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State of Vermont
Public Utility Commission

November 12, 2025

Senator Anne Watson, Chair, Senate Committee on Natural Resources and Energy
Senator Ann Cummings, Chair, Senate Committee on Finance
Representative Kathleen James, Chair, House Committee on Energy and Digital Infrastructure
Representative Amy Sheldon, Chair, House Committee on Environment

SENT VIA EMAIL

Re: Electric Generation and Energy Storage Facility Decommissioning Fund

Dear Senators and Representatives:

Section 248(a)(5) of Title 30 of the Vermont Statutes Annotated mandates that electric generation and energy storage facilities be "removed once they are no longer in service," and directs the Vermont Public Utility Commission ("Commission") to draft rules to ensure that facilities are removed. Currently, the Commission requires that certificate of public good ("CPG") holders for generation and storage facilities above a certain size file and regularly update financial instruments, such as letters of credit, escrow agreements, and bonds, with the Commission. These financial assurances are meant to ensure that funding is available to decommission the facility and restore the site once the facility is no longer in service. The administration of the current system of obtaining and maintaining financial assurance instruments requires a substantial amount of administrative work by Commission staff and imposes a lengthy and costly regulatory compliance burden for developers. This letter includes the Commission's proposal to address both of these concerns.

Pursuant to Act 38 of 2025, entitled "An act relating to increasing the size of solar net metering projects that qualify for expedited registration," the Commission opened an investigation into the definition of "plant" and a proposed alternative to the status quo method of providing decommissioning financial assurances. The Commission joined these topics in a single investigation because the interested parties for the definition of "plant" overlap significantly with the interested parties for the decommissioning process.

In this letter, we provide the legislative committees of jurisdiction with (1) background explaining the current approach to decommissioning financial assurances and why a change is needed, (2) an outline of the proposed solution, and (3) draft statutory language.

BACKGROUND SUMMARY

The status quo

- How does decommissioning fit into the Commission's regulation?
    - Unlike in most other states, the siting of electric generation (*e.g.*, solar) and energy storage (*e.g.*, batteries) facilities is regulated at the state level in Vermont. Siting these facilities requires a project developer to obtain a CPG from the Commission under 30 V.S.A. § 248.
    - Section 248(a)(5) requires that the Commission adopt rules and standard conditions to ensure "that facilities are removed once they are no longer in service."
    - The Commission promulgated Rule 5.900 in response to the statutory requirement. Rule 5.900 has two aims: (1) to require CPG holders to establish a plan and commit to decommissioning facilities at the end of their useful life, and (2) to establish sufficient financial assurances to support decommissioning.
    - For the financial component, the Commission accepts letters of credit, escrow agreements, and bonds from third-party financial institutions or financing companies to secure a decommissioning obligation.

- The fundamental problem is that the Commission has been tasked with ensuring decommissioning when we otherwise do not regulate the people performing this work or the tasks that must be completed to successfully decommission a facility. We do not regulate merchant generators in the same way as monopoly utilities. Further, the Commission does not currently have the statutory authorization to meet our obligation in the event of developer noncompliance with decommissioning expectations at the end of a facility's useful life.

Why does Vermont need a change?

- *Impossibility*: If called on, funds from current financial assurances — letters of credit, bonds, escrow agreements with third-party financial institutions or financing companies — cannot be deposited because the Commission does not have statutory authority to place these funds in a protected account solely for decommissioning.

- *Need to protect the State fiscally*: Having a single decommissioning fund would ensure enough available cash to fund decommissioning regardless of the status of the facility owner or third-party financial institution or financing company and to manage unanticipated cost overruns or inadequate initial cost estimates.

- *Simplicity and efficiency for developer and regulator*:
    - Currently, developers must engage frequently with maintaining financial instruments. This is costly, time-consuming regulatory engagement. Costs currently include:
        - Fees paid to third-party financial institutions for financial instruments;
        - Fees paid to lawyers to engage in the Commission's regulatory process for updating or replacing financial instruments on a triennial basis;
        - Fees paid to someone to perform an inflation adjustment to the fund amount;
        - Dedicating — and often freezing — capital with a third-party financial institution to secure the financial instrument; and
        - Staff or attorney time spent on regular compliance with the Commission's current financial instrument process.

- Administration of up-to-date financial instruments involves significant front-office and Commission staff time and is in tension with the Commission's move to an electronic filing system and electronic maintenance of records.

THE PROPOSED SOLUTION: A DECOMMISSIONING FUND

- A decommissioning fund is a pool of up-front contributions collected by the Commission at the time a CPG holder is given a CPG and is preparing a site for construction.
- The Commission, in conjunction with the Vermont Treasurer's Office, maintains the special fund for the purpose of decommissioning sites used for electric generation or energy storage facilities.
- The process:
  - A facility-specific cost estimate for decommissioning is calculated.
  - A CPG holder contributes a portion or all the estimated decommissioning cost into a fund held in escrow by the State.
  - The funds are invested.
  - The facility reaches the end of its useful life. Assuming the site components cannot or will not be repurposed, the site must be decommissioned and returned to the condition it was in before the site was developed.
    - If the facility owner is still actively involved in the operation and management of the facility, the facility owner arranges for site decommissioning. Upon satisfactory completion of site decommissioning, the Commission releases any remaining funds contributed to the decommissioning fund back to the CPG holder.
    - If the facility owner is missing, has filed for bankruptcy or is insolvent, or otherwise will not perform decommissioning, the Commission calls on the fund to pay retained contractors and site remediators to remove the facility components and restore the site.
    - Whether the facility owner is involved or unavailable, the fund can also be called on when costs exceed the initial decommissioning cost estimate (adjusted over the life of the facility for inflation).

Attached is proposed statutory language that would authorize the Commission to take this new approach to financial assurances for decommissioning. The statutory language was provided to the participants in our investigation. The participants were given three opportunities to submit written comments, and the Commission held a workshop to discuss the approach and to answer questions.

We respectfully request that the committees consider this approach.

Sincerely,

Edward McNamara	Margaret Cheney	J. Riley Allen
Chair	Commissioner	Commissioner

30 V.S.A. § 20 is amended as follows:

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(a)(1) The Commission or the Department of Public Service may authorize or retain legal counsel, official stenographers, expert witnesses, advisors and consultants, temporary employees, and other providers of research, scientific, financial, economic, actuarial, accounting, or engineering services:

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(F) To investigate, review, plan, oversee, or carry out the decommissioning and site restoration required by a certificate of public good issued to an electric generation or energy storage facility.

30 V.S.A. is added to read:

§ 248e. Electric Generation and Energy Storage Facility Decommissioning Fund

(a) There is created an Electric Generation and Energy Storage Facility Decommissioning Fund that shall be a special fund created pursuant to 32 V.S.A. chapter 7, subchapter 5, and shall be administered by the Chair of the Public Utility Commission.

(b) Deposits to the Decommissioning Fund shall consist of all decommissioning surety fees collected for electric generation or energy storage facilities that have received a certificate of public good from the Commission. The Commission shall deposit into the Decommissioning Fund each decommissioning surety fee it receives under this subchapter.

(c) Disbursements from the Decommissioning Fund may be made by the Chair of the Commission to undertake actions that the Commission considers necessary to investigate or mitigate, or both, the effects of an abandoned, non-operational, or disclaimed electric generation or energy storage facility. Disbursements under this subsection may be made:

(1) to pay costs to third parties who initiate or complete facility decommissioning and site restoration where the holder of the certificate of public good is unknown, cannot be contacted, is unwilling to take action, is incapable of carrying out decommissioning or site restoration, or does not take timely action as ordered by the Commission;

(2) to investigate ownership of or ascertain the holder of the certificate of public good for an electric generation or energy storage facility;

(3) to take other appropriate remedial action;

(4) to pay costs to persons retained by the Commission or the Department under 30 V.S.A. § 20(a)(1)(F); or

(5) to return portions of the surety fees as determined by a formula established by the Commission to individual CPG holders upon satisfactory completion of decommissioning and Commission approval.

The Chair is prohibited from disbursing funds for a facility that did not contribute to the Fund.

(d) For purposes of this section:

(1) "Chair" means the Chair of the Vermont Public Utility Commission.

(2) "Commission" means the Vermont Public Utility Commission.

(3) "Decommissioning" means to remove a facility safely from service and to restore the site to its condition before the facility was installed consistent with the facility's certificate of public good and Commission rules and orders.

(4) "Decommissioning Fund" means the Electric Generation and Energy Storage Facility Decommissioning Fund.

(5) "Decommissioning surety fee" means the contribution assigned to a facility and determined by a funding formula established by the Commission.

(6) "Department" means the Vermont Department of Public Service.

(e) Balances in the Decommissioning Fund shall be expended only for the purposes authorized in this subchapter and shall not be used for the general obligations of government or for other governmental purposes. All balances in the Decommissioning Fund at the end of any fiscal year shall be carried forward and remain within the Decommissioning Fund. Interest earned by the Decommissioning Fund shall be deposited in the Decommissioning Fund.

(f) The Commission shall have authority to adopt rules or issue orders implementing this subchapter.

(g) The Commission shall provide to the Treasurer of the State of Vermont an annual accounting of each decommissioning fee showing the source and the amount collected and each decommissioning project that was funded or that will be funded with the fee and the amount expended.