

Transitional Provisions for the Proposed Green Energy Repeal Act, 2018

ERO Number: [013-4265](#)

Act: Planning Act, R.S.O. 1990

Posted by: Ministry of Municipal Affairs and Housing

Comment Period: December 4, 2018 – January 18, 2019

Company Profile:

Headquartered in Chicago, Invenergy is North America's largest independent renewable power generation company. Led by a management team with decades of experience in the energy market, Invenergy's strategic vision focuses on relationships, execution, and sustainability in developing, owning, and operating large-scale energy facilities across the world, including previous developments in the province of Ontario. Invenergy invests in a diverse set of technologies, including wind, solar, natural gas, and storage facilities, and works closely with municipal and state/provincial governments to build utility-scale green energy projects at competitive rates. With an office in Toronto, Ontario, Invenergy is a committed long-term participant, developer, and investor in the Canadian energy market.

Overview:

The Ontario Government has passed the Green Energy Act Repeal Act, 2018, which would amend the Planning Act to restore municipal planning authority for renewable energy project siting. The legislation allows for the passing of regulations to specify the details on how this authority will be transitioned. As such, the Government has posted for comment a transitional regulation that enables the continued application of 62.0.2 of the Planning Act to renewable projects that are either subject to an existing IESO contract before or on the filing date of the proposed transition regulation, or renewable projects where construction/installation began before the filing date of the proposed transition regulation, and is completed by July 1, 2019. Any major changes (geographic expansion) would be subject to municipal planning authority.

Comments:

Developing renewable energy projects under the Renewable Energy Approvals Regulation O. Reg. 359/09 is a multi-year process that requires long-term consultation, planning, and extensive

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studies on the built and natural environment. Developers, investors, and small businesses rely on the government of Ontario to set consistent and reliable regulations, and honour legally-binding contracts. Bill 34's transitional provisions set clear rules regarding the application of the repealed Green Energy Act and gives currently active developers clarity and re-assurance for their current projects. This provides assurance to a narrow subset of projects to be able to continue conducting business in the province of Ontario and investing in their local communities through construction and operational jobs for renewable projects.

However, the sudden cancellation of more than 700 contracts in various stages of development was done in a very short amount of time and did not recognize the ratepayer value in allowing these additional competitively-procured projects to be built. Characterizing these contracts as "wasteful" is not consistent with facts – the LRP Projects were bid at the most aggressive cost targets to satisfy government demand to meet future energy supply gaps with domestic renewable energy sources.

Further, project-cancellation payments failed to properly capture the amount of investment that developers have spent in the province of Ontario, supporting local businesses and investing in the provincial economy. Under the Large Renewable Procurement (LRP) process, projects had signed various partnership agreements with First Nations and rural Ontario communities; the cancellation of these projects has undoubtedly impacted a potential and important revenue stream for these communities as well. Projects such as Invenergy's cancelled Strong Breeze Wind Energy Centre and the LSRA Solar Energy Centre underwent several years of due diligence to ensure responsible siting in accordance with the prescribed rules and regulations of the province, including fulfilling community support agreements/requirements outlined by the LRP process.

Cancelling these projects may also have an impact on Ontario's mid and long-term electricity system. The Independent Electricity System Operator's Supply Outlook (2016) identified a potential shortfall of 1-2 GW due to planned nuclear refurbishments. Furthermore, at the end of 2015, approximately 45% of Ontario's existing capacity was greater than 30 years old; in the next 5-10 years, Ontario's electricity system will need to invest in new generation to cover the retirement of some of these aging resources.

Recommendation:

The inclusion of the requirements to either hold an IESO contract or have reached commercial operation by July 1, 2019 effectively modifies the regulatory framework for the terminated contract facilities. These facilities have invested significant money on good faith to develop projects that respond to a pending system need – many, such as ours, at a very cost-competitive price. While these projects have no means of recuperating their lost costs, the province is now proposing to impose different approvals criteria on them in order to continue development. We strongly feel that this goes against the principles of an investment-friendly environment for Ontario.

It is respectfully submitted that the Ontario government amends the regulation to state that any projects that had applied for an REA at the time of the posting continue to fall under the previous section 60.0.2 provisions of the Planning Act.

Sincerely,



James J. Murphy
Vice President, Renewable Development