

**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

FILED: June 22, 2020

**PRE-HEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL**

The Citizens of the State of Florida, through the Office of Public Counsel, (“OPC”), pursuant to the Order Establishing Procedure in this docket, Order No. PSC-2019-0320-PCO-EI, as amended by the First Order Modifying Order Establishing Procedure, Order No. PSC-2019-0384-PCO-EI, and the Second Order Modifying Order Establishing Procedure, Order No. PSC-2020-0105-PCO-EI, hereby submit this Prehearing Statement.

**APPEARANCES:**

J.R. Kelly  
Public Counsel

Charles J. Rehwinkel  
Deputy Public Counsel

Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
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On behalf of the Citizens of the State of Florida

1. WITNESSES:

OPC's Witness	Subject Matter	Issue #
Richard A. Polich		1,7,8

2. EXHIBITS:

Witness	Proffered By	Exhibit No.	Description	Issue #
Richard A. Polich	OPC	RAP-1	Resume of Richard A. Polich, P.E.	1,7,8
Richard A. Polich	OPC	RAP-2	List of Richard A. Polich Testimony	1,7,8
Richard A. Polich	OPC	RAP-3	Advanced Decommissioning Partners Organization	1,7,8
Richard A. Polich	OPC	RAP-4	DEF Response to Citizens Interrogatory 5.a.	1,7,8
Richard A. Polich	OPC	RAP-5	DEF Response to Citizens Interrogatory 5.e.	1,7,8
Richard A. Polich	OPC	RAP-6	NorthStar Group Holdings, LLC and NorthStar Group Services, Inc. Financial Statements	1,7,8
Richard A. Polich	OPC	RAP-7	DEF Response to Citizens Interrogatory 16	1,7,8
Richard A. Polich	OPC	RAP-8	NorthStar Financial Hardship Accessible Assets	1,7,8
Richard A. Polich	OPC	RAP-9	Comparison of Contract Provision Trust Funding	1,7,8

3. STATEMENT OF BASIC POSITION

Customers have paid enough for Crystal River Unit No. 3 (CR3). It ceased generating electricity in 2009, through no fault of the customers. The decommissioning costs have been sufficiently provided for in rates paid by Duke Energy Florida's ("Duke's" or "DEF's") customers such that the accrual to fund the Nuclear Decommissioning Fund (NDF) ceased in 2002. In rate proceedings and through utilizing decommissioning studies filed in the ensuing 15 years, the Commission has not seen the need to re-start the accrual. A new generation of customers has

already started paying for the replacement generation that was required by the premature demise of CR3. This payment includes decommissioning and dismantlement costs for the new generating facilities.

While the proposal offered by DEF contains some degree of promise that the DECON proposal might return overpayments to the NDF if the facts and circumstances underlying assumptions and the risks described in DEF's petition and testimony play out exactly as DEF has set out; these facts and circumstances, unfortunately, will not manifest themselves for 3, 7, 10 or more years. And, if DEF is wrong (as it has been in the nuclear generating space before), such a miscalculation could result in the funds in the NDF being either inadequate to complete the dismantlement, decontamination and decommissioning or could deplete the fund such that there will be an inadequate principal or *corpus* available to generate funds sufficient to return to SAFSTOR without requiring Duke to find additional funds from its customers to complete the job.

At this point, DEF is unwilling to guarantee that its proposal will not impose additional costs on the long-suffering DEF customers who should be released from the shadow of the hulk that used to be the Crystal River Unit No. 3. Any approval of DEF's Petition should come with the Commission extracting either a guarantee from DEF of no further customer impacts or the imposition of additional safeguards that adequately insulate DEF's customers from additional costs, liability or harm. OPC witness Richard A. Polich offers 5 reasonable safeguards that will help insulate customers from additional costs, liability or harm.

Only with such protections can the Commission take steps to safeguard the hundreds of millions of dollars it ordered Duke to collect from its customers to ensure safe and complete dismantlement, decontamination and decommissioning of the prematurely damaged and retired nuclear power plant. As the legal entity established to ensure that costs and rates associated with the monopoly provision of electric utility services are fair, just and reasonable, the Commission is ultimately responsible for determining that customer-provided money that the Commission ordered be placed in the fund is prudently spent. This means that the Commission has an obligation to take all reasonable steps to require that DEF spends the customer' money as it was intended when it was collected from the customers and held in trust for the eventual dismantlement, decontamination and decommissioning of CR3. This regulatory responsibility is ongoing and unceasing -- until the job is complete.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

**ISSUE 1:** Should the Florida Public Service Commission approve the transactions as contemplated by the Agreement (Decommissioning Services Agreement), the SNF PSA (Spent Nuclear Fuel Purchase and Sale Agreement), and the Ancillary Agreements (as defined in Article I, Section 1.1.1 of the Agreement)?

**OPC:** The petition should not be approved without the customer protections and risk mitigation enhancements recommended in the Direct Testimony of Richard A. Polich. These are set out at pages 27 and 28 of his testimony as follows:

1. Amend the Parental Support Agreement to include the State of Florida as a beneficiary and with the same rights as the NRC.
2. Require the parent companies of ADP to maintain a minimum cash or cash equivalent asset in the amount of at least \$105 million to support the Parental Support Agreement.
3. Modify the Contractor's Provisional Trust contributions from monthly payments to NorthStar to increase it from 6% to 10% of payments.
4. Amend the ADP CR3 reporting requirements contained in Attachment 9, Section B from Quarterly to Monthly and enhance the information to provide timely insight into conditions that could impair ADP's ability to complete the contract. This includes establishing monthly and annual reporting requirements to the Commission.
5. Establish an Independent Monitor to oversee the CR3 decommissioning activities and ADPCR3's financial status.

Only with such protections can the Commission take steps to safeguard the hundreds of millions of dollars it ordered Duke to collect from its customers to ensure safe and complete dismantlement, decontamination and decommissioning of the prematurely damaged and retired nuclear power plant.

**ISSUE 2:** Is DEF's proposed transaction with ADP and its subsidiaries for decommissioning CR3 consistent with DEF's 2017 2<sup>nd</sup> Revised and Restated Stipulation and Settlement Agreement (2017 Settlement)?

OPC: It is not clear whether it is the intent that surcharges for NDF deficiencies discovered after December 31, 2021 can be collected from future DEF customers. At this point, the OPC has not determined that any notion contained in the Petition filed in this docket (and the testimony incorporated by references) that concludes that future deficiencies can be recovered from future customers is consistent with the RRSSA.

**ISSUE 3:** Should the Commission approve DEF's 2019 Accelerated Nuclear Decommissioning Study?

OPC: No position at this time.

**ISSUE 4:** What is the appropriate annual accrual in equal dollar amounts necessary to recover the proposed decommissioning costs of CR3?

OPC: \$0.

**ISSUE 5:** What is the appropriate accrual effective date for adjusting the accrual amount, if any adjustment is needed?

OPC: The last opportunity to adjust any accrual appears to be December 31, 2021 pursuant to the RRSSA.

**ISSUE 6:** Should the Commission approve DEF's request to waive, if necessary, the future filing of CR3 decommissioning studies every five years as provided in Rule 25-6.04365, F.A.C.?

OPC: No position at this time.

**ISSUE 7:** What reports should be given to the Commission to ensure that the decommissioning and spent fuel activities outlined in the DSA are completed, and NDT funds are reasonably spent, and sufficient funds remain to complete the decommissioning and spent fuel activities?

OPC: The reports referred to in Item 4 in Issue 1 and described in the testimony of Richard A. Polich at pp. 34-35 should – at a minimum – be required if the Petition is approved.

**ISSUE 8:** Should this docket be closed?

OPC: No. the issue should remain open until any action approved , if at all, by the Commission is completed satisfactorily.

**FIPUG CONTESTED ISSUE:**

**ISSUE A:** What monetary benefits, if any, should be provided to customers presently related to this matter?

OPC: No position at this time.

5. **STIPULATED ISSUES:**

None at this time.

6. **PENDING MOTIONS:**

OPC has not filed any pending motions.

7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:

None at this time.

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

None at this time.

9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Orders Establishing Procedure *that have been issued so far* with which the Office of Public Counsel cannot comply at this time.

Dated this 22nd day of June, 2020.

JR Kelly  
Public Counsel

/s/ Charles J Rehwinkel  
Charles J. Rehwinkel  
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**CERTIFICATE OF SERVICE**  
**Docket No. 20190140-EI**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 22nd day of June, 2020, to the following:

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