

RSEC President's Report on Business to Date

On behalf of the board, I would like to thank all members that have joined the teleconference RSEC 2020 Annual General Meeting. 2020 has been a year impacted by the realities of the COVID-19 pandemic and RSEC remains committed to providing transparency to all members.

There are currently 2 operating RSEC projects: one for the Muskoka chapter and one for the Bruce chapter. The remaining Feed-in-Tariff Contracts were terminated by the IESO at the direction of the Ontario provincial government on July 16, 2018. In total, 55 RSEC projects across the following chapters were terminated:

- **RSEC Simcoe – 21 CONTRACTS TERMINATED**
 - FIT 4
 - 2467260 Ontario Inc.: 14 contracts terminated
 - FIT 5
 - Sunshine Solar Ontario 2016 Inc.: 7 contracts terminated
- **RSEC Muskoka – 1 CONTRACT TERMINATED**
 - FIT 4
 - 2469780 Ontario Inc.: 1 contract terminated, 1 operating project
- **RSEC Halliburton – 3 CONTRACTS TERMINATED**
 - FIT 4
 - 2405372 Ontario Inc.: 3 contracts terminated
- **RSEC Bruce – 30 CONTRACTS TERMINATED**
 - FIT 5
 - Northern Development Solar 2016 Inc.: 30 contracts terminated, 1 operating project

We have been working towards recovering the costs on the development of these projects through two avenues:

- Pre-Development Construction Development Costs (PCDC) Claims
 - Each FIT contract includes a clause that outlines that should the IESO terminate them the Supplier can submit documentation to recover costs accumulated Pre-Construction to receive compensation from the IESO. All **55** terminated contracts submitted a PCDC claim to the IESO in 2019. To date, the Suppliers have not received any compensation from the IESO for any RSEC projects as they are still being reviewed by the IESO and external 3rd party auditors
- Legal Action against the Ministry of Energy and the IESO
 - **29** of the terminated contracts that had submitted Notice to Proceed to Construction Requests before the mass cancellation of contracts on July 16, 2018, are included as part of an ongoing legal action being pursued by the projects Suppliers and investors.
 - ASE and SFF seek to recover the lost profits and development costs resulting from the cancellation of Ontario's Feed-In-Tariff (FIT) program, a renewable energy incentive program launched by the Liberal Government in 2009, which was abruptly repealed in the 2018 turnover to the PC Government under Premier Doug Ford. Numerous ASE and SFF subsidiaries had developed solar energy facilities with the direct aim of entering into the FIT Program contracting process with the IESO and

- providing solar energy to Ontario's grid, on the basis that these constituted stable investments with guaranteed pricing on power supplied over a 20-year contract period.
- While ASE and SFF had successfully partnered on numerous FIT Projects throughout the life of the FIT Program, a bracket of 111 subsidiary projects were stalled and subsequently cancelled during the turnover between the incumbent Liberal and new PC governments following the general provincial election in July 2018. These projects had already been approved for contracts by the IESO and had submitted requests for Notice to Proceed (NTP), a contract milestone in the FIT process that was typically granted by the government to eligible projects as a matter of course prior to the election. In the lead up to the election, ASE and SFF received deferral notices in response to their NTP requests for the first time since the FIT Program's inception. These projects were later cancelled by the PC Government. It was later determined that the IESO had acted on instructions from the incoming PC Government to take steps to wind down the FIT Program prior to the official transfer of power between the Liberals and the PCs. These actions, and the 111 FIT contracts caught by this transition period, are the subject of this lawsuit.
 - Evolution of the FIT Lawsuit and Theory of the Case: Initial investigations included two main sources of evidence and documents: (1) documentary production from ASE and SFF regarding the affected contracts and the policy and marketing materials backing the FIT Program as a whole; and (2) a Freedom of Information (FOI) request submitted to the IESO in August 2018. Through the FOI request, we discovered a range of correspondence between the IESO and relevant parties, including MOE staff, which demonstrated plans and actions taken to wind down the FIT Program prior to the swearing in of the PC Government in 2018. We then engaged in legal research flowing from these new facts, and determined that this case presented a novel claim based on the constitutional notion of "one government at a time", meaning that in times of political transition, actionable rights to implement policy are only transferred after the formal "Swearing In" of a new government.
 - Work and Steps Taken in the Litigation to Date: In September 2019, a further FOI request to the MOE uncovered additional documents relevant to the transition period. On October 10, 2019, we provided notice to the MOE of our intent to commence this claim, pursuant to section 18(1) of the Crown Liability and Proceedings Act, 2019 (CLPA),¹ which governs claims for damages brought against the Ontario government. In addition to the requirement of 60 days' notice to the Crown of any claim for damages, the CLPA requires leave of the court to bring any claim for misfeasance or bad faith against Ontario government entities. In practice, the CLPA essentially provides that any lawsuit filed against the government is "stayed" –meaning, the litigation process is suspended or halted— until the court grants leave. Leave is requested by way of a "gateway" motion brought by the plaintiffs requesting the courts' blessing of the suit against the government. On December 2, 2020, we filed the Statement of Claim. Counsel to the IESO and the MOE accepted service of our documents. Counsel for the IESO have indicated they will be waiting to serve their Statement of Defence until after the leave motion has been heard and decided. We now await confirmation of filing from the court, and await a response from the MOE regarding these materials.
 - Leave Requirements and Steps Taken to Address Them: Under the CLPA, there are two requirements on a motion for leave to proceed against Ontario: the action is brought in good faith; and, the action has a reasonable possibility of being decided in the Plaintiffs' favour at trial. The CLPA is new legislation. Few precedent decisions exist to provide insight into how the court interprets and applies these conditions.

We continue to work with all parties involved to ensure sufficient compensation for the work that RSEC and its members have done over the years to develop the Co-op projects. Additionally, we remain committed to providing members updates in 2021 on the progression of the PCDC claims and the Legal Action.