

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

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

February 16, 2012

The Honorable Steven Chu
Secretary
United States Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Secretary Chu:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is continuing its examination of the Department of Energy (DOE) Loan Guarantee Program. We write seeking documents and information regarding DOE's \$1.4 billion partial loan guarantee for Project Amp, a large-scale rooftop generation project. DOE announced a conditional commitment for Project Amp on June 22, 2011, and the commitment was finalized on September 30, 2011, the deadline under the American Recovery and Reinvestment Act (Recovery Act or stimulus), for awarding stimulus-funded loan guarantees.

Project Amp is a multi-phase, multi-state installation of approximately 733MW of photovoltaic solar panels on commercial facility rooftops owned by Prologis. The electricity generated from these panels will be sold to utilities and other power purchasers. According to a DOE press release dated June 22, 2011, Project Amp's application was submitted by Bank of America Merrill Lynch (BAML), under the Financial Institution Partnership Program (FIPP).

According to the May 6, 2011, Credit Paper that was submitted to the DOE Credit Review Board that approved the conditional commitment for Project Amp, the solar panels for the first phase of Project Amp, referred to elsewhere as "Project Photon," were to be supplied solely by Solyndra, Inc. (Solyndra). The remaining phases of the project had not been defined at the time the Credit Paper was submitted to the DOE Credit Review Board (CRB). That being said, "Basic Phase Parameters" for the project had been established, and the Credit Paper stated that Solyndra's inclusion was an "exception" to the criteria relating to "supplier financial strength." The Credit Paper went on to state that the Loan Programs Office believed, however, that Project Amp was "adequately insulated from the risks associated with the long-term financial health of Solyndra." Less than four months after the Credit Paper was drafted, Solyndra filed for Chapter 11 bankruptcy.

Documents produced to the Committee during the course of its investigation of the DOE Loan Guarantee Program indicate that there may have been some hesitation on the part of DOE with respect to issuing a conditional commitment for the Project Amp loan guarantee. In a June 17, 2011, email, a Solyndra employee shared what he had learned from a BAML senior investment banker who took part in the Project Amp negotiations with DOE, stating that, “[O]n three occasions this week he thought that the [Project Amp] deal was dead, but Secretary Chu personally pulled it off. Chu shared with the team that this deal went to higher levels in the Obama Administration to gain approval than any other transaction in the Loan Guarantee Program, and that he personally committed to seeing it through to a successful conclusion.” Further, the minutes of the June 18, 2011, meeting of the DOE Credit Review Board for Project Amp stated that “Secretary Chu had requested the CRB convene to consider Project Amp.” The Committee staff have reviewed the Credit Review Board meeting minutes for all Section 1705 loan guarantee applicants during an *in camera* review. Only the Credit Review Board minutes for Project Amp reference any involvement by the Secretary.

Based on our review of documents produced to the Committee, it appears that Solyndra’s involvement in Project Amp was a significant factor both in the negotiations between DOE and Solyndra relating to a possible second restructuring of the loan guarantee in August 2011 and in the closing of the Project Amp loan guarantee.

In mid-August 2011, DOE was urging Argonaut Ventures, Inc. (Argonaut), Solyndra’s largest investor, to inject additional money into the company so that it could stay in business while DOE and Solyndra determined if there was a way to restructure the company for a second time. While these discussions took place, Solyndra was also negotiating with Prologis the terms of the agreement to supply panels for Project Photon, the first phase of Project Amp. The Project Photon agreement was critical for Solyndra as it struggled to improve its financial condition after the first restructuring. According to Solyndra’s estimates, finalizing the sales contract would have allowed Solyndra to meet its sales projections for the second half of 2011.

On August 26, 2011, a senior Argonaut advisor emailed other Argonaut colleagues and stated that further investment in the company was “dependent on the ProLogis [sic] order coming in which has still not been finalized.” The senior Argonaut advisor went on to explain that DOE might not continue to fund Solyndra’s loan guarantee, even if the ProLogis [sic] deal was finalized, unless Solyndra’s investors made a “broader commitment to fund the company going forward.” Another Argonaut official responded and asked whether “DOE [would] put pressure on Prologis to sign?” Other documents produced to the Committee appear to indicate that personnel in the DOE Loan Programs Office were actively participating in the negotiations between Solyndra and Prologis on Project Photon, going so far as to act as an intermediary between the parties as they finalized the shipment schedule, the number of megawatts Solyndra would supply, and the price per watt.

Project Photon was also a critical matter in DOE’s consideration of Project Amp. In order for DOE to close the Project Amp loan guarantee, the Recovery Act required that the project commence construction no later than September 30, 2011. Prologis’s ability to meet this requirement, therefore, was dependent on Project Photon, the first phase of the project, being underway by the Recovery Act deadline. If Solyndra was not able to supply the panels needed for Project Photon because of its poor financial condition, Prologis’s loan guarantee for the entire Project Amp might have been in jeopardy. In an August 18, 2011, email to a senior Argonaut

advisor, Solyndra Chief Executive Officer Brian Harrison stated that, "I believe DOE is desperate to get AMP to happen. I think they have linked Phase I of AMP (which is Photon) to the project success. Solyndra asked for this several months ago to ensure Photon happens. If we don't ship to Photon then I think there may be some negative implications to AMP that DOE is urgently trying to avoid."

We have questions about Solyndra's involvement in Project Amp, and what role Solyndra's involvement played in DOE's decision to issue a conditional commitment to Prologis for the project. Project Amp's conditional commitment from DOE came in June 2011, at a time when Solyndra's financial condition had sharply deteriorated. Only three months after DOE restructured the Solyndra loan guarantee in February 2011 to allow the company to continue operating, Solyndra was again running out of working capital. During the month of May 2011, DOE officials had discussions about a potential Solyndra bankruptcy, and whether it was possible for DOE to initiate an involuntary bankruptcy of the company. In June, Solyndra reached an agreement with Argonaut, under which Argonaut would purchase the company's Accounts Receivable so that cash could be immediately injected into the company.


To assist the Committee in better understanding the Project Amp loan guarantee, as well as the relationship between Solyndra and Project Amp, please provide the following documents no later than February 24, 2012:

1. All communications between or among DOE, Solyndra, Prologis, Bank of America and/or Bank of America Merrill Lynch, or NRG Energy, referring or relating to both Project Amp (and/or Photon) and Solyndra.
2. All communications between or among DOE, the Office of Management and Budget, the Department of the Treasury, and the Executive Office of the President, referring or relating to both Project Amp (and/or Photon) and Solyndra.
3. All internal DOE documents and communications referring or relating to Project Amp (and/or Photon) and Solyndra.

The applicable date range for the above documents requests is January 1, 2010 to the present. An attachment to this letter provides additional information about how to respond to the Committee's request. Should you have any questions, please contact Karen Christian or John Stone with the Committee staff at (202) 225-2927.

Sincerely,


Fred Upton
Chairman


Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

Letter to the Honorable Steven Chu
Page 4

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations