

July 11, 2025
Notice that Decommission Plan Needs Update

From: Sam Carlson <sam@encorerenewableenergy.com>
Sent: Friday, July 11, 2025 1:53 PM
To: Kathy Frenette - Town Administrator; Harry Seidel - Select Board; Alfred Hanson - Select Board; Michael Smith; Judy Newman-Rogers - Select Board Admin
Subject: Poverty Plains Solar Project - Decommissioning Fund and Bond
Attachments: PP SPR Decommissioning Plan and Fund 9 13 24.pdf

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Dear Warner Selectboard Members and Ms. Frenette,

As Encore Renewable Energy prepares to issue the Decommissioning Fund for the above-referenced project, in accordance with the Decommissioning Plan submitted to and approved by the Warner Planning Commission (please see attached), we have realized a correction needs to be made. We believe this will be in the Town's favor, but it requires your approval.

Section IV. Establishment of Decommissioning Fund on the first page of the attached document states:

"Prior to commencing Project construction, a fund for decommissioning ("Decommissioning Fund") shall be established for the Project in the amount of the estimated cost of decommissioning identified in Section III above. The Decommissioning Fund shall be established in the form of an irrevocable standby Letter of Credit (LC) that: (1) * names NHDES as the sole beneficiary of the LC; (2) is issued by an A- rated financial institution; (3) includes an automatic extension provision or "evergreen clause"; and (4) is bankruptcy remote. No other entity, including Petitioner, shall have the ability to demand payment under such LC. Upon issuance, such LC shall be submitted by Petitioner to NHDES for approval. "

* Letter of Credit will be a Surety Bond.

Upon consultation with outside counsel, and confirmation that the Alteration Of Terrain (AoT) Permit by the NHDES contains no condition related to the Decommissioning Fund, it is our belief that the Decommissioning Fund should name The Town of Warner, NH as the sole beneficiary of this Fund. The Warner Planning Commission approved this Plan and Fund as part of the Site Application Review, and PC members (and citizens) were understandably concerned that such a Fund be established.

Because these decommissioning funds in Vermont name State agencies as the beneficiaries, Encore made a mistake in assuming the same was true in New Hampshire.

This email is to request the Selectboard's approval of the following process:

- the Decommissioning Plan and Fund approved by the Warner Planning Commission in October 2024 will be revised to state that the Town of Warner, and not NHDES, is the sole beneficiary;
- Encore Renewable Energy will send to the Warner Selectboard for its review in the next few weeks a draft Surety Bond for Decommissioning in the amount of \$127,680 (note this amount will be adjusted every 3 years to account for inflation, as per the attached Plan);
- The Town of Warner will do the needful to consult with outside counsel or otherwise review this Surety Bond to ensure that it is acceptable to the Town;
- Encore Renewable Energy will then finalize and issue this Bond, naming the Town of Warner as the sole beneficiary.

July 16, 2025
Updated Decommissioning Plan
Attachment A
Attachment B

Judy Newman-Rogers - Select Board Admin

From: Sam Carlson <sam@encorerenewableenergy.com>
Sent: Wednesday, July 16, 2025 1:18 PM
To: Harry Seidel - Select Board
Cc: Kathy Frenette - Town Administrator; Alfred Hanson - Select Board; Michael Smith; Judy Newman-Rogers - Select Board Admin
Subject: Re: Poverty Plains Solar Project - Decommissioning Fund and Bond for Town of Warner, NH
Attachments: Poverty Plains Decommissioning Plan and Fund Revised 7 16 2025.docx

This email originated from outside of the organization. Do not click links or open attachments unless you are 100% sure that it is safe.

Dear Warner NH Selectboard Members,

Please find attached a **REVISED Decommissioning** Plan and Fund for Poverty Plains Solar, LLC.

You will see that **it names the Town of Warner as the "beneficiary" or "obligee"** of the Decommissioning Fund which will be established for this project, which would be activated in case Poverty Plains Solar, LLC does not fulfill its legal obligation to decommission the project.

Attachment A shows the estimated cost breakdown for decommissioning, which provides the basis for the amount of the Surety Bond naming the Town of Warner as the "obligee".

Attachment B is the Surety Bond Form. This form, in particular, requires the Town's review and acceptance. If the Selectboard deems this Surety Bond Form to be acceptable we will go ahead and get it issued.

This Plan and Fund are essentially the same as what was reviewed and approved by the Warner Planning Commission in October 2024. The only significant difference is that it names the Town of Warner as the beneficiary of the Fund, rather than the New Hampshire Dep't of Environmental Services (NHDES).

We look forward to the Selectboard's response in this matter.

Thank you and regards,

Sam

On Fri, Jul 11, 2025 at 2:37 PM Harry Seidel - Select Board <hseidel@warnernh.gov> wrote:
Sam,

The Warner BOS will review the revision at our next regular meeting and if necessary have counsel review, as suggested.

Thanks for keeping us informed. We will be in touch.



POVERTY PLAINS SOLAR, LLC: DECOMMISSIONING PLAN AND FUND

I. INTRODUCTION

Poverty Plains Solar, LLC ("Petitioner") hereby submits its plan for the eventual decommissioning of the proposed 5 MW solar electric generation facility located in Warner, New Hampshire ("Project"), and the establishment of a decommissioning fund for review as part of the: (a) Site Plan Application review process conducted by the Town of Warner Planning Board, and (b) application for an Alteration of Terrain Permit before the New Hampshire Department of Environmental Services ("NHDES") pursuant to RSA 485-A:17, NHDES-W-01-003.

II. DECOMMISSIONING ACTIVITIES

At the time the Project permanently ceases to operate, Petitioner, or its successor or assigns will perform decommissioning activities which will include off-site removal of the solar panels, support structures, electrical lines, inverters, transformers, any concrete pads, and fencing/fence posts, and any other auxiliary equipment associated with the Project that is within the Petitioner's ownership, or its successor or assigns. Decommissioning will also include reclaiming the site to its original condition. All decommissioning activities are detailed in **Attachment A**.

III. COST OF DECOMMISSIONING

The estimated cost of decommissioning the Project is US \$127,680 as indicated in Attachment A and was prepared by Doug MacDonald, Vice President of Engineering of Encore Renewable Energy, which has offices at 50 Lakeside Avenue, Suite 110, Burlington, VT. The estimated cost of decommissioning shall be adjusted every three years to account for inflationary effects using the current Consumer Price Index ("CPI") as maintained and published by the United States Bureau of Labor Statistics ("Annual Adjustment"). In the event the CPI results in a negative adjustment, the decommissioning cost will not change.

IV. ESTABLISHMENT OF DECOMMISSIONING FUND

Prior to commencing Project construction, a fund for decommissioning ("Decommissioning Fund") shall be established for the Project in the amount of the estimated cost of decommissioning identified in Section III above. The Decommissioning Fund shall be established in the form of an irrevocable Surety Bond (SB) that: (1) names the Town of Warner, New Hampshire as the sole beneficiary (or "obligee") of the SB; (2) is issued by an A- rated financial institution; (3) includes an automatic extension provision or "evergreen clause"; and (4) is bankruptcy remote. No other entity, including Petitioner, shall have the ability to demand payment under such SB. Upon issuance, such SB shall be submitted by Petitioner to the Town Administrator and Selectboard of the Town of Warner, New Hampshire for review and approval. The SB will be substantially in the form annexed hereto as **Attachment B**.

The value of Petitioner's decommissioning fund shall be adjusted for inflation every three years based upon 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. The decommissioning fund amount shall not be reduced in periods when the Northeast Urban Consumer Price Index reports a net negative change for the preceding three-year period.



The Petitioner shall adjust the Project's standby SB every three years to reflect changes to the decommissioning fund as provided above. Revisions shall be made no later than February 28 in conjunction with the report required above.

The Town of Warner, New Hampshire shall have the right to draw upon the Petitioner's irrevocable standby SB to pay for decommissioning, in the event that the Petitioner has not commenced decommissioning activities within 90 days of a Town of Warner, New Hampshire order directing decommissioning.

When the Project permanently ceases to operate, Petitioner, its successors or assigns shall decommission the Project as required.

Upon completion of all decommissioning and site restoration activities, the Petitioner will request a determination from the Town of Warner, New Hampshire that the Petitioner's decommissioning obligations have been satisfied. Upon the Town of Warner, New Hampshire's determination that the decommissioning obligations have been satisfied, the Town of Warner, New Hampshire will terminate the Project's Surety Bond.



Attachment A

<u>Estimated Decommissioning Costs for Poverty Plains Solar, LLC</u>				Est. Total (present day dollars)
Panel Removal	Est. Quantity		Unit Cost	
Removal	12,000	Panels	\$1.75	\$21,000
Delivery	30	Containers	\$600.00	\$18,000
Disposal	12,000	Panels	\$1.75	\$21,000
Support Rack Disassembly and Removal				
Removal	18,000	LF	\$1.50	\$27,000
Delivery	5	Truckloads	\$600.00	\$3,000
Disposal	18,000	LF	\$0.06	\$1,080
Removal Ballast Supports				
Removal	1,500	Posts	\$1.75	\$2,625
Delivery	3	Truckloads	\$600.00	\$1,800
Disposal	1,500	Posts	\$4.13	\$6,195
Wire Removal				
Delivery	7	Truckloads	\$600.00	\$4,200
Disposal	48,000	Pounds	\$0.06	\$2,880
Transformer/Inverter/Battery Removal				
XFMR Remove & Dispose	1	Transformer	\$1,500.00	\$1,500
Inverter Remove & Dispose	36	Inverter	\$150.00	\$5,400
Auxiliary Equipment Removal				
Relay/Metering	1	Station	\$2,000.00	\$2,000
Combiner Boxes	36	Boxes	\$50.00	\$1,800
Interconnection Facilities	1	LS	\$2,000.00	\$2,000
Fence	4,000	LF	\$1.25	\$5,000
Delivery	2	Truckloads	\$600.00	\$1,200

Estimated Total Cost **\$127,680**

All costs include labor, project management, site supervision and site safety costs.



Attachment B
Form of
Surety Bond

ER Poverty Plains Solar, LLC
Solar Facility Decommissioning Bond

KNOW ALL MEN BY THESE PRESENTS: That ER Poverty Plains Solar, LLC, (hereinafter called the Principal), and CAC Group (hereinafter called the Surety), a corporation duly organized under the laws of the State of Delaware, are held and firmly bound unto The Town of Warner, New Hampshire (hereinafter called the Obligee), in the full and just sum of One hundred and twenty-thousand and six hundred and eighty dollars (\$127,680), the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, and each of their heirs, administrators, executors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Obligee through its Planning Commission has approved the Principal's decommissioning plan on October 7, 2024 for the solar energy development located near 201-299 Poverty Plains Road, Warner, NH (Map 7, Lot 64), and as a requirement of such approval the Principal is obligated to remove the solar development and related equipment from property and restore the site consistent with the approved decommissioning plan.

WHEREAS, the Obligee has agreed to accept this bond as security for performance of Principal's obligations under said order during the time period this bond remains in effect.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall perform its obligations under said order as stipulated above, then this obligation shall be void, otherwise to remain in full force and effect, unless otherwise cancelled as hereinafter provided.

PROVIDED HOWEVER, that this bond is executed subject to the following express provisions and conditions:

- 1) The term of this Bond is for one (1) year beginning on the date of construction commencement, and such term shall automatically renew thereafter and until such time that the decommissioning requirements have been fully performed.
 - a) Prior to the expiration of the term of this Bond, Principal, or its successor in interest to the facility, shall be responsible for renewing the Bond and this obligation shall continue until the decommissioning requirements have been met.
 - b) Within thirty (30) days of the posting of the renewal, Principal will provide a copy of the renewal certificate to the Obligee.



2) Principal's decommissioning obligation is defined as part of the approval of the Site Plan Application by the Town of Warner, NH's Planning Commission on October 7, 2024, as reflected by the Minutes from this meeting, a copy of which is attached and is made a part hereof and incorporated herein by reference, except that nothing said therein shall alter, enlarge, expand or otherwise modify the terms of the bond as set out below.

3) In the event the Obligee becomes aware:

a) That the Principal has abandoned the facility, or

b) That the Principal has violated its decommissioning obligation under the order and the Obligee has issued a notice of violation to the Principal for the same, the Obligee will notify the Surety in writing of the Principal's breach and such notice will be provided within 30 days of Obligee becoming aware of the abandonment or issuing the notice of violation. Notice of the breach will be sent to Surety by certified mail, or delivered by hand, at the following address:

Surety will investigate the claim and notify Principal of said breach within 10 days of receipt. Principal will have 90 days from receipt of notification to cure. If Principals fails to cure, Surety shall issue the surety amount to Obligee.

- 4) This bond may be terminated or canceled by Surety by giving not less than ninety (90) days written notice to the Obligee, stating therein the effective date of such termination or cancellation. Such notice shall not limit or terminate any obligations resulting from default by the Principal that may have accrued under this bond as a result of default by Principal prior to the effective date of such termination.
- 5) Neither cancellation nor termination of this bond by Surety, nor inability of Principal to file a replacement bond or replacement security for its obligations, shall constitute a loss to the Obligee recoverable under this bond.
- 6) No claim, action, suit or proceeding shall be instituted against this bond unless same be brought or instituted and process served one year after termination or cancellation of this bond.
- 7) No right of action shall accrue on this bond for the use of any person, corporation or entity other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.



- 8) The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number of years this bond remains in force or the amount or number of claims brought against this bond.
- 9) If any conflict or inconsistency exists between the Surety's obligations as described in this bond and as may be described in any underlying agreement, permit, document or contract to which this bond is related, then the terms of this bond shall prevail in all respects.
- 10) It is expressly understood and agreed that this bond does not cover or guarantee rent or lease payments of any kind.
- 11) This bond shall not bind the Surety unless the bond is accepted by the Obligee. If the Obligee objects to any language contained herein, within 30 days of the date this bond is signed and sealed by the Surety, Obligee shall return this bond, certified mail or express courier, to the Surety at its address at:

Failure to return the bond as described above shall constitute Obligee's acceptance of the terms and conditions herein.



IN WITNESS WHEREOF, the above bounded Principal and Surety have
hereunto signed and sealed

this bond effective this____ day of _____ 20 _____

Principal

Surety

By:_____

Name & Title:

By:

Attorney-in-fact