



June 18, 2020

VIA ELECTRONIC FILING

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.
Docket No. 20190140-EI

Dear Mr. Teitzman:

On behalf of Duke Energy Florida, LLC ("DEF"), please find enclosed for electronic filing in the above-referenced docket, the following documents:

1. DEF's redacted Rebuttal Testimony of Terry Hobbs; and
2. DEF's redacted Rebuttal Testimony of Jeff Adix, Exhibit No. ____ (JA-1), and redacted Exhibit No. ____ (JA-2).

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).

Duke Energy Florida, LLC
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 18th day of June, 2020, to all parties of record as indicated below.

/s/ Daniel Hernandez

Attorney

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1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 REBUTTAL TESTIMONY OF

3 TERRY HOBBS

4 ON BEHALF OF

5 DUKE ENERGY FLORIDA

6 DOCKET NO. 20190140-EI

7 June 18, 2020

8
9 **Q: Please state your name and title.**

10 A: My name is Terry Hobbs. I am a Duke Energy Florida, LLC (“Duke Energy Florida” or
11 “DEF”) employee and the General Manager in charge of the Crystal River Unit 3
12 (“CR3”) decommissioning project in Citrus County, Florida.

13
14 **Q: Have you previously submitted testimony in this docket?**

15 A: Yes.

16
17 **Q: Have your job duties and responsibilities changed since you filed that testimony?**

18 A: No.

19
20 **Q: What is the purpose of your testimony?**

21 A: The purpose of my testimony is to rebut the testimony of Mr. Richard Polich filed on
22 behalf of the Office of Public Counsel on May 28, 2020. All defined terms used, but not

1 defined in my testimony, shall have the meaning ascribed to them in the
2 Decommissioning Services Agreement (“DSA”).

3
4 **Q: Are you sponsoring any exhibits?**

5 A: No.

6
7 **Q: Is DEF filing other rebuttal testimony related to the testimony of Richard Polich?**

8 A: Yes. Mr. Jeffrey Adix, NorthStar VP and Chief Financial Officer, is filing testimony to
9 more fully describe the financial structure of NorthStar, its obligations in the DSA
10 between DEF and ADP CR3 LLC (ADP CR3) and (ADP SF1), and its obligations related
11 to other nuclear decommissioning projects.

12
13 **Q: Please summarize your assessment of Mr. Polich’s testimony.**

14 A: Mr. Polich’s testimony is an attempt to cause DEF to re-negotiate the DSA with ADP
15 CR3 and ADP SF1 that was carefully negotiated to protect DEF and its customers at the
16 conclusion of a competitive bidding process. He acknowledges that accelerating the
17 decommissioning of the CR3 facility is beneficial to DEF’s customers but he then
18 introduces new components to the DSA that are unnecessary when considering the
19 benefits and protections provided to DEF customers in the DSA in its entirety. He further
20 makes the incredible and unsupported claim that “None of the recommended
21 enhancements should cause detriment to the finances of this project or the entities
22 involved.” Mr. Adix will further describe the real impacts to NorthStar and the project if
23 the Commission orders these recommendations to be added to the DSA.

1 The Commission should reject Mr. Polich’s recommended “enhancements” because if the
2 Commission imposes any of these enhancements on the DSA, this transaction, as
3 contemplated by the DSA, will not close and DEF customers will not recognize the
4 significant benefits of this deal. To be clear, DEF could seek to renegotiate a new DSA
5 with ADP CR3, could perform another competitive bidding process over the next several
6 decades, or follow the original SAFSTOR method where the decommissioning project is
7 started in 2067, license termination is completed in 2073 and site restoration is completed
8 in 2074.

9
10 **Q: Why did DEF file this petition for approval of the transaction?**

11 A: Attachment 17 of the DSA defines the DEF and ADP CR3 Required Regulatory
12 Approvals that must be obtained in order to close the transaction. The first is approval
13 from the Nuclear Regulatory Commission (“NRC”) of the transfer of the NRC license
14 from DEF to ADP CR3 on the Closing Date, which the NRC issued on April 1, 2020.
15 The second is the issuance of a favorable Private Letter Ruling from the Internal Revenue
16 Service (IRS) confirming (i) the DSA will not cause a disqualification, in whole or in
17 part, of the qualified trust fund maintained within the NDF and (ii) payments made from
18 the qualified trust fund maintained within the NDF pursuant to the DSA are a permissible
19 use of the NDF, which the IRS issued on January 15, 2020. The third is approval by this
20 Commission and is the last approval needed to close the transaction.

21
22 **Q: Please briefly describe the process DEF used to vet NorthStar and ADP CR3 and**
23 **ADP SF1 during the review.**

1 A: The vetting of NorthStar, ADP CR3 and ADP SF1 started with the Request for
2 Information (RFI) process and continued through-out the pre-bid meetings/interactions,
3 proposal bid evaluations and contract negotiations. DEF performed detailed reviews of
4 NorthStar and ADP CR3 expertise and capabilities in pertinent areas important to
5 successful and predictable execution of the CR3 decommissioning project including
6 technical, commercial, financial and legal. Below is a sample list of the areas reviewed
7 and evaluated by DEF to vet the NorthStar and ADP CR3 proposal, their capabilities,
8 expertise, and previous experiences.

9 Technical approach as to how to decommission CR3 for the critical areas:

- 10 • Reactor Vessel and Internals Segmentation and Storage of HLW;
- 11 • Removal and Disposal of Large Components;
- 12 • ISFSI Operations;
- 13 • Site and Nuclear Security;
- 14 • Removal of All Sub-Surface Structures, Systems and Components (SSC);
- 15 • License Transfer and License Termination; and
- 16 • Site Restoration.

17 Capabilities and plans dealing with programs and processes needed for CR3
18 decommissioning:

- 19 • Emergency Preparedness;
- 20 • Engineering;
- 21 • Chemistry;
- 22 • Fire Protection;
- 23 • Nuclear Oversight/ Nuclear Safety Culture / Corrective Actions;

- 1 • Operations / Maintenance / Work Control;
- 2 • Security / Nuclear Security;
- 3 • Site License and Nuclear Regulatory Affairs;
- 4 • Site Support Services / Utilities Management / Training;
- 5 • Project management; and
- 6 • Spent fuel management.

7 Experience in decommissioning commercial and nuclear plants:

- 8 • Previous commercial and nuclear decommissioning of plants;
- 9 • Performing demolition and decommissioning activities;
- 10 • Performing site restoration activities;
- 11 • License termination; and
- 12 • Site release for unrestricted use activities.

13 Capabilities and expertise in regulatory management and licensing areas:

- 14 • Nuclear decommissioning licensing;
- 15 • Regulatory management;
- 16 • Stakeholder and community engagement;
- 17 • Environmental management; and
- 18 • Local, state, and federal regulations.

19 Expertise/Experience in radiological and waste handling:

- 20 • Radiological Protection Program;
- 21 • Waste handling and controls;
- 22 • Packaging, Staging, Transportation, Shipping;
- 23 • Waste water processing;

- 1 • Hazardous and radioactive waste;
- 2 • Security related requirements for nuclear waste; and
- 3 • Disposal options for contaminated waste.

4 Capabilities and expertise in industrial safety and environmental area:

- 5 • Environmental health and safety history;
- 6 • Adequacy and records of safety program;
- 7 • Adequacy and records of environmental program;
- 8 • Meeting DEF safety and environmental requirements; and
- 9 • Human performance and observation program.

10 Project schedule for decommissioning CR3:

- 11 • Identification of appropriate milestones;
- 12 • Reasonableness and achievable for meeting specification;
- 13 • Past projects estimate and performance;
- 14 • Guarantees to adhere to estimated schedule;
- 15 • Schedule not unnecessarily extend;
- 16 • Schedule not front-end-load simpler tasks;
- 17 • Addresses complex tasks; and
- 18 • Comprehensive and includes all task to license termination.

19 Project management and organization:

- 20 • Planning and preparation;
- 21 • Project organization and reporting;
- 22 • Key personnel and experience;
- 23 • Risk management;

- 1 • Operating Experience (OE) and lessons learned;
- 2 • Progress reporting;
- 3 • Sub-contractor; and
- 4 • Oversight.

5 In addition to the project team reviews described above, the Duke Energy Transaction
6 Review Committee (“TRC”) reviews and recommends approval or disapproval of all
7 projects that require approval by the Duke Energy President and Chief Executive Officer,
8 the Duke Energy Board of Directors (“BOD”) or a committee of the BOD. The primary
9 focuses of the TRC include:

- 10 • Economic valuation and benefits to the Corporation;
- 11 • Strategic rationale and alignment with the Corporations business and financial
12 plans;
- 13 • Risks and mitigation; and
- 14 • Legal, environmental and regulatory implications.

15 The TRC is normally chaired by the Chief Risk Officer. The members of the committee
16 are the designated members of the Senior Management Committee who are direct reports
17 to the President and Chief Executive Officer of Duke Energy.

18 To assist the TRC in performing their reviews, a TRC scrub team is used. The scrub
19 team is comprised of cross-functional subject matter experts from various areas of the
20 Corporation. The scrub team includes representatives from:

- 21 • Accounting;
- 22 • Legal;
- 23 • Rates and regulatory strategy;

- 1 • Treasury;
- 2 • Risk management and insurance;
- 3 • Forecasting and financial planning;
- 4 • Environmental, health and safety;
- 5 • Project management center of excellence;
- 6 • Operational excellence;
- 7 • External affairs; and
- 8 • Supply chain.

9 The scrub team members begin their analysis of the project approximately one month
10 prior to the project going before the TRC. The scrub team members work with the
11 project team to gather all relevant information and get answers to their questions. The
12 scrub team representative from risk management (including credit, market risk and
13 insurance) is responsible to analyze and make recommendations based on the following:

- 14 • Construction and operational exposures are identified and quantified, as
15 appropriate;
- 16 • Credit exposures are identified and quantified, as appropriate;
- 17 • Performance/technology risks are identified and quantified, as appropriate;
- 18 • Risks that could impact project/transaction budget or schedule are identified, as
19 appropriate;
- 20 • Any other applicable risks/exposures are identified and quantified, as appropriate;
- 21 • Mitigation techniques/products are established to minimize risks and exposures;
- 22 • Market risk exposures and sensitivities are identified and quantified, as
23 appropriate;

- 1 • Insurance requirements are identified and quantified, as appropriate; and
- 2 • Insurance coverage assumptions included in the economic models are appropriate
- 3 and reasonable.

4 The other scrub team members perform similar analyses in their area of expertise.

5 The analysis and recommendation of each scrub team member is reviewed by that
6 member's management before the scrub team member signs-off on the project prior to
7 the TRC meeting.

8 In March 2019, the TRC recommended that the DSA be approved given the protections,
9 risk mitigation and insurance requirements included in the DSA.

10
11 **Q: Did Duke Energy identify risk factors associated with NorthStar as part of the DSA**
12 **review and approval process?**

13 A: Yes. The Duke Energy subject matter experts identified various risk factors associated
14 with NorthStar Group Services and negotiated credit support mechanisms into the DSA
15 as a result. The Duke Energy subject matter experts determined that NorthStar's
16 financial condition is in line with peers involved in large scale demolition and
17 decommissioning projects. A credit review was performed on Orano USA LLC
18 ("Orano USA") and the same rating was assigned to Orano USA and NorthStar Group
19 Services. The subject matter experts concluded that the final negotiated financial
20 assurances in the DSA are adequate to support NorthStar's obligations under the DSA
21 given its financial condition and to adequately protect DEF and its customers. This
22 conclusion was supported by the percentage of completion payment method, the
23 Contractors Provisional Trust Fund, Parent Guarantees and credit reviews of NorthStar

1 Group Services Inc and Orano USA LLC that suggest the companies have the financial
2 wherewithal to perform and complete their obligations under the DSA.

3
4 **Q: Please identify the various benefits and protections the DSA provides to DEF's**
5 **customers.**

6 A: The essential elements of the DSA that protect DEF's customers are:

- 7 1. The NRC license will be transferred to ADP CR3 making ADP CR3 responsible
8 for compliance with all regulatory obligations and all on-site activities.
- 9 2. DEF continues to own the NDF. No money is disbursed by the trustee from the
10 NDF prior to review, validation and approval by DEF. Customers have not paid
11 into the NDF since 2001.
- 12 3. DEF only pays for work that is part of the decommissioning scope of work, all of
13 which is represented by the Pay Items, and when a Pay Item has been completed,
14 either partially or fully.
- 15 4. ADP SF1 purchases the Spent Nuclear Fuel, High Level Waste (HLW) and the
16 ISFSI. ADP CR3 will operate and maintain the ISFSI until the Department of
17 Energy (DOE) removes the Spent Nuclear Fuel from the Crystal River Site to a
18 High-Level Waste Repository.
- 19 5. ADP SF1 pays for all costs associated with operating and maintaining the ISFSI.
20 No funds from the NDF pay for the spent fuel management costs. ADP SF1 will
21 fund these costs separate and apart from the DSA.
- 22 6. The DSA is a fixed-price contract with no change order process.

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- 1 7. With the exception of any changes to End-State Condition, ADP CR3 assumes all
2 project implementation risks including scope change, cost escalation, etc.
- 3 8. The DSA includes a provision for ADP CR3 to acquire an environmental
4 insurance policy (approximately \$30M) to use to remediate unknown
5 environmental conditions if any are discovered during the project. DEF will
6 reimburse ADP CR3 for the cost of this policy.
- 7 9. Parent Guarantees and Parent Support Agreements are provided pursuant to the
8 DSA to ensure the project is completed.
- 9 10. ADP CR3 will establish the Contractors Provisional Trust at Closing that will be
10 valued at \$50M through the project from the Closing Date to the date Milestone
11 One is completed. Thereafter, the Contractor's Provisional Trust will be valued at
12 \$20M until the date on which the ISFSI-Only Interim End-State Conditions are
13 achieved. The funds in the Contractor's Provisional Trust could be made
14 available to ADP CR3 to complete the project with written consent from DEF.
- 15 11. ADP CR3 will post a [REDACTED] letter of credit which DEF can immediately
16 draw upon if Milestone One is not completed by the Target Completion Date.
- 17 12. The transaction accelerates the termination of the NRC license by the NRC from
18 2073 to 2039. This acceleration significantly reduces project risks that could
19 impact the DEF customers in the future. Some examples of these risks include
20 more burdensome regulations, labor shortages, unavailability of radioactive
21 material disposal sites and cost escalation.
- 22 13. After DOE removes the spent fuel from the Crystal River Site, ADP CR3
23 decommissions the ISFSI and the NRC terminates the NRC license. DEF

1 currently estimates that there will be funds remaining in the NDF which will be
2 returned to the DEF customers and DE shareholders. DEF could decide to use part
3 or all of these funds to finish the project, if needed.
4

5 **Q: What does Mr. Polich indicate that the Commission should do with respect to this**
6 **transaction?**

7 A: Despite all the protections and mechanisms I describe above, he requests that the
8 Commission impose five additional conditions on this deal. None of the five conditions
9 are necessary, and imposing any of them would result in this transaction, as contemplated
10 by the DSA, not closing.
11

12 **Q: Mr. Polich refers to the transaction between DEF, ADP CR3 and ADP SF1 as “a**
13 **semi-fixed contract of \$540 million to perform all DECON work except final spent**
14 **fuel disposal” on page 15 of his testimony. Does DEF agree with this description of**
15 **the transaction?**

16 A: No. Notwithstanding the fact that the Agreed Amount could be more than \$540 million if
17 earnings of the IOI Decommissioning Subaccount exceed losses and expenses of the IOI
18 Decommissioning Subaccount, DEF’s sole financial obligation to ADP CR3 for all for all
19 of the goods and services provided by ADP CR3 in connection with the
20 Decommissioning of the CR-3 Facility and the NRC-Licensed Site is \$540
21 million. Since ADP CR3 bears all investment risk associated with the IOI
22 Decommissioning Subaccount, DEF believes it is commercially reasonable for ADP CR3
23 to receive interest payments and all funds remaining in the IOI Decommissioning

1 Subaccount as a final payment when the ISFSI-Only Interim End-State Conditions are
2 achieved.

3
4 There are no change order provisions in the DSA and all project implementation risks (including
5 scope changes, cost escalation, etc.) transfer to ADP CR3.

6
7 DEF does remain responsible for the risk of any Change in End-State Conditions defined
8 in the FDEP letter in the DSA. DEF would be responsible for funding the additional
9 work necessary to comply with the new End-State Conditions from the Crystal River
10 Decommissioning Reserve Subaccount of the NDF. However, DEF views this risk as
11 low.

12
13 **Q: Should the DSA between DEF and ADP CR3 and ADP SF1 be renegotiated to**
14 **designate the State of Florida as a beneficiary in the Parent Support Agreement?**

15 A: No. The Commission should reject Mr. Polich's first recommendation. Adding the
16 Commission to the Parent Support Agreement adds no additional protection for DEF
17 customers. The DSA is the result of a formal competitive bidding process and extensive
18 contract negotiations related to cost, transfer of risks and financial assurances. The DSA
19 is a fixed price contract with no change order provisions, with the exception of changes to
20 End-State Conditions, and transfers all project implementation risks (including scope
21 changes, cost escalation, etc.) to ADP CR3. It is not reasonable to expect that DEF could
22 re-open negotiations without causing a change to the terms, conditions, pricing and risk
23 transfer to ADP CR3 that could be detrimental to the DEF customers.

1 Additionally, adding the Commission to the Parent Support Agreement would require
2 NRC approval, which could reopen the NRC approval process, potentially jeopardizing
3 the NRC's approval and extending the project timeline. These delays and risks would not
4 result in additional benefits for DEF customers beyond the benefits they will already
5 receive from the contractual commitments to the NRC.

6 The State of Florida, DEF and ADP (ADP wholly owns ADP CR3 and ADP SF1) all
7 have a vested interest in the decommissioning of CR3. The decommissioning of CR3 is a
8 first-of-its-kind project for Duke Energy and the State of Florida. It is not the first
9 nuclear decommissioning project for the two partners that formed ADP. DEF conducted
10 a competitive bid process to identify a company that possessed the technical and financial
11 capabilities to safely and successfully decommission CR3. ADP was selected during the
12 process because they demonstrated that they met the technical and financial requirements
13 to perform the decommissioning project. The NRC independently determined that ADP
14 meets the technical and financial requirements to decommission CR3 as the licensee as
15 documented in the corrected safety evaluation that supported the order, issued on April 1,
16 2020, to transfer the NRC license from DEF to ADP CR3. The NRC License will transfer
17 to ADP CR3 on the Closing Date.

18 The CR3 decommissioning project will be conducted in accordance with all federal, state
19 and local rules and regulations. The NRC, Department of Transportation (DOT), the
20 Florida Bureau of Radiation Control and the Florida Department of Environmental
21 Protection (FDEP) all have jurisdiction and inspection requirements throughout the life of
22 the project. Each agency will conduct on-site inspections as well as other routine
23 inspections and reviews. For ADP CR3 to achieve the End-State Conditions, ADP CR3

1 will have completed the necessary remediation of all hazardous substances, radiological
2 and non-radiological, in accordance with all rules, regulations and requirements. The
3 End-State Conditions are based on NRC regulations and the FDEP Letter.

4
5 **Q: Why is Mr. Polich suggesting that this condition is appropriate for the CR3**
6 **transaction?**

7 A: Mr. Polich has apparently determined that the Vermont Yankee (“VY”) transaction, in
8 which Entergy Nuclear Operations, Inc. (“Entergy”) sold NorthStar the property, plant
9 and equipment to decommission VY, should be the standard for the CR3 transaction
10 notwithstanding the fact that the structure of the VY transaction and CR3 transaction are
11 completely different. In the VY transaction, NorthStar purchased from Entergy all of the
12 membership interests of the NRC licensee (Entergy Nuclear Vermont Yankee, LLC, now
13 known as NorthStar Vermont Yankee, LLC), which means NorthStar acquired ownership
14 of the plant, property and equipment and the nuclear decommissioning trust fund.
15 Furthermore, as a result of the VY transaction, there is no regulated utility involved in the
16 VY decommissioning project because Entergy has no obligations to or involvement with
17 the VY decommissioning project. For this reason, it made sense for the State of Vermont
18 to be more involved and concerned about ensuring that NorthStar finishes the
19 decommissioning project since, by regulation, the Vermont Public Utility Commission
20 did not have jurisdiction over NorthStar. In the CR3 transaction, ADP CR3 will execute
21 the decommissioning project pursuant to a DSA that contains considerable contractual
22 protections, and, with the exception of the spent nuclear fuel and ISFSI, DEF will
23 continue to own the plant, property and equipment and the NDF. Because of DEF’s

1 continued role as an owner, DEF will continue to be regulated by the Florida Public
2 Service Commission.

3
4 **Q: On page 29, Mr. Polich states that “If the decommissioning of CR3 by ADP and its**
5 **affiliates is not performed as projected, resulting in depletion of the NDF and need**
6 **for additional funding from DEF’s ratepayers, any request by DEF for additional**
7 **funding by its ratepayers will have to be approved by the Commission.” Does DEF**
8 **foresee a scenario that could result in DEF requesting additional funding from its**
9 **ratepayers?**

10 A: No. DEF will continue to have the right to seek additional funding from its customers by
11 petitioning the Commission, if needed, but does not currently envision a scenario in
12 which it would need to seek additional funding and not because ADP CR3 have not
13 performed the decommissioning as projected. There are several scenarios that the CR3
14 decommissioning project may follow. I will describe the scenarios.

15 1. The first and most likely scenario this project will follow is that ADP CR3 will
16 complete Milestone One by the Target Completion Date in 2029 for the Agreed
17 Amount. In this scenario, ADP SF1 will continue to own the Spent Nuclear Fuel,
18 HLW and ISFSI, fund all spent fuel management activities and be responsible for
19 the operation and security of the ISFSI until DOE removes the Spent Nuclear Fuel
20 and HLW from the Crystal River Site to a High-Level Waste Repository. The on-
21 going operation of the ISFSI is not impacted in this scenario. After 2029, DOE
22 will transport the Spent Nuclear Fuel and HLW from the Crystal River Site to a
23 High-Level Waste Repository, the ISFSI will be decommissioned and final site

1 surveys conducted and submitted to the NRC. None of the work involving the
2 operation and decommissioning the ISFSI is funded from the NDF. After review
3 and approval, the NRC will terminate the NRC License and release the remaining
4 DEF property for unrestricted use. Money remaining in the NDF will be returned
5 to customers and Duke Energy shareholders at that time.

- 6 2. The next scenario involves the discovery of an unknown condition during the
7 project. This scenario is unlikely since the site characteristics are well known by
8 DEF and ADP CR3. ADP CR3 owns this risk and still must meet their obligation
9 to complete Milestone One by the Target Completion Date in 2029. The on-
10 going operation of the ISFSI is not impacted in this scenario. DEF believes that
11 this risk has been mitigated by the protections that exist in the DSA. In this
12 scenario, there are multiple protections in the DSA. First, there is the
13 approximately \$30M environmental insurance policy specific to the CR3
14 decommissioning project which is in addition to ADP CR3's standard
15 environmental insurance policy. The Contractor's Provisional Trust (\$50M)
16 could be made available to fund the new scope of work with written consent from
17 DEF. The Parent Guarantee, exhibits B-1 and B-2 of the DSA, would also be
18 made available to fund the newly identified scope of work. The DEF Crystal
19 River Decommissioning Reserve Subaccount in the NDF is also a source of funds
20 to mitigate the additional costs to complete the project. If the cost increase to
21 complete the project was determined to be so great that completing the project as
22 scheduled is not feasible, ADP CR3 could, with DEF's concurrence, return CR3
23 to a SAFSTOR Condition which would allow ADP CR3 to idle the

1 decommissioning project and reduce the monthly costs that are paid to ADP CR3
2 from the IOI Decommissioning Subaccount to a minimum. In this case, DEF and
3 ADP CR3 would likely review and consider any changes to the investment
4 policies and guidelines applicable to the IOI Decommissioning Subaccount and
5 the Crystal River Decommissioning Reserve Account. Based on the updated
6 cost-to-complete estimate and the estimated growth of the NDF, ADP CR3 and
7 DEF would agree on the timeframe to restart the project to complete license
8 termination by 2073 and site restoration by 2074. In this scenario, DEF would
9 not likely petition the Commission to have its customers pay into the NDF.


- 10 3. The third scenario is a change in End-State Conditions occurs. DEF owns this
11 risk. There is currently no proposed rule-making underway at the state or federal
12 level to change the End-State Conditions. DEF believes that this risk has been
13 mitigated by the protections that exist in the DSA. One risk is associated with a
14 change to NRC regulation that establishes the radiological criteria for unrestricted
15 use of the property after decommissioning. Additionally, the other two End-State
16 Conditions are associated with removing structures to at least three feet below
17 grade and using clean, concrete rubble to fill the below grade structures. Both
18 activities are typical for nuclear decommissioning projects and the Florida
19 Department of Environmental Protection (FDEP) has agreed with these End-State
20 Conditions in the FDEP Letter in the DSA. In this scenario, ADP CR3 would
21 determine the scope and cost estimate of the additional work necessary to comply
22 with the new End-State Conditions. DEF would fund the cost increase to comply
23 with the new End-State Conditions from the DEF Crystal River Decommissioning

1 Reserve Subaccount in the NDF. If the cost increase to comply with the new
2 End-State Conditions was determined to be so great that completing the project as
3 scheduled is not feasible, ADP CR3 could, with DEF's concurrence, return CR3
4 to a SAFSTOR Condition which would allow ADP CR3 to idle the
5 decommissioning work and reduce the monthly costs that are paid to ADP CR3
6 from the IOI Decommissioning Subaccount to a minimum. In this case, DEF and
7 ADP CR3 would likely review and consider any changes to the investment
8 policies and guidelines applicable to the IOI Decommissioning Subaccount and
9 the Crystal River Decommissioning Reserve Account. Based on the updated cost-
10 to-complete estimate and the estimated growth of the NDF, ADP CR3 and DEF
11 would agree on the timeframe to restart the project to complete license
12 termination by 2073 and site restoration by 2074. In this scenario, DEF would
13 not likely petition the Commission to have its customers pay into the NDF.

- 14 4. The next scenario is that ADP CR3 or ADP SF1 fails to pay or perform its
15 obligations under the SNF PSA, the Pledge Agreement, the Parent Support
16 Agreements, the Disposal Guarantee, the Amended and Restated LLC Agreement
17 or the SNF Services Agreement. In this scenario, if DEF is unable to resolve the
18 failure with ADP CR3 or ADP SF1, then, pursuant to the Parent Guaranties, the
19 Parent Guarantors will, subject to a written notice of demand, (i) make payment
20 within thirty (30) days of notice or (ii) perform or cause to be performed the
21 unperformed obligations. If any Parent Guarantor fails to make any payment or
22 render performance when due and such failure is not cured within ten (10)
23 Business Days after written notice from Company regarding such failure, then

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1 such failure will constitute a Contractor Event of Default. See the discussion
2 regarding the occurrence of a Contractor Event of Default below with regard to
3 DEF's remedies. DEF would not likely petition the Commission to have its
4 customers pay into the NDF in this scenario.

5 5. The next scenario is that ADP CR3 is performing its obligations under the DSA,
6 but the Project Schedule indicates that ADP CR3 will not complete Milestone
7 One by the Target Completion Date. In that case, ADP shall provide its written
8 plans to address any projected failure to complete Milestone One by the Target
9 Completion Date. If, notwithstanding the written plans, ADP CR3 fails to
10 complete Milestone One by the Target Completion Date, ADP CR3 shall, within
11 five (5) Business Days after the Target Completion Date, deliver to DEF a letter
12 of credit issued in favor of DEF by a Qualified Institution in the amount of
13  payable upon demand by DEF to an
14 account in the NDF as directed by DEF for use as directed by DEF. In addition,
15 failure to complete Milestone One by the Target Completion Date is an Event of
16 Default under the DSA. See the discussion regarding the occurrence of a
17 Contractor Event of Default below with regard to DEF's remedies. DEF would
18 not likely petition the Commission to have its customers pay into the NDF in this
19 scenario.

20 6. The next scenario is that, based on the decommissioning funding status reports
21 that ADP CR3 will submit to the NRC annually, the NRC determines that ADP
22 does not have sufficient funds to cover the estimated costs to complete the
23 decommissioning. In this scenario, NRC would direct ADP CR3, as the licensee,

1 to obtain funds, which ADP CR3 could either provide itself or request from its
2 parent companies under the Parent Support Agreements. In the corrected safety
3 evaluation for the approval of the license transfer from DEF to ADP CR3, the
4 NRC concluded that the Parent Support Agreements assure the ability of ADP
5 CR3 and ADP SF1 to pay the expenses of (i) maintaining and decommissioning
6 the CR3 facility and ISFSI safely, (ii) protecting the public health and safety and
7 (iii) meeting NRC requirements are effective. Because the NRC credited the
8 Parent Support Agreements in its independent cash flow analysis, the NRC also
9 indicated that ADP cannot void, cancel, or modify the Parent Support Agreements
10 without prior written consent of the NRC. Because the NRC can take
11 enforcement action against ADP CR3 if ADP CR3 fails to obtain funds, it seems
12 very unlikely that ADP CR3 or its parent companies would not provide such
13 funds. However, in the event that ADP CR3 requested funds and the Parent
14 Guarantors failed to provide such funds under the Parent Support Agreements and
15 such failure is not cured within ten (10) Business Days after written notice from
16 Company regarding such failure, such failure will constitute an Event of
17 Default. See the discussion regarding Event of Default in number 7 below
18 regarding DEF's remedies. DEF would not likely petition the Commission to
19 have its customers pay into the NDF in this scenario.

- 20 7. The next scenario is that ADP CR3 experiences a Contractor's Event of Default
21 and DEF elects to terminate the DSA and exercises its rights under the Pledge
22 Agreement. Each Contractor Event of Default is based on the occurrence of a
23 particular event, and, in many cases, a Contractor Event of Default may have no

1 or minimal impact or effect on ADP CR3’s ability to execute and complete the
2 project. For example, the occurrence of a Bankruptcy Event with respect to ADP
3 CR3 is a Contractor Event of Default but DEF believes the risk associated
4 therewith is remote. DEF will be the Independent Manager (as defined in the
5 Amended and Restated Limited Liability Company Agreement of ADP CR3,
6 LLC (the “LLC Agreement”)) of ADP CR3. Under the LLC Agreement, ADP
7 CR3 is not authorized, without approval from the Independent Manager, to file or
8 consent to the filing of any petition, either voluntary or involuntary, to take
9 advantage of any applicable insolvency, bankruptcy, liquidation or reorganization
10 statutes. It is difficult to imagine a scenario where the Independent Manager
11 would agree to an ADP CR3 bankruptcy because, under the bankruptcy laws,
12 such an approval would allow ADP CR3 to move to reject (i.e., terminate) the
13 DSA in the bankruptcy proceeding. Accordingly, in the occurrence of any Event
14 of Default, DEF will assess whether electing to terminate the DSA and exercise
15 its rights under the DSA is prudent and in the best interest of customers. If DEF
16 were to determine that such an election is prudent and in the best interest of
17 customers, then:

- 18 • DEF would only have paid for work that is completed;
- 19 • DEF would keep the remaining funds in the IOI Decommissioning
20 Subaccount of the NDF, including all interest and earnings;
- 21 • Disbursements can be made from the Contractor’s Provisional Trust Fund
22 to pay for any cost necessary for DEF or its designee to achieve the ISFSI-
23 Only End State Conditions;

- 1 • DEF or its designee would acquire the membership interests of ADP CR3
- 2 and, as owner, would direct the activities of ADP CR3; and
- 3 • Any contracts that ADP CR3 has with subcontractors would remain in
- 4 effect.

5 DEF would not likely petition the Commission to have its customers pay into the NDF
6 even with an Event of Default. Scenarios 4, 5, and 6 are all related to scenario 7. For
7 these scenarios, DEF would have the option to return to the SAFSTOR condition if
8 needed.

9 The NRC regulatory requirement is to complete the license termination activities by
10 2073. The decommissioning project timeline is approximately six and one-half (6 ½)
11 years. If CR3 had to be returned to a SAFSTOR condition to allow the NDT to grow,
12 DEF could decide, based on fund growth and the cost estimate to complete the project, to
13 petition the Commission to have its customers pay into the NDF sometime in the middle
14 of this century.

15

16 **Q: Does DEF believe it is important to retain the timing of the proposed transaction?**

17 A: Yes. The longer the CR3 decommissioning project is delayed, the higher the probability
18 of significant regulatory changes or a Fukushima type significant operational event
19 occurring anywhere in the world. The consequences of either of these types of events
20 could significantly increase the cost of decommissioning CR3 and other nuclear plants in
21 the U.S. Some examples could be significant cost increases associated with the
22 transportation and disposal of radioactive waste based on changing regulations, an event
23 that causes regulatory changes to the End-State Conditions that cannot be mitigated by

1 NDF growth over time and other unforeseen changes to the decommissioning structure
2 and standards that currently exist in the U.S. These are the types of events that could
3 cause DEF to petition the Commission to have its customers pay into the NDF to fund the
4 significant cost increase of decommissioning in the U.S. To be clear, DEF and its
5 customers live with that risk today, irrespective of whether the transaction at issue in this
6 proceeding is approved.

7 DEF has concluded that accelerating the decommissioning of CR3 mitigates these types
8 of tail risks. DEF also believes that discoveries or other events that are much less
9 significant than those just described are mitigated by the current protections in the DSA.

10
11 **Q: Why does DEF consider the risk of an Event of Default by ADP CR3 low?**

12 A: The protections and remedies in the DSA, including the Pledge Agreement (Exhibit E of
13 the DSA) and the Amended and Restated Limited Liability Company Agreement of ADP
14 CR3 LLC (Exhibit D of the DSA) are strong. Exhibit D identifies the ADP CR3 LLC
15 Independent Manager that will be appointed by DEF on the Closing Date. ADP CR3
16 LLC is not authorized to take the following actions without the approval of the
17 Independent Manager:

- 18 • filing or consenting to the filing of any petition, either voluntary or involuntary, to
19 take advantage of any applicable insolvency, bankruptcy, liquidation or
20 reorganization statutes;
- 21 • making any filing or submittal to the NRC voluntarily electing SAFSTOR;
- 22 • filing or consenting to dissolve the Company;

- 1 • amending or terminating the SNF services agreement, by and between the
2 Company and ADP SF1 LLC; or
- 3 • modify, alter, supplement, amend or otherwise change this agreement or any other
4 organizational documents of ADP CR3 LLC.

5 The remedies in the Event of Default are clear. DEF would terminate the DSA with the
6 following consequences:

- 7 • DEF would only have paid for work that is completed;
- 8 • DEF would keep the remaining funds in the IOI Decommissioning Subaccount of
9 the NDF, including all interest and earnings;
- 10 • Disbursements can be made from the Contractor’s Provisional Trust Fund to pay
11 for any cost necessary for DEF or its designee to achieve the ISFSI-Only End
12 State Conditions;
- 13 • DEF or its designee would acquire the membership interests of ADP CR3 and, as
14 owner, would direct the activities of ADP CR3; and
- 15 • Any contracts that ADP CR3 has with subcontractors would remain in effect.

16 The ADP CR3 decommissioning method protects ADP CR3 from financial challenges
17 throughout the life of the project. With respect to the majority of the decommissioning
18 work, ADP CR3 will enter into fixed price subcontracts with an Affiliate of NorthStar
19 Group Services, Inc., and an Affiliate of Orano USA LLC, and expects to enter into fixed
20 price subcontracts with specialty trade subcontractors. With respect to each fixed price
21 subcontract, ADP CR3 will obtain payment and performance bonds or similar guaranties
22 in the amount of the fixed price work covered by that fixed price subcontract; provided,
23 however, because a small portion of the work covered by certain fixed price subcontracts

REDACTED

1 with specialty trade subcontractors may not be bonded, ADP CR3 will use commercially
2 reasonable efforts to obtain bonds from subcontractors covering an aggregate of [REDACTED]
3 [REDACTED] of the value of the work covered by fixed price subcontracts. ADP CR3
4 anticipates that it will enter a unit price subcontract with Waste Control Specialists, LLC
5 for waste disposal services; provided, however, in the event that ADP CR3 is able to
6 obtain a fixed price subcontract, Waste Control Specialists, LLC shall post a payment and
7 performance bond that complies with the requirements of the DSA. Each payment and
8 performance bond shall be issued by surety issuer(s) with a credit rating of A-VII or
9 higher.

10
11 **Q: Why is DEF confident that ADP CR3 and ADP SF1 will execute and complete their**
12 **scopes of work and that the Parent Guarantors will comply with their respective**
13 **obligations, including the Parent Guaranties and the Parent Support Agreements?**

14 **A:** DEF is confident that ADP CR3 and ADP SF1 will be successful based on their
15 experience in nuclear decommissioning projects and the significant reviews of the CR3
16 design, construction and operational information made available by DEF to inform the
17 bid proposal submitted by ADP in July 2018. ADP CR3 was able to confirm the
18 information used in preparing their proposal during the on-site due diligence activities
19 during the fourth quarter of 2018. ADP CR3 did not change the pricing and risk transfer
20 to ADP when they submitted their refreshed bid in December 2018. Should ADP not be
21 successful, the Guarantors are legally bound to their obligations in the Parent Guarantees
22 which serve to protect DEF and its customers.

23

1 **Q: Second, Mr. Polich testifies that the Commission should require NorthStar to**
2 **maintain at least \$105M to support the Parent Guaranty. Do you agree with this**
3 **recommendation?**

4 A: No, for all the reasons explained above. Mr. Adix will also address this recommendation.

5
6 **Q: Mr. Polich next recommends that the percentage of each monthly payment retained**
7 **in the Provisional Milestone Account should be increased from six to ten percent.**
8 **Should the DSA be renegotiated to increase the percentage?**

9 A: No. Changing the DSA adds no additional protection for DEF customers than currently
10 exists in the DSA and the renegotiated contract could cause a change to the terms,
11 conditions, pricing and risk transfer to ADP CR3 that could be detrimental to the DEF
12 customers. The DSA is a fixed price contract with no change order provisions, with the
13 exception of changes to End-State Condition, and transfers the project implementation
14 risks (including scope changes, cost escalation, etc.) to ADP CR3. These terms are the
15 result of a formal competitive bidding process and extensive contract negotiations related
16 to cost, transfer of risks, and financial assurances. It is not reasonable to expect that DEF
17 could re-open negotiations without causing a change to the terms, conditions, pricing and
18 risk transfer to ADP CR3 that could be detrimental to the DEF customers.

19 If the retainage was increased from six to ten percent, the increase could unnecessarily
20 restrict ADP CR3 cash flow which could have a negative impact on the project. DEF
21 believes that six percent retainage, along with all the other protections for DEF customers
22 in the DSA, is sufficient.

REDACTED

1 The Contractors Provisional Trust Fund consists of two accounts, the Provisional IOI
2 Account and the Provisional Milestone Account. ADP CR3 will deposit \$20M cash into
3 the Provisional IOI Account at Closing. ADP CR3 will also deposit the [REDACTED]
4 [REDACTED] into the Provisional Milestone Account at Closing. The value of the
5 Contractor's Provisional Trust Fund is \$50M from the Closing date until the date that
6 Milestone One is completed. ADP CR3 will invoice DEF monthly for work completed
7 the prior month throughout the project. DEF shall direct payment of an amount equal to
8 six percent (6%) of each disbursement into the Provisional Milestone Account until that
9 account reaches \$30M cash. The amount guaranteed under the [REDACTED] will
10 be reduced dollar-for-dollar until the [REDACTED] is fully released. Since the
11 value of the Contractor's Provisional Trust Fund is \$50M from the Closing Date until the
12 date that Milestone One is completed, renegotiating the DSA provides no additional
13 protection for DEF customers.

14 The [REDACTED] is Exhibit I of the DSA. The [REDACTED]
15 [REDACTED] If,
16 prior to the [REDACTED] being fully released, there is a Contractor's Event of
17 Default and DEF elects to terminate the DSA and DEF or its designee acquires the
18 membership interests of ADP CR3, then [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

1 The WCS facility in Andrews, Texas, is the only licensed facility in the United States that
2 can treat, store and dispose of Class A, B and C low-level radioactive waste, hazardous
3 waste and byproduct material. This access to the WCS facility significantly reduces
4 project risk related to waste disposal access and cost and represents an important benefit
5 for DEF's customers in the DSA.

6
7 **Q: Again, is the fact that the VY deal included a similar provision important to**
8 **whether the Commission should change the CR3 deal?**

9 A: No. As explained above, in Vermont, there is no regulated utility involved in the VY
10 project. Here, DEF continues to own CR3 and the NDF, other than the spent fuel and
11 associated assets, and DEF will continue to be regulated by the FPSC. In addition, even
12 if what happened in VY was dispositive, which it was not, Mr. Polich has not accurately
13 represented the VY transaction. In VY, NorthStar does not begin making the ten percent
14 monthly disbursement into the VY provisional trust fund until after NorthStar has
15 withdrawn the first \$100M from the VY Nuclear Decommissioning Trust (NDT). By
16 comparison, the six percent retainage in the CR3 DSA begins immediately with the first
17 invoice. In the Memorandum of Understanding between the state of Vermont and
18 NorthStar dated March 2018 under docket number 8880, NorthStar estimated that the VY
19 provisional trust fund would be fully funded by the end of 2024, which is similar to the
20 CR3 timeline until the Disposal Guarantee is fully released.

21

1 **Q: Mr. Polich's fourth and fifth recommendations are that the DSA should be**
2 **renegotiated to change the reporting requirements from quarterly to monthly and**
3 **establish an independent monitor. Do you agree?**

4 A: No. Changing the DSA adds no additional protection for DEF customers than currently
5 exists in the DSA and the renegotiated contract could cause a change to the terms,
6 conditions, pricing and risk transfer to ADP that could be detrimental to DEF customers.
7 The DSA is a fixed price contract with no change order provisions and transfers the
8 project implementation risks (including scope changes, cost escalation, etc.) to ADP.
9 These terms are the result of a formal competitive bidding process and extensive contract
10 negotiations related to cost, transfer of risks, and financial assurances. It is not
11 reasonable to expect that DEF could re-open negotiations without causing a change to the
12 terms, conditions, pricing and risk transfer to ADP that could be detrimental to the DEF
13 customers.

14 The quarterly reporting in Attachment 9 of the DSA is in support of the quarterly face-to
15 face meetings between DEF and ADP CR3. The DSA contains many more
16 communications on the status of the project between DEF and ADP CR3 such as monthly
17 invoices and the supporting validation information, monthly or more frequent tours of the
18 project, the ability to escalate concerns to executives of ADP CR3, audit rights and
19 financial reports from the parent companies of ADP CR3.

20 ADP CR3 will supply DEF updated schedules at least quarterly throughout the project.
21 The project schedules, along with the detailed validation information provided to DEF in
22 support of each monthly invoice, are essential project information that is one measure of
23 the progress of the project.

1 ADP CR3 will also provide DEF monthly written notices, by the twenty-fifth (25th) day
2 of each month, estimating the amount of funds ADP CR3 estimates it may request for
3 withdrawals from the IOI Decommissioning Subaccount during the following calendar
4 month. The variance between the estimate and the invoiced amount each month will be
5 monitored by DEF and is also information indicative of the project progress. (Article
6 9.3.1 of the DSA).

7 The fixed-price contract provides extensive protection to DEF's customers. The DSA
8 establishes the Target Completion Date of January 21, 2029 yet the Milestone One date is
9 January 2027. These dates were based on closing the transaction in March 2020. These
10 dates will be adjusted in the planned amendment to the DSA but will still allow two years
11 between the scheduled Milestone One date and the Target Completion Date (Articles 1.1
12 and 6.7 of the DSA). DEF agreed to the two-year period between the two dates to allow
13 ADP CR3 sufficient project management and schedule flexibility to complete the CR3
14 decommissioning project in an efficient, effective manner. 10 C.F.R. § 50.82(a)(3)
15 requires that the CR3 decommissioning be completed by 2073. DEF decided that it was
16 prudent and appropriate to provide the two-year schedule flexibility to ADP CR3 to
17 complete Milestone One in support of maintaining the fixed price nature of the
18 transaction.

19
20 **Q: Do you agree with Mr. Polich's comparison to the Georgia Power Vogtle projects as**
21 **supporting the need for an independent monitor?**

22 A: Not at all. Georgia Power's Plant Vogtle Units 3 and 4 projects are not a valid
23 comparison to the CR3 decommissioning project. The CR3 project is a six and one-half

1 (6 ½) year project to achieve Milestone One for the fixed price of \$540M paid by DEF
2 from the NDF. The CR3 decommissioning project does not currently affect the rates of
3 DEF customers since the existing NDF can fund the project. As described above, DEF
4 prioritized the fixed price of the project above the schedule to complete Milestone One.

5 The scope of the CR3 decommissioning work is not complex compared to the Vogtle
6 projects. Decommissioning work involves removing all structures, systems and
7 components from their current location and packaging, transporting and disposing of
8 them as waste. The waste may be radioactive, hazardous, mixed or clean waste. Each
9 type of wastes has different requirements that ADP CR3 is very familiar with and has
10 recent experience with managing at the VY decommissioning project.

11 Conversely, the Vogtle project is a complex construction project for a new class of
12 reactors. The finalization of design, the large amount of labor needed, and the start-up
13 and commissioning of new units, make Vogtle a much more complex project than the
14 decontamination and dismantlement of CR3. The complexity of the Vogtle project has
15 led to significant cost and schedule overruns with estimated cost increasing from \$14.3B
16 to \$28B. The Georgia PSC will ultimately determine the significant impact to the
17 Georgia Power customers when the two units are placed in service. Given the significant
18 cost and schedule overruns at the Vogtle Units 3 and 4 projects, independent monitoring,
19 reporting, assessing, auditing and all other project control tools are appropriate to protect
20 the Georgia Power ratepayers.

21 The ADP CR3 decommissioning project will be funded from the NDF with no current
22 impact to customers. The protections provided to the DEF customers in the current DSA,
23 the ongoing role of DEF and the oversight from NRC and multiple state organizations are

1 sufficient to protect DEF's customers and no additional reporting or monitoring is
2 required.

3

4 **Q: Does that conclude your testimony?**

5 A: Yes.

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 REBUTTAL TESTIMONY OF

3 JEFF ADIX

4 ON BEHALF OF

5 DUKE ENERGY FLORIDA

6 DOCKET NO. 20190140-EI

7 June 18, 2020

8

9 **Q. Please state your name and business address.**

10 A. My name is Jeff Adix. My business address is 370 Seventh Avenue, Suite 1803 New
11 York, NY 10001.

12

13 **Q. By whom are you employed and in what capacity?**

14 A. I am employed by NorthStar Group Services, Inc. (“NorthStar”) as Vice President,
15 Chief Financial Officer, and Treasurer. I also serve as the Vice President and Chief
16 Financial Officer for Waste Control Specialists LLC (“WCS”).

17

18 **Q. Please describe your duties and responsibilities in those positions.**

19 A. I am responsible for all aspects of financial management, planning, and reporting for
20 those two companies. These responsibilities include working with the independent
21 auditors for the companies to validate that the financial reporting is presented
22 consistently with Generally Accepted Accounting Principles (“GAAP”) on an
23 ongoing basis. In addition, I am responsible for ensuring that GAAP is correctly

1 applied for new transactions, such as acquisition purchase accounting, and unique
2 technical GAAP applications such as NorthStar's Vermont Yankee transaction.
3 Along with regular management, board, and investor reporting, I am also responsible
4 for compliance reporting to the Companies' lenders, including recurring Financial
5 Officer Certifications of the fair presentation of the lender financial statements.

6

7 **Q. Please describe your educational background and professional experience.**

8 A. I graduated summa cum laude with a Bachelor of Science in Business Administration,
9 with degrees in Accounting, Corporate Finance, and Computer Information Systems,
10 from Drake University in 1989. I received a Master of Business Administration
11 degree in 2004 from the University of Wisconsin - Milwaukee. I am also a Certified
12 Public Accountant (Iowa – 006969). My professional experience includes more than
13 30 years of auditing, financial consulting, and financial management roles of
14 increasing responsibility. Past roles include accounting and financial analysis
15 positions in a global privately-held company (S.C. Johnson & Son), and divisional
16 Chief Financial Officer positions in multiple large global publicly-traded companies
17 (Fiserv, ManpowerGroup, and Veolia). My accounting knowledge and professional
18 judgment also allowed me to serve as the Chief Audit Executive of a \$20 billion
19 global publicly-traded company (ManpowerGroup). I joined NorthStar in my current
20 role in January 2016, adding the additional responsibility for WCS in December
21 2018. NorthStar and WCS are separate companies with a common controlling
22 investor. I started my career as a CPA at Arthur Andersen LLP, performing a

1 combination of auditing and financial consulting work and leaving as an Experienced
2 Manager. My complete resume is attached as Exhibit No. __ (JA-1).

3

4 **Q. What is the purpose of your testimony?**

5 A. The overall purpose of my testimony is to rebut OPC witness Rich Polich’s incorrect
6 statements and conclusions regarding the need for “enhancements” to the
7 Decommissioning Service Agreement (“DSA”) between Duke Energy Florida, LLC
8 (“DEF”) and ADP CR3/ADP SF1, LLC (“the ADP Group”). Mr. Terry Hobbs is also
9 providing rebuttal testimony to respond to Mr. Polich’s testimony. My testimony
10 focuses on Mr. Polich’s incorrect statements, accounting interpretations, and
11 conclusions about NorthStar’s financial statements and valuation. I will explain the
12 impact of the “enhancements” to the ADP Group’s ability to successfully complete
13 the decommissioning of the Crystal River 3 nuclear plant (“CR3”) on the terms
14 agreed with DEF. Finally, I will provide insight into the Vermont Yankee (“VY”)
15 transaction, in which NorthStar participated and which Mr. Polich apparently draws
16 on for several of his recommended “enhancements.” I would note that, if I do not
17 specifically address an aspect of Mr. Polich’s testimony in my rebuttal testimony, it
18 does not mean that I agree with his testimony.

19

20 **Q. Please provide a summary of your testimony.**

21 A. The Commission should reject Mr. Polich’s suggestions that the DSA needs
22 “enhancements” to protect DEF’s customers. There are multiple protections already
23 included in the DSA, with the most important being that ADP is only being paid for

1 actual decommissioning milestones achieved. Mr. Polich has chosen to largely
2 disregard these protections and instead focus on one supplemental protection in the
3 DSA. His testimony and conclusions include multiple examples of misunderstood or
4 incorrect accounting information, incorrect statements about NorthStar's finances,
5 and he attempts to assess NorthStar's financial position on a hypothetical liquidation
6 basis vs. a going concern basis. Finally, where he has attempted to draw parallels to
7 NorthStar's Vermont Yankee transaction, these are taken out of context and do not
8 attempt to recognize differences in structures and circumstances.

9

10 **Q. Are you sponsoring any exhibits?**

11 A. Yes. I am sponsoring:

- 12 • Exhibit No. __ (JA-1) – Resume; and
- 13 • Exhibit No. __ (JA-2) – Excerpts from Mr. Polich's Deposition¹.

14 These exhibits are true and accurate.

15

16 **Transaction Overview**

17

18 **Q. First, please generally describe the DSA.**

19 A. The DSA is a fixed price contract pursuant to which the ADP Group, through its
20 affiliates ADP CR3 and ADP SF1, will decommission CR3 and take ownership of the
21 spent fuel. The DSA includes multiple provisions and protections to help ensure that
22 the ADP Group completes the project on budget and in the assumed timeframe

¹ The included excerpts are from the rough deposition transcript, because the final transcript was not available due to the limited time between the deposition and the filing of this testimony.

1 (approximately six and a half years). Mr. Terry Hobbs describes these contractual
2 provisions, and the value and protection they provide to DEF's customers, in much
3 greater detail. The DSA represents the result of a lengthy negotiation process and
4 every provision as written in the DSA is important and cannot be isolated or
5 otherwise changed, without changing other parts of the transaction. From a financial
6 perspective, it is critical to note that the DSA was intentionally structured such that
7 ADP is paid only for work completed against a negotiated schedule of values, and
8 does not earn payment simply for incurring costs. In the unlikely event that ADP was
9 unable to complete the decommissioning work for any reason, both DEF and the
10 Florida customers are protected by the fact that DEF would have only paid for
11 verified progress against specific decommissioning milestones, retaining all other
12 funding in trust to support future alternatives.

13

14 **Q. Considering the DSA structure, and key protections of only paying for**
15 **decommissioning work completed, Mr. Polich still spends much of his testimony**
16 **analyzing the NorthStar financial statements. What is your understanding as to**
17 **why he spends so much time on this topic?**

18 A. It appears Mr. Polich is focusing on one provision of the DSA, which is the provision
19 obligating the parent companies of the ADP Group, NorthStar and Orano, to provide
20 a parent guaranty to back up the obligations of the ADP Group in the event that the
21 ADP Group fails to fulfill its obligations under the DSA. Considering the structure of
22 the DSA, the parent guaranty is a supplemental enhancement rather than a core
23 protection in the transaction structure. Mr. Polich is apparently attempting to redirect

1 attention from the broader DSA structure to undermining and questioning the
2 financial wherewithal of NorthStar, since it allegedly impacts the value of the parent
3 guaranty provision in the DSA. While Mr. Hobbs will testify to the overall DSA
4 structure in greater detail, Mr. Polich's approach makes several inaccurate statements
5 and reaches incorrect conclusions about the financial position and valuation of
6 NorthStar that need to be corrected and rebutted for the record.

7

8 **Q. Do you agree with Mr. Polich's testimony regarding NorthStar's financial**
9 **position?**

10 A. No, as I explain in detail below. But I wanted to first provide context for Mr. Polich's
11 testimony, and therefore my rebuttal testimony, since he is overly focused on one, of
12 many, provisions included in the DSA.

13

14 **Overview of NorthStar Financial Statements**

15

16 **Q. Is Mr. Polich a CPA?**

17 A. No, he does not indicate that he has any financial training on his resume. He appears
18 to be an engineer. I understand he testified during his deposition that he considers
19 courses taken while earning his MBA more than thirty years ago to be finance
20 training. He does not appear to have any recent experience or training in accounting
21 or finance, and a number of his conclusions are not financially credible.

22

1 **Q. Has Mr. Polich ever served as a financial executive, credit analyst, or an**
2 **auditor?**

3 A. No, his resume does not reflect any such previous work employment.
4

5 **Q. Based on Mr. Polich’s testimony, do you believe he has a current and**
6 **comprehensive understanding of the specific accounting rules that govern the**
7 **creation of financial statements (GAAP)?**

8 A. No, Mr. Polich’s testimony includes a number of factually inaccurate statements
9 about accounting, accounting principles, and financial statement presentation. For
10 example, he incorrectly characterizes goodwill as being created by “. . . an
11 acquisition in which the purchase price is higher than the fair market value of the
12 purchase.” In reality, goodwill does not imply acquiring for more than fair value, but
13 instead represents the future economic benefits arising from other assets acquired in a
14 business combination that are not individually identified and separately recognized.
15 Despite Mr. Polich’s assertion that goodwill is typically amortized, this has not been
16 the base treatment under U.S. GAAP since the relevant accounting standards were
17 changed in 2001. He finds it noteworthy in his testimony that goodwill was not
18 written off when NorthStar’s ownership changed in 2017, when GAAP specifically
19 requires goodwill to be measured and reset to current values following an acquisition.
20

21 **Q. Are there other factual errors on accounting issues that you noted in Mr.**
22 **Polich’s testimony?**

1 A. Yes, there are several such errors. First, I disagree with his characterization of “Cost
2 and estimated earnings in excess of billings on uncompleted contracts” (CIE) as
3 “estimated earnings that may never materialize.” That is incorrect. CIE is a common
4 financial statement line item for contractors following percentage of completion
5 accounting, and represents the value already earned on contracts, in accordance with
6 GAAP, that has not yet been invoiced to a client as of a reporting cut-off date. This
7 timing item also applies to work being invoiced on a time and materials basis, where
8 the time required to assemble the invoice falls past the reporting cut-off date. In
9 addition, Mr. Polich characterizes NorthStar’s deferred income tax asset as a “delayed
10 filing of current income taxes” that will ultimately be paid to the government. He
11 actually has this reversed and is providing a somewhat accurate description of a
12 deferred tax liability. The reported asset represents deductions available on future tax
13 returns that will reduce future cash income tax expense.

14 On page 24 of his testimony, Mr. Polich also testifies that he “assigned 50% of its
15 long-term finance obligations as a current asset to recognize its encumbrance on
16 assets.” Perhaps this is a typographical error, as it does not make sense as written and
17 is inconsistent with Exhibit RAP-7. Long-term financing obligations are non-current
18 liabilities, not current assets. Finally, Mr. Polich attempts to opine on the proper
19 accounting treatment for the Parent Support Agreement (“PSA”) under GAAP on
20 page 31 of his testimony. His conclusion that the PSA creates a liability that should
21 be recognized in a company’s financial statements is incorrect and not supported by
22 GAAP. From an accounting perspective, execution of the PSA creates a contingent
23 obligation with a remote probability of being called, and therefore is not appropriate

REDACTED

1 to recognize in financial statements presented under GAAP. His testimony attempts
2 to build further conclusions around pre-funding the PSA on top of this flawed
3 interpretation.

4

5 **Q. Are there other factual errors in Mr. Polich's testimony?**

6 A. Yes, in at least three different points in Mr. Polich's deposition he states that there are
7 no restrictions on NorthStar's ability to pay dividends to NorthStar's investors or
8 parent entities (p. 58, p. 120, p. 144 of my Exhibit No. __ (JA-2)). [REDACTED]

9

10

11 [REDACTED] In addition, on page 79 of his deposition Mr. Polich
12 testifies that Vermont Yankee generates a "significant amount of accounts receivable"
13 for NorthStar (See Exhibit No. __ (JA-2). In reality, Vermont Yankee generates no
14 accounts receivable under GAAP, as NorthStar already owns the source of payment.

15

16 **Q. How do these issues with Mr. Polich's testimony impact the credibility of the
17 remainder of his testimony?**

18 A. Mr. Polich draws a number of broad sweeping conclusions to reach his recommended
19 course of action and opines on NorthStar's financial situation based on his expertise.
20 Incorrect characterization of basic accounting principles, holding out inaccurate
21 financial information multiple times as fact, and representing accounting standards
22 that are out of date by nearly 20 years as current GAAP undermines the credibility of
23 the remaining financial review performed.

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Q. Beyond the factual misstatements and level of foundational financial and accounting knowledge demonstrated, do you have other concerns about the focus of and approach to Mr. Polich’s testimony?

A. Yes, consistent with earlier comments, I question whether sufficient rigor was applied to understanding NorthStar’s financial position in the context of the full DSA and negotiated protections. The testimony adopted a much narrower approach of primarily focusing on a hypothetical financial distress scenario to ask for \$105M of incremental cash funding on a \$540M project and reduce working capital available to support the work, ignoring the existing DSA protections negotiated by a sophisticated counter-party that retained control of the funding source. There were also inconsistencies in the testimony that suggested an unwillingness to objectively look at the full context of the transaction. For example, Mr. Polich’s testimony acknowledged NorthStar’s 2017 ownership change, with new equity invested and the balance sheet deleveraged to improve the Company’s financial position. This was part of a conscious strategy to make the Company a more credible counter-party for nuclear decommissioning transactions, and the Company has flourished for the last three years under this capital structure, with steadily rising revenues and profitability. Despite this known context, Mr. Polich continued to testify to financial results as old as 2014, under different ownership and capital structure, as evidence of the Company’s forward-looking financial prospects.

REDACTED

1 **Q. Mr. Polich makes a sweeping assessment of NorthStar’s financial situation on**
2 **page 24 of his testimony. What is your response to that opinion?**

3 A. I completely disagree with his assessment.
4

5 **Q. From your perspective, what is the proper context for evaluating NorthStar’s**
6 **financial position?**

7 A. The Company should be evaluated as a going concern, and not on a hypothetical
8 liquidation salvage value. NorthStar generated [REDACTED] of revenue in 2019, resulting
9 in [REDACTED] of net income. Net cash generated from operating activities, defined
10 according to GAAP, was [REDACTED]. In 2019 “Earnings before Interest, Taxes,
11 Depreciation, and Amortization” (EBITDA), a common financial measurement used
12 as a proxy for cash earnings, was [REDACTED] implying a market value of nearly [REDACTED]
13 [REDACTED] or more using common earnings multiples for companies with similar profiles.
14 This is in contrast to the minimal or negative available resources calculated in Mr.
15 Polich’s hypothetical scenario. Despite continuing growth and the 2019 dividend
16 payment referenced by Mr. Polich, the Company remains conservatively leveraged,
17 with a net leverage ratio (Net debt / EBITDA) of only [REDACTED] at year-end 2019.
18 Consistent with my going concern testimony above, these results are sustained by
19 [REDACTED] of reported revenue backlog entering 2020, and a larger pipeline of
20 additional opportunities. 2020 has continued the strong performance trends to date,
21 with both revenue and EBITDA up significantly compared to 2019 through the first
22 four months of 2020. Mr. Polich’s failure to acknowledge this full context, before

1 moving to a hypothetical “financial hardship” case, further reduces the credibility of
2 his conclusions in the full context of the transaction.

3

4 **Q. Can you clarify your basis for continuing to characterize Mr. Polich’s “financial
5 hardship” case as hypothetical?**

6 A. Yes, I summarized NorthStar’s current financial performance, leverage, and
7 approximate market value in my testimony above. Mr. Polich testified that his
8 assessment was focused on NorthStar’s ability to weather unfavorable economic
9 conditions or losses on other projects. NorthStar has demonstrated the ability to
10 maintain and raise financial performance through a period of 2020 that included one
11 of the most abrupt economic disruptions in the Country’s history, and NorthStar’s
12 performance and modest leverage provide the ability to raise debt and equity in an
13 orderly way to support the operations and valuation of the business if needed in the
14 future. Translating this backdrop to what is effectively a liquidation scenario as a
15 basis for making transaction recommendations is not a realistic scenario, particularly
16 in the full context of the DSA.

17

18 **Mr. Polich’s Suggested Enhancements are Not Necessary**

19

20 **Q. Have you reviewed the five recommended “enhancements” that Mr. Polich
21 advises the Commission to impose on this transaction?**

22 A. Yes, and I disagree with all of them. Mr. Hobbs will respond to them in more detail
23 in his rebuttal testimony, but I have a few additional points to make with respect to

1 why they are unnecessary for this transaction and based on incorrect information and
2 conclusions.

3

4 **Q. Mr. Polich states in his opening summary on page 7 that “None of the**
5 **recommended enhancements should cause detriment to the finances of this**
6 **project or the entities involved.” Do you agree with this statement?**

7 A. No, this statement is complete speculation and unsupported by any evidence.
8 NorthStar is one of the entities involved in this transaction, and imposition of these
9 “enhancements” would absolutely impact the overall finances of this transaction.
10 NorthStar and Orano formed the ADP Group and developed a specific and tailored
11 bid to decommission CR3. The resulting DSA, taken as a whole and without
12 changes, is the result of months of negotiation and give and take. What Mr. Polich is
13 couching as “enhancements” are really just changes and amendments to the deal, and
14 they do impact the overall project. Mr. Polich is also inconsistent on this point.
15 Despite his testimony of “no detriment to project finances,” when pressed in
16 deposition, Mr. Polich testified that these contract changes might be worth \$10M.
17 See page 149-150 of Exhibit No. __ (JA-2). This is an unsupported number, but
18 simply another example of Mr. Polich providing inaccurate or inconsistent assertions.
19

20 **Q. Can you give an example of how one of Mr. Polich’s suggested amendments**
21 **would impact NorthStar?**

22 A. Yes. As previously noted, Mr. Polich recommends that NorthStar be obligated to
23 maintain \$105M of cash or cash equivalent asset during this transaction. Suggesting

REDACTED

1 that tying up approximately 20% of a project's total revenue value up front, in cash,
2 should have no detrimental impact to project or entity finances further undercuts Mr.
3 Polich's credibility to speak as a financial expert. Capital has a cost, and this is a
4 material use of cash that was not contemplated in the transaction economics. In
5 addition, his argument for this point is based on a flawed accounting premise, as
6 previously discussed.

7 I would also note that Mr. Polich, during his deposition, refused to acknowledge that
8 this requirement would reduce resources available to complete the decommissioning
9 work. In another example of inconsistent and inaccurate testimony, he represented
10 multiple times that restricted cash or trust assets could be borrowed against (see pages
11 61, 119-20 of Exhibit No. __ (JA-2), while testifying in his deposition that the
12 existing Vermont Yankee trust funds should be assigned a value of zero in his
13 financial analysis. Beyond this inconsistency in his testimony, his testimony is also
14 inaccurate, as this type of borrowing is also prohibited by the Company's existing
15 credit agreement.

16
17 **Q. Do you have any other comments about Mr. Polich's suggested amendments?**

18 A. Yes, regarding the request to increase the retainage from six percent to ten percent, I
19 believe Mr. Polich fails to appreciate the significance of the [REDACTED]
20 [REDACTED] and the value that creates for DEF's customers. Waste disposal is a key
21 cost variable and risk in any decommissioning project, and the committed value of
22 this airspace directly offsets the cost of completing the project. I would also note that
23 Mr. Polich is wrong about the details of the VY transaction. He asserts that NorthStar

REDACTED

1 agreed to ten percent in that deal, but the ten percent retainage only starts after
2 NorthStar has taken \$100 million from that trust fund. By comparison, in this
3 transaction, the six percent retainage begins immediately. That is in addition to the
4 significant value of the initial \$50 million funding, including the [REDACTED]
5 So with respect to this item, the CR3 transaction actually offers more upfront
6 protection, in a transaction structure where the counterparty retains control of the
7 decommissioning trust. Consistent with my previous testimony, he also
8 misrepresents the ability to borrow against these provisional trust assets and remains
9 inconsistent by stating that these assets remain available to the project despite
10 assigning zero value to the Vermont Yankee trust assets in his analysis.

11

12 **Q. Do you have any other comments on comparisons made to NorthStar's Vermont**
13 **Yankee transaction?**

14 A. Yes. Mr. Polich makes a number of comparisons between the CR3 structure and the
15 VY transaction. It appears he has selectively chosen certain terms from that
16 transaction to apply in this transaction without appropriate consideration of the full
17 context. There are key differences in the framework of the two deals that make the
18 CR3 deal more favorable for customers. First, in VY, there was no remaining utility
19 over which the Vermont PUC could regulate. Entergy is now completely out of the
20 state of Vermont. Accordingly, the state of Vermont had motivation to include
21 additional terms, including inclusion on the parent support guaranty with the NRC, as
22 they had reduced regulatory oversight over NorthStar compared to a public utility
23 company such as Entergy. By contrast, DEF is still the owner of CR3 and the FPSC

1 maintains regulatory oversight over DEF as a utility company. Second, in the VY
2 structure NorthStar owns the NDF, so there is no separate oversight (other than from
3 the NRC) of disbursements from the fund. In this transaction, DEF retains ownership
4 and control of the NDF. Mr. Hobbs more fully explains the value of this fact in his
5 testimony.

6 In addition, given that Mr. Polich suggested that NorthStar is over-extended because
7 of its work on VY and thus questioned NorthStar's ability to complete the CR3
8 decommissioning, I think it is important to provide an update on the status of the VY
9 decommissioning. NorthStar is currently on budget and on schedule with the
10 decommissioning after 1.5 years of completed work, with favorable regulatory
11 feedback and a perfect safety record to date. Despite Mr. Polich's attempts to
12 characterize Vermont Yankee as being dramatically different in scope or creating
13 undue financial risk for NorthStar, the work in Vermont generated only 16% of
14 NorthStar's 2019 revenue. NorthStar's successful track record on Vermont Yankee
15 underscores its credentials and reinforces its capabilities to participate in this
16 important project for DEF in a manner that will also be favorable to DEF's
17 customers.

18

19 **Q. Does that conclude your testimony?**

20 A. Yes.

21

22

23

Jeffrey P. Adix

Professional Experience

Waste Control Specialists LLC – Dallas, Texas (December 2018 – Present)

Vice President and Chief Financial Officer

- Waste Control Specialists (WCS) is a treatment, storage, and disposal company dealing in radioactive, hazardous, and mixed wastes. WCS is the only privately owned and operated facility in the United States that has been licensed to treat, store and dispose of Class A, B and C low-level radioactive waste.

NorthStar Group Services, Inc. – New York, New York (January 2016 – Present)

Vice President, Chief Financial Officer, and Treasurer

- NorthStar is the largest demolition, decommissioning, and environmental remediation company in the United States, with more than \$600 million of annual revenue generated across a national platform.

Fiserv, Inc. – Brookfield, Wisconsin (November 2013 – October 2015)

Senior Vice President Finance – Depository Institution Services Group (03/14 – 10/15)

Senior Vice President Finance – Financial Institutions Group (11/13 – 02/14)

- Group Chief Financial Officer for multiple \$1-2 billion operating groups within Fiserv. Fiserv (NASDAQ: FISV), is a leading global payments and financial technology provider, with annual revenue of more than \$10 billion.

Veolia Environmental Services North America Corp. – Chicago, Illinois (December 2012 – August 2013)

President and Chief Executive Officer

- Full P&L responsibility for the \$800M North American Environmental Services business of Veolia Environnement (NYSE: VE and Paris Euronext: VIE), a global company with 2012 revenues of over \$38B.

ManpowerGroup Inc. – Milwaukee, Wisconsin (March 2009 – November 2012)

Vice President – Audit Advisory Services (04/11 – 11/12)

- Chief Audit Executive for this \$20 billion publicly-traded staffing and workforce solutions company (NYSE: MAN – fka Manpower Inc.), with operations spanning more than 80 countries.

Executive Vice President and Chief Financial Officer (CFO) – Right Management Inc. (03/09 – 03/11)

- Leadership Team member for global professional services business owned by ManpowerGroup, with operations generating peak revenue of more than \$500M across approximately 30 countries.

Veolia Environmental Services North America Corp. – Chicago, Illinois (November 2000 – February 2009)

Senior Vice President of Support Services (01/07 – 02/09) (Promoted from VP to Sr. VP in 01/08)

- Executive committee member for the \$2.2 billion North American Environmental Services business of Veolia Environnement (VE), reporting to the CEO.

Vice President of Finance & Chief Financial Officer (11/00 – 02/09) (CFO title added in October 2005)

- Top financial executive of the \$850M Solid Waste business unit of Veolia North America.

S.C. Johnson and Son, Inc. - Racine, Wisconsin (January 1997 – November 2000)

Area Controller -- Americas Region (10/98 – 11/00)

Financial Support Manager -- International Finance (1/97 - 10/98)

Arthur Andersen LLP - Milwaukee, Wisconsin

(July 1989 - December 1996)

Experienced Manager & Consulting Segment Leader for Shareholder Value and Cost Management Services
(Final Position)

Education and Certification

- Master of Business Administration (MBA) - University of Wisconsin – Milwaukee, 2004.
- Bachelor of Science in Business Administration - Drake University, Des Moines, Iowa, 1989.
Summa cum laude – Degrees in Accounting, Corporate Finance and Computer Information Systems.
- Certified Public Accountant

Other Community and Professional Activities

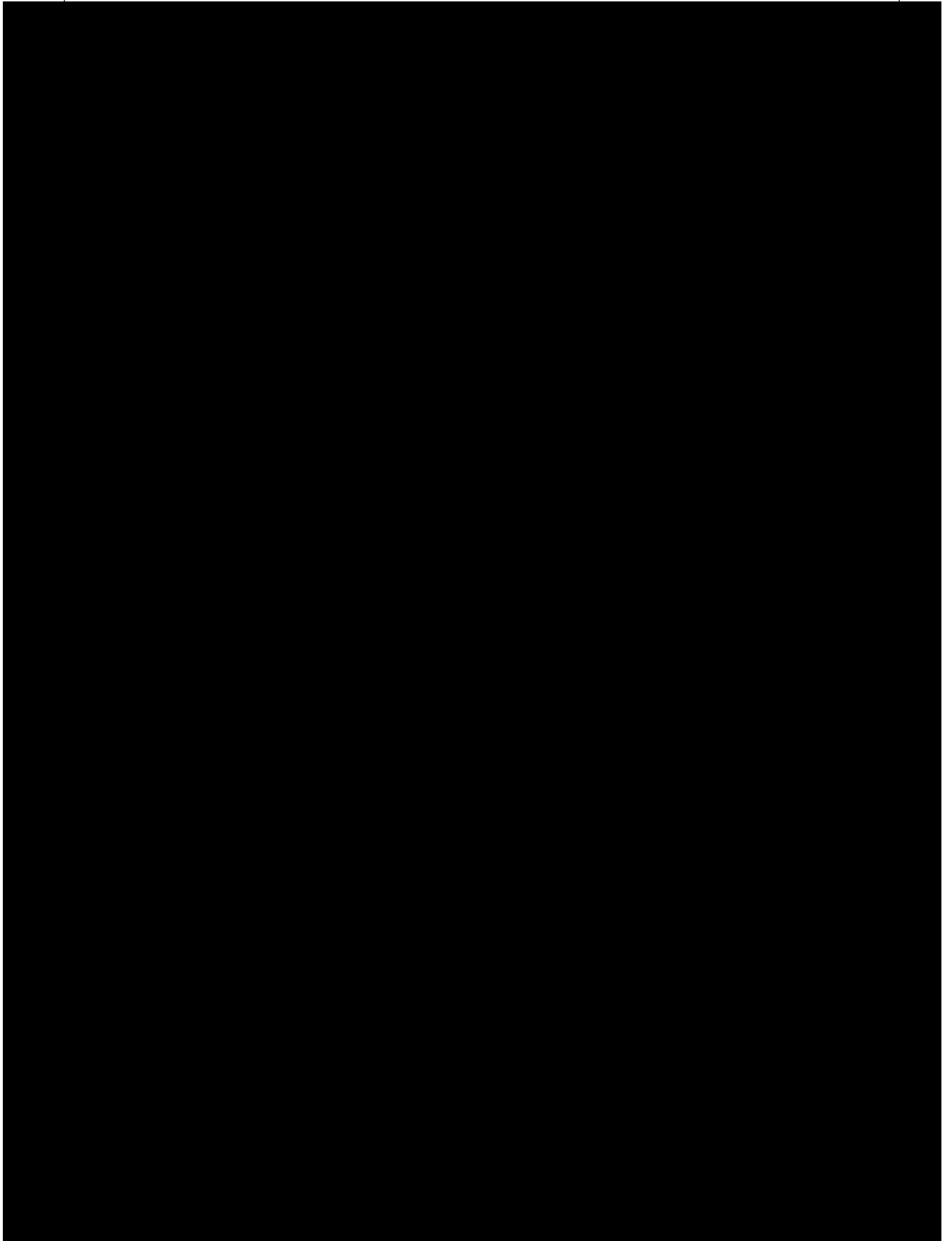
- Wisconsin Independent Learning College – Board Treasurer (July 2014 – July 2016)
- Best Buddies Wisconsin – Advisory Board (June 2011 – December 2013)
- Solid Waste Association of North America – International Board (June 2003 – September 2006)

**Excerpts from the
Confidential Deposition
of
Richard A. Polich, P.E.
taken on
June 12, 2020**

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June 12, 2020

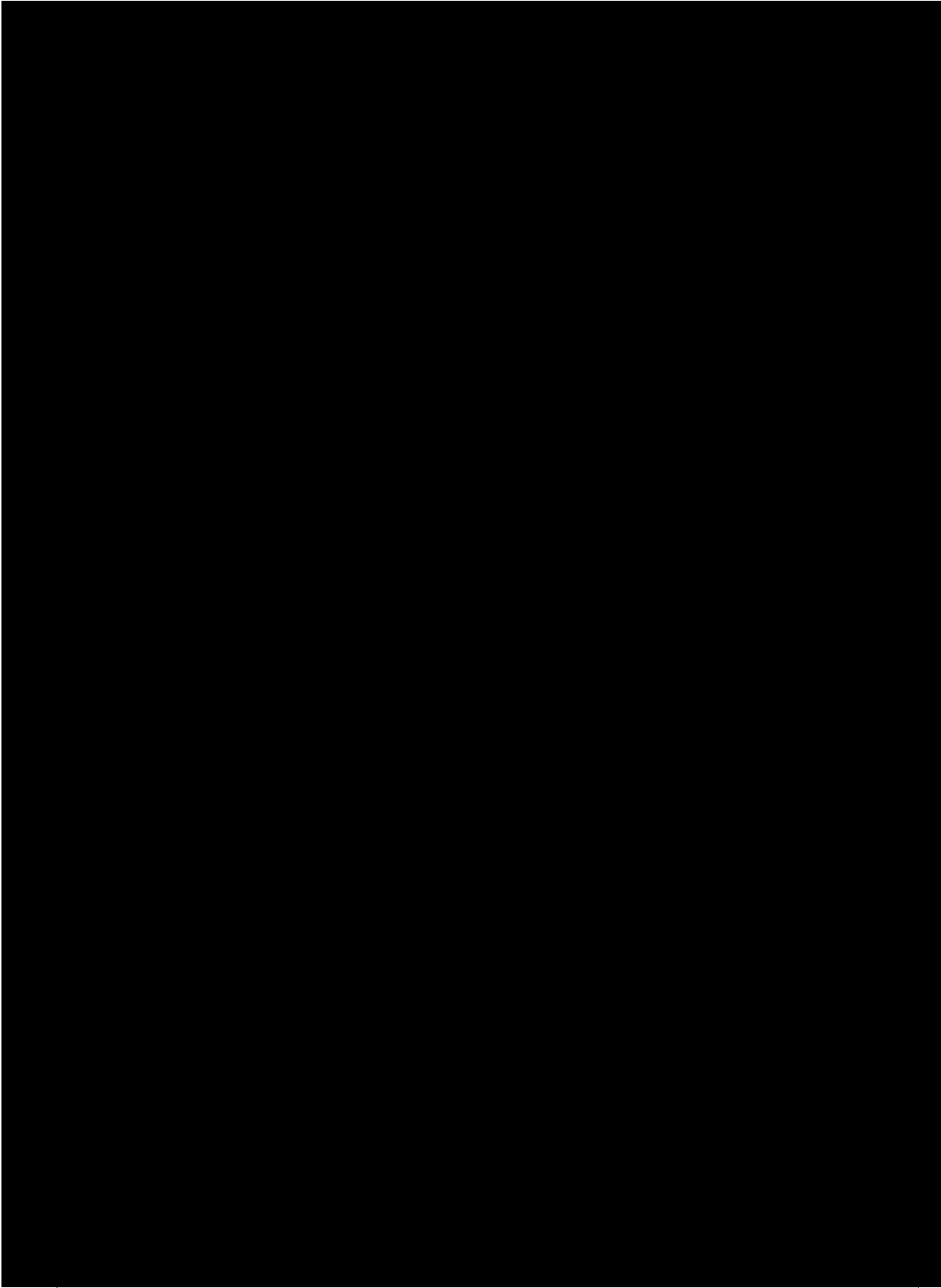
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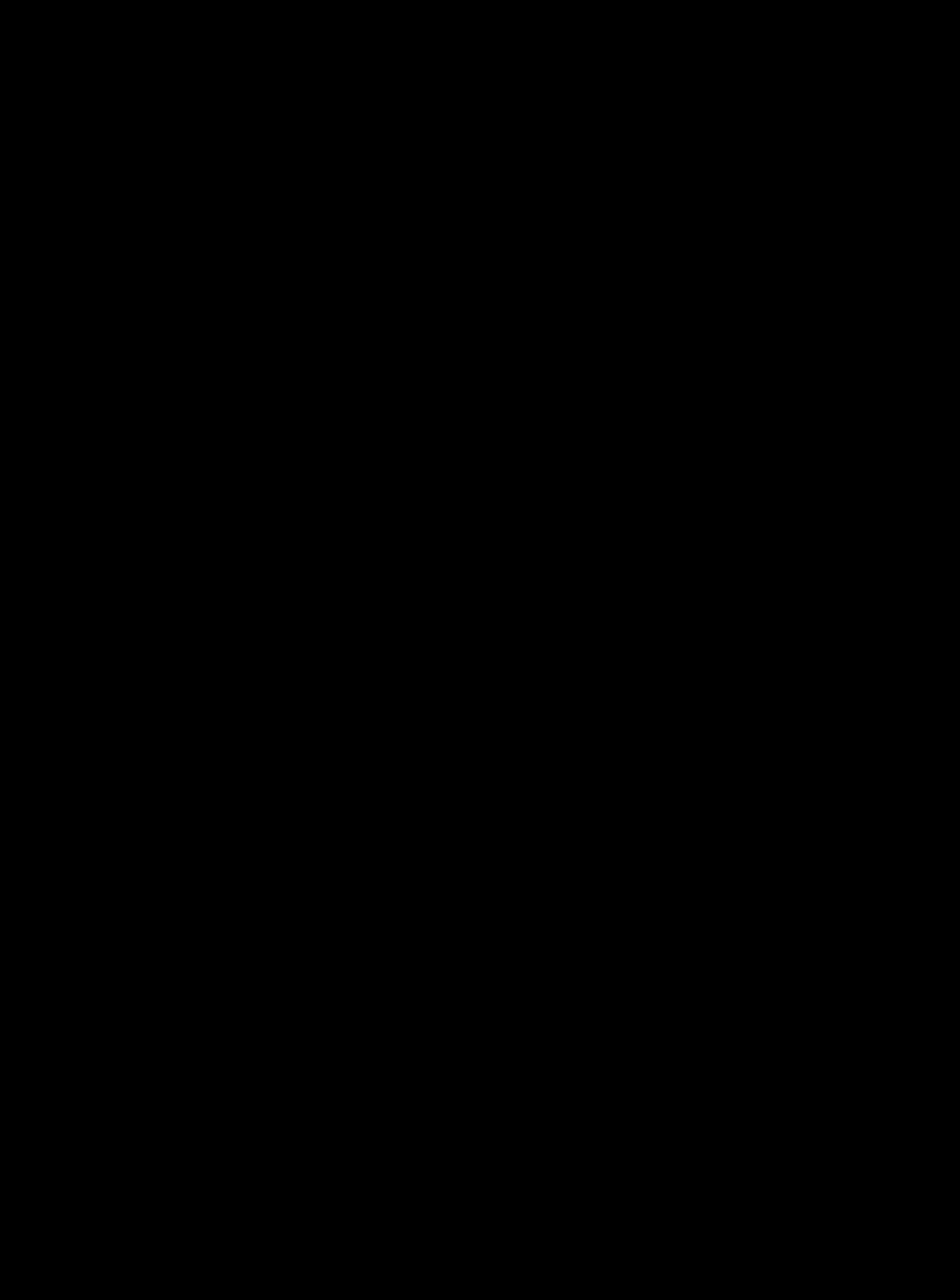
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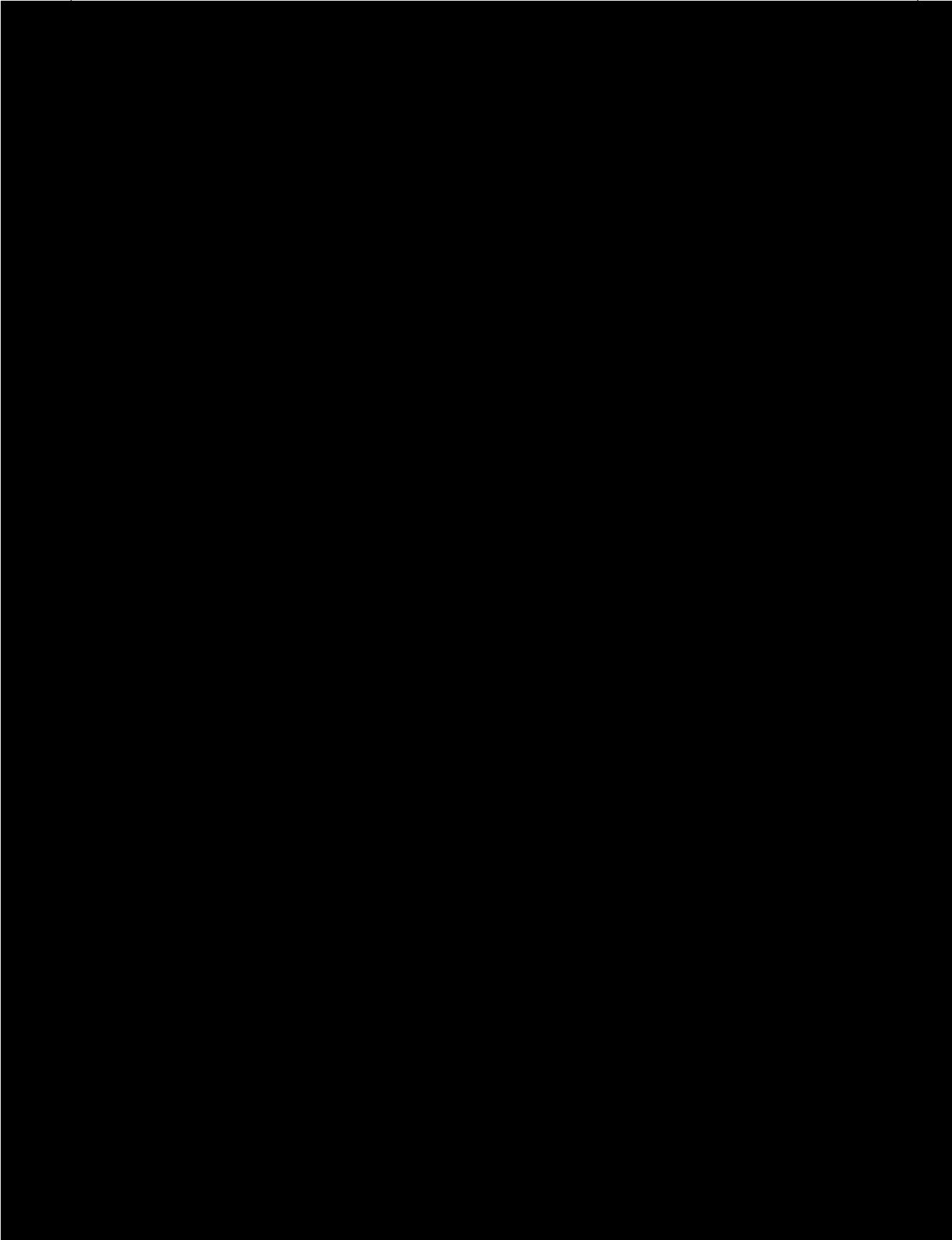
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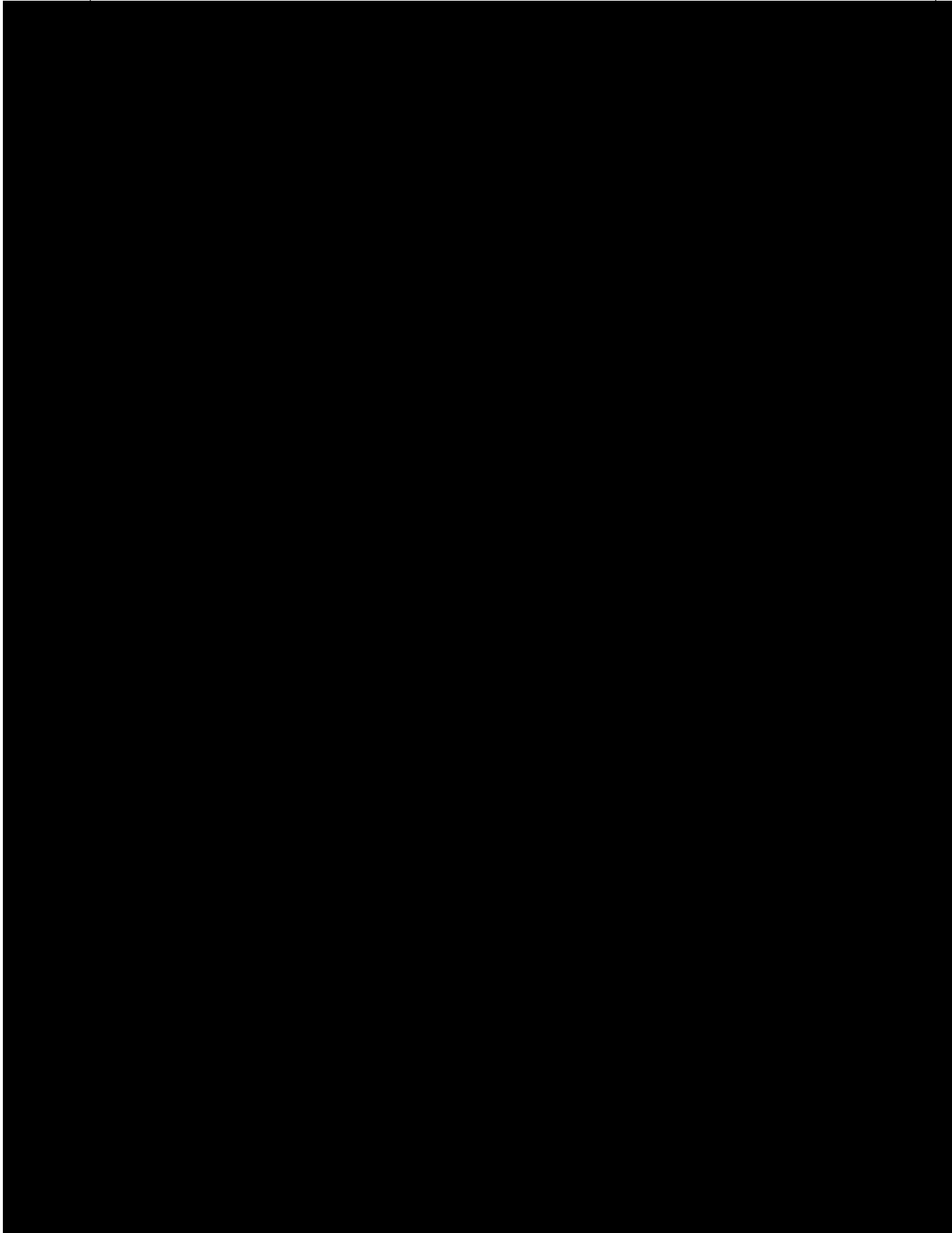


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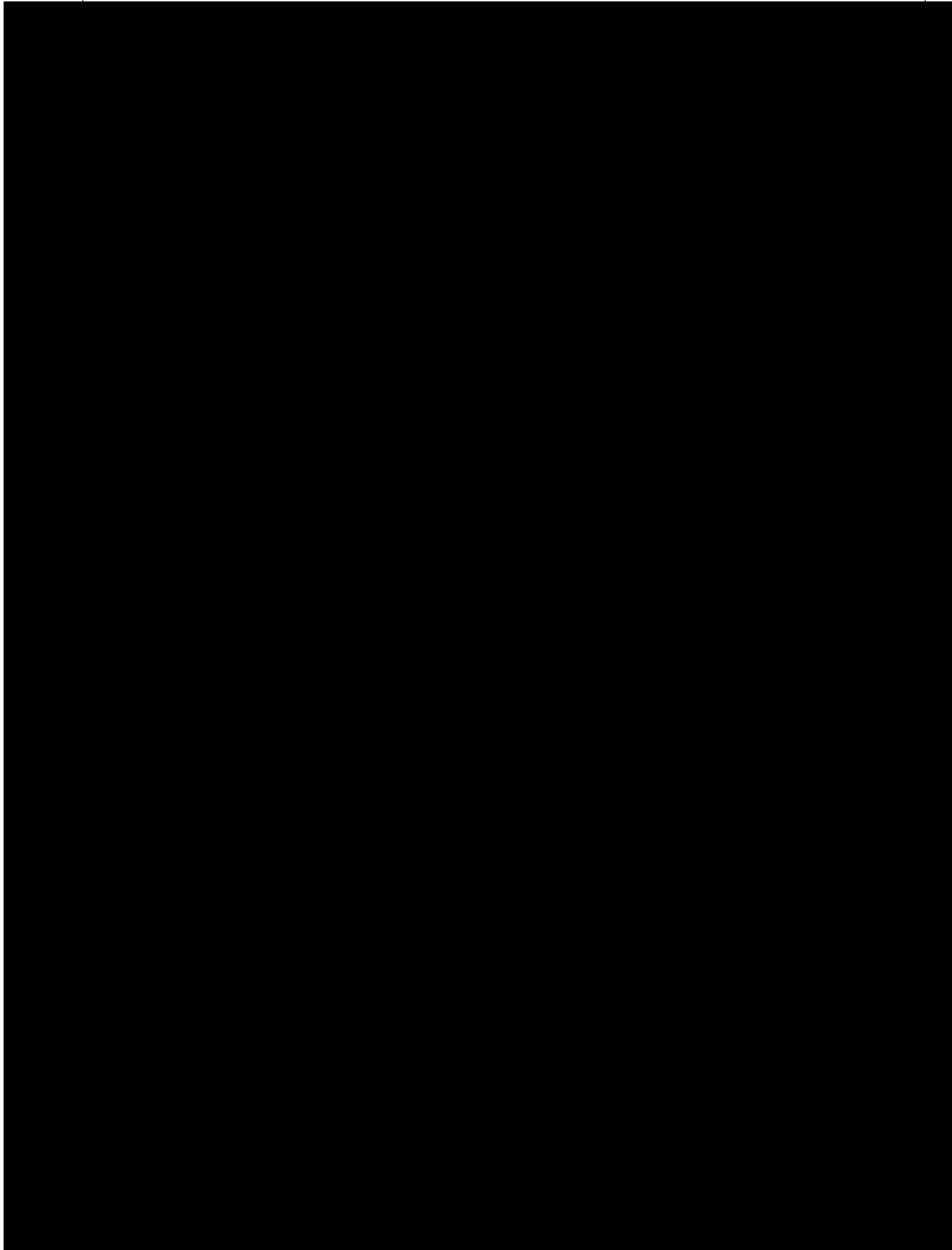
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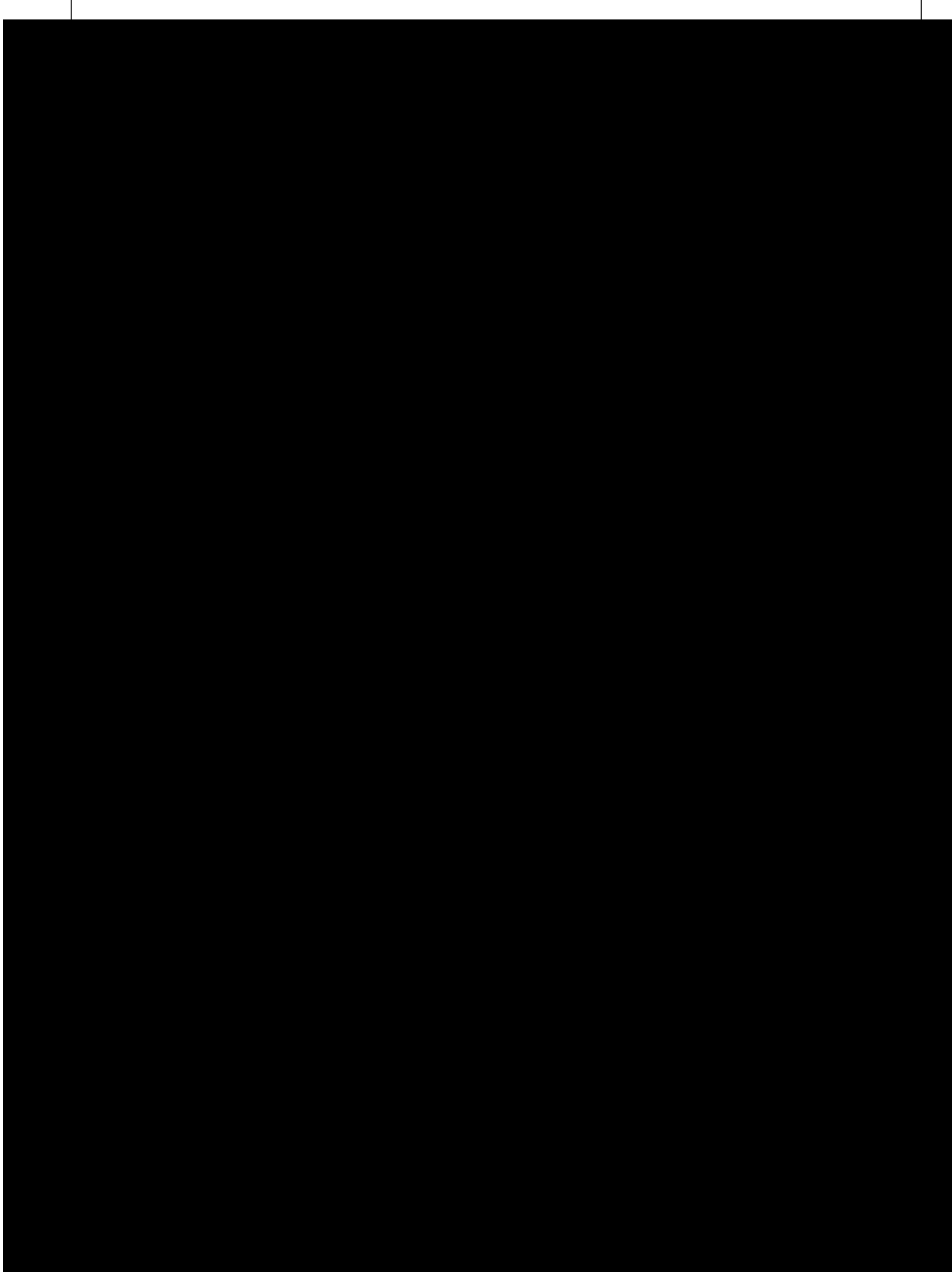
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