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July 23, 2020

VIA FEDERAL EXPRESS

Mr. Adam Teitzman, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

In re: Petition by Duke Energy Florida, LLC to Approve Transaction with Accelerated Decommissioning Partners, LLC for Accelerated Decommissioning Services at the CR3 Facility, etc. (the "Petition"); Docket No. 20190140-EI

Dear Mr. Teitzman:

On behalf of Duke Energy Florida, LLC ("DEF"), please find DEF's Post-Hearing Statement and Brief enclosed for electronic filing in the above-referenced proceeding.

Thank you for your assistance in this matter. Please feel free to call me at (813) 227-8114 should you have any questions concerning this filing.

Respectfully,

Shutts & Bowen LLP

/s/ Daniel Hernandez

Daniel Hernandez

Enclosure (as noted)

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: July 23, 2020

DUKE ENERGY FLORIDA, LLC'S
POST-HEARING STATEMENT AND BRIEF

Duke Energy Florida, LLC ("DEF") hereby submits its Post-Hearing Statement of Issues, Positions, and Brief in this matter and states as follows:

I. Introduction.

In this proceeding, DEF asks this Commission to (1) approve the proposed transaction to decommission the Crystal River nuclear plant (the "CR3 Facility"); (2) approve DEF's updated nuclear decommissioning study; and (3) approve DEF's request for waiver of the Rule 25-6.04365, F.A.C. requirements. For the reasons explained below, as further supported in DEF's pre-filed testimony and exhibits, as well as testimony provided at the hearing, this transaction is beneficial for DEF's customers. It appropriately balances risk and results in the decommissioning of the CR3 facility some thirty-six years sooner than the current plan, at a fixed cost that shifts nearly all risks to the counterparty and away from DEF's customers. Even the Interveners[1] agree that the acceleration of the decommissioning is commendable. There was also no dispute regarding the benefits of a fixed price contract, nor did any Intervener challenge the fact that all but one risk is transferred away from DEF's customers.

[1] The Interveners include the Office of Public Counsel ("OPC"), PCS Phosphate d/b/a White Springs ("PSC"), and the Florida Industrial Power Users Group ("FIPUG").

In the proposed transaction, DEF executed a Decommissioning Services Agreement ("DSA") with Accelerated Decommissioning Partners, LLC ("ADP"), through two of its subsidiaries ADP CR3, LLC ("ADPCR3") and ADP SF1, LLC ("ADPSF1") to complete all decommissioning activities of the CR3 Facility on an accelerated basis. (Tr. P. 427, L. 12-17). ADP is a joint venture between NorthStar Group Services, Inc. ("NorthStar") (75% owner) and Orano Decommissioning Holdings, LLC ("Orano") (25% owner), which was created specifically for the purpose of nuclear power plant decommissioning. (Tr. P. 49, L. 6-10). Additionally, ADP will acquire ownership of the Independent Spent Fuel Storage Installation (the "ISFSI") assets from DEF including the spent fuel, the dry shielded canisters, and the plant, property, and equipment ("PPE") that comprises the ISFSI (not including any firearms or interest in the real property). (Tr. P. 427, L. 16-20). ADP will also assume DEF's contract with the U.S. Department of Energy ("DOE") for disposal of spent nuclear fuel and/or high level radioactive waste. (Tr. P. 433, L. 4-8). Further ADP will assume DEF's obligations as a licensed operator of the CR3 Facility pursuant to the Nuclear Regulatory Commission ("NRC") Operating License No. DPR-72 to complete decommissioning activities. (Tr. P. 433, L. 16-20). DEF will continue to own and control the Nuclear Decommissioning Trust Fund ("NDT") and maintain the ability to put the CR3 Facility back into SAFSTOR with the approval of ADPCR3. (Tr. P. 433, L. 13-14; Tr. P. 436, L. 15-17).

The Interveners seem to have three major concerns with this transaction: (1) the transaction does not provide sufficient protection for customers, so varying degrees of changes should be made to the negotiated deal; (2) NorthStar and Orano lack sufficient technical expertise and/or experience to complete the work[2]; and (3) despite these first two concerns, because DEF estimates

[2] While the Interveners did not raise issues with NorthStar and Orano's technical expertise prior to hearing (i.e., pre-filed testimony or prehearing position statements), given the extensive questioning on the subject by counsel for OPC,

that there will be some money remaining in the NDT at the conclusion of the project, DEF should return those funds now. As explained below, the record evidence clearly demonstrates that the transaction, as presented by DEF, includes more than adequate protections for customers. Any changes to the deal create a risk that DEF will have to re-negotiate some or all of the terms of this deal and therefore lose the significant value the deal already includes for customers. NorthStar's and Orano's experience was thoroughly vetted by the NRC during the license transfer application process, and after this review the NRC approved the transfer and therefore approved NorthStar's and Orano's technical ability to complete the project. Finally, returning funds from the NDT to DEF customers now would jeopardize the favorable tax treatment, violate NRC regulations, and not be a prudent use of customer funds.

II. The Commission Should Approve DEF's Proposed Transaction Without the Intervener's Recommended Changes.

The record evidence is replete with the multitude of protections that DEF included in this transaction to protect its customers. (Tr. P. 690, L. 6, P. 692, L. 3). The value of the deal, in particular the transfer of risk and the fixed price nature, are valuable contract terms that limit the exposure to cost overruns or other issues that could face the project. (Tr. P. 693, L. 18-21). DEF also negotiated various protections and terms in the DSA to minimize the likelihood that DEF will have to return for additional funds from customers and ensure adequate oversight over the project. (Tr. P. 663, L. 5-12). These terms, when considered holistically and not just piecemeal as the Interveners want to do, protect customers while allowing this transaction to move forward such that the CR3 Facility is actually decommissioned. (Tr. P. 663, L. 3-5). When considered as a whole, it is clear that the Interveners' changes are unnecessary, and the Commission should not

they may make such arguments in their post-hearing briefs. Because it is not clear whether they will argue that the entire deal should not be closed or whether they will try to rely on the alleged lack of experience as further justification for their requested changes, DEF will respond in its brief as though it were a standalone issue.

impose any changes and risk losing any of the significant value DEF has negotiated for its customers. (Tr. P. 663, L. 3-12).

a. <u>All but one of the risks associated with the proposed transaction are shifted from DEF and its customers to ADP</u>.

The transaction is structured to transfer execution risks to ADP and provides measures that ensure ADP's performance under the transaction. (Tr. P. 434, L. 22- P. 435, L. 1). The risks transferred to ADP include risks related to: cost escalation, decommissioning and dismantlement execution, federal regulatory changes, maintenance and ownership of spent fuel, environmental risks, unforeseen site conditions, and potential increases in disposal costs. (Tr. P. 434, L. 21- P. 435, L 9; Tr. P. 691, L. 19-21). These risks are shifted to ADP through the DSA between DEF and ADPCR3 and ADPSF1. (Tr. P. 434, L. 22-23). The DSA is a heavily-negotiated fixed price contract, pursuant to which ADP is only paid for work actually completed. (Tr. P. 511, L. 17-19). In order to receive payment under the DSA, ADP must deliver monthly reimbursement requests or invoices to DEF reflecting the work ADP has performed. (Tr. P. 358, L. 6-8). DEF will review the invoices and pay ADP for work completed pursuant to a pay schedule incorporated into the DSA. (Tr. P. 358, L. 8-13).

Benefits of the accelerated decommissioning strategy for DEF and DEF's customers include: (1) mitigation of environmental risks of the plant sitting dormant in SAFSTOR for an extended time; (2) elimination of long-term obligations and liabilities associated with the continued maintenance of the CR3 Facility; (3) reduction of the risks associated with potential regulatory changes including loss of availability of radioactive waste disposal sites; (4) mitigation of financial risks, including the cost escalation rate that may exceed the NDT rate of return and significant reduction in the value of the NDT due to market conditions; (5) reduced project execution risks based on a fixed price contract; (6) reduced likelihood that DEF will need

additional funding from customers; and (7) increased likelihood that unused NDT funds will be returned to DEF customers and Duke Energy Corporation ("Duke") shareholders decades earlier than under SAFSTOR. (Tr. P. 434, L. 4- P. 435, L. 12; Tr. P. 690, L. 6- P. 692, L. 3).

The only risk that remains with DEF is related to a potential change in End State Conditions that are necessary to terminate the NRC license. (Tr. P. 435, L. 15-17). The End State Conditions are: (1) the radiological criteria for unrestricted use of the property per 10 C.F.R. 20.1402 and (2) removal of subterranean improvements after the first end state condition is met. (Tr. P. 435, L. 17-18; Tr. P. 435, L. 20-21). DEF retains responsibility for any cost deviation and schedule changes if either end state condition changes for any reason, including a change in regulation. (Tr. P. 436, L. 1-2).

b. <u>The Proposed Transaction, as is, without modification, includes more than sufficient protections for DEF's customers</u>.

The NDT currently contains sufficient funds to make accelerated decommissioning under the Proposed Transaction possible without having to collect additional funds from DEF's customers. (Tr. P. 357, L. 18- P. 358, L. 2). The Proposed Transaction provides multiple safeguards to ensure accelerated decommissioning of the CR3 Facility happens in a timely manner and stays within budget. (Tr. P. 663, L. 21-22). A significant protection of this transaction is that the fixed-priced contract will lock in today's prices. (Tr. P. 442, L. 5). This will provide cost certainty to DEF and DEF customers that cannot be achieved under a SAFSTOR strategy. (Tr. P. 434, L. 4-6).

As part of the Proposed Transaction, a Parent Support Agreement will be provided by both NorthStar and Orano to the NRC. (Exh. 35, P. 226-32; Exh. 40, P. 4). Under the Parent Support Agreement, NorthStar and Orano shall provide funds to ADPCR3 and ADPSF1 to complete the contracted work. (Tr. P. 308, L. 24- P. 311, L. 9).

In addition to the above protections, the Proposed Transaction includes a number of safeguards designed to protect DEF customers. These safeguards include: (1) a fixed price with no change order possibilities; (2) transfer of project execution risks from DEF and DEF customers to ADP; (3) the ability to place the CR3 Facility into SAFSTOR if necessary; (4) retention of control and ownership of the NDT by DEF; (5) payment to ADP only for work actually performed; (6) parent company guaranties provided by NorthStar and Orano—for all obligations of ADPCR3 and ADPSF1 under the DSA; (7) a provisional trust fund established and funded by ADPCR3, which will not be released to the contractor until the completion of certain contractual milestones; (8) ANI insurance that provides coverage for any onsite or offsite radiological event, including during transportation of radiological material; (9) environmental insurance that provides $30 million in coverage for previously unknown or new non-radiological contaminations; (10) performance bonds provided by ADPCR3 contractors and subcontractors for applicable scopes of work; (11) reserved NDT funds to complete the project in the event of extreme unforeseen circumstances; and (12) transfer of the NRC license to ADPCR3 and assumption by ADPCR3 of responsibilities for compliance with all regulatory obligations and all on-site activities. (Tr. P. 358, L. 19- P. 359, L. 7); (Tr. P. 690, L. 6- P. 692, L. 3).

Throughout the accelerated decommissioning of CR3, DEF will maintain ownership and oversight of the NDT funds. (Tr. P. 438, L. 23; Tr. P. 690, L. 9-11). Per section 9.2.1 of the DSA "[DEF] shall retain ownership and title to the [NDT], and the [NDT] shall retain ownership of the IOI Decommissioning Subaccount (which subaccount shall as of the Closing Date be funded with cash equal in the aggregate to the Agreed Amount), the Crystal River Decommissioning Reserve Subaccount and the assets, funds and investments contained therein." (Exh. 35, P. 62). ADP and

DEF will agree on the desired investment strategy[3] and designated investment manager for the subaccount holding the funds to pay for the DSA fixed price contract. Pursuant to the DSA, ADPCR3 will deposit $20 million in the Provisional IOI Subaccount which will be maintained in a segregated subaccount.

DEF will validate all monthly requests submitted by ADPCR3 for reimbursement from the NDT. (Tr. P. 438, L. 22). ADPCR3 will supply DEF with project reports, including safety performance, schedule performance, federal and state governmental filings or reports, and project risk management activities. (Tr. P. 439, L. 2-5). The type and frequency of these reports are outlined in Attachment 9 of the DSA, as well as throughout the DSA. (Tr. P. 571, L. 19- P. 574, L. 17; Exh. 2, P. 514-16). As Mr. Hobbs testified, DEF is willing to provide any, or all, of this information to the Commission and/or its Staff, provided that confidential information is protected. (Tr. P. 579, L. 6-20). DEF and ADPCR3 will participate in at least quarterly meetings to discuss project performance and any disputed payment request from ADPCR3. (Tr. P. 439, L. 5-7). DEF will have a seat on the ADPCR3 board with veto rights on key decisions, including resuming SAFSTOR strategy, voluntary filing for bankruptcy, and any amendment to the transaction documents that would alter DEF's rights. (Tr. P. 439, L. 7-9).

c. <u>The Interveners' unnecessary changes create risk that may prevent DEF's customers from realizing the significant value of the deal</u>.

Despite the significant value and protections included in the transaction, as outlined above, the Interveners still recommend changes to the transaction. (Tr. P. 622, L. 22- P. 623, L. 14). The only pre-filed testimony offered by the Interveners that made specific recommended

[3] Although counsel for FIPUG implied during his opening that ADP could invest the funds in the Subaccount any way they desire, Mr. State clarified that the DSA includes investment guidelines that limit the investments that ADP can make with the Subaccount funds. (Tr. P. 334, L. 17-19). These limitations on the investments further increase the likelihood that the fund will be sufficient to pay for decommissioning activities.

changes was that of OPC's witness Richard Polich. (Tr. P. 614-651). The remainder of this section addresses those specific changes. But first, given the questioning and arguments posed during the hearing, DEF will first address whether the Commission can make any changes to the transaction at all. It appears that the Interveners will argue that DEF is overplaying the argument that the Commission cannot make any changes or impose any conditions, without jeopardizing the transaction or preventing it from closing. To be clear, DEF does not know what specific condition or change the Commission may order, so unlike the specific changes that Mr. Polich included in his testimony, DEF cannot say with specificity whether or not the deal would be able to close. (Tr. P. 604, L. 22- P. 605, 2). What DEF can say is that DEF and ADP will have to evaluate any change or condition and determine whether the deal must be re-negotiated.[4] DEF does not presume to tell the Commission what it can or cannot do with respect to this proceeding. The Interveners will likely argue that DEF should not have brought what it calls a "take it or leave it" deal to the Commission, and that DEF should have expected the Commission would want or need to make changes.[5] DEF worked on this transaction for eighteen months (from the issuance of the initial RFI to the DSA execution). (Tr. P. 342, L. 5; Tr. P. 347, L. 17). It negotiated the extensive protections and in exchange, received the favorable fixed price contract and all the other commercial terms included in the nearly 600-page DSA. (Tr. P. 682, L. 19- P. 683, L. 4; Exh. 35). DEF believes it is in the customers' best interests and that the Commission should approve without

[4] Mr. Hobbs testified to this point during cross examination. (Tr. P. 481, L. 3-16). To avoid the continued protracted hearing and allow all parties to waive cross examination of the remaining witnesses, DEF agreed to the entry of these facts as well: (1) "If any of the three recommended enhancements that Mr. Polich has testified should be added to the DSA are required by this commission, it is NorthStar's position that parts of the DSA would have to be renegotiated." (Tr. P. 604, L. 17-21). (2) [I]f the Commission were to adopt any conditions as part of its approval of the transaction, would ADP or DEF require renegotiation of the DSA? And the answer is: For each entity, it would depend on its assessment of the proposed condition." (Tr. P. 604, L. 22- P. 605, L. 2).

[5] DEF notes that the Commission is frequently asked by settling parties to approve settlement agreements in their entirety, i.e., with no changes. The Interveners are parties to several such settlement agreements. *See, e.g.*, Order. No. 2017-0451-AS-EU (approving the 2017 RRSSA).

change. But given that there is a counterparty involved, and that counterparty made certain assumptions around the structure of the deal when it negotiated each term of the DSA, DEF cannot unequivocally accept any changes that the Commission may make to the deal. Rather, as indicated above, it will need to evaluate the change and determine whether the deal can still be closed. This is an unnecessary risk, given the very favorable transaction that DEF has put before the Commission on behalf of its customers.

The Interveners argue that because DEF is not guaranteeing that it will never have to come back to customers for additional funds, then the Commission should impose additional changes. It is correct that there is no guarantee; in fact, that is part of why DEF filed this petition, so that the Commission and all parties could review the DSA using the best available information and weigh the risks versus the reward. DEF did not want any party to be tempted to use hindsight review to later second guess the prudence of entering into this transaction. DEF notes that it has been prudently managing this NDT for the benefit of its customers since it started collecting money from customers. Indeed, DEF has not needed to collect incremental dollars for decommissioning since 2001. (Tr. P. 690, L. 10-11). DEF also entered into a protective hedge to secure the low-end value of the trust fund at $610 million, a strategy that preserved the value of the NDT and protected customers against the recent market volatility. (Exh. 22, P. 34). But there is no requirement that DEF guarantee it will never come back to customers. Rather, the standard of review is whether DEF is prudent in entering this transaction, and as DEF believes the record evidence demonstrates, the transaction is prudent.[6]

[6] Regarding the standard of proof, the Interveners' argument about CR3 and the amount of money DEF's customers have previously paid is an attempt to impose a different standard on this transaction. Setting aside the fact that DEF settled those previous issues regarding CR3 in multiple previous dockets, the Interveners are using the previous CR3 history as a way of asking this Commission to judge this transaction using a different, presumably higher, standard than prudence. What customers have paid for other aspects of CR3 is not relevant to the Commission's consideration of the issues in this proceeding.

Now turning to the known recommended changes, if any of Mr. Polich's changes[7] are adopted by the Commission, the Proposed Transaction as contemplated by the DSA will not close and DEF customers will not recognize the significant benefits of this deal as it stands. (Tr. P. 683, L. 1-4). The options available to DEF in the event the Commission imposes any of the recommended enhancements are very limited and are unlikely to achieve the same level of benefits already provided through the DSA: DEF and ADP could seek to renegotiate a new DSA, DEF could perform another competitive bidding process, or DEF can follow the original SAFSTOR method and complete the site restoration by 2074. (Tr. P. 683, L. 4-8).

Given the significant amount of testimony Mr. Polich devoted to NorthStar's financial condition, it appears that Mr. Polich bases his recommendations on his faulty assessment of NorthStar's financial capability to complete the decommissioning. (Tr. P. 614-51). Mr. Polich's resume does not indicate that he has any financial training aside from an MBA earned more than thirty years ago. (Tr. P. 664, L. 17-20). Mr. Polich's testimony includes several factually inaccurate accounting statements, as explained in the rebuttal testimony of Mr. Jeff Adix. (Tr. P.

This is a red herring designed to distract from the substantive issues in this docket, which are the terms of the contract presented for review and the real protections they offer for DEF's customers with respect to the future decommissioning of the plant.

[7] DEF notes that, at the beginning of the hearing, Mr. Polich withdrew two additional changes that he had previously recommended. As he indicated during his witness summary "Subsequent to the revised filing of Mr. Jeff Adix . . . the Florida Office of Public Counsel was provided a copy of the current NorthStar credit agreement. This credit agreement contains provisions and covenants which require NorthStar to meet certain financial conditions which show, in short, successful – sufficient assets to support the parental support agreement contained in the DSA. Due to the credit agreement, we are withdrawing recommendations two and three. We feel these recommendations are adequately covered by the requirements of an agreement." (Tr. P. 654, L. 9-21). DEF anticipates that the Interveners will argue that the remaining changes are modest or not as consequential as those two withdrawn changes, and therefore should be imposed. The remainder of this section of the brief addresses why none of the other changes should be imposed, but DEF would also note that the Commission should consider the fact that OPC's only witness was comfortable enough with the financial situation of NorthStar that he withdrew two financial-related conditions. This demonstrates that OPC's witness ultimately decided NorthStar was financially capable and responsible to perform the Accelerated D&D.

665, L. 8-9). The notable mischaracterizations of basic accounting principles, repeatedly inaccurate financial information, and use of outdated accounting standards seriously undermine the credibility of the financial review performed by Mr. Polich. (Tr. P. 667, L. 20-23). The Commission must consider the DSA with its many safeguards in its entirety as every provision in the DSA is important and cannot be isolated or otherwise changed without changing other parts of the transaction. (Tr. P. 663, L. 3-5).

Many of Polich's proposed enhancements appear to be adopted from the Vermont Yankee transaction. (Tr. P. 674, L. 14-15; Tr. P. 645, L. 4-6). It is important to note, however, that the Vermont Yankee transaction differs significantly from the proposed CR3 transaction. (Tr. P. 673, L. 17-18). In Vermont Yankee, Entergy Nuclear Operations, Inc. ("Entergy") sold the Vermont Yankee nuclear facility property, plant and equipment to NorthStar to decommission. (Tr. P. 695, L. 7-11). NorthStar purchased all of the membership interests of the NRC licensee, thus acquiring ownership of the plant, property, equipment and the nuclear decommissioning trust fund. (Tr. P. 695, L. 11-14). Consequently, there is no regulated utility, and the Vermont Public Utility Company is not involved in the decommissioning of Vermont Yankee. (Tr. P. 695, L. 15-20). DEF would also note that, as Mr. State testified, the additional changes resulting from the negotiation of the Memorandum of Understanding in Vermont resulted in substantial increases to the agreed-upon project costs. (Tr. P. 326, L. 5-12).

By contrast, as indicated above, DEF will maintain ownership of the CR3 Facility, with the exception of the ISFSI assets, and continues to be regulated by this Commission. (Tr. P. 695, L. 22-23). While DEF will transfer the NRC license to ADP to complete the decommissioning and dismantlement process, DEF will maintain ownership and oversight through the reporting

protections discussed above. (Tr. P. 695, L. 22-23). DEF will also continue to own and control the NDT. (Tr. P. 695, L. 22-23).

In addition to the reasons included above, DEF will now provide specific arguments against the inclusion of any of Mr. Polich's three suggested changes.

i. The Commission should not require that the State of Florida be included as a beneficiary of the Parent Support Agreement.

Mr. Polich's first recommended change is to include the State of Florida as a beneficiary of the Parent Support Agreement. (Tr. P. 642, L. 15-16). Any changes made to the Parent Support Agreement could require DEF and ADPCR3 to renegotiate the DSA and to seek approval by the NRC. (Tr. P. 481, L. 3-16; Tr. P. 683, L. 1-8). This proposed change is unnecessary because the CR3 decommissioning project will be conducted in accordance with all federal, state, and local rules and regulation. (Tr. P. 694, L. 18-19). Several governmental entities including the NRC, the Department of Transportation, the Florida Bureau of Radiation Control, and the Florida Department of Environmental Protection will have regulatory oversight and inspection authority over the decommissioning process during the project. (Tr. P. 694, L. 19-22).

ii. The proposed changes to ADPCR3's reporting requirements DEF are unnecessary.

Mr. Polich next recommends that the Commission change the reporting requirements contained in Attachment 9, Section B from quarterly to monthly. (Tr. P. 648, L. 5-7). Polich also extends these reporting requirements to the Commission. (Tr. P. 648, 11-15). Polich recommends that the Commission be provided monthly reports of project status, project delays, payments from the NDT, status of the Contractor's Provisional Trust ("CPT"), quarterly financial reports of ADP and its affiliates, and identification of critical issues and performance of ADP. (Tr. P. 649, L. 16-35).

Under the DSA, ADP will provide DEF with quarterly reports in support of the quarterly face-to-face meetings, monthly invoices and supporting validation information, at least monthly tours of the project, the ability to escalate concerns to executives of ADPCR3, audit rights, and financial reports from the parent companies of ADPCR3. (Tr. P. 710, L. 14-19). The progress of the project will be noted through the monthly invoices, which will include detailed validation information. (Tr. P. 710, L. 21-23). Additionally, ADPCR3 will provide DEF monthly written notices estimating the amount of funds ADPCR3 may request for withdrawals during the following month which will be monitored by DEF for indications of project progress. (Tr. P. 711, L. 1-6). Mr. Hobbs agreed to commit to share information obtained from the reports obtained from ADP in a method and schedule that can be worked out with the PSC staff. (Tr. P. 579, L. 20).

iii. <u>An independent monitor is unnecessary</u>.

Finally, the Commission does not need to impose a third-party independent monitor on this transaction. (Tr. P. 710, L. 4). The Vermont Yankee project does not utilize an independent monitor; instead the Vermont Department of Public Service ("DPS"), the state agency with primary regulatory authority for the project, as well as the Vermont Agency of Natural Resources, and the Vermont Department of Health, may retain advisors pursuant to applicable State of Vermont contracting procedures and the heavily negotiated Memorandum of Understanding related to that decommissioning project. (Tr. P. 323, L. 16-21; Exh. 38, P. 86, ¶ 10). The Vermont Public Utility Commission has no continuing role in the project as the relevant docket was closed upon issuance of the order approving the negotiated Memorandum of Understanding. (Tr. P. 324, L. 3-9). Of course, the Commission is free to hire its own advisor to review the information DEF has agreed to provide to the Commission, but that is not the same as an independent monitor. DEF also notes that the comparison of the Vogtle project to this decommissioning is misplaced. (Tr. P.

711, L. 22-23). The Vogtle project is a complex construction project for a new class of reactors and thus an independent monitor is appropriate to protect the Georgia Power ratepayers. (Tr. P. 712, L. 17-20). Compared to the Vogtle project, the scope of the CR3 decommissioning work is not complex. (Tr. P. 712, L. 5-6). Further the protections provided in the DSA, the ongoing role of DEF, and the oversight from the NRC and multiple state organizations will sufficiently protect DEF's customers without the need for additional monitoring. (Tr. P. 712 L. 22- P. 713, L. 2).

An independent monitor is unnecessary for a number of reasons. Most importantly, DEF will have a presence in the CR3 Facility and will be continuously reviewing monthly invoices and confirming the completion of on-schedule work throughout the decommissioning before any payments from the NDT are made. (Tr. P. 710, L. 14-19). Additionally, this Commission will retain its authority to regulate DEF throughout the CR3 decommissioning project. (Tr. P. 696, 1-2). Moreover, DEF will provide annual reports to the Commission, which will reflect data taken from ADP's invoices and quarterly reports to DEF. (Tr. P. 577, L. 11-13). The annual report will include the amount of funds paid to ADP from the NDT, the ADP schedule performance for the prior year and project to date, and an assessment of future schedule and pay projections, for the following year. (Tr. P. 577, L. 13-19). DEF will agree to share information associated with costs, and scheduled performances on a quarterly basis with the Commission (Tr. P. 580, L. 1-3). DEF will also share information obtained in ADP's annual report with the Commission. (Tr. P. 578, L. 4-6). DEF will provide the Commission with information it receives that is related to the reports in Attachment 9 of the DSA. (Tr. P. 579, L. 20).

The Interveners have suggested to this Commission that this Petition is the Commission's only opportunity to review the CR3 project. (Tr. 42, L. 18-21). This is simply not the case. DEF will continue to own the CR3 Facility and manage the fossil plants on the property. (Tr. P. 695,

L. 22-23). The Commission will continue to have oversight over DEF as a utility. (Tr. P. 696, 1-2). DEF will also continue to supply the Commission with annual, or more frequent if required, updates on the decommissioning activity at the CR3 Facility pursuant to the DSA. (Tr. P. 580, L. 1-3). Indeed, DEF is requesting approval of this transaction as submitted today, but it is not asking for approval of or a prudence determination on any of DEF's future actions in administering the DSA. (Tr. P. 594, L.5-11).

III. ADP and Its Parent Companies are Highly Qualified and Experienced to Conduct the Decommissioning.

Before approving a license transfer, the NRC reviews, among other things, the technical qualifications of the proposed transferee. Indeed, the hearing for this Commission proceeding was abated to allow the NRC to complete its review of this transaction. The technical review is based on agency regulations, the NRC Standard Review Plan for "Management and Technical Support Organization," and the American National Standards Institute standard on "Selection and Training of Nuclear Power Plant Personnel." Specifically, 10 CFR 50.80(b) and 10 CFR 72.50(b) (1)(i) required the license transfer application to include as much of the information described in 10 CFR 50.33 and 50.34 and 10 CFR 72.22 and 72.28 with respect to the identity and the technical and financial qualifications of ADP as would be required by those sections if the application were for an initial license. After completing the technical evaluation, the NRC found that ADP will (1) have an acceptable corporate organization, (2) retain an acceptable onsite organization, and (3) have adequate resources to support the safe maintenance and decommissioning of the CR-3 facility. As a result, the NRC concluded on April 1, 2020 that ADP would be technically qualified to hold CR-3 Facility Operating License No. DPR-72 and the associated general license for the CR-3 ISFSI. (Tr. P. 683, L. 14; Exh. 40, NRC License).

In addition, during the Request for Proposal process, DEF thoroughly reviewed the vendor proposals submitted to DEF, including that of ADP. (Tr. P. 431, L. 11-12). Each proposal was evaluated on (1) vendor safety record, (2) accelerated D&D experience, (3) technical approach to accelerated D&D described in the proposal, (4) radiological/health physics/waste handling programs and experience, (5) project schedule, (6) required program management approach, and (7) regulatory management experience. (Tr. P. 439, L. 16-20). Only two proposals passed the technical evaluation. (Tr. P. 439, L. 20-21). The DEF technical evaluation team ultimately concluded that ADP was a qualified team that could execute the project in compliance with the NRC requirements. (Tr. P. 439, L. 21-23). ADP provided the most financial benefits to DEF customers based on their fixed cost bid and had the strongest acceptance of project related risks. (Tr. P. 440, L. 5-7).

a. <u>ADP is a joint venture between NorthStar and Orano</u>.

As explained above, ADP is a joint venture, created specifically for nuclear power plant decommissioning, between NorthStar and Orano. (Tr. P. 49, L. 6-10). ADP and its affiliates are entirely focused on large-scale demolition and environmental remediation projects, such as nuclear decommissioning. (Tr. P. 51, L. 17-20). NorthStar and Orano have committed financial support to ADP's work on the CR3 Facility through parent guaranties and parent support agreements. (Tr. P. 54, L. 20-23). ADP will also fund a $50 million liquidity trust fund to further secure performance under the DSA. (Tr. P. 55, L. 1-3).

ADP will perform the majority of the decommissioning and dismantlement work itself, thus avoiding the expense of selecting and then overseeing contractors or subcontractors. (Tr. P. 55, L. 8-10). ADP and its affiliates have followed the same self-performance approach on its prior

projects where, aside from certain specialized tasks, the ADP Group and its affiliate employees dismantled, removed, and packaged all systems, structures, and reactors. (Tr. P. 55, L. 12-16).

b. NorthStar's experience in decommissioning and dismantlement.

NorthStar was founded in 1986 and is the nation's largest remediation and demolition company. (Tr. P. 55, L. 17-20). In 2018, according to *Construction & Demolition* Recycling, NorthStar was the largest demolition contractor in the world by revenue. (Tr. P. 55, L. 17-20). NorthStar has significant experience in decommissioning and abatement work on energy-related facilities and the contaminants often found at such facilities, including radioactive material, mercury, lead, asbestos, and polychlorinated biphenyl. (Tr. P. 53, L. 7-10). Recently, NorthStar acquired control over the Vermont Yankee nuclear power station. (Tr. P. 53, L. 10-12). NorthStar and Orano are leading the nuclear decommissioning of the plant, which is proceeding without issues and ahead of schedule. (Tr. P. 53, L. 12-13).

NorthStar has significant and relevant recent decommissioning experience, including the decommissioning of five NRC-regulated research reactors and four DOE sites. (Tr. P. 54, L. 10-12). Notably, NorthStar has a consistent record of completing projects within budget, without violating applicable regulations, and without any U.S. Occupational Safety and Health Administration ("OSHA") recordable incidents. (Tr. P. 54, L. 13-17). OPC's attorney spent significant time asking questions of Mr. State regarding the size of the NRC-regulated research reactor projects. (Tr. P. 132, L. 22-24). DEF assumes OPC intends to argue that the projects were so small that they do not demonstrate NorthStar's ability to complete the work. However, as Mr. State pointed out, the NRC reviewed those projects as part of their review of the license transfer application. (Tr. P. 326, L. 20 through P. 327, L. 9). Notably, the five nuclear projects completed by NorthStar and Orano were relevant to this transaction and to the NRC's review because the

projects were all NRC projects that required completing the work to release the nuclear facilities for unrestricted use. (Tr. P. 327, L. 1-5). The NRC inspected the five sites several times and ultimately signed off on their unrestricted use. (Tr. P. 327, L. 5-9). Additionally, NorthStar has taken apart several power plants in Florida that range from tens of megawatts to almost a thousand megawatts safely and with skill and within the expected cost structure proposed. (Tr. P. 329, L. 2-9). NorthStar has also conducted significant response activity in Florida, including response to Hurricanes Irma and Michael of about $25 million worth for communities in Central Florida and the Panhandle. (Tr. P. 329, L. 16-22). Notably, NorthStar has several contracts with Florida agencies including over thirty years of work with the Florida Department of Transportation and over twenty years with the Florida Department of Environmental Protection. (Tr. P. 330, L. 2-8). In the last five years, NorthStar has conducted about $50 million worth of work for the State of Florida.

OPC's attorney also questioned Mr. State extensively regarding NorthStar's predecessor companies. (Tr. P. 76- 80). While the point of these questions is not entirely clear, it appears to have been targeted either at an argument that it was not NorthStar, rather another company, which had the experience, or that the prior companies are facing various lawsuits that call into question NorthStar's financial situation. These arguments, however, fail for two reasons. One, as Mr. State testified, the previous companies simply changed names and became NorthStar, but pursuant to basic corporate law, the rights and obligations of the predecessor company become those of the successor company. (Tr. P. 134, L. 3-8). Second, and more importantly, the structure and protections in the deal provide protection from NorthStar's potential failure to perform or from NorthStar taking all the money from the NDT. (Tr. P. 690, L. 6- P. 692, L. 3). Again, the most important protection is that DEF only pays for work that it has completed. (T. P. 661, L. 22- P.

662, L.1). These arguments about predecessor companies are red herrings that distract from the real value of the overall deal.

c. Orano's experience with dismantlement and spent fuel.

Orano has extensive experience in nuclear component dismantling and spent fuel management. (Tr. P. 56, L. 13-14). Since 1999, Orano has successfully segmented and dismantled five nuclear plants on schedule, within budget and without any regulatory, environmental, or safety concerns. (Tr. P. 56, L. 15-18). Orano also manages more spent fuel than any other company in the world and has been providing dry fuel storage and transportation for the nuclear industry for more than fifty years. (Tr. P. 57, L. 3-5). Orano has worldwide experience with transporting spent nuclear fuel and has loaded more dry fuel assemblies than any other supplier in the United States. (Tr. P. 57, L. 3-7).

As noted above, Orano and NorthStar are leading the nuclear decommissioning of the Vermont Yankee nuclear facility. (Tr. P. 53, L. 10-12). Orano is actively segmenting the reactor and reactor internals of the Vermont Yankee nuclear facility and packaging them for shipment to Texas for disposal at Waste Control Specialists. (Tr. P. 54, L. 3-5).

In 2018, Orano successfully moved all of the spent fuel from the CR3 Facility's spent fuel pool to dry fuel storage pads. (Tr. P. 56, L. 22- P. 57, L. 1). Orano, on behalf of ADPSF1, will support the long-term management of the spent nuclear fuel in dry fuel storage and will oversee the transfer of the fuel to the DOE when the DOE is ready to accept it. (Tr. P. 57, L. 1-3).

IV. The Commission Should Not Require DEF to Return Funds to Customers and Shareholders Before the CR3 Facility is Entirely Decommissioned.

DEF projects that funds will remain in the NDT after DEF transfers the $540 million to the IOI Decommissioning Subaccount. (Tr. P. 441, L. 7-8). Interveners have suggested that some of

these surplus funds should be distributed to DEF customers before decommissioning of the CR3 Facility is completed. As discussed below, distribution of any funds from the NDT for purposes other than decommissioning of the CR3 facility would be imprudent until decommissioning is completed.

As noted above, the only risk to DEF and to DEF's customers not assumed by ADP as part of the proposed transaction is a change in End State Conditions. (Tr. P. 435, L. 15-17). In order to prepare for and manage any unforeseen changes in End State Conditions, DEF must maintain residual funds in the NDT. (Tr. P. 435, L. 1-3). Additionally, in the unlikely event that ADPCR3 and/or ADPSF1 fail to perform their portion of the contract, DEF can utilize the residual NDT as well as remaining IOI Decommissioning Subaccount funds to complete the decommissioning project itself or, alternatively, DEF can allow the residual NDT as well as remaining IOI Decommissioning Subaccount funds to grow until DEF is able to complete the decommissioning. (Tr. P. 702, L. 19-23; Tr. P. 703, L. 12-14).

The bulk of the NDT funds are held in a "qualified fund." (Exh. 28, P. 111). A distribution from the qualified fund to return surplus funds to DEF customers before the qualified fund is terminated would be an impermissible use of the qualified fund, as well as a prohibited act of self-dealing and would result in negative tax consequences (*e.g.*, acceleration of taxes and imposition of excise and additional taxes) and disqualification of the qualified fund. (Exh. 28, P. 111). In addition, all of the NDT funds have been reported to the NRC as being available for decommissioning. (Exh. 28, P. 111). Use of the NDT funds for any other purpose must be approved by the NRC through the exemption process. (Exh. 28, P. 112). Earlier in the decommissioning project, based on significant precedent, DEF received an exemption for the trust fund to allow the NDT to cover spent fuel management and site restoration costs, in addition to

license termination costs. (Tr. P. 561, L.13-19). DEF could only determine that there are unused funds in the NDT once the NRC license is either partially or fully terminated. (Tr. P. 562, L. 7-12; Exh. 28, P. 111-112). Even if DEF pursued and received an exemption (which is unlikely according to Mr. Hobbs, the only witness who provided testimony on the topic), the exemption alone would not be enough to overcome the effects resulting from an impermissible use of the qualified fund. (Tr. P. 561, L. 6; Tr. P. 584, 18-20).

Based on several questions from Interveners regarding the approximately $90 million in spent fuel damages that DEF currently anticipates receiving from the DOE in litigation, it appears that Interveners may argue that those funds, rather than being returned directly to the NDT, could be refunded to customers without the NRC restrictions or IRS issues associated with refunding dollars already in the NDT. While it is true that there is no requirement that DEF place any dollars recovered from the DOE back in the NDT, DEF still believes that it is more prudent to return those dollars, since they were paid out of the NDT, to the NDT and allow those funds to be available if they are needed to fund the decommissioning, in particular if there are any changes to the End State Conditions.[8] (Tr. P. 569, L. 18-22).

[8] FIPUG supports its argument for return of funds by pointing to the global pandemic and the economic impact that is having on customers. While DEF is mindful of the impact of COVID-19 to its customers and the communities it serves, and has taken several actions to mitigate that impact, the Commission should be mindful of the longer-term impact that return of the funds now would have on the potential ability to pay for decommissioning costs. The current economic condition is irrelevant to the issue of how DEF should continue to prudently manage the NDT for its customers and the underlying goal of the Commission's rule 25-6.04365(1) ". . . accumulate a reserve to meet all expenses at the time of dismantlement". Rule 25-6.04365(2)(b) defines "Dismantlement" as "the process of safely managing, removing, demolishing, disposing, or converting for reuse the materials and equipment that remain at the generating unit following its retirement from service and restoring the site to a marketable or useable condition." Therefore, dismantlement is not complete until license termination and as such disbursements for anything other than dismantlement should not be permitted and would be imprudent to future customers should additional funds be necessary due to unwarranted disbursements.

V. Post Hearings Statement of 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)?

Yes, the Commission should approve the proposed transaction. The transaction is in DEF's customers' best interest. All but one risk is transferred to ADPCR3. The DSA provides sufficient protections for the remaining risk to DEF. Notably, DEF will only pay for completed work. The intervener's changes are unnecessary and may prevent the deal from closing. DEF should not be required to return any money to its customers until DEF's remaining risk is terminated.

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

Yes. DEF's proposed transaction with ADP and its subsidiaries for decommission CR3 is consistent with the 2017 Settlement. The 2017 Settlement does not reference any accelerated decommissioning contracts. It only includes a provision regarding the process for obtaining an accrual if needed during the term of the settlement. Since DEF is not requesting an accrual in this docket, that provision is inapplicable.

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

Yes. The Commission should approve DEF's 2019 Accelerated Nuclear Decommissioning Study. DEF's 2019 Accelerated Nuclear Decommissioning Study reflects the new cost estimate included in the transaction and demonstrates that there are sufficient funds in the NDT to complete decommissioning.

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

There is no requested annual accrual.

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

Not applicable.

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.?

Yes, the Commission should waive the future filing of the studies every five years required by Rule 25-6.04365, F.A.C. The studies are meant to ensure that DEF accrues adequate funds in the NDT to cover the projected cost of decommissioning CR3. Once DEF has commenced decommissioning pursuant to the transaction, the studies will no longer be necessary because the cost for the accelerated decommissioning CR3 is contractually fixed at less than the NDT funds.

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, NDT funds are reasonably spent, and sufficient funds remain to complete the decommissioning and spent fuel activities?

DEF will submit an annual report to the Commission to ensure that the decommissioning activities outlined in the DSA are completed including: NDT funds paid to ADP in the previous year, NDT funds remaining, ADP CR3's schedule performance for the previous year and the project to date, and future schedule and pay projections assessment. DEF will also make available, to Commission Staff, any information provided to it by ADP pursuant to the DSA.

ISSUE 8: Should this docket be closed?

Yes.

RESPECTFULLY SUBMITTED this 23rd day of July, 2020.

Respectfully submitted,

/s/ Daniel Hernandez

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Docket No.: 20190140-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail this 23rd day of July, 2020, to all parties of record as indicated below.

/s/ Daniel Hernandez

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