STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Deerfield Wind, LLC to Amend the Certificate of Public Good to Allow Petitioner to Revise Decommissioning Letter of Credit Every Third Year Consistent with Public Utility Commission Rule 5.904(B)	)))))	Case No. 23-____-PET

<u>PETITION TO AMEND THE CERTIFICATE OF PUBLIC GOOD</u>

<u>TO ALLOW LETTER OF CREDIT ADUSTMENT EVERY THREE YEARS</u>

Deerfield Wind, LLC ("Petitioner" or "Deerfield") hereby requests that the Public Utility Commission (the "Commission") amend Condition 19 of the Amended Certificate of Public Good ("CPG") issued to Deerfield by the Commission[1] on July 17, 2009, in Case No. 7250 to change the required inflation adjustment for the Decommissioning Letter of Credit from annually to every third year.

CPG Condition 19 requires Deerfield to "implement the Decommissioning Plan submitted as Exh. DFLD-HGC-2." Exh. DFLD-HGC-2 provides that "the Estimated Cost of Decommissioning shall be adjusted annually to account for price level changes in the preceding 12-month period," and further that "[w]ithin five (5) business days after each such adjustment, Deerfield shall post an LC [Letter of Credit] (or other appropriate financial security) that reflects the revised Estimated Cost of Decommissioning." Petitioner hereby requests that the inflation adjustment occur every third year instead of annually. This requested change will provide for uniformity in letter of credit adjustment requirements by matching Commission Rules 5.904(B)(5), which requires that "[t]he value of a non-utility facility's decommissioning fund shall be adjusted for inflation every three years," and 5.904(B)(6), which requires that a "facility's standby letter of credit shall be adjusted every three years to reflect changes to the decommissioning fund."[2] The Commission recently approved a similar change in *Petition of*

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[1] Known as the Vermont Public Service Board at that time.

[2] These rules became effective on August 15, 2017, more than eight years after the CPG was issued.

Sudbury Solar LLC, Case No. 23-1492-PET, Order of June 21, 2023. The Commission observed in that decision:

> When the Commission issued Sudbury Solar a CPG for the Project on September 3, 2015, the Commission had not yet adopted a rule governing the decommissioning of projects subject to Commission review and approval under 30 V.S.A. § 248. At that time, in the absence of a rule, the Commission imposed decommissioning requirements on a case-by-case basis and customarily imposed an annual requirement for reporting on and adjusting decommissioning fund balances similar to that imposed on Sudbury Solar in its CPG.
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> Since that time, the Commission adopted Commission Rule 5.900, which establishes standard requirements for the decommissioning of electric generation, electric transmission, and natural gas facilities.

In light of Rule 5.900 and the *Sudbury Solar* decision, Deerfield requests that the Commission amend CPG Condition 19 to conform to Rule 5.904(B), as follows (new language shown in <u>underlining</u>):

19. Deerfield shall implement the Decommissioning Plan submitted as Exh. DFLD- HGC-2, <u>except that the requirements of Commission Rules 5.904(B)(5) and 5.904(B)(6) concerning the Letter of Credit, as reflected below, shall supersede any conflicting language in the plan</u>.

a. The Decommissioning Plan may allow the fund to grow as the construction process proceeds such that the funding level is commensurate with the costs of removing infrastructure in place. The amount of the fund may not net out the projected salvage value of the infrastructure.

b. <u>The value of the decommissioning fund shall be adjusted for inflation every three years based on the net positive change in the annual average of the U.S. Bureau of Labor Statistics' Northeast Urban Consumer Price Index for the preceding three-year period. Adjustments to the Fund value shall be made no later than February 28 of the year in which it is due, in conjunction with the report required pursuant to condition b. below. The Commission may require more frequent adjustments due to facility or site conditions.</u>

c. <u>Every three years the CPG Holder shall file a report with the Commission, the Department, and each party to this proceeding, describing any adjustments and changes to the decommissioning fund in the previous three-year period. The first of these reports must be filed no later than February 28, 2026, and again every subsequent third year.</u>

d. <u>The Commission shall have the right to draw on the Project's irrevocable standby letter of credit or alternate form of security to pay for decommissioning in the event that the CPG Holder has not begun decommissioning activities within 90 days of a Commission order directing decommissioning.</u>

e. <u>Upon completion of all decommissioning and site restoration activities, the CPG Holder shall request a determination from the Commission that the CPG Holder's decommissioning obligations have been satisfied. Upon the Commission's determination that the decommissioning obligations have been satisfied, the Commission will terminate the CPG Holder's decommissioning funding obligation.</u>

Dated at Burlington, Vermont this 8th day of August 2023.

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