

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  
ORDER NO. PSC-2020-0228-PHO-EI  
ISSUED: July 6, 2020

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on June 30, 2020, in Tallahassee, Florida, before Commissioner Donald J. Polmann, as Prehearing Officer.

APPEARANCES:

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On behalf of Duke Energy Florida, LLC (DEF)

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On behalf of Duke Energy Florida, LLC (DEF)

J.R. KELLY, Public Counsel, and CHARLES REHWINKEL, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400  
On behalf of the Citizens of the State of Florida (OPC)

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On behalf of the Florida Industrial Power Users Group (FIPUG)

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On behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate)

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On behalf of the Florida Public Service Commission (Staff)

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Advisor to the Florida Public Service Commission

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Florida Public Service Commission General Counsel

## **PREHEARING ORDER**

### **I. CASE BACKGROUND**

On July 10, 2019, Duke Energy Florida, LLC (DEF) filed its petition to approve the accelerated decommissioning of its Crystal River Unit 3 (CR3) nuclear power plant and the transfer of spent fuel and associated assets, license and operations to Accelerated Decommissioning Partners, LLC., (ADP) and its affiliates. An Order Establishing Procedure, Order No. PSC-2019-0320-PCO-EI, was issued on August 2, 2019, initially modified by Order No. PSC-2019-0384-PCO-EI, issued on September 20, 2019, and further modified by Order No. PSC-2020-0105-PCO-EI, issued on April 15, 2020. The Office of Public Counsel (OPC), Florida Industrial Power Users Group (FIPUG) and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate –White Springs (PCS Phosphate) have been acknowledged as parties or granted intervention in this case. This matter is set for administrative hearing before the Florida Public Service Commission (Commission) on July 7 and 8, 2020.

### **II. CONDUCT OF PROCEEDINGS**

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

State buildings are currently closed to the public and other restrictions on gathering remain in place due to COVID-19. Accordingly, the hearing will be conducted remotely, and all parties and witnesses shall be prepared to present argument and testimony by communications media technology. The Commission shall act as the host of the hearing and will use a combination of technologies to ensure full participation. The Commission will employ GoToMeeting as an audio and video platform for the hearing, and will provide for simultaneous, audio-only participation by telephone.

A GoToMeeting invitation shall be provided to counsel for each party. It shall be the responsibility of counsel to provide their clients, client representatives, and witnesses with the invitation, which will allow them to access the hearing. Counsel for each party will also be provided the call-in number for audio participation.

Any member of the public who wants to observe or listen to the proceedings may do so by accessing the live video broadcast on each day of the hearing, which is available from the FPSC website. Upon completion of the hearing, the archived video will also be available.

### **III. JURISDICTION**

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, 28-106, and 28-109, F.A.C., as well as any other applicable provisions of law.

### **IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION**

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must follow the procedures for providing confidential electronic exhibits to the Commission Clerk prior to the hearing.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by electronic exhibit.

If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

**V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES**

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

**VI. ORDER OF WITNESSES**

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
David L. Doss	DEF	1, 3-5
*Matthew Palasek	DEF	1

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Scott E. State	DEF	1
Terry Hobbs	DEF	1-8
Richard A. Polich	OPC	1, 7-8

#### Rebuttal

Jeff Adix	DEF	1
Terry Hobbs	DEF	1-8

\* This witness has been stipulated to by the parties.

## **VII. BASIC POSITIONS**

**DEF:** The Commission should (1) approve a transaction between DEF and Accelerated Decommissioning Partners, LLC (“ADP”), pursuant to which DEF will contract with ADP through two of its subsidiaries, ADP CR3, LLC (“ADPCR3”) and ADP SF1, LLC (“ADPSF1”) to decommission the CR3 Facility on an accelerated basis, (2) approve DEF’s updated nuclear decommissioning study, and (3) approve, if necessary, DEF’s request for a waiver from the requirements contained in Rule 25-6.04365, F.A.C., which requires DEF to continue filing updated nuclear decommissioning studies with the Commission every five years. As demonstrated by DEF’s testimony, exhibits, and the extensive discovery produced in this proceeding, this fixed-price transaction provides DEF’s customers with significant benefits and protections that will help ensure the CR3 nuclear plant is safely decommissioned. This transaction is in the best interest of DEF’s customers. DEF’s trust fund is currently sufficient to pay for the plant’s accelerated decommissioning without an increase in customer bills. The fixed-price contract will lock in today’s prices, which provides greater cost certainty relative to a delayed decommissioning approach. Accelerating the decommissioning allows for faster restoration and redevelopment of the nuclear plant property for DEF’s future use and gives DEF a potential opportunity to return unused trust fund dollars to customers more than three decades sooner than the current decommissioning model. The DSA includes significant and appropriate protections for DEF’s customers, the most significant such protection being the fact that DEF owns and controls the trust fund and will only pay for work that is completed. OPC’s witness Richard Polich’s suggested “enhancements” are actually new and unnecessary terms in an attempt to re-negotiate a deal that does not require any such changes. The Commission should

approve the DSA as presented, without modification, and preserve the real value that DEF has negotiated for its customers.

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

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

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

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

spends the customer' money as it was intended when it was collected from the customers and held in trust for the eventual dismantlement, decontamination and decommissioning of CR3. This regulatory responsibility is ongoing and unceasing -- until the job is complete.

**FIPUG:** FIPUG appreciates DEF's efforts actively manage the vexing questions regarding how to best manage nuclear material, including spent nuclear fuel rods at DEF's Crystal River 3 (CR3) closed nuclear power plant site. Given the unexpected series of events that prompted the closure of CR3, the parties and the Commission should closely and actively review DEF's proposal to transfer legal ownership of nuclear waste material, including spent nuclear fuel rods, to a third party. This active review should include:

- ensuring that the third party is financially capable of meeting its obligations and that sufficient financial assurance instruments are in place;
- protecting DEF's customers from fiscal responsibility should the third party not meet its financial or contractual obligations;
- ensuring that sufficient funds exist in DEF's nuclear decommissioning trust fund, and to the extent of overfunding, pursue steps to return overfunded amounts to DEF's customers;
- returning a portion of any projected savings to DEF's customers resulting from DEF's proposed transaction to DEF's customers now rather than in 30 years;
- having an independent third party retained by the Commission monitor the project and provide periodic reports to the Commission and the parties.

## **PCS**

**Phosphate:** For many years, Duke Energy Florida, LLC ("DEF" or "Duke") consumers paid for the cost of the eventual decommissioning of the Crystal River 3 ("CR3") nuclear plant through an annual accrual recovered in rates. The Commission approved halting that accrual in 2002 because Duke and the Commission deemed the accumulated assets in the nuclear decommissioning trust fund ("NDF") to be sufficient to fully cover expected decommissioning and dismantlement costs. At the same time, notwithstanding the requirements of the 1982 Nuclear Waste Policy Act and decades of debate, the country is really no closer to establishing a high-level nuclear waste repository than when CR3 entered commercial service in 1977.

With the premature retirement of CR3 associated with multiple equipment and structural failures, and a fresh approach to decommissioning and dismantlement, Duke now proposes to transfer responsibility for decommissioning CR3 and for managing the maintenance and storage of the CR3 spent fuel and high level

radioactive wastes to a third party, Accelerated Decommissioning Partners, LLC (“ADP”), a special purpose entity created for this endeavor. The expressed intent of the transaction is to accelerate decommissioning activities of CR3 by several decades, thus restoring the portion of the site not occupied by the Independent Spent Fuel Storage Installation for other potential uses. Based on the fixed price provisions of the Decommissioning Service Agreement (“DSA”), Duke hopes that there may actually be remaining funds from the NDF that could be refunded to future DEF customers (not once the decommissioning and dismantlement is accomplished, but after the high level wastes are accepted by the federal government and moved off site).

PCS sees merit in the proposal to accelerate the decommissioning of the CR3 plant; however, concerns that the immediate and near term risks to consumers that the NDF account balance will be largely consumed without accomplishing the end state objectives far out-weigh potential benefits that are, at best, twenty years distant. These risks are exacerbated by the financial and corporate structure of the ADP organization. The customer protection enhancements proposed by Office of Public Counsel (“OPC”) witness Richard A. Polich in his direct testimony address the need to mitigate the consumer impacts in the case of inadequate, insufficient or incomplete performance by ADP during the course of the project. PCS supports DEF’s efforts to accelerate decommissioning of CR3 and potentially accelerate return of unspent portions of the Nuclear Decommissioning Fund, but only if the Commission incorporates the customer protection enhancements proposed by OPC.

**Staff:** Staff’s positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff’s final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

## **VIII. 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)?**

### **POSITIONS:**

**DEF:** Yes. The Commission should approve the transactions as contemplated. The transactions are in the best interest of DEF’s customers.  
(Witness: Terry Hobbs, Scott State, David Doss, Matt Palasek, Jeff Adix)

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

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

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

**FIPUG:** Yes, if the conditions set forth in FIPUG's Statement of Basic Position are met.

**PCS**

**Phosphate:** Agree with OPC.

**STAFF:** Staff has no position at this time.

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

**POSITIONS:**

**DEF:** Yes. DEF's proposed transaction with ADP and its subsidiaries for decommission CR3 is consistent with the 2017 Settlement.  
(Witness: Terry Hobbs)

**OPC:** It is not clear whether it is the intent that surcharges for NDF deficiencies discovered after December 31, 2021 can be collected from future DEF customers.

At this point, the OPC has not determined that any notion contained in the Petition filed in this docket (and the testimony incorporated by references) that concludes that future deficiencies can be recovered from future customers is consistent with the RRSSA.

**FIPUG:** Adopt position of Office of Public Counsel.

**PCS**

**Phosphate:** The 2017 Second Revised and Restated Stipulation and Settlement agreement did not contemplate the partial transfer and delegation of decommissioning responsibilities to a third party. PCS agrees with OPC.

**STAFF:** Staff has no position at this time.

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

**POSITIONS:**

**DEF:** 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.  
(Witness: Terry Hobbs, David Doss)

**OPC:** No.

**FIPUG:** Adopt position of Office of Public Counsel.

**PCS**

**Phosphate:** Agree with OPC.

**STAFF:** Staff has no position at this time.

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

**POSITIONS:**

**DEF:** There is no requested annual accrual.  
(Witnesses: Terry Hobbs, David Doss)

**OPC:** \$0.

**FIPUG:** Adopt position of Office of Public Counsel.

**PCS**

**Phosphate:** \$-0-.

**STAFF:** Staff has no position at this time.

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

**POSITIONS:**

**DEF:** Not applicable.  
(Witnesses: Terry Hobbs, David Doss)

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

**FIPUG:** Adopt position of Office of Public Counsel.

**PCS**

**Phosphate:** Agree with OPC.

**STAFF:** Staff has no position at this time.

**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.?**

**POSITIONS:**

**DEF:** Yes, the Commission should waive the future filing of the studies every five years required by Rule 25-6.04365, F.A.C. The purpose of the studies is 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 are no longer necessary because the cost for the accelerate decommissioning of the CR3 Facility is contractually fixed at an amount that is less than the balance of funds currently available for decommissioning in the NDT.  
(Witness: Terry Hobbs)

**OPC:** Agree with FIPUG.

**FIPUG:** No, not unless the Commission imposes suitable reporting requirements as detailed in FIPUG's position on Issue 7 and an independent monitor to oversee the project on behalf of the Commission and consumer parties is put in place.

**PCS**

**Phosphate:** Agree with OPC.

**STAFF:** Staff has no position at this time.

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

**POSITIONS:**

**DEF:** DEF will submit an annual report to the Commission to ensure that the decommissioning activities outlined in the DSA are completed. The report will include the amount of funds paid to ADP CR3 LLC from the NDF during the previous year, the amount of funds remaining in the NDF, ADP CR3 LLC schedule performance for the previous year and project to date and an assessment of future schedule and pay projections.  
(Witnesses: Terry Hobbs)

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

**FIPUG:** The Commission should require that DEF provide it with timely and regular reports to ensure that decommissioning and spent fuel activities in the DSA are completed, that NDT funds are prudently spent and that sufficient funds remain to complete the decommissioning and spent fuel activities. The Commission should not grant any rule waiver or other waiver request to delay or excuse the submission of these or similar reports related to the handling of nuclear waste.

**PCS**

**Phosphate:** Agree with OPC.

**STAFF:** Staff has no position at this time.

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

**POSITIONS:**

**DEF:** Yes.  
(Witness: Terry Hobbs)

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

**FIPUG:** No, the Commission should retain jurisdiction over this matter to oversee the implementation of DEF's proposed handling of the nuclear material in question.

**PCS**

**Phosphate:** No position.

**STAFF:** Staff has no position at this time.

## IX. EXHIBIT LIST

<b>Witness</b>	<b>Proffered By</b>	<b>Exhibit #</b>	<b>Description</b>	<b>Issue #</b>
<b>Direct</b>				
Scott E. State	DEF	Exhibit No. __ (SS-1)	NorthStar Projects	1
Scott E. State	DEF	Exhibit No. __ (SS-2)	Orano Projects	1
Matthew Palasek	DEF	Exhibit No. __ (MP-1)	Request for Information	1
Matthew Palasek	DEF	Exhibit No. __ (MP-2)	RFP Bid Instructions and RFP Project Scope	1
Matthew Palasek	DEF	Exhibit No. __ (MP-3)	Bid Evaluation Process Framework	1
Richard A. Polich	OPC	RAP-1	Resume of Richard A. Polich, P.E.	1,7,8
Terry Hobbs	DEF	Exhibit No. __ (TH-1)	Decommissioning Services Agreement between DEF, ADPCR3, and ADPSF1	1-8
Terry Hobbs	DEF	Exhibit No. __ (TH-2)	DEF's Updated Nuclear Decommissioning Study	1-8
Richard A. Polich	OPC	RAP-2	List of Richard A. Polich Testimony	1,7,8
Richard A. Polich	OPC	RAP-3	Advanced Decommissioning Partners Organization	1,7,8
Richard A. Polich	OPC	RAP-4	DEF Response to Citizens Interrogatory 5.a.	1,7,8

Richard A. Polich	OPC	RAP-5	DEF Response to Citizens Interrogatory 5.e.	1,7,8
Richard A. Polich	OPC	RAP-6	NorthStar Group Holdings, LLC and NorthStar Group Services, Inc. Financial Statements	1,7,8
Richard A. Polich	OPC	RAP-7	DEF Response to Citizens Interrogatory 16	1,7,8
Richard A. Polich	OPC	RAP-8	NorthStar Financial Hardship Accessible Assets	1,7,8
Richard A. Polich	OPC	RAP-9	Comparison of Contract Provision Trust Funding	1,7,8
		<b>Rebuttal</b>		
Jeff Adix	DEF	Exhibit No. (JA-1)	Jeff Adix' Resume	1
Jeff Adix	DEF	Exhibit No. (JA-2)	Excerpts from Mr. Polich's Deposition	1

Parties and Commission staff reserve the right to identify additional exhibits for the purpose of cross-examination.

#### **X. PROPOSED STIPULATIONS**

The parties have stipulated that witness Matthew Palasek can be excused and his testimony and exhibits inserted into the record as though read.

#### **XI. PENDING MOTIONS**

There are no pending motions at this time.

#### **XII. PENDING CONFIDENTIALITY MATTERS**

DEF has two documents for which they have filed pending Requests for Confidential Classification:

- Responses to OPC's First Request for Production of Documents Nos. 1-13 and OPC's First Set of Interrogatories Nos. 1-25 filed on May 21, 2020 (DN 02693-

2020). This response was supplemented on May 22, 2020 (DN 02723-2020) and for a second time on May 29, 2020 (DN 02830-2020).

- Direct testimony and exhibits of Richard A. Polich, P.E., which were filed originally on May 28, 2020 (DN 02817-2020), again with Bates Numbered pages on June 11, 2020 (DN 03046-2020) and a third time on June 18, 2020 (DN 03171-2020).

DEF has five documents for which they have filed Notices of Intent to file for confidential classification:

- Polich June 12, 2020 Deposition Exhibit 2, Bates No. Polich DEP DT 000001-000004 filed on June 11, 2020 (DN 03049-2020).
- June 12, 2020 Deposition transcript of Richard A. Polich filed on June 18, 2020 (DN 03150-2020).
- Portions of the rebuttal testimony of Terry Hobbs and Jeff Adix and Exhibit JA-2 filed on June 18, 2020 (DN 03179-2020).
- Documents produced by DEF in response to OPC's notice of deposition duces tecum for the deposition of Jeff Adix on June 24, 2020, Bates No. 00001-00342, filed on June 24, 2020 (DN 03316-2020).
- Documents produced by DEF in response to OPC's notice of deposition duces tecum for the deposition of Terry Hobbs on June 25, 2020, Bates No. 00001-00050, filed on June 24, 2020 (DN 03314-2020).

### **XIII. POST-HEARING PROCEDURES**

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 75 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 75 words, it must be reduced to no more than 75 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

### **XIV. RULINGS**

Opening statements, if any, shall not exceed 10 minutes for DEF and 15 minutes total for OPC, PCS Phosphate, and FIPUG to be divided among them as they shall determine, unless a party chooses to waive its opening statement. Each witness shall be given five minutes for a summary of their testimony.

The parties shall provide cross-examination exhibits, including impeachment exhibits, to the Commission Clerk by noon on July 2, 2020, following the procedures set forth in Attachment A. The parties have agreed, and it is so ordered, that exhibits that are pre-filed and designated as cross-examination or impeachment exhibits will not be viewed by opposing witnesses or opposing counsel or otherwise have their contents or identity communicated to such witnesses or counsel.

FIPUG wishes to have the following issue included in this docket: “What monetary benefits, if any, should be provided to customers presently related to this matter?” Essentially, FIPUG argues that a portion of the projected savings resulting from DEF’s accelerated decommissioning proposal should be refunded now instead of waiting until the decommissioning is fully complete at some unspecified date in the future. OPC and PCS Phosphate support including the issue. DEF argues that no separate issue is needed and this point can be argued in Issue 1. I agree that this point can be raised in FIPUG’s discussion of Issue 1 and find that having a separate issue is unnecessary.

In its Prehearing Statement FIPUG has stated that it objects to the qualifications of “a witness being considered an expert witness unless the witness affirmatively states the subject matter area(s) in which he or she claims expertise.” Additionally, DEF has stated that it objects to Richard A. Polich’s qualifications to “testify as an expert regarding the financial condition of NorthStar, ADP, ADP CR3 or ADP SF1.” FIPUG argues that it is necessary to know the subject matter of the witness’ expertise so that the testimony given by that witness can be appropriately evaluated and weighed. Likewise, DEF argues that it should be allowed to ask about Mr. Polich’s qualifications so that this Commission can give appropriate weight to his financial analysis of NorthStar, et al.

Based on statements made at the Prehearing, it appears that neither party wishes to strike the testimony of any witness based on this line of questioning, nor could they. If a party wishes to strike the testimony of a witness, it must comply with the requirements of Section V.A(8) of the Order Establishing Procedure issued in this case,<sup>1</sup> which requires that a party must identify in its Prehearing Statement each witness to whom it objects and state with specificity the portions of their testimony by page and line number to which the party objects. Neither FIPUG nor DEF have done so. Thus, both FIPUG and DEF are hereby denied the ability to object to the expertise of any witness and move to strike that witness’ testimony at the July 7<sup>th</sup> final hearing. This ruling is consistent with the Florida Supreme Court’s ruling in *Florida Industrial Users Group v. Brown*, 273 So. 3d 926 (Fla. 2019).

However, the professional qualifications of any witness in the subject areas about which they testify are obviously relevant to the weight to be given to that testimony. This type of evidence is also commonly relied upon by reasonably prudent persons in the conduct of their affairs and is admissible in administrative proceedings.<sup>2</sup> For those reasons, both FIPUG and

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<sup>1</sup> Order No. PSC-2019-0320-PCO-EI, issued August 2, 2019.

<sup>2</sup> Section 120.569(2)(g), F.S.

DEF as well as all other parties are free to ask questions about any witness's professional qualifications that are relevant to his/her testimony at the final hearing.

The parties have requested that the date for filing their post-hearing briefs be extended from the current date of July 14, 2020 established by Order No. PSC-2020-0105-PCO-EI, issued on April 15, 2020. Due to the complexity of the issues in this docket and the need for a final Commission decision before October 1, 2020, the schedule for post-hearing actions is revised as follows:

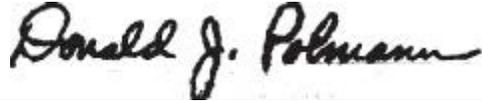
Transcripts	July 13, 2020
Briefs	July 23, 2020

With regard to the outstanding confidentiality matters, the majority have been filed in the last few weeks and are the subject of Notices of Intent to Request Confidentiality (NOI) pursuant to Rule 25-22.006(3)(a)1, F.A.C. Final orders cannot be prepared from NOIs. In order to promote administrative efficiency, if the materials which are the subject of the NOIs are admitted into evidence, the appropriate party shall prepare a Request for Confidentiality and an order shall be written after the conclusion of the final hearing. If the material is not admitted into evidence, the materials shall be disposed of consistent with the requirements of Rule 25-22.006, F.A.C., and Section 366.093, F.S., after the time for appeal has run.

It is therefore,

ORDERED by Commissioner Donald J. Polmann, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Donald J. Polmann, as Prehearing Officer, this 6th day of July, 2020.



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DONALD J. POLMANN, Ph.D., P.E.  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SBr

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

**Requirements related to providing Cross-Examination Exhibits prior to July 7 Hearing**

By noon on July 2, 2020, each party must provide the Commission Clerk an electronic copy of all cross-examination exhibits, including impeachment exhibits, the party plans to use during the hearing. As discussed at the noticed June 16, 2020 meeting with the parties and Commission staff, the need for limited exceptions to the July 2, 2020, due date is acknowledged when good cause is shown. All cross-examination exhibits must be provided to the Clerk's Office on either USB flash drives or CDs, including any late-filed exhibits. Confidential documents must be placed on one USB flash drive or CD, and non-confidential exhibits must be placed on a different or separate USB flash drive or CD. This is because the Clerk's Office will process the confidential exhibits, and transmit all non-confidential exhibits to the General Counsel's Office for processing.

All USB flash drives or CDs provided to the Clerk's Office must be clearly labeled as confidential or non-confidential, and the label must also include the Docket Number and the name of the party providing the exhibits. Pursuant to Rule 25-22.006(3), F.A.C., a notice of intent to request confidential classification must be filed for all confidential information.

Each party must pre-number each exhibit with the following sequential numbering system that clearly denotes confidential exhibits. For example, DEF will pre-identify its cross-examination exhibits DEF-1, DEF-2, DEF-3, etc. All confidential exhibits must include the letter "C" placed after the number. Thus, if DEF's third exhibit is confidential, it will be labeled DEF-3C.

Each exhibit must be saved as a separate electronic file, and each file must be labeled with the exhibit number that reflects the information contained on the exhibit. The exhibit number will serve as the filename in the virtual folder during the hearing. Each exhibit must also include a cover page that includes the exhibit number. In addition, each exhibit must include sequentially numbered pages. The page numbers must be placed in the upper right hand corner of each page.