleted. And
22 then moving down to line 16, insert the word "its"
23 between meet and immediate and delete the word "its"
24 between immediate and financial. The line should read
25 "required to utilize available assets to meet its

1 immediate financial needs."

2 Moving to Bates No. 3, which is my testimony,
3 page 26, line 22, delete the word "not," n-o-t. And
4 that is all the corrections to my testimony.

5 Q Okay. Thank you for that. Have you been
6 provided any new information related to this matter
7 that you did not have when you prepared your testimony?

8 A I have done some additional research on
9 things, but any documents that I've obtained in that
10 research you have been provided.

11 Q Did that additional research that you
12 performed after you prepared your testimony change or
13 alter your testimony in any way?

14 A No, it does not.

15 Q Have you prepared any sort of supplemental
16 testimony in this matter?

17 A I have not.

18 Q Do you have any plans to prepare any
19 supplemental testimony?

20 A Not at this time.

21 Q Are there any opinions that you have formed
22 with respect to this matter that are not reflected in
23 your testimony?

24 A I do not.

25 Q Tell me what the scope of your engagement in

1 this matter is.

2 A Can you please clarify your question?

3 Q Yes. What was GDS hired to do in this
4 matter?

5 A We were requested by the Office of Public
6 Counsel to review the proposed transaction between Duke
7 Energy and NorthStar in terms of adequacy in terms of
8 whether it seemed prudent to GDS and whether or not
9 there were any issues associated with the transaction
10 that could result in potential harm to Duke Energy
11 ratepayers.

12 Q Was anyone else at GDS retained to do
13 anything else aside from what you just described?

14 A No.

15 Q And no one at GDS participated or observed
16 the negotiations that resulted in a DSA in this case,
17 the decommissioning services agreement, did they?

18 A We did not.

19 Q I want you to turn to page 7 of your
20 testimony and I'm going to give you the Bates number
21 here in a second. It's Bates No. 11. And I'm going to
22 focus for a second on line 8.

23 On line 8 of page 7, you indicate that DEF's
24 decision to switch from SAFSTOR to DECON was
25 commendable; is that correct?

1 A Yes, I did.

2 Q And you would agree that there is a greater
3 benefit to DEF customers from a DECON decommission of
4 the CR3 power plant than from a SAFSTOR decommission,
5 correct?

6 A I would say that there is a potential for
7 that.

8 Q And you would agree that DECON would result
9 in a potential return of money to DEF customers,
10 wouldn't you?

11 A Yes, there is that potential.

12 Q You would also agree that a DECON
13 decommission would result in the removal of nuclear
14 material from the CR3 site much earlier than under
15 SAFSTOR, correct?

16 A No, I would not.

17 Q You would not?

18 A I would not.

19 Q What part of that statement do you not agree
20 with?

21 A The removal of the spent fuel material is
22 unknown.

23 Q If the DECON process as outlined in the DSA
24 currently proceeds as indicated in the DSA, the removal
25 would occur earlier than under SAFSTOR, correct?

1 A Not necessarily.

2 Q Okay. And you say not necessarily. What is
3 the qualification there?

4 A As I've talked about in my testimony, if
5 NorthStar is unable to properly perform the nuclear
6 decommissioning that material could remain on that site
7 for the same period of time.

8 Q But I asked you to assume that the DSA --
9 that the decommissioning progressed as indicated in the
10 DSA, as planned in the DSA.

11 Under that circumstance, you would agree that
12 the removal of the nuclear material from the site would
13 occur earlier than under SAFSTOR, wouldn't you?

14 A Under your hypothetical, I would still
15 contend that that's not certain.

16 Q Why would you contend that it's not certain
17 that if everything proceeds as indicated in the DSA the
18 nuclear material would not be removed earlier than
19 under SAFSTOR?

20 A Because the assumption of yours that it would
21 proceed as indicated in the contract -- and the
22 contract does not contain all of the terms and
23 conditions and issues associated with this project
24 being completed.

25 Q Okay. To your understanding, when is the

1 nuclear material scheduled to be removed from the CR3
2 facility under the DECON -- under the proposed DECON
3 decommissioning of this project?

4 A The anticipated -- let me verify something,
5 please.

6 Q Sure.

7 A I would refer back to Mr. Hobbs' testimony in
8 which he indicates potentially by 2027. And I'm
9 struggling to find a reference, but I believe there was
10 a '23 date in the DSA regarding the decommissioning of
11 the plant.

12 Q So it's your understanding based on what you
13 looked at that approximately late 2020s, early 2030s or
14 mid-2030s -- let's just assume it's mid-2030s the
15 nuclear material is going to be removed if everything
16 proceeds as planned; is that correct?

17 A Yeah, and I will say that the -- based upon
18 the experience of removal of nuclear material, 2035 is
19 a dream.

20 Q Okay. And you say it's a dream based upon
21 what?

22 A The fact that there's been promises of a
23 nuclear depository for spent nuclear fuel by the
24 Department of Energy for a very long time and it has
25 not occurred yet.

1 Q And do you know where the nuclear fuel in
2 this matter that's located in CR3 right now would be
3 relocated to if this project proceeds as planned under
4 DECON?

5 A I would have to review. No, I'm not certain.

6 Q Okay. So let's assume that 2030 -- mid-2030s
7 time frame for the removal of nuclear materials is
8 doable and does happen.

9 Under the SAFSTOR plan, the nuclear material
10 would not be removed from CR3 until sometime in 2073.
11 At least that's the plan.

12 Is that accurate?

13 A That's correct. Actually, I think it has to
14 be done by 2073.

15 Q And you would agree that mid-2030s is sooner
16 than 2073, wouldn't you?

17 A Yes.

18 Q Staying on page No. 7 of your testimony, on
19 Bates No. 11 you indicate that around Line No. 11 that
20 DEF's negotiation of the DSA was commendable, right?

21 A I do.

22 Q You would agree that the DSA terms negotiated
23 by Duke are beneficial to Duke's customers but you
24 think the DSA should be enhanced with terms you
25 recommend in your testimony; is that correct?

1 A I feel that without the enhancements
2 contained in my testimony that there is significant
3 risk to the ratepayers.

4 Q And we'll get into those risks. Would you
5 agree that there are significant benefits to the
6 ratepayers that would come from the DSA being
7 implemented?

8 A There are potential benefits but there is
9 also potential risk.

10 Q And there's typically benefits and risks
11 associated with any decommissioning of a nuclear power
12 plant, wouldn't you agree?

13 A Yes.

14 Q Indeed, after the enhancements were made to
15 the Vermont Yankee project based upon GDS'
16 recommendations there were still benefits and risks to
17 that project, correct?

18 A Yes, but those benefits were enhanced.

19 Q But there were still risks. You would agree
20 with that, wouldn't you?

21 A They were lower risks.

22 Q And lower is a relative term, right?

23 A In terms of millions of dollars, there is a
24 quantifiable number.

25 Q And we'll discuss that a little bit more in

1 more detail in a little bit.

2 You don't know what terms Duke and ADP or
3 NorthStar attempted through their negotiations to
4 include in the DSA but ultimately did not make it into
5 the DSA, do you?

6 A I do not.

7 Q And you would agree that ADP and NorthStar
8 are not obligated to agree to any of the proposed
9 enhancements that you've suggested in this matter,
10 correct?

11 A That is correct.

12 Q And you would also agree that if the
13 commission insists on including your proposed
14 enhancements but ADP or NorthStar refuse to agree to
15 your proposed enhancements DEF or Duke may have to
16 return to SAFSTOR; is that correct?

17 A That would be an option.

18 Q There is also the potential that if Duke
19 proposes some or all of the enhancements to ADP and
20 NorthStar -- and I'm going to just generally refer to
21 ADP and the ADP affiliates and ADP parent companies as
22 ADP.

23 Is that okay?

24 A That's fine.

25 Q You would agree that there is a potential

1 that if Duke proposes some or all of the enhancements
2 to ADP that ADP will want to renegotiate other terms
3 within the DSA, wouldn't you?

4 A Not necessarily true.

5 Q There is the potential for that, isn't there?

6 A Yes, there's always potential.

7 Q And there's a potential that ADP will demand
8 more money in exchange for agreeing to include any of
9 your proposed enhancements, right?

10 A There is always a chance.

11 Q There is also the potential that ADP will
12 demand to reduce the amount of risk that it has assumed
13 under the DSA for agreeing to include the enhancements,
14 correct?

15 A If they perceive that they have enhanced
16 risk, yes, they may choose that option.

17 Q And you don't know what DSA is going to do
18 sitting here today, do you?

19 A I'm sorry. Who is DSA?

20 Q I'm sorry. I meant to say ADP. You don't
21 know how ADP would respond to a demand that your
22 proposed enhancements be included in the DSA, do you?

23 A No, I do not.

24 Q I want to turn to line 15 of page 7. You
25 indicate in there that the enhancements you recommend

1 are intended to mitigate potential risk; is that
2 correct?

3 A Which line did you say?

4 Q Line 15.

5 A Yes.

6 Q On page --

7 A Yes. My statement says that the recommended
8 consumer protections in the form of enhancements
9 contained in my testimony are intended to mitigate
10 potential risk and enhance the probability of a
11 successful CR3 decommissioning under the deal that Duke
12 Energy Florida has negotiated.

13 Q And in a minute we're going to talk about
14 specifically the risks that you're referencing there.

15 But before I do that, I want to ask you there
16 is no way for you to know at this time whether any of
17 the risks that we're going to be discussing in a minute
18 for which you recommend these enhancements reflected in
19 your testimony will ever manifest themselves, is there?

20 A That is too -- that question has too many
21 different unknowns for me to answer.

22 Q Right, because we don't know whether any of
23 these risks are going to manifest themselves, do we?

24 A I don't know what risk you're talking about.

25 Q Well, the risks that you reference; for

1 instance, when you talk about mitigating potential
2 risk.

3 Do you know that those risks will actually
4 manifest themselves at this point?

5 A No. They are risks. Risks are potential
6 occurrences.

7 Q Correct. Let's look at line No. 17, please.
8 You indicate there that none of the recommended
9 enhancements should cause detriment to the finances of
10 this project or to the entities involved.

11 Did I read that correctly?

12 A Yes.

13 Q Is there any language within any of the
14 documents reflected in Exhibits 2, 3, 5, 6, 7, 8 that
15 support this opinion?

16 A I'm going to have to review all of those
17 documents to determine if that's true or not.

18 Q Okay. Please do so.

19 A This is going to take some time.

20 Q Okay.

21 A I would recommend that we take a break at
22 this point for me to continue this review process.

23 MR. HERNANDEZ: All right. Why don't we
24 take five minutes. This is a good breaking
25 point anyway.

1 We can resume -- well, let's resume at
2 10:50, which is seven minutes from now.

3 (A brief recess was held from 10:43 a.m.
4 to 10:50 a.m.)

5 BY MR. HERNANDEZ:

6 Q Mr. Polich, have you had an opportunity to
7 review the documents?

8 A Yes. Can you please repeat your question?

9 Q Yes, sir. Again, we're on Exhibit No. 4,
10 page 7 of your testimony, which is Bates No. 11. I'm
11 going to read from lines 17 and 18 in which you opine
12 that none of the recommended enhancements should cause
13 detriment to the finances of this project or the
14 entities involved.

15 And my question to you is whether there is
16 any language within any of the documents that you've
17 identified as documents you relied upon for your
18 opinions in this matter that support this conclusion.
19 And again, those documents has been identified as
20 Exhibits 2, 3, 5, 6, 7, and 8.

21 A The document that you're referring to, the
22 Exhibits 2, 3, 5, 6, 7, 8 do not contain anything in
23 them that address this issue at all with the exception
24 of my Exhibit No. 2.

25 Q Let's take a look at Exhibit No. 2, please.

1 And again, Exhibit No. 2 consists of the work papers
2 and RAP-7; is that correct?

3 A That is correct.

4 Q So these are documents -- this exhibit
5 reflects calculations and information that you gathered
6 and have reflected on this document, correct?

7 A Yes. It also is based upon supporting
8 documentation that was provided by Duke Energy in
9 regards to NorthStar's financials and the DSA.

10 Q But nowhere on Exhibit 2 does it say that
11 none of the enhancements you've recommended would not
12 cause a detriment to the finances of the project or the
13 entities involved, does it?

14 A Actually, Exhibit No. 2, Bates No. 004 shows
15 how the enhancements we're talking about would be --
16 would have a positive impact on the project.

17 Q And this reflects -- Bates No. 004, this
18 reflects a calculation or an assessment that you
19 performed, correct?

20 A That is correct.

21 Q I'm going to move on. If the commission
22 insists that your recommended enhancements be
23 incorporated into the DSA and as a consequence of this
24 Duke and ADP are forced to renegotiate the DSA and ADP
25 elects to withdraw from the DSA, wouldn't that be

1 detrimental to the DECON project?

2 A Not necessarily.

3 Q Under what circumstance would that not be
4 detrimental?

5 A Well, since we're talking about hypotheticals
6 let's continue with hypotheticals and add in if the
7 consortium of ADP proceeds with the project as it
8 currently is structured, depletes the nuclear
9 decommissioning trust fund, doesn't complete the
10 decommissioning project, and then Duke is left with
11 putting it back in SAFSTOR or even worst-case scenario,
12 putting it in SAFSTOR, being put in position where they
13 have to go back to customers for additional funds for
14 decommissioning, it would be detrimental.

15 Q Okay. But that wasn't the scenario that I
16 proposed. The scenario that I proposed --

17 A The scenario you posed is a scenario on a
18 hypothetical and it's as realistic as mine.

19 Q But, Mr. Polich, I get to ask you questions
20 during this deposition and you have to answer them.
21 You can't answer my question with another hypothetical.
22 Let me restate my question.

23 If the commission insists that your
24 recommended enhancements be incorporated into the DSA
25 and as an consequence of this Duke and ADP are forced

1 to renegotiate the DSA and ultimately ADP elects to
2 withdraw from the DSA, wouldn't that be detrimental to
3 the DECON project?

4 A No.

5 Q Why wouldn't it be detrimental?

6 A Because I can't agree with your hypothetical
7 because the risk exists both ways in the same form and
8 so defining "detrimental" has to incorporate risk from
9 both sides of the equation.

10 Q You agreed with me earlier when we talked
11 about the benefits of DECON, the accelerated
12 decommissioning. Those included the potential for
13 returning money to the consumers and the potential for
14 removing the nuclear waste from the site earlier than
15 currently planned.

16 Would you agree that these benefits would go
17 away if the DECON project goes away?

18 A Not necessarily.

19 Q Okay. Explain to me the circumstances under
20 which that would not occur if the DECON project does
21 not happen?

22 A If the current projections by Duke Energy for
23 the cost of decommissioning Crystal River 3 are
24 realistic, Duke has the option of going back out for
25 bid for the decommissioning of CR3 under a DECON

1 program or possibly going to one of the other bidders,
2 and it could result in the same or potentially more
3 savings.

4 Q And it could result in a more expensive
5 contract, couldn't it?

6 A I have no knowledge of that.

7 Q Right, and that would require the abandonment
8 of this particular DSA and starting all over again,
9 wouldn't it?

10 A Yes, it would.

11 Q We're still on page 7. I'm going to read
12 from your statement that begins on line 18. There you
13 state, "The customer protection enhancements are
14 generally consistent with accounting principles that
15 recognize contractual financial commitments."

16 Did I read that correctly? Mr. Polich, did
17 you hear my question?

18 A I did. I'm trying to find something that I
19 lost.

20 Q Okay. If that happens at any point, just let
21 me know.

22 A I'm sorry. Where were you referring to
23 again?

24 Q Yes, sir. I'll read it again and I'm reading
25 from page 7, line 81. "The customer protection

1 enhancements are generally consistent with accounting
2 principles that recognize contractual financial
3 commitments."

4 Did I read that correctly?

5 A Yes.

6 Q Is there any support in the documents that
7 you identified as ones that you relied upon for this
8 statement?

9 A Not specifically those documents.

10 Q Is there any other document that we don't
11 have here with us that would provide support to that
12 statement?

13 A This statement comes from information that
14 I've obtained in the course of my career. I would
15 probably find that text somewhere that would talk about
16 this issue but I don't have it at my fingertips.

17 Q And did you review that text as part of your
18 preparing this testimony?

19 A No, I did not.

20 Q So it's safe to say you did not rely upon
21 that particular text in preparing your testimony,
22 correct?

23 A To the extent that I gained knowledge at some
24 point in my career from that text, then I would say I
25 relied on it. But did I specifically reference it and

1 review it prior to writing this testimony? No.

2 Q Okay, fair enough. Did you consult with an
3 accountant in forming the opinions contained in your
4 testimony?

5 A I did not.

6 Q I'm going to ask you some fairly broad
7 questions about your recommended enhancements and later
8 on I'm going to ask you some more specific questions
9 about those recommended enhancements.

10 But with your first recommended enhancement,
11 which appears at page 7, Bates page 11, down on line
12 22, your first recommended enhancement is that the
13 parental support agreement be amended to include the
14 state as a beneficiary; is that correct?

15 A That is correct.

16 Q Is there anything within the documents that
17 you relied upon that you've provided to us as Exhibits
18 2, 3, 5, 6, 7, 8 that supports that opinion?

19 A I would say that the NRC order in the Vermont
20 Yankee case as well as the Vermont Public Utility
21 Commission order were influential in this piece.

22 Q Is there any particular portion of those
23 documents that you relied upon or that support this
24 conclusion?

25 A Again, I'm making a recommendation here.

1 There is no conclusion.

2 Q Okay. I should restate that. Is there
3 anything within those documents that you just
4 referenced that support the recommended enhancement
5 that the parental support agreement be amended to
6 include the state as a beneficiary?

7 A It is my recommendation based on the risk
8 that I saw and the potential benefits of this, which I
9 address later on in my testimony.

10 Q So you weren't -- there is nothing within the
11 documents that you've identified as ones that you
12 relied upon that specifically supports your recommended
13 enhancement here, correct?

14 A A recommended enhancement is a condition in
15 an existing deal. There wouldn't be any documents that
16 would support that enhancement.

17 Q So the answer is, no, there is no document
18 that supports that recommended enhancement, correct?

19 A There is no document that recommends that
20 enhancement.

21 Q But my question is whether there is any
22 document -- any other documents that you have produced
23 as ones upon which you relied for your testimony in
24 this case that support your recommendation -- your
25 recommended enhancement that the parental support

1 agreement be amended to include the state as a
2 beneficiary?

3 A Again, I go back to mentioning the Vermont
4 Public Utility Commission final order on the asset
5 transfer of Vermont Yankee.

6 Q Okay. And I attempted to ask you earlier
7 whether there was anything in particular within that
8 order that you believe supports your recommended
9 enhancement. And if you could answer that question, I
10 would appreciate it.

11 A I would have to refer you to the actual
12 order.

13 Q I'm asking you to point it out. I'm sorry
14 for jumping in there but I'm asking you to identify the
15 particular portion of that order that you believe
16 supports your recommended enhancement.

17 A The difficulty with answering your question
18 is the order contains a provision in the MOU that
19 NorthStar agreed to that provided the state of Vermont
20 essentially the same level of protection.

21 That was negotiated privately and is under
22 confidentiality so, no, I cannot provide you with that
23 document.

24 Q Okay. But that is -- the reference you just
25 made is the one that you believe supports your

1 recommended enhancement; is that correct?

2 A It is part of what supports my recommended
3 enhancement. My recommended enhancement also
4 incorporates the knowledge of how this deal is
5 structured and what the potential detrimental effects
6 could be if the project does not proceed as intended in
7 the DSA.

8 Q Yes, sir, and we'll get to those issues. My
9 focus right now is just particular documents and which
10 one of those support this first recommended
11 enhancement, and you've identified the one and the one
12 element of that order. I'm just trying to find out if
13 there is anything else within any of the documents.

14 A The other documents that support this
15 enhancement are the NorthStar financials.

16 Q Okay.

17 A Also Duke Energy's assessment of the credit
18 risk associated with NorthStar.

19 Q Okay. Anything else?

20 A Not at this time.

21 Q Let's talk about the risk here. What
22 potential risk associated with the decommissioning of
23 CR3 would this particular enhancement mitigate, your
24 first recommended enhancement?

25 A This recommended enhancement is in terms of

1 -- currently, the way the parental support agreement is
2 structured the only entities that can call on the
3 parental support agreement are the ADP consortium or
4 the NRC.

5 With the reporting requirements to the NRC in
6 terms of the nuclear decommissioning process as well as
7 the status of the nuclear decommissioning trust fund,
8 is such that there could be detrimental loss in the
9 nuclear decommissioning trust fund long before the NRC
10 is aware of what's going on.

11 This enhancement is also tied to some of the
12 other enhancements, specifically No. 4 and 5, that
13 would give the State of Florida an opportunity to know
14 what's going on sooner than the NRC would know by
15 providing them the ability to call on the parental
16 support agreement sooner than the NRC. It enhances the
17 ability to reduce the risk to ratepayers.

18 Q Okay. You would agree that Duke has the
19 ability to monitor the trust fund as frequently as it
20 wishes, wouldn't you?

21 A Duke has the ability to monitor the trust
22 fund but they don't have the ability to call on the
23 parental support agreement.

24 Q So the focus here, the risk here is the
25 parental support agreement, correct?

1 A That's what this addresses, yes.

2 Q If the commission requires that this
3 particular recommended enhancement, your first
4 recommended enhancement, is made part of the DSA and
5 ADP refuses to agree to do that, would it be your
6 recommendation that the commission not approve the DSA?

7 A That's what my testimony says.

8 Q And what would be the basis for your
9 recommendation that the commission not approve the DSA
10 on the basis that this particular recommended
11 enhancement is not included?

12 A Again, that goes back to my testimony on page
13 28.

14 Q And which particular item are you referring
15 to?

16 A I'm referring to my testimony starting on
17 line 7, page 28 continuing through line 6 on page 30.

18 Q Can you briefly summarize that for us,
19 please.

20 A Basically, what we're saying is what I said
21 earlier that by providing the State of Florida the
22 ability to call on the parental support agreement
23 provides another level of enhancement in terms of
24 ensuring that if the project doesn't go as planned in
25 the DSA that you can minimize the risk to ratepayers by

1 calling on the parents of the ADP consortium to provide
2 funding to ADP to complete the decommissioning.

3 Q Okay. Let's move on to your second
4 recommended enhancement and that appears on page 8.
5 And your second recommended enhancement is that the
6 parent companies of ADP maintain a minimum of cash or
7 cash equivalent assets in the amount of at least
8 105,000,000 to support the parental support agreement;
9 is that correct?

10 A That's correct.

11 Q Is this recommended enhancement supported by
12 any of the documents that you relied upon for your
13 testimony?

14 A Yes, they are.

15 Q Can you identify which ones in particular,
16 please?

17 A Those documents are the NorthStar financials
18 that were provided by Duke Energy.

19 Q Anything besides the NorthStar financials?

20 A No.

21 Q Can you tell us what potential risk
22 associated with the decommissioning of CR3 would this
23 recommended enhancement mitigate?

24 A The corporate structure -- and I discuss this
25 in my testimony. The corporate structure of the ADP

1 consortium, the two parent companies, which are Orano
2 and NorthStar -- Orano is a well-capitalized entity of
3 which has minimal risk of not being able to support the
4 parental support agreement.

5 NorthStar on the other hand is -- if you look
6 at the financial structure that was provided, is held
7 by a series of independent companies in which case
8 there is very little capital support for NorthStar in
9 their financials right now. There is nothing that
10 would prevent NorthStar from dividending or -- not
11 dividending but moving assets up to its parent entities
12 at any point in time.

13 Without that covenant, if the project gets in
14 financial trouble -- and again, with the other
15 enhancements that we're talking about in terms of
16 frequency of reporting of information to Duke as well
17 in Recommendation 4, as well as Recommendation 5, it
18 could be sometime before anybody knows what's really
19 going on which could result in a shell of a company
20 which means the parental support would be worthless.

21 Q Okay. And if the commission requires that
22 this recommended enhancement be made part of the DSA
23 and the ADP parties refuse to agree to do so, would it
24 be your recommendation that the commission not approve
25 the DSA on that basis?

1 A Yes.

2 Q Let's turn to your third recommended
3 enhancement and that is to modify the contractor's
4 provisional trust contributions from NorthStar to
5 increase it from 6 percent to 10 percent of payments.

6 Is that supported -- is that recommended
7 enhancement supported by any of the documents that you
8 relied upon for your testimony in this matter?

9 A Again, I go back to both the Vermont order as
10 well as the NorthStar financials.

11 Q Is there anything within that Vermont order
12 in particular that support this recommended
13 enhancement?

14 A It shows that NorthStar did agree to a
15 10 percent level of contribution to the provisional
16 trust in their agreement within the MOU that was
17 ultimately decided to move forward with.

18 Q Okay. And we'll get into that in a little
19 bit.

20 But your belief is that the fact that
21 NorthStar agreed to an increase to 10 percent with
22 respect to the Vermont Yankee decommissioning project
23 means that they ought to agree to an increase to
24 10 percent here as well?

25 A I feel that 10 percent is a valid number and

1 the Vermont Yankee case shows that it's not
2 unreasonable.

3 Q We'll get into that a little bit more. Tell
4 me what potential risk associated with the
5 decommissioning of CR3 this recommended enhancement
6 would serve to mitigate?

7 A I would actually have to defer to the DSA as
8 well as Duke's reasoning for this provision to begin
9 with.

10 The contractor's provisional trust is
11 intended to be a source of funding for decommissioning
12 in the event that it doesn't go as planned in the DSA.
13 And the fact that right now it's only being funded at a
14 6 percent level means that the full funding of it
15 doesn't occur till near the very end of the project.

16 If you look at my -- the chart that I include
17 in my testimony -- and again, this is also addressed in
18 quite detail in my testimony. But if you look at the
19 chart on page 33 of my testimony, which is -- that
20 would be --

21 Q Page 37?

22 A Page 33, which is Bates No. 37. You see that
23 that fund is funded much sooner which would mean that
24 increases the value of it for potentially being used to
25 complete the project.

1 Q And we'll get into the comparisons between
2 this Vermont project and this one with respect to the
3 contractor's provisional trust.

4 But before we do that let me ask you wouldn't
5 increasing the contributions from 6 percent to 10
6 percent restrict ADP's cash flow?

7 A Not necessarily.

8 Q Under what circumstances would it not
9 restrict ADP's cash flow?

10 A To the extent that a company has the ability
11 to utilize and claim as an asset, there's always a
12 chance a company can amortize that asset through a
13 credit form and enable it to still utilize the funds
14 associated with it.

15 In addition, to the extent that those funds
16 are earning a return on them based upon the return on
17 the nuclear decommissioning trust fund, they could
18 actually be useful.

19 Q Okay. But the funds themselves that would be
20 deposited into the contractor's provisional trust would
21 not be available, correct?

22 A I can't agree with that statement.

23 Q Okay. Why can't you agree with it?

24 A For the reasons I just stated.

25 Q But the cash itself -- so could ADP pull

1 money out of the contractor's provisional trust fund
2 itself?

3 A No, they cannot pull -- physically pull the
4 money out of the provisional trust but they can claim
5 that as an asset on their balance sheets and that as an
6 asset can be utilized for purposes of obtaining credit.
7 By obtaining credit, that cash becomes available.

8 Q Understood. If the commission requires that
9 this recommended enhancement be made part of the DSA
10 and the ADP parties refuse to do so, would it be your
11 recommendation that the commission not approve the DSA?

12 A That's my recommendation in this testimony.

13 Q All right. Let's turn to your fourth
14 recommended enhancement and that is to amend the
15 reporting requirements contained in Attachment 9,
16 Section B from quarterly to monthly and enhance the
17 information provided.

18 Is that a reasonable summary of that
19 recommended enhancement?

20 A Yes.

21 Q And is there anything within the documents
22 that you relied upon for your testimony in this case
23 that supports that recommended enhancement?

24 A Again, I'll go back to the Vermont order as
25 well as -- that one is subject to check. I've got to

1 double check something on the Vermont order.

2 But again, I'm going to go back to the
3 documents that were provided to us in discovery.

4 Q Which particular documents that were provided
5 to you in discovery?

6 A Let me rephrase this. There are no specific
7 documents. This recommendation arises from both
8 Dr. Jacobs' and my experience in terms of construction
9 projects.

10 The truth of the matter is three months is a
11 long time on a construction project in which
12 significant changes can occur. And our recommendation
13 is to -- is that this reporting requirement ensures
14 that Duke Energy has up-to-date information as well as
15 the Public Service Commission as to what's going on in
16 the project and they're not caught being surprised
17 three months down the road. So this is more of an
18 experienced-based recommendation than a documentation
19 experience.

20 Q So you relied upon experience as opposed to
21 documents for this recommendation, correct?

22 A Yes.

23 Q Fair enough. If the commission requires that
24 this recommended enhancement be made part of the DSA
25 and the ADP parties refuse to do so, would it be your

1 recommendation that the commission not approve the DSA?

2 A If the ADP companies refuse this
3 recommendation, then definitely because there is a lot
4 more risk that they are trying to hide stuff.

5 Q Okay. Let's take a look at your fifth
6 recommended enhancement and that is to establish an
7 independent monitor to oversee the decommissioning
8 activities and ADP's CR3's financial status.

9 Same question as before, is there anything
10 within the documents that you relied upon for your
11 testimony that provides support for this recommended
12 enhancement?

13 A Again, this recommendation is based upon
14 numerous construction project experience and the
15 advantages in how construction in the power industry is
16 traditionally performed.

17 Utilities will oftentimes hire an EPC
18 contractor for the project and then also hire an entity
19 to oversee -- what's commonly called the owner's
20 engineer to oversee the project with the EPC contractor
21 performing an independent review of how the project is
22 going on. And that has very often proven beneficial in
23 terms of identifying issues long before they otherwise
24 would have been identified.

25 Q Okay. And so with respect to your fifth

1 recommended enhancement and your fourth recommended
2 enhancement, you relied upon your and Dr. Jacobs'
3 combined experience related to construction projects;
4 is that accurate?

5 A That is accurate.

6 Q Did any of those projects include demolition
7 or decommissioning of nuclear power plants?

8 A Not necessarily nuclear power plants but
9 other cases of decommissioning or demolition of
10 facilities.

11 Q What types of facilities were those?

12 A Those were in some cases conventional power
13 plants and in other cases there were some cases of
14 industrial facilities.

15 Q And again, if the commission requires this
16 recommended enhancement be made part of the DSA and the
17 ADP parties refuse to agree to do so would it be your
18 recommendation that the commission not approve the DSA?

19 A Again, I'll go back to the previous statement
20 I made is that if they're willing to walk away from the
21 project based upon this issue then there is
22 considerable risk in this project because they're
23 afraid of being watched.

24 Q So you would recommend that the commission
25 not approve the DSA?

1 A That's correct.

2 Q Let's turn to page 10, which is Bates page 14
3 of your testimony. And I'm going to ask you to turn
4 your attention to a statement you make at the beginning
5 or that begins on line 10. I think it's line 10
6 through 17.

7 And you make the point here that the
8 customers who have paid into the NDF benefitted from
9 CR3's electricity generation but if the NDF for some
10 reason is insufficient in the future to complete
11 decommissioning and dismantlement the DEF customers who
12 will then be required to contribute to the NDF fund
13 will not be beneficiaries of the electricity generated
14 at CR3.

15 Is that an accurate summation of what you
16 said there?

17 A Yes, it is.

18 Q And if Duke were to continue with the SAFSTOR
19 decommissioning and for some reason, let's say, in
20 2070, the year 2070, the NDF funds are not sufficient
21 to complete SAFSTOR.

22 The DEF customers at that time would
23 presumably have to pay into the NDF fund in order to
24 complete SAFSTOR, wouldn't they?

25 A That is an extreme hypothetical. Because of

1 the annual assessment in the DEF fund that NRC reviews,
2 the question is when those would be -- when the
3 assessment of that DEF fund would have to occur and, in
4 addition, based upon Duke's recent evaluation of a cost
5 of decommissioning. Again, that's not necessarily the
6 case.

7 Q Okay. But this is a hypothetical that I'm
8 posing for you. You can plug in whatever year you want
9 in there. I chose 2070 just out of the air but choose
10 any year you would like.

11 If the NDF funds at some point are
12 insufficient to complete SAFSTOR decommissioning, the
13 customers of Duke at that time would have to contribute
14 towards the NDF fund, wouldn't they?

15 A If the commission agrees to it.

16 Q Okay. And those DEF customers would not have
17 benefitted from the electricity generated at CR3
18 either; is that right?

19 A Yes. Under the same discussion we have here,
20 yes.

21 Q Okay. And you would also agree that the
22 longer the CR3 decommissioning project is delayed the
23 greater the possibility that costs associated with
24 decommissioning will increase, wouldn't you?

25 A No.

1 Q You don't?

2 A No, because that's actually proven the
3 opposite, decommissioning costs as going up.

4 Q I'm looking at -- give me a second here,
5 Mr. Polich. I'm looking at some language contained
6 within Exhibit 5 that I'm going to ask you to turn your
7 attention to here in a second.

8 Mr. Polich, I'm going to ask you to turn your
9 attention to Exhibit No. 5 and ask you to look at page
10 36 of that document. And this one is not Bates labeled
11 because we got it I think last night.

12 I'm going to read from the last two
13 paragraphs there, and then I'm going to ask you whether
14 you agree with the statement.

15 A Which page is that?

16 Q Page 36, sir.

17 A Okay.

18 Q Are you there, sir?

19 A Yes, I am.

20 Q Okay. And I'm going to read from the last
21 two paragraphs of that page and it goes on to the
22 beginning of page 37.

23 And it begins with, "Despite NRC approval and
24 the additional assurances provided by the MOU, risks
25 related to the adequacy of available funding remain.

1 As acknowledged in the Department's
2 testimony, the additional financial assurances provided
3 in the MOU reduce but do not eliminate risks related to
4 the adequacy of financial support for the projects, and
5 approval of this transaction under the terms
6 memorialized in the MOU represents a balancing of
7 interests.

8 We therefore remain faced with a situation in
9 which the benefits of the proposed transfer must be
10 balanced against the uncertainty and risk that remain
11 after accounting for the additional financial
12 assurances and contingent resources provided for in the
13 MOU.

14 As the parties to the MOU point out, our
15 consideration must also include the status quo, which
16 also involves substantial uncertainties and risks.

17 Under Entergy's current schedule for delayed
18 decommissioning and site restoration, these
19 uncertainties and risks would fall on a future
20 generation that realized no benefits from electricity
21 generated by Vermont Yankee. In addition, significant
22 financial assurances and risk-mitigation measures
23 provided for in the MOU are not available under the
24 status quo."

25 Mr. Polich, do you agree with that statement

1 by the Vermont Public Utility Commission?

2 A I agree that this statement is made by the
3 Vermont Public Utility Commission in reference to the
4 Vermont Yankee deal.

5 Q Okay. And do you agree that with respect to
6 the Vermont Yankee deal under Entergy's current
7 schedule for delayed decommissioning and site
8 restoration there are uncertainties and risks that
9 would fall on a future generation that realized no
10 benefits from electricity generated by Vermont Yankee?

11 Do you agree with that?

12 A There is that potential.

13 Q And isn't there that potential with respect
14 to the CR3 project as well?

15 A Not the same potential.

16 Q What's the difference?

17 A Vermont Yankee is a different type of nuclear
18 power plant.

19 Q Okay. Any other difference?

20 A There were other issues associated with
21 Vermont Yankee that I'm not able to divulge.

22 Q Okay. Every one of these projects to
23 decommission a nuclear power plant is going to have
24 different aspects about it, right?

25 A Yes.

1 Q No two projects are going to be the same,
2 correct?

3 A Correct.

4 Q But you would agree generally that the longer
5 a project is delayed the more likely or the greater the
6 possibility that costs associated with decommissioning
7 will increase, wouldn't you?

8 A Reality has proved the opposite.

9 Q How so?

10 A If you look at Duke's estimates of nuclear
11 decommissioning that they filed with the NRC at various
12 times over the last several years, those cost estimates
13 were significantly higher than what Duke is currently
14 projecting for Crystal River 3.

15 Q And do you know why that is?

16 A Because nuclear decommissioning techniques
17 have been learned that allow it to be done more
18 effectively, that have reduced exposure, that have
19 allowed various things to happen.

20 One of the things that you have occur with
21 nuclear decommissioning is as the project sits the
22 amount of radiation decreases which reduces the amount
23 of decontamination that has to occur. That is one of
24 the more expensive portions of nuclear decommissioning.

25 And to the extent that that occurs, it can

1 potentially reduce or significantly reduce future costs
2 of decommissioning. So I can't agree that necessarily
3 the costs are going to increase.

4 Q But you don't know; is that right?

5 A I don't -- in response to that question --
6 you introduced a hypothetical and that hypothetical has
7 many unknowns in both directions.

8 In reality, my guess is that you would
9 probably see equal to or a lower cost in the future.

10 Q So there's a possibility that costs of
11 decommissioning will decrease and there's a possibility
12 that they will increase.

13 Is that accurate?

14 A That is correct.

15 Q And you don't know which way it's going to
16 go, do you?

17 A There's a probability both ways and it's my
18 opinion the probability is that they will stay
19 commiserate with where they are today or possibly be
20 lower.

21 Q And what is the basis for your opinion?

22 A The basis of my opinion is based on what I've
23 been seeing in the cost of nuclear decommissioning
24 projects.

25 Q Let's turn to page 15, which is Bates No. 19

1 of your testimony. On line 5 of page 15, you refer to
2 the DSA and a semi-fixed contract.

3 A Yes.

4 Q Can you tell me what you mean by that term
5 "semi-fixed"?

6 A Yes. The DSA talks about a figure of
7 540,000,000 which is deposited in a separate account
8 associated with the nuclear decommissioning trust fund.

9 That 540,000,000 is allowed to accumulate
10 earnings over the time period of the decommissioning of
11 the project such that by the end of the project it is
12 highly likely that that fund will be worth more than
13 540,000,000 of which the ADP company is entitled to the
14 full amount. So in reality, it's not truly a
15 fixed-price contract.

16 Q Okay. But you would agree that there aren't
17 any change order provisions in the DSA, correct?

18 A I would agree that there are no change orders
19 that are allowed under the DSA.

20 Q And you would agree that the risk of any
21 scope changes or cost escalations under the DSA fall on
22 ADP, correct?

23 A Yes, I do and that's, again, part of the
24 reason why this contract has risk.

25 Q Staying on page 15, Bates No. 19, I want you

1 to take a look at lines 18 through 19. And you
2 indicate there that the DSA contains several terms
3 designed to mitigate financial risk but risk still
4 exists under the DSA; is that right?

5 A Again, can you please provide me what page
6 and what line numbers again?

7 Q Yes, sir. We're on page 15 of your
8 testimony, Bates No. 19. The line numbers are 18
9 through it looks like 20.

10 And the statement that I'm reading from
11 indicates that although the DSA contains several terms
12 designed to mitigate potential financial risk, risk
13 still exists because of the financial structure of
14 NorthStar and its obligation on other nuclear
15 decommissioning projects.

16 Do you see that?

17 A I'm sorry. I was on the wrong page. Please
18 repeat your question.

19 Q Well, I was just directing you to your
20 testimony. I'm about to ask you a question.

21 Were you able to find your testimony?

22 A You're talking about page Bates No. 19, lines
23 18 through 21?

24 Q Yes, sir. You're not contending, are you,
25 that your proposed enhancements would eliminate all

1 potential risks associated with the DSA, would you?

2 A No, there will still be risk.

3 Q With an agreement of this magnitude, there
4 probably will always be some potential risks, wouldn't
5 there?

6 A Yes.

7 Q Did you assess NorthStar's financial position
8 on a going concern basis or on a hypothetical
9 liquidation basis?

10 A Both.

11 Q You said both?

12 A Yes.

13 Q Can you explain first of all why you used
14 both forms of assessment with respect to NorthStar's
15 financial position?

16 A Because you need to when you're assessing --
17 performing this kind of assessment of an entity's
18 financial capability as well as risk.

19 Q Can you explain for us what the difference
20 between a going concern financial assessment and a
21 liquidation assessment are just generally?

22 A In general, a growing concern it depends upon
23 -- again, your question has a significant number of
24 nuances as well as hypothetical conditions associated
25 with it because when you talk about liquidating a firm

1 the question is when does that liquidation occur, under
2 what terms does that liquidation occur. Is it under
3 bankruptcy, is it a liquidation by the parent
4 organization, is it a case where it's being liquidated
5 by a third party. But the -- but you need to look at
6 both when trying to look at the risk of this type of
7 project.

8 Q Does the DSA contemplate liquidation in any
9 form?

10 A No, it does not. The DSA assumes the project
11 goes forward as expected.

12 Q Is there anything within the documents that
13 you relied upon for your testimony in this case that
14 would support your use of assessing NorthStar on a
15 liquidation basis?

16 A It's an appropriate way of assessing it.
17 Duke themselves assessed NorthStar's potential to
18 perform this project as well as what the risk would be
19 if the project did not occur in the fashion that it's
20 envisioned to occur. It's prudent financial practice
21 to assess that risk.

22 Q When you say it's prudent financial practice,
23 what are you relying upon for that statement?

24 A Years and years of experience.

25 Q What experience?

1 A In project risk. If you want me to
2 specifically start referencing stuff, Duke -- if you
3 look at my exhibit of RAP-6 starting with page 208 and
4 continuing through page 313, you see that Duke
5 performed a risk assessment on NorthStar as to their
6 capability of being able to support this project.

7 That was a prudent thing to do, and we have
8 performed that same level of analysis.

9 Q So are you saying that Duke's assessment was
10 a liquidation-based assessment?

11 A The financial tests that they're performing
12 are based on the concept of what if the company gets
13 into financial trouble.

14 Things like current ratios, cash ratios,
15 quick ratios are all standard mechanisms under which
16 you assess the ability of a company to weather
17 potential shortfalls and be able to pay their bills and
18 not go into bankruptcy.

19 (Technical interruption to the witness'
20 video.)

21 BY MR. HERNANDEZ:

22 Q Does that indicate to you that Duke's
23 assessment of NorthStar's finances was based on a
24 liquidation scenario?

25 A You're missing the point here. It's not a

1 question of liquidation. These are measures that try
2 to look at their ability to weather a potential of not
3 going into liquidation. And you do this from a
4 perspective that if you do go into liquidation the
5 situation is significantly worse.

6 Q I want you to turn back to page 21 of your
7 testimony please and that is page --

8 A You're going to have to give me the actual
9 page numbers of my testimony because I have forgot to
10 bring my charger in here and my computer died.

11 Q Yes, sir. It's actually -- your actual page
12 is page 21 and the Bates number is 25.

13 A Okay. Thank you.

14 Q And I'm going to ask you to look at your
15 testimony beginning on line 10. And you indicate there
16 that the full amount of accounts receivable may not be
17 accessible in times of financial stress.

18 Is that accurate?

19 A Yes.

20 Q And can you explain to me whose financial
21 stress you're referencing there?

22 A I am referencing -- in this case here, I'm
23 specifically referencing NorthStar.

24 Q Can you explain to me why NorthStar's
25 financial stress would impede its ability to collect on

1 an account receivable to be paid by a third party?

2 A Because accounts receivable are usually based
3 upon contractual terms and the ability to collect those
4 funds are based on those contractual terms. Also,
5 there is nothing to guarantee that those -- depending
6 upon the situation and where those accounts receivable
7 are from.

8 NorthStar is about to -- is in the process
9 right now, for example, of decommissioning Vermont
10 Yankee which is a significant amount of accounts
11 receivable to them. To the extent that they have the
12 ability to withdraw or to be paid by the nuclear
13 decommissioning trust fund and access those funds in
14 accordance with that contract could significantly
15 impede their ability to utilize those accounts
16 receivable.

17 Q Okay. But you indicated that NorthStar's
18 financial stress -- if NorthStar is under financial
19 stress, it won't be able to or it will be impeded in
20 its ability to collect on an account receivable. And I
21 guess I'm not understanding your response.

22 Could you explain that to me again, please?

23 A I'm talking about -- again, we're addressing
24 NorthStar's financial situation in the event of
25 financial stress. And NorthStar may not be able to

1 collect on its accounts receivable in a time frame that
2 will mitigate that financial stress.

3 Q So you're assuming that that third party that
4 owes money to NorthStar will not pay NorthStar in a
5 timely basis because NorthStar is under some sort of
6 financial stress.

7 Is that what you're saying?

8 A That's not what I'm saying. I'm saying that
9 there's contractual terms that dictate the payment of
10 those terms -- of those amounts and if it can prevent
11 those from occurring. For example, if a company or an
12 entity challenges NorthStar's bills that then becomes a
13 case where those funds may not be paid --

14 Q But that doesn't have anything to do with --
15 I'm sorry. I apologize. Please go on.

16 A As I mentioned in terms of Vermont Yankee,
17 you have the additional encumbrance that you have to
18 meet the terms and conditions associated with their
19 ability to withdraw from the ADP funds.

20 Q Okay. I'm not sure I understand your
21 response but I appreciate you bearing with me.

22 I want to turn your attention now to page 21.
23 We're still on page 21 and we're on lines 13 through
24 14. You indicate there that NorthStar has included
25 recognition of doubtful collection on accounts

1 receivable.

2 And can you tell me to which particular
3 accounts receivable you're referring to and why they
4 are doubtful?

5 A I can't since we didn't have access to their
6 accounts receivable nor to the actual audit that was
7 conducted in terms of preparation of these financials.

8 This was a note that was contained in the
9 financials made by the firm that did perform the audit.

10 Q What did that note indicate?

11 A If you turn to my Exhibit RAP-6, page 158,
12 I'm not certain what the Bates number is. This page is
13 a continuation of Footnote 2 and there is a paragraph
14 there that talks about accounts receivable and that is
15 what I'm referring to.

16 Q Let me make sure I'm at the correct place.
17 You said page 158?

18 A Yes, my page 158.

19 Q Is that the Bates number down at the bottom?

20 A The Bates -- well, again, I don't have the
21 electronic version in front of me right now. It's page
22 158 of my Exhibit No. 6.

23 Q Let me see if I can find it before we move
24 on.

25 MR. REHWINKEL: This is the numbering

1 that's in the upper right hand under RAP-6.

2 MR. HERNANDEZ: Thanks, Charles. I
3 appreciate it.

4 MR. REHWINKEL: Sure.

5 BY MR. HERNANDEZ:

6 Q Mr. Polich, I'm at page 158 and can you tell
7 me -- can you direct me to the particular language
8 you're referencing?

9 A Halfway down the page you will see a section
10 called "accounts receivable."

11 Q Yes.

12 A You go down through that particular section,
13 "The Company estimates an allowance for doubtful
14 accounts based on the aging of the individual amounts
15 receivable beginning with a 10 percent allowance for
16 balances that are 180 days past due. An incremental
17 15 percent additional allowance is recognized after
18 270 days of delinquency, and another 25 percent at 360
19 days.

20 After one year, the allowance is increased by
21 an incremental 10 percent of the original balance per
22 quarter until the original receivable is fully reserved
23 or collected. The allowance for doubtful accounts
24 represents the Company's best estimate of the amount of
25 probable credit losses in the Company's existing

1 accounts receivable gross balance and is determined
2 based upon historical write-off experience."

3 Q Okay. And it also says, "The Company also
4 considers factors related to specific customers'
5 ability to pay and current economic trends and will
6 record an additional allowance for doubtful accounts as
7 needed."

8 Have you performed any sort of analysis or
9 study with respect to any of these particular accounts
10 receivable?

11 A I didn't have access to that information.
12 Again, this does not reference a situation in which a
13 company is in financial stress and the ability to
14 collect on these accounts receivable, and so it
15 wouldn't provide the same level of information.

16 Q Okay. And you don't know what such payment
17 terms are -- apply to these accounts receivable, do
18 you?

19 A No, I do not.

20 Q And you don't know whether NorthStar has or
21 has not received payments on these accounts, correct?

22 A All I have is the information that was taken,
23 the snapshot at the end of -- as of December 31, 2019,
24 because that was when those financials were prepared.

25 Q And these particular accounts receivable,

1 whatever they may be, may not necessarily be the same
2 accounts receivable that NorthStar will have in the
3 future, right?

4 A That is true and it's actually very probable.

5 Q Okay. But you do not know?

6 A Yes, I do not know.

7 Q And you're not trying to say that NorthStar's
8 future accounts receivable will not be collectable, are
9 you?

10 A No, I am not saying that.

11 MR. HERNANDEZ: Mr. Polich, it's twelve
12 o'clock. If it's okay with you, we can take
13 a break for lunch and, madam court reporter,
14 we can go off the record.

15 (A lunch recess was held from 12:01 p.m.
16 to 12:41 p.m.)

17 (Ms. Pirrello left the deposition.)

18 BY MR. HERNANDEZ:

19 Q Mr. Polich, we are back from lunch and I want
20 to resume questions regarding your direct testimony.

21 Could you turn to page 21, which is Bates
22 page 25 of Exhibit 4, please.

23 A (Via video-teleconference) Okay.

24 Q I'm going to read a portion of your testimony
25 which begins on Line 15 of that page and then I'm going

1 to ask you a question about it.

2 "In times of financial stress, the
3 ability to collect accounts receivable in support of
4 operations cannot be done in a timely manner due to
5 contractual commitments."

6 Can you explain that statement to me please,
7 Mr. Polich?

8 A Yes. In times of financial stress, the
9 collection of receivables is governed by a contract.
10 And if that contract has terms that those receivables
11 are due within 90 days of receipt of invoice, it could
12 be upwards of five or six months before you receive the
13 payment.

14 Q Which particular contract are we talking
15 about?

16 A You gave me a hypothetical and I gave you one
17 back.

18 Q So you don't have a particular contract in
19 mind that NorthStar is a part of, correct?

20 A This statement is a reference to accounts
21 receivable, and accounts receivable is based upon
22 contractual terms and when those accounts are due.

23 As noted in the footnote that we discussed
24 earlier, there's various conditions associated with
25 that. And the ability to use those accounts receivable

1 if you need cash today to pay off collectors may not be
2 available and that is a reality.

3 That's why they're called accounts
4 receivable. Accounts receivable means that's there's
5 been billings made for those accounts and the cash is
6 not on hand.

7 Q Are you relying upon a particular accounting
8 principle for that statement?

9 A I'm relying upon the concept of accounts
10 receivable and how they are governed by contractual
11 conditions.

12 Q So the answer is that you are not relying
13 upon a particular accounting principle for that
14 statement; is that correct?

15 A It's accounting fundamentals. It's how
16 accounts receivable is defined. Accounts receivable
17 are defined as amounts that are due to a company due to
18 invoicing. There is no particular standard that
19 defines account -- well, I guess there is an accounts
20 receivable standard but it's a fundamental principle of
21 accounting. I don't need to rely on anything.

22 Q All right. But in your statement, you make a
23 definitive statement. You say, "In times of financial
24 stress the ability to collect accounts receivable in
25 support of operations cannot be done in a timely

1 manner."

2 How do you know that they cannot be done?

3 A Because they're governed by contractual
4 conditions and the ability for the entity to pay that.
5 And the reality of the situation is if I need cash
6 today to pay off creditors when I'm in financial stress
7 I cannot bank on accounts receivable to provide that
8 cash today.

9 Q What if the account receivable is due
10 today -- payment on the account receivable is due
11 today?

12 A Can I rely upon that? If you have tiny piece
13 of accounts receivable, yes.

14 Q What if it was due yesterday, can you rely on
15 payment then?

16 A If I received it yesterday, yes. If I didn't
17 receive it yesterday, then potentially no.

18 Q Can you define timely manner as used in this
19 statement here?

20 A A timely manner is defined as in terms of the
21 needs for cash.

22 Q So if you need the cash now, timely would be
23 now.

24 Is that what you're saying?

25 A Yes.

1 Q Can you define financial stress for me as you
2 used it in this statement?

3 A Financial stress is the concept in which a
4 company is short on cash and has debts -- current
5 liabilities or debts that are due and payments that
6 need to be made.

7 Q And what is the basis for your definition
8 that you just gave me?

9 A Again, general accounting principles.

10 Q So you got this from GAAP?

11 A I didn't say that.

12 Q Okay. So it's just based on your knowledge
13 of accounting generally? That's where you got that
14 definition?

15 A It's based on my knowledge of -- it's no
16 different than a family being in a situation where
17 they're suddenly unemployed and have a mortgage due
18 tomorrow with nothing in the bank account. That's
19 called financial stress.

20 Q Can you tell me whether NorthStar has
21 suffered a financial stress that has impacted its
22 ability to function in the past?

23 A I cannot.

24 Q Would you agree that the current pandemic,
25 the coronavirus pandemic, is a financial stressor that

1 companies are experiencing right now?

2 A There are companies that are experiencing
3 financial stress due to the current situation. Yes.

4 Q Can you tell me how NorthStar is weathering
5 the current financial stress?

6 A No, I cannot.

7 Q Isn't it true that NorthStar's financial
8 condition has actually improved over the last few
9 years?

10 A I would ask what you define as financially
11 improved.

12 Q Let's talk about since January of 2019. Has
13 NorthStar's financial condition improved since then
14 based on the data that you have?

15 A I would ask you what you define as improved
16 financial condition.

17 Q Well, what is your assessment of NorthStar's
18 finances as a going entity since 2019?

19 A Since 2019? I don't have any records since
20 2019.

21 Q I'm going to read from your testimony. I'm
22 on page 25. This is Bates No. 29 and I'm on Line 9 of
23 that page. You indicate -- this is your testimony.

24 "In 2019, NorthStar's financials did reflect
25 a substantial increase in net income of over ten times

1 the 2018 net income. Net income in 2019 was
2 10.4 percent of approximately 640,000,000 of revenues.
3 This resulted in NorthStar reflecting over 69,000,000
4 in cash and cash equivalents or a doubling of its
5 previous cash and cash equivalents on its 2019
6 financials."

7 Do you agree with that statement?

8 A That is what my testimony says.

9 Q So you would agree that NorthStar's
10 financials in 2009 or 2019 rather reflected a
11 substantial increase in net income, correct?

12 A No, I wouldn't because the words -- we chose
13 a change in income statement as well as cash
14 receivables has no bearing on substantial improvement
15 in financials.

16 Q Sir, I'm just reading from your statement.
17 In your statement, you say, "In 2019, NorthStar's
18 financials did reflect a substantial increase in net
19 income of over 10 times the 2018 net income."

20 Are you saying that that's not a true
21 statement?

22 A No. I'm saying that is a true statement but
23 that is not reflective of a significant improvement in
24 financials. They're different issues.

25 Q Okay. Let's stay on page 21. I want you to

1 turn your attention to the statement that begins at
2 Line 21 and I'll read that.

3 In that statement, you say, "It is for this
4 reason I have only valued accounts receivable at
5 60 percent of the full amount for purposes of financial
6 hardship."

7 Did I read that accurately?

8 A Yes, you did.

9 Q Can you tell us what the basis for your use
10 of 60 percent there is?

11 A Because I had no knowledge of exactly how the
12 accounts receivable was structured, who they were owned
13 by or such, what the timing is of those accounts
14 receivable. Those accounts receivable could be
15 anywhere from 0 to 180 days. I don't know.

16 So I took a conservative approach and
17 assigned and said that in the case of financial stress
18 where you need cash as quickly as possible that
19 potentially over the next 30 days or so when you would,
20 -- which is usually typically a critical period for
21 financial stress, that you could be able to count on
22 50 percent of those accounts receivable to provide cash
23 for operations.

24 Q And that 60 percent value did you obtain that
25 from a particular accounting principle?

1 A No. It's a judgment from the fact that
2 assuming -- I don't know what their exact timing of
3 invoices is. And so I took the conservative approach
4 and assume that the accounts receivable have been
5 spread over an equal time period. And to assume that
6 60 percent of it would be due and collectible within
7 30 days is actually a very conservative assumption.

8 Q Why not 65 percent?

9 A Okay. I could have used 65 then. Actually,
10 if you take a look further on in my testimony I did it
11 at 100 percent and still came up with the same
12 conclusion.

13 Q Is there any support for the use of
14 60 percent within any of the documents that you relied
15 upon for your testimony in this matter?

16 A It is based upon my experience and education
17 in finance.

18 Q And when you say it's based upon your
19 experience, have you seen the use of a 60 percent value
20 with respect to accounts receivable used in the past?

21 A I have seen a situation where that is a
22 reasonable value to expect in terms of what should
23 occur in accounts receivable at the end of the year and
24 what you actually collect and within the first 30 days
25 of that end of the year.

1 Q Can you give us an indication of where you
2 saw that, what type of matter that was?

3 A It had to do with companies that I have been
4 involved with in operational formats. For example,
5 with a utility that is not an uncommon figure for what
6 your expectations are in terms of your receipts
7 billable versus collectible.

8 Q And you're speaking from your personal
9 experience?

10 A Yes, when I was in the rates department at
11 Consumers Energy.

12 Q When was that?

13 A That was back in the '90s.

14 Q Let's turn to page 22, please, lines 1
15 through 3. And there you assign a value of zero to
16 costs and estimated earnings in excess of billings on
17 uncompleted contracts.

18 First of all, for our -- for everyone's
19 benefit, I guess could you explain what the terms costs
20 and estimated earnings in excess of billings on
21 uncompleted contracts means?

22 A Yes. Give me a second here. That is a term
23 utilized by NorthStar in their balance sheet.

24 Q Can you tell us what that means?

25 A Based upon what it says, it's cost and

1 estimated earnings in excess of billings that are on
2 completed contracts.

3 Q Do you have any additional clarification you
4 can provide with respect to what the significance of
5 that term is?

6 A No. And there are actually no notes in the
7 financials on that statement.

8 Q Did you perform any sort of analysis of the
9 forecasted earnings to determine the likelihood that
10 particular earnings materialize?

11 A These are uncompleted contracts and these are
12 estimated earnings. So considering that it's an
13 uncompleted contract, it's estimated earnings, the
14 contract is not complete so it's projected that the
15 excess earnings won't occur until the contract is
16 completed. The likelihood of that contract being
17 completed in 30 days is unlikely so I would say no.

18 Q So the caveat here is that this would have to
19 be completed within 30 days?

20 A Yes.

21 Q So you assigned a value of zero because you
22 assumed that the likelihood that those earnings would
23 materialize within 30 days was zero?

24 A I assumed that in the likelihood of financial
25 stress the likelihood of that contract being completed

1 may not occur.

2 Q And why wouldn't the contract be completed in
3 the event that NorthStar has some sort of financial
4 stress?

5 A Because they are unable to complete the
6 contract because contractors are going to stop work if
7 they are not being paid.

8 Q Wouldn't the payment here be coming from a
9 third party to NorthStar?

10 A I don't see any place that states that.

11 Q Well, when we're talking about forecasted
12 earnings wouldn't that be the earnings of NorthStar as
13 opposed to a third party?

14 A Yes. It would be the earnings of NorthStar
15 on that uncompleted contract, which you have no idea of
16 when that contract is going to be completed.

17 Q So the contract is one in which NorthStar is
18 performing work.

19 Is that your understanding?

20 A Otherwise, it wouldn't -- okay. This is on
21 NorthStar's balance sheets. This is NorthStar's
22 projected earnings on uncompleted contracts. NorthStar
23 wouldn't have earnings on uncompleted contracts if it
24 wasn't their contract.

25 Q Right. I'm only trying to get clarification

1 from you because it seems to me you indicated that a
2 third party would not complete a contract. And it was
3 my understanding that the completion of a contract
4 would depend on NorthStar because NorthStar would be
5 performing the work. And if I'm interpreting that
6 incorrectly, let me know.

7 A I would like the court reporter to read back
8 my statement because I do not believe I ever used the
9 word "third party."

10 MR. HERNANDEZ: Madam Court Reporter,
11 can you read back Mr. Polich's -- I can't
12 remember which -- how far back you have to
13 go.

14 (The requested material was read back by
15 the court reporter.)

16 BY MR. HERNANDEZ:

17 Q So, Mr. Polich, you indicated that a
18 contractor was going to stop doing work because
19 NorthStar was not making payment which is why I sought
20 clarification from you as to whether NorthStar was
21 performing the work here as opposed to a third-party
22 contractor. And just so the record is clear, are we
23 talking --

24 A I see what you're saying. Yes. Okay. I
25 will rephrase that statement.

1 If NorthStar is in financial trouble -- and
2 most projects of nuclear decommissioning type and most
3 decommissioning projects involve a significant level of
4 either subcontractors, materials, equipment types of
5 things. And the extent that -- as well as labor.

6 And the question is if NorthStar can't pay
7 its labor, can't pay its bills there is no guarantee
8 that that contract is going to be completed.

9 Q Okay. I understand your response now. I
10 appreciate you providing that clarification, and I
11 apologize for the confusion on my end.

12 Did you rely on any particular accounting
13 principle when you assigned a value of zero to all of
14 the forecasted earnings?

15 A It was my projection of what the value of
16 this would be in the event of financial stress.

17 Q And your projection was based upon your prior
18 experience; is that accurate?

19 A Yes.

20 Q Is there any support for the use of zero as a
21 value for forecasted earnings in the documents that you
22 relied upon that have been identified as exhibits in
23 this case?

24 A No, there is no evidence within the exhibits
25 -- within my exhibits.

1 Q We're still on page 22, Mr. Polich, and could
2 you look at lines 4 through 8. This is from No. 3,
3 inventories.

4 And you assign a value of 20 percent to all
5 inventories. And can you tell me whether you relied on
6 a particular accounting principle when you assigned a
7 value of 20 percent to the inventories?

8 A It is based upon my judgment and experience.

9 Q And would it be accurate to say there is
10 nothing in the documents that you relied upon for the
11 case that support the use of 20 percent as a value?

12 A No, there is nothing in the documents.

13 Q Is there any particular accounting principle
14 that supports the use of 20 percent?

15 A Bear with me for a second. I'm trying to
16 find something.

17 Q Yes, sir.

18 A 20 percent -- can I please have the question
19 repeated?

20 Q Yes, sir. I asked you whether there was a
21 particular accounting principle that supports your
22 assignment of a 20 percent value to inventories?

23 A Inventories consists of consumable materials
24 and small tools used in service to provide to clients.
25 That is in NorthStar 's statement.

1 The ability for those inventories to be
2 utilized and turned into cash in a financial stress
3 situation is minimal at best.

4 Depending on how that inventory has been
5 financed, there can be long-term liabilities that are
6 associated with those assets, which could then become
7 current as a result of a disposition of those assets
8 and those assets being turned into cash.

9 20 percent is actually a liberal
10 interpretation of what those values is based upon my
11 experience and education.

12 Q So your use of 20 percent is based on your
13 experience and education and is not supported by a
14 general accounting principle.

15 Is that what you're saying?

16 A I cannot tell you whether it is or is not
17 supported by general accounting principles.

18 Q So to your knowledge, you do not know whether
19 or not it is supported by a general accounting
20 principle?

21 A It is supported by sound financial
22 principles.

23 Q And that's based upon your experience and
24 education, correct?

25 A Yes.

1 Q You also indicate under the heading of
2 "inventories" that some of the materials may be linked
3 to credit purchases and are not marketable.

4 Do you know whether in fact the inventories
5 are linked to credit purchases?

6 A In reality, all of NorthStar's assets are
7 linked to long-term liabilities.

8 Q And how do you know that, sir?

9 A It's in their financial statements.

10 Q Where is that located?

11 A Turn to page 99 of RAP-6.

12 Q The page number that's the one you're
13 referencing is the one on the top?

14 A Yes, sir.

15 Q All right. I'm there.

16 A Second paragraph, on September 6, the Company
17 entered into the credit and guarantee agreement with
18 various lenders for an aggregate amount of \$217,500,000
19 consisting of Term Loan A for \$80,000, Term Loan B for
20 \$87,500 -- \$87,5000,000 and a \$50,000,000 revolving
21 credit facility.

22 The proceeds from the credit facility were
23 used to repay the former term loan including accrued
24 interest and cancel the former credit facility,
25 whereupon the Company wrote off \$431,000 of the related

1 deferred issuance costs to interest expense. The
2 lenders have a security interest in substantially all
3 of the assets of the Company and its subsidiaries.

4 Q So substantially all of the assets?

5 A Yes.

6 Q Thank you for pointing that out. I
7 appreciate that.

8 And that concerns the assets that NorthStar
9 had at the time, correct, in 2019?

10 A This statement was made at the end on the
11 2019 financials, which closed in December of last year.

12 Q So any assets that NorthStar acquired
13 subsequent to that would not be subject to this
14 language?

15 A That is correct. And again, the inventories
16 I'm referring to are on this balance sheet so they are
17 as of the date of this balance sheet. I'm not
18 addressing anything that happened since December 31,
19 2019.

20 Q Thank you for that clarification. Let's turn
21 to property and equipment. That's the same page,
22 paragraph No. 4. You assign a value of 20 percent to
23 property and equipment.

24 Can you tell me whether you relied upon any
25 particular accounting principle for the assignment of

1 20 percent to property and equipment?

2 A I think I can help you out on this by saying
3 my responses to this one are identical as they are to
4 inventories. And I would also refer you to the same
5 footnote I just discussed.

6 Q Okay. When you say that they are the same
7 response with respect to inventory, does that mean that
8 you relied upon your experience and education in
9 determining that 20 percent was an appropriate value
10 for property and equipment?

11 A I'm saying the 20 percent was a very liberal
12 amount based upon the creditor's lien on assets.

13 Q Okay. Based upon your experience and
14 education, correct?

15 A And the reading of the financial statements.

16 Q Does 20 percent show up on the financial
17 statements somewhere?

18 A That particular number does not.

19 Q Okay. Let's turn to goodwill. We're still
20 on the same page. This is paragraph No. 5. And you
21 assigned a value of zero to goodwill.

22 And did you rely upon any particular
23 accounting principle when you assigned a value of zero
24 to goodwill?

25 A Yes, because goodwill is an asset without

1 value.

2 Q What is your basis for stating that?

3 A Well, we can start off with the financial
4 statements. Goodwill represents the excess of costs
5 over forbearer value of the assets purchased in
6 acquisition.

7 Q I'm sorry. Are you reading from somewhere?

8 A Yes, I am page 93 of Exhibit RAP 6.

9 Q Okay. I'm there.

10 A All right. "Goodwill represents the excess
11 of cost over fair value of the net assets purchased in
12 acquisitions."

13 That in itself says that it is a
14 representation of something that is not quantifiable
15 and cannot be turned into cash.

16 Q Let me ask you this. Can the value of
17 goodwill be calculated under generally accepted
18 accounting principles?

19 A No. It is a result of accounting
20 differentials between a purchase value and the fair
21 market value.

22 Q Right, but can that value be determined under
23 GAAP? Is there a way to calculate it?

24 A I just told you how to calculate it but that
25 does not mean that in terms of financial stress

1 goodwill can be utilized and turned into cash to pay
2 creditors. In fact, if the company is in the process
3 of failing and going into bankruptcy goodwill and
4 intangible assets both go to zero.

5 Q Okay. So let's turn to intangible assets
6 here. You assigned a value of zero to that as well.

7 Did you rely upon a particular accounting
8 principle when you determined that the value ought to
9 be zero for that?

10 A I would have to go back through here to see
11 what the definition of intangible assets are and,
12 again, we can refer to the accounting statements.

13 Q Okay. But you can tell me -- I'm sorry. Go
14 ahead.

15 A Go ahead ask your question.

16 Q I'm asking you whether you relied upon a
17 particular accounting principle to determine that zero
18 would be the appropriate value for intangible assets?

19 A Intangible assets, as with goodwill, are the
20 result of an acquisition of a business that include
21 customer relationships, backlogs and a trademark.

22 In the event a company is in financial
23 hardship and the potential to become bankrupt, an
24 intangible asset has zero cash value and cannot be
25 turned into cash and cannot be used to pay creditors.

1 Q Are you relying upon a particular accounting
2 principle for that opinion?

3 A That is a fundamental concept of financial
4 assessment and accounting.

5 Q And that's based upon your education and
6 experience?

7 A Yes, it is.

8 Q Is that supported by any of the documents
9 that you relied upon for your testimony in this case?

10 A It's supported by reality.

11 Q Okay. But not the documents that you relied
12 upon in this case; is that right?

13 A No. The documents that I referenced and
14 supplied to you deal more with goodwill and intangible
15 assets in association with acquisitions and how it
16 should be treated over time.

17 In terms of financial hardship, those
18 documents do not address that issue. The issue of
19 financial hardships is a completely different concept.

20 Q Okay. But that's what you're opining on here
21 is financial hardship. That's the scenario that
22 you're --

23 A Yes. Everything under this section is
24 dealing with NorthStar being in financial hardship.

25 Q Let's turn our attention to restricted cash,

1 same page, paragraph 7. Again, you assigned a value of
2 zero to this category.

3 And the question again is did you rely upon a
4 particular accounting principle when you assigned a
5 value of zero to your restricted cash?

6 A The accounting principle is that that
7 restricted cash is governed by a contract. That
8 contract identifies what that cash can be used for.
9 And under accounting principles you can't use it for
10 any other purpose.

11 Q Won't the restricted cash become available to
12 NorthStar at some point?

13 A Only for the purposes of paying for what it
14 was restricted to be used for. So for example, that
15 restricted cash could not be used in the
16 decommissioning of Crystal River 3.

17 Q Okay. I got you. Let's turn to page 23,
18 paragraph 8 at the top of the page, decommissioning
19 trust fund. You assigned a value of zero to the
20 Vermont Yankee nuclear -- is that B-Y-N-P?

21 What does that stand for?

22 A Vermont Yankee nuclear plant.

23 Q Okay. So you assigned value of zero to the
24 Vermont Yankee nuclear plant decommissioning trust fund
25 due to NRC restrictions that limit the availability of

1 the funds.

2 Is that an accurate summary?

3 A Yes, I did.

4 Q Again, did you rely on any particular
5 accounting principle when you assigned a value of zero
6 to this category?

7 A Again, the reason for assigning a value of
8 zero is dealing with the ability to pay creditors in
9 the event of a financial hardship.

10 There's actually two issues here. The
11 nuclear decommissioning trust funds are not considered
12 current assets. They're considered long-term assets.

13 Number 2, the nuclear decommissioning trust
14 fund is strictly only available if NorthStar completes
15 certain contractual commitments within the
16 decommissioning of Vermont Yankee, and it can only be
17 used for the decommissioning of Vermont Yankee. In the
18 event of a financial hardship, it is unlikely that
19 those funds would be available for other purposes.

20 Q I'd ask you to turn to page 24 of Exhibit No.
21 4 of your testimony. It's Bates 28 and I'll ask you to
22 look at lines -- your statement that begins on line 8
23 which states, "I did not make any adjustments to
24 NorthStar's current liabilities and assigned 50 percent
25 of its long-term finance obligations as a current asset

1 to recognize its encumbrance upon assets."

2 Why didn't you make any adjustments to
3 NorthStar's current liabilities?

4 A Because current liabilities are typically
5 what cause financial hardship.

6 Q Are you relying upon -- what are you relying
7 upon for that statement?

8 A The accounting definition of current
9 liabilities.

10 Q Where does that come from?

11 A I'll be happy to provide you that definition.
12 I don't have that at my fingertips.

13 Q If you were to try to find that definition --
14 if I were to try to find that definition, where would I
15 find it?

16 A It's a standard accounting definition.

17 Q Okay.

18 A You can find it in just about any accounting
19 text.

20 Q Okay. We're still on page 24 of your
21 testimony. The question that appears on that page asks
22 you what your opinion is of NorthStar's financial
23 situation based upon your experience and expertise.

24 Is there -- and you've given us some detail
25 of your experience and expertise.

1 Is there any other experience or expertise on
2 which you base your opinions in this matter?

3 A Yes, actually Duke discovery. If you turn to
4 Exhibit RAP-6, page 111.

5 Q Okay.

6 A This is NorthStar's -- Duke Services
7 counterparty financial analysis by Duke Energy by Matt
8 Holstein.

9 If you go down under the section called
10 "business risk and key issues," you will see under the
11 statement liquidity, "NorthStar has limited liquidity
12 as balance sheet cash is thin and its revolving credit
13 facility is often moderate to heavily used."

14 That is an indication of thinly capitalized
15 also.

16 Q So you're saying that that's experience or
17 expertise that you relied upon for your opinions in
18 this matter?

19 A It confirmed my opinion.

20 Q But my question is just generally what past
21 experience or expertise are you relying upon for your
22 opinions that you express in your testimony? And
23 you've given us some indication of what that is.

24 I'm just asking whether there is anything
25 else that you would like to tell us about your

1 experience or expertise that you relied upon for your
2 opinions express in this matter?

3 A I think I've done that already.

4 Q Okay. Staying on page 24, beginning at line
5 15, you indicate that NorthStar is a thinly capitalized
6 company with minimal tangible assets, significant
7 liabilities, and lower than expected net income as
8 compared to a level of revenue.

9 For purposes of this statement, were you
10 comparing the amount of NorthStar's capital to another
11 decommissioning company?

12 A No.

13 Q Did you review the financials of the other
14 companies that participated in the competitive
15 procurement process for the CR3 decommissioning
16 project?

17 A No, I did not have access to that
18 information.

19 Q So you can't opine as to how the financials
20 of NorthStar and the ADP companies compare to the
21 financials of those other companies DEF or Duke
22 considered for the project; is that right?

23 A No, not without having access to their
24 financials.

25 Q Isn't it true that the Nuclear Regulatory

1 Commission independently determined that ADP meets the
2 financial requirements to decommission CR3?

3 A They did but they also required additional
4 encumbrances -- I shouldn't say encumbrances but
5 additional provisions as they also did in the Vermont
6 Yankee case.

7 Q And do you know whether those provisions are
8 ones that ADP is going to comply with or has indicated
9 it will comply with?

10 A They have agreed to comply with the NRC's
11 requirements to the best of my knowledge.

12 Q Okay. Isn't it true that if at any point ADP
13 is unable to complete the CR3 decommissioning Duke will
14 only have paid for work actually completed by ADP up to
15 that point?

16 A That is not necessarily true.

17 Q Explain to me why that's not necessarily
18 true.

19 A If you read the DSA, Duke is essentially
20 required to pay invoices submitted by ADP CR3.

21 Q Yes, sir.

22 A So to the extent that that work is not
23 completed, it's up to Duke to contest that issue. And
24 with the provisions of the contract, the first
25 \$20,000,000 worth of contested invoices Duke is still

1 required to pay so, therefore, there could be work
2 performed or there could be invoiced amounts for work
3 that was not performed.

4 Q And are you saying that Duke is unable to
5 verify whether work they have received an invoice for
6 has actually been performed?

7 A I'm saying based on the DSA they have limited
8 ability to contest it.

9 Q Is there a particular provision in the DSA
10 that you're referencing for your statement?

11 A Yes, I'll find it here. Bear with me. This
12 is a big contract.

13 Q Yes, sir.

14 A I know it's in here. I just can't find it.
15 I would be happy to send you that.

16 Q Okay. We can move on.

17 A I know it's in here. I just can't find it
18 right now.

19 Q Well, as you indicated, it's a fairly large
20 document.

21 Is it true, Mr. Polich, that the balance of
22 the funds in the NDF in the event ADP is unable to
23 complete the decommissioning would still be owed by
24 Duke?

25 A That is correct.

1 Q Isn't it also true that the ADP provisional
2 trust fund valued at \$50,000,000 would transfer to Duke
3 in the event that ADP is unable to complete
4 decommissioning?

5 A That is incorrect.

6 Q What is incorrect about that statement?

7 A Based upon the schedule of payments into the
8 provisional contract, the provisional trust there may
9 not be \$50,000,000 in it. And that \$50,000,000 is not
10 likely to happen until over \$500,000,000 worth of -- in
11 fact, it won't occur until over \$500,000,000 worth of
12 invoices have been submitted and paid by Duke.

13 Q So let me restate the question. Isn't it
14 true that the ADP provisional trust fund, whatever
15 value it is at the time that ADP is unable or unwilling
16 to complete decommissioning will transfer to Duke?

17 A It is true that that fund -- let me go back
18 to that. That is only true if Duke chooses to take
19 over ADP.

20 Q So you agree that's a possibility?

21 A There's a possibility of that, plus any
22 liabilities that ADP has at the same time are
23 transferred over to Duke.

24 Q And what is your basis for saying that any
25 liabilities will be transferred over to Duke?

1 A Well, as I understand the conditions in the
2 contract Duke has the right to take over ADP in the
3 event that they are unable to complete the contract or
4 such or in the event of a potential for bankruptcy.

5 If ADP has creditors, which is more than
6 likely because that's what put them into financial
7 hardship, then by Duke taking over ADP they also take
8 over the financial liabilities.

9 Q Where is that language in the DSA?

10 A It becomes an acquisition of ADP.

11 Q Where is that language in the DSA?

12 A The language that Duke can take over ADP?

13 Q No, that it would also assume all liabilities
14 of ADP.

15 A Because in the process -- because when you
16 take over a company, unless that company has gone
17 through a full bankruptcy proceeding all assets and
18 liabilities, essentially the full balance sheet,
19 transfers with the company. That's a standard
20 accounting principle.

21 Q So you're relying upon your knowledge of
22 accounting principles as opposed to something within
23 the DSA; is that right?

24 A The DSA talks about the takeover of ADP by
25 Duke. That does not change accounting principles.

1 Q I understand it talks about the takeover.
2 I'm asking whether Duke would also assume all
3 liabilities of ADP in the event that takeover occurs?

4 A The word "takeover" means that you take over
5 the whole company. You just can't take over the
6 assets.

7 Q Well, sir, and I'm asking you whether the DSA
8 supports your contention?

9 A Yes, it does because it says they take over
10 ADP.

11 Q So you interpret that to mean they would also
12 take over all liabilities?

13 A It's not an interpretation; it's a reality.

14 Q Okay. Let's talk about Vermont Yankee.
15 What's the status of the Vermont Yankee decommissioning
16 project?

17 A I cannot tell you verbatim.

18 Q Can you tell me whether the decommissioning
19 is proceeding within budget?

20 A No, I cannot. I'm not privileged to that
21 information.

22 Q Is the decommissioning on schedule to be
23 completed within the contracted time period?

24 A Again, that information is not available to
25 me.

1 Q Do you know if NorthStar has failed to comply
2 with any terms within the Vermont Yankee
3 decommissioning contract?

4 A No, and it's too early to tell.

5 Q Staying on page 24 of your testimony, I want
6 to look at lines 17 through 18.

7 You indicate there that NorthStar's financial
8 condition has changed substantially since 2014; is that
9 correct?

10 A That is correct.

11 Q Isn't it true that in 2014, 2015, and 2016
12 the ownership and capital structure of NorthStar was
13 different than it was from 2017 through the present?

14 A Yes. In fact, I make a comment in my
15 testimony about the fact that NorthStar was acquired in
16 2017. If you go back to Bates number 21, page 17 of my
17 testimony starting on line 18 through -- yeah, I'm
18 sorry, page 17 through line 11 on page 18. I discuss
19 the acquisition of NorthStar by a group of independent
20 investors.

21 Q Let's turn to page 26 please, lines 7 through
22 8. There you indicated the restrictions on NorthStar's
23 assets raise a concern regarding NorthStar's ability to
24 continue funding the decommissioning work at CR3 in the
25 event of a financial hardship.

1 Isn't the funding of the CR3 decommissioning
2 going through the NDF?

3 A Yes.

4 Q Is the funding of the decommissioning going
5 to happen through NorthStar?

6 A Yes.

7 Q Is NorthStar funding the decommissioning of
8 CR3? Is that what you're saying?

9 A Partially.

10 Q I'm sorry?

11 A Partially.

12 Q Which part?

13 A Well, NorthStar doesn't get paid until they
14 are invoiced -- until they submit an invoice to DEF and
15 DEF pays that invoice.

16 Depending on NorthStar's accounting processes
17 as well as the contract terms, which I think states
18 30 days from the receipt of invoice that Duke has to
19 make payment, there can be anywhere from 45 --
20 typically 45 to 60 days between the time in which
21 NorthStar may have incurred expenses and they get paid
22 for. To that extent, NorthStar is funding that
23 decommissioning.

24 In addition, there are various sorts of
25 things such as -- I'll just stick with that answer.

1 So what I'm saying is that NorthStar could be
2 anywhere from 45 to 60 days in arrears between
3 collection from the NDF and cash outlays by NorthStar.

4 Q Okay. I appreciate that.

5 A That's assuming that cost -- there are no
6 cost overruns beyond what NorthStar's estimates of the
7 various fixed charge rates that they're doing for each
8 of the task line items that have yet to be defined in
9 the pay item schedule.

10 If NorthStar is incurring higher costs than
11 what is allowed for in the pay item schedule, then
12 NorthStar is definitely funding the decommissioning
13 because they would be unable to collect that. So they
14 would be responsible for any overage costs and that
15 definitely can create a financial hardship.

16 Q Okay. In the event that happens. You would
17 agree that the CR3 NDF currently has sufficient funds
18 to meet all decommissioning expense that are presently
19 known, right?

20 A I will agree that based upon NorthStar's
21 projected costs and what they have agreed to in the DSA
22 that there should be sufficient funds.

23 There's a couple of caveats to that. And
24 mainly, that comes in terms of the DOE reimbursement
25 for spent fuel storage. To the extent that the current

1 process of legal action to recover those funds from DOE
2 changes, there may be a situation where there is
3 insufficient funds.

4 Q Okay. Well, I'll leave that one at that. On
5 page 26, lines 13 through 23 you indicate that the DSA
6 should require NorthStar to retain a certain level of
7 net current or liquid assets.

8 Do you see that?

9 A Yes, I do.

10 Q Would requiring that NorthStar maintain a
11 certain level of net current or liquid assets tie up
12 cash that NorthStar could otherwise apply to the CR3
13 decommissioning?

14 A Not necessarily.

15 Q Explain why you don't think it's necessarily
16 true.

17 A Cash is an asset. Assets can be used to
18 obtain credit. Companies will give you -- so there is
19 multiple ways of creating cash if you do have cash as
20 an asset.

21 It's not unusual for -- I mean in reality the
22 words "cash is king" is a very critical issue. You can
23 use it for multiple things. If.

24 Your cash is encumbered by this type of
25 provision, it doesn't prevent you from incurring a

1 corresponding liability equivalent to that cash to
2 raise additional cash. And that additional cash can
3 then be turned around and used for paying bills and
4 doing other types of corporate -- additional corporate
5 needs.

6 Just because an entity is required to
7 maintain a cash asset doesn't necessarily mean that it
8 does not have the ability to utilize that cash.

9 Q Okay. Thank you for that explanation. I
10 want to turn to page 27, in particular lines 4 through
11 5. In there, you indicate that in 2019 NorthStar
12 distributed \$50,000,000 to its members.

13 You're not suggesting by that statement that
14 it was somehow improper or illegal for NorthStar to
15 distribute funds to its members, were you?

16 A No, because there is no legal requirement
17 that prevents them. I mean NorthStar -- this goes back
18 to my argument as to why the parental guarantee is
19 potentially worthless. There is no legal requirement
20 for them to keep any value at all in NorthStar and,
21 therefore, the parental guarantee if there is no value
22 in NorthStar is totally worthless.

23 Q Companies distribute funds to their members
24 all the time, don't they?

25 A No.

1 Q They don't do it? Is this a rarity that a
2 company would distribute funds to its members?

3 A No.

4 Q So they do on occasion distribute funds for
5 their members. Would you agree?

6 A They do.

7 Q Okay. Let's turn to page 28, please. There
8 you recommend that the parental support agreement be
9 amended to include the Florida public Service
10 Commission as a beneficiary.

11 In connection with the Vermont Yankee
12 decommissioning project, the Vermont State Utility
13 Commission was added as a beneficiary to the parental
14 support agreement established there; is that right?

15 A Yes.

16 Q And you are suggesting that the parental
17 support agreement for the CR3 project should mirror
18 what was done in Vermont insofar as the Florida State
19 Commission would be added as a beneficiary to the
20 parental support agreement in CR3, correct?

21 A I don't say the Public Service Commission. I
22 say the State of Florida. I say the State of Florida,
23 not the Public Service Commission.

24 Q I see. And by the State of Florida, did you
25 intend to mean the commission or did you mean

1 commission?

2 A I was going to leave that up the commission
3 in terms of how to define it. But it seemed to me that
4 the State of Florida would be the most appropriate
5 entity and that the Public Service Commission has the
6 ability to be designated as an entity to oversee that
7 agreement by the State of Florida.

8 Q Isn't it true that none of the parties to the
9 Vermont Yankee decommissioning project are currently
10 regulated by the Vermont commission?

11 A I'm sorry. Would you repeat that question?

12 Q Sure. Isn't it true that none of the parties
13 to the Vermont Yankee decommissioning project are
14 currently regulated by the Vermont commission?

15 A I would have to go back and double check and
16 review the various agreements and provisions associated
17 with the asset transfer for Vermont Yankee.

18 To the extent that that asset transfer
19 required the approval of the Vermont Public Service
20 Commission and incorporated provisions that included
21 the State of Florida -- actually, let me go over this
22 part.

23 There is a requirement in the MOU of
24 independent monitoring and reporting to a public
25 service commission so I guess that statement is not

1 totally true.

2 Q All right, sir. I'm asking whether the
3 parties to the Vermont Yankee decommissioning contract
4 are regulated by the Vermont commission presently.

5 I'm not asking whether there is an
6 independent monitor that may be referenced within that
7 MOU or contract that reports to the commission. I'm
8 asking whether the parties to the decommissioning
9 contract are currently regulated by Vermont.

10 A I think this is a nuance. In my mind, if you
11 have reporting responsibilities to the public service
12 commission you're under their jurisdiction and have
13 regulatory responsibilities to them.

14 Q Okay. Let me ask it a different way.
15 Entergy was the public utility company that originally
16 owned and operated Vermont Yankee, correct?

17 A Incorrect.

18 Q Okay. What was the entity that owned and
19 operated the Vermont Yankee nuclear power plant before
20 the transfer?

21 A That wasn't your question. You asked me if
22 they were the original owner and they were not the
23 original owner.

24 Q All right. Well, I have a new question that
25 I just asked you.

1 Can you respond to that, please?

2 A In the last transfer of ownership of Vermont
3 Yankee, Vermont Yankee was owned by Entergy.

4 Q And Entergy transferred its ownership and
5 operation of Vermont Yankee to NorthStar; is that
6 correct?

7 A That is correct.

8 Q Isn't it also true that in the Vermont Yankee
9 deal NorthStar owns and controls the nuclear
10 decommissioning trust fund?

11 A That is also correct.

12 Q Isn't it also true with respect to CR3 Duke
13 Energy would retain ownership and control of the NDF
14 under the DSA?

15 A They retain ownership but not 100 percent
16 control.

17 Q And explain that to me, please.

18 A Well, because the DSA has certain
19 requirements in terms of how Duke has to make payments
20 to the ADP consortium.

21 Q So would that caveat -- would you agree that
22 Duke retains ownership and control of the NDF?

23 A Partially. There's also requirements in
24 there with regards to the trust fund manager that is
25 supposed to be jointly agreed to between the ADP

1 companies and Duke so they do not have 100 percent
2 control.

3 Q With those two caveats, does Duke retain
4 ownership and control of the NDF?

5 A Duke retains a partial ownership and control.

6 Q By partial, you mean with the exception of
7 those things that you just mentioned in your testimony,
8 correct?

9 A I believe that's all exceptions subject to
10 check.

11 Q You agree that the Florida Public Service
12 Commission has the ability to regulate Duke and require
13 Duke to produce information related to the CR3
14 decommissioning project, correct?

15 A Yes, they do.

16 Q And you would agree that with respect to the
17 Vermont Yankee transfer Entergy is not obligated to
18 produce any information to the Vermont commission in
19 connection with Vermont Yankee?

20 A I don't think that's true.

21 Q What requires -- what do you believe requires
22 Entergy to continue providing information to the
23 Vermont commission concerning Vermont Yankee?

24 A At this time, none.

25 Q Will there be a time in the future when

1 Entergy will have an obligation to produce information
2 to the Vermont commission in connection with the
3 decommissioning of Vermont Yankee?

4 A No, not that I know of.

5 Q Would you agree that adding the Florida state
6 commission to the parental support agreement and the
7 CR3 project would require NRC approval?

8 A I don't believe so but it may.

9 Q You think it may require approval?

10 A It may. I would have to go back and take a
11 look at some -- a couple of things.

12 Q Okay. Is that something you can do now or
13 would that require you to --

14 A No. It would take a little bit of research.

15 Q I'm sorry, sir. Say that again.

16 A It would require a little bit of research.

17 Q Okay. I want you to turn to page 31 and in
18 particular your testimony starts around line 7 in
19 response to that question there.

20 You indicate that requiring ADP's parent
21 organizations to maintain minimum cash or cash
22 equivalent of \$140,000,000 would not cause a financial
23 hardship to those organizations.

24 Is there anything within the documents that
25 you relied upon for your testimony in this case that

1 supports your conclusion?

2 A There is nothing in the documents that
3 support or refute my conclusion.

4 Q Let me ask you this. Wouldn't requiring
5 ADP's parent organizations to maintain that
6 \$140,000,000 in cash or cash equivalent prevent the ADP
7 companies from applying the \$140,000,000 towards
8 completion of the decommissioning?

9 A I think I've already answered this question
10 previously about 20 minutes ago. You asked me exactly
11 the same question and I would hesitate to respond to it
12 again because it may contradict what I said previously.

13 Q Let me see if I can find the particular
14 question that I asked you because I just want to make
15 sure I cover this area. And to the extent I've already
16 asked it, obviously I won't ask it again and I
17 apologize if I did. Give me just one moment to see if
18 I can find it.

19 A It was in reference to Line 17 and 19 of
20 Bates No. 31, page 27.

21 Q Of your testimony?

22 A Yes.

23 Q That will help me find it. I think you are
24 correct, Mr. Polich, so I'll withdraw that question.

25 I do want to touch on a question that I did

1 ask you earlier. And I think this appears on page 31
2 or at least the question appears on page 31 and your
3 response appears on page 32, which is for everybody
4 else that's Bates pages 35 and 36.

5 You indicate in connection with the Vermont
6 Yankee decommissioning project NorthStar agreed to a
7 10 percent CPT contribution and you testified about
8 this earlier.

9 My question is isn't it true that the
10 10 percent contribution in Vermont Yankee only starts
11 after NorthStar has taken \$100,000,000 from the trust
12 fund?

13 A I believe that may be correct subject to
14 check.

15 Q Isn't it true that in the CR3 transaction
16 6 percent CPT contribution would begin immediately?

17 A I am looking at a document right now to try
18 and double check something. I believe that is correct
19 but there is something in the back of my mind that says
20 I need to double check that.

21 Q Okay. Sitting here today, you believe that's
22 accurate?

23 A Yeah, sitting here today I do believe that's
24 accurate. I'd have to go back and look at the
25 discovery responses from Duke on that issue.

1 Q Okay. I'm going to ask you a question about
2 your testimony on page 35 beginning around line 6.
3 There you recommend establishing an independent monitor
4 for the CR3 project.

5 A And you base your recommendation, at least in
6 part, on the fact that the Georgia Power Vogtle project
7 utilizes an independent monitor, correct?

8 A Yes, they do now. They didn't originally.

9 Q They didn't originally and then they
10 experienced significant cost and schedule overruns,
11 right?

12 A Actually, the contractor did, which resulted
13 in the contractor going bankrupt.

14 Q And is that what prompted the implementation
15 of an independent monitor?

16 A It was part of the basis for establishing
17 that.

18 Q The Vogtle project is not a nuclear
19 decommissioning project, is it?

20 A No, but it is a construction project and
21 nuclear decommissioning is no different than any other
22 construction project. The only difference is instead
23 of building something you're dismantling it. It still
24 requires the same issues associated with coordination
25 of employees, performing work on a site, getting that

1 work done.

2 It's encumbered more so than a construction
3 project because you're having to deal with a site that
4 has nuclear contamination and the associated problems
5 you have with radiological dose amounts and nuclear
6 health safety issues.

7 Q In response to the same question, you note
8 that Duke will have an onsite monitor but you believe
9 that Duke's monitor will not be able to perform all of
10 the assessments and projections that an independent
11 monitor could perform; is that accurate?

12 A That's not what my testimony says. And
13 clearly, that's not correct because -- we'll start with
14 Vogtle.

15 With Vogtle, clearly Southern Company had
16 people onsite during that project and it still ended up
17 going the direction it did and it was a fixed price
18 contract. So to the extent that that happened, it
19 doesn't mean that people onsite can prevent it.

20 When I was on the Midland nuclear project, in
21 fact I was onsite for a period of time and we weren't
22 able to prevent Bechtel Power Corporation from running
23 that project into the ground and costing, let's see,
24 something like 30 times what the original price on it
25 was.

1 Just because you have a company there,
2 doesn't mean that they will always foresee all of the
3 problems that are going on in the case of Vogtle and in
4 the case of other projects.

5 I mean in today's world, as I mentioned
6 earlier, you have an entity hire an EPC contractor to
7 build a power plant. That company also hires an
8 owner's engineer to oversee that project even though
9 they have their own personnel that are also overseeing
10 it.

11 This is no different than that. It's just
12 adding one more layer of eyes to see what's going on
13 and potentially head-off a problem from occurring.

14 Q So let's me see if I can summarize my
15 understanding of your testimony.

16 You're saying Duke is going to have their own
17 monitor who could perform the assessments and
18 projections that an independent monitor could perform
19 but the independent monitor could potentially perform
20 those assessments and projections when the Duke monitor
21 was not willing or not able to perform them.

22 Is that accurate?

23 A What I'm trying to say is that it's another
24 set of eyes on a project.

25 Time and time again throughout the history of

1 these types of projects you will find situations where
2 the company that is directly involved in the project
3 gets myopic on that project and fails to see some of
4 the other things that are going on.

5 It depends upon the expertise of the
6 personnel that Duke assigns to that project.

7 Q And we don't know who those people are going
8 to be?

9 A We don't know who those people are going to
10 be.

11 Q And we don't know whether they will
12 accurately perform the assessments or projections,
13 correct?

14 A I'm sorry. I didn't hear what you said.

15 Q I said we don't know whether the folks that
16 Duke selects to monitor the project will accurately and
17 competently perform the assessments and projections at
18 this point, do we?

19 A I'm not talking about competency. I'm quite
20 sure that Duke's personnel that they'll assign to this
21 will have competency.

22 What I'm saying it's just human nature and
23 it's been proven out time and time again on these types
24 of complicated, large construction projects that people
25 that are there day to day have a tendency to develop

1 myopia and that the utilization of an independent third
2 party with the aspect of looking at certain critical
3 functions in terms of the business aspects and the
4 operations of the company of the project will discover
5 things before those who are directly related to the
6 day-to-day operations don't find.

7 Q Okay. Thank you for that clarification. I'm
8 going to turn to Exhibit No. 5 and I'm going to read a
9 statement for you that appears on page 16 of that
10 exhibit. It's a short statement and it's numbered
11 paragraph 31. And the statement there says --

12 A Do you mind if I pull that exhibit up first?

13 Q No. Go ahead, sir. I'm sorry.

14 A Okay. And what page are you on?

15 Q Page 16, paragraph 31.

16 A Is that Bates No. 16?

17 Q No, sir there is no Bates number on Exhibit
18 No. 5.

19 A The version I have has Bates numbers on it.

20 Q Okay. I'm looking at the number that appears
21 at the top of the page.

22 A Okay thanks for clarification.

23 Q And I'm just going to ask whether you agree
24 with the statement that I'm about to read.

25 And the statement says, "The June 2017

1 capital investment improved NorthStar's liquidity and
2 its financial position relative to its previously thin
3 capitalization and high leverage."

4 Do you agree with that statement?

5 A What I disagree with in that statement -- let
6 me clarify this issue.

7 The 2017 acquisition of NorthStar did improve
8 its capitalization, but what it didn't help with and
9 what still exists is that its balance sheet's cash
10 position is still thin.

11 It also improved the leverage to a certain
12 point because what didn't change was the amount of
13 goodwill and intangible assets that remain on the
14 balance sheet which made sure that the shareholders had
15 positive equity.

16 Q Okay. But overall you would agree that the
17 June 2017 capital investment improved NorthStar's
18 liquidity and its financial position.

19 Would you agree?

20 A Yes. There was cash pumped into the company
21 which improved its balance sheet.

22 Q Thank you. Mr. Polich, I am going to take a
23 five-minute break. I'm going to confer with co-counsel
24 and we may be close to being done, but I need just a
25 few minutes to review my notes. And we will come back,

1 let's say, at 2:27 and I may or may not have a few more
2 questions for you.

3 Okay?

4 A Thank you.

5 MR. HERNANDEZ: We can go off the
6 record.

7 (A brief recess was held from 2:23 p.m.
8 to 2:32 p.m.)

9 BY MR. HERNANDEZ:

10 Q Mr. Polich, we discussed earlier what you
11 interpreted to mean financial stress as you used that
12 term throughout your direct testimony. And I think at
13 one point you gave an example related to how a
14 household could suffer financial stress.

15 I'm trying to identify the particular
16 financial stress that you were contemplating when you
17 prepared your direct testimony in this matter. And to
18 the extent there were different types of financial
19 stress you were contemplating with respect to different
20 opinions or different enhancements that you recommend,
21 please let me know.

22 But could you explain to us what financial
23 stress you had in mind when you were expressing your
24 opinions as reflected in your testimony?

25 A NorthStar currently has one large nuclear

1 project -- decommissioning project that it has put
2 itself in a position of completing and that is the
3 Vermont Yankee project. That is projected to be a
4 \$500,000,000 plus project.

5 When you think about it, that -- if things on
6 that project start to deteriorate to the extent that
7 you start having cost overruns, it could very quickly
8 put them into a position where cash coming in does not
9 equal the amount of cash liabilities that are occurring
10 as part of that project.

11 Now, we add the Crystal River 3 project on
12 top, which is another \$500,000,000 plus project. Now
13 we've got a billion dollars' worth of nuclear
14 decommissioning projects going on board.

15 10 percent cost overruns on those projects is
16 a \$100,000,000. That can put any company into
17 financial stress real quick to the point where if they
18 haven't performed their estimates properly and
19 projections as to what the costs are going to be -- and
20 seeing that these are the first two large nuclear
21 decommissioning projects that NorthStar has undertaken,
22 it should be viewed with skepticism or at least a
23 degree of risk on their ability to have those projects
24 move forward as they are projected to the extent with
25 both projects where you have a completion schedule,

1 especially in the case of Crystal River 3 which has yet
2 to be defined.

3 There are some serious unknowns in terms of
4 whether these projects will move forward in accordance
5 with NorthStar's projections. And if they don't -- as
6 we have seen in numerous nuclear projects throughout
7 this nation's history, if they don't NorthStar could be
8 put in financial trouble very quickly, unable to pay
9 bills and that financial stress can be compounded in a
10 very fast fashion.

11 Q Let me make sure I understand. The financial
12 stress that you're contemplating is that either with
13 respect to the Vermont project or the CR3 project there
14 are expenses that NorthStar will have to incur that
15 will not be covered by the trust fund for whatever
16 reason because of cost overruns presumably.

17 Is that accurate?

18 A That's part of it. Recently, there was a
19 solar energy called SunEdison which got into financial
20 trouble and ended up going bankrupt not because of cost
21 overruns but because it extended its credits too far
22 and put itself in a construction process in which they
23 were unable to be paid for the work that they were
24 performing in a timely fashion and then were unable to
25 pay their creditors.

1 It was a case -- there's been time and time
2 again in various fashions in which a company has grown
3 too quickly and ended up in financial stress because of
4 over-commitments.

5 When you look at a billion dollars' worth of
6 work compared to their balance sheet, that ratio is
7 substantial and especially when you take out the
8 portions of NorthStar's balance sheet associated with
9 Vermont Yankee which are capped at such by the nuclear
10 decommissioning trust fund. There is very little
11 assets to support that kind of effort.

12 Q So the additional financial stress that you
13 think could occur is an overextension of credit; is
14 that correct?

15 A An overextension of what they are doing and
16 the problem you have with overextension and financial
17 stress is you don't always see it coming.

18 And right now with where NorthStar sits in
19 the thin capitalization of NorthStar compared to the
20 amount of work that they are undertaking it creates
21 risk.

22 Q I appreciate the explanation. I've just got
23 a couple more questions.

24 You mentioned that the cost of nuclear
25 decommissioning has gone down based on observations

1 you've made. And you I think referenced certain
2 projects not by name but you indicated that you were
3 aware of projects in which costs have gone down.

4 Can you tell me specifically which projects
5 you know of that reflect a reduction in decommissioning
6 costs?

7 A I can reflect on projects that are
8 significantly higher than what is being projected right
9 now for Vermont Yankee and Crystal River 3. You can
10 take a look at Maine Yankee, Yankee Rowe, Rancho Seco.
11 There's numerous projects out there where their cost of
12 decommission is substantially higher than 500,000,000.

13 Q Each of those projects is unique, isn't it?

14 A All nuclear projects are unique. There is no
15 -- I won't deny that; although, I will say that there
16 have been decommission projections that are sisters of
17 Vermont Yankee -- sister nuclear plants I should say.
18 And those costs were higher than Vermont Yankee is
19 projected to be.

20 Q You're saying that because in the past other
21 projects have been more expensive with respect to
22 decommissioning that that means that in the future or
23 presently the cost of decommissioning is or will become
24 less.

25 Is that what you're saying?

1 A I'm saying Duke has their own evidence of it.
2 They had multiple studies by an independent consultant
3 on the cost of decommissioning Crystal River 3 that
4 were substantially higher than what Duke itself is
5 indicating the costs would be on their own independent
6 assessment that occurred prior to going out for bids.

7 And it was their decision on why they decided
8 to move from SAFSTOR to DECON. So Duke themselves
9 found that that -- that the costs have come down.

10 Q And does that indicate to you that the cost
11 of decommissioning has come down and will continue to
12 go down?

13 A I'm saying they have come down. And again,
14 history has shown, with the exception of construction
15 of nuclear projects, that as we learn from development
16 of techniques and ways of performing the work on
17 various things traditionally over -- there is a
18 learning curve associated with something new.

19 Nuclear decommissioning of large nuclear
20 plants is still relatively new in this country. We
21 have learned a lot over the last ten years that have
22 dropped the cost. I'm quite sure we're going to learn
23 more and the costs are likely to drop further.

24 Q But you don't know that for sure; nobody
25 knows, right?

1 A I will say that experience dictates that they
2 are likely to drop.

3 Q And you're speaking about your personal
4 experience?

5 A I'm talking about history's experience.

6 Q All right. Let me move on and this last
7 question really is seeking some clarification.

8 If you look on page 27 of your direct
9 testimony, which is Exhibit 4, you indicate at lines 17
10 through 19 that you recommend requiring the parent
11 companies of ADP to maintain a minimum cash or a cash
12 equivalent asset in the amount of at least \$105,000,000
13 to support the parental support agreement. And there
14 are subsequent instances in your testimony -- for
15 example, on page 30 -- where you recommend
16 \$140,000,000.

17 Is there a typo there or is there a reason
18 why you say 140 on one place and 105 in another?

19 A No, that is a typo.

20 Q The 105 is a typo?

21 A The 105 is a typo.

22 Q It should be 140?

23 A 105 represents NorthStar's portion of the
24 financial guarantee and the 140 represents the
25 combination of the NorthStar and Orano.

1 So in order to do it -- my intent was focused
2 on NorthStar in terms of -- I said earlier in terms of
3 financial backing of the two companies. But in
4 reality, it should be 140 to be consistent with the
5 overall parental guarantees and structure.

6 MR. HERNANDEZ: Okay. Thank you for
7 that clarification. Mr. Polich, I appreciate
8 your patience. I don't have any additional
9 questions but I think Ms. Brownless does so
10 I'm going to turn it over to her.

11 MS. BROWNLESS: Thank you.

12 CROSS EXAMINATION

13 BY MS. BROWNLESS:

14 Q Let me get my computer set up here. I want
15 to apologize at the beginning for my lack of technical
16 expertise.

17 A That's okay. I earlier forgot to bring my
18 power cord and had my computer die on me and that's a
19 very simple technical problem.

20 Q If you could look at page 16 of your
21 testimony, please.

22 A Yes.

23 Q And I'm just referring to lines 3 through 5.

24 A Yes.

25 Q And there you state, "Orano is backed by a

1 large corporation and, ultimately, the French
2 government. This, combined with Orano's limited scope
3 of work, significantly reduces the financial concern
4 for Orano."

5 Is that correct?

6 A Yes.

7 Q And then on the next page, page 17, you state
8 -- and this is on line 20 -- you state that NorthStar
9 Group Holdings, LLC, is ultimately controlled by JFL GP
10 Investors, IV, LLC; is that correct?

11 A Yes.

12 Q Did you give NorthStar any credit for being
13 controlled by JFL GP Investors similar to the deference
14 you gave to Orano for being backed by a large
15 corporation?

16 And if you did not do that, why didn't you?

17 A Actually, I gave it the opposite. The
18 experience that I have had with entities such as JFL et
19 al., is these are mezzanine investors who are very
20 interested in cash flow and dividends that they give to
21 their investors.

22 And as such, their wherewithal to provide
23 additional funding to an entity that's in trouble is
24 somewhat restricted because they may not have
25 investment dollars available to bring into the

1 corporation at the same time.

2 And on top of that, when you look at the
3 financial structure from NorthStar and up there are
4 multiple levels of different LLCs that each provide --
5 are intended to provide a barrier that don't allow
6 creditors or bankruptcy situations to reach up above.

7 In the case of Orano, the fact that they
8 maintain the same name through it and such it's a
9 different issue. There is certain credibility involved
10 with using your name all the way through the corporate
11 structure that when you think about discrediting that
12 name you're going to provide a heck of a lot more
13 support for the lower-level companies and so that is
14 one of my concerns.

15 It goes back to our concern -- I should say
16 the concern that Dr. Jacobs and I talked about in terms
17 of what could happen if NorthStar projects do become
18 financially troublesome. And the fact that there is
19 nothing to prevent from the corporate structure, the
20 governance agreements from that -- essentially all of
21 the asset bases are dividended up to the parents.

22 Q So you were concerned about the levels of the
23 number of different corporations in the ultimate
24 structure?

25 That was one of your concerns?

1 A It indicates -- it usually indicates that
2 there are various protections being placed in the
3 structure to protect the parent entities from things
4 going -- I'm going to use the word "south" which is
5 commonly used in financial communities of things going
6 negative. So each one of those levels provides a
7 barrier.

8 Q Did you do any independent research on JFL GP
9 Investors to see if they had the means to provide funds
10 to NorthStar if it was needed to meet NorthStar's
11 150,000,000 guarantee -- 105,000,000?

12 A Yes, I did what we could. We found out who
13 the parent entities were and stuff. None of these
14 entities are subject to SEC regulation so the finances
15 are not available. You don't know what the dollars
16 are. You have no idea what the corporate governance
17 structures look like.

18 On the other side of it too you asked me a
19 question about related to experience. When I was in
20 development of power plant projects and renewable
21 projects, there was one company I worked for by the
22 name of Nordic Energy in which we would set up
23 corporate structures similar to this to protect a
24 project from getting it -- if it got into trouble from
25 affecting and possibly reaching back up into the

1 parent.

2 And in one case, one of the reasons why I
3 quit that company was I discovered that there were some
4 financial things that were going on that I couldn't
5 condone and it was causing contractors that I respected
6 not to be paid.

7 Q Okay. How does the risk of the work Orano is
8 responsible for compare to the risk of the work
9 NorthStar is responsible for?

10 A Orano's work -- I'm not going to decline that
11 it's not risky because we're dealing with the highest
12 level radiation levels within Crystal River 3 and also
13 Vermont Yankee because Orano is also doing the same
14 work at Vermont Yankee.

15 That has to do with dismantling and disposing
16 of the nuclear steam supply system, often called NSSS.
17 And those are the components which will have the
18 largest amounts of nuclear -- of radioactive isotopes
19 deposited on their surface.

20 There is no doubt that that cleanup is risky.
21 You have the potential for consuming a large number of,
22 quote/unquote, man-rem's in terms of employee exposure
23 in the cleanup process and stuff like that. You're
24 talking about having to do all of that work in full
25 hazmat suits, specific ventilation systems, and

1 everything else. So that work is very tedious and
2 complicated and cumbersome.

3 At the same time, knowing Orano's experience
4 and their capabilities and background in the nuclear
5 industry I have confidence that they can probably do
6 that work within the budget they have slated for this
7 project.

8 And so I guess when you look at it it's,
9 what, 20 percent of the total project cost. And so
10 it's relatively -- it's relatively identified, you know
11 what equipment is required, you know the materials
12 involved and what the likely radiation levels are of
13 them because Duke has probably provided that data.

14 One of the interesting things at Vermont
15 Yankee that concerned me was that typically you do a
16 radiation survey in assessing the decommissioning
17 project. Vermont Yankee was a BWR as opposed to a PWR.
18 BWRs you have radiation that gets outside the NSSS
19 because you're sending steam from the reactor vessel
20 into the steam turbine.

21 So the fact that there wasn't a radiological
22 survey done, and the last one was like three years old,
23 raised some concerns when I looked at that project and
24 the quotes on the project. I'm not as concerned of
25 that with regard to the Orano process and what their

1 work level is.

2 Q If ADP seeks a higher price to incorporate
3 the enhancements that you have suggested and Duke
4 agrees to the higher price, that would simply decrease
5 the dollars that would be available to be returned to
6 customers; is that correct?

7 A It would potentially, yes. I mean that's a
8 risk that you have to look at and decide.

9 Now, if you do the enhancements we're talking
10 about and they crank the price up \$100,000,000 that's
11 not realistic because there's nowhere near that type of
12 financial hardship that's being imposed here.

13 Q Did you compute a dollar value for your
14 financial enhancements?

15 A I performed an assessment of it. The
16 enhancements from my perspective and I'm thinking about
17 it as an entity that has -- you know, I've been
18 involved in development of various emergent projects in
19 the power industry. And there's an assessment of risk
20 that you perform on each one of those projects,
21 especially when you're writing a power purchase
22 agreement with somebody. This is really no different
23 than that.

24 And when I think about what we're asking
25 versus the potential encumbrance, as I was asked

1 earlier about if you require the parents to maintain a
2 certain level of cash what does that do in terms of
3 their ability to utilize that cash?

4 Well, to a certain point -- NorthStar shows a
5 cash equivalent right now at the end of 2019 of
6 67,000,000. Bumping that to 105,000,000 for their
7 portion of that is only adding another 40 some-odd --
8 or less than \$40,000,000 in cash equivalency. They're
9 already three-quarters of the way there so that's not a
10 significant hardship.

11 Adding the State of Florida as a parental
12 guarantee, again that doesn't cost anything to do.
13 It's a freebee.

14 And then the -- does the acceleration of the
15 CPT cause some additional? Yes, it does. But the CPT
16 is owned by NorthStar. They can claim that as an
17 asset. They can collateralize that if they need cash.

18 So I see very minimal impact from their
19 ability to financially function with the enhancements
20 we're talking about here.

21 Q But if you were to assess a dollar value on
22 these enhancements, what would it be?

23 A Less than 10,000,000 and I will admit that is
24 somewhat off the top of my head. It may be less than
25 that.

1 Q Okay. Do you have an idea of what higher
2 price Duke and in essence Duke's customers should be
3 willing to pay to include your enhancements?

4 A Let's use the \$10,000,000 figure I just gave
5 you.

6 Q Are you aware of instances where NorthStar
7 was not able to meet its contractual responsibilities
8 related to a nuclear decommissioning?

9 A NorthStar has not done a nuclear
10 decommissioning of this size.

11 I have to go back to their balance sheets
12 prior to the 2017 acquisition by the consortium. It's
13 hard to tell who acquired who in that configuration.

14 But that consortium purchased -- you look at
15 their balance sheets prior to that and they had
16 negative equity. That tells me they were hanging on by
17 their thumbs, and they had already had considerable
18 investment by one of the investors in terms of a loan
19 prior to that. That indicated to me that they were not
20 making money on their projects.

21 Q But the question I'm asking, notwithstanding
22 that, were there any instances in which NorthStar did
23 not comply and complete their contractual
24 responsibilities related to a nuclear decommissioning?

25 A Again, going back to what they were

1 decommissioning these were research facilities and
2 research reactors, nowhere near the complexity, nowhere
3 near the level of dollars. No, I did not.

4 Q But they were able to successfully complete
5 them?

6 A As far as I can tell, yes.

7 Q Okay.

8 A I haven't talked to the owners.

9 Q You were asked a question by Mr. Hernandez
10 about whether the NRC has to approve the parental
11 support agreement to add the State of Florida.

12 Could you provide us with a late-filed
13 exhibit answering that question?

14 A Yeah, I will do that definitely. I don't
15 believe they do but I need to go back and double check.

16 MS. BROWNLESS: And I think that would
17 be late-filed Exhibit No. 9.

18 Is that correct, Danny?

19 MR. HERNANDEZ: Yes, it would be.

20 (Exhibit No. 9 was identified to be
21 filed at a later date.)

22 MR. REHWINKEL: Suzanne, this is
23 Charles.

24 MS. BROWNLESS: Yes, sir.

25 MR. REHWINKEL: My question is could you

1 just give a name for it and I'd like for you
2 to ask Mr. Polich on the record if he
3 understands exactly what you're asking him
4 for.

5 MS. BROWNLESS: Sure.

6 BY MS. BROWNLESS:

7 Q Let me just ask you a question, Mr. Polich,
8 and we'll do what Mr. Rehwinkel has requested.

9 Could you provide a late-filed exhibit
10 indicating whether the NRC must approve an amendment to
11 the parental support agreement to add the State of
12 Florida?

13 A Yes, I can.

14 Q And you understand the question that I'm
15 asking, correct?

16 A Yes, I do. And where my hesitancy comes in
17 is I know in the Vermont Yankee process that did
18 happen. I can't recall if it happened prior or would
19 it be prior to the NRC approving the first parental
20 guarantee or after and I don't recall that course of
21 events.

22 And I need to go back and look at the NRC
23 order to see if just simply adding a separate entity to
24 it would require them to also reapprove that document
25 or not.

1 Q Thank you. And that would be identified as
2 late-filed Exhibit No. 9.

3 And our final question is -- I'm sorry. Do
4 you have an estimate of the cost of the independent
5 monitor that you've also asked be appointed?

6 A The response to that is dependent upon how
7 that function is established, how frequently they are
8 performing assessments, reports, and things like that.
9 I could provide you an estimate if I knew what -- how
10 that function would work.

11 I'm expecting that the State of Florida if
12 they do -- if it's chosen that the State of Florida
13 takes on that functionality and chooses that
14 contractor, they would probably put that out for bid.
15 But to the extent that we understand the scope of work,
16 I could probably provide an estimate.

17 Q Did you present any information regarding
18 that in your testimony?

19 A I did not provide anything on the cost.

20 Q Have you provided details of the monitoring
21 functions you are recommending in your testimony?

22 A I can't remember how much detail I put in
23 here. So looking at -- if I were to find this in the
24 scope of work that I put on page 35 and 36 of my
25 testimony, I could probably put together a scope of

1 work or a scope of work and a cost estimate for this if
2 GDS were to potentially do the work.

3 MS. BROWNLESS: And could we identify
4 that as late-filed Exhibit No. 10, please.

5 Mr. Rehwinkel, is that okay?

6 MR. REHWINKEL: Yes. Let's call
7 late-filed No. 9 the parental support
8 agreement verification and late-filed No. 10
9 would be an independent monitor cost
10 estimate.

11 Is that okay?

12 MS. BROWNLESS: Yes, sir, that's fine.

13 MR. REHWINKEL: Just for a label. And I
14 think since the witness has said that he is
15 going to give an estimate he understands your
16 question it seems crystal clear to me.

17 (Exhibit No. 10 was identified to be
18 filed at a later date.)

19 BY MS. BROWNLESS:

20 Q Yes, Mr. Polich, do you understand what we're
21 asking for?

22 A I believe I do.

23 Q Thank you so much. All right. Turning to
24 page 14 of your testimony, sir, you indicate on lines
25 10 through 12 that NorthStar will perform project

1 management, arrange for subcontracting as needed, and
2 perform a large majority of the DECON work; is that
3 correct?

4 A Yes.

5 Q Can you tell us specifically the activities
6 and duties entailed in the term "project management" as
7 you are using it here?

8 A I can. This has -- the term "project
9 management" encompasses a large portion of tracking,
10 scheduling, invoicing, accounting, and a variety of
11 other things.

12 I'm trying to recall -- I believe I can
13 actually pull it, the -- attached to the DSA is some
14 general -- let me look at it for a second here. I'm
15 trying to remember what I got in discovery versus the
16 actual DSA.

17 Q Maybe I can just list a series of things and
18 you can tell me if they are included.

19 A That would be helpful.

20 Q Would it include oversight of contractors?

21 A Yes.

22 Q Acceptance of work?

23 A By the way, that includes oversight of Orano
24 too.

25 Q Acceptance of work?

1 A Yes.

2 Q Quality assurance review?

3 A Yes.

4 Q Establishing (inaudible) and past schedules?

5 A Yes.

6 Q Monitoring schedule adherence?

7 A Yes.

8 Q Establishing schedule task completion
9 percentages?

10 A Yes.

11 Q Establishing project task budgets?

12 A Yes.

13 Q Monitoring budget variance?

14 A Yes.

15 Q And identifying, assessing, and mitigating
16 project risk?

17 A Yes.

18 Q Are you familiar with NorthStar's track
19 record or industry reputation in the role of a project
20 manager for a project of the magnitude of this CR3
21 scope of work?

22 A I don't believe they have -- in fact, I know
23 they have not had that experience.

24 Q So your testimony is that they have been
25 project managers on other smaller projects but not a

1 project of this --

2 A Yeah, I mean there are project managers right
3 now on Vermont Yankee, but Vermont Yankee is way too
4 soon to find out whether they're managing that project
5 successfully or not.

6 Q And is it also your testimony that the other
7 projects that they have managed have been significantly
8 smaller?

9 A Definitely.

10 Q What do you know about NorthStar's track
11 record or experience that may indicate its ability to
12 successfully perform on this project even in a project
13 management role or in performing a large majority of
14 the DECON work?

15 A That is part of my concerns with NorthStar.
16 Vermont Yankee was their first project of that
17 magnitude and this is their second.

18 Q Do you have any concerns about NorthStar's
19 technical competency or expertise as it relates to
20 performing a large majority of this DECON work?

21 A Yes, I do. Managing a project of 50 people
22 versus managing a project of 200 people is not
23 necessarily a fourfold increase.

24 One of my favorite examples is as a parent
25 you have your first child but at that point it's two on

1 one. You have your second child and now it's two on
2 two. The work level shouldn't necessarily quadruple
3 but it seems to because you're both kind of being
4 tasked in the efforts.

5 In a project like this -- and I have seen it
6 involved when I was on the Midland nuclear project. As
7 projects get bigger, the amount of time and scheduling
8 personnel becomes significantly more complicated.

9 And we see this on -- we saw this on the
10 Vogtle project. When you have a site of 3,000 people,
11 trying to make sure all of those people are at the same
12 productivity as what you had on a project with only 50
13 people is extremely difficult, especially in confined
14 spaces where people get in the way of each other.

15 And so I believe the jury is out on
16 NorthStar's ability to manage that kind of increase in
17 level of a project such as this.

18 Q On page 14 when you referred to
19 subcontractors as needed, do you believe it is a
20 foregone conclusion that subcontractors will be needed
21 for the completion of this project?

22 A Yes. In fact, the DSA contemplates that
23 where there is a provision in there that talks about
24 where subcontractors will be -- are all under
25 fixed-priced contracts and will have their own

1 contractor guarantees in terms of the performance of
2 their work.

3 So yes, there is definitely subcontractors
4 being contemplated on this project.

5 Q Can you give examples of the types of tasks
6 or work that would likely be sent to subcontractors?

7 A I can't. I mean I'm not certain exactly what
8 work NorthStar and Orano are performing and what
9 they're subcontracting. I don't know what expertise
10 that NorthStar is expecting to be performed themselves.
11 The documents that I've reviewed don't seem to indicate
12 necessarily what's going to be subcontracted.

13 Q In returning to the areas of responsibility
14 that are NorthStar's in this project management, do you
15 anticipate that another aspect of the role is frequent,
16 accurate, and open communication of the project status
17 to DEF?

18 A Right now it appears from my perspective the
19 way the DSA has been written that other than the
20 quarterly required reporting to DEF communication needs
21 to -- for the most part is initiated by Duke. There is
22 no requirement in the DSA that the ADP consortium
23 initiates communication.

24 Q Okay. Can you tell us how successful
25 communication on a project of this size would typically

1 be accomplished?

2 A I've seen a variety of things happen that
3 makes something like this successful. And let's start
4 off with a basic level of communication.

5 Each day on a project of this size there
6 should be a daily briefing on project status amongst --
7 between the project manager and the direct supportants.
8 DEF should be invited to that meeting and welcomed as a
9 participant in those meetings.

10 That establishes a natural level of trust and
11 communication that will bring success to a project like
12 this on the detail level to the extent that the ADP
13 companies are conducting monthly status reviews and
14 things like that, again inviting DEF into that, as well
15 at some point if you -- if the independent monitor is
16 established, you may want to involve them in that
17 function too. It again provides trust. It provides
18 open communication.

19 And again, going back and relying on my
20 experience as an asset manager for some of my clients
21 the value of open communication is significant in terms
22 of the value that I bring to the project as well as my
23 ability to communicate what's going on to my clients.

24 It's important in terms of, as I mentioned
25 earlier, about the concept of an owner's engineer on a

1 project. The successful ones have projects in which
2 the EPC contractor works cooperatively with the owner's
3 engineer.

4 Different people have different views. They
5 have different experiences. And sometimes you get an
6 answer coming out of left field that really does turn a
7 corner on something and being open to that is critical.

8 Q Would regular written project reports also be
9 advisable?

10 A Yeah, written reports provide a lot. I'm
11 hesitant on written reports from the perspective that I
12 don't -- I don't want -- I don't like written reports
13 that become cumbersome. Written reports should provide
14 true communication and not become a marketing piece and
15 sometimes they become a marketing piece.

16 Q Is the absence of successful communication of
17 project status a handicap to the project owner or other
18 party that is relying upon the project manager?

19 A Definitely, without a doubt. One thing --
20 when we were involved in Vermont Yankee, we did bid to
21 be the independent monitor on that project.

22 When we talked to the Public Service
23 Commission, one of things we said was we viewed the
24 potential role of independent monitor to be an asset to
25 the project with the focus of wanting NorthStar to be

1 successful. And I think if you find the right entity
2 to do that it can happen. It can happen very easily.

3 I have seen on projects where, for example,
4 as I mentioned earlier the owner's engineer becomes an
5 asset to that project and helps it become successful.

6 Q Can you describe the types of information
7 that would normally be included in project management
8 status reporting?

9 A I can. I outline that in my testimony. If
10 you look on -- if you look on page 34 starting on line
11 11, I identify on a global perspective a list of things
12 that I would recommend be reported on a monthly basis
13 to the Public Service Commission so they have a
14 realistic view of what's going on in this project.

15 Q Okay. And that is -- I'm looking at lines 11
16 through 13. That would be the progress of the
17 decommissioning, the status of the funding, and the
18 financial condition of ADP and its parent?

19 A Which page are you on again?

20 Q Page 34, line 11 --

21 A That's part of it, yeah, but then you go down
22 further starting on line 17 and there is some
23 additional information on the project itself and what's
24 going on.

25 Q All right. Is there anything else other than

1 what you've listed on pages 34 and at the top of 35
2 that you think should be included?

3 A I think this does a good job of identifying
4 the information that would be beneficial.

5 Q And this includes maintaining and updating a
6 set of project performance measures; is that correct?

7 A Yes.

8 Q And also maintaining potentially a risk
9 register and estimating both the likelihood of
10 occurrence and potential dollar impacts of identified
11 risk?

12 A Yes. That's commonly called variance
13 reports. There are various -- it's interesting. We
14 have various management things that we use.

15 For example, on a project like this you
16 create what they call a heat map of your various
17 projects and you color code in a fashion that depending
18 on where a certain portion or project is it shows up
19 red and somebody says, hey, I've got to get some
20 attention to that. Those types of things are really
21 helpful in figuring out what's going on.

22 Q So basically, you think that a project
23 manager should develop and execute risk management
24 mitigation efforts for known or potential risk?

25 A It's required.

1 Q If you'll give me a few minutes, I'll sign
2 off here a little bit and I think we might be finished.

3 A Thank you.

4 MS. BROWNLESS: If we can have five
5 minutes so that would be till 3:30.

6 (A brief recess was held from 3:26 p.m.
7 to 3:32 p.m.)

8 MS. BROWNLESS: We have no further
9 questions. Thank you very much.

10 THE WITNESS: Thank you.

11 MR. HERNANDEZ: I do not have any
12 follow-up.

13 MS. BROWNLESS: Charles, do you have any
14 recross?

15 MR. REHWINKEL: I hit the wrong un-mute
16 button. I have just a short amount of
17 redirect.

18 And I was asking if -- I don't know if
19 Jay or -- Jay looks like he's gone so I guess
20 it's my turn.

21 MR. BREW: Jay's still here. He's just
22 not on video.

23 MR. REHWINKEL: Oh, okay. There was a
24 nice brown background that you had so I was
25 watching that.

1 MR. BREW: I do not have any questions
2 for Mr. Polich.

3 MS. PUTNAL: And this is Karen Putnal
4 for Florida Industrial Power Users Group and
5 I have no questions.

6 MR. REHWINKEL: Okay. I want to commend
7 Mr. Hernandez. I'm usually the one who keeps
8 everyone here all day. And I want to commend
9 him for being thorough and patient.

10 CROSS EXAMINATION

11 BY MR. REHWINKEL:

12 Q First off, Mr. Polich, do you recall some
13 questions that asked you about where in your testimony
14 you found the support -- I mean where in the Exhibits
15 2, 3, 6, 7, and 8 you found support for certain
16 statements in your testimony?

17 A Yes.

18 Q Are you aware of when the duces tecum
19 documents were provided that the Public Counsel also
20 indicated that the documents that Mr. Polich reviewed
21 or considered in preparing his testimony include those
22 filed by the company in the docket file and those
23 served in response to discovery from staff for OPC?

24 A I do.

25 Q Can you tell me were the documents that were

1 included in that description were they also
2 foundational or supportive of the statements that
3 you've made in your testimony?

4 A Yes. Part of preparing for this testimony
5 included review of various discovery documents that
6 were provided in the proceeding, as well as the
7 testimony exhibits provided by Duke Energy and its
8 application. That includes both -- it includes all of
9 the discovery that was provided. And those all were
10 part of me forming my opinions that I stated in
11 testimony.

12 Q Okay. Thank you. Do you recall a series of
13 questions by Mr. Hernandez that asked you about the
14 risk of DECON versus SAFSTOR and specifically with
15 respect to the removal of the spent nuclear fuel?

16 A Yes, I do.

17 Q Is it your understanding from the DSA whether
18 the DSA in any way controls whether the spent nuclear
19 fuel will find a home in a repository?

20 A The DSA addresses the SAFSTOR facility and
21 the management of that facility and the eventual
22 disposal of the spent fuel if and when that ever
23 occurs, but it doesn't identify how or when that
24 occurs.

25 Q Is it your understanding that the movement of

1 the spent fuel off of the CR3 site will be dependent on
2 conditions that are independent of the execution of the
3 DSA or the terms of the DSA?

4 A Yes, I do.

5 Q Do you recall a series of questions about
6 whether if there were -- the enhancements that you
7 recommend were ordered by the commission if -- that ADP
8 might want to renegotiate the contract, the DSA?

9 A Yes.

10 Q Is it your understanding that the DSA is
11 fixed in terms of the total price now or if it's
12 actually executed?

13 A The DSA has terms in it in regards to what
14 the decommissioning costs are going to be. And it has
15 a cap on the amount of nuclear decommissioning funds
16 that are put into the sub-account of the NDF. I call
17 it -- sometimes call it NDT, NDF.

18 Anyways, the nuclear decommissioning trust
19 and that amount is set at a fixed amount.

20 Q Right now that's set at \$540,000,000; is that
21 right?

22 A That is correct.

23 Q So the total contract that you described to
24 Mr. Hernandez as being semi-fixed in terms of
25 \$540,000,000 plus or possibly minus earnings is the

1 true established cost of the contract.

2 Is that your understanding?

3 A Yes.

4 Q Let's assume just for the sake of a
5 hypothetical that there is \$20,000,000 of earnings over
6 the period that the contract calls for. So
7 \$560,000,000 would be the total cost of the contract
8 under this hypothetical.

9 If all of that is spent and there were cost
10 overruns and work left undone, could ADP or the
11 consortium still receive additional payments out of the
12 nuclear decommissioning trust?

13 A If Duke agreed to it, potentially, yes.
14 There is no -- let me think about this.

15 First of all, let me -- there is one other
16 thing that's also in here is, as you have mentioned,
17 theoretically there could be invoices higher than that
18 amount submitted because Duke is required to spend or
19 to pay \$20,000,000 worth of invoices that they are --
20 that they are questioning.

21 So first of all, they could be in a position
22 where there is more than that amount paid and then
23 there is nothing -- there is nothing to -- I don't see
24 -- it's a fixed price contract but at the end of the
25 contract if you've got a certain percentage done --

1 let's say it's 98 percent done.

2 What's to prevent NorthStar from coming back
3 and saying, hey, we need another 2 percent to finish
4 this out and Duke approving that? And I don't see why
5 it wouldn't be funded out of the nuclear
6 decommissioning trust fund.

7 Q Have you agreed in your answers today that
8 the DECON approach will deliver benefits to customers
9 or have you agreed that there is a potential for them
10 to deliver benefits to customers?

11 A My statement is that there is a potential for
12 it. There is nothing in this agreement, there is
13 nothing in this deal that guarantees it.

14 Q I think you were asked questions by
15 Mr. Hernandez about whether the Vermont Yankee project
16 is on budget and on schedule.

17 Do you recall that?

18 A Yes, I do.

19 Q Is it your view that the Vermont --
20 NorthStar's work with Vermont Yankee could be both on
21 budget and on schedule -- let me strike that and ask it
22 this way.

23 If NorthStar is on budget and on schedule
24 with Vermont Yankee, is that a guarantee that they will
25 be on budget and on schedule with CR3 if they proceed

1 with DECON?

2 A Each project is different and there are no
3 guarantees that just because those conditions exist at
4 one nuclear decommissioning project it may happen on
5 another.

6 Q Okay. Do you have Exhibit 5?

7 A Yes, I do.

8 Q This is the Vermont order. And I want to ask
9 you to turn to page 16 and that paragraph 31 that you
10 were asked about.

11 A Yes, I have it.

12 Q Does this order say -- I'm sorry. Do you
13 have it?

14 A Yes, I do.

15 Q Does this order say at paragraph 31 that
16 after the June 2017 capital investment that NorthStar
17 is no longer thinly capitalized?

18 A No, it doesn't. In fact, if you look at Duke
19 Energy's evaluation of NorthStar's financials between
20 2016 and 2017, Duke Energy still rates NorthStar as
21 having a negative tangible net worth after the capital
22 investment.

23 Q Does the order on page 31 say that after the
24 2017 capital investment that NorthStar is no longer
25 highly leveraged?

1 A No, it doesn't. It stays that it's been
2 improved but it doesn't say it's still not highly
3 leveraged.

4 Q Okay. Just so I understand, you talked about
5 -- let's go to your testimony and your exhibits, if I
6 have that in the right place, Exhibit RAP-3 and this is
7 the org chart.

8 A Yes.

9 Q I want to understand your answer to I think
10 it was Ms. Brownless' question.

11 First of all, are you suggesting in any way
12 that the -- do you have this chart?

13 A Yes, I do.

14 Q Are you suggesting in any way that the
15 organization of the NorthStar side of the org chart --
16 putting aside Orano for a second, are you suggesting
17 that that in any way is established for any illicit or
18 -- well, illicit purpose?

19 A No, it's not. I mean it's strictly
20 established for corporate isolation issues.

21 Q So if we looked at -- for example, go to the
22 very top. You see the elliptical that is a dotted line
23 then it has John Lehman at the top?

24 A Yes.

25 Q If you go one below that, that's a certain

1 entity with a certain name and --

2 A Yes.

3 Q And below that is another entity and it has a
4 line that goes to a dotted line box and then it has a
5 list of investors there; is that right?

6 A Yes.

7 Q So is it your understanding that that
8 represents a certain type of investor group?

9 I'll just leave it at that. Is that right?

10 A We do not know the exact structure of each
11 one of these boxes. And my experience dictates that
12 there are certain levels of investments as occurring in
13 certain companies that are invested in each one of
14 those entities.

15 And so for example, the box that you referred
16 to which says JFL-NGS Holdings doesn't have its own set
17 of investments. The box prior to that invests in that
18 box but they probably also have a separate set of
19 investments that the lower box has no ability to tap.

20 And in addition, the difference between these
21 two boxes also provides a corporate barrier that
22 prevents investments in one box from being able to
23 impact the previous box and so on and so forth all the
24 way down the line here.

25 And so again, it's a way of setting up

1 corporate structures that prevents one group of
2 investments from affecting the other.

3 Q And you mentioned an example about an
4 organization called Nordic that you worked for and you
5 left; is that right?

6 A That is correct.

7 Q And by your answer, you were not suggesting
8 that the circumstances that you had a disagreement with
9 Nordic that you did not agree with are occurring with
10 the NorthStar organization; is that right?

11 A No. It was strictly an example of what can
12 potentially happen.

13 MR. REHWINKEL: Give me a second. I
14 think I'm -- those are all the questions I
15 have.

16 So, Daniel, I'm done. I appreciate your
17 indulgence.

18 MS. BROWNLESS: And if I could just ask
19 what is the date we can expect to get the
20 late-filed exhibits?

21 MR. REHWINKEL: I think Rich will have
22 to answer that. I don't think it will take a
23 long time but ...

24 MS. BROWNLESS: Mr. Polich?

25 THE WITNESS: I'm just thinking about my

1 schedule. I have to get those to you by
2 Tuesday.

3 MS. BROWNLESS: Okay.

4 THE WITNESS: Or at least to Charles,
5 let me put it that way.

6 MR. REHWINKEL: And when he gets them to
7 me, I'll turn them over to you all. So I
8 guess we can say at the end of the day
9 Wednesday at the latest.

10 MS. BROWNLESS: Okay. And what date is
11 that?

12 MR. REHWINKEL: The 17th.

13 MS. BROWNLESS: And do you consider that
14 this information will be confidential?

15 Are we going to get into an issue on
16 confidentiality with regard to this?

17 THE WITNESS: We may in regards to the
18 cost of the independent monitor.

19 I'm going to talk it over with Charles
20 on how I can put it together in a fashion
21 that -- what I may do is just do it from a
22 perspective of it based upon my observations
23 for this role and other venues and provide it
24 to you that way.

25 MS. BROWNLESS: Okay.

1 MR. REHWINKEL: I will --

2 THE WITNESS: -- we would bid that
3 project.

4 MR. REHWINKEL: What I will do is when I
5 get it I will notify Duke, Mr. Hernandez, and
6 Ms. Triplett, and I will let them file an NOI
7 if need be so that we have no issues in
8 getting that to the staff and the other
9 parties as soon as possible.

10 MS. BROWNLESS: Because I think we would
11 want information that was as closely related
12 to this project as one could do.

13 MS. TRIPLETT: Hey, this is Dianne. The
14 only thing, Charles, typically -- this isn't
15 my information. I'm not obligated -- it's
16 Mr. Polich's information but we can think
17 about who is filing the NOI.

18 But the other thing I wanted to know is
19 I think -- thinking through, I think some of
20 this transcript is likely to be confidential.
21 I think we're going to have to probably treat
22 it the same we have other confidential
23 depositions.

24 So I think once we get the transcript --
25 I assume you all are going to read?

1 MR. REHWINKEL: Yes.

2 MS. TRIPLETT: I think we would like to
3 have -- we'll probably take, in order to use
4 for our rebuttal testimony, the -- I forget
5 what you call it, the rough one, the draft
6 one.

7 And we can take that and file -- I guess
8 we've got to do it pretty quickly any way
9 because of the hearing. So we can file -- we
10 might just file an NOI and just hold the
11 whole thing confidential and then go back and
12 do a more detailed RFCC.

13 MS. BROWNLESS: That probably, Dianne,
14 would be the most expedient thing to do which
15 would give people access to the transcript
16 the quickest. And I think that's kind of
17 what we're interested in.

18 MR. REHWINKEL: We want a copy. We
19 definitely will buy a copy.

20 MS. BROWNLESS: And madam court
21 reporter, we need your contact information if
22 you could e-mail that to me so that I can
23 pass that on to my clerk and let him work the
24 mechanics out with you.

25 (The deposition concluded at 3:56 p.m.)

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C E R T I F I C A T E

- - -

STATE OF GEORGIA)
COUNTY OF COWETA)

I, Allison Howell, RPR, CCR
5192-1118-5078-2720, hereby certify that the witness
remotely appeared before me and was duly sworn.

I further certify that said deposition was
taken at the time and place hereinabove set forth and
that the taking of said deposition was commenced and
completed as hereinabove set out.

I certify that I am not an attorney or counsel
of any of the parties, nor am I a relative or employee
of any attorney or counsel of party connected with the
action, nor am I financially interested in the action.

The foregoing certification of this transcript
does not apply to any reproduction of the same by any
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I make the following disclosure: I am a Georgia

1 Certified Court Reporter; I will not be taking this
2 deposition under any contract that is prohibited by
3 O.C.G.A. 15-15-7(a) or (b); I have no written contract
4 to provide reporting services with any party to the
5 case, any counsel in the case or any reporter or
6 reporting agency from whom a referral might have been
7 made to cover this deposition and I will charge my
8 usual and customary rates to all parties in the case.

9 Dated this 12th day of June, 2020.

10



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Allison Howell, RPR
CCR 5192-1118-5078-2720

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ERRATA SHEET

Witness: Richard A. Polich, P.E.
Case: In re: Docket No.: 20190140-EI
Date: June 12, 2020
U.S. Legal Support Reference #2179952

PLEASE MAKE ANY CORRECTIONS/CHANGES BELOW AND NOTE THE REASON FOR SAME.

Page	Line	Change	Reason
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Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

RICHARD A. POLICH, P.E.

DATE _____

WITNESS NOTIFICATION LETTER

June 15, 2020
ATTN: Richard A. Polich, P.E.
c/o Charles J. Rehwinkel, Esquire
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399

RE: In re: Docket No.: 20190140-EI
Deposition Date: June 12, 2020
U.S. Legal Support Ref. #2179952

Dear Sir:

The transcript of the above proceeding is now available for witness review, and the following applies:

_____The witness is requested to contact our office to make an appointment for review purposes.

X

_____Counsel above ordered the transcript and is requested to facilitate the witness' review from their copy.

_____Other: _____

We respectfully request that the review be completed within 30 days.

The completed errata sheet may be returned to our office at the address listed below for distribution.

Sincerely,
Production Department
U.S. Legal Support, Inc.
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Atlanta, GA 30309
Phone: 404-381-1465
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Letter CC via transcript:
Daniel Hernandez, Esquire
Suzanne S. Brownless, Esquire

June 12, 2020

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