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Moving Clean Energy Projects Forward

McGuinty Government Providing More Stability, Creating Clean Energy Jobs

August 2, 2011 10:45 A.M. | Ministry of Energy

Ontario is making it easier for energy developers and manufacturers to do business in the province. This is part of ongoing efforts to help provide stability and create jobs in Ontario's clean energy sector while protecting the health and safety of Ontarians and the environment. Changes include:

- A new stage in the development of renewable energy projects that will provide greater stability to developers and manufacturers, helping to create jobs in Ontario:
    - Developers who are able to demonstrate a completed Domestic Content Plan and a manufacturing equipment agreement will now be able to request a waiver of the Ontario Power Authority's termination rights. Projects will still be required to submit a financing plan, connection impact assessment and obtain all regulatory approvals before proceeding to the construction stage.
- Improvements to the Renewable Energy Approvals (REA) process that will provide greater certainty for developers, while continuing Ontario's rigorous protection of the environment and human health.
- Based on recent consultations, the Ministry of Finance has proposed new rules to provide greater clarity and stability to the property tax assessment of renewable energy projects.

These changes will further advance Ontario as the leading destination for clean energy investment. Ontario's clean energy sector has already created 20,000 jobs to date and is on track to create 50,000 jobs by the end of 2012.

Quick Facts

- More than 2,000 mid-size and large-scale Feed-in Tariff projects have been awarded contracts, representing enough electricity each year to power more than 1.1 million homes.
- Since 2009, more than 30 businesses have announced they are setting up or expanding plants in Ontario to manufacture parts for the solar and wind industries.
- Ontario leads Canada in photovoltaic solar capacity and is currently home to the world's largest operational solar photovoltaic farm located in Sarnia.
- In 2003, Ontario had only 10 wind turbines. Today, the province has more than 900 wind turbines and is home to Canada's four largest wind farms.

Background Information

- Creating Stability for Clean Energy Projects

- Read about Ontario's Long Term Energy Plan: Building Our Clean Energy Future
- Learn more about Renewable Energy Approvals
- Learn more about renewable energy in Ontario
- Get details about the Feed-In Tariff Program
- Find out about the Ontario Clean Energy Benefit
- Read the Minister of Energy's Directive to the Ontario Power Authority

Quotes

"These changes will give companies who have invested in this province more stability in planning and dealing with manufacturers, ensuring we remain competitive in North America's emerging clean energy economy. It will also help protect good jobs for Ontario families as we build a cleaner electricity system."

Brad Duguid
Minister of Energy

"Ontario is a leader in the green economy and takes great pride in working closely with the renewable energy generation sector. Our property tax system will continue to maintain a sustainab le and competitive environment for renewable energy production, while also creating and protecting jobs."

Dwight Duncan
Minister of Finance

"Our approvals process ensures that all projects meet our stringent requirements to protect human health and the environment. These new guideline documents will provide developers with the tools they need to navigate the approvals process for renewable energy projects, encouraging new investment in renewable energy sources and helping create well-paying clean energy jobs."

John Wilkinson
Minister of the Environment

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Connecting Today.
Powering Tomorrow.

Waiver of OPA termination rights available

August 2, 2011

To maintain momentum and ensure Ontario remains North America's leading jurisdiction for clean energy investment, Ontario is making it easier for energy developers and manufacturers to do business in the province. This is part of ongoing efforts to help provide stability and create jobs in Ontario's clean energy sector.

To support manufacturing supply chain development, on August 2, 2011, the Ministry of Energy directed the OPA to offer FIT contract holders the opportunity to have the OPA's termination rights under section 2.4(a) of the FIT Contract waived.

The directive is available by clicking here. A Ministry of Energy news release is available by clicking here.

Section 2.4(a) of the FIT Contract says that either the OPA or the Supplier may terminate the FIT Contract until the OPA issues a Notice to Proceed (NTP) and the Supplier has paid the Incremental NTP Security.

The Minister's directive established a December 31, 2011, deadline for approved Domestic Content Plans and equipment purchase agreements. These plans need to be reviewed by the OPA. To ensure that there is enough time to thoroughly review plans, the OPA has established the following timeline:

- Non-Capacity Allocation Exempt projects (generally larger than 500 kW) must submit the waiver, a Domestic Content Plan and evidence of agreement(s) for the purchase of Generating Equipment as follows:
    - the waiver by **October 14, 2011**
    - a Domestic Content Plan, in the Prescribed Form titled FIT Contract Form of Domestic Content Plan (Waiver), by **October 14, 2011 (form updated August 9)**
    - evidence of agreement(s) for the purchase of Generating Equipment, in the form of a Statutory Declaration, by **November 30, 2011**.

The Domestic Content Plan will be reviewed for completeness and substantiation.

- Capacity Allocation Exempt projects must submit the waiver and a Domestic Content Plan by 5 p.m. on **December 30, 2011.**

If those requirements are not met by the specified deadline, the waived termination rights will be reinstated.

All Suppliers still need to submit an NTP Request to the OPA and provide evidence of regulatory approvals (Renewable Energy Approval, or environmental assessment or screening in the case of a hydroelectric project), a completed Financing Plan, a Domestic Content Plan, if applicable, and documentation related to required impact assessments, as well as pay the required security.

More details about submitting the waiver and the required additional information are available here.

This change will further advance Ontario as the leading destination for clean energy investment. Ontario's clean energy sector has already created 20,000 jobs to date and is on track to create 50,000 jobs by the end of 2012.

The OPA hosted web-enabled teleconferences on August 9 and August 23 to discuss the process for obtaining a waiver. Below are the links to the session archives where you will be able to listen to the sessions and view the presentations. A PDF copy of August 23 presentation is also posted here.

Archive August 9: http://www.snwebcastcenter.com/event/?event_id=2025

Archive August 23:http://www.snwebcastcenter.com/event/?event_id=2057

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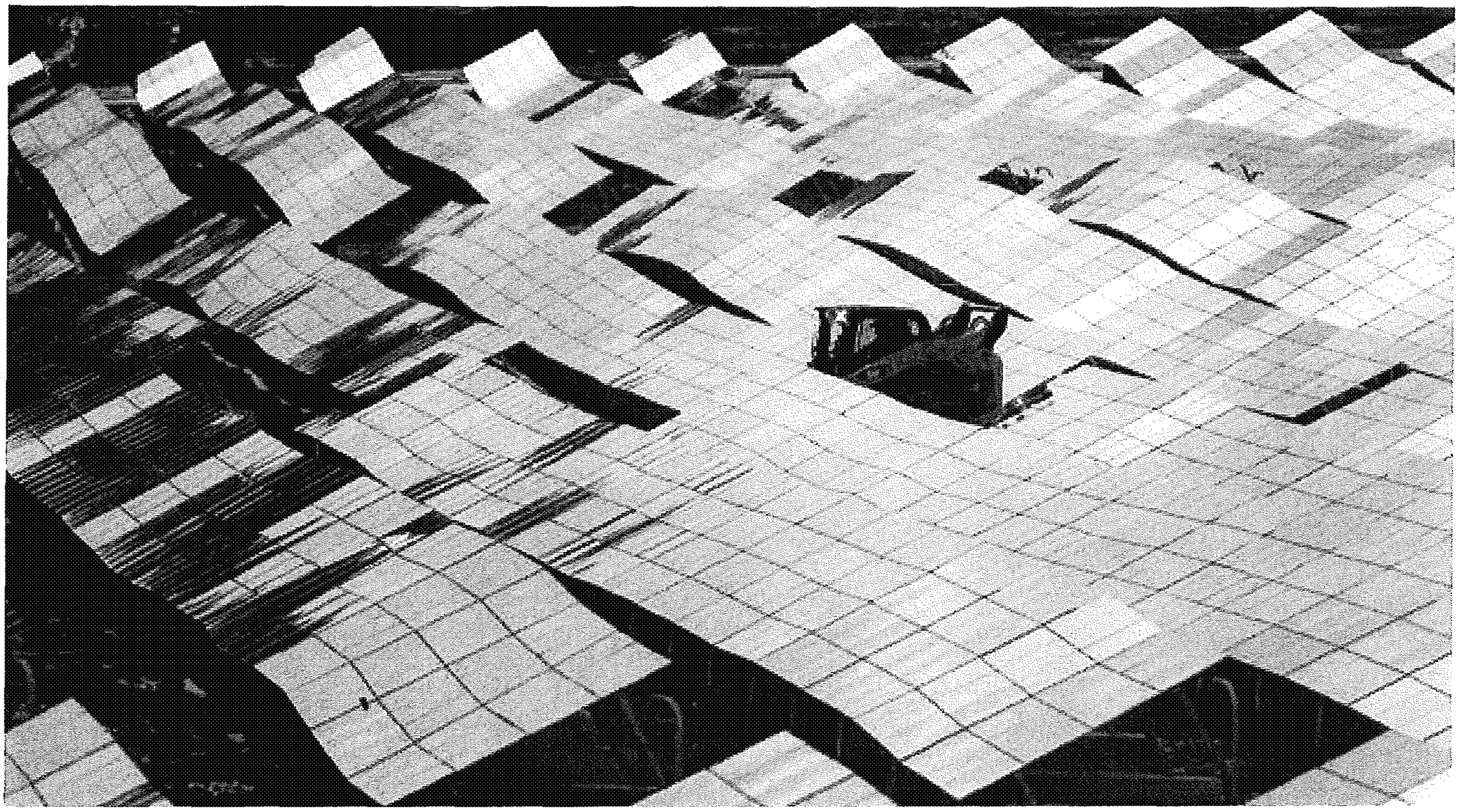
POLITICS

McGuinty Liberals make it harder to cancel green energy programs ahead of election



At the end of the work day a worker on construction equipment carefully navigates his way through hudreds of solar panels at the Lily Lake Solar facility near Peterborough, Ont. November 29, 2010.

FRED THORNHILL FOR THE GLOBE AND MAIL/FRED THORNHILL THE GLOBE AND MAIL

KAREN HOWLETT › AND RENATA D'ALIESIO
PUBLISHED AUGUST 2, 2011
UPDATED MARCH 26, 2017

The Ontario government is taking steps to protect its flagship job creation program by making it more difficult to cancel hundreds of clean-energy projects in various stages of development.

The changes, announced on Tuesday, are aimed at providing stability for renewable energy developers at a time when the opposition parties' election campaign pledges are creating uncertainty throughout the sector.

A directive signed by Energy Minister Brad Duguid effectively leaves the province's electricity planning agency with much less leeway to cancel contracts, thereby giving companies greater assurance that their projects will go ahead as long as they meet certain conditions.

"What we're doing today helps to provide a level of stability to ensure that our focus on creating jobs and attracting investment to Ontario continues," Mr. Duguid said.

The governing Liberals are counting on clean energy to generate employment in the province's battered manufacturing heartland. They are vowing to create 50,000 new jobs through the Green Energy Act by luring investors with the promise of generous long-term contracts that include a guaranteed revenue stream.

But with a provincial election set for the fall, there is no certainty the program will continue. Progressive Conservative Leader Tim Hudak, who is leading in the public opinion polls, has said he believes the program is making electricity unaffordable for many residents. He has pledged to scrap a $7-billion deal with South Korean industrial giant Samsung Group, as well as long-term contracts for wind, solar and other renewable energy projects, if he wins the election on Oct. 6.

The directive signed by Mr. Duguid affects 1,800 feed-in tariff (FIT) contracts that the Ontario Power Authority has signed with large and medium-sized renewable energy developers.

Under the directive, the OPA can no longer cancel a project before a company secures financing, environmental approval and a connection to the electricity transmission grid. The OPA will have to waive its option to cancel projects as long as a company has a manufacturing agreement and a plan to meet local content rules.

Two solar panel manufacturers said the new directive would provide more certainty for their customers. However, they added that they'll have to wait and see whether it translates into more demand for their product. They hope it does.

Both Heliene, which opened late last year in Sault Ste. Marie, and Siliken Group, which started operating a factory in Windsor in May, haven't been running at full capacity. This translated into temporary layoffs at Siliken's factory last month.

"We are going to wait and see what happens, how the market reacts, and what the next month brings for us," said Paco Caudet, general manager of Siliken Canada. "We do have capability of doubling our production."

Many large and small renewable energy projects have stalled waiting to be connected to the electricity grid. Everyone from developers to installers and manufactures are feeling the consequences of the slowdown, which has also stymied demand for solar panels.

Heliene president Martin Pochtaruk hopes this obstacle is solved next.

"We haven't been able to fully utilize the installed capacity," Mr. Pochtaruk said. "We should be doing better than we are."

Robert Hornung, president of the Canadian Wind Energy Association, also welcomed the directive. Before, he said, the OPA's powers were open to fairly broad interpretation, so there was concern about how the agency might interpret them.

Even though the agency never exercised its authority to cancel a contract, Mr. Hornung said, "it was starting to emerge as a roadblock in having investments move forward."

However, New Democrat Energy Critic Peter Tabuns dismissed the changes as minor and said they do not address bigger issues, such as making sure companies can get access to the transmission grid after they have invested in renewable energy projects.

"That is a very real and live problem that needs to be addressed," he said.

IESO-N-0017240

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Feed-In Tariff Program Contract Changes Create More Certainty in Early Stage

08/05/2011

Richard Corley, Ken Pearce (/English/WhoWeAre/FindPerson/Pages/Profile.aspx?LAS=KSP), Bryson Stokes (/English/WhoWeAre/FindPerson/Pages/Profile.aspx?LAS=BAS) and Leslie Wong (/English/WhoWeAre/FindPerson/Pages/Profile.aspx?LAS=LWO)

On August 2, 2011, Brad Duguid, Ontario's Energy Minister, announced that the Ontario government had initiated a change to create greater contractual certainty at the project approval stage of the province's feed-in-tariff (FIT) program.

As discussed in our April 2010 *Blakes Bulletin: Ontario Announces 184 Feed-in Tariff Contracts for 2,421 MW of Renewable Energy (http://blakesfiles.com/Bulletins/legal_updates/cleantech/april_2010/CleanTech_Energy_april_2010.pdf)*, the FIT program is North America's first comprehensive guaranteed pricing structure for renewable electricity production and has resulted in the most substantial investments in green energy development in Canadian history. The FIT program offers stable prices under long-term contracts with the Ontario Power Authority (OPA) for energy generated in Ontario from renewable sources, such as bioenergy (biomass, biogas and landfill gas), onshore and offshore wind, solar photovoltaic (PV) (ground-mounted or roof-top) and waterpower (naturally flowing water). Section 2.4(a) of the FIT contracts provides the OPA with the right to unilaterally terminate a FIT contract before the OPA has issued a notice to proceed (NTP) and the supplier has paid the incremental NTP security, upon notice and repayment of the security deposit and pre-construction development costs up to a prescribed limit. The pre-NTP stage in the FIT contract is a lengthy process which exposes the supplier to risk and uncertainty.

Effective from August 2, 2011, all FIT suppliers who are able to demonstrate a completed domestic content plan and a manufacturing equipment agreement, and all FIT suppliers who do not require a domestic content plan, may request a waiver of the OPA's termination rights under section 2.4(a) of the FIT contract. FIT suppliers of PV or wind renewable fuel must submit additional information to the OPA within the prescribed timeframe. Different requirements and deadlines (http://fit.powerauthority.on.ca/sites/default/files/Waiver_of_OPA_termination_rights%20.pdf) apply to capacity allocation required (CAR) suppliers and capacity allocation exempt (CAE) suppliers. In both cases, the termination provision is automatically reinstated if the applications are not received before the deadline.

As a result of this change, if a termination waiver is granted to a supplier, any subsequent termination by the OPA in the absence of a supplier default is subject to the ordinary rules of contract. In his directive to the OPA, Minister Duguid stated that this change is designed to eliminate the risk undertaken by suppliers and strengthen the financing and purchasing of equipment from Ontario manufacturers (to view the Minister's direction, click here (http://blakesfiles.com/Bulletins/legal_updates/cleantech/aug_2011/direction.pdf)). Suppliers are still required to submit a financing plan, connection impact assessment, and obtain all regulatory approvals before proceeding to the construction stage.

This new directive has the potential to enable suppliers to obtain waivers to protect up to 1,800 projects currently in the pre-NTP contract stage (representing 3,500 MW of potential generating capacity) from possible termination under section 2.4(a) of the FIT contracts (to view an article about the directive, click here (http://blakesfiles.com/Bulletins/legal_updates/cleantech/aug_2011/contract_20change.mht)). While the waivers would not eliminate the possibility of FIT contracts being terminated by the OPA, the change removes the contractual right of the OPA to terminate the contracts for convenience and the limitation on the amount of costs that the supplier would be able to seek to recover in such event. The threat of termination has become an increasing concern to suppliers as the leader of the Ontario Progressive Conservative Party has threatened to cancel the FIT program if his party wins power in the October 6, 2011 provincial election.

While the August 2 announcement has outlined the principal terms of the change, a number of matters such as the timing and process remain to be detailed. The OPA will be hosting a web-enabled teleconference to discuss the process for obtaining a termination waiver and to answer questions. The teleconference will take place on Tuesday, August 9, 2011 at 2 p.m. Eastern Standard Time. To participate in the teleconference to listen to the session and view the presentation, click here (http://www.snwebcastcenter.com/event/?event_id=2025). If you would like to ask a question, you will need to call the toll-free number at 1-866-212-9078.

If you have any questions about the foregoing, please contact:

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Tags: Energy, Environmental & Aboriginal Law, Technology, Renewables, Information Technology

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Ministry of Energy directs OPA to offer waiver of pre-NTP termination rights under FIT contracts

DLA Piper LLP

Canada | August 2 2011

Ontario Minister of Energy Brad Duguid issued a directive today requiring the Ontario Power Authority ("OPA") to offer FIT contract holders the option of getting a waiver of the OPA's pre-Notice to Proceed ("NTP") termination rights. The directive has the potential to remove a very significant obstacle to the development of many projects under the FIT program. It may also help the Liberal government make good on its green collar job creation promises in advance of this fall's election.

Under the FIT contract, the OPA is permitted to terminate the contract unilaterally at any time before the supplier has received its Notice to Proceed from the OPA. A supplier cannot request a NTP until it has completed all of the following:

- obtained a Renewable Energy Approval;
- completed impact assessments with the applicable distributor or transmitter;
- submitted a Domestic Content Plan; and
- obtained financing commitments for at least 50% of project costs.

If the OPA exercises its right to terminate pre-NTP, it may still have to pay damages in respect of certain pre-construction development costs. However, such damages are expressly capped at a modest (some would say almost trivial) amount (which varies depending on project size and renewable fuel).

For many in the industry, particularly those being asked to finance projects, the OPA's pre-NTP termination rights meant that a FIT contract was worth only slightly more than the paper its was written on until a NTP was issued. Because of project development delays, particularly with respect to the Renewable Energy Approval process with the MOE and MNR and the impact assessment process with the utilities, very few project are in a position to request NTP. Many developers found themselves caught in a chicken-and-egg scenario where a NTP was required to finance a project but financing was required to move the project forward before getting a NTP.

Today's directive will require the OPA to waive its pre-NTP termination rights, provided that suppliers agree to certain conditions. **Non-Capacity Allocation Exempt projects** will have to submit the waiver, a Domestic Content Plan and evidence of agreement(s) for the purchase of Generating Equipment as follows:

- the Waiver by October 14, 2011;
- a Domestic Content Plan, in the Prescribed Form titled FIT Contract Form of Domestic Content Plan (Waiver), by October 14, 2011 (wind and solar projects only); and
- evidence of agreement(s) for the purchase of Generating Equipment, in the form of a Statutory Declaration, by November 30, 2011 (wind and solar projects only).

Capacity Allocation Exempt projects must submit the waiver and a Domestic Content Plan by 5 p.m. December 30, 2011. Details are available on the FIT website. The OPA will post the necessary forms shortly.

By waiving the pre-NTP termination rights, the OPA will potentially make it easier for developers to finance projects. Once projects are financed, developers will be able to place binding equipment orders.

It is likely that the government issued the directive to help unleash demand for equipment. Recall that the FIT program requires that solar and wind projects incorporate a substantial percentage of domestic (i.e., Ontario) content. As a result, many manufacturers have committed to establishing operations in Ontario. These manufacturers will create many of the green collar jobs that the Liberal government promised under the FIT program. In the lead up to the provincial election, the government has been emphasizing these new jobs as evidence of the success of the FIT program. Opposition parties have responded that the job creation numbers are artificially high, because the represent potential future job, not actual current jobs. By having the OPA waive its pre-NTP rights, the government no doubt hopes that local manufacturers start filling the jobs they have promised to create.

DLA Piper LLP - Andrew Lord

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NEWS LOCAL

APPEC applauds tribunal ruling

By Bruce Bell, The County Weekly News/The Intelligencer
Wednesday, April 26, 2017 8:09:14 EDT PM

Land clearing at potential turbine site.

PRINCE EDWARD COUNTY — An Environmental Review Tribunal's (ERT) decision on the White Pines Wind Project on Wednesday afternoon has the head of the Alliance to Protect Prince Edward County (APPEC) declaring it a great environmental win.

"I think the ERT's decision fully supports what the people of Prince Edward County want and that's to protect the environment of our South Shore," said APPEC chairman Gord Gibbins. "So many groups have fought this fight over the years and this one just happened to be our battle, but it"s another we can all enjoy together."

Both APPEC and wpd Canada have been waiting since last year for the ERT to rule if wpd's mitigation measures were appropriate enough tc allow the 29-turbine White Pines project to proceed.

In February 2016 the ERT ruled the project "will cause serious and irreversible harm" to animal life and the natural environment – including th endangered Blandings turtles and little brown bats. However, the Tribunal ruled the company could prepare a mitigation plan for submission.

On Wednesday, the ERT ruled:

• With specified amendments, the proposed mitigation measures are satisfactory for little brown bats.

• With specified amendments, the proposed mitigation measures are satisfactory for Blanding's turtles, for turbines one through 11.

• The proposed mitigation measures for turbines to be accessed by specified upgraded municipal secondary and tertiary road segments and intersections in Blanding's turtle habitat are not satisfactory, and, therefore, turbines 12 through 29 are removed from the REA.

With turbines seven and 11 already removed from the project's Renewable Energy Approval in 2105 under the Heritage Act, the project has now been reduced to nine turbines from the original 29.

"I don't know if it's financially viable now, but I guess that's a decision for (wpd canada) to make," Gibbins said.

A month after the February 2016 decision, the ERT ruled wpd Canada could proceed with site preparation despite the previous ruling the project would cause serious and irreversible damage to Blanding's turtles and Little Brown Bats. At that time, the ERT provided APPEC with explanation or reasons why it ruled against the motion of stay to delay site work.

A week later an Ontario Divisional Court judge dismissed another appeal by the group to have work delayed until the ERT provides reasons its March 22 decision.

APPEC withdrew another motion for a stay on site preparation for the project at the Ontario Court of Appeal in Toronto after it was determine the appeal required a panel of three judges to rule, not the solo judge who attended the Osgoode Hall courtroom for the hearing.

Last week, wpd Canada again commenced with site preparation, clearing vegetation on private property along Royal Road in South Marysburgh.

Gibbins said crews have been busy at five or six locations clearing vegetation, often adjacent to the spring foraging areas of the turtles, but a fell quiet and work halted immediately following the decision.

When contacted Wednesday evening, wpd Canada spokesman Kevin Surette said it was too early for the company to offer much comment.

"We'll take the next several days to review the decision with our legal team and decide what our next steps will be," he replied.

Meanwhile, Mayor Robert Quaiff echoed Gibbins comments, calling it a win the municipality.

"I see this as an incredibly positive development. Our community has been fighting this project for quite some time now, and I'm glad to see that the Environmental Review Tribunal has recognized and given credence to our concerns," he said. "I want to congratulate the Alliance to Protect Prince Edward County for their tenacity throughout this process. From what I understand, this decision will make it very difficult, if not impossible, for WPD to proceed with the project."

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