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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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WASHINGTON, DC 20515-6143

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January 3, 2012

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LAWRENCE J. BRADY
STAFF DIRECTOR

Dr. Steven Chu
Secretary of Energy
United States Department of Energy
1000 Independence Avenue SW
Washington, DC 20585

Dear Mr. Secretary:

Following the bankruptcy of Solyndra, President Obama assured taxpayers that “the overall [loan guarantee] portfolio has been successful” and that decisions for loan guarantees were made based upon the merits of the projects.¹ Despite the President’s attempted reassurances, there appear to be other loan guarantees besides Solyndra that were given significant amounts of taxpayer dollars despite questionable merits. Even though the 1705 loan guarantee program has only existed for a relatively short period of time, taxpayers have already been exposed to two completely failed projects and have lost hundreds of millions of dollars with no chance of recovery.

The Committee on Oversight and Government Reform (the Committee) has sought to understand the decision-making process associated with the billions of taxpayer dollars directed into loan guarantees for green energy projects. As part of our investigation, the Committee obtained documents from the Department of Energy (DOE) relating to Beacon Power, the second beneficiary of a DOE loan guarantee to go bankrupt. The documents associated with Beacon Power raise serious questions about the management of the entire 1705 loan guarantee program.

In the past two years, DOE has invested millions of taxpayer dollars in Beacon Power. In December 2009 and September 2010, DOE awarded Beacon Power two stimulus grants, respectively, totaling over \$26.3 million.² However, the larger commitment came on July 2, 2009, when DOE offered a \$43 million conditional loan guarantee for a 20 MW “flywheel energy storage plant” in Stephentown, New York.³ A year later, on May 20, 2010, Standard and Poor’s (S&P) wrote a letter to Jonathan Silver, the Executive Director of the Loan Guarantee

¹ President Barack Obama, “News Conference by the President,” Office of the Press Secretary, The White House, October 6, 2011. *Available at:* <http://www.whitehouse.gov/the-press-office/2011/10/06/news-conference-president>.

² “Recipient Profile: Beacon Power Corporation,” Recovery.Gov. *Available at:*

<http://www.recovery.gov/Transparency/RecipientReportedData/Pages/Recipient.aspx?duns=008260445>.

³ “Obama Administration Offers \$59 Million in Conditional Loan Guarantees to Beacon Power and Nordic Windpower, Inc.,” The Department of Energy, July 2, 2009. *Available at:* <https://lpo.energy.gov/?p=834>.

Program office of DOE that provided a dismal CCC+ credit rating to the Stephentown project.⁴ S&P's credit analysis incorporated the benefits of a DOE loan guarantee in determining this rating. S&P defines 'CCC' as "currently vulnerable, and ... dependent upon favorable business, financial, and economic conditions to meet its financial requirements."⁵

Despite the poor S&P rating, DOE finalized the loan guarantee on August 9, 2010, and by this action, gambled taxpayer money on a risky venture with a known substantial potential for failure. S&P generously predicted that "the project ... exhausts the debt service reserve by Year 5, at which point \$36.45 million of the DOE loan is outstanding."⁶ In fact, the project failed almost immediately. Beacon Power filed for Bankruptcy on October 30, 2011. By the date of its default, it had not even drawn down all DOE funds.⁷

To help the Committee better understand the decision making process for the Beacon Power loan guarantee, please provide the following as soon as possible, but no later than 5:00 p.m. on January 17, 2012:

- (1) A complete written explanation for why DOE finalized the loan guarantee with Beacon Power after the CCC+ rating by S&P;
- (2) An explanation of whether there were any other projects under the 1705 program for which, prior to loan guarantee approval, DOE received credit rating information from Moody's, Fitch, or S&P regarding the entity seeking the loan guarantee. If so, provide the ratings and analysis received by DOE for these cases and provide related communications;
- (3) An explanation of why DOE required a credit rating of at least BB from Standard & Poor's or Fitch or Ba2 from Moody's in other 1705 loan guarantee solicitations⁸ but approved and finalized Beacon Power's loan guarantee when it had a CCC+ rating;

⁴ Swaminathan Venkataraman (Standard & Poor's) to Jonathan Silver (Department of Energy), "Stephentown Regulation Services LLC \$43.137 Million Senior Secured Credit Facility," May 20, 2010. On file with Committee. (Hereinafter "S&P Letter").

⁵ "Understanding Standard & Poor's Rating Definitions," Standard & Poor's, June 3, 2009. *Available at:* http://www.standardandpoors.com/servlet/BlobServer?blobheadername3=MDT-Type&blobcol=urldata&blobtable=MungoBlobs&blobheadervalue2=inline%3B+filename%3Dunderstanding_ratings_definitions.pdf&blobheadername2=Content-Disposition&blobheadervalue1=application%2Fpdf&blobkey=id&blobheadername1=content-type&blobwhere=1243834063620&blobheadervalue3=UTF-8..

⁶ S&P Letter.

⁷ The project had only drawn down \$38.5 million as of August 3, 2011. "Background on DOE's Loan Guarantee for Beacon Power's Subsidiary, Stephentown Regulation Services, LLC," Congressional Research Service, November 14, 2011. On file with Committee.

⁸ "Before seeking a loan guarantee, Lender-Applicants are strongly encouraged to verify that their proposed Borrowers' projects are not eliminated by any of the threshold determinations set forth in Section 609.7(a) of Attachment G (collectively, the "Threshold Determinations"). In addition to Section 609.7(a) of Attachment G, an application will be denied if (i) the project will not "commence construction" (as defined in Section II.A below) on or before September 30, 2011 or (ii) **the Guaranteed Obligation is not expected to have (whether structured on a project finance or a corporate finance basis) a credit rating from a nationally recognized rating agency of at least a credit rating equivalent of 'BB' from Standard & Poor's or Fitch or 'Ba2' from Moody's as evaluated**, in each case, without the benefit of any DOE loan guarantee or any

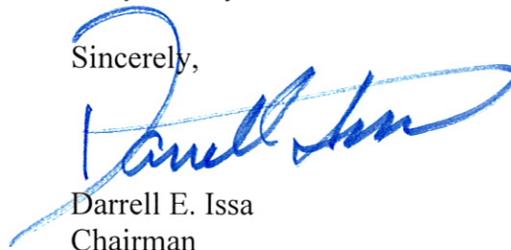
- (4) An explanation of why DOE required loan guarantee projects partially financed with private money (in the case of the Financial Institution Partnership Program) to have at least a BB rating from Standard & Poor's but did not require this same standard for loan guarantees that were completely guaranteed by the federal government;
- (5) All internal DOE communications related to the Beacon Power loan guarantee;
- (6) All communications between DOE and the White House related to the Beacon Power loan guarantee;
- (7) All communications between DOE and Beacon Power personnel related to the Beacon Power loan guarantee;
- (8) A complete list of all assets and liabilities of Beacon Power adjusted to reflect market value and expected cash flow as of a date just prior to the bankruptcy;
- (9) A detailed analysis of the DOE's expected loss associated with the DOE loan guarantee relating to Beacon Power. Itemize all expenditures since Beacon Power or its subsidiaries received the DOE credit line. State total compensation for each executive officer and board member since receiving the DOE credit line; and
- (10) Given the startlingly fast demise of Beacon Power following its recapitalization via the low interest DOE loan, an explanation of the primary factors that led to the entity's bankruptcy.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Mike Whatley or Peter Haller of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell E. Issa
Chairman

The Honorable Steven Chu

January 3, 2012

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cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives

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Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.