

## Clarification of Ontario PC Party's Plans for Feed-In Tariff Program

Further to the [Energy Law bulletin](#) we circulated in May regarding the Ontario PC Party's pledge to cancel Ontario's Feed-In Tariff Program if elected on October 6, 2011, the Party released its formal policy platform, entitled *Changebook*, earlier this month.

The document states the following with respect to energy policy:

***We will stop the expensive energy experiments that are driving up hydro bills.***

*A Tim Hudak government will end the Liberal government's schemes that have families subsidize hydro prices. We will end the feed-in tariff program that, in some cases, pays up to 15 times the usual cost of the hydro. Hardworking farmers and other Ontarians who signed contracts to host energy production on their property will have their contracts honoured. But there will be no more of these deals.*

*We will end the king of all secret, sweetheart deals – the \$7 billion Samsung deal – that happened without a competitive process or a guarantee of job creation targets. Building our green energy sector cannot be achieved by writing a cheque to one single foreign-owned multinational corporation that was handed every advantage.*

***We will give families a voice in how hydro rates are set.***

*Families understand that their hydro bill goes up if they leave the lights on. But why does it skyrocket for no apparent reason? The Ontario Energy Board sets rates, but this body has lost its independence. We will restore that independence by ending the day-to-day political interference of the last eight years. And we will establish a powerful Consumer Advocate at the OEB. The Consumer Advocate will represent only consumers. Not the bureaucrats. Not the energy sector. Not the special interests.*

We asked Party officials and the authors of the document to clarify the ambiguity regarding the phrase, "Hardworking farmers and other Ontarians who signed contracts to host energy production on their property will have their contracts honoured."

It seemed clear that FIT Program participants who have accepted a FIT Contract and received Notice to Proceed will be permitted to complete construction and operate under the contract for the 20 year term, in accordance with the terms of the Contract. However, with respect to those who have accepted a FIT Contract but have not yet received Notice to Proceed, would they be able to obtain NTP and complete their projects under a PC Government? Or would a PC Government honour their contracts by refusing NTP and paying the cancellation fees contemplated in the FIT Contract?

The clear answer we received was the latter. For any FIT Contract holders who do not yet have NTP at the time of a change in government, a PC Government would exercise its rights under Sections 2.4(a), (e) and (f) of the FIT Contract to terminate the FIT Contract, return the Completion and Performance Security, and pay the Supplier its reasonable Pre-Construction Development Costs (upon delivery of written documentation thereof). Pre-Construction Development Costs exclude the cost of Generating Equipment, the \$500 Application Fee, non-arm's length payments above fair market value, and profits, and are capped at the following limits:

Biogas, Biomass and Landfill Gas	\$400,000 + \$2.00/kW
Solar PV	\$250,000 + \$10.00/kW
Waterpower	\$500,000 + \$20.00/kW
On-shore Wind	\$400,000 + \$2.00/kW
Off-shore Wind	\$500,000 + \$2.00/kW

There may, however, be ways to protect your project in advance of an election. To discuss your legal options, please contact a member of McMillan LLP's [Energy Law Group](#).

by [Mike Richmond](#)

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#### [a cautionary note](#)

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