STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Petition of Vermont 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 CERTIFICATE OF PUBLIC GOOD</u>

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

Vermont Wind, LLC ("Petitioner" or "Vermont Wind") hereby requests that the Public Utility Commission (the "Commission") amend Condition 32 of the Certificate of Public Good ("CPG") issued to Vermont Wind[1] by the Commission on August 8, 2007, in Case No. 7156,[2] in order to change the required inflation adjustment for the Decommissioning Letter of Credit from annually to every third year.

CPG Condition 32 requires that Vermont Wind file a Decommissioning Plan. Vermont Wind submitted a Decommissioning Plan on February 8, 2008, which was approved by the Commission by order dated May 14, 2008.[3] The Decommissioning Plan provides, in part:

> Beginning in 2009, the Estimated Cost of Decommissioning ($1,331,500) shall be adjusted annually to account for price level changes in the preceding 12-month period. The adjustment shall be calculated no later than January 31 of each year by multiplying the Estimated Cost of Decommissioning by the percentage change in the "Other Heavy Const[r]uction" index of the Producer Price Index (obtained from the December PPI Detailed Report which is posted on the Department of Labor/Bureau of Labor Statistics website (www.bls.gov) on January 15 of the immediately succeeding year), and adding that result to the current Estimated Cost of Decommissioning to arrive at the revised Estimated Cost of Decommissioning.
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> Upon commencement of commercial operations, UPC shall post an LC equal to the

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[1] Petitioner's name was UPC Vermont Wind, LLC at the time the CPG was issued.
[2] Known as the Vermont Public Service Board at that time.
[3] The as-approved Decommissioning Plan has been filed on ePUC concurrent with the filing of this petition.

> Estimated Cost of Decommissioning, as adjusted under Section 3. above. On each annual anniversary thereafter, UPC shall adjust the Estimated Cost of Decommissioning as specified in Section 3. above. Within five (5) business days after each such adjustment, UPC shall post an LC or other security reasonably acceptable to the Board that reflects the revised Estimated Cost of Decommissioning.

Decommissioning Plan at 2, 3.

Petitioner hereby requests that the inflation adjustment for the Decommissioning Fund occur every third year instead of annually. This change would provide for uniformity in inflation 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."[4] The Commission recently approved a similar change in *Petition of 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, Vermont Wind requests that the Commission amend CPG Condition 32 to conform to Rule 5.904(B), as follows (changes shown by ~~strike-through~~ and <u>underlining</u>):

> *32. <u>Vermont Wind shall implement the Decommissioning Plan dated February 8, 2008 and approved by order of the Commission on May 14, 2008, except that the requirements of Rules 5.904(B)(5) and 5.904(B)(6), as reflected below, shall supersede any conflicting language in the plan:</u>*

[4] These rules became effective on August 15, 2017, ten years after the CPG was issued.

~~*UPC shall file a decommissioning plan with the Board and parties prior to commencement of construction. 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. In addition, the decommissioning plan must include a description of how the fund would be secured and why that mechanism is appropriate; and if UPC elects to utilize a corporate guarantee to secure the fund, it must demonstrate how such a guarantee would be bankruptcy remote*~~.

a. *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.*

b. *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.*

c. *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.*

d. *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.*

If actual production falls below 65 % of projected production during any consecutive two-year period, a decommissioning review is initiated; however, if UPC can demonstrate that it has entered into stably priced power contracts with Vermont utilities through which a substantial amount of power is to be sold at stable prices, the Board may reduce the decommissioning trigger to as low as 50 %.

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

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