

Casey A. Furey
100 West Broadway, Suite 250
P.O. Box 2798
Bismarck, ND 58502-2798
701.223.6585
cfurey@crowleyfleck.com

September 10, 2019

Via Hand Delivery and E-Mail

Mr. Adam Renfandt
Utility Analyst
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

Email: ***arenfandt@nd.gov***
 ndpsc@nd.gov

RE: FPL Energy Oliver Wind I, LLC
 Oliver Wind I Energy Center
 Case No. PU-10-101
 Financial Assurance
 Our File No. 035218-000023

Dear Mr. Renfandt,

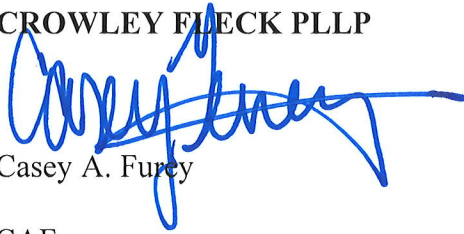
On December 22, 2017, FPL Energy Oliver Wind I, LLC (“Oliver Wind I”) voluntarily filed a decommissioning plan and proposed financial assurance with the Commission (Case No. PU-10-101, Docket No. 4) for the Oliver Wind I Energy Center located in Oliver County, North Dakota. On May 2, 2019, you requested that Oliver Wind I file updated financial assurance on the Commission’s recently adopted parent guarantee template.

The Oliver Wind I Energy Center is a “non-permitted” facility because it did not meet the siting threshold when it was constructed. Currently, the Commission’s decommissioning rules do not include non-permitted facilities; however, the Commission has recently commenced a rulemaking proceeding to amend its decommissioning rules to govern decommissioning of non-permitted facilities (Case No. PU-19-291). In consideration of the Commission’s current rulemaking, and to ensure Oliver Wind I’s financial assurance complies with forthcoming regulations, Oliver Wind I hereby withdraws its existing financial assurance filed in Case No. PU-10-101, Docket No. 4 as Exhibit B, a copy of which is attached hereto. Oliver Wind I respectfully requests that the Commission issue an acknowledgment letter acknowledging the withdrawal of Oliver Wind I’s proposed financial assurance. Oliver Wind I will file updated financial assurance pursuant to the Commission’s rules once they are finalized and enacted.

Please feel free to contact me with any questions.

Sincerely,

CROWLEY FLECK PLLP

A handwritten signature in blue ink, appearing to read 'Casey A. Furey', written over the printed name below.

Casey A. Furey

CAF:

cc: John Schuh (via-email)
Jerry Lein (via-email)
Tracy Davis (via-email)

GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of December 19, 2017 (the "**Effective Date**"), is made by NEXTERA ENERGY CAPITAL HOLDINGS, INC. ("**Guarantor**"), in favor of the NORTH DAKOTA PUBLIC SERVICE COMMISSION ("**Commission**").

RECITALS:

- A. WHEREAS, Guarantor's indirect, wholly-owned subsidiary FPL ENERGY OLIVER WIND I, LLC ("**Obligor**") constructed the Oliver Wind I Project (the "**Project**") in Oliver County, North Dakota which consists of one or more wind turbines and tower equipment;
- B. WHEREAS, Obligor is required to provide to Commission financial assurance supporting decommissioning obligations of Obligor pursuant to Section 69-09-09-08 of the North Dakota Administrative Code (the "**Statute**");
- C. WHEREAS, Guarantor will directly or indirectly benefit from the Project; and
- D. WHEREAS, Guarantor wishes to issue this Guaranty to Commission to satisfy the terms of the Statute.

NOW THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Commission as follows:

* * *

1. **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Commission under the Statute on or after the Effective Date (the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a) Notwithstanding anything herein to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed Two Million Nine Hundred Seventy Thousand U.S. Dollars (U.S. \$2,970,000) (the "**Maximum Recovery Amount**").
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments due and owing, as well as costs of collection and enforcement of this Guaranty (including attorney's fees) to the extent reasonably and actually incurred by the Commission (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. **DEMANDS AND PAYMENT.**

- (a) If Obligor fails to pay any Obligation to Commission when such Obligation is due and owing (an "**Overdue Obligation**"), Commission may present a written demand to Guarantor calling for

Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "Payment Demand").

- (b) Guarantor's obligation hereunder to pay any particular Overdue Obligation(s) to Commission is conditioned upon Guarantor's receipt of a Payment Demand from Commission satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand and the specific date(s) upon which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Commission shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "Business Day" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Florida, the State of North Dakota or the State of New York.

3. **REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of Florida and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
- (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. **RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Commission.

6. **WAIVERS AND CONSENTS.** Subject to and in accordance with the terms and provisions of this Guaranty:

- (a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to

require that Commission seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof.

- (b) No delay by Commission in the exercise of (or failure by Commission to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Commission may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release any person (other than Obligor or Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Commission as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. **TERMINATION.** Unless terminated earlier, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately at 11:59:59 Eastern Prevailing Time December 31, 2049; *provided, however,* that no such termination shall affect Guarantor's liability with respect to any Obligation incurred prior to the time the termination is effective, which Obligation shall remain subject to this Guaranty.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Commission to Guarantor, or by Guarantor to Commission, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Commission, as applicable, to the other in accordance with the requirements of this *Section 9*):

<u>TO GUARANTOR:</u> *	<u>TO COUNTERPARTY:</u>
NEXTERA ENERGY CAPITAL HOLDINGS, INC. 700 Universe Blvd. Juno Beach, Florida 33408 <i>Attn:</i> Treasurer	North Dakota Public Service Commission 600 East Boulevard Avenue Bismarck, North Dakota 58505 <i>Attn:</i> Darrell Nitschke
<i>[Tel: (561) 694-6204 -- for use in connection with courier deliveries]</i>	<i>[Tel: (701) 328-4098 -- for use in connection with courier deliveries]</i>

* *(NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. (561) 625-7504 and ATTN: Credit Department, Fax No. (561) 625-7642. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)*

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Commission and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Commission. Commission may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Commission and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Commission (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of North Dakota for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Commission, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named court, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on December 19, 2017, but it is effective as of the Effective Date.

NEXTERA ENERGY CAPITAL HOLDINGS, INC.

By: 

Name: Amanda M. Finnis

Assistant Treasurer

Title: _____

