

# Torys' Video Podcast Series

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## Ontario Introduces Green Energy Legislation: *Green Energy and Green Economy Act, 2009*

By [Jonathan Weisz](#), [Charles Keizer](#), [Valerie Helbronner](#), [Patricia Koval](#) and [Dennis Mahony](#)

Torys' experts in infrastructure, energy, and climate change and emissions trading examine Ontario's proposed *Green Energy and Green Economy Act, 2009*.



*Edited transcript*

**Jonathan Weisz:** The province of Ontario has just introduced its new *Green Energy Act*. It's been long anticipated by a lot of people in the industry, and the hope is that it will play an important role in the development of new energy infrastructure and help the province generally through the interesting times we're now in.

The question of how the *Green Energy Act* [the Act] is going to impact project finance and project development is still to be seen. The Act itself is, in many ways, a framework for new developments. A lot of the decisions are going to be made by way of regulation, so the details are still to come out. It is important to note that some of that framework, including the feed-in tariff and the changes related to streamlining regulation, is going to be very important and [it will be] very important to watch and see how that will develop.

Given some of the uncertainty in the Act as it now stands, it'll be important for industry players to come forth and speak with the government and provide input so that the various regulations that come out do reflect the best scenario for the province and the best opportunities for developers to be heard and have their interests considered as regulations come forward. It'll be interesting to see how that helps in the development of renewable energy projects in the months and years ahead.

### Transmission Grid Improvements and Connection

**Charles Keizer:** One of the more significant changes in the *Green Energy Act* relates to the connection of new generation facilities to transmission and distribution facilities. In particular, there is priority given to new generation facilities relating to renewable power. Those that are renewable-based (solar, wind, biomass) have priority in connecting to the grid. This is unlike in normal circumstances where we had non-discriminatory access — in other words, everybody was treated the same when [customers and generators sought to be] connected. This will give rise to new development on transmission and distribution systems because they'll have to be enhanced and developed to ensure that priority can be given to new "green generation" facilities.

## Feed-in Tariff

**Valerie Helbronner:** The Act has a feed-in tariff program, which has been a much-anticipated aspect of the Act and something that various different entities were lobbying for, including the industry associations and the environmental non-governmental organizations. What the program does is that it provides developers of renewable energy projects with a standard set price for any generation that they provide into the electricity system, and it also provides them with a standard contract.

It's expected that most forms of renewable energy generation will, in the future, be developed under this feed-in tariff program. Again the government has said that it knows where in Ontario the renewable energy resources are, and it's also said that it knows what the prices should be. The government had what [it feels] has been a price discovery for those forms of generation through past RFPs and also through the integrated power system plan. So the government's intention is go through this feed-in tariff route for most of generation.

## Implications for Cap-and-Trade and GHG Emissions Mitigation in Ontario

**Patricia Koval:** The proposed new *Green Energy Act* and the consideration that led up to it do have important implications for GHG emissions reporting and for the development of a cap-and-trade system in Ontario.

First, the Act includes a proposed amendment to the Ontario *Environmental Bill of Rights Act* to require the Environmental Commissioner to produce a new report on the activities in the province to reduce GHG emissions. Under the proposed Act, that first report will be due by the end of 2009.

Second, although the Act doesn't specifically address this, our conversations with the regulators indicate that under the proposed new feed-in tariff system, which is part of the proposed new *Green Energy Act*, it is contemplated that the Ontario Power Authority will continue to purchase power under terms under which it retains all of the environmental attributes and emissions credits associated with that power.

While we understand that this was the subject of some considerable study, we understand that the rationale for continuing it is that the province will require these credits in order to meet its own emissions-reductions targets by 2014. The province, of course, has committed to phase out coal by that time and to reduce its emissions 6% below its 1990 levels by 2014. If this is the case, then renewable-energy producers who sell their power through the Ontario Power Authority will not be able to keep their emissions credits or environmental attributes. Instead, only those power producers who sell power outside OPA will be able entitled to retain those credits.

The Act doesn't specifically assist in defining how renewable energy is going to be treated under the Western Climate Initiative, in which Ontario is participating, or under Ontario's own proposed cap-and-trade system, which it released for comment in a discussion paper that it tabled in December 2008.

## Exempting Renewable Energy Projects from Municipal Regulations

**Dennis Mahony:** It appears that the intention is to remove from the municipality and upload to Queen's Park several approvals that were the source (not currently, but historically have been the source) of some delay. The mechanism by which that would be achieved is exempting renewable energy projects from municipal by-laws and related planning approvals, and that would then be included in (and this isn't clear yet) legislation to be passed in the future.

So that's very significant. It's perfectly consistent with what both Minister Smitherman and the Premier have been saying in recent weeks. Particularly, the Premier has said that they will no longer tolerate NIMBYism with respect to renewable energy projects. And, in particular, he said that municipalities will no longer be in a position to reject a project because they don't like it. At the same time, what he said is that municipalities would still have the opportunity to participate in environmental processes and appeals in order to have their views heard on environmental issues.

## Streamlined Approvals Process

**Dennis Mahony:** What we got in this bill was a one-window process for the subordinate approvals but no mention of whether the *Environmental Assessment Act* approval would be included in that window. That was a surprise because a lot of the speculation was that we would have a genuine one-window process for environmental approvals in the province. And to leave out the *Environmental Assessment Act* would have been a significant gap under the circumstances. So if the bill continues in its current form and there are no additional announcements, for example, about a regulation that would include the *Environmental Assessment Act* approval, then I would describe the improvements to the process as being evolutionary, rather than fundamental or revolutionary. 