Ontario

TREASURY BOARD / MANAGEMENT BOARD OF CABINET REQUEST ASSESSMENT NOTE

Ministry:	Energy
Meeting Date:	March 26, 2013
Agenda Class:	Discussion
Last reviewed by: Cabinet – July 2011	**Tracking to:** Cabinet – March 27, 2013 (Fast Track Request)

SUBMISSION TITLE: Renegotiation of the Green Energy Investment Agreement

I. DECISION BEFORE THE BOARD

- The Ministry is seeking a negotiating mandate to amend the Green Energy Investment Agreement (GEIA), which was signed between the Korean Consortium, as represented by the Samsung Corporation, and the Province.

II. RECOMMENDATIONS:

• Approve a negotiating mandate to amend the Green Energy Investment Agreement, which includes: o If the Korean Consortium does not agree to the negotiating points within 45 calendar days, the Ministry of Energy can immediately issue a notice to terminate the GEIA in 30 calendar days.	*Board Judgement*

III. FINANCIAL SUMMARY

$ Millions	2012-13	2013-14	2014-15
Initiative cost requested	0.0	0.0	0.0
Initiative cost recommended	0.0	0.0	0.0
Recommended program base – N/A Potential Ratepayer Impacts	0.0	0.0	0.0
Offset Recommended	0.0	0.0	0.0
Total Fiscal Impact	0.0	0.0	0.0

IV. KEY COMMENTS AND CONSIDERATIONS

The Green Energy Investment Agreement (GEIA) was signed between the Korean Consortium and the Province in January 2009 and commits the Korean Consortium (KC) to build 2,000 MW of wind and 500 MW of solar projects in five phases in exchange for manufacturing plants and 900 jobs. Appendix C provides an overview of the agreement.

Under the agreement, KC receives 20-year Power Purchase Agreements (PPAs), an Economic Development Adder (EDA) based on the manufacturing/job commitments, and priority access to 2,500 MW on the transmission system. The cost of the GEIA to ratepayers is $10.5 billion over 20 years, with an average residential bill impact of $5.08 per month or $60.60 per year, once all five phases and the EDA are implemented.

KC has since missed key commitments in the GEIA by missing multiple milestone deadlines (March 31, 2012) for Phase 2 and 3 construction projects. This triggers the province's ability to terminate the GEIA, without penalty, through existing termination clauses.

IV. Key Comments and Considerations (Continued ...)

The Ministry is seeking a negotiating mandate to amend the GEIA to eliminate the last three of five phases. Phases 3, 4, and 5, do not have PPAs signed and represent approximately 1,430 MW of wind and solar generation. Costs for these three phases to Ontario ratepayers would have been $5.2 billion over 20 years if contracted.

Points of negotiation would (see Appendix D for further negotiations background):

- Allow Phase 1 and 2 projects to continue, but modify Phase 2 solar project to meet Feed-In-Tariff 2.0 rules regarding residential setback requirements (Setback requirements added to FIT 2.0, but were not part of KC's original FIT contract for the Phase 2 Kingston solar project (PPA cost - $649 million) ;
- Eliminate Phases 3, 4, and 5 (total of 1,430 MW, foregone cost approx. $5.1 billion if not reallocated);
- Secure investment in London per GEIA commitments but require KC to deliver an alternative investment (e.g. R&D) that provides equivalent employment benefits (200 Jobs target for 4th plant – Solar Module Assembly in London);
- Negotiate a reduction in the EDA to the best extent possible (current maximum EDA is $110 million); and,
- Require KC to maintain jobs and manufacturing commitments for Phases 1 and 2 (Three plants in Phases 1 and 2 with a 700 jobs target).

The Ministry notes generation from phases 3, 4, and 5 is not required given the Province's surplus situation. Over the short-to-medium terms (2013-16), Ontario is experiencing a surplus of generation. All of the power produced under the GEIA is intended to come online in this same timeframe.

The outcome of negotiations could provide substantial savings to Ontario ratepayers. The Ministry estimates eliminating phases 3, 4, and 5 could result in cost avoidance of up to $5.2 billion over 20 years (but only if the foregone electricity capacity is not reallocated), about $30 per year on the average residential electricity bill (average of 2% of bill).

The Ministry intends to review options for the 1,430 MW of capacity made available by amending the GEIA, with consideration given to its renewed Long-term Energy Plan. A potential future reallocation of the capacity from the eliminated phases to renewable energy developers will provide confidence to the development industry and manufacturing sectors that Ontario remains committed to green energy.

Legal:
The Ministry indicates the GEIA gives Ontario the right to terminate since regulatory approvals and other requirements for Phase 3 were not met by December 31, 2012 and appear not to have been waived. Ontario's negotiator has made it clear to KC that the government was not waiving its right to terminate the Agreement (also expressed in a letter to KC, January 28, 2013).

The Ministry indicates if the GEIA is terminated in its entirety. KC's jobs and manufacturing commitments will be eliminated. KC could still proceed to build Phase 1 and 2 wind and solar projects as these have PPAs with the Ontario Power Authority.

Given KC resources invested to date in Phases 1, 2 and 3, the Ministry indicates KC is likely to commence legal action against Ontario if Ontario attempts to prevent theses phases from proceeding. Damages could include sunk costs related to pre-development work, lost profits of any or all phases, and costs incurred to bring manufacturers to Ontario. Energy has not quantified potential damages to KC, whether it would impact ratepayers or taxpayers, or provided an assessment of the likelihood of losing any lawsuit.

Ratepayer Impact:
The positive impact on ratepayers of not proceeding with Phases 3, 4 and/or 5 depends on whether the foregone generating capacity is not reallocated. Any future reallocation of the 1,430 MW, as suggested by the Ministry, would diminish ratepayer cost avoidance to less than the $5.2 billion figure cited by the Ministry, as would costs or damages as a result of legal action taken by KC.

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Date:	March 20, 2013	**Log number:**	
Branch / Division:	General Government, Planning and Resources Branch, OBTB		

APPENDIX A: PROPOSED MINUTE

Should the Board wish to proceed with this item, the following minute is supporting of the Ministry's request:

Approve a negotiating mandate to amend the Green Energy Investment Agreement between the Korean Consortium and Ontario, with the following negotiating points:

i. Negotiating team to be led by Infrastructure Ontario and include the Ministry of Energy
ii. Allow Phase 1 and 2 projects to continue, but modify Phase 2 solar project to meet Feed-In-Tariff 2.0 rules regarding residential setback requirements
iii. Eliminate Phases 3, 4, 5 (total of 1,430 MW)
iv. Secure investment in London per GEIA commitment but require KC to deliver an alternative investment (e.g.; R&D) that provides employment benefits
v. Ontario negotiates a reduction in the EDA to the best extent possible.
vi. Require KC to maintain jobs and manufacturing commitments for Phase 1 and 2.

Approve that if the Korean Consortium does not agree to the negotiating points within 45 calendar days of March 27, 2013, the Ministry of Energy can immediately issue a notice to terminate the GEIA in 30 calendar days. In this regard,

i. Direct the Ministry to report back to the Board prior to issuing a notice to terminate the GEIA with an update on negotiations, an estimate of the likelihood and amount of a potential award to the Korean Consortium or settlement costs, and obtain an approval to terminate the GEIA.

Direct the Ministry to:

i. Report back to the Board on the outcome of outcome of negotiations in May.
ii. Work with Premier's Office and Cabinet Office Communications on a communications plan.

Note that the negotiating team will report to the Minister of Energy.

Financial Impacts: Changes to Expense and Revenue					**Table B1**
		Fiscal Plan Basis			***Appropriations Basis***
$ Millions		**2012-13**	**2013-14**	**2014-15**	**2012-13**
Initiative cost recommended		0.0000	0.0000	0.0000	
Expense changes:					
Operating item	Oper	0.0000	0.0000	0.0000	0.0000
Total Fiscal Impact (draw from c-funds)		**0.0000**	**0.0000**	**0.0000**	**0.0000**

Additional Context: Previous In-Year Approvals					**Table B2**
$ Millions		**2011-12**	**2012-13**	**2013-14**	**2014-15**
2011-12 Fiscal Plan (Projected Actuals)		**1,341.4**			
2012 Fiscal Plan Total Expense			**1,432.1**	**1,398.1**	**1,505.4**
Electricity Sector Strategy Implementation (April 11, 2012)	O	0.0	0.0	0.0	0.0
Greenfield South Power Plant (May 17, 2012)	O	0.0	0.0	0.0	0.0
Reduced Spending on Consultant Services	O	0.0	0.0	0.0	0.0
Load Development Program (June 11, 2012)	O	0.0	0.0	0.0	0.0
Greenfield South Settlement (August 15, 2012) (Post Year End TBO for 2011-12)	O	190.0	0.0	0.0	0.0
Report on Lease Revenue Transfer for Renewable Energy on the South Cayuga Land Bank (September 13, 2012)	O	0.0	0.0	0.5	0.5
TransCanada Energy (September 21, 2012)	O	0.0	50.0	0.0	0.0
Q2 Savings (December 6, 2012)	O	0.0	(1.7)	0.0	0.0
Trans Canada Energy Settlement (December 13, 2012)	O	0.0	(10.0)	0.0	0.0
Total		**1,531.4**	**1,470.4**	**1,398.6**	**1,505.9**

APPENDIX C: OVERVIEW OF THE GREEN ENERGY INVESTMENT AGREEMENT AND THE ECONOMIC DEVELOPMENT ADDER

The GEIA commits the Korean Consortium to build 2,000 MW of wind and 500 MW of solar projects in five phases in exchange for jobs and manufacturing plants:

PHASES	GEIA Anticipated Ratepayer Impact ($M)	TOTAL CAPACITY (MW)	Commercial Operation Dates	*Termination Dates*
Phase 1 – Power Purchase Agreements Signed • Grand Renewable Energy Park 149MW (Wind) • Grand Renewable Energy Park 100MW (Solar) • South Kent Wind Park 270MW (Wind)	$2,594	519 MW	March 31, 2014	*January 20, 2013*
Phase 2 - Power Purchase Agreements Signed • K2 270MW (Wind) • Armow 180 MW (Wind) • Kingston North 100 MW (Solar)	$2,739	550MW	December 31, 2014	*December 31, 2012*
Phase 3 • Dundalk 300MW (Wind) • Beaverdale 100MW (Wind) • Port Hope 100MW (Solar)	$1,999	500MW	December 31, 2014	*December 31, 2012*
Phases 4 Projects TBD	$1,575	Phase 4 and 5 generation totals approx. 731 MW of wind and 200 MW of solar	December 31, 2015	*December 31, 2013*
Phase 5 Projects TBD	$1,497		December 31, 2016	*December 31, 2014*
	$10,404 +$110 EDA 10,514			

Currently, Samsung has established three of the four manufacturing plants in Ontario (with 350 employees in all three plants). The fourth plant, a solar module facility, has yet to be established by Samsung (a local supplier will be used instead).

Economic Development Adder:

If KC's manufacturing and jobs commitments are met, KC is eligible to receive an Economic Development Adder (EDA) that is paid through Phase 1 and 2 PPAs up to a maximum of $110M over 20 years.

- $110M represents the total manufacturing investment to build 4 manufacturing plants in Ontario.

Payment begins upon the commercial operation of KC's Phase 1 and 2 wind and solar facilities (March and December 2014 respectively).

EDA paid is 0.27 cents/kWh for wind generation and 1.43 cents/kWh for solar generation over 20 years.

- The electricity ratepayer impact of the Green Energy Investment Agreement will average $5.08/month (Phase 1 and 2 assumed at FIT 1.0 prices and Phases 3,4,5 assumed at FIT 2.0 prices).
- This $5.08/month is made up of $0.03 for the EDA and $5.05 for FIT prices, over the life of the 20-year Agreement.

EDA payments will be reduced on a pro rata basis if job levels fall below 85% of 900 jobs.

- Average jobs between 2013-2015 to be maintained at 765 jobs. (e.g. if jobs fall below 765 by 15%, KC's EDA will be reduced by 15%).

If a manufacturing partner ceases operation before December 2016, the EDA will be reduced by 25%

Plants	Jobs (as of March 2013)	Job Targets
Wind Turbine Blades (Siemens – Tillsonburg)	80	300
Wind Towers (CS Wind – Windsor)	240	300
Solar Inverters (SMA – Toronto)	30	100
Solar Module Assembly (Announced for London)	0	200
TOTAL	**300**	**900**

Appendix D: Negotiations Background

In 2012, the Korean Consortium submitted a request for amendments to the GEIA. Six negotiation meetings were held with the KC, as represented by Samsung from November 2012 to January 2013. No agreement was reached in those discussions.

KC's request to renegotiate the Agreement included:

- extensions of commercial operation dates for Phase 3, 4 and 5 projects;
- securing the Phase 2 solar project (the Ontario Power Authority (OPA) has the ability to terminate this project.

Ontario's key negotiating principles included:

- Sustaining jobs at manufacturing plants for a longer period of time;
- Reducing/deferring ratepayer impacts and reducing impact of surplus baseload generation;
- Requiring Samsung to align with the new priority points system under the Feed-in Tariff Program including community, aboriginal and municipal support or participation for their future projects, as well as adhere to land use requirements for ground mount solar projects.

The negotiating mandate being sought improves Ontario's position in future negotiations, particularly with the ability to terminate Phases 3, 4, and 5 (there are no Power Purchase Agreements in place for Phases 3, 4 and 5, foregoing 1,430 MW of additional electricity capacity, and cost avoidance for ratepayers up to $5.2 billion over 20 years (only if the there is no reassignment of the foregone 1,430 MW. The Ministry indicates the foregone MW capacity could be reassigned in the future renewable energy projects, which would lower the cost avoidance to less than $5.2 billion over 20 years, but would show continued support for renewable energy.

Ontario

CABINET BRIEFING NOTE

Ministry of Energy

Green Energy Investment Agreement (GEIA)

Cabinet (Direct): March 27, 2013	TB/MBC: March 28, 2013 (TBC)	Cabinet: April 10, 2013 (TBC)

This government's commitment	The McGuinty government has signed an agreement that will bring more green energy and new jobs to Ontario. A consortium led by Samsung C&T Corporation and the Korea Electric Power Corporation (KEPCO) will invest $7 billion to generate 2,500 megawatts of wind and solar power. These projects will triple Ontario's output from renewable wind and solar sources and provide clean electricity to more than 580,000 households. The investment will also lead to more than 16,000 new green energy jobs to build, install and operate the renewable generation projects. *– January 21, 2010 Ontario Government News Release*

SUMMARY OF PROPOSAL

The Ministry of Energy is seeking Cabinet approval of a mandate to renegotiate the Green Energy Investment Agreement (GEIA). The GEIA is the agreement that the Province of Ontario signed with the Korean Consortium (KC) in January 2010, and which was subsequently amended in July 2011. The Korean Consortium includes Samsung.

The GEIA commits the KC to deliver a total of 2,500MW of wind and solar electricity generation through five phases. The agreement also commits KC to establishing four manufacturing plants in Ontario with an expected 900 jobs. In return, KC receives a long-term revenue stream through power purchase agreements, priority access to the transmission system, plus an additional payment of up to $110 million if specific job creation targets are met.

To date, KC has secured power purchase agreements only for Phases 1 and 2. KC has also established three of the four manufacturing plants in Ontario, although these have not yet achieved the full job creation targets. Phases 3, 4, and 5, as well as the fourth manufacturing plant, have not yet been implemented for a variety of reasons.

The ministry proposes to eliminate Phases 3, 4, and 5 from the agreement. The ministry also proposes to reduce the additional payment while having KC maintain some of their job creation requirements.

The ministry proposes to have Infrastructure Ontario lead the negotiation. Currently, KC is in default of the terms of the existing GEIA. The ministry is proposing to authorize a 45 day negotiation period. If an agreement with KC cannot be reached within that timeframe, the Minister of Energy would be authorized to terminate the entire agreement (with 30 days notice). In this event Phases 1 and 2 would still be able to proceed.

What is the expected cost to government?

There is no direct cost to the government for the approval of this negotiating mandate. In the event that the GEIA is terminated, there is a risk that the government could face costs if KC initiates legal action against the province. These potential costs have not been quantified to date.

How will the changes be communicated?

At this point, a complete communications plan has not been developed – developing such a plan would be a requirement if the proposed minute is approved. Based on the information provided to date, proposed messaging would emphasize that the province is still committed to green energy and to protecting the interests of ratepayers. The specifics of the communications strategy would depend in part on the outcome of the negotiation process (and KC may have a role in approving communications if a negotiated agreement can be reached).

CABINET OFFICE ANALYSIS

Comment [OJ1]: ENERGY – Does an estimate exist?

Comment [JS2]: The positive impact for ratepayers of not proceeding with Phases 3, 4 and/or 5 depends on whether the foregone generating capacity is not reallocated. Any future reallocation of the 1,430 MW, as suggested by the Ministry, would diminish ratepayer cost avoidance to less than the $5.2 billion figure cited by the Ministry, as would costs or damages as a result of legal action taken by KC.

The Ministry indicates KC is likely to commence legal action against Ontario if Ontario attempts to prevent theses phases from proceeding. Damages could include sunk costs related to pre-development work, lost profits of any or all phases, and costs incurred to bring manufacturers to Ontario. Energy has not quantified potential damages, whether it would impact ratepayers or taxpayers, or provided an assessment of the likelihood of losing any lawsuit.

Comment [OJ3]: Text prepared by CO Policy. CO Comms to review/update.

Amending the GEIA

The GEIA has been amended once before, and those amendments were publicly announced in August 2011. Through that amendment KC was given more time to meet their obligations under the agreement, and the province negotiated a reduction to the additional payments for job creation from $437 million to $110 million. More recently, the ministry held additional meetings with KC to discuss the agreement, but these meetings were inconclusive.

The ministry is now proposing to eliminate much of the existing agreement. The ministry argues that doing so could save Ontario ratepayers as much as $5.2 billion over 20 years, but these savings would be achieved only if KC's electrical generation capacity is not reallocated. The ministry indicates that reallocation in the future is an option, but that a decision has not yet been made. If the generation capacity is reallocated, the savings to ratepayers would be reduced.

Renewable Electricity Generation Targets

Aside from the GEIA, there is a more fundamental question about what Ontario's future electricity needs are and how they should be met. Currently, Ontario has more generation capacity than it requires, and the ministry presents this as a rationale for not proceeding with the future phases of the GEIA. However, this may not be seen as consistent with the government's previous commitment to fostering renewable energy generation.

Ontario's Long-Term Energy Plan (released in 2010) set a target of 10,700MW for non-hydro renewable energy generation by 2018. All five phases of the GEIA represent approximately one quarter of this target, and Phases 3, 4 and 5 represent approximately 13 per cent of the total. A decision on whether the 10,700MW target is still valid has not been made and would likely be explored if the Long-Term Energy Plan were to be updated.

Some stakeholders could argue that deciding not to procure all of the energy under the GEIA is premature until the broader renewable generation target has been updated or validated. Also, saying that KC's renewable generation capacity is not needed could also be contentious in communities where other renewable generation projects (e.g., wind farms) are currently being built in the face of community opposition.

Risks

The proposed strategy seeks to maintain KC's obligations to make investments in Ontario and create jobs within Phases 1 and 2. This would be advantageous to the province, but it is possible that KC may not want to maintain its investment and job creation obligations in the face of significantly reduced financial returns from the agreement with Ontario.

Whether the agreement is renegotiated as proposed or terminated, Ontario would have to manage the risk of being perceived to be walking away from an investment agreement that, in the past, has been described as an important job creation initiative. To date, KC has not achieved the job creation targets set out in the GEIA. The potential impact of terminating the agreement on Ontario's foreign investment climate should be considered.

Even though Ontario appears to be well within its rights to terminate the agreement, the ministry has flagged that there is a risk that KC could initiate legal action against the province, especially with respect to their sunk costs and expectations of investment returns. These legal risks are highest with respect to the potential cancellation of Phase 3.

Timing

Ontario's negotiating position with KC became stronger when KC went into default of the GEIA on December 31, 2012. This gives Ontario more leverage than it had in previous negotiations and supports the rationale for proceeding with this decision at this time.

Other Options

The ministry's submission does not identify any options with respect to the negotiation strategy. Other potential options include leaving the agreement substantially in place and providing KC with more time to meet their obligations, or seeking to change the prices that KC would be paid for any electricity they generate.

PROPOSED CABINET MINUTE

Cabinet agreed:

To approve a negotiating mandate to amend the Green Energy Investment Agreement between the Korean Consortium (KC) and Ontario, with the following negotiating points:

i. Negotiating team to be led by Infrastructure Ontario and include the Ministry of Energy
ii. Allow Phase 1 and 2 projects to continue, but modify the Phase 2 solar project to meet Feed-In-Tariff 2.0 rules regarding residential setback requirements
iii. Eliminate Phases 3, 4, 5 from the GEIA (total of 1,430 MW of generation capacity)
iv. Secure an investment in London, Ontario per the existing GEIA commitment but require KC to deliver an alternative investment (e.g.; research and development) that provides employment benefits
v. Negotiate a reduction in the Economic Development Adder under the GEIA to the maximum extent possible.
vi. Require KC to maintain its job creation and manufacturing commitments for Phase 1 and 2.

That the ministry has 45 calendar days from the date of this approval to secure an agreement with the Korean Consortium. If an amended agreement has not been signed by the end of those 45 days, the Ministry of Energy is authorized to terminate the GEIA consistent with the termination clauses of the existing agreement.

Comment [034]: ENERGY – This language has been intentionally proposed to make the proposed minute less ambiguous. It's important to be precise about what constitutes achieving agreement within the 45 day period – having an amendment signed has been proposed here, but your comments on that are welcome. The reference to 30 days notice is potentially confusing, and has been removed intentionally.

Comment [JS5]: I would suggest requiring a return to Cabinet and/OR TB/MBC if no potential legal risk is not quantified – what is the potential impact on ratepayers, what is the risk assessment.

To direct the ministry to report back to Cabinet on the status of negotiations prior to May 31, 2013.

Direct the Ministry to work with Premier's Office and Cabinet Office on a communications plan.